No. 20-13695-B

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PEOPLE FIRST OF ALABAMA, et al.,
Plaintiffs-Appellees,

v.

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

On Appeal from the United States District Court
for the Northern District of Alabama
Case No. 2:20-cv-00619-AKK

TIME SENSITIVE MOTION FOR ADMINISTRATIVE STAY AND STAY PENDING APPEAL

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Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1(a)(3) and 26.1-2(b), the undersigned counsel certifies that the following listed persons and parties may have an interest in the outcome of this case:

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Respectfully submitted this 2nd day of October, 2020.

s/ Edmund G. LaCour Jr.
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INTRODUCTION

The need for a stay pending appeal in this case is clear. Indeed, the Supreme Court has *already* once granted a stay in this case on nearly identical facts.

In response to the COVID-19 pandemic, Alabama took numerous steps to ensure that voting is safe. To protect voters, anyone may request to vote absentee. To protect the vote, voters must meet the State's absentee-ballot requirements—submitting a copy of the voter's ID with an application and the signature of either two witnesses or one notary with the ballot.

In June 2020, after voting in the Alabama primary runoff had begun and just *29 days* before election day, the district court preliminarily enjoined these modest anti-fraud provisions. The Supreme Court stayed that late-breaking injunction. *See Merrill v. People First of Ala.*, 591 U.S.__, 2020 WL 3604049 (2020).

Three month later, we have the same scenario. After voting in the general election had begun and just *34 days* before election day, the district court has again enjoined those same provisions. The district court did not even try to explain how its decision could be squared with the Supreme Court's stay of its last injunction.

There is no plausible explanation, for nothing has changed since the primary runoff to make a mid-election injunction any wiser or more lawful this time around. Indeed, a stay is even more warranted now. Since July, the Supreme Court has stayed additional district court orders that would alter state election laws. Plaintiffs have

had more time to find safe ways to satisfy the witness and photo ID requirements. And Plaintiffs have failed to show that meeting those requirements poses any appreciable risk. Rather, their expert testified that meeting someone to sign a piece of paper can be "reasonably safe," even "for a high-risk voter." Doc. 250 at 177.

Defendants are therefore likely to prevail on the merits. The right to vote includes the right to vote in an election where "safeguards exist to deter [and] detect fraud [and] to confirm the identity of voters." *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008). Thus, Alabama has long enforced its witness and photo ID requirements. The district court scrapped these protections on the ground that requiring a voter to have any additional interaction with anyone "presents *some* risk of COVID-19 exposure." Doc. 250 at 123 (emphasis added). But neither Plaintiffs nor the court quantified this risk or explained why it was unavoidable. Nor could they, because no voter need put her life on the line when she can, for example, simply meet two masked neighbors outside for a few moments while they watch each other sign an absentee ballot. Indeed, one Plaintiff testified that she met a colleague outside to sign *other* paperwork. *Id.* at 50. And another Plaintiff confirmed that the pandemic has not ended her regular trips to the dog groomer. *Id.* at 46. Yet when it comes to finding a way to have an envelope signed or copy made, Plaintiffs' lack of imagination dooms Alabama's election laws.

That can't be right. This injunction, like the last one, should be stayed.

STATEMENT OF THE CASE

A. Voting in Alabama During COVID-19

Alabama has taken extraordinary measures to adapt election procedures to account for the COVID-19 pandemic. First, the Governor moved the primary runoff election that was scheduled for March 31, 2020, to July 14, 2020. *Id.* at 26.

Second, the Secretary of State, John Merrill, encouraged Probate Judges, who oversee federal, state, and county elections in their counties, to introduce alternate polling places and recruit additional poll workers. *Id.* He also offered suggestions and provided millions of dollars to help local elections officials maintain safe and sanitary voting practices. *Id.*

And third, Secretary Merrill used authority granted to him in emergency situations to promulgate emergency rules expanding absentee balloting for any voter concerned about COVID-19 for elections through January 2021. *See id.* at 26-28. Any voter who does not want to vote in person because of COVID-19 may now vote absentee. Because an absentee ballot may also be cast in person prior to election day, this expansion effectively implements early voting in Alabama for the first time as well. *See* Doc. 250 at 25 n.36.

State law imposes two requirements on absentee voting that "go[] to the integrity and sanctity of the ballot and election." Ala. Code §17-11-10(b). Absentee ballots must be accompanied by a voter affidavit that is either notarized or signed by

two witnesses. *See id.* And voters must submit a copy of their photo ID with their absentee ballot application. *Id.* §17-9-30(b). These procedures are necessary to deter and investigate absentee voter fraud. 9/16 Tr. at 7-16[1]; *see also Greater Birmingham Ministries v. Sec'y of State of Ala.*, 966 F.3d 1202 (11th Cir. 2020) (holding photo ID requirement a legitimate, nondiscriminatory voting requirement that advances interest in preventing voter fraud and protecting public confidence in election integrity).

The State has also tried to make these necessary requirements as easy as possible to comply with during the pandemic. For instance, Governor Ivey allowed notaries public to notarize signatures remotely so that voters could have their affidavits notarized from home. *See* Doc. 250 at 17. Secretary Merrill has ensured that photo IDs will still be issued for free, including by *personally* copying and mailing those copies to voters who contact him and by having his office's mobile ID unit hold at least 40 events during the pandemic. *Id.* at 83-84. A pre-existing exemption from the photo ID requirement, carved out to comply with federal voting laws, still applies for voters who are "unable to access [their] assigned polling place" and are either disabled or over 65. Ala. Code §17-9-30(d); Ala. Admin. Code. r. 820-

[1] Like the district court, "[d]ue to the time-sensitive nature of this case, [Defendants] cite[] to the Court Reporter's uncertified rough transcript of the trial." Doc. 250 at 2 n.3. The transcripts Defendants cite are included in an appendix to this motion.

2-9-.12(3). And because absentee voting begins 55 days before election day, voters have nearly two months to satisfy these requirements.

One accommodation the State has not offered, however, is curbside voting. Although not expressly prohibited by statute, Alabama law does not provide for it, and serious questions exist about whether it complies with other election laws that protect ballot secrecy and require the voter to personally sign the poll list and place the ballot in the tabulation machine. The Secretary of State's Director of Elections also explained the practical issues with obtaining the necessary resources, the setup of polling places, and effectively implementing a new method of voting in fewer than 40 days in the middle of a pandemic. 9/15 Tr. at 185.

B. The District Court's Injunctions

Three months ago, the district court issued a preliminary injunction in the middle of the primary runoff election. Docs. 58, 59. That injunction rewrote Alabama's election laws by prohibiting election officials in three counties from enforcing modest anti-fraud requirements for absentee voting. Doc. 59. It also permitted counties to implement curbside voting without the Secretary's oversight. *Id.*

The State and Secretary Merrill sought emergency relief from this Court, which refused to stay the injunction. *People First of Ala. v. Sec'y of State of Ala.*, 815 F. App'x 505, 505 (11th Cir. 2020).

The State Defendants then sought emergency relief from the Supreme Court, which stayed the district court's injunction. *See Merrill*, 591 U.S.__, 2020 WL 3604049. The July 14 primary runoff then took place with all requirements in place, with all eligible Plaintiffs satisfying those requirements or voting in person, with record turnout, with no evidence of any increase in cases because of the election, and with COVID-19 cases and hospitalizations *declining* since. *See* Doc. 250 at 19, 27, 47, 50; 9/9 Tr. at 14; 9/14 Tr. at 83-87.

The district court conducted a two-week bench trial from September 8 through September 18. (Absentee voting began on September 9, Doc. 250 at 28). On September 30, the district court issued an opinion and order enjoining Defendants from enforcing the challenged provisions during the November 3 election. Specifically, the district court enjoined: (1) the Mobile County Defendants and the State from enforcing the witness requirement "for any qualified voters who provide a written statement that they have an underlying medical condition that puts them at a heightened risk from COVID-19;" (2) Ms. Schwarzauer and the State from enforcing the photo ID requirement "for absentee voters over 65, or those under 65 who cannot safely obtain a copy of their photo ID during the COVID-19 pandemic due to an underlying medical condition that makes them particularly to COVID-19 complications, and who provide other required identifiers … such as their driver's license number" (the court did not explain how to determine whether an absentee

ballot applicant has an underlying medical condition); and (3) Secretary Merrill "from prohibiting counties from establishing curbside voting procedures that otherwise comply with state and federal election law." Doc. 251 at 4.

The Defendants filed a notice of appeal and a motion for stay with the district court on the same day it issued its injunction. Docs. 252, 253. Defendants requested a prompt ruling on their stay motion and informed the court of their intent to seek a stay from this Court after 3PM CDT today if the district court did not stay its order before then. Doc. 253 at 2. The district court has not yet ruled on the stay motion, so this motion follows. *See* Fed. R. App. P. 8(a)(2)(A)(ii).

STANDARD OF REVIEW

In determining whether to stay a lower court's decision pending appeal, this Court will consider: "(1) whether the stay application has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hand v. Scott*, 888 F.3d 1206, 1207 (11th Cir. 2018). The Court is also "required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases." *Purcell v. Gonzalez*, 549 U.S 1, 4 (2006).

ARGUMENT

I. Purcell Again Requires a Stay of the District Court's Latest Mid-Election Injunction.

Five months ago, the Supreme Court stayed a district court's injunction that altered Wisconsin's election practices due to COVID-19. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1208 (2020). The Court noted that it had "repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Id.* at 1207. The reason for that admonition is clear: "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell*, 549 U.S. at 4-5.

The Supreme Court has acted with particular vigilance during the pandemic to stay injunctions entered by district courts that cite the pandemic as cause to interfere with state elections. In July, of course, it stayed the preliminary injunction the district court entered in this case. *Merrill*, 531 U.S.__, 2020 WL 3604049. That same month it also stayed a district court's injunction that relaxed Idaho's rule for ballot initiatives. *See Little v. Reclaim Idaho*, 140 S.Ct. 2616 (2020). And in August, the Supreme Court also stayed a district court's injunction that altered Oregon's election procedures due to COVID-19. *Clarno v. People Not Politicians*, No. 20A21, 2020 WL 4589742 (U.S. Aug. 11, 2020).

This teaching is just as pertinent at this stage of this case as it was when the Supreme Court acted to stay this district court's prior order. Then, like now, absentee voting was already underway. And then, like now, in-person voting was just around the corner and well within the normal *Purcell* window. *E.g.*, *North Carolina v. League of Women Voters of N.C.*, 574 U.S. 927 (2014) (staying order entered 32 days before election day); *Husted v. Ohio State Conference of NAACP*, 573 U.S. 988 (2014) (staying order entered 61 days before election day); *Purcell*, 549 U.S. at 4-5 (staying order entered 33 days before election day).

Somewhat stunningly, the district court never grappled with the fact that its earlier order was stayed—other than as a note of procedural history. Doc. 250 at 91. Instead, the court discussed eight other election law stay cases and purported to distinguish state-friendly decisions from this case. *See* Doc. 250 at 109-17. But there is no distinguishing *this case* from *this case*. *See Merrill*, 531 U.S.__, 2020 WL 3604049.

And the district court's reasoning that its order "is unlikely to cause voters confusion" because it "is taking away requirements placed on Alabama voters, as opposed to imposing them" is also a nonstarter. Doc. 250 at 113. After all, the same was true in *RNC*, 140 S.Ct. at 1208 (district court removed requirement that absentee ballots "be mailed and postmarked by election day"); *Purcell*, 549 U.S. at 4 (Ninth Circuit removed requirement that voters present identification); and in this case

when it was last before the Supreme Court.

In a final attempt to escape *Purcell*, the district court held that the "State defendants are judicially estopped" from relying on *Purcell*. Doc. 250 at 116. The court reasoned that because State Defendants argued in May 2020 that Plaintiffs' preliminary injunction request for the November election was at that time too speculative, the State Defendants are now barred from objecting to the confusion that will flow from an injunction entered 34 days before that election. *Id.* But this analysis again conflicts with precedent, for nothing about State Defendants' earlier position—which came before Plaintiffs amended their complaint, and well before trial—is inconsistent with *Purcell*. *See New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) ("[A] party's later position must be 'clearly inconsistent' with its earlier position."). There is no "irreconcilable conflict" (*Chevron Corp. v. Donziger*, 833 F.3d 74, 128 (2d Cir. 2016)) between the arguments that (1) allegations about how a novel virus will affect an election that is half a year away are too speculative, *and* (2) equitable considerations warrant the denial of an injunction once that election has begun. And Defendants were not required to pretend that Plaintiffs' claims were well-founded this spring to preserve the right to argue that voter confusion may follow when laws are changed after voting has begun.

That result follows from numerous cases, including *Zedner v. United States*, which held that a criminal defendant's position "that a continuance was needed to

gather evidence … was not 'clearly inconsistent' with petitioner's later position that the continuance was not permissible under the" Speedy Trial Act. 547 U.S. 489, 505-06 (2006). Moreover, "[i]nconsistent positions result only when the government raises contradictory arguments in response to the *same* dry of facts." *Ezekiel v. Michel*, 66 F.3d 894, 905 (7th Cir. 1995). Nor is there any contention that the purported inconsistencies were "calculated to make a mockery of the judicial system." *Transamerica Leasing, Inc. v. Inst. of London Underwriters*, 430 F.3d 1326, 1335 (11th Cir. 2005). Because different facts and legal tests are at issue today than in May, judicial estoppel does not apply.

Moreover, there's no contention that judicial estoppel applies to the Mobile County Defendants, who were not even parties to the case in May. *Purcell* thus again applies, and a stay should again issue.

II. Defendants Are Likely to Prevail.

A. The State's Interests Are Overwhelming Under *Anderson-Burdick*.

The "flexible standard" of *Anderson-Burdick* governs review of Plaintiffs' constitutional challenges. *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009); *see Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). This is a two-part analysis. Step one requires Plaintiffs to demonstrate the severity of the burden—if any—the challenged provisions impose on the right to vote. A "severe" burden is subject to strict scrutiny,

Burdick, 504 U.S. at 434, while "[l]esser burdens … trigger less exacting review," *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). The arrived-at level of scrutiny is then applied at step two, which requires Plaintiffs to prove that the burdens outweigh the State's interests. *Id*. "[A] State's 'important regulatory interests' will usually be enough to justify 'reasonable, nondiscriminatory restrictions.'" *Id.* (quoting *Burdick*, 504 U.S. at 434).

The district court stumbled at both steps. Initially the court concluded—correctly—that strict scrutiny did not apply to the challenged witness requirement because the burden imposed was not significant when viewed "categorically," without "consider[ing] the peculiar circumstances of individual voters." Doc. 250 at 122. But then the court went on to consider the "peculiar circumstances of individual voters," and thereby concluded that "the burden imposed by the witness requirement might not be severe, but it doubtlessly exists." Doc. 250 at 125; *see also id.* at 133 (photo ID requirement); 139 (curbside voting "ban").

Most critically, the court constructed a novel "some risk" standard that it used to condemn each provision for conceivably creating "some risk of COVID-19 exposure to voters who do not regularly encounter at least two adults simultaneously." Doc. 250 at 123. The court never quantified this increased risk and thus never "quantif[ied] the magnitude of the burden on this narrow class of voters." *Crawford*, 553 U.S. at 200. But it appears that by "some risk," the district court

meant "any minimal increased risk." After all, every individual Plaintiff testified that they have opportunities to safely obtain signatures, perhaps by meeting two witnesses briefly outside while maintaining social distancing and wearing masks. Indeed, Plaintiff Bettis did just that when she met her board president in a parking lot for him to sign paperwork on the hood of her car. Doc. 250 at 50; *cf. Democracy N.C. v. N.C. State Bd. of Elections*, __F.Supp.3d__, 2020 WL 4484063, at *33 (M.D.N.C. Aug. 4, 2020) (finding high-risk voters could fulfill witness requirement "without serious risk by adhering to social distancing measures and following all CDC guidelines"). And Plaintiffs presented *no* evidence that *anyone* has contracted COVID-19 under such circumstances. Rather, Dr. Reingold—Plaintiffs' epidemiologist—agreed that there were safe ways for a voter to fulfill the challenged requirements. *See* 9/8 Tr. at 71-73. And Dr. Elopre, another Plaintiff expert, testified that there were "reasonably safe" ways for even "a high-risk voter" to meet someone to sign a document. Doc. 250 at 177. Thus, "on the basis of the record that has been made in this litigation," this Court is unlikely to "conclude that the [challenged requirements] impose[] excessively burdensome requirements on any class of voters." *Crawford*, 553 U.S. at 202 (quotation marks omitted).

Second, even if socially distanced encounters with one or two adults of a voter's choosing were a cognizable burden, the evidence at trial showed that the individual Plaintiffs *already* regularly encounter other adults and can comply with

Alabama law without increased risk from COVID-19. *See* Doc. 244 at 8. For instance, the district court found that Plaintiff Thompson regularly "leaves home to visit her bank, pharmacy, doctor's office, and grocery store," as well as to take her dog for regular shampooing. Doc. 250 at 124. Yet the court counted her as someone who does not encounter other adults because her errands were "necessary," which meant that her encounters with other people "matter[ed] not." *Id.* (Thompson's dog, the court explained, "has a skin condition that requires recurrent trips to both the groomer and veterinarian." *Id.*). But necessary or not, Thompson still encounters people who could witness her ballot, and ignoring that fact artificially inflates the level of risk imposed by the challenged requirements by writing out of the baseline comparison the everyday risks that voters are already taking. By imagining that Plaintiffs are taking *no* risks, "some risk" might seem like a lot.

The court thus repeatedly embraced the false dichotomy between safety and voting and found that any level of risk—even one Plaintiffs face in their daily lives—outweighed the State's interests. *E.g.*, *id.* at 139 (enjoining the Secretary's curbside voting "ban" because "even masked, face-to-face interactions impose some level of risk that might dissuade justifiably cautious persons from voting"). Yet to the extent uncertainty remains about COVID-19's risks or nature—as Dr. Reingold testified there is, *see* 9/8 Tr. at 53-55—the court should have recognized that "legislative options must be especially broad." *Kansas v. Hendricks*, 521 U.S. 346, 360 n.3

(1997) (cleaned up).

Likewise, the court repeatedly second guessed the State's legitimate interests in combatting voter fraud and conducting orderly elections. For instance, though purportedly acknowledging that "the State undoubtedly has a legitimate interest in preventing voter fraud" and that "a photo ID requirement serves that interest," doc. 250 at 133, the court concluded that reweighing the State's interests was necessary because "an interest that can merely be articulated is not weighty," *id.* at 126 n.54. Thus, the court went on to find, based on the State's purported lack of evidence, "that the photo ID requirement's value is marginal at best." *Id.* at 135. But *Anderson-Burdick* treats the sufficiency of the State's justification in this area as "legislative fact," *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014), and "does not require any evidentiary showing or burden of proof to be satisfied by the state government," *Billups*, 554 F.3d at 1353.

In any event, the State produced ample evidence that voter fraud is real and that the witness and photo ID requirements were passed to combat it. *See* 9/16 Tr. 4-17 (testimony of Greg Biggs); 9/17 Tr. 2-66 (testimony of Justice Glenn Murdock); *see also* Ala. Code §17-11-10(b) ("The provision for witnessing of the voter's affidavit signature … goes to the integrity and sanctity of the ballot and election."); *GBM*, 966 F.3d at 1208. And officials likewise testified about the immense practical problems with implementing curbside voting. *See* 9/17 Tr. at 166-67 (testimony of

Probate Judge Bill English). These compelling interests far outweigh the Plaintiffs' minimal burdens.

B. Defendants Are Likely to Prevail on Plaintiffs' ADA Claim.

Plaintiffs failed to make out a prima facie case that the photo ID requirement and curbside voting ban violate the ADA during the pandemic. A prima facie case requires (1) a "qualified individual with a disability;" (2) exclusion from participation in or a denial of the benefits of a public entity's services, programs, or activities; and (3) that such exclusion comes "by reason of such disability." 42 U.S.C. §12132. As relevant here, a disability is "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. §12102(1)(A). But "Title II does not require States to employ any and all means to make [public] services accessible to persons with disabilities, and it does not require States to compromise their essential eligibility criteria for public programs." *Tennessee v. Lane*, 541 U.S. 509, 531-32 (2004).

Plaintiffs are not "qualified individuals" as to the photo ID requirement because it is an essential eligibility requirement of absentee voting. *See* 42 U.S.C. §12131(2). Satisfying the photo ID requirement is an essential part of voting in Alabama, *see* Ala. Code §17-9-30(b), and failure to do so is a "defect fatal" to those ballots that cannot be cured, *Townson v. Stonicher*, 933 So.2d 1062, 1065-67 (Ala. 2005).

Nor can Plaintiffs establish the second and third elements of a prima facie case. Mere difficulty in accessing a benefit is insufficient to state a prima facie case. *See Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1088 (11th Cir. 2007). And Plaintiffs are not excluded from voting because they are "able to participate in [the] voting program." *Am. Ass'n of People with Disabilities v. Harris*, 647 F.3d 1093, 1107-08 (11th Cir. 2011).

The district court's analysis improperly treated absentee and in-person voting as two separate programs, but that bifurcation is inconsistent with the ADA's general requirement that public programs be viewed "in [their] entirety." 28 C.F.R. §35.150(a). As long as Plaintiffs have accessible means *to vote*, they have not been excluded. And as detailed above, there are "reasonably safe" ways for Plaintiffs to vote. Doc. 250 at 177.

Plaintiffs also fail to show a causal connection between their alleged disabilities and their supposed exclusion. *See Bircoll*, 480 F.3d at 1081 n.11. Plaintiffs contend that they will not go out in public to vote because if they do, they might catch COVID-19, and if they do, they might experience severe complications because of underlying conditions. But the underlying conditions are not the legal cause of their "exclusion"—Plaintiffs' actions to avoid COVID-19 are. *See Thompson v. DeWine*, 959 F.3d 804, 810 (6th Cir. 2020) ("[W]e cannot hold private citizens' decisions to stay home for their own safety against the State."). Moreover,

Plaintiffs have not presented any evidence as to their own individualized risks of either contracting COVID-19 or experiencing severe complications if they do.

Finally, even if Plaintiffs state a prima facie case, their requests are not reasonable modifications and would fundamentally alter elections. As to curbside voting: State law provides other reasonable modifications, curbside voting is no safer than absentee voting, and it will undercut Alabama's interest in secure and uniform elections. As to photo ID, it is unreasonable to remove the absentee ballot application's most significant anti-fraud measure.

C. Defendants Are Likely to Prevail on Plaintiffs' VRA Claim.

Defendants are also likely to prevail in their appeal of the district court's finding that the witness signature requirement violates Section 2 of the Voting Rights Act. The logic the court used is as follows: (1) Black Alabamians are slightly more likely to be in certain high-risk categories that make it more likely, if they contract COVID-19, to suffer severe symptoms, and they are more likely to live alone or lack transportation and internet access; (2) as a result, "Black voters do not have equal access to safely vote during COVID-19, because of the absentee ballot witness requirement" (doc. 250 at 189); (3) the disparities are the result of past discrimination; and therefore (4) Black Alabamians' voting rights have been abridged on account of race or color.

The logic breaks down at every point. Past discrimination has nothing to do

with how many people live in a household, and there is no evidence that a Black voter is more likely than others to contract the virus while voting, much less while meeting two people outside to sign an envelope.

Moreover, this Court's recent decision in *Greater Birmingham Ministries*, 96 F.3d 1202, defeats the district court's use of statistical discrepancies to find a Section 2 violation. In *GBM*, the plaintiffs argued that Alabama's photo ID requirement violated Section 2 because African-Americans were slightly more likely to (1) lack photo IDs and (2) live farther away from an office that provides photo IDs. But this Court held that "the plain language of Section 2(a) requires more" than these statistical discrepancies: "First, the challenged law must have *caused* the denial or abridgment of the right to vote. Second, the denial or abridgment of the right to vote must be 'on account of race or color.'" *Id.* at 1233. Noting that it is a simple matter for anyone who needs a photo ID to get one, and that Black and white voters in the same circumstances face the same hurdles, this Court found that there was no denial or abridgment, certainly not one "on account of race or color." *Id.* at 1234.

In this case, as in *GBM*, nothing has been denied to anyone, because any voter can get two witness signatures while maintaining social distancing. In this case, as in *GBM*, race has nothing to do with a voter's ability to comply. The witness signature requirement therefore does not deny or abridge the right to vote on account of race.

III. The Remaining Factors Favor a Stay.

Absent a stay, the State Defendants will be irreparably harmed. "[T]he inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018).

The injunctions against the County Defendants similarly harm both them and the State. The Mobile County Defendants cannot carry out their duties under State law, and the State is harmed because *its* laws are being enjoined.

Moreover, the trial took place not on the "eve" of an election, *RNC*, 140 S.Ct at 1207, but during one. Absentee voting began on the second day of trial—September 9, 2020. Doc. 250 at 28. By the fourth day of trial, more than 30,000 Alabamians had applied for absentee ballots, and "several hundred" of them had cast their ballots in person. *Id.* If the Court's injunction is not stayed, voters will be subject to different rules depending on when they voted, and election officials throughout the State will have to work to implement the injunction and educate voters about the new requirements. That will cost time and money, and the changes will confuse voters. Given all that, it is hard to imagine how Defendants will not be harmed if Alabama's election laws are changed—possibly twice—while an election is ongoing.

By contrast, Plaintiffs will not suffer an irreparable injury by maintaining the status quo while this case is on appeal. Even if the lower court's findings are

ultimately upheld, that does not mean that Plaintiffs are suffering irreparable harm *now*. "The only areas of constitutional jurisprudence where [the Eleventh Circuit] ha[s] said that an on-going violation may be presumed to cause irreparable injury involve the right of privacy and certain First Amendment claims establishing an imminent likelihood that pure speech will be chilled or prevented altogether." *Siegel v. LePore*, 234 F.3d 1163, 1178 (11th Cir. 2000). And voters will still be able to vote—either by absentee ballot or in person.

Finally, the public interest demands a stay. The State's and the public's interests "merge" when the State moves for relief. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). And the risks identified in *Purcell* apply here because absentee voting is already taking place. Changing the rules now will cause confusion and uncertainty. Even Plaintiffs recognize this truth. As Benard Simelton, President of the Alabama State Conference of the NAACP, testified when asked what efforts his organization would undertake if it "obtain[ed] relief in some counties but not others":

> [W]e would try to educate voters on what the new agreements or procedures are. I mean, it's – and then again, we would look at it and say, well, we don't want to confuse voters. *And sometimes when you start down one path and you get in the middle of that path and you change directions, voters might become confused*.

9/10 Tr. at 123-24 (emphasis added). The *Purcell* Court couldn't say it any better.

CONCLUSION

The Court should enter an immediate administrative stay and then stay the district court's injunction pending appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. I certify that this motion complies with the type-volume limitations set forth in Fed. R. App. P. 27(d)(2)(A). This motion contains 5,133 words, including all headings, footnotes, and quotations, and excluding the parts of the motion exempted under Fed. R. App. P. 32(f).

2. In addition, this brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that on October 2nd, 2020, I filed the foregoing petition using the Court's CM/ECF system, which will serve all counsel of record.

/s/ Edmund G. LaCour Jr.
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Counsel for Appellants Secretary of State John Merrill and the State of Alabama

No. 20-13695-B

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PEOPLE FIRST OF ALABAMA, et al.,
Plaintiffs-Appellees,

v.

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

On Appeal from the United States District Court
for the Northern District of Alabama
Case No. 2:20-cv-00619-AKK

APPELLANTS' APPENDIX TO TIME SENSITIVE MOTION FOR ADMINISTRATIVE STAY AND STAY PENDING APPEAL VOLUME I

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TAB A

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1(a)(3) and 26.1-2(b), the undersigned counsel certifies that the following listed persons and parties may have an interest in the outcome of this case:

1. Abudu, Nancy G. – Counsel for Plaintiffs;
2. Agricola, Algert S. (Jr.) – Counsel for proposed Amicus Alabama Probate Judges Association (terminated);
3. Agricola, Barbara H. – Counsel for proposed Amicus Alabama Probate Judges Association (terminated);
4. Alabama Disabilities Advocacy Program – Counsel for Plaintiffs;
5. Alabama Probate Judges Association – Proposed Amicus (terminated);
6. Alabama State Conference of the NAACP – Plaintiff;
7. American Civil Liberties Union – Counsel for Plaintiffs;
8. American Civil Liberties Union of Alabama Foundation, Inc. – Counsel for Plaintiffs;
9. Anderson-Smith, Jacqueline – Defendant, Circuit Clerk of Jefferson County, Alabama;
10. Barger, Frank – Defendant (terminated);
11. Barnett, Alleen – Defendant, Absentee Election Coordinator of Mobile County, Alabama (terminated);

12. Bentley, Gregory – Plaintiff (terminated);
13. Bettis, Teresa – Plaintiff;
14. Black Voters Matters Capacity Building Institute – Plaintiff;
15. Bowdre, A. Barrett – Counsel for Appellants;
16. Brannon, Sarah – Counsel for Plaintiffs;
17. Brody, Stephen D. – Counsel for Plaintiffs;
18. Brom, Steven M – Counsel for Amicus Honest Elections Project;
19. Burks, Karen Dunn – Defendant, Deputy Circuit Clerk of the Bessemer Division of Jefferson County, Alabama;
20. Canupp, David J. – Counsel for Defendants Debra Kizer and Frank Barger;
21. Caroll, Donald McKinley – Counsel for Defendants Jacqueline Anderson-Smith and Karen Dunn Burks;
22. Clements, Fred Lee (Jr.) – Counsel for Defendants Ruby Jones Thomas, Johnnie Mae King, Lashandra Myrick, James Majors, Carolyn Davis-Posey, Bill English, and Britney Jones-Alexander;
23. Clopton, Robert – Plaintiff (terminated);
24. Cowell, John Mark – Counsel for Defendants Ruby Jones Thomas, Johnnie Mae King, Lashandra Myrick, James Majors, Carolyn Davis-Posey, Bill English, and Britney Jones-Alexander;

25. Davis, Don – Defendant;
26. Davis-Posey, Carolyn – Defendant (terminated);
27. Davis, James W. – Counsel for Appellants;
28. Dungan, Aubrey Patrick – Counsel for Defendants Alleen Barnett and JoJo Schwarzauer;
29. Dyar, Robert F. – Counsel for Defendants Alleen Barnett and JoJo Schwarzauer;
30. Engelhardt, Todd D. – Counsel for Defendants Alleen Barnett and JoJo Schwarzauer;
31. English, Bill – Defendant (terminated);
32. Essig, Brandon Keith – Counsel for Defendant Mary B. Roberson;
33. Fleischman, Maia – Counsel for Plaintiffs;
34. Friday, Sherri – Defendant;
35. Friedman, Peter – Counsel for Plaintiffs;
36. Gallion, Thomas T. (III) – Counsel for Defendants Gina Jobe Ishman and J. C. Love;
37. Greater Birmingham Ministries – Plaintiff;
38. Green, Tyler R. – Counsel for Amicus Honest Elections Project;
39. Hale, Lee Louis – Counsel for Defendant Don Davis;
40. Harris, A. Reid – Counsel for Appellants;

41. Holifield, Jennifer – Counsel for Defendant Don Davis;
42. Honest Elections Project – Amicus;
43. Ishman, Gina Jobe – Defendant;
44. Ivey, Hon. Kay – Governor of Alabama, Defendant (terminated);
45. Jones-Alexander, Britney – Defendant (terminated);
46. Kallon, Hon. Abdul K. – Judge for the Northern District of Alabama;
47. Kidd, Jamie Helen – Counsel for Defendants Ruby Jones Thomas, Johnnie Mae King, Lashandra Myrick, James Majors, Carolyn Davis-Posey, Bill English, and Britney Jones-Alexander;
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51. Lance, Steven – Counsel for Plaintiffs;
52. Lawson, Theodore A. – Counsel for Defendants Jacqueline Anderson-Smith and Karen Dunn Burks;
53. Love, J. C. (III) – Defendant;
54. Majors, James – Defendant (terminated);
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56. Marshall, Hon. Steve –Alabama Attorney General;

57. Means, Tyrone Carlton – Counsel for Defendants Gina Jobe Ishman and J. C. Love;
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59. Merrill, Hon. John H. – Alabama Secretary of State, Appellant;
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63. Naftel, James – Defendant;
64. Norris, Cameron Thomas – Counsel for Amicus Honest Elections Project;
65. Peebles, Eric – Plaintiff;
66. People First of Alabama – Plaintiff;
67. Porter, Howard (Jr.) – Plaintiff;
68. Reed, Mahogane D. – Counsel for Plaintiffs;
69. Rich, J. Jeffery – Counsel for Defendants Debra Kizer and Frank Barger;
70. Roberson, Mary B. – Defendant, Circuit Clerk of Lee County, Alabama (terminated);
71. Robson, Katrina – Counsel for Plaintiffs;

72. Rosborough, Davin – Counsel for Plaintiffs;

73. Ross, Deuel – Counsel for Plaintiffs;

74. Ross, Jay M. – Counsel for Defendants Alleen Barnett and JoJo Schwarzauer;

75. Ryan, Jenny – Counsel for Plaintiffs;

76. Schwarzauer, JoJo – Defendant;

77. Sewell, Robert – Counsel for Defendant Mary B. Roberson;

78. Short, Caren E. – Counsel for Plaintiffs;

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80. Smith, Brenton Merrill – Counsel for Appellants;

81. Southern Poverty Law Center – Counsel for Plaintiffs;

82. Speegle, Jerome E. – Counsel for Defendant Don Davis;

83. State of Alabama – Appellant;

84. Thomas, Ruby Jones – Defendant (terminated);

85. Thomas-Lundborg, Alora – Counsel for Plaintiffs;

86. Thompson, Annie Carolyn – Plaintiff;

87. Thornton, Jerry L. – Counsel for Defendant Ruby Jones Thomas;

88. Threadgill-Matthews, Sheryl – Plaintiff;

89. United States of America;

90. Van Der Pol, William – Counsel for Plaintiffs;

91. Walker, Constance C. – Counsel for Defendants Gina Jobe Ishman and J. C. Love;

92. Webb, Kendrick E. – Counsel for Defendants Ruby Jones Thomas, Johnnie Mae King, Lashandra Myrick, James Majors, Carolyn Davis-Posey, Bill English, and Britney Jones-Alexander;

93. Weber, Jeremy S. – Counsel for Appellants;

94. Williams, Norbert H. – Counsel for Defendants Gina Jobe Ishman and J. C. Love;

95. Zampierin, Sara M. – Counsel for Plaintiffs (terminated);

96. Zaragoza, Liliana – Counsel for Plaintiffs

Respectfully submitted this 2nd day of October, 2020.

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DOC. 250

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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

PEOPLE FIRST OF ALABAMA, et al.,	)	
Plaintiffs,	)	
v.	)	**Civil Action Number 2:20-cv-00619-AKK**
JOHN MERRILL, et al.,	)	
Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Voting is an inviolable right, occupying a sacred place in the lives of those who fought to secure the right and in our democracy, because it is "preservative of all rights."[1] The parties do not dispute those fundamental truths. The parties' dispute centers instead on whether three provisions of Alabama's election laws—the requirement that a notary or two witnesses sign absentee ballot affidavits, the requirement that absentee voters submit a copy of their photo ID with an absentee ballot application, and the de facto ban on curbside voting[2]—violate the right to vote in light of the COVID-19 pandemic.

The plaintiffs assert that the defendants' enforcement of the Challenged Provisions during the pandemic compels voters to risk exposure to COVID-19 in

[1] *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

[2] The court refers to these three provisions as the "Challenged Provisions."

order to exercise their right to vote, leading to potentially deadly consequences for vulnerable voters whose age, race, disabilities, or health conditions place them at heightened risk from the virus. The plaintiffs contend that forcing voters to bear that risk runs afoul of their fundamental right to vote and violates federal law, and they seek an order barring the defendants from enforcing the Challenged Provisions for the general election in November. Without this relief, the plaintiffs believe voters will face an impossible choice between jeopardizing their health by engaging in person-to-person contact they would not otherwise have or sacrificing their right to vote during the COVID-19 pandemic.

These issues are important to all people, but the plaintiffs find them particularly significant. Their testimony speaks for itself. Plaintiff Eric Peebles, an Alabama voter who uses a wheelchair and suffers from spastic cerebral palsy, described what voting means for people with disabilities: "Voting is important to me because as a person with a disability and for people with disabilities, voting is the one way that we can participate . . . . Voting is blind. Everybody's ballot looks the same when you're counting them."[3] Susan Ellis, the executive director of plaintiff People First, echoed that sentiment: "[Voting is] a way to have a visible participation in policy making, and decision making, and law making. . . . [O]ur

[3] 9/8/20 at 132. This citation reflects the date of the testimony and the page of that day's transcript. Due to the time-sensitive nature of this case, the court cites to the Court Reporter's uncertified rough transcript of the trial.

members are proud to . . . be examples to our community that people with intellectual and developmental disabilities are valued citizens and want to express and be seen expressing the right to vote."[4] Many Black Alabamians, another group with a historically fraught relationship with the franchise, feel the same. As plaintiff Howard Porter, Jr., a Black man in his seventies, earnestly expressed: "[S]o many of my [ancestors] even died to vote. And while I don't mind dying to vote, I think we're past that – we're past that time."[5] Mr. Porter believes that voting should be as easy and secure as possible because Election Day "is the only day that rich, the poor, sick, the healthy, all should be counted as one and just as easy."[6] Similarly, plaintiff Annie Carolyn Thompson, a sixty-eight-year-old Black woman, explained that the importance of voting "has been instilled in [her] from a young person because of . . . how hard it was for us to get the right to vote, the things that some of my ancestors had to go through in order to get the right to vote . . . ."[7] Thus, she concluded, "[T]he right to vote is very important to me, and I do not take it lightly."[8]

Neither do the defendants. Alabama Secretary of State John Merrill, for example, testified that he wants every eligible voter who wishes to vote in November

[4] 9/11/20 at 115-16.

[5] 9/14/20 at 80.

[6] *Id.*

[7] 9/8/20 at 180.

[8] *Id.*

to do so "[w]ithout any obstacle being placed in their way."[9] However, he and the other defendants maintain that the Challenged Provisions are necessary to preserve the legitimacy of the general election by preventing voter fraud and safeguarding voter confidence. The defendants also contend that the Challenged Provisions do not impose any undue burdens on the plaintiffs, especially when balanced against the State's interests, and that enjoining the Challenged Provisions so close to the election will result in voter confusion and unduly burden the defendants.

Based on the evidence presented during the trial the court held from September 8 to 18, the plaintiffs have proved that their fears are justified. As applied during the COVID-19 pandemic, the Challenged Provisions unduly burden the fundamental Constitutional rights of Alabama's most vulnerable voters and violate federal laws designed to protect America's most marginalized citizens. That is for three reasons. First, because the Challenged Provisions only marginally advance the State's interests in maintaining them while significantly burdening the right to vote, all three provisions violate the First and Fourteenth Amendments during the pandemic. Second, because the photo ID requirement and the de facto curbside voting ban make voting inaccessible for voters with disabilities, both those provisions violate the Americans with Disabilities Act during the pandemic. Finally, because the witness requirement interacts with Alabama's history of discriminating

[9] 9/11/20 at 64.

against Black citizens to deny Black voters' their right to vote, that provision violates the Voting Rights Act during the pandemic.

Thus, the plaintiffs have met their burden and are entitled to declaratory and injunctive relief. Consistent with the findings and conclusions detailed below, for the November 3, 2020 general election, the court will enjoin: (1) the witness requirement for absentee ballots for voters who provide a statement that they have an underlying medical condition that puts them at a heightened risk from COVID-19 and, thus, they cannot safely obtain the signatures of two witnesses or a notary public; (2) the photo ID requirement for absentee voters over 65 or those under 65 who cannot safely obtain a copy of their photo ID during the COVID-19 pandemic due to an underlying medical condition, and, as required by the application, who provide other identifiers such as their driver's license number and last four digits of their social security number; and (3) the de facto ban on curbside voting. To be clear, lifting the ban on curbside voting permits counties willing to implement the practice, if any, to do so, but this order does not mandate that counties must provide curbside voting in Alabama. Moreover, the court emphasizes that its decision does not undermine the validity of the Challenged Provisions outside of the COVID-19 pandemic or beyond the November 3 election. Rather, the court grants only narrowly tailored relief to address the additional burdens facing a limited class of voters who are particularly susceptible to complications from contracting COVID-19.

I. FINDINGS OF FACT

A. The COVID-19 Pandemic

1. Our nation is now in the midst of a public health emergency due to the spread of COVID-19, the respiratory disease caused by the novel coronavirus SARS-CoV-2. Since April, the United States has led the world in the total number of COVID-19 cases. Agreed Facts at ¶ 24.[10] As of September 29, 2020, the United States has confirmed 7,129,383 cases of COVID-19 and reported 204,598 deaths and counting due to COVID-19.[11] *See id.* at ¶ 25 (citing CDC data). The COVID-19 pandemic has deeply affected Alabama, and as of September 29, Alabama reported 137,564 confirmed COVID-19 cases and 2,399 confirmed COVID-19 deaths,[12] including family members and a friend of some of the individual plaintiffs. *See* Agreed Facts at ¶ 59 (citing ADPH data); 9/14/20 at 9-11, 69-71.

2. The most common symptoms of COVID-19 are fever, cough, and shortness of breath, and other symptoms include chest pain, muscle pain, vomiting,

[10] In accordance with the court's scheduling order, doc. 93 at 7-9, the parties submitted proposed findings of fact and conclusions of law to the court by email on September 4, 2020, *see* doc. 178. The submission includes agreed facts that the parties do not dispute in 176 separately numbered paragraphs, numbered sequentially from 1-15 in section one, and from 1-161 in the remaining sections. The court cites to the page and paragraph number for the agreed facts identified in the first section of proposed facts and to only the paragraph number for the agreed facts identified in the remaining sections.

[11] CDC, Cases in the U.S., https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (last visited Sept. 30, 2020).

[12] Ala. Dep't of Pub. Health, Alabama's COVID-19 Data and Surveillance Dashboard, https://alpublichealth.maps.arcgis.com/apps/opsdashboard/index.html#/6d2771faa9da4a2786a509d82c8cf0f7 (last visited Sept. 30, 2020).

anorexia, confusion, and lack of senses of taste and smell. *See* Pl. Ex. 269 at ¶ 8. Even mild cases of COVID-19 can be more severe than the flu and involve about two weeks of fevers and dry coughs. Agreed Facts at ¶ 27. Severe cases of COVID-19 cause acute respiratory distress syndrome ("ARDS") in which fluid displaces air in the lungs, leaving patients to "essentially drown[] in their own blood and fluids because their lungs are so full."[13] *See id.*; Pl. Ex. 269 at ¶ 8. Due to the respiratory impacts of the disease, individuals with severe cases may need supplemental oxygen or to be intubated and put on a ventilator, or suffer a permanent loss of respiratory capacity. Pl. Ex. 269 at ¶ 8; Agreed Facts at ¶ 29. Along with damaging lung tissue, severe cases of COVID-19 can damage the kidneys, or lead to strokes and heart attacks. 9/8/20 at 13; Agreed Facts at ¶ 29.

3. In Alabama, as of September 3, approximately 11.5 percent of those infected by COVID-19 have been hospitalized. Pl. Ex. 294 at 1. Thus, surges of COVID-19 cases can strain healthcare systems, leading to critical shortages of doctors, nurses, hospital beds, medical equipment, and personal protective equipment. *See* Agreed Facts at ¶ 29. For that reason and others, health officials recommend that all individuals take steps to prevent the spread of the disease, not just for their own health but for the health of the community. *Id.* at ¶ 35. As the

[13] Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure From COVID-19 — Even in His Young Patients*, ProPublica (Mar. 21, 2020), https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients.

CDC put it, "[e]veryone has a role to play in slowing the spread and protecting themselves, their family, and their community."[14] *Id.*

4. COVID-19 is highly infectious and spreads through respiratory droplets from infected individuals. *See* Pl. Ex. 269 at ¶¶ 10, 20; Pl. Ex. 271 at ¶ 13. Strong evidence now suggests that SARS-CoV-2 is aerosolized, such that tiny droplets containing the virus remain in the air for a period of time, and the virus can be transmitted to others who inhale that air. Pl. Ex. 269 at ¶¶ 10, 20; 9/8/20 at 15. Further evidence indicates that aerosolized droplets with SARS-CoV-2 can linger in closed, stagnant air environments for up to fourteen minutes. Pl. Ex. 269 at ¶ 10. Consequently, transmission of the virus is more likely to occur indoors when people share space in a room for an extended period of time. 9/8/20 at 17-18; *see also* Pl. Ex. 269 at ¶ 20. COVID-19 may also spread through contaminated surfaces, i.e., "when an infected individual touches a surface with a hand they have coughed into and then another person touches that same surface before it has been disinfected and then touches their face." Pl. Ex. 269 at ¶ 10. Finally, COVID-19 is particularly dangerous because it can be spread by individuals who are a- or pre-symptomatic, and who may not know they have the disease and can spread it to others. Pl. Ex. 269 at ¶ 13; Pl. Ex. 271 at ¶ 13.

[14] CDC, *Social Distancing*, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html (last visited Sept. 17, 2020).

5. No vaccine for COVID-19 currently exists, and it is unlikely a vaccine will become widely available until well into 2021. *See* Pl. Ex. 269 at ¶¶ 12, 15; 9/8/20 at 26, 29. Accordingly, to slow the spread of COVID-19, public health officials have been left to urge the public to practice "social distancing," i.e., avoidance of close contact with others. Pl. Ex. 269 at ¶ 12; Pl. Ex. 352 at 3-8; *see also* 9/8/20 at 31. For purposes of social distancing, the CDC recommends that individuals stay at least six feet away from others who do not live in their households and avoid crowded places. Agreed Facts at ¶ 33. Following that recommendation, Governor Kay Ivey recognizes that "[m]aintaining a 6-foot distance between one another is paramount,"[15] and the Alabama Department of Public Health ("ADPH") has instructed the public to "spend as much time as possible at home to prevent an increase in new infections."[16] *Id.* at ¶ 34; State Ex. 15. The CDC and ADPH also recommend that all individuals wear masks or face coverings, which decrease the spread of COVID-19 by helping to prevent an infected individual from spreading droplets containing the virus that can infect others.[17] 9/9/20 at 53; Pl. Ex. 269 at ¶ 12; State Ex. 85.

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[15] Press Release, *Governor Ivey Announces New Primary Runoff Election Date*, March 18, 2020, https://governor.alabama.gov/newsroom/2020/03/governor-ivey-announces-new-primary-runoff-election-date/ (last visited Sept. 23, 2020).

[16] ADPH, *It's safer at home; protect yourself and your community from COVID-19* (Mar. 27, 2020), https://alabamapublichealth.gov/news/2020/03/27.html (last visited Sept. 21, 2020).

[17] CDC, People with Certain Medical Conditions, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html (last visited Sept. 21, 2020).

6. Though people of all ages have contracted COVID-19 and suffered severe manifestations of the disease, the illness poses special risks for older people, and the risk of COVID-19 increases steadily with age. 9/8/20 at 64; 9/9/20 at 44; Pl. Ex. 269 at ¶ 8; Agreed Facts at ¶ 30. As of September 1, 77.3 percent of COVID-19 related deaths in Alabama have been people 65 or older,[18] and 80 percent of deaths in the United States have been people over 65.[19] Agreed Facts at ¶ 30; Pl. Ex. 270 at 8. Thus, the CDC warns that older people should avoid interacting with people outside of their households and people who have been exposed to the virus.[20] Pl. Ex. 270 at 8.

7. COVID-19 also presents special risks for people with disabilities. "The CDC [] warns that people with disabilities may be at increased risk of becoming infected with COVID-19 to the extent that they "(1) 'have limited mobility or cannot avoid coming into close contact with others who may be infected;' (2) 'have trouble understanding information or practicing preventative measures;' or (3) are 'not able to communicate symptoms of illness.'" Pl. Ex. 270 at 10. As Susan Ellis, the Executive Director of People First of Alabama, explained, people with intellectual disabilities are not able to identify risky behavior in the same way as other people

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[18] *See* ADPH, Characteristics of Laboratory Confirmed Cases of COVID-19 https://www.alabamapublichealth.gov/covid19/assets/cov-al-cases-090120.pdf.

[19] CDC, Older Adults, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html (last visited Sept. 21, 2020).

[20] *Id.*

can. 9/11/20 at 130. For example, they may pick up and throw away a tissue on the floor without wearing gloves in an effort to be helpful to others without thinking of the germs on the tissue. *Id.* In addition, adults with disabilities are three times more likely than adults without disabilities to have underlying chronic medical conditions that put them at higher risk from COVID-19.[21] Pl. Ex. 270 at 10.

8. People with certain preexisting medical conditions, including immunological conditions, hypertension, certain heart conditions, lung diseases (asthma and chronic obstructive pulmonary disease), diabetes mellitus, obesity, chronic kidney disease, and sickle cell anemia also have an elevated risk of severe complications or death from COVID-19. 9/9/20 at 44; Pl. Ex. 269 at ¶ 8; Pl. Ex. 270 at 8; Pl. Ex. 352 at 1-2, 12. In fact, statistics from the ADPH reveal that approximately 96.2 percent of Alabamians who have died from COVID-19 had underlying health conditions.[22] Agreed Facts at ¶¶ 30, 62. Due to their heightened risk from COVID-19, the CDC advises people with underlying conditions to limit interactions with people outside of their households as much as possible and to avoid others who are not wearing masks.[23] *See* Agreed Facts at ¶ 62; Pl. Ex. 270 at 8.

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[21] *See* CDC, People with Disabilities, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html (last visited Sept. 22, 2020).

[22] *See* ADPH, Characteristics of Laboratory Confirmed Cases of COVID-19 https://www.alabamapublichealth.gov/covid19/assets/cov-al-cases-090120.pdf.

[23] CDC, People with Certain Medical Conditions, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html (last visited Sept. 21, 2020).

9. Alabamians suffer from high rates of the underlying health conditions that increase their risk for COVID-19 complications: more than 14 percent have diabetes, 41.9 percent have high blood pressure, 10.4 percent have asthma, approximately 33 percent are obese, and about 1 in 11 have kidney disease. Agreed Facts at ¶ 43; Pl. Ex. 270 at 25; 9/14/20 at 198. As Alabama State Health Officer Dr. Scott Harris stated, "[c]hronic disease factors are a real risk for dying from this disease, and chronic diseases are found in about a third of our citizens."[24] *Id.* The prevalence of underlying diseases is even more profound for older Alabamians, who are already at a higher risk from COVID-19. For example, the COVID-impact survey revealed that in the Birmingham metro region, 76.1 percent of White people and 80.3 percent of Black people over the age of 60 had at least one underlying condition that put them at an increased risk from COVID-19. Pl. Ex. 270 at 30; 9/14/20 at 201.

10. Racial minorities, particularly Black people, are more likely to suffer from underlying conditions that increase the risks from COVID-19, such as diabetes, heart disease, and lung disease. *See* Pl. Exs. 268 at ¶ 6; 269 at ¶ 9; 271 at ¶ 12; 9/8/20 at 66-67; 9/9/20 at 42-43. That trend is reflected in Mobile, Alabama, where areas of the city with the highest percentage of Black residents have markedly higher

[24] Leada Gore, *Alabama's Coronavirus Peak: 'Clearly the State Can't Stay Shut Down', ADPH's Dr. Scott Harris Says*, https://www.al.com/news/2020/04/alabamas-coronavirus-peak-clearly-the-state-cant-stay-shut-down-adphs-dr-scott-harris-says.html (last visited Sept. 16, 2020).

prevalence of asthma, high blood pressure, kidney disease, COPD, and diabetes, than predominately White areas of the city. *Compare* doc. 228-5 at 8, 10, 12-14, *with* doc. 228-6. Moreover, about 42.2 percent of Black people over the age of 65 have a disability, compared to 38.1 percent of their White cohorts. Doc. 228 at ¶ 36.

11. People who are Black, Latinx, or Native American suffer higher rates of COVID-19 infections than non-Hispanic White individuals, and they are more likely to suffer severe outcomes and be hospitalized or die if they are infected with COVID-19. 9/8/20 at 20-21, 66-67; 9/9/20 at 47-49; Pl. Exs. 268 at ¶ 11; 269 at ¶ 9; 271 at ¶¶ 13-14. Indeed, a CDC report published April 8, 2020, which included data from patients hospitalized across 14 states, found that Black COVID-19 patients made up 33 percent of those for whom race or ethnicity information was available, despite representing only 18 percent of the states' populations.[25] Agreed Facts at ¶ 64. This disparity has continued. As of September 21, the CDC reports that Black people represent 18.5 percent of COVID-19 cases and 21 percent of COVID-19 deaths in individuals for whom race or ethnicity is known, despite representing only 12.5 percent of the U.S. population.[26] *See* Agreed Facts at ¶¶ 25, 68 (citing CDC

[25] Shikha Garg, MD, et. al., Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019—COVID-NET, 14 States, March 1-30, 2020, CDC Morbidity and Mortality Weekly Report (Apr. 17, 2020), at 459, https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6915e3-H.pdf.

[26] Demographic Trends of COVID-19 cases and deaths in the US reported to the CDC, https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#demographics (last visited Sept. 22, 2020); The U.S.

and U.S. Census Bureau Data). And, Latinx people represent 29.5 percent of COVID-19 cases, though they represent only 18.4 percent of the population.[27] *Id.*

12. Like the rest of the country, Alabama has reported alarming racial disparities in serious illness and mortality due to COVID-19. Agreed Facts at ¶ 68; Pl. Ex. 268 at ¶ 13; 9/14/20 at 197. As of August 13, the ADPH reported that Black people in Alabama account for 41.1 percent of COVID-19 related deaths, despite making up just 27 percent of the population. Agreed Facts at ¶ 68; *see also* Pl. Ex. 271 at ¶ 16; 9/9/20 at 49. And, in Mobile County, as of August 13, Black people accounted for 51.1 percent of COVID-19 deaths, despite representing only 36 percent of the population. Agreed Facts at ¶ 68. In addition, counties in the Black Belt[28] in Alabama that are predominately African American, including Lowndes and Wilcox, have higher COVID-19 related death rates compared to predominantly White counties, and Lowndes County has the State's highest case fatality rate. Pl. Ex. 271 ¶ 14; 9/9/20 at 50-51, 82, 99. Dr. Latesha Elopre, the plaintiffs' expert on internal medicine, infectious diseases, and disparities in access to health care and health outcomes in Alabama, explained, "there is strong data that supports . . .

Census Bureau, https://data.census.gov/cedsci/profile?q=United%20States&g=0100000US (last visited Sept. 22, 2020).

[27] *Id.*

[28] The Black Belt is named for the region's fertile black soil. *See, e.g.*, Pl. Ex. 271 at ¶ 8.

looking [across] age groups, that Black people, regardless of health conditions, have higher rates of death compared to Whites." 9/9/20 at 91-92.

13. The higher risk of COVID-19 infection for African Americans is tied to pre-existing and evolving inequities in structural systems and social conditions. *See* Pl. Exs. 268 at ¶¶ 6-10; 271 at ¶ 14; 9/9/20 at 38; 9/10/20 at 12; Agreed Facts at ¶ 66. To begin, people who are Black, Latinx, or Native American are more likely to hold jobs that do not provide paid leave, cannot be performed remotely, and require more exposure to the public and, therefore, to COVID-19. Pl. Exs. 268 at ¶ 14; 269 at ¶ 9; 271 at ¶ 14; 9/8/20 at 20, 66-67; 9/10/20 at 17. Also, due to patterns resulting from a history of housing discrimination, Black and Latinx individuals are more likely to live in areas impacted by environmental pollutants, or in densely populated areas, making it harder for those individuals to practice social distancing. *See* Agreed Facts at ¶ 66; Pl. Exs. 268 at ¶¶ 8-9, 14; 271 at ¶ 14; 9/8/20 at 21; 9/10/20 at 13-14, 16. In addition, evidence reveals that testing resources for COVID-19 are scarcer in Black communities and that Black people are less likely to be referred for testing than White people when presenting comparable signs of infection. Pl. Ex. 268 at ¶ 15. Indeed, for these and other reasons, the CDC identified discrimination in housing, education, finance, and health care as a factor that puts racial and ethnic

minorities at increased risk of getting sick and dying from COVID-19.[29] *See* Agreed Facts at ¶ 66; 9/10/20 at 9; Pl. Ex. 270 at 9.

14. The discrimination and systemic racism that contribute to elevated COVID-19 risk for Black people and other minorities nationally are evident in Alabama. Agreed Facts at ¶ 66. For example, in Alabama's Black Belt counties, residents face multiple stressors that lead to a relatively poor quality of life: high levels of poverty and unemployment, inadequate education, high rates of illiteracy, lack of jobs, many single-parent households, and food insecurity. 9/9/20 at 41; Pl. Ex. 271 at ¶¶ 8-9. On top of that, Black Belt counties have fewer primary care physicians per resident than other counties, and, despite the high rates of infection, people living in these counties receive fewer COVID-19 tests than elsewhere in Alabama. Agreed Facts at ¶¶ 67, 69; Pl. Ex. 271 at ¶ 16. Disparities in access to transportation exacerbate those obstacles and make COVID-19 testing and health care even less accessible for Black people in those counties, which in turn makes it even more difficult for communities in the Black Belt to manage and slow the spread of the disease. *See* Pl. Ex. 271 at ¶¶ 10, 14; Agreed Facts at ¶ 70.

[29] CDC, *Health Equity Considerations & Racial & Ethnic Minority Groups*, https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html (last visited Sept. 22, 2020).

B. Alabama's Response to the Pandemic

15. Governor Ivey and the ADPH have taken steps to combat the spread of COVID-19 in Alabama, including by issuing a series of orders since March 13, when Governor Ivey declared a State of Emergency. *See* Pl. Exs. 299-303; State. Ex. 7. First, on March 19, Dr. Harris issued a statewide health order implementing several mandatory measures, including: prohibiting "[a]ll gatherings of 25 persons or more, or gatherings of any size that cannot maintain a consistent six-foot distance between persons[;]" closing all public and private schools, colleges, and universities and Senior Citizen Center gatherings; requiring hospitals and nursing homes to prohibit visitation except for certain compassionate care situations; and prohibiting restaurants, bars, and breweries, from permitting "on-premise consumption of food or drink." Pl. Ex. 301.

16. On March 26, Governor Ivey issued a proclamation ordering "all public K-12 schools" to "implement a plan to complete the 2019-2020 school year using alternative methods of instruction," and, because "person-to-person contact increases the risk of transmitting COVID-19," authorizing notaries who work under the supervision of an attorney to notarize signatures through videoconferencing to "reduce the necessity of in-person meetings." State Ex. 21 at 1-2. Governor Ivey issued another proclamation on April 2 expanding the remote notary authorization to all notaries in the State. State Ex. 25 at 4. Governor Ivey's April 2 proclamation also authorized governmental entities to postpone or cancel public meetings and

enabled corporations to hold remote shareholder meetings to further reduce the need for in-person meetings in light of COVID-19. *See id.* at 4-5.

17. Then, on April 3, Governor Ivey and Dr. Harris issued a mandatory statewide order requiring "every person . . . to stay at his or her place of residence except as necessary to perform" an enumerated list of "essential activities." Pl. Ex. 300 at 2. The order also mandated the closure of entertainment venues, athletic facilities, and close-contact service providers, such as barber shops. *Id.* at 8-9. And, the order required "essential retailers" to implement a reduced "emergency maximum occupancy rate," enforce social distancing, and take reasonable steps to comply with CDC and ADPH sanitation guidelines to remain open. *Id.* at 9. In addition, the "Stay at Home" order required any non-institutionalized person who has tested positive for COVID-19 to "be quarantined to their place of residence for a period of 14 days after receiving positive test results," and prohibited persons in quarantine from "leav[ing] their place of residence for any reason other than to seek necessary medical treatment." *Id.* at 9-10.

18. On April 28, Governor Ivey announced a "Safer at Home" order, effective from April 30 through May 15, which lifted some of the restrictions in the "Stay at Home" order. Pl. Ex. 303. Since then, she has extended the order several times, *see* Pl. Exs. 299; 302, and on August 27, Governor Ivey extended the "Safer

at Home" order through October 2, 2020, Agreed Facts at ¶ 58.[30] Under this most recent order, all individuals—especially vulnerable persons—are encouraged to stay home and follow good sanitation practices, and all non-work related gatherings of any size that cannot maintain a consistent six-foot distance between persons from different households are prohibited. *Id.* at ¶¶ 57-58 The order requires that "any person who has tested positive for COVID-19—other than institutionalized persons—shall be quarantined to their place of residence for a period of 14 days" and mandates that "[a]ny person quarantined . . . shall not leave their place of residence for any reason other than to seek necessary medical treatment." *Id.* at ¶ 57. Finally, effective July 16, the "Safer at Home" order requires people over the age of six to wear facial coverings or masks in public to prevent the spread of COVID-19. *Id.* The mask requirement does not apply to certain people or in certain situations, including to "[a]ny person who is voting, though wearing a face covering is strongly encouraged . . . ." *Id.* Alabama has seen a downward trend in the number of COVID-19 cases and hospitalizations since Governor Ivey implemented the mask order in mid-July. 9/9/20 at 46, 52, 58, 76-77.

19. Evidence indicates that many people in Alabama, including the individual plaintiffs, have been adhering to the Safer at Home order and following

[30] *See* Order of the State Health Officer Suspending Certain Public Gatherings Due to Risk of Infections by COVID-19 (Aug. 27, 2020), https://governor.alabama.gov/assets/2020/08/Safer-at-Home-Order-Final-8.27.20.pdf.

CDC guidelines. *See* 9/8/20 at 116-22, 133-34, 169-70; 9/9/20 at 11-12; 9/14/20 at 10-11, 35-36, 71-72, 75, 193; Pl. Ex. 270 at 30-33. Almost two-thirds of Alabamians report following CDC guidance closely, and just over half report following CDC guidance very closely. 9/14/20 at 212. And, the COVID-Impact Survey, which asked questions about precautions respondents are taking to avoid exposure to COVID-19, indicates that the vast majority of adults under the age of 60 in the Birmingham area who have at least one underlying medical condition are avoiding crowded or public places, maintaining six-feet of distance with others, and wearing masks outside of their homes. 9/14/20 at 201-02; Pl. Ex. 270 at 30-31. Specifically, for those adults that are high risk due to a medical condition, 74.4 percent report avoiding crowded or public places, 86 percent stay six feet from others, and 88.8 percent report wearing masks outside their home. Pl. Ex. 270 at 30. A statewide Auburn University at Montgomery poll showed that people who are not high risk are following COVID-19 safety precautions as well. "78.1 percent of Alabama registered voters said that they were 'very' or 'somewhat likely . . . to voluntarily wear a mask or face covering in public if the COVID-19 pandemic continues through the end of the year.'" *Id.* at 31 n.82. For Black voters under 60 who are at high risk due to a medical condition, 74.8 percent report avoiding public or crowded places that are not job-related, and even higher percentages of Black voters in that category maintain six feet of distance and wear a mask when they go in public. *Id.* at 30-31.

C. Voting and Alabama's Elections in the Pandemic

20. Despite all efforts to control the pandemic, the number of COVID-19 cases continues to increase in the United States and Alabama, and there have been up-ticks in case numbers since schools and colleges reopened this fall. 9/9/20 at 46, 53. Dr. Robert R. Redfield, Director of the CDC, indicated that he believes "the fall and winter of 2020 and 2021 are going to be probably one of the most difficult times that we've experienced in American public health."[31] Agreed Facts at ¶ 32. The plaintiffs' expert on epidemiology, Dr. Arthur Reingold, M.D., echoed that sentiment, testifying that we will continue to have COVID-19 in Alabama and throughout the United States for the foreseeable future, though he cannot predict if the number of new cases will increase, decrease, or stay the same through the end of the year. 9/8/20 at 37, 54; *see also* Pl. Ex. 269 at ¶¶ 17-18. Thus, the COVID-19 pandemic will likely have a profound impact on voting in the November 3, 2020 general election. *See* Pl. Ex. Ex. 271 at ¶ 18; 9/9/20 at 38.

21. With respect to voting in the pandemic, Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases and a member of the White House's coronavirus taskforce, stated:

[31] Aria Bendix, CDC director predicts this fall and winter will be 'one of the most difficult times we've experienced in American public health', Business Insider (July 14, 2020), https://www.businessinsider.com/cdc-director-robert-redfield-deadly-coronavirus-surge-fall-winter-2020-7.

> I don't see any reason why, if people maintain [six-foot] distancing, wearing a mask and washing hands—why you cannot, at least where I vote, go to a place and vote. [32]
>
> And you can do that, if you go and wear a mask, if you observe the physical distancing, and don't have a crowded situation, there's no reason why you shouldn't be able to do that. I mean, obviously if you're a person who is compromised physically or otherwise, you don't want to take the chance. There's the situation of mail-in voting that has been done for years in many places. So there's no reason why we shouldn't be able to vote in person or otherwise.[33]

Agreed Facts at ¶ 31. Still, according to Dr. Reingold, traditional in-person voting exposes voters to a risk of contracting COVID-19 due to the proximity of a large number of individuals in a limited space and the large number of common surfaces that many people may touch. 9/8/20 at 46-47; Pl Ex. 269 at ¶ 19. And, the risk of infections increases for people who have to use public transportation or ride in a car with people outside of their household to get to the polls. 9/8/20 at 46-47; Pl Ex. 269 at ¶ 19. Moreover, Dr. Reingold indicated that, in Alabama, the risk of in-person voting is compounded because the State's mask order does not apply to "[a]ny person who is voting,"[34] which means that not everyone voting will wear a mask in

[32] Jacqueline Alemany, Power Up: Anthony Fauci Cautiously Supports Sending Kids Back to School, Aug., 7, 2020, https://www.washingtonpost.com/politics/2020/08/07/power-up-anthony-fauci-cautiously-supports-sending-kids-back-school/.

[33] Nsikan Akpan, What Fauci Says the U.S. Really Needs to Repoen Safely, Aug. 13, 2020, https://www.nationalgeographic.com/science/2020/08/what-anthony-fauci-says-united-states-really-needs-to-reopen-safely-cvd/.

[34] While the State's order does not require voters to wear masks, it states that "wearing a face covering is strongly encouraged" for voters. Pl. Ex. 299 at 3.

polling places, leading to greater risk of COVID-19 transmission. *See* 9/8/20 at 49; Pl. Ex. 299 at 3; *see also* 9/11/20 at 26-27, 30. Similarly, in part because of the chance that people at polling sites will not be wearing masks, Dr. Elopre recommends that people at-risk from COVID-19 vote absentee rather than in-person. 9/9/20 at 56-57.

22. Evidence exists of transmission of COVID-19 from in-person voting. Indeed, after the April 7 primary election in Wisconsin, that state's contact tracing efforts identified 71 individuals who had COVID-19 cases linked to working at the polls or voting in person at the polls. 9/10/20 at 163; Pl. Ex. 267 at 2. The plaintiffs' expert, Dr. Chad Cotti, a health economist at the University of Wisconsin-Oshkosh, concluded that counties that had higher numbers of in-person votes per polling location in the Wisconsin primary had a higher rate of COVID-19 spread at a community level after the election than counties with relatively fewer in-person votes. 9/10/20 at 156, 174; Pl. Ex. 267 at 3. In particular, he found that a 10 percent increase in in-person voter density, i.e., in-person votes per polling location, corresponds to about a 17 – 18 percent increase in the positive test rate. 9/10/20 at 158; Pl. Ex. 267 at 3, 15. Ultimately, Dr. Cotti concluded from his analysis that approximately 700 cases of COVID-19 in the five-week period after the April 7 Wisconsin primary were associated with in-person voting. 9/10/20 at 149, 158; Pl. Ex. 267 at 3. Based on his conclusion, Dr. Cotti opined that to reduce COVID-19 risk, "it would be prudent for election officials and state leaders to engage in as many

practices to 'de-densify'[] polling locations as possible," including by offering more hours at the polls, early voting, and curbside voting, and by encouraging absentee voting. 9/10/20 at 151, 174.

23. In contrast to Dr. Cotti, the State defendants' expert, Dr. Quentin Kidd, a political scientist at Christopher Newport University, found that there was no increase in COVID-19 infection rates in the 14-day period following elections in Wisconsin, Virginia, West Virginia, Georgia, and Kentucky, based on his review of data from Johns Hopkins University. 9/16/20 at 150, 154-59, 214. Dr. Kidd's review, however, analyzed only the 7-day moving average for COVID-19 cases reported in databases for the 14 days after the elections. *See id.*; State Ex. 133 at 8-13. Noticeably, he admitted he did not account for the acknowledged lag times between exposure, the onset of symptoms, testing, and results. 9/16/20 at 150-51, 165-66, 177-78, 177-182. And, on cross examination, Dr. Kidd admitted that during the time-period between 15 and 30 days after the elections, which accounted for the lag time, a noticeable increase in COVID-19 cases could be seen in all of those jurisdictions, except Virginia. *Id.* at 185-95. Virginia, however, allows curbside voting for individuals over 65 and for individuals with a disability, and only 57,500 people voted in person. *Id.* at 195. Thus, Dr. Kidd's analysis, even if the court were to accept it,[35] does not refute Dr. Cotti's testimony that there is a link between higher

[35] The court sustained the plaintiffs' objections to Dr. Kidd's opinions as to the first fourteen pages of Dr. Kidd's expert report, *see* State Ex. 133, pursuant to Rule 702 of the Federal Rules of Evidence. *See* 9/16/20 at 211-12, 221-22. As the court explained, Dr. Kidd's field of expertise

numbers of in-person votes per polling location and increased COVID-19 spread in communities.

24. The CDC has issued specific guidelines to address concerns about voting during the COVID-19 pandemic. Pl. Ex. 451. Among other things, the CDC recommends that states "offer alternative voting methods that minimize direct contact and reduce crowd size at polling locations," including early voting, and it asked states to consider "drive-up voting for eligible voters if allowed in the jurisdiction" as a means of complying with social distancing rules and limiting personal contact during in-person voting. *Id.* The plaintiffs' experts, Dr. Reingold and Dr. Elopre, agree with the CDC's recommendations, including the recommendation for curbside or drive-up voting, though Dr. Reingold admits that curbside voting is not necessarily safer than absentee voting. 9/8/20 at 45, 52, 76-77; 9/9/20 at 56-57, 62; *see also* Pl. Ex. 269 at ¶¶ 23-24.

25. Alabama does not offer early, traditional in-person voting[36] or curbside voting. Agreed Facts at ¶ 36. Still, Alabama has taken specific steps to make voting

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does not qualify him to reach the areas he offers opinions on, and Dr. Kidd admits that he has no expertise in the area of public health and has not done any research on the topic that would help the court increase its understanding of the areas he is opining on. *Id.* at 221-22. In addition, unlike Dr. Cotti, Dr. Kidd did not undertake any regression analysis or control for any public health factors, such as the lag times discussed above, in his analysis. *Id.* Put simply, Dr. Kidd's analysis is no different than what a lay person could report on through a simplistic and straightforward look at the relevant John Hopkins data, and offers no real benefit from an expertise point of view to aid the court in its understanding of the underlying data. *Id.* at 221.

[36] As discussed below, the State does offer early in-person absentee voting.

safer during the COVID-19 pandemic. To begin, on March 13, Secretary Merrill sent a letter to probate judges to suggest that they should sanitize polling machines and equipment frequently during voting, provide hand sanitizer to voters, and provide gloves to poll workers. State Ex. 5. Then, on March 18, Governor Ivey rescheduled the March 31 primary runoff election to July 14. State Exs. 15, 16; Agreed Facts at ¶ 80. That same day, Secretary Merrill promulgated an emergency rule titled "Absentee Voting During State of Emergency," providing in part as follows:

> [A]ny qualified voter who determines it is impossible or unreasonable to vote at their voting place for the Primary Runoff Election of 2020 due to the declared states of emergency, shall be eligible to check the box on the absentee ballot application which reads as follows: "I have a physical illness or infirmity which prevents my attendance at the polls. [ID REQUIRED]."

State Ex. 17; Agreed Facts at ¶ 81. In effect, this rule meant that any voter concerned about potential exposure to COVID-19 at a polling place could vote absentee in the July 14 primary runoff election. *See* 9/11/20 at 3. Secretary Merrill issued a press release in March informing voters about the emergency absentee voting rule for the July election. State Ex. 18.

26. In April, Congress appropriated funds for Alabama to prepare for voting during the pandemic in the July and November elections, and the Secretary of State's office also dedicated increased funding to this effort. 9/15/20 at 149; State Ex. 35. The Secretary of State will use some of those funds to reimburse counties

for masks, gloves, and cleaning supplies for polling places. *Id.* And, Secretary Merrill testified that his office will provide a mask to any voter at a polling place who would like one. 9/11/20 at 61. Still, Secretary Merrill's office received letters from some probate judges expressing concern about their ability to comply with CDC recommendations and State and Federal election laws during the July runoff election. State Exs. 36; 38. And, the Secretary received a report that in Mobile County, the polling sites that would have the biggest issues complying with CDC guidelines serve predominately minority communities. *See* 9/11/20 at 35.

27. Alabama saw a record turnout of voters for a runoff election on July 14, with 17.6 percent of eligible voters voting. 9/11/20 at 45. During and after the July 14 election, Secretary Merrill received complaints that poll workers and voters did not wear masks at polling sites. *Id.* at 26-27, 30. When he learned that voters in certain precincts were not wearing masks, Secretary Merrill took steps to ensure those voters were still allowed to vote in the runoff. *Id.* at 30. According to Secretary Merrill, "[n]o voter can be turned away [from a polling site] for any reason if they are a qualified elector[,]" even if they are visibly ill or have a known case of COVID-19. *Id.*; *see also* 9/15/20 at 202; 9/17/20 at 193.

28. Secretary Merrill extended the emergency absentee voting rule to apply to the November 3, 2020 general election. 9/11/20 at 3; 9/15/20 at 152. Thus, any voter in Alabama who wishes to vote absentee in the November election due to concerns about COVID-19 may do so, subject to the witness and photo ID

requirements. Secretary Merrill expects voter turnout in November to exceed the 2016 presidential election, and although most Alabama voters have traditionally voted in person on Election Day, he expects voters to cast a record number of absentee ballots in the November election. 9/11/20 at 47, 80; Agreed Facts at ¶ 89. On at least 14 occasions, Secretary Merrill's office issued a press release encouraging voters concerned about exposure to COVID-19 to vote absentee and providing information on how to apply for an absentee ballot and the applicable deadlines. State Exs. 21; 30; 33; 34; 37; 44; 46; 39; 59; 61; 62; 66; 69; 71.

29. Absentee voting for the general election began on September 9, and as of September 11, more than 30,000 people had applied for absentee ballots across the State. 9/11/20 at 47, 58; 9/15/20 at 142. In addition, several hundred people have completed absentee ballots in person in their county AEM's office. 9/11/20 at 47, 58; *see also* 9/15/20 at 92; 9/16/20 at 55-56; 9/17/20 at 137, 195. To cast an absentee ballot, a voter must complete an absentee ballot application, and return the application to the AEM by mail or in person with a copy of her photo ID at least five days before the election. 9/15/20 at 139, 151. Then, after the voter receives the absentee ballot packet, she must seal the completed ballot inside an affidavit envelope, and sign the affidavit in the presence of two witnesses or a notary. 9/15/20 at 139-40. Finally, the voter must return the completed ballot and affidavit to the AEM in person up until the day before Election Day, or by mail in time to be received by noon on Election Day. 9/15/20 at 151.

30. Voters may go in person to an AEM's office to vote before the election, and they can complete the absentee voting process in a single trip. 9/11/20 at 47-48; 9/17/20 at 130-31. Alleen Barnett, the Absentee Election Coordinator for Mobile County, estimates that her office has been serving between 40-50 voters a day since absentee voting began on September 9, and she anticipates that the number will increase. 9/17/20 at 102-03, 130. In addition to serving voters at the AEM's office, Secretary Merrill encourages AEMs and Circuit Clerks to hold events outside of their offices, such as outdoors on college campuses, in parking lots, or in nursing homes, to allow voters additional opportunities to cast absentee ballots in person before the election. 9/11/20 at 48-50.

31. In the Mobile County AEM's office, Ms. Barnett and her staff wear masks, have hand sanitizer and rubber gloves available, and wipe their work areas and the voter areas with disinfectant spray. 9/17/20 at 134. They also practice social distancing in the office and have spaced chairs for voters at least six-feet apart. *Id.* But, Ms. Barnett's office cannot turn away a voter who does not wear a mask. *Id.* at 153. At least in part for that reason, Mr. Howard Porter, Jr., one of the individual plaintiffs from Mobile County, testified that he would not consider voting in person in the AEM's office. 9/14/20 at 88. Mr. Porter explained his decision for not voting in person: "I don't want any vote that I cast to be my last vote. And in Alabama, a person can vote even if they don't have on a face mask. And that's just too much for me. [] [A]s important as the right to vote is, I just can't endure that." *Id.* at 78-

79. Mr. Porter, a Black man in his seventies, further explained: "[S]o many of my [ancestors] even died to vote. And while I don't mind dying to vote, I think we're past that – we're past that time. And that should not be a requirement . . . . Because voting is the only day that rich, the poor, sick, the healthy, all should be counted as one and just as easy. And any obstacle placed in the way of the opportunity to vote places an effect on the process itself." *Id.* at 80.

D. <u>Alabama's History of Disenfranchisement of Black Voters</u>

32. For the individual plaintiffs who are Black and the organizations who advocate for the voting rights of Blacks, voting is fundamental and sacred in light of the many thousands who died to secure the right. They view any restrictions to voting as part of the centuries-old effort to deprive Blacks from accessing the ballot. As the plaintiffs testified, Black Alabamians have consistently overcome barriers to exercising their fundamental right to vote, only to later have that right curtailed. *See* 9/14/20 at 118. The relevant historical facts are largely undisputed. Briefly, after the bloodshed of the Civil War, the nation finally deemed African Americans worthy of the franchise. *See* Pl. Ex. 264 at 6. The "radical" northern Republicans, emerging triumphant from the War, sought to cement their hard-fought victory with three Constitutional amendments. *Id.* The Thirteenth Amendment, the first of this trio, granted millions of formerly enslaved persons their freedom, abolishing a system that deprived them of their humanity. Const. Amend. XIII. Second, the Fourteenth Amendment transformed these freed men and women into citizens, guaranteeing

them due process and equal protection of the laws. Const. Amend. XIV. Finally, the Fifteenth Amendment granted the franchise to the men among our nation's newest citizens. Const. Amendment XV. Backed by the federal government, the formerly enslaved exercised their newfound rights to elect Black candidates to statewide office in Alabama and across the South. Pl. Ex. 264 at 6.

33. But their political power proved fleeting. Pl. Ex. 264 at 6. Favoring unity with the former Confederacy over equality for Black Americans, the Republican Congress withdrew federal troops from the South. *Id.* Terrorists and southern Democrats replaced them. *Id.* These groups, known as "Redeemers," used racial violence to erase the advances Black people made during Reconstruction. *Id.* Notwithstanding the Fourteenth and Fifteenth Amendments, Redeemers in Alabama "burned houses, churches, and schools; raided party meetings; and lynched" those Black citizens who dared to vote. *Id.* In Mobile, Alabama, Democrats once murdered prospective Black voters and fired a cannon near their polling place, scattering hundreds of other Black voters. *Id.*

34. By 1874, Redeemers had recaptured the Alabama legislature and governorship. Agreed Facts at ¶ 144. Once in power, these officials paired violence with policy, imposing legislative barriers to further undermine the Black vote. *Id.* They redrew voting districts to exclude Black voters, implemented at-large elections across the state to dilute Black voting blocs and maintain all-White local

governments, and, in Alabama's Black Belt, they eliminated elections altogether so that the Governor could appoint White leaders. *Id.*

35. Their later efforts included enacting new laws nominally geared toward curbing voter fraud. Agreed Facts at ¶ 145. The Alabama legislature passed the Sayre Law in 1893, which entrenched "a more respectable and cunning way of controlling or disenfranchising black voters." *Harris v. Siegelman*, 695 F. Supp. 517, 522 (M.D. Ala. 1988). This "reform" measure followed reports of rampant voter fraud among Democrats seeking to disrupt a fledgling alliance between poor populists and poorer Black voters. 9/14/20 at 115. Under the Sayre Law, Democrats no longer needed to engage in fraud to weaken this biracial coalition. The law strategically set voter registration deadlines in the busiest months for farmers, instituted time limits for voting, and adopted a "secret ballot" designed to make it difficult for illiterate voters to vote along party lines. Agreed Facts at ¶ 145. As a result, Black voter turnout plummeted twenty-two percent. *Id.*

36. Not even the Alabama Constitution was safe from White supremacy. In 1901, Redeemers revised the state constitution to more explicitly disenfranchise Black voters. Agreed Facts at ¶ 146. These revisions sought to address the "grave problem" of "Negro domination" and to "establish white supremacy." Pl. Ex. 264 at 7. Redeemers constitutionalized a poll tax, conditioned voting rights on property ownership and employment status, imposed a literacy test, and prohibited from voting anyone convicted of certain crimes "thought to be more commonly

committed by [Black residents]." Agreed Facts at ¶ 146 (quoting *Hunter v. Underwood*, 471 U.S. 222, 232 (1985)). The number of registered Black voters in Alabama dropped from 180,000 to 3,000 under the 1901 Constitution. *Id.*

37. As the federal courts awakened to southern efforts to disenfranchise Black citizens, Alabama innovated. When the Supreme Court invalidated the all-White primary in 1944, the state legislature responded by enacting the "Boswell Amendment" to its 1901 Constitution. Agreed Facts at ¶ 147. The Boswell Amendment required that citizens prove their ability to "understand and explain" articles of the U.S. Constitution to a local registrar before registering to vote. *Id.* Registrars wielded significant discretion under this system, making it nearly "impossible for a [Black voter] to qualify." *Id.* That was by design. An author of the Amendment declared this discretion integral to excluding from registration "those elements in our community which have not yet fitted themselves for self-government." Pl. Ex. 264 at 8. And when a federal court in 1949 invalidated the Boswell Amendment as racially discriminatory, the legislature replaced it with a more elaborate scheme to prevent Black voter registration. Agreed Facts at ¶ 147. This new scheme imposed a literacy test on potential registrants, disqualified registrants charged with a crime of "moral turpitude," and required registrants to produce a supporting witness willing to confirm the registrant's good standing. *Id.* Because the legacy of slavery made Black citizens disproportionately illiterate and

made most White citizens unwilling to vouch for Black registrants, these provisions disparately impacted Black would-be registrants. *Id.*

38. At midcentury, Black attorneys in Alabama began using newly enacted federal civil rights legislation to challenge voter discrimination in federal courts. Agreed Facts at ¶ 148. They scored key victories while working with the Department of Justice's Civil Rights Division. *See* Pl. Ex. 264 at 10. The Civil Rights Division in turn began filing lawsuits against local registrars across Alabama, challenging the discriminatory use of the State's voter questionnaire, witness requirement, and other registration requirements. Agreed Facts at ¶ 148.

39. In 1965, Congress passed the Voting Rights Act ("VRA"), which outlawed lingering devices for disenfranchising African Americans including literacy tests, witness requirements, and Alabama's poll tax. Agreed Facts at ¶ 149. Sections 4 and 5 of the VRA also required that changes affecting voting in Alabama receive preclearance from the federal government before enactment. *Id.*; *see also* Pl. Ex. 264 at 23.

40. Although Black voter registration in Alabama soared from 25 percent to 56 percent in the three years following enactment of the VRA, the state legislature used racial gerrymandering to subsequently dilute Black voting power. Agreed Facts at ¶ 150. Throughout the 1960s and 1970s, Alabama politicians proposed several districting plans that would have fragmented predominantly Black

communities. *Id.*; *see also* 9/14/20 at 122. Federal courts consistently blocked their implementation. *See* Pl. Ex. 264 at 15.

41. In the 1990s, the Alabama legislature again enacted so-called reform measures that disproportionately impacted Black voters in the name of rooting out voter fraud. 9/14/20 at 126. These laws formally mandated that citizens interested in voting absentee include with their ballots either two witness signatures or the signature of a notary public. *Id.* at 127; *see also* Pl. Ex. 264 at 20-21. This legislation had a "laser focus on Black political activists" who had used Alabama's absentee ballot process to increase Black voter turnout. 9/14/20 at 126. At the time, only four state senators opposed these new restrictions; all were Black. *Id.* at 128; Pl. Ex. 264 at 21. Some White senators, in contrast, insisted that only Black voters engaged in voter fraud. Pl. Ex. 264 at 21.

42. To be sure, other reformers in the 1990s had nonracial motivations. For example, former Justice Glenn Murdock of the Alabama Supreme Court, then a litigator, championed reform to the state legislature after investigating irregularities in Alabama's 1994 Supreme Court election. 9/17/20 at 8. Justice Murdock agrees, however, that voter fraud was not instrumental to that election. *Id.* at 16. Instead, purported fraud was "conflated with" the real issue in that debacle—"technical" questions "about changing the rules of the election" after the fact. *Id.*; *see also* Pl. Ex. 264 at 20–22. Meanwhile, Pamela Montgomery, a private citizen, advocated election reform only after she became "convinced" that fraud existed in Greene

County, Alabama, based, in part on an unofficial audit of absentee ballot returns she helped conduct. 9/18/20 at 18. Ms. Montgomery formed a local citizens' group, which she testified was not designed to suppress the Black vote but was instead a biracial effort to improve the lives of the Black citizens of Greene County. *Id.* at 30–32, 42–43. But, in a county she said was 90 percent Black, White residents were overrepresented by 500 percent among the leadership of Ms. Montgomery's citizens' group, *id.* at 46–47, and the court has other reasons to discount her testimony.[37]

43. Evidence at trial produced by the defendants showed instances of voter fraud, mostly occurring two decades ago. Gregory Biggs prosecuted a handful of fraud cases in the 1990s while working in the state Attorney General's office. 9/16/20 at 7. In Winston County, for example, Mr. Biggs helped convict several elected officials who conspired with local bootleggers to bribe voters into exchanging absentee ballots for beer. *Id.* at 13. The other convictions Mr. Biggs secured also involved local officials abusing their power to facilitate fraud. Mr. Biggs admitted on cross-examination, however, that the Challenged Provisions would not prevent the fraud he prosecuted from occurring today. *Id.* at 21–22. The

[37] On cross-examination, Ms. Montgomery acknowledged that she has previously complained that Black officials routinely play the "race card" to maintain power, but she denied having ever observed a White politician use race to divide people. 9/18/20 at 48–49. There were other admissions Ms. Montgomery made related to her social media postings, *id.* at 57-58, which the court will not include here to protect her privacy. The court will add only that as the trier of fact, these postings undermine her credibility and cause the court to give little weight to her testimony.

record shows that voter fraud rarely occurs today, and the defendants point to only two instances of voter fraud convictions secured in Alabama since the 1990s. *See* 9/16/20 at 67–70.

44. Regardless of whether they were designed to address fraud or to suppress the Black vote, the absentee ballot reforms enacted in the 1990s disproportionately disadvantaged the rural Black citizens who historically relied on absentee voting. 9/14/20 at 129; *see also* Pl. Ex. 264 at 21–22. Because these citizens regularly worked long hours outside their counties and often lacked access to vehicles, they struggled to reach "far-flung polling places" on Election Day. 9/14/20 at 129. Alabama's rural Black Belt, which is predominately Black, thus saw sharp declines in the number of absentee ballots cast. *Id.* Some state officials heralded this as a success. *Id.*; *see also* Pl. Ex. 264 at 21–22.

45. Alabama's history of voter discrimination interacts with systemic disparities that currently affect Black residents' education, employment, and healthcare outcomes to negatively impact Black political participation. Pl. Ex. 264 at 24.

46. For example, in addition to voting discrimination, racial discrimination in Alabama's public schools is also well-documented. Pl. Ex. 264 at 24–25. State and local officials fought to maintain segregation in Alabama schools long after the Supreme Court ruled the practice unconstitutional in *Brown v. Board of Education*, 347 U.S. 483 (1954). Pl. Ex. 264 at 24–25. Efforts to desegregate school systems

in Alabama have continued, with dozens remaining under desegregation orders today. 9/14/20 at 137.

47. To no surprise, consistent with CitiBank's study released last week that found that the U.S. Economy has lost $16 trillion since 2000 because of discrimination against Blacks,[38] educational discrimination has had a lasting effect in Alabama. *See* 9/14/20 at 139. Of adults aged 25 years and over, 16.6 percent of Black Alabamians have not completed high school compared to 11.4 percent of their White counterparts. Doc. 228 at ¶ 3. For the same age range, only 17.3 percent of African Americans in the State earned a bachelor's degree or higher compared to 28.3 percent of White adults. *Id*. at ¶ 4.

48. Complementing Alabama's historical racial disparities in education are entrenched disparities in employment and economic opportunities. Pl. Ex. 264 at 30–31. Over the past half-century, litigation has uncovered many examples of state entities adopting racially discriminatory employment practices. 9/14/20 at 140; Pl. Ex. 264 at 31. And private employers too have faced countless allegations of racial discrimination. In 2019, for example Alabama had a higher percentage of racially-based employment discrimination claims than any other state. Pl. Ex. 264 at 31.

[38] *See* NPR, *Cost of Racism*, https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/09/23/916022472/cost-of-racism-u-s-economy-lost-16-trillion-because-of-discrimination-bank-says (last visited Sept. 25, 2020).

Alabama was also overrepresented nationally in racially-based employment discrimination claims based on its population. *Id.*

49. Relatedly, Black communities in Alabama suffer from higher concentrations of unemployment and under-employment. *See* Doc. 228 at ¶¶ 5–6. The unemployment rate among Black Alabamians over age 16 is more than double the rate among White residents of the same age. *Id.* at ¶ 5. Those Black Alabamians who are employed are more likely to work lower paying jobs than White workers. Of employed Black adults in the State, 20.7 percent work in service occupations compared to just 14.8 percent of Whites. *Id.* at ¶ 7; *see also* Pl. Ex. 268 at ¶ 14. Only 26.2 percent of employed Black Alabamians hold management or professional roles; 39.1 percent of White Alabamians hold such positions. Doc. 228 at ¶ 6.

50. In Alabama, Black households also have fewer economic resources. The median household income for Black Alabamians is $33,503 compared to $58,257 for White households. Doc. 228 at ¶ 9. More than one quarter of Black Alabamians live in poverty compared to only 11.3 percent of White Alabamians. *Id.* at ¶ 10. This economic inequality has consequences. Roughly 13 percent of Black families in Alabama lack access to a vehicle compared to only 3.9 percent of White families. *Id.* at ¶ 14. Black households are eight percent less likely than White households to own a computer, smartphone, or tablet. *Id.* at ¶ 13. Black households are also less likely to have broadband internet access—29.6 percent compared to 17.2 percent of White households. *Id.* at ¶ 12.

51. These economic conditions intersect with other legacies of racial discrimination in Alabama to make the State's Black residents more likely to suffer negative health outcomes. Pl. Ex. 268 at ¶ 6. Historic racial residential segregation is a principal driver. 9/10/20 at 13–14. State and federal laws and practices "produced and maintained" racial residential segregation in Alabama by incentivizing discriminatory zoning, redlining, and predatory lending. Pl. Ex. 268 at ¶ 8. Racial residential segregation has devalued neighborhoods, reduced access to quality and affordable food, and produced disproportionately high concentrations of poverty in Black communities. 9/10/20 at 15–16; Pl. Ex. 268 at ¶ 8. It is "one of the strongest indicators of chronic illness patterns in the Black community." 9/10/20 at 13. Because of racial residential segregation, Black individuals are more likely than White individuals to suffer from chronic conditions such as obesity, cancer, and asthma. *See id.* at 16; Pl. Ex. 268 at ¶ 8.

52. This is particularly true in Alabama's Black Belt counties, where "a shortage of infrastructure to support economic stability and growth compounds the inability of [residents] to move upward economically, contributing to generational poverty, especially among rural Black people who are less likely to be able to mobilize out of rural areas." Pl. Ex. 271 at ¶ 8. Health outcomes for Black Alabamians in rural counties are much worse than for White Alabamians in those counties. 9/9/20 at 43; Pl. Ex. 271 at ¶ 9. Although impoverished people of all races face structural obstacles that adversely impact their health, a Black person living in

poverty "typically [] would have a worse outcome compared to their counterparts." 9/9/20 at 69, 72.

53. These health disparities reflect, in part, callousness among elected officials in Alabama to the needs of Black residents. For example, Alabama's legislature has rejected requests to expand Medicaid under the Affordable Care Act notwithstanding the urging of Black leaders and a racial gap in insurance coverage. 9/14/20 at 147–48. Expanding Medicaid would have insured an additional 220,000 Alabamians, particularly benefiting Black residents. 9/10/20 at 23; Pl. Ex. 268 at ¶ 13. This healthcare and insurance inequality helped to make Black Alabamians especially vulnerable when a novel coronavirus surfaced in early 2020. *See* Pl. Ex. 264 at 39

E. <u>The Parties in this Lawsuit</u>

(1) <u>Individual Plaintiffs</u>

(a) *Howard Porter, Jr.*

54. Mr. Porter is a Black man in his seventies, and a registered voter in Mobile County, Alabama who lives with his wife and adult son. 9/14/20 at 65-67, 76. Mr. Porter has asthma and Parkinson's Disease, which causes him to have difficulty walking, and he uses a cane to walk. *Id.* at 64-68. Mr. Porter is at higher risk for complications or death from COVID-19 because of his age and underlying medical conditions. Agreed Facts at 3, ¶ 3. He takes the COVID-19 pandemic seriously and follows the CDC's guidance closely. *See id.* Sadly, his sister and

uncle both died from COVID-19, and Mr. Porter is very fearful about becoming infected. 9/14/20 at 69-72.

55. Since Governor Ivey's Stay at Home order on March 13th, Mr. Porter has left his home to attend his doctor's appointments. *Id.* at 71-72; Agreed Facts at 3, ¶ 3. He also attended one of his wife's medical appointments to provide support for her while she was receiving treatment for a serious medical condition. 9/14/20 at 71-72. Every time Mr. Porter leaves his home, he wears a mask, and he practices social distancing. *Id.* at 75. In addition, the medical providers he saw also wore masks. *Id.* Upon arriving home, Mr. Porter washes his clothes and showers. *Id.*

56. Mr. Porter's wife and son leave the house to obtain groceries, and they wear a mask and follow social distancing protocols while out. *Id.* at 75. Upon their return home, they also wash their clothes and take a shower. *Id.* Since the pandemic hit, Mr. Porter's daughter and grandchildren have visited him once in his home. *Id.* at 76. His daughter and grandchildren had also adhered to social distancing protocols before their visit. *Id.*

57. Mr. Porter has always voted in-person, but now he does not want to risk a COVID-19 infection. Agreed Facts at 3, ¶ 3. Mr. Porter chose not to vote in the July 14 primary runoff election when he did not receive his absentee ballot. 9/14/20 at 78. He did not vote in-person in the election because he did not want to risk being infected with COVID-19. *Id.* When Mr. Porter votes in person at his polling place, he is required to walk 100 to 150 feet from his disabled parking space to the

entrance. *Id.* at 77. Walking this distance is challenging for Mr. Porter due to his Parkinson's. *Id.* Mr. Porter would prefer to vote curbside as opposed to voting absentee or in-person. 9/14/20 at 79-81. He believes it would be "less strenuous" given his disability, provide less contact than going inside the polling place, and reduce the time he spends now to vote. *Id.*

(b) *Dr. Eric Peebles*

58. Dr. Peebles is 39-years-old, White, and lives alone in Auburn, Alabama. 9/8/20 at 114; Agreed Facts at 1, ¶ 1. He is a lawfully registered voter who has never lost his right to vote by reason of a felony conviction or court order. *Id.* Dr. Peebles has cerebral palsy, which puts him at heightened risk from COVID-19 because respiratory illnesses carry high risks of severe complications and can be fatal for people with his condition. 9/8/20 at 114, 116. Dr. Peebles uses a wheelchair and requires "full assistance with activities of daily living . . . ." *Id.* at 115.

59. He has not left his apartment complex since early March, except to attend medically necessary appointments and to travel to Birmingham in June for retrieval of data from his phone for discovery in an unrelated legal case. 9/8/20 at 120-22. Although Dr. Peebles attempted to have the retrieval of the data conducted remotely, counsel for the opposing party required that their own expert obtain the data directly from Dr. Peebles's phone. *Id.* at 123. Because Dr. Peebles relies on his phone to not only communicate, but also to activate the automatic door opener at his home, he would not be able to leave his home in the event of an emergency if

he did not have his phone. *Id.* at 123. Therefore, he reasonably did not believe he could safely remain in his home without his phone, and he determined that he needed to be present when the expert examined his phone. *See id.* at 123-24, 150. At least six other people, all of whom wore a mask, attended the discovery meeting, and they all remained more than six feet apart during the meeting. *Id.* at 126-37. Dr. Peebles did not wear a mask because it was a high-stress situation, and he wanted access to water. *Id.* at 149.

60. Except for those appointments, Dr. Peebles has restricted all in-person contact since March 13, with the exception of his five caregivers who provide 60 hours of in-home care each week, and nurses who visit him three days a week to treat a persistent wound. 9/8/20 at 116-22,133-34. Each caregiver works separate shifts of a few hours each, and Medicaid billing practices require that their shifts are separated by at least two hours. *See id.* at 118. Although the nurses come on the same days each week and will continue to do so through September and October, the timing of their visits varies, and Dr. Peebles cannot predict when their visit may coincide with one of his caregiver's shifts. *Id.* at 119, 134, 148.

61. Because Dr. Peebles's caregivers necessarily come into close contact with him, he must be sure that they strictly follow the CDC's social distancing guidelines at all times. *See id.* at 116-17, 120. As a precaution, each of Dr. Peebles's caregivers has been tested for COVID-19, and all of his caregivers wear masks in his home. *Id.* at 120-21.

62. Dr. Peebles typically votes in person and did so during the March 3, 2020 primary election. *Id.* at 124, 129. Dr. Peebles cannot operate the voting machines unassisted and thus brings an individual into the voting booth to assist him in filling out the ballot. *See id.* at 124-25. He has had trouble navigating the physical space in his polling place, which is located inside a hotel, and requires help with operating the elevator. *Id.* at 130-31. Dr. Peebles explained that "[t]here are some issues [] with whether this is enough room for me to activate the button on the elevator and then, turn, back out or pull out of the elevator without risking being hit by the door . . . ." *Id.* at 131. Nevertheless, he reports that he has "always [been] able to vote" at his polling site with assistance. *Id.* at 153.

(c) *Annie Carolyn Thompson*

63. Ms. Thompson is a 68-year-old retiree who lives alone at her home in Mobile, Alabama. 9/8/20 at 168. She is Black, a U.S. citizen, has never lost her right to vote by reason of a felony conviction or court order, and is a lawfully registered voter in Alabama. *Id.*; Agreed Facts at 3, ¶ 4. Ms. Thompson is at higher risk of contracting and having severe complications from COVID-19 because of her age and preexisting conditions, including diabetes and high blood pressure. *See* 9/8/20 at 168-69. Ms. Thompson takes medication for both conditions. *Id.* at 169.

64. Ms. Thompson's vulnerability to COVID-19 has caused her to severely limit her social contact, and she has basically "self-quarantine[d]" since the beginning of April. 9/8/20 at 169-70. After she retired as a cosmetologist, Ms.

Thompson began working as a caretaker, but she left that job at the beginning of the pandemic to protect her health. *Id.* at 170; Agreed Facts at 4, ¶ 4. Since the start of the pandemic, the only person Ms. Thompson allows regularly in her home is her daughter, who delivers groceries and other necessities approximately once or twice a week. 9/8/20 at 169-70. One of Ms. Thompson's granddaughters tested positive for COVID-19, and both she and Ms. Thompson's daughter had to quarantine at home. *Id.* at 228-29. Accordingly, Ms. Thompson recently has had to do her own grocery shopping instead of relying on her daughter.

65. Ms. Thompson only leaves her home for necessary errands, such as going to the bank, grocery store, pharmacy, medical appointments, and to take her dog to the veterinarian and groomer to treat his skin condition. *See* 9/8/20 at 169, 171, 173, 199. When Ms. Thompson leaves her home, she protects herself "to the fullest extent" possible. *Id.* at 193. This means she always wears a mask and practices social distancing, and she also wears gloves and uses sanitizers, wipes, and sprays. *See id.* at 170, 172. When Ms. Thompson has to go to the grocery store, she limits her shopping to senior hours. *Id.* at 228, 231. In addition, Ms. Thompson uses the bank's drive-thru window, and someone at the vet's office and groomer retrieves Ms. Thompson's dog from her car and brings him back, so Ms. Thompson does not leave her car for either type of appointment. *Id.* at 172-73, 217.

66. Ms. Thompson testified that she would have difficulty meeting the photo ID requirement to vote absentee because she does not have the necessary

technology or equipment to make a copy of her photo ID at home and would, therefore, have to venture out of her home to obtain the copy. *Id.* at 176-77. She also indicated that she would have difficulty meeting the witness requirement because she does not regularly interact with two people at the same time. *Id.* at 177. She further testified, however, that, having learned about the Mobile Public Library's curbside notary services in this litigation, she would use them to notarize her absentee ballot for the November election. *Id.* at 196-97, 203-04.

67. Ms. Thompson requested an absentee ballot for the July runoff election because of COVID-19, but her ballot did not arrive until the day of the election. 9/8/20 at 174-75. Accordingly, because Ms. Thompson could not vote absentee, she called a friend who works at her polling site to find out a time when few people would be at the site. *Id.* at 174-75. She felt safe voting in person on that occasion because all of the poll workers wore masks and gloves, there were sanitizing stations all over, they had sneeze guards, and people practiced social distancing. *Id.* at 197. Ms. Thompson testified that she would not feel safe voting in person in November because her polling site, which is not a large facility, will be very crowded since it is a major election that will have a larger turnout. *See id.* at 197-98, 201, 218. Ms. Thompson also would not be comfortable voting in person in November because people are not required to wear masks when voting. *See id.* at 219, 226.

(d) *Teresa Bettis*

68. Ms. Bettis is a 51-year-old U.S. citizen who is Black, lives at her home in Mobile County, Alabama with her husband and two minor children. 9/14/20 at 4; Agreed Facts at 6, ¶ 10. She is registered to vote in Alabama and has never lost her right to vote by reason of a felony conviction or court order. Agreed Facts at 6, ¶ 10. Ms. Bettis is also the executive director of the Center for Fair Housing and in that role frequently works as an organizational partner with plaintiff Black Voters Matter ("BVM") on their voter registration and voter education efforts. 9/14/20 at 4-5. Ms. Bettis also serves as the housing chair for Mobile chapter of the NAACP. *Id.* at 5.

69. Ms. Bettis faces a higher risk of contracting and having severe complications from COVID-19 because of two preexisting conditions, diabetes and hypertension, which she treats with over-the-counter supplements from local health stores. 9/14/20 at 6-7. She has not taken prescription medications for either condition in approximately eight years and is currently looking for a doctor who is open to utilizing alternative medicine to help her manage the conditions. *Id.* at 8, 26. Ms. Bettis does not regularly check her blood sugar levels or her blood pressure, but she can feel when she has a problem with them. *Id.* at 25-26.

70. As Ms. Bettis is an at-risk individual, she has avoided crowds and limited visitors in her home and trips outside of her home. *See* 9/14/20 at 10-11. During the pandemic, Ms. Bettis has left her home to go to her dentist, the pharmacy, the bank's drive-thru window, the grocery store, and to pick up to-go meals at local

restaurants and fast food drive-thru windows. *Id.* at 17, 33-34. Ms. Bettis shops at the grocery store once or twice a week, and she has also been to Lowe's, Marshall's, and the Shoe Station. *Id.* at 35. When Ms. Bettis ventures out for such errands, she wears a mask and practices social distancing, and she keeps gloves, hand sanitizer, and disinfectant in her car. *Id.* at 10-11, 35-36.

71. Since mid-March, Ms. Bettis has had visitors at her home on limited occasions. *See id.* at 11-12. First, in early or mid-March, her sister-in-law visited to obtain help setting up a laptop to work remotely. *Id.* at 12. Then, Ms. Bettis allowed her husband's siblings to visit for Father's Day, but required them to stay outside in the yard where they could remain socially distant. *See id.* Ms. Bettis also had her nephew enter her home on one occasion to witness her absentee ballot for the July election. *Id.* at 12, 39-40, 56. Ms. Bettis has not had anyone over to her home since her nephew's visit, and she does not plan to have any visitors at her home, either inside or outside, because each visitor increases the risk "of bringing the COVID into your home, and [she's] just not comfortable with that." *Id.* at 12-13, 20, 57. And, this includes her nephew because he now has a relative living with him who has an illness that the nephew and other relatives refuse to disclose. *Id.* at 19-20.

72. Ms. Bettis has worked primarily from home since March 19, but she goes to the office to meet her bookkeeper every two weeks. *See* 9/14/20 at 14, 18, 27, 29. And, on a few occasions, Ms. Bettis has met with two people at a time at work, including her administrative assistant, an IT employee, and board members.

Id. at 14, 30-31, 52, 61. On those occasions, everyone wore masks and stayed socially distant in a large conference room. *Id.* at 31. In addition to those meetings, Ms. Bettis met the board president in a parking lot in order for him to sign documents required to open a new bank account. *Id.* at 28-29, 53. Ms. Bettis testified that her office will remain closed for the foreseeable future to minimize the risk of exposure to COVID-19. *See id.* at 16.

73. Ms. Bettis is especially concerned about avoiding exposure to COVID-19 because she has known several people who have had the disease, including a close friend who became very sick and two women in their 80s who are like second mothers to her. 9/14/20 at 9, 58. One of the older women had to be hospitalized, and one of the women's son also contracted COVID-19 and died from the disease. *Id.* at 9-11. Although Ms. Bettis normally would have attended the funeral to support her friend, she did not go to avoid potentially exposing herself to COVID-19. *See id.* at 11. In addition, her bookkeeper's daughter recently tested positive for COVID-19, and as a result, she is requiring her bookkeeper to work solely from home for thirty days, or until mid-October. *Id.* at 9-10, 14, 32-33.

74. Due to her concern about COVID-19, Ms. Bettis intended to vote absentee in the July runoff election. 9/14/20 at 18, 46. But, she sealed the envelopes for the absentee ballot incorrectly and did not have time to request another absentee ballot. *Id.* at 18, 40-41. Accordingly, she voted in person at her polling site in a large auditorium. *Id.* When Ms. Betis arrived at the site mid-morning, only one or

two people were inside the site voting and they were wearing masks along with the poll workers. *Id.* at 21, 41. However, not all of the poll workers wore gloves, and Ms. Bettis did not observe any cleaning or disinfecting at the site. *Id.* at 21-22, 41.

75. Ms. Bettis does not believe she can vote in person in November because her polling site is typically extremely crowded for a presidential election. *Id.* at 22. Since she is at high-risk from COVID-19, she is not willing to expose herself to the risk of being around so many people at one time. *Id.* at 22-23. If she cannot vote absentee, she probably will not vote, and that would be the first time since turning 18 that she did not vote in a presidential election. *Id.* at 23. Not voting would be devastating for Ms. Bettis, but exposing herself to COVID-19 is not an option for her. *See id.* at 24. When informed about the Mobile Public Library's curbside notary services at trial, Ms. Bettis agreed that utilizing the services to notarize her absentee ballot would be an option for her. *Id.* at 45.

(e) *Sheryl Threadgill-Matthews*

76. Ms. Threadgill-Matthews is a Black, 67-year-old U.S. citizen who lives in Wilcox County, Alabama with her husband. 9/9/20 at 4, 10; Agreed Facts at 7, ¶ 13. She is a registered voter at her current address in Alabama, and has never lost her right to vote by reason of a felony conviction or court order. Agreed Facts at 7, ¶ 13. Ms. Threadgill-Matthews is a retired social worker and is currently the executive director of a youth program, BAMA Kids. 9/9/20 at 5. In that role she has partnered with BVM on their voter registration and education efforts. *Id.* at 6.

Ms. Threadgill-Matthews also served as an absentee election official in Wilcox County for over 20 years, and in that role she reported to the county's probate judge, circuit clerk, and AEM. *Id.* at 6-7. Ms. Threadgill-Matthews testified that the absentee election officials check the absentee ballot envelopes for compliance with the witness requirement and that the probate judge provided some training for the polling officials. *Id.* at 7-10. During her years as an absentee polling official, Ms. Threadgill-Matthews never personally noted anything suspicious that she felt should be flagged as fraudulent. *Id.* at 9.

77. Ms. Threadgill-Matthews faces a higher risk of contracting and having severe complications from COVID-19 because of her age and hypertension, which she treats with prescription medication. *Id.* at 10. She knows several people in Wilcox County who have had COVID-19, including two neighbors who were hospitalized. *Id.* at 11. For that reason and because she is at-risk, Ms. Threadgill-Matthews has been very diligent about social distancing and wearing a mask, and she has stopped traveling to visit her family. *See id.* at 11-12.

78. Ms. Threadgill-Matthews has also limited her trips outside her home. *See id.* She goes to the grocery store during senior hours, the pharmacy, and her bank's drive-thru window, or to the BAMA Kids office to pick up files she needs for work. *Id.* at 11-12, 26-27. Ms. Threadgill-Matthews has also helped with food bank distribution outside and an outdoor back-to-school rally for BAMA Kids where everyone wore masks and practiced social distancing, and she has attended two

drive-up church services in a parking lot. *Id.* at 12-13. Ms. Threadgill-Matthews has also stopped having visitors to her home, with the exception of a niece who visits occasionally, an exterminator, and a person who delivered a new washer and dryer after the original washer stopped working. *See id.* at 11-12.

79. Ms. Threadgill-Matthews is a dedicated voter, who votes in every election, and she voted in person on March 3, 2020. 9/9/20 at 14. She plans on voting absentee in November and in any future elections when COVID-19 remains a risk in order to avoid exposure to other people at the polling site, but testified that "curbside voting would be a very attractive option for me because it would take away some of the – steps of having to secure an absentee ballot." *Id.* at 14-15. Ms. Threadgill-Matthews has helped others exercise their right to vote since she moved to Wilcox County in 1978. *Id.* at 16. For example, Ms. Threadgill-Matthews helped an elderly gentleman with ambulatory difficulties by contacting Carolyn Davis-Posey, the circuit clerk in Wilcox County, to arrange for the man to vote absentee. *See* 9/9/20 at 9, 27. Ms. Threadgill-Matthews then drove the gentleman to the courthouse, and Ms. Davis-Posey met him at the car so he could cast an absentee ballot. *Id.* Ms. Threadgill-Matthews has observed that people, especially Black people, have had difficulty exercising their right to vote due to lack of transportation and living far from the polling site, and because some people do not understand the process or are unable to read the ballot. *Id.* at 17-18, 23-24. Since the pandemic began, more people than usual have reached out to Ms. Threadgill-Matthews for

advice as to how to satisfy the requirements for absentee voting. Agreed Facts at 8 ¶ 15.

(2) Organizational Plaintiffs

(a) *People First of Alabama*

80. People First is a state-wide nonprofit dedicated to elevating the living experience of people with intellectual and developmental disabilities, such that they can be valued members of their community. Agreed Facts ¶ 1; 9/11/20 at 100-101. People First is funded by a single grant of $97,000. 9/11/20 at 118. It employs one full-time executive director, a part-time outreach coordinator, a part-time financial director, and a part-time grant writer. *Id.* at 119. People First is made up of 150 to 200 members with developmental disabilities located throughout the State. 9/11/20 at 100-101, 108, 110. It has 25 chapters across the State, including in Jefferson, Madison, and Mobile Counties. *Id.* at 110-11, 126. People First members include people from all racial and ethnic backgrounds, and roughly 25 percent of its members are Black. 9/11/20 at 130-131.

81. People First educates its members on voting during election years. *Id.* at 141. But, in the past, it has not spent time educating members about voting absentee. *Id.* at 120. After the pandemic hit, People First developed training on how to correctly apply and cast an absentee ballot. *Id.* at 116-117. The organization dedicated 18 hours of the executive director's time to developing this training and 35 hours of the outreach coordinator's time. *Id.* at 122, 125. People First held an

absentee voter training on August 7, 2020 with 20 members from the statewide leadership board in attendance. *Id.* at 123-124. It also held another training in Jefferson County a week later with 18 people in attendance. *Id.* at 125-146. The organization also held trainings in Shelby County and Huntsville and plans to hold sessions in Tuscaloosa and Mobile. *Id.* at 126. Additionally, a committee of People First members in Madison County donated volunteer time to create a public service announcement which included information about absentee voting. *Id.* at 122-123.

82. People First members' disabilities have impacted how they vote, and, at times, resulted in the members facing additional challenges when voting. For example, based on her interactions with them, Ms. Ellis testified that some of the members have vision impairments that would preclude them from casting their ballot without assistance. 9/11/20 at 137-138. Such assistance would involve them verbally telling their helper what candidate they would like to vote for so that the helper can fill out the ballot for them. *Id.* Another example is Jenny Lux, a member who has a disability requiring her to use an Automark machine to vote. *Id.* at 172. Using the Automark machine takes longer than the typical voting process, and would require Ms. Lux to spend more time at the polling place than other voters if she were to vote in person. *Id.* at 174. This would in turn increase her exposure to SARS-CoV-2. *See id.* Another challenge that results from Ms. Lux's disability is an issue with balance that makes standing in line for long periods dangerous. *Id.* at 175. Ms. Lux uses a cane while walking and waiting in line, and, if needed, she will ask a poll

worker to provide a chair for her. *Id.* at 174. However, on at least one occasion previously, no chair was available for her to use at her polling place. *See id.*

83. People First members have conditions placing them at higher risk for COVID-19 complications or death. 9/11/20 at 106-107. They have cardiovascular issues, breathing issues, obesity, and diabetes. *Id.* Further, People First's members with intellectual disabilities are not able to identify risks of infection in the same way as other people can. *Id.* at 130. One member of People First has severe asthma and difficulty breathing, placing her at elevated risk of complications and death from COVID-19. Agreed Facts at ¶ 1. Another member, Ms. Lux, suffers from Adult Respiratory Distress Syndrome and has permanent scarring on her lungs as a result of her previous battle with the swine flu. 9/11/20 at 164. These conditions put her at higher risk of complications or death according to the CDC. *Id.* Ms. Lux fears that she "would probably wind up on a ventilator" if she contracted COVID-19. *Id.* at 167.

84. Some People First members have been following the CDC's guidance on social distancing and other COVID-19 prevention measures. Ms. Lux testified that she lives alone and generally stays at home unless she is obtaining coins from the bank to use in her apartment complex's laundry facilities or picking up groceries from a Walmart with curbside pickup services. 9/11/20 at 161, 167. Ms. Lux's father drives her to get groceries, but they both wear masks and maintain social distance. *Id.* at 168. She distances herself from her masked father not only for her

own protection, but also because he is 66 and at higher risk for COVID-19 complications or death. *Id.* at 167. Ms. Lux also left her home to film a video with other members of People First that discussed the importance of voting. *Id.* at 170. During this excursion, all individuals wore masks and maintained social distance. *Id.* Further, Ms. Lux interacts with relatively few people, and she does not interact with her neighbors. *Id.* at 168-169. She sees her minor son, a church friend, her stepdaughter, and her stepdaughter's children and husband. *Id.* at 161, 168-169. However, during these interactions, everyone, aside from the children, wears a mask and adheres to social distancing guidelines. *Id.*

85. Some members of People First cannot fulfill the witness absentee voting requirement without increasing their risk for COVID-19 complications or death. Ms. Lux cannot comply with the witness requirement because she cannot easily get two adults together at the same time to witness her complete the ballot. 9/11/20 at 180. The people who Ms. Lux interacts with do not typically come to her house at the same time. *Id.* at 180, 184-85. Ms. Lux is also unwilling to go to the bank to have her absentee ballot notarized as it would involve waiting in line for the notary. *Id.* at 181. Ms. Lux, who contracted swine flu in 2009 and spent 28 days in a medically-induced coma, expressed her concern of engaging in activities, such as waiting in line, that would increase her exposure to SARS-CoV-2 this way: "But is it worth it? Is it worth that risk? That's something that you really have to weigh."

Id. at 164, 181. Because of these reasons, and her concerns about her vote being lost in the mail, Ms. Lux is not sure if she would vote absentee. *Id.* at 180.

86. Some members of People First do not have access to the necessary technology to comply with the Witness and Photo ID absentee voting requirements without leaving their homes. Many members have disabilities that make it difficult for them to maintain employment, and they rely on social security and disability benefits. Agreed Facts ¶ 1; 9/11/20 at 104-105. In general, members of People First do not have access to copiers, scanners, computers, and internet in their homes, and most members do not drive. 9/11/20 at 115, 128-129, 157. Further, based on her interactions with them and their disabilities, Ms. Ellis testified that some members would likely have difficulty navigating and solving the technological issues that come with using video conference technology. *Id.* at 129-30. And, the parties agree that at least one People First member has a developmental disability that makes it difficult for her to use technology. Agreed Facts at ¶ 1.

87. Curbside voting better reflects People First's members' prior experiences with voting in person. 9/11/20 at 136. Curbside voting would be easier for People First's members because they would not have to problem solve how to get a copy made, how to find two witness signatures, and how to complete the application for voting absentee. *Id.* Further, for those who require assistance in casting their ballot, allowing their oral communication about who they want to vote

for to take place in a vehicle would help ensure the secrecy of their ballot. *Id.* at 138.

88. Though Ms. Lux does not drive herself, she would like to vote curbside this year. 9/11/20 at 167, 171. If available, she would arrange for her father to drive her to the polling place, and she is willing to call ahead to her polling place or schedule a time to vote curbside. *Id*. at 176. She is also willing to allow a poll worker to take her ballot and ID out of her sight to facilitate the curbside voting. *Id.* at 177. She believes this would be no more intrusive than her current in-person voting option of using the Automark machine, which gives poll workers an opportunity to supervise her voting. *Id.* at 179. For example, in 2008, a poll worker watched her vote for future President Obama using the Automark machine, and expressed disapproval by saying, "Oh, I can't believe you made that choice." *Id.*

(b) *Greater Birmingham Ministries ("GBM")*

89. GBM is a multi-faith, multi-racial membership organization that provides emergency services for members and constituents in need. Agreed Facts at ¶ 2. It engages in community efforts to create systemic change with the goal of building a strong, supportive, and politically active society that pursues justice for all people. *Id.* A central goal of GBM is the pursuit of social justice in the governance of Alabama. *See id.* at ¶ 3. Toward that end, GBM regularly communicates with its members and engages in efforts to register, educate, and

increase voter turnout, particularly among Black, Latinx, disabled, and low-income registered voters. *See id.*

90. GBM has about 5,000 largely low-income members who are primarily, but not exclusively, located in or near Jefferson and Shelby counties. *See id.* at ¶ 4; 9/9/20 at 104. It also has donor members across Alabama including in Mobile, Tuscaloosa, Madison, and Montgomery counties. 9/9/20 at 105. GBM has sponsoring members that are state-wide organizations. *Id.* at 103-104. Eighty-five percent of GBM's individual members are registered voters. *Id.*

91. When the pandemic confronted Alabama, GBM began several efforts to make voting safer for its members. GBM drafted a petition advocating that the State allow for curbside voting and remove the absentee ballot photo ID and witness requirements. *Id.* at 135-146. The petition was written in Spanish and English. *Id.*; Plaintiff Ex. 377. The petition cost GBM staff time, the volunteer services of a graphic designer, and volunteer time. 9/9/20 at 138. GBM circulated the petition statewide, received 4,000 signatories, and sent the petition to Secretary Merrill. 9/9/20 at 135-136.

92. GBM also sent two letters to Secretary Merrill advocating for him to allow curbside voting and remove the absentee voting witness and photo ID requirements. *Id.* at 141-142; Pl. Exs. 392 and 393. GBM diverted staff time to draft these letters. 9/9/20 at 141-142.

93. GBM developed educational materials on absentee voting, *see* 9/9/20 at 132 and Pl. Ex. 373, and organized absentee voter clinics, *see* 9/9/20 at 125. The clinics were outdoors, and GBM required social distancing. 9/9/20 at 125. "[P]eople could come and get absentee voter assistance in which [GBM] would provide onsite witnesses as well as notaries." *Id.* GBM also provided free photocopies of participants' identification. *Id.* Thus far, GBM has held six absentee voter clinics and plans to do more before the election. *Id.* GBM expended various resources to develop and hold the clinics. It devoted advertising resources by sending an email newsletter and phone banking, and purchased tents to use for the clinics. *Id.* at 131-32. The clinic materials cost about $2,000. *Id.* GBM also used resources like folding tables, a photocopier, tablets, laptops, and Wi-Fi. *Id.* Further, two GBM staff members and up to twelve volunteers spent time working at each clinic. *Id.*

94. If the absentee voting witness and photo ID requirements were not in place, GBM would have devoted these resources to census outreach. *Id.* at 131, 138. The Executive Director of GBM explained, "[i]f there were no witness or photo ID requirements, we would not have to do those clinics because we could do the voter education work over the phone." *Id.* at 132. GBM has not helped people with absentee voting "much previously." *Id.* at 113. While it is true that GBM distributed a census flier at the clinics, GBM would not have needed as many volunteers to serve as witnesses, printers, paper, and ink if it was only doing census work. *Id.* at 153, 163-164. And, without the need to educate voters on absentee and photo ID

requirements, GBM would have instead focused its funding and staff and volunteer time on the census. *Id.* at 131, 138.

95. GBM has members who are at higher risk for COVID-19 complications or death due to their race or age. Of GBM's individual members, roughly 85 percent are Black, approximately 15 percent are White, and about 5 percent are Latinx. *Id.* at 107-110. Forty percent of GBM's members are over 60 or 65 years old. 9/9/20 at 107-110. Ninety percent of GBM's members are low income annually, and 10 percent of its members are low income based on a recent loss of a job. *Id.* at 107-110. Some of GBM's members have mobility issues. *Id.* at 134-135.

96. Some of GBM's members are following social distancing rules. 9/9/20 at 111-112, 126. Members of GBM are staying home due to their elevated risk of death or serious illness from COVID-19. Agreed Fact ¶ 6. GBM had members decline to leave their home to pick up free groceries even though GBM offered the groceries curbside. 9/9/20 at 111-112, 126. There were also members who declined to attend absentee voter clinics in order to protect themselves from COVID-19. *Id.* at 126.

97. Some of GBM's members cannot fulfill the witness absentee voting requirement without increasing their risk for COVID-19 complications or death. Forty percent of GBM members live alone, with nearly all of those individuals being over 60. 9/9/20 at 107-110. There is overlap between members who live alone, are over 60, are low-income, and are a minority race. *Id.* One GBM member, James

Sokol, reported during a board meeting that he was unable to meet the witness requirement without exposing himself to an additional individual outside of his household. *Id.* at 129-130, 166-167. Mr. Sokol has a neurological disease and informed GBM that he had COVID-19 when he voted in July. *Id.* Mr. Sokol expressed to the Executive Director of GBM that he would prefer curbside voting over absentee voting. *Id.* at 167-178.

98. Some members of GBM do not have access to the necessary technology to adhere to the witness and photo ID requirements without leaving their homes. Around 60-65 percent of GBM members polled lack internet and computer access. 9/9/20 at 107-110. These members overlap with those who live alone. *Id.*

99. Some members of GBM cannot adhere to the photo ID requirement without increasing their exposure to COVID-19. Some of GBM's members do not have a photo ID. 9/9/20 at 107-110. There is overlap between members who are a minority race and who have no photo ID. *Id.* There is also overlap between members who have no photo ID and who are low income. *Id.* Further, there is overlap between those who have no photo ID and who are over the age of 65.

100. GBM is seeking a remedy for their claims that continues after November 3, 2020. 9/9/20 at 133. There are elections in Tuscaloosa and Alabaster in late November, and GBM has members in those areas. *Id.* GBM plans to continue

to educate its members and the public about absentee voting after the November general election during the pandemic. *Id.* at 133-134.[39]

(c) *Alabama NAACP*

101. The Alabama NAACP is a state subsidiary of the National Association for the Advancement of Colored People, Inc. Agreed Facts at ¶ 7. The Alabama NAACP is the oldest and one of the most significant civil rights organizations in Alabama. *Id.* It is comprised of more than forty local units with active branches and chapters across the state including in Jefferson, Madison, Mobile, and Montgomery counties. 9/10/20 at 37–38; Pl. Ex. 329.

102. Two central goals of the Alabama NAACP are to eliminate racial discrimination in the democratic process, and to enforce federal laws and constitutional provisions securing voting rights. Agreed Facts at ¶ 8. The Alabama NAACP believes that "all people should have the right to express their political desires" and that this is done most effectively through voting. 9/10/20 at 52. Voting is thus "fundamental to the NAACP." *Id.* Toward those ends, the Alabama NAACP regularly engages in efforts to register and educate Black voters and encourages them to engage in the political process by turning out to vote on Election Day. Agreed Facts at ¶ 8; *see also* 9/10/20 at 52, 55, 57–58.

[39] At trial, the plaintiffs did not present additional evidence regarding the Tuscaloosa and Alabaster elections, including whether any members of GBM actually plan to vote in those elections. Thus, the plaintiffs have not shown they are entitled to any relief related to the Tuscaloosa and Alabaster elections, and the court confines its analysis to the November 3 general election.

103. Since the pandemic began, the Alabama NAACP has diverted resources to helping voters comply with the Challenged Provisions. 9/10/20 at 53–54. It has hosted outdoor clinics during which it offered photocopying services to help voters satisfy the photo ID requirement. *Id.* The Alabama NAACP held these clinics in Limestone, Lawrence, Jefferson, Shelby, and Montgomery counties, and it plans to host another in Montgomery County and one in Baldwin County. *Id.* at 55–57. Future clinics will offer witness and notary services, but the Alabama NAACP cannot reach everyone who needs these services because of the high demand, and some voters are unaware of the clinics. *Id.* at 56–57. For past clinics, the Alabama NAACP purchased ink and paper to photocopy IDs, and hand sanitizer and masks to protect its members and prospective voters. *Id.* at 56. Additionally, the Alabama NAACP is increasing its efforts to educate vulnerable Alabamians about the absentee balloting process. *Id.* at 58, 76. The organization has also increased its advocacy for the adoption of less restrictive voting methods. *Id.* at 72; *see also* Pl. Ex. 392; Pl. Ex. 393. If the Alabama NAACP was not engaged in this work, it would be "strictly" working on "registering people to vote and educating people about the issues that are at hand." 9/10/20 at 57.

104. Many Alabama NAACP members are particularly vulnerable during this public health crisis. *See* Agreed Facts at ¶ 9. Although the NAACP is a diverse organization, most of its members are Black. 9/10/20 at 43; Agreed Facts at ¶ 9. Most members are also senior citizens, many of whom have chronic medical

conditions, like diabetes or hypertension, that make them more likely to suffer serious complications from contracting COVID-19. Agreed Facts at ¶ 9. Many members also live alone or with only one other adult. *Id.* Some members of the Alabama NAACP have or have had COVID-19. *Id.*

105. Some of the Alabama NAACP's most vulnerable members cannot comply with the Challenged Provisions without exposing themselves to a potentially deadly case of COVID-19. *See* 9/10/20 at 77–78, 80–81. Lillian Jefferson, the Alabama NAACP's former president, lives alone, which could make it more difficult for her to satisfy the witness requirement.[40] *Id.* at 80-81. The president of the Alabama NAACP's Montgomery County branch, Della Bryant, is older than 65, lives alone, and has difficulty walking. *Id.* at 81, 111. Because Ms. Bryant does not own a copier, obtaining a copy of her ID requires her to interact with another person who may have the coronavirus. *Id.* at 81. Ms. Bryant, however, may be exempt from the photo ID requirement due a physical disorder that affects her ability to walk. *Id.* at 111-12. Keisha Hendricks is a medically retired veteran who currently serves as the Alabama NAACP's economic chair. *Id.* at 81. She cannot walk due to her health conditions. *Id.* Ms. Hendricks also lives alone, making it more difficult for her to satisfy the witness requirement. *Id.* But, Ms. Hendricks has a woman over

[40] Mr. Benard Simelton, the current president of the Alabama NAACP, admitted on cross-exam that he does not know if Ms. Jefferson has close family members, friends, or neighbors she could ask for help. 9/10/20 at 110.

the age of 18 who visits her home to help care for her, and Ms. Hendricks' caregiver was present when Mr. Simelton visited Ms. Hendricks in her home. *Id.* at 114-15.

106. The Alabama NAACP favors curbside voting because some of its members, like Ms. Hendricks, have ambulatory issues. *Id.* at 59. Without curbside voting as an option, some of those members would struggle to navigate steps at some polling places. *Id.* Curbside voting would also benefit the organization's members who face higher risks associated with COVID-19 due to their age. *Id.* For these members, curbside voting is preferred because it would allow them to "remain in their car without exposing themselves" to the coronavirus. *Id*

(d) *Black Voters Matter*

107. BVM is a nonprofit organization that works primarily with community-based groups to increase voter turnout and involvement in civic life among members of the Black community. 9/9/20 at 174. BVM supports those groups, which it calls "partners," by providing financial resources and access to tools such as texting and phone banking technology. *Id.* at 175. It also advocates for policies to expand voting rights and access. Agreed Facts at ¶ 13.

108. BVM had an active presence in Alabama before the pandemic. It has partners in Alabama at the state and local levels. 9/9/20 at 175. The organization is particularly active in Alabama's Black Belt counties, including Wilcox and Lowndes counties, because those counties have generally been deprived of resources and have higher rates of poverty and unemployment than other areas. *Id.* at 176–77. BVM

has an Alabama state coordinator, who manages its relationships with its partners and travels throughout the State to support them. *Id.* at 179–84. Since 2018, BVM has sponsored "bus tours" in Alabama to further promote its partners and generate excitement among voters. *Id.* at 183. BVM has also held an annual conference in the State. *Id.* at 179–80.

109. During the pandemic, BVM has had to divert resources from its traditional Alabama initiatives to educate voters about the Challenged Provisions. BVM has sponsored several text campaigns targeting Black voters who may need assistance navigating Alabama's absentee voting scheme. *Id.* at 190–91. In its July text campaign, BVM sent text messages inviting roughly 190,000 Black Alabamians to attend a virtual townhall discussing several topics, including voting in Alabama. *Id.* at 192; Pl. Ex. 340. BVM estimates that such campaigns cost around five cents per text, 9/9/20 at 193, and it plans to sponsor several future waves of texts because "the current requirements [for absentee voting in Alabama] are so complicated." *Id.* at 194. But for the Challenged Provisions, BVM would be focused on its "core function" of educating voters about turnout and substantive issues. *Id.* at 195.

110. BVM has also provided additional grants for its partners to educate community members about complying with the Challenged Provisions during the COVID-19 pandemic. *See, e.g.*, *id.* at 200–03. In some cases, these grants have been for as much as $10,000 "because of the extra challenges" associated with satisfying Alabama's absentee voting requirements. *Id.* at 204. If the Challenged

Provisions did not exist, BVM would not need to provide these additional and increased grants. *See id.* at 205.

111. BVM and its partner organizations favor allowing curbside voting in Alabama. *Id.* at 189. Many of BVM's constituents and the members of its partner organizations have health conditions that increase their risk of death or severe complications from contracting COVID-19. Agreed Facts at ¶ 18. Some of these individuals lack access to computers, the internet, or other reliable videoconferencing technology, and many live alone or with only one other adult. *Id*. BVM believes that curbside voting would be a safer option than voting in person for these at-risk individuals. 9/9/20 at 189.

(3) Defendants

(a) *Secretary of State John Merrill and the State of Alabama*

112. Secretary Merrill is the Secretary of State of the State of Alabama, which is itself a defendant in this action, and he has served in this position since 2015. 9/11/20 at 2. As the Secretary of State, he is Alabama's chief election official, and is charged with: providing uniform guidance with respect to elections, issuing related administrative rules, canvassing and certifying election results, and prescribing and designing the absentee ballot application form that "shall be used throughout the state." Agreed Facts at 15, ¶ 20. In addition, Secretary Merrill is statutorily required to "inform the public" about the photo ID requirement, Ala. Code § 17-9-30(n), and is granted "rule making authority for the implementation" of the

photo ID requirement, *id.* § 17-9-30(o). Agreed Facts at 15, ¶ 20. In the event Alabama, the federal government, or another state declares a state of emergency that "renders substantial compliance with" the absentee ballot provisions of Alabama law "impossible or unreasonable for a group of qualified voters who respond to the emergency," the Secretary of State "may promulgate an emergency rule to allow those qualified voters to vote by absentee ballot." Ala. Code § 17-11-3(e); Agreed Facts at 15, ¶ 20.

(b) *County Circuit Clerks and Absentee Election Managers*

113. The Circuit Clerks and AEMs are charged with processing and distributing absentee ballot applications; appointing poll workers; training absentee office workers; issuing, tracking, and safeguarding absentee ballots; and canvassing provisional absentee ballots. Agreed Fact ¶ 22; 9/16/20 at 48-49, 51. In Alabama, the county circuit clerk serves as the AEM, though a circuit clerk can decline that role. 9/15/20 at 41. Circuit clerks and AEMs defer to the Secretary of State's office on what the law is with regard to voting in Alabama. 9/15/20 at 168.

114. Plaintiffs filed this suit against many circuit clerks and AEMs throughout Alabama. Doc. 75. Many of these defendants have settled and are no longer in the case. Those remaining are: Jacqueline Anderson-Smith, the Circuit Clerk and AEM for the Birmingham Division of Jefferson County; Karen Dunn Burks, the Deputy Circuit Clerk and AEM of the Bessemer Division of Jefferson County; Gina Jobe Ishman, the Circuit Clerk and AEM of Montgomery County; and

JoJo Schwarzauer, the Circuit Clerk of Mobile. Ms. Anderson-Smith, Ms. Burks, and Ms. Ishman have all "agree[d] to abide by any injunctions or orders of the Court" with regard to this case, docs. 181 and 182, and, consequently, did not present any evidence at trial.

(c) *County Probate Judges*

115. Probate judges are the chief election officials in their county. 9/15/20 at 166-67. Probate judges defer to the Secretary of State's office on what the law is with regard to voting in Alabama. *Id.* at 168. Generally, probate judges determine the number of poll workers assigned to a polling place. *Id.* at 136. They are charged with appointing and training poll workers. Agreed Fact ¶ 23. They also ensure there are tabulation machines at the polling places. 9/15/20 at 137. They work with the county commissions to determine polling places. *Id.* at 167. They are also in charge of validating and canvassing election returns and ballots. Agreed Fact ¶ 23.

116. As with the circuit clerk and AEM defendants, the plaintiffs named many probate judges across Alabama as defendants in this lawsuit. Doc. 75. Many of these defendants have settled and are no longer in the case. Those remaining are: Judges Sherri Friday and James Naftel of Jefferson County, Judge J.C. Love III of Montgomery County, and Judge Don Davis of Mobile. Judge Friday, Judge Naftel, and Judge Love have "agree[d] to abide by any injunctions or orders of the Court" with regard to this case, docs. 181 and 182, and as such, did not present any evidence at trial.

117. Judge Davis has served as Probate Judge for Mobile County for twenty years. 9/15/20 at 37. Many of his election administration duties are shared with the Mobile County Commission, which is responsible for creating election precincts, determining poll locations, securing election machines, and providing adequate funding for elections. *Id.* at 41. Judge Davis helps nominate poll workers, although the ultimate appointment is done by the County Commission. *Id.* at 44-46. He also helps train poll workers using a printed guide and video presentations. *Id.* at 47.

118. Although Judge Davis is the chief election official for Mobile County, he does not have control over all aspects of the election. 9/15 20 at 40. According to Judge Davis, Ms. Schwarzauer (the Circuit Clerk) and Ms. Barnett (the Absentee Election Coordinator) are responsible for all aspects of absentee voting, including processing absentee ballot applications. *Id.* at 41-43. Ms. Barnett's testimony backs this up. She reported that she and the employees in her office enforce the photo ID requirement by checking that returned absentee ballot applications are complete and include a copy of a photo ID for all voters who are not exempt from the photo ID requirement. *See* 9/17/20 at 112, 116, 137.

F. <u>The Challenged Provisions of Alabama Law</u>

119. The plaintiffs in this case challenge three provisions of Alabama election law: (1) the requirement that a notary or two witnesses sign absentee ballot affidavits ("the witness requirement"); (2) the requirement that voters submit a copy

of their photo ID with absentee ballot application ("the photo ID requirement"); and (3) the state's de facto ban on curbside voting.[41] Doc. 75.

120. Dr. Tracy Burch, the plaintiffs' expert on political science and political participation, testified that "Black Alabama adults at high-risk for severe illness from COVID-19 are far less able to satisfy these requirements for absentee voting than high-risk White Alabama adults while following CDC guidance to avoid contact with people from outside their household." Ex. 270 at 7; 9/14/20 at 191-192. Dr. Burch explained that this is because high risk Black voters are more likely to live alone or with just one other adult. Pl. Ex. 270 at 34 ("22.0 percent of Black adults age 18 to 64 who report being in fair or poor health live in a household with no other adults, meaning that they would need to contact two additional witnesses from outside their household. This rate is five times higher than that for White adults with health issues; only 3.9 percent of White adults with health issues do not live with any adults."); *see also* 9/14/20 at 203-04. For Black individuals over 65, this disparity is more dramatic, "nearly 90 percent of Black people age 65 and older would need to risk contacting at least one other person outside their household to meet the witness requirement" compared with "77.2 percent of White people and 47.1 percent of Latino people." Pl. Ex. 270 at 37.

[41] The plaintiffs previously challenged the requirement that voters provide an excuse to vote absentee in Alabama elections, doc. 75, but the court dismissed that claim as moot after Secretary Merrill extended the emergency rule allowing all voters to vote absentee in the November election, doc. 161 at 26.

121. In Alabama, high-risk Black voters are also less likely to have resources allowing them to safely vote absentee. Only 3.9 percent of White households do not have a vehicle compared to 12.7 percent of Black households. Doc. 228 at ¶ 13; 9/9/20 at 89-90. Fifty percent of elderly Black adults in Alabama do not have internet access compared to thirty percent of elderly White adults. 9/14/20 at 207; *see also* Doc. 270 at 40. High risk Black voters are also more likely to be experiencing poverty than their White counterparts. 9/14/20 at 204-205. For adults who are high risk due to a medical condition, 35.6 percent of Black individuals have an income below $25,000, compared to 6.6 percent of White individuals. Pl. Ex. 270 at 39; 9/14/20 at 204-05. For that same group, 53.3 percent of Black adults are food insecure compared to only 20.5 percent of White adults. *Id.* Black Alabamians who are high risk due their age are also more likely to be poor than their White counterparts. *Id.* 39.8 percent of Black adults at high risk due to age have an income below $25,000, whereas, only 14.9 percent of White adults in that category have an income below $25,000. *Id.* Similarly, 59 percent of elderly Black adults are food insecure compared to only 27.1 percent of elderly White adults. *Id*

(1) <u>The Witness Requirement</u>

122. Voters are required to sign an absentee ballot affidavit in the presence of two witnesses or a notary. 9/15/20 at 139-40, 178; Ala. Code § 17-11-10(b). Alabama is one of only two states that has this requirement. 9/11/20 at 10. Notaries may use video conference to watch the voter sign the affidavit, but they must still

sign the same ballot affidavit as the voter. 9/15/20 at 178. That means that the voter must still arrange to meet the notary in person. *See* 9/8/20 at 165. As for the two witnesses, they are not required to know the voter or identify the voter. 9/15/20 at 178. Employees at a county AEM's offices will witness a voter's absentee ballot affidavit for voters who complete the ballot in-person at the AEM's office. 9/17/20 at 130-31. However, there is no guarantee other voters in the office will be wearing masks because they are not required to do so. 9/15/20 at 201-202

123. Witnesses and parties at trial presented conflicting testimony about which local election official checks to ensure that a ballot affidavit that complies with the witness requirement. Secretary Merrill testified that the AEM or her staff examine the ballot affidavit envelope to ascertain whether it meets the witness requirement at the time the AEM receives the ballot. *See* 9/11/20 at 88. But, the Absentee Election Coordinator for Mobile County, Ms. Barnett, testified she and her staff do not check the ballot affidavit for witness signatures or a notary stamp when they receive the ballots, and they do not notify the voter if the required signatures are missing. 9/17/20 at 127. Instead, her office files the affidavit envelopes containing the ballots in locked cabinets until Election Day. *Id.* at 127-28. Ms. Barnett then delivers the ballots to Probate Judge Davis's designee on Election Day. *Id.* at 141. Judge Davis, in turn, testified that before opening an absentee ballot, poll workers first verify that the ballot is either notarized or witnessed. 9/15/20 at 59. If

the ballot affidavits do not have the signatures or notary seal, they are not counted. *Id.* Houston County, Alabama utilizes a similar process. 9/16/20 at 48-50.

124. The facts do not show that the witness requirement prevents voter fraud. While Secretary Merrill testified that "there are experts who believe that the security standards that are in place, which include the signature provisions, are beneficial to the security and integrity of the election process," *see* 9/11/20 at 62, his office wrote SB 77, which, if enacted, would have removed the witness requirement for absentee voting, *see id.* at 7-8, 10-11. Secretary Merrill also testified that witnesses do not have to know the voter, and no one confirms the identity of the witnesses or that they saw the voter execute the affidavit. *Id.* at 11. Similarly, Justice Murdock testified that the witness requirement would not prevent the types of fraud he investigated as a private lawyer and advocate for election reform, or other antifraud measures unrelated to the witness requirement have minimized those types of fraud. 9/17/20 at 81-88. Also, Mr. Biggs, a former prosecutor of voter fraud in the mid-1990s, testified that the witness requirement would not have prevented any of the four cases of voter fraud he prosecuted. 9/16/20 at 28, 31-32, 38-39.

125. The parties and witnesses offered conflicting evidence about whether the witness requirement assists the State in investigating voter fraud. Secretary Merrill testified that none of the voter fraud convictions in the State "have been the result of investigations that have utilized the signature requirement when they have completed their investigation or during the investigative process." 9/11/20 at 62.

But, Mr. Biggs testified that the witness signatures provided a lead for identifying ballots that may have been fraudulent in the voter fraud convictions he obtained in the 1990s. 9/16/20 at 11-12. However, his full testimony suggested that he may have conflated the issue with the requirement for the voter to sign their voting documents. *See* 9/16/20 at 10. And, he indicated that the witness signature requirement's main benefit was to flag multiple ballots, if any, signed by the same witnesses. *Id.* However, Alabama law does not prohibit a witness from signing multiple absentee ballots. 9/15/20 at 181.

126. The defendants presented evidence of voter fraud convictions in Houston County in 2014. 9/16/20 at 67. The witness signatures on the absentee ballots helped the circuit clerk of Houston County, Carla Woodall, flag potentially fraudulent ballots. 9/16/20 at 67; *see also id.* at 72. But, she was also able to identify potential fraud from the similar handwriting and pen color the fraudsters used and the consecutive street addresses they listed on the absentee ballot applications. 9/16/20 at 66. And, like Mr. Biggs, Ms. Woodall's testimony also appeared to sometimes conflate the witness signature requirement with the separate requirement that voters sign the absentee ballot affidavit. *See* 9/16/20 at 71-72.

127. The plaintiffs presented evidence that the witness requirement is burdensome for Alabama voters during the pandemic. Dr. Elopre, a plaintiffs' expert on internal medicine, infectious diseases, and disparities in access to health care and health outcomes in Alabama, opined based on her direct experience

researching social determinants of health in the Black Belt that, "witness signatures and other requirements for absentee ballots may be unattainable for those who historically fought for the right to vote in [Black Belt] counties." Pl. Ex. 271 at ¶ 18. Many voters do not have two other adults living in their home to serve as witnesses. 9/9/20 at 61; Pl. Ex. 270 at 34-37. This means they need to find individuals outside of their home to serve as witnesses or a notary. 9/9/20 at 61; 9/9/20 at 115; Pl. Ex. 270 at 39. And interacting with witnesses outside of their home, increases their potential exposure to COVID-19. 9/9/20 at 115; 9/9/20 at 61.

128. Alabama's Safer at Home order mandates that anyone with COVID-19 must quarantine at home for fourteen days and can only leave home for medical reasons. State Ex. 85. This means, obviously, that a voter who has COVID-19 is prohibited from having contact with others outside their home to obtain the required witness signatures for their ballot. 9/9/20 at 61. And yet, because of the witness requirement, Mr. James Sokol, a board member of GBM, alleged at a board meeting that he had to find one witness outside of his household in order to vote absentee in the July primary run-off even though he had COVID-19 at the time. 9/9/20 at 129-130. Whether Mr. Sokol's report is true is irrelevant to the court's findings and analysis. It is undisputed, however, that a COVID-19 diagnosis alone does not exempt a voter from the witness requirement.

129. Resources that aid voters in safely adhering to the witness requirement are not available to all voters. For example, while it is possible for a vulnerable voter

to have a ballot witnessed through a car window, a voter who is highly impoverished may not have the resources to do so. 9/9/20 at 89-90. The Director of Elections and Deputy Chief of Staff to the Secretary of State, Clay Helms, testified that his staff would go to a voter's home to witness the voter's absentee ballot. 9/15/20 at 163. But, the defendants did not present evidence that this service has been advertised to voters, provided to any voter, or that voters are aware of this service

130. As stated previously, in lieu of the two witnesses, Alabama also allows voters the option of having their absentee ballot affidavit notarized. Similar to the two witnesses, using a notary risks exposure to COVID-19 if the interaction is in-person. *See* 9/9/20 at 116; 9/11/20 at 181, Agreed Facts at ¶ 62, and Pl. Ex. 270 at 8. And while the State now allows the videoconferencing option, voters may not have access to technological devices or the internet to use the remote notary services, and if they do, they still need to meet the notary in person or find some other way to obtain her signature or seal on the absentee ballot affidavit. Pl. Ex. 270 at 39; 9/16/20 at 178; 9/8/20 at 165. Lastly, the voters may not have the funds to pay for the notary's services. Pl. Ex. 270 at 39; 9/9/20 at 116.

131. The only evidence regarding the cost of notary services in Alabama involved a study of forty-two notaries presented by the plaintiffs. The study showed that only five offered their services for free to notarize a ballot, eighteen charged $5, six charged $10, and thirteen charged more than $10. 9/14/20 at 206. In addition, "[s]ome also charged if they were required to travel to meet people in order to

notarize signatures." *Id.* Finally, "only six notaries said that they had any virtual kind of capabilities." *Id.*

132. Dr. Elopre believes that curbside notary services and copying services would be a reasonably safe way for voters to comply with those requirements if they are in a car by themselves. 9/9/20 at 94. The Mobile County Public Library offers free curbside notary services at five of its branches. 9/16/20 at 118-119. The normal procedure requires patrons to exit their vehicles to utilize the curbside services, but the head of the library system testified that she is "pretty sure" her staff would go to a vehicle to retrieve documents if a patron "could not get out of their car." 9/16/20 at 129. The Library's notary services work best when patrons call ahead because there is no guarantee that a notary will be present otherwise at one of the five locations. 9/16/20 at 128. The Library has advertised this curbside service on its website, its Facebook page, flyers, and in the local, free, and widely available newspaper, *The Lagniappe*. 9/16/20 at 120-122, 135. The head of the library system testified that the use of this service has been sparse because citizens may not know about it. 9/16/20 at 133. The defendants have no control over the curbside services offered by the Library. 9/16/20 at 123-124.

(2) <u>The Photo ID Requirement</u>

133. Alabama requires voters to include a photo ID with their absentee ballot application depending on the reason that they are voting absentee. Pl. Ex. 22. If a voter is found to have "falsifie[d] [an] absentee ballot application or verification[,]"

the State can convict them of a Class C felony. *Id.* Those voting absentee due to a fear of increased exposure to COVID-19 must use the excuse, "I have a physical illness or infirmity which prevents my attendance at the polls," and comply with the photo ID requirement. State Ex. 17; Pl. Ex. 22.

134. Alabama does not require voters to submit a copy of their photo ID when they are voting absentee either (1) under the Uniformed and Overseas Citizens Absentee Voting Act, or (2) because they have "a physical illness or infirmity which prevents [their] attendance at the polls. . . . due to a neurological, musculoskeletal, respiratory (including speech organs), cardiovascular, or other life-altering disorder that affects [their] ability to perform manual tasks, stand for any length of time, walk unassisted, see, hear, or speak . . . ." Pl. Ex. 22. Voters qualify for the second exception to the photo ID requirement only if they are "(a) an elderly voter aged 65 or older; or b) [] a voter with a disability." *Id.*

135. AEMs may also require a voter to provide a copy of their identification with their absentee ballot. Agreed Facts at ¶ 118. Some absentee voters, therefore, may need to furnish photo ID twice; once with the absentee ballot application and again with the actual absentee ballot. *Id.*

136. Circuit clerks and AEMs are charged with enforcing the photo ID requirement. 9/11/20 at 16 and 9/17/20 at 116, 139. When the circuit clerk or AEM receives an absentee ballot application, they check to see if the voter is required to submit a copy of their photo ID. 9/17/20 at 116. If a photo ID is required, the AEM

or circuit clerk checks whether the voter included the ID with the application. 9/17/20 at 116. The AEM or circuit clerk will not send the voter a ballot if they fail to include a required photo ID. 9/17/20 at 116.

137. Ms. Barnett, Absentee Election Coordinator for Mobile County, testified that if a voter who is not exempt from the photo ID requirement sends an absentee ballot application without a copy of her ID, her office will send a letter to the voter to let the voter know they cannot process the application and to request a copy of the photo ID. 9/17/20 at 116. Ms. Barnett testified that her staff returns "a good many" applications to voters due to missing information. *Id.* at 120. There was no evidence presented that other AEMs follow Ms. Barnett's lead and notify the voters when their absentee ballot applications are rejected.

138. The photo ID requirement is available, if necessary, as a tool to investigate allegations of voter fraud, *see* 9/11/20 at 45 and 9/16/20 at 72, but it is not clear the photo ID prevents voter fraud. Based on the evidence at trial, the photo ID is not necessary to verifying the identity of the absentee voter. Ms. Barnett testified that with a voter's name, address, and date of birth, she feels she has "a good amount of data to be able to identify the voter." 9/17/20 at 113. Her office also verifies the voter's driver's license number or the last four digits of their social security number that the voter is required to provide on her application. *Id.* at 114. While Ms. Barnett testified that she compares the voter's signature on the absentee ballot application with the signature on the photo ID, she also testified that she uses

the signature on the voter's registration document when available in her office's computer system to verify an applicant's identity. 9/17/20 at 118. Further, no evidence was presented that other AEMs also use the photo ID to verify signatures. And there is evidence that the photo ID requirement would not prevent the type of fraud the defendants identified at trial. For example, Justice Murdock testified that as to the absentee ballot challenge in the 1994 Chief Justice race he worked on as a lawyer, which launched his anti-corruption advocacy, the dispute centered on the counting of absentee ballots with no witness signatures rather than the photo ID provision. 9/17/20 at 83-88. Mr. Gregory Biggs, a former prosecutor who worked on four voter fraud cases in the mid-1990s, also testified that the photo ID requirement would not have prevented the cases he prosecuted. 9/16/20 at 28, 31-32, 36, 39.

139. Secretary Merrill's office has received calls from voters who need help obtaining a copy of their IDs. 9/11/20 at 16-17. And, Secretary Merrill has offered to mail some voters a copy of their photo ID if they text or email a picture of the ID to him. 9/11/20 at 17. He has also encouraged county officials to offer the same service. *Id.* After receiving the text or email request, Secretary Merrill's office confirms that the information on the photo ID sent to them matches the information on a voter registration record before making the copy for the voter. *Id.* at 17-19. Still, he acknowledged that his office does not know if it is sending the copy of the

ID to the corresponding voter. *Id.* at 18-19. The Secretary of State's website does not advertise this service. *Id.* at 20.

140. The Secretary of State's office also has a mobile unit that travels around the State to provide voters with a free photo ID. 9/15/20 at 154; State Ex. 73. This mobile unit was in Birmingham on July 7 and July 11, and the Secretary's office advertised the events on their webpage and with a printable flier. State Ex. 73. The mobile unit has held at least 40 events during the pandemic. 9/15/20 at 165.

141. The plaintiffs presented evidence that the photo ID requirement is a barrier to voting for some voters during the pandemic. To begin, the varying photo ID requirements on the absentee ballot application can confuse voters causing them to believe they do not need to send a photo ID with their application. The Executive Director of GBM, Scott Douglas, believes the language of the absentee ballot application is confusing due to its lengthy paragraphs, the terms used, and the penalty of felony charges. 9/9/20 at 124. That confusion has generated questions from GBM members. *Id.* at 125. Ms. Barnett's testimony supports the conclusion about voter confusion as she testified that there are times when people should have included a photo ID in their application and did not, or included a photo ID when they were exempt from the requirement. 9/17/20 at 117, 120. Further, the Secretary of State's office has received questions regarding when voters are required to send an ID with an absentee ballot application. 9/15/20 at 162-63.

142. Obtaining a photo ID itself can be a barrier to those who do not have one. 9/11/20 at 14-15. As Secretary Merrill acknowledges, *see* 9/11/20 at 16-17, some eligible voters do not have access to the necessary equipment to make a copy of their photo ID at home. 9/9/20 at 60, 9/9/20 at 22.

143. Voters who do not own photocopying equipment may not have access to transportation to obtain a copy of their ID. 9/9/20 at 60, 9/9/20 at 22. Many people who are more vulnerable to COVID-19 complications or death do not have access to personal transportation and must rely on riding with a friend or taking public transportation. 9/9/20 at 60. This increases the risk such individuals will become infected. *Id.*; *see also* 9/8/20 at 46-47.

144. Due to the pandemic, a voter may have more difficulty gaining access to places where they normally could make copies like their church or library. As Ms. Threadgill-Matthews testified, churches, for example, have been closed making it difficult for some to obtain a free copy of their photo ID. 9/9/20 at 23. Even when voters have access to a photocopier outside their homes or can go to the AEM's office to vote in person and thereby bypass copying their ID, utilizing the outside copier or the AEM's office increases their potential exposure to COVID-19. For example, going in person to the AEM's office to vote absentee (and in that case only having to show an ID in person, *see* 9/16/20 at 51) can result in that voter potentially exposing herself to COVID-19 by interacting with the other voters or county

employees. The fact that voters are not required to wear masks while voting exacerbates this risk. State Ex. 85; 9/17/20 at 153.

145. If a voter has tested positive for COVID-19, then they are required by the State Health Officer's emergency order to quarantine themselves. State Ex. 58. During this 14-day period, the voter is prohibited from leaving her home to obtain a copy of her photo ID. *Id.* Further, even in the absence of the emergency order, an infected voter should not leave her home to obtain a copy of her photo ID for public health reasons. 9/9/20 at 60.

(3) The Curbside Voting Ban

146. No provision of Alabama law expressly prohibits curbside or drive-thru voting. 9/11/20 at 43; 9/15/20 at 184; Agreed Facts at ¶ 110; *see generally* Ala. Code §§ 17-9-1 – 17-9-15. Likewise, no provision of Alabama law expressly provides for the practice. 9/11/20 at 38, 41, 43; *see generally* Ala. Code §§ 17-9-1 – 17-9-15. Therefore, according to Secretary Merrill, curbside voting violates state law. 9/11/20 at 38, 41.

147. Secretary Merrill is aware of instances of curbside voting in Perry, Hale, and Houston counties. 9/11/20 at 37, 65. When Secretary Merrill or his staff learned of those instances, they intervened to stop them. *Id.* at 37-38, 40-41. For example, after receiving a report of curbside voting in Hale County in 2016, Secretary Merrill immediately called the Hale County probate judge, who told him that he offered the service as a convenience to voters. *Id.* at 40. Secretary Merrill

told the probate judge to cease and desist and informed the judge that, if necessary, he would call the county sheriff to end the practice. *Id.* at 40-41. Then, in 2018, two employees from the Secretary's office learned that poll workers permitted curbside voting at a polling site in Perry County, and they informed the poll workers that curbside voting is not allowed in Alabama. *Id.* at 37-38. Secretary Merrill does not know the details regarding the curbside voting that occurred in Hale and Perry counties, such as whether the voters permitted to vote curbside had a disability, whether the polling sites were accessible, or whether the secrecy of the ballots was compromised. *Id.* at 38-39, 40-42. Secretary Merrill testified that it did not matter whether the voters were disabled because curbside voting is against the law. *Id.* at 41. Because he believes the practices violates the law, Secretary Merrill would seek a court order or call law enforcement to enforce the ban on curbside voting. *See id.* at 52.

148. Secretary Merrill's deputy chief of staff and director of elections, Clay Helms, testified that, in addition to not being allowed by Alabama law, curbside voting is also not practical in Alabama. 9/15/20 at 134, 157-59. In particular, Mr. Helms testified that providing curbside voting would require additional poll workers at a time when poll worker recruitment is already an issue, along with additional electronic poll books and voting machines that would be difficult to procure. *Id.* at 157-58. Mr. Helms also expressed concerns about issues that could arise if poll workers have to remove a completed ballot from a voter's sight to feed it into a

tabulation machine during the curbside voting process. *Id.* at 158-59. Secretary Merrill expressed the same concern when testifying that he understood that when officials in Perry and Hale counties provided curbside voting, poll workers carried ballots out to the voters and then returned the ballots back inside the polling place after the voters completed them, which broke the chain of custody for the ballot in violation of Alabama law. 9/11/20 at 51, 68. He explained that under Alabama law, unlike AEMs, poll workers are not authorized to receive a completed ballot, and he is not aware if an AEM has authority to receive ballots that are not absentee ballots. *See id.* at 81-82, 84, 86. But, Alabama law expressly allows voters to receive assistance from poll officials while casting a ballot. *See* Ala. Code § 17-9-13(b).

149. In spite of the challenges that curbside voting may present, several states offer the service, and the CDC recommends that states consider curbside voting as a means of complying with social distancing rules and limiting personal contact during in-person voting. Pl. Ex. 451. In addition, Drs. Elopre and Reingold, the plaintiffs' experts in infectious diseases and epidemiology, respectively, both testified that curbside voting would be a safer alternative to in-person voting because it presents a decreased risk of exposure to COVID-19. 9/8/20 at 45, 52; 9/9/20 at 62-63. Because it is a safer alternative, the individual plaintiffs testified that they would utilize curbside voting in the November election, especially if they cannot vote absentee. 9/8/20 at 125, 129, 175, 179; 9/9/20 at 15; 9/14/20 at 23, 59, 79-81. And, Dr. Peebles testified that he would like to use curbside voting even after the

COVID-19 pandemic in case of potential issues with accessing his polling site. 9/8/20 at 161-62.

150. Montgomery and Jefferson counties agreed to "exercise good faith and undertake reasonable efforts to provide curbside voting in a manner that complies with state and federal law and the CDC guidelines for voting" if the ban is lifted. Docs. 181 at ¶ 16 and 182 at ¶ 14. There are already variances in voting logistics by county. Each county's probate judge decides "how to handle voting logistics," and not all counties have electronic pollbooks. 9/15/20 at 167, 186. Further, counties use different types of handicap accessible voting machines. *Id.* at 137.

151. The organizational plaintiffs also believe that curbside voting would benefit their members. First, Ms. Ellis testified that curbside voting would be more similar to People First members' prior experiences with voting than absentee voting would be, making it easier for them to vote because it would not require as much problem solving. 9/11/20 at 137-138. And, some members of People First may need to vote in person rather than absentee because they require assistance with voting due to vision impairments. *See id.* at 137-38. Second, curbside voting is very important to the Alabama NAACP because many of its members are older, vulnerable to COVID-19, and want to minimize their exposure to the virus, and because some members also have ambulatory issues. 9/10/20 at 59. Third, GBM also has a member who reported he would prefer curbside voting, and it has members with ambulatory issues who would benefit from the service. 9/9/20 at 134-35, 139-

40, 167-68. Finally, many members of BVM partner organizations are at high risk from COVID-19 and would benefit from curbside voting to minimize exposure to the virus. *See* 9/9/20 at 189.

152. Plaintiffs also contend the ban on curbside voting disproportionately burdens Black voters as they are more likely to have a disability. Doc. 247 at 19-24. In Alabama, Black adults over 65 are 4.1 percent more likely to have a disability than White adults over 65. Doc. 228 at ¶¶ 36, 40. Elderly Black adults are also 5.6 percent more likely to have an ambulatory difficulty. *Id.*

G. <u>Procedural History of this Litigation</u>

153. On May 1, 2020, the plaintiffs filed their initial complaint in this case alleging the photo ID requirement, the witness requirement, and the curbside voting ban infringe on their voting rights as provided by the Constitution, the Americans with Disabilities Act, and the Voting Rights Act. Doc. 1

154. The plaintiffs moved for a preliminary injunction, docs. 15, 46, which the defendants opposed, docs. 36, 38, 39, 41, and 45. The court granted the motion in part on June 15, 2020, ordering the defendants "(1) not to enforce the witness requirement for the July 14 runoff election for absentee voters who determine it is impossible or unreasonable to safely satisfy that requirement in light of the COVID-19 pandemic, and who provide a written statement signed by the voter under penalty of perjury that he or she suffers from an underlying medical condition that the Centers for Disease Control has determined places individuals at a substantially

higher risk of developing severe cases or dying of COVID-19; (2) not to enforce the photo ID requirement for the July 14 runoff election for absentee voters who are over the age of 65 or disabled who determine it is impossible or unreasonable to safely satisfy that requirement in light of the COVID-19 pandemic, and who provide a written statement signed by the voter under penalty of perjury that he or she is 65 or older or has a disability; and (3) not to enforce the State's de facto prohibition on curbside voting." Doc. 58 at 76-77; Doc. 59.

155. That same day, the court ordered the parties to provide a plan for expedited discovery with a trial setting in September. Doc. 59

156. The next day, the defendants appealed to the Eleventh Circuit, doc. 60, and also filed an Emergency Motion for Stay Pending Appeal. *People First of Ala. v. Secretary of State for the State of Alabama*, Case 20-12184, at *1 (11th Cir. June 25, 2020). The Eleventh Circuit denied the defendants' Emergency Motion for Stay Pending Appeal. *Id.* The defendants appealed this denial of their emergency motion to the Supreme Court, and the Supreme Court granted the defendants' application for stay of the preliminary injunction. *Merrill v. People First of Ala.*, --S.Ct. ---, 2020 WL 3604049 (July 2, 2020).

157. Trial testimony showed that while the court's injunction was in effect from June 15, 2020 to July 1, 2020, Judge English, the probate judge for Lee County, trained absentee poll workers to handle the different standards that applied before

the preliminary injunction, during the injunction, and after the stay. 9/17/20 at 178-80.

158. Ms. Barnett, Mobile County's Absentee Election Coordinator, testified that she was able to comply with the June injunction while it was in place without reprinting ballot applications or ballot affidavit envelopes. 9/16/20 at 146-52. She simply included a letter noting the change to the absentee application requirements with the absentee ballot application and a letter noting the change to the witness requirement with the absentee ballot. *Id.*

159. On July 7, 2020, the plaintiffs amended their complaint and asserted five separate legal theories related to the photo ID requirement, the witness requirement, and the curbside voting ban. Doc. 75.

II. CONCLUSIONS OF LAW

After orders related to motions to dismiss, motions for summary judgment, and several settlements, the following claims remain and proceeded to a bench trial from September 8 – 18, 2020:

(1) Count I—Violations of the fundamental right to vote under the First and Fourteenth Amendments: Dr. Peebles, Ms. Bettis, Ms. Thompson, and the organizational plaintiffs assert claims against Judge Davis and Ms. Schwarzauer challenging the witness requirement as applied in the pandemic; Ms. Thompson and the organizational plaintiffs assert claims against Judge Davis and Ms. Schwarzauer challenging the photo ID requirement as applied in the pandemic; and all of the plaintiffs bring a claim against Secretary Merrill and Judge Davis challenging the curbside voting ban as applied in the pandemic;

(2) Count II—Violations of the Americans with Disabilities Act: Ms. Thompson and the organizational plaintiffs assert claims against the State, Judge Davis, and Ms. Schwarzauer challenging the photo ID requirement as applied; all of the plaintiffs assert a claim against Secretary Merrill and Judge Davis challenging the curbside voting ban both during and outside the pandemic;

(3) Count III—Violations of Section 2 of the Voting Rights Act: Ms. Bettis, Ms. Thompson, and the organizational plaintiffs assert claims against the State, Judge Davis, and Ms. Schwarzauer for enforcing the witness requirement during the pandemic; all of the plaintiffs except Dr. Peebles assert claims against Secretary Merrill and Judge Davis for enforcing the curbside voting ban both during and outside of the pandemic; and

(4) Count V—Violations of the Fourteenth Amendments Equal Protection Clause: Dr. Peebles, Ms. Bettis, Ms. Thompson, and the organizational plaintiffs assert claims against Judge Davis and Ms. Schwarzauer challenging the witness requirement's notary option.

The court addresses the merits of each of the plaintiffs' claims after first analyzing the defendants' defenses and contentions related to standing, the *Purcell* principle, and due process.

A.

"[S]tanding 'is a threshold question in every federal case, determining the power of the court to entertain the suit.'" *Yellow Pages Photos, Inc. v. Ziplocal, LP*, 795 F.3d 1255, 1265 (11th Cir. 2015) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). The plaintiffs bear the burden of establishing standing as the parties invoking this court's jurisdiction. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citation omitted). To do so, "[t]he plaintiff[s] must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the

defendant[s], and (3) that is likely to be redressed by a favorable judicial decision." *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Friends of the Earth v. Laidlaw Env. Serv. (TOC), Inc.*, 528 US. 167, 180-81 (2000)). The defendants continue to challenge each of these elements.[42] *See* docs. 189 at 2-6; 246 at 2-3; 231; 244 at 14-15.

1.

An injury in fact requires "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. The plaintiffs have made this showing.

a.

"[W]hen plaintiffs 'are required to obtain photo identification before they can vote, [t]he imposition of that burden is an injury sufficient to confer standing regardless of whether [the plaintiffs] are able to obtain photo identification.'" Doc. 58 at 14 (quoting *Common Cause v. Billups*, 554 F.3d 1340, 1351 (11th Cir. 2009)). Thus, Ms. Thompson, the only individual plaintiff challenging the photo ID requirement, has shown an injury in fact with respect to that requirement because she must obtain a copy of her ID before she can vote absentee. *See* 9/8/20 at 176-77; *see also* doc. 58 at 14-16. Likewise, the individual plaintiffs challenging the

[42] The court addressed many of the defendants' contentions regarding standing in its memorandum opinions on the plaintiffs' motion for a preliminary injunction and the defendants' motions to dismiss or for summary judgment. *See* docs. 58 at 13-27; 161 at 8-12; 226 at 3-10.

witness requirement—Dr. Peebles, Ms. Bettis, and Ms. Thompson—have shown an injury in fact with respect to that requirement because they must satisfy the requirement to vote absentee. *See* 9/8/20 at 126, 177; 9/14/20 at 39-40; *see also* doc. 58 at 16. That the plaintiffs' injuries are purportedly too slight, as the defendants contend, *see* docs. 189 at 3-6; 246 at 3-6, is irrelevant. As the Eleventh Circuit explained: "The slightness of [the plaintiffs'] burden is [] not dispositive . . . ; a small injury, 'an identifiable trifle,' is sufficient to confer standing." *Common Cause*, 554 F.3d at 1351 (citing *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689 n.14 (1973)).

Next, the curbside voting ban impacts the individual plaintiffs' ability to safely vote in person during the COVID-19 pandemic. *See* Pl. Ex. 269 at ¶¶ 23-24; 9/8/20 at 45, 52, 76-77; 9/9/20 at 56-57, 62; *see also* 9/14/20 at 79-81; 9/11/20 at 171. With the ban in place, a voter's only option for casting a ballot in person on Election Day is to wait in line with others to vote inside a polling site, risking exposure to COVID-19 through exposure to poll workers and other voters, who may or may not be wearing masks, and who may or may not be sick and showing signs of COVID-19. *See id.*; 9/15/20 at 202; 9/17/20 at 193; Pl. Ex. 237. Forcing a voter to endure the risk and fear of exposure in order to vote in person is the injury regardless of whether the plaintiff catches or is actually exposed to COVID-19. Thus, based on *Common Cause*, the court finds this injury is sufficient to confer

standing to challenge the ban as applied during the COVID-19 pandemic. *See* doc. 58 at 17; *Common Cause*, 554 F.3d at 1351.

Outside of the COVID-19 pandemic, due to the curbside voting ban, all voters—including those with ambulatory disabilities—must go inside their polling places to cast a vote. And, the ban prevents county officials from accommodating voters' disabilities by allowing them to vote from their cars. In other words, the ban operates to require voters with disabilities to walk, or otherwise ambulate, to their polling site to vote in person. For Dr. Peebles and Mr. Porter, who have ambulatory difficulties that impair their ability to readily access their polling sites, 9/8/20 at 115-130-31; 9/14/20 at 64-68, 77, 79-80, the imposition of that requirement is sufficient to confer standing to challenge the curbside voting ban outside of the COVID-19 pandemic.

b.

The organizational plaintiffs also have standing either associationally or organizationally through a diversion of resources theory. First, as to associational standing, an organization may "'bring suit on behalf of its members when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of the individual members in the lawsuit.'" *Greater Birmingham Ministries v. Sec'y of State for Ala.*, 966 F.3d 1202, 1219-20 (11th Cir. 2020) (quoting *Hunt v. Washington State Apple*

Advertising Comm'n, 432 U.S. 33, 343 (1977)). Except for BVM, the organizational plaintiffs satisfy these requirements.

To begin, this lawsuit is germane to all of the organizations, whose purposes focus at least in part on equal opportunities for Black voters or voters with disabilities. *See* 9/9/20 at 107-10, 174; 9/10/20 at 52, 55, 57-58; 9/22/20 at 100; Agreed Facts at ¶¶ 1-3, 8; *see also Greater Birmingham Ministries* 966 F.3d at 1219-20 (recognizing that the Alabama NAACP and GBM have associational standing to challenge Alabama's photo ID requirement). Next, the injunctive relief the plaintiffs seek does not require the individual members to participate in the suit. Finally, at trial, representatives of People First, GBM, and the Alabama NAACP identified members of their respective organizations who must comply with the Challenged Provisions in order to vote and, therefore, are impacted by the provisions. *See* 9/9/20 at 106-10, 125-30, 145-47, 166-67; 9/10/20 at 80-11, 111; 9/11/20 at 104-05, 128-29, 180, 184-85.[43] Even if the impact is slight, as the defendants contend, it is still an injury sufficient to confer standing to those individuals. *Common Cause*, 554 F.3d at 1351. Accordingly, People First, GBM, and the Alabama NAACP have associational standing to challenge the election laws at issue.

[43] These members include People First member, Ms. Lux; GBM member, Mr. Sokol, and Alabama NAACP members, Ms. Jefferson and Ms. Bryant. *See* 9/9/20 at 107-10, 129-30, 166-67; 9/10/20 at 80-11, 111; 9/11/20 at 128-29, 180, 184-85.

The same is not true of BVM. At trial, Mr. Albright, BVM's executive director, testified that BVM works primarily through partnerships with community groups. 9/9/20 at 174. And, while Mr. Albright identified several groups that BVM partners with and people associated with those groups, such as Plaintiffs Threadgill-Matthews and Bettis, he did not identify any individual members of BVM who have been harmed by the challenged provisions. *See id.* at 177-79, 185-87. Moreover, the plaintiffs have not presented any evidence that members of BVM's partner groups, or "partner network," are also members of BVM. As a result, the plaintiffs have not shown that BVM has associational standing to assert claims on behalf of its members. *See Jacobson v. Fla. Sec'y of State*, -- F.3d --, 2020 WL 5289377, at * 7 (11th Cir. Sept. 3, 2020) (finding that an organization's failure to prove that it has any members is fatal to its associational standing).

But, this does not end the court's inquiry for BVM. An organization also has standing to sue on its own behalf "to challenge election laws by showing that [it] will have to divert personnel and time to educating potential voters on compliance with the laws and assisting voters who might be [affected by the laws] on Election Day." *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1343 (11th Cir. 2014) (citation omitted).[44] Mr. Albright testified that BVM generally provides financial resources

[44] *See also Common Cause*, 554 F.3d at 1350 (noting that the NAACP's "'reasonabl[e] anticipat[ion] that they would have to divert personnel and time to educating volunteers and voters on compliance' with the new voting requirements . . . was a 'concrete injury' sufficient to confer standing") (citations and alteration in original omitted).

to its partner organizations with the goal of increasing voter turnout and involvement in civic life among members of the Black community. 9/9/20 at 174, 195. This year, however, BVM has had to divert resources from its traditional Alabama initiatives. BVM has sponsored several text campaigns targeting Black voters who may need assistance navigating Alabama's absentee voting scheme. *Id.* at 190–91. In its July text campaign, BVM sent text messages inviting roughly 190,000 Black Alabamians to attend a virtual townhall discussing several topics, including voting in Alabama. *Id.* at 192; Pl. Ex. 340. BVM estimates that such campaigns cost around five cents per text, and it plans to sponsor up to six future waves of texts, spending up to $60,000 in text messaging, because "the current requirements [for absentee voting in Alabama] are so complicated." 9/9/20 at 193-94, 223. But for the need to educate voters on how to comply with requirements for absentee voting during the pandemic, BVM would be focused on its "core function" of educating voters about turnout and substantive issues. *Id.* at 195. Thus, because BVM will divert resources from its regular activities, it has shown an injury sufficient to confer standing to challenge the election laws at issue on its own behalf.[45]

[45] The other organizations presented similar evidence regarding the diversion of resources to educate their members on the photo ID and witness requirements. *See* 9/9/20 at 125, 131-32, 135-46; 9/10/20 at 53-57, 72; 9/11/20 at 116-17, 120; 122-46. Thus, they also have organizational standing.

2.

The next part of the standing inquiry is traceability. To establish traceability, a plaintiff must show "a causal connection between her injury and the challenged action of the defendant—*i.e.*, the injury must be fairly traceable to the defendant's conduct, as opposed to the action of an absent third party." *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1296 (11th Cir. 2019) (en banc) (citations omitted).

a.

The plaintiffs assert claims against Judge Davis challenging the photo ID and witness requirements and the curbside voting ban in Mobile County. *See* doc. 75. As to the photo ID requirement, Judge Davis testified that, although he is the chief election official for Mobile County, he does not have control over all aspects of the election. 9/15/20 at 40. Instead, the County Circuit Clerk (Ms. Schwarzauer) and the Absentee Election Coordinator (Ms. Barnett) are responsible for all aspects of absentee voting, including processing absentee ballot applications. *Id.* at 41-43. And, he testified that he has no role in training Ms. Barnett's employees. *Id.* at 56.

Indeed, Ms. Barnett testified that she and her staff in the AEM's office enforce the photo ID requirement by confirming that an absentee ballot application is complete before mailing or personally giving a voter an absentee ballot. *See* 9/17/20 at 112, 116, 137. Among the requirements they check for is that the application must include a copy of a photo ID for all voters who are not exempt from the photo ID

requirement. *See* 9/17/20 at 112, 116, 137. If an application does not include a copy of the voter's ID and the voter is not exempt, Ms. Barnett or her staff send a letter to the voter informing him or her that her office cannot process the application without a copy of the ID. *Id.* at 116. Ms. Barnett did not indicate that Judge Davis plays any role in processing absentee ballot applications, enforcing the photo ID requirement, or directly supervising the relevant staff. *See id.* Moreover, the plaintiffs did not adduce any evidence at trial showing that Ms. Barnett's or her staff's actions to enforce the photo ID requirement should be imputed to Judge Davis.

Based on *Jacobson*, Judge Davis's position as the chief election official in the county is not sufficient to show that any injury from enforcement of the photo ID requirement is traceable to him, *see* 2020 WL 5289377, at *12,[46] and Judge Davis does not play any role in enforcing the photo ID requirement. Thus, any injury to the plaintiffs from the photo ID requirement is not traceable to Judge Davis. *See Lewis*, 944 F.3d at 1299 ("'[T]he causation element of standing requires the named defendants to possess authority to enforce the complained-of provision.'") (quoting *Dig. Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 958 (8th Cir. 2015)).

As to the witness requirement, Ms. Barnett testified that neither she nor her staff confirms compliance with the witness requirement when they receive an absentee ballot, and they do not notify the voter when the required signatures are

[46] *See* docs. 58 at 25; 161 at 8-9.

missing. 9/17/20 at 127. Instead, they store the absentee ballots in locked cabinets until Election Day when they deliver them to Judge Davis's designee. *Id.* at 141. Judge Davis testified that before opening an absentee ballot on Election Day, poll workers first verify that the ballot is either notarized or witnessed, and they do not count ballots that do not have the signatures or notary seal. 9/15/20 at 59. Moreover, under Alabama's election laws, probate judges serve as the chair of the three-member board that appoints the poll workers who count absentee ballots and on the canvassing board that tabulates absentee ballots. Ala. Code. §§ 17-1-2(6), 17-1-3(b), 17-2-2(1), 17-8-1, 17-10-2(f); 17-11-11(a). Based on this evidence and a probate judge's roll in the absentee ballot process, poll workers under Judge Davis's authority and control enforce the witness requirement. Thus, the plaintiffs' injuries from the witness requirement, if any, are traceable to Judge Davis.[47]

b.

The plaintiffs assert claims against Ms. Schwarzauer, the Mobile County Circuit Clerk, challenging the witness and photo ID requirements. Docs. 75; 161. Under Alabama law, the circuit clerk is one of the three members of the appointing board responsible for selecting poll workers who count absentee ballots, and she serves on the canvassing board that tabulates absentee ballots. Ala. Code. §§ 17-1-

[47] The court does not address whether the plaintiffs' injuries, if any, from the curbside voting ban are traceable to Judge Davis because the court finds that the injuries would not be redressed by an order enjoining Judge Davis from enforcing the ban. *See* section II(A)(3)(b), *infra*.

2(6); 17-8-1, 17-10-2(f); 17-11-11(a). Moreover, Ms. Barnett testified that she performs the AEM's duties at Ms. Schwarzauer's option and that the canvassing board, which includes Ms. Schwarzauer, enforces the witness requirement. *See* 9/17/20 at 139, 145. In addition, Secretary Merrill testified that the circuit clerks are charged with enforcing the photo ID requirement. 9/11/20 at 16. Because Ms. Schwarzauer enforces the witness and photo ID requirement, or is responsible for the relevant poll workers, the plaintiffs' injuries from those requirements, if any, are traceable to Ms. Schwarzauer.

c.

Next, the plaintiffs assert claims against the State challenging the witness and photo ID requirements. Doc. 75. Because these requirements are express provisions of state law, any injuries the requirements inflict on the plaintiffs are clearly traceable to the State. *See OCA-Great Houston v. Texas*, 867 F.3d 604, 613 (5th Cir. 2017) ("The facial invalidity of a Texas election statute is, without question, fairly traceable to and redressable by the State . . . .").

d.

Last, the plaintiffs assert claims against Secretary Merrill challenging the ban on curbside voting. Doc. 37. Secretary Merrill testified that curbside voting does not comply with Alabama law because no provision in the State's code or constitution expressly provides for it, and he or his staff has put a stop to curbside voting when counties have offered it as a service to voters. 9/11/20 at 38, 41, 65.

Thus, because he enforces the ban on curbside voting or is responsible for those who do, any injuries from the ban are traceable to Secretary Merrill.[48]

3.

The final requirement for standing is redressability. To establish redressability, the plaintiffs must show that a decision in their favor "would 'significantly increase the likelihood' that [they] 'would obtain relief that directly redresses the injury' that [they] claim[] to have suffered." *Lewis*, 944 F.3d at 1301 (quoting *Harrell v. Fla. Bar*, 608 F.3d 1241, 1260 n.7 (11th Cir. 2010)). In addition, for a decision to redress the injury, "'it must be the effect of the court's judgment on the defendant'—not an absent third party—'that redresses the plaintiff's injury, whether directly or indirectly.'" *Id.* (quoting *Dig. Recognition*, 803 F.3d at 958).

[48] The plaintiffs ask the court to reconsider its order dismissing their ADA and VRA claims against the State challenging the curbside voting ban, arguing that the Secretary Merrill's testimony establishes the ban is traceable to the State. Doc. 229 at 1-2. But, as discussed below, Alabama law does not prohibit curbside voting, *see* section II(E)(2)(d), *infra*, and, therefore, the court declines to reconsider its prior order that any injury from the ban is not traceable to the State, *see* doc. 226 at 5-6. The plaintiffs also ask the court to reconsider its holding finding that any injury from the photo ID and witness requirements are not traceable to Secretary Merrill based on *Jacobson*. Doc. 229 at 3-4. According to the plaintiffs, Secretary Merrill's testimony at trial that he could compel action from probate judges, and presumably AEMs, by seeking a court order or calling a county sheriff reveals that any injuries from the probate judge's and AEM's enforcement of the witness and photo ID requirements are traceable to Secretary Merrill. *Id.* at 4. But, in *Jacobson*, the Eleventh Circuit rejected a similar argument, finding: "That the Secretary must resort to judicial process if the [county] Supervisors [of elections] fail to perform their duties underscores her lack of authority over them. Because the Supervisors are independent officials not subject to the Secretary's control, their actions to implement the ballot statute may not be imputed to the Secretary for purposes of establishing traceability." 2020 WL 5289377 at *11. Thus, Secretary Merrill's testimony does not show that injuries from the witness and photo ID requirements are traceable to him, and the plaintiffs' motion to reconsider, doc. 229, is due to be denied.

a.

The plaintiffs seek an order enjoining the county defendants and State from enforcing the witness and photo ID requirements for the general election in November. *See* doc. 75 at 78. An order enjoining the State and relevant Mobile County defendants from enforcing those requirements would redress any injuries the plaintiffs suffer from the need to comply with the requirements.

b.

The analysis is different for the curbside voting ban. The curbside voting ban imposes no requirements the plaintiffs must satisfy in order to vote, and the injury imposed by the ban is the need to face the risk and fear of exposure to COVID-19 to vote in person on Election Day. The plaintiffs seek an order enjoining Secretary Merrill and Judge Davis (as to Mobile County only) from enforcing the curbside voting ban in the November general election. Doc. 75. Such an order, however, would not require the defendants to take any affirmative action, such as actually providing curbside voting. Thus, a decision in the plaintiffs' favor would not redress their injuries if the county officials who administer the election would not provide curbside voting even in the absence of a ban. *See Lewis*, 944 F.3d at 1301.

Here, Judge Davis testified that he cannot offer curbside voting in Mobile County for both legal and practical reasons. 9/15/20 at 93-96. And, Judge Davis expressly stated that if the court issues an order allowing for curbside voting by lifting the ban, he still cannot and would not provide curbside voting at poll locations

in Mobile County. *See id.* at 96. Thus, an order enjoining Judge Davis from enforcing the curbside voting ban would not provide any redress for the plaintiffs' injuries. Consequently, the plaintiffs do not have standing to assert the curbside voting ban claims against Judge Davis. And, because Judge Davis made clear that he will not provide curbside voting in Mobile County even if the court enjoins enforcement of the ban, the individual plaintiffs living in Mobile County (Ms. Bettis, Ms. Thompson, and Mr. Porter) do not have standing to challenge the ban because an order in their favor will not redress their injuries.

The redressability analysis is different for the claims against Secretary Merrill. Although Judge Davis and Judge Bill English, the probate judge of Lee County, testified that they could not and would not offer curbside voting in their counties,[49] *see* 9/15/20 at 96; 9/17/20 at 166-71, Judge Naftel, Judge Friday, and Judge Love, the probate judges in Jefferson and Montgomery Counties, have indicated a willingness to provide curbside voting in the upcoming election, *see* docs. 181 at 8-9; 182. In particular, those judges entered into consent orders with the plaintiffs agreeing to "exercise good faith and undertake reasonable efforts to provide curbside voting in a manner that complies with state and federal law and the CDC guidelines

[49] Because Judge English testified that he could not provide curbside voting in Lee County even if the court lifts the curbside voting ban, *see* 9/17/20 at 166-71, an order lifting the ban would not significantly increase the likelihood that Dr. Peebles would receive relief from any injuries inflicted by the ban. Thus, Dr. Peebles does not have standing to challenge the curbside voting ban.

for voting in the COVID-19 pandemic in . . . the November 3, 2020 election" if the court issues an order that would permit curbside voting. *Id.* Thus, an order enjoining Secretary Merrill from enforcing the ban would "'significantly increase the likelihood'"[50] that curbside voting would be available in Jefferson and Montgomery counties, and in any other county where officials are willing to offer it. Consequently, Ms. Threadgill-Matthews's and the organizational plaintiffs' injuries from the ban are redressable by an order in the plaintiffs' favor on their claims against Secretary Merrill.

* * *

In summary, based on the discussion above and the findings in this case, the court makes the following conclusions of law with respect to standing:

1. The plaintiffs have suffered injuries sufficient to confer standing to challenge the photo ID requirement, witness requirement, and curbside voting ban.

2. The plaintiffs' injuries from the photo ID requirement are not traceable to Judge Davis. Therefore, the plaintiffs do not have standing to assert claims against Judge Davis challenging the photo ID requirement.

3. The plaintiffs' injuries from the witness requirement are traceable to Judge Davis. And, the plaintiffs' injuries could be redressed by an order enjoining Judge Davis from enforcing the requirement. Therefore, the plaintiffs in Mobile

[50] *Lewis*, 944 F.3d at 1301.

County challenging the witness requirement have standing to assert their witness requirement claims against Judge Davis.

4. The plaintiffs' injuries from the photo ID and witness requirement are traceable to Ms. Schwarzauer and the State of Alabama, and would be redressed by an order enjoining these defendants from enforcing the requirements. Thus, the plaintiffs have standing to assert their claims challenging the photo ID and witness requirements against Ms. Schwarzauer (as to Mobile County only) and the State of Alabama.

5. The plaintiffs' injuries from the curbside voting ban would not be redressed by an order enjoining Judge Davis from enforcing the ban in Mobile County. Thus, the plaintiffs do not have standing to assert claims against Judge Davis challenging the curbside voting ban.

6. The plaintiffs' injuries from the curbside voting ban are traceable to Secretary Merrill. However, Dr. Peebles's, Mr. Porter's, Ms. Thompson's, and Ms. Bettis's injuries from the curbside voting ban would not be redressed by an order enjoining Secretary Merrill from enforcing the ban because the probate judges from their respective counties have made clear they would not provide curbside voting even if the court enjoins Secretary Merrill from enforcing the ban. Thus, these plaintiffs do not have standing to assert claims challenging the curbside voting ban.

7. An order enjoining Secretary Merrill from enforcing the ban would significantly increase the likelihood that the plaintiffs would obtain relief redressing

their injuries in counties where officials are willing to provide the service. Thus, the organizational plaintiffs and Ms. Threadgill-Matthews have standing to assert claims challenging the curbside voting ban against Secretary Merrill.

B.

Based on their contention "that lower federal courts should ordinarily not alter the election rules on the eve of an election," *see* Defendants' Proposed Conclusions of Law, at ¶ 86 (quoting *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020)), the defendants argue that it is too late for the court to provide relief to the plaintiffs. Docs. 186 at 1; 188; 199 at 2. The *Purcell* principle the defendants cite is grounded in the idea that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell v. Gonzalez*, 127 S. Ct. 1, 4-5 (2006).

But, contrary to the defendants' contentions, the Supreme Court has not provided a bright line rule regarding when a federal court must abstain from interceding in an election. And its actions in this area do not support the defendants' contention that it is too late for the court to act. For example, the Court has stopped a lower court from intervening 33 days before an election, *see Purcell*, 127 S. Ct. at 6, but also allowed a lower court's injunction issued 26 days before an election to stand, *see Frank v. Walker*, 574 U.S. 929 (2014). Also, a recent decision by the Court partially leaving in place a district court's order related to absentee ballots

makes the defendants' argument against hearing this case even weaker. In *Republican National Committee v. Democratic National Committee*, the Supreme Court did not stay the lower court's injunction extending the date for the receipt of absentee ballots—even though absentee voting had already begun and the lower court issued its order six days before the election. 140 S. Ct. at 1206-07; *Democratic Nat'l Comm. v. Bostelmann*, 451 F. Supp. 3d 952, 976-977 (W.D. Wisc. 2020).

The Eleventh Circuit has also declined in two recent cases to stay injunctions issued immediately before and even after Election Day. *See Democratic Executive Comm. of Fla. v. Lee*, 915 F.3d 1312, 1315 (11th Cir. 2019) (denying stay of injunction issued *after* Election Day that provided absentee voters time to verify their flagged signature and have their vote counted); *Ga. Muslim Voter Project v. Kemp*, 918 F.3d 1262 (11th Cir. 2019) (denying stay of injunction related to absentee voting rules issued several days before Election Day) (mem.) (Pryor, Jill, J., concurring). These decisions further undermine the defendants' position that the court is past the demarcation line for it to address this dispute. And it makes sense not to have a bright-line cutoff date. After all, the doors of the courthouses are open to all who believe their rights have been infringed. To hold that an aggrieved voter cannot challenge the purported abridgement of her franchise right after a set date before an election invite some officials to engage in shenanigans knowing that courts will not hear a challenge to their illegal conduct.

Brightline rule or not, the *Purcell* principle does not prevent the court from issuing relief in this case. First, the plaintiffs timely raised this dispute. Second, the court's order today will not cause voter confusion or create an incentive for voters to remain away from the polls. Third, the defendants can adhere to the court's order without hardship. Finally, the State defendants are judicially estopped from raising this issue.

1.

Unlike the *Little v. Reclaim Idaho* case the defendants cite, the plaintiffs here have not delayed in seeking relief.[51] The plaintiffs filed this case soon after it became clear the novel coronavirus had reached the level of a global pandemic that would drastically impact everyone's life. Doc. 1. More precisely, the plaintiffs initiated this lawsuit on May 1, 2020, doc. 1, about a month and a half after Governor Ivey first declared a state of emergency in Alabama. *See* State Ex. 7. The pandemic is an unprecedented event in United States and Alabama history, and it would defy logic to expect lay plaintiffs to predict its impact on citizens well before health experts and government leaders raised alarm bells. Further, contrary to the defendants' contention that the plaintiffs "amplified" the timing problems, *see* doc.

[51] In *Little*, the Court noted that its stay of the lower court's injunction may result in the exclusion of the plaintiffs' initiative from the ballot, but that the exclusion was due to the fact the plaintiffs had waited "more than a month after the deadline for submitting signatures" to bring their claim challenging the deadline. _ S. Ct. _, 2020 WL 4360897, at *1-2 (Jul. 30, 2020) (mem.) (Roberts, J., concurring).

186 at 4-5, the plaintiffs undertook efforts to accelerate this case to a timely resolution, including seeking expedited relief by asking for an August trial and moving for partial summary judgment. Docs. 77; 169.

The court has also treated this case with the urgency it deserves, while recognizing that the parties should have an opportunity to conduct discovery. Throughout this case, the court has been cognizant of the upcoming November election and has sought to dispose of the case as fairly and quickly as possible. With input from the parties, *see* docs. 59, 68, 69, the court set the case for trial at the beginning of September, doc. 93. The court overruled several of the defendants' objections to the expedited schedule, explaining "the accelerated timeline is necessary given that the asserted claims concern the election scheduled for November 3, 2020." Doc. 126 at 1. Further, the court self-imposed a deadline to issue a final ruling within a week of the trial's conclusion, and while the court missed the deadline by three business days, it is issuing this opinion thirty-four days before the November election.[52] Frankly, the court does not know what else it could have done to bring the matter to trial without seriously impacting the parties' ability to prosecute and/or defend their respective contentions.

[52] The release date of this opinion further distinguishes it from some of the cases defendants cite in support of withholding review. The courts in those cases issued orders shortly before or even after the election. *See* Defendants' Proposed Conclusions of Law at p. 263-64, ¶ 92; *Clarno v. People Not Politicians*, No. 20A21, 2020 WL 4589742 (U.S. Aug. 11, 2020), *staying* 2020 WL 3960440 (D. Or. July 13, 2020) and *Little v. Reclaim Idaho*, _ S. Ct. _, 2020 WL 4360897, at *1-2 (Jul. 30, 2020).

2.

The court's ruling in this case will not result in "voter confusion and consequent incentive to remain away from the polls." *Purcell*, 127 S. Ct. at 7. The evidence from trial shows that Alabama's absentee voting laws are causing voters confusion as they stand. 9/17/20 at 117, 120; 9/15/20 at 162-63; 9/9/20 at 124-25; Pl. Ex. 231. This court's order may not eliminate all the confusing aspects of the absentee voter application, but it is unlikely it will make the process more confusing. Today's decision simply precludes the defendants from enforcing the Challenged Provisions against certain individuals. It does not require any additional action of voters, but, instead, relieves certain voters of the necessity of finding witnesses or a notary, obtaining a copy of their photo ID, or going inside a polling place on Election Day. Because the order is taking away requirements placed on Alabama voters, as opposed to imposing them, it is unlikely to cause voters confusion. But, even if a voter were to be confused, this confusion would, at most, result in the voter taking additional unnecessary steps to apply for or complete their absentee ballot.

Further, the order will not *cause* any voters to forgo voting altogether. The defendants theorize that a voter may plan to rely on curbside voting, then be disenfranchised when it is not offered in their county "for one reason or another on Election Day . . . ." Doc. 244 at 3. The court doubts that the counties, if any, who opt to provide curbside voting will fail to publicize and inform their citizens that they are doing so. Likewise, because this order is not ordering counties to provide

curbside voting, the court seriously doubts county officials who decide not to offer the service will fail to make that point if they receive inquiries from their citizens. Thus, to the extent that curbside voting is not offered in a voter's county making the hypothetical voter misinformed about local voting rules, the onus of such misinformation is on the individual counties and the Secretary of State, who is tasked with educating the public about how to vote. Agreed Facts at 15, ¶ 20; 9/15/20 at 166-67. Alternatively, if the defendants' point is intended to suggest that a reviewing court will stay this order and create confusion, no court should withhold relief it finds the facts and law warrant because of a concern that a higher court will reverse its decision, especially where, as here, this court has found multiple violations of the plaintiffs' and their members' right to vote. Further, under Alabama law, a voter may file an absentee ballot up to five days before an election, 9/15/20 at 139, 151, a point which the parties will likely highlight on appeal to urge the Circuit to issue its ruling before the five-day cutoff.

3.

The defendants also argue the relief requested by the plaintiffs will place a "tremendous hardship upon all Defendants." Doc. 186 at 3-4. The evidence presented at trial does not support this contention. Alleen Barnett, the Absentee Election Coordinator for Mobile County, testified that after the court issued the preliminary injunction, she simply sent a letter about the changes implemented by the injunction with a voter's absentee application. 9/16/20 at 146-52. Ms. Barnett

did not have to make any changes to the absentee ballot application or print new versions of the application. *Id.* Similarly, Ms. Barnett mailed a letter explaining who no longer needed to meet the witness requirement when she mailed voters their absentee ballots. *Id.* The injunction did not require her or the State to reprint any absentee ballot affidavit envelopes, and other than sending these two letters, she made no other changes to her absentee ballot review process. *Id.* Similarly, Judge English, the Probate Judge of Lee County, testified that he was able to train absentee poll workers to handle the varying standards that applied with the change in absentee voter rules under the injunction. 9/17/20 at 178-80. The testimony of Judge English and Ms. Barnett belie the defendants' contentions of a "tremendous hardship."

The defendants also argue that it would be impossible for them to educate voters and poll workers if relief varies by counties. Doc. 186 at 3-4. This order does not provide relief that varies by county. However, to the extent that some counties will choose to implement curbside voting while others do not, variance in voting options may result. This possibility does not foreclose the court's ability to grant relief related to the curbside voting claims. There is precedent in this Circuit for providing relief in some, but not all counties. *See Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1310-11 (N.D. Fla. 2017), *aff'd* 950 F.3d 795, 833 (11th Cir. 2020). Further, counties in Alabama already employ different procedures and resources for conducting elections. For example, Clay Helms, the Director of Elections and the Deputy Chief of Staff to the Secretary of State, testified that not all counties have

electronic pollbooks, that counties use different types of handicap accessible voting machines, and that each county's probate judge decides "how to handle voting logistics . . . ." 9/15/ 20 at 137, 167, 186.

4.

Finally, the State defendants are judicially estopped from raising this objection. When the plaintiffs moved for a preliminary injunction for the July runoff election, the State defendants argued "to the extent plaintiffs [sought] an injunction that applies to November elections, their claims [were too] speculative." Doc. 36 at 13-14. They further asserted that the plaintiffs could not establish a concrete injury "50 days" before the primary runoff election. *Id.* at 13. This court agreed with the defendants' speculation argument related to November and limited the preliminary injunction solely to the July runoff. Doc. 58 at 12. The State defendants cannot have it both ways by now contending, essentially, that the plaintiffs should have also moved for a preliminary injunction for the November election in June, at a time when the pandemic's impact on November was "speculative." *See New Hampshire v. Maine*, 532 U.S. 742, 750-55 (2001) (party estopped from asserting inconsistent position in direct conflict with previous position accepted by the court because the party "would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped").

To close, while "lower federal courts should ordinarily not alter the election rules on the eve of an election[,]" *Republican Nat'l Comm.*, 140 S. Ct. at 1207, the

court is also bound to uphold the laws of the United States. U.S. Const. art. III. This includes hearing a dispute centered on an unforeseeable global crisis, which the plaintiffs maintain interacts with State law to purportedly violate Constitutional and federal rights. Therefore, because there is nothing the plaintiffs or the court could have done differently to resolve the case sooner and there is not likely to be much, if any, confusion, the court finds that the *Purcell* principle does not preclude the court from providing a remedy here.

Based on the findings in this case and the discussion above, the court makes the following conclusion of law:

1. The *Purcell* principle does not preclude the court from providing a remedy to the plaintiffs in this case.

C.

Although the *Purcell* objection arguably supports an expedited resolution of this case, the defendants object also to the accelerated schedule set in this case, contending that the schedule violated their due process rights by impairing their ability to prepare an adequate defense and retain experts. Docs. 74; 244 at 14-15; 246 at 1-2; 9/16 20 at 220. Needless to say, this case proceeded to trial just over four months after filing, and it has proceeded on an expedited and challenging schedule. The court appreciates that the pace has not been ideal for the parties or the court. But, to state the obvious, this is not a typical case. Rather, as the court previously explained, "this case has an unusual urgency because the claims concern

the November 3, 2020 election and a State of Emergency Governor Ivey declared [approximately] six months ago due to the risks presented by COVID-19." Doc. 211 at 1; *see also* doc. 126; 9/16/20 at 223-25. Thus, given the important issues this case presents regarding voting in an upcoming election, the court exercised its "broad discretion over the management of pre-trial activities, including discovery and scheduling," *Johnson v. Board of Regents of Univ. of Ga.*, 263 F.3d 1234, 1269 (11th Cir. 2001), to enter an accelerated discovery schedule. In particular, the court provided the parties with approximately seven weeks for discovery, in part to give the parties adequate opportunity for discovery while allowing them as much time as possible to respond to any relief the court orders, including filing an appeal, before the election. *See* doc. 93.

Based on the urgent nature of this case and the court's broad discretion to manage discovery and its docket, the court makes the following conclusion of law:

1. The court's expedited discovery schedule, which applied to all parties, did not violate the defendants' due process rights.

D.

The court turns now to the plaintiffs' claims. In Count I, the plaintiffs plead an alleged violation of the fundamental right to vote. States cannot unreasonably burden citizens' fundamental right to vote consistently with the First and Fourteenth Amendments. *See Anderson v. Celebrezze*, 460 U.S. 780, 789–90 (1983). When determining whether an election law passes constitutional muster, courts apply the

balancing test that the Supreme Court first adopted in *Anderson* and further developed in *Burdick v. Takushi*, 504 U.S. 428 (1992). This involves weighing the "character and magnitude of the asserted injury to" the voters' constitutional rights against the "precise interests" the state has offered to justify its rule. *Anderson*, 460 U.S. at 789. Courts must also evaluate the "legitimacy and strength" of the state's interests and the extent to which those interests "make it necessary to burden the [plaintiffs'] rights." *Id.*

Under this flexible *Anderson-Burdick* test, the "rigorousness" of the court's review "depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick*, 504 U.S. at 434. A law that severely burdens the right to vote triggers strict scrutiny, meaning the law must be "narrowly drawn to serve a compelling state interest." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (2019) (citing *Burdick*, 504 U.S. at 434). In contrast, "the state's important regulatory interests" are generally enough to justify an election law that imposes only "reasonable, nondiscriminatory restrictions." *Anderson*, 460 U.S. at 788. But, "even when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden." *Lee*, 915 F.3d at 1318–19 (citation omitted).

1.

Alabama law requires that voters include with their absentee ballots an affidavit signed by the voter and witnessed by a notary public or two adult witnesses.

Ala. Code §§ 17-11-7; 17-11-9; 17-11-10. Plaintiffs challenge this requirement as unduly burdensome, as applied during the COVID-19 pandemic. Doc. 75 at 66–77 ¶ 190. They contend that the requirement's burdens on either their individual right to vote or their members' rights are severe enough to trigger strict scrutiny. Doc. 247 at 6. Allegedly, voters who live alone or with only one other adult and who wish to cast an absentee ballot must choose between increasing their exposure to COVID-19 and voting. *Id.* And, the plaintiffs contend that the witness requirement is not narrowly tailored to serve a compelling state interest. *Id.* Thus, the plaintiffs ask the court to enjoin this requirement for all voters. Doc. 75 at 78.

a.

The court must first decide whether the witness requirement imposes a burden on the right to vote that is severe enough to trigger strict scrutiny. *See Lee*, 915 F.3d at 1319. The court has already determined that for most voters, it does not. Doc. 58 at 36. Although the court recognized in its earlier order enjoining the Challenged Provisions that "[e]xposure to a deadly virus is a burden," it also acknowledged that observing public health guidelines "substantially mitigate[s]" one's risk of contracting COVID-19. *Id.* That fact continues to lessen the severity of the burden that most voters face to comply with the requirement.[53]

[53] The defendants cite Justice Scalia's concurrence in *Crawford v. Marion County Election Board* for the proposition that "[a] burden that is 'merely inconvenient' as opposed to 'virtually impossible' is not a severe burden." Docs. 189 at 7; 245 at 6 (quoting *Crawford*, 553 U.S. at 206 (Scalia, J., concurring)). Because the Challenged Provisions do not impose a severe burden on the right to vote in this case, the court finds no reason to opine on what constitutes a severe burden.

Still, satisfying the witness requirement imposes a more significant burden on some voters who live alone and who are at heightened risk of severe COVID-19 complications due to their age, disability, pre-existing conditions, and race. *See* 9/14/20 at 191–192. For example, Dr. Peebles lives alone and has been minimizing his exposure to other people, and therefore the virus, since early March. 9/8/20 at 114, 116, 120. He is at high risk of complications from COVID-19 due to his spastic cerebral palsy. *Id*. Dr. Peebles interacts regularly with his four caregivers, but obtaining signatures from them is not an option because their shifts do not overlap, and he only sees one caregiver at a time. *Id*. at 118. Although Dr. Peebles has encountered two adults simultaneously during previous necessary appointments with his doctors and lawyers, he has since remained isolated at home.

Similarly, Ms. Thompson lives alone and is at high risk for complications from COVID-19 due to her underlying medical conditions, age, and race. 9/8/20 at 168–69. Ms. Thompson began self-isolating at home on April 1. *Id*. at 169–70. However, she recently began leaving her home to purchase groceries and other necessaries while her daughter, who was exposed to COVID-19 and had previously delivered Ms. Thompson's groceries, is quarantining. *Id*. at 169–70, 228–29.

The court notes, however, that Justice Scalia's *Crawford* concurrence does not control. Justice Scalia's concurrence construed the flexible *Anderson-Burdick* balancing standard into a "two-track approach" in which only laws imposing a severe burden are invalid; all others would be upheld. *Crawford*, 553 U.S. at 205. Notably, Justice Scalia spoke for only three Justices. The six other Justices, in both the plurality and the dissent, did not question the *Anderson-Burdick* framework. They simply disagreed over the outcome of that framework as applied to Indiana's photo ID law.

Although Ms. Thompson was in frequent contact with her daughter and granddaughter over the summer, the granddaughter has since moved away for school. *Id.* at 178–79. Ms. Thompson thus does not regularly encounter two adults who can witness her absentee ballot application. *Id.*

Organizational plaintiffs People First, GBM, and the Alabama NAACP all have members who live alone, are at high risk from COVID-19 complications, and prefer to vote by absentee ballot rather than in person to minimize their risk from exposure to the virus. *See, e.g.*, 9/11/20 at 161, 180–81; 9/9/20 at 107–110, 115; 9/1020 at 77–78, 80–81. These plaintiffs maintain that their affected members cannot satisfy the witness requirement without risking their health by engaging in person-to-person contact in contravention of health guidelines. Doc. 247 at 6.

To be sure, these plaintiffs have good reason to be concerned about the risk of COVID-19 infection, and to minimize their potential exposure to the virus. And expert trial testimony established that "the best way to avoid contact with the virus is to not be in contact with other people." 9/8/20 at 31. However, even if the witness requirement significantly burdens some individual plaintiffs and members of the organizational plaintiffs, that does not necessarily establish that strict scrutiny applies. *See Crawford*, 553 U.S. at 206 (Scalia, J., concurring) (noting that when determining whether strict scrutiny applies, the Court has looked at the burden on voters "categorically and did not consider the peculiar circumstances of individual voters or candidates") (citations omitted).

But there is more to consider. The plaintiffs showed at trial that satisfying the witness requirement presents some risk of COVID-19 exposure to voters who do not regularly encounter at least two adults simultaneously, even if these voters follow social-distancing guidelines. The defendants' contention that the "Plaintiffs failed to show that they are burdened at all" by the witness requirement, doc. 244 at 9, is simply untrue. Their argument to this effect is essentially that the individual plaintiffs have not shown enough "creativity and initiative" to get their absentee ballots witnesses or notarized. Docs. 186 at 5; 160 at 17. They contend that each plaintiff has had "opportunities to safely obtain signatures," including while meeting others outdoors or perhaps while visiting a doctor. Doc. 244 at 9. Alternatively, they maintain that the plaintiffs could arrange for someone to witness their ballots "from a distance or through a car window." *Id.* True enough. A "determined and resourceful voter intent on voting" could certainly "manage to work around" the witness requirement. *Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020). "But it is also certain that the burdens are much more unusual and substantial than those that voters are generally expected to bear. Taking an unusual and in fact unnecessary chance with your life is a heavy burden to bear simply to vote." *Id.* at 14–15.

The availability of free witness or notary services does not diminish the burden that at-risk individuals face when attempting to comply with the witness requirement. For example, the defendants point out that the Mobile County Public

Library offers those services to county residents at no charge. Doc. 245 at 7; *see also* doc. 244 at 10. Library patrons in Mobile County can travel to any one of five library branches to have their absentee ballots notarized without going indoors. 9/16/20 at 118–119. Both Ms. Bettis and Ms. Thompson, who live in Mobile County, testified that they would consider using this program to satisfy the witness requirement. 9/9/20 at 196–97; 9/14/20 at 44–45. The defendants thus contend that both those plaintiffs can satisfy the witness requirement with minimal risk. Doc. 245 at 6–7. But the burden on these plaintiffs is not simply having to get their ballot applications notarized. Rather, it is having to expose themselves to a potentially deadly virus. Whether they can obtain notarization for free from a county library is therefore of no moment, particularly when doing so generally requires interacting with library staff face-to-face outside. *See* 9/16/20 at 129.

For the same reason, it matters not that some individual plaintiffs have ventured outside of their homes to run necessary errands. The defendants describe Ms. Thompson's safety concerns as "disingenuous" because she has made "regular away-from-home trips to get her Shih Tzu shampooed." Doc. 245 at 7. But Ms. Thompson's dog has a skin condition that requires recurrent trips to both the groomer and veterinarian. 9/8/20 at 173. And she dutifully follows public health guidelines whenever she goes to either service. *Id.* True, Ms. Thompson also leaves home to visit her bank, pharmacy, doctor's office, and grocery store. *Id.* at 171. Those trips necessarily entail a level of risk for someone with Ms. Thompson's

health conditions, despite her rigorous safety precautions. *See id.* at 170. However, "[s]uch risks may be necessary to obtain food and other necessities, but the burden one might be forced to accept to feed oneself differs in kind from the burden that the First and Fourteenth Amendment tolerate on the right to vote." *League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 4927524, at *9 (W.D. Va. Aug. 21, 2020).

Ultimately, the burden imposed by the witness requirement might not be severe, but it doubtlessly exists. Other courts have recognized that the burden such a law imposes is at least significant. *See, e.g.*, *Common Cause R.I*, 970 F.3d at 14 (concluding that a two-witness or notary requirement imposed a "significant" burden as applied "in the midst of a pandemic"). Moreover, even if the requirement only slightly burdened the right to vote, this burden "must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" *Crawford*, 553 U.S. at 191 (citation omitted). Thus, the court turns to the "precise interests put forward by the State as justifications for the burden imposed by its rule . . . ." *Burdick*, 504 U.S. at 434 (citation omitted).

b.

According to state law, the witness requirement "goes to the integrity and sanctity of the ballot and election." Ala. Code § 17-11-10(c). The defendants contend that requiring witnesses curbs voter fraud by ensuring that the voter completing the ballot is the person identified on the ballot. Doc. 244 at 10. Although

there was no evidence of extensive voter fraud offered at trial, the defendants established that voter fraud has occurred on occasion. The State has a legitimate and strong interest in preventing such fraud. *Lee*, 915 F.3d at 1322 (citing *Common Cause*, 554 F.3d at 1353–54); *see also Crawford*, 553 U.S. at 196. But, while the State's determination that the witness requirement deters fraud may be reasonable, the *Anderson-Burdick* balancing test nonetheless requires the court to "'determine the legitimacy and strength of [] [the State's] interests,' while also considering 'the extent to which those interests make it necessary to burden the Plaintiff[s'] rights.'" *Stein v. Ala. Sec'y of State*, 774 F.3d 689, 694 (11th Cir. 2014) (quoting *Anderson*, 460 U.S. at 789).[54]

Based on the evidence at trial, the necessity of the witness requirement in combating voter fraud is not as clear as the defendants maintain. The plaintiffs contend that the requirement is unnecessary because it has no impact on the integrity of an absentee ballot. Doc. 247 at 9. To start, the witnesses play only a minor role in helping to prevent voter fraud. Witnesses certify only that they watched the individual sign the affidavit envelope. *See* Ala. Code 17-11-7(b). As Secretary

[54] For this reason, defendant Judge Davis's contention that the State is "only required to articulate, not to prove," a governmental interest, doc. 246 at 12, is unavailing. It is true that "*Anderson* does not require any evidentiary showing or burden of proof to be satisfied by the state government." *Common Cause*, 554 F.3d at 1353 (citing *Anderson*, 460 U.S. at 796). But the State's legitimate interests in fraud prevention still "must be weighed against the burden" the Challenged Provision imposes "to determine whether the interest is 'sufficiently weighty to justify the limitation.'" *Id.* (quoting *Crawford*, 553 U.S. at 191). It goes without saying that an interest that can merely be articulated is not weighty.

Merrill and Mr. Helms testified, witnesses need not even know the voter. 9/11/20 at 11; 9/15/20 at 178. Nor do the witnesses have to watch the voter complete the ballot, presumably to maintain ballot secrecy. Moreover, even if the witness requirement is a fraud prevention measure, there appears to be little fraud to prevent. Plaintiff Threadgill-Matthews, for example, testified that she never encountered fraudulent activity despite serving as an absentee election official for over two decades. 9/9/20 at 8–9.

The plaintiffs further allege that the requirement is ineffective because election officials do not verify the identity of the witnesses. Doc. 247 at 9. Secretary Merrill acknowledged this fact at trial. 9/11/20 at 11. Plaintiff Threadgill-Matthews also confirmed that, in her experience, the review is cursory. 9/9/20 at 8. However, the State contends that it can use witness signatures to later investigate potential voter fraud. Doc. 244 at 10–11. The witness requirement's efficacy as an investigative tool is unclear. Mr. Gregory Biggs testified that the witness requirement helped him investigate and prosecute voter fraud cases, but that was decades ago. 9/16/20 at 10–14. Moreover, Mr. Biggs at times mentioned voter signatures rather than witness signatures in his testimony, leading the court to wonder whether he was conflating the two.[55] Setting that aside, an investigative

[55] For example, when asked whether the witness signature requirement furthered investigations in Greene County, Mr. Biggs replied, "Yes. Yes, it did." 9/16/20 at 10. He explained that if a signature appeared "suspicious" after "comparing it with a driver's license," then investigators would approach the "victim voter" and ask, "Is this your signature?" *Id.* "If it's no, then it's a forged signature. So the signatures are one of the many leads or clues that you would use to help

tool's value is diminished when there are no crimes to investigate. Ms. Woodall, the Houston County Circuit Clerk, says she finds witness signatures helpful, but the few recent instances of voter fraud she testified about did not turn on the requirement. *Id*. at 71–72, 87–90. What's more, Ms. Woodall also seemed to conflate the witness signature requirement with the requirement that voters sign the ballot and corresponding affidavit.[56] Yet the requirement might at least "inspire public confidence" in Alabama's election scheme. *Crawford*, 553 U.S. at 197. The witness requirement thus has some marginal utility as a fraud prevention tool.

Additionally, the plaintiffs argue that other laws adequately safeguard elections in Alabama. Doc. 247 at 9. State law mandates that a voter casting an absentee ballot complete an application containing "sufficient information to identify the applicant." Ala. Code § 17-11-4. Absentee applicants can use their driver's license number or the last four digits of the applicant's social security number to satisfy this requirement. *See* 9/15/20 at 176. The defendants correctly

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ferret out what was a legal vote or a stolen vote." *Id.* This testimony clearly relates to the requirement that voters sign the ballot themselves, not the challenged witness requirement.

[56] When asked whether the witness signature requirement had "any value" in "helping [her] detect instances of possible voter fraud," Ms. Woodall testified that it was "extremely helpful." 9/16/20 at 71–72. She testified that "because you have the signature on the application whereby the voter is certifying that they're voting or they are asking for an absentee ballot," the "signature on the affidavit envelope is significant and helpful to ensure that you've got two signatures, one on the application, one on the affidavit, that if there is suspicion or concern or complaints, that you have something to compare to." *Id.* at 72. Thus, "that voter [is] saying and affirming that they are the ones that cast their vote, not someone else's vote but their own vote." *Id.* This testimony clearly does not concern the witness signature requirement that is challenged in this case. If anything, it shows that the State can use the voter's signature alone to discover fraudulent activity.

point out that an AEM could theoretically process an application without that specific information, doc. 244 at 11, but the AEM could do so only after satisfactorily identifying the applicant. *See* Ala. Code § 17-11-4; 9/15/20 at 176. Furthermore, with certain limited exceptions, a voter must submit a copy of his or her photo ID with an absentee ballot application. *See* Pl. Ex. 22. And because the State apparently maintains a database containing copies of at least some voter signatures, the State could verify the authenticity of the ballot using the voter's signature alone. 9/17/20 at 118. Trial testimony established that some AEMs already do this before sending absentee ballots to voters. *Id.* Finally, the affidavit submitted with absentee ballots requires absentee voters to swear that the information in the affidavit is true. Ala. Code § 17-11-7. For added protection, the State makes falsifying absentee ballot applications or verification documents a felony. Ala. Code § 17-17-24(a); 9/15/20 at 176–78.

Aside from their contention that the witness requirement supplements investigative tools, the defendants do not dispute that these other requirements are effective deterrents to voter fraud. *See* docs. 244 at 10; 245 at 8–9; 246 at 13. In fact, Secretary Merrill confirmed that a bill his office authored proposing to swap the witness requirement for absentee ballots with a photo ID requirement would have strengthened absentee voting laws in Alabama. 9/11/20 at 10–11. Considering the State's current photo ID requirement for absentee voter applications—which will remain in place for absentee voters who are neither disabled nor over age 65—

Secretary Merrill's statement undermines the legitimacy of the State's interest in maintaining the witness requirement to prevent fraud. The fact that persons who are essentially unknown to a voter can serve as witnesses, 9/11/20 at 11, also undermines the legitimacy of the witness requirement as an effective fraud deterrent.

In the end, the witness requirement marginally serves the State's interest in preventing voter fraud. The court agrees with the Western District of Virginia that an individual intent on forging the signature of another voter at the risk of a felony charge would not likely be discouraged from "writing out an illegible scrawl on an envelope to satisfy the witness requirement." *League of Women Voters of Va. v. Va. State Bd. of Elections*, 2020 WL 2158249, at *9 (W.D. Va. May 5, 2020). Finally, the court notes that Secretary Merrill testified that Alabama is one of only two states that impose a double witness requirement on absentee voters. 9/11/20 at 10. Moreover, only twelve states require even a single witness signature. *Common Cause R.I.*, 970 F.3d at 15. This underscores that "the incremental interest in . . . the two-witness or notary rule . . . is marginal at best." *Id.* Although the State has a legitimate interest in preventing voter fraud, the evidence produced at trial shows that the State's interests do not justify the burdens that the witness requirement imposes on vulnerable voters during the COVID-19 pandemic.

As a result, because some voters at risk of severe complications from COVID-19 who do not regularly encounter at least two adults simultaneously will be dissuaded from voting due to the health risks associated with complying with the

witness requirement and the steps necessary to mitigate those risks, the plaintiffs have proved that the burdens imposed on those voters outweigh the State's interest in enforcing the witness requirement. The witness requirement is therefore unconstitutional as applied to vulnerable voters who cannot safely satisfy the requirement during the COVID-19 pandemic.

2.

With exceptions for voters entitled to vote absentee under federal law, including the Voting Accessibility for the Elderly and Handicapped Act, Alabama requires absentee voters to provide a copy of their photo identification with their absentee ballot application and certain absentee ballots.[57] Ala. Code §§ 17-9-30(b), (d); 17-11-9. The plaintiffs assert that this requirement is unconstitutional as applied to Thompson and all organizational plaintiffs and their members during the COVID-19 pandemic. Doc. 247 at 17. The plaintiffs therefore seek an order enjoining enforcement of the photo ID requirement. Doc. 75 at 67.

[57] Alabama interprets the Voting Accessibility for the Elderly and Handicapped Act to exempt from the photo ID requirement any voter who is over the age of 65 or has a disability and who is "unable to access his or her assigned polling place due to a neurological, musculoskeletal, respiratory (including speech organs), cardiovascular, or other life-altering disorder that affects the voter's ability to perform manual tasks, stand for any length of time, walk unassisted, see, hear, or speak . . . ." *See* Ala. Admin. Code R. 820-2-9-.12(3); Pl. Ex. 22. The court notes that any voter over the age of 65 or with a disability who has a symptomatic case of COVID-19, *i.e.*, a respiratory disorder, would almost certainly qualify for this exception to the photo ID requirement.

a.

Under *Anderson-Burdick*, the court must first resolve whether the photo ID requirement sufficiently burdens the right to vote such that strict scrutiny applies. The plaintiffs allege that the photo ID requirement severely burdens elderly and disabled voters who are most susceptible to COVID-19. Doc. 247 at 17. For those vulnerable voters, complying with the requirement could necessitate leaving their homes and risking exposure to infected persons. *Id.* The plaintiffs list Thompson and several Alabama NAACP and People First members as vulnerable voters for whom obtaining a photocopy requires risking COVID-19 exposure because they do not have copiers at home.[58] *Id.*; 9/10/20 at 77–78; 9/11/20 at 129. The defendants respond that the photo ID requirement does not impose a severe burden—or perhaps any burden, for that matter—to these individuals for the same reasons that the witness requirement supposedly did not. Docs. 244 at 9–10; 245 at 6; 246 at 14. Allegedly, free photocopying services provided by third parties like the Mobile County Public Library provide the plaintiffs a method of satisfying the requirement that is no riskier than other everyday tasks like grocery shopping. Doc. 245 at 6–7.

[58] During trial, the President of the Alabama NAACP also mentioned Joshua Wall as one such member. 9/10/20 at 82. But unlike the other members described, it is unclear what relevance Mr. Wall has to the plaintiffs' as applied challenge to the photo ID requirement. Although he lacks a photo ID, Mr. Wall does not appear to be particularly susceptible to COVID-19 complications. He does not have any known medical conditions and is under age 65. *Id.* at 115–16. Moreover, Mr. Wall does not possess a photo ID because his religious beliefs preclude him from doing so, not because of the pandemic. *Id.* at 115. Thus, any claim based on Mr. Wall's inability to vote must be facial, and a facial challenge would of course be barred by the Eleventh Circuit's ruling in *Greater Birmingham Ministries v. Sec'y of State for Ala.*, 966 F.3d 1202 (2020).

But, again, the burdens that people accept to feed themselves differ from the burdens that the Constitution contemplates on voting. Moreover, there is no guarantee that these third parties, or even Secretary Merrill's mobile units, will be able to service all of Alabama's vulnerable voters. The Alabama NAACP, which has similarly offered photocopying during its absentee ballot clinics, expressly stated that it cannot meet the high demand for photocopying. 9/10/20 at 55–56. The Alabama NAACP also struggled to educate all vulnerable voters about this program. *Id.* at 56. So too has the Mobile County Public Library. 9/16/20 at 133.

Finally, simply asking vulnerable voters to subject themselves to COVID-19 exposure to make a copy of their ID is itself a significant burden. "[E]very potential exposure is a risk" for those voters. *League of Women Voters*, 2020 WL 4927524, at *9. As explained, that burden does not trigger strict scrutiny. *See Crawford*, 553 U.S. at 206 (Scalia, J. concurring). But even non-severe burdens must be justified by "relevant and legitimate interests of sufficient weight." *Lee*, 915 F.3d at 1318–19 (citation omitted).

b.

The defendants' justifications for the photo ID requirement mirror those offered in support of the witness requirement. They contend that the photo ID requirement deters voter fraud and safeguards voter confidence. Doc. 244 at 10–11. To be clear, the State undoubtedly has a legitimate interest in preventing voter fraud. And, a photo ID requirement serves that interest. *Crawford*, 553 U.S. at 196–97;

Common Cause, 554 F.3d at 1353–54. Indeed, the Eleventh Circuit in *Greater Birmingham Ministries* recently applied the *Anderson-Burdick* test to find that Alabama's fraud prevention interests are generally enough to justify the burdens imposed by the photo ID law. 966 F.3d at 1223–24. The defendants therefore contend that *Greater Birmingham Ministries* closes this matter. *See* docs. 245 at 9; 246 at 14.

That was a facial challenge to Alabama's photo ID law, however, and the present challenge is as applied. *See* 966 F.3d at 1221 (observing that the plaintiffs bore "a heavy burden of persuasion" because they broadly attacked the constitutionality of the photo ID law "in all its applications") (quoting *Crawford*, 553 U.S. at 200). Moreover, circumstances have changed dramatically since the *GBM* plaintiffs filed that case five years ago. *See* 966 F.3d at 1208. The photo ID law is more burdensome as applied to vulnerable voters during a pandemic. Therefore, the court must consider again whether the significant burden these voters face is "justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" *Crawford*, 553 U.S. at 191 (citation omitted).

During the COVID-19 pandemic, and as applied to particularly susceptible voters, the State's interest in preserving the photo ID requirement is diminished. Again, the State already exempts from the requirement voters who are either 65 or older or disabled, and who cannot access the polls due to a physical infirmity. Ala. Admin. Code R. 820-2-9-.12(3). The State also has an array of tools to combat voter

fraud. For example, the requirement that a voter provide identifying information—such as her driver's license number or the last four digits of her social security number—with an absentee ballot application provides sufficient information to identify absentee voters. *See* Ala. Code § 17-11-4; Pl. Ex. 22 at 19. Although the defendants suggest that this information could be stolen, doc. 244 at 11, it is unlikely that a person intent on submitting a fraudulent absentee ballot would find the photo ID requirement a meaningful deterrent.

Evidence produced at trial confirms that the photo ID requirement's value is marginal at best. Mr. Gregory Biggs testified that although he believes the photo ID requirement is a "proactive way to protect [election] integrity," it was irrelevant in the voter fraud cases he prosecuted in the 1990s. 9/16/20 at 24, 36. Ms. Carla Woodall, the circuit clerk for Houston County, similarly testified that photo IDs were not useful during an investigation she assisted with several years ago. 9/16/20 at 71. Ms. Woodall also testified that the photo ID requirement played no role in her detection of the "red flags" she observed in some relatively recent elections. 9/16/20 at 86–89.

At bottom, based on the evidence produced at trial, the State's interest in requiring voters who are either age 65 or older or disabled—a group the State already exempts when they are infirm—to comply with the photo ID requirement is minimal. In comparison, the burden on that limited class of voters is significant. The requirement thus forces some vulnerable voters who wish to vote absentee to choose

between exercising their fundamental right and protecting themselves from the virus. To be sure, some of these vulnerable voters will choose to accept that risk and vote in person—that is their prerogative. But for others, the risks will be too high, and "even one disenfranchised voter . . . is too many." *Lee*, 915 F.3d at 1321 (citation omitted). Accordingly, the photo ID requirement violates the First and Fourteenth Amendment rights of those voters who are either age 65 or older or disabled during the pandemic.

3.

The CDC recommends that election administrators offer curbside voting as an alternative to in person voting during the COVID-19 pandemic. Pl. Ex. 451 at 11. In the past, several Alabama counties have provided this service for disabled citizens who need assistance voting, but each time Secretary Merrill has intervened to stop the service. 9/11/20 at 37–38, 40–41. The plaintiffs contend that this de facto ban on curbside voting unconstitutionally burdens their right to vote by requiring them to enter polling places and thereby increase their risk of exposure to the coronavirus. *See* doc. 247 at 22. On the other hand, the defendants say that curbside voting is illegal under Alabama law, incompatible with maintaining ballot secrecy, and

impracticable.[59] Docs. 244 at 11; 246 at 8. In deciding this challenge, the court applies what is by now the all too familiar *Anderson-Burdick* balancing test.

a.

The court begins by determining whether the curbside voting ban's burdens are severe enough to trigger strict scrutiny. The plaintiffs predictably say it does, doc. 247 at 22, but the court is not convinced. Trial evidence shows that the curbside voting ban burdens the organizational plaintiffs' members at some level. Many Alabama NAACP members, for example, are older adults who are vulnerable to COVID-19 and thus want to minimize their exposure to the virus. 9/10/20 at 59. Other Alabama NAACP members have ambulatory issues that make polling places difficult for them to navigate. *Id.* These characteristics also apply to some members of GBM and People First. 9/9/20 at 134–35, 139–40; 9/11/20 at 106–107.

The defendants have two responses. First, they say that these voters can avoid polling places by voting absentee. Doc. 244 at 10. However, that assumes the plaintiffs can comply with the witness and photo ID requirements, which some cannot do without risking their health, as explained above. Moreover, the plaintiffs showed at trial that some disabled voters, including some members of People First, have strong reasons to vote in person, rather than by absentee ballot, to receive

[59] The court notes briefly that Alabama law does not prohibit jurisdictions from implementing curbside voting when it can be done consistently with the State's other election laws. This is explained in Section II(E)(2)(d), *infra*.

assistance from poll workers. One of People First's members, Jenny Lux, testified that she needs assistance on Election Day due to her visual impairment. 9/11/10 at 172. Ms. Lux cannot vote absentee because she does not regularly encounter two adults to serve as witnesses and because obtaining notarization from her bank would require Ms. Lux to go indoors, where she might expose herself to the virus. *Id.* at 181. And, as the evidence at trial showed, standing in line at a polling place poses the same risk. That's particularly true for Ms. Lux because she often votes using an Automark machine, which requires her to spend more time at the polls than other voters. *Id.* at 174. Curbside voting would minimize the risk of exposure to COVID-19 facing voters like Ms. Lux.

Second, the defendants contend that voting in person is not burdensome even for vulnerable voters because election officials are taking steps to mitigate the risks. Doc. 244 at 10. This includes requiring poll workers to wear masks, purchasing masks to provide to voters, purchasing sanitizing products, and enforcing social distancing. 9/17/20 at 160. But these commendable efforts can only do so much. Election officials are barred from requiring voters to wear masks while voting. 9/16/20 at 110. They cannot require temperature checking. *Id.* Not even voters who have COVID-19 can be turned away from the polls, *id.*, because these voters also have a right to vote. This obviously increases the risk vulnerable voters will face when visiting indoor polling places. However, election officials do at least have a plan for isolating voters who are unwilling to comply with public health guidelines.

Probate Judge Bill English, for example, testified that he will segregate voters who decline to wear a mask once they enter the building. 9/17/20 at 161–62. Such voters will either be directed to a designated area away from other voters or required to wait outside until other voters have left the polls. *Id.*

These precautions mitigate the risks associated with voting in person such that strict scrutiny is inapplicable, but it does not follow that "the lack of curbside voting is no burden." Doc. 244 at 10. Even with precautions indoors, a vulnerable voter could encounter an unmasked individual before entering the polling place. Judge English testified that unmasked voters waiting for others to clear out of polling places will do so at the entrance, which could place them in proximity with vulnerable voters entering and exiting the polls. 9/17/20 at 161. Moreover, even masked, face-to-face interactions impose some level of risk that might dissuade justifiably cautious persons from voting. *See League of Women Voters*, 2020 WL 4927524, at *9.

b.

The defendants offer a handful of interests to justify the significant burden that the curbside voting ban imposes. For starters, they contend that allowing curbside voting would "corrupt the process." Doc. 244 at 11. Allegedly, the "practicalities" of curbside voting "would harm Alabama's interests in orderly elections and in ensuring ballot secrecy." *Id.* But several Alabama counties had already adopted the practice before Secretary Merrill intervened to stop them. No

evidence suggests that doing so compromised either the orderliness of those elections or ballot secrecy. 9/11/20 at 37–42; 9/15/20 at 194–95. To the contrary, evidence showed that curbside voting would further ballot secrecy for some voters. Ms. Lux testified that voting in person using an Automark machine required poll workers to supervise her voting. 9/11/20 at 179. On at least one occasion, a poll worker scoffed at her political choices. *Id.* Voting from the privacy of a vehicle certainly would have been more secretive for Ms. Lux.

Finally, the defendants note that requiring curbside voting would raise "massive logistical problems" where the practice was implemented. Doc. 246 at 8. These problems include "cost, personnel, geographical constraints, weather, integrity of the ballot, secrecy of the ballot, traffic and time limitations." *Id.* But this court has explained that the plaintiffs seek only a negative injunction barring Secretary Merrill from preventing curbside voting, not a positive one requiring its implementation. Doc. 58 at 50; *see also* doc. 75 at 78. The defendants recognize as much. Doc. 246 at 8 n.7. Under the plaintiffs' requested relief, the only counties that will implement curbside voting are those that determine they can do so practically and consistently with Alabama law. The defendants' pragmatic objections are thus irrelevant to the court's balancing analysis.

In conclusion, the plaintiffs have shown that the curbside voting ban imposes a significant burden on vulnerable voters during the COVID-19 pandemic. The State, in contrast, has not provided "relevant and legitimate state interests

'sufficiently weighty to justify the limitation.'" *Crawford*, 553 U.S. at 191 (citation omitted). Therefore, the curbside voting ban unduly burdens the fundamental right to vote in violation of the First and Fourteenth Amendments.

* * *

Consistent with the above discussion and findings, the court makes the following conclusions of law regarding the plaintiffs' constitutional claims pleaded in Count I:

1. The plaintiffs established that, during the pandemic and as applied to voters who are particularly susceptible to COVID-19 complications, the witness requirement imposes a significant burden on their rights and the rights of their members. Because the State's interests in maintaining the witness requirement do not justify those burdens, the requirement violates the First and Fourteenth Amendments.

2. The plaintiffs established that, during the pandemic and as applied to voters who are particularly susceptible to COVID-19 complications because they are either age 65 or older or disabled, the photo ID requirement imposes a significant burden on their voting rights and the rights of their members. Because the State's interests in maintaining the photo ID requirement do not justify those burdens, the requirement violates the First and Fourteenth Amendments.

3. The plaintiffs established that, during the pandemic and as applied to voters who are particularly susceptible to COVID-19 complications, the curbside

voting ban imposes a significant burden on their voting rights and the rights of their members. Because the State's interests in maintaining the curbside voting ban do not justify those burdens, the policy violates the First and Fourteenth Amendments.

E.

The plaintiffs assert in Count II that the photo ID requirement, as applied in the COVID-19 pandemic, violates Title II of the ADA and that the curbside voting ban violates the ADA as applied during the pandemic and also outside of the pandemic. Doc. 75 at 68-71. The court will begin its analysis by addressing the plaintiffs' facial challenge to the curbside voting ban after first outlining the legal framework applicable to Title II ADA claims.

To establish a claim under Title II, the plaintiffs must demonstrate: "(1) that [they are] 'qualified individual[s] with a disability;' (2) that [they were] 'excluded from participation in or . . . denied the benefits of the services, programs, or activities of a public entity' or otherwise 'discriminated [against] by such entity;'[60] (3) 'by reason of such disability.'" *Shotz v. Cates*, 256 F.3d 1077, 1079 (11th Cir. 2001) (quoting 42 U.S.C. § 12132).[61] A plaintiff is a qualified individual if she "meets the essential eligibility requirements" to participate in the program or services at issue

[60] A "public entity" is "any State or local government [or] any department, agency . . . or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1). The defendants here do not dispute that they qualify as public entities. *See* docs. 244; 245; 246.

[61] The court discussed the legal framework for the plaintiffs' Title II claims in its memorandum opinion granting the motion for a preliminary injunction, *see* doc. 58 at 51-69, and the court revisits it only to the extent necessary to explain its analysis.

"with or without reasonable modifications . . . ." *United States v. Georgia*, 546 U.S. 151, 153–54 (2006) (quoting 42 U.S.C. § 12131(2)). To meet the second prong, exclusions under Title II need not be absolute, and a public entity violates Title II when a disabled person cannot readily access the program, service, or benefit at issue. *Shotz*, 256 F.3d at 1080 (citing 28 C.F.R. § 35.150). However, mere difficulty in accessing a benefit is not, by itself, a violation of the ADA. *See Bircoll v. Miami-Dade Cty.*, 480 F.3d 1072, 1088 (11th Cir. 2007). The third prong of the Title II claim requires the plaintiffs to establish a causal link between their disabilities and the exclusion, denial of benefits, or discrimination. *See Bircoll*, 480 F.3d at 1081, n.11; *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1212 n.6 (11th Cir. 2008).

To the extent the plaintiffs succeed in making a prima facie case of discrimination, they must then "propose a reasonable modification to the challenged public program that will allow them the meaningful access they seek." *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 507 (4th Cir. 2016). This burden is "not a heavy one . . . [i]t is enough for the plaintiff[s] to suggest the existence of a plausible accommodation, the costs of which, facially, do not clearly exceed its benefits." *Henrietta D. v. Bloomberg*, 331 F.3d 261, 280 (2d Cir. 2003). Nevertheless, the ADA does not require public entities to make modifications "that would impose an undue financial or administrative burden . . . ." *Tennessee v. Lane*, 541 U.S. 509, 532 (2004) (citing 28 C.F.R. §§ 35.50(a)(2), (a)(3)).

1.

The plaintiffs assert a facial challenge to the curbside voting ban, contending that the de facto ban violates the ADA outside of the COVID-19 pandemic because some polling sites in the State are physically inaccessible to voters with disabilities. Docs. 75 at 71; 247 at 24-25. Specifically, the plaintiffs contend that testimony from trial reveals that Dr. Peebles's, Mr. Porter's, and Ms. Lux's polling places are not readily accessible to them.[62] Doc. 247 at 24.

a.

Dr. Peebles, who has cerebral palsy and uses a wheelchair, testified that he typically votes in person at his polling site and did so in the March 2020 primary. 9/8/20 at 124, 129. To access the site, which is located in a hotel, Dr. Peebles must go through the main lobby and use an elevator with the assistance of a caregiver. *Id.* at 131. The plaintiffs contend that Dr. Peebles's polling site is inaccessible because he cannot operate the elevator by himself, and they suggest that his need for assistance means the elevator is not "useable" by Dr. Peebles, as required by the relevant regulations. Doc. 247 at 24 (citing 28 C.F.R. §35.133(a)). However, the plaintiffs have not provided any authority to support the contention that a person with a disability must be able to use the features of a facility, such as an elevator,

[62] The court found that Dr. Peebles and Mr. Porter do not have standing to challenge the curbside voting ban because a decision in their favor would not redress their injuries. *See* section II(A)(3)(b). The court addresses the merits of their claim in the alternative for purposes of a potential appeal.

without assistance in order for those features to be accessible, *see* doc. 247, and the court is aware of no such authority. And, Dr. Peebles testified that although "[t]here are some issues [] with whether there is enough room for [him] to activate the button on the elevator and then, turn, back out or pull out of the elevator without risking being hit by the door," he has "always [been] able to vote" at his polling site with assistance. 9/8/20 at 131, 153. Moreover, the plaintiffs did not present evidence that any aspect of the hotel, including its lobby and elevator, runs afoul of applicable ADA regulations.

b.

Mr. Porter has Parkinson's disease, which causes him to have difficulty walking, and he uses a cane to walk. 9/14/20 at 64-68. He testified that he normally votes in person at his polling site, and he voted in person in March. *Id.* at 76. At his polling site, Mr. Porter's disability license plate or placard allows him to park in a disabled parking space, but he still has to walk approximately 100 – 150 feet to enter the site, which proves challenging for him. *Id.* at 68, 77. Although the court does not discount the difficulty walking that distance may present Mr. Porter, his testimony that "[a]s time goes on, the greater the challenge to walk any distance" is not sufficient, without more, to show that his polling site is inaccessible to him or does not comply with the ADA.

c.

Ms. Lux normally votes in person at her polling site. 9/11/20 at 171. She changed residences recently and is not sure if her new polling site is ADA compliant. *Id.* at 171, 177. At her former polling site, Ms. Lux had to sit down while waiting because she could not stand in line for a long period due to issues with balance and her back. *Id.* at 171-75. In addition, Ms. Lux had to "walk a long distance" to get into her former polling place via a ramp. *Id.* at 177. But, as with Mr. Porter's testimony, Ms. Lux's testimony is not sufficient without more to show that the site was not accessible to her or not compliant with the ADA.

d.

The plaintiffs attempt also to establish that two polling sites, the Snowden's Women's Center in Montgomery County and Lowndesboro C.M.E. in Lowndes County, are not ADA compliant by introducing photos of the sites from Google Street View and a Lowndesboro, Alabama website. *See* 9/10/20 at 62-71; Pl. Exs. 460; 462. But, the photo from the Women's Center is dated July 2019, and it does not provide any information about the current condition of the site. Pl. Ex. 462. The photo of Lowndesboro C.M.E. is undated, and the plaintiffs did not provide evidence regarding the current condition of the site. Pl. Ex. 460; 9/10/20 at 121-22. As a result, the plaintiffs failed to establish that the polling sites pictured do not comply with ADA regulations.

To close, based on the evidence adduced at trial, the plaintiffs have not established that any polling site in Alabama is physically inaccessible to voters outside of the COVID-19 pandemic. Consequently, the defendants are entitled to a judgment in their favor on the plaintiffs' facial challenge to the curbside voting ban under Title II of the ADA.

2.

The plaintiffs also assert that the curbside voting ban violates the ADA as applied in the COVID-19 pandemic because in-person voting is not accessible to voters with conditions that place them at high risk from COVID-19. Doc. 75 at 68-71. The defendants challenge whether the plaintiffs have established the elements of their prima facie case under the ADA and whether permitting curbside voting is a reasonable accommodation.

a.

An individual has a disability under the ADA if, among other things, she has "[a] physical or mental impairment[63] that substantially limits one or more of the major life activities of such individual . . . ." 42 U.S.C § 12102(1). The ADA's implementing regulations direct that "[t]he definition of 'disability' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted

[63] "Physical or mental impairment means: (i) Any physiological disorder or condition . . . affecting one or more body systems . . . ; or [] [a]ny mental or psychological disorder such as intellectual disability . . . ." 28 C.F.R. § 35.108(b)(1)(i).

by the terms of the ADA."[64] *Id.* at § 35.108(a)(2)(i). The regulations also expressly provide that physical or mental impairments include "visual, speech, and hearing impairments, and cerebral palsy, . . . heart disease, diabetes, [and] intellectual disability," while major life activities include "walking . . . , interacting with others, and working . . . ." *Id.* at §§ 35.108(b)(2), (c)(1)(i). Finally, "'substantially limits' shall be construed broadly . . . [and] is not meant to be a demanding standard." *Id.* at § 35.108(d)(1)(i).

Turning to the specifics here, the individual plaintiffs are eligible voters, and each has a recognized physical impairment: Dr. Peebles has cerebral palsy, Mr. Porter has asthma and Parkinson's Disease, Ms. Threadgill-Matthews has hypertension, and Ms. Thompson and Ms. Bettis[65] have diabetes and hypertension. 9/8/20 at 114, 116, 168-69; 9/9/20 at 10; 9/14/20 at 6-7, 64-68. In addition, People First, GBM, and the NAACP have all identified members who are eligible voters

[64] "Because Congress explicitly authorized the Attorney General to promulgate regulations under the ADA, *see* 42 U.S.C. § 12134(a), the regulations 'must [be given] legislative and hence controlling weight unless they are arbitrary, capricious, or plainly contrary to the statute.'" *Shotz*, 256 F.3d at 1079 n.2 (quotation omitted).

[65] Ms. Bettis testified that she currently takes only over-the-counter supplements to treat her diabetes and hypertension. 9/14/20 at 6-7. Nevertheless, under the applicable ADA regulations, "[a]n impairment that is . . . in remission is a disability if it would substantially limit a major life activity when active." 28 C.F.R. § 35.108(d)(1)(iv).

with physical impairments.[66, 67] *See* 9/9/20 at 129-30, 166-67; 9/10/20 at 81, 111; 9/11/20 at 106-07, 137-38, 172, 175, 164.

To be disabling under the ADA, the plaintiffs' impairments must substantially limit a major life activity. The State defendants contend that the plaintiffs are not disabled under the ADA because the "[p]laintiffs' own choices—not a 'physical or mental impairment'—limit their major life activities." Doc. 244 at 5. But, this blithe assertion ignores the stark reality of the COVID-19 pandemic and downplays the risks exposure to the deadly virus present to the plaintiffs. Indeed, based on the risks from exposure to COVID-19, the CDC advises people with underlying conditions, like the plaintiffs, to limit interactions with people outside of their households as much as possible and to avoid others who are not wearing masks. *See* Agreed Facts at ¶ 62; Pl. Ex. 270 at 8. This CDC guidance supports a finding that it is the plaintiffs' or their members' underlying medical conditions, not their personal choices, that impact their ability to interact with others or work during the COVID-

[66] As discussed above, the plaintiff have not identified any members of BVM, and BVM operates through a network of partner organizations rather than through members of its own. *See section* II(A)(1)(b), *supra*. And, the plaintiffs have not cited any authority for the proposition that an organization may assert ADA claims for injunctive relief on behalf of non-member constituents. Thus, BVM's claims under the ADA fail, and the defendants are entitled to judgment in their favor on those claims.

[67] Judge Davis asserts that organizations cannot maintain ADA claims on behalf of their members, doc. 246 at 11, but he cites no authority for that proposition. And, at least one other district court in this Circuit has concluded that an organization has associational standing to pursue ADA claims for injunctive and declaratory relief on behalf of its members. *See Wein v. American Huts, Inc.*, 313 F. Supp. 2d 1356, 1361-62 (S.D. Fla. 2004).

19 pandemic. And, because the ADA must be broadly construed, *see Kornblau v. Dade County*, 86 F.3d 193, 194 (11th Cir. 1996) (citations omitted), the court must consider the circumstances and impact of the State's current public health emergency when determining whether the plaintiffs' physical impairments substantially limit a major life activity. Put differently, as Judge Dee Drell aptly stated, "[t]he determination of a qualifying disability in this case cannot be looked at in a vacuum." *Silver v. City of Alexandria*, -- F. Supp. 3d --, 2020 WL 3639696 (W.D. La. July 6, 2020). Thus, the court concludes that in the context of the COVID-19 pandemic, the plaintiffs' or their members' physical impairments are a qualifying disability under the ADA because their impairments substantially limit the major life activities of interacting with others or working.[68]

b.

i.

Next, the plaintiffs contend that, in the context of the COVID-19 pandemic, the individual plaintiffs and the disabled members of the organizational plaintiffs are excluded from voting in person due to the de facto ban on curbside voting. Doc. 75 The defendants counter that, even if the plaintiffs do not want to risk exposure to COVID-19 by voting in-person at a polling place, they are not excluded from voting

[68] Whether the plaintiffs' impairments constitute a disability under the ADA is a legal conclusion. *See Pritchard v. Southern Co. Serv.*, 92 F.3d 1130, 1133 (11th Cir. 1996). Consequently, contrary to the defendants' contention otherwise, it is of limited import that some plaintiffs described themselves as not disabled at trial.

because they can vote absentee. *See* doc. 244 at 6. But, based on the ADA's broad remedial purpose, if a state provides voters with a choice between in-person and absentee voting, then the ADA mandates that both options be accessible to voters with disabilities. *See Nat'l Fed'n of the Blind*, 813 F.3d at 503-04; *Disabled in Action v. Bd. of Elections in New York*, 752 F.3d 189, 198-99 (2d Cir. 2014); *see also* doc. 58 at 68, n.46; 28 C.F.R. § 35.130(b)(1)(ii). Indeed, "[t]he Supreme Court has cautioned against defining the scope of a public benefit so as to avoid questions of discriminatory effects," noting that, "'the benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled.'" *Nat'l Fed'n of the Blind*, 813 F.3d at 504 (quoting *Alexander v. Choate*, 469 U.S. 287, 301 (1985)).[69]

In addition, the availability of absentee voting does not make voting accessible to some members of People First, such as Ms. Lux, because those voters require assistance to vote and should not be forced to give up their privacy to obtain help from someone who, unlike a poll worker, does not have an affirmative obligation to maintain their ballots' secrecy.[70] 9/8/20 at 124-25; 9/11/20 at 137-38,

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[69] *Alexander v. Choate* involved a claim brought under the Rehabilitation Act, but "[c]ases decided under the Rehabilitation Act are precedent for cases under the ADA, and vice-versa." *Cash v. Smith*, 231 F.3d 1301, 1305 n.2 (11th Cir. 2000) (citation omitted), *superseded by statute on other grounds as stated in Seals v. Lee Brass Foundry LLC*, 271 F. Supp. 3d 1302, 1322 (N.D. Ala. 2017).

[70] To be sure, Ms. Lux testified that one poll worker scoffed at her political choice for president in 2008. While inappropriate, the conduct Ms. Lux described does not show that the poll worker breached the ballot's secrecy. *See* 9/11/20 at 179.

172, 179; *see also* Ala. Code. §§ 17-6-34; 17-8-8. Also, absentee voting does not provide a fail-safe that guarantees vulnerable voters a chance to cast a ballot. For example, Mr. Porter, Ms. Thompson, and Ms. Bettis all testified that they could not complete the absentee ballot process for the July election due to timing issues or other mistakes, 9/8/20 at 174-75; 9/14/20 at 18, 40-41, 78, and Ms. Ellis testified that some members of People First are unable to fill out an application or an absentee ballot because of their disabilities, *see* 9/11/20 at 136-38.

Moreover, the availability of in-person absentee voting at an AEM's office does not necessarily provide an adequate substitute for voting at a polling place on Election Day. Under the ADA, "[a] public entity, in providing any [] service, may not, . . . on the basis of disability . . . [a]fford a qualified individual with a disability an opportunity to participate in or benefit from the [] service that is not equal to that afforded others; [or] . . . that is not as effective . . . as that provided to others . . . ." 28 C.F.R. § 35.130(b)(1)(ii). Absentee ballots completed at an AEM's office are not counted as they are cast, but are stored until poll workers begin counting them after noon on Election Day. 9/15/20 at 139-40; 9/17/20 at 127-28, 148. And there is no guarantee that an in-person absentee vote would not be rejected when the counting of those ballots commences on Election Day. Consequently, a voter does not receive confirmation that her vote was counted when she casts a ballot at the AEM's office,

and that confirmation has a special significance for many voters.[71] Thus, voting by absentee ballot in person at an AEM's office is not equal to voting at the poll on Election Day.

For all of these reasons, the court finds that the proper inquiry to determine whether the plaintiffs have been excluded from voting is whether the curbside voting ban excludes them from voting in-person on Election Day, instead of whether it excludes them from voting in general.

ii.

To establish an exclusion for purposes of Title II, the plaintiffs do not have to show that they are prohibited from voting in person, but only that voting in person is not "readily accessible" to them. *See Shotz*, 256 F.3d at 1080 (citing 28 C.F.R. § 35.150). Relevant to the analysis here, aerosolized droplets containing SARS-CoV-2 may linger in stagnant air for several minutes, and the risk of transmission of COVID-19 is heightened in indoor spaces where many people share a space for a period of time, such as at a polling site. 9/8/20 at 17-18, 46-47; Pl. Ex. 269 at ¶¶ 10, 19-20. Thus, traditional in-person voting presents a heightened risk of exposure to COVID-19, and several of the plaintiffs' experts opined that vulnerable voters with underlying conditions should not vote in person due to that risk of exposure. Those

[71] Mr. Douglas, the executive director of GBM, testified that GBM's members, especially its Black members, have "a tradition of voting in person" to ensure acceptance of their ballots and confirm their "vote[s] counted in real time." 9/9/20 at 113. As Mr. Douglas stated, "There's a pride in that." *Id.*

opinions find support from Dr. Cotti's study and report, which revealed that counties in Wisconsin that had higher numbers of in-person votes cast per polling place had a higher rate of COVID-19 spread at a community level after the state's April primary. 9/10/20 at 156, 174; Pl. Ex. 267 at 3.

The risk of COVID-19 transmission is amplified in Alabama because, as noted above, poll workers in Alabama cannot check voters' temperatures, turn away voters who do not wear masks, or turn away voters who have a known case of COVID-19. *See* 9/8/20 at 31, 48-49; 9/16/20 at 110; 9/15/20 at 202. Thus, even with all the precautions State and county officials have taken to protect voters during the pandemic, such as requiring poll workers to wear masks, providing masks to voters who want them, and sanitizing, the plaintiffs or their vulnerable members still may be confronted with unmasked or visibly sick voters at their polling sites, which may dissuade them from voting in person. Indeed, Mr. Porter testified, for example, that he did not vote in July after not receiving an absentee ballot because he could not risk exposure to COVID-19 at his polling site. 9/14/20 at 78; *see also* 9/8/20 at 175; 9/14/20 at 22. The risk of COVID-19 exposure from in-person voting also increases for voters with disabilities, such as Ms. Lux, who require assistance at the polls, which prolongs the process of voting. *See* 9/11/20 at 175.

Taken together, all of this evidence shows that voting in person on Election Day is not readily accessible to the plaintiffs or their members with disabilities during the COVID-19 pandemic.

iii.

Nevertheless, the defendants suggest that voting in person is readily accessible to the plaintiffs because going to their polling places is no riskier than other interactions the plaintiffs have had outside their homes. Doc. 244 at 6. Certainly, the plaintiffs have left their homes to attend medical appointments for themselves and loved ones, go to the office, pick up food and groceries, travel to a lawyer's office, take a pet who requires care to a veterinarian and groomer, and do essential errands. *See* 9/8/20 at 12-23, 169, 171, 173, 199; 9/9/20 at 11-12, 26-27; 9/14/20 at 17, 33-35, 71-72. But, when the plaintiffs leave their homes, they wear masks,[72] practice social distancing, use gloves or hand sanitizer, and take other steps to minimize their risks, such as shopping during "senior hours." 9/8/20 at 170-73, 193, 228; 9/9/20 at 11-12; 9/14/20 at 10-11, 35-36, 75. But, more to the point, the plaintiffs should not be required to show that they avoided <u>all</u> contact with people outside their homes and remained sequestered for the past six months for them to prove that voting in person is not readily accessible due to the risk of exposure to COVID-19. And, as mentioned above, the burden a person may have to accept to tend to his or his family's essential needs in a pandemic is different in kind from the burden he should have to tolerate to access his polling place to exercise the

[72] Dr. Peebles did not wear a mask during a high-stress meeting for an unrelated case in order to have access to water, but all the other people in the meeting wore a mask, and they remained more than six-feet apart in the meeting. 9/8/20 at 116-22; 133-34.

fundamental right to vote. *See League of Women Voters of Va.*, 2020 WL 4927524, at *9. Thus, the plaintiffs' limited activities outside of their homes do not establish that their polling sites are readily accessible to them on Election Day.

c.

To satisfy the last element of their prima facie case, the plaintiffs must establish a causal link between their disabilities and their exclusion from voting. *See Bircoll*, 480 F.3d at 1081, n.11; *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1212 n.6 (11th Cir. 2008). In their post-trial brief, the State defendants contend that the plaintiffs cannot satisfy this element because no plaintiff has shown that he or she is "actually limiting their trips out of the home and personal contact with others." Doc. 244 at 7 (emphasis in original omitted). But, respectfully, this is a gross mischaracterization of the plaintiffs' testimony. As detailed above, the individual plaintiffs testified at length about steps they have taken to reduce contact with people outside their homes. *See* section I(E)(1), *supra*. For example, Ms. Bettis went so far as to miss the funeral of a close friend's son to avoid contact with others at the funeral. 9/14/20 at 11. And, the court rejects the notion that the plaintiffs must prove they have forsaken all interactions with people outside their homes during the course of the pandemic before they can show a causal link between the conditions that make them vulnerable to COVID-19 and their exclusion from the polls.

Undisputed evidence establishes that the CDC recommends that people like the plaintiffs or their members with underlying conditions minimize their contact

with others outside of their homes and avoid people who are not wearing masks. Pl. Ex. 270 at 8. In addition, the plaintiffs' experts also recommend that vulnerable voters should not risk going inside a polling place to vote in November. 9/8/20 at 46-48; 9/9/20 at 38, 56-57. Based on the CDC guidance, the expert opinions, and the risk of COVID-19 transmission indoors, *see* 9/9/20 at 31; section I(A), *supra*, the court finds a causal connection between the plaintiffs' impairments that make them vulnerable to COVID-19 and the inaccessibility of their polling sites during the COVID-19 pandemic. Thus, the plaintiffs have established a prima facie case for their Title II claims challenging the curbside voting ban as applied in the pandemic.

d.

The final step in the analysis is a review of the reasonable accommodation the plaintiffs propose "that will allow them the meaningful access they seek." *Nat'l Fed'n of the Blind*, 813 F.3d at 507. The plaintiffs propose lifting the ban on curbside voting as an accommodation to make in-person voting more accessible to voters with disabilities. The defendants argue that permitting curbside voting is not a reasonable accommodation because curbside voting violates Alabama law or would constitute a fundamental change to Alabama's voting laws.[73] Docs. 244 at 8; 246 at 7-9. Based

[73] In their opposition to the plaintiffs' motion for partial summary judgment, the State defendants contend that permitting curbside voting is not a reasonable modification because Alabama law already provides a modification for the plaintiffs, i.e., "[a]ny voter who is 'mobility disabled' or over the age of 70, who so requests, may move to the front of the line at the polling place." Doc. 206 at 24 (citing Ala. Code 17-9-13(c)). But, this law does nothing for the plaintiffs who are under

on the evidence, the court concludes the plaintiffs' proposed accommodation is reasonable.

First, to reiterate, the plaintiffs do not request an order mandating curbside voting state-wide, but only an order enjoining Secretary Merrill from prohibiting curbside voting in counties willing to implement the practice. Thus, the defendants' arguments regarding the burdens imposed by the resources required to implement curbside voting are inapposite here.

Second, no provision of Alabama law expressly prohibits curbside voting. *See* Agreed Facts at ¶ 110; 9/15/20 at 184. Relatedly, the defendants point out that no provision expressly allows it either, and assert that, therefore, curbside voting runs afoul of Alabama law. 9/11/20 at 70; 9/15/20 at 184. However, curbside, or drive-up, voting is a form of in-person voting (which State law of course permits)—the practice involves a voter who is present in person to sign the poll book, complete a ballot, and give it a poll worker, who then inserts it into a tabulation machine.[74] *See* 9/11/20 at 175-76; 9/14/20 at 79; 9/15/20 at 157-58. And, simply because no provision of Alabama law explicitly states that a voter may cast a ballot in person

70 and not mobility disabled, and who have underlying conditions, such as Ms. Bettis and Ms. Threadgill-Matthews. And, even for plaintiffs who could benefit from this law to go to the front of the line, they still must go inside their polling place to cast a ballot, risking exposure to other voters.

[74] Because the voter is present to cast a ballot in person, curbside voting is fundamentally different in kind from voting remotely by text, phone, or email, and the defendants' arguments drawing comparisons between curbside voting and voting remotely, *see* doc. 246 at 8, are strawmen that the court will not address.

from a car with the help of poll workers does not mean that the practice is prohibited by law. Indeed, Alabama law expressly provides that poll workers may assist voters who request help completing their ballots. *See* Ala. Code §§ 17-9-11; 17-9-13; 17-8-1(b)(4). Moreover, the defendants admit that AEMs can hold events outside of their offices to process and collect absentee ballots, and they encourage the practice, even though Alabama Code provides that "[t]he county commission shall designate the place or office where [the AEM's] duties shall be performed." Ala. Code § 17-11-2; 9/11/20 at 48-50. To state the obvious, no provision of the Code on absentee voting explicitly provides that an AEM may travel to nursing homes, college campuses, or parking lots, to accept absentee ballots, *see* Ala. Code §§ 17-11-1 – 17-11-19, as Secretary Merrill encourages AEMs to do to make the process more accessible to voters, *see* 9/11/20 at 48-49. Thus, just as an AEM may lawfully hold events to collect absentee ballots that are not expressly contemplated by Alabama Code, so too may counties, if they are so inclined, lawfully provide curbside voting as a service to voters. Similarly, because curbside voting is a form of in-person voting, it would not fundamentally alter elections in Alabama.

The defendants also contend that counties cannot offer curbside voting because the Alabama legislature has not granted counties the authority to implement the practice, which the defendants add may "undercut Alabama's interest in secure and uniform elections." Docs. 244 at 8; 246 at 8. These contentions are unavailing. First, the Alabama legislature has expressly authorized counties to conduct elections,

including by selecting and operating polling sites for in-person voting.[75] *See* Ala. Code §§ 17-1-1, *et. seq*. Thus, because curbside voting is a form of in-person voting at a polling site, counties may implement the practice without a grant of additional authority from the legislature. Next, the defendants did not present any evidence that curbside voting that complies with relevant State laws would be less secure than traditional forms of in-person voting. *See* 9/11/20 at 37-39, 42; 9/15/20 at 194-95. Rather, they simply speculated that nefarious poll workers may decide to throw away ballots instead of putting them in the tabulation machine if the ballots are removed from a voter's line of sight. *See* 9/15/20 at 148-59. But, poll workers take an oath to maintain the integrity of elections by complying with relevant laws, *see* Ala. Code § 17-8-8; doc. 248- at 148-126, ¶ 8.4.4, and should be trusted to take that oath seriously. In addition, Alabama's voting practices are already decentralized across the State, with different counties utilizing different procedures. For example, not every county utilizes electronic pollbooks to verify voters at polling sites, and county probate judges determine how to lawfully handle "voting logistics" in their counties. *See* 9/15/20 at 167, 186. Therefore, allowing counties, who believe they can do so without impacting ballot integrity concerns, to implement curbside voting will not

[75] The defendants contend that the absence of county commissions, who are responsible for selecting polling sites, as defendants in this action precludes the court from granting relief to the plaintiffs on the curbside voting claims. But, curbside voting does not necessarily require a county to change the location of their polling sites, and, as mentioned above, the plaintiffs do not seek an order mandating counties to provide curbside voting.

undermine the State's interest in uniform elections even if only some counties offer the service to voters.

For all of these reasons, the court finds that enjoining the curbside voting ban to permit those counties, if any, that are willing to provide the service to do so is a reasonable accommodation. The plaintiffs with standing to assert the claim are entitled to a judgment in their favor against Secretary Merrill on their Title II claim challenging the curbside voting ban.

3.

Next, the plaintiffs assert that the photo ID requirement violates Title II of the ADA as applied in the COVID-19 pandemic because the requirement makes absentee voting inaccessible for Ms. Thompson and members of People First, the Alabama NAACP, and GBM with underlying conditions. Doc. 75.

a.

As discussed above, Ms. Thompson and members of these three organizational plaintiffs are eligible voters with a disability. *See* section, II(E)(2)(a), *supra*. Still, the defendants contend that those plaintiffs are not qualified individuals with disabilities because satisfying the photo ID requirement is an essential eligibility requirement for absentee voting. *See* docs. 244 at 6, n.5; 245 at 9-11. In particular, the defendants contend that the Eleventh Circuit's recent decision in *Greater Birmingham Ministries v. Secretary of State for Alabama*, shows that, contrary to this court's decision at the preliminary injunction stage, the photo ID

requirement is an essential eligibility requirement. Doc. 245 at 9-11. The court respectfully disagrees. To be sure, outside of the COVID-19 pandemic, the Eleventh Circuit found that "the burden of presenting a photo ID in order to vote is 'justified by relevant and legitimate state interests "sufficiently weighty to justify"' the burden on Alabama voters." *Greater Birmingham Ministries*, 966 F.3d at 1223–24 (quoting *Crawford*, 553 at 191). Simply because a requirement serves a weighty state interest, however, does not make it an essential eligibility requirement. Instead, "'essential eligibility requirements' are those requirements without which the 'nature' of the program would be 'fundamentally alter[ed].'" *Mary Jo C. v. New York State & Local Ret. Sys.*, 707 F.3d 144, 158 (2d Cir. 2013) (quoting 28 C.F.R. § 130(b)(7)). And, "[w]hether a particular aspect of an activity is 'essential' will turn on the facts of the case." *Schaw v. Habitat for Humanity*, 938 F.3d 1259, 1266 (11th Cir. 2019).[76]

Alabama already exempts a subset of absentee voters with disabilities from the photo ID requirement, including some of the plaintiffs.[77] *See* Doc. 249-4 at 1. In their post-trial brief, the State defendants insist that this exemption, or carveout,

[76] *Schaw* addressed the Fair Housing Amendments Act, but the Eleventh Circuit drew its reasonable accommodation analysis, including the discussion of whether the accommodation would remove an essential requirement, from precedent concerning the ADA. *See* 938 F.3d at 1265 n.2.

[77] A voter over the age of 65 or with a disability who is "unable to access his or her assigned polling place due to a neurological, musculoskeletal, respiratory [], cardiovascular, or other life-altering disorder that affects the voter's ability to perform manual tasks, stand for any length of time, walk unassisted, see, hear, or speak" does not have to include a copy of a photo ID with an absentee ballot application. Doc. 249-4 at 1; Ala. Admin. Code R 820-2-0-.12(3).

"is not an exception" to the requirement because "voters still must identify themselves." Doc. 244 at 6, n.5. That statement illustrates why the photo ID requirement is not essential—voters provide sufficient information on their absentee ballot applications to identify themselves without the need for a photo ID. Indeed, Ms. Barnett testified that with a voter's name, address, and date of birth from the absentee ballot application she has "a good amount of data to be able to identify the voter." 9/17/20 at 113. In addition to that information, voters also provide driver's license numbers or the last four digits of their social security numbers with an absentee ballot application, and staff in the AEM's office can verify the information provided to confirm the voter's identify before mailing an absentee ballot to the voter. *See id.* at 114; doc. 249-4 at 1. Because absentee voters provide information in their absentee ballot application that allows county officials to verify their identities without a photo ID, enjoining the photo ID requirement for absentee voters with disabilities that put them at-risk of severe complications from COVID-19 would not fundamentally alter the nature of Alabama's absentee voting program. Thus, the requirement is not an essential eligibility requirement, *see* doc. 58 at 66-67, and the plaintiffs are qualified individuals with disabilities.

b.

Ms. Schwarzauer contends the photo ID requirements does not exclude the plaintiffs from absentee voting because any individual with a disability is exempt from the requirement. Doc. 233 at 3. This contention overlooks that Alabama

narrowly interprets the exemption, such that it applies only to voters with specific disabilities. *See* doc. 249-1 at 1. Consequently, the exemption does not apply to Ms. Thompson or to all members of People First, GBM, and the Alabama NAACP with underlying medical conditions that place them at heightened risk from COVID-19. Ms. Thompson and those members must comply with the requirement to vote absentee.

As discussed above, People First, GBM, and the Alabama NAACP identified members with conditions that make them vulnerable to COVID-19 and for whom obtaining a copy of their photo ID requires risking exposure to the virus because they cannot make a copy at home. *See* section II(D)(2)(a), *supra*; 9/10/20 at 77–78, 94-95; 9/11/20 at 128-29. While the free curbside copy service offered by the Mobile County Public Library may mitigate that risk for those members who live in the County and have a vehicle they can drive to access the service, it does not help People First members who cannot drive, or vulnerable members of People First, GBM, and the Alabama NAACP who live outside of Mobile County. *See* 9/11/20 at 115, 129-30, 167; 9/9/20 at 129-30, 166-67; 9/10/20 at 81. And, for those voters, the need to risk exposure to COVID-19 by leaving their homes or interacting with another person to obtain a copy of their IDs could dissuade them from voting absentee in November. As a result, absentee voting is not readily accessible to vulnerable members of People First, GBM, and the Alabama NAACP during the COVID-19 pandemic, and the photo ID requirement excludes them from absentee

voting. In light of the CDC's recommendation that people with underlying conditions minimize their contact with others outside of their homes, Pl. Ex. 270 at 8, the court finds a causal link between this exclusion and the organizational plaintiffs' members' physical impairments.

As to Ms. Thompson, she must leave her house or interact with another person to obtain a copy of her photo ID, risking exposure to COVID-19. However, after learning of the Mobile County Public Library's curbside notary and copying service in this litigation, Ms. Thompson testified that she would use the service, in spite of her reasonable concerns about COVID-19. 9/8/20 at 197. Thus, because Ms. Thompson agreed that she could obtain a copy of her ID from the curbside service at the library, complying with the photo ID requirement does not exclude Ms. Thompson from absentee voting, and the defendants are entitled to a judgment in their favor on Ms. Thompson's Title II claim challenging the photo ID requirement.[78]

c.

To make absentee voting readily accessible to People First, GBM, and the Alabama NAACP members with disabilities, the plaintiffs propose that the State

[78] This holding is not inconsistent with the court's conclusion that the photo ID and witness requirements impose an unconstitutional burden on Ms. Thompson's fundamental right to vote, notwithstanding the library's curbside services. *See* section II(D)(2), *supra*. Even if Ms. Thompson is willing to accept the risk of COVID-19 imposed by the photo ID requirement, thereby making absentee voting readily accessible under the ADA, it does not mean that the State's interests in the requirement justifies the burden for purposes of the *Anderson-Burdick* analysis.

expand the current exemption to the photo ID requirement during the COVID-19 pandemic to apply to all voters with conditions that place them at high risk of severe complications from COVID-19. Doc. 247 at 15. According to the defendants, this accommodation is not reasonable because AEMs use the copy of the ID voters submit with their absentee ballot applications to identify the voters. Doc. 245 at 10. Indeed, Ms. Barnett testified, for example, that she compares the signature on the copy of the photo ID to the signature on the absentee ballot application to help her verify the identity of the voter completing the application.[79] 9/17/20 at 118. However, Ms. Barnett also testified that with the voter's name, address, and date of birth from the application, she has "a good amount of data to be able to identify the voter," and the application also includes the voter's driver's license number or the last four digits of his social security number to further help an AEM verify the voter's identity. *Id.* at 113-14. With all of the information provided in the application to identify the would-be absentee voter, a copy of the voter's ID is not essential to verifying the voter's identity. Indeed, neither Ms. Barnett nor Ms. Woodall, the Circuit Clerk and AEM for Houston County, indicated that they encountered any difficulty verifying the identity of voters who are exempt from the photo ID requirement.

[79] If the voter registered to vote using a paper form, then the voter's signature is on file in the AEM's computer system, and the AEM can compare the signature on the application to the signature on file. 9/17/20 at 118.

Because the photo ID requirement is not necessary to verify an absentee voter's identity, enjoining the requirement during the COVID-19 pandemic for voters with conditions that place them at risk of severe complications from the virus would not cause an undue burden on the defendants or fundamentally alter Alabama's absentee voting program. As a result, the court finds that the plaintiffs' proposed modification is reasonable, and People First, GBM, and the Alabama NAACP are entitled to a judgment in their favor against the State and Ms. Schwarzauer on their Title II claim challenging the photo ID requirement.

* * *

To conclude, based on the legal framework for ADA claims and the findings in this case, the court makes the following conclusions of law:

1. The plaintiffs failed to establish that any polling site in Alabama is not accessible to voters with disabilities outside of the COVID-19 pandemic. As a result, they have not established that the defendants have excluded any voter from voting by reason of a disability outside of the COVID-19 pandemic, and the defendants are entitled to judgment in their favor on the plaintiffs' claims presenting a facial challenge to the curbside voting ban under Title II of the ADA.

2. The defendants are entitled to judgment in their favor on BVM's claims asserted under Title II of the ADA.

3. Ms. Threadgill-Matthews and the members of People First, the Alabama NAACP, and GBM with underlying health conditions are qualified

individuals with disabilities under the ADA. Due to the curbside voting ban, voting in person on Election Day is not readily accessible to those individuals during the COVID-19 pandemic, and the exclusion is because of their disabilities. In addition, enjoining enforcement of the ban to permit counties who are willing to do so to offer curbside voting is a reasonable modification. As a result, the curbside voting ban violates Title II of the ADA as applied in the COVID-19 pandemic, and Ms. Threadgill-Matthews, People First, the Alabama NAACP, and GBM are entitled to a judgment in their favor against Secretary Merrill on that claim.

4. The photo ID requirement is not an essential eligibility requirement for absentee voting, and Ms. Thompson is a qualified individual with a disability. Even so, because Ms. Thompson agreed that she can utilize her local library's curbside copying service to comply with the photo ID requirement, she did not establish that the requirement makes absentee voting inaccessible to her during the COVID-19 pandemic. Consequently, the defendants are entitled to a judgment in their favor on Ms. Thompson's Title II claim challenging the photo ID requirement.

5. The photo ID requirement is not an essential eligibility requirement, and the members of People First, the Alabama NAACP, and GBM with underlying health conditions are qualified individuals with disabilities. During the COVID-19 pandemic, the photo ID requirement for absentee voting makes absentee voting inaccessible for those members, and enjoining enforcement of the ban is a reasonable modification. As a result, People First, the Alabama NAACP, and GBM are entitled

to a judgment in their favor on their Title II claim challenging the photo ID requirement as applied in the COVID-19 pandemic.

F.

The plaintiffs claim in Count III that the curbside voting ban and witness requirement violate Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 ("Section 2"). Doc. 75 at 71-74. Section 2 provides that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color . . . ." 52 U.S.C. § 10301(a). A plaintiff may file two types of cases under Section 2: vote denial/abridgement and vote dilution. *Greater Birmingham Ministries v. Sec'y of State of Ala.*, 966 F.3d 1202, 1234-35 (11th Cir. 2020). These types of claims are distinct, and the analysis is different depending on the type of claim filed.[80] *Id.* (noting a vote denial claim was "a very different type of claim" than a vote dilution claim).

[80] The plaintiffs argue the *Gingles* factors are controlling, but the Eleventh Circuit has "questioned the applicability" of such factors to vote denial cases holding that the lower court's refusal to apply the *Gingles* factor to the vote denial claim was "not error." *Greater Birmingham Ministries*, 966 F.3d at 1234-38. The court further noted that attempting to apply the *Gingles* factors to a vote denial claim was futile. *Id.* at 1235 ("We will attempt [to apply the *Gingles* factors] however, in order to demonstrate the futility of the exercise."). In light of *Greater Birmingham Ministries*, the court declines to apply the *Gingles* factors here.

To succeed on their Section 2 claims, the plaintiffs must first identify a "voting qualification or prerequisite to voting or standard, practice or procedure" that purportedly abridges minority voting rights. 52 U.S.C. § 10301(a). The plaintiffs bring two challenges under the VRA. First, they assert that the witness requirement is a "voting qualification or prerequisite" that abridges Black voters' access to the polls. Doc. 75 at ¶ 71-74. Second, the plaintiffs allege the curbside voting ban is a "practice or procedure" that abridges Black voting rights. Doc. 75 at ¶ 71-74.

The plaintiffs must establish that Black or minority voters have experienced "a denial or abridgement of the right . . . to vote . . . ." 52 U.S.C. § 10301(a); *Greater Birmingham Ministries*, 966 F.3d at 1233. Section 2 defines this as occurring when, "the political processes leading to nomination or election . . . are not equally open to participation by [the protected class] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10303(b). The existence of a denial or abridgment is "the critical question" and involves considering "whether the political process is equally open to minority voters[.]" *Thornburg v. Gingles*, 478 U.S. 30, 63, 79 (1986). The Eleventh Circuit explained a denial or abridgement exists when there is not "meaningful access to the political process[.]" *Osborn v. Cox*, 369 F.3d 1283, 1289 (11th Cir. 2004) (quoting *Nippers v. Smith*, 39 F.3d 1494, 1524 (11th Cir. 1994)).

If the plaintiffs demonstrate a denial or abridgement, they must then show that "the challenged law . . . caused the denial or abridgement of the right to vote on account of race." *Greater Birmingham Ministries*, 966 F.3d at 1233. This causation element has two parts. For one, "the challenged law has to 'result in' the denial or abridgement of the right to vote." *Id.* Essentially, the plaintiffs must show that but for the challenged provision, the protected class would have equal access to the polls. 52 U.S.C. § 10301(a) ("[n]o voting qualification . . . shall be imposed . . . *in a manner which results* in a denial or abridgement"). Second, the plaintiffs must show that, "the denial or abridgment of the right to vote [is] 'on account of race or color.'" *Greater Birmingham Ministries*, 966 F.3d at 1233. Stated differently, the plaintiffs must "show[] that racial bias in the relevant community[81] caused the alleged vote-denial or abridgment[.]" *Id.* (quoting *Johnson v. Governor of State of Fla.*, 405 F.3d 1214, 1238 (11th Cir. 2005) (Tjoflat, J., specially concurring)).

[81] It is clear this element of a Section 2 claim does not require the plaintiffs to prove discriminatory intent. Such an interpretation would disregard the plain statutory language and the prior Supreme Court precedent. The Supreme Court unanimously decided that the 1982 amendment to Section 2 does not require proof of discriminatory intent. *See Chisom v. Roemer*, 501 U.S. 380, 294-95 (1991) ("proof of intent is no longer required to prove a § 2 violation . . . proof of discriminatory intent is no longer necessary to establish *any* violation of the section") and *id.* at 406 (J. Scalia, dissenting) ("the statute proscribes intentional discrimination only if it has a discriminatory effect, but proscribes practices with discriminatory effect whether or not intentional"). Instead, consideration of the causal impact of "racial bias in the relevant community" is a consideration of whether "the challenged voting standard or practice causes the discriminatory impact as it interacts with social and historical conditions." *Ohio Democratic Party v. Husted*, 834 F.2d 620, 638 (6th Cir. 2016).

1.

The plaintiffs challenge the absentee voter witness requirement mandating voters sign an affidavit in the presence of two witnesses or a notary and that the witnesses or notary sign the same affidavit acknowledging that they observed the voter sign the affidavit. This requirement forces a voter to either 1) interact with two witnesses or 2) hire and interact with a notary. 9/14/20 at 139-40, 178. And, all parties agree, in the context of the coronavirus pandemic, interacting with individuals outside of one's household increases the risk of exposure to COVID-19. Agreed Facts at ¶ 62. In fact, the CDC advises those at higher risk of severe illness from COVID-19 against interacting with individuals outside of their household, especially those who are not wearing masks. Agreed Facts at ¶ 62; Pl. Ex. 270 at 8. The evidence has shown Alabamians at high-risk for COVID-19 complications and death are following the CDC's guidance.[82] Pl. Ex. 270 at 30-33.

[82] When looking at adults at high risk because of their medical condition in the Birmingham area, 74.4 percent report avoiding crowded or public places, 86 percent stay six feet from others, and 88.8 percent report wearing masks when outside of their home. Pl. Ex. 270 at 30. These percentages remain high for those who are not at high risk. *Id.* In a statewide Auburn University at Montgomery poll, "78.1 percent of Alabama registered voters said that they were 'very' or 'somewhat likely . . . to voluntarily wear a mask or face covering in public if the COVID-19 pandemic continues through the end of the year." *Id.* at 31, n.82. When looking specifically at Black voters under 60 who are at high risk due to a medical condition, 74.8 percent report avoiding public or crowded places that are not job-related. *Id.* at 30-31. Higher percentages of Black voters in that category report maintaining six feet of distance and wearing masks when they must go out in public. *Id.*

a.

The plaintiffs assert the Challenged Provision causes a denial or abridgement of Black individuals' right to vote. Essentially, the plaintiffs argue that Black Alabamians have less opportunity to vote than White Alabamians because Black voters are less able to meet the witness requirement without increasing their risk of COVID-19 complications or death. Based on the evidence presented at trial, the court agrees.

i.

To begin, Dr. Traci Burch, an expert on political science and political participation explained, "Black Alabama adults at high-risk for severe illness from COVID-19 are far less able to satisfy these requirements for absentee voting than high-risk White Alabama adults while following CDC guidance to avoid contact with people from outside their household." Ex. 270 at 7; 9/14/20 at 191-192. In support of this contention, the plaintiffs proved at trial that Black voters at higher risk are less likely to live in households with two adults over the age of 18. "22.0 percent of Black adults age 18 to 64 who report being in fair or poor health live in a household with no other adults, meaning that they would need to contact two additional witnesses from outside their household. This rate is five times higher than that for White adults with health issues; only 3.9 percent of White adults with health issues do not live with any adults." Pl. Ex. 270 at 34; 9/14/20 at 203-04. And the disparity is even greater for Black individuals over age 65: "nearly 90 percent of

Black people age 65 and older would need to risk contacting at least one other person outside their household to meet the witness requirement" compared with "77.2 percent of White people and 47.1 percent of Latino people." Pl. Ex. 270 at 37. While the percentages vary based on the study, the racial disparity remains. Ex. 270 at 35-38. With less access to potential witnesses within their households, high-risk Black voters are forced to violate the CDC's guidance and expose themselves to increased risk of COVID-19 infection.

ii.

Unlike in *Greater Birmingham Ministries* and *Brown v. Detzner*, where Alabama and Florida had implemented measures to counteract the disparate impact, the defendants have not shown that the many examples they offered alleviate the disparate burdens Black voters face here.[83] To be clear, the defendants have not sat idly by and have instead undertaken efforts to address the pandemic. But, none of these actions, individually or collectively, alleviate the disparate burdens Black voters face.

[83]*Greater Birmingham Ministries*, 966 F.3d at 1236 (noting the disparate burdens minority voters faced to get a voter ID were eliminated by "the wide range of photo IDs" that could be used to vote, the "State's willingness to cover the cost of obtaining . . . required documentation" and the "availability of mobile unit locations and home visits . . . ."); *Brown v. Detzner*, 895 F. Supp. 2d 1236 (M.D. Fla. 2012) (holding decrease in number of in-person early voting days was not a denial or abridgement when the new rules allowed for the same number of early, in-person voting hours and required more weekend early-in person voting).

To begin, Mr. Clay Helms, the Director of Elections and Deputy Chief of Staff to Secretary of State Merrill, testified that he has offered to send staff members to voters' residences, so that they could safely have their ballots witnessed without additional COVID-19 risk. 9/15/20 at 163. The court does not doubt Mr. Helms sincerity that he "was willing to do what [he] needed to do to help" the voter. *Id.* However, to the extent this testimony supports any inference the Secretary of State has eliminated the burden of the witness requirement on Black voters, the court expressly finds otherwise. This testimony was the only evidence provided that the Secretary of State's office offers this service, and there is no evidence that Secretary Merrill's office has in fact ever provided this service to voters. Further, to the extent that the Secretary of State and Mr. Helms are able to help some voters, it is questionable that they will be able to provide witnesses for the absentee ballots of all voters who are higher-risk for COVID-19, live alone, and lack access to critical resources necessary to vote safely by absentee. Finally, there is no evidence that voters know about this service, or that the Secretary of State's office has made any effort to advertise the service.

Second, the State has allowed anyone who wants to vote absentee due to concerns about COVID-19 to do so for the upcoming election. But, the voter must still satisfy the witness requirement, and it is an obstacle for those who live alone or with just one other adult and are at high risk due to underlying conditions. Third, while the State also allows in-person absentee voting, taking advantage of this would

also not eliminate the increased exposure to COVID-19 for these affected groups. Like regular voting on Election Day, in person absentee voting entails encountering more potentially infectious people (who may not be wearing a mask) and potentially contaminated surfaces than the voter would if they did not have to leave their home. 9/9/20 at 61, 115; 9/15/20 at 201-202.

Fourth, the defendants presented evidence that Secretary Merrill encourages AEMs to offer absentee curbside voting, *see* 9/11/20 at 48-50, and at least one AEM has provided absentee curbside voting in Wilcox County, *see* 9/9/20 at 9, 27. While this is an example of AEMs' efforts to respond to the pandemic, the potential to have a ballot witnessed through a car does not remedy the abridgment either because Black voters are less likely than White voters to have access to a car. 9/9/20 at 89-90. The parties agree that in Alabama, 12.7 percent of Black households do not have a vehicle compared to 3.9 percent of White households. Doc. 228 at ¶13. Further, the plaintiffs have proven Black high-risk Alabamians face poverty at higher rates than their White high-risk counterparts.[84]

[84] For Alabamians who are high risk due to a medical condition: 35.6 percent of Black individuals have incomes below $25,000 compared to only 6.6 percent of White individuals. Pl. Ex. 270 at 39. 53.3 percent of Black Alabamians who are high risk due to a medical condition are food insecure, compared to only 20.5 percent of White Alabamians who are high risk due to their health. *Id.* Black Alabamians who are high risk due to their age are more likely than White Alabamians to experience poverty as well. *Id.* 39.8 percent of senior Black individuals have incomes below $25,000 whereas only 14.9 percent of senior White individuals do. *Id.* 27.1 percent of White seniors are food insecure in Alabama compared to the 59 percent of Black seniors who are food insecure. *Id.*

Fifth, for similar reasons, the Mobile County Public Library's curbside notary services at five of its branches do not undercut the disparity in risks faced by Black voters. 9/16/20 at 118-119. Dr. Latesha Elopre, the plaintiffs' expert on internal medicine, infectious diseases, and disparities in access to health care and health outcomes in Alabama, testified that curbside notary services are a reasonably safe way for a high-risk voter to comply with the witness requirement *if the voter was in a car alone*. 9/9/20 at 94. Dr. Elopre's point cuts to the heart of the matter—the Library's services are helpful, but only for voters who have access to a vehicle and live in Mobile County. As stated previously, Black voters are less likely to have a household vehicle than White voters, meaning they would have to ride with a person outside of their household (if they can get a ride) or take public transportation (assuming it is even an option) in violation of CDC guidance. Doc. 228 at ¶13. Further, the Library's director testified that not many residents have used the curbside service, a fact she attributes to citizens not knowing about the service despite her advertisements in a local paper that has free distribution. 9/16/20 at 120-122, 133. And, even if the Library's service becomes widely known and adequately alleviates the disparate impact on Black voters in Mobile County, the benefit would be limited because there was no evidence presented that libraries in other parts of the State are offering this service.

Nor is the electronic notary option the Governor allowed a tool that can counteract the disparate impact. State Ex. 25 at 4. The evidence established that

Black voters are less likely to have access to the technological tools needed to employ a notary remotely and they are less likely to have the means to pay for the cost of the notary. The plaintiffs presented evidence that of forty-two Alabama notaries who responded to their survey, only six stated they do not charge to notarize ballots. 9/13/20 at 206. The others charge $5, $10, or more than $10. *Id.* And, "some also charged if they were required to travel to meet people in order to notarize signatures." *Id.* These fees may seem nominal to some individuals, but they can prove a major obstacle for those living in poverty. In Alabama, 27.7 percent of Black individuals live in poverty compared to only 11.3 percent of White individuals. Doc. 228 at ¶10. Among high-risk Alabamians, the difference in the rates of Black individuals and White individuals experiencing poverty is even more pronounced.[85] Pl. Ex. 270 at 39.

Black voters are also less likely to have access to the internet or a computer in their home making the option of remote notarization a fiction for a sizeable portion of Black voters. The evidence at trial showed that 29.6 percent of Black households do not have broadband internet compared to 17.2 percent of White households. Doc. 228 at ¶ 12. 18.9 percent of Black households do not have a computer, smartphone, or tablet compared to 11 percent of White households. *Id.* at ¶ 13. Similar to the disparities in those experiencing poverty, these numbers are worse when looking at

[85] *See* note 6, *supra*.

high-risk Alabamians. Of those Alabama residents who are high risk due to age, 30 percent of White individuals do not have access to internet at home compared to 50 percent of Black individuals. 9/14/20 at 207.

All of these facts prove that Black voters who are at high-risk are less able to safely meet the absentee voter witness requirement than comparable White voters. Black voters at high risk are more likely to have to break established safety protocols by exposing themselves to a witness outside their home. They are less likely to be able to utilize additional safety measures like having someone witness their affidavit from outside a window or paying for a notary to do so remotely. 9/14/20 at 207; 9/9/20 at 89-90; Pl. Ex. 270 at 40; Doc. 228 at ¶¶ 10, 13-14. Because of this, the court holds that the plaintiffs have established that Black individuals have less of an opportunity to vote than White individuals in Alabama during the pandemic, and that their voting rights have been abridged. Therefore, the plaintiffs have successfully proven the first element of the claim.

iii.

The defendants argue that, despite this evidence of a disparate impact, there is no denial or abridgement because Black and White voters *who are equally at risk* for COVID-19 complications or death due to health or age, "face similar outcomes

. . . ." and have equal access to witnesses.[86] But, this argument ignores reality in Alabama—all things are not equal in Alabama in relation to COVID-19. Based on the evidence at trial, Black and White voters are not "equally at risk" for contracting COVID-19. Agreed Facts at ¶ 68; Pl. Ex. 271 at ¶ 16; 9/9/20 at 49. . The plaintiffs have also shown that once infected with COVID-19, Black individuals are more likely to have serious complications and die. Pl. Ex. 270 at 26; Agreed Facts at ¶ 68; Pl. Ex. 271 at ¶ 14; 9/9/20 at 50-57, 82, 89. Dr. Elopre explained, "there is strong data that supports . . . looking at cross age groups, that Black people, regardless of health conditions, have higher rates of death compared to Whites." 9//9/20 at 91-92. Further, Black and White voters do not have equal access to witnesses. For those in high-risk categories, Black voters are more likely to have to break CDC recommended protocols and expose themselves to the virus in order to fulfill the witness requirement.[87]

The defendants' position that 'all other things being equal' Black voters are at no greater risk and can access witnesses the same as White voters also ignores the plain text of Section 2. A denial or abridgment is established if "*based on the totality of the circumstances*, it is shown that the political processes leading to nomination

[86] Doc. 244 at 11 ("Black and white voters who suffer similar underlying conditions face similar outcomes, 9/8 Rough Tr. at 68, and any voter can easily and safely meet the witness and photo ID requirements.").

[87] *See* sources accompanying analysis at Section II(F)(1)(a)(i)-(ii), *supra*.

or election . . . are *not equally open to participation* by members of a [protected class] . . . ." 52 U.S.C. § 10301(b) (emphasis added). The phrase "based on the totality of the circumstances" requires the court to look at all the facts affecting voters. The defendants' theoretical analysis regarding whether a Black and White voter who are the same age, with the same medical conditions, and are equally able to adhere to the witness requirement safely, have equal access to the polls runs counter to the text by failing to consider "the totality of the circumstances" people of color face, e.g. disparities in health, COVID-19 risks, and access to critical resources for safely adhering to the witness requirement like transportation, funds for a notary, technology, and internet access. Put simply, to discount the evidence of racial inequity the plaintiffs have presented, as defendants argue, would make it nearly impossible for any protected class to prove the abridgment of their voting rights and would limit the VRA to only protecting voters in cases of intentional discrimination. The Supreme Court has expressly discounted this interpretation. *See Chisom v. Roemer*, 501 U.S. 380, 394-95 (1991).

b.

Having found that the plaintiffs have established the first element, the court turns to causation. Again, this entails showing that the absentee voting witness requirement "results in the denial or abridgement of the right" of Black Alabamians "to vote on account of race or color." 52 U.S.C. § 10301(a). The plaintiffs have also made this showing.

i.

The voting abridgement "results" from the absentee voting witness requirement. But for the witness requirement, Black voters could mail in their absentee voting applications without increasing their risk of COVID-19 complications or death. The witness requirement forces high-risk Black voters to choose between safeguarding their health or voting. *Greater Birmingham Ministries*, 966 F.3d at 1234 (noting requirement plaintiffs show "the challenged law . . . 'resulted in' the denial or abridgment of the right to vote").

ii.

The plaintiffs have also shown that the abridgment of Black individuals' right to vote "was 'on account of race or color' . . . ." *Id.* To satisfy this requirement, the plaintiffs must show that the challenged law "interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters" to participate in the political process. *Gingles*, 478 U.S. at 47; *see also Husted*, 834 F.3d at 638 (directing courts to ask "whether the challenged [law] causes the discriminatory impact as it interacts with social and historical conditions"). The plaintiffs have shown the existence of pervasive "racial bias in the relevant community." *Greater Birmingham Ministries*, 966 F.3d at 1233. In particular, the historical conditions are generally not in dispute. Alabama's current constitution was drafted in 1901 with the express goal of "dealing with the 'grave problem' of 'Negro domination' and . . . 'establish[ing] white supremacy." Pl. Ex. 264 at 7.

Racial bias led legislators to implement racially discriminatory voting laws like a poll tax and a literacy test. *Id.*; Agreed Facts at ¶ 146. These voting laws remained in place for over forty years until the federal courts intervened to begin dismantling them. Agreed Facts at ¶ 147. Even the passage of the VRA in 1965 did not stop Alabama's leaders from attempting to disenfranchise Black voters again, through efforts by the legislature to create racially gerrymandered voting districts to dilute the efficacy of Black voting power. *See* Agreed Facts at ¶¶ 147, 149-50; 9/14/20 at 122. The federal courts again had to intervene to prevent implementation of such discriminatory policies. *See* Pl. Ex. 264 at 15. And the plaintiffs presented evidence that these discriminatory policies extended to the implementation of the witness and photo ID requirements in the 1990s. Pl. Ex. 264 at 20-21. To be sure, not all advocates for the absentee voting requirements instituted in the 1990s were motivated by racial bias. However, the plaintiffs presented evidence that some state officials still were, *id.* at 21-22, with one State senator "insist[ing]" voter fraud was only perpetrated by Black people, and others praising the resulting drop in absentee voting even though "the unspoken reality was that those numbers undoubtedly represented a suppression of legitimate Black votes," *id.* at 21-22.

Those racially discriminatory voting policies meant Black voters' interests were not represented by the Alabama government, and the State used its power to enact a segregated and unequal education system. Pl. Ex. 264 at 24-25. Alabama's segregated public schools created racial disparities in education still existing today.

Doc. 228 at ¶¶ 3-4. These educational deficits have been compounded by the State and some private entities adopting racially discriminatory employment practices in the past. 9/14/20 at 140; Pl. Ex. 264 at 31. And, Alabama's racial bias was not limited to the areas of voting, education, and employment. 9/10/20 at 9, 13-14; Pl. Exs. 268 at ¶ 15 and 270 at 9. Those in power implemented discriminatory zoning, redlining, and predatory lending which negatively affected housing and healthcare for Black individuals. Pl. Ex. 268 at ¶ 8. All of these historical events were caused, at least in part, by racial bias, and these events "produced and maintained" racial residential segregation in Alabama's communities in existence today. *Id.* And, the evidence at trial shows racial residential segregation has today "contributed to higher concentrations of poverty and low-quality housing, unemployment and under-employment, uninsured or uninsured" people, food insecurity, "as well as elevated exposures to physical and chemical environmental hazards." *Id.* Further, racial bias in healthcare existing today has meant Black patients are less likely to receive necessary medical tests than White patients, even when they have the same symptoms. Pl. Ex. 268 at ¶15.

This reference to and consideration of the history of discrimination is not designed to suggest that Alabama's current leaders share the prejudiced views of their predecessors. And, courts must "caution against allowing the old, outdated intentions of previous generations to taint Alabama's ability to enact voting legislation." *Greater Birmingham Ministries*, 966 F.3d 1202, 1236. The court

references these acts of racial discrimination and bias because they are directly relevant to the analysis proscribed by Section 2—they caused the racial disparities that exist today that make it harder and less likely for Black voters to be able to vote safely during the pandemic. The racial bias of Alabama's former leaders and White citizens, while certainly "outdated," unfortunately still affects Black Alabamians' health and socioeconomic status today. The racial bias caused the enactment of discriminatory policies which resulted in Black Alabamians having less access today to resources they need to be healthy—like food, doctors, health insurance, and a clean environment—all of which have contributed to the higher COVID-19 infection and death rates for Black individuals. It also led to Black Alabamians lacking resources critical to safely adhere to the witness requirement during the pandemic, like money for a notary, personal transportation, internet, and a computer.

Therefore, after considering the evidence as a whole, the court finds that the history of discrimination shows "racial bias" in the Alabama community "caused the alleged vote-denial or abridgment." *Greater Birmingham Ministries*, 966 F.3d at 1233. The court also finds that racial bias in voting, education, economics, employment, and healthcare has caused Black voters to have less of an opportunity than White voters to safely adhere to the absentee ballot witness requirement. *See Gingles*, 478 U.S. at 47; *Husted*, 834 F.3d at 638. Consequently, the plaintiffs have

shown that the abridgement of their right to vote was on account of their race, and are due relief on their witness requirement claim under the VRA.[88]

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[88] Defendant Schwarzauer argues that "the denial or abridgment is not 'on account of race or color,' but on account of the COVID-19 pandemic and the heightened risk it poses to older persons and persons with certain underlying health conditions." Doc. 189 at 10; Doc. 245 at 12. The evidence at trial establishes that the historical and current racial bias mentioned above has caused high-risk Black voters to be less able to meet the absentee voter witness requirement safely during the pandemic. Alabama's history of racial bias has caused these racial inequities, not the virus.

Defendant Schwarzauer also argues that the witness requirement's facially race neutral language and general applicability to all absentee voters "prevents it from being a violation of the VRA." Doc. 245 at 12 (citing *Lee v. Virginia State Board of Elections*, 843 F.3d 592, 600-01 (4th Cir. 2016), *Ohio Democratic Party v. Husted*, 834 F.3d 620, 631 (6th Cir. 2016), and *Frank v. Walker*, 768 F.3d 744, 753 (7th Cir. 2014)). None of these cases support Defendant Schwarzauer's assertion. In *Lee v. Virginia*, the Fourth Circuit found there was no evidence of "a denial or abridgement of the right to vote" when plaintiffs only showed that "a lower percentage of minorities have qualifying photo IDs and the process of obtaining photo IDs requires those voters to spend time traveling to and from a registrar's office." 843 F.3d at 600-01. The Fourth Circuit relied on the ruling in *Crawford v. Marion County Election Board*, 553 U.S. 181, 198 (2008), that obtaining an ID does not make voting much harder, to find that plaintiffs had only proven a "disparate inconvenience" instead of a "denial or abridgement." *Id.* at 601. The court reasoned that "[i]f Virginia had required voters to present identifications without accommodating citizens who lacked them, the rule might arguably deprive some voters of an equal opportunity to vote." *Id.* at 601. Here, the plaintiffs have shown much more than just disparate inconvenience. They have shown that Black people face higher risks of COVID-19 complications and death.

Defendant Schwarzauer asserts that *Ohio Democratic Party*, the Sixth Circuit found that "despite statistical disparities 'the record does not establish that [the state law] . . . actually makes voting harder for African Americans." Doc. 245 at 12 (quoting *Ohio Democratic Party*, 834 F.3d at 631). The quote Defendant Schwarzauer relies on relates to the Circuit's assessment of the *equal protection claim*—not the voting rights claim, and the "statistical disparities" discussed was evidence that Black voters "use early in-person voting at higher rates than other voters . . . ," *Ohio Democratic Party*, 834 F.3d at 631. In its discussion of the *VRA* claim, the Sixth Circuit expressly held the opposite of what Schwarzauer asserted in her brief. The plaintiffs did not prove a denial or abridgement because "[t]hey failed to establish a cognizable disparate impact." *Id.* at 640. In other words, "the statistical evidence in the record clearly establish[ed] that Ohio's political processes [were] equally open to African Americans." *Id.* at 639. There was no denial or abridgement of the right to vote because Black voters in Ohio were more likely to be registered to vote and Black voter turnout was at least equal to White voter turnout even under the challenged provision. *Id.*

Lastly, *Frank v. Walker* is also distinguishable. The Seventh Circuit held there was no denial or abridgement caused by Wisconsin's voter photo ID law because Black turnout would be higher than White turnout even after subtracting "the difference between the 97.6% of white voters who have photo ID or qualifying documents, and the 95% of black voters who do. . . ." 768 F.3d at 754.

2.

The organizational plaintiffs and plaintiff Threadgill-Matthews[89] claim Secretary Merrill's de facto curbside voting ban unlawfully abridges Black Alabamians' right to vote in violation of Section 2 even in the absence of a global pandemic. Doc. 75 at ¶ 215-219. They argue the curbside voting ban makes voting harder for Black voters than White voters. Doc. 247 at 19-24. The plaintiffs contend Black voters are disproportionately burdened by the ban because they are more likely to have disabilities, are at higher risk for COVID-19 complications and death, and are less likely to have safe and feasible opportunities for absentee voting. *Id.*

The plaintiffs' claim fails to meet the first hurdle of Section 2 because the curbside voting ban does not amount to a denial or abridgment of Black voting rights. 52 U.S.C. § 10301(a). The curbside voting ban enacted by Secretary Merrill only applies to in-person voting on Election Day.[90] And, to be sure, the ban is prohibiting Jefferson County, Montgomery County, and perhaps others from offering curbside voting on Election Day. Docs. 181 at ¶ 16 and 182 at ¶ 14. But, the curbside voting ban does not apply to absentee voting. *See* 9/11/20 at 48-50. In fact, Secretary

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Again, here the plaintiffs have shown Black voters are at higher risk for serious complications and death due to COVID-19, *see* Pl. Ex. 270 at 26 and 9//9/20 at 91-92, and that Black voters in high risk categories are less able to comply with the witness requirement safely, *see* sources accompanying analysis at Section II(F)(1)(a)(i)-(ii), *supra*.

[89] As discussed earlier, none of the other plaintiffs have standing to assert these claims. *See* section I(A)(3)(b).

[90] *See* section I(F)(3), supra (outlining Secretary Merrill's curbside voting ban).

Merrill encourages county AEMs to offer absentee curbside voting. *Id.* And, Ms. Threadgill-Matthews testified she assisted one voter with using this option. *See* 9/9/20 at 9, 27. Put simply, based on the evidence, any voter who would benefit from lifting Secretary Merrill's ban on curbside voting on Election Day can do so now by voting curbside at their AEM's office. Because of this, the Plaintiffs have failed to prove a denial or abridgement.[91]

* * *

Based on the above application of the factual findings in this case to the Voting Rights Act Section 2 legal framework, the court makes the following conclusions of law:

[91] This holding is consistent with the court's conclusions that the curbside voting ban both unconstitutionally burdens plaintiffs' fundamental right to vote and violates the ADA. *See* sections II(D)(3) and II(E)(2), *supra*. Different standards apply to these claims, and it is possible for the plaintiffs to satisfy their burden of proof as to one but not the others. For the curbside voting ban to violate the VRA, plaintiffs must prove a denial or abridgment of the right to vote, whether absentee or in-person. In contrast, to prevail on the constitutional claims in Count I, the plaintiffs needed to show that the State's justifications for banning curbside voting outweighed the burdens that the ban imposed on citizens' right to vote. The curbside voting ban can of course burden the right to vote without denying it. As for the ADA, to prevail on their Title II claim challenging the curbside voting ban, the plaintiffs needed to prove, among other things, that in-person voting on election day was not readily accessible to them due to the ban. *See* section II(E)(2)(b)(i), *supra*. And, because a voter does not receive confirmation that her vote counted when she votes absentee, *see* 9/15/20 at 139-40; 9/17/20 at 127-28, 184, casting an absentee ballot curbside at an AEM's office prior to the election is not equal to voting at the poll on election day for purposes of the ADA, *see* 28 C.F.R. § 35.130(b)(1)(ii). Moreover, the curbside voting ban can cause in-person voting to be not readily accessible to voters without denying or abridging the right to vote.

1. The plaintiffs have shown Black voters do not have equal access to safely vote during COVID-19, because of the absentee ballot witness requirement, and, therefore, Black Alabamians' voting rights have been abridged.

2. The voting abridgment is "on account of race or color" as it is caused, in part, by Alabama's history of racial bias in voting, education, employment, economics, housing, and healthcare.

3. The absentee ballot witness requirement violates Section 2 to the extent it is enforced during the COVID-19 pandemic.

4. The plaintiffs have not shown that the curbside voting ban is a denial or abridgement of Black Alabamians' voting rights.

G.

Finally, in Count V, the plaintiffs allege that the notary option contained in the witness requirement conditions the right to vote on a person's wealth in violation of the Fourteenth Amendment's Equal Protection Clause. Doc. 75 at 76–77. As explained above, the witness requirement mandates that absentee voters have their ballots either signed by two witnesses or notarized. Ala. Code § 17-11-9. Alabama law also authorizes notaries public to collect a five-dollar fee for notarizing absentee ballots. *Id.* § 36-20-74. Plaintiffs say that, "regardless of the COVID-19 crisis," this authorization is unconstitutional. Doc. 75 at 77 ¶ 232.

Additionally, during the COVID-19 pandemic, the Governor has freed notaries public to notarize absentee ballots by videoconference. State Ex. 25 at 4.

The court has noted, however, that "videoconferencing is not free. It requires internet access at a minimum, which is a service that is an unaffordable luxury for many." Doc. 58 at 38 n.20. As a result, the plaintiffs say the notary option is unconstitutional "[i]n the COVID-19 crisis," and that it must be enjoined. Doc. 75 at 77 ¶ 233. This claim thus presents both a facial and an as applied challenge to the witness requirement.

A "[s]tate violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard." *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966). Normally, because wealth is not a suspect classification, wealth-based discrimination claims receive only rational basis review. *See Jones v. Governor of Fla.*, No. 20-12003, 2020 WL 5493770, at *5 (11th Cir. Sept. 11, 2020). However, rational basis review does not apply to equal protection challenges that implicate fundamental rights. *See, e.g.*, *id.* at *4 (noting that rational basis review is reserved for "classifications that neither implicate fundamental rights nor proceed along suspect lines"). Supreme Court cases "solidly establish" that the "basic right to participate in political processes as voters and candidates" is among those rights. *M.L.B. v. S.L.J.*, 519 U.S. 102, 124 (1996); *Harper*, 383 U.S. at 670.

But the defendants contend that recent caselaw from the Eleventh Circuit rejects this basic tenet of constitutional law. Allegedly, the Circuit ruled in *Jones v. Governor of Florida ("Jones II")* that "heightened scrutiny does not apply" to the

present challenge and that requiring voters to provide documentation verifying their identities is constitutional, even if some individuals must pay to obtain the documents. Doc. 232 at 1–2. Thus, the defendants ask the court to apply rational basis review to this claim. *Id.* at 3–4. The court has already rejected this request after concluding that *Jones II* was inapposite, 9/18/20 at 67, but the defendants move the court to reconsider. Doc. 244 at 13. Their request is again due to be denied.[92]

The claim before the court in *Jones II* dealt with the restoration of voting rights for people convicted of felonies—not the general, fundamental right to vote. *See* 2020 WL 5493770 at * 4. Indeed, the Eleventh Circuit made clear that *Jones II* does not address the fundamental right to vote: "Whatever may be true of the right to vote generally, felons 'cannot complain about their loss of a fundamental right to vote because felon disenfranchisement is explicitly permitted . . . .'" *Id.* (quoting *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010)). Because the laws at issue in *Jones II* did not "implicate fundamental rights nor proceed along suspect lines," the Eleventh Circuit applied rational basis review. *Id.* at *4–8.

Here, the challenge to the notary option of the witness requirement implicates an Alabama citizen's fundamental right to vote. Thus, *Jones II* does not mandate

[92] The defendants also maintain that the plaintiffs failed to plead a wealth-based discrimination claim. Docs. 232 at 2; 244 at 13 n.14. The court initially labelled the plaintiffs' challenge a wealth discrimination claim. *See* doc. 161 at 22. But a review of the evidence offered at trial and the plaintiffs' amended complaint shows that Count V instead challenges the witness requirement as unduly burdening the right to vote in violation of the Fourteenth Amendment.

that rational basis review applies to the plaintiffs' claim. To be sure, the Eleventh Circuit did opine that "[o]utside of narrow circumstances, laws that burden the indigent are subject only to rational basis review." *Id.* at *5 (citing *M.L.B.*, 519 U.S. at 123–24). But the very case that the Circuit cited for that proposition, *M.L.B.*, dictates that voting rights cases fall within that narrow band. *See* 519 U.S. at 124. Therefore, because the plaintiffs' equal protection claim implicates their or their members' basic fundamental right to vote, rational basis review is inappropriate.

Traditional equal protection jurisprudence therefore applies.[93] Under that jurisprudence, "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964). In *Harper*, the Supreme Court ruled that state laws imposing poll taxes categorically failed to satisfy that exacting scrutiny. "To introduce wealth or payment of a fee as a measure of a voter's qualifications," the Court said, "is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant." *Harper*, 383 U.S. at 668. In other words, if a state law makes wealth an

[93] In an earlier order ruling on the parties' various motions to dismiss, doc. 161, the court observed that the four-factor test applied by the Eleventh Circuit in *Jones v. Governor of Florida ("Jones I")*, 950 F.3d 795 (11th Cir. 2020), controlled this claim. In *Jones I*, the panel applied "heightened scrutiny" to conclude that Florida's law conditioning the restoration of voting rights for people convicted of felonies on their ability to pay certain fines and fees was likely unconstitutional. *Id.* at 827. The Circuit considered: "(1) the nature of the individual interest affected; (2) the extent to which it is affected; (3) the rationality of the connection between legislative means and purpose; and (4) the existence of alternative means for effectuating the purpose." *Id.* at 825. Because the court now understands that plaintiffs' claim is not based on wealth discrimination, *see* note 92, *supra*, the *Jones I* analysis would not apply. Moreover, because *Jones II* overruled *Jones I*, the four-factor test is no longer valid in either context. *Jones II*, 2020 WL 5493770, at *8.

electoral standard, then that law violates the Fourteenth Amendment regardless of "whether the citizen, otherwise qualified to vote, has $1.50 in his pocket or nothing at all, pays the fee or fails to pay it." *Id.* The plaintiffs contend that *Harper*'s per se rule controls. Docs. 238 at 3; 247 at 10. The defendants correctly note, however, that *Harper*'s bright-line rule "does not apply to voting requirements that are related to legitimate voter qualifications." Doc. 244 at 13 (quoting *Jones II*, 2020 WL 5493770, at *6).

As a purported fraud prevention measure, the witness signature requirement is at least designed to help identify voters. And, because "requiring voters to prove their identity . . . falls squarely within the state's power to fix core voter qualifications," the court agrees that the *Harper* rule does not govern. *Jones II*, 2020 5493770, at *6. Accordingly, the court cannot apply "any 'litmus test' that would neatly separate valid from invalid restrictions," but must instead "identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule." *Crawford*, 553 U.S. at 190. The court will then "make the 'hard judgment' that our adversary system demands." *Id.* In other words, *Anderson-Burdick* balancing applies to this claim as well.

Starting with the plaintiffs' facial challenge to the witness requirement, the court concludes that the law is constitutional. Here, the State offers two familiar interests to justify its rule—preventing voter fraud and protecting the integrity of its elections. Docs. 232 at 4; 245 at 13. These interests are, of course, legitimate and

strong. *Lee*, 915 F.3d at 1322 (citing *Common Cause*, 554 F.3d at 1353–54); *see also Crawford*, 553 U.S. at 196. Indeed, they are at their strongest in a facial challenge. When a plaintiff "advance[s] a broad attack on the constitutionality of [a statute], seeking relief that would invalidate the statute in all its applications, they bear a heavy burden of persuasion." *Crawford*, 553 U.S. at 200.

At trial, the plaintiffs offered little evidence that Alabama's law authorizing notaries public to accept fees burdens their right to vote. In their post-trial briefing, they cite the testimony of four witnesses to support their claim. Allegedly, "Plaintiffs Bettis, Peebles, and Thompson, and Ms. Lux testified that the notary aspect of the Witness Requirement is burdensome." Doc. 247 at 11. But this does not withstand analysis.

Only one of those individuals, Dr. Peebles, testified that he might be unable to comply with the witness requirement because he could not afford a five-dollar notary fee. Dr. Peebles initially testified that he would be unable to receive free notarization from his bank because that required going indoors and interacting with others, which would expose him to possible COVID-19 infection. 9/8/20 at 127. Although that constituted a burden in Count I, it does not where, as here, the claim is that the fee itself is burdensome. Dr. Peebles did later testify, however, that a notary public's five-dollar fee might be cost prohibitive. *Id.* at 159. But it is not entirely clear why that would be, because Dr. Peebles also testified that he always has more than five dollars in his bank account. *Id.*

The other witnesses that plaintiffs contend are burdened by the notary aspect of the witness requirement never alleged that they could not pay a notary fee. Ms. Bettis testified that she would not feel comfortable having her ballot notarized because she could not be certain that the notary public followed social distancing guidelines. 9/14/20 at 20–21. Ms. Lux testified that she was unwilling to receive notarization from her bank because, like Dr. Peebles, she feared COVID-19 exposure. 9/11/20 at 180–81. But that again is not germane to wealth. Finally, the plaintiffs note that Ms. Thompson is burdened by the notary aspect of the witness requirement, but they fail to cite any of her testimony to support that contention. *See* doc. 247 at 11. And the court's review of her testimony reveals that Ms. Thompson would be willing to obtain free notary services from her local library. 9/8/20 at 196–97. Although risking virus exposure at the library constituted a burden under Count I, the free option alleviates any wealth-based burden she may face.

Ultimately, the plaintiffs failed to prove that the notary aspect of the witness requirement imposes even a slight burden on them, during or outside of the pandemic. Accordingly, the State's interests necessarily justify the rule. The plaintiffs' claims under Count V are therefore due to be dismissed.

* * *

Consistent with the above discussion and findings, the court makes the following conclusions of law regarding the plaintiffs' constitutional claims:

1. The plaintiffs failed to establish that the notary aspect of the witness

requirement, on its face, burdens their right to vote based on their wealth. Because the State has a legitimate interest in maintaining the witness requirement, the law does not violate the Fourteenth Amendment.

2. The plaintiffs failed to establish that the notary aspect of the witness requirement, as applied during the pandemic, burdens their right to vote based on their wealth. Because the State has a legitimate interest in maintaining the witness requirement, the law does not violate the Fourteenth Amendment.

III. EQUITABLE RELIEF AND CONCLUSION

Consistent with the court's findings and conclusions, the plaintiffs' motion for reconsideration, doc. 229, is due to be denied, and Judge Davis's and Ms. Schwarzauer's motions for judgment on partial findings, docs. 231, 233, are moot. The plaintiffs are entitled to enter an order declaring that the Challenged Provisions violate the fundamental right to vote, the ADA, and the VRA as applied during the COVID-19 pandemic.

Finally, as previously stated, the plaintiffs also seek an order enjoining the enforcement of the witness requirement, photo ID requirement, and curbside voting ban for the November 2020 general election. *See* doc. 75 at 78-79. To show they are entitled to an injunction, the plaintiffs must show that (1) they have suffered an irreparable injury; (2) remedies available at law are inadequate to compensate for the injury; (3) considering the balance of hardships between the parties, an equitable remedy is warranted; and (4) that the public interest will not be disserved by an

injunction. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (citations omitted). Based on the court's findings and conclusions, the plaintiffs have made this showing. If the Challenged Provisions are not enjoined, they will unconstitutionally and unlawfully violate the rights of the plaintiffs or their members, causing irreparable harm. Because no monetary sum could compensate for this injury, legal remedies are inadequate. For those reasons, the balance of hardships weighs in favor of injunctive relief, and the public interest will not be disserved. The court will issue a separate order and judgement.

DONE the 30th day of September, 2020.

ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE

DOC. 251

FILED
2020 Sep-30 PM 12:20
U.S. DISTRICT COURT
N.D. OF ALABAMA

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

PEOPLE FIRST OF ALABAMA, et al.,	)	
Plaintiffs,	)	
v.	)	**Civil Action Number 2:20-cv-00619-AKK**
JOHN MERRILL, et al.,	)	
Defendants.	)	

FINAL JUDGMENT AND INJUNCTON ORDER

Consistent with the contemporaneously-entered findings of fact and conclusions of law, doc. 250, the plaintiffs' motion for reconsideration, doc. 229, is **DENIED**, and Judge Don Davis's and JoJo Schwarzauer's motions for judgment on partial findings, docs. 231, 233, are **MOOT**. Based upon the court's findings of fact and conclusions of law, doc. 250:

A. JUDGMENT is **ENTERED** in favor of the defendants on the following claims:

1. The claims asserted against Judge Davis challenging the photo ID requirement and the curbside voting ban;

2. Eric Peebles's, Howard Porter, Jr.'s, Annie Carolyn Thompson's, and Teresa Bettis's claims challenging the curbside voting ban;

3. Black Voters Matter Capacity Building Institute's ("BVM's") claims in Count II challenging the photo ID requirement and the curbside voting ban under the Americans with Disabilities Act ("ADA");

4. The plaintiffs' claims in Count II presenting a facial challenge to the curbside voting ban under the ADA;

5. Ms. Thompson's claim in Count II challenging the photo ID requirement under the ADA;

6. The plaintiffs' claims in Count III challenging the curbside voting ban under Section 2 of the Voting Rights Act; and

7. The plaintiffs' claims in Count V.

B. **JUDGMENT** is **ENTERED** in favor of the plaintiffs on the following claims:

1. Dr. Peebles's, Ms. Bettis's, Ms. Thompson's, BVM's, People First of Alabama, the Alabama Conference of the NAACP's, and Greater Birmingham Ministries'[1] claims asserted in Count I against Judge Davis and Ms. Schwarzauer challenging the witness requirement as applied in the COVID-19 pandemic;

2. Ms. Thompson's and the organizational plaintiffs' claims asserted in Count I against Ms. Schwarzauer challenging the photo ID requirement as applied in the COVID-19 pandemic;

3. Ms. Threadgill-Matthews's and the organizational plaintiffs' claims asserted in Count I against Secretary Merrill challenging the curbside voting ban as applied in the COVID-19 pandemic;

4. People First's, the Alabama NAACP's, and GBM's claims asserted in Count II against Ms. Schwarzauer and the State challenging the photo ID requirement under the ADA;

5. Ms. Threadgill-Matthews's, the Alabama NAACP's, and GBM's claims asserted in Count II against Secretary of State John Merrill challenging the curbside voting ban under the ADA; and

6. Ms. Bettis's, Ms. Thompson's, and the organizational plaintiffs' claims asserted in Count III against Judge Davis, Ms.

[1] The court refers to BVM, the Alabama NAACP, People First, and GBM collectively as the "organizational plaintiffs."

Schwarzauer, and the State challenging the witness requirement under Section 2 of the Voting Rights Act.

Consistent with the judgment in favor of the plaintiffs, the court **DECLARES**:

1. As applied during the COVID-19 pandemic to voters who are particularly susceptible to COVID-19, the requirement under Ala. Code §§ 17-11-7, 17-11-9, and 17-11-10 that absentee ballot affidavits be witnessed and signed by a notary public or two adult witnesses violates the First and Fourteenth Amendments.

2. As applied during the COVID-19 pandemic to voters who are particularly susceptible to COVID-19 complications because they are either age 65 or older or disabled or have underlying medical conditions that make them susceptible to COVID-19 complications, the requirement under Ala. Code §§ 17-9-30(b), (d), and 17-11-9 that absentee voters provide a copy of their photo identification with their absentee ballot applications violates the First and Fourteenth Amendments.

3. As applied during the COVID-19 pandemic to voters who are particularly susceptible to COVID-19 complications, the curbside voting ban violates the First and Fourteenth Amendments.

4. As applied during the COVID-19 pandemic to voters with disabilities who cannot safely obtain a copy of their photo ID, the requirement under Ala. Code §§ 17-9-30(b), (d), and 17-11-9 that absentee voters provide a copy of their photo identification with their absentee ballot applications violates the ADA.

5. As applied during the COVID-19 pandemic to voters with disabilities, the curbside voting ban violates the ADA.

6. As applied during the COVID-19 pandemic, the requirement under Ala. Code §§ 17-11-7, 17-11-9, and 17-11-10 that absentee ballot affidavits be witnessed and signed by a notary public or two adult witnesses violates the Voting Rights Act.

Therefore, the court **ORDERS** that, as to the November 3, 2020 general election:

1. Judge Don Davis, JoJo Schwarzauer, and the State of Alabama are **ENJOINED**[2] from enforcing the requirement under Ala. Code §§ 17-11-7, 17-11-9, and 17-11-10 that absentee ballot affidavits be witnessed and signed by a notary public or two adult witnesses for any qualified voters who provide a written statement that they have an underlying medical condition that puts them at a heightened risk from COVID-19, and, thus, they cannot safely satisfy that requirement due to the COVID-19 pandemic;

2. Ms. Schwarzauer and the State are **ENJOINED** from enforcing the requirement under Ala. Code §§ 17-9-30(b), (d), and 17-11-9 that absentee voters provide a copy of their photo identification with their absentee ballot applications for absentee voters over 65, or those under 65 who cannot safely obtain a copy of their photo ID during the COVID-19 pandemic due to an underlying medical condition that makes them particularly susceptible to COVID-19 complications, and who provide other required identifiers with their absentee ballot applications, such as their driver's license number and last four digits of their social security number; and

3. Secretary Merrill is **ENJOINED** from prohibiting counties from establishing curbside voting procedures that otherwise comply with state and federal election law.

The court **ORDERS** the State and Secretary Merrill to take all reasonable steps to inform county probate judges, circuit clerks, and absentee elections managers about this injunction as quickly as possible.

[2] For defendants Judge Davis and Ms. Schwarzauer, the probate judge and circuit clerk of Mobile County, respectively, this injunction order applies only in Mobile County.

As the prevailing parties, the plaintiffs are entitled to costs and attorneys' fees. The court will defer this issue until after the resolution of any appeal of this judgment and order.

DONE the 30th day of September, 2020.

ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE

DOC. 252

FILED
2020 Sep-30 PM 02:58
U.S. DISTRICT COURT
N.D. OF ALABAMA

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

PEOPLE FIRST OF ALABAMA, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 2:20-cv-00619-AKK
JOHN MERRILL, Secretary of State, *et al.*,	)	
Defendants.	)	

DEFENDANTS' JOINT NOTICE OF APPEAL
OF PERMANENT INJUNCTION (Docs. 250 & 251)

Notice is hereby given that John H. Merrill, sued in his official capacity as Alabama Secretary of State, the State of Alabama, JoJo Schwarzauer, sued in her official capacity as Circuit Clerk of Mobile County, and Don Davis, sued in his official capacity as Probate Judge of Mobile County, Defendants in the above named case, hereby appeal to the United States Court of Appeals for the Eleventh Circuit from a Permanent Injunction entered in this action on September 30, 2020. *See* docs. 250, 251.

Respectfully submitted,

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Certificate of Service

I hereby certify that on September 30, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such to all counsel of record.

s/ James W. Davis
Counsel for Defendants Secretary of State John H. Merrill and the State of Alabama

DOC. 253

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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

PEOPLE FIRST OF ALABAMA, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 2:20-cv-00619-AKK
JOHN H. MERRILL, Secretary of State, *et al.*,	)	
Defendants.	)	

DEFENDANTS' MOTION FOR STAY PENDING APPEAL

> *"[S]ometimes when you start down one path and you get in the middle of that path and you change directions, voters might become confused."—Benard Simelton, President, Alabama NAACP*[1]

The State Defendants (the State of Alabama and Secretary of State John Merrill) and the Mobile County Defendants (Circuit Clerk JoJo Schwarzauer and Probate Judge Don Davis) respectfully move this Court for a stay pending appeal of the permanent injunction the Court entered on September 30, 2020. *See* Docs. 250, 251. Given the time-sensitive nature of this case—the November election is now just 34 days away, and absentee voting has been underway for weeks—Defendants

[1] 9/10/2020 Rough Tr. at 124. Like the Court in its Findings of Fact and Conclusions of Law, "[d]ue to the time-sensitive nature of this case, [the State Defendants] cite[] to the Court Reporter's uncertified rough transcript of the trial." Doc. 250 at 2 n.3.

respectfully ask for a prompt ruling on this motion. Defendants intend to seek a stay from the Eleventh Circuit Court of Appeals shortly after 3PM CDT on Friday, October 2, 2020, if this Court has not by then stayed its judgment.

Even though the Court has determined that Plaintiffs have brought successful claims on the merits, the Court should *still* grant a stay pending appeal because the equities favor preserving the status quo during an ongoing election. *See Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) (denying injunction because "the balance of equities and the public interest" demanded it, even assuming that "plaintiffs were likely to succeed on the merits of their claims"). Indeed, the Supreme Court has "repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election," *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (citations omitted), because doing so can itself "result in voter confusion and consequent incentive to remain away from the polls," *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). That is almost certainly why the Supreme Court stayed the preliminary injunction entered in this case just a few months ago. *See Merrill v. People First of Ala.*, No. 19A1063, 2020 WL 360409 (U.S. Jul. 2, 2020). Nothing has changed since then that makes issuing an injunction while absentee voting is already taking place any wiser a course this time round. *See Ne. Ohio Coal. for Homeless & Serv. Employees Int'l Union, Local 1199 v.*

Blackwell, 467 F.3d 999, 1012 (6th Cir. 2006) (noting strong policy "against changing the rules in the middle of the submission of absentee ballots").

In fact, a stay is even more warranted today than it was back in July as a matter of both law and fact. Since then, the Supreme Court has stayed additional district court orders that would alter state election laws. Plaintiffs have had more time to find safe ways to meet the minimal burdens imposed by the witness and photo ID requirements. And, of course, the individual Plaintiffs who were eligible to vote in the July 14 primary runoff were all able to safely either vote in-person or comply with the absentee provisions that they challenged, despite asserting that they needed injunctive relief to vote and the Supreme Court staying this Court's preliminary injunction. *See* 9/8/2020 Rough Tr. at 174-75; 9/9/2020 Rough Tr. at 14; 9/14/2020 Rough Tr. at 39-40, 77-78, 83-87.

Granting a stay would allow the Eleventh Circuit the opportunity to review this Court's decision before Alabama's election law is again upended in the middle of another election. If the Court enters a stay and the Eleventh Circuit affirms the injunction, the injunction can take effect at that time with minimal (if any) harm to Plaintiffs. But if the Court does not enter a stay and a reviewing court then grants Defendants relief, Alabama's election law will have been twice changed during ongoing elections. Without doubt, that will sow needless confusion for voters and cause much extra work for election officials (and the organizational Plaintiffs). *See*

Purcell, 549 U.S. at 4 (recognizing the confusion caused by "conflicting orders"). The Court should avoid all that by entering a stay pending appeal.

ARGUMENT

Under Federal Rule of Civil Procedure 62(c), the Court's injunction will take immediate effect unless it is stayed. In determining whether to enter a stay, courts generally consider: "(1) whether the stay application has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hand v. Scott*, 888 F.3d 1206, 1207 (11th Cir. 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)). The first two factors are generally "the 'most critical.'" *Id.* (quoting *Nken*, 556 U.S. at 434). But here, the Court is also "required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases." *Purcell*, 549 U.S. at 4. And given how many times the Supreme Court has entered stays in election cases just this year—including in *this* case—the Court should give those considerations a particularly close look.

A. A Stay Is Required Under *Purcell*.[2]

Five months ago, the Supreme Court stayed a district court's injunction that altered Wisconsin's election practices due to COVID-19. *See Republican Nat'l Comm.*, 140 S. Ct. at 1208. In doing so, the Court noted that it had "repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *Id.* at 1207 (citing *Purcell*, 549 U.S. 1; *Frank v. Walker*, 574 U.S. 929 (2014); and *Veasey v. Perry*, 135 S. Ct. 9 (2014)). The reason for that admonition is clear: "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell*, 549 U.S. at 4-5.

The Supreme Court has acted with particular vigilance since the COVID-19 pandemic began to stay injunctions entered by district courts viewing the pandemic as cause to interfere with state elections. In July, of course, it stayed the preliminary injunction this Court had entered. *Merrill*, No. 19A1063, 2020 WL 360409 (U.S. Jul. 2, 2020). That same month it also stayed a district court's injunction that relied

[2] The focus of this motion is on why the Court should grant a stay *even though* it has determined that some of Plaintiffs' claims succeed on the merits. The Defendants do not rehash all their arguments on the merits. But they do not abandon them, and the Court should reconsider its rulings on the merits, too, for the reasons Defendants stated in their pre-trial motions, at trial itself, and in their post-trial briefing. *See, e.g.*, Docs. 121, 139, 160, 186, 209, 244.

on COVID-19 to relax Idaho's rule for ballot initiatives. *See Little v. Reclaim Idaho*, No. 20A18, 2020 WL 4360897 (U.S. Jul. 30, 2020). And in August, the Supreme Court also stayed a district court's injunction that altered Oregon's election procedures due to COVID-19. *Clarno v. People Not Politicians*, No. 20A21, 2020 WL 4589742 (U.S. Aug. 11, 2020).

The inverse has also been true: The Supreme Court has upheld orders by Courts of Appeals staying election-related injunctions that were entered by district courts due to COVID-19. *See Thompson v. DeWine*, No. 19A1054, 2020 WL 3456705 (U.S. June 25, 2020) (denying application to vacate Sixth Circuit's stay of district court's order suspending Ohio's enforcement of in-person signature requirements due to COVID-19); *Tex. Democratic Party v. Abbott*, 140 S. Ct. 2015 (2020) (denying application to vacate Fifth Circuit's stay of district court's injunction requiring Texas to implement no-excuse absentee voting during COVID-19).

So the message by now should be clear (but is worth repeating nonetheless): "[L]ower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm.*, 140 S. Ct. at 1208. That message is just as pertinent in this stage of the proceeding as it was when the Supreme Court acted to stay the Court's prior order. Then, like now, absentee voting was already underway. And then, like now, in-person voting was just around the corner and well within the

normal *Purcell* window. *E.g.*, *North Carolina v. League of Women Voters of N.C.*, 574 U.S. 927 (2014) (staying lower court's order entered 32 days before election day); *Husted v. Ohio State Conference of NAACP*, 573 U.S. 988 (2014) (staying lower court's order entered 61 days before election day); *Purcell*, 549 U.S. at 4-5 (staying lower court's order entered 33 days before election day). If anything, as explained below, the equities warrant a stay more *now* than they did at the preliminary injunction stage.

Moreover, this Court was wrong to conclude that "State defendants are judicially estopped" from relying on *Purcell* to object to a change in Alabama's election law during the November 3 election. Doc. 250 at 116. The Court came to this conclusion because the State Defendants had argued in May that the allegations Plaintiffs had raised as to the November election were too speculative to warrant injunctive relief at that time. *Id.* (citing Doc. 35 at 13-14). But nothing about that position—which came before Plaintiffs amended their Complaint, and well before trial—is inconsistent with the concerns of *Purcell*. *See New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) ("[A] party's later position must be 'clearly inconsistent' with its earlier position."). That is so because an injunction is an act of equity; the underlying merits of the claim are but one factor to consider. *See Benisek*, 138 S. Ct. at 1944. So it can *both* be that the Plaintiffs' allegations in May concerning the November election were too speculative to warrant relief then *and* that equitable

considerations warrant the denial of an injunction now that Alabama is in the middle of the election. These are completely separate inquiries. The speculative nature of Plaintiffs' claims in May is simply a product of Plaintiffs' theory of the case. Defendants were not required to pretend the claims were not speculative over the summer in order to preserve their right to ask this Court to prevent voter confusion caused by changing election laws in the middle of an election. And in any event, there is "nothing improper or disingenuous about Defendants taking the alternative position(s): (1) that Plaintiffs' claims were still premature (unripe) as of May 2[5]; but (2) that if Plaintiffs are correct that their claims were ripe as of May 2[5], they would likewise have been ripe long before May 1 and thus should have been brought long before May 1." *Memphis A. Phillip Randolph Inst. v. Hargett*, No. 3:20-CV-00374, 2020 WL 4279623, at *7 (M.D. Tenn. July 21, 2020) (noting in COVID-19 election challenge that "the Court [was] unwilling to accept th[e] proposition" that "a defendant who previously made and lost a ripeness argument should be de facto (if not de jure) estopped from asserting laches").

Finally, the Mobile County Defendants are certainly not judicially estopped from raising *Purcell*.

B. Defendants Will Be Irreparably Injured Absent A Stay.

Absent a stay, the State Defendants will be irreparably harmed. "[T]he inability to enforce its duly enacted plans clearly inflicts irreparable harm on the

State." *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018). "[F]or all intents and purposes," the order "constituted injunctions barring the State from conducting this year's elections" in the manner chosen by the Legislature. *Id.* at 2324. This is why the Supreme Court allows for interlocutory appeals of preliminary injunctions, because unless the legislative directive "is unconstitutional, [the injunction] would seriously and irreparably harm the State." *Id.* (footnote omitted); *see also Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers) ("Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." (alteration omitted) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox. Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers))); *Odebrecht Constr., Inc. v. Sec'y, Fla. Dep't of Transp.*, 715 F.3d 1268, 1289 (11th Cir. 2013) (noting that the "harm of being prevented from enforcing one of its laws" is "present every time the validity of a state law is challenged").

The injunctions against the County Defendants similarly harm both them and the State. The Mobile County Defendants are harmed by the injunction preventing them from carrying out their duties under State law, and the State is harmed because *its* laws are being enjoined. The Supreme Court recognized this latter point earlier in this litigation when it granted the State Defendants' motion for a stay, even though the State was not specifically enjoined by the Court's preliminary injunction.

See Merrill, 2020 WL 360409. Soon after that ruling, the Supreme Court explained its reasoning on this point when it compared the situation in this case to the very different situation confronting the Court when the Republican National Committee and the Republican Party of Rhode Island applied for a stay of a district court's injunction of Rhode Island's voting laws. *See Republican Nat'l Comm v. Common Cause Rhode Island*, No. 20A28, 2020 WL 4680151, at *1 (U.S. Aug. 13, 2020). In denying that application, the Supreme Court explained: "Unlike *Merrill v. People First of Alabama*, 591 U.S.__ (2020), and other similar cases where a State defends its own law, here the state election officials support the challenged decree, and no state official has expressed opposition. Under these circumstances, the applicants lack a cognizable interest in the State's ability to 'enforce its duly enacted' laws." *Id.* (quoting *Abbott v. Perez*, 138 S. Ct. at 2324 n.17).

Moreover, unless this Court enters a stay, the State will not only be harmed as a matter of law, but also as a matter of fact. The trial took place not on the "eve" of an election, *Republican Nat'l Comm.*, 140 S. Ct at 1207, but during one. Absentee voting began on the second day of trial—September 9, 2020. *See* 9/11/2020 Rough Tr. at 58. By the fourth day of trial, more than 30,000 Alabamians had applied for absentee ballots, and "several hundred" of them had cast their ballots in person. *Id.* And the Court heard directly from local election officials who were processing thousands of ballots during trial in the days leading up to their testimony. 9/16/2020

Rough Tr. at 55–56 (Carla Woodall testifying that she had processed nearly 1,000 ballots); 9/17/2020 Rough Tr. at 136-37 (Alleen Barnett testifying that she had processed 2,864 applications as of September 9); 9/17/2020 Rough Tr. at 195 (Judge Bill English testifying that in Lee County 400 voters had cast absentee ballots in person and 600 absentee ballots had been mailed to voters).

If the Court's injunction is not stayed, election officials throughout the State will have to work to implement the injunction and educate voters about the new requirements. That will cost money and time, and the changes will undoubtedly confuse voters. And if a reviewing Court then determines that a stay is necessary, or holds that the injunction shouldn't have issued to begin with, then the Defendants will again need to invest time and resources to undo their previous efforts and educate voters of the additional change. Given all that, it is simply hard to imagine how the Defendants will not be harmed if Alabama's election laws are changed—possibly twice—while an election is ongoing.

C. Plaintiffs Will Not Be Substantially Harmed By A Stay.

By contrast, Plaintiffs will not suffer an irreparable injury by maintaining the status quo while this case is on appeal. Even if the Court's findings are ultimately upheld, that does not mean that Plaintiffs are suffering irreparable harm *now*. "The only areas of constitutional jurisprudence where [the Eleventh Circuit] ha[s] said that an on-going violation may be presumed to cause irreparable injury involve the

right of privacy and certain First Amendment claims establishing an imminent likelihood that pure speech will be chilled or prevented altogether." *Siegel v. LePore*, 234 F.3d 1163, 1178 (11th Cir. 2000). And factually, voters will still be able to vote in the November 3 election—by absentee ballot if they wish, in person if they choose.

D. The Public Interest Demands A Stay.

Finally, the public interest also demands a stay. First, the State—not Plaintiffs—represents the public; their interests "merge" when the State moves for relief, as it does here. *See Nken*, 556 U.S. at 435. Second, all the risks that the Supreme Court warned about in the *Purcell* line of cases apply here with considerable force because absentee voting for the November 3 election is already taking place.

As Secretary Merrill testified, Alabama expects more people to vote absentee this election cycle than ever before. 9/11/2020 Rough Tr. at 47. That is in large part because of the Secretary's efforts to make absentee voting accessible to voters during the COVID-19 pandemic. For many of these voters, this will be the first time they will be voting absentee. Changing the rules now will only cause more confusion and uncertainty. Remarkably (or not, given the simplicity of this truth), Plaintiffs themselves recognize this. As Benard Simelton, President of the Alabama State Conference of the NAACP, testified at trial when he was asked what efforts his

organization would need to undertake if it "obtain[ed] relief in some counties but not others":

> [W]e would try to educate voters on what the new agreements or procedures are. I mean, it's – and then again, we would look at it and say, well, we don't want to confuse voters. *And sometimes when you start down one path and you get in the middle of that path and you change directions, voters might become confused*. So we would have to look at it and determine, you know, would it be better to proceed on with the election as it is. But we would again attempt to educate voters. But I couldn't say right now that we would definitely do it or not try to educate voters.

9/10/20 Rough Tr. at 123-24 (emphasis added). The *Purcell* Court couldn't say it any better.

For similar reasons, the Court's order permitting curbside voting may cause voters to miss the opportunity to safely vote absentee. For example, Plaintiff Howard Porter lives with two adults and has a copier in his home; there is no dispute that he can safely vote absentee, as this Court recognized in dismissing his claims related to the witness and photo ID requirements. *See* Doc. 226 at 7; 9/14/2020 Rough Tr. at 83. Nevertheless, he testified that he would prefer to vote curbside. *Id.* at 99. Should he and other voters like him decide to forgo absentee voting in reliance on the availability of curbside voting, only to have curbside voting be unavailable on election day, they might be forced to vote at their polling place in person or else miss the opportunity to vote at all. But the Court can avoid this sort of "incentive to remain

away from the polls" by staying the injunction pending appeal. *See Purcell*, 549 U.S. at 4–5.

CONCLUSION

This Court should enter a stay of its injunction pending appeal.

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Certificate of Service

I hereby certify that on September 30, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such to all counsel of record.

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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

PEOPLE FIRST OF ALABAMA, et al., Plaintiffs, v. JOHN MERRILL, et al., Defendants.	Case No.: 2:20-cv-00619-AKK

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR STAY PENDING APPEAL

Plaintiffs respectfully submit this brief in opposition to State Defendants' and Mobile County Defendants' (collectively, "Defendants") motion for a stay pending appeal of this Court's permanent injunction entered on September 30, 2020. Doc. No. 253. Defendants inappropriately treat *Purcell* as an inexorable command rather than part of the public interest-component of the stay inquiry. In any event, *Purcell*, too, counsels in favor of permitting the Court's injunction to take immediate effect.

Upon application for a motion to stay an injunction, Courts consider "(1) whether the stay application has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418,

426 (2009). The first two factors are the "most critical." *Id.* at 434. In addition to the familiar *Nken* factors, courts are required to weigh "certain considerations specific to election cases[,]" as outlined in *Purcell v. Gonzalez*. 549 U.S. 1, 4 (2006).

Notably, Defendants address the *Nken* factors only in passing and wholly ignore the likelihood of success on the merits. Instead, Defendants rely almost exclusively on *Purcell* in support of their stay motion. But even the considerations set forth in *Purcell* favor allowing the injunction to take effect. Indeed, each of the *Nken* factors favor Plaintiffs and, therefore, this Court did not abuse its discretion by enjoining the Challenged Provisions. For these reasons and those set further below, the Court should deny the stay.

I. ***Purcell* Neither Requires, Nor Favors a Stay**

As this Court correctly found, *Purcell* "does not preclude the court from providing a remedy to the plaintiffs in this case." Doc. 250 at 117. In reaching this conclusion, this Court carefully weighed the considerations set forth in *Purcell* and determined that a permanent injunction would present no risk of confusing or deterring voters. Doc. 250 at 109–17. As *Purcell* itself explains, this Court's factual findings are "owed deference[]" and nothing in Defendants' motion counsels otherwise. 549 U.S. at 5.

Defendants argue that a stay is required under *Purcell* for three reasons: (1) the timing of the permanent injunction will cause confusion; (2) the Supreme Court

has stayed several injunctions or upheld stays regarding electoral standards during the COVID-19 pandemic, including in this case; and (3) that Defendants are not judicially estopped from relying on *Purcell* to object to changes to the Challenged Provisions for the November 3 election. Doc. 253 at 7. These contentions lack merit.

First, although the Supreme Court has "repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election," *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (citations omitted) ("*RNC*"), "these are not ordinary times," and it is hardly the eve of the election. *League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2158249, at *8 (W.D. Va. May 5, 2020).

Courts have readily altered election rules within the timeframe allotted in this case. This Court is correct that *Purcell* does not create "a bright-line cutoff date" after which a federal court may no longer issue relief regarding impending elections. Doc. 250 at 109–10; *see also A. Philip Randolph Inst. v. Husted*, 907 F.3d 913, 918 (6th Cir. 2018) ("[T]he Supreme Court has never outlined a categorically higher burden for Plaintiffs who move for relief soon before an election, and this Court has explicitly rejected such a notion."). Indeed, in *RNC*, the Supreme Court did not stay all of the relief ordered by the district court despite the district court's injunction there coming much closer to the election than in the instant order. 140 S. Ct. at 1208. And the Eleventh Circuit has "declined in two recent cases to stay injunctions issued

immediately before and even after Election Day." Doc. 250 at 100 (citing *Democratic Executive Comm. of Fla. v. Lee*, 915 F.3d 1312, 1315 (11th Cir. 2019) and *Ga. Muslim Voter Project v. Kemp*, 918 F.3d 1262 (11th Cir. 2019) (mem.)). It cannot be and is not the case that "an aggrieved voter cannot challenge the purported abridgement of her franchise right" merely because it occurs or a court rules on such abridgement "after a set date before an election." *Id.* at 110. The doors of the courthouse are always open to aggrieved voters.

Purcell was primarily concerned "with voter confusion and consequent incentive to remain away from the polls." 549 U.S. at 4–5. Yet as this Court found, the permanent injunction is straightforward and "will not cause voter confusion or create an incentive for voters to remain away from the polls." *Id.* at 111, 113. Rather, ample "evidence from trial shows that Alabama's absentee voting laws are causing voters confusion as they stand." Doc. 250 at 113. Thus, permitting the injunction to take effect will likely *reduce* voter confusion, not cause it.

Moreover, as to the witness and photo ID requirements for absentee voters, "the order is taking away requirements placed on Alabama voters," therefore it is not likely to cause confusion or to "*cause* any voters to forgo voting altogether." *Id.* With respect to curbside voting, confusion is even less likely to occur. Doc. 250 at 113. Either the option will be offered in a particular county on Election Day or it will not be. Because no county is required to offer the accommodation, it is doubtful

"that the counties, if any, who opt to provide curbside voting will fail to publicize and inform their citizens that they are doing so." Doc. 250 at 113. Of course, concern about voter confusion did not stop Secretary Merrill from interfering on Election Day with counties who were already offering curbside voting in 2016 and 2018.[1]

Second, Defendants argue that *Purcell* is "almost certainly why" the Supreme Court issued a stay of the preliminary injunction in this case in July. But the Court did not explain its rationale for acting. And even if *Purcell* played a role, the Court was silent regarding *which* considerations weighed in favor of a stay. Defendants posit that "[n]othing has changed since then that makes issuing an injunction . . . any wiser this time round." Doc. 253 at 2. But, again, we do not know the reason for the Supreme Court's stay. And Defendants' argument ignores the numerous key distinctions between the preliminary injunction and permanent injunction. For example, the Court issued robust findings of fact after two weeks of trial regarding the harm to plaintiffs caused by the Challenged Provisions, and the relative lack thereof to Defendants. *See* Doc. 250 at 6–92. And the permanent injunction provides Statewide relief, while the preliminary injunction provided relief in three counties. *Compare* Doc. 251 *with* Doc. 59. The limited applicability of the preliminary

[1] Defendants' argument that Mr. Porter might rely on the Court's order and then be confused when curbside voting is unavailable on November 3 is disingenuous. Doc. 253 at 13–14. The order is clear that no county is required to offer curbside voting and Mobile County Probate Judge Davis emphatically stated at trial that he will not offer curbside voting. Doc. 250 at 105–06. If Mr. Davis changes his position, then any confusion would be due to his equivocation, not this Court's order.

injunction to only three counties ahead of an impending *statewide* primary election might have informed the Supreme Court's decision. And Defendants were not judicially estopped from raising *Purcell* in July. For these reasons, the Supreme Court's July stay does not counsel in favor of issuing a stay of the permanent injunction.

Neither *Little v. Reclaim Idaho*, No. 20A18, 2020 WL 4360897 (U.S. Jul. 30, 2020), nor *Clarno v. People Not Politicians*, No. 20A21, 2020 WL 4589742 (U.S. Aug. 11, 2020), counsel otherwise. As this Court recognized, both cases are readily distinguishable. Doc. 250 at 111–12, n.151, n.152.

Third, this Court correctly determined that Defendants should be judicially estopped from now relying on *Purcell* to object to Plaintiffs' requested relief. Defendants argued in May that Plaintiffs' requested preliminary injunction for November was too speculative, and they prevailed on that argument when this Court denied to Plaintiffs relief for November. Doc. 250 at 116 (citing Doc. 58 at 12). That Defendants made this concreteness argument before Plaintiffs filed an amended complaint makes no difference. Doc. 253 at 7. The permanent injunction implicates the identical Challenged Provisions and claims against which Defendants argued that Plaintiffs could not establish a concrete injury.

Defendants argue that judicial estoppel is not warranted because "it can *both* be that the Plaintiffs' allegations in May concerning the November election were too

speculative . . . *and* that equitable considerations warrant the denial of an injunction now[.]" Doc. 253 at 7–8. But judicial estoppel is not limited in its application only to precisely contradictory positions — "additional considerations may inform the [judicial estoppel's] application in specific factual contexts." *New Hampshire v. Maine*, 532 U.S. 742, 751 (2001). Here, Defendants' position would place voters in an impossible position where the relief requested is both too early and too late. This is untenable. "To hold that an aggrieved voter cannot challenge the purported abridgement of her franchise right after a set date before an election [would] invite some officials to engage in shenanigans knowing that courts will not hear a challenge to their illegal conduct." Doc. 250 at 110. That is not and cannot be the law.

Defendants rely on *Memphis A. Phillip Randolph Inst. v. Hargett* to support their proposition that their *Purcell* argument is consistent with their earlier concreteness argument. Doc. 253 at 8 (citing No. 3:20-CV-00374, 2020 WL 4279623, at *7 (M.D. Tenn. July 21, 2020)). But that case is distinguishable. In *Hargett*, the plaintiffs sought to judicially estop defendants from making a laches argument in a separate action and in a separate forum than where the defendants originally raised the argument. The plaintiffs also sought to judicially estop a third defendant, who was not a party of the original action, from raising a laches argument. Here, this Court has judicially estopped the same parties from making a later inconsistent argument during the same action and in the same forum.

II. The *Nken* Factors Favor Permitting the Injunction to Take Effect

Defendants will not be irreparably injured absent a stay. Defendants make much ado about ongoing absentee voting. Doc. 253 at 10. But nothing in the order harms Defendants or any voter who has already requested or cast absentee ballots.

Plaintiffs, however, will be substantially harmed by a stay. Defendants argue that voters "*factually*, . . . will still be able to vote by absentee ballot if they wish, [or] in person if they choose[.]" Doc. 253 at 12 (emphasis added). Yet this completely disregards this Courts' findings of fact. Under a stay, Plaintiffs and the members of the organizational Plaintiffs will not in fact be able to vote absentee "if they wish" because of the significant burdens and dangers imposed by the Challenged Provisions. Doc. 250 at 130–31, 132–33, 137. Plaintiffs are also avoiding voting in person because of the threat of COVID-19 transmission presented by polling places in the absence of curbside voting. Doc. 250 at 29–30, 42–43, 53.

It is precisely because "Alabama expects more people to vote absentee this election cycle than ever before[,]" Doc. 253 at 12, that the public interest demands permitting the permanent injunction to take effect immediately to protect the health of not merely Plaintiffs but all high-risk Alabama voters.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask that this Court deny Defendants' motion to stay.

Respectfully submitted on Oct. 1, 2020,

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CERTIFICATE OF SERVICE

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No. 20-13695-B

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PEOPLE FIRST OF ALABAMA, et al.,
Plaintiffs-Appellees,

v.

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

On Appeal from the United States District Court
for the Northern District of Alabama
Case No. 2:20-cv-00619-AKK

APPELLANTS' APPENDIX TO TIME SENSITIVE MOTION FOR ADMINISTRATIVE STAY AND STAY PENDING APPEAL VOLUME II

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TAB B

No. 20-13695-B

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PEOPLE FIRST OF ALABAMA, et al.,
Plaintiffs-Appellees,

v.

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

On Appeal from the United States District Court
for the Northern District of Alabama
Case No. 2:20-cv-00619-AKK

DECLARATION OF JAMES W. DAVIS

James Davis declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am over the age of 18 and competent to make this declaration. I am an attorney for Secretary of State John Merrill and the State of Alabama. I am barred in the State of Alabama and a member of the bar of this Court. I submit this declaration on behalf of the Appellants to provide true and correct copies of the cited uncertified transcripts that I received from the court reporter, Sabrina Lewis, at the end of each day during trial.

2. Due to the time-sensitive nature of this case, certified transcripts are not yet available, as the district court acknowledged in citing to these uncertified transcripts in its opinion. *See* Doc. 250 at 2 n.3.

3. In the interest of clarity and convenience, a paralegal in our office added a cover sheet to each uncertified transcript identifying the date of the testimony each contains, and condensed each transcript so that four transcript pages will appear on each printed page.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Dated: October 2, 2020

James W. Davis

TAB C

9/8/2020
Rough Transcript

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CASE NO. 2:20-cv-00619-AKK

PEOPLE FIRST OF ALABAMA, et al.,
v.
JOHN MERRILL, et al.,

THE COURT: Good morning, everyone.

Mr. Ross, are the plaintiffs ready to begin?

MR. ROSS: Your Honor, this is Deuel Ross for the plaintiffs. I had a little trouble hearing you.

THE COURT: Are the plaintiffs ready to begin?

MR. ROSS: Yes, Your Honor, plaintiffs are ready to begin.

THE COURT: Who is your first witness this morning?

MR. ROSS: Your Honor, our first witness is Dr. Art Reingold. And I'll turn it over to my colleague, Ms. Zaragoza.

THE COURT: Good morning, everyone. We seem to be having a little bit of technical glitches this morning. Hopefully nothing major. Let's begin.

Ms. Humphrey, are you ready to swear in the first witness, please.

MS. ZARAGOZA: Okay, Your Honor. Liliana Zaragoza for plaintiffs. Good morning.

THE COURT: Good morning, Ms. Zaragoza.

MS. ZARAGOZA: I admit I am having trouble hearing you. I don't know if others are having the same trouble.

UNIDENTIFIED MALE SPEAKER: We are having trouble

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hearing you, Your Honor.

MS. ZARAGOZA: In order to diagnose the problem, it seems like a very tinny, difficult kind of like computer-generated sound, Your Honor.

THE COURT: Give us a minute, please.

(Pause.)

THE COURT: Folks, can you hear me now? I see head nods saying no.

(Pause.)

THE COURT: We're trying again. Any better luck this time?

MS. ZARAGOZA: Much better, Your Honor.

THE COURT: Thank you.

I think the first witness is Dr. Reingold; is that correct?

MS. ZARAGOZA: That's correct, Your Honor.

THE COURT: Go ahead, Ms. Zaragoza.

MS. ZARAGOZA: Excuse me, Your Honor. We have a trial tech team here today, and I'm going to ask -- Eric, could you please -- all right. That will do. Although, actually, Your Honor, I'm not sure if you have Dr. Reingold pinned on your screen. So I just want to make sure that we have some kind of Zoom housekeeping in order so that the witness is visible for everybody.

THE COURT: I think Ms. Zaragoza just wanted to make sure I could see Dr. Reingold.

Dr. Reingold, if you are hearing me, please raise your hand

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just to make sure. Is anyone else not able to see Dr. Reingold who's waving his arm back and forth?

Karen, if you can go back to that previous screen, then I can see Dr. Reingold, please. He is on. Let's swear him in and then --

Dr. Reingold, would you please raise your right hand, please, so Ms. Humphrey can swear you in.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Arthur Reingold. A-R-T-H-U-R. R-E-I-N-G-O-L-D.

THE COURTROOM DEPUTY: What city and state do you reside in, Mr. Reingold?

THE WITNESS: I reside in Oakland, California.

THE COURT: Ms. Zaragoza, your witness.

MS. ZARAGOZA: Yes. Thank you, Your Honor.

ARTHUR L. REINGOLD, M.D.,

duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MS. ZARAGOZA:

Q. Good morning, Dr. Reingold.

A. Good morning.

Q. You have already stated your name for the record, so I'll skip forward a little bit. Could you please describe your education background for the Court.

A. Very briefly, I received a bachelor's degree in biology from

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the University of Chicago 1970, my medical degree from the same institution in 1976, completed a residency in internal medicine, and then completed the Epidemic Intelligence Service training at the Centers for Disease Control and Prevention in Atlanta, then did a preventive medicine residency also based at the CDC in Atlanta. That would be pretty much my educational background.

Q. Thank you, Dr. Reingold. Now, are you currently employed?

A. Yes.

Q. Where are you currently employed?

A. I am professor and head of the division of epidemiology at the University of California School of Public Health at Berkley, California.

Q. Okay. How long have you been a professor at Berkley?

A. I formally joined the faculty July 1st, 1987.

Q. Okay. And you testified that you're the head of the Division of Epidemiology and Biostatistics at Berkley; is that correct?

A. Yes.

Q. What are your duties in that position?

A. Well, I have some administrative duties. I report to the dean. I run the division. That's a relatively small part of my time. Most of my time is spent on research on infectious disease prevention and control, training and teaching and mentoring doctoral students, masters students, and undergraduate students. I teach in a variety of courses and perform service to a

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variety of academic and governmental and other types of organizations.

Q. Okay. And you said you have an MD from the University of Chicago. Do you retain a license to practice medicine?

A. Yes. Much to my wife's irritation, I keep my medical license current with the State of California as well as my board certification in internal medicine.

Q. Okay. And have you published any peer-reviewed articles?

A. Yes.

Q. Approximately how many peer-reviewed articles have you published?

A. I think it's about 370 at the moment.

Q. Okay. And have you published any articles on infectious diseases?

A. About 98 percent of those 370 articles are about infectious diseases of different types, yes.

Q. Have you published any articles on respiratory infectious diseases?

A. Yes. A substantial portion of those articles are about a variety of different respiratory infectious diseases.

Q. Are any of those articles about COVID-19?

A. Yes. I think the two most recent publications on my curriculum vitae of August of this year relate to COVID-19, and I have others in the works, if you will.

Q. Okay. And briefly, in what scientific publications has your

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research been featured?

A. Well, it's generally been in the leading publications in my field, the New England Journal of Medicine, the Lancet, JAMA, the Journal of Infectious Disease, the American Journal of Epidemiology, so a host of different journals. But very often some of the most prestigious in my field.

Q. Okay. And have you served on any editorial boards?

A. Oh, yes. I've been on the editorial board of the AMERICAN journal of Epidemiology, a journal called Epidemiology. I'm currently an associate editor for the journal called Vaccine.

Q. Have you ever served as a peer reviewer for an academic journal?

A. For many years, I served as a peer reviewer for pretty much all the leading journals in my field. I have reduced my time doing that because as an associate editor of a journal, I spent quite a bit of time reviewing manuscripts for that journal.

Q. Okay. Have you ever served as an expert witness in any case before?

A. Yes.

Q. And how many cases?

A. Well, over the past 25 or 30 years, I would say that in general, I have served as an expert in cases at least the deposition stage on the order of once or twice a year.

Q. Okay. And excuse me.

Before I ask the next question, I'm having -- I'm hearing a

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little bit of feedback. I don't know if others are experiencing it as well. I'm seeing some head nods. I'm not sure.

THE COURTROOM DEPUTY: Tell them to turn their volume down.

THE COURT: Ms. Zaragoza, I can hear Dr. Reingold. If others can mute their screens, that may be of some help as well.

MS. ZARAGOZA: Thank you, Your Honor.

Q. Okay. So just to get us back on track, you testified that you've served as an expert witness before, You know, on several occasions the last 25 to 30 years. When was the most recent -- prior to 2020, when was the last most recent case in which you were an expert?

A. A case in which I appeared at trial would have been in January of 2019 in Orange County, California.

Q. Okay. What was that case about?

A. Well, that was an instance in which an individual allegedly contracted a food-borne illness from a Mexican restaurant.

Q. Okay. And have you been certified as an expert before?

A. Yes.

Q. Have you ever been found not qualified as an expert before?

A. No.

Q. Okay.

MS. ZARAGOZA: Your Honor, at this time, plaintiffs offer Dr. Reingold as an expert in epidemiology including emerging and remerging infections in the United States of America and

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vaccine preventable diseases such as COVID-19.

THE COURT: Any objection from anyone on the Defendants' side?

MR. WEBER: No objection.

MS. ZARAGOZA: Your Honor, Mr. Reingold -- oh, excuse me.

THE COURT: I think I heard Mr. Davis. Having not heard anyone else, I will receive Dr. Reingold as an expert in the areas that he's being tendered for.

Ms. Zaragoza, you may continue.

Mr. Weber, was that you?

MR. WEBER: It was, Your Honor.

THE COURT: Thank you, Mr. Weber. Sorry about that. Thank you, Ms. Lewis.

MS. ZARAGOZA: Thank you, Your Honor. Dr. Reingold has been provided an electronic binder of documents today that are relevant to his testimony, and Defendants have been provided these documents as well in advance of trial.

Q. Dr. Reingold, could you please pull up the document which is premarked Exhibit PX 269 starting at page 20?

A. 269? What was the title of the document? Sorry.

Q. 269. It should be --

A. Is that my declaration in the case?

Q. Yes. Yes. And on page 20, do you recognize page 20 if you're there yet?

A. Page 20, is that my curriculum vitae that's attached?

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Q. Yes. If you wouldn't mind having it in front of you to confirm for the Court.

A. Yes, that's correct.

Q. Thank you, Dr. Reingold. Is it an accurate copy of your CV dated as of May 2020?

A. As of May 2020, yes.

Q. Is this the most recent version of your CV?

A. No, I updated it the latter part of August.

Q. Okay. And can you briefly describe any changes that you made as between your May 2020 version of your CV and the August 2020 version of your CV?

A. Well, I would say there were really only two substantive changes in the area of my publications. A handful of additional scientific publications were added including a couple about COVID-19, and two of my important service contributions were added under committees that I serve on both for the National Academy of Sciences Engineering and Medicine and both in relation to COVID-19.

Q. Okay. Thank you. And now you've identified the beginning, if you could go back to page 1 of Plaintiffs' Exhibit 269.

A. Yes.

Q. Did you prepare an expert report in this case?

A. Yes.

Q. Okay. And is that your report dated July 24, 2020?

A. Yes.

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Q. Did you sign this report under oath?

A. Yes.

Q. Does this report accurately reflect your analysis and opinion in this case as of July 24, 2020?

A. Yes.

Q. Okay. For the record, is there anything in your report that you would like to update?

A. Well, I believe that there is one statement which is not entirely accurate where -- let me find the section. Sorry. I believe I make reference somewhere in the document to a case of COVID-19 in the death of a poll worker. And in fact, they erroneously say that the poll worker may have contracted COVID-19 at the polling station. In point of fact, the issue in that case was that the poll worker may have exposed a large number of voters at the polling station as a result of being infected with the virus.

Q. All right. Is there anything that you would like to update or correct in that report?

A. No. Well, we now have a great deal more information about aerosol transmission of the virus which has become available since I signed this document. But other than that, no.

MS. ZARAGOZA: Your Honor, Defendants were provided a copy of Plaintiffs' Exhibit PX 269 which is Dr. Reingold's expert report. And we would now move to offer both his May 2020 CV which is a part of that exhibit and his expert report both of which

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comprise PX 269.

THE COURT: Any objections from anyone?

MR. WEBER: No objections, Your Honor.

THE COURT: Plaintiffs' 269 is received.

(Plaintiffs' Exhibit 269 was admitted into evidence.)

MS. ZARAGOZA: Thank you, Your Honor.

Eric, I am asking that the second slide in the demonstrative be put up on the screen.

Q. Okay. Dr. Reingold, what were you asked to talk about in this case?

A. Well, they are basically the topics that are listed here. I was asked to review what is known about COVID-19 and the virus that causes it, SARS-CoV-2. What we know about who is most likely to be infected, most likely to be hospitalized, to suffer severe illness, who's most likely to become infected with the virus, how the virus is transmitted, what are the various measures for mitigating the spread of the virus, to look at data concerning COVID-19 in Alabama, and to look at the provisions for voting in the State of Alabama.

Q. Can you briefly summarize your overall conclusions in this case?

A. Well, my overall conclusion is that like virtually every state in the United States, Alabama continues to have transmission of SARS-CoV-2, it continues to have cases of hospitalizations and deaths attributable to COVID-19. And that that's likely to be the

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case in November at the time of our next elections. And that it would prudent to you allow voters the opportunity to vote without having to come into contact with other individuals as a way of safeguarding their health.

Q. Okay.

MS. ZARAGOZA: And, Eric, you may take down demonstrative number 2, please.

Q. Dr. Reingold, in reaching these conclusions which you have just described for the Court, what sources have you relied on?

A. Well, like most academics and researchers, I try and keep up to date in my field and areas I'm doing research on. So I looked at a whole variety of research publications. I looked at a number of websites because for a rapidly changing disease like COVID-19, that's important. So I look at, for example, the CDC and the World Health Organization websites. I find the New York Times website to be informative. Sometimes Johns Hopkins website. So I look at a variety of those types of websites. But, of course, I largely rely on published scientific reports.

Q. Okay. Now, you have made reference to it on several indications, but can you please describe for the Court what is COVID-19?

A. Well, COVID-19 is a --

THE COURT: Dr. Reingold, you faded out briefly. COVID-19 is a disease. Would you --

A. Sure. COVID-19 is an early emergent infectious disease. As

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best the science tells us, the first case probably occurred in an individual in China, perhaps in mid November 2019. But since then has infected millions of people in the United States, large numbers in virtually every country in the world. The etiologic agent, the virus that causes it has been named SARS-CoV-2. And a great deal has been learned about that virus in the seven or eight months that people have been studying it. So -- and in general, COVID-19 involves infection of the respiratory tract and often signs and symptoms related to infection of the respiratory tract.

Q. (BY MS. ZARAGOZA:) Okay. You discussed that often signs and symptoms relate to the respiratory tract. But are symptoms limited to respiratory symptoms?

A. No. The classic symptoms people refer to, as is true for many respiratory infections, include cough and fever and shortness of breath, but there are a number of other features. Some people lose their sense of taste or their sense of smell. Other people have manifestations in the -- virtually every other part of the body. People can suffer strokes and heart attacks in the midst of a severe COVID attack. But the most serious problem in most patients is respiratory failure, needing of ventilation, ventilatory support, and care in an intensive care unit for their inability to provide oxygen to their system.

Q. Does every person who is infected with SARS-CoV-2 display symptoms?

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A. Current estimates from a variety of sources indicate that perhaps something in the order of 30 to 40 percent of people who are infected do not develop any symptoms at all despite being infected. But there's quite a range of estimates. It probably depends in part on how big of an infectious dose you got, how old or infirm you are, or what you underlying illnesses you have. There's a pretty wide range of estimates. But the scientific community has generally said that something in the range of 30 to 40 percent of people develop no symptoms.

Q. Okay. How is SARS-CoV-2 transmitted?

A. Well, the standard literature on this refers to several methods. The virus is in essence transmitted from one person to another. Probably the first case acquired it from an animal. But since then, it's basically been transmitted from one human being to another through the respiratory route. So people often refer to droplet transmission. And the notion of that is when I cough or sneeze, I emit large droplets, and some of them may land on you and get into your eye or your nose or your throat and infect you through a large droplet landing on you.

There is a belief that the virus can be transmitted through putting those droplets on your hand, then touching someone else's hand, then that person putting their hand to their eye or their nose or their mouth. Similarly, it's believed it can be transmitted through inanimate objects in the environment often called fomites in medicine. Such that you cough or sneeze in

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your hand, touch the inanimate object, then I touch the object, then I manage to transmit the virus to my nose or mouth or eye.

And I would say at this point there is extremely strong evidence that it can also be transmitted via aerosols. And the standard description of aerosols is very small particles that can remain suspended in the air for a period of time and that I can breathe in directly.

Q. Okay. And you discussed aerosol transmission, and you earlier in the context of updating your CV mentioned that the science has changed since July. Can you briefly describe that recent evidence suggesting aerosol transmission of SARS-CoV-2?

A. Sure. Early on, the World Health Organization and the CDC and others issued statements that transmission via aerosols of this virus was unlikely and there was no evidence for it. I think because there are a number of episodes that are best explained by aerosol transmission, which I'll be happy to talk about, that's been called into question, and I believe the science has evolved. And in response to that, the national academies held a two-day workshop of the world's leading experts two weeks ago. It was open to anyone who wanted to dial in. I think about ten thousand people listened in. I was one of the organizers and chaired one of the sessions.

And I would say that the evidence presented there and published in the last two months makes it very clear that this virus can be transmitted via aerosols. That evidence includes not

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only the fact that in the laboratory, you could easily generate such aerosols with virus, but in the rooms of patients with the virus, you can find it in the air of that room in an infectious form.

There are now animal studies of at least two animal models clearly documenting aerosol transmission in ferrets, in golden hamsters, two classic models for studying respiratory infections. And so I personally and every expert on this call believes that we do sometimes have aerosol transmission of this virus. The only additional study you could do to prove that categorically would be to intentionally expose into humans aerosols of the virus. And of course, that's completely unethical and will never be done.

Q. Okay. And you alleged to one location. You mentioned -- you testified that aerosols can be found in a hospital room. Are there any specific locations that present a heightened risk of COVID-19 transmission?

MR. WEBER: Your Honor, the Defendants object. This was not information that was contained in Dr. Reingold's expert report. We haven't had a chance to review this information.

MS. ZARAGOZA: Your Honor, Dr. Reingold in July -- on July 24, he stated that there was increasing evidence of aerosol transmission. He said it in paragraph 9, there's growing evidence that SARS-CoV-2 is also aerosolized such that tiny droplets containing the virus remain in the air and can be inhaled by others who come into contact with that air and SARS-CoV-2 can be transmitted in that fashion.

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And then there's a footnote 8 which cites to several articles, and Defendants did have that information available as of July 24. And Dr. Reingold has not only provided that at that time but has testified today that the science has -- you know, it changes rather quickly in this area. And so he is simply updating the Court since that time.

THE COURT: Mr. Weber, are you objecting to the aerosol testimony or to the question that was asked after that about areas that perhaps pose an increasing likelihood of transmission?

MR. WEBER: Yes, Your Honor. My objection was to the latter question which is not an issue that was covered in his expert report with regard to any science about the aerosolized nature of the virus.

THE COURT: Okay. All right. In light of the portions that Ms. Zaragoza has referenced, let me overrule the objection, please.

You may continue, Ms. Zaragoza.

MS. ZARAGOZA: Understood, Your Honor.

Q. So, Dr. Reingold, you briefly were giving us an overview of recent evidence of SARS-CoV-2 aerosol transmission. Could you please describe for us where SARS-CoV-2 transmission can occur?

A. Well, I would say that whatever your belief about aerosol transmission of this virus, the greatest concern for transmission is indoors. So transmission is much more likely to occur indoors than out of doors. And it's much more likely to occur indoors

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when people share space for extended periods of time and when the ventilation in that room is suboptimal or inadequate, so there isn't a great deal of air exchange and fresh air coming in. That's the highest risk setting. And I don't believe there's any disagreement about that even among people who are not convinced about aerosol transmission.

Q. Okay. And can -- who can transmit SARS-CoV-2?

A. Well, of course you have to be infected with the virus. So if you have the virus in your nose and throat, then you may be able to transmit it to others or through coughing, sneezing. Those were initially thought to be the primary ways in which people could transmit it to others.

I believe there is now strong evidence that even talking, loud talking, singing, and other activities involving the vocal cords can in fact emit virus into the environment around someone. It is also thought to potentially represent a way of transmitting the virus to other people.

MR. WEBER: Your Honor, the Defendants renew their objection. Dr. Reingold is now testifying as to studies or means of transmissions that were not covered in his declaration.

THE COURT: What's the Plaintiffs' response, if any?

MS. ZARAGOZA: Your Honor, in the same report, and I'm happy to locate the paragraph for you, but there is discussion of SARS-CoV-2 being transmitted via talking or coughing, the same sorts of modes that have been mentioned previously. And it does

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discuss that, you know, as Dr. Reingold testified earlier, that asymptomatic persons can transmit it. So to the extent -- and moreover, that necessarily infected persons transmit it. I'm happy to locate those paragraphs, but it is -- let's see. It is again in paragraph 10, in the same paragraph in which the -- where it says that there is growing evidence that SARS-CoV-2 is also aerosolized.

At the top of that paragraph, Your Honor, it says that SARS-CoV-2 is readily spread through respiratory transmission. All people are susceptible to and capable of getting COVID-19 because of the ease with which it spreads. And then in the third line, it says that when an infected individual speaks, coughs, sneezes, and the like, they expel droplets. And then it's -- those are the preceding sentences to the discussion of aerosolization of SARS-CoV-2.

THE COURT: Objection is overruled.

Q. (BY MS. ZARAGOZA:) Okay. Dr. Reingold, can anyone contract COVID-19?

A. Well, I believe the common wisdom among the scientific community is because this is a new virus, that people have not been exposed to before, that everyone is at risk of becoming infected with the virus. Whether being infected produces a protective response that protects you from reinfection is an extremely important but still unanswered question. So there may be people who have been infected who are not at risk of

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reinfection. But we think that in general, people are susceptible to this virus until they're infected with it.

Q. Based on your analysis of existing research, are there any specific populations that are particularly susceptible to contracting COVID-19?

A. So I think one needs to divide that into two different pieces. One piece is a group that might be at greater risk of being infected with the virus, and the second relates to people who if they become infected are at greater risk of having a severe illness requiring hospitalization, respiratory support, and the like. So I would rather divide it into those two subcategories if that's all right.

With regard to people with risk of infection, all of the studies in the United States of America in virtually every geographic area where it's been studied would say that first of all, that people who are African American, Latin X, or Native American suffer higher rates of infection with the virus than non-Hispanic whites. And a lot of this has to do with greater exposure to people in the community, holding jobs, for example, that require them to be -- generally lower paid jobs that require them to have a lot of contact, whether it's as a nursing assistant in a nursing home, whether it's food delivery, whether it's working in a poultry or meat processing plant, that they often hold lower wage jobs, that they cannot do from home the way I can. So they are more likely to be exposed to the virus. Also,

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because they are more likely to live in multi-generational crowded homes, there's a greater likelihood once the virus comes home that it will be transmitted within the household.

So we know that people in these groups, because of social and economic and employment, are at greater risk of coming into contact with the virus. And then unfortunately, the same groups are disproportionately represented among people who are hospitalized and who die. And that's partly because they're more likely to become infected. But it's also because in general, they have poorer access to health care, to timely and high quality health care. And they also have a much more higher prevalence of underlying health conditions often poorly controlled that increase the risk of a severe outcome.

Those include morbid obesity, uncontrolled hypertension, various types of heart disease and lung disease which are more common in our -- in the poorer part of the population and more common in African Americans or Latin X and Native American populations. So if they do become infected, because they have a higher prevalence of these underlying conditions, they're more likely to become severely ill, require hospitalization, intubation, and be at risk of dying.

Q. Okay. Dr. Reingold, I'm going to ask if you can please pull up a series of documents. And can you please pull up first document marked as PX 352, which is titled Centers for Disease Control and Prevention, people with certain medical conditions.

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Defense counsel was also provided this document in advance of your testimony today.

A. Yes.

Q. Do you have that document in front of you, Dr. Reingold?

A. Yes.

Q. Are you familiar with this document?

A. Yes.

Q. What is it?

A. It's basically a document from the U.S. Centers for Disease Control and Prevention which outlines some of what I was saying with regard to the various types of medical conditions that increase someone's risk of having severe COVID-19 such as obesity and heart disease and sickle cell anemia and things of that kind.

MS. ZARAGOZA: Your Honor, Defendants as I mentioned previously were provided a copy of this document. At this time, plaintiffs would move to offer PX 352 into evidence.

THE COURT: Any objections?

MR. WEBER: No objection, Your Honor.

THE COURT: Thank you. Plaintiffs' 352 is received.

(Plaintiffs' Exhibit 352 was admitted into evidence.)

MS. ZARAGOZA: Eric, can you please put up Plaintiffs' 352? Okay. Actually, can you put down the bottom of the screen? Thank you.

Q. Dr. Reingold, does this list accurately reflect your

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understanding of medical conditions which might render a person at increased risk for severe illness from COVID-19?

A. Well, I think different studies point to -- some of these other studies point to others. This is an attempt to compile the results of multiple studies and I think to be inclusive. I don't have any reason to disagree with this list. I think the evidence was stronger for some of these conditions than others. But this is the standard accepted list by the medical community.

Q. Okay.

MS. ZARAGOZA: Eric, you can take that document down.

Q. And, Dr. Reingold, can you please pull up the document marked PX 349?

A. Yes, I have it.

Q. Are you familiar with this document, Dr. Reingold?

A. Yes.

Q. What is your understanding of that document?

A. Well, this document, it basically lays out the case that there are other factors within our community that put people at increased risk of adverse health outcomes. We in public health might refer to this as a social determinance of health model, which is to say that, in essence, communities of color, particularly poor communities of color suffer from adverse health -- virtually every health outcome that we know of at a greater rate, and that reflects a whole host of different factors, some of which I mentioned relating to poor housing, related to

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the types of jobs they hold, relating to access to health care.

This document also points to discrimination. There's a lot of work on whether experiencing racism, for example, increased risk of various adverse health outcomes. So this is standard information in public health that in our highly unequal society some groups suffer adverse health and have much shorter lifespans than other groups.

Q. Dr. Reingold, in your expert opinion, are the contents of this document consistent with your assessment of available COVID-19 data?

A. Yes.

Q. Okay. I'm going to briefly turn to the subject of testing for COVID-19. Are there any methods available to confirm whether a person is currently infected with COVID-19?

A. Yes. The standard method often employed involving something called PCR for polymerase chain reaction where a specimen is taken from the nose, the mouth, the throat, what's called the nasopharynx, and the RNA, the nucleic acids of the virus are looked for in the test. That's pretty much the test people will be familiar with.

There's increasing research to develop a study -- a diagnostic test called point of care tests that look for the proteins of the virus, not the nucleic acids. Those are certainly under development and may be more widespread soon. But those would be the two primary ways we would attempt to determine if

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you're currently infected or not.

Q. Can anyone be tested for COVID-19?

A. Well, our political leaders have said anyone can be tested at any time they want. But I think that a practical level, in many places, you may have to wait in line a day or more to get your sample taken, and then you may need to wait a week or more to get your results back. So I think there's enormous geographic variability and socioeconomic variability in terms of who can access testing. In theory, everyone can be tested. In practice, some people can get tested every day with little difficulty, and others really have a great deal of difficulty getting tested.

Q. Apart from diagnostic testing, is it possible to determine whether a person has previously been infected by COVID-19?

A. Well, you're presumably referring to what we call serologic logic or antibody tests where we take a blood sample and we look for antibodies to the virus. A great deal of work has been done in that area, and a number of laboratories have developed serologic assays. The problem is that -- so first of all, those are not clinically useful tests. We don't use them to make a diagnosis of COVID-19. They're primarily at this point used for epidemiologic studies and research of that kind because we don't really know the meaning of a positive or a negative test. I know people will interpret them, but the interpretation is actually not quite as clear as people might think.

Q. Okay. What do you mean by the interpretation is not as

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clear as people might think?

A. Well, just we've been doing a study at my university of students over the summer, and we've collected blood samples from them. And what will we tell them when we report back to them a negative or a positive test? What will we explain to them about what their test result means? And this has taken a great deal of discussion because nobody actually knows what the test results mean.

The presence of an antibody presumably means you have been exposed to the virus, but people are likely to interpret it as perhaps they are now protected against reinfection. And I think that is really not known at the moment. So we have to be very careful what we tell people when we report back a positive result. And a negative result, we don't really know for sure that that means they're still susceptible either. So it's very hard to interpret these results so that people know what they mean.

Q. Okay. Dr. Reingold, you testified early that you are an editor of the journal called Vaccine. Is a COVID-19 vaccine currently available?

A. Well, certainly not in the United States, no.

Q. Okay. Are there any COVID-19 vaccines in development?

A. Yes. And I think the New York Times does a good job of this. If you look and see their vaccine tracker each morning, they will tell you -- I think there are some well over a hundred vaccines being tested. Several are already in what are called phase 3

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clinical trials which is of the most advanced part of the testing regimen. So there are dozens in development and several at advanced stages.

Q. And what are the stages of vaccine development?

A. Well, generally, things are first given to animals of one kind or another to sort of get some information about their performance. Once people believe that it's reasonable to do so, they do phase 1 studies where they, if it's an injectable vaccine, an oral vaccine, whatever, however it's administered, the vaccine is administered to what is typically a few dozen people, 30, 40, 50, 100, maybe a couple hundred people, in order to primarily see whether the vaccine produces an immune response at that dose or how many doses of vaccine and whether it's grossly safe. Do people faint? Do they have some serious adverse event?

And if things look good after that, the phase 2 studies then look at larger numbers of people. They look at how well the vaccine performs typically at the target population to whom we'd like to give it at a dosage, one or more dosages we think might be the right dose or the right schedule. We learn more about the immune response. We learn more about safety because we're now giving it to several hundred people. And if everything still looks good, we go to phase 3.

In phase 3, we randomly assign some number of people to get the vaccine. Others to get a placebo. And we look to see if the vaccine in fact prevents the infection or the disease we're

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trying to prevent, which is after all what we care about. And at the same time, we're now also looking at safety very carefully again but now perhaps in several thousand people instead of several hundred people. It's only after that phase 3 trial that shows that the vaccine is safe and effective in preventing infection or illness that a vaccine is typically licensed and made available to the larger population.

Q. Okay. Are any of the vaccines currently in development in phase 3?

A. Yes, I believe 3 are in phase 3 in the United States at the moment.

Q. Okay. Are there any intervening steps in your experience within your field? Are there typically any intervening steps between phase 3 and when a vaccine becomes available for use by the general public?

A. Well, in the normal course of events, once that phase 3 study has been successful and shown that a vaccine is safe and effective, then there typically takes some period of time to ramp up production and to distribute it. There's clearly been an attempt through what's called Operation Warp Speed to shorten that time by basically buying the vaccine and having it manufactured before we know whether it's safe and effective. And the gamble is that if it doesn't turn out to be safe and effective, we may flush a billion dollars' worth of vaccine do you the toilet.

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But what has to happen once we deem a vaccine safe and effective is we need large numbers of doses. It needs to be packaged either in individual syringes or in vials or whatever. It needs to be stored appropriately. It needs to be transported. It needs to be administered to people. And of course if you're talking about doing that to several hundred million people spread over a large geographic area, there's a bit of complexity to that .

Q. Okay. And once -- in your expert opinion, will a vaccine become available for general use by the public in 2020?

A. No.

Q. In your expert opinion, when do you believe a COVID-19 vaccine might become available?

A. Well, I think the optimistic scenario, a very optimistic scenario is that we could know that one of the vaccines that's in phase 3, one or more of them, is safe at the level we can assess it now and has at least acceptable efficacy by perhaps October or November, but because I'm on the committee making recommendations for who should get priority for a vaccine in the United States, you know, there have been public presentations by the head of (Operation Warp Speed that initially under the most optimistic scenario, there may only be about ten million doses available for use.

There will then be increasing numbers of doses over the next six months, each month more lots be released. But we've been asked the question if there are only 10 million doses or 20

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million but needing two doses per person, who should get priority because there will not be enough vaccine to give it to the general population for at least a number of months after it's approved.

Q. Okay. Dr. Reingold, once the vaccine is approved and available to the general adult population, does that cease of spread of transmission of SARS-CoV-2?

A. So vaccines for something like COVID-19 or SARS-CoV-2 are viewed as potentially having two types of effects. One is protecting you as an individual against disease. The other is potentially reducing transmission of the agent from one person to another. These are really two different effects. We have some vaccines that prevent disease but do not prevent transmission that we commonly use.

So is it remains uncertain whether the vaccine will prevent transmission of the virus even if it protects you as an individual. So if the notion is we will achieve herd immunity through wide spread vaccination, we certainly hope that that's the case, but it's certainly going to require successfully vaccinating a very large number of people with a vaccine that has at least reasonably good efficacy. And so I would say talking about achieving probably at least -- I don't know -- 50, 60, 70 percent coverage in the population with a vaccine that's at least 50 to 60 percent effective. So you're talking about having to vaccinate very large numbers of people. If the idea is that that will reduce

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transmission or prevent transmission to others in the community to any noticeable extent.

Q. Okay. Absent a vaccine or herd immunity, what are currently the most effective methods for reducing transmission of SARS-CoV-2?

A. Well, they are the ones everyone has heard about. Social distancing. So not being in indoor spaces with other individuals particularly unmasked in poorly ventilated spaces. Good hand washing and sanitation, disinfection of surfaces are thought to be an important part. So, you know, these are things that everyone reads about in the newspaper. But of course, the best way to avoid contact with the virus is to not be in contact with other people.

Q. Okay. Dr. Reingold, have you looked at COVID-19 data specific to Alabama?

A. Yes.

Q. Okay. What sources have you looked at?

A. Well, I have looked at the Alabama Department of Public Health website for COVID-19. Again, I have looked at the New York Times website because they public state by state data that seem to be accurate. And timely. So those would be the two primary sources with regard to Alabama specifically.

MS. ZARAGOZA: Okay. Eric, could you please put up demonstrative number 3. Sorry. There was a bit of feedback for me for a moment there.

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Q. Dr. Reingold, are you familiar with this graph?

A. Yes. This is another source people often look to. The Johns Hopkins University is often regularly putting out data and this I believe is a graph showing data from Johns Hopkins collection of information from the 50 states.

Q. Okay. And what is this a graph of?

A. Well, I believe this is the number of reported COVID-19 cases in the 50 United States pretty much on a daily basis perhaps with some smoothing, moving three-day average to smooth things a little bit. But it's basically the number of diagnosed cases per day since February or March 2020.

Q. What is your analysis of the data depicted in this graph?

MR. WEBER: Your Honor, we (indecipherable) plaintiffs purporting this to be a demonstrative exhibit, but they are asking the witness to testify as to underlying data depicted on it.

MS. ZARAGOZA: Your Honor, so Dr. Reingold is testifying as an expert here today. We're not asking that this graph be, you know, admitted into evidence. And I'm just asking for Dr. Reingold's evaluation of this information. He can use any even inadmissible evidence to form an opinion particularly if it's something that experts in his field regularly rely on. He has testified to the fact that he relies on Johns Hopkins information. He also mentioned that it's something that various experts and others regularly look to at the start of his testimony on this graph.

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THE COURT: He said he relied on Alabama public health and New York Times data only. But I think he has testified that he's familiar with the Johns Hopkins data. So he can answer the question.

A. So if I understand the question correctly, what do I make of this graph?

Q. (BY MS. ZARAGOZA:) Yes, Dr. Reingold.

A. Well, I think it shows what most people already know, which is that, you know, the beginning of this year, we began to see substantial numbers of cases of COVID-19 in the United States. Of course, a great deal of geographic variability in different parts of the country not reflected here. But overall, a steady increase in the number of cases and apparently peaking in July or August then somewhat of a decline, and then, you know, an increase again in early September.

Q. Okay. Dr. Reingold, can you please pull up document --

MS. ZARAGOZA: Oh, and Eric -- excuse me. You can remove the demonstrative. Thank you.

Q. Dr. Reingold, can you please pull up document premarked PX 294.

A. Yes.

Q. Are you familiar with this document?

A. No. I have it in front of me. Can you tell me which one it is? I have it, but I don't have it labeled.

Q. It is the Alabama -- it's Alabama Department of Public Health

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COVID-19 Data and Surveillance Dashboard.

A. Yes, I have a number of those in front of me. But I don't have the PX number on them. So just a second. What's the number? The exhibit number? 294?

Q. Yes.

A. Yes, I have that.

Q. Okay. Are you familiar with this document?

A. Sorry. Yes.

Q. Can you hear me?

A. Yes. I'm familiar with it, yes.

Q. Okay. What is it?

A. Well, you know, there are a number of pages to this, of course, but it's the Alabama -- labeled the Alabama COVID-19 Data and Surveillance Dashboard. So it's an attempt to update people regularly on the findings with regard to COVID-19 in the State of Alabama.

MS. ZARAGOZA: Okay. Your Honor, I represent to the Court that this is a document marked PX 294. It is an updated version of PX 294 because we saw that an error in the Court's binder as well as in the Defendants' E-binder, the way that the Alabama COVID-19 dashboard is structured is that there's a home page, so that's all that automatically printed. But we have provided the Court as well as Defendants last night an updated -- we properly printed each tab. And in addition during the pretrial conference as Defendants' raised, the data changes frequently and, you

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know, we have shared that the Alabama Department of Public -- this is the Alabama Department of Public Health's dashboard. This was updated, the tabs as shown in the copy that we gave to Defendants last night, the Court, reflects the latest data as of September.

THE COURT: Any objections to Plaintiffs' 294?

MR. WEBER: No objections, Your Honor.

THE COURT: Thank you. Plaintiffs' 294 is received.

(Plaintiffs' Exhibit 294 was admitted into evidence.)

BY MS. ZARAGOZA: Eric, can you please put up demonstrative number 4.

Q. Okay. Dr. Reingold, do you see that graph on the screen?

A. Yes.

Q. Are you familiar with that graph?

A. Yes.

Q. What is it a graph of?

A. Well, the gray bars represent what's called the daily check count, how many cases of COVID-19 were diagnosed in the State of Alabama on that date. And then the three different colored lines when what we call smoothing approaches to sort of smooth out sort of the up and down that is somewhat not very helpful and to give you a better sense of what's happening. So this is either a three-day moving average or seven-day moving average or 14-day moving average. They all look pretty much the same. So I'm not sure it matters particularly which one we look at. But

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it's again basically a trend in the number of COVID-19 cases diagnosed per time period in the State of Alabama.

Q. Dr. Reingold, what is a moving average?

A. Well, a moving average basically says that instead of just looking at the actual number that were reported today, I will take three days or seven days or 14 days' worth of information and average that out and graph it again to basically get rid of some of the the random up and down that you see in the gray bars. I don't think the message is terribly different. It's visually a little earlier to understand.

Q. Okay. And what is your interpretation of this graph?

A. Well, again as shown, it appears that, you know, COVID-19 was first diagnosed in the State of Alabama in early March. The number of cases stayed at some fairly similar level into through the end of May perhaps, slight increases through May. Then there was a substantial uptick in cases in June and July. So that's the early part of August. Again, there was a decline in the latter part of August and then perhaps somewhat of an increase at the very end of August.

Q. Okay. And, Dr. Reingold, based on this graph, can you in your expert opinion make any predictions about the future of COVID-19 in Alabama?

A. Well, I would predict as I think most infectious disease epidemiologists would that we'll continue to have the COVID-19 and the virus that causes it in Alabama and in every other state in

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the United States for the foreseeable future.

Q. Excuse me. I was muted.

MS. ZARAGOZA: Eric can be can you please put up demonstrative number 5.

Q. Dr. Reingold, are you familiar with this graph?

A. Yes.

Q. What is this a graph of?

A. This is a graph of testing, numbers of tests done for COVID-19 presumably almost entirely or entirely PCR tests. I assume there are no antibody tests in here and probably no point of care diagnostic tests. So it's probably PCR tests positive for COVID-19 are the green bars, the numbers per week perhaps, and then the red line is the percentage of tests that are positive in the given week.

Q. Okay. And what is your assessment of the information in this graph?

A. Well, clearly the amount of testing went up substantially around the middle of the time period portrayed here and then stayed reasonably high, perhaps dipped a bit for the past few time periods. But the red line would indicate and the values of the red line that still pretty a substantial portion of the tests were reading positive certainly in the range of 15 to 20 percent during a number of these time periods. That's considered to be much higher than it should be.

Q. Okay. And what is the meaning of -- so there's a 10.6

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percent on August 29 is the most recent data. What does that number mean to you?

A. Well, most experts in the field would say that if enough testing is going on, we would expect the percent positive to be lower than this and hopefully under 5 percent.

Q. Okay.

MS. ZARAGOZA: Eric, can be can you please put up demonstrative number 6.

Q. Dr. Reingold, are you familiar with this graph?

A. Yes.

Q. Okay. And what is this a graph of?

A. Well, it's also a daily case count and the moving averages for a number of COVID-19 cases. It looks to me like this might be for Lee County, one of the counties in Alabama. So the state does break the data out for individual counties. If it's labeled correctly, this would be Lee County.

Q. Okay. And what is your expert assessment of this chart?

A. Well, except for a little sort of blip back in early April, there are relatively few COVID-19 cases in May, then a substantial increase in June and July, a dip in early August, but then a substantial increase again at the very end of August.

Q. Okay. Dr. Reingold, are you aware that colleges and universities recently opened up in Alabama?

A. Yes.

Q. Are you aware that Auburn University is in Lee County?

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A. Yes.

Q. In your expert opinion, what impact might opening colleges and universities have on COVID-19 transmission?

MR. WEBER: Objection. Foundation.

THE COURT: That's fair. Ms. Zaragoza, why don't you step back briefly and then lay the foundation for your question, please.

MS. ZARAGOZA: Sure.

Q. Dr. Reingold, you testified that you are aware that colleges and universities have recently opened up in Alabama?

A. Yes.

Q. Okay. And you are aware that Auburn University is in Lee County?

A. Yes.

Q. Okay. In your expert assessment, what impact, if any, might reopening of schools have?

MR. WEBER: Objection. Lack of foundation.

THE COURT: Presumably, Dr. Reingold, when schools reopen, there's an increase in the number of people in the town; is that correct?

THE WITNESS: Well, certainly in large numbers of college towns, that's absolutely correct, yes.

THE COURT: And are you saying that Auburn, for the record, is a college town as far as you know?

THE WITNESS: That's my understanding, yes.

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THE COURT: Do you believe, I guess, the question that Ms. Zaragoza is trying to ask -- and this will be the last question, and we'll take a break -- that an influx of people may increase the potential likelihood of infections?

THE WITNESS: Well, that would certainly be one reason why the number of infections would increase. But it would also depend on the behaviors of those individuals.

THE COURT: Let's stop here. We have been going for roughly an hour. Let's take 15 minutes. Come back at 10:30 to be exact, central time. We are in recess from now until then. Thanks, everyone.

(Recess.)

THE COURT: Hello, everyone. All right. We stopped with Dr. Reingold mentioning that in addition to increased number of people, we also need to take into account the behavior of those people.

Ms. Zaragoza, why don't you pick up. Let's try to go for another hour before we take a break again, please. But if anyone needs one before then, please let me know. Ms. Zaragoza, would you begin, please.

MS. ZARAGOZA: My colleagues have told me that the judge spoke, but I can't hear unfortunately. Can anybody hear me?

THE WITNESS: We can hear you.

MR. WEBER: Yeah.

THE COURT: Okay. Ms. Zaragoza, you may begin. I think

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we can hear you.

MS. ZARAGOZA: I'm going to get some different headphones. Testing.

MR. WEBER: We can hear you, Liliana.

MS. ZARAGOZA: I still can't hear. Nothing changed over the break. So I apologize, Your Honor, and to others. If I may, and I can't hear, but I will rely on my colleagues who can send me a message. I may exit the Zoom and try to enter again because I'm hearing other sounds on my computer. So if the Court would allow that.

THE COURT: You may.

MS. ZARAGOZA: Because I unfortunately can't hear anybody else in the Zoom. Okay. Wonderful. I can hear again. I can hear everyone here. My apologies, Your Honor, for the inevitable technology difficulties.

THE COURT: Indeed. Not a problem at all. You may begin again when you're ready.

MS. ZARAGOZA: Thank you.

Q. Dr. Reingold, can you please pull up document premarked as Defendants' Exhibit 186?

A. Which one is that?

Q. Defendants' Exhibit 186. It's a proclamation by the Governor, the 17th supplemental state of emergency and order of the state health officer dated August 27, 2020?

A. Yes.

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Q. Do you have that, Dr. Reingold?

A. Yes.

Q. Okay. Are you familiar with this document?

A. Yes.

Q. What is it? Although I have it. In your own words, what is it?

A. It's an order from the state health officer from the State of Alabama, Dr. Scott Harris.

THE COURT: Dr. Reingold, we lost you there briefly. Can you repeat? It's a public order from Dr. Harris.

THE WITNESS: Yes. Can you hear me now?

THE COURT: I can.

A. It's an order from Dr. Harris, the Alabama state health officer, continuing an order that suspends certain public gatherings because of the risk of COVID-19.

MS. ZARAGOZA: Okay. Your Honor, Defendants had a copy of this exhibit before this trial. In fact, it is one of Defendants' Exhibit. It's marked as 186. And at this time, plaintiffs actually move to offer it into evidence.

MR. WEBER: No objection, Your Honor.

THE COURT: Is it PX Plaintiffs' 186 or Defendants' 186?

MS. ZARAGOZA: It's Defendants' 186, Your Honor.

THE COURT: Defendants' 186 is received into evidence.

(Defendants' Exhibit 196 was admitted into evidence.)

Q. (BY MS. ZARAGOZA) Okay. Dr. Reingold, can you please pull

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up documents marked PX -- and again, since we just had a Defendants exhibit, this is PX 299 through PX 303.

A. Yes, I have them.

Q. Okay. Are you familiar with these documents?

A. Yes.

Q. And what are they?

A. Well, these are earlier versions of the same -- well, similar health order limiting behaviors or guidance for the State of Alabama dating from March 19th through May 8th, I believe.

MS. ZARAGOZA: Okay. Your Honor, at this time, plaintiffs move to offer into evidence exhibits PX 299 through PX 303, all of which were provided to Defendants ahead of today's -- ahead Dr. Reingold's testimony and are copies of proclamations of the State of Alabama, and we now move to offer them into evidence.

THE COURT: Any objections?

MR. WEBER: No objection, Your Honor.

THE COURT: Thank you. Plaintiffs' 299 to 303 are admitted.

(Plaintiffs' Exhibit 299 to 303 admitted into evidence.)

MS. ZARAGOZA: Okay, thank you.

Q. Dr. Reingold, can you please pull up another document marked PX 451?

A. Sorry. Which one is that?

Q. It is a CDC document recommendations for election polling locations, interim guidance --

A. Yes.

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Q. -- okay. Was that enough to locate the document?

A. Yes.

Q. Okay. Are you familiar with this document?

A. Yes.

Q. Can you briefly describe the contents of this document?

A. Well, this is guidance provided by the U.S. Centers for Disease Control and Prevention for how to minimize the risks of COVID-19 --

THE COURT: Dr. Reingold, we did not hear the end of your response. Please restate it.

A. These are a series of recommendations from the U.S. Centers for Disease Control and Prevention about measures that can be taken to reduce the risk of COVID-19 associated with voting.

THE COURT: Thank you.

MS. ZARAGOZA: Okay. Your Honor, Defendants were provided a copy of this exhibit as well in advance of today, and plaintiffs now move to offer PX 451 into evidence.

THE COURT: Any objection to 451?

MR. WEBER: No objection.

THE COURT: Thank you. Plaintiffs' 451 is received.

(Plaintiffs' Exhibit 451 was admitted into evidence.)

MS. ZARAGOZA: Okay. Eric, can you please put up PX 451 at the bottom of page 10, top of page 11. Apologies. It -- my screen seems to be freezing up. Okay. I'm back with you all and -- okay. Thank you, Eric.

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Q. Dr. Reingold, are you familiar with this section of PX 451?
A. Yes.
Q. Do you agree with its recommendations?
A. Yes.
Q. Apologies. I'm having technical difficulties at Dr. Reingold's response. I couldn't hear it.
A. My response was yes.
Q. If you will give me please one moment, I will check something with my internet connection.
MS. ZARAGOZA: Apologies to everyone. I'm not sure what's going. Apologies to everyone on the line.
Q. Dr. Reingold, my apologies to ask the question again. But do you agree with the recommendations of this provision on the screen?
A. Yes.
MS. ZARAGOZA: Hello. Apologies to everyone. I have connected my audio by phone. This morning it was connected by computer without issue, but something has changed. Is everyone able to hear me okay?
THE WITNESS: Yes.
MS. ZARAGOZA: Apologies, Your Honor.
Q. Okay. Dr. Reingold, and I apologize, but can you please repeat your last answer?
A. Yes, I agree with these recommendations.
Q. Okay. Why?

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A. Well, obviously, these are among the things that can be done to reduce the number of people who need to go into a polling location in order to cast their vote. And the fewer the people that need to do that, the less crowded those polling stations will be, and those people who don't need to go into them can maximize their protection and minimize their risk of acquiring COVID-19 by the act of voting.
Q. Okay. And in your expert opinion, what is your assessment of traditional in-person voting during the ongoing COVID-19 pandemic?
MR. WEBER: Objection.
MS. ZARAGOZA: What is the basis of your objection?
THE COURT: Hang on. Give me a minute, please. Presumably, Dr. Reingold, this is based on what you've testified about earlier about indoor places, number of people, air flow, et cetera, et cetera; is that correct?
THE WITNESS: Yes.
THE COURT: Let me overrule the objection. Ms. Zaragoza, you may continue.
MS. ZARAGOZA: Thank you, Your Honor.
Q. In your expert opinion, Dr. Reingold, what is your assessment of the risks of traditional in-person voting?
A. Well, I would say that the risks relate in part to transport to and from polling places, particularly for people who have to take public transportation or ride in a car with other people outside

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their household because there's risk of exposure to and from the polling place. There's obviously some risk of exposure standing in line waiting to enter the polling place. There's risk of exposure inside the polling place whether to other voters there or to polling staff or employees who are there to run the election.
Q. Okay.
MS. ZARAGOZA: Eric, can be can you please put up demonstrative number 9.
Q. Dr. Reingold, are you familiar with this provision?
A. The provision of the health officer order? Dr. Harris's order, Scott Harris's order? Yes.
Q. Okay. And what is your understanding of this particular provision?
A. Well, it's obviously meant to give advice to individuals as to how they can reduce their personal risk through personal actions they can take. Number A on the list is to minimize travel outside the home.
Q. Okay. And do you see that definition of vulnerable person?
A. Yes.
Q. Is that consistent with your understanding of who is at elevated risk for complications from COVID-19?
A. Yes.
Q. Okay. As a public health matter, do you agree with the recommendations in this provision?
A. Yes.

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Q. In your expert opinion, would you recommend that a vulnerable person as defined in this provision vote in person at a polling place?
A. Well, I would hope that they had other alternative ways of voting that didn't require travelling outside their homes since the recommendation here is to minimize travel outside the home. So I would recommend that people follow these recommendations. But obviously that might impede their ability to vote.
Q. Okay. And you mentioned alternative methods of voting. To which methods are you referring?
A. Well, in my state, you can vote by mail. You request a ballot, you fill it out at home, and you mail it in. No proof of identity or anything else is required. You have to sign it of course. That would be one way. I believe that other ways include potentially curbside voting or other things of that kind. I'm sure there's a variety. I'm not an expert on voting.
MS. ZARAGOZA: Okay. Eric, can you please show demonstrative number 10.
Q. Dr. Reingold, are you familiar with this portion of the stay-at-home order?
A. Yes.
Q. What is your understanding of this provision?
A. Well, this provision stipulates that when voting, one of the times that people cannot be required to wear a facial covering or mask.

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Q. Okay. And in your expert opinion, what impact might this exception to the mask requirement at the top have on COVID-19 transmission?

A. Well, I think we know that in general that if wearing facing coverings is optional, it's recommended that fewer people do it. To the extent...

THE COURT: Dr. Reingold, you faded out towards the end. Could you please restate your answer?

A. Sure. You know, I think the net effect of this would be that fewer people are likely to wear a facial covering while in a polling place. If that's true, then there's a greater risk of transmission to the COVID-19 virus in such locations.

MS. ZARAGOZA: Okay. Eric, you can take the demonstrative down. Thank you.

Q. Dr. Reingold, are you familiar with the requirement in Alabama that a voter must submit a photocopy of their photo ID with their absentee ballot application?

A. That's my understanding, yes.

Q. Are you familiar with the requirement in Alabama that a voter must get their absentee ballot envelope signed by two witnesses or notarized?

A. Again, that's my understanding.

Q. Okay. So in your expert opinion, would you recommend that a vulnerable person as defined in the safer-at-home order who does not have a printer at home go to a store and make a copy?

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A. Well, again, that presumably means leaving one's home in order to go to the store, transport to and from the store, and potential contact with people both while in transport and at the store. So it would be better not to do that if it's avoidable.

Q. Okay. And you testified that you're familiar with the witness requirement. In your expert opinion, what is your assessment of requiring a vulnerable person as designed in the safer-at-home order who lives alone to comply with that provision?

A. Well, again presumably, it results in an increased need to be in touch with other individuals outside the home in order to meet that requirement, and that is an exposure it would be better to avoid.

MS. ZARAGOZA: Eric, can be can you please put up demonstrative number 11.

Q. Dr. Reingold, are you familiar with this provision?

A. Yes.

Q. What is your understanding of this provision?

A. Well, this provision basically says that anybody who's found to have COVID-19 should be isolated for 14 days.

Q. Okay. As a public health matter, do you agree with this recommendation?

A. Well, it's certainly the standard recommendation of health departments. You know, one could argue with how 14 days days was chosen. But yes, I basically agree with it.

Q. In your expert opinion, if a voter is quarantined and

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consistent with the State of Alabama safer-at-home order and does not have a printer, would you recommended that that person potentially go to an establishment to make a copy?

A. Well, I believe they'd be violating this order for one thing. But on general public health principles, no, I would not.

Q. And in your expert opinion, if the voter is quarantining and lives alone, would you recommend that that person seek the signature of two witnesses?

A. No.

MS. ZARAGOZA: Okay. Eric, can you please put up PX 451 again. Thank you.

Q. Dr. Reingold, you have previously testified that you're familiar with this portion of PX 451; is that correct?

A. Yes.

Q. Okay. Let's see. What is your understanding of that -- this provision?

A. Again, this provision is presumably intended to reduce the number of people that need to go to a polling place in order to cast their ballot.

Q. Okay. And do you see there's a bolded bullet, and there are several non-bolded bullets below that. Do you see the third non-bolded bullet?

A. Yes.

Q. What is -- can you please describe your understanding of that portion of this provision?

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A. Well, one way to reduce crowding and crowd size in polling locations, one of the ways that's suggested is to allow people to basically vote from their cars, what's called drive-up voting.

Q. Do you agree with this recommendation?

A. Yes.

Q. Why?

A. Well, again, it basically is intended to reduce crowding within a polling station so there are fewer people in a polling station at any one time which is what we're trying to accomplish in terms of reducing risk of transmission of COVID-19 virus. So while they still have to leave their home, you know, they can stay within their car and thereby avoid or reduce contact with individuals who would be in the polling station.

MS. ZARAGOZA: I have no further questions.

THE COURT: Thank you. Cross-examine, Mr. Weber.

MR. WEBER: Yes, Your Honor.

CROSS-EXAMINATION BY MR. WEBER:

Q. Hello, Dr. Reingold.

A. Hello.

Q. We talked -- just a few weeks ago that we talked in your deposition. We'll cover some of the same ground but focus on a few of the areas that we discussed. First, I want to discuss the nature of your expertise. When you offer opinions in this case, are you offering them from a public health standpoint, or are you offering them in a broader standpoint that incorporates concerns

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such as voter security, prevention of fraud, et cetera?

A. From a public health standpoint.

Q. So your expertise is solely in public health; is that correct?

A. Well, public health broadly defined to include infectious diseases, yes.

Q. You don't hold this yourself out as an expert on elections, do you?

A. No.

Q. You don't have any of specialized training in elections law?

A. No.

Q. You don't have any specialized training or expertise in voting procedures, do you?

A. No.

Q. You have not worked with the State of California or other states in managing elections, have you?

A. That's correct.

Q. And you have not worked as a poll worker?

A. I have not, no.

Q. Do you have any knowledge as to whether the plaintiffs in this case have tested positive for coronavirus?

A. I do not.

Q. Do you have any knowledge as to whether any of them are or have been quarantined due to a positive test?

A. No.

Q. Is it your belief that the novel Coronavirus that causes

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COVID-19 will continue to circulate for the foreseeable future including through the end of 2020?

A. Yes.

Q. Do we know whether the number of new cases per day nationwide will rise or fall between now and November 3rd?

A. No one can predict with certainty what will happen in the future, no.

Q. Do we know whether Alabama will experience an increase, decrease, or steady amount of new cases per day between now and November 3rd?

A. Same answer, we can't know to a certainty, no.

Q. Do we know whether the nation or Alabama specifically will see a so-called second wave in cases between now and November 3rd?

A. No.

Q. We don't know whether in fact the SARS-CoV-2 virus surges or recedes based on the weather or season as some flu strains do, do we?

A. We don't know that. But the evidence to date suggests that it's readily transmitted at various temperatures and humidities.

Q. And that would seem to indicate that a surge in cases based on the change in weather or season is perhaps less likely, would it not?

A. I would say the honest answer is we just don't know.

Q. You don't know whether the rate of deaths or

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hospitalizations in Alabama will increase, decrease, or stay the same between now and November 3rd, do you?

A. No.

Q. And in fact, the Centers for Disease Control does not project out the rate of cases or deaths to November, does it?

A. Does the CDC make projections? Is that your question? Sorry.

Q. That is my question.

A. Generally the CDC looks at what's happening now. They look at what various academics do in the way of projections. But I don't know that the CDC has made its own projections, no.

Q. Dr. Reingold, I'm going to call up what has been marked for identification as State Defendants' Exhibit 119. Do you have a copy of that document, or do you want me to show it on the screen?

A. Can you tell me what the title is? I don't see it on the screen.

Q. That's fine. I'll show it on the screen. Can you see this document, Dr. Reingold?

A. Yes.

Q. It's entitled COVID-19 forecast cases from the Centers for Disease Control and Prevention. And it has a couple charts on it?

A. Yes.

Q. Are you familiar with this document?

A. Yes.

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Q. In fact, we looked at this during your deposition, did we not?

A. Yes.

Q. Now, this document is about three or so weeks old. Does it make projections going forward about the rate of cases nationwide for coronavirus?

A. Well, it makes projections for a couple of weeks, to what at that point would have been September 1st.

Q. And so this document which shows current data through roughly the middle of August, has several different lines going forward between then and September 1. Do you see that?

A. Yes.

Q. And do those lines represent a number of different scenarios regarding the rate of transmission of COVID-19?

A. Yes, they represent different models assembled by different people which make different assumptions, yes.

Q. And those models range from a stark increase in the number of cases to a stark decrease to the number of cases to the point where the number of new cases actually approaches zero, does it not?

A. You can certainly build models that will do that, yes.

Q. Thank you. I'm going to show you --

MR. WEBER: And so at this point, Defendants would move to introduce State Defendants' Exhibit 119 into evidence.

THE COURT: Any objections? State's Exhibit 119 is

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received.

(Defendants' Exhibit 119 was admitted into evidence.)

Q. (BY MR. WEBER:) All right. Dr. Reingold, can you see the documents on my screen now that's entitled COVID-19 forecast deaths?

A. Yes.

Q. From the CDC. Are you familiar with this document?

A. Yes.

Q. And this only goes through the middle of August or so. But it also shows a variety of models trying to predict the number of Defendants between then and September 1, does it not?

A. Yes.

Q. And those models vary from only a slight increase in the number of deaths to a more significant increase in the number of deaths between mid August and September 1, does it not?

A. Yes.

Q. Neither of these documents either 119 or 120 purport to make any prediction past September 1, do they?

A. No.

Q. Thank you, Dr. Reingold.

MR. WEBER: At this point, State Defendants move to introduce Defendants' Exhibit 120 into evidence.

THE COURT: Any objections? State Exhibit 120 is received.

(Defendants' Exhibit 120 was admitted into evidence.)

Q. (BY MR. WEBER:) Dr. Reingold, are you aware of any

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reputable studies that predict the course of the pandemic between now and November in terms of transmission of the virus and number of cases and deaths?

A. Well, there are any number of people who have, as you've already shown, produced models that make projections. They're all subject to a range of assumptions. So I guess I'm not entirely sure what your question is. I'm sorry.

Q. My question is you have stated before that you have extensive experience in peer reviewed literature. Are you aware of any reputable studies that project or predict the course of the pandemic between now and November in terms of transmission of the virus, number of cases, and deaths?

A. I think the Institute For Health Metrics at the University of Washington has made projections through the end of the year. I think a number of groups have made projections, but they are all subject to the assumptions that are in them.

Q. Dr. Reingold, we had a deposition just a few weeks ago, did we not?

A. Yes.

Q. And at the time, you were placed under oath?

A. Yes.

Q. And swore to tell the truth?

A. Yes.

Q. And you took that oath seriously, did you not?

A. Yes.

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Q. During that deposition, you were asked, "Are you aware of any reputable studies that predict the course of the pandemic between now and November in terms of the transmission of the virus and number of cases and deaths," and you said, "No, I am not." Is it your testimony that your answer has changed since then?

A. Well, I guess I'd have to say it has. I think as I said, a number of modelers make projections through the end of the year that they produce while refining their various assumptions. So I guess I misspoke then.

Q. Let's talk about Alabama specifically. You're aware that Alabama Department of Public Health publishes data in terms of the transmission of the virus in that state; is that correct?

A. Well, it publishes information about the number of positive tests, the number of tests performed, the numbers of deaths, things like that, yes.

Q. And that data typically includes a rolling average, perhaps a 7 or 14-day average that shows the number of new cases reported per day; is that correct?

A. Yes.

Q. That data also typically indicates a rate of hospitalizations perhaps also depicted on a 7 or 14-day rolling average. Is that your understanding?

A. Yes.

Q. Dr. Reingold, you testified at the start that one of the things

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that you were brought in to do in this case was to quote analyze existing Alabama COVID-19 data. Did I state that correctly?

A. Yes.

Q. Are you aware of the trends regarding the number of cases, number of hospitalizations, and number of deaths in Alabama?

A. That is reflected on its website and on other compilations like the New York Times, yes.

Q. Let's talk about those compilations. Are you aware of the compilation known as Bama Tracker?

A. Well, if that's separate from the website, the COVID-19 website of the Alabama Department of Public Health, then, no, I am not.

Q. Just to confirm, I'm going to share my screen here with you, and this is marked as State's Exhibit 236 for identification, which is the current information on the tracker known as bamatracker.com. Dr. Reingold, have you looked at this information before?

A. No.

Q. Are you aware that Bama Tracker is considered a reputable source of information regarding number of cases, number of hospitalizations, number of deaths, and similar information?

A. No, I know nothing about this particular data set, no.

Q. Are you aware that Bama Tracker draws its data from the Alabama Department of Public Health and other official sources such as the CDC?

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A. I don't know that, but I'll take your word for it.

Q. Dr. Reingold, I'd like to look at the charts depicted here. The first is the chart in green at the upper right-hand corner of my screen. It is titled new cases per day. Do you see that?

A. Yes.

Q. That represents a daily running total of new cases per day as reported by bamatracker.com as well as a seven-day average depicted on the line on that chart. Dr. Reingold, does that roughly track what you've seen on the Alabama Department of Public Health's website?

A. Well, it would be helpful to know what the last date shown there is because on the Alabama Department of Public Health website, that goes through the first week in September. So that's helpful. So as far as I can tell, I don't know if there's a noticeable difference between this and what the Department of Public Health website or not. But on that website, there appeared to be a bump up in the first few days of September. I can't tell if that's true here or not.

Q. The Alabama Department of Public Health website. Dr. Reingold, do you see that on the screen?

A. Yes.

Q. And what daily number and moving average confirmed cases by date of report?

A. Yes.

Q. And it looks like it runs through September 6. Is that what

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you see on your screen?

A. That appears to be correct, yes.

Q. And so does that align with what you saw on bamatracker.com?

A. I'm sorry. Could you repeat the question? I didn't hear the end.

Q. Does the information you see depicted on the Alabama Department of Public Health]s website align with what you saw on bamatracker.com?

A. In general, yes.

Q. You testified before that what you saw depicted on the ADPH's website was an increase in cases through the mid to the end of July followed by a decrease of cases through middle of August followed by, I believe, an increase toward the latter part of August.

A. Yes.

Q. Is that accurate?

A. Yes.

Q. And in fact, since the end of August, the 14-day moving average, seven-day moving average, and the three-day moving average all show a continued decrease in the number of cases per day, do they not?

A. That's what the curve shows, yes.

Q. And to the point where when you look at those three measures, they are now back down to a level that they have not

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been seen -- that Alabama has not seen since roughly the middle to end of June. Is that what you understand?

A. That's what this graph shows, yes.

Q. I'd like to go back to bamatracker.com. Do you see a graph on the right side of the screen marked deaths per day?

A. Cumulative deaths or deaths per day?

Q. Deaths per day?

A. Yes.

Q. Does that show a decrease in the number of deaths per day since around the first of August?

A. Since the first of August? I think that's a little hard to say. But you could do a statistical analysis, but, you know, there seems -- there might be a trend downward overall, but it's up and down obviously.

Q. Oh, there might be a trend downward, or there is a trend downward, Dr. Reingold? Because what I'm looking at indicates that we are now at levels that we have, you know, not seen since again, you know, very early on in this pandemic. Is that what you see?

A. You're looking -- if you're looking at the last two data points, then that would be correct. But if you look at the third to last data point, it's obviously somewhat higher. So you need to -- if you wanted to do a statistical analysis, I suppose you could do that. But clearly, the last two data points show a decline from the point before that, yes.

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Q. Finally, do you see a graph on the right side of your screen indicating hospitalizations per day?

A. Yes.

Q. And that shows both a daily count and a seven-day average back since at least early July. Dr. Reingold, does that indicate to you a steady decline in the number of hospitalizations per day since early August?

A. Yes.

Q. Thank you. I'll stop sharing my screen at this point. With regard to the nature of this virus, do people with no significant underlying medical complications sometimes suffer serious consequences as a result of the virus?

A. Yes.

Q. Do young people with no significant underlying medical complications sometimes suffer serious consequences as a result of the virus?

A. I'm sorry. Is that a different question, or is that the same question? I'm not --

Q. My earlier question just asked whether people with no significant underlying medical complications sometimes suffer serious consequences as a result of the virus. You agreed that the answer to that is yes. My question now is do young people with no significant underlying medical complications sometimes suffer serious consequences as a result of the virus?

A. Sometimes, yes.

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Q. Do young people with no significant underlying medical complications sometimes die as a result of the virus?

A. Infrequently but tragically, yes.

Q. Would you agree that everyone should be cautious as a result of the novel Corona virus that causes COVID-19?

A. That would make for better public health control, yes.

Q. Would you agree that everyone would be wise to limit their direct exposure to other people as a result of the virus?

A. Yes.

Q. Dr. Reingold, the touching of contaminated surfaces is not thought to be the major way the virus spreads, is it?

A. It's not thought to be the major way it spreads, no.

Q. In fact, there's very little epidemiological evidence that the SARS-CoV-2 virus is actually transmitted in this way, correct?

A. I would say it's largely a theoretical concern. I don't know of much evidence that it actually happens, but it's a theoretical concern, yes.

Q. And to the extent that that theoretical concern might be grounded in reality, a person can take precautions to limit his or her risk by washing his or her hands thoroughly or by using hand sanitizer before touching one's face, correct?

A. Yes.

Q. Likewise, disinfecting commonly touched surfaces can reduce the risk of transmission due to touching of contaminated surfaces, correct?

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A. That's believed to be the case, yes.

Q. Your declaration and your testimony here today discussed the disparate impact the virus has had on African Americans and other racial and ethnic minority groups. I believe you testified that that is due at least in part to factors such as close living conditions and a higher degree of concentration in so-called essential jobs where people in those categories are more often exposed to the general public. Did I characterize your testimony correctly?

A. Yes.

Q. Is there any evidence that differences either in rate of transmission among African Americans or other minority groups or the seriousness of cases in those groups is due to any sort of innate physiological characteristics such as is the case with a disease like sickle cell anemia?

A. Well, there is a large study being done to see whether sickle cell either disease or trait is associated with a greater risk of infection or COVID-19 illness. But at the moment, that's a study that's in progress, and I don't think we know the answer to that question.

Q. Beyond that, is it your opinion that African Americans or other minority or racial or ethnic minority groups is an innate physiological characteristic that make them more prone to contracting Corona virus?

A. Well, I have already alluded to the fact that the prevalence of

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underlying conditions is higher in those groups. But if you leave that aside, if you're not talking about that as part of their physiology, then, no, I am not aware of any such evidence.

Q. And when you talk about that, you're talking about conditions such as diabetes, respiratory diseases, obesity, things like that; is that correct?

A. Which certainly affect your physiology, yes.

Q. And those conditions make it person could suffer serious consequences or even death from COVID-19; is that correct?

A. Yes.

Q. Those conditions do not make a person more prone to catching, if you would, the Corona virus that causes COVID-19, does it?

A. Not to my knowledge, no.

Q. These factors that you described that particularly impact certain minority groups, densely populated neighborhoods and living areas, access to medical care and testing, predominance of employment in essential positions and preexisting medical conditions, are these purely a function of race, or do people of all races experience these conditions to varying degrees?

A. Well, people of all races can experience those conditions through one extent or another. There's also some evidence that experiencing racism has adverse effects on various health outcomes such as hypertension. Presumably if that's true, that would not be true for people, for example, who are non-Hispanic

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whites.

Q. I'd like to pose a hypothetical to explore your expert opinion here, Dr. Reingold. If a white, low-income, 70-year-old person who suffers from diabetes and obesity contracts the virus and a black or African American, middle-income, 35-year-old person with no complicating conditions contracts the virus, all other things being equal, who faces a higher risk of death or other serious complications from the virus?

A. The older person with underlying conditions.

Q. You testified that the higher rates of infections that African Americans and other minority groups experience may be due in part to their greater exposure to members of the public. Again, did I characterize your testimony correctly?

A. Yes, that's one of the reasons, yes.

Q. Do you have any reason to believe that African Americans will face greater exposure to members of the public on Election Day?

A. Well, I don't have an opinion about that one way or the other because I don't know about where people vote and the amount of crowding in polling stations where blacks may be voting versus whites or the like. So I'm not sure I could answer that question.

Q. You have voted for a long time, have you not, Dr. Reingold?

A. 50 years.

Q. Are there members of all races who vote where you vote?

A. Well, I have lived a few places during those times. And I

would say in some some places, yes, and in other places, no. We live in a segregated society, for the most part.

Q. You have voted in places that had no members of any minority groups voting there?

A. Not to my recollection, no.

Q. Do they have separate lines for whites and other minority groups where you vote?

A. I'm sorry. I didn't hear the question.

Q. Do they have separate --

MS. ZARAGOZA: Oh, I -- apologies. I objected, but I was on mute. Apologies if others could not hear me. I objected to Mr. Weber's last two questions. I apologize. I forgot that I was muted on my phone.

THE COURT: Not a problem. He's already answered the question. He lives in some -- he lived in some areas that have a lower number of minorities. So he's voted in places were interracial or others less so.

Mr. Weber, you may continue with your exam.

MR. WEBER: Yes, Your Honor.

Q. Dr. Reingold, when you vote, do you face the same risk of exposure to the public that everyone else who votes in your location does?

A. I would. I haven't voted in person for about 20 years. But if I did vote in person, presumably I would unless I took additional measures to protect myself.

Q. Dr. Reingold, I want to discuss some of the provisions that are at issue in this case starting with what's been called the witness requirement in Alabama, the requirement that an absentee ballot be signed by two witnesses or a notary public. Dr. Reingold, in your expert opinion, if a voter votes by absentee and gets two members of his or her household who he or she is already interacting with to witness the ballot, would you agree that there is no appreciable risk to the voter in this situation during the pandemic?

A. From having two people within the household serve as the witnesses? Is that your question?

Q. It is.

A. I would agree, yes.

Q. If a voter gets two people, say co-workers that he or she is already interacting with -- they're sharing work spaces, they're passing documents and objects back and forth regularly, if the voter gets those two people to witness the ballot, would you agree that the risk of transmission in this situation is minimal?

A. Well, to the extent that it represents more contact with those individuals, it might increase the risk. But how much it would increase it, I really can't say.

Q. Let me ask you, Dr. Reingold. If I as a voter am already interacting with colleagues, we're having discussions, we're working side by side, we're passing objects to each other, and in the midst of that, I hand that person my absentee ballot and say,

""Hey, would you mind signing this," would that represent to me any appreciable additional risk of contracting COVID-19?

A. Well, if you're saying that it doesn't require additional contact with the individual that wouldn't have occurred otherwise, then I would agree with you.

Q. Dr. Reingold, if a voter gets two nearby family members, friends, or neighbors to witness the ballot outdoors using their own pens, standing six feet or more apart, wearing masks, would you agree that the risk of transmission in this situation is minimal?

A. So they end up tossing things back and forth to each other? Is that the way -- perhaps they are tossing pens back and forth to each other.

Q. I did not propose that. But let's explore that hypothetical a little more. Let's say the person sets up a table outside and places his or her ballot on it, steps six feet back, the neighbor steps forward, uses his or her own pen, signs the ballot, steps six feet back, and then the voter collects it. Everybody is wearing masks. Would you agree that the risk of transmission in this situation is minimal?

A. It's certainly far lower than it would be indoors, yes.

Q. If a voter gets two people to observe the voter's signature through a house or a car window and then signed the ballot themselves after sliding the ballot through a door or through a cracked window, would you agree that the risk of transmission in

this situation is minimal?

A. Presumably, yes.

Q. Dr. Reingold, let's talk about the second requirement that's at issue in this case, the photo ID requirement or the requirement that a person applying for a ballot submit a copy of his or her photo ID with the application. If the voter makes a photocopy of the ID at home and mails that in with his or her ballot application, would you agree that there's no appreciable increased risk of COVID-19 transmission in this situation?

A. Yes. For someone who has the ability to make that copy at home, I would agree, yes.

Q. If the voter handed his or her photo ID to a household member who is already running errands for him or her, the person goes out, does grocery shopping, also makes a photo copies, brings the back, and leaves them on the front porch, would you agree there's no increased risk of COVID-19 transmission in this situation?

A. Well, if the total amount of time spent running around doing things and interacting with other people doesn't change, then presumably the answer is yes.

Q. My question is the risk to the voter, him or herself, if the household member goes out and goes two places instead of one but brings everything back and leaves it on the front porch, is there any increased risk to the voter in that situation?

A. Presumably it would be minimal.

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Q. If the voter leaves the ID at the front door for a friend, neighbor, a nearby relative to make a copy while that person is going to the pharmacy to pick something up, and the person makes the copy, brings it back, leaves the ID and the copy at the front door, would you agree there's no appreciable increased risk of COVID-19 transmission in that scenario?

A. Well, if there's no contact between the people and they're careful with the inanimate objects, yes, I would agree.

Q. If the voter takes a pictures of the photo ID, uploads that to a photo printing website, has a print of the photo ID delivered to his or her home via mail, and then mails that in with the ballot application, would you agree that there's no appreciable increased risk of COVID-19 transmission to the voter in in situation?

A. Yes, for people that have the technology available for them to do that, I would agree.

Q. If the voter is already going to the pharmacy or a bank drive-thru window and asks the pharmacy or the bank to make a copy of the photo ID via the drive-thru window and the pharmacy does so, would you agree there's no appreciable increased risk of COVID-19 transmission to the voter in that situation?

A. Well, if there's no additional contact with other people, then, yes, I would.

Q. Finally, let's talk about the last matter in this case which is what's been called curbside or sometimes drive-thru voting.

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Plaintiffs' counsel walked through the CDC recommendations or considerations for polling locations with you before. Do you remember that?

A. I'm afraid I heard none of that. You're breaking up, partially freezing. Sorry.

Q. Dr. Reingold, are you familiar with the CDC's document, recommendations or considerations for polling locations that Plaintiffs' counsel discussed with you?

A. Yes.

Q. And specifically with regard to drive-thru voting, those considerations recommend that voter -- I'm sorry. Let me back up. You're also familiar with the safer-at-home orders that Alabama has issued as a result of the pandemic, correct?

A. Yes.

Q. Those documents, the safer-at-home orders, generally advise people specifically -- especially at-risk people to minimize travel outside the home, correct?

A. Yes.

Q. Have you studied the risk of transmission of the virus through curbside voting?

A. No.

Q. Are you aware of a definition of the term curbside or drive-thru voting as the CDC uses it?

A. I don't know a specific definition, no.

Q. Would curbside or drive-thru voting as you understand it

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require the voter to leave his or her home?

A. Well, I presume it would require them to leave their home, yes.

Q. So it actually would involve travel outside the home, would it not?

A. Yes.

Q. Are you aware that to legally cast an in-person ballot in Alabama, the voter must hand a photo ID to an election worker?

A. That wouldn't surprise me.

Q. Are you aware that to legally cast an in-person ballot in Alabama, the voter must sign a poll book using a pen provided by an election worker?

A. That also would not surprise me.

Q. Are you aware --

MS. ZARAGOZA: Objection. Apology. I was on mute.

THE COURT: No apology is needed. Overruled in the sense that the answer is not real probative at the end of the day. He said that wouldn't surprise him. Keep going, please.

Q. (BY MR. WEBER:) Dr. Reingold, are you aware that to legally cast an in-person ballot in Alabama, a voter must receive the ballot in pen from the polling location?

A. I was not aware of that. But again, that wouldn't surprise me.

Q. Are you aware that to legally cast an in-person ballot in Alabama, the voter must vote the ballot using that pen?

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MS. ZARAGOZA: Objection.

THE COURT: Again, he's not an expert on Alabama election law. So he can answer the question if he knows or does not know. So overruled.

A. No, I did not know that.

Q. (BY MR. WEBER:) And, Dr. Reingold, are you aware that to legally cast an in-person ballot in Alabama, the voter must personally take the voted ballot and place it in the tabulation machine him or herself to insure voter secrecy?

MS. ZARAGOZA: Objection to the extent these questions assume facts that are not in evidence.

THE COURT: I'll sustain that. But presumably the state will introduce the facts through the relevant person in due course. Again, as to this witness, I'm not really sure the utility of the questions, but you can answer, Dr. Reingold, if you are aware of the scenario that Mr. Weber articulated for you.

A. No, Your Honor.

Q. (BY MR. WEBER:) Thank you, Dr. Reingold. And where I'm leading with that is if the voter personally interacted with the poll worker even in his or her car to do things like hand an ID card, sign a poll book, receive a pen and ballot, and return the ballot to the tabulation machine, do you believe that curbside is necessarily safer than absentee ballot in Alabama?

A. Safer than absentee ballot? You mean voting by mail?

Q. That is my question.

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A. No, I do not.
Q. Your declaration cites a couple factors that make voting in person a risk for spread of virus. The first would be a large number of people in close proximity, and the second would be a large number of common surfaces that multiple people touch. Is that an accurate representation of your opinion?
A. Yes.
Q. Are these two factors present in any other locations besides polling locations?
A. Presumably, yes.
Q. Are they present in some grocery stores?
A. Not grocery stores I would shop in, but probably.
Q. Home improvement stores?
A. I don't go to home improvement stores, so I would only be guessing.
Q. Schools?
A. It obviously depends on how schools are being organized in the time of COVID, but presumably, yes.
Q. Some work locations?
A. I'm sorry.
Q. Some work locations?
A. That's certainly plausible.
Q. Places of worship?
A. Lamentably, it's quite possible, yes.
Q. So, Dr. Reingold, is it your opinion that any place that has

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these two factors present a risk for transmission of the virus, not just polling locations?
A. Yes.
Q. Dr. Reingold, let's return to the CDC considerations for election polling locations and voters. You said before you're aware of these recommendations. Do you consider these to be sound guidance for states as they attempt to conduct elections during the pandemic?
A. Well, I think they're an attempt to make a reasonable set of recommendations for states, yes.
Q. Do you understand them to represent recommendations or mandates through governments?
A. You know, when I worked at the CDC, I understood we were not allowed to give out mandates. So as far as I know, CDC doesn't issue mandates of any kind.
Q. Let's go through a few of those recommendations. One is stay at home when sick or after recent close contact with a person with COVID-19. All right. Plaintiffs' counsel actually showed you some language from the state's safer-at-home orders in that regard. Are you aware that Alabama requires those who have tested positive to quarantine for 14 days?
A. I'm sorry. You're breaking up a little bit. Am I aware that what?
Q. Are you aware that Alabama requires those who tested positive for the virus to quarantine for 14 days?

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A. Yes. To isolate for 14 days, yes.
Q. Another CDC recommendation is to engage in hand hygiene and respiratory etiquette, to provide hand sanitizers at each step of the voting process where voters interact with poll workers and to encourage poll workers to wash their hands frequently. Have you aware that Alabama has distributed funds to allow for purchase of hand sanitizing stations and other similar hand hygiene measures?
A. I don't know that, but I'm happy to hear it.
Q. Another recommendation from the CDC is to recommend and reinforce the use of masks among all workers and to encourage voters to use masks in the polling location. Plaintiffs' counsel showed you one of the state's safer-at-home order. Did you understand that to encourage the wear of masks among voters?
A. To encourage it but certainly not to require it.
Q. Does the CDC require voters to wear masks at polling locations?
A. No.
Q. Masks?
A. The CDC, first of all, doesn't require anybody to do anything. But if you ask whether they recommend it that they be required, the answer is, no, but that's a very political issue.
Q. The CDC also recommends that polling locations disinfect frequently touched surfaces such as door handles or pens. Do

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you have any information as to whether polling locations in Alabama are or are not following this recommendation?
A. I do not.
Q. Are you aware that Alabama has distributed funds to allow polling locations to purchase items such as one-time-use pens?
A. No.
Q. Another recommendation from the CDC is to clean and disinfect voted associated equipment such as laptops, keyboards, and other reusable items. Are you aware that Alabama has distributed funds to allow polling locations to purchase disinfecting supplies and equipment?
A. No.
Q. The CDC recommends the use of physical barriers and guides. Are you aware that Alabama distributed funds to allow polling locations to purchase Plexiglass shields in some areas?
A. No.
Q. The CDC guidance that was shown on the screen before and that I read from recommends that states consider offering alternatives to in-person voting if allowed and that they allow use of drive-up voting, if allowed, in the jurisdiction. Do you have any personal knowledge as to whether curbside or drive-thru voting is allowed in Alabama?
A. I seem to remember hearing that it is not, but I can't state that to a certainty.
Q. When it comes to offering alternatives to in-person voting, is

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it your understanding that allowing early voting or extended hours where voting crowds may be smaller is another CDC recommendation?

A. Yes.

Q. Are you aware that in Alabama, a voter can physically vote in person at an absentee ballot location up to 55 days before the election, thereby allowing for early in-person absentee voting?

A. No.

Q. Are you aware that through an emergency rule the Secretary of State has made absentee voting available to any qualified voter who determines it is impossible or unreasonable at their voting place for the general election?

A. No.

Q. Dr. Reingold, is it your opinion that Alabama has complied with most if not all of the CDC's recommended guidance with regard to voting during the pandemic?

A. Well, taking the information you have provided to me about what the state has done, I -- sounds as though they've done a great deal of it, yes.

Q. I want to cover a couple matters that are covered in your declaration. You alluded to one of those before, and perhaps we can get that out of the way. You cited two examples to support your opinion that voting in person could present a risk of transmission of the virus. Are you aware of the two instances that I'm talking about?

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A. No. Could you refresh my memory? I don't know which you're talking about.

Q. Certainly. So one of the those instances you alluded to before involves a poll worker in Alabama who is later hospitalized for COVID-19. Do you recall that?

A. Yes.

Q. And in fact, the last sentence of your declaration states this connection is further confirmed by reports of at least one poll worker who worked on Alabama's July 14, 2020, primary runoff election and was hospitalized within three days of the election after testing positive for COVID-19. Later in your declaration, you state as follows, on page 17 of your declaration, "The recent incident of SARS-CoV-2 transmission to a poll worker in Alabama following congregant in-person voting further confirms my opinion that these public health interventions and the CDC's recommendation are necessary to prevent further the spread of SARS-CoV-2 in Alabama's upcoming 2020 elections. Is it -- do I understand that now your opinion is that there is no evidence that that poll worker contracted the virus at the polling location?

A. That's correct. That's the statement I corrected at the beginning this morning, that what that represented was the possibility of the poll worker being a risk of exposure to voters in the polling place. And I misstated it in my declaration.

Q. Do you have any personal knowledge as to how many voters that poll worker came in contact with on July 14th?

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A. No.

Q. Do you have any knowledge as to how many hours that poll worker worked?

A. No.

Q. Are you aware that the article that you cited indicated that all poll workers were wearing masks on July 14?

A. I honestly can't remember if I saw that or not.

Q. Let's call that out, Dr. Reingold. We have marked this as Defendants' Exhibit 132. Do you see the article on my screen entitled "Poll Worker Tests Positive For COVID-19 in Piedmont"?

A. Yes.

Q. Is that the article you referred to in your declaration?

A. Yes.

Q. There are about three sentences that comprise the sum and substance of this article. Would you read those to your self briefly?

A. Yes.

Q. Does this article indicate that the poll worker was wearing a mask on July 14th?

A. It says every poll worker was wearing a mask. That's what it says.

Q. Can you tell based on this article whether anyone else at this polling location tested positive for the virus?

A. No.

MR. WEBER: Your Honor, at this time, the State Defendants

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move to introduce State Defendants Exhibit 132 as State Defendants' Exhibit 132.

THE COURT: Any objections?

MS. ZARAGOZA: No objection.

THE COURT: Thank you. 132 is in.

(Defendants' Exhibit 132 was admitted into evidence.)

THE COURT: Mr. Weber, how much longer do you have?

MR. WEBER: Your Honor, my best guess is we're talking about maybe 10 more minutes.

THE COURT: Okay. Let's take a quick break. 10 minutes. We'll come back at the top of the hour. We are in recess until then. 10 minutes, everyone. Thanks.

(Recess.)

THE COURT: Assuming everyone can hear me. I don't know if you can. The courtroom deputy is not in the room. But if you can hear me, let's resume with the cross, please.

MR. WEBER: Yes, Your Honor.

THE COURT: Thank you.

Q. (BY MR. WEBER:) Dr. Reingold, have you ever voted in Alabama?

A. No.

Q. Have you visited any polling place in Alabama?

A. No.

Q. Have you reviewed any polling place schematics for locations in Alabama?

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A. No.
Q. I didn't hear your answer.
A. No.
Q. Dr. Reingold, have you spoken with any county probate judges or other local election officials about the measures that that they plan to take with regard to the November election?
A. No.
Q. Have you spoken with any state officials about measures that they plan to take with regard to the November election?
A. No.
Q. You've covered some of the details from your CV before. Have you published anything specifically on COVID-19 and elections?
A. No.
Q. Dr. Reingold, you testified before that you're familiar with the New York Times vaccine tracker; is that correct?
A. I'm sorry. I only heard part of that.
Q. You testified before that you're familiar with the New York Times vaccine tracker; is that correct?
A. Yes.
Q. Is it your testimony that there are three COVID-19 vaccines currently in phase 3?
A. That's my understanding, yes.
Q. Are you aware that as of today the New York Times vaccine tracker shows in fact nine vaccines in phase 3 trials?

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A. You know, I looked at it this morning, and I saw three. But I will have to pull it up. I won't argue with you about it. But there are certainly several there are in advanced stages.
Q. Let's return to your declaration, Dr. Reingold. We were discussing two case studies that you said supported your conclusion with regard to the risk of voting. One was an Alabama poll worker. We covered that. The second was covered in paragraph 21 of your declaration which cites the Wisconsin primary election on April 7. In that paragraph, you assert that the Wisconsin Department of Health Services has directly traced and linked 71 confirmed cases of COVID-19 to people who voted in person at that primary election. Have I summarized paragraph 21 of your declaration correctly?
A. Yes.
Q. And by directly tracing and linking 71 confirmed cases, do you believe that 71 people contracted the virus while voting in person?
A. Well, that's the straightforward interpretation of the tracing efforts, yes.
Q. You cite two sources in footnote 32 to support your conclusion about the Wisconsin Department of Health Services' findings. First is an article by D.J. Hall from Wisconsin Watch. We have marked that as State Defendants' Exhibit 129. I will put that up for you. Dr. Reingold, can you see that article on the screen?

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A. Yes.
Q. Is this the article to which you referred in your declaration?
A. Yes.
Q. I would like to move to page 4 of this article. Can you read that on your screen, Dr. Reingold?
A. Yes.
Q. Are you able to read it? Was that a yes, Dr. Reingold?
A. Yes.
Q. Dr. Reingold, can you see that on your screen?
A. Yes.
Q. Thank you. The article states the State Department of Health Services found 71 Wisconsinites got COVID-19 after voting or working at the polls, the Wisconsin State Journal reported last month, but those people could have been exposed in other ways. Dr. Reingold, does this article indicate that 71 Wisconsinites contracted COVID-19 while voting in the primary election?
A. Well, that's what the first half of the sentence says. Got and contracted with pretty much equivalent in this sense. It acknowledges the fact that in an individual, it can be very difficult to know where they acquired the infection.
Q. Does that indicate to you with any reasonable degree of scientific certainty that 71 Wisconsinites contracted Corona virus as a result of voting in person?
A. Well, this is the whole underpinning of what's called contact tracing. Contact tracing takes individuals who are positive for

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COVID-19 and attempts to see where they may have been exposed during the relevant time period. So this is the standard interpretation of the data from contact tracing efforts.
Q. Did you cite any contact tracing studies that were done in support of your conclusion in this report?
A. No. Thank you.
MR. WEBER: At this time, the State Defendants move to introduce what has been marked as state Exhibit --
THE COURT: 129 or something else? Mr. Weber, are you moving --
MS. ZARAGOZA: I didn't hear the number.
THE COURT: Are you moving 129 in?
MR. WEBER: Yes, Your Honor.
THE COURT: Any objections to 129?
MS. ZARAGOZA: No, Your Honor.
THE COURT: Thank you. State Exhibit 129 is in.
(Defendants' Exhibit 129 was admitted into evidence.)
Q. (BY MR. WEBER:) Dr. Reingold, the second source that you cited to support your conclusion that 71 confirmed cases had been directly traced and linked to in-person voting in Wisconsin is an article in the Associated Press that we have marked as State Defendants Exhibit Number 130. I will call that up on the screen. It's entitled "At Least 50 Positive Cases Tied to Wisconsin Election." Is this the article that you cited in your declaration, Dr. Reingold?

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A. Yes.

Q. The first sentence of that article reads "More than 50 people who voted in person or worked the polls in Wisconsin's election earlier this month have tested positive for COVID-19 thus far." I'm moving down a few paragraphs. It states "Several of the 52 people who have tested positive and were at the polls also reported other possible exposure, said Wisconsin emergency management spokesman Andrew Beckett. Because of those other possible exposures, it's unclear whether the person contracted the virus through voting at the polls." Does this article demonstrate to you with any scientific certainty that 71 Wisconsinites contracted COVID-19 as a result of voting in the primary election?

A. Well, again in the context of contact tracing, there are often where people have more than one possible exposures. In in some instances, it would be unclear which exposure led to their infection.

Q. And so does this Associated Press article detail any of that contact tracing was done?

A. No. But it's based on the contact tracing.

MR. WEBER: Your Honor, at this time State Defendants move to introduce State Exhibit 130 into evidence.

THE COURT: Any objections?

MS. ZARAGOZA: No.

THE COURT: Thank you.

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MS. ZARAGOZA: No objection, Your Honor.

THE COURT: State's Exhibit 130 is in.

(Defendants' Exhibit 130 was admitted into evidence.)

MR. WEBER: Thank you.

Q. And forgive me. With regard to that article, it mentioned the number 52 positive cases. Does that article indicate to you that 52 people tested positive as a direct result of voting in the primary elections?

A. Well, that's the straightforward interpretation of that number. But again, there may be some of those people who acquired infection elsewhere. It's impossible to know.

Q. So can you determine based on the information that is in those two articles that you cited whether any Wisconsinites contracted COVID-19 at the polls?

A. Well, it's my belief that many of those individuals did. But it's -- based on contact tracing, that's the best we can do.

Q. Do you see any evidence in those articles to support --

A. I'm sorry.

THE COURT: Mr. Weber, you faded out. Any evidence in the articles what?

Q. (BY MR. WEBER:) Did you find any evidence in those articles that support your conclusion that either 52 or 71 Wisconsinites directly contracted COVID-19 at the polls?

A. Well, as I said, that's the most straightforward interpretation of those reports. There are alternative explanations one could

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come up with.

Q. And in fact, state health officials in those two articles are quoted as saying that there could be alternative explanations, are they not?

A. Yes.

Q. Dr. Reingold, are you familiar with the CDC's publication entitled "Morbidity and Mortality Weekly Report"?

A. Yes.

Q. Is that considered a reputable publication in epidemiological circles?

A. Yes.

Q. I'd like to show you what's been as State's Exhibit 131 for identification. This is an article titled "Public Health Efforts to Mitigate COVID-19 Transmission During the April 7, 2020, election, City of Milwaukee, Wisconsin, March 13 to May 5, 2020."

Dr. Reingold, are you familiar with this article?

A. Yes.

Q. On the bottom of the first page of the article, it states "These data provide an initial assessment of potential impacts of public health efforts to mitigate COVID-19 transmission during an election. No clear increase in cases, hospitalizations, or deaths was observed after the election, suggesting possible benefit of mitigation strategies which limited in-person voting and aim to ensure safety of the polling sites open on election. Epidemiological likely also influenced by a relatively lower

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turnout of voters overall compared to spring 2016.

Moving on to the next page, it states, "These data provide preliminary evidence that CDC's interim guidance for ensuring various voting options, encouraging physical distancing, personal prevention practices, and employing environmental cleaning and disinfection lower COVID-19 transmission risks during election."

Dr. Reingold, this article including the chart that's on the screen now entitled "Figure," does this article support a conclusion that the Wisconsin election led to an increase in cases, hospitalization, or deaths?

A. It certainly doesn't support that there was an increase. But it also has very poor power to show that there wasn't an increase particularly with regard to hospitalizations and deaths.

Q. Is it your position that there is essentially an absence of evidence on this topic?

A. I'm sorry. Is it my position that what?

Q. Is it your position that essentially there is an absence of evidence on this topic?

A. I don't think --

MS. ZARAGOZA: Objection.

THE COURT: Mr. Weber. Is it your position what about evidence on this topic?

MR. WEBER: Your Honor, my question was is it your position that there is essentially an absence of evidence on this topic.

THE COURT: Okay.

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MS. ZARAGOZA: Objection.

THE COURT: Dr. Reingold, you may have answer that question. The objection is overruled.

A. In terms of this study, I would say there's an absence of evidence, yes.

Q. (BY MR. WEBER:) Dr. Reingold, one of the factors that makes people more at risk for COVID-19 is a person being over the age of 65; am I correct?

A. Yes.

Q. Another one is hypertension; am I correct?

A. That's one of the listed ones, yes.

Q. Are you over the age of 65?

A. Yes.

Q. Do you have hypertension?

A. I have very low level hypertension, well controlled on one pill each morning, yes.

Q. Have you flown from San Francisco to the Washington, D.C. area during the pandemic?

A. Yes.

MS. ZARAGOZA: Objection.

THE COURT: Not sure where he's going yet, but I'll give him latitude.

Mr. Weber, you may continue.

MR. WEBER: Your Honor, actually that was my last question.

THE COURT: Okay. Thank you.

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Ms. Zaragoza, we're well past the lunch break. Do you want to wrap up with this witness, or do you want to stop for lunch and come back with redirect? It's your call and obviously Dr. Reingold's as well.

MS. ZARAGOZA: I believe -- Dr. Reingold, do you have a conflict later this afternoon?

THE WITNESS: No, I have a conflict that started 15 minutes ago for a national academy meeting on COVID-19 vaccine.

THE COURT: Let's stop. Would you like to break now and come back in an hour, Dr. Reingold?

THE WITNESS: No, that's a four-hour telephone call. I'd rather finish now if that's possible.

THE COURT: It's possible with me. Ms. Zaragoza, you may do your redirect, please.

MS. ZARAGOZA: Understood. And just to clarify, I take this as no -- Your Honor, during the pretrial conference, you noted that Defendants would go in a particular order. Are no other Defendants asking questions today?

THE COURT: That's a good point. Thank you for correct meeting. I think the lateness of the morning -- I guess it's afternoon now -- made me forgot that. Mr. Weber is done. He has passed the witness. Are there any other Defendants who have questions for this witness?

MR. ENGELHARDT: Your Honor, this is Todd Engelhardt.

THE COURT: Mr. Engelhardt.

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MR. ENGELHARDT: We are going to fix this. We have no questions for this witness. Thank you.

THE COURT: I'm sorry, Mr. Engelhardt. You're going to pass?

Mr. Webb?

MR. WEBB: Your Honor, we pass as well.

THE COURT: Thank you. Anyone else? I only see Engelhardt and Webb on my monitor. Last call.

Ms. Zaragoza, your witness, please. Thanks, everyone.

MS. ZARAGOZA: Okay. Thank you, Your Honor.

REDIRECT EXAMINATION BY MS. ZARAGOZA:

Q. Dr. Reingold --

MS. ZARAGOZA: And I may ask for the assistance here of Eric if you are on the line. We had a chart earlier of the positive tests from the Alabama dashboard. Let me see. This was demonstrative number 35, please, Eric. Okay. Thank you.

Q. Mr. Weber showed you a variety of graphs from Bama Tracker. Do you remember that, Dr. Reingold?

A. Yes.

Q. Okay. And Dr. Weber noted that the daily number of positives have dropped. Do you remember that?

A. Yes.

Q. Okay. Does this -- so you also testified earlier that your interpretation of this chart on the screen from PX 294 is that there are an insufficient number of -- or that there is an

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insufficient number of testing in the State of Alabama; is that correct?

A. Yes.

Q. Okay. How would the -- what impact would insufficient testing in the State of Alabama have on the daily number of positive tests? Excuse me. On the number of confirmed cases?

A. Well, obviously, if you do less testing, you may uncover fewer and confirm fewer cases. So if the number of tests is going down and the positivity rate is going up, then it's certainly possible that a greater percentage of cases that are there are being missed.

Q. Okay. And does the total number of tests -- or does this chart influence your confidence in whether the true number of positive cases in COVID-19 is dropping or rising?

A. Well, I think it's very hard to know what the true number of cases is doing in Alabama or pretty much any other state. But by those measures, I would say it does reduce one's confidences, yes. Apologies.

Q. And you noted, Dr. Reingold, that not only -- and please correct me if I'm wrong. But your interpretation of this chart was that there's insufficient testing but also that there appears to be more testing here, it looks like at the mid -- about July 11 through about August 15. There was more testing and then a recent decrease in testing. Is that accurate?

A. That's what this graph shows, yes.

Q. Okay. If you reduce the number of testing in a population but the rate of daily cases stays the same, would you expect to see the trend line down?

A. I'm sorry. Could you ask me that again?

Q. Sure. If you keep the number of daily cases -- or rather if you reduce testing in a population but the rate of true positivity is the same, would you expect the daily moving averages or the three-day moving averages go down in light of the reduction in testing?

A. Well, the number of cases confirmed will obviously partly be a function of who is getting tested or how much testing being done. If you test no one as some political leaders have said, you will have no cases. That doesn't mean you won't have any infections or illnesses, but you will count zero cases. So obviously, if you're not testing people, you can't confirm cases. If you test fewer people, you will probably confirm fewer cases.

MS. ZARAGOZA: Okay. And, Eric, you can take down the demonstrative. Thank you, Eric.

Q. Dr. Reingold, Mr. Weber showed you a variety of four graphs from earlier this year from about the time of your deposition and some of that reporting on the CDC's website. Do you remember that?

A. Yes.

Q. Okay. And -- okay. What factors influence the rise and fall of COVID-19 cases?

A. Well, in terms of the true incidents of cases, the factors that influence it we know are the extent to which people are practicing social distancing and other measures to prevent transmission. Other factors might include are temperature, weather, or humidity-type factors. It's plausible, but there's no evidence that the virus itself could change. You know, if we reach a point where there's lots of the prior infection and we reach herd immunity through vaccination, that could influence if. So but in the absence of herd immunity and with the virus as far as we can tell staying the same, it would mostly be due to changes in what people do and don't do to try and protect themselves and reduce transmission.

Q. Okay. Now, you testified about your personal experiences voting, correct?

A. Yes.

Q. Okay. You testified about who may come into contact -- or with whom you might come into contact at your polling place?

A. Yes.

Q. Okay. But today you are testifying in your capacity as an expert, and you are providing your expert opinion; is that correct?

A. Yes.

Q. And you are not testifying in your personal capacity; is that correct?

A. You mean as a voter who's experienced voting? No, I'm not.

Q. Okay. And so are you aware of the demographics of the thousands of polling precincts in Alabama that Mr. Weber referred you to?

A. No.

Q. Do you have an expert opinion about the number of voter density in any particular polling precinct in Alabama?

A. No.

Q. Okay. Now, Mr. Weber walked you through a few hypotheticals. Do you remember that?

A. Yes.

Q. Okay. If a voter is a vulnerable person as defined in the stay-at-home order and lives alone, does requiring that person to interact with any other person present more risk to the voter than not requiring an individual to interact with another person at all?

A. Well, if by interact you mean be in their physical presence, the answer is, yes, it changes their risk. I could interact with you over a telephone, and presumably it wouldn't increase your risk. But if it involves in-person interaction, yes.

Q. Now, Mr. Weber asked a hypothetical with a porch and a table outside. Do you remember that?

A. Yes.

Q. If a vulnerable person lives alone in an apartment building without outdoor space, does requiring that person to invite two persons to witness their ballot increase the relative risk of exposure to COVID-19 for that person?

A. Well, if those people need to either enter apartment or meet with them in an enclosed space such as the hallway outside their apartment, presumably the answer is, yes, it does increase their risk.

Q. Okay. And opposing counsel or -- excuse me. Mr. Weber asked you a series of hypotheticals related to voting curbside. Do you remember that?

A. Yes.

Q. Okay. I'm going to ask you a hypothetical. But first, I'm going to ask whether you are aware that some voters may need assistance requiring them to vote in person by reason of disability?

A. Well, that seems quite likely or plausible to me, yes.

Q. Okay. If a person who needs assistance by reason of disability votes -- needs to vote in person, would it be safer in your expert opinion for that person to vote from their vehicle or to enter the polling place?

MR. WEBER: Object on lack of foundation. The witness has testified that he has no knowledge of the layout or configuration of Alabama polling locations.

THE COURT: As to the generic going inside versus staying in the car, you can answer. And then cross-examine on the specifics for the inside, Mr. Weber.

Go ahead, Dr. Reingold.

A. Well, to the extent that the car is located out of doors rather

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than inside, we think that any such interactions are safer outside than inside.

Q. (BY MS. ZARAGOZA:) Okay. Now, is it -- okay. Excuse me. So Mr. Weber discussed the quarantining individual as well. Do you remember that?

A. Yes.

Q. Okay. And he asked you about a quarantining voter voting by mail. Do you also remember if he asked -- he asked you whether a person who's quarantining at home would necessarily have to go outside the home, thereby violating the quarantine in order to vote curbside. Do you remember that?

A. Yes.

Q. Okay. If that quarantining voter is unable to vote absentee, would you recommend that that voter enter the polling place?

A. No.

Q. In your expert opinion, does it present less of a risk to others if that person votes from their own vehicle than if they enter any indoor space, in this case their polling place?

A. Somebody who's under quarantine or isolation for having COVID-19? Yes, it represents less of a risk than going into the polling station.

Q. Okay. And then for -- you may recall that there's a vulnerable person as defined under the safer-at-home order. Do you remember that?

A. Yes.

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Q. Okay. And for a person who -- for a vulnerable person at increased risk of COVID-19, is it -- and they are staying at home as much as possible pursuant to the safer-at-home home order, in your expert opinion, is it safer for them to vote from inside their vehicle? Let's say that they had their window up, they open it a crack, they give their ballot to a poll worker, or rather the poll worker gives them the ballot, they fill it out, they pass it through the window again. Is that or the vulnerable person entering the polling place safer?

A. Doing it as you described from a vehicle would be safer.

Q. Okay. Mr. Weber asked about the number of vaccines available in phase 3 trials. Setting aside the exact number that might be available according to the New York Times' (with ' or no also previous) tracker today, in your experience, are there any intervening steps between phase 3 trials and a vaccine being available for the general public?

A. Yes, even once a vaccine is approved by the Food and Drug Administration or given an emergency use authorization, there's still enormous logistical constraints to delivering a vaccine to millions of people. I'd be happy to talk about them in detail. But they relate to distribution. Even once a vaccine has been produced and is in vials or in syringes, there's still enormous logistical challenges to getting it into the arms of people. And of course, if two doses are required, there's the time period between the first and second dose. So I wouldn't expect there to be large

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numbers of people rendered immune through vaccination until some substantial period of time after that approval is given.

Q. Okay. And in the ordinary course in your experience, how long might that period between phase 3 trials and everything you've described take?

A. Well, as I've said, I mean, obviously often the delay has to do with manufacturing. But even if the vaccine has been manufactured, all of the indications from the people doing Operation Warp Speed are that we're going to have a very limited number of doses available in the first month or two after the approval is given far smaller than the population of the United States, maybe only 2 or 3 percent, 5 percent of the population.

Q. Okay. And do you know how those vaccines are going to be distributed across the country?

A. Well, one of the problems is that at least the vaccines that are most advanced have to be stored at minus 80 degrees. So they have to be stored on dry ice the entire time of transport. There's lots of planning going into the transport and logistics. But at the moment, the details are being worked out. They appear to be quite complicated.

Q. And apology. But that was due to the poor quality my question. But as between the states, do you know how the vaccines will be distributed?

A. Well, no one has said yet, but given that the federal government has already in essence purchased of the vaccines, it's

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my assumption they will give them out proportional to the size of the population. So if a state has 5 percent of U.S. population, it's my opinion that it's likely they will get 5 percent of the doses that are available although some doses may be reserved for certain populations such as the military or other individuals. So it could be less than the percentage of all the vaccines available.

Q. Okay. And do you remember that Mr. Weber asked you a series of hypotheticals about a hypothetical older white voter with certain health conditions and a relatively healthy younger black individual?

A. Yes.

Q. Okay. He asked you about inherent differences. But -- as between different people of different races. But in your testimony as you've stated it earlier, did you testify to the impact of social determinants of health on different health outcomes?

A. Yes, that's a well accepted fact in public health in the United States that virtually every important health outcome is effected by what are called social determinants of health such as poorer people and in our countries people of color have worst outcomes than white people or non-Hispanic whites on average.

Q. Okay. So your testimony is not that there is an inherent difference between a black voter and a white voter in Alabama?

A. Well, if by intrinsic, you mean genetic, if you mean based on their genes, there are some genes that are differentially distributed like sickle cell that are more common in African

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Americans than in non-Hispanic whites. In general, we think the vast majority of these differences are due to social factors and unequal disparities of various types and perhaps an element of racism and its effects on stress antiimmune system.

Q. So, Dr. Reingold, if an older voter with certain preconditions, for example, has health insurance and relative access to care but the younger black individual is subjected to the various -- there was -- I'm forgetting the exact exhibit number. But is it possible that due to the various factors in the CDC guidance relating to disparities in health care, is it possible that that younger black individual may in fact face a worse health outcome?

A. Well, the reality is we look at these things at a group level. So trying to compare two individuals in that way is very, very difficult. I think it's not really a question I can answer in terms of those two hypothetical individuals.

Q. Okay. But as far as you're aware, could race discrimination in health care or health access create disparate health outcomes for black individuals in Alabama?

A. Well, that's quite well studied. And I think the evidence is incontrovertible that that's the case for a variety of types of health outcomes.

MS. ZARAGOZA: Okay. No further questions.

THE COURT: Thank you. As to those additional questions, any follow-up, Mr. Weber?

MR. WEBER: Yes, Your Honor, very briefly.

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RECROSS EXAMINATION BY MR. WEBER:

Q. Dr. Reingold, with regard to the variables that are involved in looking at whether a number of cases per day is a good indicator, would you agree that hospitalizations is a more accurate indicator as to the dangerousness of the virus at a given point of time than simply case counts?

A. I think the answer to that is complicated to be perfectly honest. So I think hospitalizations are more a stable count of things that there's less bias. But hospitalizations may not be a good reflection of infection in the community.

Q. Understood. Would you have the same answer with regard to COVID-19 deaths?

A. Yes.

Q. There was a little bit of questioning about having documents witnessed outside and whether everybody has access to a porch, for example. In your expert opinion, is the risk of transmission less outdoors regardless of the outdoor space -- in other words, will any outdoor space due to lessen the chance of transmission?

A. Well, the reason we think outdoors is safer than indoors has to do with dilution of any virus that someone is putting into the air through lots of air moving through the area. So I suppose you could envision a space that's technically outdoors where there's very little air exchange and a space indoors where there's a great deal of air exchange. So it's a general statement that outdoors is better than indoors because there's lots more air circulating. So

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you'd have to give me details about the spaces.

Q. Understood. I guess my question is a person doesn't have to own a porch or a yard -- in other words, in order to find an outdoor space that lessens the risk of transmission. Would a park, a street, or other lightly populated outdoor space work to lessen the risk of transmission?

A. Yes, if the person can get to that park or street in a safe manner, yes.

Q. Dr. Reingold, with regard to curbside voting, would you recommend that a person who is known to be infected with the virus vote via curbside and interact with a poll worker in the manner we have discussed this morning?

A. I would prefer that individual to vote by mail. But if the choice is to vote from inside of a car or inside of a polling station, I would suggest doing it from inside of a car. But it would be better still if they didn't have to leave their home.

Q. It's always better to stay at home, is it not?

A. With regard to this virus, yes.

Q. If an infected voter interacts with a poll worker and transmits the virus to the poll worker, can that poll worker in turn transmit the virus to other voters throughout the day?

A. Not as far as we know, no.

Q. A person who is infected from another cannot transmit the virus to another person?

A. That same day that they became infected? I know of no

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evidence that that -- we believe that generally what's called the latent period, the time between you become infected and when you are infectious to others would be at least two or three days.

Q. Could a poll worker who was infected say a week before through other means in turn infect voters?

A. Yes.

Q. With regard to curbside voting, you state an opinion that generally you consider it at least relatively safe based on the conditions that we have described. What about for people who don't have cars and have to -- would have to take a bus, let's say, to the polling location. Would you recommend that a bus load up with people and vote curbside?

A. So I'm not exactly sure how that would work. But having a lot of people on a bus is probably not a good idea in the first place.

Q. Would you recommend that multiple people get in the same car from outside the same household and go to the polling location to vote curbside?

A. Not if they can avoid it. But of course, some people can't drive themselves and would be reduced to having to do that, yes.

Q. And you don't have any personal knowledge as to whether polling locations in Alabama will be able to enforce greater measures of social distancing that are possible in a car or a bus, do you?

A. No.

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MR. WEBER: Thank you, Your Honor. I have no additional questions.

THE COURT: Thank you. Ms. Zaragoza, anything else for Dr. Reingold?

MR. ENGELHARDT: Your Honor, I'd like to ask a couple questions. This is Todd Engelhardt.

THE COURT: Mr. Engelhardt, as long as they are limited to the redirect or to the recross, you may.

MR. ENGELHARDST: Absolutely. Thank you, Your Honor.

CROSS-EXAMINATION BY MR. ENGELHARDT:

Q. Good -- now it's afternoon, Dr. Reingold. It's nice to see you again. I just want to ask you a couple of follow-ups based on what you just discussed. You would agree that there's more information about COVID available now than there was at the beginning of testing, correct?

A. Yes.

Q. And that there's more information to the public about the benefits of social distancing?

A. I would hope so.

Q. And more information about the benefits of mask wearing in preventing the spread of COVID?

A. Well, if we're only talking about information being available, yes.

Q. And there's more information about the use of disinfectants and in fact the purchase of disinfectants. Would you agree with

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that?

A. Yes.

Q. Could it be possible that a decrease in the number of tests but either a maintenance or an increase in the number of positives of those tests, could that be traceable to less people who are unsure about whether they have the virus knowing from testing?

A. You know, theoretically I suppose that's possible. The reality is that who shows up for testing, when and why is highly variable depending on many, many factors. So it would be hard to know why some people show up for testing, frankly.

Q. Could it be that with the increased media attention and information available to Alabama or any citizens about the dangers of coming in contact with someone who has tested positive, that that is what has changed the number of people who seek testing?

MS. ZARAGOZA: Objection.

THE WITNESS: Well, to be candid, I would say that the evidence is pretty much everywhere in the United States including Alabama familiarity has bred contempt and that fewer and fewer people are worried and are masking and doing things and are exhibiting behaviors that transmit the virus. And we know this is true on university campuses across the country including in Alabama. We have plenty of documentary evidence that people basically are not masking and not practicing social

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distancing. So many things have changed over the past several months that could effect who's getting tested and why and who's getting infected and why.

Q. Are you aware of any studies or data that support your claim that less people are wearing masks in Alabama?

A. Well, I'm not -- I have no data except the kinds of pictures that are published and the thousands of cases at Auburn University and the University of Alabama campuses. The three campuses combined have had over three thousand infections documented in the last several weeks. So something is not working.

Q. But in the 64 other counties including Mobile County where for example there's the University of South Alabama or Mobile University, have you seen pictures of those students not wearing masks and proliferating around social media?

A. No, I have not.

Q. So it's possible that the 64 other counties are better than the two or three counties that you have mentioned about social distancing and about mask wearing?

A. I suppose it's theoretically possible, yes.

Q. And then I wanted to ask about -- one question about the availability of vaccines. You have testified that it is your belief that vaccines, if they become available would likely be distributed based on population percentage. Is that a fair summation of what you testified?

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A. I think the political pressure to do that will be immense, yes.

Q. Do you think that it is possible that any vaccines that are created might be distributed more heavily towards a state that supports one political candidate rather than another?

A. I hope not.

MS. ZARAGOZA: Objection. Outside of the scope. Mr. Weber didn't ask about any vaccines.

MR. ENGELHARDT: I was talking about the availability of vaccines.

THE COURT: Let me sustain the objection. I think we are going outside of the public health expert's expertise.

MR. ENGELHARDT: Okay, Your Honor. Well, that's actually the last question I have. Thank you. Thank you, Dr. Reingold.

THE WITNESS: Thank you.

THE COURT: Anyone else before I pass the exam to Ms. Zaragoza?

Mr. Webb, any questions?

MR. WEBB: No, Your Honor.

THE COURT: Thank you. Ms. Zaragoza?

MS. ZARAGOZA: No further questions.

THE COURT: Thank you.

Dr. Reingold, thank you, sir. Have a good afternoon. Take care.

THE WITNESS: You, too. Thank you very much.

THE COURT: All right. Let's take our one-hour lunch break.

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We will start back at 10 minutes to 2:00. Thanks, everyone. We are in recess for the next hour.

(Lunch recess.)

THE COURT: Good afternoon, everyone.

MS. SHORT: Good afternoon, Your Honor.

THE COURT: Are you ready for the next witness?

MS. SHORT: We are, Your Honor. This is Caren Short for the plaintiffs. Can you hear me okay?

THE COURT: I can indeed, Ms. Short. Who is your next witness?

MS. SHORT: Plaintiffs call Dr. Eric Peebles.

THE COURT: Dr. Peebles, good afternoon.

DR. PEEBLES: Good afternoon, Your Honor.

THE COURT: Ms. Humphrey is going to swear you in. Just answer yes or no when she is done.

(Witness sworn.)

THE COURT: Would you please state your full name.

THE WITNESS: Eric A. Peebles.

THE COURT: Never mind. Can we call -- thank you. Give us some time, please. Sorry about that, folks.

THE COURT: Dr. Peebles, what city and state to you live in?

THE WITNESS: Auburn, Alabama, sir.

THE COURT: Ms. Short, your witness.

MS. SHORT: Thank you, Your Honor.

ERIC A. PEEBLES,

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duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MS. SHORT:

Q. Good afternoon, Dr. Peebles.

A. Good afternoon.

Q. I believe you just stated that you live in Auburn, Alabama; is that correct?

A. Yes.

Q. And you just said that's in Lee County, correct?

A. Yes.

Q. Dr. Peebles, do you live alone?

A. Yes, I do.

Q. How old are you?

A. 39.

Q. Are you currently registered to vote?

A. Yes, I am.

Q. Dr. Peebles, I'd like to talk about your health and COVID-19. Do you currently have any currently medical conditions?

A. My disability diagnosis is spastic cerebral palsy. This is caused by an oxygen deprivation at or near the time of birth. The severity of the cerebral palsy is determined by what portion of the brain has been deprived of oxygen and for how long. For example, you may have seen cases with mild physical manifestations of cerebral palsy like related to age or use of only one arm of the body but have tremendous intellectual deficits cognitive ^ CHECK THIS and cognitive processing and expressive

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language. Where then you would have someone like me who is effected physically to the point of functional quadriplegia which (CHECK THIS) leads me about the functional level of that of a nine-month old baby but everything from the shoulders up right on par with someone of the equivalent age and education such ^ CHECK THIS disability.

Q. And do you use a wheelchair?

A. Yes, I do. I use a wheelchair. But I use a wheelchair CHECK THIS staff or mechanical devices or with ambulation. Responsible for that providing full assistance with full assistance with activities of daily living, bathing, dressing, accessing nutrition. Those are direct activities of daily living. They are also responsible for indirect or instrumental activities of daily living which include helping with meal prep, cleaning the house, you know, getting groceries, things, getting groceries, running errands, things like that.

THE COURT: My court reporter is not comfortable giving us a certified record of what Dr. Peebles has testified to so far. So let's do this. Let's limit the answers without preventing Dr. Peebles from testifying and giving a narrative. So short questions, short answers. Let's try that, and then hopefully we can capture everything that Dr. Peebles wants to say.

Ms. Short, I think the question has been answered, which was do you use a wheelchair. He said yes. And then he also told us that he has caregivers that come to his home to help him take

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care of various things. You may pick up from there.

Dr. Peebles, thank you for your patience. But let's just try to keep the questions and answers short so that we can capture everything that you have to say. Thank you.

THE WITNESS: Okay.

MS. SHORT: Yes, Your Honor. Thank you.

Q. (BY MS. SHORT:) Dr. Peebles, based on your cerebral palsy, are you considered high risk for serious illness if you were to contract COVID-19?

A. I consider myself high risk based on the fact that if I was to develop a respiratory illness such as COVID due to the -- due to mental atrophy that has occurred, since my birth, I would be high risk because of potential chest ^ CHECK THIS and things like that.

Q. Are respiratory viruss particularly risky for a person with cerebral palsy?

A. I'm going to go on the record that I'm not a physician. But in my experience, yes, because of -- because of the lack of -- the lack of the increased spasticity and muscle atrophy are ^ CHECK THIS much less able to keep proto which medical folks have can lead to a breeding ground for respiratory conditions.

Q. Are there any other reasons related to your cerebral palsy that make you higher risk for contracting COVID-19?

A. Yes. Yes, because I rely on caregivers to come into my home and the greatest extent that I can, we have practices but ^ CHECK THIS coming well within the six-foot ^ CHECK THIS to provide the

care.

Q. So how does that relate to your greater risk for COVID-19?

A. I have to -- I have to make extra sure that my caregivers are practicing -- following practice guidelines even more strict than the average person. Almost to the level of a -- almost to the level of any sort of health care practitioner that's providing direct patient care.

Q. And what would happen if one of your caregivers were to contract COVID-19?

A. What would happen if one of my caregivers would happen to contract COVID-19 is they would -- we would have to put them -- we would have to place them on leave for 14 days, and then it would create a scheduling ^ CHECK THIS directive not to mention the fact looking at the idea that looking at how long I was exposed to them or if I was exposed to them or if it was a secondary exposure like that. If there was CHECK THIS after direct exposure, then we've got issues this between we've got issues with staff and if I didn't have enough care, worse went to worse and I didn't have enough care ^ CHECK THIS I could elect to -- I could elect to temporarily interact with ^ CHECK THIS but there are risk with that that have probably been well documented in the media ^ CHECK THIS breeding ground for COVID-19 as well.

Q. We have been talking about your caretakers. You've testified that you have caretakers that come to your home; is that correct?

A. Yes, that's correct.

Q. Can you describe how that works?

A. I'm given -- I'm a participant on the Alabama community ^ CHECK THIS community based ^ CHECK THIS administered by the Alabama Department of Medicaid in conjunction with the Alabama Department of Human Services. I'm given 60 hours a week of care that roughly cares in blocks of ^ CHECK THIS eight hours a day. Those eight hours a day are separated into usually four, two-hour shifts, and those shifts have to be -- in order to bill correctly, the shift has to be separated by two hours.

Q. Thank you Dr. Peebles.

MS. SHORT: Your Honor, forgive me. We have a couple of attorneys on the plaintiff side who are in the waiting room. Would it be possible for the Court to allow them in? It's Natasha Merle and Davin Rosborough.

THE COURT: We will. Thanks for letting us know.

THE COURTROOM DEPUTY: They're in.

MS. SHORT: Thank you, Your Honor.

Q. Dr. Peebles, you just testified that your caregivers work a total of 60 hours a week; is that correct?

A. Yes. That's our entire budget ^ CHECK THIS.

Q. And that's eight hours a day; is that correct?

A. Yes.

Q. And is it also your testimony that their shifts cannot overlap?

A. Yes. They have -- each shift has to be separated by two hours.

Q. So is it also correct that their shifts cannot it be back to back?

A. That's correct.

Q. And how many caregivers do you currently employ?

A. Five that are actually providing care. Six that -- the sixth is doing administrative stuff because she current can't provide physical -- can't provide physical care.

Q. And at the start of the pandemic, how many caregivers did you employ?

A. Four, and then we went up to five, and now we're at six.

Q. But the -- you still have the -- you're still limited by the same number of hours per week; is that correct?

A. Yes, ma'am.

Q. Do you have any other individuals who visit you in your house regularly?

A. I -- I do. I have visiting nurses that come in three days a week to provide care for persistent wound that's on the inside of my right foot.

Q. And how often does that take place?

A. Three days a week.

Q. And is it always the same day and the same time?

A. Always Monday, Wednesday, and Friday, but the timing depends on the -- how the care coordinate assesses their travel

internet based on a clinical -- based on the staffing availability and the clinical care needs.

Q. Is it always the same person who comes to the house for that care?

A. No.

Q. Are you able to predict when that person will come for the wound care?

A. Not always. They are supposed to give me a couple hours's notice, but sometimes they show up knocking at the door. It's never the same time of the day. It's just depending on staffing availability and the care needs of their other patients.

Q. Dr. Peebles, are you taking any steps to ensure your own protection with your caregivers while they're in your home?

A. Yes. I basically limited my exposure outside of the house since March to -- off the property since March to medically necessary appointments.

Q. And what about for your caregivers? Have you asked them to take any steps to protect you while they are in your home?

A. All my caregivers have been given the -- given the P P R 5 test at various points. (Check that test) and there are -- my high volume traffic caregivers now have both subject to the rapid human response test (check that test) since the deposition. But everything else I said at the deposition was spot test ^ CHECK THIS.

Q. So is it fair to say that your testimony is that each of your

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caregivers have been tested for COVID; is that correct?

A. Yes.

Q. Are you taking any -- asking your caregivers to take any other precautions to protect your health?

A. Two main things. Number one, if ^ CHECK THIS secondary exposure, we have been putting them on or taking them off the schedule. Number two, while I ask ^ CHECK THIS as far as not going in population-dense environments and as well as if there's somebody who has been -- for example say for example traveling or different contact in different contact arrangements, I do have ^ CHECK THIS.

Q. Thank you. Dr. Peebles, you mentioned a moment ago that you've been limiting your own contacts out of your condo. Can you explain how your behavior has changed since the beginning of the COVID-19 pandemic?

A. Yes, I will. One of the things that I mentioned a few minutes ago was that I have really been containing my off-property trips to medically essential travel. You know, I'm going out at least once a day around the property to walk my dog. But my travel has really been -- all my travel has really been medical in nature. And other than my caregivers, I -- with the other ^ CHECK THIS I really haven't let anybody -- let anybody in my home since March.

Q. And can you give a rough estimate of when these changes started? I know you referenced March. Is there a specific time?

A. I would like to say March 13 when the first orders of the

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state health officer started to go into effect.

Q. And you mentioned only leaving for medically necessary reasons. Can you give examples of what this means? Do you mean doctors' appointments?

A. Medically necessary, yes. It means doctors' appointments to Atlanta to get my muscle relaxant medication infused. May, and then after July 8, I returned I returned to in-office visits with Dr. Thomas who is the attending physician that's providing the care of my wound. But I would say February through the beginning of July, I was in a -- exchanging care, with his nurse rather than going into the office. And that's one of the reasons why we decided to go through home health and have the wound vac rather than going into the office every two weeks for treatment like I was prior to the pandemic.

Q. So you've been leaving for medical -- meds and medical treatments; is that correct?

A. Medical treatments. And then as everybody is aware, there was an additional trip to Birmingham on June 10 in order to accompany my phone to Birmingham where electronic data extraction in relation to a civil matter. And request for production ^ CHECK THIS.

Q. This is a trip related to a request for production in a case that's different from this one; is that correct?

A. Yes. That is. It's Eric Peebles v. Auburn University currently in the Middle District of Alabama Federal District Court.

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Q. And the request was for your mobile phone; is that correct?

A. An image of current status of every app and history on my mobile device, yes.

Q. If the request was for your -- something on your mobile phone, why would you go in person?

A. Because as much as I tried for an in person -- for a remote hearing, the defense counsel wanted the extraction done by their experts using their equipment. Which required me to make the trip because I suppose I could have mailed -- overnighted my phone, but me without my phone is like a ^ CHECK THIS because that particular cell phone is my means of communication with the outside world as it allows me to activate my automatic door opener on my front door. So without it, it's really a fire hazard.

Q. So what would happen if you were separated from that phone for any period of time?

A. I wouldn't be able to get out of my -- I wouldn't be able to get out of my house.

Q. Would there be any other --

A. I wouldn't be able to turn on my lights, wouldn't be able to make a phone call, summon emergency services, get in touch with my caregivers, any form of communication, outgoing communication.

Q. And how many hours a day are you without caregivers and reliant on your phone?

A. Well, I'm budgeted for eight hours a day. So I guess 16,

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would be -- 16 would be the answer where I don't have care.

Q. And are you without caregivers overnight?

A. Yes, ma'am.

Q. And do you rely on your phone during those overnight hours if you were to have an emergency?

A. Yes. My phone has to be in close proximity to my iPad in order to make an outgoing call.

Q. Dr. Peebles, I'd like to talk about voting now.

A. Yes, ma'am.

Q. Have you voted this year?

A. Yes, I did. On the March 3rd, Democrat -- Alabama Democratic Presidential Primary.

Q. And in that primary, how did you vote? By what method did you vote?

A. I voted in person at my polling place.

Q. And when you vote in person, do you require assistance?

A. Yes, I do.

Q. How does that work?

A. The person that -- the person that drives me to the polls usually comes inside the polling place with me and helps me receive the Scantron ballot from the poll worker, and I validate the poll book with my signature stamp, and then my driver/caregiver and I take the ballot and go over to one of the card tables that's set up with the paper partitions, and then I -- at my direction, I usually have the caregiver place the ballot in my

lap or on my tray service, and I call out the last name of the candidate which I -- that I want to vote for. And then after that, we -- I go with the caregiver to turn the Scantron back in or -- which involves them placing the Scantron ballot in the optical scanning device and then getting the receipt or the sticker that says I voted today.

Q. Did you vote in the July 14 election this year?

A. No, I did not.

Q. Why not?

A. Because there were no issues on the Democrat ballot in my county.

Q. Do you want to vote in November?

A. Yes, ma'am.

Q. And how would you like to vote in November?

A. I would -- assuming the current trajectory of the virus continues, I would like to be able to vote either by absentee ballot if relief is granted in this case, and then curbside voting would be a secondary option if the absentee ballot rule that we're seeking with with regard to the signature -- with regard to the witness requirement is not granted.

Q. Let's talk about absentee ballots.

A. Okay.

Q. You understand that you -- what is your understanding regarding your eligibility to request an absentee ballot for November?

A. Related to COVID-19 or just generally?

Q. For this November election. Do you believe you're eligible to request an absentee ballot?

A. Yes, I believe I would be eligible to check the box that says person is not able to have in-person attendance at the polls due to physical infirmity.

Q. And will you be able to request and receive an absentee ballot for November?

A. Absolutely. Absolutely.

Q. And will you be able to vote and return your absentee ballot for November?

A. No, I will not.

Q. Why not?

A. Because I have -- I can -- it's uncertain that I will be able to secure the two witnesses who are required by election law to -- someone needs to witness me executing my ballot.

Q. Why won't you be able to do that?

A. Because like we've spoke to earlier, there's no way that I can have two caregivers in the -- being paid at the same time, and I'm a little leery about having neighbors in since I'm not very friendly with my neighbors, and I'm not aware of how they have been conducting themselves or how they have been exposed.

Q. And are you aware that the law allows you to have your absentee ballot notarized?

A. Yes, ma'am.

Q. Are any of your caregivers notaries?

A. No, they're not.

Q. Would you be able to find a notary at your bank to witness your ballot?

A. Notary service is a free service at my bank, but it requires actually going inside the branch, coming within six foot -- coming in close contact with my banker. I don't know where he's been. I don't know what -- I'm assuming that PNC has taken reasonable precautions, but I don't know where he's been. I don't know what he's been exposed to. And for my health, my health, I would prefer not to -- for my health, I wouldn't want to take that risk.

Q. And you have a computer and a web cam, as we can see, correct?

A. Yes.

Q. Are you aware that the Governor has allowed notaries in Alabama to notarize documents remotely?

A. Yes, I am. But that would not satisfy my case because the law then requires that the voted ballot would be transported to the notary and then to the clerk's office for reception and I -- I -- the exposure required to complete the notary requirement would basically make the whole process -- I'm not gaining anything by doing the notary. I'm actually maintaining the same risk if not making it worse.

Q. But if you can have -- if the notary can watch you remotely sign, wouldn't that satisfy the notarization requirement? How

would you be putting yourself at risk?

A. I would be putting myself at risk because of chain of custody issue with the voted ballot. A voted ballot has to be in the voter's possession at all times until it's been -- until it's dropped -- at all times until it's dropped -- dropped at the -- dropped in the mailbox or taken to the clerk. And as I understand it, I can't have anyone do that by proxy. I can't have one of my caregivers make it a part of their errand run. I physically have to be in the notary's presence when that document is received or when the clerk receives the document.

Q. So is it your testimony that even though you could have the notary watch you sign your ballot, you would still have to be in the presence of the notary with your ballot when the notary stamped the ballot?

A. As I understand it, yes.

Q. Dr. Peebles, have you looked at the absentee ballot before in Alabama?

A. Yes, I have.

Q. Do you remember when that was?

A. I believe it was the November election in 2017.

Q. Did you have the same caregiver hours set up back then?

A. Roughly, yes.

Q. And how were you able to comply with the witness requirement?

A. I -- technically I was not. What we ended up doing was

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having one caregiver sign the witness line all while I was actually doing it, and then I waited until the next caregiver came in the next day to mail it.

Q. So why can't you do this again this year to satisfy the witness requirement?

A. It's not legal.

Q. Dr. Peebles, can you ask one caregiver to come by during another caregiver's shift to witness you signing your ballot at the same time and satisfy the requirement?

A. ^ CHECK THIS my testimony that shifts cannot run back to back or overlap, and I want to be able to pay my caregivers for everything they do in my employ. So the answer is, no, because I wouldn't be able to pay them.

Q. Dr. Peebles, I'd like to talk about curbside voting.

A. Okay.

Q. Would you use -- are you familiar with the phrase curbside voting?

A. Yes, ma'am.

Q. Would you use curbside voting if it were offered in Lee County?

A. Yes, I would.

Q. And how would you -- how would curbside voting work for you?

A. I assume because my polling place is in a hotel, we would pull up in one of the registration lines next to the door and be

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met by a poll worker. The poll worker would hand an iPad or some other way to validate the poll book through the window, and I would do that with the assistance of the driving caregiver. And then after that's done, I would be handed the standard optical scan ballot for my precinct, and then I would close up my window and verbalize my preferences to the caregiver in the same fashion as I would do if they were inside, roll down the window, and hand the optical scan ballot back to the poll worker, and the poll worker along with two party watchers would retreat back into the hotel wherever the optical scan machine is located, and they would then put the -- they would then put the ballot in the machine, have it scanned and come back out with my -- come back out with my receipt and/or my sticker that says I voted today. And if they have taken my ID for validation, give me that back.

Q. And you have testified you typically vote in person; is that correct?

A. Yes.

Q. After the COVID-19 pandemic is over, would you also use curbside voting if it were offered?

A. Absolutely.

Q. Why?

A. I because there are additional access issues at my precinct. The preferred method of access for voters at my precinct is to use -- extend an external staircase that grows outside the building

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that dumps into an elevated lobby that is adjacent to the ballroom where they actually use for the polling place. For those of us that require ADA access route, we have to use the main entrance that is used by hotel patrons and then access the elevator that is off to the right of the registration desk, go upstairs, and enter the ballroom through the main door. There are some issues there with whether there is enough room for me to activate the button on the elevator and then turn, back out or pull out of the elevator without risking being hit by the door and hoping the electronic eye is working.

Q. And when you have voted in the past, you have used the assistance of a caregiver, correct?

A. Right. Right. The caregiver is the one that actually operates the elevator.

Q. Dr. Peebles, if curbside voting is not made available and the witness requirement remains in place, will you be able to vote in November without putting your health at risk?

A. No, I will not.

Q. And if you are put in that position, how would that make you feel?

A. I really don't like -- I really don't feel that anyone should be able -- have to put in a position where they're calculating their health risk against their citizenship rights and exercising their right to vote. That's a choice that nobody should make. Have to make.

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Q. Dr. Peebles, why is voting important to you?

A. Voting is important to me because as a person with a disability and for people with disabilities, voting is the one way that we can participate -- participate blind. There's no mark on my ballot that says this guy over here has cerebral palsy or a disability ^ CHECK THIS Ms. Short's vote or Webb's vote or His Honor's vote. There's no distinguishing characteristic that says I have a disability, and I can participate in the election process.

MALE VOICE: Fear of consequences.

A. What was that?

Q. I think someone was just unmuted for a second. Go ahead.

A. You know, I mean, this is the one way where voting is -- they say justice is blind. Voting is blind. Everybody's ballot looks the same when you're counting them.

Q. Thank you, Dr. Peebles.

MS. SHORT: I have no further questions.

THE COURT: Mr. Webb, are you up first?

MR. WEBB: Yes, Your Honor.

THE COURT: You may. Thank you, Ms. Short.

THE WITNESS: Good to see you, Mr. Webb.

MR. WEBB: Good to see you again, Dr. Peebles.

CROSS-EXAMINATION BY MR. WEBB:

Q. Now, isn't it true you voted in 2018 general election by absentee ballot?

A. I believe I did. I voted by absentee one time in Alabama. I

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can't quite remember when it was.

Q. Was it the election where the Governor was on the ballot?

A. Yes. I believe so.

Q. And that would have been in November of 2018; is that right?

A. Yes.

Q. And, sir, I've noted, you know, you have a computer with both Wi-Fi and internet connection, correct?

A. Correct.

Q. And you also have an iPad and a smart phone; is that correct?

A. That is correct.

Q. And you have a copier, printer, and scanner; is that correct?

A. Yes.

Q. And you also -- I'm sorry, Dr. Peebles. I might have interrupted you. What was that?

A. Yeah. I was just saying it's a multifunction device. It does all. And --

Q. Does -- those all fully function, correct?

A. Yes.

Q. And you have a digital image of your photo ID stored on your computer so you can print it and put it in an envelope, correct?

A. Yes, that's correct with assistance.

Q. And you said that you had five health care workers that

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come by your place of residence?

A. Yes.

Q. Every day. Is that seven days a week?

A. Some of them don't come by every day. But some of them.

Q. But you have a health care worker come by every day; is that correct?

A. That is correct.

Q. And you also have nurses that come by Monday, Wednesday, and Friday; is that correct?

A. That is correct.

Q. And are your nurses there at any time when your health care workers are present?

A. Sometimes they are. Sometimes they aren't. It really depends -- like I said earlier on direct, it really depends on the coordinator from the nursing agency putting up the nurses's travel itineraries and balancing their staffing versus the care needs case load. You can't really say whether the nurses and my PCAs will cross. Usually -- they usually don't. But when they do, it's unpredictable when that's going to occur.

Q. Now, in the November 2018 general election, you actually applied -- you filled out your application for absentee ballot on line; is that correct?

A. I believe I did, yes.

Q. Now, Dr. Peebles, you would consider cerebral palsy to be a life-altering disorder?

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A. Yes.

Q. Affects your ability to perform manual tasks, stand for any length of time, and walk unassisted, correct?

A. That is correct.

Q. And this condition is also considered a disability, correct?

A. Yes, it is.

Q. As a matter of fact, it's considered a permanent disability, correct?

A. Yes. Under some definitions, yes.

Q. And without assistance, this disability would prohibit you from voting in person; isn't that correct?

A. Correct.

Q. And are you aware that you qualify for a permanent disability absentee ballot status due to your disability?

A. I suppose I could check the physical infirmity -- physical infirmity preventing personal attendance at the polls. But they would walk me right into the same ^ CHECK THIS as the requirement that we have been discussing today.

Q. But you're aware that you can receive a permanent disability absentee ballot, correct?

A. That is correct.

Q. And whenever you leave your residence, a health worker must be present with you at all times, correct?

A. I'm not going to say they must be, but I think, you know, if I want to go anywhere that requires going off the property, I need

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somebody to drive the car because I can't. So more often than not, they're with me.

Q. And you have a special -- specially equipped van to -- that you own; is that correct?

A. That is correct.

Q. And your health care workers would drive that van when you're required to go off site, correct?

A. That is correct.

Q. And you have been off site to doctors' visits during the time of this pandemic; isn't that correct?

A. That is correct.

Q. And you have doctors' visits scheduled for September and October, correct?

A. Not in October that I'm aware of, but there are two in September.

Q. Two in September. Okay. And you also travelled to your attorneys's office in -- was it June 10 of this year?

A. Yes.

Q. And this was your attorney in the case that you filed against Auburn University; is that right?

A. Yes, sir.

Q. And while you were at the attorney's office, you were in the same room with at least six other people; isn't that right?

A. We went in their moot court room. So there was more than six feet distance between -- more than six feet of distance

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between all of us.

Q. But it's actually a smaller room than the auditorium that you vote in at the Clairon Inn; isn't that right?

A. I'm not a -- I'm not a -- I'm not a, you know, planning engineer. But I would say there probably roughly about -- they have three quarters -- the moot room is about three quarters of the size of the ballroom.

Q. And you felt safe because everyone was socially distanced and everyone wore a mask; isn't that right?

A. That is correct.

Q. Now, you've had the option where you could've waited out in your van with your health care worker, correct?

A. I didn't feel as if I could exercise that, Mr. Webb, because at the time, I was not aware of what the extraction process would actually entail. So I felt like I needed to be within eyesight of my device at all times.

Q. Now, you have the ability to, when you have a worker out -- a health care worker with you at your residence, you have the ability for a neighbor or friend to stand outside your front window and witness you signing an absentee ballot, correct?

A. I suppose that could happen, Mr. Webb, but I really don't want to do that because I don't know where they've been. You can't -- you can't be sure that they're actually -- in order for them to actually seal, they would -- they have to be within the six-foot bubble, and I'm not confident with that. I'm not comfortable with

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that.

Q. Well, they would be outside, and there would be a window between you. There doesn't need to be a six-foot bubble, does there?

A. I suppose not, but I really don't want to ^ CHECK THIS then they'd have to, you know, basically stand in the grass, stand in the mulch, be awkwardly doing this. Where we could -- you know -- it's just not practical, and I'm not going to have anybody, you know, leave the ballot on the ground. I'm not -- you know, that's not -- that's not the way to treat presumably a signed document at that point.

Q. But, Dr. Peebles, it can be done, couldn't it?

A. Not without -- not without potentially risking my health or banking on the fact that there's going to be a neighbor, you know, whatever come by. And ^ CHECK THIS I'm not friendly with the neighbors. I'm not aware of their school and work schedule. You know, it would have to be a happenstance for that to work, sir.

Q. Well, how about a friend of yours, Dr. Peebles?

A. Well, the majority of my friends are in the health care profession functioning as nurses or caregivers. And I wouldn't want any of those people to -- any of those people to be in my house during this time either, because Lord knows where they've been. I know they're as conscientious as they can be. But I know at least one of them has contracted COVID over the period.

Q. But again, they could witness you sign it while the window is

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closed, correct?

A. I'm not sure. I'm not proposing to be an expert in the ^ CHECK THIS eyesight. I suppose that -- I suppose they could. But there's a lot of supposing going on there.

Q. Oh, I understand, Dr. Peebles. But you could also have a -- you could open your front door, and a neighbor or friend could stand six feet from you and witness you sign your absentee ballot; isn't that right?

A. Mr. Webb, I could be writing down a football score ^ CHECK THIS. How do you know what I'm writing from that distance. As you know, six foot is only a guideline. There is the -- I'm not sure of the -- I'm not sure of the scientific certainty of that or 10 feet, 12 feet. Nobody knows with the virus, sir.

Q. Well, if the CDC guidelines say six feet away, you would feel safe with somebody six feet from you and even wearing a mask, standing outside, witnessing your signature on that absentee ballot affidavit, correct?

MS. SHORT: I'm going to object at this point to the speculative nature of these questions.

THE COURT: It's not speculative. They just have a disagreement. You can ask it all you want, but it sounds like this witness is going to say he just does not feel comfortable exposing himself because of his health conditions to strangers and/or his friends who are in the health care industry.

Q. (BY MR. WEBB:) Would you have a problem with a neighbor

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or friend standing socially distanced from you outside wearing a mask and witnessing your signature?

A. I can't in good conscience -- I can't in good conscience say that I would feel comfortable with that. 6 foot, 10 foot, you know, 5 foot, is only a guideline for the CDC, and nobody really knows. Nobody really knows anything for certain with this virus. We're basing ourselves on transient trajectory. Nobody really knows -- nobody really knows for certain the public health risks for the virus.

Q. Dr. Peebles, when you're at your next doctor's appointment with your health care worker, could you have the receptionist at the doctor's office witness your signature?

A. No, I wouldn't feel comfortable doing that because that's outside -- that's outside the scope -- that's outside the scope of a -- what you would do at a normal doctor's office.

Q. You don't think the receptionist at the doctor's office would be willing to witness your signature?

A. I don't know. They're busy. And the particular doctor office that I'm thinking of charges $25 for the completion of any form that's not directly medically related. For example, Workman's Comp, leave requests, like that, they charge $25. And I'm certainly not in a position to pay for the right to vote. That's a poll tax.

Q. Do you think the doctor's office would charge you for a receptionist witnessing your signature on an absentee ballot

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affidavit?

A. I can't be sure. I can't be sure. And I know for dammed sure that my medical insurance wouldn't cover that fee.

Q. Dr. Peebles, you bank at PNC bank, don't you?

A. Yes, I do.

Q. Can you go through the drive-thru and have the bank teller be a second witness on your absentee ballot when your health care worker drives you?

A. I suppose I could, sir. But that's not very practical either, you know, because when there's -- you know, you have been behind people in the bank, and you're throwing a fit just like somebody else is when somebody takes long in front of you. That's -- that's not being a responsible citizen, sir.

Q. Now, you have friends that actually live within a mile of you, correct?

A. My caregivers, yes.

Q. And you have friends that live even a little bit further away from you, six to eight miles, correct?

A. Yes, yes.

Q. And you could have your health care worker drive you to a friend's residence and let them witness through the window, couldn't they, or your car wind shield?

A. I suppose they could, sir. But I raise the other question. How do they know -- at a safe distance inside my car, how do they know for sure what I'm writing down. It could be the

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football score or even my dinner order. It could be anything.

Q. Well, if they witness you sign an affidavit, this is a good enough -- you wouldn't make a -- isn't that good enough for them to witness your affidavit?

MS. SHORT: Objection. Asked and answered.

MR. WEBB: I don't believe this has been answered, Your Honor.

THE COURT: Again, I think you guys have raised the same point over and over in the sense that no matter what you ask, I think the witness's testimony is if it involves other individuals, he either does not feel comfortable from a health perspective, or the distance will make it difficult for them to ascertain what he is actually signing. You're free to ask him the questions, but I think they're going to result in the same general responses.

Q. (BY MR. WEBB:) Well, Dr. Peebles, do you somehow think that the -- the poll worker would have also the same limitations, wouldn't they, in drive-by voting, wouldn't they?

A. Well, I actually thought about that, Mr. Webb. And my answer to you is going to be this. I'm assuming that if the Lee County board of elections engages in this drive-by voting process, they have educated their poll workers on safe handling of the ballots with respect to the COVID-19 virus. I can be assured that -- I can be virtually assured. I'm sorry. I have a reasonable expectation that they've done that. Whereas some neighbor, some friend, some something, there's no guarantee

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they've gone through similar training.

Q. But certainly you can educate your friends, correct? You wouldn't deceive your friends, would you?

A. No. But -- no, but that's not -- at a certain point, that's not my responsibility.

Q. Have you ever used FaceTime, Dr. Peebles?

A. Yes.

Q. Have you ever used -- well, you're using Zoom now, and you've used Zoom in the past, correct?

A. Yes.

Q. Could you have one of your health care workers or friends be a second simultaneous witness over FaceTime or Zoom?

A. I don't know. I'm not sure how that works, sir, because I have to get a copy of the same ballot, sign it -- sign it twice proximate to when I'm doing it. I don't see the mechanics there, sir.

Q. Well, they can simultaneously witness with the other witness, and then just sign it later on, correct?

A. I'm not sure. I'm not so sure that that -- not sure that that qualifies as valid under the law, sir.

Q. Well, if it does, you would be able to do that, correct?

A. If it did, we wouldn't be -- if it did, we wouldn't be here, sir.

Q. You could even also have your notary -- your bank do the same type of visual witnessing, and then you could drive -- your health care worker could drive you to the bank, correct?

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A. Wouldn't that fall into the same -- wouldn't that fall into the same category of the doing things that exposed myself if I used notary requirement. I believe so.

Q. Couldn't your health care worker hand the ballot to the notary?

A. I suppose they could. I suppose they could. But that raises some questions as far as chain of custody and being able to keep the -- being able to keep the ballot in my possession until it's been dropped in the -- being able to keep an eye on the ballot until it's dropped in the mailbox.

Q. But you could watch the health care worker from the car, correct? I mean, wouldn't you be able to recognize your own signature?

A. I -- I'd be able to recognize my own signature. But that's -- you're parsing, Mr. Webb.

Q. Do you trust strangers more than you trust the health care workers that you are friends with?

A. No.

Q. How close by are caregivers when they're with you?

A. Usually as close as you might be to one of your friends at church. I don't know. As close as you might be to somebody in the grocery store.

Q. But they help take care of you? They help you change clothes, help you bathe, and things like that, correct?

A. Yes, sir.

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Q. And when you're in a car with -- when you're in your van with the health care worker driving, you usually will not be wearing a mask, correct?

A. As I testified back in July, I usually keep the mask off because I'm usually out of inhalant and trying to get access to drinks ^ CHECK THIS.

Q. Now, in your opinion, is everything speculative with this virus?

THE COURT: What do you mean by speculative?

MR. WEBB: I'm just using a quote he's used in the past, and so I just wanted to confirm.

THE COURT: You may answer, then.

A. It's a novel virus. We've never seen anything like it. Obviously, our judgments are going to be based on -- should be based on the best scientific evidence, not -- nobody knows for sure what the course of this virus is going to be.

Q. (BY MR. WEBB:) Now, isn't it true that you do not know whether you will even have someone who can drive you to the polling place on Election Day?

A. There could be a barrier there, yes.

Q. And as far as absentee ballots are concerned, there is no difference in the simultaneous witness requirement you experienced in November, 2018, and the one you will experience in November of this year, correct?

A. Correct. But I need to remind you, Mr. Webb, that I already

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testified on the record that -- how I accomplish that, and that wasn't -- that wasn't -- that wasn't with simultaneous ^ CHECK THIS. That was one with us one day and one the next and the mailbox ^ CHECK THIS.

Q. Now, your home health workers recognize your signature because it's a stamped signature, correct?

A. Yes, for the most part when the stamp is allowed.

Q. So you can submit your absentee ballot this year just like you did in the 2018 November election?

A. Yes, but illegally.

Q. You're testifying under oath that you voted illegally in November of 2018?

MS. SHORT: Objection.

THE COURT: He says he did not comply with the witness requirements as he reads them or understands them. In November of 2018.

Q. (BY MR. WEBB:) Dr. Peebles, you were never notified that your vote in November 2018 didn't count, did it?

A. No, I would never receive notification from the Secretary of State.

MS. SHORT: I'm going to object. Is Mr. Webb suggesting that the witness requirement does not require simultaneous witnesses?

MR. WEBB: No.

THE COURT: He's asking if his vote was tossed in 2018.

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MS. SHORT: Okay. Thank you, Your Honor.

THE WITNESS: Can you repeat -- is there a question there? Can you repeat it?

THE COURT: I think you have already answered it, Dr. Peebles. You were not notified in November 2018 that your ballot was inappropriate.

THE WITNESS: No, I was not, sir.

MR. WEBB: I have no further questions at this time, Your Honor.

THE COURT: Thank you. Mr. Smith, do you have questions for this witness?

MR. SMITH: Yes, Your Honor.

THE COURT: You may.

CROSS-EXAMINATION BY MR. SMITH:

Q. Dr. Peebles, how are you this afternoon? It's good to see you again.

A. Good to see you, too, sir.

Q. Dr. Peebles, I have just a handful of questions for you. Have you requested an absentee ballot for the November 3rd election yet?

A. I have not.

Q. Why not?

A. I just haven't had time to do so it, sir. I will do it shortly.

Q. So you do plan to request an absentee ballot for November 3rd?

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A. Yes, sir.

Q. Dr. Peebles, are you aware that you can vote an absentee ballot for the November 3rd election as early as tomorrow?

A. Yes, I'm aware of that. I just became aware of that within the last 24 hours. But, yes.

Q. Sure. Dr. Peebles, you discussed some nurses that come to your home to treat a wound on your foot. Do you remember that testimony?

A. Yes, sir.

Q. And will those nurses continue to come to your home in September and October?

A. Yes, they will. Or they will as long as the doctor thinks it's medically -- thinks that it's medically appropriate.

Q. Is there any indication that they will stop before the November 3rd election coming to your house?

A. No, there's not.

Q. Dr. Peebles, I want to talk a little bit about your trip to Birmingham related to the Auburn litigation?

A. Yes, sir.

Q. What time did you leave Auburn for Birmingham that morning?

A. I don't remember. I think the appointment was at 2:00 o'clock. So I think we must have left around 10:00 or 11:00.

Q. And what time did you get home?

A. I don't remember. We got out about -- we got out about 4:00

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o'clock. So God knows the traffic was bad on 280.

Q. Okay. So the appointment was at 2:00. You got out about 4:00 o'clock; is that right?

A. Yes.

Q. So you were in the room with these folks for about two hours?

A. Right.

Q. Did you wear a mask while you were in the room?

A. I did not because -- I did not because I was under very, very high stress. And you could tell it was an adversarial situation for me being present with my lawyers. And I wanted easy access to water, hydration, and things like that.

Q. Dr. Peebles, you recall you gave a deposition in this case, right?

A. Yes.

Q. About a little over a month ago, five weeks, something like that?

A. Yes, sir.

Q. And in that deposition, did you swear to tell the truth?

A. Yes, I did.

Q. Dr. Peebles, do you recall testifying in the deposition that you did in fact wear masks at the Auburn litigation meaning?

A. They did. Clarify. They did. I did not.

Q. So, Dr. Peebles, in your deposition when you said, "And we were socially distant and wore masks," that was not true as to

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you?

A. That's correct.

Q. Dr. Peebles, did your care worker accompany you into the meeting?

A. No, she did not.

Q. She waited in the car the entire time?

A. Yes, she did. I can't -- I can't -- I can't testify to what she did while I was out of her presence but.

Q. I understand, Dr. Peebles. But she did not come into the meeting with you?

A. No, she did not.

Q. Dr. Peebles, were you required to attend this meeting?

A. Required is a strong word, sir. I would say -- I would -- for the reasons I stated earlier, I was not -- I was not comfortable having the phone out of my -- out of the scope -- out of the scope of my ability to use it, you know. In order -- in order to maintain my -- for reasons of my personal safety, I felt that I -- that I needed to maintain my phone on my person or as close to it as I could at all times.

Q. Dr. Peebles, how did the expert get the phone from you?

A. I believe I -- I believe I handed or directed my attorney to take it off my tray. The attorney -- the attorney handed it to the forensic expert that they had hired.

Q. And did you sit close enough to watch the expert connect to your phone and perform whatever analysis he did?

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A. I was able to see -- i was not right on top of computer screen, but I was able to see that he was plugging a cable from a laptop into the utility port on my phone. And we've gotten data retrieval back since. So I'm assuming -- I'm assuming that's what he did was retrieve the data.

Q. So could you see the screen of the phone as he performed whatever --

A. No.

Q. Dr. Peebles, you said you gave the phone to your counsel to give to the expert; is that right?

A. Right.

Q. Is there any reason you couldn't have given the phone to your counsel in the parking lot and waited in the car with your caregiver?

A. As I testified early, sir, I wasn't -- I wasn't sure of the nature of the retrieval process. So I wanted to keep the phone within my -- I wanted to keep the phone within my line of sight at all times.

Q. Okay. Dr. Peebles, the Clairon Inn, that's where you vote in Auburn, correct?

A. Right. Yes.

Q. Dr. Peebles, do you contend that the Clairon Inn is inaccessible to you for voting purposes?

A. There are areas that I wouldn't say -- I'm not able to use the regular access path that they prefer for nonregistered guests.

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Q. But are you able to access your voting place?

MS. SHORT: Objection. Legal conclusion.

THE COURT: He's able to go and vote. He said there are some areas that are not fully accessible. But I don't believe he's arguing that there are barriers that prevent him from being able to vote structurally. It's the pandemic is the reason why he doesn't want to vote physically.

THE WITNESS: Right.

MR. SMITH: Thank you. Thank you, Your Honor.

Q. Dr. Peebles, have you ever talked to any local election officials about your polling place and any issues you may have with it?

A. I -- okay, Mr. Smith, let me put it to you like this. Can I vote independently in my polling place?

THE COURT: You may.

THE WITNESS: Could I go -- can I proceed?

THE COURT: You may. This will be the last point, and then we're going to take a break. We have been at it for about an hour. I owe all of you a break. Actually, let's stop here. Mr. Smith, when we come back, you can pick up with the question about whether Dr. Peebles has spoken to anyone about his voting place or issues there. Let's stop until 3:30 roughly 15 minutes. We are in recess until then. Thanks, everyone.

(Recess.)

THE COURT: Dr. Peebles, are you ready, sir?

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THE WITNESS: Yes, sir.

THE COURT: Thank you. Mr. Smith, how about you?

MR. SMITH: Yes, Your Honor. Thank you.

THE COURT: You may begin.

Q. (BY MR. SMITH:) Dr. Peebles, I'd like to start just by renewing my last question. Have you ever talked to a local official about any problems with your polling place?

A. No.

Q. Have you ever talked to any state election officials about any such problems?

A. I do when accessibility director ^ CHECK THIS election day is usually asked whether I have any problems. I typically say no because I'm always able to vote.

Q. Dr. Peebles, I'm sorry. I couldn't understand. Who was it you spoke with?

A. I usually consult with the county ADAP usually on Election Day. I usually get a call from somebody going, "Did everything go okay with voting," and I usually say yes because I was able to cast my vote without incident.

Q. Okay. But have you ever talked to any state election officials about your polling place?

A. No.

Q. Have you ever talked to any local officials about any of the issues in this case?

A. No.

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Q. What about any state officials about the -- any of the issues in this case?

A. Define officials. Define officials, Mr. Smith.

Q. Either an elected official, a member of the Secretary of State's office, someone in government pertaining to elections?

A. No.

Q. Okay. Thank you, Dr. Peebles. Dr. Peebles, what's your monthly income?

A. My monthly income is a Social Security retirement benefit off of my father's record totalling $1,209 a month.

Q. Is that your only source of income?

A. My corporation ability is unlimited CHECK THIS occasionally depending on how many contracts. But it's very.

THE COURT: Dr. Peebles, we lost you there. The social security disability income through your dad or retirement income through your dad. And then something about freelance. Can you repeat that, please?

THE WITNESS: I'm sorry, Your Honor.

THE COURT: Oh no, it's not you. It's just -- it's the technology. We've had problems across the board with witnesses and with lawyers. So go ahead, please.

THE WITNESS: Judge, what I was saying was I do have receipts from my consulting firm, Abilities Unlimited, but those are variable depending on how many times -- how many contracts we have and whether they're -- whether they are up for payment

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that month or whatever. And those are receipts that are paid in the name of the company, not to me personally.

Q. (BY MR. SMITH:) Do you have receive income from the company?

A. No. I've never taken a salary. I've never taken a salary. I've never taken a member draw is the best -- I've never paid myself out of the company if that's what you're saying.

Q. So, Dr. Peebles, where do the receipts go when they come into the company?

A. The receipts go to operating expenses, phone lines, domain lines, internet service, Zoom service, you know, things that keep the business running, paper, ink, you know, new printer if we need it.

THE COURT: Mr. Smith, are these questions designed to prove that he can pay the notary fee or something else?

MR. SMITH: Yes, Your Honor, that's -- I'm asking in regards to count 5.

THE COURT: Yeah. I'm not sure that he has asserted -- at least on direct -- that that fee was a problem. But, Dr. Peebles, you're not claiming in this lawsuit that you cannot afford to pay the notary the fee he or she would charge to notarize your signature by video, are you?

THE WITNESS: I'm claiming, sir, that my income is variable. So I'm not sure -- I'm not sure, you know, what my financial condition will be at any given time. Sometimes the funds in my

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personal account runs under a hundred dollars a month by the time rent, expenses, you know, doctors, by the time all that's taken --

THE COURT: Okay. Well, in light of that, Mr. Smith may continue with his questions. Thank you, Dr. Peebles.

MR. SMITH: Thank you, Your Honor.

Q. Dr. Peebles, you said receipts go to things like phone bill, internet line. Is that the internet in your condo?

A. Yeah, but I claim the home office exemption on my taxes.

Q. And is the phone line a cell phone that you have?

A. Yes. But I also keep a land -- up until very recently, I kept a land line for the fax machine.

Q. So, Dr. Peebles, the receipts from your company also go to support utilities that you use in your home; is that right?

A. Actually, I use my Social Security money is used to pay all the utility bills, condo association fees, whatever. Things that are related to the house, repairs.

Q. Dr. Peebles, did you not just testify that the receipts from your company go to your internet bill?

A. The internet bill that I -- the internet bill that I use for business purposes ^ CHECK THIS company receipts, internet would cross into my personal. They go to things that are -- I feel are ^ CHECK THIS check. My company is virtual. So therefore, we need a solid internet connection to do our work.

Q. Are you using the internet connection that the receipts from

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your company pay for to connect to this Zoom today?

A. Yes. I have a home business. So it doesn't make sense that I have two separate connections.

Q. Dr. Peebles, you said it varies based on how many contracts you have. How many contracts do you currently have with your company?

A. Paying contracts, we have two.

Q. And who are those with?

A. One is -- one is be a -- one is with the Alabama Disabilities Advocacy Program. That is a fee-for-service relationship. I'm drafting a -- I'm drafting -- I'm drafting a ^ CHECK THIS report for the organization. And the other contract is with an internet-based teletherapy therapy counseling firm out of New York.

Q. And how much in fees are you receiving from each of those respectively?

A. Well, the one with ADAP was -- the one with ADAP -- is 5 thousand dollars in total. And 4 thousand dollars of that has already paid. The other thousand will come out later this month on publication of the report.

Q. And what about any fees from the New York contract?

A. Talk space -- yes. I started -- my contract with them began on the 23rd of June. And they pay on a monthly basis based on various performance incentives. So far, those -- so far those receipts have totalled just over 5 hundred dollars.

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Q. Dr. Peebles, do you have a mortgage payment?

A. Yes, I do.

Q. How much is it?

A. $376 a month.

Q. And, Dr. Peebles, did you receive the stimulus check from the federal government?

A. Yes.

Q. And how much was that stimulus check for you?

A. Standard single 12 hundred dollars.

Q. Dr. Peebles, do you ever get takeout food?

A. Occasionally, but not very rare -- not very often.

Q. Do you ever get sushi?

A. Yes.

MS. SHORT: Objection. Relevance.

MR. SMITH: It goes to whether he can pay the $5 fee.

THE COURT: I'll allow the questions in light of Dr. Peebles's answers earlier about his income. Fluctuation, I should say.

MR. SMITH: Thank you, Your Honor.

Q. So, Dr. Peebles, do you ever get sushi?

A. Sushi, burgers, ice cream. ^ CHECK THIS.

Q. The amounts you spend on those meals, are they ever more than $5?

MS. SHORT: I'm going to object again. This isn't even relevant to the poll tax claim.

MR. SMITH: Your Honor, in ruling on our --

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THE COURT: It's overruled.

MR. SMITH: Thank you, Your Honor.

THE WITNESS: Obviously, there's usually more than $5 but less than $20.

Q. (BY MR. SMITH:) Thank you, Dr. Peebles. And, Dr. Peebles, you do contend that you could not pay a $5 notary fee?

MS. SHORT: Objection.

THE COURT: Let me hear the question first. Depending on I think you were about to put a condition on it? Mr. Smith?

MR. SMITH: No, Your Honor. I just wanted to clarify it for the record.

THE COURT: Okay. Dr. Peebles, the question is do you believe or are you able to pay a notary's $5 fee that he or she will charge to notarize your signature remotely.

THE WITNESS: I can't get -- honestly I can't guarantee that, Your Honor, because it depends on what the time of the month it is and where my billing cycles are and things like that. As I testified earlier, there are times of the month where my balance in my checking account can be under -- it will be under $100 dollar, sometimes under $50. So at that time, I'm not -- at that time I'm not going out to sushi bars and pizza places either.

MR. SMITH: Okay. Thank you, Dr. Peebles. Nothing further for me.

THE COURT: Okay. Anyone else?

MR. DYAR: Nothing from us, Your Honor.

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THE COURT: Thank you, Mr. Dyar.

Redirect?

MS. SHORT: Yes, Your Honor. Thank you.

REDIRECT EXAMINATION BY MS. SHORT:

Q. Dr. Peebles, are you challenging the photo ID requirement in this case?

A. No, I'm not.

Q. And on cross-examination, you talked about the nurses that are coming to your home three days a week. Can you predict when they will come to your home, at what time?

A. No. I know what day but not -- not the time.

Q. And is it up to you how long their visits will continue?

A. It's based on the CHECK THIS attending physician Dr. Johnson.

Q. So let's go back to your absentee ballot in 2018. You were discussing earlier, I believe, with Mr. Webb that the witness requirement was the same as it is now. Is there any other difference between the election in 2018 and the election this November?

A. Obvious. That was only a state election and a congressional mid term. This is a presidential election.

Q. Any other difference that's happening now?

A. Absolutely. The presence of the COVID -- COVID pandemic and the national SOE as well as the state SOE ^ CHECK THIS.

Q. And you talked with both opposing counsel about the

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Auburn litigation trip that you took. Do you anticipate any future trips related to the Auburn litigation prior to the November election this year?

A. Between now and the November election?

Q. Between now and the November election?

A. I can't -- most of the scheduling order now is all electronic filings deadlines.

Q. Are there any currently scheduled in-person trips related to that litigation between now and November?

A. There are not.

Q. And related to curbside voting, let's talk about curbside voting outside of the pandemic.

A. Yes.

Q. So let's think about, you know, the wonderful time when this pandemic is no longer with us. Are you able to access your polling site where you actually vote unassisted?

A. No, I'm not.

Q. Are there physical barriers to accessing the polling location where you vote at the Clairon Hotel?

A. I would say without -- with the condition without assistance?

Q. Yes. Without assistance, are you able to access it?

A. No, I'm not because I'm -- as many times as I've actually used the polling location, I'm not sure -- based on my personal experience, there has been several times when I've almost gotten crushed by the elevator after moving to hit the button and in the

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background being able to ^ CHECK THIS get out the door without being crushed.

Q. So as I understand your prior testimony when we spoke earlier, you require assistance to go through the lobby of the hotel to access the elevator; is that correct?

A. Yes.

Q. And also to go into the elevator, push the button, and turn around in time to access -- to leave without the doors closing on you; is that correct?

A. Hope and pray that the electronic eye is working, but, you know.

Q. And so outside of the pandemic, you would like to use curbside voting as a -- in-person voting; is that correct?

A. Absolutely. Absolutely.

Q. And inside or outside the pandemic, if you could call ahead to your polling place and say, "I'd like to vote curbside and have a poll worker meet you outside at a parking spot and you could vote curbside that way," would you feel safe doing that?

A. Assuming that, -- is there an objection there? Assuming that the poll worker had train in such a way to handle ballots and handle with respect to the Corona virus, yes.

MS. SHORT: I don't have anything further.

THE COURT: Thank you. Mr. Webb?

MR. WEBB: Yes.

CROSS-EXAMINATION BY MR. WEBB:

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Q. Dr. Peebles, you require assistance to even get to the polling location, correct?

A. That is correct.

Q. And you require assistance to get into the -- inside the polling location, correct?

A. That is correct.

Q. And you require assistance in order to vote when you're in the polling location, correct?

A. That is correct.

Q. And so what you're saying is -- but you trust your health care workers, correct?

A. Right.

Q. And you would trust them more than you would a stranger who's a poll worker, correct?

MS. SHORT: Objection. That's vague.

THE COURT: Mr. Webb, you want to clarify what you mean specifically by trust?

MR. WEBB: Yes.

Q. As far as being -- not having COVID-19. You would trust the sanitation practices of your health care workers over a stranger who serves as a poll worker, correct?

A. Hypothetically, yes.

Q. Well, how about not hypothetically. You trust your health care workers, don't you?

A. Because they have been following my protocol.

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Q. Right. Have the strangers who serve as poll workers, do you know if they followed your protocols?

A. If such a situation was put into practice, I would -- I would -- I would, you know, have to say that I have a reasonable expectation that the poll workers would have undergone some education on how to properly handle ballots with respect to COVID-19 and reducing exposure.

Q. So your testimony is you would trust strangers that serve as poll workers?

MS. SHORT: Objection. Asked and answered.

THE COURT: You may answer again if that's your testimony.

THE WITNESS: Assuming they have been -- assuming they have been trained on how to do their job in a safe manner, yes.

Q. (BY MR. WEBB:) Would that apply to any other workers in any other professions?

MS. SHORT: Objection. Vague.

THE COURT: I will sustain that part. But you can obviously cure it. Basically just to short change the issue, Dr. Peebles, your contention is as long as the people have been trained properly that are poll care workers, you don't have a problem trusting them; is that correct.

THE WITNESS: Just as much as I would trust the people doing a drive-thru COVID test.

THE COURT: Mr. Webb? Thank you.

MR. WEBB: No further questions, Your Honor.

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THE COURT: Thank you. Mr. Smith?

MR. SMITH: Nothing for me, Your Honor. Thank you.

THE COURT: Anyone else? All right. Before I release Dr. Peebles, there is one thing I was a little unclear on that I need some clarification on. It may be an explanation that the lawyers will need to give me later. But, Dr. Peebles, let me understand why you don't believe that having your signature notarized remotely is a valid option for you.

THE WITNESS: As I understand it, I feel like the second step of the remote notary would create -- will create another opportunity for exposure just as going to see -- just as going to see the notary live. It would be the same --

THE COURT: What is that second step that you're alluding to?

THE WITNESS: The second step is that -- the second step is that the notarized -- the virtual document, the -- of the virtual document that you sign. The document that you sign by video witness of the notary still has to be dropped off to get stamped someplace. And as I understand the law or the Governor's exemption proclamation that the ballot has to be maintained in my possession until it can be dropped off and received by the notary agent for stamp.

THE COURT: Okay.

THE WITNESS: And...

THE COURT: You may finish your answer. I'm sorry.

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THE WITNESS: By the notary agent for stamp. That was it.

THE COURT: Thank you. That's it for my question. Ms. Short, anything follow-up on what I asked?

MS. SHORT: No, Your Honor. No more questions.

THE COURT: Thank you. Mr. Webb?

MR. WEBB: No, Your Honor.

THE COURT: Mr. Smith?

MR. SMITH: No, Your Honor. Thank you.

THE COURT: Thank you. Dr. Peebles, thank you very much, sir. You are excused and released.

THE WITNESS: Thank you, sir.

(Witness excused.)

THE COURT: Thank you. Who is the Plaintiffs' next witness?

MS. SHORT: Your Honor, plaintiffs call Annie Carolyn Thompson.

THE COURT: Ms. Thompson, good afternoon.

MS. SHORT: I think she's still connecting to the audio, Your Honor.

THE COURT: Okay.

MS. SHORT: There we are, Ms. Thompson. We can see you, and we can hear you.

THE WITNESS: All right.

THE COURT: Ms. Thompson, would you raise your hand please so Ms. Humphrey can swear you in.

THE WITNESS: Okay.

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(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Annie Thompson.

THE COURTROOM DEPUTY: Could you spell it for me, Ms. Thompson?

THE WITNESS: Spell it?

THE COURTROOM DEPUTY: Yes, ma'am.

THE WITNESS: A-N-N-I-E, Annie, T-H-O-M-P-S-O-N, Thompson.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: I reside in the State of Alabama.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Ms. Short, your witness.

MS. SHORT: Thank you, Your Honor.

ANNIE CAROLYN THOMPSON,

duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MS. SHORT:

Q. Hey, Ms. Thompson.

A. Hello.

Q. Can you see and hear me okay?

A. Yes, I can.

Q. Okay. And you're a plaintiff in this case, correct?

A. Correct.

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Q. And you said you live in Alabama. Where in Alabama?

A. In Mobile, Alabama.

Q. And is that Mobile County?

A. Mobile County.

Q. Do you live alone, Ms. Thompson?

A. Yes, I do.

Q. And how old are you?

A. I am 68 years old.

Q. And are you currently registered to vote?

A. Yes, I am.

Q. Ms. Thompson, I'd like to talk about your health and COVID-19. Can you tell me about any current medical conditions that you have?

A. At present, I suffer from high blood pressure and diabetes.

Q. Any other medical conditions that you have?

A. I took a fall last year that I'm still recuperating from.

Q. And have there been any complications from that fall?

A. Just some nerve end damage that I'm still waiting for them to repair themselves.

Q. And, Ms. Thompson, how would you describe your race?

A. My what?

Q. Your race?

A. I am African American.

Q. You just testified that you have high blood pressure, correct?

A. Correct.
Q. Do you take any medications for your high blood pressure?
A. Yes. I take two pills for my high blood pressure.
Q. And do you take any medication for your diabetes?
A. Yes. I take three pills per day for my diabetes.
Q. And are you taking any medication related to the complication from your fall?
A. Yes. I take one medication from that fall.
Q. Ms. Thompson, are you considered high risk for serious illness if you were to contract COVID-19?
A. I think I would be.
Q. Why?
A. Due to the fact of my diabetes and high blood pressure and also my age.
Q. And what is your understanding of what would happen if you were to contract COVID-19?
A. That I can become seriously ill, and I could possibly not recover from it.
Q. Ms. Thompson, I'd like to talk now about any steps you have taken to protect yourself from COVID-19. Has your life changed since the beginning of the COVID-19 pandemic?
A. Yes, it has changed considerably.
Q. How so?
A. Because now I have been self-quarantine myself. I don't go out unless I absolute have to. I have my daughter deliver

groceries when she can or other things that I might need.
Q. Have you stopped working since the beginning of the pandemic?
A. I've also stopped working due to the fact that I was working as a caregiver. And for my health and the health of the people that I was taking care of, I had to stop.
Q. And approximately when did these changes start?
A. These changes started around the first part of April.
Q. When you do go out, are you taking any steps to protect yourself?
A. Yes, I am. I always wear my mask when I'm out, and I also wear gloves. And particularly I wear gloves if there's a situation where I may have to touch some things.
Q. Any other steps that you're taking to protect yourself when you have to go out?
A. I also keep sanitizers in my car, wipes and spray, Lysol, for just in case.
Q. Do you take any precautions when you return home after being outside?
A. It depends on where I've been. Sometimes I have to come home and take my clothes off and take them straight to the washer and change clothes.
Q. And you mentioned your daughter. Is there anyone else that you see on a regular basis since the start of the pandemic?
A. No one else that I see regularly, no.

Q. And about how often do you see your daughter?
A. I see my daughter once or twice a week depending on our needs.
Q. And why are you seeing her? For what reasons?
A. I'm seeing her because she comes over to check on me and also to bring things that I may need from the store or wherever.
Q. And when she comes to the house, is she coming inside?
A. Yes, she is.
Q. And you mentioned that you do need to leave the house. Can you explain what you're leaving for?
A. I leave to go to the bank. I leave to go to the pharmacy and sometimes to the grocery store due to the fact that my daughter recently started a job, and she's also going back to school. So her time is very limited.
Q. Any other places that you're going when you leave the house?
A. I also take my dog to the vet and to the groomers.
Q. Have you been going to any medical appointments?
A. Yes, I've also been going to doctors' appointments.
Q. You mentioned the bank. Are you not able to do your banking on line?
A. I don't do banking on line. I'm not that computer savvy, so I do my banking in person. And right now, it's just through drive-thru.
Q. You're speaking to us on some sort of a device. Is that your

device?
A. No.
Q. Did someone give it to you?
A. Yes.
Q. So when you go to the bank, are you going inside?
A. No, I'm not. I'm using drive-thru.
Q. And what about your pharmacy? Are you using drive-thru there?
A. There is no drive-thru at my pharmacy, so I have to go in.
Q. Are you taking any precautions when go in?
A. Yes, I am. I'm making sure I have on my mask, and I'm distancing myself. And the pharmacist is also taking precautions because they have the lines drawn where you can only stay in to wait your turn that's six feet apart. And they also have sanitizing stations throughout the store.
Q. And we were just talking about the way that you're communicating to us now. How did you get the device that you are talking to us on right now?
A. It was sent to me by your office.
Q. Okay. By us?
A. Uh-huh.
Q. Okay. And you mentioned the vet. Are you going into the vet and taking your dog to these appointments?
A. Yes, I'm taking him to the appointments. But they are also practicing care as far as COVID is concerned. Because, now, when

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I go, we have to take -- we have to make an appointment. And when we get there, we have to call in. They will have someone come out and pick up my dog out of the back seat, take him in to do whatever they need to do with him, and then bring him back and put him in the back seat.

Q. So just to be clarify, you aren't going into the vet's office. They are coming to you; is that correct?

A. Correct.

Q. And you mentioned that the dog is getting groomed; is that right?

A. Yes.

Q. Can you explain why this is a necessary trip for you, the dog getting groomed?

A. My dog has to be groomed because he's a very hairy dog. He suffers from a skin condition. And too much hair is not good for him. So I have to keep him trimmed in order to work with him as far as his allergies, skin allergy's concerned.

Q. Is the skin condition not something that could be treated at the vet?

A. I am getting some medication from the vet. The reason why he's going to the vet. I am getting some medication from the vet. But it cannot be applied on him if there's a lot of hair on him.

Q. Is the -- why can't you groom the dog at home?

A. Because I don't have the equipment, and it would not be a good idea if I groomed him at home because he wouldn't behave

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for me.

Q. So your dog is getting groomed. Are you also going to get your own hair done?

A. No, I don't.

Q. Have you been going to church?

A. No, I haven't.

Q. Have you been going out to restaurants?

A. No, I don't.

Q. Have you been going out socially to see your friends?

A. No, I haven't.

Q. Ms. Thompson, I'd like to talk about voting. Have you voted this year in 2020?

A. Yes, I have.

Q. Did you vote in the March primary?

A. Yes, I did.

Q. And did you vote in person?

A. Yes, I did.

Q. Do you usually prefer to vote in person?

A. I prefer to vote in person.

Q. And did you vote in the July 14 election?

A. Yes, I did.

Q. And how did you vote? By what process did you vote?

A. I had applied for an absentee ballot because of the COVID-19 situation, but my ballot only arrived on the day of the election. So therefore, I had to find another way to vote. So because we

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have a very small precinct where I vote, I called a friend that works the poll, and she gave me a time when I could come in and there would be no one there. So that's how I voted. I went in, and I voted in person. And there was only one other person inside to vote at the same time that I was.

Q. So it's your testimony that your -- you applied for an absentee ballot. It didn't arrive until Election Day?

A. Right.

Q. So you called your friend who works at the polling place, and she told you that it was okay to come, there aren't that many people here, and you were able to vote when it wasn't very crowded; is that correct?

A. Correct.

Q. Do you want to vote in November?

A. I'm going to vote in November, yes.

Q. And how would you like to vote in November?

A. I would like to vote absentee ballot. If we had curbside voting, that would be better.

Q. Better than voting in person in November?

A. Well, I definitely don't plan on voting in person in November because this is a totally different election.

Q. Can you explain what you mean by that?

A. Because of COVID and the amount of people that are going to be voting in November, I could foresee that there will be lines, there will be more people, and I do not want to expose myself.

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Q. Expose yourself to COVID-19?

A. To COVID-19, correct, uh-huh.

Q. So let's talk about absentee ballots. Do you understand -- is it your understanding that you are eligible to vote by absentee ballot this coming November?

A. Yes.

Q. And will you be able to request and receive your absentee ballot?

A. I will be able to request and receive my ballot, yes.

Q. Will you be able to comply with the photo ID requirement to request your ballot?

A. That will be a problem.

Q. Why?

A. Because I don't have a scanner or printer that I could photocopy my ID.

Q. Do you have a copy machine?

A. I have none.

Q. Does your daughter have a printer or scanner or photocopy machine?

A. No, she does not.

Q. So let me back up. Okay. If you are able to get a copy of your photo ID, let's say, would you be able to vote and return your absentee ballot?

A. If I was able to get a photocopy?

Q. Yes.

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A. Yes.
Q. Let me ask it this way. Would you be able to comply with the witness requirement for the absentee ballot?
A. The witness requirement could be a little tricky also because I'm a very private person, and I live in a neighborhood where there's not much contact with my neighbors. So I would probably contact my neighbors next door because there are two of them and see if they will be available to be a witness.
Q. You live alone, correct?
A. Correct.
Q. And do you regularly interact with two people at a time daily?
A. No. No.
Q. Would you have to go out into public to get two witnesses to sign your absentee ballot?
A. I would.
Q. And would that pose a risk to your health right now?
A. Of course, yes, it would right now.
Q. And you testified a little bit ago that you applied for an absentee ballot for the July election; is that right?
A. Correct.
Q. Did you submit a copy of your photo ID with that application?
A. No, not at that time because there was a window of opportunity where being 65, I -- older than 65, I did not have to.

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Q. Was that related to the court order in this case?
A. Yes.
Q. And you testified that you never received your ballot in time, but did you have a plan to fulfill the witness requirement?
A. Yes. I had in mind that I could ask my neighbor if they were available to do this.
Q. And had you already called them?
A. No, I had not. I was waiting for my ballot.
Q. And could you ask those two neighbors in November to witness your ballot?
A. I could possibly ask my neighbors in November. But due to the fact that we are having COVID, they are elderly, also, and I'm not sure about how they're taking care of themselves or how they are handling COVID. And there's a possibility that one of them may have it at that particular time. That's a long-range plan that I'm just not sure of.
MS. SHORT: And my apologies, Your Honor. We have an attorney that's waiting to be let in. I believe Bill Van Der Pol.
THE COURT: Thanks for letting us know. Ms. Humphrey.
MS. SHORT: Thank you.
Q. Ms. Thompson, do you have a grand daughter?
A. Yes. I have two.
Q. And your grand daughter, does she live with your daughter?
A. Not at this time. She did live with my daughter but not at this time. She's away at school now.

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Q. So you couldn't have your daughter and grand daughter come over to witness your ballot for November?
A. No, because my grand daughter's at school.
Q. Ms. Thompson, I'd like to talk a little about curbside voting. Are you familiar with that term?
A. I'm familiar with the term, yes.
Q. Would you use curbside voting if it were offered in Mobile County during the COVID-19 pandemic?
A. I would.
Q. Why?
A. Yes.
Q. Why would you use it?
A. I would use it because it will be less contact with too many people. I could protect myself. I could then present my driver's license in person, and it would be less contact because I would only be in contact with one other person.
Q. What about outside of the COVID-19 pandemic, assuming we ^ CHECK THIS. Would you use curbside voting if it were offered at your polling place?
A. Yes, I would.
Q. Why?
A. Because, again, that will be less contact. And to me, that will be easier than to sit in my car and wait my turn rather than sitting -- standing in a long line.
Q. Ms. Thompson, if curbside voting is not available and the

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photo ID and witness requirements remain in place, will you be able to vote in the November election without putting your health at risk?
A. No, I wouldn't.
Q. And if you are put in that position, how would that make you feel?
A. That would be devastating me because it's important to me to vote, especially this year.
Q. Why is it important for you to vote?
A. It's very important because it has been instilled in me from a young person because of our -- how hard it was for us to get the right to vote, the things that some of my ancestors had to go through in order to get this right to vote, the right to vote is very important to me, and I do not take it lightly.
MS. SHORT: Thank you, Ms. Thompson. No further questions from me.
THE COURT: Thank you. Who is up first?
MR. SPEEGLE: That would be me. Jerry Speegle representing Judge Davis.
THE COURT: Okay, Mr. Speegle, you may.
MR. SPEEGLE: Judge, I'm sorry.
THE COURT: That's okay. This is Jerry Speegle representing Judge Davis.
CROSS-EXAMINATION BY MR. SPEEGLE:
Q. Ms. Thompson, we haven't met, but I'm Jerry Speegle. I

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represent Judge Davis, the probate judge in Mobile County. Good afternoon.

A. Good afternoon.

Q. Where is your actual -- what's your actual street address in Mobile? Where do you live?

A. I live at 2901 Cotton Street, 36607.

Q. And I understand -- I've read your deposition, and I understand that you have a long history of voting since you were in your 20s, right?

A. Yes.

Q. So I can take from that that you're very interested in exercising your right to vote; would that be correct?

A. Correct.

Q. And you would do pretty much what it took to get your vote counted this year in this election, wouldn't you?

A. Pretty much.

Q. Now, I heard from your testimony today that you have two grand daughters, and I think one -- is one off to school, off to college now?

A. Both are.

Q. Both are?

A. Uh-huh.

Q. Okay. And your sister also lives not too far away from you; is that correct?

A. Not too far, yeah.

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Q. I mean, she lives in Mobile, right?

A. Yes, she is in Mobile.

Q. All right. And you drive and you get around in your own car, correct?

A. Yes.

Q. And you live in a house, a residential house, as opposed to an apartment, correct?

A. Yes.

Q. Now, you're doing a really good job with your Zoom today. Did you take some instruction on how to use the device that your lawyer sent you?

A. Yes.

Q. And are you aware that you can actually take a picture of your photo ID and load it to your device you're using there and send it to your lawyer, and they could make a copy of your photo ID for you today?

A. No.

Q. Have you asked anyone to give you instruction so you could do that today?

A. No, because I was not aware.

Q. Now that you're aware you can do that, are you interested in asking anyone directions on how you can do that while you have that device there in your possession today?

MS. SHORT: Objection.

THE COURT: She can answer it. Overruled.

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THE WITNESS: Ask me the question again.

Q. (BY MR. SPEEGLE:) Are you interested in asking anyone for directions on how to make a copy of your photo ID and send it to your lawyer or someone else to make a copy for you? Are you interested in doing that today, asking anyone for instructions along those lines?

MS. SHORT: I'll object again.

THE WITNESS: And I should answer?

THE COURT: Yes, ma'am.

THE WITNESS: I would be interested.

Q. (BY MR. SPEEGLE:) Are you aware -- I mean, you've been to the Mobile Public Library before, haven't you, one of the branches?

A. Yes.

Q. As a matter of fact, I think you've testified that you had gone to the Mobile Public Library before to get a photo ID of your ID; is that correct?

A. No.

Q. Have you been to the library before, the Mobile Public Library, to get copies before?

A. No.

Q. Do you know where your local branch of the Mobile Public Library is?

A. Yes.

Q. Have you been there before?

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A. Yes.

Q. Now, you described earlier about why you wanted to curbside vote. And I believe you told us that one of the reasons is that you have -- would be able to drive up in your car and hand someone your ID to copy, right?

A. I don't think they would have to copy it. They would look at my ID and see that I am the person that's voting.

Q. Yes. Excuse me. I misspoke. You would hand the ID to them, and they would see it, correct?

A. Yes.

Q. Then after that, I guess you would -- would you envision that after you showed the poll worker your ID that you actually sign one of the documents there as you would normally do when you voted in person?

A. Yes.

Q. So they would come to your window, you would roll the window down, and they would hand you the document to sign, correct?

A. Correct.

Q. And you would take that from them. So you would one want them to have a mask on because they're going to be just a few feet from you, right?

A. Right.

Q. And you would have your mask on, right?

A. Right. And gloves.

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Q. And gloves, yes. And then once you handed the document back to them after you signed it, do you envision they would hand you a ballot to fill out?

A. Yes.

Q. Then you would fill the ballot out at some period of time. It may take you a few minutes. But then you would fill it out and hand it back to them. Would that be the process you would envision?

A. Say that again.

Q. Would -- after you filled out your ballot, would you then hand it back to the poll worker?

A. Yes.

Q. And they would then of course be within a close enough distance for you to hand it to them, correct?

A. Yes.

Q. Now, I asked you before about your going to the library to get your ID. Do you remember the question that was asked before about providing a photo ID when you applied for your absentee ballot, that you testified that you had gone to the library to get --

A. No, I did not.

Q. Let me read to you from page 45 of your deposition. Starting with --

MS. SHORT: Objection. The deposition has not been entered into evidence.

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MR. SPEEGLE: This is for impeachment, Your Honor.

THE COURT: It's for impeachment, so it may not be needed for --

MS. SHORT: Also improper impeachment.

MR. SPEEGLE: Well, Your Honor, she just denied that she --

THE COURT: Correct. Ms. Short, do you have the deposition handy so you can follow along and then point out to me if it's -- the representations are not correct?

MS. SHORT: Yes, Your Honor.

THE COURT: Okay. Mr. SPEEGLE, you may.

MR. SPEEGLE: Thank you, Your Honor.

Q. On page 45, the first line, the question was, "How did you request an absentee ballot that time, "And your answer was from the registrar's office, I think."

Question was, "Did you call them?" Answer "Yes."

"Did they send you an application for absentee ballot?" Your answer "Yes."

"And you filled it out and sent it back?" "I filled it out. They sent me a ballot, and I filled it out."

"And at that time, did you provide a copy of your photo ID when you applied for the absentee ballot?" Your answer was "Yes, because I was able-bodied to do that."

Question, "How did you get that copy of your photo ID?" Answer, "I had gone to the library, I think."

Do you recall that deposition testimony under oath?

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A. I don't recall that deposition because that's not true.

Q. All right. Then I'll go to page 107 of your deposition.

A. Are you sure that's mine?

Q. Yes, ma'am.

A. Because I never said that I went to the library to get a photo ID. Not for this -- the election. I did not send in a photocopy of my ID. Because I --

Q. Ma'am -- I'm sorry. But you may be confused. I'm not talking about this year necessarily. You've voted absentee at least four times in the past, haven't you?

A. At least, yes.

Q. I'm not necessarily talking about this time.

A. Oh, well, that's what I was understanding. That's where the misunderstanding came.

Q. I thought you might be. So let me address that issue again. So in the past, do you recall having gone to the library to get a copy of your photo ID to send along with your absentee ballot application?

A. Yes, in the past.

MS. SHORT: Can you clarify which election you're talking about?

MR. SPEEGLE: I'm not really concerned about which election.

MS. SHORT: Well, if you're going to using her deposition testimony to impeach her with it, you need to be specific.

MR. SPEEGLE: Well, I appreciate your admonition to me --

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THE COURT: Well, now, let's stop. Stop. Stop. The question may not have, in the deposition mentioned which election. In any event, the witness has testified that in the past -- not this 2020 election but in the past, that she has gone to the library to get a photo ID.

Is that correct, Ms. Thompson?

THE WITNESS: Yes.

THE COURT: Thank you, ma'am.

THE WITNESS: Not in 2020 but in the past.

Q. (BY MR. SPEEGLE:) Yes. And are you aware that you can go to the library, public library branch now and curbside, just like you describe voting, hand your ID to a public library employee, and they will make a free copy of your photo ID for you? Are you aware of that?

MS. SHORT: Objection. Assumes facts not in evidence.

THE COURT: True. But Ms. Thompson has answered it. You're not aware that that is a possibility or service that's available; is that correct, ma'am?

THE WITNESS: Correct.

Q. (BY MS. SPEEGLE:) Ms. Thompson, are you aware also that the Mobile Public Library offers free notary service, curbside notary service where you can bring your -- once you get your absentee ballot, you can sign your envelope in front of the notary at the public library who will come to your car curbside and notarize your envelope? Are you aware of those services offered

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free by the Mobile Public Library System?

MS. SHORT: Objection. Assumes facts not in evidence.

THE COURT: Correct. It's not being received now for its evidentiary value or lack thereof. Ms. Thompson, you're not aware that that is a service that's available; is that correct?

THE WITNESS: Correct.

THE COURT: Okay.

THE WITNESS: Correct.

Q. (BY MR. SPEEGLE:) Now, you mentioned that your daughter is working now. Where is she working?

THE COURT: If you know.

THE WITNESS: Why is that important that you know where my daughter works?

THE COURT: If you know, ma'am. If you know.

THE WITNESS: She works at a place called Synergy.

THE COURT: I know you're concerned. Obviously, Mr. SPEEGLE, it's not a flippant response on Ms. Thompson's part. I've actually had a case where a family member was retaliated against based on a lawsuit that she was not involved in but her dad filed. So I suspect that's Ms. Thompson's concern.

But obviously, that is not why Mr. SPEEGLE is asking that question, and he does not plan to in any way notify Synergy that they have an employee whose mom's a plaintiff in this lawsuit. But in any event, if your daughter gets terminated and she believes it's related to this litigation, she will have recourse.

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Okay? So I'm glad you've answered the the question.

Mr. SPEEGLE, you may continue.

Q. (BY MR. SPEEGLE:) What business is Synergy in?

A. I'm not sure what it is.

Q. Does she work in an office?

A. Yes.

Q. And because you want to vote in this election, have you asked your daughter to take your photo ID and make a copy of it at her office?

A. No, I haven't asked her to do it.

Q. But are you aware that there's a copy machine at her office?

A. Possibly, yes, there is.

Q. Now, and I'm still on the photo ID issue. Have you asked your daughter to take your ID -- and I know you see your daughter at least once a week. Have you asked your daughter to take your photo ID and have a copy made for you so you could submit it with an application for an absentee ballot?

A. No, I haven't asked her.

Q. Are you planning on asking her?

A. It's possible that if I have to I will.

Q. That would be an easy way to get your photo ID, wouldn't it, a copy?

MS. SHORT: Objection.

THE COURT: Overruled. She can answer.

THE WITNESS: Yes.

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Q. (BY MR. SPEEGLE:) And did you say that you had been going to the grocery store now that your daughter had started working?

A. Yes.

Q. Are you aware -- which grocery store that you shop most?

A. At Publix.

Q. Have you thought about asking the people at Publix to make a copy of your photo ID for you?

A. No because --

MS. SHORT: Objection. Facts --

THE COURT: Unless Publix has a photocopying option, I will sustain that objection.

Q. (BY MR. SPEEGLE:) Do you know whether or not Publix has a copy machine open to the public?

A. I'm not guilty aware of that. I go in there to buy groceries. I'm not aware of them having a copying machine.

Q. Are you aware that you can go to the absentee election manager's office in the probate court, and while there, they will make a copy of your photo ID, process your application, and provide you with an absentee ballot which you can fill out on the spot, and then they will act as witnesses for you?

MS. SHORT: Objection. Assumes facts not in evidence and compound.

THE COURT: If you know. Do you know that's a service that's offered by the probate office, probate judge in Mobile.

THE WITNESS: I'm not aware of that service.

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Q. (BY MR. SPEEGLE:) Now, are you aware of when you can first apply for an absentee ballot?

A. Yes, sir. The first of September.

Q. Have you done that yet?

A. No.

Q. When you do plan on applying for your absentee ballot, Ms. Thompson?

MS. SHORT: Objection.

THE COURT: Overruled. She will know if she plans on when she plans to do it.

THE WITNESS: I plan on doing it soon. Maybe even this week.

Q. (BY MR. SPEEGLE:) And when you get your ballot back, are you planning ahead about how you will secure either a notary or two witnesses for your envelope, for your ballot?

A. I haven't planned that far in advance. I'm going to get the ballot first and then figure that part out.

Q. And do you think you'll be able to handle getting the two witnesses, don't you?

MS. SHORT: Objection.

THE WITNESS: I'm not sure.

THE COURT: Overruled.

Q. (BY MR. SPEEGLE:) Would it be advisable from your point of view to go ahead and ask your next door neighbors -- you said there are two of them there -- if they would be available in the

next week or two to act as witnesses for you?

A. I could possibly ask them ahead of time if they would be available. Now, these questions are being asked if I could do these things. I could do all of these things before we had COVID-19. But because of COVID-19, I'm a little leery about being in contact with different people. And when I do go out, I protect myself to the fullest extent. Things are different than it was before. Before, I would do anything in order to vote. But because of COVID-19, I don't want to risk my health if I don't have to.

Q. If you go next door to your neighbors and you have a clipboard and you turn your back to them and they see you sign your ballot and you hand it -- you put it down on their porch and they pick it up and witness it, you stay six feet away, you have your mask on, and they have their mask on or they're at least six feet away and they give you the ballot back or the ballot envelope back, is that any different than your yard man coming up and handing you a clipboard and you're closer than six feet and you approving the work they've done in your yard? Are those two situations different to you?

A. Yes, they're different --

MS. SHORT: Objection. Assumes facts not in evidence.

THE COURT: Yeah. Do you have a yard person, and do you receive a clipboard from them, ma'am?

THE WITNESS: No. I have a yard person, but I don't receive a clipboard from them.

THE COURT: Okay. Sustained.

Q. (BY MR. SPEEGLE:) Do you remember in your deposition, Ms. Thompson, on page 40, where you said people have come to your house, and you've had to sign paperwork and that that happened twice during the pandemic and that that paperwork had to do with work on your lawn?

A. No. It may have been the Terminix man that came to the house, and I had to sign a paper. But it wasn't the yard man.

Q. So you have had people do work at your house come up to you, hand you a clipboard, and you sign it during the pandemic, correct?

A. Correct.

Q. And how is that different than you signing your envelope on your ballot and putting it down for your neighbors to pick it up, staying six feet away from you, and signing the ballot so you can get your two witnesses for your ballot envelope? How is that different?

A. I don't have a clipboard, and I'm aware of them having a clipboard that we could do it that way.

Q. Let's just say you use the back of a book or a pad to sign with. Because I'm not sure the clipboard is the necessary part of my question. I may have asked it so it's a bit confusing. What's the difference in you coming within three feet of your Terminix man to sign an approval paper during the pandemic and you signing your ballot envelope in front of your two neighbors,

placing it on their porch, them picking it up and -- or you handing it to them, for that matter, and them witnessing your signature? What's the difference there?

MS. SHORT: Objection. Assumes facts not in evidence.

THE COURT: Ms. Thompson, do you see a difference between what you did with the Terminix man and approaching your next door neighbors?

THE WITNESS: Somewhat because the Terminix man, he wore masks and a glove -- and gloves. I wore masks and gloves in order to sign the paperwork. We were not three feet apart. We were six feet apart.

Q. (BY MR. SPEEGLE:) So when he handed you the clipboard and you took it from his hand, you were six feet from him?

A. He did not -- I did not take it from his hand.

Q. He placed it down, and you picked it up?

A. He placed it down on the chair on the porch.

Q. Which is what I was questioning you about as to go through that same process with your neighbors, just sign your ballot, put it down, back away, and allow your neighbors to pick it up and sign it. Don't you believe that process with your neighbors would be as safe for you as it was with the Terminix man?

THE COURT: I think she answered it no. And the difference is, at least as I understand her testimony, is the hypothetical does not assume that the neighbors are wearing masks.

Q. (BY MR. SPEEGLE:) If the neighbors were wearing masks,

would it be the same as far as the danger to you, Ms. Thompson?

A. We're being hypothetical here. And we're concentrating on my neighbors. As I said before, my neighbors are elderly also. They're in the same position that I'm in. And who's to say that when it's time for me to -- time for me to have this ballot signed that one of them may have the COVID. They may be quarantined. So these are hypothetical.

Q. So let's go back to the scenario with the -- assume for me for a second that the Mobile Public Library has the services that I proposed to you. Would you believe it would be safe to go curbside and have one person come out and notarize your envelope or your ballot after you signed it?

MS. SHORT: Objection. Assumes facts not in evidence.

THE COURT: Overruled. Ms. Thompson, you may answer. Go ahead.

THE WITNESS: If I was aware of the service, I suppose I could do that.

Q. (BY MR. SPEEGLE:) And from what you've said because you do want to vote and you do want to do an absentee ballot, that would be something that you'd be quite interested in, wouldn't it be?

MS. SHORT: Objection.

Q. (BY MR. SPEEGLE:) Ms. Thompson, can you answer?

MS. SHORT: Your Honor, I objected. Speculation.

THE COURT: Overruled. If the service is there, indeed is

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offered by the public library and -- is it one you would use notwithstanding your concerns about COVID? That is, driving up, handing your license and/or your ballot to them to notarize?

THE WITNESS: If that was possible?

THE COURT: Yes, ma'am. Is that a service you would use notwithstanding your concerns about COVID?

THE WITNESS: If it was available, I would.

THE COURT: Okay.

Q. (BY MR. SPEEGLE:) Ms. Thompson, when you went to vote in July, you noticed that all the poll workers had on masks, correct?

A. Everybody had on the mask. They also wore gloves, and there were sanitizing stations all over.

Q. And did they have the sneeze guards up for you, too?

A. The shield on the face?

Q. Yes.

A. Yes.

Q. And when you went, there weren't -- there wasn't but one person. But were you aware that social distancing was required in the poll, the poll place?

A. And we were distanced.

Q. And you felt very safe going to vote there, right?

A. I did.

Q. And I think your problem with going to vote in person at this election is you believe it's going to be very crowded, correct?

A. I know it will.

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Q. How do you know that that event --

A. Because this is a major election. A major election.

Q. Have you been to vote in the past, say in the 2018 election during the day at your precinct, and did you find it crowded then?

A. Yes, I have.

Q. Are you aware that the poll workers are trained to keep people at social distance during the voting process this year?

A. Yes, I am. But it doesn't always happen.

Q. Does that make you feel better about voting?

A. No.

THE COURT: I think you're also overlooking what she said. She's concerned about the turnout, the long lines, having to wait, et cetera, et cetera, because she believes turnout will be high, I guess, because it's a Presidential election or a major election.

THE WITNESS: Could I just say that I have been voting a long time. I have been part of the election process a long time. I have worked every field -- almost every field as far as the election is concerned. And I've also been a precinct chief for several years at a polling place where I used to live. I only changed that because I moved out of the district. But after that, I became a poll watcher, and I have been a poll watcher up until the last Presidential election.

THE COURT: So I guess you're saying that because of all that, you believe a Presidential election generally has a higher

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turnout than other elections.

THE WITNESS: I know that it does.

THE COURT: Okay.

MR. SPEEGLE: Judge, we wouldn't dispute that. I would agree with Ms. Thompson. That there will probably be a bigger turnout -- or there would be on the 18th except we may find a lot of people just like Ms. Thompson who vote absentee. So that may affect the turnout.

Q. (BY MR. SPEEGLE:) Now, Ms. Thompson, you testified earlier that you have been to the doctor. Have you been to the doctor regularly during the pandemic?

A. Not regularly. I have been to three doctors since the pandemic, but they were three different doctors.

Q. And when you went in the doctor's office, was it crowded?

A. They practiced social distancing. They took your temperature before you came in the door and made sure that you had not been in contact with anybody with COVID, and they also practiced social distancing when you went in.

Q. And while there, they also, I guess, had hand sanitizers; is that true?

A. Everywhere.

Q. And you felt safe at your doctor's office, correct?

A. Yes.

Q. And they had the same systems in place that you observed when you went to vote in July in person, correct?

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A. Pretty much except for the temperature taking.

Q. And unlike the the doctor's office, I guess they had the shields, the Plexiglass sneeze guards at the polling place, right, in Mobile County; is that right?

A. Yes.

MR. SPEEGLE: At this time, Your Honor, I will pass the witness.

THE COURT: Thank you, Mr. Speegle. Who is up next? Mr. Engelhardt?

MR. ENGELHARDT: I think that's me, Your Honor. Fix the sound, Your Honor.

THE COURT: Ms. Thompson, are you okay? You need a break?

THE WITNESS: No, I'm good.

THE COURT: My goal is to get you done today so you don't have to come back tomorrow.

THE WITNESS: Okay. I would like for it to be done today also.

THE COURT: Okay. That's not a problem at all. We will try. Let's pass the microphone to Mr. Engelhardt, please, counselor.

MR. ENGELHARDT: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. ENGELHARDT:

Q. Good afternoon, Ms. Thompson.

A. Good afternoon.

Q. Sorry. I waited until you were drinking. So I just want to

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ask a couple other questions that Mr. SPEEGLE asked or maybe an answer consistent with quite get. Let's start with just some general things. Where is it that you vote?

A. I vote at precinct 41. It's Boys & Girls Club on Rice Street.

Q. Is that a large facility?

A. It's not a large facility at all.

Q. Do you have a sense of how its size compares to your pharmacy?

A. It's bigger than my pharmacy.

Q. I wanted to ask you just a general question. What kind of car do you drive?

A. I drive a Jeep.

Q. A Jeep like a Wrangler?

A. A Jeep Compass.

Q. Jeep compass. Is that one of the larger SUVs, a smaller SUV?

A. Midsize.

Q. So there in your house, do you have Wi-Fi?

A. Do you have a what?

Q. A Wi-Fi?

A. Yes, I have internet service, yes.

Q. Okay. And do you have a laptop computer or a desktop computer?

A. No.

Q. Do you have a smart phone?

A. I guess it's smart.

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Q. Can you access the internet on that phone?

A. Yes.

Q. Is it an iPhone?

A. It's not an iPhone.

Q. Okay. But it is one that accesses the internet?

A. Yes, I think it does.

Q. Okay. Can you send email on that phone?

A. Yes, I can.

Q. And you can access -- well, we just said you can access internet from the phone. Have you ever been to the website for the Mobile County Public Library System?

A. No.

Q. Are you a member of the Mobile County Public Library System?

A. No.

Q. Are you on Facebook?

A. Yes.

Q. Have you ever been to the Mobile County Public Library Facebook page?

A. No.

Q. What is been the nearest public library to you?

A. Pardon me?

Q. Do you know what the nearest public library to you is?

A. The nearest one, I think it's downtown on Government Street. That's the main branch.

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Q. Are you close to the Virginia Dillard Public Library?

A. Excuse me.

Q. Virginia Dillard? Virginia Dillard Smith?

A. Where is that located?

Q. From what I can tell, it's within a mile of your house. I'm going to give you the address in a second. 601 Stanton Road?

A. Oh Stanton Road? Oh, yeah. I forget that one.

Q. You'd agree that's about a mile from your house?

A. I agree, yes.

Q. So if the library on Stanton Road had the ability to print copies of your photo ID, is that something that you would take advantageous of?

MS. SHORT: Objection. Assumes facts not in evidence.

THE COURT: Overruled.

THE WITNESS: Would that be drive-thru? Would that be Drive-thru?

Q. (BY MR. ENGELHARDT:) Curbside, yes.

A. I would if they provided that.

Q. And if that same library was to provide notarization services that fulfilled the witness request for free curbside, would you take advantageous of that?

MS. SHORT: Objection.

THE WITNESS: For free? For free?

Q. (BY MR. ENGELHARDT:) Yes, ma'am.

A. Curbside? Yes.

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Q. Okay. So those would be options for you to meet those requirements assuming that the Mobile County Library System offered those services?

A. That would make it possible.

Q. I wanted to ask you a couple of questions about your health. You said -- you testified earlier and during your deposition that you took a fall last year and that you're still recuperating from that. And I think you said you have nerve end damage and may be taking medication. Is that a fair summary of your testimony so far?

A. Yes.

Q. What type of medications are you taking?

A. I am taking gabapentin, and it's to refire my nerve.

Q. What happens if you miss that medication?

A. Pardon me?

Q. What happens if you miss that medication?

A. Nothing happens if I miss it.

Q. What is the injury that you suffer?

A. When I fell --

MS. SHORT: Objection just to the relevance of this.

THE COURT: Mr. Engelhardt?

MR. ENGELHARDT: This goes to her medical ability to -- as we're going to discuss, whether she's exempt from providing a photo ID at all.

THE COURT: Okay.

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MR. ENGELHARDT: Due to her medical condition.

THE COURT: All right. I will allow you to go there. Go ahead.

THE WITNESS: Okay. It causes me to have pain in my neck, my shoulders, my arms, and my hands. And it is still -- whereas there has been some relief over the year, I'm still having problems with my hands. Sometimes I drop things. Because I can't help it.

Q. (BY MR. ENGELHARDT:) Does it affect your ability to stand for long periods of time?

A. No.

Q. Do you recall -- I'm sorry.

A. Because it did nothing to my legs or anything. Just my arms and hands.

Q. Does the high blood pressure or the diabetes that you -- those are the two, right, high blood pressure and diabetes that you suffer from, do they impair you from standing for a long period of time?

A. No.

Q. Do you recall during your deposition when you were asked that question?

A. No. I don't remember.

Q. I would call your attention and counsel as well on page 29 of the deposition. Starting at line 16, the question that was asked I believe by the representation of the state, Jeremy Weber, was, "Do

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any of your conditions effect your ability to stand for extended periods of time. The answer starting on line 19 was yes. The neurological situation does impair me from standing for a long period of time."

So has that changed since your deposition on July 31st.

A. Somewhat, yes.

Q. So the situation has improved, and you're no longer --

A. Yeah. I'm improving all the time, yes.

Q. So it's your testimony then that as of July 31st, the neurological situation prevented you from standing for a long period of time but that as of September 8, it no longer does?

A. No. It no longer does.

Q. So, no, it no longer does; yes, it has changed? I want to make sure I understand your testimony.

A. It no longer causes me a problem for standing too long.

Q. But you believe that it did on July 31st?

A. Yes.

Q. What caused the big difference in the way that your neurological disorder affects you?

A. The taking of my medication on a regular basis. And like I say, it keeps improving all the time. I've had this situation for more than a year. So during this last -- during these last few months, I am seeing more and more improvement.

Q. Okay. So in the last month and a half, have you changed the medication that you were taking for --

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A. No, same medication.

Q. The same medication? Have you changed the amount of that medication that you've been taking?

A. Yes. I would say yes to that.

Q. Has it increased or decreased?

A. Increased.

Q. And when you testified during your deposition that had you a neurological condition that affected your ability to stand for a length of time, what was the -- what was the inability to stand? Were you dizzy? What was the physical feeling that prevented you from standing for a length of time?

MS. SHORT: I'm going to object. It mischaracterizes the testimony in the deposition.

THE COURT: I'm at a disadvantageous since I don't have the testimony. Mr. Engelhardt, to the extent that you have the relevant page, I suppose that's one way to ask the question.

MR. ENGELHARDT: Perhaps I'll rephrase it, Your Honor.

THE COURT: Okay.

MR. ENGELHARDT: Let me find the cite. That will just take me one second.

Q. You were asked at the deposition on page 87, starting at the first line, the question was asked, "The conditions that you suffer from right now, diabetes, high blood pressure, your neurological issues, do you executive those to go away anytime between now and November. The answer was no. I wish." Does that mean that

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you got your wish, and they've gone away and no longer affect your ability to stand and walk?

MS. SHORT: Objection.

THE WITNESS: When I answered that question, I was being truthful that I will -- because I did not know. And when I'm answering your question now, I'm saying that there has been improvement.

Q. (BY MR. ENGELHARDT:) All right. So you no longer suffer from a neurological condition --

A. I have still suffer from a neurological condition, but I can stand longer.

Q. All right. How long do you think you'll be able to stand?

A. I'm not sure. I'm not sure. I can't calculate how long I will be able to stand.

Q. How long generally do you stand in the grocery store when you go to the grocery store?

A. Not long at all because I shop during the time on the days when there are only seniors in the store.

Q. Okay. So would you say half an hour?

MS. SHORT: Objection. Asked and answered.

THE COURT: Slightly different this time. He's suggesting an answer or a time period, I should say. So let me allow it. Do you think you can stand for at least 30 minutes, ma'am?

THE WITNESS: At least 30 minutes, yes.

Q. (BY MR. ENGELHARDT:) For the last time -- for the last

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election, you said you filled out an absentee ballot application; is that correct?

A. Yes.

Q. I'm going to show you a document, Ms. Thompson. I'd like you to tell me if you recognize it. I has some parts that are redacted because people don't need to see your address, things like that, driver's license number. Do you see it? This is going to be our Schwarzauer Exhibit Number 88.

MR. ENGELHARDT: Can you make that slightly larger? Scroll just a little bit down.

Q. (BY MR. ENGELHARDT:) Ms. Thompson, can you see that document?

A. Yes.

MS. SHORT: Can you give us the Exhibit Number, please?

THE COURT: 88. I think that's what he say.

MR. ENGELHARDT: I'm sorry. 38. And it's Bates stamped 3622.

Q. (BY MR. ENGELHARDT:) Ms. Thompson, do you recognize this?

MS. SHORT: Schwarzauer?

MR. ENGELHARDT: Yes.

THE WITNESS: Ask your question.

Q. (BY MR. ENGELHARDT:) I just asked if you recognize that document?

A. Yes.

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Q. And what is that a copy of?

A. What is this paper?

Q. Yes.

A. That's my request for an absentee ballot.

MR. ENGELHARDT: Okay. Your Honor, I'd like to move this into evidence.

THE COURT: Any objections? This is Exhibit 38.

MS. SHORT: No, Your Honor.

THE COURT: It's received.

(Defendants' Exhibit 38 was admitted into evidence.)

Q. (BY MR. ENGELHARDT:) Ms. Thompson, right there in the middle of the page, you see it says I am applying for an absentee ballot because. And you see you have checked one of the boxes. And that box says I have a physical illness or infirmity which prevents my attendance at the polls. I am unable to access my assigned polling place due to a neurological, musculoskeletal, respiratory including speech organs, cardiovascular or other life-altering disorder that affects my ability to perform manual tasks, stand for any length of time, walk unassisted, see, hear, or speak, and I am an elderly voter age 65 or older, or I am a voter with a disability. And you circled I am an elderly voter age 65 or older. Is that correct? Is that the box you checked and the --

A. That's the box that I checked.

Q. Okay. And underneath that, it says ID not required; is that correct?

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A. Yes, it did.

Q. So when you submitted this, you didn't actually have to turn in a copy of your driver's license, correct?

A. No. That's not why I didn't have to have my driver's license. When I checked that box, it was not for all the things that were impaired and all that stuff. I checked that box because it was very confusing, and I thought that because, A, it says I am elderly -- I'm an elderly voter age 65 or older. That's why I checked that one because I thought that was the one that applied to me.

Q. Okay. And so you sent in the application?

A. Yes.

Q. I should ask this. Did you ask anyone for help in filling out the absentee ballot?

A. No.

Q. Did you call the absentee ballot office to ask them what box you were supposed to or entitled to check?

A. No, I did not.

Q. So you -- oh. And since you have circled A, I am an elderly voter age 65 or older, does that mean that you do not consider yourself a voter with a disability?

A. I do not consider myself disabled in any way.

Q. So you mailed this in to the place it was supposed to go, correct?

A. Correct.

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Q. Did anyone contact you to tell you that you needed to submit a copy of your photo ID following your submission of this application?

A. At that particular time, I was within a window of opportunity where I did not have to send in my voter's ID.

Q. Why do you say that?

A. Because of a case that was already presented, and I was not required to send in my ID at that time.

Q. Are you referring to the injunction filed in this case?

A. Yes.

Q. And do you know the date that that order was stayed?

A. Pardon me?

MS. SHORT: Objection.

THE COURT: Okay. What was the date of this application, and does she know that it was -- my injunction was stayed, I guess is a different question, than when it was stayed. Does this application in fact -- I'm sorry.

MR. ENGELHARDT: I'd be happy to ask them separately if you'd like, Your Honor.

THE COURT: Well, let's establish the first part. Was this application submitted after my injunction?

THE WITNESS: Yes.

Q. (BY MR. ENGELHARDT:) Okay. And was the application submitted after the Supreme Court stayed the injunction?

THE COURT: That again assumes that she knows about that

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part.

THE WITNESS: I don't understand. I don't understand.

Q. (BY MR. ENGELHARDT:) Are you aware of whether the judge's injunction in this case ceased to take effect at some point?

A. Yes. After I had sent in my application.

Q. And do you know what date that was?

A. I'm not sure about the date.

Q. Okay. Do you know what date you sent your application in?

A. I sent my application in on the 2nd.

Q. On the 2nd?

A. Uh-huh.

Q. Okay.

MR. ENGELHARDT: Can you pull up -- scroll down a couple -- to the next page. Keep going. Keep going a little bit.

Q. So is that the envelope, a copy of the envelope that you submitted your application in? You can scroll up and see the one Eiffel stamp? CHECK THIS

THE COURT: When was the application signed?

MR. ENGELHARDT: There's no signature date on it, Your Honor.

THE COURT: Is the application dated in any way?

MR. ENGELHARDT: No, sir.

THE COURT: Okay.

MR. ENGELHARDT: But it is stamped as received, which I

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was going to get to in a second.

THE COURT: All right. She will not know when the post office stamped it.

You believe, Ms. Thompson, that you signed off on it or you mailed it on July 2nd; is that correct.

THE WITNESS: Yes. Yes, I did.

Q. (BY MR. ENGELHARDT:) All right, Ms. Thompson. In the document I am showing you, do you agree that it is stamped by the Post Office as July 6th?

A. Yes.

Q. That underneath that, it is stamped as received July 8th?

A. Pardon me?

Q. And that underneath that stamp, there is a stamp on this envelope that shows it was received July 8th, 9:19 a.m. Do you see on that envelope as well?

A. Yes -- I see it.

Q. I'll ask, do you recognize this envelope?

A. Yes, that's the envelope that I sent in.

MR. ENGELHARDT: Okay. Your Honor, I would like to admit this envelope -- well, it's actually part of the prior exhibit. So I guess I don't have to.

You can scroll back up, Joy.

Q. So it's a little hard to see on this.

MR. ENGELHARDT: Would you scroll down a little bit more to where the bar code is?

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Q. Over here on the right where the bar code is, do you see that it has your name there, Annie Carolyn Thompson?

A. Uh-huh. Yes.

Q. And then I'm trying to see where that's -- never mind. That's not going to get us where we need to go. So we're going to let that one go. Is there any reason that you can think of that the application may have taken as long as four days to get to the Mobile absentee ballot --

MS. SHORT: Objection.

THE WITNESS: I don't know. The mail has been kind of slow lately, so I don't know.

Q. (BY MR. ENGELHARDT:) Okay. So when you filled out this application --

MR. ENGELHARDT: Can you remove that from the screen, please? Thank you.

Q. When you filled out that application, you intended to vote absentee, correct?

A. Correct.

Q. And you knew at that time that you were going to have the need for someone to witness -- in fact, two people to witness that -- the ballot that you were receiving; is that right?

A. Yes.

Q. I believe you testified earlier you thought had you a plan on how that would take place?

A. I thought I did.

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Q. And was that a plan where you were going to be using your neighbors to do that?

A. Yes.

Q. Is there any reason that that exact plan couldn't happen this time around for November?

A. There's a possibility that it could. I'm not sure that it could. Because things are changing very fast because of this COVID-19. But, yes, there's a possibility.

Q. Okay. And are you aware, Ms. Thompson, that you could actually start voting absentee tomorrow?

A. Once I receive my ballot, yes.

Q. Or you can go in person to the absentee ballot office which is located in the probate court. Are you aware of that?

MS. SHORT: Objection.

THE COURT: Overruled. She can do that if she knows. She can do that or if she wants to do that.

Q. (BY MR. ENGELHARDT:) Ms. Thompson, were you aware that you could go to the probate court to vote in person at the absentee --

A. No.

Q. -- ballot office?

A. No.

Q. And were you aware that at the probate court where you would find the absentee ballot office that you were required -- well, that the people there wear masks and social distance?

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MS. SHORT: Objection.

THE WITNESS: I'm sure they do.

Q. (BY MR. ENGELHARDT:) And that were you aware that when you entered the court complex, you have your temperature taken?

MS. SHORT: Objection.

THE WITNESS: No. I haven't been to the courtroom.

Q. (BY MR. ENGELHARDT:) Okay. So when -- I want to get to a question I had about you going to the dog groomers and the dog -- the veterinarian's. When you got to these locations, I believe you testified that someone came out to the car and took the dog out of the vehicle; is that correct?

A. Correct.

Q. When they got into the vehicle that you were occupying, were they within six feet of you?

A. They did not get in the car. The dog was at the door. They reached in the door to get the dog.

Q. So they opened the door, reached in to get the dog, and pulled it out?

A. Yes.

Q. When they were going through those mechanics, would they have been within six feet of you?

A. Yes, because I was in the front seat, and the dog was in the back.

Q. You testified, I believe, that when you -- one of the two times

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during this pandemic that you went and voted in person -- I believe it was the second time. Of the two times you voted in person during the pandemic, you called a friend who works at the poll. Is there any reason --

A. Yes.

Q. -- that you couldn't call that friend again this time around to determine when the traffic might be lighter at the poll?

MS. SHORT: Objection. Objection. That mischaracterizes the testimony. She voted in the March primary what was not in the pandemic.

MR. ENGELHARDT: I would readily disagree with that as your expert testified this morning.

THE COURT: I think calling of the person for when the traffic was light I thought was part of the July runoff because the absentee ballot did not come in time.

MR. ENGELHARDT: Agreed, Your Honor. I did not try to imply that she had called her friend during the March --

THE COURT: Correct. I was just saying the objection said something about March. But in any event, overruled. You may continue.

Q. (BY MR. ENGELHARDT:) Ms. Thompson, is there any reason that you could not call that friend to determine when the traffic inside the polling place might be lighter this time around?

A. I could. But it's not the same situation. There's going to be a larger turnout. There are going to be a lot more people. And I

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don't want to take that chance.

Q. Is there any reason that --

A. Because every -- and everybody don't wear masks because they're required to. We could be outside in a line and everybody doesn't necessarily wear their mask. I've seen that too many times.

Q. Wouldn't that be true also at puck abolition?

Q. At Publix you are required to wear a mask in the store. Whether you pull it on when you get out or earlier putting on when you're going in the store, you're required to wear masks?

Q. So it's your testimony that people ignore public mask requirements outside of a polling place but they don't ignore them inside Publix?

A. They don't ignore them inside the polling place either but they don't necessarily wear them outside while they are waiting to get -- to get in.

THE COURT: And you guys are also fighting over I think Ms. Thompson shops during the senior hours. My guess is Publix) people that go during that time period are a little bit more compliant with masks than the rest of us knuckleheads during the other times so --

MR. ENGELHARDT:

Q. Ms. Thompson you testified that you are next door neighbors are also -- are elderly. Are they normally complaint with mask requirements and social distancing as far as you

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know?

A. To be honest with you, I never see them with a mask when they are going outside.

Q. But that was not a concern when you were applying for the absentee ballot for the July election and were planning on using them as witnesses?

A. It was a concern.

Q. The friend that you have that works at the polling place, is that who provided you the absentee ballot that you used in July?

A. No.

Q. Where did you get that absentee ballot?

MS. SHORT: Objection. Assumes facts not in evidence.

THE COURT: She may answer where she received it. Overruled. Ms. Thompson you may answer.

A. I called the registrar's office.

MR. ENGELHARDT: I'm sorry.

THE COURT: She called the registrar's office.

MR. ENGELHARDT:

Q. Okay. So they mailed it to you?

A. Yes.

Q. Do you recall that during your deposition, I believe you testified that you got it from a friend. Is that friend somebody who works at the registrar's office?

A. Say that again?

Q. Sure. During your deposition a little over a month ago, you

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testified that you got the ballot from a friend, you got the absentee ballot from a friend does that friend work at the registrar's office?

A. Yes.

Q. So is there any reason that having friends who work at a registrar's office or friends who work at a poll who actually have an interest in the running an election, have either of those two people could not assist you by witnessing your absentee ballot or helping you get a copy of your ID?

A. I have not asked any of these people to do that.

Q. I'm sorry?

A. I have not asked any of these people to do that.

Q. Was there any reason that you could not?

A. I suppose I possibly could.

Q. Is there any particular reason that you haven't yet submitted an absentee ballot application to vote in November?

MS. SHORT: Objection.

MR. ENGELHARDT:

Q. I believe early you testified that you have not yet submitted an application but that you were aware you could start doing it on September 1st. I'm just curious as to if there's a reason that you have waited --

THE COURT: Overruled. You can answer. I suppose she's waiting for the case or she could be waiting for some other reason. So Ms. Thompson, why don't you answer as to why you

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have not requested a ballot yet or to November.

A. Really, I was waiting for this case to see how this case is going to --

MR. ENGELHARDT:

Q. Do you think that there's some result that is going to change from -- from this case that could change whether you would have to apply for an absentee ballot?

A. Possibly.

MR. ENGELHARDT: That's all the questions I have. Thank you, Ms. Thompson.

THE COURT: Thank you. You're not done yet, Ms. Thompson, unfortunately. You may, Mr. Weber.

MR. WEBER: Yes, Your Honor.

THE COURT: Mr. Weber give me a minute. Ms. Thompson you need a quick break are you still okay going forward.

THE WITNESS: I'm still okay but can I just let my dog out for a second?

THE WITNESS: Yes, ma'am. Okay I'm back.

THE COURT: Mr. Weber, your witness.

CROSS-EXAMINATION BY MR. WEBER:

Q. (BY MR. WEBER:) Yes. Ms. Thompson, we've talked before. I know the hour slate. I will try to keep my questions few in number, direct, clear and to the point. And if I do my job, you'll be able to give me short clear answers so we can wrap this up soon. Sound fair?

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A. Okay. Thank you.

Q. I want to talk first of all about some of your options for satisfying the photo ID requirement. If your bank offered to photocopy your ID on a drive through basis --

A. Say again.

Q. In your bank allowed you to photocopy your ID on a drive-through basis, would you take advantageous of that?

A. If -- yes. If they had it, yes I would.

Q. But you haven't asked them, have you?

A. No, I haven't.

Q. Your pharmacies, if your pharmacy offered a photocopying services during a time when you're already there on other matters, would you take advantageous of that?

MS. SHORT: Objection. Asked and answered. This is all cumulative.

THE COURT: We've asked about Publix. I don't know if Publix is the same place as where she gets her prescriptions filled. So generally, I agree with the cumulative part but I'm not sure we've asked specifically about the pharmacy. So overruled.

A. At my pharmacy, I'm not aware that I could do that.

Q. (BY MR. WEBER:) That was not my question, Ms. Thompson. My question was if your pharmacy offered photocopy services at a time you're already there on other matters, would you take advantageous of that?

A. Yes.

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Q. But you haven't asked your pharmacy, have you?

A. I have not.

Q. If the Secretary of State offered the ability for you to take a picture of your ID and send it to him via email, text, or even -- you know, whatever means you're comfortable with, would you take advantageous of that?

A. I suppose, yes.

Q. I want to talk briefly about the July election when you voted in person. Were poll workers wearing masks at that time?

A. Yes, they were.

MS. SHORT: Objection. Asked and answered.

THE COURT: Yeah, as to that one, I will sustain, Mr. Weber, only because of the lateness of the hour since that's been asked and answered.

MR. WEBER: Yes, Your Honor.

Q. Were poll boricers wearing gloves during the July election?

A. Yes.

MS. SHORT: Objection.

MR. WEBER: Your Honor, my questions are few in number here and I --

THE COURT: Keep going. Keep going. Keep going. I'll stop you if you need to stop.

MR. WEBER: Yes, sir.

Q. Were poll workers wearing gloves during the July election, Ms. Thompson?

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A. Yes.
Q. Was hand sanitizer able during the July election?
A. Throughout the building, yes.
Q. Were voters wearing masks during the July election?
A. The two of us, yes.
Q. Did you feel safe voting in that environment in July?
A. Yes.
Q. Were you able to physically assess e access your polling place in July?
A. Yes.
Q. Were there any obstacles or barriers that prevented you from getting inside and doing everything you needed to do to cast a ballot in July?
A. No.
Q. You testified before that you do not consider yourself to be disabled as a result of any of your medical conditions. Are you able to care for yourself without assistance?
A. Yes.
Q. Do you have a disabled or handicapped sticker or placard on your car?
A. No (hand capped) .
MR. WEBER: Your Honor, I have no further questions.
THE COURT: Thank you. Anyone else on the cross side that needs to.
MR. COWELL: Nothing from us Your Honor.

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THE COURT: Mr. Could youwell, thank you. Let me pass the witness back to Ms. Short. Do you have any redirect for your client, counselor.
MS. SHORT: Yes, Your Honor. Thank you. Can you hear me okay? Ms. Thompson.
A. Yes.
Q. Just a few questions for you. I know you want to get back to what you were doing this evening. Ms. Thompson, would you feel safe voting in person at your precinct if the voters are not required to wear masks?
A. No.
Q. Opposing counsel was just asking you a lot of questions about your local libraries and some scenarios about allowing you to comply with the requirements of absentee ballots at your local libraries. Do you remember those questions?
A. Yes.
Q. Would those opportunities require you to leave your home?
A. Yes.
Q. Would they require you to go out into public?
A. Yes.
Q. Would they require you to interact with someone that you don't normally interact with?
A. Yes.
Q. Would you be aware of the practices of the individual who was assigned tonote copy your ID or notarize your ballot relating

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to COVID-19 precautions?
A. No, I would not.
Q. Would taking advantageous of these services still pose a risk to your health?
A. For me? I think yes.
Q. If given the choice between staying home and voting an absentee ballot without having to leave your home at all and using these library services that the gentlemen described, which would you choose (gentleman) ? You want knee rephrase the question?
A. Yes.
Q. If given the choice between voting an absentee ballot without the photoID and witness requirements such that you wouldn't have to leave your home and instead voting an absentee ballot and using the library services, if given the choice between those two situations --
A. The first choice. Not having to have the ID of the witnesses and voting absentee, that would be my choice. That would be my -- the best choice I think for me.
Q. You talked early about the fact that you are going to get groceries more often now that your daughter is working; is that correct?
A. Yes.
Q. Are you getting your own groceries completely or is your daughter still getting groceries for you?

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A. Since she; is that righted working welcome she also started school. So I'm basically getting my groceries myself.
Q. Does she ever get your groceries for you now?
A. Well, as a matter of fact, she did get some groceries for me on Saturday.
Q. So she's still getting some -- bringing you some groceries?
A. Yeah, if she's out and there's something that she thinks that I might need, she will pick it up for me.
Q. You testified earlier that you are limiting your contact at the grocery store to hours that are for senior citizens when there are certain precautions being taken; is that correct?
A. Correct.
Q. And was there a point in time during the pandemic when you were getting groceries for your daughter?
A. Yes, there was a time because my grand daughter, one of my grand daughter at the scened positive. And at that point, she was not able to go to the grocery store for knee because they were both in quarantine. So I had to go to the grocery store for them and I would get groceries or whatever they needed and leave it outside the door for them to get it, for my daughter to get at the.
Q. So that was your grand daughter who tested positive?
A. Yes, my grand daughter at the scened positive. My daughter never did although she took care of my grand daughter, she never did.
Q. But was your daughter required to take certain steps

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because she lived with your grand daughter?

A. Of course. And she was very good at it.

Q. What were they required to do?

A. My grand daughter stayed quarantined in her room. My daughter would wash down everything and make sure everything was sanitized. And she grand daughter had her own bathroom and she would keep that clean and she just keep the everything clean, all the clothes and stuff that went in and out of the room, she would keep them washed and sanitized. And so she did a very good job because she never did test positive for it.

Q. So during that time, you -- the roles were reversed at that point. You got groceries for them?

A. Yes, because she could not go -- she wouldn't go out to expose anybody just in case.

Q. And did you -- how did you get groceries to them during that time?

A. How did I do what.

Q. Mow did you give them the grows State Police did you leave them on the porch or --

A. Yeah. I left them on the porch at the door.

Q. You did not go in the house?

A. No.

Q. We talked a little bit -- you've talked with opposing counsel a little bit about people who come to do work on your house. And there was some discussion of a clipboard. When the Terminix

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man comes to do work and you sign something for him, does the Terminix man have to watch you sign the receipt that you're signing or the invoice?

A. He doesn't necessarily have to watch me sign it but he does.

Q. Are you aware that he's legally required to watch you sign?

A. No, not aware that he's supposed to do that.

Q. And you talked about -- you you talked about your plans to apply for an absentee ballot soon. Do you remember that?

A. Yes.

Q. Will you be able to apply for your absentee ballot without a copy of your photo ID?

A. Not the way that it seems now.

Q. And will you be able to get a photocopy of your ID without putting your health at risk?

A. Not without putting my health at risk.

Q. You talked a little bit with opposing counsel about asking your daughter to make some copies. Do you know if your daughter's allowed at her now job to make personal copies at work?

A. I'm not aware yet if she's allowed to do that.

Q. Is that something that you would be willing to ask her to do, to make personal copies at work?

A. Not if it's going to cause a problem for her to do personal things at work. I know there are some jobs that don't allow you to do personal things on their equipment. So,, you know, -- and I

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don't know if -- I'm just not aware of that situation just yet.

MS. SHORT: Thank you Ms. Thompson. Those are all the questions I have, urn.

THE COURT: Thank you. Start -- Mr. Speegle, are you on? I'm going to go in the order. And of course we'll limit you guys to the redirect questions only. Mr. Speegle, any follow-up?

MR. SPEEGLE: Yes, Your Honor. Just a few.

Q. Ms. Thompson, you said you -- you're under oath. You said you go to the Publix. Which Publix do you think to?

A. The one over here close to knee on Florida street.

Q. And when do you go for senior hours?

A. When do I go for senior hours?

Q. Yeah, when are their senior hours?

A. From 7 to 9 in the morning.

Q. Are you aware that they've stopped that service some weeks ago?

A. No.

MS. SHORT: Objection.

MR. SPEEGLE.

Q. You mentioned with the Terminix, I know that your counsel brought up again about you signing with the Terminix guy. You also -- you've been handed things to sign when you take your dog to the groomers, right? Don't they hand you something to sign?

A. Yes.

MS. SHORT: Objection. That's outside the scope of my

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redirect.

MR. SPEEGLE: Your Honor, it relates to the handing of things to sign.

THE COURT: It generally does. But because of the lateness of the day and because I said I was limiting to questions that came up on redirect, I will sustain the objection.

MR. SPEEGLE: All right.

Q. So as far as the people doing the work at your house, you said early that was the Terminix. Do you stand by your testimony, Ms. Thompson, that they did not hand you a clipboard both times that they were there and you signed it?

THE COURT: The question or the answer earlier as I understood it is no physical handoff but the clipboard was placed on a chair I think on the porch maybe and that Ms. Thompson grabbed it. It's late in the day so I may be conflating testimonies.

MR. SPEEGLE: She did say that Your Honor. But in her testimony at deposition which I can pull it up on page 46 -- okay.

THE COURT: Okay. Ms. Thompson did they physically and that to you or did they place the clipboard on a chair and then you picked it up and signed off on it.

A. Because that was twice that they came to the house, I could have possibly -- he could have possibly handed it to me the first time and then the second time, because of me being afraid or passing on it, I had him place it on the chair. So it was both.

MR. SPEEGLE and when they handed you that clipboard, they

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were wearing masks you testified, right.

A. And gloves.

Q. And gloves. And you felt very comfortable signing? That environment, correct?

A. Yes. When were outside.

Q. And that would be the same circumstance circumstance as going to the library with someone who is an employee of the city who abides buy their rules and you hand your identified to tell to make a photo. There's really nothing --

MS. SHORT: Objection.

MR. SPEEGLE.

Q. There's no difference is that in that scenario of handing something to someone and someone getting a piece of paper back?

MS. SHORT: Objection. Assumes facts not in evidence?

THE COURT: Overruled.

A. The difference is that we were outside.

MR. SPEEGLE well, curbside service, if it was available at the public library, would be outside. Is not that the definition of curbside, Ms. Thompson.

A. True.

Q. So the scenario I'm talking about is you pull up outside the public library, a person comes out who has a mask as is required by the city of Mobile for all their employees. You hand your driver's license to that person. Is not that the same as you

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handing the paper back to the Terminix guy?

A. They could --

MS. SHORT: Objection.

A. -- to that.

MR. SPEEGLE: And so when they bring the piece -- they'll make a copy and bring the piece of paper and hand it to you. It's the same thing again, isn't it?

MS. SHORT: Objection.

THE COURT: Overruled.

Do you have view the scenario that he's describing as being different than the exchange you had with the Terminix person?

A. Not really.

MR. SPEEGLE.

Q. And you felt comfortable with the Terminix guy handing you the paper, right and you handing it back to him.

MS. SHORT: Objection.

A. Yes. You said that so many times.

THE COURT: Sustained as to asked and answered.

MR. SPEEGLE I'm so sorry, is Ms. Thompson. I'll pass the witness with that Your Honor.

THE COURT: Thank you. Mr. Engelhardt.

MR. ENGELHARDT: I'll go ahead and pass the witness.

THE COURT: Thank you as well. Mr. Weber.

MR. WEBER: Very briefly.

RECROSS EXAMINATION BY MR. WEBER:

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Q. Ms. Thompson, you testified on redirect that you made some visits to your daughter's house. Since the quarantine there. Have you also made social visits to see your daughter and grand daughter during the pandemic?

A. No, I haven't.

Q. Do you recall our deposition when we discussed social visits that you made to your daughter and grand daughter?

A. No. I made a social visit several times to my daughter but my grand daughter was away at school.

MR. WEBER: Very well. No further questions.

THE COURT: Thank you. Mr. Could you well, anything from you?

MR. COWELL: Nothing from us Your Honor.

THE COURT: Thank you. Ms. Short, anything else for your witness?

MS. SHORT: No, Your Honor. Nothing from me.

THE COURT: Ms. Thompson, I was able to keep my promise. You don't have to come back in the morning. Have a good night.

THE WITNESS: Thank you.

THE COURT: Thank you. Have a good night. You are free to go.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Let's start at 9 a.m. in the morning. Well, let me get a few of you or at least one or two of you. I'm still a

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little -- for the record, I guess my findings of fact as to Dr. Peebles -- and I guess as to anyone else. I just need some education on the notary aspect. It's video. The person notarized. And then Dr. Peebles has said you still need to take a physical paper to the notary's office and then mail it. I just need some education on how the process works so I can get it right when I make my findings of fact. So someone or some of you can just fill me in in the morning before we begin day two, that will be very helpful assuming we can all agree on what the process actually entails. If not, then I'll just make the findings based on actual testimony that comes in in the course of the case. Thanks, everyone. Have a good evening. I will log on in the morning at roughly 10 minutes before 9:00. But the actual case presentation will begin at 9 a.m. Anything from anyone before we sign off for the day?

MR. ROSS: Your Honor, dual Ross for the plaintiffs.

THE COURT: Mr. Ross.

MR. ROSS: Given how -- may I?

THE COURT: You may.

MR. ROSS: Thank you, Your Honor. Given how today's testimony went, plaintiffs are concerned about the cumulative questioning by the Defendants. You know, they asked the same questions over and over again between three different defense counsel. And so plaintiffs would renew their request that the plaintiffs be limited to at least the amount of time or the number

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of questioners.

THE COURT: I thought generally your point had some validity to it, but I thought generally the parties coordinated well. So let's just do it as how we've done it today. I will leave it to the lawyers for the plaintiffs to raise the objections if you believe things are being cumulative and likewise, I will ask the lawyers for the Defendants to coordinate as they generally did today with at least some of the the witnesses and did not go over the same questions, the same topics for the most part. Thank you all. As to that point, Mr. Ross, I will just handle it the same way as today. Any other issues that you want me to address, Mr. Ross?

MR. ROSS: That's it Your Honor. Thank you.

THE COURT: Thank you. Thanks, everyone. We'll see you in the morning at 10 till 8:00. 10 till 9:00. Excuse me.

TAB D

9/9/2020
Rough Transcript

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CASE NO. 2:20-cv-00619-AKK

PEOPLE FIRST OF ALABAMA, et al.,
v.
JOHN MERRILL, et al.,

THE COURT: Good morning, everyone. Doing a system check to make sure you can hear me, and hopefully we can avoid the snag that we had yesterday morning with my audio. Am I coming through to you?

UNIDENTIFIED MALE SPEAKER: Yes, Your Honor.

THE COURT: Perfect. Who has the first witness this morning?

MR. ROSBOROUGH: Your Honor, this is Davin Rosborough for the Plaintiffs. I believe Ms. Sheryl Threadgill-Matthews will be the first witness. She is having some internet troubles at the moment, so we're just making sure in case we need to switch, though.

THE COURT: That's fine. We've got some time to work out the kinks. As to the issue that I mentioned yesterday evening, I will leave it to the lawyers to address in the course of your cases if you believe it's necessary to do so. I have what I need from a deposition of Dr. Peebles to generally understand more fully what he was alluding to.

MR. DAVIS: Your Honor, this is Jim Davis. May I raise a question before we get started?

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THE COURT: You may.

MR. DAVIS: I thought it might save some time if we had an agreement if it was permissible with the defendants and the Court that if one of the defendants raises an objection, that that objection applies to all of the defendants so we don't all have to assert the same objection.

THE COURT: Mr. Ross?

MR. ROSS: Plaintiffs can agree to that.

THE COURT: Thank you, Mr. Davis. Thank you, Mr. Ross.

MR. DAVIS: And also, I wanted to ask the Court if the Court thought it might be helpful perhaps tomorrow morning before -- you know, ten minutes before we're supposed to get started if counsel and the Court got on just to assess the first two days of trial, any suggestions the Court had for how to handle things differently, any questions that had arisen in the Court's mind that it wanted us to address through the rest of the trial.

THE COURT: We can do that. I think it makes sense for us to caucus generally every morning at least ten minutes before we begin to address any issues. So I will make myself available not only tomorrow but in the course of the trial as well.

MR. DAVIS: Thank you.

THE COURT: No, thank you. Anything from the Plaintiffs this morning before we start at 9:00?

MR. ROSS: No, Your Honor. We did look into the issue that you had raised about the -- how the absentee ballot was supposed

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to be notarized. But it sounds like you don't have those questions anymore.

THE COURT: I have a better understanding to what Dr. Peebles was alluding to. But again, no one is precluded from further going into that in the course of your cases if you believe you need to do so. Thanks, everyone. We have five minutes. I'm going to go in the back and put on my robe. I'll be back out at least a minute before we start at 9:00. Thank you.

THE COURT: Are the Plaintiffs ready, or do you still need a few more minutes?

MR. ROSBOROUGH: Plaintiffs are ready, Your Honor.

THE COURT: Thank you. You may call your first witness.

MR. ROSBOROUGH: Thank you, Your Honor. Plaintiffs call Ms. Sheryl Threadgill-Matthews.

THE COURT: Ms. Threadgill-Matthews, good morning. Please raise your right hand so Ms. Humphrey can swear you in, please.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Sheryl, S-H-E-R-Y-L. My last name is hyphenated, Threadgill-Matthews, T-H-R-E-A-D-G-I-L-L hyphenated Matthews, M-A-T-T-H-E-W-S.

THE COURTROOM DEPUTY: What city and state do you reside in?

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THE WITNESS: Camden, Alabama.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Your witness, counsel.

MR. ROSBOROUGH: I'm sorry. Thank you, Your Honor.

SHERYL THREADGILL-MATTHEWS,

duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. ROSBOROUGH:

Q. Good morning, Ms. Threadgill-Matthews. How are you today?

A. I'm well.

Q. Good.

A. Thank you.

Q. Ms. Threadgill-Matthews, can you tell the Court where you live?

A. I live in Camden, Alabama, 141 Hillview Drive.

Q. And what county is that in?

A. It's in Wilcox County.

Q. Do you live with anyone else?

A. I live with my husband.

Q. And how long have you lived in Wilcox County?

A. I've lived in Wilcox County basically all of my life except four years away in college and some time away from my husband in the military about three years.

Q. And can you briefly describe your educational background, please?

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A. I'm a graduate of Camden Academy in Camden, Alabama. And I have a bachelor's degree in sociology from Knoxville College in Knoxville, Tennessee.

Q. And what is your professional background?

A. I'm a retired social worker and resource specialist from our state Department of Human Resources. And I serve presently as executive director of BAMA Kids, Incorporated.

Q. And what is BAMA Kids, Ms. Threadgill-Matthews?

A. BAMA Kids is a comprehensive youth development organization which stands for Better Activities to Make All-Around Kids. We provide comprehensive youth development, leadership, family advocacy, and ^ CHECK THIS engagement act.

Q. And can you tell me what it's been like to run BAMA Kids during the COVID-19 pandemic?

A. Could you excuse me? My battery and my alarm keeps going off. I'm so sorry. Let me see if I can get it off.

Q. Not a problem, ma'am.

A. I'm so sorry. Could you repeat the question.

Q. Not a problem at all.

Can you describe what it's been like to run BAMA Kids during the COVID-19 pandemic?

A. Okay. It's been quite difficult because we're accustomed to engaging with our families and our children. However, on March 18th, we had to switch to a virtual model. We suspended the program for the remaining of the school year. And beginning

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June 18th, we started a virtual learning program where we reached out to our participants and parents and families via Facebook, Zoom, House Party, and even some telephonic instruction and engagement.

Q. And can you explain how BAMA Kids partnered in the past with Black Voters Matter, if at all?

A. Yes. We partnered with Black Voters Matter in some nonpartisan voter education and mobilization. And even with our BAMA Kids program and our cultural arts and history piece, we have used some of their promotional activities on dramatizations about the voting rights and getting out to vote during civil rights and history.

Q. Thank you. Ms. Threadgill-Matthews, are you familiar with Alabama's absentee ballot process?

A. I am very familiar with the absentee ballot process.

Q. How did you gain that familiarity?

A. I've -- I've served as an absentee election official for probably about 30 years, over 20 years.

Q. And what different roles did you serve when you served as an absentee election official?

A. I have served as both an inspector and a clerk.

Q. And can you tell the Court about what those different roles entail, please?

A. Okay. As an inspector, I oversaw the operations of the absentee box. I had to swear in the poll watchers and the polling

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officials, and I helped -- assisted in certifying that the ballots where in compliance. And basically the same thing as a clerk. Just not overseeing the process.

Q. When you were an inspector, who did you report to?

A. Reported to the probate judge and the circuit clerk and the absentee election manager.

Q. When was the last time you worked the absentee box in Wilcox County?

A. The last time I worked the absentee box was in the 2018 election.

Q. Have you worked as a polling official at all this year?

A. No, I have not worked as a polling official this year. My husband had a niece that was running for public office, and I asked to be removed from those duties because of that.

Q. And can you tell me about the process for counting absentee ballots that you remember from your role as an absentee official?

A. Yes. At 12:00 noon on Election Day, the absentee election manager, who's normally the circuit clerk if they aren't up for office, will come in and count the number of ballots out to the polling officials. We have to sign off for those ballots according to the number that have been received. We then proceed to call the name of each voter who has voted absentee. We remove the affidavit envelope from the outside envelope and check for compliance. And that is we ensure that the voter has indicated the reason for voting absentee. We check to make sure that they

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have signed, witnessed -- signed and printed their names on the ballot and that they have been witnessed by two people with addresses or notarized.

Q. Okay. And as for the witness signatures, what specifically did you check for?

A. We simply checked to ensure that they have been witnessed by two people.

Q. And can you tell me about any other investigation that happens with the witness signature beyond just checking for their presence, if at all?

A. We just check for the presence of the witness signature. And if the ballots are not in compliance, if any of those things according to the code have been omitted, we have to put them in a stack because they're indicated as spoiled ballots, and we return them to the circuit clerk after our proceeding. We then -- those ballots that have been deemed valid, we then open the secrecy -- take the secrecy envelope out of the affidavit envelope and feed the ballots into the voting machine.

Q. And how did you learn to conduct these different processes as an election official?

A. Polling officials are required to attend a polling school at each election, and we also refer to the Alabama Election Handbook.

Q. And what role did the Wilcox County probate judge have with regard to --

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A. I'm sorry. You faded off.

Q. Sure. I'm sorry about that. What role, if any, did the Wilcox County probate judge have regarding the polling school?

A. Okay. The Wilcox County probate judge is always present at the polling school. They provide some instruction to the polling officials as does a representative from the company that furnishes the voting machine.

Q. And can you explain whether in your years and your process of checking ballots as an absentee election official you ever personally noted anything suspicious or that you felt the need to flag as fraudulent?

A. I have not.

Q. Switching gears a little bit, can you tell the Court about any experience that you have had with curbside voting?

A. Yes. There was an elderly gentleman that had some ambulatory problems and did not apply for an absentee ballot and wanted to vote. And I called Ms. Carolyn Davis-Posey and asked if we could get him to the courthouse, get him in the car and get him to the courthouse, if he would be allowed to vote, and she said she would accommodate him. And we were able to get him to the courthouse, and she came down, downstairs to the car and allowed him to vote.

And I've been aware of instances where questions were asked in the polling school about the -- about polling officials being able to come out to the car, as has been done in the past, to

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assist voters that had ambulatory problems. And recently, the person conducting the polling school said that this was no longer allowed.

Q. Thank you. When you took the gentleman to -- who had ambulatory difficulties to vote curbside, in your observation, was that difficult for the circuit clerk to implement?

A. It did not seem to be. She seemed to be quite willing to accommodate the voter.

Q. Okay. And, Ms. Threadgill-Matthews, how old are you?

A. I'm 67 years old.

Q. Can you tell the Court about any medical conditions that you have that you believe may put you at a higher risk for serious consequences if you contracted COVID-19?

A. I do have high blood pressure.

Q. Okay. And when you were diagnosed with that?

A. In 1989. I remember it was the year my father passed away.

Q. And how often do you see a doctor for your hypertension?

A. I see a doctor at least every three months when my medication needs to be refilled.

Q. And you anticipated my next question. How do you and your doctor treat your hypertension?

A. I take a medication called Lotrel. And I watch -- you know, I watch my diet.

Q. Ms. Threadgill-Matthews, can you describe the effect of COVID-19 in your community in Camden and Wilcox County?

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A. Yes. Wilcox County is a very small, close-knit community. And we've known a number of people personally that have been stricken with COVID-19. Two of my neighbors have been in intensive care. I have a friend who lost two sisters within one month to COVID. And I think almost everyone here knows someone who has passed away or been stricken.

Q. Sorry to hear that. Since COVID-19 began spreading in the community, can you describe your social distancing practices?

A. I have been very diligent in socially distant. I wear a mask whenever possible. A lot of my routines have ceased. I have stopped traveling. Not visiting family members outside of town except on Zoom. I go to the grocery store and pharmacy to get necessities whenever I can. Whenever I need to, really.

Q. I'm sorry. I didn't to interrupt you. What is your practice, if any, regarding maintaining space between you and others when you're out of the home?

A. I'm very diligent about staying the required six feet, the recommended six feet.

Q. And can you talk about any times since the pandemic began when you've had to have someone in your home besides you and your husband?

A. I've had a delivery person from Lowe's come in and bring a washer and drier when my washer went out, and we've had an exterminator who comes in about once every three months to exterminate the home. And I normally have been just treating

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outside. However, we were having some problems inside, and we had to have him come in to exterminate. And --

Q. And -- I'm sorry. Go ahead?

A. And my niece who lives here does come -- come by occasionally.

Q. And when you've had those other individuals in your home, what has been your practice regarding mask wearing?

A. I always -- I have masks at my door, and I always put on a mask whenever someone comes into my house.

Q. What about the other people who have come into your house? Do they wear masks?

A. They do. They wear a mask as well.

Q. And what has been your practice of keeping distance from people when they have been in your house?

A. I -- well, when the exterminator -- and when the repairman came, I had paid for everything on line, and I just opened the door, and he went into the laundry room, which is away from the main part of the house. And of course when the exterminator came, I didn't have to be close and, you know, in the same room.

Q. You mentioned some trips outside of your house for essentials. Have you taken any other trips outside of your house during COVID-19, for example, for your job?

A. I have gone to the BAMA Kids office and center to pick up files since I'm working from home. But that center is closed and, you know, nobody's there. I've had also participated in some

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food distribution, some USDA food distributions which have been -- which has been outside. And this past Saturday, there was a drive-through back-to-school rally that BAMA Kids was partnering in. Everyone wore masks, and we socially distanced, and parents just came through and opened their trunks, and items were placed in the drunk. That's the same for the food distributions as well.

Q. And have you taken trips outside of your house for religious services?

A. Our church is closed. I have gone to at least two drive-up services in the parking lot.

Q. And have you taken any trips outside of your house to see family?

A. I've gone to my niece's -- sometimes if I pick up something from the grocery store that she needs for her baby, and it's a practice that I usually just place things on the table outside of her door.

Q. And a few minutes ago you discussed the overall effect of COVID-19 in Wilcox County. In your observation, have any groups, any demographic groups or segments in your community been particularly hit harder than others by COVID?

MR. WEBB: Object to the question, Your Honor. That is a failure to lay a proper foundation.

MR. ROSBOROUGH: Your Honor, I'm just asking for her personal observation as a community member in Wilcox about

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the people that she knows that have been personally affected.

THE COURT: I'll allow it.

THE WITNESS: The people that I've been aware of that have been affected have been from the African American community and mostly from low socioeconomic status.

Q. (BY MR. ROSBOROUGH:) Thank you. Ms. Threadgill-Matthews, how regularly do you vote?

A. I vote in every election. Every county election. I don't vote in the municipal elections because I'm not in the city limit.

Q. And before the pandemic, how did you typically vote?

A. I always go to the polls and vote in person.

Q. And why did you use to vote that way?

A. I take pride in the voting process. When I was 12 years old, I participated in the voting rights movement and come from a large line of civil rights advocates, and I've always -- I've always taken a lot of pride in going to the poll to cast my vote because I remember when African-Americans could not vote.

Q. Thank you. Do you plan on voting in person inside the polling place in November?

A. My plans are to vote absentee as I did in July.

Q. And why do you not plan on voting in person this November?

A. Because I have an option of voting (lost connection.) And conduct with other people I take that option.

Q. I'm sorry, Ms. Threadgill-Matthews, at least for me, you just

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froze a little bit there. Could you just repeat your answer?

THE COURT: To the question of -- let me interrupt. Why do you plan to vote absentee this time, I think was the last question.

THE WITNESS: Yes. Can you hear me now?

THE COURT: Yes, ma'am.

THE WITNESS: We're having internet problems here today, and I had to connect to a jet pack. But I -- I do plan to vote absentee because anytime I have the option of not being exposed to other people, I take that option.

Q. (BY MR. ROSBOROUGH:) And if curbside voting was available for you as an option in November, would that resolve your concerns about in-person voting?

A. Curbside voting would be a very attractive option for me because it would take away some of the -- some of the steps of having to secure an absentee ballot.

Q. Are you aware of other people in your community that would use curbside voting if it was available?

A. I am. There has been a lot of talk about ways that people would vote in the community in trying to overcome some of the challenges --

MR. HARRIS: Objection, Your Honor. Hearsay.

MR. ROSBOROUGH: Your Honor, I believe -- well, I believe Ms. Threadgill-Matthews is referring to people's questions that they have had about voting. And, you know, questions are not assertions, which is part of the definition of hearsay.

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THE COURT: Well, if they're questions that people have asked her, then I'll allow it.

THE WITNESS: Yes. I have been contacted by individuals who are concerned about voting, and we've discussed various options for them, and they would use curbside voting --

MR. HARRIS: Objection, Your Honor.

THE COURT: That last part I will sustain.

Q. (BY MR. ROSBOROUGH:) Ms. Threadgill-Matthews, how long have you been helping people in Wilcox County exercise their right to vote?

A. I moved back to Wilcox County in 1978, and I've been assisting voters since then.

Q. And in what ways have you helped people in Wilcox County exercise their right to vote?

A. I've conducted -- been a part of voter registration drives. I go to the local high school each year and register students that have turned 18 and do some education about voting and the voting process. I've assisted individuals in securing voter ID and helped facility absentee voting by getting applications to the people and advising them of the correct way to complete the affidavit envelope.

Q. And in your observations, what are some of the biggest barriers that people in your community have faced to voting?

A. Just voting period?

Q. Sure. Yes, let's start there, please.

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MR. HARRIS: Objection, Your Honor, to the extent that this is what other people have told her.

MR. ROSBOROUGH: I'm just asking Ms. Threadgill-Matthews about her personal observations. She's testified that she's assisted with a lot of people.

THE COURT: I'll allow that. Overruled.

THE WITNESS: Some of the challenges to voting have been lack of transportation, voters not being able to understand the process, not being able to read the ballot. Just living distances away from the polling places.

Q. (BY MR. ROSBOROUGH:) And more specifically in your experience and your observations, what are some of the reasons that people who need to vote absentee may find it difficult to do so in your community?

A. Some people that don't read well just have a hard time facilitating the process and finding -- going through the procedure correctly. And some people even have problems getting postage stamps and envelopes. And in the past, I have been one to assist in providing those things.

Q. And, Ms. Threadgill-Matthews, can you tell the Court about any personal efforts you have made this year to help inform your community about the absentee voting process?

A. Yes. Especially in light of COVID, we have used a lot of social media. And did I a video on -- to advise people how to vote and how to ensure that their vote is in compliance.

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Q. And, Ms. Threadgill-Matthews, you talked about assisting people in the past who have faced barriers to voting. In your observations, what is the racial background of the people you've assisted?

A. What is -- could you repeat the question?

Q. Sure. In your experience, what is the racial background of the people who you have assisted?

A. Of the people that I have assisted?

Q. Yes, ma'am.

A. Primarily it's been people in the African-American community, people that I know and have a relationship with.

Q. And you mentioned people struggling with literacy challenges. What has been the racial background of those people that have struggled with literacy challenges who you've helped vote?

A. Well, of course, it's been people in my community, in the African-American community.

Q. Thank you. Ms. Threadgill-Matthews, you just mentioned making a video about instructing people to -- about how to use the absentee balloting process this year. Why did you decide to make this video?

A. I decided to make the video because in my years of working as a polling official, we've just always had to discard a number of absentee ballots mainly because the affidavit envelopes were not completed correctly, and I decided to use social media as way to

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educate people on the process.

MR. ROSBOROUGH: Eric, can you please pull up -- I'm sorry.

MR. HARRIS: I'm very sorry. I'm having cutting out in a good amount of the last couple of her answers. Is anyone else having that problem?

MR. ROSBOROUGH: I was not.

THE COURT: Not on my end, either. Let me see if I can pull up. Basically, I'm not sure how much of the last answer you heard. She decided to do the video based on her experience as it related to the absentee ballots were being rejected because of the affidavit envelopes being completed incorrectly. And so that was at least one of the reasons for why she decided to do the video this year to help people navigate the process. Was there another question that you didn't hear clearly? Answer I should say?

MR. HARRIS: I'm sorry. I think I got the substance of the other answers. Thank you, Your Honor.

THE COURT: Thank you, Mr. Harris.

MR. ROSBOROUGH: Eric, can be can you please pull up Exhibit 427.

Q. Ms. Threadgill-Matthews, do you recognize the document that's being shown to you? I'm sorry. You broke up there a little for me again. Do you recognize the document being shown to you?

A. I do recognize the document.

Q. Okay. And what is this?

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A. This was a sample of an application for an absentee ballot that I placed on Facebook to show voters how to complete the application for an absentee ballot.

MR. ROSBOROUGH: Okay. At this time, Your Honor, the Plaintiffs would like to offer Exhibit 427 into evidence.

THE COURT: Any objections?

MR. HARRIS: No, Your Honor.

MR. WEBB: No, Your Honor.

THE COURT: Thank you both. Plaintiffs' 427 is received.

(Plaintiff's Exhibit 427 was admitted into evidence.)

MR. ROSBOROUGH: Thank you, Your Honor.

Eric, if you could scroll down a little on the application.

Q. Ms. Threadgill-Matthews, what were you intending to show people through use of this document?

A. This was -- in use of this document? What was I trying to show people?

Q. Yes, ma'am.

A. I was trying to show people -- give them an example of the process of applying for an absentee ballot and completing the application.

Q. Okay. Thank you.

MR. ROSBOROUGH: Eric, you can take that down. Thank you. Actually, can you please pull up Plaintiffs' Exhibit 428, please? Thank you.

Q. Ms. Threadgill-Matthews, do you recognize this document?

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A. Yeah, I recognize this document.

Q. And what is this document?

A. This is an example of the affidavit envelope.

Q. When you say the affidavit envelope, what are you referring to specifically?

A. The affidavit envelope is the envelope that the secrecy envelope is placed in when the voter votes absentee.

MR. ROSBOROUGH: Okay. At this time, Your Honor, Plaintiffs would like to offer Plaintiffs' Exhibit 428 into evidence.

THE COURT: Mr. Harris, Mr. Webb, any objections?

MR. HARRIS: No, Your Honor.

MR. WEBB: No, Your Honor.

THE COURT: Thank you both. Plaintiffs' 428 is received.

MR. ROSBOROUGH: Thank you.

Q. Ms. Threadgill-Matthews, what were you trying to explain through -- by using this document?

A. We were trying to indicate to voters that they needed to complete the --

THE COURT: Ms. Threadgill-Matthews, may I get you to start your answer again, please? Internet connection issues. Can you answer the question again, please?

THE WITNESS: Yes. This envelope was -- is an example of -- we were trying -- we were showing voters how to correctly complete the affidavit envelope and reminding them that everything in line must be completed and that they should be

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signed and witnessed as well as indicating why they're voting absentee and that it should be notarized or witnessed by two people 18 years or older.

Q. (BY MR. ROSBOROUGH:) Thank you, Ms. Threadgill.

MR. ROSBOROUGH: Eric, you can take that down.

Q. Ms. Threadgill-Matthews, can you tell the Court about any assistance you have provided in the past for people who lacked IDs for voting at all?

A. Yes, I have -- before COVID, I would go to -- I would make trips to voters's homes and bring -- take the ID somewhere to be copied and taken it back to them. I have copied ID at my home. I've taken photos of ID and been able to print it back and take it to the voter. I've had to take --

Q. And -- I'm sorry.

A. And I've taken -- I've taken at least -- one voter just stands out so vividly because he had been adopted, and he was having problems with his -- with his name matching what was on his birth certificate. And we had to spend about a half day at the voter registrar's office. They secured his birth certificate from vital statistics and was able to issue him a photo ID?

Q. And these people that you helped with copies of their ID as you testified or other assistance with their ID, do you understand why they needed help?

A. They didn't have access to a printer or copier. Some didn't have transportation to get to a place to make the copy.

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Q. And in your observation, what was the racial background of these individuals who you helped?

A. They were African-American.

Q. Based on your history of helping people, have you observed the COVID-19 pandemic affecting people in your community's ability to vote absentee?

A. Yes.

Q. How so?

A. Well, of course, contact in the homes of voters have been -- has been limited. Here before COVID, there would -- there was a network of people in the community that would normally reach out to people that needed to vote absentee. However, contact has been limited, and that has -- that has been a challenge for people as well as getting -- some of the places are closed that would normally make IDs for people. Churches have been closed where people could use their copy machines at churches and that type of thing.

Q. And are you aware of anybody that will need help to vote absentee this November?

A. I have received phone calls. I'm aware of it from...

Q. Okay. And are you aware of what type of help people are asking for for November?

A. I'm aware that people are asking for assistance in get -- securing an application for an absentee ballot and getting IDs copied.

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Q. And what is the racial background of the people that you're aware of that are going to need help in November?

A. Of course, they've all been African-American.

Q. And in general, in your past experience helping people vote, can you tell the groups about the racial background in general of individuals that have a greater need for absentee voting?

A. I'm aware of people in the African-American community having the greatest need.

Q. Okay. And similar question, just based on your experience in the past helping people vote, are you aware of any demographic groups that you've observed that seem to face greater barriers to meeting the absentee voting requirements?

A. Of course, this is the African-American community who are in a lower socioeconomic economic status who don't have resources readily available.

MR. ROSBOROUGH: Thank you, Miss Threadgill-Matthews. Your Honor, I have no further questions at this time.

THE COURT: Thank you. Mr. Harris, Mr. Webb, who's going first?

MR. WEBB: I will, Your Honor.

THE COURT: You may.

MR. WEBB: Thank you.

CROSS-EXAMINATION BY MR. WEBB:

Q. Mrs. Matthews, I'm Ken Webb, and I just wanted to ask you a few questions. And you have at your house one of these

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all-in-one scanner, copiers, and printers, correct?

A. I do have that at my home.

Q. Okay. And you have internet access and Wi-Fi, correct?

A. Yes, I do.

Q. As well as you have a smart phone, correct?

A. Yes.

Q. And you had no problem making a copy of your photo ID for the absentee ballot for the runoff in July, correct?

A. I didn't have any problems making mine.

Q. And you also had no problem in getting a second witness because your husband and niece witnessed your absentee ballot affidavit, correct?

A. You know, I've -- in the deposition, I said that my husband and niece witnessed my ballot. And after I -- I thought about it, I looked at my calendar to determine where I had been just as a review of where I had been, and I -- I recall that a Chelsea Wilson witnessed my ballot.

Q. Okay. Who is Chelsea Wilson?

A. Chelsea Wilson is one of our tutors at BAMA Kids. And the reason it came to me was because when I looked at the calendar, I realized that we had conducted some STAR testing -- that's an assessment -- at BAMA Kids. And that's when it occurred to me that I -- that I had asked her to witness my ballot at that point.

Q. Okay. And you will also not have any problem in making a photocopy of your ID for the November general election, correct?

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A. No, I won't have any problems.

Q. You also will not have any problem in getting another person to be the second witness besides your husband, correct?

MR. ROSBOROUGH: Objection. Calls for speculation.

THE COURT: Overruled. Ms. Threadgill-Matthews, do you believe you will be able to get a second witness?

THE WITNESS: I believe I'll be able to get a second witness, yes.

Q. (BY MR. WEBB:) Now, Ms. Matthews, you leave your home at least once a week; isn't that right?

A. I would say at least once a week, yes.

Q. You go by Piggly-Wiggly, is it every week?

A. Not every week, but I do go to Piggly-Wiggly to get groceries, necessities. And I normally go at the designated time that's set aside for senior citizens.

Q. Yes. And you also go to the pharmacy every now and then; is that right?

A. Yes. I have to go to the pharmacy to pick up medication for me and my husband who takes a considerable amount of medication. And I normally use the drive-through.

Q. And you also go and get gas; isn't that right?

A. Yes, occasionally I get gas. I'm not traveling that much. So I don't have to get that much gas, but I do get gas.

Q. And you also go to the bank twice a month?

A. I go to the bank about twice a month, and I always use the

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drive-through.

Q. And you have accounts at both banks in Camden, right?

A. I do have accounts at both banks.

Q. And now, the instance where the circuit clerk, Carolyn Davis-Posey, helped out the senior citizen vote, that was before Election Day, wasn't it?

A. Yes, it was before Election Day.

Q. And you were not personally aware of any instances of curbside voting that has happened on Election Day in Wilcox County?

A. I'm not personally. I've not witnessed it. I'm aware that the question was raised in polling school about curbside voting.

Q. And the only personal instance you are aware is where Carolyn Davis-Posey assisted an elderly person with an absentee ballot; is that correct?

A. That's correct.

Q. And you yourself in advance of the -- after March 13th and in advance of the July runoff came by the courthouse and picked up applications for absentee ballots for your friends, right?

A. I did.

Q. And you have a long history of assisting members of the community in casting absentee ballots; isn't that right?

A. That's correct.

Q. And you have -- you have done just a very good job of educating the public as well on absentee ballots and completing

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the affidavit attached on the back of the absentee ballot envelope; isn't that right?

A. I would say so.

Q. And you have even played videos on your Facebook account on absentee voting?

A. Yes.

Q. And you have also done training by both Facebook and Zoom on absentee voting?

A. Yes.

Q. And you're also aware that the circuit clerk will do everything in her power to help people vote by absentee; isn't that right?

MR. ROSBOROUGH: Objection, Your Honor. Assumes facts not in evidence.

MR. WEBB: I'm just --

THE COURT: If you know.

MR. WEBB: -- her testimony in the deposition, Your Honor.

THE COURT: If you know, you may answer, ma'am.

THE WITNESS: Could you repeat the question, Attorney Webb?

MR. WEBB: Yes, ma'am.

Q. You're aware that Carolyn Davis-Posey, the circuit clerk, has done everything in her power and will do everything in her power to help people vote by absentee?

A. I believe so.

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MR. WEBB: Your Honor, I have no further questions at this time.

THE COURT: Thank you. Mr. Harris?

MR. HARRIS: Yes. Very briefly, Your Honor.

CROSS-EXAMINATION BY MR. HARRIS:

Q. Do you know when the first day of absentee voting is?

A. The first day of absentee voting is today.

Q. So could someone go today and vote absentee in person and cast their ballot for the November election?

A. Yes. According to the Secretary of State's website and the circuit clerk, they can.

Q. And what's today's date?

A. September 9th.

Q. Great.

MR. HARRIS: I have no further questions.

THE COURT: Thank you. Anyone else on the Defendants' side? Let me turn it back to Mr. Rosborough. Any redirect?

MR. ROSBOROUGH: Yes, Your Honor, just one or two questions.

THE COURT: You may.

REDIRECT EXAMINATION BY MR. ROSBOROUGH:

Q. Ms. Threadgill-Matthews, Mr. Harris just asked you about your awareness of the availability of in-person person voting at the clerk's office starting today. Do you recall that?

A. Yes.

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Q. Of the people that you know in Wilcox County, do all of those people have the resources or transportation to be able to go and get themselves to the clerk's office to vote in person?

A. I wouldn't -- not transportation -- I wouldn't think people would have transportation. Everyone wouldn't have transportation to get there.

MR. ROSBOROUGH: Thank you, Your Honor. No further questions.

MR. WEBB: No questions, Your Honor.

MR. HARRIS: None from me either.

THE COURT: Thank you.

Ms. Threadgill-Matthews, thank you very much, ma'am. Have a good day.

THE WITNESS: Thank you.

THE COURT: Thank you.

(Witness excused.)

THE COURT: Who is the next witness for the Plaintiffs?

MS. REED: Good morning, Your Honor. Plaintiffs call Dr. Latesha Elopre.

THE COURT: Ms. Reed, good morning.

MS. REED: Good morning.

THE COURT: Tell me Dr. Latesha's last name again, please, while we're waiting for her to connect.

MS. REED: Yes, Your Honor. Dr. Latesha Elopre, E-L-O-P-R-E.

THE COURT: Thank you.

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Dr. Elopre, good morning.

DR. ELOPRE: Good morning.

THE COURT: Would you please raise your right hand so that Ms. Humphrey can swear you in, please.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: It's Latesha Elopre. You need me to spell it?

THE COURT: Yes, please.

THE WITNESS: L-A-T-E-S-H-A. And my last name is E-L-O-P-R-E.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: Birmingham, Alabama.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Ms. Reed?

MS. REED: Thank you, Your Honor.

LATESHA ELOPRE, M.D.,

duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MS. REED:

Q. Good morning, Dr. Elopre.

A. Good morning.

Q. So we've already gotten your name for the record.

MS. REED: Your Honor, Dr. Elopre has been provided an electronic binder of documents that are relevant to her

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testimony.

Q. Dr. Elopre, would you please pull up what's been premarked as Plaintiffs' Exhibit 271 and flip to page 11.

A. Yes.

Q. Do you recognize this document?

A. Yes, I do.

Q. What is this document?

A. It's my curriculum vitae.

Q. Is this the most recent draft of your curriculum vitae?

A. There's an updated one for September.

Q. And what are -- are there any updates of note in the September 1st draft of your CV?

A. Yes. The biggest update is a grant that we think is about to be awarded regarding COVID-19 testing for the state.

Q. Okay. Dr. Elopre, have you ever served as an expert witness in any case before?

A. No, I have not.

Q. Have you ever provided testimony before any governmental body before?

A. No, I haven't.

Q. Would you please explain your educational background.

A. Sure. I got a bachelors of science from Florida State University. I received a medical doctorate from the University of Florida College of Medicine, and I have a masters in applied epidemiology from the University of Alabama at Birmingham.

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Q. Are you currently employed at the University of Alabama at Birmingham?

A. Yes, I am.

Q. What is your position?

A. I'm an assistant professor in the department of medicine in the division of infectious diseases.

Q. How long have you been an assistant professor at UAB?

A. A little over five years.

Q. Does your position as an assistant professor have both clinical and research components?

A. It does.

Q. And would you please explain the clinical component of your position.

A. Yes. So I am employed by the HSF -- the health service foundation for UAB. And in that role, I have some outpatient clinics weekly. One is a clinic where I see people with HIV and also provide primary care for these individuals. I also provide in another clinic. And I have member of infectious diseases and also provide inpatient care for people who are admitted to the general medicine service in the hospital.

Q. Would you briefly explain the focus of your research as an assistant professor?

A. Sure. My main focus for research is I do research on HIV prevention. Specifically I look at how multiple stigmatized identities can impact people's ability to access HIV care and HIV

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preventative care to be specific.

Q. As part of your research, do you review of works identifying and discussing the racial disparities in health care?

A. Yes, I do.

Q. And what types of works do you review?

A. I reviewed a fair number of works. Most of them have focused on HIV prevention. I have done a few works that focused on HIV specifically, and some focused on other sexually transmitted infections and overall sexual health.

Q. And do you regularly rely on these articles in furthering your own research?

A. I do. I look at it for my research, and I have also a role in the hospital as the director for diversity and exclusion for graduate medical education. And through that role, I have to often times speak to students and residents about health disparities, and I review those articles for that as well.

Q. Okay. What other positions and appointments do you hold?

A. So as I mentioned before, I have the director of diversity and inclusion for graduate medical education through the university. I also do some consultative work. I'm a consultant for an online medical article journal called Very Well. I provide consultative work for Alabama A&M on their COVID reentry plans for the students, and I've also done some consultative work for a group of that offers continuing medical education.

Q. What work do you perform as an investigator in the

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department of medicine's Center for AIDS Research?

A. So Center for AIDS Research, I am investigators, and I have been asked to review other grants. So when people are applying for internal awards or if they need feedback on grants that they're about to submit to an external funders, I provide my expertise in health disparities and intersexual stigma in reviewing those grants. And then also we recently put in, as our center, a large grant looking at how we can increase COVID-19 testing across the state. So that is our ^ CHECK THIS initiative.

Q. Have you ever published a peer-reviewed article or paper?

A. Yes, I have.

Q. And can you explain a little bit about some of your publications.

A. Sure. Most of my publications do focus on like I was talking about this intersection between race, poverty, and sexual identity for black gay bisexual men and for black women living in urban and rural settings in the State of Alabama and how that impacts their ability to access HIV prevention services.

Q. Have you ever served as a peer reviewer for an academic journal?

A. Yes, I have served for several journals. A few just off the top of my head clinical infectious diseases, the journal for acquired immunodeficiency syndrome, AIDS and behavior.

Q. And have you received any grants for your research?

A. Yes. I have received grants from the national institute of

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health, Robert Wood Johnson foundation, and some grants through Center for AIDS Research.

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

A. Yes. I am a member of the infectious disease society of America which is the largest society for IV physicians. I'm also a member of A S T A which is a group for people ^ CHECK THIS and then one that's focused on HIV called eye pack ^ CHECK THIS.

MS. REED: Thank you. Your Honor, at this time, I'd like to offer Dr. Elopre as an expert in internal medicine, infectious diseases, and disparities in access to health care and health outcomes in Alabama.

THE COURT: Any objections?

MR. SMITH: None from the State, Your Honor.

MR. COWELL: Your Honor, we object to offering her as an expert. There has been no foundation laid about her expertise as far as COVID-19.

THE COURT: I think that may be more for cross-examine point. As to the issues that she's being presented for, the objection is overruled. The Court will receive Dr. Elopre as an expert in the areas of internal medicine, infectious diseases, and disparities in access to health care and health outcomes in the State.

Ms. Reed, you may begin your examination.

MS. REED: Thank you, Your Honor.

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Q. (BY MS. REED:) Dr. Elopre, would you please turn to the first page of what's been previously marked as Plaintiffs' Exhibit 271. And what is this document?

A. This is my expert testimony.

THE COURT: Dr. Elopre, you faded out for a minute. Plaintiffs' 271 is your expert report. Is that what you said?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

Q. (BY MS. REED:) Dr. Elopre, did you sign your declaration under penalty of perjury?

A. Yes, I did.

Q. And what is the date of your report?

A. It is July 23rd.

Q. Okay. So does your report declaration reflect your opinions in this case as of July 23, 2020?

A. Yes. As of July 23, 2020.

Q. Well, is there anything in your report that you would like to update or correct?

A. Yes. There have been some changes in the local COVID-19 epidemic, and that would have been reflected in my testimony that we're giving today.

MS. REED: Thank you. Your Honor, I'd like to offer Dr. Elopre's expert report and CV, what's been previously marked as Plaintiffs' Exhibit 271 into evidence.

THE COURT: Any objections as to 271?

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MR. SMITH: No, Your Honor.

MR. COWELL: No.

THE COURT: Plaintiffs' 271 is received.

Q. (BY MS. REED:) Dr. Elopre, what were you asked to assess in this case?

A. Specifically, I was asked to look at health disparities and the interplay between poverty, race, and other social determinants and how that has impacted the COVID-19 local epidemic in Alabama.

Q. Can you briefly summarize your conclusions?

A. Yes. I tried to outline that there's been a long history of health disparities not only in the state but throughout the south and the United States and that these have been really amplified in black belt counties. And I tried to provide reasons as to why I believe that to be the case given that there's severe oppression, poverty, (didn't hear), and that has resulted in worsening COVID-19 outcomes. And because of this, it is likely to impact people's ability to do things like vote in person, and it would be better for them to vote by absentee ballot if able.

Q. Let's start at the top of your testimony. Can you elaborate on the focus of your research?

A. Sure. So I really tried to dedicate my research to understanding how we can reach what we call vulnerable populations when it comes to HIV. We know that for people who are diagnosed with HIV that if you are African-American, you

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have a higher likelihood of being diagnosed with AIDS. So highly advanced HIV and then dying from that as well. So I tried to funnel my research into preventing HIV and specifically in the groups that we know are greatly impacted by the epidemic. So that would be black, gay and bisexual men then and black women, especially people living in rural counties.

Q. And what interventions do you attempt to offer to these communities?

A. So a lot of my research focuses on trying to deploy people interventions. You know, there's a lot of layers to barriers to care, symptom which of structural so things like lacking personal transportation, low education, lack of insurance that we as physicians and scientists cannot fix. So a lot of my research focuses on trying to increase things like social support and social capital and people's ability to access or at least gain education about HIV prevention and specifically doing so in their communities.

Q. And what -- you referenced early the black belt. Is this one of the communities you serve?

A. Yes. Through one of my studies, I had the privilege to speak to black women and listen to their stories in four rural counties. Lowndes, Hale, Greene, and Dale, and talk to them about what were barriers for them being able to either consider HIV prevention or PrEP specifically which is what I'm interested in, a drug that you can take daily to prevent HIV. And I have also

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given talks in several rural counties to churches as well trying to increase their knowledge about HIV prevention and recognizing the role that the church plays especially in black belt communities.

Q. And in your experience, do the people -- do people in these communities choose not to utilize PrEP for their HIV remedy?

A. You know, it's actually really complex. There's a lot of stigma surrounding HIV and sexual health. But mostly what women talk about was having higher unmet needs that they felt needed to be addressed before they could even start talking about their health. So they talked about things like having access to child care, having ability to afford or pay for their lights, food insecurity, things of that nature, which I think, you know, as we listen to these stories and all agree, those two outweigh a lot of times looking at your personal health.

Q. And just for a bit of context, what is the black belt?

A. So the black belt has been named that because of the black soil that slaves used to toil to pick cotton. And to this day, there is a large concentration of African-Americans in these communities that really never left from slavery to sharecropping and now.

Q. And within the black belt communities that you interacted with in attempting to assist people with accessing PrEP, what is -- how would you describe the --

THE COURT: Ms. Reed, your question faded out. May we get

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you to repeat it, please.

MS. REED: Yes, Your Honor.

Q. For the people in the four black counties that you have interacted with, what is generally the quality of life for the people in those counties?

A. I think overall quality of life is pretty poor for those individuals. They have high levels of poverty. A lot of the women I spoke to were single mothers and lived in single-parent households. There was a lot of stressors in their daily lives.

Q. Okay. Dr. Elopre --

MS. Reed: Eric, do you mind pulling up Plaintiffs' Exhibit 339. Thank you.

Q. Dr. Elopre, I'm showing you what we have previously marked as Plaintiffs' Exhibit Number 339. Are you familiar with this document?

A. Yes, I am.

Q. And what is it?

A. So this is a document that was created by Centers for Disease Control that talks about why we might be seeing some of the inequities in the occurrence of the COVID-10 pandemic.

Q. Right.

MS. REED: Okay. Your Honor, I move to admit Plaintiffs' Exhibit 349 into evidence.

THE COURT: Any objections to 349?

MR. SMITH: No objection from the State, Your Honor.

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MR. COWELL: None from us, Your Honor.

THE COURT: Thank you both. 349 is received.

MS. REED: Thank you.

Q. Dr. Elopre, how is the information reflected in this report connected with the testimony you gave about health outcomes and access to health care for your HIV patients?

A. I think this nicely reflects a lot of the social determinants of health that I have discussed for my patients with this report. And I think, you know, overall most experts in the field recognize that this makes sense. The inequities that we see in one disease state is oftentimes reflected in multiple disease states. And it's because of the structural and social interplay that people who are people of color oftentimes have to face. So I was not surprised reading this report, and I was very happy that Centers for Disease Control and Prevention put this report out recognizing these things?

Q. Thank you, Dr. Elopre.

MS. REED: Eric, would you, please, take down this exhibit.

Q. So, Dr. Elopre, you alluded to inequities and disparities in health outcomes. Can you elaborate on that a bit?

A. Sure. So there are multiple disease states where we have seen improvements in overall health outcomes across populations. But health disparities and inequities have really been maintained. So if it's heart disease, coronary artery disease, strike, diabetes, obesity, there are multiple studies that have

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supported that. We are still seeing pretty large health disparities that are likely attributable to these social determinants of health that I have just discussed. HIV is another example of that. And then with COVID-19, I think a lot of us recognize that, you know, up front because we have a lot of structural barriers and systems put in place that don't support vulnerable populations, there was a large potential for COVID-19 to have these same types of health disparities.

Q. So just to be clear, do health outcomes for -- or how do health --

THE COURT: Ms. Reed, may we get you to repeat that question, please?

MS. REED: Yes. I'm sorry.

Q. Dr. Elopre Elopre, how do health outcomes for black Alabamians in the black belt compare with health outcomes of white people living in rural counties in Alabama?

A. So for a lot of disease states, they're much worse. And we even know for over like the biggest outcome which is overall life span, you know, black men, especially black men in the south have about five years shorter life span compared to white men. So I think overall they are worse.

Q. Dr. Elopre, what is COVID-19?

A. So this is a Corona virus that changed to be highly infectious. It has high mortality associated with it. It is spread through respiratory droplets, and it originated in China and has

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since moved across the globe.

Q. And what is the range of health outcomes for a person who contracts COVID-19?

A. You know, it's varying and it's growing. So we have been seeing a lot of different types of health outcomes. The worst of course is death. But people are having issues like renal failure, myocarditis, embolisms, multi-organ shutdown requiring ICU stays. The most common that people present with because this is spread by respiratory droplets, they oftentimes will have shortness of breath, cough that's dry, pneumonia that's associated with this. So it's a spectrum that we are seeing when it comes to outcomes related to COVID-19.

Q. Okay. Are certain groups or demographics more likely to experience worse health outcomes from COVID-19?

A. Yes. There have been some associations with certain characteristics and those individuals having worse outcomes. We know that older individuals are likely to have worse outcomes and that's tiered. The older you are the more likely you are to have a worse outcome. We know African-Americans are more likely to have more outcomes. People with obesity, diabetics, heart disease, or any kind of underlying pulmonary condition are more likely to have worse outcomes.

Q. As an infectious disease expert, do you regularly review COVID-19 data?

A. Yes, I do. I do. I do that for my role with Alabama A&M.

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And then also just as a part of my division, we have regular updates in email chains from our division director giving us the local epidemiology, what's happening within our hospital, and then what they're kind of charging us with as a division to help.

Q. Okay. Is there a source or a set of sources that you refer to more -- that you refer to?

A. Yes. There are several. For local Alabama data, I usually look at Alabama Department of Public Health and Bama Tracker which is their data dashboard. We look at Centers for Disease Control and Prevention, and there's a couple of simulated models that Harvard and Johns Hopkins puts out.

Q. Okay. And you referenced Bama Tracker. Would you agree it's a reliable source for COVID-19 data for confirmed cases?

A. Yes. To my knowledge, it is definitely reputable and is up to date.

Q. Thank you.

MS. REED: Eric, can you pull up the Bama Tracker, please.

Q. Dr. Elopre, does this live link look like -- well, what is this?

A. Yes. So I actually looked at this this morning. This is an outline that is looking at overall COVID-19 cases since you start seeing cases beginning in March 15th to today. And it has some indicators of some public safety health measures that were put in place.

Q. Dr. Elopre, what does the chart or the graph reflect as far as COVID-19 trends in Alabama?

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A. Well, I think what it shows nicely is the time that I was writing my expert statement, there was definitely what we were concerned about as a surge resulting in this mask ordinance that came down mid July. Then you can see a downward trend in some of the COVID-19 cases since that mask ordinance was put into place. They also have a marker indicating when in-person schools started for a lot of our public universities, and there have been some upticks in cases since then.

Q. And, Dr. Elopre, what percentage of Alabama's population do black people make up?

A. So about 25 percent.

MS. REED: Eric, can you take us to the demographics landing page for Bama Tracker. Thank you. Can you scroll down little bit. Thank you.

Q. Dr. Elopre, what is this?

A. So this is looking at COVID-19 cases, and it's separating it into a couple of different categories. So it's looking at it from different age rages by gender, ethnicity, and by race.

Q. Okay. And looking specifically at the race pie graph, what does that reflect?

A. So this is looking at how many cases we're seeing a month different racial groups. So they have white. They have an other category, black, and unknown. And what you can see from this pie graph is that, number one, there's a large number of unknowns. So about 34 percent, a little over of cases right now

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we do not have racial demographics for. And of the ones that we do, you can see African-Americans while looking at the whole denominator make up 25 percent. If you were to remove that unknown category for those individuals for which we don't have race, they actually make up about 40 percent of cases.

Q. And can you just state one more time what the unknown category reflects?

A. Yes. So these are cases that have been reported to our state health department, and this is looking at the number of people where we do not have that demographic information available, where race is not present for those who tested positive for COVID-19. And about 35 -- I'm sorry. 34, a little bit over, percent of cases we do not have race available for those cases.

Q. Okay. And what effect does removing the unknown category of cases have on the overall data set?

A. Right. So, you know, ultimately when we're trying to look at health disparities, if we're looking at this from an epidemiologic standpoint, we can term this as something that we have missing data for. So by removing this from our denominator and looking at the cases where we have known demographics on, ultimately what you'll see is that 40 percent of cases where we have known demographics, 40 percent of those cases are African American, which is a disproportionate amount of cases compared to what we see in the state.

Q. Okay. Is there anything significant about a large number of

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unknown cases?

A. Yes. You know, ultimately when -- especially at the beginning of the epidemic when we were first providing testing to now, I think it's important we know that we have a large likelihood of having health disparities. In a disease state, it's important for us to be able to collect this type of demographics because it helps inform targeted interventions that we can make to improve outcomes in populations that are inequitably affected by that disease state. So for COVID-19, our ability know that there is a large proportion of African-Americans being diagnosed with COVID-19 and what counties these are occurring can help us mobilize and provide better targeted intervention for those individuals in those groups to improve overall health across the state.

Q. And before moving on, what conclusions can you draw with respect to infection rates and racial disparities in Alabama from this pie graph?

A. Yes. I think ultimately we are seeing racial disparities in the State of Alabama in regards to who's being diagnosed with COVID-19 for the cases where we have demographics available. And I think that this is reflected in what we're seeing pretty much across the country where we're seeing African-Americans being disproportionately impacted by the pandemic.

Q. Thank you.

MS. REED: Eric, can you scroll down so we get more of the

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pie graph on the screen? Thank you.

Q. Dr. Elopre, what does what's on the screen show? What is that?

A. This is looking at individuals who have died from COVID-19. And again, the state has broken this down to different demographics sets. So you have it by age, gender, ethnicity, and race.

Q. Okay. And looking specifically at the race pie graph, what does that reflect?

A. So you'll see for this pie graph, there's not as many unknowns, which is likely due to the fact that when we report deaths and you have information on death certificates, we do oftentimes report race. But also what you'll see with that is again about 40 percent of individuals who are dying from COVID-19 are African-American, which is a disproportionate amount compared to what we have in the general population of Alabamians.

Q. And how does the fact -- or how does this pie graph reflect approximately 40 percent of black people die from COVID-19 effect your conclusion about disparities in infection rates?

A. I think this makes a lot of sense that likely for the people that we do have known demographics on in regards to cases, probably about 40 percent are African-American, and it makes me feel more confident thinking that if we're trying to impute what that unknown category likes like, you probably would see those same disparities.

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Q. Thank you.

MS. REED: Eric, can you take us to the next. Thank you.

Q. Dr. Elopre, have you reviewed data showing COVID-19 case fatality ratios by county?

A. Yes, I have.

Q. Is that what's on the screen?

A. That's what's on the screen, yes.

Q. Thank you. What is a case fatality ratio?

A. So this is kind of looking at the incidents of deaths in the State of Alabama due to COVID-19, and it's looking at it for ten thousand people.

Q. And when is the last time you reviewed this data?

A. I reviewed it this morning.

Q. Okay. And what does the case -- COVID-19 case fatality ratio per county page reflect?

A. So this is something that really hasn't changed when we're looking at trends in our state. We're seeing that a large proportion of black county -- I'm sorry. Not black counties. Counties that are in the black belt that are highly populated by African-Americans have higher case fatality rates. Specifically if you look at the number in the top seven, six of the seven are black belt counties.

Q. Okay. And what does that indicate about health outcomes from COVID-19 in these black belt counties?

A. So, I think that this is probably, you know, for most not

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surprising. Lowndes County, which is the county that I have been able to go to and visit for a lot of my work with HIV going and trying to -- in the HIV epidemic in the case. Lowndes County has some of the highest fatality rates in our state, and it's not surprising because we know that Lowndes is one of the most impoverished counties in our state, and there are really large inequities and other health conditions where you see African-Americans having poor health compared to others within that county.

Q. At this.

MS. REED: Eric, can we go back to the main -- perfect. Thank you.

Q. Dr. Elopre, pulling back up the graph reflecting the trajectory of COVID-19 over the past several months, what based on this graph happened in about the middle of July?

A. So you see the mask ordinance.

Q. And what is the mask ordinance?

A. So this was an ordinance that was put out by our Governor that asks, you know, Alabamians when they're in public settings when they cannot socially distance to wear masks, and this is something that is in effect for 5 and up, and it's been maintained within several settings.

Q. Okay. I missed a little bit of your testimony. Do you mind repeating that? I'm sorry.

A. Sure. No problem. So this is an ordinance that was put in

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place by our Governor, and it really was stating that, you know, Alabamians are required to wear masks when they're in public settings when they cannot safely socially distance.

Q. Okay. Are there any of exceptions to the mask ordinance?

A. There are exceptions. And I will say that the mask ordinance is strongly recommended. But we haven't really seen people be penalized if they're not wearing their masks. Where you do find that in other states where people do receive fines. But there are exceptions. So if you're in a church setting, you don't have to comply with the mask ordinance. Also when you were voting, you do not have to comply with the mask ordinance.

Q. Thank you. And at the time when the mask ordinance went into effect, what was happening with respect to new COVID-19 cases in Alabama?

A. It was actually getting very scary during this time as a UAB employee and as an Alabamian citizen. You were seeing large spikes in COVID-19 cases, and there was a lot of stress put on our health care systems at that time. We were starting to see shortages in our ICU beds, and some hospitals ran out of beds completely.

Q. Then what happened after the mask ordinance went into effect?

A. So after the mask ordinance went into effect, you can see that there was a downward trend in overall cases across the state.

Q. And do you think there's a correlation between the decrease

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in overall cases and the mask ordinance?

A. I do. I think that there's strong evidence to support that wearing a mask and appropriately wearing a mask -- so over your nose and your mouth -- decreases the spread of COVID-19.

Q. And, Dr. Elopre, a little past the middle of August, what does the graph mark as a significant event?

A. In-person schools start.

Q. Thank you. And do you know whether all schools have resumed in-person instruction?

A. So a lot of our public universities have resumed in-person. For some of the other school systems, it's been varied. So it's been based off of that school district and what they felt was good for their student population. I do know because I have a son that's in Hoover Public School System, and my husband is a school teacher as well that they have been varied, and several school systems are now planning to start opening back up as well for public schools.

Q. Okay. And why is in-person school reopening marked as an event on this graph?

A. Well, because we saw an uptick in cases at that time, and I think there was concern with having as we know large gatherings where people are cohabitating that there was a risk from a public health standpoint of us seeing more COVID-19 cases, and we have, and we did see upticks in COVID-19 cases.

Q. So just to elaborate on that, what has been the effect on

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COVID-19 rates since colleges and universities have opened?

A. So as you can see, especially in this part between September, there was a pretty significant spike there. And we're starting to see overall some of our early gains looking like we are concerned they might be being lost. So I think only time will tell. We're about to head into the fall. And I think that's another reason why some public health officials are also concerned that we might start seeing an uptrend again.

Q. Have -- has school resuming for in-person instruction had any effect on COVID-related hospitalizations?

A. We have not seen that yet. But I will say that typically when you start seeing changes in trends so as people become infected and we see those infection rates increase, poor outcomes related to those infections typically take a couple weeks out. So we'll have to kind of wait and see if we continue to see these upticks, if we see increases in hospitalizations. Also I think we might see a delay because who's becoming infected. These are younger individuals. So the question would be are we seeing a spread from these younger individuals, people who are like we said are in in the high-risk groups.

Q. And you mentioned before that there's concern among public health officials about the fall. Why is that?

A. Os we know by looking at other countries and looking at the virus itself that it's likely more infectious in cooler temperatures. And there is concern that there will be more spread come fall.

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The other big event that happens in the fall is we have flu season, and flu season already puts a little bit of a strain on hospitalizations due to poor flu outcomes. So coupling that on top of what we could see with COVID-19 could put some taxing on our hospital systems overall.

Q. Dr. Elopre, how would a vaccine effect the COVID-19 rates going forward?

A. I think, you know, that's kind of what we're all kind of hoping for is an effective vaccine that would improve if not people getting COVID-19 at least the poor outcomes we're seeing with COVID-19. There are several trials that are going on right now have for vaccines, and three that are in the U.S. I know that recently in the news there has been some press where one of the larger ones that has had an accelerated timeline, they have put a pause on their vaccine trial due to adverse event which I saw on the news this morning. Some report could be.

Q. So what is the likelihood of there being a vaccine in the fall?

A. You know, I would say based off my conversations with my colleagues and what I know is going on for the vaccine trials, having an effective vaccine in the fall, I am a little pessimistic about.

Q. Thank you.

MS. REED: Eric, would you please put up what has been admitted as Plaintiffs' Exhibit Number 451. Thank you.

Q. Dr. Elopre, what is this document?

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A. So this is a document from the Centers for Disease Control and Prevention talking about how we can have some safer practices in regards to election polling locations during COVID-19.

Q. And what is -- can you summarize what the recommendation is from your understanding?

A. So from what I can understand, it looks like they are, you know, kind of recommending things that would limit the potential for spread. And they talk about things like drive-up voting as one of those strategies that limits spread of COVID-19 and is recommended.

Q. Do you see at the top where it says -- it recommends that jurisdictions consider alternatives to in-person voting?

A. Yes, I do.

Q. Do you agree with this recommendation?

A. Yes, I do, especially for groups that are high risk. I would not recommend for those individuals -- for my patient populations that have poorly controlled HIV to vote in person.

Q. And can you elaborate on why?

A. Ultimately we know that people who are immunocompromised have a higher risk of having poor outcomes if they get COVID-19. Especially in the State of Alabama, there is the chance that they could be in a site that people are not wearing masks, especially other voters, and that would put them at significant risk. I think one of the biggest protections we get

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from masks is preventing the spread of COVID-19. And so I would be more comfortable and would advise my patients especially those who are immunocompromised if they can to not put themselves at risk.

Q. Okay.

MS. REED: And, Eric, in the larger exhibit, can you please scroll down in the document to where it says, "says consider alternative voting options for voters with symptoms." Right there. It's going to be -- almost.

Q. And, Dr. Elopre, I'll give you a second to just quickly review. But do you agree with the recommendation on this elaborated bullet point for considering alternative voting options?

A. Yes, I agree with this.

Q. Okay. We'll elaborate on that a little bit more in just a second.

MS. REED: Eric, would you please pull up State Defendants' Exhibit 186. Thank you.

Q. Dr. Elopre, do you recognize this document?

A. Yes, I do.

Q. Thank you.

MS. REED: Eric, would you please scroll down to the top of page 2. Thank you, Eric.

Q. Dr. Elopre, are you familiar with this portion of this document, recommendations for individuals?

A. Yes, I am.

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Q. And what guidance does this -- is reflected in this section?

A. So it talks about general recommendations on how to reduce spread. But it also has a highlighted section talking about specifically vulnerable populations and special considerations for them to reduce spread. Specifically if they can, to not put themselves at risk by being around others.

Q. Dr. Elopre, how does this section define vulnerable persons?

A. So, it reads that they are 65 years and older, or they have underlying health conditions like some of the health issues that I discussed earlier, having high blood pressure, underlying lung disease, diabetes, obesity, asthma, are those who have an immune system that's compromised.

Q. And does the safer-at-homes definition of vulnerable persons align with characteristics that place people at high risk for COVID-19?

A. It does. The only thing that's not here that we know is an additional risk factor is race. So, yes.

Q. Thank you.

MS. REED: Eric, you can pull down this exhibit. And just really quickly, Your Honor, I believe there's someone in the waiting room, Ms. Nancy Abudu, who is waiting to be let in. She's an attorney for the Plaintiffs.

THE COURT: We will let her in. When you get to a good stopping point, let's take our morning break, please.

MS. REED: Thank you.

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Q. And, Dr. Elopre --

MS. REED: Actually, could you put states Defendants' Exhibit 186 back up. And would you please scroll down to number 3. Thank you.

Q. Dr. Elopre, are you familiar with this Exhibit?

A. Yes, I am.

Q. And what does it recommend with respect to quarantining for a person infected with COVID-19?

A. It recommends that if you are a person who has tested positive for COVID-19, you should isolate yourself. And if you -- it doesn't say here. But if you're in contact with somebody who has COVID-19, you should also isolate yourself and quarantine.

MS. REED: Thank you. Eric, we can take that down.

Q. Dr. Elopre, you live in Alabama, correct?

A. Yes, I do.

Q. Are you aware of absentee voting requirements in Alabama?

A. Yes, I am.

Q. And what are they?

A. To get absentee voting privileges, you have to have a copy of your ID and either two witnesses sign or a notary.

Q. Thank you. And so if I refer to the requirement about a photo ID attending the absentee ballot application requirement, would you follow that? And then if I refer to the requirement that have a note affidavit as a witness requirement, would you follow that?

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A. Yes.

Q. Thank you. Based on your expert opinion, do you have concerns about voters's ability to feet the photo ID requirement?

A. I do especially those like we discussed who live in a highly impoverished environment that have multiple barriers. I think that being able to effectively have some of the equipment necessary or being able to travel, those who don't have personal transportation, would be a barrier to being able to get a copy of your photo ID.

Q. Does the barrier persist if the voter is vulnerable or high risk?

A. Yes, the barrier does persist if that person's vulnerable or high risk. And I would say for most of my patients that fit in that category, a lot of times if they don't have personal transportation, they use -- or ask a friend to take them which would also put them at risk potentially as well.

Q. Thank you. How does -- or does the barrier persist if a voter has tested positive for COVID-19?

A. Yes. And technically, if you have tested positive for COVID-19, you're not really supposed to leave your home. You're supposed to stay home and quarantine and really not leave your home unless you are needing to get medical treatment. So I would say unless you have the equipment at home and the ability to make a copy of your photo ID at home which most Alabamians living in black belt counties likely would not have, that would be

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something you would not be able to do.

Q. Thank you. Same question with respect to the witness requirement. Based on your expert opinion, do you have concerns about voters's ability to satisfy the witness requirement?

A. I do have concerns. I think mostly, as I was stating, a lot of people do not have or may not have the ability to have another adult within their home or two adults within their home to sign. So they would have to ask people outside their home. And being able to control the actions of other people, to make sure that they're wearing masks appropriately, and also if you're a vulnerable person, being around somebody that you may not know and they may not know whether they have COVID or not puts you at risk. So ultimately if you're in a vulnerable group, I would say I would try to limit contact if possible with other people unless you have to.

Q. And does your opinion change if the voter has tested positive for COVID-19?

A. If the person has tested positive for COVID-19, then they should not be in contact with anyone. They should be quarantined at home, and as I was saying really only leave the home if they're trying to get medical treatment.

Q. And what about the notary option for the witness requirement? Can that serve as a barrier to voters's ability to meet the witness requirement?

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A. I do believe so. As I mentioned before, I think lack of personal transportation and the need to get transportation to get something notarized is a barrier. But also, sometimes there is a cost with getting things notarized. And depending on your disposable income, which we know most people living in black belt counties are highly impoverished, they may not be able to afford to pay to get a notary.

Q. Thank.

MS. REED: Eric, would you please pull up one last time Plaintiffs' Exhibit 451.

Q. Dr. Elopre, do you see the CDC guidance related to drive-up voting?

A. Yes, I do.

Q. Do you agree with this recommendation?

A. Yes, I do.

Q. And why?

A. I think that this allows people to have decreased risk of potential exposure to COVID-19. And for someone that fits in that vulnerable category, I would say being able to have the alternatives to in-person voting would be crucial.

Q. Dr. Elopre, if drive-through voting involved interacting with one person from the car outside, would that be safer than voting inside in person on Election Day?

A. Yes, I definitely think that would be safer likely because we know that the poll workers would have masks. And it would be

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that one individual who you're interacting with, and you could do it from the safety of your car. But I would safe again if you fit into that vulnerable category, ultimately I think the best option would be for you to be able to vote from home and not have to potentially have the risk of doing drive-through or -- not if you don't have personal transportation being in a car with another individual for a prolonged period of time.

Q. Thank you.

MS. REED: Eric, really quickly, can you bring up Plaintiffs' Exhibit 349 one more time. Thank you. And can you actually scroll down and zoom in on -- yes. That section right there.

Q. Dr. Elopre, do you see under facts the bullet point titled discrimination ^ CHECK THIS?

A. Yes, I see this point.

Q. And what is your understanding of the impact of discrimination on increased risk of COVID-19?

A. So this is something that's been I think recognized not just for COVID-19 but like I was saying there's other health conditions as well. We know that discrimination affects multiple social determinants of health. It causes it to be harder to have access to health care, education, and stable housing. And also even discrimination within the health care system can be detrimental to the COVID-19 pandemic and our ability to, you know, reach groups that we know are higher risk for poor outcomes. So as an example, there have been some that have questioned whether

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there has been differences by race in who's been hospitalized based off of who is presenting and the color of their skin. So we know that this occurs with other conditions where there is discrimination from a health care system standpoint. And it's something that we need to address especially as related to COVID-19.

MS. REED: Thank you, Dr. Elopre. I have no further questions at this time, Your Honor.

THE COURT: Thank you. On the theory that cross-examine will take more than 15 minutes, why don't we take a 15-minute break and come back at 11:00 o'clock to begin, please. Thank you, all. We were in recess for the next 15 minutes. Thanks, everyone.

(Recess.)

THE COURT: Let's begin with the cross-examinations. Who is up first?

MR. SMITH: This is Mr. Smith for the state, Your Honor.

THE COURT: Mr. Smith, you may begin.

MR. SMITH: Your Honor, before I begin cross, if I may, if Defendants could know which exhibit -- or which witness, excuse me, for Plaintiffs are up next, that might help streamline going forward just so we can go ahead and get set up for that, at least here for the State Defendants.

MS. REED: Yes, Your Honor. Plaintiffs would call Scott Douglas of GBM next.

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THE COURT: Thank you, Ms. Reed.

MR. SMITH: Yes, thank you, Ms. Reed.

CROSS-EXAMINATION BY MR. SMITH:

Q. Dr. Elopre, good morning.

A. Good morning.

Q. It's nice to see you again.

A. Thank you. Nice seeing you, too.

Q. Thank you. Dr. Elopre, I want to start with just a few questions about your expertise. Now, Dr. Elopre, are you an expert in elections?

A. No, I'm not an expert in elections.

Q. And the -- administering an election?

THE COURT: Mr. Smith, you broke up. I think the question was expert on administering of elections, but it was not clear.

MR. SMITH: That was my question, Your Honor.

THE WITNESS: No, I am not an expert on that.

Q. Thank you, Dr. Elopre. Dr. Elopre, are you an expert in Alabama law?

A. No, I'm not an expert in Alabama law.

Q. Dr. Elopre, have you ever been a poll worker in Alabama?

A. No, I've never been a poll worker.

Q. And so, Dr. Elopre, it's fair to say you've never been involved in the elections process other than as a voter?

A. Yes, that's true.

Q. Dr. Elopre, your published works, all but one of those is on

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HIV; is that right?

A. Yes, that's correct.

Q. And the one that is not, it's on a tick-borne disease related to rickets; is that true?

A. Yes, I published that as a fellow.

Q. So, Dr. Elopre, you've never published on COVID-19, have you?

A. No, I've never published on COVID-19. My work has been purely on health disparities as it relates to HIV prevention.

Q. And so you haven't published even on respiratory illnesses generally, right?

A. No. That's not my area of expertise.

Q. Dr. Elopre, COVID-19 and HIV, are they similar in their transmission methods?

A. No. HIV is transmitted through bodily fluids, and COVID-19 is a respiratory illness. But I will say that looking at the populations that are being impacted by both and the way the disease is spreading across the state in certain populations is similar as well as how we're trying to mobilize to test.

Q. But the method of transmission itself, not similar?

A. Yes, the method of transmission is not similar.

Q. And isn't it true that HIV and COVID-19 don't have similar symptoms?

A. No, they do not have similar symptoms. You can get respiratory illnesses if you've advanced HIV. But ultimately, no.

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Q. And isn't it true that COVID-19 and HIV don't have similar methods of treatment?

A. So that is true to a certain extent. There has been some -- we have looked at some of the interviral medicines that we give in HIV to see if it would be effective for COVID-19. But overall, yes, it's a different method of treatment.

Q. And the prevention or mitigation methods used for both COVID-19 and HIV are not similar either, are they?

A. No. The prevention methods for a reparatory illness typically is masks to prevent respiratory spread. Whereas with HIV, you recommend things like condoms and some of the medications I have talked about that my research has focused.

Q. Dr. Elopre, we have talked about the black belt counties this morning. I've heard you reference Lowndes, Hale, Greene, and Dale counties?

A. Yes.

Q. Are there other counties that you would consider to be in the black -- Alabama's back belt?

A. Yes, there are other counties.

Q. And what are those counties?

A. I do not have all the lists on the top of my head of all the counties that are in the black belt in the State of Alabama.

Q. Dr. Elopre, have you done -- in your deposition, you testified that you'd done research in black belt counties including Dallas, Greene, Hale, Lowndes, Macon, Perry, and Wilcox. Adding Dale to

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that, does that sound like counties you're familiar with in the black belt?

A. Yes.

Q. Thank you. Now, in your report, you talk about social determinants of health; isn't that right?

A. Yes.

Q. And those include things like high levels of poverty, right?

A. Yes.

Q. Low education levels?

A. Yes.

Q. And high levels of single-parent households. And those things make accessing health care more difficult; is that right?

A. Yes, that's what I believe.

Q. Is that true across the state and not just in the black belt counties?

A. It is true across the state. But what we know and what's occurred in the black belt counties is that you have higher densities of impoverished people within those counties. And you usually have fewer health care standing hospitals and clinics in those counties as well. So sometimes the disparities are more accentuated because of those things.

Q. Dr. Elopre, what counties in Alabama outside of the black belt have you done research on?

A. So I've done research in Montgomery and Birmingham.

Q. You haven't done research in Alabama's Appalachian

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counties, for instance?

A. No, I have not.

Q. So, Dr. Elopre, your research is only focused on HIV; isn't that right?

A. So up until this point, it has been. It looks like the Center For AIDS Research is going to be funded for the study that I mentioned earlier which is looking at how we can expand COVID-19 testing across the state. So that would be my first grant that I get to do. I'm excited about working with COVID-19.

Q. But sitting here today, all of your research to date has been on HIV?

A. Yes.

Q. So, Dr. Elopre, something you said in your report is that there's an entanglement between poverty and health. Do you recall that?

A. Yes, I do.

Q. So is it far to say that poverty and health are entangled in every county in the state?

A. Yes, I would say that they are.

Q. Dr. Elopre, is the South as a region poorer than the other regions of the country?

A. Yes. Typically the South is poorer as a region than other regions of the country.

Q. Is that true across racial groups as well?

A. It is true across racial groups. But you do see higher levels

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of poverty among certain racial groups specifically African-Americans.

Q. But white people in the South are poorer than white people in other regions?

A. Yes. White people in the South usually are poorer than other people in other regions of the country.

Q. Dr. Elopre, I want to talk a little bit about the sources that you cite in your report. There are nine end notes; is that right?

A. Yes.

Q. Citing eight different sources?

A. Yes.

Q. The sources that you cite in regard to statistics in the South, the data?

A. I'm sorry. You broke up.

Q. The sources that you cite in regards to demographic information about the South, when are those dated?

A. So those are 2003, I want to stay. There's one from 2002. There's one from 1996, and there's one from 2003.

Q. Is there also one from 2004?

A. Yes.

Q. Would you consider that to be recent data?

A. So I do not consider that to be recent data. But I do know in my review of the literature that there is recent data that you can find that is publically available that is peer reviewed that shows similar information as these articles do.

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Q. Did you cite that data in your expert report?

A. No, I didn't. I chose to cite experts that I knew were at institutions like Tuskegee that I like their work because I thought that it had a better explanation as to this idea of intersectionality and seeing things like race impact poverty.

Q. The information that those sources provide, it's not the most recent data, is it?

A. No, it's not.

Q. Dr. Elopre, is it the case that most people living in very low income rural counties are white?

A. So you do see a high proportion of white people -- white people make up the majority of the U.S. population. So if you look at the overall epidemiology, you'll see a higher proportion of African-Americans in those counties than you see in other counties and locations across the country.

Q. Well, Dr. Elopre, my question was in regards to very low income counties in particular. Are most people living in very low income rural counties white or some other racial group?

A. Yes. I'm sorry. I tried to answer that. Yes, you do see mostly white people. But I think that that is because, you know, that the majority of people in this country are Caucasian.

Q. Thank you, Dr. Elopre. And, Dr. Elopre, is it true that the reasons for poverty in Alabama are complex?

A. Yes, they're.

Q. And so many factors go into determining or influencing

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whether someone lives in poverty or experiences poverty?

A. Yes, I would say experiences poverty, multiple things go into that, yes.

Q. And we talked about some of those. They include literacy, high percentages of female households, right?

A. Yes.

Q. Is that true across racial groups?

A. So I would say it's true across racial groups. I would say, though -- and what my research focuses on specifically is the idea of that intersection. So that when you have multiple identities or multiple conditions, that puts you in that risk for poor outcomes. You usually see an amplification of those poor outcomes. And race is a significant thing to consider in that.

Q. Dr. Elopre, you're a clinician, right?

A. I'm a physician scientist, yes.

Q. But you treat patients?

A. Yes, I treat patients.

Q. Dr. Elopre, do you have any white patients who face structural obstacles like those we've talked about?

A. I do, yes.

Q. And how does that influence their health outcome?

A. It greatly influences their health outcomes. It makes it harder for them to be able to adhere to --

THE COURT: Dr. Elopre, could you repeat your answer, please. Towards the end, you faded it.

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THE WITNESS: Yes, sir. It makes it harder for them to adhere to multiple medications that I have prescribed them and treatment plan.

Q. (BY MR. SMITH:) So, Dr. Elopre, in general, that means that their outcomes are worse?

A. Yes, their outcomes are worse.

Q. Now, Dr. Elopre, social determinants of health, there are some different prongs of that you've identified; cultural, socioeconomic, and psychosocial. Do you recall that?

A. Yes, I do.

Q. What is a cultural social determinant of health?

A. So, you know, culture is a set of typically social norms that people have that they live within. That can be anything from having legacy of medical mistrust because of atrocities it's done to a group of individuals to not routinely as a part of your social norm accessing health care on a regular basis. So those things are kind of what you consider cultural.

Q. Socioeconomic, those are the things we have sort of already discussed, right, education, income?

A. Yes.

Q. Psychosocial?

A. So psychosocial usually is categorized as being like mental health, psychoses, substance abuse disorder, things of that nature. And pretty good summary ^ CHECK THIS.

Q. Dr. Elopre, you identified a few characteristics that are

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associated with COVID-19. Do you recall that testimony?

A. Yes.

Q. I think you identified in your report at least older age male sex and chronic health conditions. Do you recall that?

A. Yes, I do ^ CHECK THIS.

Q. Are those things correlated with COVID-19 outcomes or causative of COVID-19 outcomes?

A. They are correlated. So you see an association between one and the other.

Q. So there's no clear causation between for instance having diabetes and having a severe outcome from COVID-19?

A. No. I think that right now there are studies underway trying to figure out how we can identify or look at things like genes and if there's any associations between certain people having certain types of genetics that put them at a higher risk of COVID-19 from a causative standpoint. But all those are associations.

Q. Dr. Elopre, is that true for race as well? It may correlate, but there's no causative -- there's no proof of causation?

A. Yes, that is true. But again, I'll say that for most of the things that we do in epidemiology, we're looking at associations, not necessarily things that are causation.

Q. Are you aware of whether race correlates with things like chronic health conditions?

A. Race does correlate with chronic health conditions.

Q. Are you aware of whether any studies done for COVID-19

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and race, whether they have controlled for chronic health conditions?

A. I've seen a couple of studies done by Centers for Disease Control and Prevention, but those were primarily looking at whether there was a correlation between highly densely populated areas with African-Americans or Hispanics and seeing if there were worst outcomes in those areas. I do not think in that data set that they looked at a full set of other chronic health conditions.

Q. Thank you, Dr. Elopre. Dr. Elopre, I'd like to pull up some information from Bama Tracker. You did say Bama Tracker you consider that to be a reliable source of information on the pandemic; is that right?

A. Yes.

Q. And that's a source of information that you use?

A. Yes.

Q. Can you see this graph on my screen?

A. Yes, I can see it.

Q. Is this the same graph that your counsel showed you earlier?

A. It is.

Q. And so generally, Dr. Elopre, what is the state of the pandemic based on this graph in Alabama today?

A. So right now I think we have seen improvements from what we were seeing in July when we were having a surge. Still more cases than we were seeing at the beginning of the pandemic in

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March and April and May.

Q. Dr. Elopre, has there been a steady decline in cases since around the 16th or 17th, mid July?

A. I'm sorry. You broke up at the end.

Q. Since mid July, has there been a steady decline of cases based on this?

A. There has been a decline. You do see, like I was pointing out, a couple of upticks specifically in September. But overall, I would say that the trend has been down.

Q. Dr. Elopre, since the first of September is marked there on the graph, what's the general trend?

A. They have been decreasing.

Q. And, Dr. Elopre, you contribute that in part to the mask ordinance, right?

A. I do, yes.

Q. And is the mask ordinance still in effect?

A. The mask ordinance has been extended. It's going until October 2nd.

Q. Dr. Elopre, I'd like to pull up this graph. Is this the graph of hospitalizations in Alabama?

A. Yes, it is.

Q. And what general trend do you see in this graph?

A. Hospitalizations have improved. But like I was saying earlier, time will tell. I think with school reopening and what we see in the fall whether that stays the way it is. But right now,

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hospitalizations have gone down.

Q. So based on the information that's available right now, there is a decreasing there's in the number of hospitalizations?

A. Yes, there are.

Q. And, Dr. Elopre, I'm sorry. I'm pulling up a different graph. Do you see this graph here, Dr. Elopre?

A. Yes. Deaths per day.

Q. And what's the general trend you see in deaths per day?

MS. REED: Your Honor, I'm going to object. The past few questions and this question have been relatively vague. If he could ask more specific questions.

THE COURT: Sure.

MR. SMITH: Okay.

THE COURT: If the witness also does not understand the question, Dr. Elopre, you're free to ask for clarification as well. Mr. Smith.

MR. SMITH: Thank you, Your Honor.

Q. Dr. Elopre, do you see this line running through the graph?

A. Yes. The seven-day average line?

Q. Yes. Dr. Elopre, is that line generally a good way to track the course of the pandemic? Or the course of whatever statistic is depicted in this graph?

A. Yes, I think it is.

Q. And the seven-day average line in this graph, deaths per day, has that generally been going down since the first of August?

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A. Again, I think that's hard to really say. You see where it went back up here in September. It's gone down recently. But I don't know where that line is going to interject after that. So I would say that it's gone down in some instances, but we've seen some upticks.

Q. Let's see. Again, since the first of September, what's the general trend?

A. That's been down.

Q. Okay. Thank you, Dr. Elopre. Sorry. I'm trying to pull up the racial data that you were discussing with your counsel earlier.

A. Yes.

Q. Okay. Dr. Elopre...

THE COURT: Mr. Smith, was there a question about this chart you just put up on the screen?

MR. SMITH: I just asked if she recalled this chart, Your Honor.

THE COURT: Thank you.

Q. (BY MR. SMITH:) And so, Dr. Elopre, these are the case fatality ratio per county in Alabama; is that right?

A. Yes, it is.

Q. Now, if I click over here, that organizes the data by least. And if I do it again, those are the most per ten thousand population; is that right?

A. That's correct.

Q. In your experience, is per capita data a good way to compare

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statistics between counties of different sizes?

A. Actually, we do that a lot with HIV. So yes, when we're looking at HIV incidents, if you were to look just at the overall number of cases, it can be deceptively low if you just to look at rural counties. But if you were to look at the incidents looking at per capita data, you would know that a larger proportion of people are being impacted or infected.

Q. Dr. Elopre, the top five counties here we have Lowndes, Crenshaw, Tallapoosa, Butler, and Hale; is that right?

A. Yes.

Q. Are all of those counties in the black belt?

A. Tallapoosa is not, I believe. Lowndes, Crenshaw, Butler, Hale.

Q. Crenshaw County is in the black belt?

A. I thought so when I looked the other day.

Q. Okay. You didn't identify it as one earlier but --

A. I didn't. I don't typically work there but...

Q. Fair enough. Dr. Elopre, I'm now going to pull up some census bureau data. And do you ever rely on data from the census bureau for demographic information in your research?

A. Yes, I do.

Q. And -- I'm sorry. I'm trying to get it. Can you see the county labels here on the left-hand side?

A. Yes, I can.

Q. Okay. And what is this graph titled?

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A. White alone not Hispanic or Latino percent.

Q. So do you understand this to be the percentage of the population in each county in Alabama that is white alone, not Hispanic or Latino?

A. Yes.

Q. So going through those five counties, Lowndes is here at the top, right? What is that percentage?

A. 25 percent.

Q. And next we have Crenshaw and Tallapoosa?

A. 40 percent.

Q. And 70 percent is for Crenshaw County?

A. Yes.

Q. And for Tallapoosa?

A. 68.7 percent.

Q. And for Hale County?

A. 40 percent.

Q. And for Greene County?

A. That one says 17.5 percent.

Q. And, Dr. Elopre, for the state as a whole, what's the percentage as depicted there?

A. 65 percent.

Q. So of the five counties with the highest fatality rates, two of the five have a population that is -- had a greater proportion of white people than the state as a whole; is that right?

A. Yes.

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Q. Now, Dr. Elopre, I'd like to show you a different graph. This is from Bama Tracker as well. This is the data grid. And do you see what this column is labeled?
A. Seven-day average per hundred thousand.
Q. And so do you understand that to be a per capita comparison as well?
A. Yes, of cases.
Q. In the last seven days averaged, right?
A. Uh-huh.
Q. Dr. Elopre, in the last seven days per this stat, what are the top ten counties listed here? Or the top five, let's say?
A. Clay, Cleburne, is that how you say that? Franklin, Walker, Chilton.
Q. And you've identified Cleburne before as being a black belt county, right?
A. Yes.
Q. Are the other four?
A. No, they're not. I will say that this is looking at cases which have fluctuated, whereas this case fatality rate looking at deaths, death is permanent, and the worst outcome that you can receive from COVID-19.
Q. Sure. Did we talk about per capita data a few weeks ago in your deposition?
A. We did. But I don't remember specifically what.
Q. Sure. Dr. Elopre, let me -- stop sharing there. On August,

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Clay County, Franklin County, Wilcox County, Jackson County, Pickens County, do you recall that?
A. Yes.
Q. And how many of those counties are in the black belt?
A. Can you repeat them one more time? I know Wilcox is.
Q. Yes, of course. Clay County, Franklin County, Wilcox County, Jackson County, and Pickens County?
A. And Wilcox, I believe.
Q. So one of the five?
A. Yes.
Q. So, Dr. Elopre, is it fair to say that both three weeks ago and today based on a per capita measurement that the pandemic is effecting counties severely outside the black belt in Alabama?
A. You know, it's interesting. I would say that it's fair to say. But again I'll point out what is unique about what you just pointed out is the fact that you see that in the cases. But the fatality, the worst outcome you can have, is still disproportionately high in black counties. Why is that, right. I think that's probably what we were talking about with the social determinants.
Q. Dr. Elopre, I'm going to pull up a graph now from ADPH. Have you seen this graphic before?
A. Did you show this to me last time?
Q. ADPH publishes a graph every day, ever business day, characteristics of laboratory confirmed cases. This one is for

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yesterday. Today's hasn't been released yet as of the beginning of cross. You can see here. Does that say as of 9/8/20 at 11:30 a.m.?
A. Yes, I see it.
Q. Now, Dr. Elopre, in the race category, we talked about this a little bit or your counsel talked with you a little bit about this. There's a large percentage of unconfirmed cases; is that right?
A. Of cases where demographics like race are not known, yes.
Q. Okay. Do you know the racial makeup of those unknown cases?
A. So -- right, no. In epidemiology, speaking in those terms, typically when you have a missing data like this where you don't know what that makes up, one way to treat that data is to assume that it's just missing and we don't know what that would look like. Or you can do imputations based off what we know the other population looks like and say this is likely what this unknown category would be.
Q. But those unknown cases, they could all be white people, for instance?
A. They could be. But I would be surprised if that were the case.
Q. But you don't know?
A. No. You cannot say a hundred percent for certain.
Q. And, Dr. Elopre, do you see this category here, deaths with no underlying conditions?

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A. Yes, I do.
Q. And what's the total number of deaths with no underlying conditions?
A. 75.
Q. In looking at the race category here, is that different than the graph we looked at above comparatively?
A. It's about -- it's different, I would say, yes.
Q. Is the unknown statistic much smaller?
A. The unknown statistic is smaller, yes.
Q. Is the percentage of deaths with no underlying conditions attributed to white people 60 percent?
A. Yes, it is.
Q. And is the percentage of deaths where no underlying conditions attributed to black people at 32 percent?
A. Yes, it is.
Q. With 2.7 percent unknown and 5.3 percent other?
A. Yes.
Q. Thank you, Dr. Elopre. Dr. Elopre, you talked a little bit about temperature -- about fall and the pandemic. Has the pandemic slowed over the course of the summer?
A. Yes, it has. Let me back up. There has been a surge and a spike in some parts in the summer like we were talking about in July. But recently it has slowed, yes.
Q. But, Dr. Elopre, does that suggest that maybe temperature isn't a primary factor in the spread of the disease?

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A. So I think it's a little surprising. Most people were wondering if we would see that correlation. But based off what people have shown in the laboratory, it still seems like temperature will be a factor in COVID-19 spreading more rapidly in colder temperatures. I think a lot of the trends we were probably seeing in the summer had to do with large gatherings as well. So when summer is out, you have a lot more large gatherings and things like Memorial Day. And people at the beaches I think play a role as well.

Q. But as of now, we have no information?

A. As of now, we have no information.

Q. And, Dr. Elopre, you talked about vaccines earlier. Do you recall that?

A. Yes.

Q. Are you involved with the development of vaccines?

A. No, I'm not on the vaccine trials. I'm about to enter into an agreement to be on the data monitoring group for some of the vaccine trials related to COVID-19. But I'm not taking part in them actively.

Q. So as of today, most of the information you receive from vaccines that's being just from the news, right?

A. Actually, that's not entirely accurate. We do get updates within our division because there are several faculty members that are very involved in the vaccine trials that we're very excited about. And they give us updates and reports on the how those

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are proceeding.

Q. Dr. Elopre, you talked a little bit about flu season. Do you recall that?

A. Yes.

Q. Is there any indication that flu season will increase the spread of COVID-19?

A. You know, again, that's something that has been debatable. When we were looking at the beginning of the pandemic, which was on the tail end of flu season here in the United States, we did not see a lot of people who had coinfections with flu and COVID-19. I think time will tell whether we see that now. But the biggest concern is whether you're going to have a tax on the health care system. Because we do know that in flu season in general, people have poor outcomes. I think about 60 thousand people died last year. So add that on top of what we are concerned about with seeing COVID-19, that could be something that we have to try to control for and how we're managing our hospital beds.

Q. Dr. Elopre, you discussed with your counsel earlier some information from the CDC. Do you recall that?

A. Yes.

Q. As to recommendations for election officials, right?

A. Yes.

Q. Are those recommendations or mandates from the CDC on the?

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A. They're recommendations. They are not mandates.

Q. Are they often qualified with if allowed, where allowed, things of that nature?

A. They are. But most of the recommendations that are put out by the CDC are based off of some form of evidence of what they've seen from an epidemiologic standpoint. So I wouldn't say that they're just stating this, and there's no like background or support for why they're saying what they're saying.

Q. Well, Dr. Elopre, that wasn't really my question. My question was, are they just saying we recommend these things where they are allowed?

A. They are saying, we recommend these things where they are allowed. I would say, yes.

Q. Thank you, Dr. Elopre. And you talked a little bit about quarantine earlier. Do you recall that?

A. Yes.

Q. In a paragraph in the Governor's order, you referred to as individuals should self-isolate. Do you recall that?

A. Yes, I do.

Q. Is it actually -- if someone's quarantined, isn't it that they must isolate?

A. There's no penalty for you not doing it. It's not -- but yes, it says that you must isolate.

Q. What do you mean there's no penalty?

A. So what I'm saying is right now, when I've looked, there

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hasn't been anybody that has received some type of fine because they've been out and they haven't quarantined. It's kind of up to you as a citizen to quarantine yourself.

Q. Well, but the Governor's order is enforceable, right?

A. The Governor's order? What do you mean? Can you clarify?

Q. It's a law, right?

A. I'm sorry. You're breaking up.

Q. I'm sorry. Can you hear me?

A. I can.

Q. The Governor's order is an enforceable source of law, right?

A. Yes.

Q. And it says that individuals who have tested positive shall quarantine, right?

A. It does.

Q. And so someone who doesn't quarantine could theoretically be subject to prosecution, right?

MS. REED: Objection.

THE COURT: Yeah. It's a legal issue beyond this witness's expertise. What she says is, it's from her perspective, there's no enforcement. She does not quibble with the language of the Governor's order.

MR. SMITH: Thank you, Your Honor.

Q. Dr. Elopre, does the CDC define curbside voting?

A. It gives general recommendations for having the language that was present in it so.

Q. Does it define what it is or how it's conducted?
A. Not really to my knowledge. Not specifically.
Q. Dr. Elopre, is there any reason why an individual who needs to get an absentee ballot witnessed couldn't have someone do it through their car window?
A. Can you clarify the question?
Q. Sure. You're aware of the witness requirement for absentee ballots, right?
A. Yes, I am.
Q. And is there any reason why an individual couldn't in their car sign their ballot with someone watching through the car window and then pass it out the window to that person to then witness their ballot?
MS. REED: I'm going to object to this hypothetical.
THE COURT: Overruled.
THE WITNESS: So I would say that that is a possibility. But again, we're talking about being able to have the resources to do these things. Which I think could be lacking significantly for those who are highly impoverished.
Q. (BY MR. SMITH:) Well, Dr. Elopre, as to curbside voting, you testified that you'd pass a ballot in and out of a window, right?
A. I did.
Q. Is there any reason why that couldn't be done as safely with an absentee ballot and a witnessing requirement?
A. I believe I also testified, though, that in order to be able to

do that, you would have to have a personal automobile and that a barrier to that would be people like we were talking, have lower levels of having ownership of personal automobiles especially in black belt counties or in counties that have lower levels of poverty. So the likelihood of you needing to get a ride from somebody else I think is a barrier. If you could be in a car by yourself and you have that ability to do so, I think that that would decrease your risk of getting COVID-19.
Q. Dr. Elopre, could that also be done through a house window?
A. If you have stable housing, yes, it can be done through a house window.
Q. Dr. Elopre, would voters have to break any social distancing protocols to comply with the absentee ballot requirements?
A. In the scenarios that you mentioned, I think that there would not be a break if they could do that successfully. But I will say best laid plans, even if you have the resources to do all of those things, I can speak from personal experience with my son, you do not always have the ability to make sure to make sure people are wearing masks they way they are supposed to, and you put yourself at risk if you do those things.
Q. But, Dr. Elopre, if you have two witnesses wearing masks outside six feet apart, they watch you sign your ballot, and then you pass it to each of them to witness it, isn't that a safe way to comply with the absentee ballot requirement?
A. If you're able to do that, then yes, that would be a safe way

to comply. And that would be also not considering that this individual who's asking for those is in a vulnerable group. I still would be somewhat concerned if you're in that category of a somewhat vulnerable individual. So putting yourself in that type of risk. So if it are one of my patients who are highly immunocompromised had uncontrolled HIV, I would probably say that at if at all possible, I would limit your interactions with people as much as possible as much as you can.
Q. Dr. Elopre, the social determinants of health you talked about, do those play a part both in the context of the pandemic and outside it?
A. Yes, they do.
Q. So even before the pandemic, individuals with worse social determinants of health would have worse health outcomes, right?
A. Yes, that is true.
Q. And, Dr. Elopre, let's take an individual, for example, who is 75, who has obesity and diabetes and is -- experiences poverty. Compared to -- and is white. Excuse me. Compared to an individual who is healthy, 25, middle class, and black, in general, what would their health outcomes be as determined by session determinants of health?
A. I would say that's hard to say. In all likelihood, the individual who is 75 who has all these other chronic health conditions would have worse outcomes. But in saying that, there is strong data that supports you're looking at cross age groups

that black peoples regardless of health conditions have higher rates of death compared to white groups.
Q. Dr. Elopre, would you recommend that one of your patients would use curbside voting where they hand ballots back and forth through a car window?
A. I they were virally suppressed, meaning that their HIV virus was well controlled, I think that would be okay. If it was someone who had AIDS meaning their viral load was not controlled, I would probably encourage them to do absentee ballot if possible. But again like I was talking about with those requirements, I would probably counsel them a lot about how we could potentially help them in doing that.
Q. Dr. Elopre, do you plan to vote on November 3rd?
A. I do, yes.
Q. And how do you plan to vote?
A. I plan to vote in person.
Q. So you're going to go into the polling place on November 3rd?
A. Yes, most likely.
Q. Dr. Elopre, are you offering any opinion about Alabama elections that would occur outside the context of the pandemic?
A. My expert opinion was supposed to be in the context of the pandemic, and that's what I've been trying to inform my opinion on.
Q. Dr. Elopre, briefly, I'm going to share my screen with you

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again. And is this the Bama Tracker website?

A. Yes, it is.

MR. SMITH: Your Honor, the State had previously marked information from the Bama Tracker website as Exhibit -- State's Exhibit 184. We'd move that that be admitted into evidence.

THE COURT: Any objections to 184 coming in, Ms. Reed?

MS. REED: No objection, Your Honor.

THE COURT: Thank you. State's Exhibit 184 is received.

Q. (BY MR. SMITH:) Dr. Elopre, one more set of questions. In your report, you state that it is without a doubt that hospitals will be taxed in the fall. Do you recall that?

A. Yeah.

Q. If current trends continue in hospitalization numbers, case rates, et cetera, is that still without a doubt?

A. That's a big if. But yes, if COVID-19 cases go down, which I don't imagine that they will. But if we continue to have masking, COVID-19 cases go down, then I would say we'd have the typical taxing of our hospital system that we get in the fall related to flu season.

Q. Dr. Elopre, do you have any evidence that the current trends won't continue?

A. I do not have any evidence. I just have my opinion as an infectious diseases physician.

MR. SMITH: Thank you, Dr. Elopre. Nothing more from me.

THE COURT: Thank you. Mr. Cowell?

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MR. COWELL: I will pass on the witness at this time.

THE COURT: Thank you.

MR. DYAR: Your Honor, if I could ask a few questions.

THE COURT: You may, Mr. Dyar.

Q. Hi, Dr. Elopre. My name is Robert Dyar. I represent Jojo Schwarzauer in her official capacity as the Circuit Clerk of Mobile County. Did you recall testifying earlier that you would recommend drive-through or curbside voting to your patients if that were offered?

A. Right. I believe I said that if they were -- that their was well controlled and they didn't have any other high-risk health conditions like coronary vascular disease, diabetes, stroke, obesity, then yes, I would probably say you're safe to go.

Q. Assuming that a curbside copying and notary service was publically available, would you also recommend to you patients to take advantageous of that service in order to comply with the absentee voting requirements?

A. I would. But I would say that a lot of my patients -- it's hard. A lot of them do not have personal automobiles. I think it would be hard for them to comply with curbside in general.

Q. But for those that do have access to a personal automobile, you would recommend it as a reasonably safe way to comply with those requirements?

A. Yes. If they could be in the car by themselves, I would say it was safe.

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Q. And do you recall discussing CDC recommendations for election polling locations earlier?

A. Yes, I do.

Q. And you haven't reviewed the plans for about polling places in Alabama to determine if they would meet the CDC recommendations, have you?

A. No. That's not my area of expertise, so...

MR. DYAR: Okay. All right. That's it for me.

THE COURT: Thank you. Any redirect, Ms. Reed?

MS. REED: Yes, Your Honor.

THE COURT: You may begin.

MS. REED: Thank you.

Q. Dr. Elopre, Mr. Smith asked you a few questions about the relationship between HIV and COVID-19. Do you recall that?

A. Yes, I do.

Q. Do HIV and COVID-19 both use contact tracing?

A. They do.

Q. Are there any other similarities between diagnosing, treating, preventing HIV and doing the same for COVID-19?

A. Yes. Actually, one of the reasons that Center For AIDS Research were contacted by National Institutes of Health to try to mobilize COVID-19 testing specifically is because they saw those correlations. They recognized that as HIV providers and epidemiologists and advocates that we have experience working with community partners trying to make sure we have targeted

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testing and linkage to services for those that need it. And so I would say that those are the relative overlaps that you could see between the two.

Q. You wrote in your report and testified a little about the relationship between poverty and health. Do you recall that?

A. Yes, I do.

Q. And did you testify that poverty and health are entangled across the state?

A. I did.

Q. Is the relationship between poverty and health more pronounced among any specific demographic in the State of Alabama?

A. Yes. I would say that as I was saying earlier when you are looking at the intersection between other conditions or identities that we know cause worse outcomes, things like race make it a lot more plausible and probable. And what we've seen currently actually predictive or associated with worse outcomes. So having someone who's African-American living in poverty, typically they would have a worse outcome compared to their counterparts.

Q. Okay. Turning to the sources you cite in your report, Dr. Elopre, why did you cite those sources?

A. So I tried to choose sources that I knew were from people who are from the State of Alabama and also could speak to a body of research that really supports this idea of that intersectionality that you seen between things like race and poverty. But there are

other sources that are available that are from people within University of Alabama at Birmingham that also highlight this idea of social determinants and health and how you see worse outcomes specifically among African-Americans in the state.

Q. And can you give us examples of some of the those sources right now?

A. Sure. Several of them have been published by some of my colleagues. So Dr. Scene has published with Dr. Selwyn Bickers concerning specifically speaking to COVID-19. Dr. Bickers has talked about his cohort looking at African-American men and how they have worse outcomes related to multiple health conditions. There is a publication that focuses on hypertension that is published by Andrea Sheridan who is also in preventative medicine. So there are several that give examples that are contemporary from 2015 and later.

Q. And are the sources you just referenced, are they consistent with the discussion and conclusions you reach in your declaration?

A. Yes, I would say so.

Q. Okay. Earlier you testified that the health outcomes for your white patients are bad or worse, but there wasn't really a comparator there. Do you recall that?

A. I do.

Q. How did the outcomes for your white patients compare to outcomes for your black patients?

A. So actually, it's pretty stark. Most of the patients that I care for, number one, are African-American. And most of them compared to my white patients that have significant barriers to care, I would say there are more African-Americans in that group that have worse outcomes.

Q. And can you tell us why that is?

A. It's complex. I think a lot of it actually has to do with racism. And a lot of my patients, both white and black, are sexual or gender minorities meaning that they are gay, bisexual, or transgender. So they have issues with that as well. A lot my patients also have a history of incarceration, in unstable housing, mental health and substance abuse disorders.

Q. Thank you. Do you recall testifying about the COVID-19 trends in response to Mr. Brenton's questions and the graphs on Bama Tracker?

A. Yes.

Q. Are COVID-19 infection and death rates consistent?

A. The death rates have been pretty consistent.

Q. And what about case rates?

A. Case rates have fluctuated. As he was showing especially with the counties.

Q. So is it likely -- or what is the probability -- what can you tell us about the future trends of COVID-19 rates in Alabama based on how things have trended thus far?

A. You know, I would say that we might continue to see

fluctuations especially in what counties are being most heavily impacted by COVID-19. But what we're unfortunately seeing is that the counties that have the worst outcomes, those are staying the same. Especially Lowndes County which was referenced in my report back in July. You still see it at the highest case fatality rate for the state.

Q. Dr. Elopre, Mr. Smith showed you on Bama Tracker a graph for a charge showing a seven-day average by county. Do you recall that?

A. I do, yes.

Q. How probative is the seven-day average by county point in assessing overall trends in COVID-19?

A. It's a snapshot. It's just looking at that past seven days. I think to see the larger pictures, you'd have to look at it over of the duration of the pandemic.

Q. Okay. And did that chart include racial data?

A. No. Not that I recall.

Q. And so I think Mr. Smith highlighted that several of the counties at the top of the chart had larger proportions of white citizens but also a high seven-day average by county. Do you recall that?

A. I do recall that.

Q. Is it possible that those counties have high black fatalities within the county?

A. Yes, I would say it's highly possible.

MS. REED: I don't have any further questions.

THE COURT: Thank you, Ms. Reed. Mr. Smith, briefly.

MR. SMITH: Nothing more for me, Your Honor.

THE COURT: Thank you. Mr. Dyar?

MR. DYAR: Nothing for for me, Your Honor.

THE COURT: Thank you. Mr. Cowell?

MR. COWELL: Yes, Your Honor. We would like to renew our objection to allowing Dr. Elopre to testify as an expert in this case. Dr. Elopre's research has been limited to HIV which she has testified is not transmitted in a similar way to COVID-19. Therefore, we would renew our objection at this time and ask that her testimony be stricken.

THE COURT: Objection is overruled for the reasons stated earlier. She was received as an expert matter in the subject matters that she was tendered for. As to any weaknesses in her analysis or research, I believe they were addressed on cross-examine, or at least everyone has had the opportunity to point out the differences between her expertise and COVID-19. So objection overruled.

Dr. Elopre, thank you very much. You are released. Everyone else, it's 12:00. Why don't we stop here and break for lunch and plan to come back and start at 5 after 1:00. I think if I recall correctly, the executive director for Birmingham Ministries is up next. We will be in here at 1:00 to turn on the system and make sure everything is ready. But we will not begin until 5 after

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1:00. Thanks, everyone. Have a good lunch break.

(Witness excused.)

(Recess.)

MR. WEBB: Judge, may we ask who the next witness will be so that we could coordinate that.

THE COURT: Executive director of Greater Birmingham Ministries. Mr. Harris or Mr. Ford. Mr. Douglas. Is that correct, Mr. Ross?

MR. ROSS: Yes, Your Honor.

THE COURT: Mr. Douglas, good afternoon.

MR. ROSS: Your Honor, to the extent that the Defendants are asking how long or who our next witness, we would ask that they let us know how long they'd expect to take on some of their crosses. Because we'd obviously like to get through as many witnesses as possible today.

THE COURT: Was it a length question as opposed to who the next person is? But I do agree I need to speed this up in some fashion. I thought the morning today went better. And hopefully we will continue with the same coordination that the Defendants are showing without being forced by my hand just yet.

MR. ROSS: Thank you, Your Honor. I would just add that -- all right. We -- Mr. Douglas, are you ready?

THE WITNESS: Yes.

THE COURT: Good afternoon, everyone.

Mr. Douglas, would you please raise your right hand so that

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Ms. Humphrey can swear you in.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Yes. My name is Scott Douglas III.

THE COURTROOM DEPUTY: Could you spell it for me, Mr. Douglas.

THE WITNESS: I'm sorry. S-C-O-T-T, D-O-U-G-L-A-S.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: Birmingham, Alabama.

THE COURTROOM DEPUTY: Thank you. You can put your hand down.

THE COURT: Mr. Ross, your witness.

MR. ROSS: Thank you, Your Honor.

Q. (BY MR. ROSS:) Mr. Douglas, what race do you identify as?

A. African-American.

Q. And you said you live in Birmingham, Alabama. How long have you lived in Birmingham?

A. Since 1976. 44 years.

Q. And what is your occupation?

A. I'm executive director of Greater Birmingham Ministries.

Q. How long have you been in that position?

A. I have been in that position since 1993. 27 years.

Q. And what is Greater Birmingham Ministries?

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A. Sure. Greater Birmingham Ministries is a 50-year-old multi-faith, multiracial organization that works to assist low-income families and support public policies that assist low-income families.

Q. Is that the mission of GBM?

A. Our mission is to serve people, build communities, and pursue justice.

Q. Is GBM a membership organization?

A. Yes, it is.

Q. Are there different types of members?

A. Oh, yes. There are three types of members of Greater Birmingham Ministries. There are sponsoring members, and those are the faith communities that support GBM. Then there are individual donor members, and there are client members.

Q. What is a sponsoring member?

A. Sure. A sponsoring member, we use the term faith community or congregation. For instance, the African Methodist Episcopal Church of Alabama is a sponsoring member. The Christian Methodist Episcopal Church is a sponsoring member. The North Alabama Conference United Methodist Church is a sponsoring member. The 16th Street Baptist Church is a sponsoring congregation. The Unitarian Universal Church of Alabama is a sponsoring member. We have 22 all together.

Q. Where do the sponsoring members operate?

A. It varies based on the structure of the individual

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denomination that's not a single church. For instance, the African Methodist Episcopal Church the Ninth Episcopal District covers the entire state. The United Methodist Conference of North Alabama just covers Birmingham north to the Tennessee state line. The Episcopal Diocese of Birmingham covers from the Tennessee border to north of Montgomery. What else? The Presbyterian Shepherds Dilaply (sic) covers the entire state. So other than individual congregations, our denominational members cover either half or all the State of Alabama.

Q. Who are the individual members of GBM?

A. The individual members of GBM are individuals -- individuals who volunteer and donate to the work and mission of GBM and also our client members who choose to be so members.

Q. Do the sponsoring members help to recruit the donor members?

A. Oh, yes. And they actually encourage us to do so. We, before the pandemic, we'd be invited to their conferences and meeting conferences to make presentations about the work of GBM. And they encouraged us to solicit volunteers from their ranks.

Q. Approximately how many members does GBM have?

A. Approximately five thousand members all total.

Q. Where do they live?

A. The vast majority live in the Birmingham Metropolitan area -- the five counties around Birmingham, the Birmingham

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Metropolitan statistical area.

Q. Do the donor members live outside the Birmingham area?

A. Yes. We have donor members across the State of Alabama and a few states around the country.

Q. Does that include Mobile County?

A. Yes, it does.

Q. Tuscaloosa?

A. Yes, it does.

Q. Montgomery?

A. Yes, it does.

Q. Madison County?

A. Yes.

Q. Do you maintain any records about your members?

A. In all three categories, yes, we do to varying degrees of specificity detail.

Q. What kind of records do you keep for your members who are also clients?

A. In our client database, we keep records of family income, family size, if the person who applies registers to vote. Of course address and contact information like email, phone, street address.

Q. Does it also include information about age and race?

A. Yes. It includes information about age for the entire family at the time they apply and also race or ethnicity or national origin.

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Q. How are these records collected?

A. These records are collected at the point of interview with our clients when they approach us trying to address a need.

Q. And then are there check ins after that?

A. Yes, there are check ins after that. We inform our clients, for instance, when we have resources to distribute through email. We have -- for those who have emails, we let them know about special events or health clinics going on in the city or in the county nearby, information about the beginning of school and school uniforms and where to obtain school uniforms. Or we used to do that.

Q. Do you also keep information about their voting?

A. Yes, we do. The information that we keep is are they registered to vote, and if not, how we can get them get register to vote and how to get registered to vote.

Q. Are these records kept in the normal course of GBM's business?

A. Yes, these records are kept in the normal course of business in a database.

Q. Why do you keep these records?

A. Several different reasons. One, we want to maintain contact with people who come to us in need because they may come to us with the need for food, or help with the rent or help with utility bills. We also want them to be forward participants in civil engagement in the live of the community. Secondly, we're

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required by FEMA and the community food bank to keep economic information on the clients we provide food to that we get from FEMA and food we get from the food bank.

Q. And did you review these records to prepare for your testimony today?

A. Yes, I did.

Q. What's the approximate racial makeup of GBM's membership?

A. The makeup of our demographic database is about 85 percent African-American, 15 percent white, about 5 percent Latino.

Q. And what are the age demographics of your members?

A. Age demographics, about 40 percent are over 60, 65. About 30 percent are between 21 and 30. And another 30 percent between 30 and 59.

Q. And about what percentage of your members are registered voters?

A. As recently as July, about 85 percent of our members are registered to vote.

Q. And about what percentage of your members live alone?

A. Almost 40 percent of our members live alone.

MR. HARRIS: Objection, Your Honor. I believe that's facts not in evidence. I didn't hear him say anything about living alone status.

MR. ROSS: Your Honor, he testified that they keep records

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about the household and the people who live in the household.

THE COURT: Correct. At intake, when he collected the demographic data. So let me overrule, please.

MR. ROSS: Thank you, Your Honor.

Q. Mr. Douglas, of those individuals who live alone, is there a particular age demographic that they fall into?

A. Nearly all of those who live alone are senior citizens over 60 years old.

Q. And you testified that you also keep information about household's income; is that right?

A. That's correct.

Q. And what percentage of your members, client members are low income?

A. Over 90 percent of our client members are low income on an annual basis. There's another -- go ahead. I'm sorry.

Q. Sir, you can go ahead. I'm sorry.

A. Oh, I was saying 90 percent are -- of our client members are low income on an annual basis. Approximately 10, maybe 15 percent are people who are low income at the moment they come see us. For instance, people who just lost their jobs.

Q. Do your members include people who lack photo ID?

A. Yes.

Q. How does GBM know that?

A. We know that during our recurring questions about are you registered to vote and during our voter education activities and

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phone banking.

Q. Does GBM document members who lack access to the computer or internet?

A. Yes, we do.

Q. How do you do that?

A. We began doing that back in the beginning of January in particular when we started working seriously on getting people to complete the census. And one of the options is to do it on line. And the question was do they need help in doing it on line, can they do it on line by themselves, or do they need our assistance doing it. And that's when we found out that they did not have or did not know how to use technology to complete the census on line.

Q. And based on that, how many of your members lack internet or computer access?

A. We did not call everyone in our database with our volunteers during the phone banking. So I don't have a hard number for exactly how many.

Q. Based on your understanding about what percentage, of those members that you did call?

MR. HARRIS: Objection. Speculative.

MR. ROSS: I asked him about the members that he did call.

MR. HARRIS: Withdrawn.

THE COURT: As to those that he made contact with, he can answer the percentages for those individuals.

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THE WITNESS: Can you give me the question again?

Q. (BY MR. ROSS:) Yes. Mr. Douglas, so of those members that GBM did contact and keep a track of, about what percentage of those members lacked computer and internet access?

A. Between 60 and 65 percent.

Q. Do those members who live alone overlap with those members who are low income?

A. Oh, yes.

Q. Do the members who are -- live alone also overlap with your members who are black or Latino?

A. Yes, they do.

Q. And do the members who live alone overlap with those who are also over age 65?

A. Oh, yes.

Q. Okay. And the members who live alone, do they overlap with those who lack computer or internet access?

A. Yes.

Q. Do those members who lack photo ID also overlap with the members who are black and Latino?

A. Yes.

Q. And the members who lack photo ID, do they overlap with those who are low income?

A. Yes.

Q. And the members who lack photo ID, do they overlap with those who are over age 65?

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A. Yes.

Q. Are your members who are over age 65 following social distancing rules?

MR. HARRIS: Objection.

THE WITNESS: Yes.

THE COURT: How do you know that, sir?

THE WITNESS: Yes. After COVID pandemic came to Alabama, GBM had to change the way we did our food distributions that were on a weekly basis. And people would come or have someone drive -- have someone drive them to our offices and if they qualified to receive the free food distributions. After COVID, we had to change that because we could not use spatial distancing in the way -- we couldn't spatial distance in the way we did before.

So we came up a way -- it's the same way you get your COVID testing now drive-through where you would drive through stay in the distance. And one set of volunteers would collect your family's information to see if they qualify. Another set of volunteers would give them the food. And distance is the line of cars that we first check them for qualifications. Then we would provide for them the food.

When we informed our clients about that to let them know of the changes, several -- some said they were not coming. They couldn't come. Because they were not -- some were not even leaving the house or had relatives or family members do the

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shopping for them. They told us they weren't coming. They couldn't come.

THE COURT: Based on that, the objection is overruled.

MR. ROSS: Thank you, Your Honor.

Q. (BY MR. ROSS:) So, Mr. Douglas, just to clarify, so your testimony was that some of your members were refusing to even come in for free groceries; is that right?

A. That's correct.

Q. Mr. Douglas, I believe you testified that one of the goals of GBM was civic participation?

A. That's correct.

Q. What activities does GBM typically engage in to accomplish that goal?

A. Civic participation covers a whole wide range of activities. It ranges for GBM of course encouraging people to participate in health screen activities. Cooper Green Hospital would often come to our site and conduct free health care screenings, blood pressure checks, and other tests. It also involved helping make sure that everyone who was qualified was registered to vote and participate in the elections. We also encourage people to attend city council meetings and Jefferson County commission meetings and other boards and agency that touch on their lives.

Q. And why does GBM engage in that work?

A. It's -- the way we say is it at GBM, a lot of people who face economic cries will call GBM to say -- to reconnect their water

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because they've been cut off because they wasn't able to pay or reconnect their electricity because it's been cut off or reconnect their gas because it's been cut off. We are saying that people need to reconnect or get connected to everything that affects their lives. Not just the utilities, not just the rent, not just the gas but also to participate in the decision making and decision making that affects the quality of their lives by attending city council meetings, by attending PTA meetings, by attending the first meeting, for instance, that in the formal school year, the meetings of their child's teacher, you know, when school first opens up. Those are things that we see are really family-based community civic engagement.

Q. Mr. Douglas, do you know what the witness requirement for absentee voting is in Alabama?

A. Yes, I do. Currently it's two witnesses or a notary stamp.

Q. They must sign absentee ballot affidavit; is that right?

A. That's correct.

Q. Do you know what the photo ID requirements for absentee voting is in Alabama?

A. Yes. It's a valid state issued photo ID.

Q. And do you know whether people have to mail in a copy of their photo ID for their absentee ballot application?

A. Yes. It's on the application. It says so.

Q. Does GBM typically help people with absentee voting?

A. We haven't much previously.

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Q. Why not?

A. Well, in previous years, we have encouraged those who can to go in person. That's one thing. The other thing is that there's a -- I want to say it's a culture but a tradition of voting in person, to be able to go to your voting booth and cast your ballot and see that number change to make sure your -- which confirmation your vote counted in real time. There's a pride in that.

Q. And when you say there's a tradition, is there a tradition among a particular demographic group in Alabama of going to vote in person?

A. Yes. The one I'm most familiar with is the African-American community in Birmingham. And yes, there is a pride with people coming out with their I Voted sticker.

Q. Mr. Douglas, are you aware of a change in absentee voting rules for this year?

A. Yes, I am.

Q. What is that change?

A. Secretary of State Merrill issued a change I think on July 17th in which on the absentee ballot application you can check that you have -- well, on the waiver it talked about -- the order, it talked about having a reasonable fear of being in close proximity during the COVID period. But on the absentee ballot, it says I have an illness or infirmity that prevents me -- in addition to the -- I'll be out of town stuff. I have an illness or infirmity that prevents me from attending my poll in person. And then the

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second box, it says, I have a musculoskeletal and lists several other infirmities. And then if you're over 65, you do not need a photo ID.

Q. Okay. We'll come back to that, Mr. Douglas. Is the witness requirement a barrier for your members to vote?

MR. HARRIS: Objection.

THE WITNESS: It's a barrier to -- I'm sorry.

THE COURT: You believe it's a barrier to your membership?

THE WITNESS: Yeah. I'm sorry. It's a barrier to our members.

THE COURT: Why?

THE WITNESS: Oh, yes. Because those who live alone, especially elderly or in the fragile, vulnerable compilation of the COVID to come into contact with two people to sign their witness document or application for absentee ballot.

THE COURT: All right. Based on what you've said earlier about outreach to them, the food distribution response, I'll overrule the objection.

MR. ROSS: Thank you, Your Honor.

Q. What about the notary option, Mr. Douglas?

A. The notary option --

MR. HARRIS: Objection, Your Honor. If I may be heard.

THE COURT: Of course.

MR. HARRIS: I'm not sure I've heard that that's sorts of things are in records that might qualify for a hearsay exception. I

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understand Mr. Ross mentioned some records. I don't know of any records about satisfying the witness requirement, about notaries, or about any of these things that might get around the hearsay rule.

MR. ROSS: Your Honor, Mr. Douglas clearly testified that they keep records on who lives alone. He also testified that several members are -- that members are social distancing, and he's aware of what the witness requirement is. And so I'm asking him to the extent he knows whether his members have faced a barrier to the witness requirement. He will, as he has with every other objection, explain the basis for his knowledge and why he thinks it may or may not be a barrier for his members.

THE COURT: Because he will tell me why he believes that the notary exception will pose a barrier, I'll overrule the objection for now.

MR. ROSS: Thank you, Your Honor.

Q. Mr. Douglas, the notary option, does that pose any barriers for your clients and why?

A. The notary option will pose a barrier to our clients typically those would live alone in terms of calling them to help come in contact with two people. I'm sorry. On the notary. The notary barrier would cause a barrier to our clients because of the fact one, they have to go to or have a notary come to them, and two, they also have to pay.

MR. HARRIS: I renew my objection, Your Honor. He didn't

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provide a factual basis for those statements.

MR. ROSS: Okay. Your Honor, I'm happy to ask follow-up questions or --

THE COURT: You may.

MR. ROSS: Mr. Douglas --

MR. DAVIS: Mr. Ross, I'm sorry to interrupt you, and we're not double teaming you, I promise. Your Honor, I have been notified that some of our colleagues in Mobile, their internet and phone lines are both off and may have dropped off for a moment. And I just want to make the Court aware I think some of the parties are not able to participate at the moment.

MR. ENGELHARDT: It's not Mobile, Your Honor.

THE COURT: It's not Mobile, Mr. Engelhardt?

MR. ENGELHARDT: I think it's Ken Webb in Lee County.

MR. DAVIS: I beg your pardon. I got mixed up. It's the folks in Lee County. So that would be Ken Webb. Mr. Webb and Mr. Cowell. I apologize for the interruption.

THE COURT: Well, it's important for us to know. Were Mr. Webb or Mr. Cowell, either of them responsible for this witness? Do you know, Mr. Davis? I know you guys have allocated who was doing the crosses. Do you know if those gentlemen from Lee County were going to take on any of the cross responsibilities?

MR. DAVIS: I do not know. I only know that Mr. Harris is taking those responsibilities for the State Defendants. And I

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apologize, but I'm not sure who may be handling this witness for our codefendants.

THE COURT: On my screen, which at least has been highlighting the active participants -- I don't know if that's by design. I'm not technologically savvy in any way. But it shows Mr. Dyar and Mr. Harris at least having some responsibility for Mr. Douglas's cross. And no one else has popped up at all. I mean, you guys I think have talked about this or at least have some coordination.

Mr. Harris, Mr. Dyar, let me start there. Are you guys doing some of this cross-examination of Mr. Douglas?

MR. HARRIS: Yes, Your Honor, I am planning to cross-examine Mr. Douglas on behalf of the State Defendants.

THE COURT: Mr. Dyar?

MR. DYAR: Yes, Your Honor, on behalf of our client, I plan to.

THE COURT: Okay. Has there been any coordination at all amongst the parties as to who is taking point for cross-examines?

MR. HARRIS: Your Honor, the extent of the coordination as I understand it is that the State Defendants would go first, you know, which would entail the majority presumably of the cross-examination. If we could have a few minutes to call the Lee County folks to see if they planned to cross, if that's information you'd like to know.

THE COURT: Well, I do -- would like to know that. Because if

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they are on point, then I need them on the call at a minimum by telephone. But I've also for some reason on my court screen, are the only people that are visible to date have been individuals who somehow the system has figured out are doing some cross-examination duties and/or the direct exam. And there's generally not been any exception to that.

So I thought there was coordination that you guys -- because last week, when we met, I said that I was going to do this alphabetically -- well, not alphabetically. Just based on the order listed in the pretrial order. And I think there was some correction that you guys were going to talk and would figure all that out so that I don't have to go through the list person by person.

So but anyway, going forward, let me know so that I don't limit calling only to the people that are flashing on my screen.

MR. DAVIS: And, Your Honor, I believe our colleagues have rejoined us now.

THE COURT: Correct. Okay. All right. Mr. Ross, you were going to go further into Mr. Douglas's knowledge of the notary requirement posing a burden for his clientele.

MR. ROSS: Yes, Your Honor. Thank you.

Q. Mr. Douglas, can you explain to me your basis for believing that your clients will face a barrier because of the notary requirement.

A. Because of their adherence to safer at home, the barrier that would be posed would either be having to go out and find a

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notary. There is also the barrier of the income having to pay for a notary.

THE COURT: Is this information -- I'm sorry. I thought you were done.

MR. ROSS: I'm sorry, Your Honor.

THE COURT: No, go ahead.

MR. ROSS: No, you --

Q. So, Mr. Douglas, is this information that GBM collects from its members?

A. The information that we collect from our members is whether or not they are low income and their age. And the age tells -- and the demographics. The age tells us if they are vulnerable. The income tells me they are low income and vulnerable.

Q. Does GBM reach out to its members who are low income and vulnerable to find out if they are able to vote?

A. Yes, we do. Before we -- before the last -- July 14th election.

MR. ROSS: Your Honor, I believe we have established his basis for knowing why the witness requirement might be a barrier for his members. And to the extent he hasn't, he'll also testify about why this is relevant to the work that GBM does.

THE COURT: Yes. It's not just based on any specific survey. It's just based on income and living arrangements and other demographics. With that caveat and with that -- am I missing something else, Mr. Ross?

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MR. ROSS: I believe he also said that they did in fact survey their members before the July 14th election.

THE WITNESS: That's correct. The phone banking of our clients.

MR. HARRIS: And which is hearsay so far as we know. And I believe we'll also heard that this is the first election I believe he said where they had focused and on absentee balloting. I'm not sure how that could be kept in the ordinary course of their organization if this is the first time they've done it.

MR. ROSS: Your Honor, it's based on his personal knowledge as the executive director of Greater Birmingham Ministries for 27 years.

MR. HARRIS: It's hearsay then if it's his personal -- I'm sorry, Your Honor. I don't mean to go back and forth.

MR. ROSS: Your Honor, it's based on his review of the records and his understanding as the executive director of Greater Birmingham Ministries. I'm happy to ask additional questions to lay that out for Mr. Harris. But --

MR. HARRIS: Your Honor, I don't mean to be a pain here. My --

THE COURT: Go ahead.

MR. HARRIS: It seems to me that we could hear from a member of GBM who could testify if they could. But so far as we've heard so far, Mr. Douglas doesn't have personal knowledge. And to the extent he has something, it's hearsay. I haven't heard

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anything that would cure those kind of foundational issues.

THE COURT: With the caveat that at least -- Mr. Ross, I don't see the part about the survey. So I don't recall that specific. But he is providing information, I guess, based on his knowledge of their income and general demographics. And he believes based on that it will pose a problem for his membership. With that restriction and with that understanding, I'll allow his testimony.

MR. ROSS: Thank you, Your Honor.

THE COURT: You may continue.

MR. ROSS: Thank you, Your Honor.

Q. So Mr. Douglas, are you ready to continue?

A. I'm sorry. There was a shoulder pain.

Q. Okay. No worries. Just want to make sure you're comfortable. You testified earlier that your members, a percentage of them lack video conferencing technology; is that right?

A. Yes.

Q. And you testified earlier that some of your members lack photo ID; is that right?

A. That's correct.

Q. Are you aware -- and you mentioned as you were testifying about a potential exemption to the photo ID requirement? For absentee voters?

A. Absentee ballot application.

Q. Yes.

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MR. ROSS: Eric, can you please pull up Plaintiffs' Exhibit Number 22.

Q. Mr. Douglas, do you recognize this document?

A. Yes. It's the Alabama Application for Absentee Ballot, yes.

MR. ROSS: Your Honor, Plaintiffs would like to move Exhibit Number 22 into evidence.

THE COURT: Any objections?

MR. HARRIS: No, Your Honor.

THE COURT: Plaintiffs' 22 is received. Thank you.

Q. (BY MR. ROSS:) Mr. Douglas, I'd like to direct you to the third excuse.

MR. ROSS: Eric, if you can scroll down.

Q. The one that begins, "I have a physical infirmity, and has sort of a longer description there. Do you see that, Mr. Douglas?

A. Yes, I do.

Q. Can you, please, read it out for me?

A. Oh, oh.

Q. Well, rather than reading it out, this was the excuse that you were talking about earlier; is that right?

A. That's correct.

Q. Okay. And why is it -- your members who don't have photo ID, do you know why this might be a barrier for them?

MR. HARRIS: Objection.

MR. ROSS: I'm asking him if he knows why.

THE COURT: Overruled.

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THE WITNESS: Oh, okay. Those without photo ID why it would be an objection? I think -- well, when I read this -- let me say two things. When I read this, there are use of words that people, I don't think people, a lot of people over 60 or 65...

THE COURT: Mr. Douglas, let me interrupt you briefly. It seems to be a connection issue on your end, I think.

THE WITNESS: Oh.

THE COURT: Having a hard time hearing the last answer that you were giving. Can you, please, try again, sir.

THE WITNESS: Yes. Am I clear now?

THE COURT: Keep going. Thank you.

THE WITNESS: Oh. My computer just said my internet objection is unstable. Flashed. I hope I'm not catching what the other county had. Okay. Yes. I believe it's confuse language.

Q. (BY MR. ROSS:) Okay. Why do you think it's confusing language?

A. It's the long paragraph in letter A, the and, and letter A or letter B. The terms that is used and also because there is at the bottom of the application that if you say something is untrue, you're subject to criminal charges.

Q. Does criminal charges include a felony?

A. Yes.

Q. So has GBM received any questions from its members about complying with the witness or photo ID requirement?

A. Have we received any questions?

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Q. Yes.
A. Oh, yes. We received questions during the phone banking that preceded the July 14th runoff.
Q. And what did GBM do in response to those questions?
A. Because of those questions, we established a series of -- we called them absentee voter clinics.
Q. And what were those clinics?
A. Those clinics were outdoor with tables and tents and social distancing sites where people could come and get absentee voter assistance in which we would provide on site witnesses as well as notaries. Also, using our office printer and copier, make free photocopies.
Q. And how often did GBM present these -- do these clinics?
A. We offered them four times before July 14th and twice afterwards.
Q. And does GBM intend to do more of these clinics?
A. Yes, we intend to do several more between now and the end of October.
Q. And about how many people have attended the clinic so far?
A. Of the six we have done so far, approximately 150.
Q. And can you tell me, so why has GBM begun offering those clinics?
A. We are offering the clings to help people who are having problems understanding the languages, as well as to offer free notary services and also witnesses in a spatially distanced way.

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Q. And photo ID services as well?
A. And photo ID copying, yes.
Q. Did GBM reach all of its members with these services?
A. No. We phone banked and emailed to let people know. When were expecting more people to come by. But there's people who still didn't come by because they're still not going out.
Q. And did you keep a record of those members who said they were not going to come by?
A. I don't think we did. Because it wasn't a -- we were trying to get a count of those who were coming and not those who were not coming.
Q. Okay. Does GBM keep any regular records as a part of its normal business practice about barriers that its members face to voting?
A. Yes.
Q. And did GBM keep those records for members after the July 14th election?
A. We have not kept them for after the July 14th election. But we will start up again.
Q. Okay. Let me be clear. So did you contact members about whether or not they were planning or able to vote in the July 14th election?
A. Yes, we did.
Q. And do you normally contact your members after elections to see if they were able to vote?

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A. No, we did not -- normally, we do not contact people after an election.
Q. Okay. You contact them before an election usually?
A. Yes, before an election. After an election was unusual because this was a very special election. It was a postponed -- a pandemic postponed special election that had special conditions attached to it.
Q. Okay. And to the extent you surveyed your members because of the necessity of this pandemic, do you recall what barriers those members faced?

MR. HARRIS: Objection. I renew my objection that he hasn't established that this is a regularly conducted business record. I think he even said as much, that they don't do this normally.

MR. ROSS: Your Honor, he said that they norm -- I'm sorry, Your Honor.

THE COURT: Go ahead. Your question is as to the survey that he did do. Is that what you now want him to go into?

MR. ROSS: Yes, Your Honor.

THE COURT: Okay. You may answer that question, sir.

THE WITNESS: Repeat the question.

Q. (BY MR. ROSS:) I was asking were you -- based on the survey that GBM did do, are you aware of members who weren't able to vote in July?
A. Oh, yes.
Q. Okay. Who is Larry Walton?

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A. Larry Walton is one of our clients. He's a senior citizen. He's way over 65. Way over 65. He has a disability, and he's homebound.
Q. Do you know if he was able to vote in July?

MR. HARRIS: Objection.

MR. ROSS: I'm asking based on the survey, Your Honor, that they conducted as a part of the normal course of business. He also testified that obviously this is the unique circumstances with the pandemic. Normally they contact people before. But given the pandemic, they also contacted them after. But in any event, it's all a part of their normal course of business.

MR. HARRIS: Your Honor.

THE COURT: What's the objection if he knows if one of his members voted in July or not.

MR. HARRIS: I'm sorry, Your Honor. I'm not sure that I -- my objection is that that would be hearsay in that there's no record of it that might cure that problem. We haven't heard about a regularly conducted record that would solve this hearsay issue of members or someone telling Mr. Douglas how it is they voted and what problems they had when they voted and whether or not they could have solved those problems and voted otherwise. This is all testimony that we don't have the chance to consider or hear from these would-be voters, and we have no way of knowing anything about these voters.

THE COURT: Okay. As to Mr. Walton who is the person on

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the table so far, the objection is overruled.

Mr. Douglas, the question is do you know if he voted.

THE WITNESS: In response to our survey, he said he did not vote.

Q. (BY MR. ROSS:) Who is Tanya Newton?

A. Tanya Newton was one of our clients that we surveyed after the election. African-American woman.

Q. And was she able to vote?

A. No, she was not able to vote.

THE COURT: Based on what she told you.

MR. HARRIS: Your Honor --

THE WITNESS: Yes, she told us.

THE COURT: Yeah. But you don't know for a fact --

THE WITNESS: No.

THE COURT: Correct. And you're not testifying here that these individuals did not vote. You're just saying that they represented to you that they did not vote.

THE WITNESS: That's correct.

THE COURT: Okay. Objection's overruled.

MR. ROSS: Thank you, Your Honor.

Q. Since GBM -- who is James Sokol?

A. James Sokol is a member of GBM.

Q. And do you know if he had any issues with voting in July?

MR. HARRIS: I'll lodge an objection and say it's a standing objection for questions similarly. I'm not trying to belabor the

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point.

THE COURT: No, it's not -- no apologies needed to preserve the record.

THE WITNESS: He was able to vote.

Q. (BY MR. ROSS:) And did he have any barriers to voting?

A. Just the witness requirement.

Q. And why was the witness requirement a barrier for him to vote?

A. To get one more person in addition to his wife to be a witness.

Q. Did his barrier have anything to do with his medical condition?

A. Yes.

Q. What was his medical condition that created a barrier for him?

A. He has a -- I won't name it. A neurological disease.

Q. Did he also have COVID-19?

A. Oh, yes. He -- he had COVID-19 early.

Q. And how did you -- how did you obtain -- strike that.

And based on the survey of members, did GBM use it to determine that additional clinics were necessary for its members?

A. I'm sorry. Additional what was needed?

Q. That the absentee voting clinics were needed for its members?

A. Yes.

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Q. Going back to the clinics, what was your role in them?

A. As executive director, my role was to one, help recruit volunteers, and two, help provide -- provide the resources necessary to conduct the clinics. We purchased tents. We used our own folding tables. And we had to allow the use of our photocopier to make copies of the photo IDs, as well as provide tablets and laptops and use our building's Wi-Fi to look up information.

Q. And about how much do these clinics cost?

A. Oh, the clinics? The clinics themselves, just the material costs, cost around two thousand dollars.

Q. And did staff work at the clinics?

A. Staff and volunteers worked the clinics.

Q. About how many staff worked the clinics?

A. Eight -- I'm sorry. Two staff worked each clinic, up to 12 volunteers.

Q. And if GBM did not offer these clinics, what would your staff and volunteers have worked on?

A. We would have continued to do our work around helping particularly hard-to-count populations, low income, people of color, senior citizens, complete the 2020 census.

Q. And where would the funding have gone if you were not doing these clinics?

A. Well, some of the funding came from the -- came from what we would have used to do the census outreach. Because just like

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the census completion work, just like elections under COVID-19, are totally new operations.

Q. If there was no witness or photo ID requirement, would GBM continue to do these clinics?

A. If there were no witness or photo ID requirements, we would not have to do those clinics because we could do the voter education work over the phone.

Q. Did GBM advertise these clinics at all?

A. Yes, we did. We advertised it in our new -- we call our e-news, our email newsletter that we send to all our members and all our clients that we have email addresses for as well as phone banking.

Q. Did GBM create any educational materials regarding absentee voting?

A. Yes, we did.

Q. I'm going to show you what has previously been marked as Plaintiffs' Exhibit Number 373. Do you recognize this document?

A. Yes. That's one of our safe voting reference.

MR. ROSS: And could you scroll through it, Eric, please.

Q. And it has a number of pages; is that right?

A. That's correct.

Q. And so this is -- I think you said this is one of the GBM educational materials that you all created?

A. Correct.

MR. ROSS: Your Honor, at this time, I'd like to enter

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Plaintiffs' Exhibit 373 into the record.

THE COURT: Any objections?

MR. HARRIS: No, Your Honor.

MR. ROSS: Thank you.

THE COURT: 373 is received.

MR. ROSS: Thank you, Your Honor.

Q. Mr. Douglas, when did GBM create that flier?

A. We created that flier -- we started working on that flier in April. And we used it throughout the period up to the July 14th election.

Q. Why did GBM create the flier?

A. We wanted to provide our clients in particular members with information and assistance in applying to vote absentee.

Q. And are you aware of any elections after November 3rd?

A. 2020?

Q. Yeah.

A. I know there's an election in Alabaster, a house legislative race in a district near Alabaster, in Alabaster, and also there's an election in Tuscaloosa later in November.

Q. And do you have members in those places?

A. In Alabaster, yes, we do. In Tuscaloosa, yes, we do.

Q. If the witness and photo ID requirements were still in place after November 3rd, would GBM continue to distribute these sorts of informational fliers to its members and other people in the community?

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A. Yes, as long as these COVID conditions, pandemic conditions exist.

Q. Do you know what curbside voting is?

A. Yes.

Q. Can you describe it for me?

A. Oh. Curbside voting, there's several ways you could do it. Curbside voting is you can, under not just safer at home but social distancing practices, drive-through a polling place or other place designated after you have received your absentee ballot. You can take it to the polling place and use it in a drop box or other form of secure collection. Another way is to do it, actually drive to your polling place and still on the photo ID rules present your photo ID and essentially vote from in your car by having your identity confirmed and then have your ballot filled out and carried back in.

Q. Do you know whether Alabama's Secretary of State permits curbside voting?

A. I believe that the Alabama Secretary of State disallows curbside voting.

Q. Does GBM think that curbside voting would be -- let me strike that. Does GBM have members who have mobility issues?

A. Yes.

Q. What's your basis for knowing that?

A. Some of them have told me directly. And others have --

MR. HARRIS: Objection.

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THE WITNESS: Okay. Some of them have told me directly and when we have called on the phone banks.

MR. ROSS:

Q. Have you personally observed members using wheelchairs or walkers?

A. At election places?

Q. No. In general?

A. Oh, yes. When we had clients coming to our office, they came in wheelchairs and walkers. Many did.

MR. ROSS: Your Honor, I don't know if there's still an objection pending so --

THE COURT: The objection is overruled since he's personally observed people with mobility issues.

Q. (BY MR. ROSS:) Has GBM done anything to advocate for curbside voting?

A. Yes. We have circulated a petition statewide.

Q. I'd like to show Plaintiffs' Exhibit 377. Do you recognize this document, Mr. Douglas?

A. Yes. That's our safe voting petition.

Q. And is this the same petition that was mentioned in the flier on Plaintiffs' Exhibit 373?

A. That's correct.

MR. ROSS: Your Honor, Plaintiffs would like to move Exhibit 377 into evidences.

THE COURT: Any objection to 377.

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MR. HARRIS: No, Your Honor.

THE COURT: Thank you. 377 is received.

MR. ROSS: Thank you, Your Honor. And, Eric, if you could please scroll to the second page of 377.

Q. Mr. Douglas, what language is this page in?

A. Oh, that's the Spanish language version of the petition.

Q. Why did GBM create a Spanish language version of the petition?

A. We have clients and members who are Spanish that Spanish is their first language.

MR. ROSS: If you could take this down, thank you.

Q. And tell me about how many signatories did you get to the petition?

A. We've got four thousand signers.

Q. And is it right that the petition sought curbside voting?

A. Yes, it did.

Q. And you said that had you four thousand signatories. Did that include members of GBM?

A. Yes, it did.

Q. And were these members located in places like Jefferson and Montgomery where you have membership?

A. Yes, some of them were.

Q. Why was the petition sent? Sorry. Was the petition sent?

A. The petition was sent to the Secretary of State.

Q. And do you know when it was sent?

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A. July 28th.

Q. And did the petition also ask that the witness and photo ID requirement be removed?

A. Yes.

Q. And was GBM asking that those requirements be removed for voters across the state? Sorry, Mr. Douglas. Did you hear my question? Mr. Douglas, can you hear me?

MR. ROSS: Can other folks hear me?

MR. HARRIS: I can hear you.

THE COURT: Same here. Mr. Douglas?

MR. ROSS: He may be frozen.

THE COURT: He has.

MR. ROSS: Looks like it's frozen.

MR. HARRIS: I see a black box for Mr. Douglas.

MR. ROSS: Your Honor, if we can give him a minute, or I can try calling him if the Court doesn't mind.

(Pause.)

MR. ROSS: Sorry, Your Honor. I got disconnected from what I was using.

THE COURT: No. Listen, we're trying to trial by video is going to pose some technological challenges for all of us. I fully understand there will be glitches on everyone's end, including on mine yesterday and probably going forward as well. No apologies needed. We will wait if anyone gets dropped off, and we will also just do the best that we can and hope to get it all done in

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relatively good fashion when all is said and done. You may continue, Mr. Ross.

MR. ROSS: Thank you, Your Honor. If you give me one moment to try to reconnect. If you all can hear me, I can hear you.

Q. Mr. Douglas, can you hear me?

A. I sure can.

Q. Did the petition take any resources away from GBM's usual work?

A. Yes. It was additional resources required to do the petition.

Q. What were those resources?

A. Staff time and graphic designer.

Q. Did it also take volunteers?

A. Yes, it did take volunteers.

Q. If these staff and volunteers would not have been working on the petition, what would they have been working on?

A. Once again, we were trying to maximize our efforts to increase the census completion here in Alabama.

Q. And if the Secretary allowed curbside voting, would GBM need to petition for it?

A. No, not if he allowed it.

Q. Given what you know about your survey of your members, have any members ever had trouble accessing their polling place because they have mobility issues?

MR. HARRIS: Objection.

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THE WITNESS: Yes.

THE COURT: All right. Let me carry the objection to hear what the basis of that knowledge is.

Q. (BY MR. ROSS:) Mr. Douglas, can you explain the basis for your knowledge that voters -- sorry -- members have had issues accessing their polling place?

A. Yes. After the election, Sarah Price told me of her efforts to vote at her regular polling place. And because she uses a walker, she had driven up to the front door of the polling place, and a poll worker came out and told her that she couldn't park there, to take her car back to the big parking lot, park it, and come back. She went back to the polling -- the front door of the polling place on her walker. And then the poll worker said if I had known you used a walker, you know, I would have let you park closer.

Q. And was that information gained as a part of your survey of barriers that people face to voting, your members?

A. Correct.

Q. Sarah Price is a member of GBM?

A. Yes.

MR. HARRIS: Your Honor, may I be heard on this hearsay issue briefly.

THE COURT: Well, I'm not sure whether that is a barrier. Sounds like it was a mistake. But I also don't think he is presenting it for the truth of the matter. Again, it's just based on what a member told him on that one incident. But I will stop

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there and let you be heard. Go ahead.

MR. HARRIS: Yes, Your Honor. And I apologize if this is not procedurally appropriate at this stage in the proceedings. But we do have evidence in the form of deposition testimony that he did not keep a record of that conversation with Ms. Price.

THE COURT: Sounds like a cross-examination point. But again, I mean, even if the information is correct and truthful, the second part of what Mr. Douglas said and then when the poll worker told Ms. Price, I believe --

THE WITNESS: Yes.

THE COURT: -- that if she had known she needed physical assistance, she would have let her park closer I think undermines the overall position that there were structural barriers in place. But anyway, let's go ahead. Overruled for now. Let's see what else comes in with respect to Ms. Price or anyone else.

MR. ROSS: Thank you, Your Honor. And, Your Honor, the Plaintiffs are happy to provide the Defendants with -- I'm sorry -- the Court with case law on this point that members are -- excuse me -- testimony about from organizational leaders about their organization about their membership is allowed including as I'm sure the Defendants are aware of Alabama Legislative Black Caucus v. Alabama where the Supreme Court accepted similar testimony.

THE COURT: Yeah. I think I'm less worried about that. If the point again is that Mr. Douglas's members face physical

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barriers, I don't know if Ms. Price's example is enough, but I don't think you are done yet. So keep going, please.

MR. ROSS: Thank you, Your Honor.

Q. Mr. Douglas, do you know the racial makeup of your members who signed the petition requesting curbside voting?

A. The racial makeup of the petition signers?

Q. Yes.

A. No, I do not.

Q. I'm sorry. Let me be clear. Do you know the racial makeup of the petition signers who were your members?

A. No, I do not.

Q. Did GBM send any other letters to the Secretary of State about curbside voting or the photo ID and witness requirements?

A. Yes. We sent an earlier letter. Not a petition but a letter -- back in March of 2020.

MR. ROSS: Eric, can you please pull up -- I believe it's Plaintiffs' 393.

Q. Is this the letter that you were talking about, Mr. Douglas?

A. That's correct.

MR. ROSS: Your Honor, the Plaintiffs would like to enter this document into evidence.

THE COURT: This is Exhibit what? Remind me again, please? What's the exhibit number, Mr. Ross?

MR. ROSS: 393.

THE COURT: 393. Any objections to 393 coming in?

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MR. ROSS: No, Your Honor.

THE COURT: Thank you. Plaintiff's 393 is received.

MR. ROSS: And, Eric, if you can scroll to the second page of that.

Q. Mr. Douglas, is it right that this letter requests that the Secretary of State permit curbside voting and also permit exemptions to the photo ID and witness requirement?

A. That is correct.

MR. ROSS: Eric, if you pull up Exhibit 392.

Q. Mr. Douglas, do you recognize this document?

A. Yes, I do.

Q. What is it?

A. It is a separate letter to Secretary Merrill.

Q. And was GBM a signatory to this letter?

A. Yes, it is. Yes, we were.

Q. This letter also requests curbside voting and waiver of the photo ID and witness requirements?

A. That's correct.

MR. ROSS: Plaintiffs would like to enter Exhibit 392 into evidence as well.

THE COURT: Any objections to 392?

MR. HARRIS: No objection, Your Honor.

THE COURT: Plaintiffs' 392 is received.

MR. ROSS: Thank you, Your Honor.

Q. Were these letters also part of your advocacy?

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A. Yes, they were.

Q. And did GBM have to divert staff time to these letters as well?

A. Yes, we did.

Q. And would GBM have diverted staff time to this letter if there were no photo ID or witness requirement or curbside voting ban?

A. No, we would not have.

Q. Do you know whether the Secretary of State responded to your petition?

A. We have not received a response as of yet.

Q. Does GBM intend to continue to advocate for curbside voting?

A. Yes.

Q. Why did GBM become a part of this lawsuit?

A. We became -- we became a part of this lawsuit because the conditions of COVID-19 and the Governor's order of safer at home presented some unique first-time conditions that had to be overcome in order to people to have full access to vote.

MR. ROSS: No more questions at this time, Your Honor.

THE COURT: Thank you. All right, let's start with the cross-examinations, please.

Mr. Harris, are you going first?

MR. HARRIS: Yes, Your Honor, I believe so.

THE COURT: You may begin. We have been at it for about

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an hour. I don't plan to take a break until 2:30, but that's 12 minutes away. Maybe we should take a break now. Although I'm always afraid of breaks because we hit some snags. What do you guys want?

Mr. Douglas, are you able to go for another 15 minutes before we stop?

THE WITNESS: Yes, I can.

THE COURT: Okay. Let's go forward, and then we'll take a break it when you hit a good stopping point in 15 minutes or so.

MR. HARRIS:

Q. Good afternoon Mr. Douglas.

A. Good afternoon.

Q. Do you recall your response, your interrogatory response and supplemental interrogatory response that you signed in the course of this case?

A. Yes.

Q. Do you recall that you did not list any members of GBM in Shelby County or Tuscaloosa County?

A. Yes.

Q. Why is that?

A. Because we have sponsoring -- I didn't think of our sponsoring members.

Q. And did you testify earlier today that you had individual members in Alabaster or Tuscaloosa?

A. Yes, we do.

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Q. Okay. But that's not what you said in your discovery response; is that correct?
A. That's correct. Because I looked at our database, and we do have people in Alabaster and Shelby County.
Q. Okay.
A. Individuals and congregations.
Q. I want to ask you about Mr. Larry Watson.
A. Larry Watson?
Q. Is that who you were testifying about earlier today?
A. Oh, Larry Walton.
Q. Walton. I apologize. Larry Walton. I had that wrong in my notes too. I'm very sorry. Okay. Is it right that you tried through a family member to help Mr. Walton vote absentee?
A. Yes, we did.
Q. So you didn't speak to him directly?
A. I did not speak to him directly, but other staff members did.
Q. Okay. And they told you about it?
A. Yes.
Q. Okay. And you never spoke to Mr. Walton directly?
A. That is correct.
Q. Okay. And is it right that -- did you testify here today that you conducted a survey in which Mr. Walton, someone spoke to him?
A. That's correct.
Q. Okay. And did someone speak to Mr. Walton at that point,

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or did they still speak to a family member?
A. They spoke the sister, Vera Moore, a family member.
Q. So no one from GBM ever spoke to Mr. Walton; is that correct?
A. I can't verify that. All I know is they did speak to Vera Moore.
Q. You don't know of anybody from GBM ever speaking to Mr. Walton; is that correct?
A. That's correct. Can I say one thing about Mr. Walton?
Q. Yes, sir.
A. He's bedridden. And his sister is the one who's more mobile. And we talked to her, and she gave us the information.
Q. Okay.
A. Thanks.
Q. And I believe you also testified earlier today about I believe it was Mr. James Sokol; is that right?
A. That's correct.
Q. Okay. And is it right that you testified in your deposition that he voted absentee in the election?
A. That's correct.
Q. Did he in fact vote absentee?
A. Yes, he did.
Q. Okay. And how do you know that?
A. He told me.
Q. Okay. Did you see him vote absentee?

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A. No, I did not see him vote absentee.
Q. Okay. Is it right that you also believe that Mr. Sokol -- oh, I'm sorry. Were you going to add something?
A. No. Go ahead. No, I got it.
Q. Okay. Is it right that you think that Mr. Sokol could not vote in person and so therefore needs curbside voting; is that right?
A. It was the fact that he was recovering from COVID.
Q. I see. So does he have a disability that limits his mobility?
A. Yes, he does. A condition, he does, yes.
Q. What is that?
A. It's a neurological -- I guess it's called musculoskeletal disorder. He uses a cane.
Q. Do you know if he's able to walk?
A. Yes, he can walk with a cane.
Q. What is his polling place?
A. It's on the south side in Birmingham. I don't know the exact one.
Q. Do you know what it looks like?
A. Nope.
Q. Do you know if it's accessible to Mr. Sokol?
A. Yes. I do not know.
Q. You've never seen Mr. Sokol attempt to enter his polling place?
A. Not that polling place, no. I don't know which one it is.
Q. Okay. And also, is it Ms. Sarah Price? Is that the other

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individual you testified about today?
A. Yes, with the walker, yes.
Q. She has a walker?
A. Yes.
Q. Why does she use a walker?
A. She uses a walker because of arthritis and other conditions. At least arthritis is the main one.
Q. Do you know where her polling place is?
A. Yes. Legion Field in Birmingham.
Q. Have you seen her try to enter her polling place before?
A. I have not -- no. I wasn't with her at the time.
Q. I'm sorry. Weren't with her at what time?
A. When she went to the polling place.
Q. Was she able to vote in person?
A. Yes, she was.
Q. Okay. So Ms. Price was able to vote in person. And you did not speak to Mr. Walton. And Mr. Sokol, we don't know if he could enter his polling place. Is that all right?
A. That is correct.
Q. Okay. Okay. Have you ever worked in your outdoor clinics about absentee balloting? Have you ever coordinated with the Secretary of State's office at any of these events?
A. Have I ever coordinated the outside tents events? No, I have not.
Q. Okay. And have you ever worked with the Secretary of

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State's office and their mobile unit in another context?

A. No, not the mobile unit, no.

Q. Okay. Have you worked with the Secretary of State in other ways to help people access the right to vote?

A. Yeah, some years earlier.

Q. Some years -- so you had not done it this year?

A. Not this year.

Q. So Greater Birmingham Ministries has not worked with the Secretary of State's office in order to help people vote?

A. Oh, no. I take that back. I have not called him. But our people who designed the petition, volunteers and staff, did contact frequently Secretary of State's office. We didn't talk to Mr. Merrill. We talked to staff.

Q. I understand. Let me back up a minute. Are you aware that the Secretary of State's office has a mobile unit to go to remote locations to help people get IDs and fill out absentee ballot applications?

A. I have heard that.

Q. Register to vote. I'm sorry.

A. I've heard that.

Q. You have heard that?

A. Uh-huh.

Q. Have you ever witnessed the mobile unit?

A. No, I've never witnessed the mobile unit.

Q. And so your testimony today is that they have never worked

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with GBM in order to help people register to vote?

A. That's correct.

Q. Okay. Has GBM ever requested the Secretary of State bring the mobile unit to help your members or other people register to vote?

A. GBM was part of a group that first asked Secretary Merrill to do mobile units across the state.

Q. I see. But for example, did you invite Secretary Merrill to one of your clinics or another proposed event and said, hey, can you please come on July 10th or what have you, to come and help people register to vote?

A. No, GBM did not.

Q. Okay. Is it right that you testified that all GBM clients and donors are members; is that right?

A. That's true.

Q. And you testified that there are about five thousand members give or take?

A. All total, yes.

Q. Do you have personal knowledge of each of those members?

A. Not each and every one of them.

Q. So you don't know if each and every one has a disability?

A. That's correct.

Q. And you don't know if each or every one or any could be unable to access their polling place because of that disability?

A. I can't say each and every one. Because in doing our phone

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banking, we ask information, you know, about mobility as well as access.

Q. Did you see those people, or that's just what they told you over the phone?

A. That's what they told our phone bankers over the phone. We ask a lot of questions. That was one of them.

Q. Is that part of the survey that you were testifying about earlier, or is that something different?

A. Yeah. I don't want to use the word survey. It's like phone canvassing. I guess the same thing. But, yes, we phone banked our members about getting assistance they needed when they were preparing to vote like absentee and voter registration, all that.

Q. When was that?

A. That was done prior -- started in April and prior to the July 14th runoff.

Q. Can you tell me exactly when it was?

A. I can get that information, but I don't have the exact dates all the phone banks were done. They are done mostly during the week and during the evenings by staff and volunteers.

Q. And what did -- what was the result of the phone banking? You said you asked questions. What happened then?

A. Yes, the result of the phone banking was one, we were able to clarify information about voting under new conditions, asking people if they -- no. The first question on the phone bank was

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how are you doing. Knowing that people were shut in at home in those days much more than now. And then we asked them about were they registered to vote, did they need assistance voting absentee.

Q. And then what happened?

A. Then what would happen was we used that information to circle back to people to tell them when we were doing our outdoor spatially distanced safe voting tent events, absentee voting tent events.

Q. Do you have a spreadsheet of some kind with results of phone banking?

A. Yes, there is a spreadsheet of that.

Q. What does it contain?

A. It mostly contains the notes of the phone bankers and whether or not the -- anyone answered the phone, if they talked to anyone, and any notes they take during the conversation.

Q. Okay. You testified earlier that GBM members follow social distancing. And you were talking about that in the context of your food services that you provide for those members. Do you know whether those members practice social distancing when outside your presence or otherwise in their daily lives?

A. Only to the degree they tell us.

Q. Okay. So only what they tell you. And if they told you, "I'm not coming yeah like I believe you testified earlier that people told you that they didn't come because they were -- did not want

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to get out, did not want you -- pardon me. Wanted to follow social distancing protocols. Did you keep of record when they told you that?

A. We did not.

Q. I'm sorry I'm jumping around here. You also testified some about the clinics you hold as part of GBM; is that right?

A. Yes, I did.

Q. Do these clinics also provide information about the census?

A. Some of them actually did, yes. We did fliers about the census.

Q. Would you still have events to help people register or participate in the census even without the pandemic?

A. We were doing census work that -- we continued to do census work but not at the level before pandemic.

Q. So you are doing work to help people participate in the census; is that correct?

A. Yes, on a much smaller scale.

Q. And you would still provide information about the census whether or not a pandemic was going on, right?

A. Yes. We have a sign outside our office that stays up.

Q. I wanted to ask you about some of the ^ CHECK THIS you did particularly with the petition that we saw earlier. I believe you testified today that you mentioned graphics were involved and someone had to create graphics; is that correct?

A. That's correct.

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Q. Is there any cost associated with those graphics?

A. Yes.

Q. What is that?

A. Around a thousand dollars.

Q. Okay. Do you remember the deposition we took in this case I guess several weeks ago now?

A. In July, yes, I think.

Q. Do you remember testifying that the graphics were donated for free?

A. For the petition?

Q. Yes.

A. Or for the education?

Q. I'm happy to read it to you on page 64. Starting with line 6. "Did the petition carry with it any cost other than time? Mr. Ross objected. I trust I can continue. "I think the graphics were donated free. So no, there were no printed petitions, paper costs, or copying costs, but it took a lot of time?

A. Yes. I stand corrected. The petition graphics was free. The other graphics were not free.

MR. ROSS: Your Honor, I don't know if you can hear me, but I was trying to raise the objection of improper impeachment. In his deposition testimony, he said I think. And now he's testifying based on his knowledge now. So to the extent that they are trying to impeach the witness --

THE COURT: All right. So it's not direct impeachment. But

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in any event, the witness has clarified his answer and agreed in part that what was read to him was correct but that there were some other costs that he's alluding to today.

Q. (BY MR. ROSS:) Speaking a little more about the petition, is it right that you testified that you didn't categorize the signers of the petitions, you didn't do it by race or by socioeconomic status?

A. That's correct. It's an on line special. With no categories for race or...

Q. Did you keep a record of the signers of those petitions besides just where they signed it in the petition on line?

A. Other than the petition itself? No. The petition is the source.

Q. Understood. I want to clarify something we spoke about a little bit earlier. I asked you some questions about phone banking. Earlier when Mr. Ross was questioning you, you also talked about a survey that took place after the election. The phone banking is that distinct from the survey. Is that something different?

A. Yes. I should not -- all of our contacts with voters and members was done by phone banking. I mean, other than email, yes. All the conversations were done by phone banking.

Q. All the conversations in working for example to identify members who were burdened by Alabama voting requirement --

A. That's correct.

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Q. -- that all happened as a result of phone banking?

A. Correct.

Q. Did you have a conversation with members of your board in an attempt to identify members who were burdened by Alabama law?

A. Yes, we did.

Q. Okay. And was that a part of phone banking?

A. No. That was on a Zoom board meeting.

Q. Okay. And in that call, that's where you identified members of GBM who you thought were burdened by Alabama law; is that right?

A. That's correct.

Q. And that wasn't part of phone banking; is that right?

A. No, it was not.

Q. How did you keep a record -- did you keep a record of when you reached out to specific members of GBM based on your conversations with the board of directors?

A. Did I keep a record of the board meeting?

Q. No. Of the conversations you or someone had with members of GBM based on your conversation with fellow board members about which members might be affected by Alabama law?

A. Yes. I made a list.

Q. You made a list?

A. Yeah.

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Q. What kind of list? Like on a piece of a paper?
A. A spreadsheet, a piece paper first of would be something like a spreadsheet. Just the names of the people and the conditions they were facing that came from the board meeting.
Q. Well, would you consider that list to be an official record of GBM?
A. No. An official record of GBM would be our minutes.
Q. Sure.
A. Yeah.
Q. And so -- and I touched on a couple of these things. We mentioned phone banking. We mentioned the conversations you had with your board of directors. Did you keep any other records in terms of trying to reach out to GBM members who had voted or not voted in the July election?
A. No.
Q. Okay.
MR. HARRIS: Your Honor, could we have that -- a break at this point?
THE COURT: Sure. Let's take 15 minutes. We will come back at 5 till 3:00. Thank you, everyone.
(Recess.)
THE COURT: Mr. Harris, you may begin when you're ready.
MR. HARRIS: Thank you, Your Honor. I have no further questions.
THE COURT: All right. Who is next?

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MR. DYAR: Your Honor, if I may go next.
THE COURT: Mr. Dyar, you may.
Q. (BY MR. ROSS:) Hi, Mr. Douglas. My name is Robert Dyar. I represent Jojo Schwarzauer in her official capacity as the Circuit Clerk of Mobile County. Is it correct that your members are primarily located in Jefferson and Shelby Counties?
A. The majority, yes.
Q. And you said you also have members in Tuscaloosa County, correct?
A. That's correct.
Q. But you are not seeking relief from any election officials in Shelby County in this lawsuit, correct?
A. Repeat that.
MR. ROSS: Objection.
THE COURT: Yes.
MR. ROSS: Objection, Your Honor.
THE COURT: Mr. Dyar, what's the relationship to Shelby and Mobile since your client is in mobile?
MR. DYAR: The relation is just why they were seeking relief from certain counties and not others that their members are located in.
THE COURT: All right. What's the objection? Are you challenging the accuracy of the statement?
MR. ROSS: I don't understand why he's asking the question, Your Honor. Part of it may obviously include attorney/client

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communications. Part of it may go to a legal question of the relief that we're seeking. And as this Court knows, we are seeking statewide relief. So I just -- I don't understand what question Mr. Dyar expects Mr. Douglas to answer in that respect.
THE COURT: Why don't we rephrase the question perhaps, Mr. Dyar, and ask Mr. Douglas what he's seeking on behalf of his clients.
MR. DYAR: Sure. Thank you, Your Honor.
Q. Mr. Douglas, what relief are you seeking on behalf of your clients?
A. Among others, the removal of the witness requirement, photo ID, and end the ban on curbside voting.
Q. Does GBM have any individual members in Mobile County?
A. Yes.
Q. Are those individual member clients of GBM?
A. No. They're individual donor members.
Q. And can you identify any of those individual members living in Mobile County that have issues complying with the photo ID or witness requirements?
A. Yes. But I'd have to check.
Q. You would have to check, so you can't identify them now?
A. By name? No. I can identify some members by name. But in terms of when we did our phone banking, we called the metropolitan area, five counties including Shelby, Jefferson, Walker, Blount,

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THE COURT: He is asking about Mobile. Do you know if any of your donor members there -- you may not know -- who have issues complying with the photo ID and witness requirements as to Mobile County.
THE WITNESS: I do not know for Mobile County members who have photo ID issues.
Q. (BY MR. DYAR:) And has GBM held any clinics in Mobile County to educate or assist voters in complying with absentee ballot requirements?
A. It's a bit far. No, we have not.
Q. And has GBM engaged in any activities in Mobile County relating to absentee voting?
A. Only to the extent we have informed our members in Mobile County by email. That's it.
Q. And we discussed earlier some fliers that you had created. Do you recall that?
A. Yes.
Q. And where those fliers sent to Mobile County?
A. Yes. We sent them electronically to our all our mailing list.
Q. Okay. And you say it's fair to say that GBM expended any resources to educate or assist voters in Mobile County in complying with the photo ID or witness requirements?
A. We did that statewide including Mobile County.
Q. But you haven't held any clinics there or engaged in any activities specifically in Mobile County?

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A. Right. No direct clinics in Mobile County, no.

MR. DYAR: I believe that's it for me.

THE COURT: Thank you. Mr. Cowell, did I see your screen pop up as well at some point? Do you have any of questions for this witness?

MR. COWELL: Yes, Your Honor. Just a few.

THE COURT: You may.

Q. Mr. Douglas, good afternoon.

A. Good afternoon.

Q. Is it true that you do not know of any of your members from Lowndes County who wish to challenge the photo ID requirement in this case?

A. That's true. I do not.

Q. Would the same be true for Lee County?

A. That would be true for Lee County as well.

Q. What about Wilcox?

A. Wilcox County as well.

Q. Okay. Is it true that you're not aware of any members from Lowndes County who wish to challenge the witness or notary requirement to submit an absentee ballot?

A. That's correct.

Q. Okay. Would the same be true for Lee County?

A. That's correct.

Q. Now, what about Wilcox?

A. That's correct as well.

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Q. Okay. Is it true you're not aware of any members of Greater Birmingham Ministries from Lowndes County who wish to challenge the ban on curbside voting?

A. That's correct.

Q. Okay. What about Lee County?

A. That's correct.

Q. Do you have any members in Wilcox County wishing to challenge that?

A. No, we do not.

Q. Okay. And likewise for Mobile County, you did not conduct any clinics or anything of that nature in Lowndes County?

A. We did not.

Q. Did you do it in Lee County?

A. No, we did not.

Q. Did you do it in Wilcox County?

A. No, we did not.

MR. COWELL: I don't have any further questions.

THE COURT: Thank you. Anyone else that's not on my screen who has any questions for Mr. Douglas? Mr. Ross, any redirect?

MR. ROSS: Yes, Your Honor.

THE COURT: You may.

MR. ROSS: Thank you.

Q. Mr. Douglas, your petition was sent to Secretary Merrill; is that right?

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A. That is correct.

Q. And was GBM seeking for Secretary Merrill to implement rules statewide that would allow voters to vote curbside?

A. That was the request in our petition to Mr. Merrill.

Q. And you also were seeking similar relief from the photo ID and witness requirement for voters statewide; is that right?

A. That is correct.

Q. Okay. And you just testified that you sent information about how to vote absentee to your members in Mobile. Do you remember that?

A. Yes.

Q. And did you also send this information out to members who may live in other counties like Lowndes or Lee?

A. Yes, we did.

Q. And Wilcox County as well?

A. Yes, we did.

Q. And you were talking about your clinics earlier and how you needed to have printers there. Do you remember that testimony?

A. Yes, I do.

Q. If you were doing only census work, would you have printers at these clinics to assist people with making photocopies of their ID?

A. No. That wouldn't be necessary.

Q. And did it cost money in terms of paper and other materials to operate those printers?

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A. Yes, it did.

Q. And did you have additional volunteers there to serve as witnesses for the absentee voting clinics?

A. Yes, we did. We did extra volunteers so there would be no -- we wouldn't have to have lines and using spatial distancing, yes.

Q. Would you have to have those volunteers if there was no witness requirement or if you were only doing census-related work?

A. No, we would not have.

Q. And with respect to curbside voting, your members signed the petition to Secretary Merrill requesting curbside voting; is that right?

A. That's correct.

Q. And you saw the list of members who were -- who signed the petition; is that right?

A. That's correct.

Q. And based on your knowledge of the members who signed the petition, did some of them include people who had mobility issues?

A. Yes, it did.

Q. And did some of the people who signed the petition, also were they over age 65?

A. Yes.

Q. And did GBM then have elderly and mobility members who would like -- excuse me. Does GBM have members who are

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elderly or mobility impaired who would like to use curbside voting in the pandemic?

A. Yes.

MR. HARRIS: Objection.

THE COURT: I'll overrule. I think he's asking the question based on the individuals who signed the petition.

MR. ROSS: Thank you, Your Honor.

Q. Mr. Douglas, who is Vera Moore?

A. Vera Moore is a client member of GBM.

Q. And I believe you said earlier that you -- Ms. Moore lives with Mr. Walton; is that right?

A. That's right. She is his sister and caretaker.

Q. And she is the person that GBM spoke to as a part of its survey or -- right. She is the person that GBM spoke to as a part of its phone banking; is that right?

A. That's correct.

Q. Do you know if Vera Moore was able to vote on July 14th based on your phone banking records?

A. I do not know if she was able to vote.

Q. Sorry. Let me ask that better. Based on your records, was Vera Moore able to vote on July 14th?

MR. HARRIS: Objection based on the lack of records.

THE COURT: Based on the records that Greater Birmingham maintained or took when they had a conversation with Ms. Moore about Mr. Walton? Is that what you're asking about, Mr. Ross?

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MR. ROSS: No, Your Honor. I'm asking about Ms. Moore herself.

THE COURT: Information that she provided to Birmingham Ministries?

MR. ROSS: Yes, Your Honor.

THE COURT: And, Mr. Douglas, did you see the notes that your employees made of their conversations with Ms. Moore?

THE WITNESS: Yes, I did.

THE COURT: All right. I'll overrule the objection.

Q. (BY MR. ROSS:) So, Mr. Douglas, based on your review of the notes about Ms. Moore, was she able to vote in the July 14th election?

A. No, she was not.

Q. Thank you. And your testimony was that she lives alone with her brother; is that right?

A. That's correct.

Q. Mr. Harris was asking Mr. Sokol. Do you recall that?

A. That's correct.

Q. And is Mr. Sokol a board member of GBM?

A. Yes, he is.

Q. And does GBM keep meeting minutes for its board as a regular course of its business?

A. Yes, we do.

Q. And that would reflect conversations with board members about whether they were able to vote or not?

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A. It would keep that the conversation happened, but it wouldn't quote everybody.

Q. Would it have -- do you keep your own notes about meetings, of board meetings?

A. Yes, I do.

Q. Okay. And in your own notes about board -- sorry. From board meetings, I believe you testified earlier that those notes included who was able to vote; is that right?

A. That's correct.

Q. And do you recall that you were asked to respond to interrogatories in this case?

A. Yes, I do.

Q. And do those interrogatories identify every member of GBM of your five thousand members who would have a barrier to voting?

A. No, it did not.

Q. Is it possible for you to find out and survey all five thousand members to know every single person who faces a barrier to voting?

A. No, it's not possible.

Q. And so those interrogatories were to the best of your knowledge; is that right?

A. That's correct.

Q. And based on your notes from the board meetings, is it your understanding that Mr. Sokol also would have also preferred to

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vote curbside given his diagnosis with COVID-19?

A. That's correct.

MR. HARRIS: Objection, Your Honor.

THE COURT: A statement that he purportedly made in your presence, Mr. Douglas, so let me overrule the objection.

MR. ROSS: Thank you.

Q. Mr. Douglas, is it your understanding that GBM has sometimes worked with Alabama Secretary of State's office to assist people in obtaining photo ID?

A. Correct.

MR. ROSS: Your Honor, can I take just one moment?

THE COURT: Of course.

(Pause.)

MR. ROSS: Nothing else, Your Honor.

THE COURT: Thank you, Mr. Ross. Mr. Harris?

MR. HARRIS: Yes, Your Honor. Can counsel identify the Bates numbers of these notes from the phone bank records and other records that have been discussed?

THE COURT: They're not exhibits -- I'm sorry. Mr. Ross, go ahead.

MR. ROSS: Your Honor, yeah, they were -- they were not exhibits. And they were business records of the Defendants to our knowledge and request that Mr. Douglas testified about during his deposition.

MR. HARRIS: Your Honor, it's our understanding that it's for

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the records and the substance. But the testimony that he's offering is not his testimony. It's based on the records that I don't see is subject to the exception. We haven't seen them. We have -- well, I renew my objection.

THE COURT: Yeah, that's a separate issue. I generally do not in the middle of testimony allow lawyers to be grilled on issues or -- and/or -- I think you can address your point through cross-examine of this witness. I think you did first go round. That these may not have been notes that he kept or exist or et cetera, et cetera. So why don't we cross the witness based on the redirect, and let's see where we are.

MR. HARRIS: No further questions, Your Honor. Thank you.

THE COURT: Okay. Mr. Dyar, do you have any questions, sir?

MR. DYAR: No, I do not, Your Honor. Thank you.

THE COURT: Mr. Cowell?

MR. COWELL: None from us.

THE COURT: Anyone else?

Mr. Douglas, it looks like you are done. Have a good afternoon, sir.

THE WITNESS: Thank you very much. You too.

THE COURT: Who is the next witness for the Plaintiffs?

MS. BRANNON: Your Honor, this is Sarah Brannon from the ACLU. We're going to call Cliff Albright on behalf of Black Voters Matter Capacity Building Institute. Let me just give him a quick

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note that he should try and dial in. But then, I have a quick evidentiary issue before we admit him that I want to discuss with the Court and counsel.

THE COURT: Ms. Brannon, good afternoon. Why don't you make contact with Mr. Albright, and then you can discuss the evidentiary issue with us.

MS. BRANNON: Your Honor, I'd like to bring everybody's attention to what's been marked as Plaintiffs' Exhibit 344 and 341. If it's helpful, we can pull them up on the screen. But those two -- let me start with 344 so people can see.

Eric, if you could call up Plaintiffs' Exhibit 344. Those two exhibits have been produced and provided in this case pursuant to the protective order and I think inadvertently included materials that we provided to the Court without any redactions. We have sent the Defendants copies I think on Sunday evening of this exhibit. And then if you want to do 341 so the Court can see that, too, with redactions.

I would like permission to provide the redacted copies to your courtroom clerk. During Mr. Albright's testimony, I'm going to move to admit both of these exhibits. And I would like to admit the redacted copies into the court record. Both documents have email addresses and telephone numbers of individuals that work with Black Voters Matter Capacity Building Institute. And we would just like that personal information in this form of phone numbers and email addresses to not be part of the

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permanent court file.

Is there any objection from Your Honor or from defense counsel about me providing these redacted copies to the courtroom clerk and then having the redacted copies admitted into evidence? Foundation. We can talk about the documents themselves when we get to the testimony. But to the extent that they are admitted, can we admit these versions so that the individuals's personal information is not part of the permanent court file?

THE COURT: Your request for redacting personal identifiers is consistent with the Court's practice. So no pushback on my end. Any objection from any of the defendants?

MR. WEBB: No, Your Honor.

MR. BOWDRE: No, Your Honor.

MR. DYAR: No, Your Honor.

MS. BRANNON: All right. I will email those now to your courtroom clerk. And hopefully Mr. Albright has dialed in, and we can get started.

THE COURT: Mr. Bowdre, is that you for the Secretary?

MR. BOWDRE: Yes, Your Honor, Barrett Bowdre with the Secretary of State.

THE COURT: Good afternoon.

Mr. Albright, good afternoon.

THE WITNESS: Good afternoon. How are you?

THE COURT: Doing well, sir. Hope you are.

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Ms. Brannon, are you ready to begin?

MS. BRANNON: I am. Swear the witness.

THE COURT: Mr. Albright, would you please raise your right hand so that Ms. Humphrey can swear you in.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Clifford Albright.

THE COURTROOM DEPUTY: Could you spell it for me Mr. Albright. And you can also put your hand down.

THE WITNESS: Oh. You said stand up?

THE COURTROOM DEPUTY: No. Spell it for me.

THE COURT: Spell your full name, please.

THE WITNESS: C-L-I-F-F-O-R-D, Albright, A-L-B-R-I-G-H-T.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: Atlanta, Georgia.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Ms. Brannon, your witness.

Q. Thank you, Mr. Albright. We already have your name for the record. Can you give us your educational background?

A. I have an undergrad degree from Cornell, a master's degree from Cornell, and an MBA degree from University of Alabama.

Q. And can you tell us your current occupation?

A. I am cofounder and executive director of Black Voters Matter

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Capacity Building Institute as well as Black Voters Matter Fund.

Q. And are you here today to testify in your capacity as CEO of Black Voters Matter Capacity Building Institute?

A. Correct.

Q. And then you understand as I go through and question you today, I'm going to refer to this entity as Capacity Building Institute for short?

A. Understood, yes.

Q. Can you just briefly explain to us what the difference is between the Capacity Building Institute and the Black Voters Matter Fund?

A. So the Capacity Building Constitute is it our (c)(3) entity. It's the 501(c)(3) nonprofit which means that it engages in matters of public welfare, social welfare. In this case, civic engagement and capacity building for community based groups. The Black Voters Matter Fund has a similar purpose in terms of building power in black communities and encouraging civic engagement. But as a 501(c)(4), it's allowed to participate in some types of advocacy that is not allowable for (c)(3) organizations and which, you know, particularly in terms of voting, voting rights policies, being able to advocate and in addition to just raising general awareness.

Q. When were these organizations founded?

A. The Fund was founded in 2016, late 2016. And Capacity Building Institute in late 2017.

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Q. And what is the -- you alluded to it a little bit. But what's the focus of the work of the Capacity Building Institute?

A. The focus of the work is to -- it's two-fold. It's to build up the capacity of community-based groups that engage in civic participation, civic engagement, and to support those organizations with the ultimate objective of increasing participation by members of the black community in terms of voter turnout and just overall being involved in civic life.

Q. What are the priorities of the Capacity Building Institute as it works to achieve those goals?

A. Oh. The priorities are to, you know, have discussions with community members around issues such as voting rights, you know, the general issues that we experience in our daily lives and based on those conversations to encourage people to participate more in the election process and to support the organizations that seek to do so.

Q. Does the Capacity Building Institute work with partner organizations?

A. Yes. The majority of what we do is done in partnership with community-based partner groups which are groups that may operate at the city level, the county level, sometimes the state level. And they're engaged in a range of issues ranging from strict civil rights to health care to youth and arts and culture. But they all have an interest in increasing civic engagement, and they have relationships with community members which helps them

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to provide the messages and access to increasing the voting.

Q. What resources does the Capacity Building Institute provide its partners?

A. We provide a range of resources ranging from financial resources, a mini grant program that we do to support our community-based groups. We also provide access to tools and technology like texting technology, phone banking technology, and then sometimes we provide strategy report.

Q. Does the Capacity Building Institute work in Alabama?

A. Yes, we do.

Q. And do you have partners in Alabama?

A. Yes, we do.

MS. BRANNON: Eric, can we pull up Plaintiffs' Exhibit 344.

Q. Mr. Albright, do you recognize this document?

A. Yes, I do.

Q. Can you describe what it is?

A. This is a list of a large number of our community partners in the State of Alabama. It's a robust list but not exactly a complete list.

Q. Was this document created in the regular course of business of Capacity Building Institute?

A. Yes, it was.

MS. BRANNON: I will move to admit Plaintiffs' Exhibit 344.

THE COURT: Any objections?

MR. BOWDRE: No objection, Your Honor.

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Q. (BY MS. BRANNON:) Mr. Albright, looking at Plaintiffs' Exhibit 344, can you describe specifically what counties black -- the Capacity Building Institute works with per the information on this document?

A. Well, as you can see, we've got partners in some of the largest counties -- Montgomery County, Jefferson County, Mobile County, Madison County, as well as in a wide number of counties in the smaller more rural black belt counties, counties like Wilcox, Lowndes, Dallas, et cetera.

Q. And what is your understanding of what the black belt is?

A. Well, the black belt is a stretch of counties which goes from all the way as far as the state line with Mississippi across the central part of the state over as far east as almost to the state line in the other direction. You know, going through counties like Macon and Bullock. And it's a range of counties which in addition to it's geographic designation is also known for having large black populations.

The name itself comes from the soil, not from the people. But, you know, this is a stretch of counties which unfortunately also happens to be some of the most economically challenged counties in the State of Alabama, you know, regularly with very high rates of poverty, high unemployment, educational as well as health challenges.

Q. And why is it important to the Capacity Building Institute to do work in the black belt?

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A. Yeah. It's important that we do work in the black belt for a couple of reasons. One, because, you know, these are counties that have been really deprived of resources for local organizations to really encourage voter participation as well as being deprived of resources for a range of other issues some of which I mentioned earlier, health, arts and culture, et cetera. These also happen to be counties that have had strictest forms of voter suppression.

This also happens to be the parts of the state when several years ago when photo ID was first passed that many of the departments of motor vehicles in these very counties were then eliminated making it hard for somebody to get a photo ID. And so for both the economic reasons as well as the issues of voting rights, this is a critical part of the state for us to be engaged in and supporting.

Q. Does this document list an organization called BAMA Kids?

A. Yes, it does.

Q. Do you know where BAMA Kids is located?

A. It's located in Wilcox County.

Q. And is that a partner of the Capacity Building Institute?

A. Yes, BAMA Kids is a partner. It's one of our earliest partners. Sheryl Threadgill is one of our oldest friends and community partners.

MS. BRANNON: Your Honor, I don't know if I formally moved. I'd like to move Plaintiffs' Exhibit Number 344 into

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evidence.

THE COURT: There's no objection. So Plaintiffs' 344 is received.

Q. (BY MS. BRANNON:) Thank you. Mr. Albright, you mentioned that not all of your organizations are listed on this exhibit. Does the Capacity Building Institute have any partners in Lowndes County?

A. I'm sorry. I missed that. In which county?

Q. Sure. Lowndes County?

A. Lowndes?

Q. Lowndes. I'm sorry. I am mispronouncing it. Lowndes County?

A. That's all right. Yes, we do. We have a partner, an organization called Stand Firm that we have partnered with several times.

Q. In general, what are the demographics of the members and constituents of the partners you work with in Alabama based on your knowledge?

A. Right. The vast majority of the partners we work with are -- represent -- are run by as well as represent black communities. So again both in terms of the organizational leadership and also the constituents that those organizations serve.

Q. Does the Capacity Building Institute have any employees in Alabama?

A. Yes, we do. We have a state coordinator.

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Q. And what are her responsibilities?

A. Her responsibilities are to maintain regular communications with our partner groups, to hold periodic and usually monthly partner network calls, you know, mainly Zoom calls to provide training for our partners, to attend events, and to support our partners as they engage in their activities, to provide feedback to us in the central office about grant applications that come in from the State of Alabama, and to, you know, just provide overall coordination of the tools and support that we provide to the partner groups in the state.

Q. And that overall coordination, is that accomplished through monthly coordinating calls?

A. Partially through monthly calls. She is also tasked with having regular one-on-one calls with partners. And so in addition to the monthly calls, you know, each week she might be talk to go anywhere from 10 to 15 partners, sometimes more or communicating in some other form or fashion -- email communications or social media. And so basically to have regular communication with our partners to better understand the needs, to better understand the issues that not only that she's seeing in the state but also that our partners communicate that they're seeing in the state.

MS. BRANNON: Eric, can we pull up Plaintiffs' Exhibit 370.

Q. Mr. Albright, did the Capacity Building Institute recently hold a state convening in Alabama?

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A. Yes, we did. We held a state convening that took place in Montgomery.

Q. And are you familiar with this document that's been previously marked as Exhibit 370 on the screen right now?

A. Yes. That's a social media post including some photos from the convening, you know, folks in the hallways, outside the step and repeat taking photographs, some of the materials that we gave out to every participant that attended the convening, and probably some other photos that I can't quite see.

Q. Was this social media post made in the regular course of business by the Capacity Building Institute?

A. Yes, it was.

MS. BRANNON: I will move to admit Plaintiffs' Exhibit 370.

THE COURT: Any objections?

MR. BOWDRE: No objection, Your Honor.

MS. BRANNON: So we formally move to admit Exhibit 370.

THE COURT: Plaintiff's 370 is admitted.

Q. (BY MS. BRANNON:) Mr. Albright, can you just describe briefly what kinds of things were done -- let me rephrase and go back. When was this leadership conference convening, when did it occur?

A. This was September 2019.

Q. Can you just briefly describe what sort of things took place at the leadership conference?

A. Sure. You had a range of training sessions. Some of the

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topics that were included were social media training, how to have an effective organizational social media account and do social media outreach. We did training on how to create a geo-tv plan, how to identify targets numbers for, you know, voters that you're trying to reach. We had the training on like information, security, how to secure digital information. What else did we have?

We had training just on organizing tactics. We had training on how to do criminal justice organizing and restoration of driver's licenses for people that had had their driver's licenses suspended, training on how to do texting, how to run a text campaign. In addition to all the trainings, we also had, you know, just some general kind of fellowship opportunities. Because again, part of the purpose of the convening is to help create a strong well-connect, strong relationships between the many partner groups. We had over 60 partners who participated in this training. And so they all got to -- they got good information but also got to know each other much better.

Q. How long has the Capacity Building Institute been working in Alabama?

A. The Capacity Building Institute as an organization which was started in 2017 has been working in Alabama since 2017.

MR. BOWDRE: Your Honor, I hate to interrupt. We just were notified that the Lee County attorneys, their internet is down again.

THE COURT: Okay. Thank you for letting us know,

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Mr. Bowdre.

Mr. Albright, I will give you a few minutes to relax for a few seconds, and then hopefully the technical issues will be resolved.

MS. BRANNON: Just let us know. I can't tell when they've joined back, Your Honor.

THE COURT: All right.

MS. BRANNON: We have everybody again?

MR. WEBB: Yes, we're back on again. My apologies.

THE COURT: It's not your problem. It's not your fault I mean. So let's continue, please.

Ms. Brannon?

MS. BRANNON: Sure. Eric, you can pull down that one, but can you pull up Plaintiffs' Exhibit 431.

Q. Mr. Albright, are you familiar with this document?

A. Yes, I am.

Q. What is this?

A. It's a social media post talking about our bus tours including a tour of the State of Alabama.

Q. Was this created in the regular course of business of the Capacity Building Institute?

A. Yes, it is. Yes, it was.

MS. BRANNON: I would move to admit Plaintiffs' Exhibit 431.

THE COURT: Any objections to 431?

MR. BOWDRE: No objection, Your Honor.

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THE COURT: 431 is received.

MS. BRANNON: Thank you.

Q. Mr. Albright, can you just describe a little bit what the bus tour is?

A. Yes. So our bus tour travels around multiple states and within the state usually multiple cities and counties making stops at cities and counties where we have community partners that are part of our partner network. And sometimes the bus will come, and it will support outreach activities that partners are doing. Sometimes it will sponsor a town hall. Sometimes when it takes place during elections, early voting or on Election Day, it will support activities at polling place, creating energy, you know, excitement amongst voters and providing useful information so that community members can be civically active.

Q. And the bus was in Alabama in the past when?

A. Well, it's been in the past since we first started the bus in 2018. We did several trips in 2019 and even in 2020. Although it's been more limited because of Coronavirus we have done a couple stops in Alabama.

MS. BRANNON: You can take this down, and then, Eric, can you pull up Plaintiffs' Exhibit 365.

Q. Mr. Albright, are you familiar with this document?

A. Yes. Again, it's a social media post.

Q. And what's in this social media post?

A. A range of activities that our coordinator at that time was

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supporting activities that our partner groups were doing and distribution of information.

Q. And is that in Alabama?

A. Yes, it is.

Q. Was this document created in the regular course of business of the Capacity Building Institute?

A. Yes, it was.

MS. BRANNON: So Plaintiffs would move to admit Plaintiffs' Exhibit 365.

THE COURT: Any objections?

MR. BOWDRE: No, Your Honor.

THE COURT: 365 is received. Go ahead, Ms. Brannon.

MS. BRANNON: Sorry. Thank you.

Q. And what kinds of things are reflected in these pictures in terms of the activities of your state coordinator?

A. So she is travelling around. You see a couple of our partners there in the Black Voters Matter hoodies, you know, their arms folded. And so, you know, this is a situation where she was supporting some outreach activities that our partners were doing. I believe the literature that they're giving out is literature that we helped provide. So usually -- you know, this demonstrates the way that our coordinators will again support activities that our partners are doing, support with presence, her presence as well as supporting with educational material to help voters be able to turn out.

MS. BRANNON: Thank you. Eric, you can take that exhibit down for right now. Thank you.

Q. Mr. Albright, do you have an understanding of the absentee voter process in Alabama?

A. Yes.

Q. What is your understanding of the photo requirement during the absentee voting process in Alabama?

A. My understanding is that a voter is required to show their ID, photo ID from the list of acceptable photo IDs. But they're required to show it either by doing -- if requesting their ballot by mail, by making a copy of their photo ID and submitting it with their application or by going in person to apply for their absentee ballot and showing it to election officials in person.

Q. And what's your understanding of the witness requirement during the absentee voting process in Alabama?

A. My understanding is that a voter is required to submit their -- to sign and have two witnesses to that signature or to have a notary notarize their signature.

Q. And are you aware of any individual from the Capacity Building Institute with -- let me rephrase the question. Are you aware of any individuals from Capacity Building Institute's Alabama partner organizations who have had trouble or will have trouble complying with the witness requirement?

A. Yes. Just to name one I'm familiar with, Theresa Bettis, who is a partner and part of a partner organization in Mobile County

who, because of her family situation as well as because of underlying health conditions will have trouble getting two witnesses. She's only got one other adult in the household. She's social distancing because of Coronavirus. And so it makes it at a minimum difficult to get a second signature without exposing herself to greater risk. And as I mentioned, she's got underlying conditions I believe both hypertension and diabetes.

MR. BOWDRE: Your Honor, we object for lack of foundation and hearsay to this line of questioning.

THE COURT: That's fine.

Ms. Brannon, why don't you lay the foundation on how Mr. Albright came about this knowledge.

Q. (BY MS. BRANNON:) Mr. Albright, do you know Theresa Bettis?

A. Yes, I do. For some years now.

Q. Have you interacted and discussed with Ms. Bettis her desire to vote by mail in Alabama?

A. Yes.

Q. And what did she tell you about her desire to vote by mail in Alabama?

MR. BOWDRE: Objection. Hearsay. And we understand Ms. Bettis is a witness. So she can testify to this herself.

THE COURT: She can. He's --

MS. BRANNON: Let me rephrase the question.

Q. Mr. Albright, what's your understanding of Mrs. Bettis's

challenges to voting by mail in Alabama?

MR. BOWDRE: We object again to hearsay.

MS. BRANNON: So, Your Honor --

THE COURT: Let me overrule as to that question and the way it's phrased.

You may answer, Mr. Albright.

THE WITNESS: Yes. My understanding is that because of her family situation as well as because of her health conditions that voting by mail with the current challenge requirements would be difficult.

Q. (BY MS. BRANNON:) And what partner organization does Ms. Bettis work with?

A. The Fair Housing Center of Mobile.

Q. Do you have any general knowledge about other constituencies that your partners in Alabama work with that have or will have challenges complying with the witness requirement?

A. Yes. I mean, as somebody who's both lived in Alabama -- I lived there for nine years -- and has done work in Alabama even after moving, I'm just very familiar with the general conditions in which voters in the state and in particular black voters and even more particularly in the black belt of Alabama or even in the cities of Alabama in some of the lower-income communities, you know, these are voters that don't have access to notaries readily, you know, don't have access to a scanner or a photocopier in their household or across the street and who have health

conditions.

I used to live in Selma, Dallas County which at the time that I was living there was actually the country's leading county in terms of diabetes. Which as you know is one of the underlying conditions which puts people at great risk because of Coronavirus. So both in terms of the potential health impacts but even in terms of the general economic situations that black voters in Alabama are generally in, these challenge requirements are very difficult and in some cases impossible for voters to meet.

Q. So that's both the witness requirement and the photo ID requirement that you're speaking to right now, correct?

A. Correct.

Q. And you know that information through the work that you've done as the CEO of the black -- of the Capacity Building Institute?

A. Yes. Through the work that I've done and through living there. I mean, if I -- I mean, we're talking about counties like Lowndes County. There are households in the county that don't have covered floors. But we're asking these same households to have a printer or a scanner.

Q. In your experience, what does the term curbside voting mean to you?

A. In my experience, it's been -- I've seen it in states where it's a process which allows voters either because of disability or

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because of age or both who can drive up to a polling location, request assistance voting from the curbside, and have an election official come present their ballot, take their ballot, and actually cast the ballot that the voter has filled out.

Q. Is the Capacity Building Institute -- does the Capacity Building Institute favor allowing curbside voting in Alabama?

A. Yes, we strongly favor it.

Q. And why?

A. Because you have again members of our population, some with disabilities, some with health conditions, some who are just of a certain age who will put themselves at great risk even in good times, right, would put themselves at great risk but particularly during this current Coronavirus health cries would putting themselves at great risk if they had to come out and wait in the regular lines surrounded by people, potentially long lines and exposing themselves to the Coronavirus. And so to avoid all of that, it just would make sense, and it would be feasible based on my experience to allow such voters to arrange to have somebody assist them curbside and allow them to cast their vote and to do so safely -- yeah.

Q. You mentioned that one of the things that the Capacity Building Institute does to help its partners in Alabama is text campaigns?

A. That's correct.

Q. Have you done a text campaign already in Alabama this

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year?

A. Yeah, we've done a couple of texting campaigns. Early on, a campaign about Coronavirus, followed that up with another campaign about our town halls which we're going to discuss, voting by mail, and then recently followed it up with another come pain to again try to educate people about voting by mail.

MS. BRANNON: Eric, can you call up Plaintiffs' Exhibit 343.

Q. Mr. Albright, are you familiar with this document?

A. Can you blow it up? I'm sorry. Yes. That's the script from one of our texting campaigns.

Q. Was this text sent to people in Alabama?

A. Yes, it was.

Q. Can you read what this text said?

A. It says, "Hi, first name. I'm Cliff with Black Voters Matter. We're working to build and exercise the power in our communities. We're holding an on line townhall on -- whenever the actual date was, at, whatever the time was, to share more about actions we can take on police violence, the upcoming election, voting rights and more. And then we provided a link so people could register for the town hall and then asked the the question, "Can you join?"

Q. Do you know when this town hall took place in Alabama? Do you remember?

A. Oh. I'm sorry. I should -- I can't remember the exact date. It was in July. It was like first, maybe second week of July.

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MS. BRANNON: Eric, you can pull this one down. Can you bring up Plaintiffs' Exhibit 340. Do you recognize that document.

A. Yes. This is a summary report that we get from our texting partner in regards to the texting campaign that we were just talking about.

Q. Was this document created in the regular course of business of the black -- of the Capacity Building Institute?

A. Yes, it was.

MS. BRANNON: This is Plaintiffs' Exhibit 340, and I would move to admit this exhibit into evidence.

THE COURT: 340. Any objections?

MR. BOWDRE: No, Your Honor.

THE COURT: Are you also moving for 343, the texting script?

MS. BRANNON: I am not, Your Honor.

THE COURT: Okay. 340 is admitted.

Q. (BY MS. BRANNON:) So what does this document show?

A. So again, it shows us a summary of how many people we texted, what the response rate was, what the positive response rate was, negative response rate was. And it shows that for both the initial text as well as the reminder text.

Q. And this is about the texts that occurred -- I think it says July 13th?

A. Yes.

Q. This document is July 13th, 2020, before the town hall,

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correct?

A. Exactly.

Q. And then it says that the text was sent to 190627 individuals; is that correct?

A. That's correct.

Q. What does that mean?

A. It means that the initial text went out to 190 -- a little bit over 190 thousand black voters in Alabama.

Q. And how do you generate that list?

A. It comes from -- it's a list that our partners pull. It comes from, you know, voter data and other data companies that have, you know, put together a list of consumer or voter information.

Q. And then it says positive response rate, and then the number there is 4368. Can you explain what that number is?

A. That would be the number of people who responded in answering the question about whether or not they'd like to join us. They responded positively meaning, yes, they wanted to join.

Q. And then it also says that you ran -- you did a reminder campaign. Can you explain what that is?

A. Yep. That would have been -- so for those people that responded that they wanted to join, they would have received two reminder messages as we got closer to the actual date of the town hall.

MS. BRANNON: Thank you. Eric, you can pull that one down.

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Q. Mr. Albright, how much does it cost to send a text like the one to the town hall that we just discussed?

A. Yeah, you know, we rounded off -- we say around 5 percent. Sometimes it could be as low as -- four cents I'm sorry. Five cents or five cents per text message.

Q. Does the Capacity Building Institute plan to do more texts in Alabama in October and September?

A. Definitely. We'll be doing several rounds of text messages. And the exact number of rounds will depend partially on what the results of this litigation is.

Q. And I think you may have said that have you already done another round of texting in Alabama since the July town hall?

A. Yes. We actually just recently did a round of texts in Alabama which I think started -- what's today? Today's Wednesday. It was either towards the end of last week, like Friday, Saturday of last week or the beginning of this week, like Monday, Tuesday of this week.

Q. And what was the content of that message?

A. Basically, you know, again educating voters around and encouraging voters to vote by mail and seeing if voters wanted to receive more information about voting by mail.

Q. And you mentioned that you have an upcoming text planned that will deal with some of the absentee voting requirements in Alabama?

A. Exactly. Exactly, because -- uh-huh.

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Q. Go ahead?

A. No. Because I was going to say we've got to do multiple rounds because the current requirements are so complicated, and so, you know, you can't just do it with one wave of texting.

Q. So the text campaign will include information about the photo ID requirement during the absentee voting process in Alabama?

A. Right. At least one -- you know, we can't necessarily put everything all in like one. So that's why we have to think about in in terms of like successive texting campaigns. It's literally like telling a story. And the more complex the story is that you're trying to tell, then the more rounds of texting that you have to do because again you can only get so much in a text. And so that's why having these requirements forces us as an organization to, you know, multiply the types of outreach and the number of outreach -- waves of outreach that we do to deliver what's fairly complicated information, information which most of our voters, 90 to 95 percent have never done voting by mail or absentee voting in their usual election cycle.

Q. But some of that would include information also about the the witness requirement?

A. Exactly.

Q. If there were no witness requirement or photo ID requirement as part of the Alabama voting process, would there be less text messages that you might send?

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A. Definitely. Definitely there would be less messages. And, you know, we'd be able to spend more time on our core function which is, you know, just kind of having discussions with voters about turnout in general, around issues in general, around the importance of voting in general. So the more messages we have to spend on, you know, the complicated process and these requirements, the less we're able to spend on like really what's our core function.

Q. So those core functions, they would be the content of a future text message campaign if there were no witness or ID requirement?

A. Exactly.

Q. In your experience, would the text messaging campaigns that did not have to explain a witness requirement or ID requirement be more effective?

A. Definitely. You know, it's just like providing any explanation. You know, the simpler the explanation is, then the easier it is to communicate it, the fewer times you have to repeat it. And so, yeah, a much simpler message of, "Hey, you can vote by mail. Here's the link," is obviously something that requires fewer repetitions than, "Hey, we want you to vote by mail. Don't forgot you need to do this with your photo ID. Don't forget that you've got to get these signatures. If you can't get the signatures -- hey, you might be able -- it's a much more complicated process. Not to mention if we get into not only telling people what the

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requirements are but this is the type of support that we're able to provide if you can't get a notary. And so it's layers upon layers of having to message all made necessary because of the complicated requirements.

MS. BRANNON: Eric, can you pull up Plaintiffs' Exhibit 359.

Q. Mr. Albright, do you recognize this document?

A. Yes. This is a save-the-date graphics that we created in preparation for our town hall.

Q. This reflects your recollection that the town hall was on July 16th?

A. Yes.

Q. Was this social media post made in the regular course of business of the Capacity Building Institute?

A. Yes.

MS. BRANNON: Plaintiffs would move to admit Exhibit 359.

THE COURT: Any objections?

MR. BOWDRE: No, Your Honor.

THE COURT: 359 is received.

MS. BRANNON: Thank you, Your Honor.

And then can we also now pull up Plaintiffs' Exhibit 361.

Q. Mr. Albright, are you familiar with this document?

A. Yes, I am.

Q. And what is this document?

A. It's a social media post. It's actually a recording of the virtual town hall which was conducted via Zoom and broadcast

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on Facebook live.

Q. And was this social media post created in the regular course of business of the Capacity Building Institute?

A. Yes, it was.

MS. BRANNON: Plaintiffs would move to admit Plaintiffs' Exhibit 361.

THE COURT: Any objections?

MR. BOWDRE: No, Your Honor.

THE COURT: 361 is received.

Q. (BY MS. BRANNON:) Mr. Albright, what was the content of this town hall that took place in July?

A. Yep, so as you can see from this graphic, we had several speakers, several of our partners from across the state who were speaking on a range of issues. One of the the main issues that was discussed, I think each discussed it, you know, from one extent to another, but one of the main issues was Alabama's vote by mail process.

Q. And who is Kenesha Brown?

A. Kenesha Brown is -- she was one of the speakers at the town hall. She's one of our partners. She represents a group in Montgomery, Alabama.

Q. And what did she address at -- what topic did she address at the town hall?

A. She addressed largely the issue of voting by mail, the importance of educating, educating voters around the process,

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raising awareness, educating folks around the challenge requirements and then trying to -- and talking about creative ways of helping people to be able to meet those challenge requirements.

Q. And who helped organize this town hall?

A. So Arne, who is our state coordinator, who is in the photo on the top left of the graphic, top left. She helped to organize it. She helped put together the speakers, and of course centrally, all of our central staff helped to coordinate it either by helping with outreach, you know, setting up the social media, et cetera.

Q. And she is and was an employee of the Capacity Building Institute?

A. Yes, she is.

Q. And who is Norma Jackson?

A. Norma Jackson is another one of our partners. She's based in Macon County. And she was also one of the speakers on the town hall.

Q. And what topic did she address at the town hall?

A. She also largely addressed the vote by mail issues including, you know, general awareness, education, voter education, and also talked about efforts to advocate for, you know, better policies and better access in regards to vote by mail.

Q. And do you know how many people attended the town hall?

A. I believe in terms of the Zoom itself that we had over 300 attendees but that we also had, as you can see in this graphic,

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that we had 4.7 thousand views of the town hall meaning people that watched it on social media.

Q. Did the Capacity Building Institute do other virtual town halls in different states this past summer?

A. Yes, we did.

Q. And what were some of the those states?

A. Michigan, Pennsylvania, Georgia, Mississippi, Florida, Tennessee, South Carolina, North Carolina.

Q. And some of those other states, Michigan, for example, was there as much discussion about vote by mail as there was in the Alabama one?

A. No. No. To the extent that it was discussed, Michigan has a much easier process. And so a far shorter amount of time needed to be dedicated to explaining that process or about what kind of organizing would need to be done about around that process because it's far less complicated than Alabama's.

Q. What kinds of things would you have talked about more during the Alabama virtual town hall if you did not have to address the absentee ballot process?

A. So without having to talk about the process, we'd be able to talk more about the substance of the electoral issues so being able to talk about education issues, housing issues, economic development issues, talking about the things that at the end of the day are going to be the things that energize voters about turning out. We could put more emphasis on that and less on the

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intricacies of the process.

Q. Thank you very much.

MS. BRANNON: Eric, can you pull up Plaintiffs' Exhibit 341.

Q. Mr. Albright, you testified that the Capacity Building Institute gives grants or mini grants to its partners in Alabama?

A. Yes.

Q. Do you recognize this document?

A. Yes. This is a list of some of the grants that we've given in the State of Alabama to our community partners.

Q. Was this document prepared in the regular course of business of the Capacity Building Institute?

A. Yes.

MS. BRANNON: Plaintiffs would move to admit Exhibit 341.

THE COURT: Any objections?

MR. BOWDRE: No, Your Honor.

THE COURT: 341 is received.

MS. BRANNON: Eric, is it possible to turn to the second to last page. And then there is an entry for 317.

Q. Okay. Mr. Albright, who is special new years club?

A. That's one of our partner groups in Dallas County.

Q. And did you give them a grant in March of 2020?

A. Yes, we did.

Q. The Capacity Building Institute gave them a grant?

A. Yes.

Q. And was that grant for work related to absentee voting in

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light of COVID?

A. Yes. They were doing some support I think probably for, you know, the elderly, folks with, you know, underlying conditions that they were very concerned about not being able to vote.

Q. Had the special new years plus organization done work on absentee voting in the past? Before 2020?

A. Not to my knowledge. You know, they may have done a little bit. You know, any organization that does GLTV voter mobilization work in Alabama probably has some small part that does absentee voting but, you know, nothing like the amount of effort that's had to have been put in in recent months in 2020.

Q. And your understanding and experience having worked with special new years plus, have they made any changes to their focus on absentee voting in light of the Coronavirus?

A. Like everybody else, you know, having to explain the process to a wider group of people who are now impacted and able to use the absentee voting process but having to explain that process to a larger number of people takes up a significant amount of their time which is why they put in this request. And they may have -- they may have been our first Alabama partner. And they really kind of emphasized the challenges that having to do this expanded education was going to create.

Q. And when you say expanded education, what do you mean?

A. The expanded education around the vote-by-mail process,

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the absentee voting, and the challenge requirements.

Q. When you refer to challenge requirements, what are you referring to?

A. To the photo ID requirements and the signature notary requirements.

Q. And -- let me ask it this way.

MS. BRANNON: Eric, let's go back to the first page.

Q. And there's an entry there from 7/21/2000 which is also Special Years, Inc. for a second grant; is that correct?

A. That's correct.

Q. And what was that second grant for?

A. I can't make it out. Let me see if I can -- yeah. Similarly, it was around, you know, voter outreach, focusing on the -- focusing on the elderly and those who might need -- I'm trying to read the -- but not just voting. So they were dealing with this one with other issues related to COVID, you know, other types of assistance, you know, medication, food, care, et cetera.

Q. But is it your understanding that they are continuing to do work on providing education about the absentee ballot requirement in Alabama?

A. Definitely.

Q. And then this chart also talks about giving grant money to journeys for souls. Do you know that organization?

A. Yes.

Q. Did that organization to your knowledge do work related to

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educating about absentee voting requirements?

A. Yes.

Q. Also on this list is Alabama black women's table?

A. Uh-huh.

Q. To your knowledge, does Alabama black woman's table, does this grant also to some work they have done related to absentee voting processes in Alabama?

A. Yes.

Q. And then the southern youth leadership conference. To your knowledge, are they also doing work related to education about the Alabama absentee voting processes?

A. Yes. Given the realties of Coronavirus, you know, really any of our partners that's doing -- and that we have provided grants to to engage in GLTV voter mobilization just out of pure necessity has to be addressing and raising education around the vote-by-mail process. There's really no way to get around having to educate folks around that process. On the requirements.

Q. When you say a necessity to educate people, why is it a necessity?

A. One, because it's the way that people -- the only way that people are going to be able to vote safely. And so people have an interested in being able to do it. I think the turnout data from in Alabama and even other countries shows the level of interest there is in the process. But we also know that there's a level of confusion around that process. And so any of our organizations

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that are trying to talk to voters about voters in this cycle has got to be providing information around that process. Because again, this is a process that in previous election cycles, at least 90 percent of our folks our voters do not use this process and have never used this process. So it requires significant education and conversation.

Q. If there were no photo ID requirement or witness requirement, would these organizations need to spend as much of their grant resources on voter education about absentee voting?

A. No. They would not have to spend as much of those resources for that. And it would free them up to have other discussions or to not even need to request as much support.

Q. And one of the other organizations that's on this list that you have given grant support for education about the absentee voting process is faith and works statewide engagement civic collective; is that correct?

A. That's correct. That's correct.

Q. How much are these grants typically for?

A. They've ranged from one thousand to five thousand. In this election cycle -- and again, partial because of the extra challenges of having to do a deeper level of communication around these requirements, we've actually been expanding some of our more recent grants in some cases even going as high as 10 thousand.

Q. Yeah, that was going to be my question. This is a document

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from July. Has the Capacity Building Institute given additional grants to partners in Alabama since then?

A. Yeah. Yeah, we have. Some of these same groups will be getting a second round of support. And there's a ton of organizations that aren't listed on this document that are now requesting support.

Q. And is some of that work that your partners are going to do that you're going to support through grants related to education about the absentee ballot process?

A. Definitely. Education about the -- education and outreach and other forms of support related to the absentee voting process.

Q. And why is education about the absentee voting process important to the goals and mission of the Capacity Building Institute and its partners?

A. Right. Well, because, you know, if you -- anybody that wants to increase voter turnout, right, you've got to provide folks with the information and two sets of information, right. What are the issues and the reasons why people even want to turn out. Like, what's the reason, what's the modification. You know, it's simply not enough for everybody to say, oh, it's Election Day, right? So you've got to provide information about the issues involved.

But you've also got to provide information about the process. Our experience shows that in a lot of communities where voter turnout is low, it's not because of apathy or lack of

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concern. A lot of times it's because of lack of information. There are a lot of folks who say I don't know what's on the ballot, I don't know who these people are, or more importantly, I don't know have to do it. Do I have to bring my ID? What ID works? What's the process? What days do I go? Where do I go? There's just so many questions.

So in particularly about this process, this absentee process, there's even more questions. So it's imperative that we provide this education and this information or else people without this information will simply choose to not participate. And I can't believe that's something that any of us would view as being acceptable, you know, without trying to provide the necessary information and trying to make the process as easy as possible for folks who can legally vote to be able to vote.

Q. If there were no photo ID or witness requirement in Alabama, would your partner organizations be able to use the grant funds to engage in other activities to promote participation?

A. Exactly. I mean, they'd be able to, you know, again focus more on just the general issues and have the general discussions to get people excited about voting. You know, if you can take away the procedural reasons, right, why people may not be motivated to vote, if you can take away the lack of information, the insecurities about what the process is, and you will you have to do is have a discussion around how important these issues are,

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then, you know, organizations are better able it use their time and resources. And from our perspective, we're better able to use our resources rather than having to double, triple, quadruple our expenses because we're spending time and money talking about process issues that are impediments.

Q. So if the Plaintiffs were to prevail on this litigation and there were no witness or ID requirement, what would the Capacity Building Institute do differently in terms of grant funding to partners in Alabama?

A. Right. We'd be able to provide, you know, grant funding that could again focus on, you know, getting the information out to motivate people just to go vote, right. We'd still have to do some amount of information about, you know, vote by mail, but it would be nothing in comparison to the layers of information, the layers of text messaging, the layers of radio ads. You know, everything is made complicated and it has to multiply in order to deliver a more complicated message. So in short, we'd be really able to focus our message on those issues that are really designed to get people to participate and have to spend less time educating them on how to participate.

MS. BRANNON: Eric, can you pull up Plaintiffs' Exhibit 636.

Q. Mr. Albright, do you recognize this document?

A. This is a social media post. Oh. This is a social media post talking about the Secretary of State's decision to allow COVID to be used as an excuse for absentee voting.

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Q. Was this document created in the regular course of business operations by the Capacity Building Institute?

A. Yes, it was.

Q. And did you help draft this text?

A. Yes.

MS. BRANNON: Plaintiffs move to admit exhibit 363 into evidence.

THE COURT: Any objections to 363?

MR. BOWDRE: No objection, Your Honor.

THE COURT: Plaintiff's 363 is received.

Q. And why was this post important to you? Go ahead.

A. Yeah. So this post was important because we wanted to be clear that, you know, although expanding the excuses that could be used for absentee to include, COVID was a step in the right direction. It was by no means a panacea. It is by no means eliminates the fact that the state is still standing in the way of these requirements, which are going to have a detrimental impact on voter turnout or to have a detrimental impact on voters's health because they will be forced to actually go vote in person and expose themselves to Coronavirus. So we wanted it -- we wanted it to be -- we just wanted to make it clear that although there was a small step in the right direction, that there were these remaining challenges and that we're going to have to, you know, continue to provide information around those challenges.

This communication is an example of, you know, the ways

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that we've got to layer our messages to deal with these complicated issues. It would be great that we would have just sent out a simple communication and just said, thank you, right. Thank you for getting rid of all the obstacles. But we can't because it's complex. And so with that complexity comes the need for more complex messaging which then turns into more frequent and, you know, layered approaches to the messaging.

Q. Is the Capacity Building Institute planning to go back to doing bus tours in 2020?

A. We are. Some modified versions of our bus tours. But bus tours and caravans. Again, that will be designed to encourage voters to participate in vote by mail including doing absentee in person. So using bus tours and caravans is something to generate some excitement around that.

MS. BRANNON: Can we just call back up Exhibit 341? I'm sorry. 431. Plaintiffs' Exhibit 431.

Q. Are you going to all of these states with the bus tour in this fall?

A. We certainly hope to. We're again trying to expand our use of our bus tours in a modified way. But we know that we'll need to put more time and attention into those states that most complicated vote-by-mail processes because that's where it's going to take the most creative interventions in order to motivate people and to provide a way for people to participate. So Alabama will -- it's likely to require more bus tours and more

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versions of the bus tours including not just that bus but even our smaller, what we call our baby buses, use of vans that are similarly wrapped with graphics in order to generate excitement. A lot of that is going to have to take place in a state like Alabama more so than some place like Michigan because of the difficulties of the vote-by-mail process.

Q. So to the extent that you're going to do a bus tour, it is going to come back to Alabama more than once this fall?

A. Yes.

MS. BRANNON: Eric, you can take that down.

Q. And as part the activity of the bus tours that come back to Alabama, if Plaintiffs don't prevail in this lawsuit, will the Capacity Building Institute focus on explaining the ID and witness requirements to people in Alabama?

A. Yes. I mean -- yes. So we'll have to explain the process and use the bus tours for that. We'll also have to use the bus tours to try to lead efforts to try to get people to come to the absentee voting offices. Because again for those people that can't make copies of their photo ID, the only possibility is going to be to go do it in person, present their IDs in person. So this means that we'll have to create a whole new strategy of providing resources including bus, vans, people, materials, to support that type of a strategy. Again a strategy that would not be necessary if those strict requirements on signatures and photo ID were not in place.

So it's going to take bus tours to help with that process.

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And then the third piece is that we'll also wind up having to do more bus tours and other forms of outreach on Election Day in order to help mitigate the cost or to mitigate the risk that will be in place for those people who can't use vote by mail because of the strict requirements. We'll need to support those lines of people that will inevitably show up on Election Day putting themselves and those that they love and their neighbors at risk.

Q. And when you say support, does the Capacity Building Institute plan to give grants to partners to provide assistance to voters at the polls in Alabama on Election Day?

A. Yes. And then to be clear, you know, we usually will do some level of, you know, polling place support, polling place parties. But given this situation and the risks that are imposed, what it means is that we'll have to do types of support that we would not normally wind up having to do. So in other words, whether that's providing sanitizers at polling places or providing masks that we give out at polling places, you know, these are things that we'll have to do to larger extent if people are not able to use, fully use the absentee process and wind up showing up on Election Day, again, the cost of providing that mitigation, that comfort, that safety is an expense we'll wind up taking on that we otherwise would not have had to take on.

Q. If the Plaintiffs prevail in in litigation, do you think more people in Alabama would vote by mail?

A. I'm absolutely certain that it would. And again, that's just

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not speculation. We can look at the results in other states to show those states that have had the most flexible access to vote by mail have had record turnout. The states that have had more restrictive use have still seen obviously increased turnout but not to the same extent as a state where they actually make the process a lot easier.

Q. If the Plaintiffs were to prevail and vote by mail is easier, would you need to expend the same level of resources to provide the personal protective gear to mitigate exposure to COVID-19 during voting on Election Day in Alabama?

A. No. Clearly not. So I'm just going to use some numbers that may not match up. But I mean, it's the difference between if you have harsh restrictions that people are not able to use and therefore a million people have to show up on Election Day versus if you, you know, have far friendlier requirements without the harsh restrictions, more people vote by mail, and instead of a million people, only two hundred thousand show up on Election Day. You know, again, that means that fewer people on Election Day means fewer resources that have to be put into those mitigation efforts like sanitizing masks or any of the other things that we may wind up doing.

Q. Are there any other things that the Capacity Building Institute will need spend money on to address the challenged provisions?

A. I mean, you know, in addition to the education, you know,

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there's other forms of providing support to deal with those challenge requirements. And so, you know, I mentioned the caravans. You know, we and some of our local partners have floated the ideas of, well, if there -- you know, people need notaries but they can't get in their communities, maybe we could have notaries that would are able to be mobile and go around to support voters. Maybe we are able to provide extra witnesses. So providing -- maybe we're traveling around with a printer to make it be available.

No matter how you slice it though, that's increased time, that's increased planning, that's increased funding that shouldn't be necessary to deal with some requirements that at the end of the day aren't necessary and are only serving to make the voting process more restrictive and holding back voters from fully participating. And, you know, finally just to add on, it's a process that also feeds into the overall cynicism that many in our communities have about the voting process. You know, if we really want voters to feel like their vote matters, then we need not make the process so difficult and restrictive.

MS. BRANNON: I have no further questions. Thank you very much, Mr. Albright.

THE WITNESS: Thank you.

THE COURT: Mr. Bowdre, are you up first?

MR. BOWDRE: Yes, Your Honor. Thank you.

Q. Good afternoon, Mr. Albright.

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A. Good afternoon. How are you?

Q. Good. Thank you. Let's start off with some questions about BVM's organizational structure. I'm going to call it BVM if that's okay with you?

A. That's fine.

Q. You testified that BVM itself does not have individual members but instead works through partner organizations; is that right?

A. Right. We consider our member -- our partner organizations to essentially be like membership. But we don't use an official membership structure like that.

Q. Okay. And you don't keep track of the individual members of your partner organizations, do you?

A. Only to the extent that we track like who the leadership are, you know, who's the contact people that, you know, apply for our grants, participate on our statewide calls.

Q. Okay. But you don't have a list of names of the individual members?

A. No, not by organization.

Q. Okay. You said that BVM does do some individual outreach itself through text messaging campaigns, social media posts; is that right?

A. Yes.

Q. And isn't it true that even with those campaigns that you try to connect the voters that you're reaching with the

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boots-on-the-ground organizations that are in their communities?

A. We do both. We try to connect them to their local organization. We also have their information as well so that sometimes we'll engage in follow-up communications. And so, for example, with that texting campaign that Ms. Brannon was just asking about, once they let us know that they want more information or that they want to be part of a town hall, then, you know, we'll continue to be able to send them information.

Q. Okay. But when they respond to you in a text message, you won't then consider them a member of BVM, do you?

A. We don't generally use the member language for everybody who opts in, although we, you know, we're more likely to use the language supporters or -- supporters, volunteers. We just don't use the actual member -- member language.

Q. With regard to the partner organizations that you work with, do you know how many of the members of those organizations are registered to vote in November?

A. The number in terms of absolute number or percentage or?

Q. Either one. And I'm speaking of Alabama in particular.

A. Right. You know, I -- just from, again, general information, we've not done like a specific like census of our organizational partners or their membership. But understanding their organizational commitment to voter mobilization, you know, we, again, just, again, just as a general, we believe that at least 90 percent of their membership -- certainly their staff -- would be

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registered voters.

Q. You don't know how many of those members will be unable to comply with the photo ID or witness requirements for absentee voting in November, do you?

A. I can't say an exact number.

Q. And you don't know how many of your partner organizations's members in Alabama have disabilities or other circumstances that would require them to vote curbside, do you?

A. I can't give an exact number.

Q. And aside from the individual Plaintiffs in this lawsuit whom we will hear from directly, you cannot identify the name of a member of one of your partner organizations who's unable to meet the absentee voting requirements in November, are you?

A. Not apart from the ones that I have already identified.

Q. One of those that you identified -- I think the only one that you identified today was Ms. Bettis; is that correct?

A. That's correct.

Q. Are you aware if she voted in July?

A. I'm not aware if she voted in July.

Q. Earlier you gave the example of driving around Alabama with a copy machine. Do you recall that as one of the examples of something that you might do?

A. Yeah, uh-huh.

Q. Have you done that yet?

A. No.

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Q. Have any of your partner organizations asked you for help providing photocopying services like for their members?
A. Not formally. I don't think I've seen a grant application where they've made that formal request. I know that there's been some discussion, you know, amongst the partners and on the calls and with our coordinator, but not a formal request.
Q. Do you have firm plans to make photocopying services available to your member organizations in Alabama before November?
A. Until this case is finalized, I wouldn't be able to say firm plans, no.
Q. Have any of your partner organizations asked you for help setting up Zoom notarizations for their members?
A. Not that I know of. Zoom? Zoom -- you said Zoom notarizations?
Q. Yes, sir.
A. Not that I know of.
Q. Have you hired or worked with any notaries public to go around in Alabama to notarize absentee ballot applications?
A. No, not at this time.
Q. Do you have firm plans to do so?
A. Definitely not firm plans. Again, we're hoping that as a result of this that it won't be necessary.
Q. Okay. Is this the kind of unanticipated expense that your organization might have to incur because of the challenge

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regulations?
A. That could be one example of such an expense.
Q. Okay. But it's not something that you have done or have plans to actually do?
A. It's not something that we've done. And we have no definite plans at this point on doing that.
Q. So speaking before COVID, would it be fair to say that BVM's focus was on mobilizing voters to get out and vote?
A. That would be fair.
Q. And again before COVID, is it fair to say that BVM would provide support for partner organizations to host voter registration drives, but BVM itself would not really be on the ground hosting those drives itself. Is that right?
A. Not exactly. The first half is right, that we would provide support to our partners to do such drives. We may or may not be on the ground supporting those efforts. So, again, you know, we -- that's an example, I think I mentioned early, ways that we've used our bus tours in the past is that sometimes we would show up at such events that our partners are doing. So that's us directly being on the ground. Or our state coordinator might join and be directly on the ground actually bring other resources to support the -- you know, those types of activities. So there are times when we support our partners in doing it and we're not on the ground with them in, but there are times when we are on the ground with them.

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Q. Has BVM hosted a voter registration drive this year in Alabama?
A. Not one that we've hosted unilaterally. You know, we've supported some. We have co-hosted. We have helped do social outreach to increase attendance at some. But we don't generally do that in isolation from our partners.
Q. Turning to BVM's educational efforts that you spoke about, most of those efforts that you engage in directly with voters are through social media or text messaging; is that correct?
A. In the context of Coronavirus, so throughout most of this year, most of those efforts have been that.
Q. How about before Coronavirus, what did those efforts look like?
A. Some of them -- you know, again, as I mentioned, we would do some in person, on-the-ground activities to do some of the that awareness raising including with our bus tours.
Q. Okay. Speaking again before COVID, if an individual voter in Montgomery County, for example, had a question about the witness requirement for absentee voting, that's not really something that they would call like an BVM hotline and ask, is it?
A. You said before COVID? I missed the beginning of the question.
Q. Yeah, before COVID?
A. Yeah, before COVID, you know, questions about absentee and even outreach around would usually be something that our

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local partners would handle because it was, again, such a small part of our community. It wasn't necessarily something that we would do at the organizational, you know, national level.
Q. Okay. What about after COVID? If a voter in Montgomery called with a specific question about the witness requirement, would you answer that, or would you turn that voter to one of your partner organizations in Montgomery?
A. Sometimes it's both. You know. And, you know, we get questions now. So like when we do a post, for example, a post Ms. Brannon showed early that was talking about the absentee process, we'll get comments or direct messages in our inbox that says, hey, can you provide more information about this. And we'll usually do some kind of combination of, here's a link that, you know, provides more information about vote by mail, and, oh, here's a local partner that you might want to connect with.
Q. Again speaking, you know, since the pandemic began, would it still be accurate to say that the primary mission of BVM is voter turnout and getting out to vote?
A. I think I would be prepared to say that that's the primary mission.
Q. And the main way that BVM I guess accomplishes that mission is again and still is through the partner organizations; is that correct, even after COVID has begun?
A. Yeah. I'd still say that that is our leading -- you know, it's the first of our five core beliefs that we believe in supporting

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local partners. So it's still a primary way. Again, as I explained, it's not the only way because there's some communications that's kind of high level that doesn't necessarily go through our local partners.

Q. I understand that BVM has done some investigation in other states about the kinds of challenges that voters are facing in light of COVID; is that correct?

A. That's correct, yes.

Q. For example, you've set up an automated survey line where people can report challenges to voting; is that right?

MS. BRANNON: Your Honor, I'm going to object. This is outside the scope of the direct questioning, and I'm not sure the relevance of this line of questioning.

THE COURT: Mr. Bowdre, I definitely agree. It's outside the scope. Let me hear from you as to the relevance, please.

MR. BOWDRE: Yes, Your Honor. I'm trying to understand the activities that BVM is doing in Alabama. And so I can go on to my next question which is whether they have set up a line like that in Alabama.

THE COURT: Okay.

Mr. Albright?

THE WITNESS: Can you repeat the question?

THE COURT: Have you set up a line like that in Alabama.

THE WITNESS: No, we have not.

Q. (BY MR. BOWDRE:) The convention that you hosted -- what

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was it, last November; is that right? In Alabama?

A. September, I believe.

Q. In September. How much did that cost roughly, do you recall?

A. Wow. Probably -- what did that wind up costing? It was around around 80 thousand, I think.

Q. And is it correct that you had not have a convention this year because of COVID?

A. That would be -- well, not necessarily -- it's correct that we have not had one this year mainly because of COVID. It's also been just a matter of timing. So for example, that one was last September. So even if we were doing one this year, it wouldn't have happened until later this month or next month. It's also partially because of the election cycle being different this year than last year. But it would be fair that obviously COVID has had an impact on when we would do such a retreat.

Q. Are you supplementing or replacing those -- you know, the in-person activities with more activities on line such as the virtually town hall that you hosted in July?

A. Yes, definitely. Supplementing those activities, yep.

Q. Do you know how much it cost to host the virtual town hall in July?

A. So there's a couple ways to think about those costs. You know, there's the texting and the social media advertising associated with it. You know, there's the cost of production like

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the team that actually did the behind the scenes. And so I'd say even if I just take the texting alone, you know, if you're looking at 200 thousand text messages at, say, five cents a text, then you're looking at ten thousand -- I'm sorry. 200 thousand. Yeah, ten thousand just for the text messaging, right. And you can -- and then you put on, you know, the other costs that are associated with that. It can be anywhere from ten to 20 thousand.

Q. And was there is any text messaging with regard to the convention last year?

A. Actually, no.

Q. How did you publicize it?

A. It was mainly directed at our existing partners. So it was convening of the partner network. So it was just direct communication, emails largely, emails, phone calls.

Q. Do you have an estimate of the increased cost that BVM is facing in light of the challenged provisions or to respond to the challenged provisions? I'm sorry.

A. Yeah. So the short answer is no. We don't have like a packaged estimated cost because there are different pieces to it. So as I have explained, there's the texting component to it, a series of texting campaigns that we'll need to do. That adds up. Even again if you estimate it around ten thousand per wave, you know, if you're doing four, five, six different waves -- which is real a minimal requirement, then, you know, that can add up to, you know, 60 thousand.

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If you look at the extra radio time that we've got to spend, you know, similar to multiple rounds of radio around this issue. If you look at -- you know, I mentioned the extra caravans that we're having to do. And so, you know, that's extra vans and vehicles that we're going to be renting over a seven or eight-week period. That's extra drivers. That's extra expenses to do the caravans. And so, you know, all of that -- all of that adds up.

Q. Just to clarify, all those things that you just listed, are those things that you have firm plans to do or just examples of things that you might or could do?

A. No, all of those things that I have mentioned are firm plans. You know, there are other plans like you were asking about, you know, are we going to provide notaries going around, are we going to do the printers, that's not firm. But what's absolutely firm is that we're going to be a doing a series of radio ads just around the vote-by-mail process.

We're planning on doing educational videos that we're going to be showing people like how to do vote by mail. All of that's going to be pushed out on social media. That's going to involve some social media ad spending. So those are the things that I just mentioned, the extra texting, the extra radio, the video, the caravan, those are firm. Now, what exactly -- how much of that we'll need to do again will depend on what winds up happening in this case. But if it's not ruled in our favor and these requirements stay in place, then all of those things are firm

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things that we'll have to do just to get the word out and to educate voters.

Q. All right. You also mentioned earlier some of the mitigation measures that you're prepared to help with for in-person voting. Do you recall that?

A. Yes.

Q. Do you know if polling places in Alabama already provide hand sanitizer?

A. I -- what I think I have heard is that there's going to be some access like within the polling place. So like as you're at the machine, maybe there will be a bottle of sanitizer around. But for the people who are going to be standing out in what could very well be some very long lines, you know, that's a different story. And so it's that type of extra support that we'll be looking to, you know, having to provide.

Q. Are you aware if the Secretary of State has given funds to counties to make their polling places safe for in-person voting?

A. I actually saw something from the Secretary of State. I'm hoping that that will be used to get some extra sites and extra support during the vote-by-mail period. That would include -- that would improve safety.

Q. I have a few questions about the budget for BVM and specifically to this year and how that has changed. At the beginning of this year, you set a budget of about 5.5 million overall; is that correct?

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A. That's correct. I'm sorry.

MS. BRANNON: I was just going to object because again, that's not something that was discussed on direct.

MR. BOWDRE: Your Honor, it goes to the expenditures and whether they're allocating resources and having to reallocate them.

THE COURT: Go ahead. It's getting late, though, so I hope the other lawyers who are coming up behind you are adjusting their outlines as well to not make sure -- to make sure they don't go over the same things. But you may continue, Mr. Bowdre.

MR. BOWDRE: Thank you, Your Honor.

Q. By July, my understanding is that you had actually raised 2 million more than that; is that correct? So it was between 7 and 7.5 million?

MS. BRANNON: And again, Your Honor, because this is beyond the scope, I'm going to object. That's mischaracterizing information.

THE COURT: Overruled, because the witness can answer and correct mischaracterization if he believes there's been one. I'll give Mr. Bowdre some leeway.

MR. BOWDRE: Thank you, Your Honor.

THE WITNESS: Yeah, so we received more revenues than what we had expected at the start of the year. As you may recall, there was uprisings that have taken place all across the country, and, you know, organizations such as ours saw an increase in

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support around that period of time. And a lot of that support was coming in even more so than for the voter outreach work for, you know, work around related issues dealing with police violence. And we have in fact created some funds to deal specifically with supporting protests, supporting, you know, some organizing around those issues. And so as extra support has come in, so has our expenses. And some of those expenses have not been related nor in any way anticipated, you know, having to deal with or being directed towards vote-by-mail issues.

Q. (BY MR. BOWDRE:) But you would agree that at least part of that increased funding was to help BVM with with COVID-19 matters; isn't that right?

A. I mean, honestly, again, some of those -- some of the money that we have received has been general. Some of it has been directed towards some of the, you know, policing, Black Lives Matter, police violence issues. And then some of it has been directed at COVID, has directed at COVID in the sense of what we call mutual aid, rental assistance, utilities assistance. And so, you know, what portion has gone towards or been directed towards or donated with in mind assisting with Alabama's, you know, restricted requirements, you know, that's a hard thing to put a finger on.

And again, even amounts that may have been attended for vote by mail -- because we have done some outreach on in terms

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of vote by mail, but it's not with the intention of having to deal with the types of requirements that Alabama has. It might be, you know, more the intentions of having to explain vote by mail they way that they have to explain it in Michigan. So again, I don't think that those extra resources were fully intended to deal with the complexities of Alabama's particularly harsh of restrictions.

Q. Let's talk specifically about Alabama then. Is it correct that in January the budget for the Alabama Get Out the Vote Initiative was around 450 thousand?

A. That sounds -- which month did you say? I'm sorry.

Q. The budget at the beginning of the year for Alabama Get Out the Vote was around 450 thousand dollars?

A. Uh-huh. I think that's fair enough.

Q. And due to the increased funding at least as of July, it had increased to about 650 thousand; is that correct?

A. That's fair enough.

Q. Do you know what that number is today, a few months later?

A. It's probably pretty close to what it was when we gave the July number.

Q. You mentioned some of the in-person activities that you did or normally do in Alabama that you have since had to cancel or at least decrease. Do you recall that?

A. In terms of like some of the in-person, you know, door-to-door outreach and bus tours?

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Q. Yes.
A. Uh-huh.
Q. And you have a decrease in the amount of that because of COVID-19 concerns; is that right?
A. Yes.
Q. You don't allege that those are a result of the provisions challenged in this lawsuit, do you?
MS. BRANNON: I'm just going to object to the characterization of the question.
MR. BOWDRE: I'll rephrase.
MS. BRANNON: Mischaracterization. Go ahead.
Q. (BY MR. BOWDRE:) You did not make the decision to lessen those in-person activities because of the regulations challenged in this lawsuit, did you?
A. The decision to lessen those activities? No, no, I wouldn't say that.
Q. At the beginning of this lawsuit, one of the challenged provisions was the excuse requirement for absentee voting. Do you recall that?
A. Yes.
MS. BRANNON: Again, Your Honor, I'm going to object because this exceeds the scope of direct. We did not talk about the excuse requirement at all.
MR. BOWDRE: Your Honor, I guess --
THE COURT: Go ahead. It does exceed the scope. What's

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the relevance?
MR. BOWDRE: It goes to the allocation of resources and whether -- whether relief itself, you know, is a claimed harm.
MS. BRANNON: Your Honor, I don't understand. Relief itself is a claimed harm? I just don't understand the basis for why it's relevant.
MR. BOWDRE: If it's the case that increased resources are being used because Plaintiff got relief, that is what I'm trying to figure out and whether that is one of the claims.
THE COURT: I'm going to butcher this. But are you trying to argue that because the excuse requirement is a moot issue, that BVM is no longer able to say that they have been damaged or have had to spend resources on that point that they can recover? There's silence. I'm not sure I've done justice to your question.
MR. BOWDRE: I can move on. My real questions are about the relief that they're still seeking and whether that itself would create a reallocation of resources. So I can go on to the witness and ID requirements.
THE COURT: Please.
MR. BOWDRE: Thank you. Just a couple more questions, and then I'll be done.
Q. If the Secretary of State changed the curbside voting requirement, would BVM then engage in a text campaign or some other way to tell voters of that change?
A. We would probably leave -- much the way that we've treated

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absentee voting in the past, right, where it was applicable to a particular segment of our population, we would most likely leave those communications to our partner groups regarding specifically around, you know, the curbside voting.
Q. What about changes to the absentee ballot requirements?
A. Because the changes to the absentee ballot requirements are going to effect a wider segment of the electorate, those would be communication that we would do both strategies both supporting our local partners in their outreach and also doing some amount of communications ourselves.
Q. And would those communications cost money or -- yeah. I'll just leave it at that.
A. Those communications around, you know, the positive change or the relaxing of those requirements, those communication would literally be a fraction of the communications that we would otherwise have to do in order to communicate the more complicated existing requirements.
MR. BOWDRE: May I have just one moment, Your Honor?
THE COURT: You may.
(Pause.)
MR. BOWDRE: I pass the witness. Thank you, Mr. Albright.
THE COURT: Thank you, Mr. Bowdre. Who is up next?
MR. DYAR: I'll go next.
THE COURT: Mr. Dyar?
Q. Hi, Mr. Albright. My name's Robert Dyar, and I represent

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defendant Jojo Schwarzauer.
MR. DYAR: Joy, if you could pull up Plaintiffs' Exhibit 344. One second. I'll pull it up.
THE COURT: Mr. Albright, I should have asked you this early. Do you need a break before we continue?
THE WITNESS: No. I'm fine. I've got some water by my side. Thank you though.
THE COURT: Thank you. Mr. Dyar, you may.
Q. (BY MR. DYAR:) Mr. Albright, this is the exhibit that you discussed earlier. And looking here at the first column on the left, can you explain what that column represents?
A. That is a column that our new coordinator added when she came on board. And it was her way of keeping track of her outreach to partners that we already had in our network.
Q. And when it says connected, what does that mean?
A. If I remember correctly, I think that was her way of saying whether -- it's how they -- whether and how they've connected. And I'm not exactly sure of what -- how she was defining connected. That just means that she had a conversation with them, that they participated on a call, but it's however she was defining it, it was that they've connected in some way.
Q. And what does known mean?
A. Again, I think -- I'd probably have to go back and check with her to see what the coding on this. Just kind of knowing, knowing the process. You know, it might be again maybe that

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she reached out in some way and there was some kind of response. But that they hadn't actually connected, right. Like I send an email, and you respond, and we're trying to connect, we're trying to have a call. We're trying to get together and have a coffee, but we haven't connected in that way. That would be my -- that's just my guess kind of knowing what the general process is. But I'd have to check with her to be absolutely positive.

Q. And the same question as to unknown," what would your understanding of "unknown," here be?

THE COURT: If you know.

THE WITNESS: Yeah, I don't really know what the "unknown" refers to.

Q. (BY MR. DYAR:) So can you testify whether this is an accurate and up-to-date list of your partner organizations in Alabama based on that?

A. I'd say it's accurate. I also think it's fairly up to date. The only reason I say fairly is because I think since this time, literally even just in the past two weeks, you know, we have been adding even more partners on, some that she has identified or that she's brought to the table. Because again when this was created, she was fairly new, and so she was still bringing some of her existing relationships and partnerships to the table. So, you know, at a minimum, I would say this is accurate, and the list now is just bigger. But I don't think that anybody on this list is not accurate.

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You know, again, most of these are partners that actually attended our convening just back last year in September.

Q. But can you say for sure that all of these listed partners are in fact partners that you've connected with and that you are -- have an ongoing relationship with?

A. I mean, there again, they're all definitely partners that we have connected with. That's how -- this isn't an exploratory list. This list was composed by a combination of groups that we had either given a grant to, attended our convening, participated in one of our activities. So all of these have been connected with at one time. Now, whether how she's connected with them or at least at the time of this document how she connected with them could be another story. But they're all organizations that we had connected with one way or the other, and I would say are still, you know, active to this day.

Q. You don't know how recently you would have connected with them, correct?

A. I mean, some of these on here I can actually say I've seen a grant as recently as within the past two weeks. And then other ones I would say, you know, I'd have to check with her to see like what the last date of connectivity was.

Q. Okay. Thank you.

MR. DYAR: Joy, you can take this down.

Q. And, Mr. Albright, has BVM held any clinics in Mobile County to educate or assist voters in complying with the absentee voting

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requirements?

A. When you say in, do you mean physically in Mobile County?

Q. Yes, sir.

A. No. We have been largely doing our work virtual. Some of our partner groups, you know, Ms. Bettis being an example may have held some activities. But we as BVM wouldn't have held an in-person clinic in Mobile.

Q. Has BVM participated in any activities in Mobile County relating to absentee voting that you're aware of?

A. Again, in terms of like us as BVM being there physically, no, we've not. You know, and again, our partners may have done some things in Mobile -- well, definitely have done some things in Mobile. And then some of our virtual activities may have reached voters in Mobile. But in terms of us being present, we have not taken a bus or done a tour ourselves in Mobile this year.

MR. DYAR: All right. I think that's it for me.

THE COURT: Thank you.

MR. DYAR: Thank you.

THE COURT: Mr. Webb?

MR. WEBB: Yes, Your Honor.

Q. Mr. Albright, did us as BVM put out any videos in advance of the runoff election in July of this year?

A. Any videos in advance of the runoff? I'd have to -- I'd have to go back and look at our social media. Again, sometimes when we put out videos, it's videos that we have created, and it's a

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video of something we have done ourselves. Sometimes we help amplify -- one, you know, of the tools that we offer in support of one of our partners is that if they have a video like of one of their activities, we'll help boost it and amplify it and share it. So I'd have to go back and take a look and see if we did any that with our any of partners there.

Q. Are you aware as to whether us as BVM either produced or pushed a video with respect to absentee voting in Alabama?

A. Again, we -- I don't recall us doing a video in regards to absentee voting prior to the runoff. One of our partner groups, you know, may very well have done that. And part of that is because of the nature of the runoff, right. It's not necessarily a statewide runoff, right, where every community was impacted the same where you have particular races in particular places. So we may have had a partner in a community that was having a runoff that did something that we amplified but, we would not necessarily have done something statewide for that.

Q. Now, all of BVM's partner organizations in Alabama are separately incorporated; isn't that right?

A. Yes.

Q. And they all have their separate board of directors; is that correct?

A. Yes.

Q. And their own organizational structure; is that right?

A. That's correct.

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Q. And you're not aware of any complaints specifically as to voting in Lee County, are you?

A. No. I'm not aware of any.

Q. And you're not aware of complaints specifically as to voting in Lowndes County, are you?

A. Complaints in Lowndes County? I mean, when you -- when you say am I aware of complaints -- you know, so as I mentioned before, we've got a partner group in Lowndes County that has, you know, raised issues around the difficulties of these issues that we're talking about, the challenge requirements. But are you talking about other complaints other than that?

Q. Have you received any complaints specifically regarding the absentee procedures used in Lowndes County?

A. Have we received any complaints? I mean -- so, like, we'll receive -- we'll receive, again, you know, comments on our social media, you know, discussions with our partner groups where people are saying this is going to be a problem. We're trying to figure out how to deal with this. Now, you know, whether that's a filed complaint or something is -- or whatever. But we have heard of people having concerns over the process -- not specifically about -- maybe that's what you're asking. Not that Lowndes is doing something that's like different from state law but just in terms of like what these requirements are, I mean, those have been, you know, discussions that we've had as we mentioned on our town hall, in communications with our state coordinator,

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comments that we get on our Facebook page.

Q. Your complaints or the complaints us as BVM receives relates to the state law requirements, correct?

A. Correct, not something that Lowndes itself -- yeah. Correct.

Q. You've never received any complaints about the probate judge in Lowndes County, have you?

A. Correct.

Q. Or the absentee election manager in Lowndes County?

A. Correct.

Q. Or the circuit clerk in Lowndes County?

A. Correct.

Q. And outside of what you have read in the first amended complaint as to issues relating to Sheryl Threadgill-Matthews, you're not aware of any complaints in Wilcox County with respect to voting?

A. Correct.

MR. WEBB: No further questions, Your Honor.

THE COURT: Thank you. Anyone else for cross? Any redirect?

MS. BRANNON: Just a little bit, Your Honor. I promise. I know we're at 5:00. I'll keep it very short.

Q. Mr. Albright, if the Plaintiffs were to prevail in this case and there were no ID or witness requirement, would you engage in any plans to have photo copies on the bus that's coming to Alabama? Photo copiers?

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A. If we prevail in this? No, we would not.

Q. So that's an expense you would not have to occur?

A. Exactly.

Q. Similarly, if the Plaintiffs were to prevail in this case when you do some of the your advocacy when the bus tour comes back to Alabama, would you take any steps to have notary services available to voters?

A. No, we would not.

Q. So that's an extra expense that you're considering engaging in if the lawsuit is not successful?

A. Exactly.

Q. And then I just want to clarify that if the lawsuit is successful, that BVM, the Capacity Building Institute, would plan to do less texting to potential voters in Alabama because the message could be simpler, correct?

A. Correct.

Q. So you would just do less -- you wouldn't need to do as many texts?

A. Correct.

Q. And you talked also about some radio ads. Those are radio ads about absentee voting?

A. Correct.

Q. And you would do less radio ads in Alabama if the Plaintiffs prevailed?

A. Correct.

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Q. And then just to turn back -- I don't think we need to call the exhibit back up again. But you were asked about Exhibit 344 and some of the notations. That is a list of partners that was compiled with assistance of your previous state coordinator; is that correct?

A. Yes.

Q. And the state coordinator that you have right now, when did she start her position?

A. Arne nay would have started I think sometime in June.

Q. So the work that the Capacity Building Institute has been doing with partner organizations in Alabama certainly precedes her time?

A. Exactly.

Q. Right. And you as the executive director of the Capacity Building Institute have some familiarity with the groups on that list and some roles that they have played as partner organizations?

A. Yes.

MR. BOWDRE: Your Honor, I know it's late. But I object to the line of leading questions.

THE COURT: Okay. As to leading, sustained.

MS. BRANNON: Yes. Sorry. Trying to be efficient.

Q. So -- let me try to go back to figure out what... You were -- counsel was asking you about Exhibit 344 and the list of partner organizations. What is your relationship with those

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organizations?

A. So I have a relationship with most of those organizations that even predate the formation of Black Voters Matter. Again, I used to live in Alabama. Did work not just in Selma, Dallas County but across the state. So many of those organizations we've known and done work with going back years, and at least, at least going back to 2017 when us as BVM was created.

Q. So those partnerships were created from work you did personally?

A. Right. Me and as well as my cofounder, Latosha Brown, who grew up in Alabama and did work in there at the same some time when I was living there.

Q. And when you talk about your partner organizations, what role specifically do they have in making decisions about work in Alabama?

A. Well, they play a role in like shaping, you know, especially in terms of like the statewide partner network calls. You know, part of the purpose of those calls is for partners to be able to compare notes about what they're seeing in their counties and to help shape like what strategies we think will be effective. Even this idea of doing the caravans came about as a result of partner conversations. And so -- so they play a role in shaping our thinking of course as an organization. You know, we have the final say in terms of what we as us as BVM do, but, you know, when they send in their grants, they're sending in their grant

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applications with their ideas of what they want to do. And then once we support it, they go about shaping and determining how they're going to implement it.

MS. BRANNON: Nothing further, Your Honor.

THE COURT: Thank you. Recross, Mr. Bowdre?

MR. BOWDRE: Nothing further. Thank you, Your Honor.

THE COURT: Thank you. Mr. Dyar?

MR. DYAR: Nothing further for me, Your Honor.

THE COURT: Mr. Webb?

MR. WEBB: Nothing further, Your Honor.

THE COURT: Thanks to the three of you. Anyone else on the line? Thanks, everyone. It looks like, Mr. Albright, you are free to go. Have a good evening. We will adjourn here for the day. I will come in at 10 till 9:00 in the morning to take up any issues that any of you want to raise at that time. Is there anything that anyone wants to bring up at this point before we call it a day?

MR. ROSS: Your Honor, Deuel Ross for the Plaintiffs. I'd just like to again renew -- sorry, Your Honor.

THE COURT: No, go ahead, Mr. Ross.

MR. ROSS: Did you say something? We'd like to renew our objection -- our request that the defendants be limited in their cross-examination to at least the time that it's taking us to do the direct. Plaintiffs have a number of witnesses that we were hoping to get through in the next two days. And it simply won't be possible with the length of direct and repetitiveness of the

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directive that the defendants are offering. Crosses. I'm sorry, Your Honor.

THE COURT: We have been dealing with the repetitiveness either through objections, or there's been less of it today at least based on my unscientific assessment. I don't know if I'm ready to place time limitations. The only time I've ever done that was well ahead of trial, and so the parties had adequate notice. I'm a little bit reluctant to do that at this point. But I am concerned about how long the examinations are taking. For now, no, on time limits. But let's all revisit this issue if we continue down this same road again, and I may change my mind at that point.

Mr. Ross, do you have anything else that you wanted to raise?

MR. ROSS: That's it. That's it. Thank you, Your Honor. Thank you for indulging my multiple requests.

THE COURT: No, it's not indulgent at all. It's a valid point. But more importantly, if anyone has an issue they want to raise with the Court, the Court should always make time for it.

Anyone else on the call -- I mean on the video who has anything that you wanted to bring up before we call it a day today? Okay. Again, I'll be in tomorrow morning at 10 minutes before 9:00. We'll see all of you then. Have a good evening, everyone.

MR. ROSS: Thank you, Your Honor.

THE COURT: Thank you, all.

TAB E

9/10/2020
Rough Transcript

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CASE NO. 2:20-cv-00619-AKK

PEOPLE FIRST OF ALABAMA, et al.,
v.
JOHN MERRILL, et al.,

MS. ROBSON: Good morning, Your Honor. I just want to make sure the Court is aware that our first witness for this morning, Dr. Courtney Dawn Cogburn, has joined the Zoom call.

THE COURT: Dr. Cogburn, good morning. Thank you, Ms. Robson.

THE WITNESS: Good morning.

THE COURT: We seem to be having some technical issues with the system. We will begin shortly for the non-testimonial part of the case.

THE COURT: I think from the most part, all the lawyers are on the line. Counsel, is there anything we need to take up this morning before we begin with the evidentiary presentation at 9:00.

MR. DAVIS: Judge, this is Jim Davis. There's been some questions about Defendants' coordination. And I just want to assure the Court, the Court mentioned that the Court hoped that the Defendants would coordination on cross-examination, and we believe we've done so. We know, for example, for all the witnesses that we expect Plaintiffs to call, we know who -- which

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party and which attorney for that lawyer will be taking the lead on cross-examination. Of course, that may still require some follow-up for other Defendants, but we have coordinated and discussed that, and we believe we are doing this efficiently as the circumstances allow.

THE COURT: Yeah, my question yesterday was when we lost Mr. Webb, I believe. I just needed to know at that time if he or his colleagues were planning on crossing the witness that was on the stand at the time. I think, Mr. Davis, consistent with what you've told me, for each witness that's up, you guys generally know who are taking the lead or who is taking the lead on cross-examining that person. And my only concerns was the failure to know at that particular time in response to my question if Mr. Webb was one of those lawyers or his colleagues were responsible for that particular witness.

Again, from my perspective, I don't know how the technology works, but I do think there's some coordination going on because when a person is testifying on the Court's screen that I'm following, the lawyers who seem to be responsible for that witness are all on that screen. Any other issues that we need to talk about?

MR. DAVIS: Not for the State Defendants -- not from the State Defendants' perspective, Judge.

THE COURT: Thank you, Mr. Davis. Anyone else? All right. I'm hoping we can begin at 9:00 sharp. I'm going to step away

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briefly, and I'll be back shortly.

MS. ROBSON: Thank you, Your Honor.

(Recess.)

THE COURT: Dr. Cogburn, good morning again. Would you please raise your right hand so you can be sworn in by Ms. Humphrey, please.

THE COURT: Just to get going, I am going to go in through Zoom while we figure out the rest of the system. Ms. Robson, Mr. Harris, can you hear me? Ms. Robson, Mr. Harris, can you hear me? Counsel, can you hear me by any chance? Counsel, can you hear me?

THE COURT: My apologies. Dr. Cogburn, could you please raise your right hand so you can be sworn in by Ms. Humphrey, please.

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Courtney Cogburn.

THE COURTROOM DEPUTY: Could you spell it for me.

THE WITNESS: First name is C-O-U-R-T-N-E-Y, the last name is C-O-G-B-U-R-N.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: I reside in New York City, New York.

THE COURT: Ms. Robson, your witness.

MS. ROBSON:

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Q. Good morning, Dr. Cogburn.

A. Good morning.

Q. Where do you work?

A. I'm an associate professor at the Columbia University School of Social Work and faculty of the Population Research Center also here at Columbia.

Q. How long have you been a professor at Columbia?

A. Six years.

Q. What's your field of study?

A. I study the ways in which we characterize and measure racism and assess the effects of racism on racial inequities and health.

Q. Have you pushed any peer-reviewed articles related to racism and health outcomes?

A. Yes, I have.

Q. Can you describe a few of them for us?

A. I have done work linking structural and cultural racism to population health and have made policy recommendations regarding what to do about that. I have done work around racial discrimination and the associations with various health outcomes as well as mental health.

Q. And which journals have you published your articles in?

A. JAMA, Social Science and Medicine, other health and psychology journals.

Q. Have you served as a reviewer for peer-reviewed journals?

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A. Yes, I have.
Q. Which ones?
A. I'm an advisory editor for Social Science and Medicine. I review for Social Science and Medicine as well, the Annals of Behavioral Medicine, and a number of other public health and psychology journals.
Q. Do you participate in or direct any research program?
A. I do. I have a research lab here at Columbia that I direct called the Cogburn Research Group. I codirect a lab called the Justice Equity and Technology Lab. And I'm also a member of the Data Science Institute here at Columbia.
Q. Have you been granted any funds for your research?
A. Yes, I have.
Q. Approximately how much in aggregate over the last few years?
A. Last four years or so, about a million dollars.
Q. And what degrees do you hold?
A. I hold a bachelor's degree in psychology from the University of Virginia, a master's degree in social work from the University of Michigan, a Ph.D. in education and psychology from the University of Michigan, and I have completed postdoctoral training in health and population health at the Institute for Social Research as well as the Harvard University School of Public Health.
Q. And what about are you here to testify about today?

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A. I'm hear to testify regarding racial inequities in COVID-19 infection and mortality rates and the role of structural racism related to those patterns.
Q. And who engaged you for this matter?
A. Mr. Deuel Ross of the NAACP.
MS. ROBSON: Eric, could you pull up Plaintiffs' Exhibit 268 for us, please.
Q. Dr. Cogburn, what is this document?
A. This is the expert report that I have prepared for the case.
MS. ROBSON: And, Eric, could you turn to page 12 of this document.
Q. And what is this attached to your expert report?
A. This is a copy of my CV.
Q. Do you have any updates to your CV?
A. Just some additional manuscript submissions and publications and pending funding.
Q. Okay. And any updates to your report?
A. No updates to my report, although I have just been generally tracking the COVID-19 reports and data.
MS. ROBSON: Your Honor, at this time, Plaintiffs offer Dr. Cogburn as an expert on racism and the effects of racism on the health outcome.
THE COURT: Mr. Harris, any objections?
MR. HARRIS: No, Your Honor.
THE COURT: Any objections from anyone else? Dr. Cogburn

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is accepted as an expert on the areas for which she is being tendered. Counsel, you may continue.
MS. ROBSON: Thank you, Your Honor. We also move to offer Dr. Cogburn's expert report including her CV into evidence as Plaintiffs' Exhibit 268.
THE COURT: Any objections to 268?
MR. HARRIS: No, Your Honor.
THE COURT: Thank you. Plaintiff's 268 is received.
Q. (BY MS. ROBSON:) Dr. Cogburn, what did you do to prepare your opinions in this case?
A. I reviewed existing literature related to structural racism in health and emerging studies around COVID-19 specifically examining race and structural racism and have been consulting reports from institutes of health of various sorts, health organizations as well as reputable journalistic outlets that are covering the COVID-19 pandemic as well.
Q. And what are some of the key materials that you reviewed?
A. Well, there are two key papers from my report that really give a, you know, overview of the complexities of structural racism and health, and that's the Fallan, et al. piece as well as the Williams piece that I cite early in the report, and I also have relied on reports from the Centers for Disease Control, again journalistic outlets like the New York Times and the Washington Post and their coverage of COVID-19 and reputable schools of public health as well that are covering the pandemic.

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MS. ROBSON: Eric, could you bring up Plaintiffs' demonstrative 1 through 15 for us, please.
Q. Dr. Cogburn, what is this document?
A. These are slides that I prepared based on my reports to help me with the testimony today.
Q. Thank you. Could you tell us what conclusions you drew based on the research and analysis that you've done regarding COVID-19 and racial disparities?
A. So based on my analysis, the role of structural racism is a substantial contributing factor to the disproportionate rates of infection and mortality for COVID-19 in the black population. In particular, residential segregation and racial discrimination that generally contribute to patterns of chronic illness and poor health in the black community are playing a role here as well with COVID-19. And those combination of factors contributed to my conclusion that voting rights that require black voters to break social distancing protocols threaten health of black people in particular but also to the black health in the black community more broadly.
Q. What data leads to you conclude that there are racial disparities in COVID-19 infection and morality rates?
A. So a number across all of the reports that I have been reviewing are consistent showing elevated risk among black people, two to five times greater than white people for cases, hospitalization as well as death. The demonstrative here is a

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chart -- a visual provided by the Centers for Disease Control based on more recent data also showing this consistent pattern that black people are facing two to five times greater risk across those different indicators. So that and the other documents I'm referencing are informing that opinion.

MS. ROBSON: And for the record, Dr. Cogburn is referring to Plaintiffs' demonstrative Cogburn 3, and her conclusions where visible at Plaintiffs' demonstrative Cogburn 2.

Q. Dr. Cogburn, what has the CDC concluded about why we are seeing these racial disparities?

A. So in their assessment of these patterns, the Centers for Disease Control, if I refer you to demonstrative 4, I pulled a quote from the Centers for Disease Control where they are stating long-standing systemic health and social inequities have put many people from racial and ethnic minority group at increased risk of getting sick and dying from COVID-19. And I think it's important to note it's not just the Centers for Disease Control connecting structural inequities and structural racism to these patterns to COVID-19. The National Institutes of Health, the World Health Organization and others have made similar statements.

Q. Have you reviewed COVID-19 data specific to Alabama?

A. I have, yes. In the demonstrative is -- yeah, demonstrative number 5, data showing you -- what I'll draw your attention to is the dotted vertical line there that's showing the share of the

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population of black people in Alabama which is about 26 percent. So when we're trying to capture disproportionate rates of death in cases, anything to the right of that dotted line is showing an overrepresentation. So -- so what this graph is showing is a greater risk of death and risk of infection in the black population that's disproportionate to the representation of the Alabama population.

MR. HARRIS: Your Honor, I'd like to object to this specific line of question. This was undisclosed data. I asked about data in her deposition. She said she hadn't looked at any Alabama specific. This is all brand new.

MS. ROBSON: Your Honor, these were -- this is data that was referenced in her report. Her source in the Alabama show a race disparity in COVID-19 deaths which is referenced at the bottom of the page, and it was also referenced in her report.

THE COURT: Ms. Robson -- is it Robson or Robson?

MS. ROBSON: It's Robson, Your Honor.

THE COURT: Okay. You faded out at the end. But I think the gist of your point is that this is information that Dr. Cogburn references in her report; is that correct? Did I understand you correctly?

MS. ROBSON: That is correct, Your Honor.

THE COURT: In light of that, Mr. Harris, I will overrule for now. If you have a basis to disagree with that representation, just let me know, and I will revisit the issue.

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Q. (BY MS. ROBSON:) All right. Ms. Cogburn or Dr. Cogburn, could you tell us the date of the article that provided this information showing in this slide?

A. So the date of this article -- let me look at the report. Is from April 8, 2020. The report that's cited in the expert -- the data that's recited in the expert report.

Q. And how would you characterize the numbers that are being shown here?

A. Well, one, they are pretty startling so that the magnitude of this difference is pretty striking. I think unfortunately, they're probably an underestimate given the number of unknown cases. So there's a notable percentage of unknown cases where race wasn't identified or disclosed. So if the black population takes up any of that unknown percentage, these numbers only increase. So these may just be the minimum numbers that we're seeing for the black population.

Q. And have you reviewed more recent data on racial disparities in COVID-19 infection and morality rates in Alabama?

A. Yes, I have. I have been monitoring the numbers in Alabama.

Q. And when was the last time you looked at these numbers?

A. I took a look last night.

Q. And what did you observe in the updated numbers?

A. So the updated numbers, you know, they're shifting quickly. I think it's happening nationally. But in Alabama, the pattern of

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disproportionate rates of death are still quite clear. And in terms of number of cases, that's also likely still disproportionate among blacks. I think in the most recent data that I saw for the number of cases, there's an increase in the unknowns. So again where we don't know what the race is, it either wasn't documented or it wasn't disclosed. Which is pretty high for the more recent estimates. It's about 30 percent, I believe. I'd have to look back at the graphs.

So if blacks make up any percent of that 30 percent of unknown in terms of rates of infection, their numbers are going to increase, and we're again moving into disproportionate representation at that level for that indicator. But for the number of deaths, blacks are still disproportionately represented, which is, again...

Q. You conclude that this disparity exists because of structural racism. What is --

A. Can you hear me? I can. I'm sorry. I lost you for a moment

Q. Sure. Let me start again. You conclude that this disparity exists because of structural racism. What is structural racism?

A. So structural racism refers to systems that create disadvantage or advantage on the basis of race. So when we're talking about systems, we're thinking about policies, practicing, institutions, that cut across domains of society. So we're thinking about financial institutions, education, housing, systems, health care, et cetera.

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Q. And how has structural racism led to racial inequities in health?

A. Structural racism is really we're thinking about intersections across those multiple systems. So what happens in education also has effects on what's happening in employment, et cetera, and that creates sort of this cumulative negative affect. In my report, I highlight a focus on two which is racial residential segregation and racial discrimination in medical care.

Q. So let's begin with racial residential segregation.

A. Okay.

Q. Can you explain to us what that is?

A. Racial residential segregation refers to concentrations groups on the basis of race delineated by a neighborhood.

Q. And what practices have led to racial residential segregation?

A. A combination of things. So practices like -- I can draw you to -- or it's already up. Demonstrative number 6. So practices like red lining and discriminatory zoning. So redlining refers to governmental practice of creating neighborhoods and drawing boundaries of neighborhoods and then assigning value to those neighborhoods. So which neighborhoods are desirable, which neighborhoods are less desirable. Nationally, Alabama included, the neighborhoods that were deemed less desirable, less valuable were consistently black communities.

And that has implications for what resources are available in

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the neighborhood. It has implications for income and what types of businesses are in the neighborhood, the quality of schools, where chemicals calls are dumped and so exposure to chemical and environment pollutants. And then there are some ongoing practices that come to bear in terms what we observe in terms of residential segregation as well. So predatory lending that creates subpar terms for loans on homes or qualifying for credit to start businesses and that sort of thing as well as practices around devaluation in neighborhoods. So how are home values determined and bias that occurs in that process have contributed to these patterns as well.

Q. And what evidence do you have to show the devaluation of black neighborhoods?

A. So I'll draw you to demonstrative number 7. So in a recent study that I cite in my report, the authors from the Brookings Institute were able to show that homes in black communities are consistently being undervalued by an average about 48 thousand dollars that have accumulated to about 156 billion dollars in aggregate value over time. And so what the authors mean by devaluation here is that you're holding certain factors consistent that would otherwise influence home value.

So the quality of the home, the square footage, the number of rooms as well as qualities in the neighborhood, the quality of the schools, access to public transportation and those sorts of things that affect neighborhood quality are being held constant

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or taken into account. And so this difference is after you consider that black homes in predominantly black communities are being undervalued by close to 50 thousand dollars per home.

Q. Does that devaluation exist in Alabama?

A. Yes. So I don't have data from this study for every city. But they did provide data for a couple of major cities in Alabama. So I created a visual here on demonstrative number 8. Again, so holding -- taking into account differences in the home that would contribute to value and differences in the neighborhood that would contribute to value, this data for Huntsville, Alabama shows that white homes are valued on an average of 266 thousand dollars where comparable black homes are valued at 83 thousand dollars. So resulting in a devaluation of about 30 percent. So this is a pretty striking difference in for comparable homes in comparable neighborhoods, black homes in predominantly black neighborhoods are being undervalued by almost 30 percent.

Q. How have those practices and the resulting devaluation effected resources in those communities?

A. So, I can draw you to a slide number -- sorry. Demonstrative number 9 where -- so again, those same practices and effects of red lining and predatory lending that I talked about and the consequences of those sorts of practices, devaluation, and other types of practices are related to how we value homes, et cetera, are contributing to these patterns of concentrating lower income

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families, poverty concentration in the same communities, lower quality of housing concentrated in the same communities, a concentration of unemployment and underemployment as well as a concentration of people who are uninsured or underinsured.

It restricts access to quality and affordable food so again, what types of amenities or resources are available in the neighborhood. It can affect things like commuting time, so how easy or difficult is it for you to get to employment, viable employment, as well as as I mentioned, exposure to chemical and environmental hazards. So concentrating neighborhoods based on race can create sort of a concentration of all of these factors in a single space in concentrated neighborhoods.

Q. And down how does that restriction of resources affect COVID-19 infection and morality rates?

A. So there's two ways. So one, racial residential segregation is one of the strongest indicators of chronic illness patterns in the black community. So all of these factors that I'm mentioning like being underinsured or exposure to chemical or environmental hazards or access to quality and affordable foods have implications for diabetes, cancer, asthma, which are underlying conditions that increase vulnerability to COVID-19 infection and the severity of those infections that often result in the higher rates of morality as a result of infection.

It's also important to note, though, that these concentrations also have direct implications for COVID-19. So when you have a

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higher concentration of people who are underinsured, for instance, or not insured living in the same place, you may have people who are getting sick but who are not able to seek medical care or fear going to get medical care because they are, you know, afraid of the financial consequences of going to seek care and might let symptoms linger longer as a result of that.

And you have a higher concentration of people who are employed in particular roles, essential roles living in the same neighborhood. So their rate of exposure is higher as a result of their occupations. They're returning to these high-risk communities that also elevate risk for the community as a whole. So it's functioning in multiple ways that are important for us to consider here.

MR. DAVIS: I apologize for the interruption, Your Honor. It appears we've loss some of our colleagues from Mobile. We are in the process of finding out if they still have any attorneys on who plan to have questions for Dr. Cogburn.

THE COURT: Let's stop briefly and see if we can resolve the issue pretty quickly. Dr. Cogburn, if you need to step away for a minute, you can. We obviously will not resume until you get back.

THE WITNESS: Thank you.

MR. DYAR: Judge Kallon, I'm here for the Mobile County Defendants or at least for the Mobile County Circuit Clerk. This wasn't a witness that I was personally handling for our team. So

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I'm trying to double check with them if they want me to have this --

THE COURT: Thank you, Mr. Dyar.

MR. DYAR: -- until Mr. Dungan can hop back on.

THE COURT: Thank you. We'll wait.

MR. DYAR: Actually, Your Honor, I just heard from Mr. Engelhardt, and he said that they have at least one person back on now that they can listen to their screen.

THE COURT: Okay.

MR. DYAR: Thank you.

THE COURT: Thank you. Sounds like all has been resolved. Let's go forward with the examination then, please.

MS. ROBSON: Thank you, Your Honor. Thank you, Eric, for bringing that up. I appreciate that.

Q. Dr. Cogburn, what evidence do you have that COVID-19 is effecting black neighborhoods disproportionately?

A. So I'll draw your attention to demonstrative number 10. So there is emerging data that's demonstrating concentrations of higher rates of infection and morality in predominantly black counties nationally. And in this study, they also document higher rates of like air pollution, et cetera, and because of their analysis again conclude that structural racism and other social conditions with coming to bear on the higher rates of infection and morality in predominantly black counties.

Q. You mentioned a second system of structural racism that is

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effecting COVID-19. Could you briefly describe that again for us?

A. Yes. So racial discrimination in medical care. So here, what we're talking about are sort of very direct encounters with the health care system and health care providers so the way that you're treated by your physician or health care provider when you've gone in with an illness or to seek treatment, the medical care decisions that are made in terms of who's enrolled in special treatment programs or offered additional financial assistance from the hospital, et cetera. So we see it in a variety of aspects in terms of points of care and across the medical care system.

Q. And can you give us some examples of direct discrimination in health care?

A. So again, the empirical literature here documents differences in say the amount of time a physician spends with a patient, patients reporting not being listened to when they're complaining about symptoms or pain, inequities in terms of diagnosis of illnesses. There is a large literature around pain management, so differences in -- by race in who's having their pain adequately treated and who's being believed when they're in pain, difference in terms of even things like amputation rate. So data regarding how likely are -- how much more likely are black people to have a limb amputated, how far will physicians or surgeons go to fight to save their limbs. So we really see it in a range of aspects, range of points of care across the medical system that are pretty consistent and persistent, I think. Yeah.

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Q. And how does that affect health outcomes?

A. So, you know, this is the most direct point between -- sorry. I lost sound for a second. This is the most direct point between -- you know, direct point of impact in terms of health outcomes. Are you going to go seek treatment for fear of not getting the support you need when you show up, or decisions that are made regarding your treatment become a factor here, also. So, you know, whether you're believed, whether you're treated well, whether your illness is accurately diagnosed, whether your illness is accurately treated, whether you're put into programs that could improve your health or extend your life, all of those factors have direct implications for health and what we observe in terms of chronic health in black communities.

Q. And what about the algorithms that are used in the provision of medical care?

A. So I also, I direct you to demonstrative number 12. So in my report, I talk about a study that is an example of the increasingly widespread use of algorithms specially in large health systems to determine who's going to be enrolled in particular programs, who's going to qualify for treatment programs, et cetera. So this study assessed whether the algorithms were similarly discriminatory. So in the way that I'm saying discrimination is happening at direct point of care are these algorithms that are presumably designed to reduce bias and be more efficient, are they actually perpetuating the same types of racial bias. And

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what they demonstrate is that is what is happening.

So if -- let's see. If you go to demonstrative number 13 -- oh, it's not visible here. Maybe you need to click again. There you go. So if you look at the graph on the left, graph A, you can see -- graph A, you can see the purple line there, the dotted purple line. And what this is indicating on the Y axis, you have the number of chronic conditions. And this is showing that black people essentially have to be sicker according to the algorithm in order to qualify for this special program that's meant to address patients with complex needs.

So at the same levels of risk, black people have to be sicker in order to qualify for the programs according to this algorithm. And if we move to graph B, you can -- what the authors are doing are trying to simulate if the bias didn't exist, at what rate would black people be defaulting into the special program to help patients with complex needs. So the bottom line is what the algorithm is predicting. So there's a different Y axis here. So it's the fraction of black people being enrolled and defaulting into the program.

So the original data from -- according to the algorithm, black people are being enrolled at a much lower rate than if that bias is removed, their rate increases. So the orange dotted line is removing the bias that exists in the algorithm and is accounting for how many black people would be enrolled into this program if the algorithm was not biased. And what we show is about a 30

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percent increase. If you look at the upper right angle there, we see about a 30 percent increase in the rate at which black people would have been enrolled into this program.

So based on what I have been talking about just to simplify it, what I have been talking about, we know black people have a higher rate of chronic illness, that they have these comorbidities. I'm talking about the ways in which structural racism actually predicts the rates of disease in the black community. We know they're sicker. And what this study is showing that in spite of them being sicker they're still not being enrolled in the programs meant to address the sickest patients in the health care system that bias exist in these automated processes as well. If we remove that bias, it's clear that the sickest people would be getting enrolled in these programs more frequently.

Q. And how does that discriminate -- that racial disparity in medical care treatment affect health outcomes?

A. Well, it's the -- it's what I was just describing, that if you're very sick, and the program that was a part of this algorithm study for instance is designed to allocate additional resources so that you can get better faster, more than your average patient might receive. And if patients aren't being accurately identified as being in need, and in this case, white patients were being identified as being in greater need and being enrolled in these programs more frequently, if you're not being enrolled in those sorts of programs be it through an algorithm or the choice that

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your physician made, you're less likely though get the kind of care that you need to improve, or you're more likely to have new issues emerge, or you're more likely to die because you haven't received adequate care to help improve your health.

Q. Are there any additional health care practices specific to Alabama that are affecting health outcomes for black people in Alabama?

A. So, you know, based on the data of the studies that I'm summarizing here, this is a national pattern in terms of these discriminatory practices in health care. But Alabama's also one of a handful of states that have opted not to expand Medicaid, which would ensure, you know, an order of hundreds of thousands more people, and we know that this disproportionately affects the black population in Alabama. So those sorts of choices that effect how many people are insured -- are adequately insured to receive care also have important implications here.

Q. Given the racial disparities in health outcomes that we have been discussing today, what is your opinion of the risk associated with black voters breaking social distancing protocols?

A. So again, we're dealing with individuals, individual black people who are at higher risk who are also living in communities that have higher concentrations of other black individuals who are at higher risk. So breaking social distancing protocols and potentially exposing yourself to infection risks spread to the

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black community more broadly. But the individual risk is also high, that a black person with these underlying illnesses or living in black communities being exposed have potentially much more severe consequences. And again, you know, just to emphasize that the magnitude here is not small. It's a considerable difference, the increased risk compared to say white people living, living in the same state, living in the same cities. So I think this -- just referring to my fourth conclusion here that those voting requirements, if it requires in-person contact that you're placing black people, black communities at higher risk of infection and death.

MS. ROBSON: Thank you Dr. Cogburn. Your Honor, I pass witness.

THE COURT: Thank you. Who is up first? Mr. Harris, you're the only one on my screen.

MR. HARRIS: Yes, sir, I am.

THE COURT: Okay. You may.

MR. HARRIS: Thank you.

Q. Good morning, Dr. Cogburn.

A. Hi, Mr. Harris.

Q. You were just testifying about your conclusion about voter requirements and breaking social distancing protocols.

A. Uh-huh.

Q. Which of Alabama's voter requirements cause voters to break social distancing protocols specifically?

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A. So what I am referencing are anything that might make it difficult to vote in person or make it difficult to vote in some alternative form. So in Alabama, in relation to this case, we're thinking about the criteria for absentee -- qualifying for absentee ballots, absentee voting.

Q. Okay. So it's not your opinion, is it right, that for example, the witness requirement would cause a voter to break social distancing protocols?

A. I think in Alabama, yes, because there is a witnessing -- a witness requirement that potentially voters have to break social distancing protocols in order to obtain witness signatures.

Q. Okay. Do you remember your deposition that we had now about a month ago, I guess, on August 17th?

A. I do, uh-huh.

Q. In that deposition, I asked do you think that filling an absentee ballot in Alabama -- that by filling an absentee ballot in Alabama, an individual could avoid the risk of breaking social distancing. And you responded I think that voting absentee is one way to adhere to social distancing more easily, yes. Do you agree with that answer still?

A. So I agree that being able to vote absentee can be an important way to avoid breaking social distancing protocols. I think that's a challenge in Alabama because of the witness requirement and the voter ID requirement that potentially require face-to-face contact.

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So like in New York, for instance, you can just register on line for an absentee ballot and it shows up to your home. You don't have to have contact with anyone to qualify for an absentee ballot. So I think it's a little bit different in Alabama.

Q. Okay. What evidence do you have that discriminatory lending and redlining happens in Alabama today?

A. So I'm not directly familiar with those practices in Alabama today. I'm more familiar with national patterns that have included data from Alabama. And it's really -- it can be a difficult thing to measure because it's an informal practice. It's not legal in the way that redlining was.

Q. Sure.

A. But what --

MS. ROBSON: Dr. Cogburn, you're -- there you go.

THE WITNESS: Sorry. My headphones keep trying to connect to my phone. My apologies. So using banking records and banking data. Banking records and banking data, what types of loan terms are people being given, who's more likely to be denied or qualify for a particular loan, and then they examine that by race. So I'm more familiar with that as it happens nationally but haven't dug into work specifically related to Alabama. And then the devaluation study that I have talked about used national data as well that included Alabama, and then they highlight data for a few different major cities in the state to demonstrate that that practice is happening. Yeah.

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Q. (BY MR. HARRIS:) So it's right that that particular study that included some data from Huntsville is the only Alabama-specific data you're familiar with that's specific to the state?

A. Not just for Huntsville. So the study included data from the entire state. They just highlighted cases from specific cities. So the data and the patterns that they're observing referencing that average, that 48 thousand dollar per home difference in black home valuation includes data from the State of Alabama. And Alabama was not functioning differently than other states that were showing the same pattern.

Q. Sure. And was the State of Alabama assigning values to those homes?

A. The State of Alabama? I'm not sure what the -- what the procedures are for determining home values in Alabama. So I'm not sure if it involves the state or others.

Q. I'm sorry. So in that study, was the state assigning those values, or were those created by another metric?

A. It's my understanding according to that study that it can vary state to state.

Q. I see.

A. Yes, who's involved in determining the valuation of homes.

Q. But you don't know that the State of Alabama was discriminatorily devaluing homes?

A. I'm not aware of the procedures for determining home valuation in Alabama.

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Q. Okay. Is it only in Alabama that you think that African-Americans are overrepresented in COVID-19 cases and deaths?

A. No. I think, you know, part of what I emphasize in my report and what I have been reviewing is that this is a national concern that we're actually seeing disproportionate rates nationally for the black population that includes Alabama.

Q. And is it right that you're not aware of any causal relationship between racial residential segregation and health outcomes?

A. Can you clarify what you mean by causal?

Q. No. What do you mean? What do you think causal means?

A. So as a scientist when we think about causal, we're talking about variable X directly predicts variable Y, and it's a particular way that we model relationships as opposed to correlational relationships. It's my understanding, though, that legally that might mean different things. But the way that I'll respond to that is that we have a clear and consistent documentation that racial residential segregation is tied to chronic illness in particular -- the same illnesses that elevate risk for COVID-19. And there's emerging data that -- can you still hear me? There's emerging data that --

Q. Yes.

A. -- racial residential segregation has direct implications for COVID-19 as well not only through COVID-19 -- I'm sorry. Not

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only through the chronic illnesses but also because of things like occupation and insurance levels that elevate risk.

Q. So and again, so there are indirect inferences that we've made, other things that are related to residential segregation, but just so I understand your opinion, it's not your opinion that racial residential segregation directly causes differences in health outcomes?

A. I think the way -- you're not clarifying how you're using causal, but, yes, racial residential segregation is strongly associated with chronic illness rates and COVID-19 infection rates and morality rates.

Q. Question about the algorithms you were talking about some early. Are you aware of those algorithms being performed by Alabama institutions or state agencies?

A. No. The study didn't do a breakdown by state. What they referenced is that these are widespread -- it's actually one algorithm that they're referring to. This algorithm in particular has widespread national use in large health systems. But it didn't reference whether Alabama was included in that.

Q. And is it right that the State of Alabama didn't go about helping create that algorithm or otherwise endorse it?

A. Again, so I don't know if Alabama is using that particular algorithm. And then it would vary depending upon the role of the state in making decisions about whether an algorithm is used or not in health systems. I imagine that decision making might

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vary pretty widely state by state.

Q. Do patient preferences play a role in the disparity of treatment between African-Americans and white people, for example?

A. I'm sorry. Could you repeat the question?

Q. Sure. Does patient preference play a role in the difference between medical care provision in different races?

A. Can you clarify what you mean by patient preference?

Q. Sure. I was looking specifically at the article you cited and that you mentioned in your testimony from Williams, Williams and Rucker?

A. Uh-huh.

Q. Are you familiar with that paper?

A. Yes, I am.

Q. It's called understanding and dressing racial disparities in health care. It mentions other potential causes. In the case of racial disparities in medical care, other potential explanations include geographic maldistribution of medical resources, racial preferences, and patient preferences, pathophysiology, economic status, insurance coverage as well as trust, knowledge, and familiarity with medical procedures." I'm curious as to the role that patient preferences pays in these differences in medical care provision?

A. I actually can't say what the authors meant by that in particular. What I do know is that they're listing a secondary

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range of factors that could be also coming to bear. So they're being thorough in identifying secondary factors. But because they didn't focus on racial patient preference in particular, I'm not quite sure what they meant by that, by that term.

Q. And I'll continual reading.

A. Okay.

Q. However, recent research indicating that patient preferences do not account for these disparities suggest that discrimination remains as a central plausible explanation." Do you agree that racial discrimination is a plausible explanation for the differences?

A. The differences in?

Q. In health outcomes or health treatment?

A. Yes, according to that study and many others.

Q. Do you agree that there are many other factors that also play an important role in those outcomes?

A. I think anytime we're trying to understand human behavior and population health, there are always a cadre of factors that are coming to bear on these factors -- I mean on those patterns that we're observing in terms of health. What we try to do as population health and public health researchers is isolate those that are playing the most significant role in contributing to those outcomes. But there are always a combination of factors at play.

Q. Is economic status one of those important roles?

A. Yes, socioeconomic status is an important factor in patterns

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that we observe in terms of health. And again, structural racism is a considerable factor in explaining differences by race and socioeconomic status. So those two things are closely intertwined. So again, if you take the example of racial residential segregation and the effect that it has on wealth, income, concentrations of poverty, et cetera, education, so socioeconomic factors don't really function in isolation of structural racism when we're considering racial differences in health.

Q. So is it right that this -- the effect, the disproportionate effect on African-Americans in health care provisions is closely tied to all those factors you must mentioned?

A. Yes.

MR. HARRIS: I have no further questions.

THE COURT: Thank you, Mr. Harris. Anyone else?

MR. COWELL: No questions, Your Honor.

THE COURT: Thank you, Mr. Cowell.

MR. DUNGAN: No questions.

THE COURT: No questions?

MR. DUNGAN: No questions.

THE COURT: Last call. Any redirect?

MS. ROBSON: Yes, Your Honor, very quickly.

THE COURT: You may.

Q. Dr. Cogburn, have you reviewed any research on racial disparities in health outcome that controls for health insurance

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coverage or other socioeconomic factors?

A. Yes. So racial disparities researchers in general are trying to isolate the effects of or uniquely understand the effects of race. So to do that, we try to control for other factors that might be explaining the difference. So in those overview pieces that I rely on heavily in this report, the patterns that we observe between racial inequities and health are persistent even after we account for socioeconomic factors so things like education, income, health insurance, quality of health insurance. So there's a residual effect that in spite of those things, we still see this difference by race. And in addition in that literature, there's some health indicators where higher income, higher educated black people are at higher risk of poor maternal health outcomes, sleeping disorders, morality rates, et cetera. So it's something that's carefully considered in these analysis, the relationship between race and socioeconomic factors.

MS. ROBSON: Thank you, Dr. Cogburn. Your Honor, that was my final question.

THE COURT: Okay. Mr. Harris, any follow-up?

MR. HARRIS: No, Your Honor.

THE COURT: Thank you. Anyone else?

MR. COWELL: No, Your Honor.

THE COURT: Dr. Cogburn, have a good day, ma'am. Mr. Cowell, I'm sorry. I was speaking when you chimed in. No questions?

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MR. COWELL: No questions, Your Honor.

THE COURT: Thank you. Dr. Cogburn, thank you. Have a good day.

THE WITNESS: Thanks, everyone.

(Witness excused.)

THE COURT: Who is the next witness for the Plaintiffs?

MS. REED: Good morning, Your Honor. Mahogane Reed. And we will call Mr. Benard Simelton president of the NAACP's Alabama State Conference, next.

THE COURT: Mr. Simelton, good morning.

Ms. Humphrey, would you swear him in, please. Would you raise raise your right hand, sir.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: First name is Benard. Last name is Simelton. Benard is spelled B-E-N-A-R-D. Simelton is S-I-M-E-L-T-O-N.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: Harvest, Alabama.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Ms. Reed, your witness.

MS. REED: Thank you, Your Honor.

Q. Good morning, Mr. Simelton.

A. Good morning.

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Q. Mr. Simelton, what county do you live in in Alabama?

A. Limestone.

Q. And what do you identify as your race?

A. African-American.

Q. Thank you. How long have you lived in Alabama?

A. Since 2021. I'm sorry. 2001.

Q. You're taking us to the future Mr. Simelton. Okay. Are you retired?

A. Yes.

Q. What was your career before you retired?

A. Yes. I spent 23 years in the United States Air Force and spent 16 years working for a company in Huntsville, Alabama after I retired from the Air Force. And I retired from that company in 2016.

Q. Okay. What is your affiliation with the Alabama State Conference of the NAACP?

A. I am the president of the Alabama NAACP.

Q. And how long have you served as president?

A. I've served as president of the Alabama NAACP since 2009.

Q. What are your duties as president?

A. Well, my duties are to ensure that the units within the State of Alabama are carrying out the mission of the NAACP and to ensure that our units are remaining in compliance and to kind of act as a go-between between our national office and our units to carry concerns that our units are having to the national office to

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help get those resolved.

Q. Okay. And when you say to make sure units remain in compliance, what do you mean?

A. Well, in -- the NAACP has a compliance requirement for our units. One is that they file a year-end financial report and the other one is that they maintain the appropriate level of membership based on whether the unit is a youth unit or what we call an adult unit. And it could be 50 members for the adult units and 25 members for our youth and college units.

Q. And, Mr. Simelton, how do you go about executing your duties as president of the Alabama State Conference?

A. Well, we speak and talk to our units, someone from our units on a daily basis, and we go and visit the units. We reactive units, we start new units, and we work with our units to resolve complaints that they have. We conduct -- help the units conduct their elections and answer any questions that they may have concerning activities or how to carry out their duties. Also, we provide some training for our units that are specially new units that are coming on board. We provide the training -- some training for them as well.

Q. Thank you. So you've talked about units, and you've talked about the college chapters. And could you just explain the organizational structure of the Alabama State Conference of the NAACP?

A. Sure. The NAACP in Alabama is organized with the state

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conference is the unit in the State of Alabama. And then we have all of our units that are under the state conference. And units are comprised of the branches. Also we have college chapters. And now college they are adults too, and we understand that. But they are comprised of students that are attending college. And then we have our youth council who are primarily comprised of anyone from age, you know, 0 up to approximately age 18. And so that's comprised of our youth councils. And so the state conference has an executive committee that is similar to a board of directors, but we call it executive committee. And they have committee chairs for each of our standing committees, and we have executive committee members that are elected at large. And they more or less control the actions of the state conference including the -- to some extent the action of the president.

Q. Okay. So, Mr. Simelton, do the adult branches, college chapters, and youth councils, do you refer to them as units?

A. Yes, collectively we refer to them as units.

Q. Okay. How many active units are -- does the NAACP have in the State of Alabama?

A. Including our youth and college, we have 42.

Q. Okay.

MS. REED: Eric, would you please call up what's been premarked as Plaintiffs' Exhibit 329. Thank you.

Q. Mr. Simelton, do you see that document?

A. Yes, ma'am, I sure do.

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Q. Do you recognize it?

A. Yes.

Q. What is it?

A. This is a membership roster, a membership report that is provided by our national office of the units in the State of Alabama.

Q. Okay. And does it reflect current and past units in Alabama?

A. Yes, it does.

Q. And can you identify where are some of the active units in Alabama?

A. Sure. Unit 50 A B, Shelby County, 5039, Limestone branch as well as the youth council, the Birmingham branch, Brewton branch, Cherokee branch, Lawrence County branch, Decatur Morgan Counties branch, Dothan Wiregrass branch, Coffee County branch, Eufala branch, Conecuh County, Baldwin County, Etowah County, Huntsville branch, University of Alabama Huntsville, Jacksonville State, Mobile, Mobile youth council, Spring Hill college. Well, not Spring Hill college -- yeah, Spring Hill College, University of South Alabama, metro Montgomery, Tricounty branch, Phenix City, Randolph County, Talladega branch, Pike County, Troy State, Tuscaloosa branch, University of Alabama -- strike that University of Alabama, Tuskegee University and Tuskegee of Macon County branch, Bullock County, Indian Springs, and Elmore County.

Q. Thank you.

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A. Beg your pardon?

Q. Thank you for going through that list.

MS. REED: Your Honor, I'd like to at this time offer what's been previously marked as Plaintiffs' Exhibit 329 into evidence.

THE COURT: Any objections?

MR. WEBER: No, Your Honor.

THE COURT: Thank you. Plaintiff's 329 is received.

MS. REED: Thank you, Your Honor. Eric, you can pull down Plaintiffs' 329.

Q. Mr. Simelton, how often do you meet with unit leaders?

A. Well, we meet, have a Zoom call with them once a week, and we quarterly meeting once a quarter.

Q. Okay. And what records do you keep of these meetings?

A. Well, we keep minutes of these meetings and -- and on our weekly call, we keep notes of those meetings. If we are taking a specific action during those meetings, we do record those as official minutes, and they become official minutes of that particular meeting. But typically, we try not to -- we share -- it's more or less an opportunity to share information. But if we have to take action such as approving someone to come on to our executive committee or approval to expend a major -- make a major financial expenditure, then we will turn that into a minutes at the weekly meeting.

Q. Thank you. And in addition to the official actions you just mentioned, what else do you meet with unit leaders about?

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A. Well, as I stated early -- as I stated earlier, some units have issues, concerns, and things like that. And so I will meet with them to help resolve their issues and concerns within the unit. Whether it's an internal problem with the unit or whether it's a problem that the unit is having with our national office. And so we meet with them. And also, as I said earlier, we conduct training on how to conduct elections, how to do voter engagements, civic engagement, activities. So there's a variety of things that we meet with the leaders and the units about.

Q. Thank you. Do the issues you discussed that units have internally concern also issues that members have, non-leadership members have?

A. Yes.

Q. And you keep notes of those meetings even if they're not official meetings, correct?

A. We keep notes if it's -- again, if it's a -- what we call some type of action that we're taking either against a member, or if we are going to maybe conduct some training or something like that, we will note that we trained this unit on this date for this purpose. So it depends on what the meeting is about. But yes, there are generally notes from those meetings.

Q. Thank you. How does one become a member of the Alabama NAACP?

A. There is an application that the person completes. You can complete a hard copy and turn it in to one of the units that you

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want to join, or you can go on line to complete it and just designate the unit that you want to affiliate with, and you become a member of that unit by filling it out on line or filling out a hard copy.

Q. And what information does the information form collect?

A. Well, of course you collect the name, address, phone number. And for the younger group, meaning the 1 to age 25, you collect their date of birth. And also, in addition to email, I also ask question about if they are a registered voter on those applications.

Q. And what does the national NAACP do with this information once it's collected from the application form?

A. Well, what happens is the application is turned in, for the hard copies, is turned in to the unit. And that can be a youth unit or the adult branches. And then the -- that information is transcribed from a -- the hard copy application into what we call the membership report form, and that's submitted to the national office. And we have recently moved up I guess the technology chain, and so we are doing everything by -- well, we're supposed to be doing everything by computer. But we still have some units that's doing it the old way because we have some old members who just refuse to touch a computer. And so but generally speaking, the application information is transcribed to some kind of a membership report form.

Generally, the national office does not see the application

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itself. Someone at the local unit will submit that information to the national office, and the application is maintained for the -- by the unit until, you know, the person's membership expires or until they get their membership card back from the national office.

Q. At the unit level, do unit leaders collect or can unit leaders collect additional information from members or prospective members?

A. Yes, they could. If they want to, yes, they can. They can collect -- go ahead. I'm sorry.

Q. I was going to ask what information can they collect?

A. Okay. Well, they can collect information on, you know, the individual -- not their medical status, but information about, you know, maybe, you know, more specific their age or their needs, specific needs. If someone knows that they cannot drive or they cannot make it to an in-person meeting, you know, we may keep that and say, well, remind us to call -- like some of our members do not have access to Zoom. And so we will collect information about that person so that when we are doing our phone calls, we'll know that we need to call that person rather than expect them to get on a Zoom call. And so that kind of information that we may collect. Also, we may collect information about, you know, when they are -- when it's election time saying that, you know, this person would need to -- we need to make sure we get this person a ride to the polls or something like that.

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Q. Thank you. And where do units send that information, or do they send it anywhere once it's collected?

A. Now, that information is held by the unit. They do not share that information.

Q. Is collecting information about members in the NAACP's normal course of business?

A. It's not -- we don't collect it as a part of our normal course of business per se. Once we collect the information -- I mean, once we have the basic information about the member, that's generally -- you know, we're finished. But like I said earlier, if there is something unique about this person, either where they live or not their specific health condition, but that they need rides to places, things like that, that information may be collected by the local units but not the state or the national. We don't maintain that type information.

Q. Okay. What is the racial makeup of your membership?

A. We have people from all -- from several different racial groups, nationalities. Of course, it's predominantly African-American. But we have whites, Asian-Americans, Hispanics, Native Americans, who are members of the NAACP.

Q. And how do you know that?

A. Well, I know it based on my knowledge of -- part of it is recruitment. Part of it is during our discussions on our weekly call, someone may say, we have, you know, ten new members when the branch give their reports, they say that they have ten

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new members and, you know, they may explain that, you know, the mayor of a particular city has joined or the sheriff of a particular county has joined the NAACP. And so -- and also, at our formal conventions and events that we have, you know, we see the people who attend those events as delegates. And often delegates are the observers who are members of the NAACP.

MR. WEBER: Your Honor, we object to the extent that the answer constitutes hearsay. I don't object that it's based on the witness's personal observations. But as to information that was told to him by local units about who's joining the organization, we object. And it's clear that that's -- that the witness's knowledge is not based on any records that are kept within the state conference. And also the fact that he's testified that those records are kept at the local units.

THE COURT: The answer is inclusive because I know this from recruitment from meetings in-person conventions, perhaps. So it covers both personal and what's been relayed in membership reports from his units. And obviously, Director Singleton -- I'm sorry -- Simelton -- is not representing about the accuracy of the information. He's just relaying that this was what was informed to him by members. But in any event, I will overrule since his answer also, again, relayed information that he personally knows about.

MS. REED: Thank you, Your Honor.

Q. And, Mr. Simelton, what proportion of your membership is

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registered to vote?

MR. WEBER: Your Honor, again, objection. These -- you know, to the extent that this -- the witness has any knowledge on this, this comes from records that are maintained at the local organization. It seems like Plaintiffs are attempting to invoke a regularly conducted meeting records exception to the hearsay rule. But the witness is not the custodian of these records. And in addition, the exception covers the records themselves, you know, or perhaps, you know, testimony from a custodian directly invoking those records. That's not the case here. The witness is not the custodian of those records.

THE COURT: You may be correct. But let me find out how he knows the answer to the question.

Mr. Simelton, how do you know the percentage of your members that are registered to vote?

THE WITNESS: Well, one is on the form, application. It asks if the individual is a registered voter. In addition, when we are talking about in our meetings, when we are talking about voter registration, Get Out The Vote, civic engagement activities, you know, of the questions we ask is everyone, you know, registered to vote, you know, that are on the call or in that particular meeting, you know, and we ask that, you know, just to make sure that -- because sometimes there is new members that we don't know if they're registered to vote or not.

In addition, we have people who are members of the

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organization who are ineligible to register to vote because of the requirement in Alabama that ex-felons have to go through to get their voter rights restored. So we have members that are not registered to vote but -- and we know that they're not because when we register them as a member, you know, they cannot check that box that says I'm a registered voter.

MR. WEBER: And, Your Honor, so we renew our objection. The witness has not testified that he's reviewed the contents of any such records. He's not testified that he keeps those records. And he's not -- you know, they're not producing the records themselves.

THE COURT: Director Simelton, do you review the membership applications that you alluded to earlier that ask about registration to vote?

THE WITNESS: Your Honor, was that a question to me? I didn't quite understand.

THE COURT: Yes, sir. The first thing you said in response to my question is that the membership application inquires about voting registration status. Do you review those membership applications?

THE WITNESS: Do I review them?

THE COURT: Yes, sir.

THE WITNESS: No, sir, I do not review them all. If I collect one, of course, I review it. But I do not review them all.

THE COURT: Okay. And then you have been part of

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meetings where inquiries were made about the people who were present and about their registration status; is that correct?

THE WITNESS: Yes, sir.

THE COURT: All right. As to the applications that you've reviewed, what is the percentage of members that were eligible -- or have registered to vote, I should say?

THE WITNESS: I would say that -- of course, this goes back over several years. And I would say 99 percent of the people that I collect membership from were registered voters. As I stated earlier, there are some who are ex-felons that we are trying to help them get their voting rights restored and may not be a member. But I would say probably 99 percent of the people that I have personally registered are members of the -- are registered voters.

THE COURT: And in the meetings that you have been physically present where the members that were present were asked about their voter registration status, what has been the percentage of those who responded to that inquiry?

THE WITNESS: Those -- and of course, we didn't actually check during that time, but it's been 100 percent, you know, at those meetings people say, yes, I'm registered.

THE COURT: Thank you. Ms. Reed.

MS. REED: Yes, Your Honor. And, Your Honor, if I may, I'll ask a question that might obviate the need for some of these hearsay objections since I am taking the testimony of

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Mr. Simelton as the head of the Alabama State Conference of the NAACP.

Q. Mr. Simelton, what records did you review ahead of your testimony today?

A. Well, I reviewed our emails that we have received from members -- I mean not members but from our leadership as well as emails that I have sent, news articles, letters that we have written, and those type things that help to refresh my memory on what we have done concerning voting rights and voting issues in the State of Alabama.

Q. And as head of the Alabama State Conference of the NAACP, do you review periodically the national roster that reflects membership data for Alabama?

A. Okay. Now, when you -- you talking about -- oh, you said for the State of Alabama. Yes, I do.

Q. Yes. And to the extent they exist, do you review as head of the -- as president of the Alabama State Conference of the NAACP records that units maintain about members to the extent they exist?

A. You say do I review individual units's records?

Q. Uh-huh.

A. About their membership?

Q. Uh-huh. Yes.

A. Yes. The one that comes down from the national has individual members on it.

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Q. Okay. And you said you have quarterly meetings and weekly meetings with unit leaders about membership, correct?

A. Well, it's more than about membership. But that is certainly something that is discussed, yes.

Q. Okay. And based on what you know as president of the Alabama State Conference of the NAACP and review of records, what is the age breakdown of your membership?

A. The -- well, of course, I don't have precise numbers. But of course, most of our members are older people because they're the ones who have time to dedicate to the organization mission and goals. But if -- I mean, I can speculate, but I don't have a precise breakdown of what the members's membership are. But I can say that based on participation, based on attendance at our conventions, our quarterly person -- in-person quarterly meetings, based on the leadership of the organization, majority of the members are probably around my age, you know.

Q. And I won't ask your age for the record, but would you say they are 65 or older?

A. Yes, I'm 65 or older.

Q. Okay. Are you aware of members who have ambulatory issues?

A. Yes, ma'am.

MR. WEBER: This is hearsay. And the problem has not been cured. It's been made worse.

THE COURT: As to ambulatory issues? He may know based

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on his observations.

THE WITNESS: Yes.

THE COURT: Let's figure out first where we're headed, please.

Ms. Reed, you may continue with your examination.

MS. REED: Thank you, Your Honor.

Q. And how do you know, Mr. Simelton?

A. Yes. The ones that I know specifically, I have observed them. I have even picked some of them up to take them to meetings with me. And when you see them at conventions, when you see them at events, you know that they're walking either with a cane or some kind of assistive device. So, I mean, I have personal knowledge that they are -- you know, they need assistance.

Q. Thank you. Are you aware of members who have contracted COVID-19?

A. Yes, I am.

Q. And how do you know?

A. I have spoken to them. And they have personally told me that they have --

MR. WEBER: Objection. Hearsay.

THE WITNESS: -- the virus.

THE COURT: Overruled.

MR. WEBER: Your Honor, may I be heard briefly?

THE COURT: Individual relayed to me that he or she was

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sick. Whether or not it's truthful or not, I don't think is the issue. He has spoken to individuals directly. Why is that improper?

MR. WEBER: Well, Your Honor, it's not --

THE COURT: I generally prefer to quibble over things that move the needle. But let me give you the forum since you do have the right to make your objection. Let me make sure I understand the objection, please.

MR. WEBER: Thank you, Your Honor. And for purposes of building a record, I mean, it seems like this is being offered for one of two purposes. Either it's being offered as non-hearsay because it's not being offered to prove the truth of the matter asserted. In which case, we object on relevance grounds. Or if it's being offered as a record of regularly kept activity, there's no evidence of any underlying record here. It's simply a conversation.

THE COURT: Okay.

Ms. Reed, you may continue with the exam. Overruled.

MS. REED: Thank you, Your Honor. I just understand your ruling. I just want to make clear that we are asserting that that it is relevant for purposes of -- you know, the pandemic is, you know, one of the reasons of that absentee voting restrictions we're complaining about are the basis of our claims. So for purposes of the record. But I will continue my examination. Thank you, Your Honor.

Q. Mr. Simelton, what voting activities does the NAACP

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traditionally engage in to accomplish its mission?

A. Yes. So we engage in what we call the entire civic engagement process. That includes voter education, voter registration, GOTV efforts as well as actually taking people to the polls on Election Day.

Q. Okay. And why does the NAACP engage in these activities?

A. Well, the NAACP's -- if you go back to its mission, when it talks about the political rights of all people, we believe that people should have the right to express their political desires and the best way to -- well, one of the best ways to do that is through their vote. We believe that their vote is their voice and that the only way that they can effect -- well, one of the primary ways that they can effect change is through the use of their vote. And the NAACP has for many years, 111 years, fought for the equality of rights of all people. And those rights must and have always included voting rights even before the 1965 Voting Rights Act was passed. And so voting is fundamental to the NAACP.

Q. What activities does the NAACP in Alabama typically do to help people with absentee voting?

A. Typically, we tell people about , you know, that as an option, that they can vote absentee.

Q. Okay. And what work regarding absentee voting has the NAACP started doing in 2020?

A. Well, since the COVID-19 and restriction on moving about and with social distancing and everything, we know that because

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of the age of a lot of our members and a lot of the people that we represent, we have taken an extra effort to ensure that those who want to prevent themselves -- and that should be of course all of us -- prevent themselves from catching COVID-19, but our older generation is more susceptible to catching COVID-19. And the consequences of catching it is far greater than perhaps some of our young people.

So we have made that as an option, and we have reemphasized that don't stay at home on Election Day. Don't do not vote. And notice the double negative. But we want you to vote. And one of the ways that you can safely vote is through the absentee ballot process. Even though it requires some additional things that you must do, we want to explain to you specifically what is required so you can meet the needs and satisfy the needs of the election officials in the State of Alabama so that your voice can be heard.

Q. Mr. Simelton, you mentioned the absentee voting process has some requirements that make it -- that may make it a little less safe. Can you explain what those requirements are?

A. Well, the -- in order to complete the application, you must have a copy of your photo ID. And in order to get a copy of the photo ID, many of our members do not have printers or copiers at home. So you have got to somehow get a copy of your photo ID which will further expose yourself to possible COVID-19. And so we want to educate our people that in order to get that ballot,

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even before you get the ballot, you've got -- you must have a copy of your photo ID to submit with your application.

And then once you get the ballot, you've got to have either two people to notarize it which further exposes yourself, or have a notary come in and sign -- see you sign your -- your signature, sign the ballot, before you can submit it. So that is -- those are things that's required for the person to submit their ballot in addition to, of course, putting it in a separate envelope and returning it to the absentee voting manager in your area.

Q. And how has the NAACP worked to help members in the community satisfy these requirements?

A. Well, we have held voting -- voter registration clinics throughout the state where we have set up outside where people could drive up and get a copy of their photo ID made safely so that they could attach that to the application and submit it to the absentee voting manager in their state or in their location.

Q. And so at these clinics, you said you have a place set up for people to make photocopies of their ID; is that correct?

A. Yes, that is correct.

Q. And where throughout -- I'm sorry. I didn't mean to interrupt you. Go ahead.

A. Yes, and also, we've asked the State Secretary of State's office to bring their equipment for people who do not have a photo ID to get a copy of their photo ID.

Q. Okay. And where have you -- where has the NAACP held

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these clinics throughout the state?

A. We've held them in Limestone County. We've held them in Lawrence County, and Jefferson County, Mobile County, and Shelby County, and in Montgomery.

Q. And what -- did you play any role in coordinating these clinics?

A. Yes. During our weekly conference call, that's one of the things we talk about and how we're going to do that. So through that and also specifically for the one here in Limestone County, where I live, I helped the branch here coordinate that, and I participated in that particular one where we had the copy machine out and -- at Tito's barbershop, and they were making copies of the photo IDs.

Q. Why did the NAACP offer this clinic?

A. Well, you know, as I stated earlier, that's part of our mission. And we believe that everyone should have the right to have their voice heard, and that's through the voting. And as I have stated on record many times, we don't agree with the photo ID requirement. We don't agree with all the signatures that's required. But we must -- that is the law currently. And we're going to do everything that we can to ensure that each person in the State of Alabama has the right to vote and that they can exercise that right safely and without any kind of hindrance, you know, based on what the laws are.

Q. Was the NAACP able to reach everyone who needed a photo

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ID?

A. No, of course not.

Q. Why not?

A. Well, there are so many people that need a copy made that, you know, no matter how hard you try, there's always those who didn't know about it and was not aware that we were offering it. So, you know, we offered that -- we will offer those clinics again. And so we -- we do what we can to make sure that they -- they know about it. But we're always going to -- someone's always not going to get the word.

Q. Did this event cost the NAACP?

A. Yes. There's an additional cost because of, of course, the ink and the paper that it costs to do the photo IDs and the hand sanitizer that we have to use to make sure everyone is safe in that regard, the masks that we provide for people who drive up that may not have a mask. We purchase masks to ensure that not only our workers plus those who are -- come driving up to get our services, that they have, you know, appropriate protection.

Q. Thank you. You testified before that the NAACP's planning to do more of these events; is that correct?

A. The NAACP what now?

Q. Is planning to do more of these events; is that correct?

A. Oh. Yes. Yes, we are.

Q. And where?

A. Yeah, we've got currently planned in Montgomery on the

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26th of September and also in Baldwin County on the 26th. And we will be -- our other units will be hosting more of those. We don't have exact dates yet. But that's something we discussed on the conference calls -- at the conference call.

Q. Thank you. If you were not offering events -- clinics of the type you just described, what else would your members be working on?

A. Well, we would be working on strictly at this point registering people to vote and educating people about the issues that are at hand that's during this election coming up.

Q. Thank you. And does the NAACP plan to offer any assistance to members with respect to the witness requirement?

A. Yes. That's a part of the additional clinics that we will offer for people to drive up. It will be kind of a one-stop shop. Now that you can apply for your absentee ballot, we will have the witness requirement, two people to sign your ballot. Not your ballot. I'm sorry. Two people to sign your -- let me back up. We will have people to sign your application if you're applying for your absentee ballot. And also, we will continue to make copies of the photo ID. And then of course later on, we will have clinics where we -- once a person get their ballot, that we will have a notary as well as witnesses to sign the -- sign the ballot, you know, set up at different clinics.

Q. Why will you have this clinic -- form of clinic available to members?

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A. Yes. Go back to what I said earlier. We believe that a person's vote is their voice. And we want to see that every person regardless of obstacles that are put before them, that they exercise their right to vote because it's guaranteed to them under the constitution. And we want to do everything that we can to ensure that every person in the State of Alabama exercises their right to vote regardless of what barriers may be presented before them.

Q. Mr. Simelton, are you aware of any elections after the general election on November 3rd?

A. Yes, we are. There's a house seat -- I think it's 49 -- in the Shelby County area. And there's a senate seat in the Montgomery area that I think the government just announced Tuesday, I think this week.

Q. Okay. And are these elections in counties where the NAACP has members?

A. Yes. Yes.

Q. And what assistance will the NAACP provide for members in these elections?

A. Yeah. We will provide again the civic engagement, the education process, educating people on the issues, how to vote. And also we will help people with the absentee balloting process to ensure that they know that's available for them and to help them get their ballot in the mail. So do the same thing we're doing fort general election.

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Q. Thank you. Mr. Simelton, do you know what curbside voting is?

A. Yes, ma'am.

Q. What is it?

A. Curbside voting, at least my understanding, is an opportunity for a person to be able to drive up to a designated spot without getting out of their vehicle and be given that ballot, and they mark the ballot, and they give it back to the voter poll worker and have their ballot counted without them having to get out of their vehicle.

Q. Okay. And is curbside voting important to the Alabama NAACP?

A. Yes. Curbside voting is important because it allows -- and especially during this time of the epidemic, the Coronavirus pandemic. It will allow a person to remain in their car without exposing themselves to the -- well, without further possibly exposing themselves to catching the Coronavirus. So it's -- curbside voting is very important to us and of course the members we serve because of the age of several of our members.

Q. And how do you think curbside voting would impact members with ambulatory issues?

A. Well, for those who are -- need assistance, they could drive up without getting out of their vehicle and cast their vote. And if their polling place had steps or something, you know, they would not have to try to navigate those steps. And they would, you

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know, be able to vote safer, you know, and, again, without those unnecessary barriers such as physical barriers.

Q. Mr. Simelton, have you served as a poll worker for an election?

A. Yes, ma'am, I have.

Q. And when is the last time you served as a poll worker?

A. During the July -- I think July 15th election of this year.

Q. So was that the primary runoff in your county?

A. Yes. Yes.

Q. And I'm sorry. I didn't mean to testify. I guess where did you serve as a poll worker?

A. In Limestone County at Capshaw Baptist Church.

Q. And based on your experience as a poll worker, what would it take for the polling precinct you polled at to implement curbside voting?

MR. WEBER: Objection. Speculation and opinion testimony.

THE COURT: It's opinion testimony. But no reason for me not to allow it. As to Shaw Baptist church, I think is what he said, you may answer that question, sir, and then we will take our 15-minute morning break.

THE WITNESS: Yes. At Capshaw Baptist church where I served as a poll worker, the -- it's -- I'm sorry. Ask the question again. Make sure I understand.

Q. (BY MS. REED:) And I can just ask it, you know, hypothetically for, you know, at a polling precinct, what would it

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take for a polling precinct, based on your experience as a poll worker, to implement curbside voting?

MR. WEBER: Renew the objection.

THE COURT: You may answer, sir.

THE WITNESS: Okay. Yes. And I can answer specific where I am. The -- what will happen is they have to move the -- the poll -- poll book as well as the ballots, have to move those outside and as well as a voting machine outside and it will require -- one person could do the whole thing depending on how many people were in line. But probably two would be better, one to feed the ballot through the machine and the other one to sign them in. And the person could drive up and sign in, get their ballot, mark the ballot in their car, and then maybe drive up a little further and actually feed it through the machine. And so it could be done real simple, real easy.

THE COURT: Thank you. Let's stop --

THE WITNESS: Based on my experience as a worker.

THE COURT: Thank you. Let's stop here, take a 15-minute break. We will come back at 17 minutes after the hour. Thanks, everyone.

(Recess.)

THE COURT: Ms. Reed, are you ready to resume your examination?

MS. REED: Yes, Your Honor.

THE COURT: Mr. Simelton, are you ready, sir?

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THE WITNESS: Yes, Your Honor, I'm ready.

THE COURT: Thank you. Ms. Reed.

MS. REED: Thank you.

Q. Mr. Simelton, one last question. When you were a poll worker for the July primary runoff in Limestone County, did the polling precinct you worked at have electronic poll books?

A. Yes, they did.

Q. Okay. Thank you. Mr. Simelton, you testified earlier that the NAACP has members in Lowndes County, correct?

A. Yes.

MS. REED: Eric, can you pull up Plaintiffs' Exhibit 460. Thank you.

Q. Mr. Simelton, do you know what is depicted in this exhibit?

A. That's a church where there's a polling place in Lowndes County.

Q. And is this photo of Lowndesboro C.M.E. in Lowndes County?

A. Yes.

Q. And how do you know that?

A. I've seen it on the -- I've Googled it, and I've seen it.

Q. Okay.

A. It's a...

Q. Thank you, Mr. Simelton.

MS. REED: Your Honor, Plaintiffs move to admit Plaintiffs' Exhibit 460 into evidence.

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MR. WEBB: Your Honor, we object on the basis of there is no reference as to when this picture was taken or the relevance of this picture. Just with the witness seeing it on Google is not good enough to authenticate an exhibit.

MR. WEBER: And, Your Honor, we also object on foundation grounds.

THE COURT: When was this picture --

MS. REED: Your Honor -- so, Your Honor, this picture -- the picture we have here is from the town of Lowndesboro's official city website. And under Federal Rules of Evidence, Your Honor can take judicial notice of -- Your Honor can take judicial notice of this photo as being an accurate depiction from a readily -- a reliable source -- I'm sorry -- and that would resolve the -- assisting resolve the authentication issues as well. Also, because Mr. Simelton has seen this photo on the Google -- I think he said Google or Google maps -- I can't recall -- that would -- you know, the Court can take judicial notice of things on Google maps.

THE COURT: I gather you're trying to show that this voting place has steps, which can be a barrier to some people.

MS. REED: Yes, Your Honor.

THE COURT: Certainly there is no dispute -- I think -- on the Defendants' part that maybe some voting places have steps that people that vote have to navigate. Is that in contention, lawyers for the state secretary?

MR. WEBB: Your Honor, this picture number one, we don't

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know if this picture is 20 years old.

THE COURT: I'm sorry. Feedback on my end perhaps where I lost what you were saying. Please are try again, Mr. Webb.

MR. WEBB: Your Honor, we do not know whether this picture was taken 20 years ago or 30 years ago --

THE COURT: That's a different question. I have moved beyond the photo. Is there a dispute that some polling places may have steps that people have to navigate?

MR. WEBB: Well, Your Honor, this polling place also has a ramp on the left side. If there was an accurate picture --

THE COURT: Correct. I mean, I think that's the --

MR. Webb: -- there is a ramp.

THE COURT: That's the response to this. But my question is I think we can all agree that there are some polling places that have steps that people have to navigate. And likewise, there are some polling places perhaps that will also have ramps that people can go up and down -- that people can use, excuse me, that can not go up and down steps.

I will allow this photo and will allow obviously on cross for you guys to point out to this witness that he's not fully familiar where the site, that there is a ramp there, allegedly, et cetera, et cetera. So over the Defendants' objections and with the representation that this is a recent photograph that was obtained and that this witness has seen it as well on the website where it's located, he can testify about it.

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Ms. Reed, you may go forward.

MR. WEBER: Your Honor, I'm sorry. Very briefly. I'd also like to object on the basis that this was not disclosed during discovery and in fact was not timely disclosed as an exhibit by the Court's deadline. Thank you.

THE COURT: Okay. Ms. Reed, please continue.

MS. REED: Thank you, Your Honor.

Q. Mr. Simelton, does the NAACP have members in Montgomery County?

A. Yes.

Q. Okay.

MS. REED: Eric, would you please put up what has been premarked as Plaintiffs' Exhibit 462.

Q. Mr. Simelton, do you recognize the structure in this photo?

A. Yes.

Q. And what is it?

A. It's a polling place in Montgomery County and -- well, a polling place in Montgomery County.

Q. Okay. And is this the Snowden's Women's Center in Montgomery County?

A. Yes.

MR. WEBER: Objection.

THE COURT: What's the objection on is this the Snowden's -- I think was the name -- place. Building.

MR. WEBER: Yes, Your Honor. I'm objecting on leading and

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that she's suggesting the answer.

THE COURT: Okay. All right. Since the witness is familiar with it, at least this time I will overlook the leading aspect of the question.

MS. REED: Yes, Your Honor.

Q. Mr. Simelton, how do you know what the structure is in this photo?

A. Likewise, I Googled the facility. The Snowden's women's facility -- well, it's also used as a polling place.

Q. And, Mr. Simelton, in this photo, do you see a paved walkway that leads to the ramp in the front of the structure?

A. No, I do not.

MS. REED: Your Honor, I move to admit Plaintiffs' Exhibit 462 into evidence.

THE COURT: Mr. Simelton, how do you know this is a polling place, sir?

THE WITNESS: Well, based on the information that listed polling places in Montgomery, this was listed as a polling place.

THE COURT: Is there any dispute that the Snowden's Women's Center, if my notes are correct, is a polling place?

MR. WEBER: Your Honor, we simply don't know.

MR. ENGELHARDT: Your Honor, we also don't know when this photograph was taken, nor has there been any testimony as to that.

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MR. WEBB: Your Honor, the picture was also disclosed late beyond this Court's deadline.

THE COURT: The latter question -- the latter objections do concern me, Ms. Reed, about the disclosure. So let me hear from you if these exhibits were disclosed after the deadline to designate exhibits.

MS. REED: Your Honor, if I recall correctly, these exhibits were disclosed ahead of us -- certainly ahead of us transmitting hard copy and electronic copies of all Defendants' exhibits. These exhibits did not make it on to Plaintiffs' initial exhibit list. But given the large volume of discovery and short deadline ahead of trial, we -- Plaintiffs researched and decided to include -- requested to include these exhibits and shared them with the Defendants as part of the electronic transmission of all Plaintiffs' Exhibits and highlighted these exhibits as additions to the exhibit list and did not hear or -- any objection from the Defendants at that time.

THE COURT: All right.

MR. WEBB: Your Honor, may we speak to that?

THE COURT: Mr. Simelton, you I guess saw some list of things on the election website, and correct me if I'm wrong, that lists this place as a polling site that's used in Montgomery County; is that correct?

THE WITNESS: In Montgomery -- did you say Montgomery County?

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THE COURT: Yes, sir.

THE WITNESS: Yes, sir. Yes, sir. That's correct.

THE COURT: And when did you view that website and that listing of polling places?

THE WITNESS: On yesterday.

THE COURT: Okay. And do you know when this picture -- well, on this website that you viewed, was this photograph in it? Used on that website? Maybe a bad question. Have you seen a copy of this photograph on a website?

THE WITNESS: Yes.

THE COURT: When did you view that website last?K

THE WITNESS: On yesterday.

THE COURT: What is the name of that website?

THE WITNESS: It was -- we Googled the women's -- Snowden's women's -- I can't remember the last --

THE COURT: Oh, so you did a Google search of the name, and this is a picture from Google maps or Google street view but not necessarily -- it's not a picture from the State of Alabama's polling website or other official records; is that correct?

THE WITNESS: No. This is the address of -- of -- and I don't remember -- I know it's on Norman Bridge Road. But I don't remember the exact address of the --

THE COURT: It looks like it's 6147 U.S. Highway 331 is the address if this map is correct. But in any event, what you did is you plugged in one of the addresses for the polling places that

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were listed on the Secretary of State's website or on the Montgomery elections' website, and this is the picture that popped up?

THE WITNESS: Well, what I did, I Googled the Snowden women's site, and I was informed that this is it a polling place. And I looked it up, and this is what -- what the site gave us when we put in the address. Well, actually, when I Googled the Snowden Women's Facility, this is what came up.

THE COURT: Ms. Reed, what's the point here? That this is a polling place that some of his members use? Do we know that?

MS. REED: Your Honor, that will ultimately be the point, yes, Your Honor. Well, the point of this photo, which is a screen grab that -- a screen grab of Google maps's photo is just to reflect that polling place -- or a structure that is a polling place in a county where the NAACP has members is not accessible -- you know, is not accessible. And just based on Google maps, you know, this Court can take judicial notice of not necessarily the accessibility which is a legal argument that we intend to make but of the structure, the location of a structure itself.

THE COURT: Well, how do you respond to their contention that we don't know when this photograph was taken, and perhaps as of today, the lack of a paved driveway that you're referencing may have been remedied?

MS. REED: Well, Your Honor, certainly the photo we have here -- this is definitely a recent screen grab and --

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THE COURT: I know that. I mean, I know the screen grab was done recently. But as I understand it -- and let me reemphasize what I've said all along. Technology is not my forte. But as I understand it, generally, Google sends out cameras attached to automobiles to take photographs of streets and structures. So while you may have grabbed this recently, how do we know when this photo was taken and uploaded onto the Google website?

MS. REED: Yes, Your Honor. I am looking -- we did include additional photos. There is image capture data -- date data that attends searches -- Google searches. And I believe this one was from July 2019, if I am recalling correctly. But I'm looking to confirm whether we have other geo data --

THE COURT: While you're doing that, let me just make sure I understand what you just said. So you are able, based on information available on the web, to know when this picture was taken?

MR. ROSS: Yes, Your Honor.

THE COURT: Okay. And you think it's -- well, you're checking. You think it's July 2019, but you're looking to further confirm that. Go ahead.

MS. REED: Yes, Your Honor. It isn't reflected on any of the screen grabs I have. But certainly my notes show that on -- if we were to Google it now, the image capture date would show that this picture was taken on -- or as recent as July of 2019.

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THE COURT: All right. With the caveat that, obviously, I don't know what this building looks like today, I will allow you to introduce evidence that based on your representation as of July of last year, this is what this building looked like. So let me overrule the Defendants' objections. You may continue with your examination. Again, this is a picture that at least based on the data that you have, was taken as of July of last year. I was looking at my picture on the screen. Someone wanted to say something. I don't know who. So I missed the person.

MR. WEBER: Your Honor, this is Jeremy Weber for the state. Very briefly just to fill in the Court, we did object based on the untimely disclosure as well as on other grounds because this was provided to us after the Monday deadline set by the Court. And that's of course impacted our ability to actually go out and physically verify whether this is an accurate representation.

THE COURT: It's an accurate representation as of July of last year. I think your objections beyond the disclosure I think will still be addressed when you cross that this witness does not know if this building looks the same today, if this barrier still exists, et cetera, et cetera. So objection's overruled.

Ms. Reed, you may continue with your examination, please.

MS. REED: Thank you, Your Honor. Eric, would you please take down this exhibit.

Q. Mr. Simelton?

A. Yes, ma'am. I'm here.

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Q. What do you know about whether the Secretary of State permits curbside voting?

A. The Secretary of State does not permit curbside voting in Alabama. As a matter of fact -- okay.

Q. Go ahead.

A. I was getting ready to say, as a matter of fact, the Secretary of State has intervened and stopped -- and I don't remember the specific location, but there was a couple locations where the Secretary of State has intervened and stopped the units that were trying to do curbside voting -- not the units but the places that were trying to do curbside voting.

Q. Thank you. Has the NAACP advocated for curbside voting?

A. Yes, we have.

Q. And what has the NAACP done to advocate for curbside voting?

A. Well, we have spoken -- spoken through sending letters to the Secretary of State and doing some -- written some opinions about how curbside voting could be used to help other people, ambulatory people who need assistance with voting, how curbside voting could be beneficial to them.

Q. Thank you.

MS. REED: Eric, would you please call up what has been previously admitted as Plaintiffs' Exhibit 392.

Q. Mr. Simelton, do you recognize this document?

A. Yes, I do.

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Q. And what is it?
A. It's a letter that we sent to Secretary Merrill during the -- asking him to do certain things to help make it more convenient for people to vote especially during the COVID-19 pandemic.
Q. And can you read the subject line at the top of the letter.
A. Yes. "March 19 letter ensuring ballot access to Alabama voters during the Coronavirus pandemic.
Q. Thank you. When is this letter dated?
A. This letter is April 17, 2020.
Q. Thank you.
MS. REED: Eric, could you call up please what has previously been measured as Plaintiffs' Exhibit 393.
Q. Mr. Simelton, do you recognize this document?
A. Yes, ma'am.
Q. Okay. And what is this document?
A. This is the initial letter that we sent to Secretary Merrill requesting him to again make access to the ballot -- the voting much easier especially during the COVID-19. We signed on to this letter along with other people.
Q. Thank you.
MS. REED: Eric, can you pull down this letter.
Q. And why, Mr. Simelton, did you cosign on these letters as part of your advocacy?
A. Well, again, we believe that voting is a fundamental right that everyone should have access to. And we know that in the

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COVID-19 era, voting is going to be -- is complicated for some people. It's not as easy as just saying, well, I won't go to the poll. Because of the virus out there, people are going to need to take extra precaution to make sure that they are protecting themselves while they are voting. So we sent this letter to Secretary Merrill asking him to do certain things to make it easier and safer for voters to cast their vote.
Q. Thank you. Mr. Simelton, would you have written these letters to the Secretary of State -- strike that.
How would you -- how would your advocacy have changed if there were none of the voting requirements or voting prohibitions listed in the letter?
A. Well, we perhaps probably would -- may not have sent a letter at all, but if we had sent a letter, it would not have included certainly some of the things that we included in the letter if everyone just had easy access to the polls even during the pandemic era such as the signatures that are required for your ballot or for the application, the photo ID that's required for the application. We would not have included those type things in the letters. And so our advocacy would not have included those type things that the Secretary of State needs to do.
Q. Thank you.
MS. REED: Eric, can you call up please what has been premarked as Plaintiffs' Exhibit 414. Thank you, Eric.
Q. Mr. Simelton, do you recognize this document?

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A. Yes, I do.
Q. Okay. And what is it?
A. It's an op-ed that I wrote back in I think it was July -- yeah, back in July concerning really some of the barriers to voting in Alabama especially in the face of COVID-19.
Q. Thank you. And did you write this letter in your capacity as president of the Alabama State Conference?
A. Yes. It's more of a -- I wouldn't call it a letter per se. But I did write this document.
Q. Yes. I'm sorry. The op-ed.
MS. REED: Your Honor, I move to admit what's been previously marked as Plaintiffs' Exhibit 414 into evidence.
THE COURT: Any objections?
MR. WEBER: No, Your Honor.
THE COURT: Plaintiff's 414 is received.
MS. REED: Thank you, Your Honor.
Q. Mr. Simelton, was this a part of your voting advocacy beginning in March 2020?
A. Yes.
Q. And would you have written this op-ed if there were none of the provisions you discussed in the op-ed?
A. No, I would not have drafted this letter, you know, I mean, certainly not under the current, you know -- if the current barriers were there, we would not have drafted this letter. Perhaps there would have been other barriers -- I don't know --

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but I certainly would not have draft this letter.
Q. Okay. Thank you. And how have you used social media during the -- since March 2020?
A. Well, we've posted things on Facebook about voting. We've used emails and -- so we've used those instruments to inform people about their voting rights, how to safely vote, and what to expect at polling places, meaning that when you go to the polling place, make sure you have the required photo so you can vote in place. If you are voting absentee, make sure you have the required documents prior to you submitting your application and everything.
Q. Okay.
MS. REED: Eric, would you please call up what's been premarked as Plaintiffs' Exhibit 416.
Q. Mr. Simelton, can you see that?
A. Yes, ma'am.
Q. What does this document reflect?
A. Yeah, this is a representative Terri Sewell, she has the Terri Talk. And I was on her Terri Talk a few months ago along with other people that you see there. Primary focus in this Terri Talk was to talk to her constituents about preparing themselves for the elections that were upcoming and access to the polls, of how you can safely vote in the era of COVID-19. And so that's what this discussion was about. And of course, it's also about just making sure that you do cast your vote.

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Q. Okay. And who is Terri Sewell?

A. She's the U.S. Congress woman from the 7th district in Alabama.

Q. Thank you.

MS. REED: Your Honor, I move what has previously been marked as Plaintiffs' Exhibit 416 into evidence.

THE COURT: Any objections?

MR. WEBER: No, Your Honor.

THE COURT: Plaintiff's 416 is received.

MS. REED: Thank you. And Eric, would you please pull 416 down. Okay.

Q. Mr. Simelton, is the witness requirement for absentee voting difficult for some of your members to satisfy?

MR. WEBER: Objection. Hearsay.

THE COURT: I don't know yet. So let me let him answer. Go ahead, please.

THE WITNESS: Okay. Restate the question.

Q. (BY MS. REED:) Yes. Is the witness requirement difficult for some of your members to satisfy?

A. Okay. There was a -- okay. There was a little delay. I think I'm perhaps having some internet challenge. But if I remember -- understand your question correctly, you said is it difficult for some of our members to satisfy the witness requirement?

Q. Yes. Yes, sir.

A. Yes. The answer is yes. And the reason being is some of our

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members who live alone, they cannot -- they don't have access to the copier or to a copier to make their photo ID. And of course if they live alone, they're going to have to get someone else to sign their ballots. So those are some of the barriers. And let me just say here that when we advocate, we're not only advocating for members who are members of the NAACP. We are advocating for the broader community here in the State of Alabama.

Q. Thank you, Mr. Simelton. But as to your members, how do you know that the witness requirement would be difficult for some of your members to satisfy?

A. Well, I know some of them that live alone, and so when you're living alone, you don't have anyone in the house that you can turn to sign your documents or your ballot.

Q. Thank you. And, Mr. Simelton, is the photo ID requirement difficult for some of your members to satisfy?

A. Yes.

Q. And, well, how do you know?

A. Well, I know we have some members that are -- that don't have a photo ID.

Q. Uh-huh. Are there any other aspects of the photo ID requirement that you are aware your members would have difficulty satisfying?

A. You say any other aspects?

Q. Uh-huh. Other than just not having a photo ID?

A. Well, again, as I said earlier, if they have to make a copy of

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it, that would be a barrier. But as far as the ID itself, if a member doesn't have one, then, you know, they can't -- they can't vote. And if they have to have a copy -- have to have a copy made, then they have to potentially expose themselves to get a copy. Or, you know, if they don't have it and are trying to get it, then they have to go somewhere where they can get the proper photo ID which again further exposes themselves to potential of catching the Coronavirus.

MR. WEBER: Your Honor, I don't believe my last objection registered. I did object to those last three questions based on hearsay. To the extent that the witness's answers come from things that members have told him.

THE COURT: Overruled.

Q. (BY MS. REED:) Mr. Simelton, I want to talk about some of the NAACP members who might have a hard time satisfying the challenge provisions.

MR. WEBER: Your Honor, I don't wish to belabor things. It's probably appropriate at this point just to register a standing objection to this line of questions. Based on previous testimony, the State believes that all of Mr. Simelton's information in this regard comes from conversations that he's had with these members, and none of them were done in the course of regularly conducted activity. So if it's expeditious to do so, we can register a standing objection now.

THE COURT: Ms. Reed. Thank you, Mr. Weber. Ms. Reed.

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MR. ROSS: Yes, Your Honor. Would you like me to respond or proceed with the questioning?

THE COURT: You may respond or you may proceed. The objection has been overruled for the same reasons. I think this witness knows this information in his capacity as the head of the organization, based on personal interactions. I think he said earlier he's reviewed some documents as well to get ready for today. So you may continue.

MS. REED: Thank you, Your Honor. And, yes, that is my response. It is just personal awareness based on the elements you listed.

Q. Mr. Simelton, who is Lillian Jefferson?

A. Ms. Jefferson is the previous president of the Alabama State Conference, and also, she was a national board meeting of the NAACP.

Q. And, Mr. Simelton, based on what you know as president of the NAACP and personal observations of Ms. Jefferson, what -- will she experience difficulty satisfying the witness requirement?

A. Yes. Ms. Jefferson lives alone, and she has some health conditions that further, you know, increases her probability of contracting the virus. If she is, you know, exposed to the virus in her health condition, it would make her more susceptible to having a severe impact from the virus if she were to contract it.

Q. Okay. And who is Ms. Della Bryant?

A. Ms. Della Bryant is the president of the Montgomery County

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branch of the NAACP. And she lives in Montgomery. And I know that she lives alone as well as she's well over the age of 65 and she -- she -- of course, she has a photo ID, but she does not -- well, yeah, she has a photo ID, but, you know, for voting, you know, she's another one that if we did not have the photo ID requirement, a copy of the photo ID, you know, that would lessen her exposure to someone with the virus because she does live alone. And based on conversations I've had with her, and I have been in her house on at least two occasions, she does not have a copy machine to make the photo ID herself. So she has to depend on someone to obtain that for her.

Q. Okay. And who is Keisha Hendricks?

A. Keisha Hendricks is the economic chair for the Alabama NAACP, and she's also a church member, and she's also a medically retired veteran who lives in Huntsville, Alabama, and she's -- she has a health condition that she cannot walk.

Q. Okay. And so what challenge provisions would she -- you know, based on your observation -- have difficulty satisfying?

A. Yes. Ms. Hendrix lives alone, and she has recently obtained a copy machine. So I guess she could make a copy herself. But she does live alone. And so -- but -- so she would have a challenge getting someone to witness her signature on the ballot or notarize it.

Q. Thank you, Mr. Simelton. I guess the last person I'll ask you about is Mr. Joshua Wall. Who is he?

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A. Joshua Wall is a member of the NAACP who does not have a photo ID. Therefore, has not been able to vote. And based on what conversation I had with him a few years ago, he went to a polling place to vote, and even though that there were two people there that recognized him, he -- they -- they did not -- they said they didn't recognize him. And so he was not able to vote during that particular election.

Q. Okay. And, Mr. Simelton, why is the Alabama State Conference of the NAACP a plaintiff in this lawsuit?

A. Well, again, as was stated on numerous occasions during this testimony, the NAACP wants to ensure that everyone has equal access to the polls. And when I say equal access, I essentially mean unfetterred access meaning that there should not be barriers that prevent a person from performing their constitutional duties, constitutional rights as citizens of the United States. So we want everyone's vote to count because we want their voice to be heard.

MS. REED: Thank you, Mr. Simelton. I pass the witness, Your Honor.

THE COURT: Mr. Simelton, we've reached the lunch hour. I can keep going. Or if you need a break, we can break now and come back around 1:00. Your preference. There's no guarantee we're going to be done by 1:00 if we keep going. But you want me to keep going, or you want me to take the lunch break now, sir?

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THE WITNESS: It's up to everyone else, but I'm -- I'll take a lunch break. But if people want to press through, I'm not -- I don't object to that.

THE COURT: All right. For the lawyers for the Defendants, my assumption is this will take more than an hour; is that correct, gentlemen? Let's -- okay. I see some head nods from all three of you. Let's stop here, please. And we will come back at 1:00 p.m. to begin the cross-examine. Thank you, everyone. We're in recess until then. Thanks.

(Lunch recess.)

THE COURT: Good afternoon, everyone.

Mr. Simelton, are you ready?

THE WITNESS: Yes, sir, I'm ready. I was on mute.

THE COURT: Mr. Weber, you're up first?

MR. WEBER: Yes, Your Honor.

Q. Good afternoon, Mr. Simelton.

A. Good afternoon, Mr. Weber.

Q. I'm going to try to do my job by asking you clear, direct, and relatively short questions this afternoon. If I do my job well, that will elicit clear and direct and short answers from you as well so that we can explore what we need to explore. So let's both try and keep up our end of the bargain there.

Mr. Simelton, voting activities is just one aspect of what the Alabama NAACP does; is that correct?

A. That is correct.

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Q. You also do fund raising?

A. Yes.

Q. And veteran affairs?

A. Yes.

Q. Educational activities?

A. Yes.

Q. Economic activities?

A. Economic? Yes.

Q. And your voting activities, are they a mix between Get Out The Vote and voter motivation-type activities as well as voting rights education and assistance?

A. Yes.

Q. Does the Alabama NAACP do voter education and assistance every election season?

A. You said do we do it every election season?

Q. Yes, sir.

A. Yes, we do.

Q. The Alabama NAACP, I believe you testified, work through local organizations generically known as units; is that correct?

A. That's correct.

Q. And those units help you carry out your mission?

A. Yes, sir.

Q. Did you say that you have 42 units across the state?

A. Yes. That includes youth and college units.

Q. Are all 42 of those units considered active?

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A. Some of them are not -- they're active -- yes, they're all active units.

Q. I'd like to show you on the screen Plaintiffs' Exhibit 329. It's been -- you've seen it before today. Can you see that, Mr. Simelton?

A. Yes, sir.

Q. A number of these organizations -- by my count 24 of them -- don't list a point of contact. Are those organizations nonetheless active?

A. Well, I would have to look at which ones are not showing a point of contact.

Q. Is it your assertion, though, that everybody on this list is an active unit?

A. No, everyone on this list is not an active unit.

Q. Are the ones that no contact listed --

A. Well, again, I would have to go through each one and compare to see if each one that has a unit number, if they -- whether they are active regarding their point of contact or not. I can't say that -- I mean, I'd have to go through each one and determine. I know that some of the contact information is incorrect on this list.

Q. Very well. I won't ask you to do that. We'll take that down.

A. Okay.

Q. When a person joins the NAACP, am I right that he or she joins a local branch as well as the national organization typically?

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A. Yes. They are a member of both.

Q. The state conference itself does not have membership itself, does it?

A. No, it does not.

Q. And the state conference itself does not keep records with regard to members within the state, does it?

A. Well, we keep records based on what national sends us. We don't keep a separate record of the memberships. We get the official list from national.

Q. The applications that are completed for membership, does the -- do the local units maintain those or does the state conference?

A. The local unit maintain those. And as I stated earlier, if someone joins on line, that application may -- because it's done electronically, the application itself will never be transmitted to the local unit.

Q. The state conference only keeps the records that the national organization sends to you; is that correct?

A. Well, you talking about regard to membership or what?

Q. Yes.

A. Yes.

Q. You testified this morning about the percentage of members that are registered to vote. And I believe the figure you cited is -- was roughly 99 percent. Am I right in that?

A. Yes.

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Q. Are you confident that's an accurate number for members across the state?

THE COURT: Well, I think I intervened, and the answers that he provided were not statewide. If I'm correct. Ms. Reed, chime in, but I think I limited it to what he -- documents that he's reviewed personally.

MR. WEBER: Your Honor, I don't dispute that. Thank you.

MS. REED: Yes, Your Honor.

Q. (BY MR. WEBER:) Mr. Simelton, does the state conference --

THE COURT: Mr. Weber, internet issues perhaps on our end. Could you repeat that question. Members registered to vote statewide I think is where you were headed. But you faded out.

MR. WEBER: Certainly.

Q. Mr. Simelton, does the state conference maintain records that show how many members across the state are registered to vote?

A. No, we do not.

Q. The state conference does not collect that information, do you?

A. No. The state conference does not collect it. The individual units collect it.

Q. Briefly, am I correct that your budget at the state level has increased from roughly 137 thousand dollars in 2016 to roughly 254 thousand dollars in 2020?

A. That is correct. And I have might add that a budget is based

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on anticipated income. It's not actual income that we receive but anticipated income for 2020.

Q. Do you believe you're on track to collect roughly that amount in 2020?

A. Well, it will fall short of that because during our state convention, which we are going to do virtually, we have not received the number of sponsors that we budgeted for at the beginning of the year which was in January before the Coronavirus. So it will be something perhaps short of that. However, other funding may come to fill that gap. But right now, I will say that we will probably fall short of that.

Q. Would you say it will be north of $200,000 this year?

MS. REED: And, Your Honor, if I may interject and object. I think the budget questions exceed the scope of direct.

THE COURT: They do. But I think he's trying to argue that the activities that are being challenged has not impacted the finances of the organization.

MS. REED: Thank you, Your Honor.

THE COURT: Mr. Weber.

MR. WEBER:

Q. Mr. Simelton, would you estimate that you'll collect more than $200,000 this year?

A. Yes, I do.

Q. Do you expect to be more than $240,000 this year?

A. Right now, I would say, no. But we have some grants out

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there that, you know, if they come through that would put us, you know, perhaps more than that. But based on what we know as of today and based on our state convention that we normally know raises upward of $40,000, it's probably going to be -- we're going to be -- the state conference convention will be something less than that amount we raise because of our sponsors are not sponsoring us this year as they have in previous years.

Q. I'd like to talk about the Alabama NAACP's voter education and assistance efforts.

A. Okay.

Q. I'd like to talk about your normal activities before the pandemic. So before March of this year. Would the organization typically hold town hall meetings to Get Out The Vote and educate voters?

A. Yes.

Q. Would you hold events in venues such as parks to Get Out The Vote and educate voters?

A. Yes.

Q. Would you do voter registration at these kind of events?

A. Yes.

Q. Since the pandemic hit -- I'm sorry. Let me back up. You have been the president of the Alabama NAACP for a number of years. You have been through a few election cycles by now; am I right?

A. Yes, sir.

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Q. Would your efforts typically increase in terms of voter education and assistance efforts during an election season?

A. Yes.

Q. Would the volume of calls you receive with questions about voting typically increase in an election season?

A. Yes.

Q. Now, let's discuss the context of the pandemic. Does the Alabama NAACP maintain any reports or statistics on the number of voting-related questions it has answered during the pandemic?

A. We don't -- we keep records of calls that comes into our office, and we keep a record of what that call is about and who it is referred to. And so whether that's a call that comes in related to a voting issue or any other thing, we keep a record of that, that office -- work records that we -- a record of calls we receive and also any correspondence that we receive, written correspondence that is, that we receive.

Q. Mr. Simelton, we talked about just a few weeks ago in your deposition, did we not?

A. Yes, sir.

Q. And during that deposition, you took an oath to tell the truth; is that right?

A. Yes, I did.

Q. And you did tell the truth to the best of your ability, correct?

A. That is correct.

Q. And do I understand you that you do keep records as to

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calls that come in with voting-related questions?

A. We keep records of all calls that come into the office and all written correspondence that come into our office.

Q. I'd like to show you an excerpt from your deposition. This is on page 89 of your deposition.

A. Okay.

Q. Starting on line 9, it says, "Does the state conference keep any kind of reports or statistics on the number of voting related questions it answers? Answer no, we do not. No."

A. Okay.

MS. REED: Your Honor, if I can just quickly object. Mr. Weber's question here today was -- or Mr. Weber's question regards whether the Alabama State Conference may -- keeps -- accepts questions or reports statistics, I believe. And Mr. Simelton -- the question posed to Mr. Simelton during -- no. Let me back up. I'm sorry. The question posed to Mr. Simelton during the deposition concerned whether the state conference keeps any reports for statistics. And that's different than the question Mr. Weber just asked. So I'd object to improper impeachment.

THE COURT: Maybe. Mr. Weber, you may continue.

Q. (BY MR. WEBER:) Mr. Simelton, do you see the excerpt I'm referring to in your deposition?

A. Yes.

Q. Does the state conference keep any kind of reports or

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statistics on the number of voting-related questions it answers?

A. We keep reports on all calls that comes into the -- into the state home office. Whether that's a call recording voting or question or something else. We don't do any kind of statistical analysis, but we keep a log of those calls.

Q. Would the log show the number of calls you receive?

A. Well, I mean, it doesn't show the number of calls. It just is a -- kind of a spreadsheet that says who called, what the nature of their call was, and who it was referred to. But we don't do a statistical analysis to say, well, we received 10 calls today about voting or, you know, 30 calls for the week about voting or that we received, you know, 50 calls total and 10 was about voting and 40 were about, you know, other issues. It's just a log that the administrative person keeps for us so that we will have a record of anyone that has called our office so that we can go back and begin a tracer on what happened to that particular call or that piece of correspondence.

Q. And so is it accurate that the Alabama NAACP does keep records as to calls it receives? You simply have not sorted that spreadsheet to determine the number of voting-related questions you've answered?

A. That's correct.

Q. Thank you. You can take that down.

With regard to voter-related calls you've received during the pandemic, you have not had to put in additional phone lines to

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handle those calls, have you?

A. No, we have not.

Q. You've not had to hire any workers -- additional workers to answer those calls, have you?

A. No, we have not.

Q. Mr. Simelton, you testified before that you've held some events during the pandemic to assist people in meeting the photo ID and witness requirements; is that correct?

A. Yes, sir.

Q. And forgive me, how many events did you say that the Alabama NAACP has conducted during the pandemic in that regard?

A. I would say there has been one, two, three -- there has been -- the ones -- there have been several in Birmingham. I don't have the exact numbers and don't have the exact numbers of any of them because sometimes branches will just report that, you know, we've had an event. We don't keep track of how many events on our conference calls, weekly conference calls. They will report that, you know, we are having an event this weekend but, you know, we don't keep track of how many units. But I would say that, you know, there have been several throughout the State of Alabama that I am aware of personally.

Q. And are you referring to in-person events, virtual events, or both?

A. Well, majority have been -- when I say in-person, it's

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something registration outside where we've done registration. As far as virtual, there have been some virtual phone -- well, there have been some virtual events that we've held where we've talked about trying to educate the community, having people to call in about -- to ask questions about voting. So we've had those as well.

Q. With regard to the in-person events, you've both assisted people in meeting the witness requirement and assisted people with meeting the photo ID requirement at these events; is that right?

A. Well, not at all of them. But at some of them, right, yes.

Q. Thank you. Were you able to do that in a way where you were able to maintain six feet of separation between people?

A. Well, we tried to maintain that distance, you know, and we provided the masks for people to wear. But there was times when, you know, maybe the individual that was coming to us for -- to receive their photocopies of ID, you know, it may not have been quite six feet distance. But the intent certainly was there, and, you know, if someone observed that people -- we were getting too close, we would ask them to back up or something like that so that we could maintain the six feet. But to say that we always maintained 6 feet, you know, that certainly is not an accurate statement. But we tried to.

Q. Do you know if any of the people who were assisted at the events would be considered in the at-risk group for Coronavirus?

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A. Well, in that they were 65 and older and African-American, yes.

Q. Are you aware if anyone contracted Coronavirus at any of these events?

A. I can't hear you. There's background noise. But I think you said that am I aware that anyone contracted the virus? No, I'm not.

Q. Thank you. The events that you speak of, were they conducted by the state conference, local units, or both?

A. Well, there were some that was jointly. And just remember that anytime a unit does anything in the State of Alabama, it's representing the state conference. But there was certain some that we -- we being me -- helped organize personally and participated in personally.

Q. Were these events designed to particularly focus on meeting the concerns about voting during a pandemic?

A. Well, that was included certainly as a part of what we -- we were trying to do is to make sure that people were able to either register to vote during a pandemic without exposing themselves or get to copy their photo ID without exposing themselves as well as get a photocopy -- I mean get an ID.

Q. Did I understand your testimony earlier to indicate that you would not have done these events had it not been for the challenge provisions in the context of the pandemic?

A. Now, which events are you talking about? Because we're

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always doing voter registration. So we would do a voter registration portion. We would not have the photocopier out there to make IDs. We would not have the hand sanitizer. We would not have the masks out there for these events. But we will, have been, and always will do voter registration.

Q. Were any events conducted specifically to meet the needs of the voters in satisfying the challenge provisions during the pandemic?

A. I would say that certainly none that I helped organize or participated in, they were not just to do that but to educate voters and to register voters -- register individuals who were not registered voters.

Q. I'd like to show you a brief excerpt from your deposition again. And this is on the bottom of page 97 of your deposition. Mr. Simelton, do you see at line 22 where the question begins "are you aware"?

A. Yes.

Q. It states, "Are you aware of any events either in person or virtual events where the state conference or any of the local organizations has conducted since the middle of March that particularly focus on the concerns about voting during a pandemic. Answer again, I will answer that question the same way I answered before. We'll have several of our units -- well, not several. But some of our units have held voter registration along with other events where they have talked about absentee voting.

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We have had Zoom calls where people have talked about the requirements of absentee voting in the COVID-19. Was that the singular topic? No. But was it discussed in detail...

Mr. Simelton, do I understand your testimony both during deposition and today to indicate that you have had events during the pandemic. Some of those events have addressed concerned regard the witness and the requirements, but those events have not exclusively focused on those issues?

A. That is correct. (End of that deposition was and the discussed in detail? Yes."

Q. These events that you're talking about, did you advertise them?

A. Yes, they were advertised through social media.

Q. Would that include your Facebook page?

A. Well, these particular events that I'm talking about did not -- well, some of them may have been put on our Facebook page as a -- the unit that actually hosted it may have shared it to our Facebook page, and we further advertised it that way. But the local unit was the primary one that was responsible for getting the advertisement and notifying the people in their local community.

Q. Does your Facebook page include a calendar of events at the state conference level?

A. No, it does not.

Q. I'd like to show you something on the screen here,

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Mr. Simelton. Scroll up just a little bit. Mr. Simelton, do you recognize what I'm showing on the screen?

A. Yes.

Q. Is that the Alabama State Conference's Facebook page?

A. Yes, it is.

Q. Scroll down. I'm looking at the the list of past events here. Do you recognize some of those events as yours?

A. Well, when you say as mine, again, this is the NAACP events. It's not -- I didn't organize these, but they were organized by units within the NAACP Alabama State Conference.

Q. And at any events you spoke of where photocopiers were used or notaries were provided, are any of those listed on your calendar here?

A. The --

MS. REED: Your Honor, I'm going to object. This mischaracterizes Mr. Simelton's testimony. He didn't say that this was a list of all the NAACP's events across all units.

THE COURT: He said that. That sometimes the units may cross-post their events on the state conference's Facebook page. So but as I understand this question is as to these events that are listed here, which no one is claiming are all-inclusive of all of the events the units held, but any of these events where the mobile unit copier service was available.

THE WITNESS: Okay. So I guess I'm going to answer in a question.

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THE COURT: Yes, sir.

THE WITNESS: Okay. The only event that I see in there is the Shelby County event on the 25th may have included that. I was not at that particular event. And -- let's see. Virtual town hall"... I think that -- I think that may have been the only one -- the June 20th may have included something, but -- now, again, let me make sure I understand the question you're asking. You're talking about specifically as it relates to the challenge provision, right, not just voter registration information and Get Out The Vote efforts?

Q. (BY MR. WEBER:) Yes, sir. I'm asking which of these events listed here did you do things such as provide photocopying or notary services to help people meet those requirements?

A. Right. Certainly the one on the 25th at Shelby County could have included that and possibly the one on the June the 20th. But I'm not for sure about either event.

Q. The one on the 20th is listed as Alabama NAACP virtual town hall. Was that run by the state conference?

A. Yes.

Q. Did you provide notary or photocopying services at that virtual town hall?

A. No.

THE COURT: It's a virtual town hall, so it's not live. If I understand the testimony, Mr. Simelton, the copying and notary services or witness services are only at physical events instead of

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virtual events; is that correct or incorrect?

THE WITNESS: Okay. I didn't quite understand you, Your Honor.

THE COURT: The events where the units or the state conference provided access to copiers or assistance with notaries and witnesses, were those live events or also at virtual events?

THE WITNESS: Those are live events. And -- yes, that was live events.

THE COURT: Mr. Weber, you may continue.

MR. WEBER: We can take that down.

Q. Mr. Simelton, you -- I think you the state conference meet once a week as well as quarterly to share information with local units, correct?

A. That is correct.

Q. Am I right that during the pandemic, those meetings have been conducted virtually?

A. Yes.

Q. Do you -- and am I right that you share information about the voting issues involved in this case at at least some of those weekly or quarterly meetings?

A. Now, did you say involved in this case or?

Q. Yes, Mr. Simelton. Do you share information about the witness requirement, the photo ID requirement, or curbside voting during those weekly or quarterly sessions?

A. Yes.

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Q. Do you provide training to local units as to how they can help people satisfy these requirements?
A. Yes, we do.
Q. Do you have any training materials to offer that you've sent to local units as to how to do this?
A. Yes, we do.
Q. What training materials would those be?
A. It's a -- we have a PowerPoint slide presentation that we share with the -- that we are prepared to share with the units on how to conduct voter registration as well as the photo ID copy requirement.
Q. Am I right that these PowerPoint slides cover a number of different issues not just the excuse, the witness requirement -- I'm sorry. Not just the witness requirement, photo ID requirement, and curbside voting?
A. Yes, that is correct.
Q. During these weekly and quarterly sessions with the local units, do you discuss other topics besides absentee voting?
A. Yes.
Q. Are these regularly scheduled weekly and quarterly sessions?
A. When you say regularly scheduled, I mean, we hold them weekly and of course unless something comes up. And the quarterly meetings, those are -- those are required by our constitution and bylaws. They are regular in that regards.

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Q. Did you conduct weekly and quarterly sessions before the pandemic?
A. We -- the quarterly meeting, absolutely. The weekly meetings, we were doing almost every week, but they have increased -- and when I say increased, sometimes we have them -- they're normally on Wednesday night. But we've had to have calls on Sunday afternoon or special calls so that we could cover everything that we wanted to cover because we have people who like to talk on the calls, and so we can't get everything done on a Wednesday night call. So we have to have additional calls to try and get some of the information out to our branch leadership.
Q. Am I correct that the Alabama NAACP has posted information on Facebook about these provisions at issue in this case?
A. Yes.
Q. Does it cost the Alabama NAACP any money to do that?
A. Well, it's not a direct cost, but it's a time that the -- our Facebook manager has to post that information when they could be either writing grants proposals or doing other things. But it's not a direct cost.
Q. Have you sent emails to educate voters on the challenge provisions?
A. Yes, we have.
Q. Does that directly cost any money?
A. Again, it's not a direct cost, but it -- it requires time and

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effort to draft the emails and make sure you have your information accurate that's coming from the Secretary of State website as well as other sources on how to vote safely in a pandemic.
Q. The Alabama NAACP has not conducted in the statewide surveys to assess which of its members cannot comply safely with the challenge provisions, has it?
A. No, we have not.
Q. You have not tasked local units to canvass their organizations as to who cannot safely comply and report back to you, have you?
A. No, but we, during our weekly calls, we certainly emphasize to our branches to, you know, find out in their community as best they can who may need a photo ID or who may need a copy and make sure that you, meaning the branch, the local unit has a plan in place to try to help as many of those individuals get their photocopy or whatever they need to satisfy that requirement.
Q. So you have not tasked the local units to assess which of its members cannot safely comply and report that information back to you?
A. No.
Q. You have not sent any emails to all members statewide asking members to safely comply with the challenge provisions, have you?
A. Well, first of all, I don't have access to every member email

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in the State of Alabama. Normally, the way we do it is we send it to the unit president, unit secretary, and have them is send it out to the members in their unit, the information that is required to be transmitted. But, no, we have not sent information to each member. Well, I guess, let me take that back because when we send the information out to the branches, they're responsible for sending it out to the members.
Q. In terms of education that the Alabama NAACP has done about the excuse and witness requirements, the education that you've done with your local units, has that been the sole topic of conversation at your weekly or quarterly calls, or has that been one of many topics?
A. It's one of several topics that we discuss.
Q. During an election year when you have calls with your local units, would you normally discuss matters about how to educate voters on voting requirements during a typical election season?
A. Yes, we would.
Q. Have you had to expand to twice weekly calls to provide this education to your local unit?
A. In previous years, we have not -- I would say that we have not spent -- had two or three calls per week. And as I also testified a little earlier, since the pandemic, you know, we had the calls -- weekly calls before -- but since the pandemic, it has increased because -- I mean, the consistency of the weekly calls has increased because the need to get information out to the --

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our members and the community regarding everything from funding that's provided in the CARES Act and how people can keep their utilities on and all of those type things. So the consistency has certainly increased. We had the provision in place previously where we would do a weekly call, but it was not as consistent as it has been since the pandemic.

Q. The education that you've done with regard to absentee voting, either for local units or for members, is that exclusive to the challenge provisions, or does it provide broader information about safely voting during a pandemic?

A. Okay. You froze up for a minute there. I'm not for sure if it's on my end or what. But could you restate the question.

Q. Certainly. The information that you've provided either to local units or to members about voting during a pandemic, have you only focused on the challenge provisions in those communications, or have you more broadly discussed how to safely vote during a pandemic?

A. Well, we've discussed how to safely vote, but we also emphasize that you don't want to go to the polls or to get your absentee ballot or to request an absentee ballot or send in an application without the correct information that is required. So we emphasize that aspect of, you know, because of the pandemic, you're going to have to have these items. You don't want to either get to the polls and not have what you need or you submit your absentee ballot and you don't have the photo ID, a copy of

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your photo ID included. So we want to educate our members and the community that they make sure that they have all these things that is required so that they will not necessarily expose themselves but yet still maintain their right to vote.

Q. Mr. Simelton, Ms. Reed earlier showed you a couple letters the Alabama NAACP and other organizations sent to Secretary Merrill. Do you remember that?

A. That's correct.

Q. Apart from that, have you or have any other officers in the Alabama NAACP written state officials advocating for measures such as curbside voting or the lifting of the photo ID and witness requirements?

A. You said has other leaders in the NAACP in Alabama?

Q. Correct.

A. I can't say whether they have or not. They have -- might have sent something without my knowledge to a local official. But usually, typically, if it's something going to the state, it come from the state office. But sometimes branches will send it directly without notifying us. So I can not testify. I can testify that -- you know, what our process and procedures are.

Q. Has the Alabama NAACP -- I'm sorry. Let me start over.

The Alabama NAACP has not circulated any petitions seeking to change absentee or curbside voting policies, has it?

A. You talking about petitions that we have initiated or just petitions in general?

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Q. The Alabama NAACP has not initiated any petitions seeking to change absentee or curbside voting policies, has it?

A. None that I can recall.

Q. You testified that you have written an op-ed regarding the matters at issue in this case, correct?

A. Yes, sir.

Q. You've written op-eds before not related to the issues in this case, have you?

A. Yes, I have.

Q. And you mentioned that you participated in a Terri Talk by -- conducted by a representative. Absentee voting was not the only topic of discussion during that Terri Talk?

A. That is correct.

Q. You discussed other matters such as the census during that talk, did you not?

A. Yes.

Q. Okay. Sitting here today, you personally cannot quantify how many members -- or how many members have conducted the Alabama NAACP with concerns about challenge provisions, can you?

A. No, I can not quantify that sitting here today right now. We could get the information for you.

Q. Sitting here today, you cannot quantify how much time your organization has spent looking into voters's concerns, can you? (That was members or voters in the 2003 two above this one)

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A. Repeat the question again. I want to make sure I answer it correctly.

Q. Yes, sir. Sitting here today, you cannot quantify how much time your organization has spent looking into voters's concerns about the challenge provisions, can you?

A. No, we cannot quantify in terms of we spent, you know, three thousand hours or, you know, how many days or anything like that. No, we cannot.

Q. And sitting here today, you personally cannot say if your organization has spent any money directly looking into voters's concerns about the challenge provisions?

A. We have taken the initiative to answer members's questions about what the challenge provisions are and how they can maneuver or what they can do to satisfy that challenge. But as far as being able to quantify in terms of we spent 10 hours or 5 hours or 100 hours, the answer would be no. But that still does not say that we did not do any -- any time on that. We don't keep track of how much time we talk about this issue versus another issue.

Q. Do you have personal knowledge as to whether the organization has actually had to cut a check for any efforts spent investigating, responding to, mitigating, or addressing concerns by individuals about the challenge provisions?

A. No, we have not cut a check.

Q. Mr. Simelton, on your testimony -- in your testimony this

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morning, you discussed a few individuals who you stated have been impacted in terms of their ability to vote during the pandemic. The first person you cited was Lillian Jefferson; am I right?

A. Yes.

Q. Now, Mr. Simelton, you earlier provided answers to interrogatories in this case that were submitted on July 24th; is that correct?

A. Yes, I believe that was the date.

Q. And you identified individuals who you or your organization believed were burdened by the witness and excuse requirements; is that right?

A. Yes.

Q. And you did not list Ms. Jefferson as one of those individuals; am I right?

A. I don't remember whether I do or not. But I mean, that's -- the list is not exhaustive list. There are other people that I know personally that are burdened by the witness -- I mean -- yeah, witness as well as the photo ID requirement.

Q. When did you learn that Ms. Jefferson was burdened by one or both of these requirements?

A. That was maybe a month and a half ago or something like that. When I had a conversation with her.

Q. Would it have been before or after July 24th?

A. That was probably after. But, you know, I know

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Ms. Jefferson, and I know her health condition. But based on what -- you know, what conversations she and I have had because she and I talk, you know, on somewhat regular basis, every three or four months, something like that. And so I don't recall. It was perhaps afterwards. But I couldn't swear to exact date and time frame when it was.

Q. The information that you have about her medical condition, does that come from conversations you've had with her?

A. Yes.

Q. You've not personally viewed her medical records, have you?

A. No, sir, I have not.

Q. Your organization doesn't maintain any records to show what her medical conditions may be, do you?

A. No, I do not. Or we do not, rather.

Q. Have you personally viewed Ms. Jefferson's NAACP membership application?

A. No, I have not.

Q. Do you have any knowledge as to how many relatives she has within a 30-minute drive of her?

A. No, I do not.

Q. Do you have any personal knowledge how many friends she has within a 30-minute drive of her that she could ask a favor of?

A. Well, no, I do not, but, you know.

Q. Do you have any personal knowledge as to how many neighbors she has who she's on speaking terms with?

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A. No, I do not her neighbors.

Q. Do you know who's delivering her groceries during the pandemic?

A. No, I do not.

Q. Do you know who's helping her with household chores and maintenance?

A. No, I do not.

Q. The second individual you mentioned was Della Bryant?

A. Yes.

Q. Ms. Bryant has medical conditions that cause her to walk with a cane; is that correct?

A. That is correct.

Q. Does she have difficulty walking?

A. Does she have difficulty walking?

Q. Yes, sir.

A. Yes, she does.

Q. I'd like to show you what's been previously marked as Plaintiffs' Exhibit Number 22. And it's been introduced into evidence. Can you see that on your screen?

A. Yes, I can.

Q. This is the absentee ballot application. I'm going to read the third block there. It states I have a physical illness or infirmity which prevents my attendance at the polls?

A. Yes.

Q. It's my assigned polling place due to a neurological

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musculoskeletal, respiratory, cardiovascular, or other life-altering disorder that effects my ability to perform manual tasks, and for any length of time walk unassisted, see, hear, or speak, and either I'm an elderly voter age 65 or older, or I'm a voter with a disability, ID not required. Mr. Simelton, based on what you know about Ms. Bryant, is she eligible to check that third box on her voter application?

MS. REED: Your Honor, I'm going to object to this question to the extent it asks Mr. Simelton to speculate about why Ms. Bryant has not checked that -- if she has not, which we do not know.

THE COURT: Okay. No speculation is being asked at this point. The question is simply based on what Mr. Simelton knows about her and her age, is she able to check that third box of the application.

THE WITNESS: Based on -- oh, I'm sorry.

THE COURT: You may answer, sir.

THE WITNESS: Okay. Based on the way I read that and understand it, Ms. Bryant would be able to check that box.

MR. WEBER: Thank you. You can take that down.

Q. Mr. Simelton, the information that you're aware of regarding Ms. Bryant's medical conditions, does that come from conversations you've had with Ms. Bryant?

A. Yes, it does.

Q. Have you directly seen her medical records?

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A. No, I have not.
Q. Does the Alabama NAACP maintain information as to her medical conditions?
A. No, we do not.
Q. Do you have personal knowledge as to the relatives, friends, or neighbors she has available to ask a favor of in her area?
A. Well, I know she does -- she has a son. And as far as other relatives, I'm not for sure about other relatives. If she does have neighbors, I'm not for sure, you know, what kind of terms they are on. But she does have neighbors
Q. Do you know who is buying groceries for her and helping her with other errands?
A. No, I do not.
Q. Have you seen her in person during the pandemic?
A. No, I haven't. No, I have not.
Q. Have you been to her home during the pandemic?
A. No, I have not.
Q. I believe the third person you mentioned this morning was Kecia Hendrix; is that correct?
A. That is correct.
Q. Does Ms. Hendrix have a medical condition which makes it difficult for her to walk and stand for periods of time?
A. Yes, she does.
Q. Based on the information that you're aware of regarding her, would she be eligible to check that third block on the ballot

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application?
A. Well, she would not because she's not 65.
Q. Is she considered to be disabled?
A. Yes.
MS. REED: Your Honor --
THE WITNESS: Beg your pardon? Oh.
MR. WEBER:
Q. Ms. Hendrix has an internet connection in her home, doesn't she?
A. Yes, she does.
Q. And she has a smart phone or laptop or other means to do video conferencing, doesn't she?
A. Yes, she does.
Q. Do you have personal knowledge as to whether she has had other people inside her home during the pandemic?
A. Yes, I do.
Q. Does that information come from Ms. Hendrix?
A. Some of it has come from Ms. Hendrix.
Q. Have you personally been to her home during the pandemic?
A. Yes, I've been to her home.
Q. When was that?
A. About -- what, two or three weeks ago.
Q. Were you the only -- were you and Ms. Hendrix the only people in her home at that time?
A. No. There was a -- she has a -- a person that comes in to

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help -- help her with some personal things. I think she does some cleaning, too, so.
Q. Do you know whether that person was over the age of 18?
A. Yes, she was over the age of 18.
Q. And again, you haven't seen Ms. Hendrix's medical records, have you?
A. No, I have not.
Q. The information you have about her medical condition comes from conversations you've had with her, correct?
A. Well, it comes from conversation and personally observing, you know, her medical condition.
Q. The last person I believe you mentioned this morning was Joshua Wall; am I correct?
A. That's correct.
Q. Are you aware whether Mr. Wall has any medical conditions which make him particularly susceptible to the effects of COVID-19?
A. I don't believe so. I haven't asked him personally about that. But based on conversations I've with him previously, I don't think he has any.
Q. Mr. Wall is not age 65 or older, is he?
A. No.
Q. Mr. Wall does not possess a photo ID, does it?
A. No. Not -- no, based on what conversation I've had with him.
Q. And that's because of his religious beliefs, is it not?

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A. Yes.
Q. You don't have any information as to whether Mr. Wall has been in contact with other people outside his household during the pandemic, do you?
A. No, I do not.
Q. Do you know what race Mr. Wall would be considered?
A. From what I understand, he's Caucasian.
Q. Mr. Simelton, the Alabama NAACP has members in Madison County, does it not?
A. Yes, it does.
Q. Are you aware -- and you're one of -- the Alabama NAACP is one of the Plaintiffs in this case, correct?
A. That is correct.
Q. Are you aware that you and the other Plaintiffs moved to dismiss its claims against Madison County probate judge and the Madison County circuit clerk?
A. Yes.
Q. Was that pursuant to a settlement agreement?
A. Yes.
Q. Are you aware of the terms of that settlement agreement?
MS. REED: Your Honor, I'm going to object here.
THE COURT: Sustained.
MS. REED: -- to the -- thank you.
MR. WEBER: And, Your Honor, just to make the record, the reason for asking the question is I was going to explore the terms

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that that settlement agreement might have contained concerning curbside voting and whether that would undercut the Plaintiffs' claim that they are entitled to statewide relief. But I understand, Your Honor has ruled.

Q. Mr. Simelton, with regard to curbside voting, do you consider yourself an expert on the subject of curbside voting?

A. No, sir.

Q. Have you ever administered an election were curbside voting was conducted?

A. No, sir.

Q. Have you personally studied how many workers, additional workers curbside voting would require at polling locations?

A. No, I have not.

Q. And I believe you testified before that you thought one poll worker could handle the job of curbside voting. Did I understand you correctly?

A. That is correct.

Q. You have served as a poll worker indoors, correct?

A. Yes, yes, I have.

Q. When you served as a poll worker, does one person run the whole operation indoors?

A. No, sir.

MS. REED: And I'm going to object here, Your Honor. I believe Mr. Simelton testified that he thinks one or two would be needed to man an outside or curbside voting.

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THE COURT: He said one could do it, two would be better from a logistical flow point of view. Yeah.

MS. REED: Thank you.

MR. WEBER:

Q. I'm sorry, Mr. Simelton. I did not hear if you answered. So when you worked as a poll worker inside, does one person run the whole operation inside?

A. No.

Q. Have you studied where these additional poll workers required to conduct curbside voting would come from?

A. You say have I studied it?

Q. Yes, sir.

A. No, I have not studied it. But I would say they come from the same place, you know, I come from. They're volunteers. Well, I guess -- they say you get paid but volunteer.

Q. Based on your experience, can it be a challenge to find enough poll workers for a regularly conducted election?

A. I think before the pandemic, there was not. Based on what I know in Limestone County, there was not a significant challenge in getting the -- enough poll workers. But after the pandemic, I know that for the July election, the -- we would -- I think we were short of one poll worker that we would like to have had, and but we were able to manage with the number of poll workers that we did have. Just meant the supervisor had to do a little more work than what they would normally do perhaps.

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Q. In terms of the relief that you are seeking in this case, are you seeking that all voters should be allowed to vote curbside, or are you seeking to request that only certain voters should be allowed to vote curbside?

A. The relief is that if you feel that you can't vote safely for whatever reason, then you should have that as an option. It should not be closed to you saying you can't do it. If curbside voting were made available and someone chose that option, then that would be up to the individual as to how they want to vote.

Q. So if you were able to obtain the relief you're seeking in this case, anyone would have the option of choosing curbside voting, correct?

A. Anyone -- that option would be available to anyone but especially for those who feel that they might expose themselves by going inside or standing in a long line to cast their -- cast their vote.

Q. Have you studied how many people would take advantageous of that option if curbside voting was present in a given location?

A. No, I have not.

Q. Have you studied what kind of traffic issues that would involve or what kind of traffic control measures would be required?

A. No, I have not studied that.

Q. Do you know how many additional electronic poll books

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would be required across the state if curbside voting was implemented?

A. No, I do not. But, you know, based on my knowledge of working the polls -- of course, it always depends on how many people are taking advantageous of that. But there are always, you know, a couple poll books out there, especially where I work the polls at, you know, one poll book would be sufficient.

Q. Have you studied how many additional tabulation machines would be required statewide if curbside voting was offered?

A. No, I have not studied that. But again, based on where I vote at and the number of people come through there, there's only one machine, so one additional machine outside, you know.

Q. Have you studied polling location by polling location basis how to supply electricity to the tabulation machine and other equipment outdoors?

A. No, I have not.

Q. Have you studied whether the tabulation machines even work outdoors particularly in inclement weather?

A. No, I have --

MS. REED: Your Honor, if I may object to this line of questioning. I won't continue raising it. But Mr. Simelton I believe testified about how he believes curbside voting would work at the location he served as a poll worker at and not --

THE COURT: Correct.

MS. REED: -- across the state.

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MR. WEBER: And for what it's worth, Your Honor, that's my last question along those lines.

THE COURT: Okay.

Q. (BY MR. WEBER:) Based on -- strike that.

Mr. Simelton, I'd like to show you an exhibit you've already seen this morning. 461. Plaintiffs' Exhibit 461. Do you remember this exhibit, Mr. Simelton?

A. Yes, sir.

Q. Have you personally been to this location?

A. No, I have not.

Q. So you haven't walked around the building?

A. No, I have not.

Q. And you don't have any personal knowledge whether this fairly and accurately represents the property as it looks today?

A. No, no more than looking at the photograph.

Q. When did you first see this picture?

A. On yesterday.

Q. And so your only knowledge about what this property looks like comes from Google?

A. Yes.

MR. WEBER: I'm sorry. One moment, Your Honor.

(Pause.)

Q. I'm sorry. I'm going to show you Plaintiffs' Exhibit 460. All right, Mr. Simelton, you remember this exhibit from this morning?

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A. Yes, sir.

Q. Same questions. Have you personally visited this location?

A. No, sir, I have not.

Q. And you have not walked around that building?

A. No, I have not.

Q. You don't have any personal knowledge whether this fairly and accurately represents the property as it looks today, do you?

A. No, I do not.

Q. When did you first see this picture?

A. On yesterday.

Q. And your only knowledge about what the property looks like comes from Google; is that correct?

A. That is correct.

Q. Mr. Simelton, just a few more questions.

Are you aware that absentee voting is already underway in Alabama?

A. Am I aware of what now?

Q. Are you aware that absentee voting is already underway in Alabama?

A. Yes, I know that people can request an absentee ballot.

Q. And do you know that today is the first day that a voter can actually go to the absentee voting location and cast a ballot?

A. Yes, that is correct.

Q. Are you aware that some number of absentee ballots have already been mailed out?

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A. Well, I don't know that for a fact. But I guess I would assume that since they started receiving the application last -- I think it was last week. Yes, last week.

Q. And, Mr. Simelton, you're aware that under the Secretary's emergency rule, anyone who determines in-person voting on Election Day is impossible or unreasonable due to COVID-19 can vote absentee either via mail or in person; is that correct?

A. Repeat that again.

Q. Yes, sir. You're aware that under the emergency rule from the Secretary, anyone who determines in-person voting on Election Day is impossible or unreasonable due to COVID-19 may vote absentee either via mail or in person; is that correct?

A. Yes, that's correct.

Q. The Alabama NAACP has members all over the state; is that correct?

A. That's correct.

Q. If as a result of this lawsuit you obtain relief in some counties but not others, would that require you to engage in additional education efforts to educate voters in those particular counties about the changes?

A. We would --

MS. REED: Objection, Your Honor. That requires -- calls for speculation.

THE COURT: Not necessarily. He engages -- or the organization's local units engage in educational efforts related to

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voting, and from time to time, they have live programs and virtual programs. As I understand the question, based on the settlement that's been reached, at least with Madison County, do you believe, sir, that will require the organization to engage in additional educational efforts for your members across the state?

THE WITNESS: Yes, sir. Perhaps to make the voters aware of any type of relief that, you know, has been agreed to with the County of Madison as well as other counties, we would try to educate voters on what the new agreements or procedures are. I mean, it's -- and then again, we would look at it and say, well, we don't want to confuse voters. And sometimes when you start down one path and you get in the middle of that path and you change directions, voters might become confused. So we would have to look at it and determine, you know, would it be better to proceed on with the election as it is. But we would again attempt to educate voters. But I couldn't say right now that we would definitely do it or not try to educate voters. It's just we would have to measure in our opinion what would be the total impact to voters of not -- for this upcoming election in November in particular.

THE COURT: Thank you, sir.

THE WITNESS: That may not answer your question. But that's the best I can do at this time.

THE COURT: Thank you. Mr. Weber.

MR. WEBER: Just a few more questions.

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Q. Mr. Simelton, if somebody came to one of your voting consistency events and declined to wear mask, would you still help them?

A. We do not turn away -- if a person just walked up and says I don't -- I refuse to wear a mask, we would ask them to make sure that they stayed the distance and that we not, you know, come in contact, you know, with that person, you know, certainly not within six feet. And if they were in their vehicle, we would just, you know, take the item out of their hand at a safe distance and either make a copy of their ID or we would hand them an absentee ballot request or hand them a voter registration form or whatever they need so that we could stay the safe distance.

Q. And, Mr. Simelton, we discussed before additional equipment that might be necessary for curbside voting, whether that's electronic poll books or tabulation machines. Do you know who would pay for that additional equipment?

A. Who would pay for it?

Q. Yes, sir.

A. The citizens of the State of Alabama.

MR. WEBER: Thank you. I'm sorry. One moment, Your Honor. Thank you, Your Honor. I have no further questions.

THE COURT: Thank you. Mr. Engelhardt.

MR. ENGELHARDT: Thank you, Your Honor. Can you all hear me?

THE WITNESS: Yes.

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MR. ENGELHARDT: Excellent.

Q. Good afternoon Mr. Simelton. Nice to see you again.

A. Yes, sir. Nice seeing you too.

Q. Thank you. I've only got a few questions to ask, and I apologize in advance. We're going to be bouncing around a little bit. Let's start here.

MR. ENGELHARDT: Joy, can you bring up Plaintiffs' 460.

Q. I'm going to show you Plaintiffs' Exhibit 460 which now you've seen a couple of times. And I just want to ask you one quick question about it. So this is Plaintiffs' Exhibit 460, and you're familiar with that from your earlier testimony today; is that correct, sir?

A. Yes.

THE WITNESS: Your Honor, I don't know if it's proper protocol or not, but could we have Mr. Engelhardt to identify himself and what -- I know but --

THE COURT: Who do you represent, Mr. Engelhardt?

Q. (BY MR. ENGELHARDT:) Absolutely, Mr. Simelton. My name is Todd Engelhardt. I represent the circuit court clerk Jojo Schwarzauer from Mobile County.

A. Okay. Thank you, sir.

Q. Absolutely. So again, this is Plaintiffs' 460, and I think you testified earlier that you are familiar with this picture and you saw it on Google; is that correct?

A. Saw it on -- did you say Google? Yes. Yes. Saw it on line.

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A. Yes.

MR. ENGELHARDT: Joy, could you pull up Plaintiffs' Exhibit 459.

Q. Mr. Simelton, I'd just like to know if you have ever seen this picture before?

A. Did something else come up or --

Q. Not yet. I'm waiting on it.

A. Okay.

Q. So have you ever seen this picture before? This is Plaintiffs' Exhibit 459.

A. I don't -- you'd have to expand it out some. I can't tell from just looking at the front of it there. I think that looks like the -- can I see the top of it? Looks like -- yeah, that's a picture of the same church.

Q. That's the same church, is it not, sir?

A. It looks the same, yes.

MR. ENGELHARDT: Joy, can you zoom back in a little bit.

Q. And over on the -- as you're looking at the picture, over on the left side, does that seem to be a ramp?

A. Yes, sir. Sure does.

Q. Thank you.

MR. ENGELHARDT: You can take that down, please.

Q. I wanted to ask questions -- you testified earlier that you have had some events where you have offered to assist members with photocopies and witness signatures, and you've done those

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in person. Have you done any of those in Mobile County?

A. Yes. The branch down there has done those. I personally have not been down there for Mobile.

Q. Do you happen to know the date or dates on which those events were held?

A. No, I do not. I would have to get those for you.

Q. Do you know if photocopiers were actually brought to the site in Mobile County?

A. I don't know for sure. I can't say. I'm pretty sure there were. But like I said, I was not there. But I'll have to ask the branch and make sure whether they had photocopies or not.

Q. Do you know if there were any notaries there to perform notary services in Mobile County?

A. I kind of doubt it because until they -- until they started getting the ballots, we were not, you know, that concerned about the notary, having someone to notarize it.

Q. So do you think that those events only happened -- at say the application stage of this absentee process and not necessarily at the ballot stage?

A. Exactly. We're putting a plan together to do the balloting stage where the notaries will be there to notarize. Like the one that's on the 26th of September in Montgomery, the notaries will be there.

Q. Do you know of any of those similar-type events scheduled in the future in Mobile County?

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A. Yes. I know there's one at -- I think it's First Missionary Baptist Church that the NAACP there is planning with that particular church. The president of the Mobile branch is a member of that church and mentioned last night that they were partnering with the church to do that.

Q. Do you happen to know what date that is scheduled for?

A. No, I do not have that date.

Q. Do you know if at the prior Mobile County in-person events that they would offer drive-up service, curbside service for the photocopying of IDs?

A. You're talking about the event that's going to be held at the church that I just spoke about?

Q. No, sir. Any prior Mobile County that you were describing earlier where you said that you were unsure of whether they had photocopiers?

A. Right.

Q. That's what I'm asking, if they had drive-up services available at that?

A. Yes. Based on what the branch had reported, it was a drive-up service.

Q. There was a drive-up service, but you're not sure if they had actual photocopiers on site?

A. Right.

Q. Mr. Simelton, you testified earlier and at your deposition about prior efforts to educate voters in Alabama. And I believe

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you testified that in years past, you have educated voters on the absentee ballot process; is that correct?

A. Yes. It's education where we just talk about that that's an option that, you know, voters have. We didn't go through the details of making sure that you have, you know, your notary or -- two witness, and that you get it in in sufficient time to make sure that you get your ballot back and then that you mail your ballot in time for the -- well, the local absentee voter manager to receive it in time for it to be counted. So it's education, but it's not -- we didn't harp on it like we are now because a lot more people are planning to vote absentee than have previously done so.

Q. In those prior educational efforts before the pandemic, what was the purpose of -- you may have just answered this. And I apologize if it seems like I'm repeating the question. But what was the purpose of giving the absentee ballot educational piece?

A. Oh, it's an option that a voter would have that if they, you know, could not make it to the polls. And most of what we emphasized in that education was if you're going to be out of town, make sure you do your absentee ballot. We didn't go over if you're 65 or over, make sure you had your photo ID -- I mean, 65 or younger, make sure you had your photo ID and all that. It just did not register with us at that time at least to the extent that we are now because again, there are more people that's going to vote absentee this year. And so in our effort to make sure that every person vote counts, we want them to make sure that they

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know what the requirements are before they begin that process.

Q. So would it be fair to say that when you gave that education in years past, you presumed that you would have some members who would need to know about that option; is that fair?

A. You said I would presume to know that some members would know about that option?

Q. Would need to know about that option?

A. You talking about just the absentee?

Q. Yes.

A. Oh, yes, yes, yes.

Q. Okay. So when you gave that --

A. But that was because they were -- you know, they were going to be out of town. And that was mainly why we emphasized, you know, that if you're going to be out of town, make sure you, you know, do your absentee ballot before you, you know, leave to go out of town.

Q. When you -- thank you, Mr. Simelton. When you gave that education in those years past pre-pandemic, did you -- the photo ID law was in effect at that time, correct?

A. Yes.

Q. And the witnessing law, that was in effect at that time, too?

A. Yes.

Q. So as far as the legal requirements of the voter -- of the absentee ballot process, the only difference in this year is that Secretary Merrill has waived the excuse requirement, and there's

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a global pandemic; would that be fair to say?

A. Well, there's a global pandemic. But within the global pandemic, there is -- I mean, it's just so much more that -- I mean, the pandemic itself in our opinion -- in my opinion, more people are taking advantageous of that. So it's -- need to be emphasized more to again make sure that each person knows what they need to do to make sure their vote count and that it doesn't get rejected for the signatures not matching, you know. We've had some problems with that as recently as a couple weeks ago, that the signatures, you know, in their opinion did not match, and several votes was thrown out.

So all this has to be something else that, you know, is taken into consideration. So -- and again, I will say again that, you know, previously, we did not -- it wasn't that we weren't concerned about it. It's just that it did not, you know, really register with us because of the number of people that were going to vote absentee.

Q. Right. Because there wasn't a pandemic and there wasn't as much of a need for it? Is that a fair statement?

A. Well, I think going forward, you're going to see more and more people vote absentee because they are more knowledgeable of the process how safely it can be done if we have a -- if the votes -- the people feel the votes are being counted. If we have a lot of votes that are rejected, then I think people are going to go back to the in-person voting more. But if it is a smooth process

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and people feel that there voices have been heard through their vote, then I think you'll see a lot more people doing the absentee voting in the future because if they feel that it's easy and their vote is counted.

Q. These are not laws that were enacted this year, right? These are -- I'll wait until you take a drink. These are not new laws?

A. Right.

Q. These are laws that were on the books --

MS. REED: Your Honor, I'm just going to object. Mr. Engelhardt has asked this question in four our five different ways. So asked and answered.

THE COURT: I'll sustain the objection. I think he serves a membership that although it's not been stated, it's implicit, prefers to be heard on Election Day and felt doing so in person was important. But because of the pandemic, his members for age, underlying conditions, have issues voting in person, so he is, along with his member units, educating people more this year than in the past about absentee voting. Which in the past, he said his members have only utilized when they have been out of town on Election Day. So there was not as big a need as there is now.

So, Mr. Engelhardt, I think you have gotten your point which is that it's the difference this year is because of the pandemic. Let's speed it up, please.

MR. ENGELHARDT: Absolutely, Your Honor. I really only

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have two more questions.

Joy, if you can bring up Plaintiffs' 414. Can you scroll down just a little bit, please. Thank you.

Q. Mr. Simelton, I believe this is a copy of Plaintiffs' Exhibit 414 that you asked you earlier. This is an op-ed that you had written.

MR. ENGELHARDT: Can you scroll up just --

Q. Do you recognize that, sir?

A. Yes, sir.

Q. And do you recall when you wrote that op-ed? I see it's posted July 9th and updated July 10th. Do you recall when you wrote it?

A. It was -- I probably started it around July the 4th or 5th or something like that, you know. And I don't remember the exact date it was submitted, you know, to the newspaper. Or to the AL.com.

Q. So it was written during the pendency of this case?

A. Written during the what now?

Q. During the pendency of this case? After the case was filed?

A. Yes, yes.

Q. And it was somewhere around when the Supreme Court stayed the permanent injunction; would that be a fair statement?

A. Let's see. I'm trying to remember the date the stay came down. September --

Q. I'll represent to you, Mr. Simelton, it was on July 2nd.

A. Okay.

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Q. When the stay was initiated?

A. Yes.

MR. ENGELHARDT: Okay. That's the last question I had for you. Thank you, sir.

THE WITNESS: Thank you.

THE COURT: Mr. Webb?

MR. WEBB: Yes, Your Honor.

Q. Mr. Simelton, my name's Ken Webb. And I'm the attorney representing the probate judge and absentee election manager in Lee County, the probate judge, circuit clerk, and absentee election manager in Lowndes County, and the probate judge and circuit clerk in Wilcox County. I just wanted to ask you some questions regarding those counties.

You are not aware of any problems that have occurred specifically with regards to voting in Lee County, are you?

A. Going back how far? Because I think we had a problem in Lee County in 2000 -- was it 2012? I think -- seem like around 2012 or 2010 election. But I would have to go back and do some research on that. But certainly none recently.

Q. Okay. Are you aware of testifying -- did you remember testifying at your deposition?

A. You said did I remember testifying?

Q. Yes.

A. Yes, I remember testifying.

MS. REED: Your Honor, I'm going to object to improper

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impeachment. Mr. Simelton just said he can't remember.

THE COURT: Yeah. He said no recent problems. He said -- how far back was your question, Mr. Webb.

MR. WEBB: Well, I'm going to pull up his deposition testimony, Your Honor, and show it to him.

THE COURT: Are you really disputing what happened in 2012? This is -- the relevance period is now, and he said he does not recall any relevant problems -- I mean recent problems.

Q. (BY MR. WEBB:) Okay. Mr. Simelton, do you remember testifying in your deposition that you were not aware of any voting problems in Lee County?

A. Yes. I think that's what I testified to.

Q. Yes. Excuse me. It's the bottom of page 191. "Do you know of any problems that have occurred specifically with regards to voting in Lee County?" And do you recall what your answer was?

A. Well, based on what you said there, I mean, what's written there, it says, "No, I'm not aware of."

Q. Okay. So is your testimony different today?

A. Well, I'm trying to -- I didn't say I was aware of. I said it seemed -- appears that we may have had some issues in 2012 or '10. I would have to go back to look at our records to see if there were. I don't remember of any certainly in recent history of any problems in Lee County that have come to our attention. So that's, you know, the best I can answer now, and I think my answer on the deposition -- in my deposition, and my answer

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today still stands.

Q. Okay, Mr. Simelton, you are not aware of anything that the probate judge in Lee County has done or not done with respect to the issues involved in this lawsuit, are you?

A. Regard to what, now?

Q. The issues regarding in this lawsuit?

A. No, I'm not.

Q. And you are not aware of anything that the absentee election manager in Lee County has done or not done with respect to the issues in this lawsuit; is that right?

A. No. Not in this lawsuit, right.

Q. And you are not aware of anything that the probate judge in Lowndes County has done or not done with respect to the issues involved in this lawsuit, are you?

A. No.

Q. And you are not aware of anything that the circuit clerk in Lowndes County has done or not done with respect to the issues in this lawsuit, are you?

A. No, I'm not. And let me just say that while I'm not aware of specifically what these individuals have done, but in terms of that they represent and carry out the more or less orders of the Secretary of State, then they are enforcing those rules according to the Secretary of State. Now, is that something that they have done independent? No. It's they're carrying out the rules of the Secretary of State. So I don't know whether your question is

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them -- something different than that or not, you know.

Q. Mr. Simelton, is your disagreement with state law and the interpretations of state law by the Secretary of State? Is that what your issues are?

MS. REED: Your Honor, I'll object --

THE COURT: I'm going to sustain the objection. The witness is giving you the answers. He says he does not know what your clients have specifically done personally. But they are involved from his perspective as to the issues that he's challenging in this lawsuit on behalf of his members.

MR. WEBB: Okay. Well, I'll continue with that.

Q. Are you aware of anything that the absentee election manager in Lowndes County has done or not done with respect to the issues in this lawsuit other than enforce state law?

A. No, I'm not.

Q. Are you aware of anything that the Wilcox County probate judge has done or not done with respect to the issues in this lawsuit other than enforce state law?

A. No, I am not.

Q. Are you aware of anything that the circuit clerk in Wilcox County has done or not done with respect to the issues in this lawsuit other than enforce state law?

A. No, I am not.

Q. Are you aware -- and getting to -- you said that you reviewed for the first time yesterday the picture of the Lowndesboro C.M.E.

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Church in Lowndesboro, Alabama; is that correct?

A. Okay. At least I missed a portion of what you said. My internet is probably...

Q. And I apologize, sir.

THE COURT: I thought the picture -- maybe I'm wrong. The picture was being offered in part -- or perhaps the only reason was to show accessibility issues. And Mr. Engelhardt has pointed out that there's a ramp.

Is your question different than as to that particular point?

MR. WEBB: Yes, Your Honor.

THE COURT: All right. You may.

Q. (BY MR. WEBB:) Are you aware of when this picture was taken, Plaintiffs' Exhibit 460?

A. No, no, I'm not.

Q. Do you know whether it was 10 years ago, 20 years ago, or 30 years ago?

A. No, sir, I do not.

Q. Are you aware as to whether the Lowndesboro C.M.E. Church is accessible for voting?

MS. REED: Your Honor, I think that calls for a legal conclusion.

THE COURT: Well, I'm going to sustain the objection too as to asked and answered. I think -- let me make sure I get the question. It's accessibility. To the extent that the contention is that it's not accessible because of a lack of a ramp, I think the

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photo that Mr. Engelhardt showed which this witness said was of the same church answers that question in part.

Q. (BY MR. WEBB:) Mr. Simelton, do you have any personal knowledge as to whether the Lowndesboro C.M.E. Church is accessible?

A. No, I do not.

Q. Do you have any personal knowledge as to whether Plaintiffs' Exhibit 462, as to the community center in Snowden, Alabama is accessible?

MS. REED: Your Honor, I'm going to object to that as well. It calls for a legal conclusion, accessibility.

THE COURT: Maybe. But I'm more concerned about time and repetitiveness issues validly addressed by other parties in cross. Let's move on please, Mr. Webb.

MR. WEBB: Your Honor, with all due respect, I don't believe that question was asked.

THE COURT: The witness has not been there. He does not know when it was taken. On direct, Ms. Reed points it out that the best that she can show is that photo was taken in July of 2019. This witness has said he does not know what this church looks like today. I think that's enough for the point that you are trying to get across. Mr. Simelton does not know, as he based on his review of the photograph yesterday, any specifics beyond what he saw in the picture.

MR. WEBB: Yes, Your Honor. In view of your ruling, we have

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no further questions.

THE COURT: Anyone else for this defendant -- I'm sorry. For this witness? Any redirect?

MS. REED: Your Honor, I don't know if it's appropriate at this time to ask for a break.

THE COURT: That's fine. We've been going --

MS. REED: I do have a few questions --

THE COURT: Yeah. We've been going at it for about an hour and almost 45 minutes. Let's break for 15 minutes and then resume right before the top of the hour, please.

MS. REED: Thank you, Your Honor.

(Recess.)

THE COURT: Ms. Reed, you may begin your redirect, please.

MS. REED: Thank you, Your Honor. Just a few questions.

Q. Mr. Simelton, is the Alabama State Conference like a coalition of all the local units? You're on mute, Mr. Simelton.

A. Sorry about that. It's more than just a coalition. It's an organization that has leadership and the responsibilities to the parent organization. And you could say that they're a coalition in that they somewhat act independent, but they're not -- we don't consider it a coalition.

Q. Well, what's its relationship with the local units, the state conference?

A. The state conference provide guidance, leadership, and direction to the local units as in accordance with the constitution

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and bylaws.

Q. Okay. Has the NAACP experienced increased calls regarding absentee voting this year compared with prior years?

A. Again, I would need to go back and check our log. I would just -- rather than give you a direct answer, I can get that information and provide it to you. But in general, I would say that we have received more calls and responded to more calls about absentee voting this year than we have previous years. But I can't give you a specific number at this time.

Q. Okay. You know, I am -- I'm sorry. One more question. Mr. Simelton, has the NAACP had to recruit or utilize volunteers to help assist with education or other efforts regarding the absentee voting requirements?

A. Well, we haven't recruited any other people. We have worked with other groups. But everybody in the NAACP basically is a volunteer including myself. We have two paid staff, and only one of those is full time. The other is just part-time. So all the work that we do is volunteer work.

MS. REED: Thank you, Mr. Simelton. No further questions from me.

THE COURT: Okay. Thank you. Since it's clear that I am being a little bit more strict with the last person that does the cross, let me flip the order. If Mr. Webb is ready, you will go first. Then Engelhardt and then Mr. Weber.

Mr. Webb, your witness if you are ready.

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MR. WEBB: Your Honor, I have no further questions of this witness. However, I would like to raise a motion with respect to the admission of Plaintiffs' Exhibits 460 and 462.

THE COURT: Are those the photographs?

MR. WEBB: Yes. And request that they --

THE COURT: I think that they are in. But from an evidentiary point of view, Ms. Reed, to the extent that they are being offered to show physical barriers for people that vote in those two locations, you have not met your burden with respect to those two photographs. They're still in. But they will not make my findings with respect to any barrier issues based on the record at this point.

MS. REED: Thank you, Your Honor.

THE COURT: Mr. Engelhardt, any questions for this witness?

MR. ENGELHARDT: No. I'm going to pass the witness to Jeremy, please.

THE COURT: Mr. Weber?

MR. WEBER: No questions, Your Honor.

THE COURT: Thank you. Mr. Webb, I think your renewal for those two exhibits that you referenced were based in part on the issues that I have identified. Was there anything else that I may have overlooked?

MR. WEBB: Yes, Your Honor. It was those issues that he has no personal knowledge on it but also the proper authentication as far as the times the pictures were taken. Also, that these were

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not timely disclosed. You listed a deadline for the exhibit list of August 28th, and they were not disclosed until September 3rd. So from those standpoints, Your Honor, we do request that they be stricken from the record.

THE COURT: Okay. Duly noted. They're still in. But based on the record so far, they have not helped the Plaintiffs to advance the ball with respect to the barrier issues that they were presented for.

Director Simelton, thank you for being here. Looks like you are excused, sir. Have a good afternoon.

THE WITNESS: Thank you. I appreciate it.

MS. REED: Thank you, Mr. Simelton.

(Witness excused.)

THE COURT: Who is the next witness for the plaintiffs?

MR. ROSBOROUGH: Good afternoon, Your Honor. This is Davin Rosborough. The Plaintiffs call Dr. Chad Cotti.

THE COURT: Mr. ROSBOROUGH, hello again, and good afternoon. Dr. Cotti, are you on the line, sir?

THE WITNESS: I am, sir.

THE COURT: Good afternoon to you. Please raise your right hand so Ms. Humphrey can swear you in please.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Chad Cotti.

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THE COURT: Spell your first and last name please, Mr. Cotti.

A. First name Chad, C-H-A-D. Last name Cotti, C-O-T-T-I.

THE COURT: And what city and state do you reside?

THE WITNESS: Appleton, Wisconsin.

THE COURT: Thank you. I may need to give the defense -- Defendants a few minutes. I see Mr. Davis on my screen. Anyone else who is responsible for this witness? Okay. Good. I see Mr. Cowell. I see Mr. Speegle as well. I believe that will be everyone.

Mr. Rosborough, you may begin your examination.

MR. SPEELE: Your Honor, this is Jerry Speegle. I probably will be asking Dr. Cotti some questions in cross representing Judge Davis.

THE COURT: Good. I see you on the screen. So I'm comfortable. I see Mr. Cowell as well. I just wanted to make sure Mr. Davis was not the only one who was flashing on my monitor.

Mr. Rosborough, your witness.

MR. ROSBOROUGH: Thank you, Your Honor.

Q. Good afternoon, Dr. Cotti. How are you today?

A. I'm well, thank you.

Q. Sorry about that. I was having some speaker issues.

MR. ROSBOROUGH: Can you all hear me okay?

THE COURT: Yes, for me.

MR. ROSBOROUGH: Okay. Thank you.

Q. Dr. Cotti, can you please tell the Court your current

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professional positions, please?

A. Yes. I am the Oshkosh Corporation endowed professor and chair of the department of economics at the University of Wisconsin Oshkosh and at least temporarily also serving on the university's emergency operations team for response for COVID-19.

Q. Thank you. And can you please tell the Court your educational background?

A. Yeah. I have a bachelors in quantitative economics, a masters degree in public affairs with a public policy focus, and a doctoral degree in economics.

Q. And, Dr. Cotti, can you tell the Court your academic and teaching experience up to the present day.

A. Yes. I have been a faculty member at the University of South Carolina, tenured faculty member at the University of Connecticut, and currently a tenured professor at the University Wisconsin in Oshkosh where I received my undergraduate degree.

Q. And, Dr. Cotti, what do you study?

A. So my fields of research broadly speaking are applied economics but primarily within the areas of health economics and related health outcomes as well as public policy analysis.

Q. And, Dr. Cotti, what is a health economist?

A. So health economics kind of generally speaks breaks into two different areas. Institution health economists who tend to study things related to hospitals, clinics, nurses, physicians, the

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kind of industrial organization of health care, insurance, and then the other side when is more about behaviors related to health outcomes which is kind of where my expertise lies. In particular, my area tends to focus on risky health behaviors. But I have studied a wide range of health outcomes and policies that are related to health.

Q. And can you please tell the Court about your related research experience, please?

A. Sure. I think I've got about 40 peer-reviewed academic publications. They're not on all health economics outcomes, but a significant proportion are. Those tend to look at things related to the effects of different policy interventions such as tobacco control policies or different kinds of taxation on health outcomes such as drunk driving, smoking, looking at consumption of electronic cigarettes, substitution and complementary effects, mental health outcomes, an array of different sorts of things.

Q. And, Dr. Cotti, have you performed any studies relating to the spread of COVID-19?

A. Yes. One.

Q. And what is the status of that study?

A. It is under review at an academic journal at this time.

Q. Has it been posted publically at all?

A. Yes. It was published on the National Bureau of Economic Research website in May. And we have made updates to that publication based on response and suggestions from other

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academic researchers over the course of the summer.

Q. And can you just describe in broad terms what you looked at in that study?

A. Right. So the main focus of that project was to empirically analyze or determine if there was a relationship between in-person voting, specifically in-person voter density, and the spread of COVID-19 in the state of Wisconsin following the April 7th election.

MR. ROSBOROUGH: Your Honor, at this time, I'd like to offer Dr. Cotti as an expert in health economics and public policy.

THE COURT: Any objections as to what he's being tendered for?

MR. DAVIS: No objections from the State Defendants, Your Honor.

THE COURT: Thank you. Mr. Cowell, any objections from you?

MR. COWELL: No objections.

THE COURT: Mr. Speegle, are you still with us? Your screen is blank on my monitor, but any objections from you?

MR. SPEEGLE: Yes, Your Honor. No objection.

THE COURT: Thank you, Mr. Speegle.

MR. SPEEGLE: No objection, Your Honor.

THE COURT: Dr. Cotti is accepted as an expert in health economics and public policy *i.e.* the matters that he's being tendered for.

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MR. ROSBOROUGH: Thank you, Your Honor.

Q. Dr. Cotti, what is your overall opinion in this case?

A. My opinion is based on the research study that was conducted by myself and four coauthors that I prior referenced that's available on the NBER website. We found that there's a positive relationship between voter density, in-person votes per polling location and COVID-19 spread at the community level.

Q. And when you say COVID-1919 spread, what metrics did you use to assess that?

A. So the outcome measures we look at are the percent of positive tests weekly in a county as well as three different measures of COVID-19 cases, the growth rate of COVID-19 cases, the aggregate amount of COVID-19 cases over time, and the new marginal weekly amount of COVID-19 cases.

Q. And what did those metrics show for Wisconsin's April primary in terms of the election's effect on COVID-19 spread?

A. The data suggests -- we estimate that roughly a 10 percent difference in the amount of voter density resulted in about 17.7 percent increase in the share of positive tests. So that's not a 17.7 percentage point increase. It's a 17.7 percent increase on the base. And in terms of cases, we extrapolate from our estimates that approximately 700 cases of COVID-19 in the five-week evaluation period we look at were associated with in-person voting. And this is out of roughly 9,100 confirmed

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cases during that same five-week period of time or approximately 7.8 percent of the poll.

Q. And what was the method you used to identify this relationship between in-person voting and COVID-19 spread?

A. We use a multi-varied regression analysis and event study. It's a very well-accepted practice in applied micro econometrics. That's the statistical approach that we utilized.

Q. Now, this study that you referred to concerns the election that's in Wisconsin. What application in your opinion does it have in Alabama or any other states for elections this year?

A. Well, we're able to determine to what extent -- so I should back up. One of the things that made studying Wisconsin very advantageous at this period of time was that the election took place during Wisconsin's safer-at-home protocol. In other words, we were in shelter in place at the time of the election, about 13 or so days into our shelter in place law. And as a result, pretty much all the rest of the activity in the state had dissipated.

We were only in essential activities kind of mode. And so you have this election that's kind of dropped into this somewhat very stable laboratory where there's not a lot of other activity happening. And it allows us to very cleanly see what the effect of this one specific event is in a much more obvious way. You don't have to account for as many other social distractors. We do account for those regardless, but there's just going to be a lot fewer of them.

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You get a much cleaner test. So that's one of the advantages. And as such, you know, we can get a very clean estimate of what the effect of voter density changes or differences in voter density or in-person voting per location is on COVID spread. So to the extent that other states have in-person voting, it would be applicable or a reasonable estimate to consider.

Q. And so from a public policy perspective, what impact does your study have for other states that are holding elections this year?

A. Well, our estimates would suggest that it would be prudent for election officials and state leaders to engage in as many practices to de-densify (sic) polling locations as possible with the goal of trying to reduce COVID-19 risk. This could include more hours at the poll, more early voting, more curbside voting, and increased access to absentee ballots and voting.

Q. Dr. Cotti, let's talk about the basis for your opinions.

MR. ROSBOROUGH: Eric, can you pull up Plaintiffs' Exhibit 35, please. Thank you.

Q. Dr. Cotti, do you recognize this?

A. Yes. It looks like the NBER paper, the study that we conducted on the relationship between voting and COVID-19 spread.

Q. How does this study if at all inform your opinions in this case?

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A. The opinion -- my opinions related to the relationship between in-person voting and COVID-19 are based on the outcomes of this study.

Q. And is this the type of information experts in your field would normally reasonably rely upon in offering opinions like the one you are today?

A. Yes, I believe so.

Q. Okay.

MR. ROSBOROUGH: At this time, Your Honor, we'd like to offer Plaintiffs' Exhibit 35 into evidence.

THE COURT: Any objections?

MR. DAVIS: None from the State Defendants, Your Honor.

THE COURT: Mr. Cowell, Mr. Speegle?

MR. COWELL: No objection, Your Honor.

MR. SPEEGLE: No objection, Your Honor.

THE COURT: Thank you, Mr. Speegle. Plaintiffs' 35 is received.

MR. ROSBOROUGH: Thank you, Your Honor.

Q. Now, Dr. Cotti, how does that study inform your expert report in this case?

A. My report is based on this study.

Q. Okay.

MR. ROSBOROUGH: And, Eric, can you please pull up Plaintiffs' Exhibit 267. Thank you.

Q. Dr. Cotti, do you recognize this document?

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A. I do.
Q. And what is it?
A. It seems to be the first page of my expert report in this case.
Q. Okay. And did you offer it sworn under penalty of perjury?
A. I did.
Q. Okay.
MR. ROSBOROUGH: At this time, Your Honor, Plaintiffs move to admit Plaintiffs' Exhibit 267 into evidence.
THE COURT: Any objections to 267?
MR. DAVIS: No objection, Judge.
MR. COWELL: No objections, Your Honor.
MR. SPEEGLE: No objections, Your Honor.
THE COURT: Thanks, everyone. Plaintiff's 267 is received.
MR. ROSBOROUGH: Thank you. You can take that down, Eric. Thank you.
Q. Dr. Cotti, could you please explain for the Court why you undertook this study?
A. Well, so there was a lot of attention surrounding this particular election hearing in Wisconsin where I reside. It wasn't determined until the day before the election that the election was actually going to go on. Up until that point, it had been thought that the election was going to be delayed. And this is early April. So we were less than a month really into the nature of the pandemic. So having an election while you're in a shelter-in-place environment created a lot of attention and trying to -- about

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whether or not this would become a super-spreading event, or would it have really no effect, or would it be really something in between. And as health economists, this is the sort of thing that we're particularly good at trying to assess or measure if you have appropriate data which does exist in this case.
Q. And speaking of data, what was the data that you relied upon in conducting this study?
A. So several different data sets. Obviously, we had a measure of COVID-19 spread. Those data come from the Wisconsin department of ^ CHECK THIS. Straight from their website. Publically available. Anybody can get it. And that provided us information on the amount of cases in any county over time. We accessed data on voting behavior from the Wisconsin Elections Commission. So that would provide us with total votes, absentee votes, in-person votes, all determined from that data set. That's also publically available.
We needed to be able to account for the fact that there are differences between the counties in Wisconsin that can influence COVID-19 spread separate from voting behavior and could potentially be correlated with voting behavior. So you don't want to confound your estimates. So you need to account for other differences. We accounted for differences in demographics by using census data. So that would give us information on educational differences, unemployment rate, income, population, age, also access to information on the population density.

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Population density is of course an important component of how spread of COVID-19 evolves in a location -- or locations in Wisconsin of course -- difference in population density.
Then we also accessed safe grab data. Safe Grab is a private company which provided us information on social distancing behaviors during and after the election. So this would include things like the average amount of time that households were spending in their dwellings, the percent of time that they left home, average distance travelled, things of that nature.
Q. And once you collected this data, what types of analysis did you perform?
A. Right. So that's the data we used in the multi-varied regression analysis to perform this event study that's discussed in the report and displayed.
Q. You were just alluding to some of this I believe. But how did you control for other variables that might have lead to COVID-19 infections other than in-person voting on Election Day?
A. Right. So one of the real key things in conducting a study like this is that you have to have some way of creating kind of a counter factual or apples to apples in your different areas of studies. So we're looking at different counties. So the counties in Milwaukee County, Wisconsin is different from Vilas County, Wisconsin in many, many ways. So we account for these differences as I mentioned, things like population density, differences in educational outcomes, differences in income and

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employment rate and age and social distancing habits or behaviors as they vary across the counties to try to give us a cleaner control versus treatment analysis.
Q. Okay. And in the report, I believe you also did something called a mechanism analysis. Can you explain what that was and why you performed it?
A. Yes. So we identify that there's this positive relationship that exists between voter density and COVID-19 spread. Places that had more in-person votes per polling location, those counties had a higher rate of COVID-19 spread after the election. Although there was no difference in those communities before the election in terms of there wasn't a statistical difference that was identified.
So but as economists, we want to make sure that we're not -- that the actual behavior of the individuals in those locations matches what the county level analysis was showing us. So it's kind of like the extra robustness to verify that what we're seeing is matching how people were actually behaving. So by looking at the safe grab data, they have a myriad of different source of data. We can track people's behaviors in and around the dates of the election itself. And try to A, make sure -- the first thing you should see in this kind of -- if this is the true mechanism of voting is that there is an increase in activity during the Election Day that's aberrant from other days and other areas away from the polls. The first thing we should see is that there's aberrant

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activity, and we see a great deal of that. And those graphs are provided in the report.

The second thing is that aberrant activity should be isolated to and around the area of the polls. If it's not, you have to make -- the point is you want to make sure there's not aberrant activity on the days around the election, and you want to make sure that it's not aberrant activity away from the polls. It really should be -- that you should identify big differences at and near the polls.

The third thing is that degree of aberration should correspond to the treatment which is in-person voter density. In this case, we find all three of these things to be true. We find that the aberrant or excessive activity exists only on the day of the election. It doesn't exist on the day before, the day after, or the Tuesday before depending on how you want to compare it. It's strictly localized to the areas right around the polls. Specifically, we find that the greatest degree of aberration occurs within 50 meters of the polls themselves so the polling locations.

And the degree to which the aberration exists is strongly correlated with the amount of in-person voting per location. All these things are strongly consistent with the mechanism that is leading to this relationship between in-person voting and COVID-19 spread being the act of voting itself.

Q. Okay. And I believe you said that you had found a positive relationship between voting density and COVID cases?

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A. Right.

Q. Now, do you have any estimates as to the size of that relationship?

A. Right. As I stated before, we find that a 10 percent difference in in-person voter densities corresponds to about a 17 or 18 percent increase in the positive test rate. And that overall, the effect of Wisconsin having in-person voting led to about 700-ish more cases in COVID than it otherwise would have likely have seen or something on the relationship of approximately 8 percent of the total confirmed cases during the eight weeks following the week of the election that was studied.

Q. Okay.

MR. ROSBOROUGH: Eric, can you please pull up State Defendants' 133. Just zoom in a little bit, please. Perfect.

Q. Dr. Cotti, are you familiar with this document?

A. Yes. This is the expert report from Professor Kidd.

Q. Okay. And do you understand this to be Defendants' expert in the case?

A. I do.

Q. Okay.

MR. ROSBOROUGH: Eric, can you please turn to page 10. Okay.

Q. So I'd like to draw your attention to the first full paragraph on the page. And it states there beginning partway through the second line there, "Because Plaintiffs have submitted an expert

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report by Dr. Cotti, an amazingly attempt to convince us hundreds, 700 of additional COVID-19 cases resulted from the election. The critical flaw in Dr. Cotti's report is that he is attempting to give the April 7th election credit for COVID-19 cases by effectively using an incubation window of six weeks with zero to week five which is far beyond the actual 14-day incubation window of the disease."

Did I read that correct?

A. Yes.

Q. What is your reaction to Dr. Kid's statement that you are using a six-week incubation period?

A. He is misunderstanding our analysis.

Q. And why is that?

A. We don't uses a six-week incubation period. The -- my report and the study both illustrate quite clearly that we recognize that the incubation period for COVID-19 is 14 days. The lower paper in Annals of Internal Medicine which I reference in my report very clearly demonstrates that the median incubation period of time for COVID-19 symptom onset is 5.1 days, 75th percent is 6.7 days, and 97.5 percent ^ CHECK THIS of cases demonstrates symptoms in 11.5 days. This is just a misunderstanding on Dr. Kid's part as to what our analysis is actually doing.

Q. Well, why did you look at five weeks after the election when you acknowledge that the incubation period for COVID-19 is at

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most 14 days?

A. Well, something that I think a lot of people who aren't real familiar with COVID-19 case data, and one of the mistakes that is commonly made or misunderstandings that is commonly made is that they fail to recognize that there's a significant lag between symptom onset and when cases are actually reported in the data.

So in the case of COVID-19, there is -- the symptom onset is about five days. But in Wisconsin, using Wisconsin data, we can estimate what the gap is between case report time when it shows up in essence on DHS's database and when symptom onset actually occurred. This is in my report. I believe it's on page 8 be 9 or 10, somewhere in there. We estimate that that lag time, the median lag is 7.5 days. So ourselves and others -- there's a research paper by Andrew Goodman Bacon who's an economist at the Minneapolis Federal Reserve Bank formally of Vanderbilt University who discusses this exact issue in the sense that when conducting research on COVID-19 transmission from community events such as this study that we conducted, you should not see anything the week following the event because all the cases that are being reported the week following the event are from individuals whose symptoms onset prior to the event you're studying. You really shouldn't start to see anything until a week after.

And because the delay is so long, potentially as much as two weeks after of the event in question, should you start to see

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primary transmission show up in the cases. So a couple of things that are incorrect in particular to Dr. Kid's statement. First of all, the evaluation periods we're looking at is five weeks. Week zero is the week of the election. We don't consider that a period of time for the reasons I just explained. So we start with week one, the week after the election because that -- that's when you could conceivably start to see cases that were related to the election. All cases before that are going to predominantly have occurred -- would have been -- you would have had symptom onset prior to the election itself.

So week one of that five-week period is when you would start to see cases. Week two is when you would expect to start to hit the median because median symptom onset is 5.1 days. Median time to report to the database is 7.5 days. So that's 12.6 days -- let's call it 13 days. It's roughly -- the election took place in the second day of the election week. So it's roughly exactly the start of the second week is when you should start to see the middle of the distribution of cases being reported. So that's why you have week two.

Week three would be the drawdown of the primary transmission and then also the fact that we want to be able to track some degree of downstream community transmission. The study's not just about those who may have been infected at the polls but those who were subsequently infected as well.

MR. ROSBOROUGH: Thank you, Eric. You can take that

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down. And actually, if you can pull -- sorry. If you could pull back up that same exhibit. We're going to go to page 3 though. That's State Defendants' 133. Okay. Thank you.

Q. Now, you would see -- Dr. Cotti, do you see in the last paragraph of this page where it says Dr. Cotti's declaration reports on the results of a study conducted by himself and a coauthor that is essentially an extrapolation analysis attempting to estimate how many Coronavirus cases were caused by the April 7, 2020, Wisconsin elections." Did I read that correctly?

A. Yes.

Q. Do you agree with Dr. Kid's assessment of your study?

MR. ROSBOROUGH: You can take that down, Eric.

A. No. The author is essentially -- sorry. I lost it there. But -- it came off my screen, but that's okay. Dr. Kid states that our analysis is -- that we conduct an extrapolation analysis. We don't conduct an extrapolation analysis. Our primary analysis is a -- based on a regression event study. We do an extrapolation analysis from the estimates of that study to generate what the overall total number of cases estimated to be related to voting was. But the -- the analysis itself is not an extrapolation analysis.

Q. Okay.

MR. ROBOROUGH: Eric, can you pull back up State Defendants' Exhibit 133 and go to page 10, please. Thank you. And can you focus in on the second full paragraph there. Okay.

Q. And, Dr. Cotti, do you see where it says thus, with as few as

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19 cases actually linked to in-person voting or working at the polls on April -- oh I'm sorry. That's the wrong paragraph. I apologize.

MR. ROSBOROUGH: Can you go to the first full paragraph again. My apologies. Okay.

Q. Do you see the last sentence of that paragraph where it says, "With as few as 19 cases actually linked to voting in-person or working at the polls on April 7th, the ability to extrapolate as Dr. Cotti and his colleagues attempt to do is limited at best."

What is your reaction to that statement?

A. Well, it's not correct. It's not correct for a couple reasons. Dr. Kid's report references the Wisconsin DHS's contact tracing report from April 22nd which at that time had linked 19 cases to voting in person. DHS continued to update that report. I believe the last report they issued was on May 15th. It's the one that's cited on page 2 of my report where DHS had actually identified 71 individuals who participated in the election. But epidemiological contact tracing is -- what they find is not relevant necessarily to our ability to analyze and determine if there is a relationship. We're looking at community spread and the nature of the relationship between a community's voting behaviors and the spread of COVID-19 in those communities. It has nothing to do with DHS's epidemiological contact tracing analysis at all.

MR. ROSBOROUGH: Eric, can you turn to the bottom of page 8 and the top of page 9 of this document, please. Thank

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you.

Q. Dr. Cotti, do you see where it says, "The reported cases for April 7, the day of the election, are represented by the blue bar and visually demonstrate no surge as a result of the April 7 elections in the two-week incubation period for COVID-19 after the election. In fact, statewide the seven-day moving average trends down starting about five days after the election before flattening out and gently wandering for the remaining week of the incubation window."

Did I read that correctly?

A. Yes.

Q. Do you have any reaction to Dr. Kid's conclusion there?

A. Well, again, Dr. Kid is misinformed by -- if you scroll down, you'll see there's a graph that's associated with this. In terms of, as I referenced before, many people are confused about the nature of when cases get reported, what they're related to. If a case gets reported on the 8th, that doesn't mean the person started presenting symptoms on the 8th. The median time between symptom onset and when a case gets reported by DHS in Wisconsin is seven-and-a-half days at this period of time in April and May.

So if you were trying to identify a window with which to evaluate the trends in COVID-19 cases, you would need to shift that whole window to the right by seven or eight days to make it match up. Besides the fact that the first day wouldn't really

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count because nobody -- there's pretty strong evidence people don't show symptoms one day after exposure. Nevertheless, that would put us at a window that if we were to replicate what Dr. Kid had done here that would start around April, say 16th and go through April 29th, that 14-day window would be much more consistent with symptom onset that got reported in the data. So reported data that would -- because it was symptom onset related to the 14 days following the election.

If you look at the seven-day trend in Wisconsin, again using DHS data for between April 16th and April 29th, it moves from about 141 cases per day to 239 cases per day. That's greater than a 70 percent increase in cases. That said, you cannot -- in my expert opinion, even if Dr. Kid was on the Plaintiffs' side, and I was sifting with Mr. Davis, and Mr. Davis showed me the numbers that I just repeated, I would tell you there is no counter factual in this analysis. You cannot -- whether or not the election had an effect or didn't have an effect from -- by looking at an observational trend in case data. You have to have some kind of a control group. You have to do some statistical analysis. This is just a plot of what the cases were the 14 days following the election.

Q. Okay.

MR. ROSBOROUGH: Eric, can you focus if on that last paragraph on page 9. Thank you.

Q. Now, Dr. Kid, do you see where -- I'm sorry. Dr. Cotti. Do

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you see where Dr. Kid refers to at the beginning a study by Barry Mulekar and berry demonstrates that rather than the Wisconsin election causing a surge in COVID-19 cases, new case rates where in fact lower than those of the rest of the country for the ten-day period before the election and remained lower during the post-exposure incubation period.

Are you familiar with the study referenced there?

A. Yes.

Q. And have you read it?

A. I have.

Q. Do you believe the conclusions that study draws are sound?

A. No, I do not.

Q. And why is that?

A. Well, this study -- again, it's very observational. It suffers from some of the shortcomings that I've already mentioned. Again, they're looking at a period of time where they've identified that they should start seeing cases associated with the election in this 14-day window following the election but fail to recognize that there is this delay that exists between when symptom onset ours and when cases actually get reported.

To elaborate more on that, especially at this period of time, but in general, people don't get tested the day they have symptoms. It will generally be the day after or two days after, three days after. And then they get tested, and then there is a delay in how long it takes to process that test. And that can

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range from 24 to 72 hours or even up to four or five days. And then once confirmation comes back, then there is a delay in when it actually gets reported.

As I said, the median period of time between symptom onset and when a case shows up is about seven-and-a-half days. The Berry paper fails to recognize that. So the ten-day period they're looking at after the election isn't even the right ten days. That said, this statement says new case rates were in fact lower than those for the rest of the country for the ten-day period before the election and remained lower postexposure. In particular, think find that -- what the berry paper does is they attempt to use the United States trends as some kind of a counter factual. They don't account for the differences between Wisconsin and the United States in general which makes it a very poor counter factual. There's no actual statistical testing, statistical tests done in this report either. So they can't make any definitive claims.

But just to explain how looking at observational trends doesn't tell you anything, if you look at -- they looked at the ten days after the election compared to the ten days before the election. If you go ten days out prior to that -- so days 20 to 11 priority the election and compare that to the ten days prior to the election, there's a massive decline in the number of cases in Wisconsin relative to the United States during that period of time too. It's not driven by fewer cases in Wisconsin. It's driven by more cases in the United States, specifically New York, New

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Jersey, and the southern new England area.

That doesn't mean that some occurred. It's just it's a trend. The trend was that cases in the United States were growing quite quickly prior to the election relative to Wisconsin and then stabilized after Wisconsin had its election, not because Wisconsin had its election. Their conclusions here are spurious in my opinion.

Q. Okay. And do you see in the next sentence right there it says Leung, et al. also examined effects of the April 7 election of COVID-19 case in Wisconsin and conclude that there was no evidence of a surge caused by the election.

Are you familiar with that study, Dr. Cotti?

A. Yes, I am.

Q. And have you read it?

A. I have.

Q. Does that study undermine your analysis here?

A. It does not.

Q. And why not?

A. Well, so this is a more sophisticated analysis than Dr. Kid or the berry papers provide. They're doing a deconvolution-based method to try to determine what the infection right, the R factor, was on the date of the election. But what they're looking for here is a surge defined as an increase in the absolutely amount of the cases, a definable increase. That's an absolute measure. And they find that there's no absolute increase in the infection rate on

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the date of the election.

They made one small flaw that's important to their deconvolution analysis. But this flaw -- which I'll discuss in a second. This flaw aside though it wouldn't matter even if they'd done it correctly because what we're doing is a relative comparison. It's a dose-style model. Some counties were dosed with a low amount of voter density. Some were dosed with a high amount of voter density. Do we see that the size of that dose effects subsequently the size or the difference between those high and low-dose communicates the spread of COVID-19? And we find the statistical relationship shows that very clearly.

What Leung is looking at here is the state as a whole. Did they see an increase in the state's infection rate? Some parts of Wisconsin could have a declining infection rate. Other parts could have an increasing infection rate, and it would average out. So it's not definitive. Further, what a lot of people fail to understand, what Dr. Kid and the berry paper fail to understand and what the Leung paper is just not looking at -- they're looking for a surge which is why it doesn't mean that their results are incompatible with ours is -- and this speaks to why having a counter factual of a control group is important. Just because something is going down doesn't mean that it's not -- it wouldn't be going down faster if you didn't have the intervention at hand, right?

So if I -- if you look at the Leung paper, they find that the

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infection rate in Wisconsin is declining leading up to the election. That's their estimate. And that's consistent with other estimates I've seen in other research. If I go on a very strict diet and I eat a very strict meal set every day for days and days on end, I will start to lose weight. So my weight will decline. If I then at a certain day weigh myself and weigh 200 pounds and I continue with my exercise regimen, and I continue with my diet, one small change that I add six Oreo cookies at the end of every night, I may find that my weight decline will slow. I can't look at that and go, well, I'm still losing weight. Clearly Oreo cookies didn't matter because my weight is still going down. It's going down slower. The intervention did not matter. You can't tell that though unless you have a counter factual. You have to have some kind of control measure with which to look at it.

Now, the one small issue with the Leung paper that I do have which creates a problem for them concluding that there was no effect is that a deconvolution model relies on retrospectively looking at cases in the future and then dialing back to when they likely were associated. Unlike the berry analysis or the analysis put forward by Dr. Kid, Leung and authors do recognize that there is a delay between symptom onset and reporting in the data.

However at the time of their analysis, they wouldn't have been able to ascertain what that actual delay would be. And the amount of days is very important in their case. They use 186

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cases from a report in Beijing, China in January and February to assess that the delay on average is about 4.3 days. And so that's the number of days they used to assume what the delay is in Wisconsin. The actual delay is seven-and-a-half days which means that they pinpoint when the election's R factor would be. So when they measure were it would start to to go up from, they are off by about three days which could be salient in their estimation. But regardless of that, are their results and our results are not incompatible.

Q. Okay. Thank you.

MR. ROSBOROUGH: Eric, can you turn to page 10 of the report, please. Okay. Can we go to the top -- not the full paragraph but the first few lines, please.

Q. Dr. Cotti, do you see where it says more recently, Paradis, et al. report in morbidity and mortality weekly report, a CDC publication, state no clear -- I'm sorry. No clear increase in cases, hospitalizations, or death was observed after the election."

Are you familiar with that study?

A. I am.

Q. Have you read it?

A. I have.

Q. Okay. Do you believe -- does this is study undermine your analysis?

A. It does not.

Q. And why not?

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A. So, again, they're looking to see if there's an increase. This study only looks at Milwaukee itself. It doesn't look at Wisconsin in general. It doesn't have any counter factual or control in Milwaukee that they're using. It's just Milwaukee before the election compared to Milwaukee after the election. And trends in Milwaukee of cases were declining prior to the election. They continued to decline after the election. It's the same exact reasons I just discussed with some of the other papers. They also -- they access their data rather from DHS since their doctors -- Heather Paradis is a pediatrician with the Wisconsin Children's Hospital -- have access to WEDSS. So WEDSS is the Wisconsin Electronic Disease Surveillance System. So they'd be able to see positive tests. And they would therefore get them a day or two prior to them being reported in DHS. So the lag there is probably a little bit shorter than seven-and-a-half days. But they still looked at a period of time directly after the election which would predominantly be cases that are actually due to exposure prior to the election. So they have that same issue.

But the broader point here is it's completely observational. They compare rates in Milwaukee before the election to rates in Milwaukee directly after the election. Regardless of the fact that's not exactly the right period of time to look at. It's observational and it's descriptive. It's very interesting. But it is in and of itself not statistically inferential.

Q. Okay. Thank you.

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MR. ROSBOROUGH: Now, finally, Eric, can you go back to be -- yeah. Can we go to the second full paragraph on this page. And then we'll take this down after this.

Q. Dr. Cotti, do you see where it says thus, with as few as 19 cases actually linked to in-person voting or working at the polls on April 7, the conclusions of Leung, et al. remain instructive. The number is effectively too small to reliably predict the amount of downstream damage. No amount of modeling including dramatically expanding the incubation window can overcome a number of cases that is too small to start with."

Dr. Cotti, do you have a response to that statement?

A. Yeah. It's -- it just demonstrates a misunderstanding of what the sort of regression analysis we're doing entails. It assumes -- first of all, it's 71 cases linked from DHS. And it assumes that somehow we're extrapolating -- I believe it assumes that somehow we're extrapolating from those number of cases to the number of cases to the outcomes we're looking at.

Our estimates are completely independent of other analysis. It's not a function -- we were looking see if there was a statistical relationship and what the degree of that relationship looked like. If we would have found no relationship or no estimate, we would have written the paper saying we found no or very -- you know, we found 10 cases, or we would have said 10 case. If we would have found it was 2000, we would have written that. So this is -- this kind of statement doesn't make a whole a lot of sense to me.

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Q. Okay.

MR. ROSBOROUGH: Thank you Eric. You can take that exhibit down.

Q. Dr. Cotti, I'd like to come back to your opinions and their relation to elections during COVID. What does your analysis of the Wisconsin election tell us about the risk to voters in elections this year more generally?

A. Our analysis -- the analysis that is in the NBER paper that you presented shows that there is a positive relationship between in-person voter density and the number of in-person votes for voting location and COVID-19 spread measured in a number of different ways. Suggesting that in-person voting presents some degree of risk to individuals, and measures to try to reduce the density of voter -- voter congregation, voter -- you know, getting people together at the same time would be prudent to try to help offset that risk to increase the degree of safety involved with voting this year in the election.

Q. So since in-person voting presents some degree of risk to individuals, what are some different things that can be done to reduce that risk?

A. As I mentioned, what we state in the study and what I would support as a health economist is as many actions as possible to reduce voter density. So that would be like I said more hours at the polls, more early voting, more curbside voting, you know, encourage absentee voting. Whatever could be done to try to

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prevent people from congregating at polling locations at the same time.

Q. Okay. And I think you mentioned as a few examples in-person early voting, curbside voting, and the ability of everyone to vote absentee. Which of those options does Wisconsin offer?

A. To my knowledge, all of them.

Q. Okay. So if I told you that unlike Wisconsin, a state did not offer in-person early voting, what does that do in terms of risk of in-person voting on Election Day?

A. Can you say that again?

Q. Sure. So, you know, I'll pose this as a hypothetical. If I were to tell you that unlike Wisconsin, a state did not offer in-person early voting, what does that do in terms of the risk of in-person voting on Election Day?

A. Well, if I assume that the same number of people would vote without in-person voting as would with in-person -- sorry. Without early voting. If I assume that the same number of people are going to vote either way, it would just increase the density on the day of the elections.

Q. Okay. And with that same assumption, if a state did not allow curbside voting, unlike Wisconsin, what would that do in terms of the risk of in-person voting on Election Day?

A. It would increase the amount of density in the actual voting site itself.

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Q. And similarly, if I asked you to assume that a state made it difficult for some people to vote absentee, what does that do in terms of the risk of in-person voting on Election Day?

A. Again, if I assume that people who were unable to vote absentee then chose to vote in-person, it would increase the density at the polling location.

Q. Okay. Dr. Cotti, do you recall testifying earlier about your conclusion that roughly 700 or so cases were traceable to the April election in Wisconsin?

A. Yes.

Q. Okay. And was that number based upon an extrapolation from estimates in your paper that we discussed?

A. Yes, it's based on estimates in the study.

Q. Okay.

MR. ROSBOROUGH: Eric, can you please pull back up Plaintiffs' Exhibit 267, which is Dr. Cotti's revised report and turn to page 6.

Q. Dr. Cotti, do you recall the number of open polling places in Wisconsin in April?

A. I think it's there on top of the page. 2,100 or so.

Q. Okay. If I show you the first paragraph of your report, does that refresh your recollection as to the specific number?

A. 2,132.

Q. Okay.

MR. ROSBOROUGH: And, Eric, if you could turn to page 16,

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please, and highlight footnote 19 and maybe make it bigger. Thank you.

Q. Dr. Cotti, how many in-person votes per polling location did you find on a county level in Wisconsin using a weighted average?

A. It's about 294, 293.7.

Q. Okay.

MR. ROSBOROUGH: Eric, can you take that down and pull up our demonstrative, please. Okay.

Q. Now, Dr. Cotti, I'd like to pose you a hypothetical. So these are the numbers we just discussed for Wisconsin, correct, that you see on this demonstrative, approximately 700 cases related to the election and a little under 294 in-person votes per polling location as a weighted average?

A. That's correct.

Q. Okay.

MR. ROSBOROUGH: Eric, can you pull up Plaintiffs' Exhibit 190, please, and scroll to the second page. Okay.

Q. Dr. Cotti, I'll represent to you that these are figures from the Secretary of State's office in terms of the total number of ballots cast in the July election in Alabama and the number of those which were absentee ballots. So I'll ask you to assume those numbers.

A. Okay.

MR. ROSBOROUGH: Eric, can you go back to the

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demonstrative.

Q. And assuming that my math is correct, the numbers I just showed you I'd like you to assume amount to approximately 5.2 percent of the total ballots cast in the July runoff were absentee ballots in Alabama, okay?

A. Okay.

Q. Now, I would like you to assume that according to the official voter turnout statistics provided by Secretary Merrill's office, 2,137,482 voters voted in the last presidential election which was November 2016?

A. Okay.

MR. ROSBOROUGH: So, Eric, can you pull up Defendants' Exhibit 47. I'm sorry. Exhibit 47. Defendants' Exhibit 47. I think we've got Plaintiffs' Exhibit 47 up. I'm looking from the State Defendants' 47. Thank you very much. And can you scroll to the last page. Thank you.

Q. Now, Dr. Cotti, I'd like to represent to you for the purposes of this hypothetical that Alabama will have 1,980 open polling places for the November election.

MR. ROSBOROUGH: Eric, you can take that down and pull up the demonstrative. Thank you.

Q. So assuming this number of polling places, if the number of voters who vote in November in Alabama are the same as in November 2016 and the same proportion vote absentee as in this year's July runoff, I'd like you to assume that this then means

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that Alabama will have approximately 1,023 voters. All else equal and assuming that my numbers are in the ballpark, do you have any opinion as to wether more cases are likely to arise because of the election in Alabama in November as compared to Wisconsin's April primary?

MR. DAVIS: Objection, Your Honor, for lack of foundation. Dr. Cotti I don't believe has presented any testimony that he studied any election in Alabama or is aware of the conditions in Alabama either the state of the COVID pandemic in Alabama or the situation with any polling places in Alabama.

MR. ROSBOROUGH: If I can respond, Your Honor.

THE COURT: Sure.

MR. ROSBOROUGH: So Your Honor, this has been posed as a hypothetical to Dr. Cotti which is -- you know, the Eleventh Circuit has referenced the difference between a lay and an expert witness. I can provide some case law, the notes for -- federal advisory notes from Rule 702 specifically note that the facts or data that an expert can rely upon encompass hypotheticals. So obviously we would have to prove those up, but I believe that the hypothetical is proper.

THE COURT: I'll allow the hypothetical. Mr. Davis can cross him on the flaws and the missing point as to his objection.

Mr. Speegle, did you want to --

MR. SPEEGLE: Yes, Your Honor. I'm sorry I interrupted. I also join the objection. It's an improper hypothetical because I

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believe what Mr. Davis was alluding to is that while -- that one simply can't in a hypothetical come up with a valid opinion because of the independent variables that were in place in Wisconsin upon which he would base his opinion have not been shown to be in existence not only in July but presently in Alabama. So it's simply an improper hypothetical without putting in -- or showing the foundation that there are similar circumstances whether it's voting in place, social distancing, and so forth. And in fact also what's going on with today, the number of cases in Alabama of COVID which would have a direct impact on the number of people with COVID who --

MR. ROSBOROUGH: Okay. We're getting into cross here, Your Honor. I believe this is a speaking objection. And this has gone --

THE COURT: That's all points that you can bring out, Mr. Speegle, on cross-examine. I will allow the hypothetical. And also in addition to cross, I suspect the Defendants' experts, at least one of them, may be able to show the flaws, if any, from their perspective as to this hypothetical as well.

MR. ROSBOROUGH: Thank you, Your Honor.

Q. So --

A. Can you restate the question.

Q. Yes. All else equal and assuming that these numbers -- we can establish otherwise, that they're in the ballpark, do you have an opinion as to whether more cases are likely to arise because of

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the election in Alabama in November as compared to Wisconsin's April primary?

A. As I state in the report -- you said all else equal. All else equal, if you have greater voter -- what we find is that greater voter density is related to a greater spread of COVID-19. So if you present me with an environment that is the same otherwise and has greater voter density -- in this case, maybe three or four times as much, I would expect a greater degree of risk associated with that election.

Q. Okay. And are there other factors outside this statistical relationship that you identified that might affect COVID-19 transmission due to in-person voting such as the degree of community spread and mask wearing practices?

A. Right. This is another thing that I reference in my report; that during the Wisconsin election, the degree of community spread while present was still quite low. But mask wearing was also mixed. The CDC wasn't necessarily recommending masks for all people at that time. So, you know, we had relatively low community spread which makes any kind of social activity such as voting safer. But we had less mask wearing which makes degrees of community interaction more dangerous. If you were to have an election in an environment where you didn't have complete compliance with masks like we didn't at the time but also had a higher degree of community spread, the risk would likely be larger based on our result.

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Q. Thank you.

MR. ROSBOROUGH: Eric, you can take that down.

Q. Dr. Cotti, as to those positive rates and degree of spread, what were these roughly for Wisconsin in April?

A. At the time -- based on our study, the time frame that our study looked at, the positive test rate for Wisconsin was roughly 4 percent. Maybe slightly higher than that.

Q. Okay. And what sort of stay-at-home orders were in place for Wisconsin in April?

A. For the entire month of April, we were in a shelter-in-place environment.

Q. Okay.

MR. ROSBOROUGH: Eric, can you please pull up Plaintiffs' Exhibit 294 and go to page 13. Okay.

Q. Dr. Cotti, I'll represent to you that this is the Alabama Department of Public Health's COVID tracker and that graph shows positive tests over time. Looking at the range --

MR. ROSBOROUGH: Eric, can you zoom in on the chart, the bar graph there. Thank you very much.

Q. Looking at the range of positive rates in Alabama between May and the present, how do these compare to the positive test rates in Wisconsin?

A. They're higher.

Q. Okay. And what, if any, are the implications of that disparity in positive test rates between Wisconsin in April and

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Alabama over the past several months? What, if any, are the implications between the differences between Wisconsin's positive test rate around the time of the April election and Alabama's positive test rates between May and the present?

A. Assuming similar density at the polls, you would assume a greater degree of risk. If you had more or less density at the polls, then the relative exposure would be different because you'd have different factors moving in the same -- many factors moving in potentially many different directions. But all else equal, it would suggest a greater degree of risk. There's just simply more people who have cases, more people to run into.

MR. ROSBOROUGH: Thank you, Dr. Cotti. I have no further questions at this time for Dr. Cotti.

THE COURT: Okay. Mr. Davis, are you going first?

MR. DAVIS: I believe so, Judge.

THE COURT: You may.

MR. DAVIS: Thank you.

Q. Good afternoon, Dr. Cotti.

A. Mr. Davis, how you doing.

Q. Doing well, thank you. You do not hold yourself out to be an expert in epidemiology, do you?

A. I do not.

Q. Or in election administration?

A. I do not.

Q. Or in constitutional law?

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A. I do not.

Q. You don't disagree with me that under our federal system, states are perfectly entitled to have different election laws from each other. And just because Alabama adopts a law, doesn't require another state to do it or vice versa?

A. There's no question.

MR. ROSBOROUGH: Objection. Beyond the scope of Dr. Cotti's expertise.

THE COURT: It's allowed. He's not holding himself out as an expert on federalism or con law or anything beyond what he's tendered for.

Q. (BY MR. DAVIS:) Your study, Dr. Cotti, was of one election in Wisconsin in April, correct?

A. That is correct.

Q. In Wisconsin, as you said, there was a good bit of consolidation of polling places, right?

A. That is correct.

Q. And in Milwaukee, if I remember right from your deposition, you said originally -- or regularly, Milwaukee operates approximately 260 polling places?

A. That sounds correct (216?)

Q. And do you recall how many polling places were open in April?

A. In Milwaukee County or Milwaukee City?

Q. Well, whichever data you were using in your deposition. As

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I recall, you said it went down from 260 to 58?

A. That would be the county.

Q. Okay. And those are the numbers that you recall?

A. That sounds right to me.

Q. What about Dane County, Dr. Cotti?

A. I don't have them in front of me. But Dane county, which is where Madison is, saw a lower degree of reduction. I don't remember exact. I think it was something like 20 percent fewer polls. Compared to Milwaukee, they had much less consolidation.

Q. What you said in your deposition was Dane County normally operated 176 polling places. It was close to -- it only operated 130 something in April.

A. That sounds right. That's consistent with my understanding about 20 percent less or something like that.

Q. Footnote 7 of your report says that the city of Green Bay, Wisconsin in Brown County which typically has 31 voting locations had only two open during the April 7 election?

A. That is true.

Q. You agree with that? Do you have any reason to believe that polling places were consolidated in Alabama in either the March 2020 primary or the July 2001 runoff election?

A. Wouldn't know either way.

Q. Do you have any reason to think that Alabama would be consolidating places for its November 2020 election?

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A. Again, I'm not aware of anything.

Q. Have you studied the layout of any polling places in Alabama?

A. No, I have not.

Q. Do you know whether polling places in Alabama are particularly crowd spaces, low-square footage or open spaces, high-square footage?

A. I have not studied the polling places in Alabama.

Q. Have you spoken to any election officials in Alabama to know if they're making any preparations to ensure polling places are safe? Just for example to maintain social distancing or offer hand sanitizer?

A. Have I spoken to anybody?

Q. Yes.

A. No, I have not spoken to any election official.

Q. Do you have any independent information from any source as to what Alabama plans to do in terms of making polling places safe in November?

A. I do not.

Q. Do you know how many people have requested absentee ballots for the November election?

A. No, I do not.

Q. Do you know when they are able to begin requesting absentee ballots for the November election in Alabama?

A. No, I do not.

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Q. Do you know -- obviously, you do not know how many people total would request an absentee ballot between now and the November election in Alabama?

A. I don't know anybody who would.

Q. At the time of the Wisconsin election in April, was the CDC recommending that people wear masks?

A. No. I do not believe that that is the case. The CDC had some guidelines for elections out at the time. But they have changed subsequent, and I can't tell you specifically when they changed from what to what.

Q. Well, not even just for elections. Just in general. Was the CDC wearing -- recommending in April that the public -- members of the public wear facial coverings?

A. I don't believe they were.

Q. That was a time, was it not, when there was concern about personal protective equipment being reserved for the medical community, would you agree?

A. I believe that timing sounds right.

Q. Now, would you agree the CDC is recommending facial coverings?

A. I definitely know that public health is, yes.

Q. Do you know whether Alabama has any rules or regulations concerning the public and whether we are requiring people to wear masks?

A. Not definitively.

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Q. Wisconsin that you studied in April, would you agree that that was fairly early in the pandemic before many members of the public had been exposed to the virus?

A. I would agree it was early in the pandemic.

Q. If I remember right, Dr. Cotti, you said that your study assessed date at the county level?

A. That's correct.

Q. Did your study allow you to account for any difference between one polling place where social distancing was strictly observed and another polling place where social distancing was completely disregarded?

A. We cannot observe anything at the polling location in terms of the behavior of the individuals outside of them going to and leaving polling places as I mentioned in the safe graph data. We do account for social distancing behaviors in the counties which one could assume would be correlated with social distancing habits. I can comment on what the potential flaws, though, like what the potential bias would be if there were differences in social distancing behaviors across locations that was correlated with in-person voting if you'd like.

Q. Well, you would agree that we know more about the virus now than we do in April?

A. Absolutely.

Q. Yeah. And we know more about the importance of social distancing now than we did in April?

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A. If you define social distancing as being six feet apart, I would say no. If you define it as being like the aerosolization of the virus, I would say yes.

Q. Okay. You don't think that the public understands the importance of staying six feet apart from each other, wearing facial coverings, generally protecting yourself? You wouldn't disagree that the public has a better understanding of that now?

A. Of wearing masks, I would agree. Social distancing, meaning staying six feet apart was something I'm pretty sure was recognized during the election. But the mask component, I would agree with.

Q. You told the Court, Dr. Cotti, that the more we can reduce the density of voting, the less likely we will see further exacerbation of the spread of COVID-19 because of voting itself. Can you say whether there's been any spread of COVID-19 in Alabama as a result of voting itself in prior elections?

A. I haven't studied Alabama's election.

Q. And can you say whether there will or will not be any spread of COVID-19 in Alabama as a result of voting itself in November?

A. Based on the results of our paper, voting increases the risk of the spread of COVID-19. That's what we find.

Q. Does your analysis allow you to say whether any voter will contract COVID-19 at the polls in November in Alabama?

A. No statistical analysis can say anything with 100 percent certainty.

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Q. Tell us whether anyone in Wisconsin, in fact, contracted COVID-19 at the polls in April?

A. We do not study whether or not there was actual contraction at the polls. We're looking at community experience. It's a much stronger way of doing the analysis. Because contact tracing which is, you know, an epidemiological method which tries to trace exactly where somebody contracted a virus and then who they've come into contact with subsequent so they can be quarantined is not able to discern those kinds of things either if you have community spread. So one of the big problems with trying to do epidemiological analysis -- and when you have community spread of a pathogen is that you are not able to with 100 percent certainty guarantee where somebody contracted the virus.

Q. If I understood you correctly, that wasn't even what your study was doing. You weren't looking to see if anyone contracted COVID-19 at the polls in Wisconsin?

A. No. We're looking to see how voting differences across counties were related to COVID-19 spread all else equal.

Q. And where did you get your data, Dr. Cotti, for positive rates of COVID in Wisconsin?

A. It comes from the Wisconsin DHS.

Q. Do you have knowledge of who in Alabama is going to be able to vote absentee in November?

A. I believe this was changed recently. I believe it's more open

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than it used to be, or maybe I'm thinking of a different state.

Q. If you assume that in Alabama, under normal circumstances, a voter is required to show one of several excuses, but that during the pandemic for the November election, Alabama has changed the rules and allows any voter who chooses to vote absentee, would that move in the language of your report be a prudent one?

A. Yes.

Q. You agree, do you not, that health officials should set health policy, not economists?

A. Not always.

Q. You do not agree?

A. Well, I -- I've heard several economists make bad recommendations on the economy. I've heard several health officials make bad relations on health. Lots of the them during the pandemic specifically in March and April which I disagreed with as an economist.

THE COURT: But I'm not sure that the health experts don't rely on folks from other disciplines.

MR. DAVIS: One moment, Your Honor.

THE COURT: Okay.

THE WITNESS: I mean, generally speaking, I would say that that's true.

Q. (BY MR. DAVIS:) I'm not going to be able to efficiently find what I was looking for. So I'll move on to something else for the

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moment. As an economist, Dr. Cotti, do you still -- do you deal with a lot of cost benefit analyses?

A. On occasion.

Q. That's something economists do regularly, correct?

A. Some do. Some don't.

Q. Okay.

A. It's a broad field.

Q. Of course. Do you agree that if a state could force every member of the public to isolate for a month at home, that that would have a profound effect on the pandemic and slow the rates if not just eliminate the pandemic?

A. It would slow it dramatically, yes.

Q. Would you also agree that such a move would have a profound effect on the economy?

A. Temporarily, yes.

Q. As an economist, do you have any expectation of who would be -- of who could more readily weather an economic down-turn? A wealthy person or someone of few economic means?

THE COURT: What's the relevance? I'm not sure the Plaintiffs are asking for the state to shut down. So what's the relevance to the issues in this case, absentee requirements, voter ID, and the curbside/drive by?

MR. DAVIS: Dr. Cotti has suggested that there are things that states should consider that might have a positive effect on the transmission rates of COVID-19. I'm exploring whether he

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would agree that that is not the only consideration that public officials and that those who are constitutional entitled to set election procedures must consider, that there are other factors.

THE COURT: Yeah. His relevant factors here is to reduce density on Election Day. That's the only thing that resonated with me anyway. So let's focus on that aspect since it's related to the case.

Dr. Cotti, were you about to say something before I kept speaking?

THE WITNESS: That's okay.

THE COURT: Okay. Mr. Davis.

Q. (BY MR. DAVIS:) Dr. Cotti, one decision that may have a very positive effect on COVID-19 rates such as the lowering density at a polling place or through any other means, there could also be costs to that that public officials have to consider, would you not agree?

A. Yes. Mr. Davis, if I could try to address your point though about the economy, I'm happy to do so. I would state very clearly that the majority of nonpartisan economists would argue that if we could bring the schedule of COVID-19 under control, it would be the best thing we could do for the economy.

Q. I'm not trying to introduce that into the case. And I believe His Honor has said that that's not an appropriate topic for us. My only point and I understand you to agree with me, that there may be other sides to these decisions. And a public official who's

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constitutional authorized to set election procedures must consider not just the effect of an election rule on the rate of transmission but also how it will effect, for example, the fairness of the election, the efficiency of the election, and other factors as well. And you will agree --

MR. ROSBOROUGH: I'm going to object as outside the scope of the direct examine.

THE COURT: I'll allow the question as to solely modified to say, in addition to reducing density on Election Day, there are other factors that election officials have to consider as well as.

THE WITNESS: Yes, I would agree with that.

Q. (BY MR. DAVIS:) In the end -- and to give my colleagues some notice, I'm wrapping up. You studied an election in Wisconsin, not Alabama?

A. Correct.

Q. And you studied an election in April, not in November?

A. Correct.

Q. You studied an election when the Centers for Disease Control was not recommending masks and not an election in a state with a mask order?

A. Correct.

Q. And you studied an election in a state where in some places, polling places were remarkably consolidated by as much as 31 down to 2 or 260 down to 58, and you did not study an election were there are no plans to consolidate polling places?

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A. Correct.

MR. DAVIS: I'll pass the witness.

THE COURT: Thank you. Who is up next? Mr. Speegle or Mr. Cowell?

MR. COWELL: I'll pass the witness at this time, Your Honor.

THE COURT: Thank you, Mr. Cowell. Mr. Speegle?

MR. SPEEGLE: Thank you, Your Honor.

Q. Dr. Cotti, I'm Jerry Speegle. I represent Judge Don Davis who is the probate judge and chief election officer for Mobile County, Alabama. I wasn't at your deposition. So you won't be hearing me ask you questions about what you said in your deposition. Let me start out with this. Your study is, as I understand it, a correlation study; is that correct?

A. We're looking at the empirical relationship between voter density and COVID-19 spread.

Q. Well, and you are looking at the correlation between a number of people and in-person voting and the instance of COVID-19 cases after that incident, correct?

A. It's more than a simple correlation.

Q. Well, I agree you've made it more than a simple association. But I'm looking at your report, and you -- you state that overall, there's a strong preponderant which is I guess more likely than not, right?

A. Yes, it's quite a bit more likely than no.

Q. Of statistical evidence demonstrating that more in-person

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voting per location is associated with a greater spread of COVID infections in Wisconsin. That's what your study was about, right?

A. That's correct.

Q. All right. And association in the vernacular of statistics and empirical studies is correlation, isn't it?

A. Well, an association can -- a correlation can be an associate. It's -- a simple or true correlation is a mathematical relationship that would involve two specific variables of factors. Once we introduce regression analysis with multiple factors, that starts to move well beyond a correlation. But association I would recommend as a more broad definition.

Q. And when you look at correlation, you're looking at and analyzing a situation. But you're not carrying out what would be called an empirical study or a double-blind study here, correct?

A. It's an empirical study. It's not a double-blind study. I wouldn't know how you could conduct such a study within civil law.

Q. True. And your example you gave of someone keeping everything the same on a diet and exercise and adding Oreos, that would, in fact, be something more close to a double-blind study where you know you're adding one independent variable, and you're looking at a result, right? An independent variable change?

A. In the truest sense, yes, I'd agree. We're controlling or accounting for differences in order to try to make the analysis

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more clean in the way that you represent. And also, the mechanism analysis that we do afterwards is also designed to try to make sure that we are not missing anything -- that the actual mechanism that we're proposing --

THE COURT: Dr. Cotti, you faded out there for a minute. Would you repeat the latter part of your answer, please.

THE WITNESS: Yes. The mechanism that we look at is mobile section 6 of my report is designed to actually alleviate concerns that this is some type of spurious correlation, that indeed actual behaviors of the individuals in these counties corresponds directly to going to the polls, and that the degree to which they go to the polls is associated with the degree of difference in COVID-19 spread. That pushes the analysis past simple correlation. Further, we account for many of the different demographic differences that could and likely would cause COVID-19 spread to evolve differently in these communities over time.

Q. So let's get back to my point. This isn't -- what you're doing is not the example of adding one independent variable into a scenario and testing your results of weight gain. You, in fact, aren't doing that. You have a situation where you are attempting to remove other causes of the results you're seeing, right?

A. We're attempting to account for other potentially compounders, right.

Q. Right. And if you didn't account for all those different

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variables, then your results would not necessarily be valid; would that be a true statement?

A. If there was some other factor that was unobserved? Is that what you're suggesting?

Q. Yes.

A. In the hypothetical, that's true.

Q. Now, you -- have you come to the point after Mr. Davis's questioning where you would agree that you can't accurately predict an increased incident of COVID-19 in voters that to go to vote in person in Alabama?

A. Can I accurately predict how much more spread there would be from our analysis?

Q. Yes.

A. I can make a prediction if you gave me some numbers. How accurate it would end up being would be a function of many things that are unknown to me about Alabama.

Q. Exactly. So sitting here today, you cannot make that prediction with your knowledge, can you?

A. Can I make a specific prediction?

Q. Exactly.

A. I can make a specific prediction. How accurate the prediction would be a function of how well Alabama's -- what the nature of Alabama's spread rate is at the time of the election, how well people behave at the election, how many people show up in person. Those are all things I don't know.

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Q. And because you don't know those, those factors, while you could make a prediction, it wouldn't have a loot of accuracy, would it?

A. Nobody's would necessarily have accuracy. You won't know that until after the election.

Q. Am I correct -- and I'm looking at now page -- in your report, page 16. I'll ask Ms. Matthews to pull that up for us. Dr. Cotti, I'm looking at this paragraph you have on the -- that Ms. Matthews put on the screen. And you say here in that third sentence that starts, "In particular. The estimates of total cases per capita suggest that 100 voters per polling location is associated with the total 0.1353 more total cases per one hundred thousand residents in the average county five weeks after the week of the election."

Now, I want to make sure I've read that correctly in the sense of are you saying that in a county of 100 thousand residents who go vote and they average 100 voters per polling location that you would see an incident of .1353 more total cases after -- within the five weeks after the election?

A. Per polling place per hundred thousand residents.

Q. All right. And so --

A. Per county.

Q. Per capita. So if there's an example, and you have a hundred polling places, and you have a hundred thousand residents, how many more cases -- if this were the situation, how many more

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cases would you have five weeks afterwards?

A. If you had a hundred polling places -- I'll have to write this down to make sure I'm hearing you right. What's your example?

Q. A hundred thousand residents and a hundred polling places.

A. Okay. And how many people go to vote? What's the --

Q. Let's just say they all go vote.

A. All of what? All hundred thousand people?

Q. Yes, all hundred thousand. Is that -- how many is that -- give us -- does that give us a thousand people --

A. Uh-huh.

Q. -- per polling place?

A. Yeah, that sounds right.

Q. So how many more cases would you have?

A. Over if none of them voted?

Q. If all of them voted --

A. As opposed to none of them?

Q. Well, I'm just saying if --

A. Well, that's the analysis we have --

Q. Yes. If none of them went in person, none of them went, how many would you have?

A. We would estimate 1.35 more cases per polling location per county.

Q. And I'm just talking about one county. So that's -- you're talking about 1.35 more cases per polling location ? Is that the way I read that? Is that correct?

A. That's correct. If there's a thousand people per polling location.

Q. And you -- in the circumstance -- and I'm talking about Mobile County. You don't know how many polling places there are in Mobile county, do you?

A. No, sir, I do not. Apologize for that.

Q. And I assume you aren't aware of the conditions -- and you can take that off now. And you're not aware of the circumstances existing at the polling locations in Mobile County in the July runoff or what would exist in the November election, are you?

A. No, sir.

Q. And certainly, if those locations had I guess plexiglas sneeze guards, all the poll workers had masks, the vast majority of voters had masks, everyone socially distanced inside and outside, the areas they voted in were quite large with high ceilings so there's a significant amount of air flow, those conditions would make it so you couldn't really compare either the July election or the November election to what you analyzed in Wisconsin. Wouldn't that be correct?

A. I wouldn't know either way because I'd have to pull data from Wisconsin and compare it to see how comparable they are. And then you would have to figure out some way of estimating the effect of community spread in that environment. It just changes the probabilities.

Q. And one of the problems you would have is in comparing the conditions, the safety of the conditions in Mobile, would be that you didn't know what the conditions in Wisconsin were as far as the size of the polling areas, how many people wore masks, whether the poll workers had masks, correct?

A. It's my understanding poll workers had masks and plexiglas was up in Wisconsin.

Q. And did you -- do you know -- do you know that from personal experience? Do you know that from state reports?

A. I know that that was what the recommendation was and from my anecdotal accounts of seeing images of the voting that there were plexiglas up and discussing the nature of the polls with a neighbor of mine who worked at the polls here in Appleton, things of that nature. I do not know to what extent that was universal. But I know -- it wasn't like there was none of that during at the time.

Q. And is it true in Wisconsin that the safer-at-home order was actually abolished some time in May?

A. Safer-at-home order was overturned by the Wisconsin Supreme Court I believe around May 15.

Q. Now, you were there in Wisconsin, correct, during the April election?

A. Yes.

Q. Was school out then?

A. School was virtual at that time.

Q. School was virtual. Were all the universities virtual?

A. I know the public ones were. I assume the private ones were as well. I'm pretty sure.

Q. But you don't know that, do you?

A. I don't know that what specifically?

Q. That the -- that all the schools were virtual.

A. I haven't checked on all of them. I know all the K through 12 schools were virtual. And I know all the public universities were virtual. I'm pretty sure all the private ones were as well. I can't say with 100 percent certainty.

Q. Did you account for the fact that there was -- that spring break overlapped with the election?

MR. ROSBOROUGH: Objection. Assumes facts not in evidence.

THE COURT: True. But it can be fixed. Was the election -- did the election in fact overlap with spring break, Dr. Cotti?

THE WITNESS: To my knowledge -- if you're referring to college spring break, there were no college spring breaks. College spring breaks in Wisconsin are typically in March. Most of the institutions went virtual right before their spring breaks started to avoid spring break behavior. That said, spring break is a March activity that largely takes place over two different weeks that would have been prior to the election and would have the effected the counties in the state in a similar fashion.

Q. (BY MR. SPEEGLE:) Certainly if there had been a spring

break, it could effect -- because you went five weeks out to see about community spread. That could have effected the number of COVID cases during the week of April 7, couldn't it.

A. If there had been a spring break?

Q. Yes.

A. In aggregate? Sure. But there wasn't one.

Q. Well, you don't know about the private schools, do you, private colleges?

A. I know most of them didn't. I hadn't checked them all. My assumption if they were all closed. And if they weren't, they would have been very tiny.

Q. I wrote this down, but tell me if I'm correct in your testimony. You said that you criticized Dr. Kid because you said you had to have a control group to make some of the determinations that he made. Was that a statement that you made?

A. Yeah. You have to have some kind of a counter factual. My assessment was more of an academic criticism than a personal one.

Q. You certainly didn't have a control group in this case, as far as a double-blind group in that vernacular of the hard sciences, correct?

A. If you're referring to physical sciences, no. But in social science, I absolutely do have a control group. We're using a dose model here. So we have places that have a high density versus

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places that have a low density. This creates a gradient by which we can empirically assess the relationship quite clearly.

Q. Now, you used the words empirically assess, and I must I'm pressed by that language, and I'm impressed by the jargon in your appendix of empirical methods, which is attached to your reports. And I read through your equation here which has some integral calculus and so forth. But I also count 12 times there in that empirical methods were you use the words "estimate" or "estimated." So it would be correct that in your empirical methods, you are estimating a number of variables in order to come up with your conclusion; is that correct?

MR. ROSBOROUGH: Objection. Vague. Counsel testifying.

THE COURT: Overruled. Dr. Cotti is familiar with the study, and he can push back if it's warranted.

Dr. Cotti, you may go forward with your answer.

THE WITNESS: The variables are not estimated. They're actual numbers. I mean, we had to subtract total number of votes from absentee votes to get in-person votes. So to some extent, that is a minor estimation. But it is a well-validated one. When we had say estimated, we're referring to the estimates that are -- determine the relationship between different factors and COVID-19 spread. But I should point out that all statistical methods everywhere use estimation -- including random control trials are using estimates of the relationship or difference in this case between a control group and a treatment group.

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Q. Well, empirical studies with a control group in a double-blind study may make estimates based on statistical evidence of distance from the mean. But in your case, you are actually estimating different factors which are quite relevant to your outcome and upon which your outcome is based, true?

A. There is statistically no difference between the nature of an estimate between what you're referencing in hard sciences and in social sciences. If you go one factor at a time, you're looking at the statistical significance or the statistical likelihood that factors are different or similar. It's the same if you're doing a double-blind trial or if you're looking at one specific factor in a multiple regression setting.

Q. Well, you provided estimates that could compound to come to a different result. For example, you've estimated how long it takes in Wisconsin in April for someone to show symptoms of COVID, to report that symptom, for it to be tested. You've made a lot of estimates upon which your final decisions are based, right?

MR. ROSBOROUGH: Objection. Mischaracterizes testimony.

THE COURT: Correct. But again, Dr. Cotti is familiar with the methods in social sciences for studies and to the extent I think some of the disagreement here may be how social scientists conduct studies versus what the lay person expects physical science studies are and how they should be in social sciences as well.

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But anyway, Dr. Cotti, that's my long-winded way of saying please answer the question and disagree or agree as you see fit.

THE WITNESS: Sure. Thank you. So our estimates of the incubation period -- well, first of all, I can state that other researchers outside of us have identified what the appropriate window of time when you should start to see cases appear. That estimate of when you would expect to see cases appear, it comes from the DHS study. It is a very straightforward analysis which is presented in the study and discussed in the report very clear. It is looking at differences between when people's cases are reported on the DHS website and then looking -- and then DHS now subsequently reports when those individuals after they have tested positive, reported symptom onset. So it's quite easy to estimate what the average or median amount of time is between symptom onset and case report time. There's no complicated statistics in that.

And the only -- that doesn't enter our regression analysis at all. What that provides us with is a good understanding of when you should start to expect to see cases reasonably show up in the data. And again, like I said, that is supported by other research that has empirically looked at these sorts of questions. Spoken to researchers ourselves and said this is when you should and when you shouldn't see differences because of these lags.

Q. (BY MR. SPEEGLE:) You mentioned that OLS models are weighted by population or estimated. So you did estimate some

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of your modeling; isn't that correct?

A. I don't understand. I understand the first part of the question. I didn't understand how the second part of the question connects.

Q. Well, you are using estimates in your -- I mean, that is -- I'm getting a little bit confused I guess from your answers. You've used quite a few estimates in your analysis; is that not correct?

A. I don't -- I don't agree with the way that it's being framed. Can you give me a specific example?

Q. You just said OLS models weighted by population were estimated.

A. Yes. Yeah, estimated is the thing that gives us the result at the end which I have stated is the estimate -- is the point. We're not putting an estimate into the model. The model is giving an estimate out.

Q. And I believe in answer to a question it appeared that came out that Plaintiffs' counsel was implying that Alabama did not have in-person early voting. Are you aware of whether Alabama has in-person early voting?

A. I am not.

Q. And if they did have in-person early voting, say as Mr. Davis alluded to in his questions, would that reduce the risk in your mind of transmission of COVID-19 or -- COVID-19?

A. Yes. Any action that reduces density or collecting of people at one time should reduce transmission. I would agree with that.

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Q. And in fact, if the polling places in Mobile County had been moved from smaller voting locations as far as square footage to larger areas with higher ceilings, that would also reduce the risk of transmission of the virus, wouldn't it?

A. All else equal, I would agree that anything that reduces density or keeps people farther away from each other, or outdoors, wearing masks, not touching, is safer than indoors, not wearing masks, holding hands.

Q. You found that -- you cited that the DHS in Wisconsin found I think 700 COVID cases were associated with the election. But when they actually traced them to find ones that they could determine were originated, wasn't that number somewhere around 40; is that what you said, Doctor?

MR. ROSBOROUGH: Objection. Mischaracterized his testimony.

THE COURT: Let me overrule since again. Dr. Cotti is well versed with his research and can make the necessary correction.

THE WITNESS: Mr. Speegle, you said Wisconsin DHS? Wisconsin DHS linked 71 cases to people who voted in person. Is that the study you're referencing?

Q. (BY MR. SPEEGLE:) That must be the number then instead of 40. So 71. And do you know how many people voted in the Wisconsin election on April 7?

A. In person or overall?

Q. In person. Isn't that what you are relating it to, the 70 was

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in person?

A. Yeah. Yeah. 400 and some thousand, I believe.

Q. 400 thousand.

MR. SPEEGLE: Those are all the questions I have at this time.

THE COURT: Thank you. Redirect.

MR. ROSBOROUGH: Just very briefly, Your Honor. Thank you.

Q. Dr. Cotti, do you recall Mr. Davis asking you a question or several questions about the consolidation of polling places?

A. I do.

Q. Okay. Separate and apart from polling place density, does consolidation have any relevance to your analysis?

A. Only in that it is one of the factors that increased density. You could have no consolidation and have more density simply by just having more people vote in person.

Q. Okay. And do you recall a question from Mr. Davis about your knowledge about whether Alabama required people to wear masks?

A. I do.

Q. Okay. If Alabama officials were not requiring people to wear masks while voting, would that affect the risk of in-person voting?

A. I'll say what I said to Mr. Davis which is that any activity that increases the risk of transmission such as not wearing masks or getting closer to individuals will increase risk. And activities that

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reduce transmission such as, you know, staying away from people or wearing masks will help prevent transmission. It's a probability game we're talking about.

MR. ROSBOROUGH: Thank you, Dr. Cotti. I have no further questions at this time.

THE COURT: Mr. Speegle, going in reverse order, any follow-up based on these two areas?

MR. SPEEGLE: No, Your Honor.

THE COURT: Thank you. Mr. Cowell?

MR. COWELL: No, Your Honor.

THE COURT: Thank you. Mr. Davis?

MR. DAVIS: Nothing else, Judge. Thanks, Dr. Cotti.

THE COURT: Thank you. Dr. Cotti, have a good evening, sir. You are released.

(Witness excused.)

THE WITNESS: Thank you, all. Appreciate the time. Have a good night.

THE COURT: You too. It's 4:53. Let's go ahead and stop here for the day, and we will begin officially at 9:00 a.m. I will come in again at 10 till, and hopefully there will be no snags from a technology point of view in the morning. But before we wrap up, let's do our daily debrief.

Anyone has anything that you want to bring or raise at this point? Let me start with the Plaintiffs.

MR. ROSS: Yes, Your Honor.

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THE COURT: Uh-huh. Mr. Ross.

MR. ROSS: Deuel Ross for the Plaintiffs. Can you hear me, Your Honor?

THE COURT: I can.

MR. ROSS: Okay. Thank you. Given the -- how things have been going, Plaintiffs are fairly confident that we'll need to continue our case through Monday. I just wanted to alert the Court.

THE COURT: That's actually -- the fact that you feel the need to tell me that is a surprise because my assumption from day one said because we started on a Tuesday that you guys would actually go to the next week. Okay. But I am glad to hear that you think you can finish on Monday, though. That's good news for me.

And for the Defendants again, let's do all that we can as I think you've been coordinating already to reduce the cross-exams. And I will be a lot stricter with the person on the back end. But I will try to mitigate that by at least on recross going in reverse order to reduce the pressure that the last person has.

Mr. Ross, any other issues that you want to raise with the Court?

MR. ROSS: No, Your Honor. That's it.

THE COURT: Thank you. Anyone from the defense? Anything?

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MR. DAVIS: A question, Judge, if I may.

THE COURT: Mr. Davis.

MR. DAVIS: Next Friday, the Court has a conflict in the afternoon.

THE COURT: I do. I actually -- the time periods that I gave you guys were eastern -- well, no, were central times. I failed to account for the eastern time slot. The moot court starts at 1:00 p.m. central. So we will need to wrap up by 12:30. So again, there will be no lunch break. We will just plow through. And assuming I can trade at-home for daycare drop off that day, I may bring you guys in earlier than 9:00 as well. But I will let you know about that before Thursday as well.

MR. DAVIS: Sure. Does that mean, Your Honor, that all our proceedings will end at 12:30 on Friday?

THE COURT: They have to. The moot court will probably be at least two hours. Maybe less than that. But I think it makes sense to just stop, and then if necessary, resume the next Monday.

MR. DAVIS: Well, Your Honor, my codefendants may have a different view. I'm still hopeful even with Plaintiffs suggesting they'll need some time on Monday that we'll be able to finish Friday without having to expand hours. But we can assess that as we get into the case.

THE COURT: Okay. Good.

MR. DAVIS: I will alert too if I may that we're in discussions

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with Plaintiffs. I know one of the things we're talking about is a way to streamline some testimony through stipulations. And I'm working with Mr. Ross and Ms. Merle, others on their team. And we're going to be working to present some additional evidence by stipulation. We're hopeful that week just --

THE COURT: Mr. Davis, you faded out. Hopefully you can continue to do what?

MR. DAVIS: To have these discussions and think of any way that we can be efficient and get things done without being too big a burden on the Court.

THE COURT: Thank you. I'll definitely need a post-trial presentation debrief/argument. And so depending on when the case ends, I may bring you guys back in Monday morning to do some argument. But we'll talk more about the timing of that based on when the Defendants rest and when the Plaintiffs rebuttal case, if any, ends as well.

Thanks, everyone. Assuming there's nothing else, we will reconvene at 8:50 in the morning, please. Thank you. Have a good night, everyone.

TAB F

9/14/2020
Rough Transcript

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CASE NO. 2:20-cv-00619-AKK
PEOPLE FIRST OF ALABAMA, et al.,
v.
JOHN MERRILL, et al.,

THE COURT: Good morning, everyone. Hoping you can hear me through the Zoom application. I'm still waiting for the courtroom system to set up. Can you guys hear me?

THE COURT: Good morning, everyone.

MR. DAVIS: Good morning, Judge.

THE COURT: All right. We have a few minutes. Looks like the system's working thankfully. You guys need me for anything this morning before we officially begin at 9:00 a.m.?

MR. DAVIS: For the State Defendants, I'm not aware of any issues we need to take up, Your Honor.

THE COURT: Thank you. Anyone else?

MR. ENGELHARDT: Yes, Your Honor. It's Todd Engelhardt. I just kind of want to address in general terms -- I'm sure the Court is aware and all the parties are aware that we have a tropical storm that is supposedly going to be becoming a hurricane in the next day or so just outside the coast of Mobile and Destin and New Orleans. So I just want to make sure everybody was aware of that and to let you know we're trying to take steps to ensure that we're able to continue through whatever we get tomorrow morning or the next morning, but we're still working on what our back-up plan from down here would be. And of course, we have

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Dyar in Birmingham to help us.

But we're thinking ahead. We may get into a situation where our powers are limited, and we may run into a situation where we might need to participate by phone. And I know the Court would like to see us on the camera, but that may not necessarily be an option for us.

THE COURT: Okay.

MR. ENGELHARDT: We'll know more once the storm hits. But I just want to make sure we raise that so it wasn't a surprise and see what the Court thinks.

THE COURT: If you can participate by phone, that alleviates my initial concern which was that you may not be able to participate at all. Assuming the Defendants get the case today, Mr. Engelhardt, what's the general plan for when your side of the case will be presented?

MR. ENGELHARDT: We had been thinking originally that it might be late Tuesday or early Wednesday. But the issue becomes then that's about when the storm's going to hit. So we may -- we were going to talk about it later today. Once we know when the -- you know, if the Plaintiffs are done today, we -- and all the other defendants were going to get together and talk about what the best opportunity would be. It may be that Thursday things are clear enough -- or it may be that it pushes to the west and doesn't hit it here at all.

THE COURT: Thank you for the heads up. Obviously, no

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one can control nature. We will do our best to adjust accordingly. Anyone else? All right. We will start at 9:00 a.m. sharp. Let me make sure I am ready. I will see all of you shortly. Thanks, everyone.

(Recess.)

THE COURT: Are the Plaintiffs ready?

MS. THOMAS: Yes, Your Honor.

THE COURT: Who is your next witness, please?

MS. THOMAS: The Plaintiffs will call Ms. Teresa Bettis.

THE COURT: Ms. Bettis, good morning. Please raise your right hand.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Teresa Bettis.

THE COURTROOM DEPUTY: Would you spell it for me, Ms. Bettis.

THE WITNESS: Teresa, T-E-R-E-S-A. Bettis, B-E-T-T-I-S.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: Prichard, Alabama.

THE COURT: Thank you.

THE COURT: Ms. Thomas.

MS. THOMAS: Thank you, Your Honor.

DIRECT EXAMINATION BY MR. THOMAS:

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Q. Good morning Ms. Bettis.

A. Good morning.

Q. You've already stated where you're located for the record. But could you please state what county you're located in, please?

A. Mobile County.

Q. And how long have you lived at your current residence?

A. Approximately 45 years.

Q. And are you registered to vote at that address?

A. Yes, I am.

Q. And have you voted at that address?

A. Yes, I have.

Q. What elections do you typically vote in?

A. Generally in all elections.

Q. Who do you live with?

A. I live with my husband and my two children.

Q. And how old are your children?

A. My son is 15, and my daughter is 12.

Q. Can you please describe for the Court your work background?

A. I have been working at the Center for Fair Housing for approximately the last 20 years. I'm the executive director there. We are a small nonprofit organization, and we educate on fair housing laws, and we are an enforcement agency as well in that we accept complaints and file on behalf of consumers with the U.S. Department of Housing and Urban Development.

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Q. Does the Center for Fair Housing engage in any election-related work?

A. We have in the past.

Q. And what type of election work has the Center for Fair Housing engaged in?

A. We have partnered with Black Voters Matter and did Get The Vote Out activities which include canvassing, door-to-door knocking, telephone banking, texting banking, as well as just working with consumers to understand what it is to vote, how to register to vote in the election.

Q. And have you received any funding from Black Voters Matter?

A. We have.

Q. And was it to do this election-related work?

A. Yes, it was.

Q. Have you personally worked with the NAACP?

A. Yes, I have.

Q. And how have you worked with the NAACP?

A. I have been a member now for several years, and I currently serve as the housing chair for the local Mobile chapter.

Q. And outside of your work with the organization, have you had any other experiences with elections in Alabama?

A. I have. I was introduced to voting at a very young age. My mother used to take me to the polls with her. My mother was a poll worker. And once I became an adult, for a time, I was a poll

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worker as well here in Prichard.

Q. And you understand that this litigation is about voting. Can you tell the Court in your own words why you joined the litigation?

A. Well, once I was made aware of the issue and concerns of those individuals, essentially in the midst of the pandemic -- as I just said earlier, I was introduced to the concept of voting as a child. It was always impressed upon me as a child how important it was to vote. And I feel like relieving any type of barriers that would prevent people from being able to vote is important. And so that's what made me want to be a part of this case.

Q. And do you have a personal interest in wanting to vote in the upcoming election?

A. I do. It's my right as a citizen to be able vote, and I want to make the sure that I'm able to vote in a safe manner.

Q. And why do you say you want to make sure you're able to vote in a safe manner?

A. That's because I would consider myself, according to all of the reports that I have heard, from the CDC as well as from other renowned physicians, Dr. Gupta, Dr. Fauci, that any individuals who have any type of underlying conditions are at a greater risk for contracting COVID. And I have currently two underlying issues that would make me high risk, high blood pressure and diabetes.

Q. Okay. Let's take each of those in turn. When were you first

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diagnosed with high blood pressure?

A. Approximately around 2000.

Q. And what do you do to manage your high blood pressure or hypertension?

A. At one point in time for many years, I was on prescribed medication for it. And eventually, as I learned more about alternative medicines, I decided to go that route. And I use over-the-counter supplements that I purchase from local health stores.

Q. And when were you first diagnosed with diabetes?

A. I'm going to say approximately about ten years ago, ten years or so ago. And again, for that at one time, I was being treated with prescription medication for that and again have opted to an alternative style of medication. So using over-the-counter supplements provided through health stores.

Q. And when was the last time you talked to a medical professional about your diabetes?

A. Most recent would have been around June when I went in to see my dentist. I had a tooth that had to be extracted that was giving me a lot of problems. And he asked of me was I a person with diabetes. I told him I was. He said that explained why he was seeing so much bone loss and gum loss and just suggested that maybe I follow up with my physician about it so see if they needed to adjust the treatments at all.

Prior to that, it would have been maybe last summer, late

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last summer when I went to see -- went to like an urgent health care for another medical issue. And after looking at my urine sample, the doctor asked me was I diabetic, and I said I was. And again, he said perhaps I might want to just check with a physician and make sure that they didn't need to adjust some things.

Q. And are you currently looking for a physician to manage these conditions?

A. I currently am. But I'm looking for a doctor who would be open to doing traditional medicine as well as alternative medicine. We don't have a loot of those here in our area. So it's been kind of difficult to find one. I did visit with a physician last year. I can't remember his name, but it was in Saraland -- but decided not to go with him.

Q. And if you're not seeing a doctor regularly for these conditions, are you concerned about how COVID-19 might affect you because of them?

A. Well, because I have them and I believe what the medical experts have said -- I believe the CDC. I believe the doctors that have talked about if you have these underlying conditions that you are at greater risk for spread. Certainly two medical physicians within a year have treated me, and they saw indications that I do have diabetes. And so I -- that's why I consider myself to be a person of high risk. It only takes one. Don't have to have more than one. But if you have any type of underlying condition, that makes you a greater candidate for

contracting COVID with difficulty.

Q. Do you know anyone who has had COVID?

A. Oh, my gosh. I know several people that have had COVID. The first that I found out was a former son. A little boy about three-year-old contracted COVID from his grandmother. The grandmother had to be hospitalized. The child was not. Also two older women in their 80s, both like mothers to me, surrogate mothers, contracted it at the same time. I found out they both had it. One had to be hospitalized. The other was able to remain at home. And one a little worse than the other.

Then I had a really close friend of mine who also has hypertension and diabetes, both uncontrollable. She is under the medical care of a doctor for that. And she contracted COVID and became very sick behind it, suffered with issues with her legs, lungs, coughing up tissue, lung tissue, headache, weakness. Just really disturbing. And she even shared with me that she wanted -- sick as she has been in other lifetime, she has never been sick as she has been with COVID and most recently had to have her liver tested for lesions. Which her physician told her are sometimes they're seeing that happen after people have COVID that their organs get lesions on them. So they were checking that just to make sure that it wasn't some form of cancer and in fact something left over from the COVID.

Even -- I'm trying to think -- as most recently, my book keeper contacted me on last Monday to tell me that her daughter

tested positive for COVID. And so as a result, we're going to have her work remotely. Generally, I would meet her every two weeks at my office. But we're going to wait at least 30 days to allow her daughter to get well, and hopefully no one else in her house comes down. She is married and has two other children as well. So yes, several people I know have had COVID.

Q. And what effect has knowing people who have had COVID had on you?

A. It's been very disturbing. The thought of the two women in my life who are like second mothers to me having COVID both in they are 80s you know which makes them susceptible to having it and not recovering because of their age and some underlying health conditions, that was very troubling to me at the thought that I might lose both of them at the same time.

My girlfriend who I have known for many, many years, I was very upset about that knowing what her health condition was even before having COVID. So it's been very traumatizing just to know that people very close to me have experienced it and concerned that they might succumb to COVID and that I would lose them as a part of my life. So it's been a very stressful time.

Q. What precautions have you taken in your everyday life to deal with COVID?

A. One is trying to stay home as much as possible. And when I do go out, I am always wearing a mask, making sure that I have hand sanitizer in my car, disinfectant wipes. Even have a small

bolt of Lysol. And I keep gloves in my car as well. Avoiding large crowds of people. Social life is basically down to nothing. You know, everything is around work or going to the store to feed my family, taking care of the things that we just have to do. So it's had a huge impact on my life.

Q. And what have you done to avoid large groups of people?

A. I just void them. I mean, we don't do football games. We don't go to outings. You know, my kids are consistently asking can they go to the movies, can they go to some of the trampoline places that we have here in Mobile, and the answer is always no because they're enclosed spaces. They are usually places that are crowded. And I'm not exposing myself let alone my children to potentially being in large groups of poem.

So I just don't frequent anywhere where I have to be in a tight closed place with a lot of people. I have had other people -- you know, I was going to add that people have died. One of my -- one of the women who had COVID, one of her sons died, the older women. And, you know, where I normally would have went to that funeral to support her, I don't do funerals. I have had several people that we work with in the community and folks that I know that have had deaths, and we just don't attend funerals anymore.

Q. And you mentioned that your social life has changed. How often have you had people over to your home since COVID began?

A. Once my husband wanted his siblings over for Father's Day, and I would only agree to that if he would agree that everybody would remain outside in our yard where we could social distance. And so he agreed to that. And so that's the one time that we had family over since COVID started.

Q. Have you had people over at any other times at your home?

A. No. Other than my -- I'm sorry -- my nephew, who witnessed my ballot.

Q. And what about early in the COVID process? Did you have anyone over?

A. Early on, right as the office was closing down, my sister-in-law brought her laptop over to have my son help her to set it up so she could work from home. And that was the early part of March, maybe the first or second week of March.

Q. And other than those three times, have you had anyone else in your home either inside or outside?

A. No.

Q. Do you have plans to have anyone over to your home either inside or outside?

A. No, I do not.

Q. And why is that?

A. Again, because when you're dealing with other people, I don't know how they social distance. I'm not sure what they're doing as far as wearing masks. I don't know who they have been exposed to. And I'm just not comfortable with having people in

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my home, and I don't know what their lifestyles are. And each time you bring someone into your home, it's a greater risk of bringing the COVID into your home, and I'm just not comfortable with that.

Q. You mentioned that you've left your house to go to the office; is that correct?

A. Yes, that's correct.

Q. And why do you go into your office?

A. I have to meet with my bookkeeper every two weeks. She processes our payroll, taxes, quarterly taxes, financial report, and just other general accounting duties for us. And everything is there at the office. So it's easier to meet her there. And so outside of that or if it's something related to one of our grants that requires me to go to the office, perhaps get paperwork or to do something there that we have documents there at the office. It's not feasible for me to bring everything in the office to my home. So on occasion, I do have to go for other work-related reasons as well.

Q. And how many other people are in the office when you go in?

A. Generally, it's myself. Or if I'm there with the bookkeeper, she and I. And on a few occasions, one or two occasions, my administrative assistant has been there and one of my board members has been there.

Q. So often has it been that there's more than one person in the

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office?

A. Well, with my bookkeeper, she and I, every two weeks. To have the time where it was either my administrative assistant or my board members has only been I think two times they have each been there, once with three people. I think it's been twice that we've had that since COVID.

Q. And you mentioned that your bookkeeper's daughter has COVID?

A. Yes.

Q. And what plans do you have now that someone in her household is infected with COVID?

A. We had our monthly board meeting, board call on last Thursday. And so we made a decision that we will have her remain out of the office at least for a month to make sure that her daughter is well and to make sure that, you know, if anybody else has contracted it, that they have time to get past it.

We have a capacity for her to work remotely. It requires me to still go into the office because I have to put checks into the drawer. I have to pull certain documents for her while she works and she can remote into the computer there at the office. But it still requires me to be there. So that's our initial plan. And based on what follows up with her as to how her household is doing and to make sure that no one else has contracted it will determine if we go beyond that 30-day window as far as her working remotely.

Q. Okay. And prior to your bookkeeper's daughter contracting

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COVID, what system had you set up to have checks paid?

A. Pre-COVID, normally what we would do is the bookkeeper would come. She would prepare the documents. I would take those to my board member. We have a two-person check signer policy. I would take those checks to my board member. She would sign those.

After COVID started, what we do now is the bookkeeper comes. She prepares the checks. I live them there at the office. The board member has access to get into the office, and she comes when she's off work. It's hard for her to come during the day. That's why I would take care of it. She works at a local college campus. So now I leave those checks for her to come in and sign them once she gets off work and leave them there for me. And then I will go back and finish up what needs to be done with those checks and get things paid, bills sent out.

Q. And why have you set up this system?

A. Well, it requires a couple of extra steps, but it keeps me from having to on to the college campus where I would prefer not to go, essentially everything I'm seeing now where there are spikes on college campuses with the cases of COVID. So it keeps it where she can come in, no one is there at the office, she can sign the checks. I can come in. There's no one there and can complete what needs to happen with those transactions and get those bills taken care of. So it's just another way of making sure that we're social distancing and not having to be around people

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as much as possible.

Q. And you said that your office has been closed. Do you have any plans to reopen your office soon?

A. At this time, we don't have any plans to reopen. My board say that we will remain closed for the foreseeable future, and everybody will continue to work remotely at home.

Q. And why is that?

A. Again, because we're still experiencing COVID. There has not been a vaccine that's been approved and out that people can take. And we don't want to take the risk. Our organization is a community-based organization, and the majority of the work that we do is it out in the community. We do community meetings. We go to community events. We set up booths at health fairs, community affairs. So a lot of the work that we do on a daily basis would be done out in the open in the public. And so we don't want to put our staff at harm's way.

And so we've continued to maintain working remotely, as many of the fair housing centers are doing across the country. Even HUD at this point is still working telework. And they are not going in. They have least another 60 days and they'll reassess. So we're following the trend and being precautious and trying to be safe, provide a safe environment for our staff.

Q. And as part of your duties, have you been -- as the executive director, have you been to the bank?

A. Yes, I did have to go to the bank.

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Q. And have you been inside of the bank?
A. No, I have not been inside.
Q. How did you did your banking when you went to the bank?
A. I used the drive-through.
Q. Okay. And other than going to work and going to the bank, what other times have you left your house?
A. Generally to just grocery shopping, picking up stuff for the household or picking up food, fast food or something like that for my kids. They like Chick-fil-A and McDonald's, all the stuff that's unhealthy. But those are my primary reasons for leaving the house.
Q. And what's the longest period you've gone since the COVID-19 pandemic started without leaving your house?
A. I've done maybe like nine -- nine to ten-day stints of being able to stay home.
Q. And why is that?
A. Just having -- didn't need to go to the office for anything in between the time that the bookkeeper might would come. And so I've been able to do that not on a regular basis, but I have been able to do that some.
Q. Have you become more cautious since March with your COVID-19 precautions?
A. I have. And just being more aware. Over the summer, Mobile was experiencing a tremendous spike in cases that really, you know, made me uncomfortable. And still, just trying to

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practice -- there are still hot spots, and we still don't have a cure. And so the virus still remains a threat. So yes, I've been more cautious and trying to just avoid as much as I can having to go out if I don't have to.
Q. And generally, how long have you been social distancing?
A. I would say since March. Once we shut down our office, that's kind of when we really started learning more about the virus and the potential hazards. And so that's when we began social distancing.
Q. Did you vote in the July election?
A. I did vote in the July election.
Q. How did you vote in the July election?
A. It was my intent to vote absentee ballot, but I wound up having to unfortunately vote in person. I did request my absentee ballot. However, I got the ballot. And in the process of after it had been witnessed and signed by me and putting all of the information into the envelope, I realized that I'd done it incorrectly, and I put the forms into the wrong envelope, and it had already been sealed, so I -- from working at the poll, I know you can't break the seal on those envelopes. And I didn't have time to secure another absentee ballot. So on Election Day, I did go to my polling place. When I got there -- and with the intent of seeing how was it, was it crowded. It was not crowded. So I did go in and vote on Election Day.
Q. All right. Let's take each of these in turn, the voting

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absentee and the voting in person.
A. Okay.
Q. Did you have two witness when you were going to vote absentee?
A. I did. My husband was a witness, and his nephew was the second witness. And it was at his suggestion that we get him to witness.
Q. And how did you feel about having your nephew witness your ballot?
A. I didn't necessarily want that, but, you know, it's the process. I didn't have a choice. It was at night when he was able to come. You know, he had to come into my home. He's my nephew, and -- but still, I don't know how he social distances. I don't know if he regularly wears masks. I don't know who he spends his time around. I don't know if he's a cautious person when it comes to COVID. And so it was not a comfortable experience to have him in my home. But I needed to try to get my ballot witnessed at the time, and so that's what we did.
Q. And are you planning to have him witness your ballot in November?
A. I do not. Since he last witnessed my ballot, he has a sibling, a brother that has returned home to Mobile, and we understand that he is ill. We don't know what he is ill with. And no one in the family has shared that information. So now I would not be comfortable in having him come to my house because I don't

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know what he's being exposed to.
Q. And how would you feel about someone else coming to witness your ballot?
A. I still feel the same way. We're learning more and more about COVID and the transmission of it. Again, anytime I'm going to bring somebody to my home or expose myself to somebody, I don't know what their practices are. I don't know how they social distance. I don't know who they spend time around. I don't know if they wear masks. And so I still would not be comfortable with that.
Q. What about having your ballot witnessed by one of your employees?
A. I wouldn't do that as well. We're currently under a directive from my board to work remotely. We're not allowed to go out into the community and do activity. And for me to have one of my employees come to the office to do something that's personal, not work related, I'm not comfortable with that at all. You know, that could -- they might not be comfortable with it. It could be reported back to my board, and it might cause trouble. So I'm not comfortable in having them come in and do anything for a personal matter for me during this time.
Q. And what about having your ballot notarized?
A. Again, that's trying to find somebody who will do it. I'm still not comfortable with that again. I don't know that person. I don't know their experiences. I don't know who they're around,

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and I don't know how they social distance or how they take care of themselves during COVID.

Q. So let's turn to your experience voting in person in July. What time of day did you go to vote in person?

A. It was early morning, early mid morning, sometime around I think 9:00, 8:30 or 9:00 in the morning.

Q. And why did you go then?

A. I just took a chance that I might miss that first rush that comes in at 7:00. People perhaps that had gone to work and maybe there would have been a lull. And when I went, I only observed about four to five people standing out in front of the building. They were not social distancing, and I can't remember if some of them may have had on masks. I can't remember if they were all wearing masks or not.

And then when I went inside, I think there may have been one or two people already in there voting, and I noticed all of the poll workers were there. All of them had on masks. I do recall them. I specifically looked at that. They did have on masks. I did not notice -- no. I noticed that all of them did not have on gloves. A gentleman that actually helped me did not wear gloves, but he did wear a mask.

And while I was in, I observed two women, older women coming in. They were both wearing masks. One thing I didn't notice is that there was no disinfecting or any cleaning. Even as the -- the people who were in when I came in, I didn't notice that

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they did any follow-up wiping or anything behind where they had been. When I went to the table to vote, they had me down as an absentee ballot voter. I explained to them what had happened. And so they told me I would need to sit with the other gentleman to do a provisional ballot. And so I was the first -- I do know I was the first because they had to break the seal on the boxes and everything. So I was the first to do a provisional ballot that day.

Q. And how did you feel about voting in person in July?

A. I didn't want to do it. But after I had messed up my ballot, I tried to -- you know, I took the chance that if it was not crowded, I would attempt to do it. It wasn't crowded. You know, since that time, with the increase in cases and with the big election coming up in November, I think that would be a problem for me.

Q. What is your polling place like on a presidential Election Day?

A. Extremely crowded. Long lines. Easily anywhere from 75 to 100 people at any given time. It's the -- the times that I have been, it's been extremely packed. And I've never not voted in a presidential election, but given COVID and given the way things are now, I just don't see how, with me being high risk, I could put myself at jeopardy to be around that many people at one time. I just don't see it.

And, you know, like I said, I've never not voted in a presidential. But, you know, God forbid that I mess up the ballot again, I plan to take my time. But I just don't see how I could put

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myself at risk for voting. I for the first time in nigh life may not vote in a presidential election. I probably would not vote. I just don't see myself exposing myself for the length of time that it's going to take to vote, and especially noticing when I went in July when there was hardly anybody in the building, that they don't even clean up behind people. They don't disinfect. They don't wipe the counters down, the tables down, the counters down where people are sitting. I didn't see any of that have going on.

Q. Okay. And so I think you've anticipated a few of my further questions. So what is your plan for voting in November?

A. My plan is to vote absentee ballot.

Q. And what would you do if for some reason you couldn't vote absentee ballot or your ballot was delayed?

A. Well, right now, the only other option would be to vote in person. And that's really not an option for me at this point unless there's curbside voting that's allowed. That would be be the only other thing that I could consider at this point.

Q. And how do you feel about curbside voting?

A. I would accept that as an option because I would be dealing primarily with one person versus standing in a line with hundreds of people and waiting for who knows how long out in the elements with those individuals. At least I can remain in my car and just deal with the person who is actually -- or the poll worker and being able to vote.

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Q. And how would you feel about not potentially voting in November?

A. That would be a really hard decision for me. As I said earlier, I've never not voted in a presidential election since I've been able to vote. But when I see what's happened to, you know, family and friends who have COVID and what I'm seeing the results of COVID is, I'm afraid to go and put myself in that type of situation and potentially contract COVID. So it would just -- it would be devastating for me to not be able to vote, but I have to weigh it out. There would be other opportunities. There will be other elections. But if I get COVID and if I succumb to that, I will leave my husband and my two kids, and that's just not an option for me.

MS. THOMAS: Your Honor, I'm just going to check my notes quickly, but I believe I'm read to pass the witness.

THE COURT: You may.

MS. THOMAS: Yes. I'm read to pass the witness.

THE COURT: You are? Okay.

MS. THOMAS: Thank you, Your Honor.

THE COURT: Thank you. Who wants to go first? Mr. Weber? Are you up first? No? Okay.

MR. DUNGAN: Your Honor, this is Patrick Dungan.

THE COURT: Mr. Dungan, you may.

MR. DUNGAN: Thank you.

CROSS-EXAMINATION BY MR. DUNGAN:

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Q. Hi, Ms. Bettis.
A. Hi. How are you.
Q. I'm well. Nice to see you again. Can you hear me okay?
A. I can. Nice to see you as well.
Q. And just as a remainder, I represent the Mobile County Circuit Clerk, Ms. Jojo Schwarzauer in this case. I want to start by touching on a few things regarding your medical conditions. It's true, right, that you have not seen a doctor for your diabetes in over a year, right?
A. That's correct.
Q. And you don't check your blood sugar levels regularly?
A. I do not. However, I do know when my blood sugars are off. I can tell when things are off, when my blood sugar is too low or if it's too high. I have a -- again, to just pay attention to my body so I understand it when changes happen, that indicates that there's something going on with my blood sugar.
Q. So you can just feel it?
A. Oh, yeah, you can definitely feel it.
Q. Now, you have been prescribed medication for diabetes in the past, but you don't currently take any, correct?
A. I do not take any prescribed medications, but I do use over-the-counter supplements for it.
Q. And the same for your high blood pressure. You have been prescribed medication for it in the past, but you currently do not take it?

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A. No, no prescription medicine, no.
Q. In fact, you haven't taken any prescription medicine for the high blood pressure in over ten years, right?
A. I'm trying to think. It's been at least that. It would have been around the time -- may not be exactly ten years. Maybe a little less. Because I'm thinking when I was diagnosed for diabetes, I was still under my former physician. And at that time when she started prescribing the prescription medication for the diabetes, I was still on high blood pressure medication at that time, and she would have diagnosed me with that about ten years ago. And so I remained on that medication maybe about a year or two, the metformin. So maybe about eight years since I have been on any type of prescribed medication.
Q. So that's about eight years since you have been on any kind of prescribed medication for either condition; is that right?
A. That is correct.
Q. And you don't check your blood pressure daily, do you?
A. Not daily. But I do have a blood pressure machine, and I check it routinely. Especially if I get headaches from time to time. My head, if I notice that I have a consistent headache, it's definitely a trigger for me to check my blood pressure.
Q. Other than the diabetes and the hypertension, you don't have any other medical conditions that you believe places you at a higher risk for COVID, do you?
A. Not that I'm aware of, I don't know.

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Q. You don't have a disabled or handicapped tag or placard for your car, do you?
A. I do not.
Q. So sitting here today, would you consider yourself to be disabled?
A. No, I don't consider myself disabled. But I do consider myself living with two conditions that can limit sometimes my daily activities.
Q. Okay. But you're not disabled, right? Okay.
I believe you testified back during your deposition that you have been practicing social distancing since your office closed on March 19, and I believe what you said then was everybody just kind of hunkered down and stayed in; is that right?
A. That's correct.
Q. And you've continued to live like that since March 19, right?
A. That's correct.
Q. Would it be fair to say that March 19, the day your office closed down, was essentially the beginning of the pandemic in your mind at least?
A. Well, it's when it became real for us, yes.
Q. Right. I asked that only because I may ask you some questions today and reference something before the pandemic or during the pandemic. I just want you and I to have an understanding of what that means. So if I say before the pandemic, can we agree that means before March 19? And if I say

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during the pandemic, that I mean since March 19 of this year?
A. Yes.
Q. So you'd agree with me as I believe you testified earlier today that you have avoided leaving your home unless it's for something really important?
A. Yes.
Q. And just for an example, you told us earlier that you've had to go to the dentist a couple of times during the pandemic because of a tooth ache?
A. Yes. It was a tooth where I was experiencing a lot of pain, swollen gums, and it was infected. So I had to get it treated.
Q. And then of course you went to the bank to open an account for work?
A. For work. It was a grant that we were receiving that we had to open a new bank account.
Q. You were able to do that throughout the drive-through, right?
A. Yes.
Q. Didn't you also need to get your board president to sign some papers to set up that account?
A. Yes. He was supposed to go to the bank and sign them, but his work precluded him being able to get to the bank before the bank closed, and the banker asked if any way I could please get him those papers so he could sign and they could get the account open. I made arrangements to meet him outside of his building

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for him to sign that paperwork and take it back to the bank through the drive-through.

Q. So where did you meet him?

A. At his place of business.

Q. How did he sign the paper? Just like on the hood of his car, something like that?

A. Yeah. On the hood. I put the papers on the hood of the car. He had his own ink pen. And he signed the papers.

Q. And I believe you've already testified some about your role as executive director for the Center for Fair Housing and how you've had to go into the office some during the pandemic, right?

A. Yes.

Q. And in fact, as you have said, you have met your bookkeeper at the office about every two weeks since your office closed in late March, right?

A. Yes.

Q. And that's to process payroll and get checks printed?

A. That's correct. And her other accounting duties, financial reports, paying our payroll taxes, just general accounting duties that she does for the center.

Q. And in addition to those meetings with the bookkeeper, you've also gone into the office some for other reasons, right?

A. Yes. But all for work-related reasons.

Q. Aren't there some duties that your administrative assistant usually did before the office closed down that you've since taken

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over?

A. There are some of her duties that I've taken over, yes.

Q. And is that because you don't want your staff to have to come into the office if they don't have to?

A. That's correct.

Q. But you have met with other people at your office besides the bookkeeper, right?

A. Yes, my administrative assistant and one of my board members.

Q. And the IT person?

A. Yes. Mr. Green was there on one occasion, yes.

Q. And which of the board members was it that you met with?

A. Roger Wetloffer.

Q. Is he the one that generally signs the checks?

A. He is not.

Q. Was there another board member that was signing the checks?

A. Yes, there's another board member that signs the checks.

Q. And what was that person's name?

A. Felicia Jackson.

Q. But I believe you said Roger Witlocker?

A. Wetloffer.

Q. Wetloffer. Is he the vice president that's also the CPA?

A. That is correct.

Q. He's been at the office some too while you have been there

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during the pandemic, right?

A. He's been there once with the bookkeeper.

Q. And at least once since the office closed in March, you've been there with those two, the bookkeeper and Mr. Roger is what I'm just going to say because I can't remember his last name well. Those two at the same time, right?

A. That's correct. And our office is a large office. It's about 3,000 square feet. So there's plenty of room to social distance.

Q. Y'all have a large conference room, right, that seats like 30 people?

A. We do. Yes, we do.

Q. So the three of you can kind of spread out in that conference room. Is there like a big conference table in there?

A. It's a series of smaller tables that are on roller wheels that can be moved around.

Q. And you and the bookkeeper and the board member, y'all stayed spread out and wore masks, right?

A. Right.

Q. Now, at that time the board member was there at the office because you needed her to sign checks, right?

A. No. The board member that signs checks, I'm not there at the office when she comes. The checks are left for her to come and sign those once she gets off work.

Q. So this was when the -- Mr. Roger was there. I guess he's the CPA, so he's kind of assisting the bookkeeper with some kind of

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financial matters?

A. Yes. She's a new -- as I said early, she was new. We changed out from our long-time bookkeeper. She was still learning our system and how we do things. She was having some problems within the QuickBooks system, and she needed some assistance to figure out how to get it corrected. And so he came to help her with that.

Q. And I understand you -- I believe you testified earlier that, you know, precautionary reasons, due to the bookkeeper's family member contracting COVID, that she's wanting to stay out of the office for at least a month. So, you know, best case scenario, is it possible that she will resume this every two week coming into the office about mid October?

A. Yes. Depending on what happens at the office and what happens in her household and if they are able to show everybody is clear, you know, and free of COVID, we would do that.

Q. Was it you or the board of the Center for Fair Housing that decided on the 30-day timeline there?

A. It was my recommendation to the board, and they agreed.

Q. Is there any reason why you went with 30 days instead of 14?

A. Well, it's a family -- she, her husband, the daughter that's sick, and I think two other kids. And, you know, to me it makes sense that if they're all in the same household at some point, they all if not some may come down with COVID because they're all

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living in the same home. And so for me, it's an error of precaution to make sure that everybody in the house is clear, nobody else has the COVID. So that's why I went with at least the 30 days before even considering to allow her to come back into the office to do her work.

Q. So you didn't get that 30-day timeline from the CDC or any medical professionals or anything as --

A. No. It's an extra precaution for me because I would be there in the office with her.

Q. I believe you talked a little bit earlier about some of the reasons why you had to leave the house during the pandemic. I'm going to start with I guess when you mentioned picking up food. I believe in your deposition you testified that you would sometimes go get to-go dinner from local restaurants. How does that work? Has that always been in the drive-through? Or have you gone inside to pick up the food?

A. No, generally it's drive-through. I try to pick places -- they like Chick-fil-A. They like Popeyes. You know, I try to choose places where they have a drive-through so that I don't have to get out and go inside.

Q. And in that, when you're in the drive-through there, do you -- how does that process work? Do you hand cash or a debit card to the cashier through the window?

A. I've done both cash and card.

Q. And then I presume they run your card or get your change

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and then hand it back to you; is that right?

A. Yes. That's correct.

Q. And then at some point, they'll hand you a bag with your purchase in it?

A. Yes.

Q. And you mentioned Popeyes and Chick-fil-A. You've also been through the drive-through at McDonald's, right?

A. Yes.

Q. And Hart's Chicken?

A. Yes.

Q. And Wendy's?

A. Yes.

Q. And you've been inside Walgreens to pick up a prescription, right?

A. That's correct.

Q. And you didn't use the drive-through at Walgreens that time, did you?

A. I did not. I'm not accustomed to using the drive-through. So it really didn't register in my mind. I had a paper prescription. It wasn't something that the doctor had called in. Generally, I've always went into a drugstore to pick up prescriptions. So I -- it's a habit. Didn't even think about the fact that they had a drive-through or if they had one.

Q. You've also been to Lowe's during the pandemic too, haven't you?

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A. Yes, I have.

Q. And didn't you take your kids to Shoe Station to get some shoes during the pandemic?

A. I did.

Q. And I believe you also went to Marshalls after the retail stores opened back up?

A. Yes, I did.

Q. And you've been to the post office to check the P.O. Box for work?

A. Yes.

Q. That's at the post office branch in Bel Air mall, correct?

A. That's correct.

Q. Before the pandemic, you would typically go to the grocery store several times a week; is that right?

A. Yes. I could almost go every day on some occasions some weeks.

Q. But during the pandemic, you have cut back those trips to once or twice a week?

A. Yes.

Q. And as we discussed a few weeks ago, you either go to the Piggly-Wiggly that's near your house, the midtown Publix that's on Florida Street or Walmart on the Belt Line; is that right?

A. That's correct.

Q. Now, when you go to the grocery store, I presume you're wearing a mask, right?

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A. Yes, I am.

Q. And do you see -- what is it like? Are there other customers inside the store?

A. Yes.

Q. Are those customers wearing masks?

A. On occasion, they are. Some are not. Especially prior to the governor's mandate to wear masks, it was not an uncommon thing to see people in stores without masks before the mandate.

Q. But would you agree with me that it's gotten a lot better since that mask mandate came out, that predominantly you see more folks wearing masks in the stores now?

A. Yes, you do see more people wearing masks now.

Q. And when you are shopping for groceries, do you ever come into close physical proximity to other customers and employees of the store?

A. Occasionally, you do. Most of the time if I see an aisle that's crowded, I try to go down another aisle until I can -- you know, and maybe circle back around and see if that aisle has cleared out.

Q. And then when you are ready to check out, put your groceries on the conveyor belt. You walk up. I'm assuming you either give cash or a debt card or credit card of some sort to the cashier; is that right?

A. That's correct.

Q. And you don't -- you've never been -- you don't have the

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ability to do the touch-less payment with your phone?

A. No. I'm not into that, hadn't become that advanced to do that. I still prefer either the cash or the card.

Q. Have you looked into that since we talked last few weeks ago?

A. I have not. I -- I'm really not comfortable with having set up something like that on my phone. I have lost my phone on occasions before. And to know that I have that on my phone, if I've lost my phone and someone could just take my phone -- no. I'm still not that comfortable in using that type of process.

Q. Fair enough. During the pandemic, have you ever gotten groceries delivered to your home?

A. No, I have not. And the reason that I don't do delivery -- I have looked into that. But, you know, I am the primary bread winner in our household. It's a family of four. And by the time I was looking at what the fees would be to have groceries delivered, that's money that I could put towards buying groceries to feed my family. So it's not feasible for us where we are right now to be able to pay those delivery fees for our household. That's not an option for us.

Q. Well, you've also never done the curbside pickup at Walmart or Publix, have you?

A. No, I have not.

Q. Are you aware those are free services?

A. Yes. We have talked about that before, so I am now aware of

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that. However, as I explained before, you know, I just prefer to pick my own groceries. I don't want other people picking my meats and my vegetables and my food that I feed to my family. I prefer to make those selections myself. That's what I'm most comfortable with.

Q. So you'd prefer to go inside even during the pandemic so that you can pick your own meat and produce in person even when there's a curbside pickup option available?

MS. THOMAS: Objection. Assumes facts not in evidence. It hasn't been established that curbside is available for these grocery stores.

MR. DUNGAN: I believe that she just testified that she is now aware of it.

THE COURT: Overruled.

MS. THOMAS: She said based on your questioning, not based on her independent knowledge.

THE COURT: I'll overrule the objection.

Q. (BY MR. DUNGAN:) You can answer, Ms. Bettis. I'm not sure if you did.

A. Will you rephrase? I'm sorry. Will you repeat the question?

Q. Sure. I just wanted to I guess confirm my understanding that it's so important for you to be able to pick your own meat and produce and things like that in person even during the pandemic and even if there is a free curbside option available for getting those groceries?

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A. That is my preference, yes. Because once I get home and I got something in my bag that I don't want, then guess what? I got to turn around and come back to the store and return that merchandise.

Q. And you testified earlier when I first started questioning you that since the pandemic started, you have only left your home for things that are really important?

A. Yes, that's right.

Q. So I know that we discussed earlier that you did vote in the primary runoff election on July 14 of this year, and you voted in person. Just to confirm, you filled out the application to vote absentee in that primary runoff, right?

A. That is correct.

Q. And you made a photo copy of your ID and sent it in with your application, right?

A. That is correct.

Q. You received an absentee ballot back in the mail?

A. That is correct.

Q. You filled out that absentee ballot, right?

A. I did.

Q. You got two witnesses to sign your absentee affidavit, did not you?

A. I did at that time, yes.

Q. And one was your husband, and one was his nephew who does not live with you, right?

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A. That's correct.

Q. And your nephew came inside the house, right?

A. That's correct.

Q. Was he wearing a mask?

A. He was wearing a mask. And he did come into my home. However, I still wasn't comfortable with that, as I testified earlier. Trying to get my ballot witnessed, it was at my husband's suggestion. And again, the reason I'm uncomfortable is because I do not live with him. I don't know what his practices are. I don't know if he would normally wear a mask. He wore a mask because we said that he had to wear a mask. But outside of that, I don't know if he regularly wears a mask or not.

Q. But you never mailed that ballot in. I understand, I believe you had testified there was an issue with the envelopes and you accidentally sealed the wrong one?

A. Yeah.

Q. At that point, you felt it was too late to get a new one. Did you happen to call the absentee office and ask them if there was any way that you could still vote absentee?

A. I did not.

Q. And so when you went to vote in person on July 14, can you just kind of describe the building that your polling place is in?

A. Yeah. It's the Sunlight District Auditorium. And so in previous years, when I have went there to vote, when you enter into the building, you go off to your right, and there's a smaller

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room where everybody is usually set up. On the 14th when I went in, they were actually over in the auditorium portion, which is the big, wide, open space. I can't even begin to -- it's -- you know, thousands of square footage wide. It's an auditorium.

And so I went in there to make my voting. And as I had testified earlier when I first got there, I did observe about four to five people kind of in a huddle just talking outside of the building. I can't remember if everybody had on a mask. But it seems like some of them may have had on masks. I did notice that they were not social distancing, though. They were too close to be social distancing. And when I went in, I observed that there were a couple people already in there that were voting. And I did notice as I looked around that the poll workers were wearing masks. I know the gentleman that assisted me was not wearing gloves. He did have on a mask. But he was not wearing gloves. I know there was one other lady that came over to help him with getting the provisional ballot information together. She was wearing a glove and a mask. While --

Q. Let me ask you, Ms. Bettis, about the folks you saw outside that you said weren't social distancing. Do you know any of those people personally?

A. No, I didn't know any of them.

Q. So you don't know, but it's possible they could all be in the same family or live in the same household?

A. I don't know. They all appeared to be seniors, senior

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citizens. I don't know that they all lived together or not.

Q. But you don't know that they don't either, right?

A. No, I don't.

Q. Okay. You believe that public libraries would be an ideal place to go make a photocopy of your ID; is that right?

A. I don't remember testifying to that. You asked me, do I believe that?

Q. Yes, ma'am.

A. I don't remember having said that I did.

MR. DUNGAN: Joy, can you pull up Ms. Bettis's deposition, page 109. Go back up just a little bit. Start right there at line 10 where it says "for example."

Q. Can you see that, Ms. Bettis?

A. Yes. Oh, that's too big. Okay. That's good. Can you just give me a moment to read, please?

Q. Sure. Can you read it out loud, Ms. Bettis? Just that one sentence?

A. Okay. But so I can get a context what we're talking about, do you mind scrolling back up?

Q. Sure.

MR. DUNGAN: Joy, can you do that?

A. That's good. Okay. And I'm starting at number 5. "When making a copy of my driver's license, I did in fact use that copier. But however that's not my personal property. And so going forward, to be able to continue, when you're going to be

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requesting an absentee ballot, to be able to do that for example, here in my area, the libraries are still closed. That would be an ideal place that you would go -- that would be the ideal place that you would go and make a copy, but we don't have access to that." Do you want me to stop there?

Q. Yes, ma'am. Thank you.

MR. DUNGAH: You can take it down.

A. Okay.

Q. So is that true? You believe libraries would be the ideal place to get a photocopy of your ID?

MS. THOMAS: Objection. Outside of the scope of direct. We didn't discuss photo ID as part of her direct examination.

THE COURT: Overruled.

MR. DUNGAN: Your Honor, I'm -- thank you.

Q. My next question was going to be, do you also believe that a library would be an ideal place to get your absentee ballot affidavit notarized?

A. Not necessarily, no.

Q. And I'm not necessarily talking about going inside to do so. Did you know that the Mobile Public Library is offering free curbside notary service?

A. Did I know that?

Q. Yes, ma'am.

A. Not at the time of testimony, no.

Q. You mean not at the time of the deposition. I'm talking

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about today?

A. I'm saying -- yeah, the deposition. Do I know that today?

Q. Yes, ma'am.

A. I'm not aware that they're doing it today.

Q. If that was the case, say for example at the Ben May main library downtown or the Toulminville branch on Stanton Road or Saraland branch or one of these branches close to your house, would you consider getting your absentee ballot witnessed using this free service by the library at curbside with one individual?

A. At the curbside with one individual?

Q. Yes, ma'am.

A. To have my ballot notarized?

Q. Yes.

A. I don't know. I don't -- I don't know. I'm not certain.

Q. I believe you testified earlier that you would accept curbside voting as an option because you would only be dealing with one person and you'd be in your car. So I'm just trying to find out if there's a difference in your mind between curbside voting and getting your absentee ballot affidavit notarized for free by someone from the Mobile Public Library in kind of that same manner, in your car?

MS. THOMAS: Objection. Objection, asked and answered.

THE COURT: Overruled. I want to know the distinction, if any, that Ms. Bettis is making.

THE WITNESS: Between doing the curbside voting and doing

the curbside -- having my ballot notarized curbside at the library?

THE COURT: Yeah, but just dealing with one person. How is that different from either voting curbside or going through a drive-through and dealing with one person?

THE WITNESS: I guess there may not be a difference. I had not -- when asked that, that's something, one, I didn't know that that was an option. I had not even thought about that as a potential option to have it done curbside at the library. I didn't know the library was offering that. So when he asked me the question, it kind of threw me off guard there. Yes, I -- that could be a potential option. If it's curbside and it's dealing with one person, then, yes.

Q. (BY MR. DUNGAN:) So if you weren't aware of that service being provided, I guess, does that mean Black Voters Matter didn't tell you about that?

A. I've not had a discussion with them about that, no.

Q. And no one from NAACP let you know that information?

A. No, I've not had a discussion with nobody from the NAACP. It may come up -- we have an executive committee meeting on Tuesday, and it may come up then. But prior to my giving this testimony today, no, I had not had that conversation with anybody.

Q. You believe the upcoming election this November is really important, don't you?

A. Yes, I do.

Q. And I believe you've testified that you can't go vote in person during the November 2020 election because of your -- there's a fear of you putting yourself at greater risk of contracting the coronavirus if you were to go vote in person; is that right?

A. That is correct.

Q. Do you plan to vote absentee in the November election?

A. Yes, I do.

Q. Have you already mailed in your absentee ballot application?

A. I have not. But I have sent off my request for it.

Q. You have sent off a request for an application?

A. Yes. You have to request the absentee ballot. You have to request it.

Q. Right. That's with -- that's the application, right? You send the application in, and then they send you the ballot back?

A. Yes.

Q. So have you filled out the application? You submitted that application?

A. The application for the ballot? Yes.

Q. Okay. Are you aware that you can print an absentee ballot off the internet? I'm sorry, the application for the absentee ballot off the internet?

A. Am I aware of that, yes. That's how I did it before.

Q. Okay. Do you understand that the election started last Wednesday?

A. No. Here in Alabama?

Q. Yes, ma'am.

A. No.

THE COURT: I think what he means, ma'am, is do you understand or do you know if people could start voting absentee beginning last week?

THE WITNESS: Oh, no, I did not -- I was not aware of that.

MR. DUNGAN: Thank you for clarifying that, Judge.

Q. Right. I was going to ask, Ms. Bettis, if you knew that you could go to the absentee election office during their regular business hours and submit your application, hand them your photo ID, they'll make a copy of it right there, and then they will witness or notarize your affidavit, and you can fill your ballot out right there in the office and hand it back to them, and you have voted? Were you aware that that was an option?

A. No, I really wasn't, no.

Q. Is that something that you would consider doing?

A. No. I really would have preferred to do it just the way I did. Request my ballot and mail it back in, the application.

Q. Why is it that you wouldn't want to go in person there at the absentee election manager's office?

A. Again, it's another reason that I have to go outside my house. When I can request it, they'll send to me in the mail, I can put -- you know, put postage on it, and I can just drop it in a post office box, and I don't have to deal with anybody.

Q. So if you were going in and there's a limited number of people allowed in the building, everyone's wearing masks, social distancing required, there's glass between you and staff at the absentee election manager's office, would you feel less safe being there than you do dealing when you're in Publix, Walmart, Marshalls, Shoe Station, Hardee's, or Lowe's?

A. It's one more trip that I would have to make outside of my house unnecessarily to go down there and do that. You have to find somewhere to park. And yes, I am, even if it's limited people, it's still another exposure, and why couldn't I simply mail it in.

Q. Well, you can certainly mail it in. But I believe that you've been challenging the witness requirement and saying that having to get another person to witness your ballot affidavit is what you fear is a burden to you because it puts you at greater risk of contracting COVID. So I'm just trying to see if there's a way you would feel more comfortable going to the absentee election manager's office like that with all of those safety protocols in place in a similar manner --

A. Again -- again, I still -- I don't know those individuals. I understand that they have safety protocols in place. But again, it's another trip outside of my house. It's not easy to finding parking downtown. I'm still having a witness, whether it's a witness that I had to go find or it's a witness that they have there, you're still having to have it witnessed. So I would prefer to do it

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the way that I've done it, which was to mail it in and make my request for my application.

Q. Ms. Bettis, you're here in your individual capacity; is that right?

A. That's right.

Q. So you're not in this case on behalf of the Center for Fair Housing?

A. No, I am not.

Q. Is it your understanding that as the executive director of the Center for Fair Housing that you sometimes speak on behalf of that organization?

A. Yes, I do. That's a part of my duty.

Q. But you're not doing that in this lawsuit, right?

A. No. This has nothing to do with the Center for Fair Housing.

Q. Are you speaking today on behalf of Black Voters Matter Capacity Building Institute?

A. I'm speaking on behalf of myself today. The Black Voters Matter is a partner that my organization has partnered with to do Get The Vote Out activities. But I'm speaking on behalf of myself today.

Q. Are you a member of Black Voters Matter?

A. I don't know if it's necessarily a member, but we're partners through my organization. We partner with them.

Q. Do you know Cliff Albright?

A. I do know Cliff Albright.

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Q. And how do you know him?

A. I met him through Latosha Brown, who I've known since hurricane Katrina.

Q. Have you spoken to Mr. Albright since this lawsuit was filed?

A. I have not spoken with him. I had -- as far as a verbal conversation -- I've received an email from him a while back in March.

Q. Have you ever told Mr. Albright about your health conditions?

A. No.

Q. Has Center for Fair Housing ever conducted any voter education activities in Mobile County in this year, 2020?

A. No.

Q. I believe you testified earlier that Center for Fair Housing has received funding from Black Voters Matter. When was that? When did Center for Fair Housing receive that funding?

A. I think that may have been around 2016. '16, '17, and then I think again in '18. And that was the last that to date that we've gotten anything from them.

Q. And likewise, has Center for Fair Housing received any funding or grants or anything of the sort from NAACP?

A. No.

MR. DUNGAN: Your Honor, if I can just have a few seconds to view my notes, I may be ready to pass.

THE COURT: You may.

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MR. DUNGAN: Okay. I'm ready to pass this witness. Thank you, Ms. Bettis. Stay safe.

THE WITNESS: Thank you as well.

THE COURT: Thank you, Mr. Dungan. Mr. Cowell, Mr. Weber, either of you have questions for this witness? Mr. Weber.

MR. WEBER: Yes, Your Honor.

CROSS-EXAMINATION BY MR. WEBER:

Q. Good morning, Ms. Bettis. I have just a few follow-up questions from Mr. Dungan's questions. The first is a little bit indelicate, so please excuse me. You are not over the age of 65, are you?

A. I am not.

Q. In fact, I believe you are 51 years old; is that correct?

A. That is correct.

Q. The medical conditions that you outlined before, your diabetes and high blood pressure, normally, outside the context of the pandemic, do you have any difficulty accessing your normal polling location?

A. No. Outside of the pandemic? No.

Q. So you're able to walk in and out of your normal polling location without assistance; is that correct?

A. That's correct.

Q. Now, Ms. Bettis, you have lived in the -- in Prichard, Alabama for a long time. You have several relatives in that area; is that

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correct?

A. That's correct.

Q. Plenty of cousins and other relatives in Mobile County, correct?

A. That's correct.

Q. And you also have friends in the area of whom you could ask a favor; is that correct?

A. Possibly, yes. I don't tend to ask favors, but possibly.

Q. You discussed before your activities in your office since March 19. There have been times when you've been in your office with two or more other people present, correct?

A. Yes, my administrative assistant, my bookkeeper, and one of my board members, Mr. Wetloffer. Oh, and my IT person, Mr. Green.

Q. I wanted to briefly go over the instance you discussed where you had...

A. Could you repeat that?

THE COURT: Yeah. Mr. Weber you faded out. Meeting with a board member outside of the office. Please rephrase.

Q. (BY MR. WEBER:) Yes. Ms. Bettis, I want to briefly cover the instance where you had your board president sign paperwork outside of his workplace. That happened in June, correct?

A. Approximately, yes.

Q. And you needed to set up a bank account for your organization; is that correct?

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A. Yes, for a new grant.
Q. And the board -- as part of that paperwork, the board members needed to sign signature cards to set up that bank account, right?
A. Yes, that's correct.
Q. And so the board president could not make it to the bank prior to closing, so the bank gave the paperwork to you to bring to the board president; is that what happened?
A. Yes, that's what happened.
Q. And you got ahold of him and coordinated to meet him outside of his business in downtown Mobile?
A. Yes, that's correct.
Q. You placed the paperwork on the hood of your car?
A. Yes, I did.
Q. He came out, he signed that paperwork on the hood of your car?
A. Yes, he did.
Q. And then you took that paperwork that he signed and returned it to the bank; is that correct?
A. That's correct.
Q. Okay. Thank you. I want to talk about just a few of your other activities during the pandemic. Mr. Dungan covered that pretty thoroughly. You go about every other week to the post office to check the P.O. Box; is that correct?
A. Yes, that's correct.

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Q. And normally there are two post office employees working at that location; is that correct?
A. One to two. Never -- I've not seen since the pandemic more than two in there at any given time.
Q. With regard to the Father's Day celebration that took place outside in your yard?
A. Yes.
Q. Am I right there were about eight people over for that event?
A. Let me count them out. Let me think. Yeah, I think it was eight of us altogether.
Q. And your brother --
A. Well -- yeah. Yeah.
Q. Your brother-in-law has been to your house twice since March; is that correct?
A. Let me think. I think, yes, when he was in town. He works out of town. And he came by to see my husband, which is his brother.
Q. You mentioned that you have two surrogate mothers, friends in their 80s who you are close with; is that correct?
A. Yes, yes.
Q. And you have been to visit them at their residences during this pandemic as well; is that correct?
A. That I have visited them?
Q. Yes.
A. I have talked with them on the phone.

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Q. Ms. Bettis, I'd like to -- so is it your testimony --
A. I'm trying to think back.
Q. Is it your testimony --
A. If I have visited, it may have been maybe once or twice, but typically, no, not during the pandemic. One, because they are susceptible themselves.
Q. All right, Ms. Bettis. I'm going to share my screen and show you --
A. Sure.
Q. -- deposition. Does that refresh your recollection as to whether you've been there?
A. Okay. Yeah.
Q. All right. Would you mind reading page 80, lines 1 through 10.
A. Sure. "Since the middle of March, I have been to a family -- twice I think maybe the two women that I spoke to you about who are like second mothers to me for short visits just to check on them to see how they are. One, I was trying to remember, inside the home, and the other I think was just from the car because she was sitting outside on her porch and just checked to see. But other than that, no." Yes.
Q. Take that down.
A. Okay.
Q. Your husband, am I correct that he gets together with his friends on a regular basis?

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A. Yes.
Q. I briefly want to cover the July election and how you completed an absentee ballot for that.
A. Okay.
Q. You said your husband and his nephew witnessed your ballot, correct?
A. That's correct.
Q. And am I right that you're testifying today that you no longer consider that an option because you're not aware of where -- what practices your nephew has been taking and also that he's been ill recently?
A. He has not been ill, but he has a brother that has moved back to Mobile who is residing with him. And it is our understanding that he is sick, but nobody is saying what the illness in. So for me then, I would not have him to come back and witness for me because I don't know what type of illness his brother is experiencing and what he is exposed to.
Q. With regard to the witnessing in July, did your nephew come within six feet of you when witnessing your ballot?
A. He actually dealt more with my husband than with me. I gave the ballot to my husband, and he came -- I would say that he probably came within six feet of my husband.
Q. Have you tested positive for Coronavirus since that time when he witnessed your ballot?
A. No, I have not. But I've not been tested, either.

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MR. WEBER: Thank you. I have no further questions.

THE COURT: Thank you. Mr. Cowell, do you have any questions?

MR. COWELL: No, Your Honor.

THE COURT: Thank you. It's 10:30. Let's stop here, Ms. Thomas, unless you only have very, very short redirect. But let's take our morning break now would be my preference, and then you can do your redirect when we get back. Is that okay with you?

MS. THOMAS: Yes, Your Honor.

THE COURT: Thank you. Let's return at 10:47 everyone, please. Thank you very much. Bye-bye.

(Recess.)

THE COURT: Let's go forward with the redirect. Ms. Thomas, you may begin when you're ready.

MS. THOMAS: Yes, Your Honor.

REDIRECT EXAMINATION BY MS. THOMAS:

Q. Hello, Ms. Bettis.

A. Hello.

Q. I'd like to go over some of the subjects that were discussed on cross with you just very briefly. Have you had anyone over to your house since your nephew witnessed your ballot in July?

A. No.

Q. And have you known folks who have gotten sick with COVID since then?

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A. Yes.

Q. And how many people have you known?

A. Since July?

Q. Yes. Yes, ma'am.

A. That would be my girlfriend, long-time girlfriend. Gosh. I'm trying to remember was that in July. I think the two older ladies who are like mothers to me and the bookkeeper's daughter.

Q. And has knowing these people who have gotten sick informed your opinions about COVID?

A. Informed my opinions?

Q. Yes. About COVID-19?

A. Yes. I think it's made it real even more so for me. So yes, it has.

Q. And did the experience of knowing individuals who have been sick with COVID go into your 30-day recommendation to your board regarding your bookkeeper?

A. Yes. You know, we're still not quite sure how the two older women contracted it. So definitely, as a safety precaution, I asked that of the board, I made that recommendation that we do least 30 days.

Q. And do you recall being asked questions on cross-examination about having your ballot notarized?

A. Yes.

Q. And do you understand that that would still be an absentee ballot?

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A. Yes. Yes.

Q. And you tried to vote absentee in July; is that right?

A. Yes, I did.

Q. And is it right that having problems with your absentee ballot in July is one of the reasons why you're considering curbside?

A. Yes. There is some noise in the background. I don't know if you all hear that. But it's impeding my being able to -- I don't know. It's like somebody's moving around.

Q. I hear the noise. I think we just have to work through it.

A. Okay.

Q. So I'm not sure if my question was answered. So I'll repeat it. Is one of the reasons why you'd like to vote, potentially vote curbside just because of the problems you have had voting absentee?

A. Yes.

Q. And I believe you testified that another reason you might want to vote curbside is because of delayed mail?

A. That's correct.

Q. And why is that?

A. The concern would be that my ballot, either I wouldn't get the application back in time or something would impede my being able to have my ballot arrive in time.

Q. And you were asked further questions about using services at the Mobile library. Do you recall that?

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A. Yes, I do.

Q. Okay. And do you receive any updates or formal communication from Mobile County?

A. Through the NAACP. And if you're speaking of the health department, I do receive a daily report from the board -- from the president for the NAACP chapter here in Mobile.

Q. And have you received any information directly from Mobile County regarding notary services at the library?

A. No, not that I'm aware of. I have not seen that.

Q. Have you received any communications directly from Mobile County about in-person absentee voting?

A. No.

Q. Do you recall being asked about conversations that you've had with Cliff Albright?

A. Yes, I do.

Q. Do you know an April Albright?

A. Yes. That's his wife.

Q. And to your knowledge, does April Albright have any relationship with Black Voters Matter?

A. I know her husband is a cofounder, I know that she supports the work. I don't know if she has any official role with Black Voters Matter.

Q. And have you talked to Mrs. Albright about your health conditions?

A. I did when I initially spoke with her about the case.

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Q. Do you recall being asked questions about going into your office and other folks being in the office?

A. Yes.

Q. Have you ever had more than two other people in the office with you?

A. No.

Q. And when was the last time that there were two other people in the office with you?

A. Oh, it was a while back. I'm sorry that I can't remember the exact time. The last time -- maybe in July. I can't remember. It's been a while back.

MS. THOMAS: I'm just going to check my notes, Your Honor, and then I think I may be able to pass the witness.

THE COURT: Thanks.

Counsel, are you done?

MS. THOMAS: I'm just doing a quick check.

THE COURT: I'm sorry.

MS. THOMAS: I believe I'm done. I'm ready to pass the witness, Your Honor.

THE COURT: Thank you. Recross, Mr. Dungan?

MR. DUNGAN: Very briefly.

RECROSS EXAMINATION BY MR. DUNGAN:

Q. Ms. Bettis, Center for Fair Housing, would you say that Center for Fair Housing is a partner of Black Voters Matter?

A. Yes. The organization that partners with them for Get The

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Vote Out activities, yes.

Q. But Teresa Bettis is not a part of Black Voters Matter, right?

A. I don't think -- I wouldn't say that because the funding -- the work that we've done has been through the center.

MR. DUNGAN: That's all I have, Your Honor.

THE COURT: Thank you. Mr. Weber?

MR. WEBER: No questions, Your Honor.

THE COURT: Thank you. Ms. Cowell?

MR. COWEL: No questions, Your Honor.

THE COURT: Thank you. Ms. Bettis, looks like you are done. Have a good day and a good week, ma'am.

THE WITNESS: Okay. Thank you.

THE COURT: Thank you. Who is up next for the Plaintiffs? Is it Mr. Porter?

MS. ZARAGOZA: Yes. Good morning, Your Honor. This is Liliana. Let me just -- I will --

THE COURT: Ms. Zaragoza, good morning. How are you?

MS. ZARAGOZA: Good morning. How are you? Doing well. Thank you, Your Honor. Mr. Porter -- if you will allow me just one moment, Your Honor, just to make sure that we're connected to audio properly.

Mr. Porter, I can see you on video, and I know you were having a little trouble connecting to audio. Could you try to speak to so we can test it if that's all right?

THE COURT: Mr. Porter, can you say something if you can

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hear us?

MS. ZARAGOZA: I think Mr. Porter is having trouble hearing us. I'm communicating with him via text. I will give him a call from my cell phone here for just a minute, Your Honor.

THE COURT: Okay.

THE COURT: Mr. Porter, good morning.

THE WITNESS: Good morning, Judge.

MS. ZARAGOZA: Thank you for your patience, Your Honor.

THE COURT: Oh not a problem at all. Mr. Porter, could you please raise your right hand so Ms. Humphrey can swear you in, please.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: My name is Howard Porter, Jr.

THE COURTROOM DEPUTY: Could you spell it for me, Mr. Porter.

THE WITNESS: Howard, H-O-W-A-R-D. Porter, P-O-R-T-E-R. Jr. That's J-R period.

THE COURTROOM DEPUTY: Thank you. What city and state do you reside in, Mr. Porter?

THE WITNESS: I reside in the city of Prichard, the State of Alabama, County of Mobile.

THE COURT: Ms. Zaragoza, your witness.

MS. ZARAGOZA: Thank you, Your Honor.

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HOWARD PORTER, JR.,

duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MS. ZARAGOZA:

Q. Good morning. I think it's still morning, Mr. Porter.

A. Thank you. It is. Good morning.

Q. Wonderful. Good morning. So since you have already stated your name and where you live, I'm going to jump a little bit to how old are you, Mr. Porter?

A. I am 70 years old.

Q. How do you identify in terms of your race?

A. I am a member of the human race. But in most instances, I cut it short and just say that I'm an African-American.

Q. Okay. Mr. Porter, are you registered to vote in Mobile County?

A. Am I interested in voting in Mobile County.

Q. Excuse me. I just want to make sure you can hear me okay. Are you registered to vote in Mobile County?

A. Oh, yes, yes, yes. Yes, I am.

Q. And when did you first register to vote in Alabama?

A. In 1972.

Q. Okay.

A. In January of '72.

Q. Okay. And can you describe for the Court your educational background?

A. I finished high school, Blount High School in Prichard in

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1968. I went on to Dillard University in 1968 and left in January of 1972 and then enrolled in the University of South Alabama and subsequently got a bachelors in economics and a minor in business management studies in '75. Subsequent to that, I entered Miles Law School in 1981 and finished in 1985 with a juris doctorate.

Q. Thank you, Mr. Porter. Are you currently employed?

A. No, I'm not.

Q. Okay. When is the last time you were employed?

A. It's been about 10 or 12 years or so now.

Q. Okay. And where did you last work?

A. I last worked for the Fair Housing Agency of Alabama.

Q. Okay. And about how long did you work there?

A. I worked there for about 10 years, 12 at the most.

Q. Okay. Why did you leave?

A. I left for two reasons. One was a medical condition, physical. And the other was a lack of funding from the federal government.

Q. Okay. And you mentioned those medical conditions. What were those?

A. Asthma since the age of 13 and the -- a double knee replacement at that time.

Q. Okay. And let's see. So have you been retired since then?

A. I have. I initially was on social security disability. And when I got to be 65, I went to straight social security.

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Q. Okay. Now, you mentioned -- you jumped ahead a little bit. But when you left your employment, you mentioned two knee replacements. Were there any other reasons in terms of your health condition at that time that you left your work?

A. Those were the primary conditions. Also, I had prostate cancer.

Q. Okay. And, Mr. Porter, do you live with anyone?

A. Yes, I do.

Q. Okay. With whom do you live?

A. My wife of 46 years and my eldest son, who is 39 years old.

Q. Is your wife employed?

A. No, she's not.

Q. Okay. Is your son employed?

A. Yes, he is.

Q. Okay. And what does he do?

A. He's a -- by all indications, he's a shipping clerk for a local bottling company, Buffalo Rock.

Q. Okay. And, Mr. Porter, you started to mention a little bit of your medical history. You mentioned that you had asthma. Do you have any other current medical conditions?

A. Yes, I do. In addition to asthma, I have several things that's wrong that's concomitant with Parkinson's disease. I was diagnosed with Parkinson's about tw0-and-a-half years ago. And with that, I have cognition problems, and I have -- I have several things that's wrong as a result of Parkinson's in addition to

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cognition. Also pain. It's painful. And I think that's the bulk. Excuse me. Also with that is depression and anxiety.

Q. Mr. Porter, does your Parkinson's affect your ability to ambulate?

A. Yes, it does. That's what brought on the diagnosis. I was starting to rather frequently fall when I was trying to work. And after talking with the neurologist -- in fact, two neurologists, they told me that what was happening was that one leg was freezing, and the leg that was not freezing would try to overcompensate, and thereby, gravity did its thing. I fell either to the floor or to the ground. And when that happened, if I had help getting up, that's the only way I could get up. Then I could just start walking.

Q. Okay. Do you take any medications for your Parkinson's?

A. Yes, I do. I take Levodopa carbidopa, which they say is the Cadillac of the treatment for Parkinson's. It's the gold standard. And I take liprotine, and I also take incompatine. I think it's something like that. And both of those medicines are supposed to increase the off times or help to extend the time that Parkinson's become active again.

Q. Understood. Do you have health insurance, Mr. Porter?

A. Yes, I do.

Q. Okay. And what is that?

A. I have -- the only health insurance I have is Medicare.

Q. Okay. Do you use any mobility aids, Mr. Porter?

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A. Yes, I do. Since the knee surgeries, I've had to use a walking cane. And for a long time, it has worked well. But when I started to fall tw0-and-a-half years ago, I had the cane, and that's when the diagnosis started. And the other medications was placed to help with that.

Q. Okay. And how do you get around inside your home?

A. I walk. Most of the time, I have to have the cane. But sometimes I can walk because they're not great distances, to the wall or to furniture, then I can kind of lean on the wall or get a distance from a piece of furniture in the house.

Q. Okay. Now, Mr. Porter, does your family have a vehicle?

A. Yes.

Q. Okay. Does your vehicle have a disability license plate?

A. My vehicle does. It is inoperable at the moment. But it does have the handicapped plate. I also have a placard when I ride with somebody else, my wife or my son, and the placard is in the car so that it will allow me to allow the car to be parked in a handicapped please and not have to go a great distance to get into the building.

Q. And so you mentioned that when you ride with your wife or your son. Does your wife have a vehicle?

A. Yes, she does.

Q. Okay. Does your son have a vehicle?

A. Yes, he does.

Q. Okay. So, Mr. Porter, I'm going to turn -- I'm going to switch

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subjects a little bit to COVID-19 and the experience the last two months. Are you familiar with COVID-19?

A. Yes, I am.

Q. And how did you personally become familiar with COVID-19?

A. I first heard in a general way about COVID on the news and different publications. But it wasn't long before I got a very, very close relationship with COVID-19 and a very direct understanding.

THE COURT: Mr. Porter, can you repeat the last part of your answer, please. I can -- let me prompt you. You told us about general familiarity with different publications. And then you started saying it was not long before you got very close with it and a very direct understanding.

THE WITNESS yes, sir. What brought that on was my sister, my only sister, contracted COVID-19. She entered the hospital, and initially they told her that she did not have COVID. And they released her and one week later, she was back in the hospital with COVID. And before the hospital, she was not on dialysis. But while there, she was placed on dialysis, and she also went through dementia, a very horrible disease as well.

And while she was hospitalized, my uncle, my only surviving uncle on my dad's side, my only surviving uncle, period, contracted COVID, and he was hospitalized for a total of 82 days. And within 82 days, that's when I really, really began to

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understand what COVID meant. He had been a pillar of the community, a lot of faith for African-Americans in the community, well-trained, well-discipline, ran a newspaper, also was a public information officer for Northwestern University, and came back to work at Bishop State for a long time and started his newspaper after that.

And it just was a great loss. And the most deafening thing about his passing was that even after rehab for about close to 80-some-odd days out of the hospital, he succumbed to COVID-19 on my birthday, on my 75th birthday. And so that's something that I would have to contend with for every birthday from now on. We were very, very close. And we worked on different projects together, and he gave me good wisdom and counsel. And I don't have that now because of COVID.

Q. (BY MS. ZARAGOZA:) Mr. Porter, I'm very sorry for your loss, and I'm sorry that I have to ask further details. But you testified that soon after you learned about COVID, your sister contracted COVID-19. Do you remember about when that was when she first contracted COVID-19?

A. Yes. That was in March, about mid to late March. And my uncle contracted COVID in around April.

Q. Okay. So you've testified that you've personally, you've had family members who have contracted COVID-19. And just to clarify for the record, and apologies, Mr. Porter. I'm having a little bit of trouble hearing. I'm hearing --

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A. Okay. I'll try to adjust to that.

Q. No, I appreciate that.

A. Sure.

Q. And so just to make sure that I understood your testimony correctly, you mentioned your uncle had been in the hospital for 82 days and that he had left but that he subsequently passed away?

A. That's correct.

Q. Okay. And your sister first contracted COVID-19 in March. How did that impact your behavior?

A. It was traumatic. Because at that time, COVID was raging and continued to rage during her hospital stay. And of course, when she got dementia and several other problems, I started to think about the fact that no one from the family would be there to hold her hand as she exited this life. And I -- after that, I started to even think that, wow, she -- there's no funeral to be planned, because there was no funerals allowed. And backups at the mortuary, they were backed up for cremations. And so, you know, the coming into life and the exiting of life both can be painful. And you have to start to face those things.

Q. Mr. Porter, in March, so your sister contracted COVID-19. And then are you familiar with Governor Ivey's stay-at-home order that was issued around that time?

A. I am.

Q. And how did you respond to that?

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A. I responded directly. I tried to respond completely with it. Because shortly -- all in the midst of this, around the same time, it became clear to me what COVID was, the effects that it has not just on the individual who is suffering but also on the families and communities. And that's a heavy burden. That's a very, very heavy burden. And I read that a lot of people would not obey by the restraints that have been issued that would actually work until somebody close in their family contracted COVID. That it's something personal when that happens. It's very personal.

Q. Okay. Mr. Porter, did you leave home after March?

A. No. I had a doctor's appointment on March 13th. And that was my last time going out until in, you know, late June.

Q. Okay. And between March and June, you did not leave the home at all?

A. No. No. By then, I was -- I was convinced that my body could not deal with COVID-19. Being an asthmatic, that's the first thing that COVID-19 seems to attack or affect in a very negative way. And as I read continuously, the fact that Parkinson's was affected, it was exacerbated by COVID-19. The pain, the ambulation, cognition. You know, your mind begin to not work as it used to work. And for someone who has always been a voracious reader, that did not set very well with me. Because it creates a lot of anxiety. And I don't think that's really abnormal. I think it's normal. But it's just it's something that as human beings we must deal with.

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Q. Okay. Now, Mr. Porter, you mentioned that you left your home. And what did you do at that time?

A. In late June, my wife had a doctor's appointment. She was on the verge of an eye stroke that could lead to blindness. And so I had been going to all of the treatments with her, and I felt it my duty to go at that time with her. You know, after 46 years, you've been through a lot and a lot of things together. And certainly as a human being, we value vision, ability to see. And so I did not want her to get a bad diagnosis and I not be there.

Q. Okay, Mr. Porter. And did you leave at any point thereafter, after late June?

A. Yes, I did. Subsequent to that, I started to have quite a few doctor's appointments, somewhere between six and seven between June and July. Neurological examinations, urological examinations because I thought I was having a hernia. After seeing the neurologist, he informed me -- after I saw the urologist, he informed me that it was not a hernia. And the neurologist told me that it was --

THE COURT: Mr. Porter, let me be rude and interrupt briefly. I think there was a problem with your connection. I was not able to hear what you said after you saw the neurologist. Can you try again, please, sir.

THE WITNESS: Yes, sir. You want me to start where, sir?

THE COURT: The part that I got -- let me make sure so you don't repeat. Your neurologist, I think, if I'm correct, informed

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you that you did not have a hernia.

THE WITNESS: The urologist informed me that I did not have a hernia.

THE COURT: Okay.

THE WITNESS: But the neurologist told me that, no, I was not having a hernia, that it was a component of Parkinson's. I had the symptoms of a hernia.

Q. (BY MS. ZARAGOZA:) Thank you, Mr. Porter.

A. Judge -- Your Honor, I want to apologize to the Court. I did not mean to -- my intent is to be crystal clear and not waste the Court's time on having to repeat. But some of this is just kind of tough. And I do apologize to the Court.

THE COURT: Well, it's precisely because it's tough and with your asthma that you don't need to apologize. If anything, we're the ones that need to apologize when we need to chime in from time to time to tell you to please repeat yourself. No apologies warranted, Mr. Porter. Keep doing what you're doing. And if we need to, we will request that you repeat your testimony, please, sir. Thank you.

THE WITNESS: Thank you so much, sir.

Q. (BY MS. ZARAGOZA:) So, Mr. Porter, thanks again. You mentioned that you had -- and please correct me if I'm wrong, but about five to seven medical visits this summer; is that correct?

A. That is correct.

Q. And during those visits, how did you get there?

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A. My wife would drive me.

Q. Okay. And did you wear a mask when you went to these appointments?

A. Yes. Always.

Q. Okay. And did your wife accompany you?

A. Yes.

Q. Did she wear a mask?

A. Always.

Q. Did the medical personnel wear masks at your visits?

A. They did. In fact, they started off with the minimum. And as time went on, they started to even increase. I know the last two visits they even had on shields, face shields along with the mask, along with the sanitizer, along with the temperature taking.

Q. Okay. And when you left those medical appointments, do you engage in any hygiene or other ritual?

A. Yes. And I think that was the proper way to characterize it. Now, whenever anybody leaves the house, including myself as well as my wife and son, if they leave the house -- if we leave the house, upon getting back, we wash the clothes that we wore. We sanitize, shower, and while we're out, we try to make certain that we social distance as much as possible.

Q. Mr. Porter, so, you know, you mentioned that you didn't leave from March to late June when you've gone to these medical appointments. How did you get groceries?

A. My wife and my son get the groceries. Primarily my wife.

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And they do this because they feel that I'm at a greater risk than they are. And I don't argue with it or anything like that. It's a pretty happy family. Anything I want, I just make it known that that's what I want, and they accommodate.

Q. Thank you, Mr. Porter. Okay. So have you -- has anyone other than your wife and your son been inside your home since March 13?

A. Outside? Inside or outside?

Q. Inside?

A. Yes. Yes. I had a visit from my grandkids and my daughter. And this is my first recollection of this, although very important. But they came to visit during that interim time. But my understanding is that they also social -- they practiced all of the guidelines. They're from the state of Georgia, and I really hate that I'm just thinking about this, but, yes, they have been here. And I must tell you that it was a joyous time. And even to date, no one has come down with the -- or contracted the COVID-19.

Q. Okay. And so they visited you once?

A. Yes.

Q. Okay. So turning back to voting, you mentioned that you are registered to vote in Mobile County; is that correct?

A. Yes.

Q. Okay. So in general, how do you normally vote outside of a pandemic?

A. In person.

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Q. Okay. When was the last time you were able to vote?
A. During the primary of this year.
Q. Is that the March 3rd primary?
A. That's right.
Q. And did you vote in person during the March 3rd primary?
A. I did.
Q. Okay. How did you get there?
A. My wife took me.
Q. Okay. So you testified earlier, Mr. Porter, that you use a cane to ambulate. Do you normally park in a disability parking space at your polling place?
A. Yes.
Q. Okay. You're pretty familiar with your polling place?
A. Yes, I am.
Q. Do you know about how long you have to walk from the disability parking spot to enter your polling place?
A. Yes. It averages anywhere from about 100 to 150 feet.
Q. Okay. And do you experience any challenges walking that length of distance?
A. Yes. As time goes on, the greater the challenge to walk any distance. It's getting greater. It truly is.
Q. Okay. Now, you mentioned that the last time you were able to vote was in March, Mr. Porter. Did you vote in the July 14th primary runoff election?
A. No, I did not.

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Q. Why not?
A. Because I -- I called and had an application for a ballot sent out. And I sent the ballot back in. And I was using as a thumb rule on the time that it would take as to the time I used the time that it took me to get the application from the time I made the request. And I allowed that much time when I sent it back. And I never received a ballot. Consequently, I did not vote.
Q. Mr. Porter, just to clarify your testimony, I think you said that you had sent in the ballot. But did you mean you sent back the absentee ballot application?
A. Yes. I take that back. I didn't mean the ballot. I meant the application. Let me be extremely clear on that.
Q. Apologies. I'm speaking over you. I think it's just a lag --
A. No, no, no. I think it's my duty to the Court to be clear.
Q. Thank you, Mr. Porter. So you sent in your ballot application, but you did not receive an absentee ballot. Is that your testimony?
A. It is.
Q. Okay. So when you didn't receive your absentee ballot, did you consider voting in person on July 14th?
A. No, I did not.
Q. And why not?
A. With the current state, I'm -- I'm very, very fearful of COVID-19. I give it a lot of respect, and I don't want want any vote that I cast to be my last vote. And in Alabama, a person can

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vote even if they don't have on a face mask. And that's just too much for me. I just -- as important as the right to vote is, I just can't endure that. I have too many other things going on.

And not only that, but if I were to really contract a bad incidence of asthma, right now, I would go into the hospital. It's hard to get out of the hospital as well alive. And with Parkinson's, it beats me up. I'm still learning the disease itself. And it's more than challenge enough. I don't want anything to exacerbate my Parkinson's because it is a progressive disease. And so the outlook on that is that things will not get any better anyway. And so the last thing I want is to finish which ultimately ends in death. I don't want to go through the part of being bedridden because that's a very human side of Parkinson's.
Q. So, Mr. Porter, have you heard of curbside voting?
A. I have.
Q. Okay. And what's your understanding of curbside voting?
A. My understanding of curbside voting is that you can be taken to the precinct, and you can be given a ballot, and you can actually have the ballot counted on that day. Which to me is the better of all alternatives. Because I tried the absentee ballot, and it did not work for me. And I don't know where the fault lies, but it did not work. And anything more direct and less time and space involved in the procedure, the...

THE COURT: Mr. Porter, would you repeat the last part of your testimony, please.

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THE WITNESS: Yes, sir. Yes, I will. The less movement in an effort to vote, the more exact would be the success of voting. I -- voting has some something very near and dear not just for me but for all Americans, and especially for me because so many of my descendants even died to vote. And while I don't mind dying to vote, I think we're past that -- we're past that time.

And that should not be a requirement. The requirement to vote should be made as easy as possible and as secure as possible. Because voting is the only day that rich, the poor, sick, the healthy, all should be counted as one and just as easy. And any obstacle placed in the way of the opportunity to vote places an affect on the process itself.
Q. (BY MS. ZARAGOZA:) Mr. Porter, so you testified about why voting matters to you and why curbside -- given your experience with absentee voting, curbside would be your preference. Is there a reason that you would be interested in curbside voting in light of the pandemic?
A. Yes. It would allow less contact with people who are not protected and people who are not protecting me or themselves, and it's much faster. It's less strenuous to ambulate. And that's basically it. Even if I were able to just walk in to vote, it -- I don't see that as an acceptable alternative. Because even in doing that, you're standing -- you're going to pass people who very well may not be protected. And that makes me think that my state is not being considerate enough and serious enough about COVID-19.

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It doesn't really matter how long you are in contact with anyone unprotected. But it's just the matter of fact that you are unprotected, in contact with someone who may very well know or not know that they have COVID-19. And right now, the state of our state is that you do not have to wear a mask. And certainly there's no guarantee that you're going to have to be six feet apart. And I think they probably have the sanitizing part down as perhaps one of the easier things to do. But if you get within six feet, then someone can touch you. So I just don't see going to the precinct for not just myself but for people who are more infirm than I am. It's just not a wise thing to do, and I don't think we should be placed at peril just to vote. And I say just to vote. But that's when we citizen up. You're a citizen on Election Day.

MS. ZARAGOZA: Thank you, Mr. Porter. I will pass the witness.

THE COURT: Let's take a five-minute break to give Mr. Porter just a few minutes to recharge. Let's come back -- make that 11:46, everyone, please. Thank you. And who's up first when we got back? Mr. Harris? Mr. Engelhardt?

MR. HARRIS: I am, Your Honor.

THE COURT: Okay. 11:46 please. Thank you.

MS. ZARAGOZA: Thank you, Your Honor.

(Recess.)

Q. Good morning. I believe it's still morning, Mr. Porter. It's good to see you.

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A. Good morning. Good to see you. I trust you're doing well.

Q. I am. Doing very well. Thank you. Is it right that you are still able to drive?

A. Yes, I am. I have a current driver's license.

Q. You have a current driver's license. But you just don't because your car's not operable; is that right?

A. That's right. I'm trying to decide whether to get a new vehicle or fix this one.

Q. Okay. And is it true that physically, you think you're still capable of walking to and from the corner to your house?

A. I can on most days. With Parkinson's, every day is not the same. What you can do one day, you may not be able to do the next day. But hopefully, that's never far off.

Q. And is it right that outside the context of the pandemic, before the pandemic, you would get outside your house frequently?

A. Oh, yes.

Q. And it's right that you haven't been unable to vote at your polling place for physical reasons in the past?

A. Yes. Let me back up a second, please, sir.

Q. Yes, sir.

A. If it's all right with you and the Court. My activities started to lessen since I've started to have trouble falling with ambulation which they started to decrease. I used to walk five miles or better. I used to run five miles. And then I started to

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walk more than five miles. And then this came. And so it's decreasing as times goes on.

Q. Okay. Thank you for clarifying that, Mr. Porter. Are you aware that absentee balloting began last week for the November election?

A. No, I was not. I haven't seen anything to that effect in fact.

Q. Is there anything keeping you from applying for an absentee ballot for November now?

A. No. In fact, I'll do that today.

Q. Do you expect that your wife and son will be able to serve as witnesses again?

A. I hope so.

Q. And do you still qualify for the exception to not use a photo ID to file an absentee ballot?

A. Yes, sir. I still --

MS. ZARAGOZA: Object. Facts not in evidence.

THE COURT: Well, okay. But I think Mr. Porter can correct Mr. Harris if he's incorrect about that. Mr. Porter, do you have to submit a photo ID with your absentee application?

THE WITNESS: No, sir.

THE COURT: Mr. Harris.

MR. HARRIS: Thank you, Your Honor.

Q. Mr. Porter, is it right that you submitted an application to vote absentee in the July election?

A. I did.

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Q. Okay. I'm going to share my screen with you, show you that election -- excuse me. Show you that application. Let me see here. Can you see that?

A. I do.

Q. Do you recognize that document?

A. Yes, I do.

Q. All right. And there's a signature there, the defendant, JoJo Schwarzauer's Exhibit Number 40. What is this document, Mr. Porter?

A. That's the application for the absentee ballot.

Q. And did you send this to the absentee election office in Mobile?

A. Yes.

Q. Do you remember when you sent it? I'm sorry.

A. I was going say that my wife actually took it to the post office for me, and I have every reason to believe she did that.

Q. Do you remember when she did that?

A. I don't really remember. And I see you have something here that says "late." And I don't -- the only thing I can say about that is that I used the length of time that it took them to send me the application, there should have been enough time for it to get back and still be on time.

Now, I don't know if this is one of the things that they talk about slowing the mail or what. But -- I just don't. And I thought that they should have gotten it within time for me to vote.

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Because oftentimes -- just want to say this as a note. Oftentimes in Mobile County, if you mail something within the county, it's generally received the next day.

Q. And here, do you see when this was postmarked?

A. Yes, I do.

Q. And when was that?

A. It's the 8th of July, 2020.

Q. And do you also see when it was marked received by the absentee election office?

A. Yes, I do.

Q. And when was that?

A. 2020, July 10.

Q. Okay. Thank you, Mr. Porter. Pardon me. I'll bring that back up.

MR. HARRIS: I'd like to move this into evidence.

THE COURT: What's the exhibit number again, Mr. Harris?

MR. HARRIS: It is Defendant Schwarzauer's number 40.

THE COURT: Any objections?

THE WITNESS: Can I make a comment about this, Judge?

THE COURT: You may. Let me deal with the administrative part just -- any objection to this exhibit, Ms. Zaragoza?

MS. ZARAGOZA: No objections.

THE COURT: 40 is received. Mr. Porter, you wanted to say something, sir.

THE WITNESS: Yes. Yes, sir. I have a lot more faith in the

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stamp that the post office made on the document than I do the stamp on the elections office documents. And that's just because there's a lot of history within the State of Alabama for these kinds of things happening. And not saying that specifically this is it, but just to take notice of the fact that things have happened like this. You see them in the news all the time. People oftentimes doesn't play fair. I hope they are playing fair here. But I don't know why it would take so much longer to get back to them than it took them to get it to me. That's all, Your Honor. And I thank you.

Q. (BY MR. HARRIS:) Thank you, Mr. Porter. And I believe it's correct, Mr. Porter, I want to make sure. You testified that you did not include a copy of your ID with that application; is that correct?

A. That's correct.

Q. And then is it right that it was your understanding you mailed that application the day before it was due?

MS. ZARAGOZA: Objection.

THE COURT: Yeah. I don't recall that he's testified about that. He just said he mailed it within the same time frame as when he requested the ballot or the affidavit and that he felt it should have been sufficient time.

MR. HARRIS: Sure, Your Honor. I apologize. I understood him to say he expected it to arrive in one day and instead it took two days.

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THE COURT: That's fair. I think he said generally in Mobile County if you mail things within the county it takes a day to get there.

Q. (BY MR. HARRIS:) And looking back at this envelope, Mr. Porter, when was the postmark?

A. 8 July 2020.

Q. And according to the election office, it was received on July 10; is that right?

A. That's correct.

Q. And you expected that it would just take one day and not two; is that right?

A. That's correct.

Q. So you sent it the day before it was due?

MS. ZARAGOZA: Objection.

THE COURT: You still have not established that he knows when the application was due.

MR. HARRIS: Sure. I apologize, Your Honor.

Q. Mr. Porter, do you know when the deadline was to submit your absentee ballot application?

A. Yes. Yes. That's why I felt that I was submitting it within time.

Q. Was the deadline to submit your absentee ballot application July 9?

MS. ZARAGOZA: Objection.

THE COURT: If he knows. Mr. Porter, do you know when the

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deadline was for the election office to receive your application by?

THE WITNESS: Judge, I do not recall when it was. But I do remember calling and finding out about this -- about the ID thing. And at that time, I also asked when did I have to get it back. And based on those things, that's when I sent it back, because I factored in enough time for it to get back, and it should have been back in time. Based on the service I received when they mailed it, and I'm not aware that they have a superior service than I should have with the post office.

THE COURT: Mr. Harris.

MR. HARRIS: Thank you, Your Honor.

Q. Mr. Porter, were you aware that you can vote absentee in person in Alabama?

A. Yes.

Q. Have you considered voting absentee in person for the November election?

A. No.

Q. Did you know that you could submit an absentee ballot at the probate court in Mobile County and someone could come to your car to take that ballot from you?

MS. ZARAGOZA: Objection. Facts not in evidence.

THE COURT: He can answer if he knows.

THE WITNESS: I don't really know. Now, I have a question. Do you mean they will come out to the car to get the ballot?

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Q. (BY MR. HARRIS:) Yes, Mr. Porter, that's what I'm referring to. And it's fine if you don't know.

A. Let me just say this about that. Have you ever called that office? No, I'm serious. Because if you call that office, you are in for a wait. That procedure will not work very well. And I am familiar, thoroughly familiar, with the layout of probate court in Mobile, Alabama. For most things like filing in probate, wills, and estates, and accountings, and all of that, that's done at those windows. And there are several of them. I think as many as four to six windows.

But the elections office, the elections office is across the hall, inside. And you don't get in unless someone answers the door. And then you don't know how many people are in if -- when they answer the door. And so in all practicality, I just don't think you're talking about a viable solution. You're talking about an alternative, but I don't think you're talking about a workable alternative. Not enough lines going on, not enough people to answer the phones.

Q. Thank you, Mr. Porter. Have you contacted any local officials about your mobility issues that you may have about accessing your polling place in the November election?

A. No, I have not. And nor am I aware of the need to really do that. I mean, I've been around for a while, and I have worked with elections for a good number of years. And what you're talking about now is just something that's a little bit unworkable.

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Maybe you need to explain it better or rephrase the question and maybe I could help you out a little. But as it's framed now, no, it's not something that would work.

Q. I'm sorry, Mr. Porter. I may not have been clear. I just wanted to know if you had talked to an official and said that you had problems accessing your polling place?

A. No.

Q. That you said you needed accessibility help?

A. No. No, I haven't.

Q. Thank you.

A. This is -- this is a learning process for me, too. Is that something that I'm required to do?

Q. I'm just trying to know what you've done so far, Mr. Porter, and to learn what you --

A. I understand. But in the process of that, I don't want to lead the Court down a gopher hole on this deal. Because it's very important. And if it's something that I should do, I can notify other people that this is an option, a viable option. And so that's -- working as a defense and, you know, what works, works. And the best way to get it out is to get it out. We don't have to be cat and house about that.

MR. HARRIS: Thank you, Mr. Porter. I have no further questions.

THE COURT: Thank you, Mr. Harris. Who is going next? Mr. Engelhardt, you? You may.

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MR. ENGELHARDT: Yes, Your Honor. I'm just getting my sound appropriate so we don't have the echo. We good? Thank you.

Q. Good afternoon, Mr. Porter. Nice to see you again.

A. Good afternoon. And I'm pleased to see you and glad that you're here to make sure that the citizens of Alabama will have a chance to vote and make it as easy as possible. And for the Court, I'm sure you will fulfill your duty.

Q. That is absolutely our goal here in Mobile County, for sure. I hope you are battening down your hatches for the impeding storm.

A. It's on the way. I told my wife this morning. If anything goes awry with this to impede my testifying, it most likely will be Sally knocking at the door.

Q. That's right. Fingers crossed that we do all right.

A. Hey. I have been through a few. Don't want to go through another.

Q. I know it. I know it. I've only got a couple questions for you.

A. Sure.

Q. I really appreciate how clear and concise you have been in your testimony today.

A. I'm trying. I think it's important that the Court understands this issue. I think it's important that all of us understand this issue. And believe it or not, I know that there are two sides to

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every story. But in this case, this is something I think all Americans can agree on and should agree on.

THE COURT: Let's give Mr. Engelhardt a chance to proceed so I can release you, Mr. Porter, hopefully soon.

Mr. Engelhardt, you may begin, sir.

MR. ENGELHARDT: Absolutely.

Q. So Mr. Porter, I just wanted to ask you just a couple of questions. You were testifying earlier about the setup of the Mobile County AEM office, the absentee ballot office.

A. Yes. They call it the elections office, I believe.

Q. When you walk in the probate court -- do you recall the last time that you have been to that office?

A. Yes.

Q. Roughly, how long ago would that have been?

A. That's been quite some time. But I'm not aware of any rearrangements to that facility. In fact, that -- the probate court sits separate from Government Plaza.

Q. That's correct. That's correct. When you go in that door at the probate court, do you know if they check to see if you're wearing a mask?

A. When I was last there, this was not going on.

Q. Correct.

A. And so I don't know if they're checking to see if you're wearing a mask or if they take your temperature or just what.

Q. That was going to be my next question if you know if they

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take your temperature?

A. No.

Q. When you walk in that door, you know, you make a left turn to go towards the election office. Is that your recollection?

A. That is correct.

Q. And then as you go down that hallway, the election office is on the right side of the hallway. Is that also correct?

A. Correct. Yes, sir.

Q. Do you know how many windows there are, walk-up windows there are there roughly?

A. On the left side? The windows are on the left-hand side.

Q. No, sir. When you go to the office now, I believe there are six walk-up windows with glass. Do you recall that?

A. No. I recall them being on the --

MS. ZARAGOZA: Objection. Relevance.

THE COURT: Make sure you guys are talking about the same thing. We're not talking about windows in the traditional sense on the walls. We're talking about clerk's stations, Mr. Engelhardt?

MR. ENGELHARDT: Correct. Correct. Sort of like you have at the DMV.

MS. ZARAGOZA: And I'd also like to object in that Mr. Porter testified that he believed there were about four to six windows earlier.

THE COURT: Okay.

Q. (BY MR. ENGELHARDT:) Mr. Porter, were you aware that you

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could drop off your completed ballot there at the AEM's office?

A. Yes.

Q. Are you aware that the election for as concerns absentee ballots started last week?

A. That, I was not aware.

Q. Do you know that you could -- have you submitted an absentee ballot application yet for the November --

A. I have not. Because the only thing that I can recall seeing was something to the effect that it had to be within 42 days of the election. And I think we're still somewhere around in the 50 count days before the election.

Q. Do you recall where you saw that information?

A. It may have been on one of the -- on the requests for the absentee ballot. May have been the application. It very well may have been on there or on the back of it.

Q. When you got your absentee application last time, how did you get the application?

A. In the mail.

Q. You called the absentee office and had them mail it to you?

A. I did, sir.

Q. Are you aware that you could do that today? Barring the hurricane, is that something you would do now rather than closer to the election?

MS. ZARAGOZA: Objection. Asked and answered.

MR. ENGELHARDT: I don't believe I asked that question.

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MR. ZARAGOZA: That was asked earlier. Oh. Apologies, Your Honor.

THE COURT: I think the slight differences here is now that he knows, is that something that he would do. So with that slight caveat or slight twist to the question, Mr. Porter you may answer.

THE WITNESS: Yes, sir. I will in all probability do so. At the same time, if I'm forced to do it, I -- at the same time, if I'm forced to do it, I think that's one of the things that kind of chills the process of voting. I don't think there's anything wrong with staying within the limits of voting, within the framework that the state sets out that you vote. And if you can't stay within the limits, then do we have false requirements? Are we placing some kind of obstacle out here for this or just what?

Q. (BY MR. ENGELHARDT:) Would you agree, sir, that a framework would be to set a timeframe from the return of ballot applications?

A. Sure. If you can -- if there's such a thing.

Q. And I believe earlier, sir, you testified that you -- it was a little unclear. So I want to make sure I understand.

A. Sure. Thank you.

Q. Were you aware of the deadline for the return of the absentee ballot applications in July?

A. I really was not. And what I used was the speed in which they got the application to me. And I thought that I could exercise that same speed in getting it back and it would have

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been within the required timeframe.

Q. Did you know you were cutting it close?

A. Sure. Sure. But when you cut close, do you cut out?

Q. So you knew it was two days ahead, just not the day ahead. Is that what you are saying?

MS. ZARAGOZA: Objection. Asked and answered.

THE COURT: Sustained. We're getting repetitive. Mr. Engelhardt, let's move forward with the rest of your examine, please.

Q. (BY MR. ENGELHARDT:) Mr. Porter, do you have any reason to believe that the absentee office -- absentee election office would hold or delay the envelope that contained your absentee ballot application?

A. Only in the historical sense. I don't -- I would not put that past the pale. The right for African-Americans to vote in Alabama has not been one that's been cheered or really amped up by the minority -- by the majority public in Alabama. We didn't have that for school desegregation. We didn't have that mentally health care in Alabama. And now, voting has gotten to be more of a premium. And so just historically, I would not be surprised. I can't speak for anyone else.

Q. Mr. Porter, I want to speak specifically to you. Is there anything on the outside of the envelope that you submitted containing the absentee ballot application that would have indicated to anyone at the absentee election office the color of

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your skin?

MS. ZARAGOZA: Objection.

MR. ENGELHARDT: I believe Mr. Porter just testified that his concern was that there has historically been -- to use a different term racism in the processing of votes. And the question is, what on the outside of the envelope, which is stamped, would indicate to someone at the election office that this is someone who should be a victim of such racism.

THE COURT: Mr. Porter is telling you how he feels. Mr. Porter, you can answer.

THE WITNESS: Okay. Yes, sir. I understand the constraints, and I'm pleased to answer. Because you don't -- it's on the outside of the application -- I mean, on the outside of the envelope. And I just have a question. Was my name on the outside of the envelope?

Q. (BY MR. ENGELHARDT:) Not that I can see. Was it -- did it look like your handwriting. I believe you verified the envelope?

THE COURT: Well, I think Mr. Porter will tell you that his name was inside -- I think this is where you're heading, Mr. Porter, is your name is known --

THE WITNESS: Right. They knew from the address and all of that before they sent it out to verify that I'm the voter. And because of that, in Alabama, when you look at the voter registrar's information, it has all of that on that as to who you are. In many cases, it even has the social security number. And

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so this question of just -- yes, I think if they wanted to, they could know.

Q. (BY MR. ENGELHARDT:) Do you think there is a reason that that in a runoff election on the Democratic side on July 14 that the absentee election office intended to stop you from voting?

A. I think that's something that they would have to decide. The only thing I'm saying is that it's possible.

MR. ENGELHARDT: I have no further questions.

THE WITNESS: Thank you, sir.

THE COURT: Mr. Cowell, Ms. Holifield, who is up next?

MS. HOLIFIELD: No questions for me, Your Honor.

THE COURT: Thank you, Ms. Holifield. Mr. Cowell?

MR. COWELL: No questions, Your Honor.

THE COURT: Any redirect?

MS. ZARAGOZA: Yes, Your Honor, briefly.

THE COURT: You may.

MS. ZARAGOZA: Thank you, Your Honor.

Q. So, Mr. Porter, am I correct in understanding your testimony that before the July 14th election, you had never voted absentee before; is that right?

A. That is correct.

Q. Okay. So were you familiar, personally familiar with the requirements to vote until you applied or before you applied?

A. Yes. Yes.

Q. So you testified earlier that even if you -- that now that

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you're aware that you can apply for a ballot today, even if you can apply for an absentee ballot, if relief is granted in this case, would your preference be to vote absentee or to vote curbside?

A. Curbside.

Q. Why?

A. There's far less contact. And the less contact that you have, the less chance of contracting COVID-19 or the novel coronavirus. And that's really -- that's really where I am. I do not want to contract this novel coronavirus. COVID-19 does not play. It does not choose its victims. It just guarantees a very, very good fight and oftentimes to the death. That's what happened with my uncle.

Q. Okay. And, Mr. Porter, I think you may have misunderstood. I think as between -- did you understand me to say as between in-person voting and curbside voting?

A. No. I thought it was a singular question on curbside. Would you give me the question again, please.

Q. If relief is granted in this case, would you prefer curbside voting to voting absentee?

A. Curbside. I would prefer curbside.

Q. Okay. Now, Mr. Engelhardt asked you a few questions about going to the absentee voting office today. Would you prefer to vote curbside than to go to the absentee election manager's office today?

A. Curbside. It's the safest thing for me to do.

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MS. ZARAGOZA: Okay. No further questions.

THE COURT: Thank you. Let's do recross briefly based on these two or three areas, and then we can break for lunch. Mr. Harris?

MR. HARRIS: No questions for me, Your Honor.

THE COURT: Thank you. Mr. Engelhardt?

MR. ENGELHARDT: No questions for me, Your Honor.

THE COURT: Thank you. Mr. Cowell, Ms. Holifield, any questions based on the redirect?

MS. HOLIFIELD: No, Your Honor.

MR. COWELL: No, Your Honor.

THE COURT: Thank you both as well. Mr. Porter, have a great day and a great week, sir. You are released.

(Witness excused.)

THE COURT: For everyone else, it's 20 minutes after 12:00. Let's plan to come back roughly an hour from now, and we will begin at that point with our afternoon session. We are in recess for the next hour I think.

Mr. Ross, do you need to say something before we break for lunch, sir?

MR. ROSS: Yes, Your Honor.

THE COURT: You may.

MR. ROSS: I just -- sorry. Hold on one second. Can you hear me?

THE COURT: I can indeed.

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MR. ROSS: I'm sorry about that. Plaintiffs have two more witnesses which both of them are experts. And so to the extent -- you know, our hope is that we can finish today before 5:00. But if we need to go a little bit longer, we wanted to ask whether or not the Court was willing to go until 5:30 or 6:00 today if that's necessary.

THE COURT: If necessary, I can give you guys until 6:00 p.m. Hopefully, the directs and the crosses will not take that long. But we'll see where we are. Thank you, Mr. Ross for the heads up. I will make the necessary arrangements.

Mr. Davis, do you need anything before we break for lunch, sir?

MR. DAVIS: No, Your Honor.

THE COURT: Thanks, everyone. One hour from now. Let's say 1:22, please.

THE WITNESS: Thank you, Your Honor. A pleasure being in your court.

THE COURT: Nice meeting you, Mr. Porter. Take care, sir.

(Lunch recess.)

THE COURT: Mr. Ross, is Dr. Bagley your witness?

MR. ROSS: Yes, Your Honor.

THE COURT: Are you ready to proceed?

MR. ROSS: Yes, Your Honor.

THE COURT: Give me a minute to make sure I have all the relevant parties. I say see Mr. Davis, Mr. Dungan. Anyone else on

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the Defendants' side who you guys know who will be examining this witness that I need to wait for to at least appear by video?

Dr. Bagley, would you please raise your right hand so you can be sworn in.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Dr. Joseph Bagley.

THE COURTROOM DEPUTY: Could you spell it for me, Mr. Bagley.

THE WITNESS: I'm sorry. Say again, please.

THE COURTROOM DEPUTY: Could you spell it.

THE COURT: Spell your name, please, sir.

THE WITNESS: Yes, I'm sorry. J-O-S-E-P-H, B-A-G-L-E-Y.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: Atlanta, Georgia.

THE COURT: Thank you.

THE COURT: All right, Mr. Ross. Give me a minute, please.

Mr. Engelhardt, are you on? You are? Okay.

MR. ENGELHARDT: Yes, Your Honor.

THE COURT: Thanks. Mr. Weber, are you on? I see Mr. Cowell. I just want to make sure I can go forward. I see Mr. Weber. Mr. Webb? Perfect. Thank you, all.

Let's proceed please, Mr. Ross.

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MR. ROSS: Thank you, Your Honor.

Q. Dr. Bagley, I'd like to discuss your background and experiences first.

MR. ROSS: Eric, can you please pull Plaintiffs' Exhibit 264. Are you having trouble hearing me, Your Honor?

THE COURT: No. I can hear you. Thank you for checking.

Q. (BY MR. ROSS:) Dr. Bagley, what is this document?

A. This is the report that I submitted in this case.

Q.

MR. ROSS: And, Eric, can you please go to page 41?

Q. Is this your CV, Dr. Bagley?

A. It is.

Q. What is your educational background?

A. So I hold a Ph.D. in history from Georgia State University as well as a master's and bachelors in history from Auburn University.

Q. And what is your current occupation?

A. I'm assistant professor of history and honors program coordinator at Georgia State Perimeter.

Q. How long have you taught in the Georgia State system?

A. I have taught at Georgia State for ten years.

Q. What do you consider your area of specialization?

A. I specialize in 20th century American politics and law, particularly these that relate to civil rights.

Q. And have you won any awards?

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A. My dissertation won our department's award for distinguished dissertation in a two-year cycle.

Q. And what is your dissertation about?

A. The title of my dissertation was school desegregation law and order and litigating social justice in Alabama. It's a narrative and analysis of school desegregation in this state and the politics that are associated with that.

Q. And have you been invited to lecture?

A. Yes, I've delivered a number of invited lectures and talks. Earlier this year, I gave the keynote address at Georgia State Perimeter's symposium on the struggle for black freedom. The title of that address was the struggle for black voting rights from reconstruction to right now. Last year, I gave another keynote address at Perimeter entitled to abridge and deny, both dilution section 5 preclearance, undermining the 15th amend. I have presented to the Auburn University critical studies working group on school desegregation. I have given a book talk at the Draughon Center for the Arts and Humanities in Auburn. And I have both given a lecture at the Department of Archives and History in Montgomery and also moderated a panel which sat Judge Delores Boyd and Peggy Wallace. Those are both on school desegregation.

Q. And have you ever been published?

A. Yes. My book was published in late 2008, the politics of white whites, race justice, and integrating Alabama's schools. An

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adaptation of my dissertation.

Q. And was that a peer-reviewed book?

A. Yes, extensively so. There were two scholars who reviewed the manuscript thoroughly multiple times. And then it's published in a serious, the politics and culture in the 20th century south series with a distinguished board of editors that also signed off on the book's publication.

Q. And have you published anything else?

A. I published a number of solicited book reviews. I have reviewed books for the Alabama Review including books on Judge Frank Johnson and on racial conditioning. I have published reviews for the Law and History Review, a book on the Lee hen till murders. All the events in Selma in 1965. I published book reviews for the Journal of Southern History on school desegregation and also for the Georgia Historical quarterly and the Journal of Mississippi History. I have also reviewed manuscripts -- I'm sorry, Mr. Ross. I have also reviewed --

Q. No --

A. -- manuscripts for the Journal Urban History and for the History of Education quarterly journal.

Q. And what was your own book about?

A. My book, as I said, is an adaptation of my dissertation. It's a narrative of school desegregation in this state. But what it's more concerned is analyzing the shifting politics associated with that. I look at the process that I describe as color masking. This is a

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process whereby law makers learn how to craft laws that are spatially race neutral but whose purpose is to protect what I characterize as white rights. For example, the white right to freedom of association or freedom of choice and perfecting those laws such that specifically they would pass court muster.

Q. Are you a member of any professional organizations?

A. I am a member of the Organization of American Historians, the American Historical Association, the Southern Historical Association and a few others.

MR. ROSS: Your Honor, Plaintiffs would like to tender Dr. Bagley as an expert witness in Alabama political history, political analysis, and historical analysis.

THE COURT: Any objections.

MR. DAVIS: Your Honor, the State Defendants agree in a Dr. Bagley is qualified to testify as a historian. His report does address the issue of polarized voting. We do not agree a historian is qualified to express opinions about polarized voting. But we do not dispute his qualifications to testify as a historian.

THE COURT: Dr. Bagley -- go ahead. Mr. Ross.

MR. ROSS: Sorry, Your Honor. I was just going to make the point that Dr. Bagley is going to talk about racial polarization as its relevant to his historical analysis. Obviously, the Court is welcome to give it as much weight as necessary.

THE COURT: Okay. I was going to inquire if he has looked into those areas as part of his research. With that in mind, I'll

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accept him for -- as an expert in the areas that he's been tendered for in this litigation and will assess his analysis related to voter polarization that Mr. Davis has flagged and will make my own determinations later.

You may continue, Mr. Ross.

MR. ROSS: Thank you, Your Honor.

Q. Dr. Bagley, I believe you said that this is a copy of your report; is that right?

A. Yes, it is.

Q. What was the subject of your report? I believe it's on page 2?

A. Yes. I was asked by the Plaintiffs to examine any relevant historical evidence and to determine if there are associated are historical factors that come would into play along with the provisions challenged in this case that might prevent Alabama's black citizens from being able to participate in an equal footing in the electoral process.

Q. And what were the election laws that you analyzed for this case?

A. The requirement that absentee ballots be signed by either a notary or two adult witnesses, the requirement that absentee ballot applications and certain absentee ballots be accompanied by a copy of photo ID, a de facto ban on curbside voting, and an issue I understand is now moot for this litigation, the strict limitation on who may vote by absentee ballot.

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Q. And what guided your analysis?

A. Well, as a historian, I'm guided by the standards of historiography, meaning just that we as historians examine any relevant existing literature and decide how we want to engage that. We then would go to a broad array of sources and check of course those sources against one another, never accepting any one particular source as definitive. And then we make an analysis as we sift that based upon on all of that relevant information. At the same time as this of course is a legal case, I am guided by the senate factors and the totality of circumstances test.

Q. And what are the senate factors?

A. The senate factors are adapted from a judiciary committee report from the early 1980s when the senate was extending and amending the Voting Rights Act. And they list certain areas of inquiry that one would consider in trying to determine what I have been asked to determine here.

Q. And how many senate factors are there?

A. There are nine senate factors. I can list them all if you'd like. I have not considered --

Q. Briefly.

A. Yes. So senate factor 1 would consider extent of history of official discrimination.

Senate factor 2 would consider racially polarized vote.

Factor 3 would consider vote dilution devices like unusually

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large election districts, majority vote requirements, et cetera.

Senate factor 4 would consider candidates slating.

Senate 5 would be the extent to which in this case black citizens had been elected to office.

Factor 6, you would investigate whether political campaigns or public statements had been characterized by either overt or subtle racial appeals.

Factor 7, you would investigate the extent to which in this case black citizens have been elected to office.

Factor 8, you would consider if there's a lack of responsiveness on the part of elected officials to the needs of black citizens.

And then factor 9, you could consider whether the policies in question are tenuous.

Q. And I believe for factor 5, is it right, that that is about the history of discrimination in educational and other areas?

A. Yes. I'm sorry. Yes, I misspoke and conflated 5 with 8. 5 would be to the extent to which there are lingering effects of discrimination in areas like employment and health.

Q. And are the senate factors consistent with your analysis as a historian?

A. Yes. These align essentially with historical inquiry. I think if you were a historian looking at this strictly as a historian independent of litigation, these would be precisely the kinds of things that we would look at.

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Q. And did you review all nine of the senate factors for your report?

A. I focused specifically in my report on factors 1, 5, 6, and 7. I do explain briefly why I have not systematically examined factors 2, 3, 4, and 9.

Q. And why didn't you look more closely at factors 2, 3, 4, and 9?

A. With factor 2, I do have a cursory discussion of that here on page 4. I am not a political scientist. But I think insofar as I am looking at a history of discrimination and the effects of past discrimination, it was relevant enough for me to present here some exit polling data and findings of courts in the footnotes on page 4, including very recent decisions of federal courts where the courts have found racially polarized voting on a statewide basis in Alabama. So in terms of factor 2, that is what I have.

With factor 3, I address that essentially under factor 1. I mean, this is not a vote dilution case. I do think that the use of dilution devices in the past is irrelevant to my analysis of the history of discrimination. And so I have included that where relevant in my discussion of factor 1.

Factor 4 is simply not germane here. And then with factor 9, this is among -- the final 2, I believe are factors that the judiciary committee said could, and the Court in jingles says could be considered but don't necessarily need to be. And so I did not include a systemic discussion of the tenuousness of the policy.

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Q. And what did you find with respect to senate factor 2?

A. Well, in examining exit polling data from the last 10 or 12 years, it would appear to me that voting is indeed racially polarized. And again, I cite to some cases including the recent Greater Birmingham Ministries case. There was also a case within last year involving Jefferson County in which the federal court found there to be racially polarized voting.

MR. ROSS: And, Eric, can you bring up page 4 for me.

Q. And looking at that first paragraph, you cite some exit poll data?

A. Yes.

Q. Isn't that right?

A. That's correct.

Q. And does exit polling data show that -- well, what does it show?

A. I believe it shows clearly that voting is racially polarized. In 2008, Senator McCain won the state with 90 percent of the white vote including the majority of white Democrats while President Obama won 92 percent of the nonwhite vote in this state and only 10 percent of is white vote. That same election, State Senator Figures was challenging the incumbent, Senator Sessions for his seat, and she won 90 percent of the black vote while Senator Sessions took 89 percent of the white vote including a majority of white Democrats.

I also cite to data from the 2012 election in which President

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Obama received 95 percent of the nonwhite vote and 15 percent of the white vote. And then again, I in that footnote, cite to some cases in which the courts have found voting to be racially polarized in the state.

Q. And beyond this, did you do any analysis of the racially polarized voting?

A. No.

Q. Why is racially polarized voting relevant for your analysis as a historian?

A. For me, it ties into the other factors. If you are looking at a history of discrimination, the effects of that past discrimination, and finally if there's a lack of responsiveness to the needs of black citizens in this case, I think polarized voting would show you there's an incentive for unresponsiveness. And of course, its very existence would be a product of the history of discrimination and the effects of that discrimination.

Q. What do you mean an incentive?

A. I mean, that white law makers would, if voting is polarized have less incentive to be responsive to the needs of the state's black citizens.

Q. And we'll go through your findings as a whole. But what did you find with respect to those senate factors that you did analyze? Were they present in Alabama?

A. Yes. I found with factor 1 that the state has a long and in fact very well-documented history of racial discrimination most

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especially in regards to voting towards black citizens and preventing black voters from registering to vote, from preventing them from voting, and then diluting the strength of that vote and failing in the other two.

With factor 5, I found that systemic inequality in areas of education and employment, health care, and also criminal justice have had such effect that access to the franchise for the state's black citizens is critical.

And then with factor 6, I found that white candidates have in fact historically and very recently used both blatant and more coded racial appeals.

Factor 7, I found that black candidates post Voting Rights Act and post litigation and with great effort have in the last 50 years gained access to local political positions and potions in the state legislature and a position in the congressional delegation. But in terms of statewide, black candidates have had very, very little success in getting elected.

And then with factor 8, I found that most especially, the state's repeated refusal to expand Alabama's Medicaid coverage under the Affordable Care Act would demonstrate a particularly relevant example of unresponsiveness for this case.

Q. Okay. So with respect to senate factor 1, I believe you said that you found there was a history of discrimination in Alabama; is that right?

A. Yes, it is.

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Q. Okay. Let's briefly discuss that history. What occurred in Alabama with respect to voting discrimination in the years between the end of the Civil War and 1901?

A. I began this part of the report so far back as the end of the Civil War because this is where you see I think that process of color masking begin. Without getting too deep into it and to be as brief as possible, under presidential reconstruction, states like Alabama under those very lenient parameters were able to include in new state constitution as they petitioned to be readmitted to the Union what are known as black codes which are explicit limitations on what black citizens could not do. And in some cases, black codes would include direct provisions that would say black people cannot vote in state and local elections.

Those were invalidated when the radical Republicans take over the process of reconstruction. And so that's the moment at which color masking has to begin at which you have to have more crafty or more carefully considered provisions to disenfranchise black citizens after the 14th and 15th Amendments are ratified. So what you see see during the process that white Democrats know as redemption, that is gaining back control of their governments from Republicans during the latter half or latter third of the 19th century, you begin to see those kinds of color masking laws being enacted during that period.

Q. Is there a particular example that you discuss in your report of those kind of laws?

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A. There are a couple of examples. I think especially important would be the 1893 sayer law which was a response to a particular challenge but that has the same result that we'll see time and time again of the disenfranchisement of black decide.

In the late 19st century, the populace movement presented a challenge to these white, Democratic redeemers in that you had poor or small farmers in the Wiregrass and the northern Piedmont that it looked for a brief moment might align themselves with those black voters who could vote in the state at that time. And the initial response to that was simply to stuff ballot boxes, to engage in more or less blatant and open fraud. But this was unsustainable given the 15th amendment.

And so what the sayer law is it's couched as a reform measure. It's couched as an antifraud measure. But what it does is creates this voting system that is intended specifically to ensure that black people can't vote for the candidates of their choice. Some of the provisions would include moving to the so-called Australian ballot, the secret ballot. This is as opposed to the party ballot where an illiterate or semiliterate voter could come in and see an emblem representing a party and say that is my party. I vote for these candidates.

In this case, the secret ballot system included a card with written instructions, a ballot that lists candidates, you know, independently. It would include a five-minute limit on your time in the voting booth, and it would strictly limit any assistance to

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the voter just to the polling workers who were of course appointed by the governor himself who was a white Democratic redeemer. The idea here is that illiterate or semiliterate voters would have no choice but to ask for assistance. And they could then be more or less swindled into voting for a candidate other than the candidate of their choice. And so the net effect here was the disenfranchisement of a large number of the state's black citizens.

Q. And you mentioned ballot box stuffing. Who was stuffing ballot boxes at this time?

A. So initially, that was the response of the white Democratic redeemers to stuff the ballots in their favor. But again with the sayer law, you have something that's facially race neutral and allows for the same result but in a color masked fashion.

Q. And so you mentioned there were some other provision laws that were passed at this time. Does that include the 1901 constitution of Alabama?

A. Yes. The process of redemption really culminates in the enactment of that have 1901 constitution. The convention comes together with the express purpose in fact of the complete disenfranchisement of the state's African-American citizens. The president of the convention just says explicitly we're here to deal -- this is page 7 of the report -- to deal with the quote grave problem of negro domination and to quote establish white supremacy.

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And so the 1901 constitution has a number of provisions, an accumulating poll tax, a required reading of portion of the constitution, a property ownership requirement. I mentioned the literacy test. But a provision that the potential voter be gainfully employed for a certain period. And then there is a list of crimes of so called moral turpitude that if anyone had been convicted of these crimes, they would be disenfranchised. And the Supreme Court later acknowledged that this list of crimes of moral turpitude that -- it was crimes that were thought to be more commonly committed by black people. And there are also holdovers from the black codes. Like for example, you could be disenfranchised for vagrancy. So these would be among the provisions of the 1901 constitution.

Q. And what constitution is Alabama operating under today?

A. Alabama still operates under the 1901 Constitution.

Q. And does Alabama still disenfranchise people who committee crimes of moral turpitude?

A. Yes. There there was some litigation in the '80s that resulted in the state having to sort of tweak that list. There are some exceptions, for example, if someone obtains a pardon. But the disenfranchising provision for crimes of moral turpitude is still in place.

Q. What was the white primary?

A. After the 1901 constitution was enacted, Alabama and other states in the early 20th century, their Democrat parties moved to

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establish themselves as private clubs if you will and restrict voting in the primary for that party to members. And by that time, so thorough was the redemption that the Republican party in its general elections was not a threat.

And so the only election that mattered was the Democrat primary. And if you restrict voting to members of the party and exclude black people from membership, this would be yet another way to shore up complete disenfranchisement. I would stress too that it is couched as a reform measure. The idea is that you have, as they would have expressed in the 1901 convention, voters or potential voters who are unfit, meaning black people, to participate in the political process. And so to reform the system, you changed the constitution, you enact the white primary, and then this would ensure the disenfranchisement but couched again as reform and an antifraud move.

Q. What happened to the white primary?

A. It was invalidated in 1944 by the Smith v. Alright decision in the Supreme Court.

Q. What happened after the white primary was struck down in Alabama?

A. Here, you begin to see a pattern emerge. What we see is any time there is potential advancement of the state's black citizens, for example, in this case, the white primary being struck by the Court, there's a backlash. There's a white backlash to any

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potential advancements for black citizens particularly when it comes to voting. And it manifests itself in this case in the enactment of the so-called Boswell Amendment to the 1901 constitution.

This was of course race neutral on its face, but it includes this understand and explain clause where applicants for voter registration would have to understand and explain and therefore read and write about any article of the U.S. Constitution that of course could be chosen by registrars. The point of such a system is that the registrars could strictly enforce this against black applicants but not white applicants and that this would be, you know, a post-Smith v. Alright disenfranchising device again couched as a reform element, couched as an antifraud element.

You have people -- I'm quoting from a member of the State's Democratic Executive Committee regarding this under and explain clause. You have people who had quote not yet fitted themselves for self government trying to register to vote, and what this individual means is black people. And so you could couch this as reform. You could couch it have as antifraud by saying we have these individuals who are not fit to participate, and we are putting something in place that would prevent them from participating.

Q. And what happened to the Boswell Amendment?

A. Boswell also was invalidated in 1949 in the Davis v. Schnell case.

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Q. Was anything enacted after that?

A. Yes. Again, you see a cycle of potential advancement and then white black lash. So if Boswell is struck, then that represents a potential advancement for black citizens. And the response in this case was the voter qualification amendment.

The state legislature went to the state supreme court and said, give us, you know, a new system for registering people to vote and for voting. And the court comes back with a required reading of portions of the constitution but without the language that was struck in Boswell. And then also, there is a lengthy application form that is produced and adopted with 20-plus questions with subquestions that would include -- question if a potential voter had even been charged with a crime of moral turpitude. And the application also includes an examination of a supporting witnesses that is similar in fact to the witness requirements at question in this litigation.

Q. And what was the impact of these voting rules on black voter registration by 1965?

A. The result is what was intended. The state was able to maintain the disenfranchisement of its black citizens despite these, you know, potential advancements as I have mentioned.

Q. And do you know what the Voting Rights Act of 1965 is?

A. Yes. The Voting Rights Act gives the Justice Department the ability to send federal observers into southern states to observe voter registration and voting and potentially to even intervene in

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that process. And it also establishes through sections 2 and 5 the preclearance process whereby any changes in state or local election law in certain states would have to be presented to the civil rights division of the Justice Department and either pre-cleared or objected to with a potential hearing before the DC circuit court.

Q. And was Alabama one of those jurisdictions subjected to section 5 preclearance?

A. It was.

Q. And what was the impact of the 1965 Voting Rights Act on Alabama?

A. Well, eventually over time and with litigation, it will lead to the ability of black citizens to elect some candidates of their choosing in some cases. But again, potential advancement equals white backlash. And so if you look at the instances in which the civil rights division objects and if you look at the fact that over the period from 1965 to the Shelby County v. Holder decision in 2013, I believe the civil rights division sends observers into the state over 200 times. And I believe there are around or perhaps even over 100 objections that are entered into by the civil rights division and the attorney general when it comes to potential changes in election law in the state.

Q. Do you have some examples of those objections?

A. Yes. There are attempts to limit the ability of upstart black political parties to participate in the political process that are

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struck. There are attempts to limit assistance to illiterate voters. There's an attempt to institute an absentee ballot literacy test. There are all manner of attempts to tweak the judiciary system adding judges, switching judges from elected to appointed, and so on, requirements to sign poll lists that are struck.

Of course, nearly every ten years when there is a census and the redistricting of the legislative districts in this state, the CRD objects to the state's plans as discriminatory -- in 1960, 1970, 1980, and so on. There's an attempt at one point to create a local constitutional amendment commission of the legislature that would be able to review potential amendments that would deal with local laws that would have to pass through a committee before they could be put to the floor. That is objected to. There are voter purges that are objected to and voter re-identification laws that are objected to and so on.

Q. Was there also litigation in the time after the passage of the Voting Rights Act?

A. Yes. There's quite a bit of litigation aimed at those kinds of devices. There is litigation brought by the civil rights division and by private litigants that would target discriminatory use of the voter qualification provisions. There is litigation directed at the redistrict, the discriminatory redistricting plans that are attempted to be adopted by the legislature and so on. And then in the 1980s, there is some more robust litigation that is brought in that decade.

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Q. And is that a reference to the Dillard v. Crenshaw County case?

A. Yes. I would reference there both the Dillard litigation and the Harris litigation.

Q. Let's start with Dillard. What was the Dillard litigation about?

A. The Dillard litigation targets the use of at-large election systems in counties in municipalities throughout the state. So county commissions, boards of education, city councils, and so on. At-large systems, that would be the subject of the senate factor I mentioned earlier. When you're looking at vote dilution devices, you could have at-large systems where candidates run for specific numbered places. And this is really the target of the Dillard litigation specifically, the state's so called numbered place law. And there are other elements like staggered elections for these numbered posts and majority vote requirements. The intent and the result being that black people would be prevented from electing candidates of their choice even where they were able to register to vote.

Q. And what was the result of the Dillard litigation?

A. As a result of Dillard, I think 183 local systems were brought under the umbrella of this litigation and either forced to or agreed to switch from these at-large systems to single-member district systems that would allow black people to get candidates of their choice elected.

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And I should say that again here with the numbered place law, if you go back to when that was enacted in the early 1960s, you would see again, it's part of this cycle of potential advancement and backlash, and it's also something that is couched as reform, as antifraud. If you look at the statements that were made by law makers when this law was enacted, Frank Mizell, a member again of the Democratic executive committee is quoted as saying that black people have quote criminal attitudes, they're illiterate and so to quote protect the white people of Alabama, we need a numbered place law. Those quotations I believe came out in the Dillard litigation and were part of what the Court and Judge Thompson considered in deciding that case.

Q. And is the numbered place law still in effect for at-large elections in Alabama?

A. Yes. So it's been enjoined of course or had become irrelevant in those systems that were covered under Dillard but not everywhere was covered under Dillard. Even last year or earlier this year I think actually, numbered place law was still in effect in the city of Pleasant Grove, and litigation forced the city to move to a single-member district system which resulted in the election of the first black candidates to the city council there.

Q. What was the Harris v. Seigelman litigation that you mentioned?

A. The Harris litigation -- and there would be at least two major decisions there, Harris v. Graddock and then Harris v. Siegelman,

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when the attorney general changes, of course. In Graddock, they targeted the appointment of poll workers and the discriminatory impact that that has had. And then the Siegelman decision, the court strikes -- these are hangovers from the Sayer law, the five-minute limit in the voting booth and swearing an oath of illiteracy.

The Court in Siegelman decision determines the state ought to give broad assistance to voters, that voters should be able to have assistance from anyone of their choice and not be limited to five minutes. And I think the Court in fact would use the language of the Voting Rights Amendment there. For example, you couldn't have your union representative or leader come in and assist you. But beyond that, or your employer, I think you should be able to have broad assistance from anyone and not be limited to this strict five minutes in the voting booth. I believe that was eventually codified into state law as well.

MR. ROSS: Eric, can you bring up the demonstrative for me.

Q. And is this the language from Harris v. Siegelman that you're talking about?

A. Yes.

Q. And then you mentioned that the state law was modified to bring it into compliance with Harris v. Siegelman?

A. That's right.

Q. Okay. And so the language at the bottom is the Alabama state law governing assistance for voters?

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A. Right. That is correct.

MR. ROSS: Thank you, Eric. You can take it down.

Q. What was the result of the Dillard, Harris, and the other litigation and section 5 objections that you mentioned?

A. So here again, we see potential advancement and advancement. I mean, this allows -- obviously, if we're talking about Dillard especially, black people to get candidates of their choice elected to local positions especially in those areas that were covered under Dillard. But also, you see again the cycle of advancement and backlash. And so what we see in the 1990s is a sort of laser focus on black political activists using the state's absentee ballot process and couching that use of that system as fraudulent and really limiting black candidates's ability to use that system.

Q. Okay. So you mentioned that there was a response to limiting black -- the use of -- excuse me. That one response I believe you said was limiting black access to the absentee voting system; is that right?

A. That's right. And if you look in the 1990s, especially after an election in 1994 for chief justice of the state Supreme Court, there was an issue there with some 3,000 absentee ballots and as to whether they should be counted or not and that they lacked required witness signatures. And the election would turn on whether or not these would be counted. If they would be counted, the Democratic incumbent would win. And if not, he

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would not.

The immediate impetus then for what I call the Fob James Amendments in the report is that election. But I think you would have to also see it as part of this broader narrative and cycle of advancement and backlash. So the James Amendments which are adopted in 1996 I think would be part of that process. These would cement the requirement for two witness signatures or the signature of a notary public where previously the state Supreme Court and lower courts would have determined that absentee ballots would be in quote substantial compliance as long as they had the voter's name and signature and reason for voting absentee.

This would cement beyond that the requirement that in order to be counted, they absolutely had to have the two witness signatures or the signature of the notary public. And I believe the penalties for violating that would -- or violating any absentee law would be stiffened as a result of these amendments. There was an attempt to institute a voter photo ID law, but it did not pass as part of those amendments at that time.

Q. You mentioned that there were 3,000 ballots that were at issue in this state Supreme Court race. What was the issue with respect to those ballots?

A. They lacked the proper witness signatures, I believe. And again, they would have been considered to be within substantial compliance with the essential requirements of the law but -- and

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it was argued that they were not, and these would be issues on which there was -- there was litigation in both state and in federal court on that issue as a result.

Q. And the issue was solely whether to count unwitnessed ballots; is that right?

A. That's correct.

Q. And you mentioned that with the Fob James Amendment, the witness requirement became a strict requirement; is that right?

A. That's correct.

Q. Who voted against the Fob James Amendment in the legislature?

A. Black legislators voted against these provisions, and white legislates across the aisle voted for.

Q. And by across the aisle, you mean white Democrats and Republicans voted for the measure?

A. That's correct.

Q. And what can we take from that racial divide between black legislators and white legislators on the passage of the Fob James Amendments?

A. I think you've seen historically in the state that whenever it behooves them, that the whites of either party will discriminate against black people when it comes to voting.

Q. What was the effect of the witness requirement on voting in Alabama?

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A. There's a significant reduction in the number of absentee ballots cast. In fact, in the report on page 21, the Secretary of State at the time touts that as a victory. He cites Figures in which there's a sharp decrease in the casting of absentee ballots and heralds that alone as a success. You have the Secretary of State saying, well, we have fewer absentee ballots cast, and that's a good thing. And I should note too that where black citizens needed the absentee process most in places like the Black Belt where, you know, many people worked outside of the county all day long or perhaps lacked access to a car, the ability to get to far-flung polling places, these are areas where you see sharp decreases in absentee votes being cast. And again, the Secretary of State of is heralding that in and of itself as a success or victory.

Q. Okay. And do you have -- so you said the Secretary of State touted the drop in absentee voting itself as a success?

A. Yes.

Q. What do you mean by that?

A. Well, I mean, it wasn't that there were proven cases of fraud, and it's not that the secretary is saying, we have evidence that we have reduced fraud. He's simply saying that fewer absentee ballots equals a good thing. I think the unspoken reality is knowing that it was black political activists in those areas who were helping to facilitate the absentee process perfectly legally. And yet their ability to do that is reduced, and that this is on its

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face heralded as a success strikes me as significant.

Q. And you mentioned that the photo ID law was initially -- that the legislature initially tried to pass the photo ID law in the 1990s. Who was pushing for the photo ID law in the '90s?

A. The primary proponent of such a law at that time would have been State Senator Larry Dixon.

Q. Who is Senator Dixon?

A. Senator Dixon is a white Republican representative of -- a senator rather I believe from Wetumpka. He argues that the lack of a photo ID law quote benefits black leaders and that enacting a photo ID law would I believe quote undermine the black political power structure. I might be paraphrasing, but it's close to the quotation, I think. And so he pushes every -- just about every legislative session to have such a law passed. And there were some times I guess it came close. There were efforts to tether it as a package to a felon re-enfranchisement law. But these get bogged down I think typically in the senate each session. And during his tenure, it is not passed.

Q. Okay. When was the photo ID law passed?

A. Well, there was an ID law that was passed in the early 2000s. But it didn't restrict or didn't require an actual photo ID. It's not until I believe 2011 until the law is actually passed and that it then is utilized in 2013, I believe.

Q. And was Senator Dixon in office in 2011?

A. No. Senator Dixon was no longer in office. So I suppose the

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baton had been passed, if you will, on to other members of the legislature when it came to getting this law pushed through.

Q. Who had the baton been passed to?

A. Notably, to State Senator Scott Beason and Representative Kerry Rich, I think. These are among those cosponsoring and championing the bill in the state legislature.

Q. Who is Scott Beason?

A. Senator Beason is the represent -- or the Senator from Gardendale. I think if you look at his record, you can see the real motivation here that Senator Dixon was sort of more or less open about when he was pushing for the law. As part of the McGregor, the U.S. v. McGregor investigations and litigation, Senator Beason was caught on tape as referring to black people as aborigines.

Senator Beason and Representative Rich also were champions of House Bill 56. And in championing that law, Senator Beason I think is on record saying something to the effect of it would quote empty the clip on illegal immigrants in the state. Which I think he and Representative Rich are also on record more or less equating all Hispanic people with illegal immigrants and insisting in Representative Rich's case that Hispanic people are coming into the state and in particular up onto Sand Mountain and taking jobs and creating I think quote social and economic or socioeconomic problems or something like that. House bill --

Q. And you mentioned senator -- go ahead.

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A. I'm sorry.

Q. You mentioned Senator Beason and his comments about aborigines, referring to black voters as aborigines. What was the context for those conversations?

A. So Senator Beason and in fact Senator Dixon and some others were caught on tape discussing a gambling referendum that was potentially going to be on the ballot and arguing openly that if the referendum were on the ballot, that this would encourage more black people to come to the polls and that quote that ain't gonna help, when it came to their electoral chances. In fact, I believe it was Senator Dixon who said that black people would be bussed on HUD buses to the polls and there would be a buffet and this sort of thing. And that's part of again, the McGregor litigation. Those comments became public.

Q. And is it right that they wanted to keep this off of the 2010 -- this gambling referendum off the 2010 ballot?

A. That's correct. And then that is subsequently the election in which white Republicans win control of the state legislature for the first time since reconstruction.

Q. And I believe you began to discuss HB 56. Who was the sponsor of H B 56?

A. Beason is one of the sponsors of that. And I believe if Rich was not as well, he was certainly one of the champions of it. This was sort of omnibus litigation aimed at Latinos in the state. I think pertinent for this case, it included a provision that would

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have required schools to maintain records on the citizenship status of not just the students but the parents. And you had students who were American-born citizens who continuously targeted by this legislation due to the immigration status of their parents.

It also involved a potential proof of citizenship requirement to vote in the state, and I think it would be pertinent here as well. It also too I would add is couched as this sort of antifraud reform measure where you have people who are coming into the state illegally, they're fraudulently voting, they're doing all these other things. And so here is a quote unquote antifraud reform measure.

Q. To your knowledge, has that documentary proof of citizenship requirement been enforced in Alabama?

A. I believe it's not been enforced, no. I'm sorry. I believe the other provision I mentioned is among -- some have been enjoined or struck. I believe that is one of those.

Q. You mean the schooling provision has been struck?

A. Right.

Q. Okay. And when did section 5 preclearance end in Alabama?

A. With the 2013 Shelby County v. Holder case.

Q. And what, if any, instances of voting discrimination have there been in Alabama since 2013?

A. I think you would look at the 2010 redistricting. I know that the legislature's plan in that case was pre-cleared. But private

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litigants brought suit in the Alabama Legislature Black Caucus case, and the Court in that case I think determined that the quotas the legislators were using for redistricting were violative of the equal protection clause.

You would also look at the fact that the photo ID law is -- you know, goes into place in 2013. And too, I think you could look at the 2015 closure of polling places and DMVs have. The state initially attempted to close a number of DMVs, essentially in the Black Belt. I think they rolled that back to simply reducing the hours. And but the result though is that the U.S. Department of Transportation civil rights division finds that even in that this was discriminatory and violative of the Voting Rights Act. And so that policy was ultimately reversed. But I think you would consider that when it was being enforced -- this is also the period in which the photo ID law is in place. So you've got a full year of elections that take place while those hours had been significantly reduced and while the photo ID law is being enforced for the first time.

Q. I'm sorry. I think you said -- is it right that the Department of Transportation found that the DMV closings violated righted the Civil Rights Act?

A. Yes. I'm sorry. That is correct.

MR. DAVIS: Your Honor, if I may, I want to lodge an objection to an effort to relitigate the photo ID case. We -- at least the photo ID law outside the context of the pandemic.

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That's the subject of other litigation before the Northern District of the Eleventh Circuit Court of Appeals claimed that the photo ID law was passed for discriminatory purpose is not in this case. It was resolved in our favor through litigation. So I object to the testimony concerning the intent of the photo ID law that was the subject of other litigation.

THE COURT: Noted. I don't think he's attempting to relitigate. I think it's all part of the background information as to this expert's report that with any step that's taken to advance franchise rights with respect to minorities, there are some things that come back in response to set the bar back is how I'm taking the testimony. And that is just one example of it from his perspective. The recent decision from the Eleventh Circuit obviously is the law. So I don't think they can relitigate that issue. But with that caveat, Mr. Ross, you may continue with your examination.

MR. ROSS: Thank you, Your Honor.

Eric, if you can pull up the demonstrative.

Q. So we've gone over a number of things here. But can you tell me what was the justification for the white primary laws?

A. Voter fraud.

Q. What was the justification for the supporting witness requirement?

A. Voter fraud.

Q. What was the justification for the crimes of moral turpitude

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provision?

A. Voter fraud.

Q. And what was the justification for the numbered posts laws?

A. Voter fraud.

Q. What was the justification for Alabama's voter purge laws?

A. Voter fraud.

Q. What was the justification for the Sayre law?

A. Voter fraud.

Q. And for the two requirements here at issue, what's the justification for the witness requirement?

A. Voter fraud.

Q. What's the justification for the photo ID requirement?

A. Voter fraud.

Q. Okay.

MR. ROSS: You can take the demonstrative down.

Q. Let's discuss senate factor 5. What were your conclusions with respect to senate factor 5?

A. I found that there is a long history of discrimination in education, employment, health, and in criminal justice that would -- that has lingering effects that put black people at a disadvantageous when it comes to participating in the electoral process.

Q. And what discrimination did you identify with respect to education?

A. With respect to education, I looked specifically at the Lee v.

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Macon County Board of Education case. This is a case that eventually brings under its umbrella 99 school systems throughout the state that targets specifically the state using its powers to enforce segregation in those systems. And the Court in that case enters an injunction that requires the state to then use its power over local school boards to actually desegregate.

Ultimately, those cases, those 99 cases are splintered off. The state is held directly accountable through the 2000s. But some of those cases remain open. In addition to, Lee didn't cover all of the school systems of the state. When the statewide order was issued in Lee in '67, a number of other school desegregation suits had already been filed and were being litigated. And some of the systems of the state would fall under that umbrella as opposed to Lee. And some of those cases are still active as well.

Q. About how many school desegregation cases are still active in Alabama?

A. When last I looked at a definitive list, there were 56 systems in the state that were still under school desegregation orders. That number is no doubt slightly lower. But suffice it to say, there are still dozens of systems in the state that are still under desegregation orders.

Q. And I believe you mentioned that the state was still subject to the Lee v. Macon order until the early 2000s; is that right?

A. Yes. I think that ends in 2007, yes.

Q. Is it correct that the state, the reason why these school

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districts are -- strike that.

Is it correct that the state had required school districts to be subjected to -- sorry -- to segregate students by race?

A. That's what the Court finds in lee. Civil rights division attorneys and attorneys for the private litigants in Lee focused on myriad controls that the state had over local school boards and also a public campaign by state officials to intimidate those school boards when they were approached by the Department of Health Education and Welfare in an attempt to have them submit plans to desegregate. What the Lee case does when it goes statewide is to sort of flip out on its head and require the state to use those powers to actually desegregate those systems or to hold them accountable for that.

Q. Was there any other education litigation against the state?

A. I'm sorry. Could you repeat that, Mr. Ross.

Q. I'm sorry. I was asking you was there other school desegregation litigation against the state?

A. Yes. The state was subjected to a similar order when it came to institutions of higher education. I refer here specifically to the knight case in the 1980s and '90s wherein vestiges of segregation were found in the state's higher education system. And the state was given certain requirements in, I think a period of ten years in which it was held accountable for carrying out these requirements in order to help desegregate the higher education system in the state.

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Q. Do you recall when that litigation ended?

A. I believe it ends in the 1990s. And the ten-year window, I think is issued then. And when -- before it expires, there had been an attempt in Knight to argue that segregation in the state's public schools had tended to cripple the opportunity of the state's black students to participate or to get admitted to institutions of higher education. And that was -- that was dismissed as part of Knight. It never made its way into Knight. But it made its way into the Lynch litigation that lasted on into the 2000s and the 2010s.

Q. What effect has this discrimination education had on black Alabamians?

A. Well, if you look at the Knight opinion, an 800-plus page opinion, of course, the Court did not find that there was discriminatory intent. The focus in Knight -- or Lynch right was the Lidville amendments. As I'm sure everyone here knows, that shields the property of -- certain forms of property from being taxed at anything other than a very, very minimal value. While the Court found in Lynch that they could not find incriminate intent, I think it important to this case it does find discriminatory effect. And the Court finds that, yes, indeed Alabama's property tax system was quote crippling education when it came to black students in the state.

Q. Okay. Did you find anything with respect to employment discrimination?

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A. If you look at my report on pages 30 and 31, I note that if you're looking at equal employment opportunity commission claims of discrimination, I list some figures here that would tend to indicate that Alabama has the highest percentage of racially based claims of any state in the nation and that racially based claims account for a higher percentage of claims and color based claims, a disproportionate amount I should say, compared to other claims.

And then also too I looked at in that same paragraph, litigation within the past 50 years. And even with the past 10 years, courts have found discrimination on the part of certain state entities, the personnel department, personnel board, the Department of Public Safety, the Alabama Cooperative Extension Service, State Board of Education, and the Department of Transportation. So litigation has revealed discrimination on the part of those state entities as well.

Q. What has been the impact on black Alabamians of this employment discrimination?

A. If you look at the next paragraph, I examine that the wage gap for black workers has increased in the last couple of decades, that if -- I cite a study that if you consider unemployment and if you consider incarceration, which scholars, you know -- leading scholars in the last few years have characterized mass incarceration as a new Jim Crow. If you consider those factors and part of the wage gap which is critical if you're using the wage

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gap as a socioeconomic indicator, then that has widened. And that would include in Alabama.

Q. Okay. And I believe you mentioned earlier some discrimination in health care. What did you find there?

A. Well, if you look at the history of Alabama, I think you see that black citizens have had to deal with a legacy of obviously government sponsored and encouraged segregation discrimination and here as well. Traditionally, you've had to rely on entities like the Rosenwald Fund or the Catholic Church when it comes to health care.

More recently than that, there is litigation that's found discrimination in the state dispersal of aid and temporary assistance to needy families program. And even more recent than that, I think you can see the lack of access to health care in places like the Black Belt has led to black individuals to create upstart health care programs like the West Alabama Health Services that I allude to in that paragraph on page 32.

And then finally, I think probably most important for this case, studies have shown that these socioeconomic factors with historical roots that have been the subject of my report are directly responsible for the disproportionate impact of COVID-19 on black people.

Q. Let's turn it to the next senate factor. I believe that's senate factor 6. What were your conclusions there?

A. So I found historically and very, very recently a number of --

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well, a few examples of more or less blatant appeals, and so more coded or what I would call again color masked appeals on the part of state's white leaders.

Q. Okay. Let's talk about a couple of examples. What racial appeals if any has Roy Moore made? And who is Roy Moore?

A. Judge Moore who is the former chief justice of the Supreme Court of the state. And Judge Moore is on record suggesting that the country would be better off without any of the amendments that follow the 10th amendment, which of course would include the 13th amendment that outlawed slavery and the 15th amend guaranteeing voting rights to freedmen. Judge Moore also specifically signaled out the 15th Amendment, the citizenship for freedmen amendment and insists, in fact, that the antebellum time in the United States or specifically in the South was a time when quote it was great. Even though we had slavery, it was great at that time when the families were united and strong.

Q. Who is Representative Dismukes?

A. Will Dismukes was a representative from Prattville who is a member of a neoconfederate group called the Prattville Dragoons, a group if you look at their website who has been very vocal in denouncing the Black Lives Matter movement, referring the late George Floyd as a quote drug career criminal. Representative Dismukes himself has posted publically on social media attending various neoconfederate events including, I think a Confederate flag day event and also celebrating the birthday of

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Confederate general Nathan Bedford Forrest, the founder of the Ku Klux Klan.

He has also himself publically argued that anyone who is angry about the removal of Confederate monuments as part of this, you know, racial reckoning of 2020 that -- angry as he is, per his own words, they should quote turn that anger into something constructive as our ancestors did by rebuilding their homes and lives during the hateful years of reconstruction, referring specifically to the black reconstruction when black people were able to participate in the electoral and political process.

Q. And has Secretary Merrill made any statements that you would refer to as racial appeals?

A. I think if you look at the Secretary's statements, these would not be blatant as attending a Nathan Bedford Forrest day or suggesting we don't need the 14th Amendment or suggesting America was great under slavery. But there are some more coded appeals. I think the Secretary has made more subject appeals. For example, he has referred to initiatives like voting by mail or automatic voter registration as a quote sorry, lazy way out, and has said that just because you turn 18 doesn't mean you have the right to anything and you ought to quote get off your rear and go vote. And these sorts of things that you consider too he has also, you know, gone on Twitter and lambasted people as being lazy and, you know, anybody that has a hard time figuring out how to use the absentee ballot process probably ought to be voting in

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person and that he can, you know, come to your house and show you how to tie your tie and this sort of thing if you can't figure that out. Again, I think if you -- go ahead, Mr. Ross.

Q. No. You go ahead.

A. So I think if you consider all of this together, take the sorry and lazy way out quotation, again, this is not anything blatant. But laziness is a stereotype that white people have had of black people. So when specifically the Secretary says you're sorry and lazy, if you want to be automatically registered, I think that speaks loudly. And then too, in those same remarks in this video, the Secretary says, you know -- well, he lists off a litany of civil rights pioneers and suggests, you know, he's friends with Fred Gray and Senator Figures, and so on,and then says I'm not going to let lazy people disgrace of legacy of John Lewis who was beaten of course on bloody Sunday and so on.

Take that and again consider that the black people as lazy stereotype, and consider too that obviously, a lot of black people especially in Alabama are very poor. I think in those same remarks in the video -- he says, turn the computer on. I think a lot of black people in Alabama don't have a computer. May not have a tie. And so I think considering the sum total of this, this is all suggesting that, you know, unless you're out there fighting and getting beaten, you don't deserve to be automatically registered. And again, I think it's important using the stereotypical language here as well.

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MR. ROSS: Eric, can you pull up Plaintiffs' 430. Can you scroll down, Eric.

Q. Is this the tweet you were referring to?

A. Yes.

Q. Okay. And is it right that this is -- can you describe this Twitter conversation for me.

A. Yes. So someone, notably a white person, but someone has asked, you know, how do I navigate this process of getting a copy of photo ID and so on. And you see here Representative Merrill dismissively says, well, if you can't figure that out, you probably need to be voting in person.

MR. ROSS: Eric, can you go to the next page.

Q. And is this more of the Twitter conversation you were discussing?

A. It is.

Q. Can you describe this tweet for me?

A. The Secretary then says, well, I can -- when I come to your house and show you how to use your printer, I can also teach you how to tie your shoes and to tie your tie. I can also go to Walmart or Kinkos and make sure that you know how to get a copy of your ID made while you're buying cigarettes or alcohol. And again, I understand that the Secretary is tweeting at a white person here. But this would be also I think code language that, you know, black people are lazy and spend all their times buying cigarettes and alcohol instead of, you know, figuring out how to get a copy

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made of their ID.

MR. ROSS: Eric, you can take it down.

Q. And you mentioned that there was a video of Secretary Merrill making statements saying people who wanted same-day registration were sorry and lazy?

A. That's correct. Yes.

Q. Why are these racial appeals relevant to this case?

A. So again, I think you have to consider that the very reason that black political activists began utilizing the absentee ballot system is that a lot of poor black people find it difficult to get their vote cast and that this was a way that facilitated that. Similarly here, you've got provisions, which by the way, Congressman Lewis supported that would make it easier for black people to access the franchise. And instead, the Secretary is at best dismissive about this and perhaps belittling in his dismissal of those efforts as sorry and lazy.

Q. Okay. So let's move to senate factor 7. What were your conclusions there?

A. I'm sorry. Give me just one second to rearrange my pages of my report. Well, as I mentioned before, after the passage of the Voting Rights Act, the various cases that are litigated and efforts that are made, black people do eventually gain the ability to get some candidates of their choice elected to local positions, to the state legislative legislature, and to at least one Congressional seat. Never more than one. But Alabama has never sent a black

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person to the U.S. Senate. And I believe only three individuals have been elected to statewide office in Alabama since reconstruction.

Q. And let's go to the final senate factor that I believe you analyzed, and that was senate factor 8. What did you find with respect to that factor?

A. Well, I looked specifically for this case at the state's repeated refusal to expand Medicaid under the Affordable Care Act. Groups like the Black Caucus in the state have pushed for this pretty openly and repeatedly. In fact, former Governor Bentley have a task force that even recommended that the state do this and suggested that it might be a boon even financially as opposed to a burden. And yet repeatedly the state has refused to do this.

The reason it's relevant here is that studies have identified a significant coverage gap and that black citizens in Alabama are disproportionately infected by that coverage gap and therefore would benefit from its being closed. And yet, repeatedly the state has refused to close it. And so to me, that was a relevant aspect of unresponsiveness.

And I would add too again that you probably want to consider that it's been found that due to those socio historic factors that I discussed in my report, COVID-19 has had a disproportionate impact on black citizens in the state. Even there's a state health officer who has been quoted in saying that

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quote this is a disease that has worse outcomes in people that already have other social determinants like chronic health problems or issues just related to education and income.

Q. Who was it that said that?

A. That is Scott -- Officer Scott Harris, state health officer.

Q. And you mentioned the coverage gap. Is that the gap between current Medicaid coverage and the Obamacare Marketplace?

A. That's correct.

Q. Okay. About how many people fall into that coverage gap?

A. Around 134,000 Alabamians in that gap. About 40 percent of those are minorities, the vast majority of whom are black, and this despite the fact that black people currently constitute only about 27 percent of the state's citizens.

Q. So having gone through your analysis of the senate factors, what conclusions did you draw with respect to the requirements at issue in this case?

A. I think if you look at the witness requirement and the photo ID requirement and you consider that black people are very clearly disproportionately poor in this state, they are less able to comply with the requirements. They are more likely to be negatively impacted by COVID. And if you look at that in the context that I provided of this cycle of backlash, these repeated claims of fraud, and enactment of discriminatory legislation, I think you would answer in the affirmative that the state's black

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citizens are disproportionately affected by this in terms of their access to the franchise.

In terms of the curbside voting ban which I believe that the CDC has recommended and you consider too what we looked at where state law indicates there should be quote broad assistance available, you consider the effects of the past discrimination that we've looked at in this case, the socio historical factors that I have looked at in my report, you consider again that black people are more likely to have severe negative complications from COVID, I think you would find similarly with respect to the curbside voting ban.

MR. ROSS: Your Honor, at this time, Plaintiffs --

MR. DAVIS: Oh. Excuse me, Mr. Ross. Before you pass, I want to lodge an objection to the last question. I believe that that is outside the scope of the report. And I also believe it is outside the scope of Dr. Bagley's expertise. He's testified about history. But that last response was something that a political scientist or sociologist would do, not a historian in terms of whether these measures in fact affect people's voting rights today.

MR. ROSS: Your Honor, he was simply drawing conclusions from his report which analyzed all of these things as a historian. Obviously, Plaintiffs have had and will have other experts testify as to the implications as far as political science is concerned.

THE COURT: Thank you both. I have had a chance to look at the answer and the question. I'll overrule it. I'll overrule the

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objection, that is.

Mr. Ross, you may continue examination.

MR. ROSS: Thank you, Your Honor. At this time, Plaintiffs would like to move Exhibits 264 and 430 into evidence.

THE COURT: What are 264 and 430?

MR. ROSS: 264, Your Honor, is Dr. Bagley's expert report, and 430 are the tweets from Secretary Merrill that he was just discussing.

THE COURT: Let me take those in reverse order. Any objections to the tweets coming in?

MR. DAVIS: No, Your Honor. We'll have issues to the weight those should be given. But we do not object to their admission.

THE COURT: 430 is in. What about 264? Just the opinion that you challenged earlier about the political impact if I recall correctly? Or maybe it was something else. Mr. Davis?

MR. DAVIS: Your Honor, we do not object to the admission of Dr. Bagley's expert report. But we do believe that his opinions concerning polarized voting are outside of his expertise and should not be given any weight in this case.

THE COURT: Okay. 264 is received. I think those are issues that can be addressed in part by cross-examination. Anything else, Mr. Ross, for this witness?

MR. ROSS: No, Your Honor. Plaintiffs pass the witness.

THE COURT: It's been an hour and a half. Let's take a 10-minute break and come back at the top of the hour, please. 10

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minutes only. I'm hoping we can still get done today. We are in recess until the top of the hour. Thank you.

(Recess.)

THE COURT: Good afternoon, everyone.

Mr. Davis I'm assuming you're ready to begin?

MR. DAVIS: I am, Your Honor.

THE COURT: Good. I see Mr. Engelhardt. I don't know who else is responsible for this witness. I see Mr. Dungan. All right. Mr. Davis, I think I have everybody I need. Why don't you go ahead and get started, please.

MR. DAVIS: Thank you.

Q. Good afternoon, Dr. Bagley.

A. Good afternoon.

Q. Dr. Bagley, are you an attorney?

A. I am not.

Q. Are you a political scientist?

A. No.

Q. A psychiatrist?

A. Nope.

Q. Sociologist?

A. No, sir.

Q. Why is your report centered around these so-called senate factors, Dr. Bagley?

A. Well, as I stated before on direct, I think these align with historical inquiry for me as a historian, and two, they provide

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pertinent guidance for this kind of case.

Q. Are you aware of anything the Eleventh Circuit has said recently about the relevance of the senate factors in a vote -- claim?

A. Again, you cut out there.

MR. ROSS: Objection.

MR. DAVIS: My apologies.

Q. Dr. Bagley, are you aware of anything that the Eleventh Circuit of Court of Appeals has said recently about the relevance of the senate factors in a vote denial claim?

A. How recently?

Q. Within the last couple of months?

A. No, I'm not.

Q. Concerning your comment about polarized voting, Dr. Bagley, did you perform any analysis of vote returns?

A. No, I did not.

Q. Did you perform an ecological regression analysis?

A. No. That would be for political scientists.

Q. What about ecological inference for homogenous precinct analysis?

A. No. These are not the inquiries that a historian would undertake.

Q. Are you aware of any decision where a Court has made a finding of polarized voting on the basis of exit polling?

A. On exit polling alone?

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Q. Correct?
A. I don't think so.
MR. ROSS: Objection.
THE COURT: He's answered it as to his knowledge. I will let the lawyers fight over the proprietary nature of that analysis and the law at a separate time.
Q. (BY MR. DAVIS:) Dr. Bagley, are you aware of any of the decisions or exit polling that you reviewed concerning polarized voting, any analysis about polarized voting in Mobile County specifically?
A. No. All I looked at were statewide exit polling returns. I didn't look specifically as to Mobile or any other county.
Q. Okay. So then for Mobile County, the same would you true for Lee, Lowndes, or Wilcox County, correct?
A. That's Correct.
Q. On the Fob James Amendments that were the subject of your testimony and the legislation passed concerning the witness signature requirement, did I understand you to say that at the time there was no evidence of voter fraud?
A. So what I mean to say there, and I believe this is -- do you have a page number, Mr. Davis? I believe it is around about 23 in my report. What I mean to say is there was very little evidence of the kind of voter fraud that would be addressed with a photo ID law. What I mean to say is that there's almost no evidence of voter impersonation, for example. And so this is not clear in the

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language in the report. But I do not that mean there is no evidence whatsoever of any kind of voter fraud, because of course, there had been investigations for voter fraud in the '80s. There were some convictions in the '90s and in the 2000s. I think there are very few in number relative to the number of votes cast, but there are those investigations and some convictions.
Q. Forgive me, Dr. Bagley. I believe though we're talking about two different time periods. I want to address your comment about the evidence of fraud in and around 2011 when the photo ID law was passed. What I'm asking if I understood you correctly in your direct examination today, I thought you said that when the Fob James Amendments were passed, that there was no evidence of voter fraud?
A. In 1996? Is that correct? We're talking about the James Amendments in 1996.
Q. Right?
A. There would have been again investigations in the '80s into absentee ballot irregularities that would have resulted in the '90s in a few convictions for fraud in that regard.
Q. Okay. So there was some evidence of voter fraud?
A. Of that nature, yes. Very few. I think again in -- if you consider the number of votes cast, but, yes, there were investigations in the '80s, and there were a few convictions in the '90s for example for improperly notarized absentee ballots.
Q. Okay. Okay. Is it your contention that the purpose of the

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witness signature requirements in the 1996 legislation limit black access to the absentee ballot process?
A. I'm sorry, Mr. Davis. It continues to cut out here and there. Could you please ask again.
Q. Is it your contention, Dr. Bagley, as a historian that the purpose of the witness signature requirements in the 1996 litigation was to limit black access to the absentee balloting process?
A. That was --
MR. ROSS: Objection. Your Honor, he didn't testify to that on his direct.
THE COURT: He's about to make the necessary correction. So let me allow the witness to answer. Mr. Bagley -- Professor Bagley, excuse me.
THE WITNESS: Yes, Your Honor. That was not the stated purpose. That is the effect that it had, and I believe as a historian considered in context that this was among the purposes of that requirement.
Q. (BY MR. DAVIS:) What evidence do you cite to, Dr. Bagley, that suggests that a witness signature requirement discriminated against minority voters?
A. Again, I think you have to consider the entire context, and that's what my report is doing. And if you consider the cycle that I was talking about of potential advancement followed by other measures, color mask measures, facially color line measures that

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are taken, to me as a historian, that laser focus on the absentee balloting process of which this then becomes a manifestation, to me as a historian, that puts this situated well within that history, which again I would come to the conclusion as a historian that among the motivations for the requirement would be what you see is the effect. The fact that the Secretary of State himself touts that when the amendments go into place, there is a significant reduction in absentee ballots cast specifically in these Black Belt areas.
Q. Did you perform any analysis to see if in fact African-American voters were less able to use the absentee ballot process after the passage of the 1996 law?
A. On that page where I cite to Secretary of State's Bennett's remarks, I believe there are figures that would indicate that the ballots cast were reduced significantly in the Black Belt where black political activists were encouraging the use, facilitating the use of that process.
Q. What evidence do you have that that is the result of the witness signature requirement?
A. Did you say -- it cut out again. Did you say what evidence do I have?
Q. What evidence do you have that that is the result of the witness signature requirement?
A. Again, it's -- to me in context, as a historian, considering the cyclical backlash, that is the intent behind this. It's not the stated

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purpose. And that is the effect that it has. I think you're asking if I have some sort of smoking gun direct evident. By their very nature, these kinds of laws, these kind of efforts don't produce the kind of comments like by Mr. Mizell, where you could present that as in the Dillard litigation and say, okay, this is very blatantly obviously to intended to quote protect white people. I don't have that kind of evidence. Because by this point, no one is going to be out there saying that sort of thing unless it's like the clandestine recordings from the McGregor case.

Q. Is it your contention, Dr. Bagley, that investigations of voter fraud in the '80s or '90s, that that was the product of select prosecution as a result of racial bias?

A. I think if you look at and in specifically the Marion 3 case, the Spy v. Gordon case, I don't think think any court ever found that there was selective prosection. Although I believe the Eleventh Circuit at one point found that there was evidence that could suggest that possibly was the case. In my opinion as a historian, they are the product of selective prosecution. They are part of this history of cyclical backlash. But again, I'm not an attorney. But insofar as far I have reviewed the case law, I don't think there has been a specific finding by a Court that that was the case if that's what you're asking.

Q. Okay. Do you have a judgment as to how many times the state and federal governments were accused of selective prosecution in the '80s and '90s?

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A. I do not know specifically, no.

Q. And of course, I meant concerning voter fraud prosecutions. Was it more than, say, five or six?

A. I don't think so.

Q. Okay. But again, as far as you know, none of the courts looking at that issue found that there was in fact selective prosecution?

A. Correct.

Q. But you think you as a historian are better able to discern that than the courts that were reviewing the evidence?

A. Well, the courts have different standards than me as a historian. To prove something within a court of law is much more difficult. And I think that cuts again to what I look at in terms of this process of color masking. The very purpose of color masking is designed laws that are in fact discriminatory but that can pass court tests. So I as a historian have standards that are somewhat different than, you know, a judge in a federal court.

Q. Okay. Well, what did you do to investigate whether or not these people were -- who were prosecuted were in fact the subject of selective prosecution?

A. I didn't undertake a systemic investigation.

MR. ROSS: Objection. Your Honor, on his direct, he didn't testify about selective prosecutions or any of the things Mr. Davis is asking him about.

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MR. DAVIS: I would respond, Your Honor, that they put his report into evidence.

THE COURT: Correct.

MR. DAVIS: If they withdraw that section of his report, I'll be happy to move on.

THE COURT: Overruled.

Q. (BY MR. DAVIS:) So, Dr. Bagley, you said you did not perform a systemic investigation as to whether in fact the state or federal governments were guilty of selective prosecution?

A. That wasn't the subject of my report. Insofar as I discuss voter fraud in this report and specific to the absentee ballot process, it's to demonstrate that this issue becomes a part of this long history of discrimination, of cyclical backlash. It was never intended that this report would in any of its phases be a systemic or thorough investigation of every accusation of voter fraud or every accusation of selective prosecution on the part of the state or whomever.

Q. Be that as it may, do you not in your report accuse the state and federal governments of prosecuting African-Americans for voter fraud in a selective way, that they accused the state and federal governments of being guilty of selective prosecution?

A. I wouldn't say use that language. I would say that what I do is investigate what happens post-1980s and present that as part of a narrative of backlash. I think that, yes, the laser focus on the use of the absentee balloting process is a part of this historical

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narrative.

Q. What, if anything, did you do to investigate whether or not the persons accused of voter fraud in fact committed voter fraud?

A. I didn't go into the case files and study at length Mr. Gordon or the Marion 3 case or anything like that. I reviewed the case law is all.

Q. Many of the comments you referenced by Senator Beason, were any of the comments about the provisions that have been challenged in this case?

A. No.

THE COURT: Mr. Davis, the first part of your question did not come through.

Q. (BY MR. DAVIS:) Did HB 56 have anything to do with the provisions that are challenged in this case?

A. I discuss HB 56 only because its cosponsors are among the cosponsors of the photo ID law. And I considered the public statements of Representative Rich and Senator Beason to be examples of what have one would consider under that senate factor, have there been racial appeals. And to me, HB 46 mirrors other litigation -- or rather other legislation that is at issue here in addition to the connection that these public statements would be examples of racial appeals.

Q. The actual senate factor was racial appeals in political campaigns, is it not?

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A. That's correct.
Q. I want to share your report, Dr. Bagley. And let's look at page 23 of your report.
A. Yes.
Q. And this is part of what you were referencing earlier. All right. In this paragraph, you're talking about the passage of the photo ID law, correct?
A. Yes.
Q. And in your report, you say, "But the 2010 elections cemented white flat from the Democrats. Finding it no longer necessary to cultivate coalitions for legislation, the Republican majority turned back to its quest to enact a voter photo ID law despite the lack of any evidence of voter fraud in the state since the few instances of absentee irregularities prior to passenger of the 1996 James laws." And I believe you said this isn't exactly what you meant, right?
A. No. I had about a month to investigate and write and issue this report, and that's just poor wording. What I mean here is there was very little, I think maybe one case, possibly one or two more, of impersonation, the kind of fraud that would be rectified potentially with the enactment of a photo ID law. Obviously, there are instances in the 1990s and early 2000s of individuals who are convicted of fraud in the way of illegally or improperly notarized absentee ballots and that sort of thing. But these would have nothing to do with the photo ID law.

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Q. Why do you say that the photo ID law would only be effective in deterring voter impersonation?
A. It's again cutting out. I hate to continually frustrate --
THE COURT: I did cut out. But I think it's voter ID law -- voter impersonation only? Is that what you said Mr. Davis? Please try again.
Q. (BY MR. DAVIS:) Yes. And, Dr. Bagley, I apologize. There's something -- there's obviously something wrong on my end.
A. Yeah. It's no worries.
Q. -- frustrating me with that. Anytime my question is clear, please let me know.
A. Okay.
Q. My question is, why do you say that a photo ID law would only be effective in deterring cases of voter impersonation and not other types of fraud?
A. I don't mean it would only apply in that regard. I just mean if you look at the list of convictions for fraud during this time, it's almost exclusively absentee ballots that haven't been properly notarized and this sort of thing.
Q. Okay. Now, at your deposition, you said, did you not, that you had actually investigated whether there were reports or convictions of voter fraud in this time period?
A. Yes.
Q. And you viewed, did you not, the Heritage Foundation's website?

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A. That's correct.
Q. I'm sharing the screen, Dr. Bagley. Is this the website that you reviewed?
A. It is.
Q. And if I go down here to see a map, I can see cases that are related to the State of Alabama. Is that what you did during your investigation?
A. Yes.
Q. So if I click on Alabama, it brings up these reports of voter fraud, does it not?
A. It does.
Q. And is this what you viewed during your investigation?
A. It is.
Q. So for the record, then, you would have noted this 2019 case concerning Elbert Melton?
A. Right.
Q. It says case type, criminal conviction. And then under fraud type, it says fraudulent use of absentee ballots?
A. That's right.
Q. Now, if I click on the right, the website provides a brief description of that case, does it not?
A. It does.
Q. And did you look at the brief description for each of these instances?
A. For most of them.

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Q. Okay. Why did you review the website, Dr. Bagley? And I'm saying -- I assume you considered this to be a reliable source?
A. Sure. Yes.
Q. So if I look down, I see in 2017, a case involving Brandon Dean, fraudulent use of absentee ballots, correct?
A. Right.
Q. 2017, Wetumpka City Council District 2, fraudulent use of absentee ballots, election overturned, correct?
A. Yes.
Q. Daniel Reynolds, fraudulent use of absentee ballots, year 2016?
MR. ROSS: Your Honor, I'm going to object because Dr. Bagley has already testified that his report was not about voter fraud. He mentioned that he had looked at the Heritage Foundation website. But he expressly testified that his report was not about voter fraud or the number of instances of voter fraud in Alabama.
THE COURT: Mr. Davis has a right to question him, but I do want to speed things up. Let the record reflect that the website that Dr. Bagley reviewed lists multiple examples -- I don't know the exact number -- of absentee voter fraud. Anything else about that, Mr. Davis, or can we move on?
MR. DAVIS: There is not, Judge. Thank you.
THE COURT: Sorry, Mr. Davis. Please start again.
Q. (BY MR. DAVIS:) I was going back to your report, Dr. Bagley.

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I want to go to page 21 of your report. In the section of this paragraph that's highlighted in blue, you write, "Constantly raising alarm bells about the issue would be a useful politics of fear, too. Stoking anger in the white conservative electorate that would generate support for measures, couched as reform, that would in effect, disenfranchise black Democratic voters not unlike the Sayre law had done." And the issue that you're talking about is voter fraud, is it not?

A. Right. I should clarify what I mean here. This is another example of language that could have been cleaned up. Obviously, in the case of the Sayre law, we're talking about disenfranchising at that time black Republican voters. So I don't mean to suggest that -- I mean, black voters would have been voting at that time for the Republican party. So that sentence is a little bit unclear in that regard.

Q. Okay. Okay. But what measures do you contend have been couched as reform that disenfranchised black Democratic voters not unlike the Sayre law had done?

A. Well, if I'm looking at the report and situating it correctly, we're talking about Senator Dixon and his quest to enact the photo ID law. So that is what I was talking about in particular here. But then of course, I go on to discuss the passage of the James Amendments in '96.

Q. Okay. So you're saying that the witness signature requirement would in effect or did in effect disenfranchise black

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Democratic voters not unlike the Sayre law had done?

A. I'm saying if you consider the historical narrative here and the analysis that I've performed up to this point, it is part of the cycle of backlash.

Q. But this paragraph doesn't say it's part of the cycle of backlash, does it? You're saying that this measures in effect disenfranchise black Democratic voters?

A. I'm saying I think as a historian that was part of the intent. I haven't undertaken a systemic study where I could present to you figures that would demonstrate that. But again, I'm providing the historical context that I think as a historian shows that.

Q. In the first part of this paragraph, you quote Senator Dixon about voter fraud, and you say that Dixon said obviously they -- I think from context, you're suggesting he's referring to African-American voters. Dixon said, obviously, they learned well, meaning black people had learned how to engage in voter fraud from the past efforts of white supremacists. Dixon's comment demonstratives how white Republicans felt about voter fraud at that time."

What is your evidence that Senator Dixon was speaking for all white Republicans?

A. I'm sorry. I caught all of that except the very last -- the question.

Q. I'm sorry.

A. That's okay.

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Q. What is your evidence, Dr. Bagley, that Senator Dixon is speaking for all white Republicans?

A. Well, I -- obviously can't go through a list of every Republican who was serving in the legislature at that time and have specific direct evidence that that is precisely in fact how they felt. To me, I think I'm just trying to speak to the fact here that as we've seen, obviously, throughout history, there have been these shifts in party politics. And it was around this time that the shift of white people out of the Democratic party and into the Republican party was occurring. That's all I'm trying to highlight there.

Q. Okay. As you sit here today, do you have any evidence that any other member of the Republican party agreed with Larry Dixon on this point?

A. Specifically about the Klan? No.

Q. Dr. Bagley, you accuse Secretary Merrill of using racialized language. Again, for context, what is it that you believe Secretary Merrill said that you believe was racialized language?

A. I believe I included both the sorry and lazy remarks from the video and also the Twitter remarks that were entered into evidence.

Q. Where at any point does Secretary Merrill say that he was talking about minority voters?

A. He does not. To me as an historian, though, knowing how this -- I mean, this is decades into this process of I think what

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some people have called dog whistling, a part of a process of color masking where a public official can use language that is not overtly racial but that can tap into people's understandings of certain stereotypes. And I think in particular here the contention that people who are going to benefit from things like automatic registration are sorry and lazy to me is a fairly clear case of a racial appeal.

Q. Well, how so? What is your evidence that he is referring to minority voters?

A. Well, again, by design, with these coded racial appeals, we don't have -- that's the nature of a coded appeal. You don't come out and say, well, black people are lazy, and I don't think they should have freer access to registration. We have to parse that out as historians and look at years from, you know, George Wallace saying segregation forever to people continually saying they champion things like law and order, you know, we can infer given the context that these are very likely racial appeals. Again, a coded appeal will not by its very nature have smoking gun evidence of someone saying, you know, in this case, I think black voters are lazy and shouldn't have freer access.

Q. Okay. So as a historian, you look at the fact that George Wallace and people back before had used language like this in a derogatory way. Then you fast forward to 2020. You see John Merrill use the same word in a conversation with another white person, and you as a historian can conclude that he's really using

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racialized language?

A. No, I'm mischaracterized there I think. I think it's what happens between Wallace in the '60s and where we are now. And it's the subject of a lot of my book how people have learned over the years to not be as clear or even as roughly coded as Wallace and learn how to more clearly convey things to white constituents without using that kind of blatant or overt language. If that makes sense.

Q. Uh-huh. Do you contend that anytime one person calls another person lazy that that is racialized language and that the speak is guilty of racial bias?

A. No, sir. Of course not. I think in this case, it's the fact that the Secretary is talking about freer access to the franchise, specifically things like automatic voter registration, the fact that there is this very long and documented history of black people having to struggle very hard just to get the right to registering to vote. All these contextual things. We would never take the language at its face by itself. As a historian, we want to consider it in context along with other evidence, right, other context.

Q. Okay.

A. So, no, very obviously you would not say anybody who calls someone lazy is making a coded racial appeal.

Q. Of course not. Well, do you think it might be relevant as a historian if Alabama did actually make it difficult to register to vote?

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A. Say the first part again, Mr. Davis, please.

Q. Do you think it would be relevant evidence in determining whether John Merrill was using racialized language to see if Alabama made it hard to register to vote?

A. I think I presented in my report a very long history of Alabama making it difficult to register to vote.

Q. Okay. And when was the last time you contend Alabama made it difficult to vote? Difficult to register to vote?

A. Specifically to register?

Q. Yes.

A. I mean, it's -- the report is littered with this. I mean we're talking about the Harris v. Siegelman language being codified in. We're talking about the photo ID law being enactd in 2010. (That was 2006 up there) so I think the report has ample evidence of have.

Q. Okay. Did you do any investigation as to whether John Merrill has taken any action whatsoever to make it more difficult to register to vote?

A. No.

Q. Why not?

A. Well, what I have done in respect to Secretary Merrill is simply include him in that racial appeal section because I think if we're talking about voting and we're considering racial appeals, a racial appeal by the Secretary of State would be relevant. If we're talking about enforcing the provisions in question, obviously,

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that is relevant, and that's what we're looking at here in the report. So I don't think that I have simply focused on this action by the Secretary alone for any insidious reason if that's what you suggest.

Q. Dr. Bagley, I'm going put up a press release. This is State Defendants' Exhibit Number 65. Just for the record, this can be authenticated if not by stipulation then by future witnesses later. I'm not going to seek to admit it now. But, Dr. Bagley, if you see, this is a press release from the Alabama Secretary of State's office dated June 15, 2020?

A. Right.

Q. It says, this week the office of the Secretary of State topped 3.6 million registered voters. Our registrars have recorded the successful application of 1,531,584 new voters since Secretary Merrill took office.

A. Yes.

Q. Bringing the total number of registered voters to 3,600,807. Do you have any reason to know whether this is accurate or inaccurate?

A. I have no reason to believe this is inaccurate.

MR. ROSS: Objection, Your Honor. To the extent he's going to go ask him about these specific numbers, it's based on a press release. There's no -- there's nothing to authenticate that these numbers are true or accurate. It's just a press release.

THE COURT: I can agree with that. Although the witness

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obviously -- and the question that was framed, he has no reason to dispute the numbers. So that doesn't mean the numbers are true obviously.

Mr. Davis, please continue.

MR. DAVIS: Correct.

Q. You did no investigation whatsoever, did you, Dr. Bagley, to see whether Secretary Merrill had taken action to make it more difficult to register to vote or whether he had opened up the registration process?

A. I understand that recently after this litigation was filed, the Secretary finally allowed for no-excuse absentee voting.

Q. Did you do any investigation one way or the other into whether the Secretary of State had made voter registration easy or made it more difficult?

A. Not specifically as to registration, no.

Q. You expressed an opinion about the success of minority candidates in statewide elections, correct?

A. Yes.

Q. As part of your research and as a historian, did you review the Court's decision in a lawsuit that was tried in the Middle District of Alabama styled Alabama NAACP v. Merrill which I concerned the election of appellate judges?

A. I am passingly familiar. I have not read the entire opinion of the Court.

Q. Do you know whether in that case, an issue before Judge

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Watkins was the reason that minority candidates had been unsuccessful in recent years in statewide election?

A. Again, I've not read the opinion. I'm not an attorney. And so --

Q. Well, you've reviewed court opinions as part of your investigation?

A. I have, yes. Yes.

Q. And you reviewed this one?

A. I am familiar with it, yes. Again, I have not read the entire opinion of the Court.

Q. Are there any discriminatory provisions of the 1901 constitution that are still enforced today?

A. I think we discussed on direct the crimes of moral turpitude provision which have has been litigated and modified but is still operative.

Q. Is it your belief that the provision that was passed in 1901 concerning moral turpitude is still operative today?

A. It is --

MR. ROSS: Objection.

THE COURT: I think he said it's been revised and modified.

MR. DAVIS: Okay.

Q. Is the Sayre law in effect today?

A. No. Well, the provisions of it that were still in effect were targeted by the Harris v. Siegelman litigation and later codified.

Q. Does Alabama have a white primary today?

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A. No.

Q. Has it had a white primary in the last 55 years?

A. It has not.

Q. Has it had a Boswell Amendment in the last 55 years?

A. No, that was struck.

Q. Has Alabama had poll taxes or used literacy tests in the last 55 years?

A. No.

MR. ROSS: Objection. Calls for a legal conclusion. But you may answer.

THE COURT: I sustain the objection. As to the specific thing itself that he references in his report, sure. He would say they're not in effect today as they were described or codified back then.

MR. DAVIS: Yes.

Q. The objections, Dr. Bagley, that you say that the Department of Justice raised to voting laws in Alabama, when was the last time the Department of Justice objected to a statewide law in Alabama?

A. I believe the DOJ objected to each -- each reapportionment up to '90, I believe, if that's not a mistake. I don't have the list of CRD objections in front of me. So I'm not 100 percent positive.

Q. Are you aware of any objection that the Department of Justice raised to a statewide Alabama law in the past 25 years?

A. No. But I'm aware that there are a number of local laws that have to pass through the state legislature that the CRD objected

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to during that period.

Q. When you were discussing the Harris v. Sealingman case, Dr. Bagley, there was a demonstrative there where you quoted language and said -- I'm going to paraphrase here. But any person who requests assistance in voting can get it?

A. Right. As limited of course by language of the VRA. It couldn't be your union representative, for example. But broad assistance should be available.

Q. Are you saying that's assistance of any kind that any voter can imagine?

A. The law is what it is. I have quoted that section, and it speaks for itself, I think.

Q. Well, you don't contend a voter could sit at home, call up the state, and say, hey, I need assistance. Please bring me a ballot and take it back for me?

A. No. I think what this refers to is if someone needs assistance navigating a ballot, for example, they can have someone come in and help them with that.

MR. DAVIS: Your Honor, I believe that I could wrap up if I could ask the Court's indulgence to take maybe even just 60 seconds to two minutes to consult with my --

THE COURT: You may.

MR. DAVIS: Thank you.

THE COURT: Recess for the next two minutes.

MR. DAVIS: Thank you.

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(Recess.)

MR. DAVIS: Your Honor, I will have just a few more questions, but I'll alert my colleagues that I'm very nearly done. If they have questions, they should be ready.

THE COURT: Okay. You may begin when you're ready.

MR. ROSS: Thank you.

Q. (BY MR. DAVIS:) Dr. Bagley, do you contend that you have given the Court a full picture of the history that you present?

A. Could you explain further what you mean by a full picture?

Q. Did you cherry pick sources and events that support the results that you wanted to reach, or do you contend that you have given the Court a broader scope of history --

A. I certainly wouldn't agree that I have cherry picked and come to, you know, any predetermined conclusion and cherry picked to support that. I would stress though again that this is intended to get at that fundamental question that I was asked to get at. It's not intended to be, for example, a thorough history of voter fraud in the State of Alabama. So there may be areas in which it is not thorough. The lack of thoroughness in those areas though I don't think demonstrates that I have cherry picked evidence to support any one conclusion.

Q. Why, when you discussed the photo ID law -- and I believe it's clear that you have expressed an opinion that you believe that it is discriminatory or was intended to discriminate. Why does your report not include the fact that Alabama accepts forms of ID

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disproportionally held by black voters?

MR. ROSS: Objection. Assumes facts not in evidence.

THE COURT: Correct.

MR. ROSS: There's no evidence -- yeah. Thank you, Your Honor.

THE COURT: He has not spoken specifically about types of ID. The only thing that I recall -- I think he said the first law that was passed just said an ID did not require -- did not specifically call for a photo ID.

MR. DAVIS: Correct. Judge, my point would be, he may not know the answer to that question, and then that would be his response. I'm not trying to seek to prove to him that that is the case. I'm asking why that was not a subject that he saw deemed fit -- that he did not deem fit to include.

THE COURT: What voter IDs -- what voter IDs are we sailing are favorable to minorities?

MR. DAVIS: Your Honor, as the Eleventh Circuit recently discussed, there are several IDs accepted by the State of Alabama that are disproportionately held by minority voters. My question is to just ask if Dr. Bagley was aware of that, and if so, why he chose not to include it in his historical report.

MR. ROSS: And, Your Honor --

THE COURT: As to that question, Dr. Bagley my answer. Were you aware of the Eleventh Circuit's opinion sir, on, that particular point?

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THE WITNESS: No, Your Honor, I was not aware of the opinion. I am aware of the fact that those forms of ID are acceptable. As to Mr. Davis's question, I would say we could go through the report and probably list a number of things that are not in there. But again, I had a month to compile a report to get at that fundamental question that I was asked to get at. I included the evidence I thought was relevant as to each senate factor as best I could. I'm sure we could cherry pick instances in the report of information that might have been useful to the Court or might have not have.

Q. (BY MR. DAVIS:) And then lastly, Dr. Bagley, I would like to share the screen. This is something we talked about in your deposition. Do you recognize this as a news release from the United States Attorney for the Northern District of Alabama?

A. Yes, sir.

Q. The date is January 29, 1998, correct?

A. That's correct.

Q. And was Doug Jones the U.S. Attorney at that time?

A. He was.

Q. For the record, this is State Defendants' Exhibit Number 111 that I'm discussing. As we discussed in your deposition, this press release announced an investigation, a joint investigation by the state and federal governments, did it not?

A. That's correct.

Q. And do you contend Doug Jones, now Senator Jones, was

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guilty of engaging in selective prosecution when he started this investigation?

MR. ROSS: Your Honor, Plaintiffs object. Again, so this news release, this press report was not the subject of his expert report at all. And he's already again testified that he did not do any sort of analysis of every instance of voter fraud in Alabama.

THE COURT: I'll sustain the objection.

Mr. Davis, wrap up, please.

MR. DAVIS: Done, Your Honor.

THE COURT: Thank you. Who is up next? Mr. Cowell?

MR. COWELL: No questions, Your Honor.

THE COURT: Thank you. Mr. Dungan?

MR. DUNGAN: No questions, Your Honor.

THE COURT: Thank you. I see no other takers.

Mr. Ross, any redirect?

MR. ROSS: Yes, Your Honor. Just a few questions.

THE COURT: You may.

MR. ROSS: Thank you.

Q. You mentioned the Marion 3 in your testimony. Who were the Marion 3?

A. These were individuals from Marion County who were charged with voter fraud related to the absentee voting process.

Q. And what happened --

A. I'm sorry, Mr. Ross. They were subsequently exonerated.

Q. And you testified earlier about a documentary proof of

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citizenship requirement as a part of HB 56; is that right?

A. That's right.

Q. And that was for a voter registration requirement; is that right?

A. That is correct.

Q. And you also were asked by Mr. Davis about Secretary Merrill's comments about black -- sorry. Strike that. About people who want to use certain types of voting measures like same-day registration. I believe Secretary Merrill referred to them as sorry and lazy, right?

A. Yes, that's correct.

Q. Was that also in the context of him discussing civil rights icons like John Lewis and Martin Luther King and Rosa Parks?

A. Yes. He listed off a number of those figures and more and that -- in that same --

Q. And was -- and are those people who he listed, were they all African-American?

A. They were.

Q. And does that play any role in your analysis of whether or not that was a racial appeal?

A. Yes. And he lists these people and is championing them as pioneers and then suggested that the sorry lazy people today are dishonoring their legacy. Which to me would seem to suggest that there is an expectation that you would have to get out and work that hard to be able to have your vote count as opposed to

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again something that Congressman Lewis would have supported like an automatic registration process, which would make it easier for people, like especially black people who are very poor in the Black Belt getting registered to vote.

Q. Okay.

MR. ROSS: And, Eric, can be can you please pull up the DOJ settlement link. I believe this is the other settlement.

Q. But, Dr. Bagley, are you aware of any -- strike that.

Are you aware of any settlements between the Alabama Secretary of State's office and the Department of Justice or anyone else regarding the National Voter Registration Act?

A. Yeah, what is reflected here on the screen, yes.

Q. And can you read for me just the second paragraph out loud?

MR. DAVIS: I want to object. Now, this may be cited in his report that I don't recall. In which case, I withdraw the objection. But if this isn't part of his report and part of the opinions that we were given notice of, I object.

THE COURT: Let me hear from you, Mr. Ross, because I think that is a fair objection.

MR. ROSS: Yes, Your Honor. I -- you know, I checked to see whether or not it was cited in his reports. I -- you know, Mr. Davis seemed to imply that there was no evidence of Secretary Merrill having engaged in any violations of federal civil rights law. And as we've already gone over before, this is one

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instance in which Secretary Merrill entered into a settlement because he was not complying with federal civil rights laws and voter registration laws in particular.

THE COURT: Yeah. It's already in evidence properly. To the extent that this --

MR. ROSS: Yes, Your Honor.

THE COURT: -- this witness did not mention this in his report, let's move on, please. Dr. Bagley, did you talk about this in your report, sir, since you're more familiar with it than the rest of us?

THE WITNESS: I discussed the DMV closures. I discussed the fact that the closures and the limiting of hours were found to be violative of the Civil Rights Act and that they were reopened. I do not recall specifically as to whether I cite in my footnotes to this particular document. There's a lot of information in those footnotes. And -- I'm sorry, Your Honor.

THE COURT: Does this memorandum of understanding deal with those issues that you just referenced?

THE WITNESS: Well, it deals more specifically with the noncompliance with the motor voter provision, actually.

THE COURT: Okay. All right. You may ask him about it. Mr. Ross, you are on mute, I believe.

Q. (BY MR. ROSS:) I believe, Dr. Bagley, you just said that you were aware of the settlement between Secretary Merrill and the Department of Justice; is that right?

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A. Yes, in regards to the motor voter program.

Q. And is it right that this settlement was about Secretary Merrill's noncompliance with the National Voter Registration Act?

A. That's correct.

Q. Okay.

MR. ROSS: You can take it down, Eric.

Q. One last question. So, Dr. Bagley, Mr. Davis was asking you about various provisions of Alabama law which no longer are in effect; is that right?

A. That's right.

Q. And those provisions of Alabama law related to voting that are no longer in effect, is it accurate to say that all of them were struck down by federal courts rather than by the state legislature changing the law?

A. Yes. Their being struck would be part of this long history of advancement cyclical backlash as I have mentioned repeatedly.

Q. And it was not the state legislature loosening laws around absentee ballot before a federal court stepping in for example?

A. No. There are very few if any examples of the state volunteering opening up the electoral process to black citizens. This has been part of a decades-long fight involving the civil rights division and private litigants and of course black citizens themselves in direct action, protest.

MR. ROSS: Thank you, Your Honor. I pass the witness.

THE COURT: Mr. Davis, the topics, at least from my notes,

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Marion 3, HB 52 citizenship requirement, Secretary Merrill's comments, the DOJ memorandum of understanding, and the laws that are no longer in effect. Any recross as to those areas?

MR. DAVIS: Yes, one. I understand my limitations and agree with them. I have one question about the memorandum of understanding.

Q. Did the State of Alabama or did Secretary Merrill admit to any liability by entering into that settlement agreement?

A. I -- the actual specifics, I don't know. All it was was just noncompliance with motor voter allowing recommendation when you get the driver's license.

MR. DAVIS: That's all, Judge.

THE COURT: Thank you. The rest of the folks on the call that are assigned to this witness, any questions? I see some heads shake --

MR. COWELL: Nothing, Your Honor.

THE COURT: All right. Thank you. Dr. Bagley, you're free to do. Have a good afternoon and good week.

THE WITNESS: Thank you, Your Honor. The same to you.

THE COURT: Ms. Merle, are you responsible for the next witness?

MS. MERLE: Yes, Your Honor.

THE COURT: Who is he or she?

MS. MERLE: Dr. Burch. And I believe she's in the waiting room.

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THE COURT: I see you, Dr. Burch. Good afternoon.

THE WITNESS: Good afternoon.

THE COURT: Can I get you to raise your right hand, please, so you can be sworn in.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Tracy Burch, B-U-R-C-H.

THE COURTROOM DEPUTY: What city and state do you reside in, Ms. Burch?

THE WITNESS: Evanston, Illinois.

THE COURT: Thank you.

THE COURT: Ms. Merle, your witness.

MS. MERLE: Thank you, Your Honor.

Q. Good afternoon, Dr. Burch.

A. Good afternoon.

Q. Could you please describe your educational background for the Court?

A. Yes. I did my undergraduate work at Princeton and majored in politics, which is what they call political science there. And I completed my Ph.D. at Harvard in government and social policy.

Q. And what is social policy?

A. So it's actually a dual-degree program. So government is the political science component at Harvard, and social policy is a separate degree program that looks at the implementation,

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passage, structuring of policies that affect people as opposed to say energy policy or the like.

Q. And where are you current employed?

A. I am currently employed at both Northwestern University as an associate professor of political science and as a research professor at the American Bar Foundation.

Q. And how long have you been a professor at Northwestern?

A. Since 2007.

Q. And are you a tenured professor?

A. Yes.

Q. And what courses do you teach at Northwestern?

A. I've taught lots of courses from both Ph.D. students to undergraduates including law in the political arena, race and public policies, criminal justice politics and policy, welfare state policies for graduates...

THE COURT: Professor Burch, we lost you there just briefly when you were telling us about the courses you were teaching.

THE WITNESS: Yes. I can start -- I can repeat. So I -- welfare state, politics and policy for Ph.D. students as well as undergraduates. I've taught Ph.D. students, seminars in political behavior, introduction to American politics, a fairly long list of courses.

Q. (BY MS. MERLE:) And you mentioned the American Bar Foundation. What is this?

A. It's a separate research institute that is tied to the American

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Bar Association loosely. And I am on staff there to do research the project that I design and implement and write-up myself as well as some in-house service activities such as mentoring doctoral students and postdoctoral students, some undergraduates and other kinds of tasks like me having in-house journals, and sometimes I have been associated with that, vetting research for the other research professors, that signed of thing.

Q. And have you published any peer-reviewed academic research?

A. Yes. I have published several peer-reviewed articles, books, chapters in books as I note on my CV.

Q. And can you describe the primary subjects that your research focuses on?

A. Sure. I've done work on political behavior more broadly. So there's several articles and books and book chapters that deal with political participation as well as how certain aspects of laws such as felony disenfranchisement laws affect political participation. And I also have done work that looks at how different people participate in policy.

Q. And have you served as a peer reviewer for any academic journals related to political participation?

A. Yes. Lots. I have served as a peer reviewer for the American Political Science Review, the American Journal of Political Science, Journal of Politics, Political Behavior, Public Opinion Quarterly, the Board Review on Race. I have reviewed books for the

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University of Chicago, Princeton, Harvard, Duke, Cambridge, Oxford, various -- oh. Sorry. I was going to say various -- project proposals for NSF and other groups as well.

Q. And have you served on any academic oversight committees?

A. Yes. So I have been on several editorial boards for journals including Law and Social Inquiry as well as Political Behavior. And currently I am on the executive council for the elections public opinions and voting behavior section for the American Political Science Institute.

Q. And have you received any professional awards or academic honors for your research concerning political participation?

A. Yes. So my book won several awards from the American Political Science Association including the best book on race or ethnic politics, urban politics and law in court section. And my dissertation also won several prizes from the American Political Science Association including the best dissertation in American government in state and local government and in Urban Politics. And I also won an award from Harvard for writing the best dissertation in political science.

Q. I'm sorry. You faded out at the end for me, Dr. Burch. You received --

A. The award from Harvard for the best dissertation in political science.

Q. Okay. And do you have experience analyzing or conducting

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surveys?

A. Yes. I have fielded either questions on surveys as well as I've been co-principle investigator on a survey that we've done here in Chicago. I'm also on the board of overseers for one of the longest running surveys in the United States, general social survey.

Q. Okay.

MS. MERLE: Your Honor, at this time, Plaintiffs offer Dr. Burch as an expert in -- on political science and social science and political behavior.

THE COURT: Any objections?

MR. BOWDRE: No objection, Your Honor.

THE COURT: Thank you, Mr. Bowdre. Anyone else?

MR. DYAR: No objection.

THE COURT: Thank you, Mr. Dyar. In that case, the Court will accept Dr. Burch as an expert on political science and social science and political behavior, *i.e.* the matters for which she's being tendered for as an expert in this case.

Ms. Merle, you may continue with your examination.

MS. MERLE: Thank you, Your Honor.

Q. Dr. Burch, I want to discuss your involvement in this case. Did you prepare reports in this case?

A. Yes, I did.

Q. And how many reports did you ultimately submit in this case?

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A. An initial report and a supplemental report I believe a couple weeks after that.

Q. And were both of these reports signed under oath?

A. Yes.

Q. And do these reports accurately reflect your analysis -- your opinions in this case?

A. Yes.

MS. MERLE: Your Honor, at this time, Plaintiffs would move Exhibit 270 which includes Dr. Burch's initial report and her CV into evidence as well as her supplemental report which is Plaintiffs' Exhibit Number 265.

THE COURT: Mr. Bowdre, Mr. Dyar, any objections to Plaintiffs' 270?

MR. DYAR: No, Your Honor.

MR. BOWDRE: No, Your Honor.

THE COURT: Thank you both. Plaintiffs' 270 is received.

MS. MERLE: Thank you, Your Honor. We also move for Dr. Burch's supplemental report, 265.

THE COURT: Same question, gentlemen. Any objections to 265?

MR. BOWDRE: No objection.

MR. DYAR: No objection.

THE COURT: Thank you again. 265 is received as well.

MS. MERLE: Thank you.

Q. Dr. Burch, what where you asked to do in this case?

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A. I want asked to examine how in light of the pandemic, how certain voters who are at high risk of severe complications from COVID-19 might be affected by the requirement of voting in the State of Alabama either to vote in person at a polling place or to have to fulfill the requirements to vote absentee of either notarizing their ballots or obtaining the signature of two witnesses and providing a copy of their photo ID.

Q. And can you briefly summarize your overall findings before we discuss in more detail?

A. Yes. I found -- based on my analysis of the political science literature as well as several surveys, I found that there are at least a million people in Alabama at a minimum who would be considered high risk based on CDC guidance of severe illness from COVID-19. I also find that based on the scholarly literature that the pandemic has the -- in light of the pandemic, there may be an effect on voter turnout to the extent that people have to go against the CDC guidelines to avoid public or crowded places and to avoid contact with people outside their household to vote.

So the first of those would be because of a direct fear of having to encounter people from outside their households, that should have a suppressing effect on turnout. And there also may be a disruptive effect because of the pandemic in terms of how people are voting or are able to vote. And the final thing is that I find racial disparities in the extent to which people will have to encounter people from outside their household in order to fulfill

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each of these requirements, whether in person or absentee voting in order to vote. So with respect to having either access to either two witnesses, two adult witnesses in their household already or having the technology such as internet or computers or even the financial means to overcome those barriers in order to fulfill them and vote.

Q. For the record, is there anything in your expert report that you would update?

A. I think that because this is a constantly changing field, there have been several other surveys of Alabama that have been released since I was writing. But really, the -- what all the work that -- all the other survey work that I've seen since has just confirmed my analysis here with respect to both the numbers of people as well as behavior. So I mentioned in my deposition the COVID -- the 50-state COVID survey that again, finds the same thing that I find with respect to the relationship between fear and wanting to turn out and the like.

Q. And, Dr. Burch, we can move now more into -- specifically into your findings. And you just mentioned your analysis regarding the fear that voters may have during the pandemic. Based on your research, what did you conclude in terms of voters's fear of contracting COVID-19 and the impact on their political participation?

A. I concluded that voters at high risk of contracting COVID-19 as well as voters more generally are really -- majority of the

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voters are very concerned about the prospect of contracting COVID-19. And the research also suggests that concern shapes political behavior. So I cite here in my report beginning on page 13 several surveys as well as political science studies that suggest that people are taking precautions to avoid contracting the disease, both nationally and in Alabama. And I cite several studies that show that people's concerns about voting and specifically their desire to avoid avoid having to do any kind of contact with people outside their household in order to vote is shaped by their concerns about the pandemic.

So I talk here about several such studies that show that even regardless of ideology, so both liberals and conservatives, who fear contracting COVID-19 are much more likely to support voting by mail. Voting by -- even in Alabama, voting by mail is such higher. So people expect a much higher percentage of people to say that would like to avoid in-person activity and vote by mail even though Alabama traditionally has a lower rate of people who vote by mail in fact.

Q. In your research, did you have find information as well about the size of -- about people in Alabama who would want to vote curbside if allowed?

A. Yes. So there's a study that was conducted by Auburn University in Montgomery that asks specific questions about Alabama -- of Alabama registered voters about their preferences with respect to voting in the pandemic. And only about 16.3

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percent of respondents said that they supported none of the alternatives to voting in person. So a large majority of people support some alternative to voting in person at a polling place this November in light of COVID-19. And about 40 percent said that they supported curbside voting.

Q. And did you say that survey from Auburn University -- was that Alabama registered voters? Is that what you alluded to?

A. Yes. It was Alabama registered voters. And it was fielded in July.

Q. In your research, did you do any analysis about the percentage of voters who expect to vote by mail in 2020? I believe you testified to this. What was that percentage of individuals who expect to vote?

A. So the most recent figures that I know about and that I testified about in my deposition comes from the 50-state COVID survey. And that was about 43.3 percent -- 43 percent of Alabamians expect or say that they want to vote by mail in November. And that's compared with only 3 percent who say that they had voted by mail in 2016. So it's a large leap. And those data I think were just published after my report but again, I talked about it in my deposition. I think it was early August when that report was --

Q. And did you do any analysis regarding Alabama voters's confidence in navigating the process to vote by mail?

A. Yes. So on that same survey, about 54 percent of voters said

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that they were not confident that they knew how vote by mail worked in Alabama. And that again, is probably because so few had -- only 2 percent had done it recently.

Q. Okay. If we can turn now and focus on your analysis as to high-risk individuals in Alabama specifically.

MS. MERLE: And, Eric, if you could bring up slide 4 of the demonstratives.

Q. Dr. Burch, did you do -- did you do any analysis as to the size of the population in Alabama that is at high risk in regards to COVID-19?

A. Yes. I examined several national surveys and one Alabama-specific survey. So several of the surveys that I discuss here in my report include data collected by the CDC as well as the recent American social and economic surveys by the -- collected by the census bureau as well as the census's household polls surveys which are specifically designed to collect up-to-the-minute data on how the pandemic is unfolding and affecting American households and several other data as well.

Q. Can you -- on the demonstrative here, which is figure 1 in your report, there is three different surveys over three different years. Can you explain to the Court why you looked at three surveys over three years, please?

A. Sure. So I typically looked at multiple surveys to answer the same question just to show that the data are fairly consistent in terms of the magnitude of the patterns that I am seeing in the

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data. So here I include data on -- I'm looking at -- I'm trying to start to estimate how many people are at high risk based on surveys questions about individuals's health status.

So many of the government surveys don't ask specific questions about comorbidities. I do have some data on comorbidities in Alabama both statewide and in the Birmingham-Hoover area that I talk about later. But the CDC and other public health surveys have been listing people who are of fair and poor health as an indicator of higher risk of morality and other indicators as I note in my report. So the CDC website itself for 2018 has that among white Alabamians who are under the age of 65, this is younger people but who have -- who report that they're in fair or poor health, about -- that population is about 22 percent of white Alabamians and about 26.5 percent of black Alabamians.

The second column lists similar data from the ASEC. And that is a survey of white Alabama residents, but I'm able to narrow it down to just citizens, so it's closer to the citizen voting age population, at least under age 65. And there 15.7 remembers whites, and 14.8 percent of black Alabama's say that -- report that they're in fair or poor health. The household poll survey reports slightly higher number of people in fair or poor health, but those are a little more consistent with the CDC website. Again, the racial gaps between black and white Alabamians are there across all the surveys.

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Q. Okay. And can you explain why you looked at fair and poor health for analyzing individuals who are at high risk because of underlying medical conditions?

A. Yes. So as I said, they are -- the data are consistent in that people -- those -- sorry -- delineate between fair and poor health versus good or better health in highlighting those outcomes. But I do at least in my report discuss and make a note of the fact that in -- just looking at the bottom category of people who report that they're in poor health, about -- there's still a racial disparity there, about 8.8 percent of black Alabamians report that they are in the bottom category of poor health compared to about 4.1 percent of white Alabamians.

Q. Okay. And did the Alabama Department of Public Health also put out information that was relevant to this aspect of your analysis?

A. Yes. So in -- the Alabama Department of Public Health also talked about the fact that there is racial disparity in terms of who is hardest hit by COVID-19 in Alabama. So they report on their website that black Alabama residents are disproportionately affect, and counties in the Black Belt have a higher rate of COVID-19 transmission and deaths than in others. And that's partly to do with some of the data that we see here about health status.

Q. Okay. And the figure that we're looking at here, figure 1 in your report, this demonstrative, this does not include data about

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specific underlying health conditions. Is that -- was that your testimony?

A. Right. That's just people who say that they are in fair or poor health.

Q. And did you collect data that -- did you collect any data regarding Alabamians and their specific underlying health conditions?

A. Yes. So it turned out that these data, just using self-reports of fair or poor health, actually underestimate the rate of comorbidities in Alabama.

MS. MERLE: And, Eric, if you could -- thank you.

A. So if you look at data from the CDC, even with respect to specific underlying medical conditions, that these numbers are much higher than what we just saw with respect to people reporting that they are in poor health. So nationwide, about 60 percent of Americans have at least one of the underlying medical conditions that the CDC says would put people at higher risk of severe illness from COVID-19.

In Alabama, the CDC lists that about 10.4 percent of people have asthma, 12.7 percent have been diagnosed with diabetes, 6 percent have heart attacks. Hypertension is very common, high blood pressure, about 42 percent. And the CDC says that obesity, about a third of Alabamians are obese.

Q. And so we have been talking about individuals who are at high risk because of underlying health conditions. If we can turn

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now to individuals who are at high risk because of their age.

MS. MERLE: Eric, if you could put up the next -- thank you.

Q. Dr. Burch, what was your conclusion with regard to the size of the population who was at high risk in Alabama due to their age?

A. So if we just look at, again, several government studies, including the November CPS, which is the one that allows us to look at registered voters. Alabama -- among Alabama registered voters, overall, about a quarter are both -- are over age 65 or over in Alabama. By race, we can see racial gaps. So about 27 percent of -- almost 28 percent of white Alabama registered voters are over 65 compared with just over 50 percent of black registered voters. And you can -- that gap persists in all the other household surveys as well, that white Alabama adults are more likely to be at high risk because of the advanced age.

Q. And did you come to any --

MS. MERLE: Eric, if you could pull up demonstrative 7.

Q. Dr. Burch, did you come to any conclusions about the combined high-risk population in Alabama? So those at high risk because of older age and those at high risk because of underlying medical conditions?

A. Yes. So if you just add those numbers together, we can get at least a baseline of the high-risk population in Alabama. And again, this is the -- an underestimate. Because again, using fair or poor health to estimate the population who's at high risk because

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of medical conditions is low. But based on that, with all those caveats, about 40 percent of white Alabama adults and about -- 41 percent of white Alabama adults and about 40 percent of black Alabama adults are at risk of severe illness from COVID-19 compared with about 24 percent -- 24 percent of Latino Alabama adults. Putting numbers to that, that's just over -- let me make sure I have the specific numbers here because I don't want to -- yes. That's just over a million white Alabama adults and about 350,000 black Alabama adults and about 30 -- close to 36,000 Latino adults.

Q. And, Dr. Burch, if I can ask you, a moment ago you were looking at the demonstrative about those who are at high risk due to age, and you were noting the gap or the disparity of those who were at high risk due to age.

MS. MERLE: Eric, if you could bring up that demonstrative we were just looking at, I believe. Yes. This one.

Q. And you were discussing the gap here, Dr. Burch. Did you come to any conclusions or -- yeah. Did you come to any conclusions regarding why this disparity may exist between White Alabamians and black Alabamians in regard to being at high risk because of age?

A. Yes. So there is life expectancy probably because of the difference in underlying medical conditions at younger ages between racial groups. So as I note in my report, the life expectancy for white people in Alabama is about three years

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longer on average than that for black people in Alabama.

Q. Okay.

MS. MERLE: And you can take that down, take down the demonstratives, Eric. Thank you.

Q. And did you come to any conclusions regarding the Alabama population that's the highest risk group? So those who are over the age 65 and have an underlying condition?

A. Yes. So having a series of these risk factors makes you at higher risk. And I note in my report that when you look at the COVID impact study which just looks at Alabama adults in the Birmingham-Hoover region, but has really much more detailed data on comorbidity, if you look at the older respondents by racial group, as I do on page 30, 76.1 percent of older white people and 80.3 percent of older black people and all of older people of other races also had at least one underlying medical condition that made them more vulnerable to significant illness from COVID-19. So they were both older and had been diagnosed with underlying medical conditions.

Q. Okay. And after you analyzed the size of the Alabama population that is at high risk, did you do any assessment as to the precautions those who were in the high-risk group were taking in order to avoid exposure to the coronavirus?

A. Yes. And I did that with a survey of Alabama adults from the -- called the COVID impact studies.

Q. Okay.

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MS. MERLE: And Eric, if you could bring up slide 10 of the demonstrative.

Q. And, Dr. Burch, what did you have find in your analysis of the precautions that high-risk individuals were taking?

A. So the main takeaway from figures 3 and 4 is that I found high levels of compliance with the guidelines from the CDC with respect to high-risk population. So from figure 3 on the left, we can see about 80 percent compliance across both racial groups with the guidance to avoid public or crowded places. And when people couldn't do -- avoid public or crowded places, again, you see 80 percent compliance with maintaining six feet of distance and wearing masks among people who were at high risk because of the underlying medical conditions. Figure 4 repeats that but for people who are high risk because they're older. And again we see overwhelming compliance among people who are at high risk because of their age with the guidance to avoid public and crowded place, maintaining social distancing, and wearing masks.

Q. Okay. And I want to turn next to your analysis of the absentee voting requirement in Alabama in specific to high-risk voters. Did you do any analysis as to the impact of the two witness or notary requirement for absentee voting?

A. Yes. So I looked specifically at survey questions to see household size. So specifically to see if Alabama residents who are high risk, the proportion of them who also live with

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additional adults which could serve as witnesses to witness their ballots. And I also do an analysis of computer and internet use as well as financial -- some financial wherewithal will to be able to pay for both.

Q. So let's start with the analysis you did for the witness requirement.

MS. MERLE: And, Eric, if you could bring up slide 12 of the demonstrative.

Q. Dr. Burch, what was your conclusions as to the size of the population that would have to come into contact with someone who was out of of their household in order to meet the witness requirement?

A. So, there's a large proportion of Alabamians who don't have any other adult witnesses in their household. And what's important about that and also relevant from the charts that I show here in figures 5 and 6 is that there are large racial gaps to the extent which people can fulfill that requirement from people within their household. So all of the studies that I cite here, the census household pulse study, the American socioeconomic supplement, and the COVID impact study of just Birmingham residents show about a 20-point gap, 20 percentage point gap in terms of the percent of black high-risk Alabamians who live with two additional adults in the household -- who don't have two additional adults in the household that they would have to find additional adults from without their household to fulfill that

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requirement versus a much lower number for white high-risk Alabamians. And that's true also for people who are at high risk because they are older. And those gaps are again about 20 percentage points.

Q. Did you also rely on data from the voting and registration supplement in your analysis -- in this part of your analysis?

A. Yes. So specifically, if you look at figure 6, the first bar, that shows that almost right at about 50 percent of Alabama residents who are over the page of 65 and black would have to contact two additional witnesses from outside their household because they don't live with any other adults versus about 30 percent of white Alabama registered voters who are high risk because of their age.

Q. Dr. Burch, I want to move next to your analysis of the notary requirement. I believe you already testified or you already noted that you did some financial analysis. Could you tell us what you analyzed or what you concluded in terms of Alabamians and their financial stability?

A. Yes. So I looked mainly at the household pulse survey here from the census because it's the most recent data and can best account for the effects of the pandemic restrictions on income. And what I found is that among people under the age of 65 who are high risk because of medical conditions in Alabama, there's a large racial gap in terms of the ability to pay -- to pay for a notary. So about -- almost 40 percent of high risk -- of Alabama black adults who are high risk because of underlying medical

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conditions, almost 40 percent of them have an income below 25,000. For white high-risk Alabamians, that number is in single digits. So it's orders of magnitude in terms of difference of income. But I think even more pressing with respect to food insecurity -- let me get make sure I get the -- let me refer to my report to get the wording right here. 53.3 percent of black adults under the age of 65 who report fair or poor health say that they are only somewhat or not at all confident that they can afford the kind of food they need for the next four weeks. And that's compared to about 20 percent of white Alabama adults who are high risk because of an underlying medical condition. So people are really struggling -- report that they are struggling to afford adequate food.

Similarly people who are at high risk due to old age, about 40 percent of black Alabama residents age 65 or older have incomes below $25,000 compared with about 15 percent of white Alabama adults. And 27 percent of white Alabama adults over the age of 65 are food insecure. But about almost 60 percent, so 59percent of black older Alabama adults state that they're food insecure, and they probably won't be able to get the food they need for the next four weeks.

Q. Did you look at as well whether notaries in Alabama charge a fee?

A. Yes. In my supplemental report, we did call a sample of 42 notaries in certain counties to ask whether they charged a fee and

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what they charge.

Q. And so when you say, we, who's we?

A. So I hired some research assistants to help with that task.

Q. Did you supervise their research?

A. Yes. I gave them instructions for how to call, what to ask, who to call and the like in terms of finding people to call.

Q. And I believe -- I think you testified that you -- you did -- you called 42 notaries?

A. Yes. We attempted to contact more. But we were able to reach 42.

Q. And what were the results of your survey concerning whether notaries in Alabama charge a fee?

MS. MERLE: And, Eric, if you could pull up the demonstrative, please.

A. Yes. So I found some variation in terms of what notaries said that they charged to notarize ballots particularly. 18 out of the 42 said that they charged $45. Six said that they charged $10. 13 said that they charged more than $10, and five said that they didn't charge at all. There was also an additional charge -- this is just for the signature. Some also charged if they were required to travel to meet people in order to notarize signatures. So they also mentioned travel costs as well.

Q. Okay. And did you -- did you cite any other relevant information from your survey of the notaries?

A. We also asked about whether they could do any kind of

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virtual or online notarizing of signatures. Only six notaries said that they had any virtual kind of capabilities, and the other 36 said that they were able to notarize ballots in person only.

Q. Then turning to your -- the analysis you did relevant for the photo ID requirement, I believe you already testified that you looked at the computer and the internet availability?

A. Yes. So in order to --

MS. MERLE: Eric, if you could bring up demonstrative slide 14, please.

A. Yes. So in order to do things like make copies from home, I was looking at information such as do they have access to a notebook or other kind of computer or even access to the internet through a computer, smart phone, or other kind of device. And those data -- I was able to find those data for the high risk -- group that was high risk because they were older.

So as you can see here in figure 8 from my report, there are large numbers of Alabama residents who just don't have access to technology. So about -- and that varies by race. So about a third of white Alabamians do not have access to a computer at home compared with well over half of black older Alabamians. But even more interesting, about 30 percent of white and about 50 percent of black Alabama residents who are high risk because of age don't have access to the internet at home. So there's a great digital divide as well.

Q. Dr. Burch -- so we discussed, you know, you looked at

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individuals who live -- who don't have witnesses. And then you also looked at the notary and what the notaries charge and also as well as technology. So did you do any analysis of whether --

A. I'm sorry. I'm having a hard time hearing you.

Q. Sorry. Did you do any analysis -- analysis specific to whether individuals are having contact with others outside of their home?

A. I'm sorry. There's some background noise. Could you repeat that one more time.

Q. Yes. No problem. Did you do any -- did you do any analysis regarding whether Alabamians were not having contact with individuals outside of their home?

A. Specifically, I was looking at questions such as whether people were avoiding contact with others and avoiding public and crowded places.

Q. And what did you find in that research?

A. As I note here, large numbers of people say that they are -- I'm sorry. Let me find the specific number here in my report. Among people who are high risk because of age, so the Birmingham residents who were over 60, 77.2 percent said they are avoiding crowds and public places. And for people who are under 60 but high risk because of preexisting conditions -- sorry. I'm looking specifically for the number. 79.2 percent -- sorry. 74.4 percent say that they are avoiding public or crowded places.

Q. And did you review Dr. Kidd's report in this case, the

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Defendants' expert?

A. I reviewed the part that specifically responded to my report.

Q. Okay. And what did you understand Dr. Kidd's critique of your report to be?

A. I understood Dr. Kidd's report to basically be saying that voter turnout in the primary season spring went up in some states, and it went down in some states, and therefore, the pandemic didn't have any effect on voter turnout.

Q. And does Dr. Kidd's critiques of your report, did that critique make an impact on your conclusions?

A. No. For several reasons. So it really doesn't -- Dr. Kidd really doesn't present any analysis of voter turnout, public opinion surveys, or any other data that suggest that is -- well, there's just no analysis of anything. And it's just really citing this something from 538.com that says that turnout went up in some places and down in others. So there's just no analysis here. I'm presenting analysis of several controlled survey experiments, surveys, and other political science analyses -- analyses done by political scientists and other literature that's looking how the pandemic is affecting voters.

Q. And do you have any opinions about -- you testified that he relied on a 538 blog post. Do you have any opinions about the conclusions that he's relying on that blog post for?

A. It's weird because in the post itself, it also doesn't do any statistical or other kind of analysis of voter turnout in the spring.

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But it also -- the conclusions that they draw also talk about the fact that they actually make an argument that the pandemic did disenfranchise individual voters. And specifically, the -- if I could just quote from the blog post -- the 538 article that he cites, "There's an important caveat here though. Just because the coronavirus did not lower turnouts overall, does not mean it didn't disenfranchise individual voters. We know that at least some voters were unable to vote because of the pandemic. Indeed, the primaries conducted during the pandemic have been far from the smooth sailing suggested above. Instead, an unusual number of problems have occurred, some serious enough that they have made it harder for people to vote and even put them at heightened risk for infection."

Q. And so can you -- so can you tell from Dr. Kidd's report -- and I believe you may have testified to this. Can you tell from his report if he did any independent analysis of turnout?

A. I'm sorry. He doesn't mention any here.

Q. And did he do any review or any analysis of Alabamians's attitudes towards absentee -- or towards voting during the pandemic?

A. I didn't see any in the part of the report that pertained to -- responded to my report.

Q. And, Dr. Burch, you relied on a number of surveys in creating -- in coming up with your conclusions which we have discussed. When were most of those surveys done?

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A. So, the most were fielded I think between March and July.

Q. And did any of those studies -- did any of those surveys pose to voters that there may be -- did any of those surveys pose to voters different timing regarding the spike of coronavirus?

A. Yes. So the houser study was really interesting because they actually did an experiment in terms of how they told voters -- or when they told voters that the pandemic might peak. So they randomly selected people in their survey to either hear a prompt that the pandemic would peak in the spring or that it would peak in the fall, during the election season. And people who were told that the pandemic would peak in the fall were actually more likely and more concerned about the coronavirus and were more likely to say things like they were afraid to vote in polling places even with social distancing and other precautions.

So there is this toggle effect between thinking about when the pandemic is peaking and when it -- and voting. But again, even if you just look at the overall numbers, there are still pretty high rates of people that they report in both conditions, either given the spring condition or fall condition -- who say that they have some concerns.

Q. And did you do any analysis of studies -- or did you come across any surveys that asked voters or asked Alabamians what type of activities they were foregoing in order to comply with the safer-at-home order or the CDC guidelines?

A. Yes. So I cite several here in addition to the COVID impact

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study that I talked about a lot. I also have here some data from the Auburn University of Montgomery poll in footnote 82, for instance, that talks about 78.1 percent of Alabama registered voters said that they were very or somewhat likely to voluntarily wear a mask or face covering. I also did see some data that I talked about in my deposition for a survey, the 50-state COVID survey for Alabama that was fielded in July that said that in large majorities of people in Alabama say that they're avoiding public or crowded places. Almost -- following that guidance very closely. So almost two-thirds of Alabamians said that they're following that CDC guidance closely, avoiding contact with others. 51.4 percent said that they're following that guidance very closely. If you add somewhat closely, that number goes up even higher.

Q. Did any of these surveys ask the individual what type of activity they were foregoing --

A. Yes. So the COVID impact study, for instance, had a list of -- I can't even remember all of them. But I list here on page 32 a range of these kind of safety precautions -- wearing masks, cancelling doctor's appointments, avoiding public places. People are reporting that they're taking part. They're doing at least about 8 out of the 12 specific precautions on average.

MS. MERLE: Your Honor, we pass the witness.

THE COURT: Thank you. Who is up first? Mr. Bowdre? It looks like you are. You may begin.

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MR. BOWDRE: Yes, Your Honor. Thank you.

Q. Good afternoon, Dr. Burch. As you may remember, my name is Barrett Bowdre. I represent the State Defendants. Given the hour, I will try my very best to ask very concise and straightforward questions that will hopefully elicit concise and straightforward responses. And then we can -- we won't be here for too long.

So just a few preliminary questions. Your expertise is in political behavior and political participation; is that right?

A. Yes.

Q. You are not a medical doctor?

A. No.

Q. And you're not an election administration official or expert, are you?

A. I'm not an election administration official.

Q. Let's move on to in-person voting and some of your conclusions. With regard to your testimony about how voters -- how their self-limitations might impair their ability to vote in person, was the main study you looked at the one by Dr. Kouzer and his colleagues that I think you were just talking about pretty recently?

A. What's the self-limitation?

Q. Your -- I think this is in the first part of your report discussing in-person voting. My understanding is you made two conclusions, one with self-limitations of voters and one with

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structure limitations; is that correct?

A. You mean where I'm talking about fear?

Q. Yes.

A. Okay. Yes. I'm sorry. I didn't understand that. No, I actually cited a few studies about that. The Kelder report is one as well as the Matta and Jansa and also several surveys as well.

Q. Okay.

A. I'm trying to see if I also cited back to a different one. Morris and Dillard.

Q. But the Kalder survey is the one that you were just talking about with the experimental nature; is that correct?

A. Yes, that was the one I was just talking about.

Q. You had a control group. And then a group that was told to imagine that COVID would peak in the spring and then a group that was told that the pandemic would peak in the fall; is that right?

A. Yes.

Q. Okay. And you mentioned that the total response was that 74.8 percent -- I'm sorry. Let me go back. This study was fielded in April; is that right? The survey part of the study was in April?

A. I believe so.

Q. And even then, fully 74.8 percent of the total respondents said that they would feel safe going to vote in person so long as the polling place adhered to social distancing protocols and created space between voting booths, poll workers, and other

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voters; is that correct?

A. Let me do the math. So, yes. So I write here that 25 percent of the respondents wouldn't feel comfortable waiting in line in a polling place. But I'm not quite sure. There could be a range of what those responses were that I'm not sure it would be adequate time characterized as --

Q. Okay. Let's go into those. Do you recall the different ranges for the -- sorry. Let me go back. You testified earlier that the control -- Excuse me -- the experimental group that was told that COVID would peak in the fall had more fear of in-person polling; is that correct?

A. Right.

Q. And do you recall what that number was versus the spring group or the controlled group?

A. I don't recall specifically. But I think the spread was about 8 to 10 percentage points.

Q. Okay. Just one second, let me see if I can share my screen. We'll talk about the report. Is this the Kousser study that you were referencing?

A. Let me check the title because they actually have a few of them to make sure it's the same one. Yes. Unless it was updated or changed, that's the same one.

Q. Let me see if there's a date. The publication date was April 30th. Does that sound right?

A. Yes. That should be the one that I have.

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Q. Go scroll down to page 13. And this is the question that asks people different ways of casting -- their preferences for different ways of casting a ballot; is that correct?

A. Uh-huh.

Q. Okay. And I think it's the second question that asks, "In the November 3rd election, would you be comfortable waiting in line at a polling place if the polling place was reconfigured in order to adhere to social distance protocols." Do you see that?

A. Yes.

Q. And the overall response was 74.8 percent said they would feel comfortable; is that right?

A. I'm sorry. This is really -- I'm like -- to go see. This is -- yes. The white box in the -- all the way on the far right.

Q. I'm sorry. I don't know how to Zoom in. Yeah. Just one second. I am going to try to Zoom in.

A. That's okay. I can mostly make it out. Okay.

Q. And then these are the two -- we have the spring peak treatment and the fall peak treatment. Do you see those?

A. Uh-huh.

Q. And the percentage difference is -- it's between 74.8 percent with the spring treatment, and it's a .3 percent difference for the fall treatment; is that right?

A. Right. So for that question, there's no difference.

Q. Okay. Okay. And do you recall in that same study, voters were asked if in-person voting was the only option for them to

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cast a ballot in the November election, how likely would they be to cast a ballot. Do you recall that question?

A. I don't recall that question.

Q. I'm going to try to share my screen again. Okay. This is the same study at page 11. And we're looking at -- this question, it says, "in the November 3 election, if your only option to cast a ballot in your county was an in-person option such as traditional a polling place place or professionally staffed county elections office, how likely would you be to cast a ballot." Do you see that?

A. Yes.

Q. To that question, it looks like 84.7 percent of voters said they would definitely vote, 12 percent said they might vote under the circumstances, and only 3.3 percent said they would not vote under those circumstances; is that right?

A. Yes. That's what that says.

Q. So thinking of how these numbers might relate to Alabama, you're not aware of any polling place in the July 14th primary runoff election that failed to implement social distancing protocols, are you?

A. I am aware of reports that masks weren't required. And there were some other issues that I list here in my report.

Q. Okay. Did the Kousser survey when he was asking about in-person polling, did it ask about mask usage?

A. It does say -- it actually talks about -- I think the language, the specific language was adhere to social distancing protocols,

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create additional space between voting booth, poll workers and voters standing in line, and take other measures to protect public health. And then it talks about the NAACP LDF requirement.

Q. Okay. The question that the survey respondents were actually asked did not specifically ask about mask usage, did it?

A. That could be, "And take other measures." So I'm not going to rule it out.

Q. It did not use the word mask; is that right?

A. Not not that I have listed here.

Q. Okay. Am I correct that you're not giving a medical opinion today that the way that Alabama is conducting in-person voting is medically or scientifically unsafe?

A. I'm not offering any opinion on that.

Q. So turning to your second concern about in-person voting, which is the institutional disruptions, you did not conduct an analysis as to whether in-person voting was reduced in the July 14th primary election runoff in Alabama due to institutional disruptions, did you?

A. No.

Q. And you've not analyzed the precautions that the state and local polling officials are taking for the November elections, are you, or did you?

A. No.

Q. Let's move on to curbside voting. You mentioned earlier in your testimony the AUM survey conducted on curbside polling.

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Do you recall that?

A. Yes.

Q. And did that survey define what curbside voting meant for the survey respondents?

A. I don't recall specifically. I'm just remembering the table. But I don't remember if they gave a specific definition.

Q. Okay. We'll move on. And then the other survey that you cite in your report on curbside voting is the same Kousser study that we were talking about earlier; is that right?

A. Uh-huh. Yes.

Q. And that study asks only about dropping off premarked ballots, didn't it?

A. I don't know if it said -- the way I wrote it here is respondents would feel comfortable dropping off their ballots curbside if social distancing precautions were in place. So I don't know if those specific questions were premarked or not.

Q. Let me pull up the study real quick. This is the same Kousser survey that we were discussing earlier, isn't it?

A. Uh-huh. I see -- yes. I see it at the bottom of the page.

Q. That's right. "In the upcoming November 3rd election, would you be comfortable dropping off your ballot at a drive-through location professionally staffed by your county elections office if it was reconfigured in order to adhere to social distancing protocol?" That's the question that the respondents were asked?

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A. Yes.

Q. And so the study did not ask about a person coming to a polling site, obtaining a ballot at that time, and then casting the ballot then and there on Election Day, did it?

A. Yes. That would be the one about voting in person at a polling place at the top of the page.

Q. I'm sorry. The study did not ask about a person participating in curbside voting from -- you know, from a person's car on Election Day, did it? Other than this question about dropping off a ballot that the person already had in his possession?

A. Well, I don't know about the already had in his possession part. It just -- the question is just the one that's presented there.

Q. Okay. Let's move on to absentee voting. So you mentioned earlier in your testimony that the numbers from the government surveys that you discuss in your report, you think that they underestimate the sizes of at-risk groups in Alabama; is that right?

A. With respect to people who are at risk because of health conditions. The older age estimates should be accurate.

Q. Is that conclusion based on the COVID impact survey that you discussed?

A. And the CDC statewide data that we talked about as well. So the data that I cite on page 10 that even talks about the fact that the number of Alabamians who have been diagnosed as

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hypertensive is higher than, you know, the highest estimates that I find for people who report fair or poor health.

Q. Okay. Did the CDC data also discuss I guess the other conditions that the COVID impact survey discussed?

A. Yes. So I have here among Alabama adults, obesity -- a third have been diagnosed as obese, 41.9 percent have hypertension or high blood pressure, 6 percent have had heart attacks, 12.7 percent have diabetes, and 10.4 percent have asthma. The COVID impact study I think also had COPD and a few other things that I don't list here.

Q. Okay. So as I understand it, one of your findings that is based on the COVID impact survey is that there are a large percentage of individuals in the Birmingham Metropolitan area who are at high risk of sickness if they contract COVID-19; is that right?

A. Yes.

Q. And you note that many of these individuals are taking precautions to reduce their risk of getting COVID?

A. Yes.

Q. So on page 32 of your report, you say that 28.4 percent of white adults under 60 with preexisting conditions report that they have had no contact or reduced their contact with their neighbor since early March. Is that true?

A. Let me find -- you say on page...

Q. 32?

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A. 32. Sorry. Yes. 28.4 percent. Yes, that's right.

Q. By comparison, you note -- this is on the same page -- that only 15.1 percent of black adults under 60 with preexisting conditions report reduced or no contact with neighbors since March. Is that accurate?

A. Yes, that's what I found.

Q. One more question along these lines. You note that 19 percent of Birmingham area residents who are over age 60 say that they have reduced or no contact with their neighbors since March. Does that statistic come from the COVID impact study?

A. Can you point me -- okay. So that's on the next page.

Q. It's at the top of page 33.

A. Yes.

Q. Do you recall the wording of the survey response?

A. Not specifically.

Q. Is this the COVID impact study?

A. It is.

Q. And this would have the questions that the respondents were asked?

A. It may.

Q. Okay.

A. You'll have to scroll down for me.

Q. Let me scroll down and then -- are these the questions?

A. Yes. Those are the questions.

Q. I'll just start at the beginning. And I think these are -- the

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first three questions seem to me to be the ones that discuss neighbors, but you can correct me if I'm wrong.

A. Uh-huh.

Q. The first question asks about, "do you trust people in your neighborhood;" is that right?

A. Yes, that's the question.

Q. And then the second question asks, "in the past month, how often do you talk with any of your neighbors"?

A. Yes.

Q. And then that compares with the next question, "during a typical month prior to March 1, 2020, when COVID-19 began spreading in the United States, how often did you talk with any of your neighbors?"

A. Yes.

Q. Okay. Are these the questions that you looked at for your conclusions on contact with neighbors?

A. I believe what I -- yes. The -- can you scroll up to the first one?

Q. Yes.

A. I'm sorry. To 2A and 2B? Yes. So I looked at 2A and 2B.

Q. And so these these questions don't use the word "contact" but instead ask the respondents how often did they talk with their neighbors; is that right?

A. Right.

Q. You testified earlier about your conclusions that high-risk

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individuals who live alone may have trouble finding two witnesses or a notary public to sign the absentee ballot form. Do you recall that?

A. I said that they would have to find them from outside their household.

Q. And you note in your report -- this is on page 36 -- that among respondents 18 through 59 with preexisting conditions, 34.1 percent of black respondents live alone and thus would need to violate CDC guidance in order to contact two witnesses from outside their household compared with 26.8 percent of white respondents. Is that still true in your opinion?

A. Yes.

Q. On the next page -- this is on page 37. You say, "nearly half of older black voters would need to violate CDC guidance to contact two witnesses from outside their household." Is that still true?

A. Let me find where I wrote that.

Q. It's in the second full paragraph. And I can share that if you'd like.

A. Yes. So I see -- second full paragraph. I was just looking to see the exact -- could you read back you said?

A. Yes. "Nearly half of older black voters would need to violate CDC guidance to contact two witnesses from outside their household."

A. Yes. I'm sorry. I was looking at before capital M. Yes, I see

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that.

Q. Okay. Would you agree that these conclusions do not say anything one way or the other about the actual current behavior of older black voters but is instead simply applying your understanding of CDC guidance to their situation?

A. What I wrote there is saying that they would need to contact people from outside their household in order to fulfill the witness requirement. So it definitely is a statement about who lives in their household.

Q. Yeah. I'm sorry. Let me try and be a little bit more specific. When you say that the voters would need to violate CDC guidance to contact the two witnesses who live outside their household, you're not making a statement as to whether or not those people may already be having contact with people outside of their household, are you?

A. No. That's from a different section.

Q. Okay. So it could be that a substantial portion of those voters are already having some sort of physical contact with people outside of their household, couldn't it?

A. I don't know if mathematically that works out. Because a lot of the other survey data both that I cite here and that we talked about in my deposition and other places, again, large majorities of people are saying that they're not having contact with people outside their household. So I'm not sure if the characterization that it's possible that most people are answering one survey

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question saying that they're not having contact and then the other -- you see what I mean? It just doesn't -- I'm not sure that I can draw that -- I would agree with that.

Q. Sure. Okay. Would you agree that the CDC guidance is concerned about physical contact?

A. I don't know.

Q. Do you think that COVID-19 can be transmitted by virtual contact over Zoom, for instance?

A. I would hope not. All the Zooms I've been on. No.

Q. Okay. And we talked early about -- I just want to dive into your response here. We talked earlier about the COVID survey in Birmingham, and that talked about people talking with their neighbors, right? It did not use the word "contact;" isn't that right?

A. That specific question was about talking.

Q. Okay. And the AUM survey that we talked about earlier, that also did not define the word "contact" for the respondents. That's right?

A. Define the word "contact" for the respondents?

Q. The survey did not give a definition of the word "contact" in this question about whether people are having contact; is that right?

A. I don't recall.

Q. Okay. I think I'll move on. The Birmingham COVID impact study did not ask respondents about whether they had family

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members who visited them during the pandemic, did it?

A. I think the next question was the -- after the one you showed me was the only one that I saw about family. But in that battery of questions, there may have -- there actually may have been a couple of questions about family. I'm not sure -- I'm actually not sure. I'm sorry. I'm trying to -- I don't have it listed here. But if you could scroll down for me some.

Q. Okay. So the next question that you referenced --

A. Yeah, that one is communicate by phone, text, or app.

Q. Would you agree that question is not talking about physical contact, right?

A. No. But there may be some later about cancelling plans and other things. So I'm not going to rule it out specifically. I just don't recall.

Q. Okay. Dr. Burch, is it your position that anytime a high-risk individual interacts in person with someone outside of his or her household that she is violating CDC guidance?

A. All I'm doing here is -- and I believe I quoted the CDC guidance here in my report on page 9 that says, "the best way to protect yourself is to limit your interactions with other people as much as possible." So whatever they mean by interaction. I didn't try to interpret that in my report.

Q. You do note in your report that, for instance, nearly half of older black voters would need to violate CDC guidance to contact two witnesses from outside their household; isn't that right?

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A. Right. So that guidance is with respect to avoiding contact with people outside your household.

Q. Okay. So I guess again, is it your position that anytime a high-risk individual interacts in person with someone outside his household that she's violating CDC guidance?

A. Yes.

MS. MERLE: Object to asked and answered.

THE COURT: I agree. The witness has answered it just now anyway. Let's move on now, Mr. Bowdre.

Q. (BY MR. BOWDRE:) So under your understanding of CDC guidance as you are applying it in your report, if three individuals, one of whom is at high risk for COVID-19, met together for five minutes in an open space outside, everyone wore masks, everyone stayed six feet away from each other, would the high-risk individual have violated CDC guidance?

MS. MERLE: I'm going to object again to asked and answered in just a different form.

THE COURT: Professor Burch, you can answer the question.

THE WITNESS: So it says here that the best -- so it says here the best way to protect yourself is to limit your interactions with other people as much as possible and to -- and then after that, there's a second part that I condensed here, but there's a second part of it that says and to take precautions to prevent getting COVID-19 when you do interact with others. And it says avoid activities where taking protective measures may be difficult such

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as activities where social distancing can't be maintained and that high-risk gatherings should be avoided and things like that.

So they just rank things as different levels of risk. So that's all I can -- you know, again, I'm not a medical doctor with respect to how -- what contact is entailing or anything like that. I'm just telling you what the guidance is and answering -- and presenting answers to survey questions that ask people about how close I will -- about whether they're following that guidance.

Q. (BY MR. BOWDRE:) Okay. Let's turn finally to your conclusions regarding notaries. You testified that some of the notaries that your group contacted charged for their services; is that right?

A. That's what they said, yes.

Q. And to contact those notaries, you relied on the American Society of Notaries web page and Google in order to find the notaries that you contacted?

A. Yes. We also contacted -- I think we may have also contacted some from UPS and FedEx, and we might have found some of those through Google as well.

Q. As far as you are aware, did you contact any banks to see if they offer notary services for free to the public?

A. I'm not specifically sure if we contacted any banks. But I do think we did contact some people who worked for insurance companies and other places. But they said they only did -- they only notarized -- they didn't do public notarizing. It was just for

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their job.

Q. Did you contact any local government offices to see if they offer notary services for free to the public?

A. No. We just contacted the notaries themselves, and some may have worked for some of those places.

Q. Did you contact any public libraries to see if they offered notary service to the public for free?

A. We may have contacted some people who worked at libraries if they were listed on that website.

Q. Okay. Are you aware of any public libraries in Alabama who are offering curbside notary services to the public for free?

A. I didn't look into that, no.

MR. BOWDRE: May I have just one moment, Your Honor?

THE COURT: You may, Mr. Bowdre.

MR. BOWDRE: Your Honor, I pass the witness. Thank you, Dr. Burch.

THE COURT: Thank you. Does anyone need a quick two-minute break?

THE WITNESS: I'm fine.

THE COURT: Okay. Let's go forward. Mr. Dyar.

MR. DYAR: Thank you, Your Honor.

Q. Hi, Dr. Burch. My name's Robert Dyar, and I represent defendant JoJo Schwarzauer in her official capacity as the circuit clerk of Mobile County. And going back to the survey you conducted regarding the notaries within a 50-mile radius of

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Montgomery, Jefferson, Lee, Wilcox, Tuscaloosa, Colbert, Mobile, Madison, and Lowndes Counties, the results of that survey, over 10 percent of the notaries that responded indicated that they do not charge a fee for their notary services, correct?

A. Yes. 5 out of the 42.

Q. And you just testified earlier that you did not reach out to public libraries regarding the notary services they offer?

A. No. The unit of analysis in my data was the notary. So we reached out to individual notaries regardless of where they were.

Q. And are you aware that Mobile County Public Libraries are offering curbside notary services to the public by appointment free of charge?

MS. MERLE: Objection.

THE COURT: Did you know that, assuming the fact is true?

THE WITNESS: I'm not aware of that. Yeah, I don't know.

Q. (BY MR. DYAR:) So to your knowledge, you did not contact the Mobile County Public Libraries in conducting the survey?

A. No. We contacted notaries in Mobile.

Q. Okay. And the COVID impact survey that you discussed -- it's mentioned on page 30 of your report and elsewhere -- only analyzed the Birmingham-Hoover population, correct?

A. That's right.

MR. DYAR: I think that's it for me. I pass the witness.

THE COURT: Thank you, Mr. Dyar. Mr. Webb?

MR. WEBB: No questions, Your Honor.

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THE COURT: Thank you. Ms. Merle, any redirect?

MS. MERLE: Yes, Your Honor. Just briefly.

Eric, can you bring up Exhibit 423, please.

Q. Dr. Burch, do you recognize what Eric has pulled up as Plaintiffs' Exhibit 423?

A. Yes. That is the report -- or a report from the 50-state COVID-19 survey that I talked about in my deposition.

Q. And what -- for what did you rely on this -- for what information did you rely on this study?

A. So when they asked me in my deposition if I was aware of any other more recent data that shed light on these issues, I referenced this one and some others that doesn't have data specifically on high-risk Alabamians, but it does have statewide data on all Alabamians and how they're thinking about voting in November.

MS. MERLE: Your Honor, at this time, Plaintiffs would move to have Exhibit 423 entered into evidence.

THE COURT: Any objections?

MR. BOWDRE: Your Honor, I don't recall discussing this particular line of questioning in my cross-examination. But other than that.

THE COURT: Yeah. It's unusual, Ms. Merle, to receive in redirect, but with the caveat that obviously, Mr. Bowdre will be able to get into it and Mr. Dyar as well, 423 is received. Please continue with your questions about this document.

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MS. MERLE: That's actually all the questions I had, Your Honor.

THE COURT: Okay. Mr. Webb, going in reverse order, any questions?

MR. WEBB: No, Your Honor.

THE COURT: Thank you. Mr. Dyar?

MR. DYAR: No, Your Honor.

THE COURT: Thank you. Mr. Bowdre?

MR. BOWDRE: No, Your Honor.

THE COURT: Thank you. Professor Burch, thank you very much. Have a good evening. Enjoy the rest of the week.

(Witness excused.)

THE COURT: For the next three mornings, we probably will not be able to begin until ten after 9:00. In looking ahead this week, I just realized that I am taking guilty pleas Tuesday, Wednesday, and Thursday at 8:30 in the morning by Zoom. So you guys will not be able to access -- I don't believe -- this link until perhaps 9:00 or something shortly thereafter. But in any event, let's -- the Plaintiffs, I'm assuming, based on earlier representations have rested or are resting, excuse me. Is that correct?

MR. ROSS: Sorry. Yes, Your Honor, Plaintiffs still have I think some exhibits that we'd like to move into evidence, and I -- we can either attempt to deal with that now or on tomorrow morning. We've asked the Defendants whether or not they

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object. So we're just waiting on them, Your Honor.

THE COURT: Are you ready to do that now, or do you guys need some more time to talk and finalize any issues?

MR. ROSS: We haven't heard back from the Defendants, Your Honor. And so I don't know what their position is on it yet.

THE COURT: Let's take that up first thing in the morning when we reconvene. And then I will deal with any motions, if any, at that point as well. But again, I don't think you will be able to access the system -- I hope I'm wrong -- until probably 9 a.m. at best. Maybe shortly thereafter. And my goal is to be able to log on by 9:10, do what we normally do, and then go into the actual case at that point once we handle -- finish handling preliminary things.

Before we wrap up for today, is there anything else that anyone wants me to take up at this time?

MR. ENGELHARDT: Your Honor, it's Todd Engelhardt. This isn't really a matter for the Court. But I thought I would do my James Span impersonation, try to include the word polygon if I can. But, you know, I know I mentioned this morning that there's a storm out in the gulf of Mexico. It's now upgraded to a category 2 hurricane with hundred-mile-an-hour winds, and it seems like it's now headed more towards Mobile than it had been as of yesterday. It's moving really slowly, and that makes it build a little more in strength. So we don't know what it's going to be like. But some of the models are showing the eye actually coming

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into Mobile Bay with a hit on downtown Mobile which is where I'm sitting.

THE COURT: What's the estimated arrival time, assuming that's the right terminology?

MR. ENGELHARDT: Sure. The rain is going to start tonight overnight, and they're expecting between 12 and 18 inches and winds in the 30 to 50-mile-an-hour range. And then depending on how it moves, it may not actually make landfall until tomorrow night between Tuesday and Wednesday, not between Monday and Tuesday. So what's going on here is the Adams and Reese office and I think this building are actually going to be closed tomorrow. We're going to deal with our witnesses. Like I said, we're going to move them I think to Thursday. But in case we lose power or something like that, I want to again just let you know. We're going to try to participate anyway we can, and we have been touch with Judge Davis's attorneys and Mr. Speegle is here actually, and we're working on it. But we may not have any IT people who can get in depending on the surge and things like that.

THE COURT: I appreciate that. I'm not sure I'll be able to go forward if you guys cannot participate. I mean, obviously, it's time for you to put on your case. And there are things beyond your control. I will plan to obviously begin tomorrow and Wednesday mornings. If you guys are not able to join us, it is what it is. I will have no choice but to stop and just reconvene

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when all parties are able to put on not only their cases but also when you're able to participate in the litigation.

MR. ENGELHARDT: Thank you, Your Honor.

THE COURT: It's a contingency that we were all unprepared for. But we will have to adjust accordingly.

MR. ENGELHARDT: We'll try to log on tomorrow for sure and give you a status update and let you know what the local word is.

THE COURT: Thank you, all. Let's try to reconvene in the morning. At least from a logistical point of view for the Plaintiffs, you guys don't have the pressures of lining up your witnesses in the middle of a hurricane. The Defendants are the ones that have to deal -- in particular, the Mobile Defendants, and then the rest of the Defendants having to perhaps put your clients on hold if we have to stop for a day or so. We'll talk some more. Let me talk to my team, and we'll make plans for going forward. My calendar is still yours for next week if we need it. But we'll see where we are come Friday. Okay?

Thanks, everyone. Have a good evening, and I will see you all around 9:05, 9:10 in the morning. Have a good night, everyone.

No. 20-13695-B

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PEOPLE FIRST OF ALABAMA, et al.,
Plaintiffs-Appellees,

v.

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

On Appeal from the United States District Court
for the Northern District of Alabama
Case No. 2:20-cv-00619-AKK

APPELLANTS' APPENDIX TO TIME SENSITIVE MOTION FOR ADMINISTRATIVE STAY AND STAY PENDING APPEAL VOLUME III

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9/15/2020
Rough Transcript

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CASE NO. 2:20-cv-00619-AKK

PEOPLE FIRST OF ALABAMA, et al.,

v.

JOHN MERRILL, et al.,

THE COURT: Good morning, everyone. My apologies for running behind schedule this morning. Before we begin, are there any preliminary things that we need to take up?

MR. ROSS: Yes, Your Honor. Plaintiffs were intending to move several outstanding exhibits into evidence. We have heard back from the County Defendants on their objections. We've not heard back from the United States. I don't know if Mr. Davis was still planning to get back to us. We're happy to wait to address this until we talk with him.

THE COURT: Well, let's go ahead and move. And then I will just deal with the objections as they come in.

MR. DAVIS: I can say, Your Honor, that we are prepared to address these issues. I've not had time to give Mr. Ross a response in writing. There are some that we agree should come in. There are some that should come in in maybe a limited fashion just depending on the purpose of the document and some that we do have objections to. I'm prepared to address that now. If it would make things more speedy, I can address that in writing.

THE COURT: It's the Plaintiffs' case. Unless you guys agree that you can allow them to reopen later to bring in these exhibits,

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I think they have to do it now. But what do you guys want to do?

MR. DAVIS: We can go through these pretty quickly, but, Mr. Ross.

MR. ROSS: I mean, if we want to list them out now, we're happy to do it. I think it probably would be easier on the Court and everyone if we were to do it by emails to work -- try to work at least some of these out and hold open the Plaintiffs' exhibits. But, again, I'm happy to do it now.

THE COURT: I agree with the latter. It's always helpful when parties can sort out these issues to at least reduce the number that the Court has to address. But the last thing left for the Plaintiffs, what I understand, is to introduce these exhibits. Are the Defendants willing to allow the Plaintiffs to reopen the case later to then move these exhibits in after you guys have sorted out these issues? I've lost my courtroom feed. I've lost the courtroom feed. I'm still looking. We may just have to do it with Zoom today. I don't see anyone.

Let me retest. I'm opening you guys can hear me.

MR. DAVIS: Yes.

THE COURT: Good. The last question before the system went kaput is whether the Defendants are willing to allow the Plaintiffs to reopen the case later to introduce these exhibits at that point.

MR. DAVIS: I'd like to know what my codefendants think. If I understand the Court's question, the reopening would be for the

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sole purpose of these exhibits and not for other matters?

THE COURT: Correct. I will allow you guys to try to sort out these issues. Mr. Davis. I'm sorry.

MR. DAVIS: I say if my codefendants do not have a problem with that, I don't think I do for the State Defendants' perspective. We do have some motions. I think my codefendants do and we have a brief motion. I know the State Defendants' motion would be unrelated to these exhibits that we would like to address before we begin our case. But the State Defendants do not mind allowing the Plaintiffs to reopen the case for the sole purpose of taking up these exhibits later unless my codefendants have a problem with that.

MR. ENGELHARDT: Your Honor, the only issue I can think of that would be in some instances, some of the exhibits might require some authentication or verification in some manner, and I think if we can't work that out where that gets tricky. Others, if it's simply a motion to allow the Plaintiffs to admit a bunch of exhibits that we all agree on, I have no problem with that.

THE COURT: Yeah, it's not in any way an agreement that the defendants will waive any objections that they have. It's just an agreement that in lieu of addressing these exhibits now since you guys are still at least making some efforts to try to resolve some of the objections, allow you guys an opportunity to keep doing so. And then later the Plaintiffs will, after they perhaps have resolved the entire issues or have reached an impasse would then

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at that point move to admit the exhibits, and then the Court would deal with any remaining objections at that point. Again, that's all it is, Mr. Engelhardt. Okay.

MR. ROSS: Your Honor, if I may.

THE COURT: Yes, sir, Mr. Ross.

MR. ROSS: To the extent the Defendants have objections to authentication, you know, Plaintiffs would like to reserve the right to authenticate certain emails and documents through some of the Defendants who we know are going to be called today at least.

THE COURT: I'm not sure that the Defendants will object to an authentication issue involving witnesses that they're going to call. But I think that makes since still, Mr. Ross, to the extent that you have been told that there are some documents that are being challenged on that point, and you believe that you can authenticate them through witnesses being called today. Then I think it will make sense to attempt to do so if it's relevant to that witness' testimony.

MR. ROSS: Thank you, Your Honor. And Plaintiffs would also like to reserve the right to call rebuttal witnesses before we close our case.

THE COURT: Correct. The Defendants will go next after I deal with motions, and then the Plaintiffs as always will have a right to do a rebuttal if they're so inclined to do that.

All right. I think we're all in agreement. Does anyone else

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want to be heard on this particular point, that the Plaintiffs will have a chance to try to resolve the objections that have been raised with respect to these remaining exhibits they seek to introduce? And then later we'll at that time move to admit first the exhibits that have no objections, and then the Court will then deal with the subset of any remaining exhibits that have objections at that point as well.

Last call. Any pushback from anyone on the Defendants' side? Thanks, everyone.

Let's deal with -- with the caveat, obviously with that the Plaintiffs will have an opportunity to bring in these exhibits that we have just talked about, the Plaintiffs from what I understand will rest at this point. And then obviously, with an opportunity, as Mr. Ross said, to do a rebuttal case if they believe one is necessary after the Defendants' case.

Let's deal with motions that Mr. Davis has alluded to, and let's start with you, Mr. Davis, and then we'll take up other motions as well.

MR. DAVIS: Yes, Your Honor. There is an issue that the State Defendants would like to raise that Mr. Bowdre is actually going to address, and I believe he's on.

THE COURT: Mr. Bowdre, good morning. You may.

MR. BOWDRE: Good morning, Your Honor. Just one second, let me try and get the echo. Okay. Okay. I'm sorry, Your Honor. Yes. The State Defendants move under rule 52 C for judgment on

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partial findings on as to Plaintiffs's count 5 in their amended complaint. And this is based on intervening case law since the court ruled in its order on the motion to dismiss. Count 5 deals with the wealth-based equal protection claim on the notary option for fulfilling the witness requirement.

In its order, the Court relied on the panel decision in Jones v. Governor of Florida which is the Florida felon re enfranchisement case. Since then on Friday, the Eleventh Circuit sitting en banc issued an order, an opinion expressly overruling the part of the prior panel's -- that the Court relied on. In particular, the en banc Court held that rationale basis review cannot heightened scrutiny applies to a wealth-based discrimination claim in the voting context. And so under this current precedent, we think one, that rationale basis review applies and that two, there's really no doubt that the notary option for fulfilling the witness requirement passes rationale basis review because it is -- because it is tied to a --

THE COURT: Mr. Bowdre, you faded out the latter part of your argument. Can you please repeat it. We're still having issues, unfortunately, Mr. Bowdre. It's one of those mornings. The reason why I was late joining you is because of -- there we go.

Karen, I think it may be on our end. May we just do this by Zoom? I'm trying the old fashioned way. Can you guys hear me? Well, I can't hear anyone.

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Okay, folks. IT is here working on a fix. Let's take another stab at this, please.

Mr. Bowdre, let me confess, I've not read the 200-page opinion that came out on Friday.

Are the Plaintiffs ready to respond?

MR. ROSS: Yes, Your Honor. To the extent the State is arguing that that opinion has any bearing on this case, it's very clear in that opinion that the Court is saying that rationale basis applies in people who are convicted of felonies are seeking to be reenfranchised and have to pay a fee. ^ CHECK THIS that to the extent we're talking about outside the context of criminal convictions, heightened scrutiny applies, and it applies any time a state requires the payment of a fee to vote. So I don't think that that opinion has any bearing on this case except to reaffirm what the Supreme Court has said over 50 years right to vote cannot be conditioned on the payment of a fee which is exactly what Plaintiffs showed is happening in Alabama.

THE COURT: Let me carry the motion with the case to read the opinion that came out on Friday, and then I will address the issue. Obviously, if nothing else with the ultimate decision that I render in this case, and maybe even before then depending on what I do with my time during the breaks.

MR. BOWDRE: Your Honor, with your permission, we will file a paper copy of that motion and attach the order -- the Eleventh Circuit opinion to that.

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THE COURT: There's no need to attach the Eleventh Circuit opinion itself just to save the burden on you and the environment as well. Just relevant citation pin point is sufficient. Then I'll have a copy of it on my screen. I just have not had a chance to read it yet.

MR. BOWDRE: Yes, Your Honor. Thank you.

THE COURT: Mr. Davis, are you on? Or, Mr. Bowdre, any other arguments for the State besides this --

MR. DAVIS: Not for the State Defendants, Your Honor. Thank you.

THE COURT: Thank you. Okay. Mr. Webb? Sorry about the echo.

MR. WEBB: Yes, Your Honor. We move for motion for judgment as a matter of law on behalf of the probate judge of Lee County, the absentee election manager of Lee County, the probate judge of Lowndes County, absentee election manager of Lowndes County, circuit clerk of Lowndes County, the circuit clerk of Wilcox County, and the probate judge of Wilcox County. We adopt the argument that was made by the State with respect to the application of the rationale basis. But we ask for actually the complete motion and complete dismissal of our clients. I first want to start off with quoting from article 8, section 177 of the Alabama constitution.

THE COURT: Mr. Webb, I apologize. It's one of these days where there's some serious internet issue on our end, it seems. I

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completely lost you when you started with article 8 section -- all right. I hate to do this. Why don't you guys give me 20 minutes. Let's reconvene at 10:00. Hopefully that's plenty of time for my IT folks to try to figure out what's going on here. If they're not able to do that, I will ask for them to release me so I can join you through actual Zoom as opposed to the court system as I have been using. So give us 20 minutes, please. Thanks, everyone.

(Recess.)

THE COURT: Good morning, everyone.

Okay. Folks. Can you hear me? Perfect. Thank you.

Mr. Webb, you have the floor. You joined in the State's motion, and then you were making your separate arguments. Can you please start again, please.

MR. WEBB: Yes, Your Honor. I wanted to give the Court just the background of Alabama law and the setup of Alabama law and first wanted to read from article 8 section 177 subsection C of the Alabama constitution. Which states the legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates. As this Court is aware, Alabama counties do not have home rule. With respect to the photo ID provision, which is found in Alabama code section 17-9-30, subsection B, which reads, "Voters requesting an absentee ballot shall submit the absentee ballot application -- excuse me. Shall submit with the absentee ballot application a copy of one of the forms of

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identification listed in subsection A. Notwithstanding subsection E, an absentee ballot shall not be issued unless the required identification is submitted with the absentee ballot application. Except as provided in subsection C.

Your Honor, with respect to the photo ID requirement, this matter, the actions that are performed by the local officials, whether circuit clerks or absentee election managers are ministerial actions. They are required to follow Alabama law. There is further administration rules that are -- which the Secretary of State has the authority to implement and has implemented on this.

With respect to the notary and witness requirement, Alabama Code Section 17-11-10 subsection B beginning of the second paragraph reads, "no poll worker or other election official shall open an absentee envelope if the envelope indicates the ballot is an unverified provisional ballot or the affidavit printed thereon is unsigned by the voter or unmarked and no ballot envelope or ballot therein may be removed or counted. No poll worker or other election official shall open an affidavit envelope if the voter's affidavit's signature or mark is not witnessed by the signatures of two of witnesses or a notary public or other officer including a military commissioned officer authorized to acknowledge oaths and no ballot envelope or ballot therein may be removed or counted. The provisions for witnessing of the voter's affidavit, signature or mark in section 17-11-7 goes to the

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integrity and sanctity of the ballot and election. No court or other election tribunal shall allow the counting of an absentee ballot with respect to which the voter's affidavit, signature or mark is not witnessed by the signature of two witnesses 18 years of age or older or a notary public or other officer including a military commissioned officer authorized to acknowledge oaths prior to being delivered or mailed to the absentee election manager."

THE COURT: Mr. Webb, just to speed things up, if I'm wrong, correct me, but it sounds like you're arguing legal issues that I have already addressed. What I want to take up at this time is the Plaintiffs have rested. Do you believe they have been able to prove their case? If not, what from the testimony leads you to conclude that you are due judgment at this time at the end of the Plaintiffs' case.

MR. WEBB: Okay. Your Honor --

THE COURT: You have preserved -- I think the arguments that you're making have been preserved. They are not in any way waived. To the extent you feel the need to make them, you can. But where are we with respect to the Plaintiffs' burden and the weight of the evidence that they have presented?

MR. WEBB: Okay. Let me first start with there's nothing that distinguishes Lee, Lowndes, or Wilcox County from any other county in this state. That includes Fayette County, Lauderdale County, Greene County, Calhoun County, any other county.

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There is no evidence whatsoever as to what is happening in Lowndes County. There's not an individual plaintiff residing Lowndes County. None of the organizational Plaintiffs have been able to identify anybody that has been harmed in Lowndes County. Therefore, the Lowndes County circuit clerk, absentee election manager, and probate judge should be dismissed from this case.

With respect to Wilcox County, the only identified plaintiff is Sheryl Threadgill-Matthews. You have on summary judgment already dismissed her claims with respect to photo ID and with respect to the notary and witness requirements. She testified that she would be able to do the same thing again and vote by absentee ballot. Therefore, her claims for this curbside voting, which is not authorized under Alabama law and which the Secretary of State was very clear in his testimony cannot be done by any probate judge or any official in a county. Those claims should be dismissed. And again because she plans on voting by absentee number one and number two, no one in the county has authority to do that. Therefore, the circuit clerk and the probate judge in Wilcox County are due to be dismissed.

With respect to Lee County, the only individual plaintiff in that case is Dr. Eric Peebles. Eric Peebles testified he will be able to fill out the absentee ballot in the same manner he did in November of 2018. Therefore, there's nothing that would prohibit him from voting absentee in the November election,

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general election. He also did not show that in any way curbside voting is authorized under Alabama law. And the same arguments with respect to curbside voting for Wilcox County apply with equal force to Lee County.

Furthermore, with respect to the organizational Plaintiffs, neither People First of Alabama nor Greater Birmingham Ministries identified any members or chapters located in Lee County, Lowndes County, or Wilcox County, and they have not established their burden to show injury with respect to these counties.

THE COURT: What was the testimony from -- I think it was Ms. Ellis, the executive director of People First, with respect to affiliation with a chapter or group of students or people at Auburn?

MR. WEBB: They have contacts in Auburn. I believe with the chapter at Auburn, that was the testimony, if I'm not mistaken, by the head of the Alabama chapter of the NAACP.

THE COURT: No. That's not what I'm referring to. I remember the executive director of People First suggested, if my notes are correct, that they don't have a chapter at Auburn, but they do have a group. And maybe she did not say university. But they have some members who live in that area. But in any event, I get your argument with respect to the organizations.

As to Dr. Peebles, I thought his contention is that he is not able to satisfy the witness requirement of the absentee ballot in

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the same manner as he did in 2016 because of his fear about exposing himself to two people at the same time, et cetera, et cetera.

MR. WEBB: Your Honor, he also testified that he can use Facebook and Zoom and get a second witness to verify his signature.

THE COURT: Okay. I need to check that aspect of his testimony. All right. I stopped you when you were talking about People First not having any members in Lee County. You may resume your argument, please.

MR. WEBB: Yes, Your Honor. And we also further argue that the other organizational Plaintiffs have not alleged any specific conduct of any of the officials in Lee, Lowndes, and Wilcox County sufficient to support a claim under any of these provisions. We also specifically move for the dismissal of the claim under the Americans with Disabilities Act. Specifically, there were references to accessibility and also with respect to what these -- the evidence -- just there's no evidence that either Lee, Lowndes, or Wilcox in any way discriminates against someone based on their disability.

THE COURT: Thank you. Let me get a response to the disability claim at least with respect to the two photographs that were shown from Lowndes. Well, it was the second one in Montgomery County, I think, the 2019 one. But, yeah, let's pick up on that. What is the evidence related to accessibility issues

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that the Plaintiffs have presented to support their ADA claim?

MR. ROSS: Yes, Your Honor. With respect to the ADA claim about curbside voting, Plaintiffs presented evidence as well as testimony from Dr. Peebles, from Ms. Lux of People First, and from the -- sorry, Mr. Porter about their inability to access their polling station even outside the context of the pandemic. Plaintiffs' claim with respect to curbside voting as you know is directed at the fact that there have been voters in Alabama who have been accommodated because of their disability through curbside voting and that that is something that the ADA contemplates as a remedy. And so it frankly doesn't matter what state law does or doesn't say because federal law as we all know trumps state law, and the ADA has clearly and consistently been interpreted by both the DOJ and federal courts --

THE COURT: Let's focus on the first part.

MR. ROSS: I'm sorry. I missed --

THE COURT: The testimony about their accessibility issues. I need to go back and look at it. That's the -- I recall Dr. Peebles, I guess, testifying that he needs help at the Clarion Inn pushing elevator buttons. All right. You believe that there is testimony from individuals that you have cited, the Plaintiffs, where they maintain that they had accessibility issues to their polling places? Mr. Ross?

MR. ROSS: Yes, Your Honor.

THE COURT: Okay.

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MR. ROSS: Yes, Your Honor. And I think it's also -- Plaintiffs would ask that the Court take judicial notice or simply review the ADA regulations related to accessibility. It goes far beyond whether or not a polling place has a ramp. Your Honor referenced, for example, the photographs that Plaintiffs entered into evidence. The mere fact that there is a ramp at some of these polling place does not address their lack of accessibility. Looking at the Lowndes County photograph, for example, the area was surrounded by grass. There was no handicapped accessibility parking. All of these things are required by the ADA. To the extent they are not available to voters, those polling places are inaccessible for the purposes --.

THE COURT: Yeah, the general concern that I have with respect to the photographs is, one, the failure to pinpoint when they were taken, not being able to tell me that's what they look like today. And then even with the Lowndes County one, I'm not sure -- I need to go back and look at it -- that the framework allows me to be able to see the point that you just made about handicapped parking not being available. My concern for you -- the Plaintiffs I should say, is that obviously there are well over a thousand polling places in the state. I'm just not sure that there's evidence to support the Plaintiffs' position that the polling places do not comply with the ADA.

But in any event, I think at this point, I need to review the testimony again of the individual Plaintiffs and take a look at the

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photographs. So I'm not ready to rule on that motion yet. But I did remember, as the evidence came in at least with respect to I think Montgomery County and the Lowndes County photos that I did not believe that ultimately, although I admitted them, that they were sufficient to prove the point that the Plaintiffs were trying to prove about ongoing current accessibility issues.

MR. ROSS: Your Honor, if I may.

THE COURT: You may.

MR. ROSS: I believe just to clarify Plaintiffs' point, it is not that all, you know, some 2000ish --

THE COURT: Corrects.

MR. ROSS: -- polling places in Alabama are inaccessible. It's merely that for some voters who testified that the curbside voting is a reasonable accommodation for them --

THE COURT: Yeah, but I think, Mr. Ross -- I think. This is the reason why I said earlier it's the first part that I want you to focus on. To grant the accommodation, do you not have to show that those individuals's polling places are not accessible? And for Dr. Peebles, I do recall his testimony about problems that he's having and having to need assistance to access his polling place. I need to look at the other individual Plaintiffs's testimony. But certainly, an accommodation to the extent the Plaintiffs have proved their case, may well involve curbside voting. I'm just not sure about the testimony. I need to go back and review it, is all I am saying. I'm not prepared to grant Mr. Webb's motion on

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behalf of his clients just yet as to that point.

MR. WEBB: Your Honor, may I speak further on that?

THE COURT: I'm going to carry it with the case, but sure, you may speak further on it.

MR. WEBB: Your Honor, what I think everyone is not looking at is under Alabama law, Alabama Code Section 17-6-4. It is the county commission that designates polling places. There is no county commission in this case. Hence, there is not a defendant that can grant -- that this court can grant relief against with respect to the polling places.

THE COURT: Maybe. I'm still not sure if the Plaintiffs have proven their case. But to the extent the relief is curbside voting, I think that is not an issue that runs afoul of what you have just said. But let me carry the ADA issue with the case.

MR. WEBB: Your Honor, if I may address just two more matters with respect to that. Number one, there's been no expert testimony provided as to the accessibility of these polling places. Number two, I would like to renew our motion to strike Plaintiffs' Exhibits 460 and 462. Again, they only came in through the testimony of --

THE COURT: Mr. Webb, I'm going to deny that motion. I've told you guys from the very beginning that because this is a bench trial, I'm less concerned about documents because, as I've said ad nauseam with those two -- although I've admitted them, they're full of the flaws that you've highlighted, and I don't

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believe they support the Plaintiffs' position. And even just now, I've told Mr. Ross that I don't believe that photograph from Lowndes County supports his position that that parking lot shows the lack of accessibility.

To the extent that you're trying to convince me not to rely on that document -- those two documents, photographs, I think the people that need to convince me are the Plaintiffs, not you. So let's focus on other things that I've already signaled that I'm inclined to agree with you with respect to some other flaws that you've raised as to those photographs. Photographs are in. But again, Mr. Ross, and -- I forget. It may not have been Ms. Merle who introduced them. But I think I told the lawyer who introduced them and introduced me to the Google timestamp technology or terminology that at best, for the Montgomery County, that's how it looked in 2019. There's no representation that that's how those polling places look today. Anything else with respect to the ADA, Mr. Webb?

MR. WEBB: Not with respect to the ADA, Your Honor.

THE COURT: All right. Thank you. Mr. Ross or one of your colleagues, I think one of the things that Mr. Webb mentioned is that none of the organizational Plaintiffs have been able to show that they have any members in Lowndes County who are harmed by the accessibility issues. What's the response, if any, to that argument?

MR. ROSS: Yes, Your Honor. There was testimony with

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respect to Lowndes County that there was information being shared with voters, and that was a part of the organization's diversion of resources both for Black Voters Matter and for GBM and the NAACP, that they were diverting resources educating voters across the state including voters specifically in Lowndes County.

THE COURT: And then the other thing is Ms. Threadgill-Matthews purportedly testified that she plans to vote by absentee this election cycle and that at least based on that testimony, her claims as an individual are due to be tossed.

MR. ROSS: Your Honor, with respect to Ms. Threadgill-Matthews, her testimony was that she would like to vote absentee. She has not voted absentee yet, and that there are obviously issues that we have all learned about with respect to the mail and other things that she would like curbside voting as an option as well. And again, there was also testimony from Black Voters Matter and the other organizations that they do work in Wilcox County as well to educate voters and that that is diversion of resources.

THE COURT: I'm not denying any aspect of Mr. Webb's motion just yet. I will carry it with the case as well. Let me turn to our colleagues from Mobile.

Mr. Engelhardt, let me start with you. Then I will go to Mr. Speegle and Ms. Holifield afterwards. Go ahead, please.

MR. ENGELHARDT: Absolutely. Thank you, Your Honor.

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Can you hear me?

THE COURT: I can indeed.

MR. ENGELHARDT: Wonderful. Thank you. We have lucked out as far as the hurricane goes. It is heading in the right decreasing condition. So, all right.

THE COURT: Good.

MR. ENGELHARDT: On behalf of JoJo Schwarzauer, the circuit clerk of Mobile County, we move for a judgment on partial findings as to the Plaintiffs' claims under Count 2, the ADA claims. That's the only motion that we're bringing at this time.

THE COURT: Please make your argument.

MR. ENGELHARDT: Absolutely, Your Honor. Of course, to prove a case under Title II of the ADA, a plaintiff has to show that he or she is a qualified individual with a disability, that he or she was excluded from participation in or denied benefits of a public entity's services, programs, or activities or was otherwise discriminated against by the public entity, and three, that the exclusion, denial of benefits, or discrimination was by reason of that disability.

Previously, this Court has already dismissed challenges to the witness requirement as related to the ADA for failure to state a claim, and the claims regarding curbside voting and the excuse requirement have already been dismissed as to the circuit clerk from Mobile County. So that only leaves the photo ID claim.

As far as the photo ID claim goes with the ADA, of the five

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individuals, Dr. Peebles and Ms. Threadgill-Matthews do not vote in Mobile County, and their claims have been dismissed. Mr. Porter's claims and Ms. Bettis, both of whom do live in Mobile County, Mr. Porter's claims regarding the photo and witness requirements and Ms. Bettis's claim challenging the photo ID requirement, they were dismissed in the most recent document 226, most recent order. So that only leaves Ms. Thompson.

And on cross-examination of Ms. Thompson, I had asked her the question and she specifically and quite stridently testified that she is not disabled. If she is not disabled, then she is not a qualified individual with a disability for whom it is -- would be possible to make a claim under the ADA. Even if she did have a disability that she is disavowing under direct testimony, the application process shows that when she did apply for it last time, she was not required to submit a copy of her photo ID whether intentionally or not. She was not called on that.

And akin to what Mr. Webb was just talking about, she testified that there are numerous ways for her to obtain a copy of her photo ID in a safe manner. She could send a copy -- she testified she could send a copy of her photo ID using her iPad to a lawyer or a friend. She could use the free services at the library. She could use her daughter to make that copy. She could get it at a grocery store. She could go to the absentee voting election office. She has friends who work at the election office. She could go to her bank. So even if for some reason despite her

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disavowment of any disability, that she was considered disabled, she hasn't been denied the services -- I want to make sure I get the language right -- or the ability to participate in the service of voting.

When you turned to the organizational Plaintiffs, none of the organizational Plaintiffs have pointed to a single person in Mobile County who is a qualified individual with a disability and has been excluded from participating. The Greater Birmingham Ministries executive director, Mr. Douglas, only testified that they have donor members in Mobile County. But he didn't identify any who were disabled and didn't know any members in Mobile County that had an issue complying with the photo ID requirement.

Mr. Simelton from the NAACP testified that there are active units in Mobile County, and he talked about clinics to assist members. But he was unsure about whether they actually had photocopies at any event, and he did not identified a single person in Mobile who had a disability and who had been because of that disability prevented from getting a photo ID.

Mr. Albright from the Black Voters Matter Capacity Building Institute, they don't even have members. But if we presume that people who work for one of their members, like Ms. Bettis does, well, Ms. Bettis has testified that she's not contesting the photo ID requirement. So if that's the only person, and indeed that was the only person who testified on direct at all about, then they

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don't have a claim either.

And finally, People First, Ms. Ellis, she didn't provide any testimony about people within Mobile County that had an issue complying with the photo ID requirement. And in fact, what she testified to was when she realized that her -- any People First members could go for free to the absentee election manager's office and that they would provide those services, she was rather excited about it and noted that the only reason that they could not do such a thing would be because they were unaware of that opportunity, not because the service was not being provided.

So with no organizations able to identify a single person in Mobile County who has been denied under the ADA because of a disability and been denied the services of voting, and no individual Plaintiffs in this case, then we move for judgment on partial findings.

THE COURT: Let's start with the individual Plaintiffs. Let's hear the response, if she -- does she have an ADA claim. Go ahead.

MR. ROSS: Yes, Your Honor. Ms. Thompson clearly testified she has diabetes. Diabetes is a disability within the meaning of the ADA. Whether or not someone is disabled within the context of the ADA is not for the individual person to say. Many people who have disabilities don't describe themselves as disabled. That is a legal --

THE COURT: What's the current law on conditions that are

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controllable with medications?

MR. ROSS: Your Honor, I'm happy to brief the issue and to the extent someone has controllable --

THE COURT: Well, which begs the other question. She is not taking any medicines. So that may be an uncontrolled condition. So your -- as to Ms. Thompson, the disability is diabetes and her hypertension.

MR. ROSS: Yes, Your Honor. She is taking multiple medications for those disabilities, you know, in the same way that someone --

THE COURT: I think she said over-the-counter meds, and she hasn't gone to doctors because she believes -- uh-huh? Am I confusing her with someone else?

MR. ROSS: I believe that was Ms. Bettis, Your Honor, not Ms. Thompson.

THE COURT: All right. Did Ms. Thompson provide any testimony with respect to how her diabetes or the medical condition that you're relying on impacts her major life activities?

MR. ROSS: Yes, Your Honor. She testified about how she needs to take medication. She testified that she has been staying home in light of the COVID-19 pandemic and not interacting with other individuals as she normally would, that she in fact quit her job at the start of the pandemic because of her concerns about COVID-19 and her inability to work in that context. So I think she has very clearly testified about how it has and continues to

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impact her major life activities.

MR. ENGELHARDT: Your Honor, could I speak to that?

THE COURT: Yeah, so it sound like the impact is the concern. The diabetes being one of the underlying conditions and not necessarily what actions she took pre-COVID. But go ahead, Mr. Engelhardt, please.

MR. ENGELHARDT: Actually, you may have just summed up what I was going to say which is that her testimony did not describe anything that was actually affected by her diabetes. What she testified to essentially is she was scared of getting COVID because she has diabetes, not that the diabetes itself affected any major life activity unless her choice to stay inside her house is considered a major life activity. It didn't say anything about she couldn't walk, speak, breathe, what have you. Her concern was COVID, not the diabetes.

THE COURT: I thought I was dealing with constitutional issues about voting only. But it's new ground for me from this perspective. I don't know if the legitimate fear that she has about COVID in light of her diabetes rises to the level of a disability under the ADA. I think I need to look into that. My fear is I may not be able to find anything helpful since that is perhaps a new and novel concern and argument. And I also need to factor in that if an individual -- well, does not believe that she's disabled, although that may only be with respect to physical conditions and not the diabetes -- how that interplays with the analysis.

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So let me -- the theme for this morning carries on. Let me carry that argument, that motion, excuse me, as to Ms. Thompson, whether or not she is a qualified person with a disability. From what I understand, her disability is her diabetes. Is diabetes that's properly medicated, does that qualify? At one point, I know it does not. But the most recent amendments may have changed that. I don't know. I need to look into that again.

Mr. Ross, what about the argument about the organizational Plaintiffs not being able to point to any members who have disabilities in Mobile County? Are you going to make is a similar argument that --

MR. ROSS: Your Honor, I would make the argument with respect to Ms. Bettis testified that she is a member of the NAACP. She testified that she works with Black Lives Matter, and she testified to her disabilities being diabetes and how it impacts her. And again, Your Honor, I would say that my understanding of the ADA amendments and the ADA is that the fact that someone has their medical condition under control does not mean that it does not qualify as a disability. And the CFR specifically names diabetes as a disability within the meaning of the ADA. And I'm also happy to provide Your Honor with some recent case law in which courts have said that the fact that someone has an underlying medical condition and has to modify their behavior in light of COVID-19 is irrelevant to the ADA -- to their status as a disabled person and entitled to accommodation under the ADA.

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THE COURT: All right. The latter case law would prove helpful for me and for Mr. Engelhardt. You will likely want a chance to respond to it. So why don't you email him and me as well with those cases with those cases.

Mr. Engelhardt, were you about to say something?

MR. ENGELHARDT: It was. It sounds like Mr. Ross is relying on Ms. Bettis. And this Court has already dismissed all of Teresa Bettis's claims regarding challenging the photo ID requirement. So if she's an individual Plaintiff who has decided that she is not so harmed by whatever claims are being brought and they -- the Plaintiffs have voluntarily, I suppose, dismissed her claims challenging the photo ID requirement to the extent that she doesn't bring one and this Court has already ruled on that, I'm not sure how the NAACP or People First or -- I'm sorry.

THE COURT: Black Voters.

MR. ENGELHARDT: Black Voters Matter get to suddenly revive a claim that's been dismissed. If Ms. Bettis doesn't have a photo ID problem, then she doesn't have one. Whether she doesn't have one for herself, or doesn't have one for the NAACP, or doesn't have one for the Black Voters Matter, she doesn't have a photo ID problem. So I'm not sure how that all works.

MR. ROSS: Your Honor.

MR. ENGELHARDT: And as regards Ms. Thompson, again, I would point out that Ms. Thompson has not only already in the past satisfied witness requirement and photo ID requirement and

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she's taking medication, she goes to the grocery store, and all that, but I'm sure the case law that Mr. Ross will send on that will deal with people who take medications and apparently do not complain that their alleged disability affects them on a daily basis.

THE COURT: But basically as to Ms. Thompson and I guess as to the organizational Plaintiffs -- Mr. Ross, I'll give you a chance to respond to Ms. Bettis not having a photo ID claim in a minute. The contention with respect to Ms. Thompson is the one that was flagged earlier by Mr. Ross and summarized by me, is she is disabled because of her diabetes. Apparently the case law is that even when it's a controlled condition -- I remember it changing at one point to say that -- or to at least change the old law. If it's a controlled condition, it does not matter and that the regulations apparently specifically recognize diabetes as a condition that can be disabling. And as to her specifically, she would argue, I guess, the fact that it's one of these conditions that makes one susceptible to the extreme forms of COVID-19 is how her diabetes has affected her daily life activities, et cetera, et cetera.

Mr. Ross, what about the point that Mr. Engelhardt just made that the organizational Plaintiffs at least with respect to the voter ID claim in Mobile County will need to point to someone other than Ms. Bettis?

MR. ROSS: Yes, Your Honor. The Plaintiffs would again note

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that, you know, the organizations have both associational and organizational standing claims. There was testimony that the organizations are doing work to notify voters in Mobile about these requirements that are diverting resources to it, both the photo ID, the witness requirement, and the lack of curbside voting. And so even if they were unable to identify an individual who was injured by the photo ID requirement in that jurisdiction, they are still diverting resources and still therefore suffering an injury.

THE COURT: Their work in Mobile County, though, is all inclusive. It's not necessarily limited to disability advocacy. Does that matter, Mr. Ross, to the extent that they're expending resources in Mobile County and elsewhere to Get The Vote Out and doing other things related to the voter ID issues? Is that global work sufficient to deal with a disability voter ID claim to the extent they're not able to pinpoint any of the members who are not able to -- well impacted from a disability point of view as to the voter ID requirement?

MR. ROSS: Yes, Your Honor. I believe both the NAACP in particular testified about its membership and that its members are largely elderly people with disabilities. And so to the extent the NAACP has said they do have members in Mobile, that they're trying to educate those members. I think that is certainly relevant to their ADA claim.

THE COURT: Mr. Engelhardt, you get the final word. It's

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your motion.

MR. ENGELHARDT: Again, I think we're aligning a couple different things. Whether the organizations have standing to bring a claim based on organizational expenditures is one thing. But whether they have a burden to prove the claim that they bring -- and in this case, even if we're going to say the NAACP, which Mr. Simelton absolutely testified that they are engaging in events and that they have one coming up. But what he did not do -- first of all, he could not testify that there was a photocopier so that they were assisting anyone with photo IDs at the event. And he did not say that he had a single person in Mobile County who actually had this problem, who actually had a disability. And to use the part of the elements, and this applies to Ms. Thompson too -- again, even if her diabetes qualifies, it's the same argument. That he or she was excluded from participation in or denied benefits of a public entity's services, programs, or activities or was otherwise discriminated against by the public entity. And as long as Mobile County and the Mobile County Library, as long as they're offering these services for free and not discriminating against or excluding them from participation, then he's failed to meet his burden to prove that. I think that's where that goes with the NAACP for sure. They have not shown anybody who was a qualified individual with a disability in Mobile County.

They may have a majority of their members -- I don't recall

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that testimony but they may have a majority of members who are disabled. But he didn't say that they were living within Mobile County. They could all be living in Limestone County or Madison County or Lee County or whatever county, Baldwin County, right across the bay. But he didn't say anything about Mobile County, and I think that's why they failed to meet their burden.

THE COURT: I will carry this one with the case as well. Unlike the others, I will say this. I'm leaning in favor of granting the motion. But I reserve the right to change my mind after I read the cases that you will send to me and Mr. Engelhardt and then read any that Mr. Engelhardt send to me as well.

This goes for all of you. Time is of the essence. I don't need briefs. Cases alone are sufficient. But lawyers like to advocate your positions. So to the extent that anyone feels the need to write as you have the right to do, I will exercise my right to place reasonable, from my perspective, limits on the briefs and from your perspective perhaps unreasonable limits. No one is allowed to submit more than five pages double spaced, 14 point font.

Let me move on to Judge Davis. Mr. Speegle and Ms. Holifield, Mr. Hale, who is taking lead? Ms. Holifield, you may.

MS. HOLIFIELD: We would adopt all of the State's arguments today for judgment on partial finds. Likewise, we would adopt Mr. Webb's and Mr. Engelhardt's arguments as well. We would add to the ADA claim that we don't believe Mr. Porter proved that his poll was inaccessible to him. And likewise, I mean, Ms. Bettis

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didn't prove her poll was inaccessible at all. She in fact voted in person in July. So we would just add those facts. I understand the Court is going to go through the record anyway and look and see what evidence of accessibility was presented. So we would ask that you do that in Mobile County as well.

THE COURT: Thank you.

MR. ROSS: Your Honor, if I may.

THE COURT: Going to carry it with the case but for the same reasons, but go ahead, Mr. Ross.

MR. ROSS: I would just very briefly make a few points. The defendants are misconstruing the ADA which as you know and as you have cited in your prior opinions does not say that someone has to be completely excluded from voting or from any other service or activity in order for them to state a claim first. And then second, that Mr. Engelhardt and Ms. Holifield both reference, I believe, the availability of -- the alleged availability of --

THE COURT: Free services. Correct.

MR. ROSS: Yeah. And some other locations. There's no evidence that that is actually available to any voter, that voters know about it. It's merely Mr. Engelhardt testifying that it was available and the client saying that, you know, it would be something that they are open to. So they have not established anything, and that is all I have on that. Thank you, Your Honor.

THE COURT: Yeah. At this point, they have not. And I think Mr. Engelhardt and Ms. Holifield and their team, I suspect, will be

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doing that in their case when they get it. But all right.

I think that I have resolved all of the motions in the sense that I have agreed to carry them all to review specific testimony related to these motions. And then obviously, the Defendants can renew the motions at the end of their cases as well. So I am ready to go forward with the evidentiary phase of the Defendants' case. Let's break until 11 a.m. and then we will begin.

MR. ENGELHARDT: Your Honor. I'm sorry to interrupt you. I just want to make sure before we left, if it's all right, I wanted to orally join the State's motion in regard to the poll tax too.

THE COURT: Duly noted.

MR. WEBB: And, Your Honor, our clients, Lee, Lowndes, and Wilcox, wanted to join the arguments made by the Mobile County Defendants.

THE COURT: Thank you all. We are in recess until 11 a.m. Who will be the first witness?

MS. HOLIFIELD: I believe that will be Judge Davis, Your Honor.

THE COURT: Thank you. Judge Davis, are you on, sir? We will start at 11:00.

JUDGE DAVIS: Good morning. Yes, I'm here. And I'm ready, willing, and able.

THE COURT: Thank you.

(Recess.)

THE COURT: Hello again, everyone. We may begin.

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Mr. Speegle, Mr. Hale, who is doing the direct?

MR. SPEEGLE: It's me, Judge.

THE COURT: You may. Judge Davis, I know you are used to swearing people in. Can I get you to raise your right hand please so we can swear you in.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: My first name is Mallory. My last name is Davis.

THE COURTROOM DEPUTY: Could you spell it for me, Mr. Davis.

THE WITNESS: Mallory is M-A-L-L-O-R-Y. Davis is D-A-V-I-S.

THE COURTROOM DEPUTY: What city and state do you reside in, Mr. Davis?

THE WITNESS: I reside in Mobile, Alabama.

THE COURT: Thank you. Mr. Speegle, you may begin, sir.

MR. SPEEGLE: Thank you, Your Honor. Can you hear me fine?

THE COURT: Your microphone needs to be unmuted.

MR. SPEEGLE: Well, when I do that, we're going to hear feedback. I'm on the judge's microphone.

THE COURT: You're coming in faintly. Let me see. On my end.

MR. SPEEGLE: I'll try and be -- but I think we're going to get

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feedback when I do.

THE COURT: Okay. You may.

MR. SPEEGLE: How's this? Judge, that's it.

THE COURT: Mr. SPEEGLE, you may continue with the caveat that if Ms. Lewis, our court reporter is not able to hear you, she will let you know.

MR. SPEEGLE: Thank you. And I'll either talk louder or I'll change places.

Q. Judge Davis, would you give us a brief background of your education?

A. I am graduated from the University of South Alabama in Mobile, Alabama in 1978 with a bachelors of arts degree in political science and chemistry. I am graduated from the Cumberland School of Law at Samford University located in Birmingham, Alabama with a juris doctorate degree. I graduated from Cumberland in 1981.

Q. And after you completed law school, what did you do?

A. I practiced law for approximately 20 years. And in November of 2000, I was elected as the judge of probate of Mobile County. I have been reelected since 2000 as the judge of probate of Mobile County.

Q. When you were in private practice, what were your areas of practice?

A. I had many different areas of practice. I -- both in terms of federal and state court litigation, real estate transactional work,

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banking transactional work, financial institution litigation work. I did a good bit of bankruptcy litigation both in the bankruptcy court and the U.S. District Court in Mobile, as well as in Montgomery. I had a significant case I was involved in in Montgomery bankruptcy court as well at one point.

My last three years of my law practice, I also was the appointee of my predecessor as the general conserver for Mobile County. And I served in that role for just shy of three years before becoming Mobile County's judge of probate.

Q. If you will remind us again, how long have you been the judge of probate of Mobile County?

A. I am nearing the end of my 20th year as the probate judge of Mobile County.

Q. Now, in that as judge of probate, have you been involved in work related to election laws?

A. I have been involved in a lot of different matters related to election laws. The notable matters or points would be that when Congress passed the Help America Vote Act, it specified in that act that the states had to take certain actions to become in compliance with the Federal HAVA Act. And it specified in the federal legislation that the chief election officers of the two most populous counties in each state would be a member of the state committees that the federal legislation or federal act contemplated being created and operating to deal with the state HAVA matters. And with Mobile County being the second most

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populous county in the State of Alabama, I was a member and I guess I continue to serve as a member of Alabama's Help AMERICA Vote Act committee.

The second major aspect of my election role during my tenure is that after the Congress passed the Help America Vote Act, the State of Alabama, the Alabama Law Institute, which is an arm of the Alabama legislature, created an election committee to review all of Alabama's laws relating to elections to identify any discrepancies, any problems, any conflicts between various Alabama election laws but also between Alabama election law and federal election law, especially then given the recent passage of the Help America Vote Act.

And I was a member of the ALI's election law committee during that entire process, which was about, as I recall, about an 18-month process where we met in Montgomery monthly without fail to work on the revision of the Alabama election code. As I recall, the revised proposed election code was presented to the legislature in either late 2004, and it was adopted by the legislature in 2005, and it went into effect in 2006, in time for the 2006 election cycle. Separate and apart from that, I have been a speaker at a number of Alabama Law Institute, Alabama probate judge association sponsored continuing education courses relating to elections. And throughout the 20-year time period.

Q. Next, let's list some of your duties as probate judge. Tell me briefly what your nonelection related duties as probate judge are?

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A. Okay. As the judge of probate, I have both judicial and ministerial responsibilities. In the judicial area, the basic areas are decedents's estates, guardianship conservatorship matters, eminent domain matters, involuntary commitment of the seriously mentally ill in the community, and name changes. In addition to my judicial responsibilities and my election responsibilities, I am also the custodian of the public records of Mobile County.

Q. Now, is there a difference between the powers of your courts relative to the powers of other probate courts in the State of Alabama?

A. Yes, there are differences. In Mobile County, like in Jefferson County and I believe now in Pickens County, the -- and Shelby County, perhaps, the judge of probate is required to be a licensed lawyer and -- and I am such. When I first was elected in 2000, that legal -- the lawyer requirement only applied to Mobile and Jefferson Counties. It's now several other counties have that requirement as well, as I noted a moment ago.

And consequently, because of the legal requirement of -- for Mobile County, the judge of probate, the probate court has concurrent jurisdiction with the circuit court as to trust matters, decedents's estate matters, and protected proceedings which are the guardianship conservatorship matters.

Additionally, our appeals are different. The appeals of this court normally go to the Supreme Court and on a -- well, in a

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mental health commitment case would go to the Alabama Court of Civil Appeals first. But unlike most Alabama probate courts where their appeals go to the circuit court, our appeals go immediately to the appellate level in Montgomery by and large.

Q. Is there something in the nature of equity powers that your court has that's different from other probate courts in the state?

A. Yes. As I noted a moment ago, the Mobile County probate court has concurrent jurisdiction with the Circuit Court of Mobile County. The Circuit Court of Mobile county is a court of general jurisdiction understand the constitution and laws of the State of Alabama. So what we have -- the probate court of Mobile County has concurrent jurisdiction with the Circuit Court of Mobile County, we have what's commonly referred to as equity power or equity jurisdiction.

Q. Now, let's move on to the election-related duties. What are your duties in that regard, Judge Davis?

A. All right. Under Alabama law, the judge of probate of each county is the chief election officer of the county. That is in my personal view, a little bit of a misnomer because although I have that title, I am not completely in control or have control over all aspects of election -- administration and elections within Mobile County.

The Alabama -- the code of Alabama contemplates the key aspects of the election administration process be split up between several different elected officials or elected groups of

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people so that it's not all consolidated and vested in one person alone. For example, the Mobile County Commission is responsible for drawing, creating precincts. An election precinct is a geographic area. The county commission also determines and the poll locations. There is at least one poll in every precinct.

The County Commission is also responsible for the funding -- the procurement and use of the election -- the ballot counters, the machinery that's used in the election polls on Election Day. The county commission is also responsible as the chief budgeting authority of the county to provide adequate funding for elections within the county.

The sheriff of Mobile County is the chief law enforcement over of the county and he -- the sheriff is responsible for maintaining peace and providing law enforcement at election polls on Election Day. The sheriff of Mobile County is also responsible for Alabama law for the safeguarding and protection of the election materials, notably the ballots. And by federal law, those have to be kept in storage and maintained in a secure area for 23 months following an election.

The circuit court clerk of Mobile County is also by statute -- serves as the absentee election manager of the county, although the circuit court can decline to serve in that role. As the absentee election manager, the circuit court clerk is responsible for all aspects of the absentee election balloting process within the

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county.

There is also a board of registrars. The board of registrars in Mobile County consists of three persons. One is appointed by the governor, one is appointed by the state auditor, and one is appointed by the commissioner of business and agriculture. And they serve four-year terms, and they oversee the vote registration process and procedure.

The board of regular registrars also pursuant to Alabama's approach to the Help America Vote Act, they are responsible for processing of provisional ballots at the conclusion of an election and reporting to the county, to the canvassing board of the county, the election canvassing board of the county, I should say, which provisional ballots should be counted at the conclusion of an election.

There's an election -- Alabama counties -- Mobile County has an election official appointment board. And the members of that board are the judge of probate, the sheriff, and the circuit court clerk. The judge of probate serves as the chairman of that committee and oversees the administrative operations of that committee. The -- by state law, there is also an election canvassing board which is comprised of the -- again, the judge of probate, the sheriff, and the circuit court clerk of the county.

That board is responsible for the canvassing of the results and the reporting of election results to state and governmental officials. The judge of probate serves as the chair of that

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committee and as the administrative officer of that committee as well. I believe I've covered most most of the key aspects of election administration and who is responsible for what.

Q. Did you discuss the election absentee manager's position, Judge?

A. I believe I did. The circuit clerk serves as the absentee election manager. In Mobile County's instance, that's Mrs. JoJo Schwarzauer.

Q. And let me the defendant a little bit. Are you aware of what the duties of the absentee election manager are of Mobile County?

A. I am -- I think I'm generally aware of those duties. The absentee election manager is responsible for the processing of absentee ballots. That -- the applications and the processing of those applications, the issuance of absentee ballots, and the storage of the -- of any absentee ballots received back prior to Election Day. On Election Day, the absentee election manager will deliver the absentee ballots, all absentee ballots received, to the poll workers of the absentee ballot poll. And the poll workers will process the absentee ballots. That is not -- the processing of the absentee ballots is not a role of the absentee election manager.

Q. You mentioned the absentee ballot poll. What do you mean by that, Judge?

A. All right. The absentee ballot or election poll consists of

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citizens that reside in Mobile who are registered to vote and qualified to vote. And they serve as the poll workers who process the absentee ballots on Election Day. Similar to what we do at our geographically located polls around the county where we have citizens serving there to manage the election at the polls in the local communities around the county.

Q. Would it be accurate to say that this absentee ballot poll is essentially just like another -- another poll place that's in a precinct?

THE COURT: Mr. Speegle, the last part of the question did not come through.

MR. SPEEGLE: I'm sorry.

Q. Would that be an accurate depiction of or a comparison of the absentee ballot poll compared to the geographic polls in the precincts?

A. Yes. The poll workers are paid the same as the poll workers that are serving in the geographic polls around the county. And they take an oath of office just like the other poll workers do. And they certify the election results of the absentee poll just like the other poll workers do at the other polls located around the county geographically.

Q. I want to move to a little bit different topic. Let's move to in-person voting at the polls. You mentioned that there are poll workers at the polls. How are those poll workers selected?

A. The poll workers, there's several sources of nominations

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that the election official appointment board utilizes to come up with the persons that we appoint. Some 8, 10, maybe 12 weeks before any election that is partisan in nature, I will reach out, contact the county chairpersons of the Mobile Republican and Democratic committees and remind them that we have an election coming up, and I will request nominations from them of poll workers. I do that without fail. Very rarely do they have anyone that they nominate, but that's one source of nominations.

The second source of nominations are that at our -- on Election Day in our polls, we advertise the need for poll workers. And we have applications available at the polls on Election Day for voters that are interested in serving in the future as a poll worker to complete and turn in either there at the poll on Election Day or to mail back in or to email back to us later at the courthouse to let us know that they are interested in serving as a poll worker in future elections.

We also -- the primary source of our nominees comes from our poll inspectors. Under Alabama law, the title for the poll worker that is in charge of the -- of an individual poll on Election Day is inspector. And we -- the first part of the poll worker nomination process is that the election official appointment board identifies who the inspectors will be for our polls. Once we have that person identified, then we will send to them materials asking them to nominate poll workers. And a part of that material -- and part of the materials we furnish them are the

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names of persons who have served in prior elections that live in that precinct or persons who have indicated to us that they are interested in serving as a poll worker.

I would -- another way by which we receive nominees for poll workers is through the individual contacts of the sheriff, the circuit court clerk, and myself. All three of us are elected officials, and all three of us come in contact with citizens during the course of our different duties that we perform. And there have been occasions when the sheriff or the circuit court clerk or myself have noted to the appointment board that one of us had an individual that we desire to appoint as a poll worker at the appropriate poll.

We take all of these nominations from all of these different sources and then we fill the positions. The positions are authorized by the county commission. We don't have -- I don't have the ability and the appointment board does not have the ability to appoint just ever how many poll workers we want. That is prescribed by the county commission. And but we fill the available positions. And I will say that when they are appointed, their appointment is a -- is conditioned on them attending and completing a training course to prepare them as a poll worker for the upcoming election in which to serve.

Q. Now, going back to -- say a typical general election say the one in 2016, approximately how many poll workers would Mobile County have?

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A. Approximately 1,700. Just shy of 1,700.

Q. And now, if you would, tell me how you go about, if you do, explaining to the poll workers -- if you would, explain the training that if they are trained, the training that the poll workers receive?

A. We have a comprehensive training program. In fact, our training program is utilized now by a number of other Alabama counties. It involves -- there's several components to it.

First of all, we have a poll worker, a printed poll worker guide that is probably 40, 50 pages in length. It has a lot of photographs in it. And one of those is given to every poll worker at the training class that they attend. We also have developed a series of short video presentations that we share with the poll workers at the training. These videos are themed around either a position within a poll or a piece of equipment that will be used by the poll workers in a poll or an election-related topic. And these videos, there are certain basic videos that we actually display to and share with the poll workers at our training classes.

We also make all of the video presentations available now in a DVD format, and we give the DVD to all of our poll workers when we train them, and we encourage them to review the DVD in its entirety between the date of their training and the date of the election. These videos are also available on the court's internet website. And the website is accessible seven days a week, 24 hours a day. The videos are also downloaded on a lap -- we provide each poll now with two laptop computers that contain

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the Mobile County voter registration database. And on that laptop computer -- those laptop computers at the polls, the training videos are also downloaded there. The thought being that on Election Day, if a poll worker had a question about what they should do, they could go to the laptop computer and view the appropriate video for instruction. So I would also note that the video presentations have references to the printed poll worker guide, and the printed poll worker guide has references to the video presentation. So everything is cross-referenced to the best of our ability.

Q. Now, there are certain equipment, I believe, at the polling places. If you would, tell me what kind of equipment is there, and I'll follow up with that, or you can tell us how the poll workers are trained to use that equipment.

A. All right. In elections prior to the upcoming general election, there have been two primary pieces of election equipment at our polls. The first is the ballot counter, which is what the name connotes. It's the machine that counts the ballots as the voter is casting their ballot.

The second piece of machinery is a marking device required by both federal and state Help America Vote Act, HAVA, that enables persons with a number of different types of disabilities to be able to mark their own ballot without assistance at an election pole on Election Day. Prior to this year, the 2020 election cycle -- and let me say, from 2006 through 2019, Mobile

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County utilized what is called the Automark marking device. Earlier this year beginning with the 2020 primary election, beginning of the 2020 election cycle, we are no longer using the Automark, and we are using a new marking device called the ExpressVote. It provides the same functions -- the functions and services each machine, Automark and ExpressVote provide are essentially the same.

Now, in the upcoming election, general election, we will also be introducing and have use of a new item of equipment, and it is an electronic notebook. And this will be utilized in the registration, check-in process of voters, and also it will record the voter's signature and any witness -- identification of witness signatures relating to the balloting process.

Q. Now, you mentioned the electronic notebooks. Before the advent of those -- if you could be brief -- what was the process when the voter entered the polling place to vote?

A. Okay. When a voter entered a poll, when the voter -- there are three basic stages or stations in an election poll. The first station is a registration table, where the registration cards are. That is where the voter -- the active list of the voters who live within that precinct, their names are on lists that are alphabetized. And the voter would get in the -- meet with the appropriate registration clerk, depending on what their last name was or is, and would present themselves to vote. The registration clerk would look to see -- confirm that their name is on the active

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voter's list. The voter would also -- this is also the state where the voter's photo ID would be checked and confirmed. And after the voter is cleared as being an active voter and photo ID's been furnished, then the registration clerk gives the voter what's called a card. And it's a little slip of paper that has on it the ballot style for the voter and the initials of the clerk that issued it.

The voter is then directed to the second station of the poll. At that station, there are three clerks. The first clerk is the clerk that -- or poll worker that manages and oversees the poll list. The voter has to sign the poll list. If the voter cannot affix their signature but can affix their mark, then their mark has to be witnessed. There's a procedure for that to occur. If a voter -- it's at this stage if a voter is requesting assistance that the voter identifies to the poll worker that they are requesting assistance, and they sign at the appropriate place on the poll list that they are requesting assistance. And then the person who is providing assistance to them signs adjacent to their name.

Then after that, after the voter has cleared with the poll list clerk, the voter is referred to the clerk's list clerk. The poll worker manning the clerk list is responsible for printing the name of the voter, and it has to match the same line where the voter signed on the poll list that I referenced a moment ago. After the voter's name has been printed on the clerk's list by the poll worker, the voter is then referred to the third poll worker at the second station who will take the election card or slip of paper

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from the voter where the ballot style is indicated, and the poll worker will -- distributing the ballots, will give the voter the correct ballot style that's reflected on the slip of paper that's handed to them.

From there, the voter then goes in a designated area to mark their ballot. And then once they finish marking their ballot and are ready to vote, they go to the ballot counter station, the third stage of the poll. At that stage, that's where they cast their ballot. And there's a poll worker stationed in that general vicinity to be available if there are any questions or issues that come up while the voter is going through the physical act of casting their ballot. That voter also -- that poll worker will also retrieve, or has in past elections retrieved the secrecy folder and the ink pens used by voters. Because in the past, we have recycled those. And then the voter should depart from the poll at that point.

Q. All right. Now, Secretary of State Merrill mentioned the phrase chain of custody regarding ballots. Tell me how this process of voting relates to that concept.

A. At the polls on Election Day, the voter is -- handles their own ballot. It's in our constitution and our laws that the voter's right to vote is to be protected at all cost. It's secret. That's why we provide secrecy folders to them. The voter is always -- should ideally and normally be in physical control of their own ballot. They mark it normally themselves, and then they -- in most instances, they directly themselves deposit their ballot into the

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ballot counter. As I noted earlier, they can request assistance.

Now, by law, there are two types of persons who cannot provide assistance, and that is an employer or representative of an employer or a labor union official. They are not permitted to provide assistance to voters in the State of Alabama.

But if a -- the voter has to request that someone provide assistance. The law does not contemplate someone volunteering to provide assistance to a voter. The -- if a voter does require assistance, they're going to note it first on the poll list. There is a place where they sign confirming in writing that they have asked for assistance. And there is a place adjacent to that on the poll list where the person who will provide assistance will sign as well.

Same thing occurs at the clerk list station. And this is at the second station of the poll, on the clerk's list. The same information is noted there. The voter has control, physical possession of their ballot. And once they mark their ballot, they go to the ballot counter to cast it. And most voters cast their own ballot -- insert it into the machine themselves.

On occasion, they will ask the poll worker assigned to the ballot counter to assist them in that act. We train and teach our poll workers in Mobile County that they should at all times encourage the voter to go on and cast the ballot themselves, noting that it's very easy for them to stick it into the machine to be counted. But if the voter insists, the poll worker assigned to

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the ballot counter can insert the ballot into the ballot counter. But I would note all of this is done in the physical presence of the voter. The voter is right there watching everything that is going on.

Q. They're watching everything that goes on with their ballot; is that your testimony?

A. Yes.

Q. Now, when you put in place the electronic poll books, is that going to streamline this process of going in to vote in person?

A. Yes, it will significantly streamline it.

Q. How will it do that?

A. Well, the electronic notepads will be at the first station of the poll. And we will still have registration clerks there. The voter, citizen, will present a form of photo ID. There are -- the notepads are designed to read several types of photo ID electronically, notably driver's licenses. And so the voter would hand their driver's license, for example, to the registration clerk at the first station of the poll, which will be placed at the appropriate place within the notepad for the notepad to read the driver's license. And this will populate the screen on the notepad with all the voter's registration information.

The voter will then sign on the notepad, thus eliminating the need for the voter to sign the poll list at the second table or second stage in the poll as I described earlier. And because all this is already in the system, there is no need for anyone to print

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the name of the voter. So it will eliminate the need for a poll worker to man the clerk list.

And so now the other aspect of the streamlining is that this happens just in milliseconds at the registration table in terms of it's going to greatly speed up the time it takes to process the voter at the registration stage. It eliminates the time associated with signing a poll list and then going and having your name printed on the clerk list. So the voter will go straight from the registration table directly to the clerk at the second station who will hand them their ballot.

Another feature is that these notebooks that Mobile County will be utilizing will have printers associated with them. And as each voter is processed at the first stage, there will be a slip of paper generated that has the voter's ballot style printed on it. This is all going to be done electronically. There will be -- so this will minimize errors we've seen in the past at the registration table where poll workers may have checked off the wrong name on the list or written down the wrong ballot style that a voter is supposed to utilize for the election process. And as I noted earlier, it eliminates two of the three clerks at the second station in the poll.

Q. So not only are you speeding things up, but you're reducing the number of poll workers that need to be present at the poll; is that correct?

A. That's correct.

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Q. Now, you mentioned -- Judge Davis, you mentioned ballot style. What do you mean by ballot style?

A. Okay. Both federal and state law requires that voters have got to vote -- we have a lot of districted positions. For example, at the federal level, the House of Representatives, those are districted positions. And at the state level and county level, we have state senate, we have house of representatives, we have county school board, we have state school board, we have county commissioners, we have constables in Mobile County also. So there are a lot of districted positions.

And the law of the land is it's one person, one vote. And the voter is supposed to vote for the right set of candidates associated with where they are domiciled, where their residence is. And so because of all these different districted positions that we can find on a ballot at any given election, the ballots have got to be tailored to where the voter lives in the right set -- so that they vote for the right set of candidates. So we refer to the different types of ballots as ballot styles. For this upcoming general election, Mobile County will have 132 different ballot styles countywide.

Q. So I'm clear on that, is it correct if one says, I live in downtown Mobile. You live out in West Mobile. In my district, I may have different people I'm voting for, and only I can vote for them. You can't in West Mobile. So I get a different ballot. Is that what you're saying?

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A. That's correct.

Q. When you -- you mentioned the training. Now, we're going to the actual voting day. You mentioned earlier that you train poll workers. I think you mentioned a little bit about the absentee election manager office. And can we assume that there are employees at the absentee election manager office pretty much constantly today through the election?

A. Yes.

Q. All right. And you mentioned also there are poll workers on the day of the election that are the absentee ballot poll workers. Are those two groups the same?

A. No.

Q. Okay. Which ones are you in charge of?

A. The -- I'm responsible as the judge of probate for training those persons, citizens serving as absentee ballot poll workers on Election Day. I have no role in the training of the employees of the absentee election manager.

Q. Now, let's move to the actual day of the election. Tell me how your day starts out on a typical general election morning in Mobile County as the county chief election officer.

A. By law, the polls have got to be open and running at 7:00 a.m. in the morning. We instruct all poll workers that are serving at the geographically located polls to report to their designated poll at 6:00 a.m. in the morning. When they arrive, they are instructed and are led by their inspector in setting up

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the poll and making certain -- activating, turning on and activating the ballot counter and the ExpressVote machine, and this coming November, it will also be the electronic notepads, so that all of the machinery is ready and operational at 7:00 a.m.

If they -- they are told that they should do this immediately when they arrive first thing at the polls at 6:00 a.m. in the morning. Because if there are any kind of issues, it is our desire to try to address those issues before 7:00 a.m. in the morning. The -- my morning -- the court has a what we call a call center that becomes operational at 6:00 a.m. in the morning also. And it is manned by probate court staff members and led by the chief deputy clerk of the court. And it is available as a telephone resource to all polls on Election Day. And it becomes operational at 6:00 a.m. in the morning.

I personally start going checking on polls at about 6:15 or 6:30 in the morning. I start going to polls. Obviously, my first thing I would do that morning if there was a problem that I was alerted to and it was a serious problem, I would go to that poll to respond to whatever the problem is. But absent any kind of problem, I will start checking on polls around 6:15, 6:30 to make sure that things are going well and they don't need need any supplies or have any issues or anything.

My day progresses in that type of manner. My first prior to of both myself and the chief clerk of the court, we travel separately with sheriff escort on Election Day. We travel, and

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we're available to respond to any kind of an issue that comes up during the course of an Election Day. Some things can be handle by telephone. Some things require personal presence. If we do not have any kind of issues of that nature that require our immediate attention, we both try to visit the polls. And we split -- we split up the polls between the two of us. Our goal is that every poll get visited by one or the other of us on Election Day. We do that not only to check to see how things are going but also to offer support and encouragement to our poll workers. Being a poll worker on Election Day is not always an easy task. And so we're there trying to provide the best support we can for our poll workers at the different polls as well.

Q. Now, as the day goes on and people are voting in person at the poll, what's going on with the absentee ballots that day, during the day?

A. The -- on the morning of an Election Day, the absentee election manager -- the only ballots that an absentee election manager can receive on that day are ballots that come in before 12:00 noon by mail provided that they were postmarked on the day before the election. In other words the Monday before the election. This year it would be November 2nd. And they are also authorized to receive emergency medical ballots from the designee of the voter. Those are the only absentee ballots that an absentee election manager can receive on Election Day per Alabama law.

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At 12:00 noon on Election Day, the absentee election manager delivers all of the absentee ballots in the absentee election manager's custody to the absentee election poll. And at that time, those are sorted into two groups. You're going to have your absentee ballots with regard to which there are no known issues. And then you are going to have, and can have, and usually do have, some provisional absentee ballots.

Now, the provisional absentee ballots are at 12:00 noon on Election Day, they are delivered to the custody of the sheriff of Mobile County, and they are kept under lock and key until the week after the election. The remainder of the absentee ballots are processed by the absentee ballot poll workers at the absentee ballot poll. They work -- this upcoming election, we are planning to appoint 40 individuals, and they will take the absentee ballots under the direction of the poll inspector, and they will -- the first phase is that they will be looking at the outer envelopes of the absentee ballots. They're looking for a signature. They're looking for a reason for the absentee ballot. And they're looking for -- to confirm that the absentee ballot was properly witnessed by either two persons or a notary public.

Presuming all those things are in order, then they will open the outer envelope, and they will retrieve the absentee ballot envelope which is inside. They will open the second envelope, the inside envelope, and retrieve the absentee ballots. And the absentee ballots are then grouped together. Once they finish that

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process -- and the amount of time depends on the nature of the election and how many they have to process. For a general election, they generally finish up around 2:00 to 3:00 in the afternoon.

At that point in time, all of the ballots are stored. They are not processed. They are stored. And all of the absentee ballot materials are stored as well. The poll workers, the absentee ballot election poll workers will depart, and they will return at approximately 6:30, 6:45 in the evening. Then at 7:00 p.m., when by law the polls close, the absentee ballots are retrieved and with the -- and then they are counted at the poll site with the assistance of court employees.

Once the ballot counter counts the ballots, the absentee ballots, there are a series of printed tapes that are issued by the computer system that confirms the totals. And the poll workers then sign those returns that are being generated by the ballot counter at the absentee ballot poll in the same manner as the poll workers are doing at the geographically based polls at the conclusion of the election. And then those results, along with the computer data from the ballot counter are delivered from the -- or taken from the absentee ballot poll to the place within the courthouse where the electronic cartridges from the ballot counters are going to be read by special computer and compared to the printed strips from each of the machines that generated those results.

And presuming the figures match, then they are posted, the results are then posted on the court's website as unofficial results, and they are transmitted through the night to the Secretary of State's office in Montgomery. I might add before I forget we've never had an issue with where the numbers or figures on the tapes did not correspond with the data being retrieved from the electronic cartridges.

Q. Judge Davis, I'm going to ask you a couple questions about that absentee ballot counting process. The first is, who is typically present when the absentee ballots are reviewed and the outer envelope is checked and the ballot's actually taken out of the inside envelope?

A. Well, by state law, only -- the only people that are permitted in an election poll on Election Day are the poll workers, the appointed poll workers, sheriff's department deputies because they are responsible for law enforcement, probate court representatives, and then poll watchers that are properly credentialed. So they're the only ones permitted. The media is not permitted. Visitors are not permitted at that time period. At the conclusion -- and what I'm referencing there is somewhat we do at midday starting at 12:00 noon.

Now, at 7:00 p.m. when the results -- when the absentee ballots are being run through the ballot counter and the poll has officially closed per state law, then the poll opens up. And in addition to the persons I just identified a moment ago being

present, the media and individuals can be present as well if they want to observe the tabulation canvassing process there at the poll.

Q. Now, you mentioned the process of checking the outside envelope for voter signature and either two witnesses or a notary. What happens to those envelopes that don't pass muster and are set aside for some reason?

A. If they do not comply with Alabama law, they are not processed.

Q. What happens to those envelopes?

A. Well, they're -- we store them for 23 months after the election. But they're not processed. They're kept in a -- by the sheriff under lock and key for 23 months.

Q. Now, are you aware of the deadline for absentee voting in the State of Alabama?

A. Yes.

Q. All right. Tell me what you know about the deadlines for absentee voting in Alabama?

A. Well, the absentee -- the deadline date to apply for an absentee ballot is always the Thursday before the Election Day. In this instance, that will be, I believe, October the 29th.

Q. So that's the date by which a voter who wants to vote absentee has to have requested the application; is that right?

A. That's correct. I would also note that the voter, in addition to requesting the application, can actually physically come to the

absentee election manager's office, request their -- make their application request. They can be handed their absentee ballot while they are there. They can -- they are afforded a place with privacy where they can mark their ballot, and then they can turn in their absentee ballot back to the absentee election manager.

Q. And I'm going to get to that in a second. Are there any other deadlines other than the date by which a voter must request by application to vote absentee?

A. There are some deadlines. There's a -- the Alabama election code enables a voter who has a business emergency that has come up last minute, there is a procedure by which they can obtain what we would call -- commonly call a business emergency absentee ballot. There is also deadlines associated with a voter that has a medical emergency. And there's a provision in Alabama law for an absentee medical -- a medical emergency absentee ballot.

All ballots have got -- all absentee ballots have got to be back in before 12:00 noon on Election Day to the absentee election manager. And if they -- they have to be postmarked by -- if they're mailed in, they have to be postmarked by the day before the election. Which in this instance, would be November 2, 2020. If they are hand delivered, they have to be hand delivered by the voter by the day prior to the election. And a voter cannot hand in an absentee ballot on Election Day directly to the absentee election managers or their office.

The only ballots that can be turned in or received by the election manager on Election Day are those that were mailed and have a postmark of the day before the election or earlier than the day before the election or those medical emergency absentee ballots that I referenced earlier. Those are the only two types of absentee ballots that by law an absentee election manager can receive on Election Day.

Q. Now, the Court in this case has asked Secretary of State Merrill about whether the AEM could receive ballots outside the AEM's office, say at a polling site on Election Day. Is that allowable?

A. No. It's not permitted under state law.

Q. Now, you've had the election -- the primary election this year, 2020, on March 3rd; is that correct?

A. Correct.

Q. Now, after that, was there a time that you became concerned about COVID-19 and the in-person voting process?

A. Yes.

Q. Did you take some actions -- well, let me withdraw that. I understand that there was a runoff election that was originally set for March 31 of 2020; is that right?

A. Correct.

Q. And that got postponed; is that right?

A. That's correct.

Q. And after that, and when was the next election -- or when

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was that postponed to?

A. It was postponed to July 14, 2020.

Q. All right. So before that election on July 14, did you take any actions to protect your voters from contracting COVID-19 at the polls under your purview?

A. Yes.

Q. What did you do?

A. So as I shared earlier, on Election Day, the chief clerk of the probate of Mobile County and myself, we are visiting polls. And I -- I visited right at 40 of our 88 polls myself that day, on March the 3rd. And as I want visiting polls, I had some poll workers to express concern to me about the pandemic, what was going on, what was being reported in the news, and the seriousness of it, and they just expressed general concern. They knew -- and it was in the context of we've got the runoff coming up in several weeks. And so I -- I was concerned myself. Not only for my own personal well-being but for my employees and for my family members and citizens and poll workers, everybody.

So I immediately within the week of the primary election determined that -- and at that time, the primary runoff was scheduled for March the 31st. I determined that we should, within Mobile County, to the greatest extent possible and as permitted by Alabama law, we should utilize the CDC guidelines for election polls. And I gave the appropriate instructions to the court staff to start searching and procuring masks and gloves and

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hand sanitizer and all the other things -- wipes -- that would be necessary for us to be compliant with the CDC guidelines for the runoff election -- again, under the -- with the understanding it was going to be scheduled and held on March the 31st.

Thankfully, that date was extended by Governor Ivey and pushed back to July the 14th. And in the ensuing several weeks in March, as March progressed, I felt that additional measures needed to be taken to facilitate a safe election in Mobile County not only for our citizens but also to have a safe working environment for our poll workers. And I started working towards trying to accomplish some ideas that I had that I thought would facilitate such.

Q. Now, when you're talking about your poll workers, it is true that a number of them are retired -- we won't use the word elderly considering my gray hair. But was that one of the reasons for your concern?

A. Definitely. I would say 75 percent -- and it may be -- we don't have the precise numbers. But at least 75 percent of our poll workers are 65 years or older. So they are automatically in what the CDC refers to as a target group.

Q. And you were very concerned about that group; is that true?

A. Yes.

Q. And the regular voters, correct?

A. Right. Right. I wanted -- I'm concerned for everybody.

Q. So coming up to the July 14 runoff election, what -- and I

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know you've got some help from some other departments of the government, agencies of the government. But tell me what you put in place between that March 3rd election and July 14 runoff to make your vote -- in-person voting polls safer?

A. Well, as a part in March, early March, I contacted Dr. Burt Ishol, who is the medical director of the Mobile County Department of Public Health. He's the medical officer for Mobile County. And I contacted him and actually met with him to review our -- the first plans we had to try to implement the CDC guidelines for what was then the scheduled March 31 primary runoff election. And when I met with Dr. Ishol, he endorsed everything that I proposed. But he also proposed that Mobile County procure and utilize what are commonly called sneeze shields at the polls on Election Day.

Those things, I did some quick -- my staff and I did some quick research, and those things are kind of pricey. And so I immediately started engaging with the Secretary of State's office and with the Mobile County commission and the Mobile County administration to alert them and share with them what Dr. Ishol had recommended and also trying to see if we could put together -- find the means by which Mobile County could procure these sneeze shields that Dr. Ishol firmly recommended. I would note that at the time, Mobile County was one of the prominent -- what they call hot spots for COVID within the State of Alabama. And so it was a matter that was in the media a good bit and on

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the forefront of everyone's minds as I feel.

As time -- as time progressed, there wasn't in my perception much progress being made, and so I ratcheted up my efforts to try to draw attention to the situation and what we were trying to do, what we desired to do in Mobile County.

Q. And were you successful? Did you get some procedures, processes, protective equipment in place for your polls?

A. Yes.

Q. What did you get and put in place?

A. All right. So we reached out to the governor's office and finally got it on their radar screen, the situation. At the federal national level, the United States Congress passed a stimulus bill, I think it's called the CARES bill or legislation that provided funding, emergency funding for states and local governmental entities, part of that funding to be used for election purposes.

And so we went about -- we had already engaged in our PPE, our equipment procurement effort, and I might add we were very successful. I have a wonderful staff. And we got the gloves, the masks. And when I say masks, not only masks for poll workers, but masks for voters that might come into a poll without a mask. We wanted to offer masks to them as well if they did not have one.

The hand sanitizer, face shields. We were able to procure the hand sanitizer from a local winery over in Escambia County, Alabama that's about 70 miles from Mobile. They had quit

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making wine and started making hand sanitizer, and we procured gallons and gallons and gallons of hand sanitizer. My staff worked hard, and we got wipes, and we got Clorox wipes. I don't know how we did it, but the ladies did it. We had wipes at every precinct. We had nonlatex gloves. We worked hard and got those.

We were able to -- what we found as to sneeze shields through the market such as places like Staples and whatnot, there were two major problems with that. First of all, they weren't -- we didn't think they would be very effective because they were very short, and we knew our poll workers would be seated, and our voters would be standing at the polls on Election Day. And we needed the type of face shield that extended up that would prevent a voter from looking down over and being able -- if they had the disease, to transmit it to the poll worker who was sitting below them.

The other thing -- problem we encountered with the national providers is that they were on backorder, and they cannot guarantee delivery of sneeze shields by July the 14th. So we were able -- there was a local company in Mobile that manufactured sneeze shields that our county administration found and pointed us to. And we met with them and went through the process, and the county engaged them to manufacture sneeze shields for us. So that when we had the election July the 14th, every voter -- every poll worker that was at a seated position within the poll

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had a sneeze shield barrier, a clear plastic, heavy-duty plastic sneeze shield barrier between them and the voter that they were interacting with.

We also mandated and told our poll workers that if they worked in the runoff election, it was going to be mandated that they had to wear a mask at any -- if they were -- at all times they were interacting with the public and that there was -- if they had any kind of issue with that, that they should notify us immediately. And we set up a phone bank, and we started calling poll workers. And we also had it set up the phone bank so they could call in and leave a message to us if they had any kind of issue with wearing a mask all day. We --

Q. Did you have anybody who failed as a poll worker because they didn't want to wear a mask?

A. Yes --

THE COURT: Let me interject here, please. Let's table that question and pick back up after a lunch break. For the lawyers, so that we can finish up this week, for tomorrow, Thursday, I'm going to shorten the lunch break to 30 minutes unless anyone pushes back. For today, since you guys have not received any notice, I will take the standard one-hour lunch break.

We are in recess until 20 minutes after or 21 minutes after 1:00. Again, but for tomorrow, I would like to reduce the time to 30 minutes, and I'll get your thoughts on that, counsel, at the end of the day today. Thank you, all. Let's break here for lunch,

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please. See you guys in an hour.

(Recess.)

THE COURT: Good afternoon. Judge Davis, are you ready?

THE WITNESS: Yes, sir.

THE COURT: Thank you. Mr. Speegle, you may continue with your exam.

MR. SPEEGLE: Your Honor, I think the question on the table had to do whether -- with whether any of the poll workers after being directed they could not be poll workers unless they agreed to wear masks, whether any of those poll workers decided -- the point.

MR. ROSS: Your Honor. I'm sorry, Your Honor. This is Deuel Ross.

THE COURT: There's someone in the background. Is that you, Mr. Ross? I'm looking at a different monitor.

MR. ROSS: Yes, Your Honor. It's Deuel Ross. My colleague Lillian Zaragoza is handling this witness, and I believe she's having trouble connecting her audio if you wouldn't mind waiting a moment.

THE COURT: I see her, and I assumed she was with us. Let's give her a moment, please. Thank you, Mr. Ross.

MS. ZARAGOZA: Your Honor, I just want to flag for the Court I did not -- I had a moment of my audio not connecting, and I just now was able to hear, so I missed whatever. I apologize.

THE COURT: No, that's not a problem. Mr. Ross, thanks for

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letting us know. Mr. Speegel, why don't you start back with your initial question that was on the table before we broke for lunch.

MR. SPEEGLE: Yes, Your Honor.

MS. ZARAGOZA: Your Honor, excuse me me if I may. Just before Mr. Speegle continues, and thank you and apologies to Judge Davis and Mr. Speegle. Just to the extent the examination might concern any of the Alabama code or concerns election administration statutes, you know, Plaintiffs would just advise the Court that we are amenable to stipulating to entering, you know, that code just in the interest of time as I know Defendants have let us know that they anticipated presenting five witnesses today. Of course, we just wanted to flag that for the Court and the parties.

THE COURT: Appreciate that. Mr. Speegel, obviously to the extent that we can take advantageous of that, let's do so. But you may resume your examination.

MR. SPEEGLE: Thank you, Your Honor.

Q. Judge Davis, before the break, I had asked you after you sent out your directive that poll workers at the July 14th runoff election were required to wear masks when they were interacting with the public. Did any of those poll workers withdraw from being poll workers?

A. Yes.

Q. How many approximately?

A. I don't recall the exact number. But it was -- I want to say it

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was between 50 and 100. But even though they withdrew, it turned out not to be a significant matter. Because one of the -- one of my recommendations to Governor Ivey -- that Governor Ivey accepted and included in a revised emergency declaration was Governor Ivey waived the statutory requirement that the same poll workers who worked in the primary election worked in the runoff election. And she waived that requirement and gave all Alabama probate judges the flexibility to reduce the number of poll workers to be utilized for the runoff election.

And we took advantageous of that provision in Mobile County. And we significantly reduced the number of poll workers. It was, as I believe I testified earlier today, back in March, on March 3rd, we used right at 1,700 poll workers countywide in Mobile County. We were -- with the Governor's declaration, we reduced that number to right at 900 poll workers. So it was a significant reduction in terms of the number of poll workers that we utilized in Mobile County. And the fact that we had 50 to 100, whatever the number was, that were not willing to serve, that did not present a problem to us.

Q. Why did you want to reduce the number of poll workers?

A. Well, we wanted to reduce the number of poll workers. Because if you dig into the CDC guidelines, you'll see that they have a formula for how many people can be in a defined area of space and maintain the social distancing and all that stuff. And so we wanted to reduce -- the county, at my request, we got the

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square footage of all of the poll locations, all the spaces we were using. And we computed the number of persons that can be inside that particular election poll per the CDC. So we knew the maximum number of people that could be in the poll at any time whether they were poll workers, voters, or poll watchers.

And so once we got that number of the total number of people in the poll, we wanted to facilitate as many voters as possible being able to vote. And so we worked towards minimizing the number of poll workers either across the board inside as to a poll. But even if we -- places where we had -- even after we -- if we still had a concern about the numbers -- the space available for voters to utilize, that's what we used that data, and then I think there were four locations in Mobile County where we were not able to change to an alternative location where we wound up -- the county commission procured the rental -- rented large air-conditioned tents that were erected outside the door of the election poll. And we moved some of the poll workers and some of the poll administrative operations into the tented area to enable the -- more voters to be able to be in the indoor area to mark and cast their ballot.

The significance of that is that is that in Alabama, we utilize paper ballots, and the ballots are printed on a special type of paper. And the paper is very -- the type of paper, the weight of it and the consistency of it is very susceptible to moisture. And on occasion in other past elections, if we -- we have had trouble at

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different polls where if the ballots got too moist, then the ballot counters had trouble reading them. And so we're aware of that. That's a common problem. And so we were wanting to avoid that happening the best we could. So that's why we wanted the voters marking -- receiving their ballots, marking their ballots, and casting the ballots into the ballot counters indoors, not under any kind of tent.

So going back to the poll workers, our goal was to minimize poll workers to facilitate more voters being able to participate in the election at any given time given the CDC guidelines. The other thing that factored into this was that the turnout for a runoff election is typically less than what it is for a primary or a general election. And in most runoff elections, we had poll workers that are bored stiff because there's such low turnout, and they're just -- the voters are not there to process as they are in a primary election or a general election. So that was -- that also factored into this as well.

Q. Now, were there any other changes that you made in the July 14th runoff in either polling places, size of places, or any other safety measures that you haven't mentioned yet that you put into effect?

A. Yes. As I noted earlier, in Alabama, the county commissioners had the responsibility for determining the poll locations. That's not a responsibility of the judge of probate as the chief election officer. That said, I worked very closely with

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our county commissioners in that -- in terms of our precincts and our poll locations and whatnot. And we have a very good working relationship. And my office along with county administration, we worked together to identify where we had polls that we had utilized in the March 3rd primary election that we knew we were going to have serious CDC guideline issues with for the runoff. We were able in a number of places to locate alternative poll locations that were much larger and offered more space. And a number of those were utilized that we recommended.

We also had some places where there were existing polls. But because of past low voter turnout, the poll workers were not utilizing all of the designated space available to be used as a poll. And in those instances, we directed the poll inspectors to utilize all of the spaces available. For example, there is a -- there is a church facility in the Prichard, Alabama community in Mobile County that is called the Sunlight Auditorium or Sunlight Baptist Auditorium. It's a very large facility, a very large open space, and we were using a very small amount of that space.

And I visited, I personally visited every poll in Mobile County prior to the July runoff election where we had CDC concerns at any new location that we were going to be using for the first time in the runoff election in July. I visited those polls as well along with my chief clerk and, too, we would have the inspector of the poll as well. And we personally went through

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those polls to make certain to satisfy myself that they would comply with the CDC guidelines, and we would give instructions to the inspectors if they were there with us where they should place the various stations of the poll that I outlined before.

Another example of that have is the Boys and Girls Club in the Brighton Community in Mobile County. This facility, the building has a large -- when you go into it, there is a large room open space, and then that -- you walk through that room into a very large gymnasium. And while the use of the entire facility is authorized as a poll, in many past elections, the poll inspector because of low voter turnout has not utilized all of the area. In fact, frequently they have not used the gymnasium area.

Well, at that poll, we directed -- we knew we had use of the entire facility, and we knew the facility was closed to the public because of the COVID pandemic situation. So we directed that the entire facility was to be used. Not only the space, the large room that's not the gymnasium, but we also directed that the entire gymnasium be utilized as well. Again, the goal being to maximize the number of voters that could come and cast their ballot at any given poll the best we could.

Q. You mentioned the Boys and Girls Club. Is that the one on Rice Street?

A. It is.

Q. Amy Thompson testified last week that's where she voted. And she was asked if that's a large facilitate. And her answer was

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it's not a large facility at all. Is your testimony that it is a very large facility?

A. Yes. There's a large room, kind of a multipurpose room that you walk into. And then you walk through that large room into a super -- a regular good-sized gymnasium where they play basketball games and stuff.

Q. As far as that Boys and Girls Club on Rice Street, did you put in measures that -- for the July 14th election that were compliant with the CDC recommendations?

A. Yes.

Q. Do you believe that on July 14th that was a safe place for voters to vote?

A. Yes.

Q. Let's go back to the -- there have been some allegations about ADA compliance or --

A. Well, Mr. -- I also would note I haven't finished discussing -- I mean, we did prepare for the July election. But you're the lawyer, not me.

Q. Whoops. Okay. Go ahead, Judge. I think you're right. Continue on your topic of what else you did for the July -- to prepare for the July 14th election.

A. Well, we had to get the message to the citizens of Mobile County about what our plans were. I mean, I had to get the message to the poll workers, and we had to train all the poll workers again. And every poll worker that worked the

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July election went through another training session to prepare them not only for the election itself, the nitty gritty of an election on Election Day, but also as to all the COVID measures that we were implementing. But we also had engaged in an intense method to notify the citizens of Mobile County as to what to expect and what to plan for. And we did that in several ways.

We issued several news special -- specially formatted public service announcements for both television and radio that were focused on the pandemic. And in those, we encouraged voters to vote absentee. We also advised them that if they came to the polls on Election Day that we would be following the CDC guidelines. We asked them -- we could not mandate that that they wear a mask, but we asked all citizens that were coming to the polls to vote to wear a mask.

We -- and we told them again that the CDC guidelines would be complied with. We also issued a postcard to every active registered voter in Mobile County that went out in June, three or four weeks before the election, where we shared this same information. And again, we encouraged them to vote absentee. We told them we'd be following the CDC guidelines. We reminded them of the absentee ballot application deadline date, the voter registration deadline date. All of that data was in a postcard that went to all of our active registered voters.

We also had a series of press releases that we issued that discussed the runoff election and the overlay of all of the COVID

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CDC guidelines in that, with regard to the runoff election. We also had some specially made what I'm going to call yard signs prepared relating to the COVID CDC guideline measures that we had placed outside all of the election polls to alert voters what to expect when they got inside the poll. So we took a number of measures to try to ensure that citizens were informed about the runoff election and what they could do well in advance of the actual runoff election date.

MR. SPEEGLE: At this time, Ms. Massey, would you pull up Exhibit 1 for us.

MS. ZARAGOZA: I can't hear, Mr. Speegle, I'm sorry.

MR. SPEEGLE: I'm sorry. Ms. Massey, would you pull up Defendants' Exhibit 1 please. Defendant John Davis's Exhibit 1.

Q. Judge, do you recognize Defendant John Davis's Exhibit 1?

A. Yes.

Q. What is it?

A. That is the front side of -- one side -- I guess that's the reverse side of the postcard that we issued to all active voters in Mobile County in June of 2020 prior to runoff election.

Q. Who paid for the mailing of this postcard?

A. Mobile County.

MR. SPEEGLE: Your Honor, at this time, we would offer John Davis's Exhibit 1 into evidence.

THE COURT: Any objections, Ms. Zaragoza?

MS. ZARAGOZA: No.

THE COURT: Thank you. Defendant's 1 is received.

Q. (BY MR. SPEEGLE:) What does the top two lines of this exhibit tell your active voters?

A. Anyone concerned about contracting or spreading the coronavirus are encouraged to vote absentee.

Q. Why did you want to encourage absentee voting?

A. Trying to reduce the number of persons that would be going to the polls, the actual polls to vote on Election Day, affording them the opportunity to participate in the election.

Q. Did you have more absentee voters in this runoff than in other runoff elections before then?

A. Yes, significantly.

Q. Did you also have the same or greater or lesser turnout for in-person voting in this runoff than in prior runoffs that were similar to this one?

A. Yes, significantly.

MR. SPEEGLE: If you would, Ms. Massey, turn to the next page.

Q. Is this the first page, Judge Davis?

A. Yes, that's the front side.

Q. All right. And on the left side, are those -- you don't have to go through you and read them all. I'm not asking you to. Are those some of the things that not only did you put in this postcard but you also put in your press releases to the public?

A. Yes.

MR. SPEEGLE: Ms. Massey, you can take that down. Thank you.

Q. And I believe you said, Judge Davis, that you decreased the number of polls available and increased the size of some polling locations for the July elections; is that true?

A. No, we did not decrease the number of polls available. We modified poll locations for the runoff election on an emergency basis. I say we. The county commission did. But we did not reduce the number of polls. We have -- at that time, we had 88 precincts and 88 poll sites plus the absentee ballot poll site which is located in the Mobile County Government Center Annex.

Q. Oh, I'm sorry to have misled anyone on that subject. You put tents out on some though to accommodate when they were to small in your opinion to follow CDC guidelines?

A. There were four locations where that took place. Three of those were in rural, small rural precincts where there just are not any other facilities available.

Q. You mentioned you did some different training for your poll workers in the July election. What specifically did you change about your training methods for the poll workers for the July runoff?

A. Well, we reviewed and got them ready. It had been such a gap in time between the time of the primary election and the runoff election. It had been more than 60 days. So per state law, we needed to train again. And we -- so we needed to go back over

and refresh their recollections about their duties and responsibilities on Election Day.

But what we also did was we walked them through all of the measures that we were taking with regard to the usage of the CDC guidelines in terms of social distancing, the usage of masks. We outlined to them what materials we had available in terms of gloves, wipes, hand sanitizer. We showed them how to utilize the sneeze shields that we had procured. And we just went through all of that with them.

Q. Have you now told us everything you did prior to July 14th to make the July 14th in-person voting as safe as possible?

A. I believe so.

Q. So how did it turn out?

A. Well, we had a very good election. It was. The turnout was significantly greater than expected, one. Two, while it was a harder day for the poll workers at the poll because we had fewer poll workers and a stronger turnout than expected, we had no reported instances of any poll worker contracting COVID, and we've had no reported instances of any voter in Mobile County contracting COVID and attributing it to participation in the election on July 14th.

Q. Did you receive any reports from any person as to how the election went as far as the safety measures you put in place?

A. I got a lot of kudos and thanks from poll workers. As I shared, I visited, as I recall 40 polls on runoff Election Day

myself. And everywhere I went, I had poll workers, invariably poll workers thanking me, and on a number of calls --

MS. ZARAGOZA: Objection to the extent that it constitutes hearsay.

THE COURT: Okay. Sustained.

THE WITNESS: I also -- well.

Q. (BY MR. SPEEGLE:) Go ahead.

A. I also had voters express thanks.

Q. So then we move on to the question of -- that I had earlier that was -- you had the polling places. Is it correct that the county commission is the party that -- not you -- that determines the location of the actual physical polling places?

A. That's correct.

Q. And in the July election, were all of the polling places in Mobile County ADA compliant?

A. Yes. Mobile County prides itself and has for years that all of our poll locations are ADA compliant. That is a very important matter to us in Mobile County.

Q. And whose responsibility is that to make sure they're ADA compliant?

A. Well, the legal responsibility lies with the county commission. But I certainly myself and the polls I visit -- and let me say I -- between the last -- every election cycle or two, I'm going to visit every poll site in Mobile County. I swap up where I go if I'm making voluntary visits so that I visit every poll in the

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cycle. And the ones I don't visit, the chief clerk of the court visits. And in my personal observations, I've never seen an instance where Mobile County poll sites have not been ADA compliant.

Q. Moving to the coming election, November election, since the July 14th election, have you and your office instituted any changes in the processes and procedures you used in the July election to make the polling places and in-person voting safer?

A. Yes. First of all, we have increased the amount of protective equipment and supplies that we'll be furnishing to the polls significantly. And we've done that because we're expecting a greater turnout on general Election Day. We have also -- Mobile -- I have engaged with Mobile County, the county commission, and the county administration and working cooperatively together, the Mobile County Commission has designated a number of alternative poll sites for us to use for the general election.

A lot of these new temporary poll sites are public school gymnasiums and cafeterias. The Mobile County School Board has agreed to close Mobile County public schools to student use on general Election Day and -- which will facilitate us having great -- better parking, less traffic issues, and whatnot at the poll sites that we'll be using that are school facilities.

We have also in the process of -- we're going to, as I said earlier, we have public service announcements, radio and

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television public service announcements that we aired before the runoff election that are COVID specific. And we're going to cut some new ones, update those for use prior to the general election. And for the first time -- in the past, we have -- while we've had the PSAs that we have furnished to the radio and television stations and they have always been very cooperative to run those at decent hours of the day or night when people are awake and watching and listening.

For this upcoming election, yesterday, the Mobile County Commission approved my request for some limited funding, and we're going to actually pay for air time for radio and television advertising in Mobile County on all of our local television stations and most of our local radio stations to inform our citizens again about the upcoming general election, encourage them to vote absentee if they have any kind of concern or issue relating to the pandemic, and also share the same information we did back earlier this year about the CDC guidelines that we'll be utilizing and that we're encouraging them to wear a mask and whatnot.

We also share with them -- we'll be sharing with them that the Mobile Public Library provides free curbside notary and copy services for absentee ballots, and we'll be sharing all the information about absentee balloting, the voter registration deadline, all of that's going to be outlined in these new PSAs that we are going to hopefully shoot in the next seven to ten days.

Q. Any additional items you can think of that you have taken

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actions since the July 14th election to make in-person voting safer for Mobile voters?

A. Yes, there is one additional item. And that is the Mobile County Commission several weeks ago procured, purchased an electronic poll notebook system. It's manufactured by a company called 10 X. And we will be utilizing these electronic poll notebooks for the upcoming general election. And this will significantly reduce the number of poll workers that we use in the polls which will enable -- because we're going to be following the CDC guidelines, it will enable more voters to be inside the poll at any given time. And it will also -- the use of the electronic poll notebooks will reduce the number of occasions that a voter has to interact with a poll worker. It will eliminate two people out of that process. And that's the other main ting that I think that comes to my mind in terms of what we're doing different.

Q. Let's move to the -- you're a big proponent of absentee voting at this time; would that be an accurate statement, Judge?

A. Yes.

Q. Now, tell me physically where is the absentee election manager's office located?

A. The absentee election manager's office is located on the first floor of the Mobile County City Government Annex which is a county government owned building that is on the east side of Mobile Government Plaza. The probate court, the board of registrars are located -- our operations are located in the annex

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building. The absentee election manager's operations are located there. The Barbour commission has offices in the building as does the Mobile County license commissioner and the Mobile County revenue commissioner.

Q. Is there available parking close to this annex including handicapped parking available?

A. Yes. There have been significant measures taken by the City of Mobile in the last couple of years. There's now a park called the Mardi Gras Park that's on the east side of our building. And there's free parking on three sides of that park. There's also now curbside parking across the street from the courthouse -- the annex on Government Street, and there's parking on Royal Street. There's also a good amount of paid parking available at around the annex and Government Plaza complex both for general usage and handicapped usage.

Q. Now, if I were going to come to the absentee ballot election manager's office to either get an absentee application filed or vote physically --

MS. ZARAGOZA: Objection. Judge Davis does not oversee the absentee election process.

MR. SPEEGLE: Well, it's in the building where his office is. He knows how to get in there, Your Honor.

THE COURT: I'll allow it.

Q. (BY MR. SPEEGLE:) Proceed, please, Judge Davis.

A. Okay. When you come in the building, into the annex, you

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will turn to your left after you go through the security check point and walk maybe ten yards, and then on the right-hand side, you come into an open lobby, a small open lobby area. It's not small. And on the right-hand side of that lobby area is where the absentee election manager's office is located. On the left-hand opposite side is where the reporting division of probate court is located. And there is seating there. We're utilizing the CDC guidelines. And that's where a voter would go to request their absentee ballot application and their ballot.

Q. And when you say they walk into the area where the absentee election manager's offices are, how large an area is that which you walk into?

A. I can't -- I don't know the exact square footage, but I will say this. It has been very -- in the last week, absentee voting started last week, and I am in and out of that area throughout the day each day of the week. And it was very adequate utilizing the CDC guidelines to facilitate persons that were participating in absentee voting.

Q. Now, when you walk up to the counter where the absentee manager's office is, is there some kind of barrier there, or is it just open?

A. There are barriers. The absentee election manager employees are wearing masks and gloves and face shields.

Q. Is there any plexiglas between them and the absentee voters?

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A. No. But they are essentially social distancing. And they are utilizing the CDC guidelines in terms of the exchange of paperwork.

Q. Now, are you aware of the services that that office provides to people who want to vote absentee?

A. Yes.

Q. So if a voter comes up to the window and says, I want to vote absentee, what are their options there?

A. Well --

MS. ZARAGOZA: Objection.

MR. SPEEGLE: Your Honor, he knows what the options are. I mean, this is -- just because he doesn't run the office doesn't mean that he doesn't have personal knowledge of what the options are when you're at the absentee election manager's office.

THE COURT: I agree. He can answer.

THE WITNESS: I will say I vote absentee a good deal myself.

THE COURT: Judge, you can answer.

Q. (BY MR. SPEEGLE:) Go ahead, Judge.

A. You will be asked -- they will ask you to provide a form of photo ID. And you provide your photo ID to them. They will take it and hand you an application, and they will make a copy of your ID while you're completing your application. Then they will handle you -- exchange your application. And they give you back your ID, and then they process you for a ballot.

In Mobile County, we use what's called the ES&S. It's the

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Election Symptoms & Software. That's the name of the company that makes and services our ballot counters and the system we use in Mobile County. They have a computerized ballot machine that will make a ballot on demand for -- that's specific to the voter that is there being processed.

So the absentee election manager will enter the data from the application into the system, and the ballot -- they call that machine the ballator machine. It will generate the appropriate ballot style for that voter, that absentee voter. That ballot, a secrecy folder, and a pen are then provided to the voter. And then there is another room the absentee voter can go into if they so desire to complete their ballot with privacy and secrecy.

They're also given the envelopes to complete. One envelope is the one that you put your absentee ballot in. Then you put that envelope inside a larger envelope. You seal it. On the outside of that larger envelope, that's where you complete it, your name, the reason that you're voting absentee. Then you take that back to the window of the absentee election manager's office. You sign it in their presence. They have two clerks there that witness your signature. Once that's done, they take the ballot, and they store it and secure it until general Election Day.

Q. Now, certainly if you're there to apply for absentee ballot, if you're one of the exempt people from actually presenting a photo ID, you don't have to present a photo ID, do you?

A. That's correct.

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Q. Do they take any security -- not security -- but safety measures as far as the counters, replacement pens, whatever? Are you aware?

A. It's my understanding that they are utilizing the CDC guidelines. I don't know if they're wiping down the pens that are used or if they're replacing them. I'm not certain of that. But I know that they're following the CDC guidelines.

Q. And I think you may have mentioned this, but some Plaintiffs' Exhibits in this case have mentioned the problem with using pens in -- and this is stepping back a little bit -- in in-person voting at the polls. Do you have a problem about people reusing pens at the polls?

A. Yes. As in the runoff election, we are not going to reuse pens. And I have in our building right now 300,000-plus ink pens for us to use on Election Day for our voters, for the voting process. It's our plan not to recycle any pens.

Q. Are you aware, Judge Davis, of how many people have come in and actually voted and submitted their absentee ballot since voting started the middle of last week?

A. I know the data for last week.

Q. What was that?

A. It was a total of 150 people.

Q. And how many days of the week were there for voting, do you recall?

A. It was Wednesday, Thursday, and Friday.

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Q. Three days. So about 50 people day?
A. That's the average, yes, sir.
Q. What hours are they open?
A. 8:00 a.m. to 5:00 p.m. Monday through Friday.
Q. So an average of five people an hour sort of, is that it?
A. Perhaps.
Q. Yeah, an average. Okay. Let's move now to a topic that has come up which is curbside voting. Do you have an idea of what curbside voting have?
A. I think I do.
Q. What is your understanding?
A. Well, as I appreciate it from all I have seen and read and heard, it involves a citizen driving up outside a poll location and summoning one or more election officials to come to their vehicle and to facilitate the voting process while the citizen remains in their motor vehicle.
Q. Does Mobile County have that kind of curbside voting?
A. No.
Q. Why not?
A. Well, first of all, it's not permitted under Alabama law. Second of all, from a practical standpoint, many of our poll locations are not designed -- we could not make curbside voting happen. And it's both constitutionally and statutorily, everything we do at one poll, we've got to be able to do at all polls. You've got to have uniformity. And that is just not possible when it

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comes to curbside voting.
Q. You just said that there are certain polling places where you couldn't do it. Why can't do you it, Judge?
A. Well you can't do it at some of them because the way the street system, the way the driveways and stuff, the way they're constructed and the way the sidewalks are constructed. And at some polls, it might be a little bit of a distance from the actual building where the poll's located and all the election materials and equipment are located and the driveway. It's also problematic from the standpoint it would unnecessarily tie up poll workers going back and forth. There are different poll workers that have different duties and responsibilities, and it's going to tie up poll workers.

We have a finite number of poll workers were poll, and if they are doing this, they're not going to be able to service the voters that are waiting inside the facility to vote. The electronic notebooks that we're about to start using, they're designed for tabletop usage. They're not designed to be carried around just anywhere. They've got to be -- and the electronic notebooks have got to be -- that are assigned to a poll have got to be in electronic connectivity with each other for them to work properly not only from a general standpoint, operation standpoint, but also to ensure integrity in the election process and to prevent someone from voting twice. And so if you're walking outside with an electronic notepad, you run the risk of connectivity issues and

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also affecting the integrity aspect of the electronic Poll Pad system.
Q. How could somebody vote twice if you're using the electronic voting pad?
A. Well, if they don't have connectivity with each other, they're not able to tell -- the machines are not able to communicate to the other machine that that voter has already voted.

MS. ZARAGOZA: Objection. Calls for speculation. I only recall Judge Davis testifying to the fact that they had been procured, not that they had been implemented or that he has knowledge about how they communicate with each other or the details he's discussing.

THE COURT: Fair enough. That can be for cross-exam. So overruled.
Q. (BY MR. SPEEGLE:) Judge Davis, we touched on this earlier, but can any -- can an AEM from Mobile County go to any poll place and receive the ballots from other voters?
A. No. That's prohibited by state law.
Q. Well, that gets into this question. Who can be at the poll? I think you mentioned earlier some people that could assist someone. But who can actually be at a poll?
A. All right. By state law -- I've got my election code here adjacent to me, and I could look up a specific statute reference if needed. But by state law, the only people permitted in a poll on Election Day are the electors who live in that precinct or that poll,

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the appointed poll workers, appointed poll watchers, the sheriff, and the sheriff's representatives, and probate court representatives. And the sheriff and the probate court employee representatives have all got to be properly credentialed. Then additionally, a voter, an elector as it's referred to in the code, can bring someone from outside the poll to provide assistance to them provided that person is not their employer or their labor union -- affiliated with their labor union if they belong to a labor union.
Q. You did mention about curbside voting a number of issues with it. If the Court enters such an order which I know that the Court has said the requests from the Plaintiffs and I think you're aware of this, Judge Davis, is that the Secretary of State not be ordered to not prevent curbside voting -- could you implement curbside voting at this time for this election in November?
A. No. I can't do it. First, because it's not authorized by law. But from a practical standpoint, if it was authorized by law, practically speaking, we cannot implement it at all of our poll locations within Mobile County.

MR. SPEEGLE: Your Honor, if I might have about a two-minute break to review my notes, I may be about finished.

THE COURT: You may.

MR. SPEEGLE: Thank you, Your Honor.

THE COURT: Mr. Speegle, are you ready?

MR. SPEEGLE: Yes, Your Honor. Can you hear me?

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THE COURT: I can indeed. Any additional questions?

MR. SPEEGLE: Just a couple, Your Honor.

Q. First, Judge Davis, you've talked about all the safety measures you'd put in place, the training and so forth, for the November 3rd election. Is it your opinion that you can carry on an election, in-person election, November 3rd, that is safe for your voters?

A. Yes.

MS. ZARAGOZA: Objection.

THE COURT: His opinion, to being quibbled with, I'm sure. So overruled.

Q. (BY MR. SPEEGLE:) Judge Davis, going back for a moment to curbside, in your description, a poll voter would come out and they'd be checking ID or checking names and securing ballots maybe for the voter to vote from their automobile. Could you describe to me what problems, if any, would -- as that process would relate to your earlier testimony about chain of custody and control of the ballot bit voter?

MS. ZARAGOZA: Objection. It's very leading.

THE COURT: Sustained.

Q. (BY MR. SPEEGLE:) Judge, describe to me the -- how a ballot would be processed in curbside voting to ensure ballot integrity for chain of custody?

A. I don't know how that could occur because unlike -- when you're voting in person at a poll on Election Day, your ballot, the

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voter's ballot at the voter's election may be in a secrecy folder. It may not. We have a lot of voters that don't want to use the secrecy folders. It's their option. But we are required to provide it, and we do provide it though a lot of them decline it. So at a poll on Election Day, your ballot -- it's not in a sealed envelope like it would be if you were an absentee ballot voter. And so you -- if we're doing curbside voting and the voter's in their motor vehicle, they're going to have to give their ballot to some stranger, presumably a poll worker, to take inside and to insert in the ballot counter.

Well, that breaks what you refer to as the chain of custody so to speak relating to that ballot. It also -- that poll worker could modify that ballot somehow between the walk between the motor vehicle and the ballot counter. And then when you get to the ballot counter, assuming there was no marking or anything between the vehicle and the ballot counter, it could have been that that voter in that motor vehicle did what we call double vote, in other words, they voted for two people for the same position on the ballot. That happens with regularity.

And if that were to happen, when that ballot is inserted into the ballot counter, the voting -- the ballot counter is going to alert whomever is sticking that ballot into the ballot counter that there is a problem with the ballot such as an overvote or a double vote. Well, at that point in time, the person that has that ballot -- that's inserted that ballot into the ballot counter has two options. One

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is to reject the ballot so that the voter can correct whatever the error is, or two, cast the ballot as-is for all of the other positions on the -- that have been marked on the ballot where have there is no problem.

Well, if you're not the voter there at the voting machine making that decision -- again, the integrity of the ballot and the elections is thrown into play. If the poll worker were to try to go back outside to return that ballot that's got a problem with it to the voter, to let the voter -- the voter's probably driven off and gone. So then you're going to have the issue of what do you do with that ballot. Are you going to vote it as-is for what will count, or do you count it as a spoiled ballot, and it's not inserted in the ballot counter. And so that's just another practical issue related to curbside voting.

Q. Do you have at the present time any plans to make any polling places accessible in the sense of controlling the environment if there were any curbside ballots that were handed to the poll worker in inclement weather?

A. No.

MR. SPEEGLE: Those are all the questions I have at this time, Your Honor.

THE COURT: Thank you.

Cross-exam, Ms. Zaragoza.

MS. ZARAGOZA: Thank you, Your Honor.

Q. Judge Davis, you testified that you're the chief election

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officer for Mobile County, correct?

A. Yes.

MS. ZARAGOZA: Apologies, Your Honor. Before I jump in although I have jumped in, I just wanted to note for the record that Mr. Speegle and Judge Davis went off the record -- or excuse me. Went off of camera for a moment for the two-minute break. And I just wanted to confirm that they were not conferring about any questions or answers.

THE COURT: I think the answer there will be no Mr. Speegle; is that correct?

MR. SPEEGLE: I didn't instruct the witness on how to answer any questions. I did consult with my co-counsel, though. But I'll consider that privileged.

MS. ZARAGOZA: Fair enough. Okay. I will proceed with the questioning if that's all right.

THE COURT: It is.

MS. ZARAGOZA: Thank you, Your Honor.

Q. Just going back to my previous question. So, Judge Davis, just to confirm, you are the chief election official of Mobile County, correct?

A. Yes, ma'am.

Q. And you oversee the administrations of elections in Mobile County?

A. Generally speaking. I mean, I outlined earlier in my testimony that the title is a little bit of a misnomer because there

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are a lot of other aspects of government and government officials that have prominent roles in the election process.

Q. Understood, Judge Davis. But you oversaw the administration of the July 14th primary, correct?

A. Yes, ma'am.

Q. And typically, you have 88 polling precincts in your county, correct?

A. I'm sorry. I did not understand.

Q. Apologies. Typically, you have 88 polling precincts in your county, correct?

A. We did in July. And in previous -- in the most recent series of elections. It has just been reduced to 85 precincts as of yesterday by the Mobile County Commission on an emergency basis.

Q. Okay. And so you testified that with respect to the March primary, you began to become concerned about the pandemic potential impact on the July 14th primary, correct?

A. Correct.

Q. And you testified that over 75 percent of your poll workers during the March 3rd primary were over 65 years of age or thereabouts?

A. Yes, ma'am.

Q. And that many of those election officials contacted your office and expressed concern about serving as election officials for July, correct?

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A. Well, on election -- on primary Election Day, as I was visiting polls, I had some poll workers to express concern to me. Then following the election, we had some express concern as well, or they were responsive to us when we reached out to them asking them were they willing to serve in the runoff election understanding that we were going to be utilizing the CDC guidelines and mandating the use of masks by poll workers while they were interacting with the public.

Q. Okay. And you testified that it was Mobile County's intention to utilize the CDC's recommended guidelines for election polling places including social distancing, correct?

A. Yes, to the extent they comported with Alabama law.

Q. Now, Judge Davis, you mentioned that you were concerned that some polling places were inadequate to utilize the CDC guidelines, correct?

A. Correct.

Q. And you heard concerns that polling locations that create the biggest issue with the CDC guidelines serve predominantly minority communities, correct?

A. I'm sorry, what? I didn't fully under -- hear your question.

Q. Fair enough. You heard concerns, Judge Davis, that polling locations that create the biggest issue with the CDC guidelines serve predominantly minority communities. Did you receive that complaint?

MR. SPEEGLE: Your Honor, I object. That is an attempt to

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elicit hearsay.

THE COURT: What's there to object? Just did you hear those concerns as a question or did you receive those concerns.

MR. SPEEGLE: I just thought it was eliciting the hearsay, Judge. But that's my objection.

THE WITNESS: I'm not aware of anyone stating it or expressing the concerns in the manner that you outlined, ma'am. But I will state with my --

MS. ZARAGOZA: Eric, if you could please pull up PX 150. Okay. And if you can see at the bottom, the last sentence of the first paragraph, and it says to -- you know, oh. Excuse me. Actually, Eric, can you zoom out for a moment. In the to "line, it says Don Davis.

A. Right.

Q. You see that?

A. Yes.

Q. Okay. And in the last line of the first paragraph, could you read that?

A. I need to get my IT director to reduce a screen. Something's showing on my screen so it's blocking part of this. Okay. That is a statement by Mark Urban, the chief clerk of the court, who is a white Caucasian American. In Mobile County, many of the polling locations that create the biggest issue with the CDC guidelines serve predominantly minority communities.

Q. Okay. So you received this complaint, correct?

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A. Well, it was not a complaint. It was an observation --

Q. Or statement. Okay. And in fact, Judge Davis, you just confirmed that you had some concerns about the facilities where you conducted an assessment of the facilities used for polling places in advance of the July 14th primary runoff, correct?

A. Yes, ma'am.

Q. Okay.

MS. ZARAGOZA: Eric, can you please pull up PX 389. Okay.

Q. And Judge Davis, do you recognize this document?

A. Yes.

Q. Okay. What is this document?

A. This is -- that is a copy of a letter I sent to Secretary of State John Merrill dated May 4, 2020.

Q. Okay.

MS. ZARAGOZA: Your Honor, at this time, Plaintiffs move to offer premarked Exhibit PX 389 into evidence.

THE COURT: Any objection, Mr. Speegle, to PX 389, if I have my numbers correct?

MR. SPEEGLE: No, Your Honor.

THE COURT: Thank you. This exhibit is received.

MS. ZARAGOZA: Okay. And, Eric, could you take us to the bottom of the page, please.

Q. And please let me know, Judge Davis, if at any point you are not able to see it in light of how your screen is configured?

A. I can see it.

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Q. Okay. Great.

MS. ZARAGOZA: And actually, Eric, if you could take us to the next page. My apologies. Okay.

Q. So do you see the bottom paragraph there, Judge Davis?

MS. ZARAGOZA: Oh, you can zoom out, Eric, in light of Judge Davis's screen, please. Thank you. Okay.

Q. And so you determined that 46 precincts could not accommodate the same number of election officials who had worked in the March primary locations; is that correct?

A. Yes.

Q. Okay. And so for those locations, you would not have been able to accommodate any voters; is that correct?

A. Yes.

Q. Okay.

A. Or very few -- none or very few.

Q. And for many locations, you determined that they could only accommodate a handful of voters inside at a time in compliance with the CDC's social distancing guidelines and so that would be maintained?

A. Correct.

Q. Okay. Now, you testified that you were able to change some of those poll locations that could not comply with the CDC guidelines, right?

A. Yes. The county commission did. Not me. The county commission did it in consultation with me would perhaps be the

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best way to be accurate.

Q. Okay. Thank you for clarifying. But for several polls, there were no other known facilitates in those precincts that could be an alternative location, correct?

A. Correct. Four.

Q. Okay. So you notified the Attorney General's office about these concerns prior to sending the letter on the screen, correct?

A. I notified the Secretary of State's office and the Governor's office. I believe the Attorney General's office was copied with the letters. I also submitted an Attorney General's opinion request to the Alabama Attorney General regarding some of these matters.

Q. Okay.

MS. ZARAGOZA: Eric, could you please bring up PX 407. Okay.

Q. And do you recognize this document, Judge Davis?

A. Yes.

Q. Okay. What is this document?

A. This is my response to Mr. Jim Davis, who is an Assistant Attorney General in the AG's office regarding the proposals that I submitted to Governor Ivey for her consideration in terms of a possible modification of her emergency decree. The two things that I had recommended to Governor Ivey that she consider were, one, authorizing counties -- all Alabama counties to be able to utilize what is referred to as -- commonly referred to as the voting center concept for polls, and, two, to authorize us to use

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fewer poll workers in the runoff election than we had utilized in the primary election. Mr. Davis had sent an email in response to that, and that was my response back to him.

Q. Okay. And you informed the Attorney General's office including Jim Davis that you were concerned you couldn't conduct the runoff elections at most of your current precinct polls?

A. Yes.

Q. Okay. And so you stated that you recommended voting centers; is that correct?

A. That was a concept -- yes. What I'm referring to is that the code of Alabama, the election code enables counties to have what are called voting centers instead of a poll in each precinct. What a voting center is, is where you have voters from more than one precinct voting at the same place. And the way that we thought this would work in some locations in Mobile County is that we could -- while one precinct may not have -- one precinct may have CDC issues -- and typically, these were small precincts, very small geographic areas with a few number of voters. If we could utilize the voting center concept and have them vote at an adjacent poll -- the poll of an adjacent precinct that was a much larger facility, then we could comply with the CDC guidelines better and easier that way.

And so I was -- to be able to utilize the voting center concept of elections provided by the Alabama election code, you have to

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have -- the county has to have -- the legislature has to have adopted local legislation that enables the counties to utilize the voting center concept. And in Mobile County, we do not have that enabling -- we have not had that enabling legislation. So we don't have that ability in Mobile County to do that. Now, some other counties do have that ability. But we don't in Mobile County.

Q. And what counties do have that?

A. Oh, I can't tell you the specific counties, ma'am. I'm sorry. But I -- everything I can tell you would be hearsay in terms of numbers.

Q. That's okay. Fair enough. And in this letter, you conveyed in light of, you know, what you've testified to just now that these matters -- so, for example, with voting centers -- were beyond your control?

A. That's correct. Because I --

Q. Okay. And if you may answer in yes-or-no questions. And apologies. I know we are running short on time. Thank you.

MR. SPEEGLE: Your Honor, I would object to counsel instructing this witness --

THE COURT: I don't think in this instance she is. I think Judge Davis -- at least as I read his response, he was just going to explain again that Mobile cannot do it on its own. He needed the legislature to ask -- I mean to act. I think that's where he was headed.

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THE WITNESS: Your Honor, there was something else besides that that I was going to note.

THE COURT: Well, then you may. You may answer the question then.

THE WITNESS: The county commission makes those decisions as to polls and voting centers, not the probate judge as the chief election officer.

Q. (BY MS. ZARAGOZA:) Okay. Thank you. And so you notified in this letter as well that you would be sending formal letters to Secretary Merrill and others, correct?

A. Correct, if there was no action.

Q. Okay. And so in fact, you did send a letter to Secretary Merrill which was PX 389 which has been entered into evidence, correct?

A. Correct.

Q. Okay. So no action was taken on your recommendation; is that correct?

A. No, that's incorrect.

Q. Okay. So you just testified that you would send the letter if no action was taken, and you sent the letter; is that correct?

A. Oh, I sent the letters. But then there was action taken after I sent the letters, within a week.

Q. Okay. Thank you. So you've testified that you were ultimately unable to change several of the polling sites that were not complying with CDC guidelines; is that correct?

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A. Yes.

Q. Okay. And you testified that you had four polling locations at which you rented and erected air-conditioned tents, correct?

A. The county commission made those arrangements, yes.

Q. Okay. So you worked with the county commission to provide those tents, correct?

A. Yes, ma'am.

Q. Okay. And some of the election process occurred in those outdoor tents, correct?

A. Correct.

Q. And you testified earlier about the three steps in the voting process. And that first step of the voting process is the registration check-in process where the voter signs in, and the poll worker checks ID, correct?

A. Correct.

Q. Okay. And that first step of the voting process took place within some of the tents, correct?

A. Correct.

Q. And you testified that prior to procuring the e-poll books, there's a second step of the voting process where the voter signs the poll list; is that correct?

A. Well, the poll list, the clerk list is completed, and then they're handed their ballot. That's all done at the second stage.

Q. Okay. So a voter is handed their ballot at the second step. And you are not sure, but the second step of the voting process

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may have happened inside some of the tents, correct?

A. It's my appreciation that all of the handling of the ballots occurred inside facilities, not in a tent.

Q. Okay.

MS. ZARAGOZA: Eric, could you please pull up Judge Davis's deposition, page -- excuse me. You can just pull up the deposition. Okay.

Q. And, Judge Davis, do you see is that it says "remote deposition of Judge Don Davis on the front page"?

A. Yes.

Q. And do you see that it has a date, the 19th day of August at the end of that first paragraph there?

A. Yes.

Q. Okay.

MS. ZARAGOZA: Eric, could you please take us to page 65. Thank you.

Q. So -- here we go. Starting at line 11. Can you read that, Judge Davis?

A. Well, line 11, the question is "so what took place outside and what took place inside?"

Q. Okay. And could you read your answer, please?

A. "Well, I believe the registration check-in process would have taken place inside within the tent the first step of the procedure. There could be a poll where the second step took place under the tent, but I don't believe so. The second step at our polls, the

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second station at our polls is where the voter signs the poll list. The clerk prints the voter's name on the clerk list, and a third clerk hands the voter their ballot."

Q. Okay. And then it continues.

MS. ZARAGOZA: So, Eric, could you go to the next page. Okay.

Q. So could you read your answer? It's a continuation of the question from 1 through 12, please.

A. I'm sorry. What do you want me to read?

Q. Apologies.

MS. ZARAGOZA: Eric, could you just put page 66 on the screen. Thank you. Just don't want any of the text to get cut off.

Q. Your answer continuing -- the question whether the second step might have happened in the tent. You can read beginning at line 1, please.

A. Okay. Line 1. Answer. "We working with the county commission as to the tent matter aspect of our operations -- but we also vest -- and we reviewed these matters with the inspectors of the polls where this is going to occur. But we also tell the inspectors that, we give them some leeway in terms of how they operate their poll on Election Day. If they felt on Election Day it was better to have the second station of the poll within the tent area and if there was enough space for it utilizing the CDC guidelines, it could have occurred. I don't know that it did. I'm just saying it could have. I'm not aware of it happening, but it

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could have."

Q. Thank you, Judge Davis.

MS. ZARAGOZA: And, Eric, you can take that down.

Q. So just so I understand your testimony, your deposition testimony correctly, poll inspectors have some leeway in terms of how they operate their poll on Election Day, correct?

A. A little bit.

Q. Okay. And you testified that they could have had the second stage occur in the tent and that the second stage is where the voter receives a ballot; is that correct?

A. Yes.

Q. Okay. And the Alabama code doesn't say whether voters can undertake steps one or two of the voting process in a tent; is that correct?

A. The tent was located at the designated -- officially designated site for the poll as designated by the county commission.

Q. But Alabama code is silent as to whether step one or step two of the voting process can take place in a tent; is that correct?

A. There is no specific reference that I'm aware of to tents in the Alabama election code.

Q. Okay. Now, you testified that you -- in discussing curbside voting, that you had test uniformity from one polling place to another. But you only provided tents at four locations, correct?

A. The county commission did, yes, ma'am.

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Q. Okay. And so you provided recommendations, and you undertook these efforts, you know, to have a better election on July 14th. But you still have logistical problems; is that correct?

A. I don't know what you're referring to.

Q. Okay.

MS. ZARAGOZA: Eric, could you please pull up PX 195. Thank you. Okay. Could you zoom out a little bit, Eric. I think I'm having the same problem that Judge Davis was having with parts of it being cut off.

Q. So if you can see it, in about the middle of your first paragraph, Judge Davis, it says that despite -- or excuse me. If you can see, he noted that despite all the efforts. Could you read that sentence?

A. Sure. "He noted that despite all of the efforts we undertook (significantly reducing the number of poll workers, finding larger alternative poll locations, being the two most significant ones) we still had logistical problems, long lines at many of the larger polls notably in precincts in West Mobile that vote predominantly Republican. And our voter turnout was much less than the 3/3/20 primary election, and it's expected to be much less than the voter turnout for the 2020 general election. There were some places where I could not get one of Mobile County commissioners to consider poll changes even when there were larger facilities (that we *i.e.* probate court identified) available such as public schools."

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Q. Thank you. So if I'm understanding that correctly, you had long lines at some of the larger polls; is that correct?

A. We had the longer lines, yes.

Q. Okay. And that was true even though you had lower turnout than on March 3rd, correct?

A. Yes.

Q. Okay. And you expect tremendous -- and excuse me. You did not read that yet. My apologies. So I'll point you to the second sentence of the second paragraph. You are expecting tremendous voter turnout in November; is that correct?

A. Yes.

Q. Okay. So -- and we can stay on this document. In light of your experience on July 14th, you shared recommendations for the November election with Secretary Merrill and the Governor's office, correct?

A. Correct.

Q. And that included, if you go, you know, at the bottom there, it begins with "so, I want to suggest." Okay. And so you recommended that all public facilities like gyms, cafeterias, and auditoriums be made available as polling sites, correct?

A. Correct.

Q. Okay. And you briefly described earlier that you advocated --

THE COURT: Ms. Zaragoza, you briefly -- your question was you stated earlier that you advocated. I think you were referring

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to gymnasiums and all that may be voting centers.

MS. ZARAGOZA: Voting centers. Apologies. Okay.

Q. So you -- you testified earlier, Judge Davis, that you had recommended the voting center concept in advance of the July 14th election. And here you renewed your recommendation for voting centers; is that correct?

A. Correct.

Q. Okay.

MS. ZARAGOZA: And, Eric, can you go to the next page, please. Okay.

Q. Can you read the third recommendation?

A. "The governor direct that the CDC COVID-19 pandemic guidelines for election polls be utilized but only to the extent that they comport with existing Alabama law. Note, one of their CDC is guidelines is curbside voting. In other words, make such mandatory, not discretionary (or suggest/encourage) as it was for the primary runoff election."

Q. Thank you.

MS. ZARAGOZA: Eric, you can take that down.

Q. Okay. Judge Davis, you testified that you have procured e-poll box in Mobile county, correct?

A. The county commission has, yes, ma'am.

Q. Apologies. You together with the county commission. And so the e-poll books, you will have them available at polling locations for November, correct?

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A. Correct.

Q. Okay. And, Judge Davis, the e-poll books have a program specific for curbside voting, correct?

A. I'm not aware of that.

Q. Okay.

MS. ZARAGOZA: Eric, can you please pull up PX 180. Okay.

Q. Now, I think you could see at the top, it says this email is from Marengo probate. And I think actually Eric's zoom just cut out your email address. But about a third of the way down, do you see DonDavis@probate.MobileCounty.al.gov? Let's see. Seven lines down.

A. I see my name -- I see my email address.

Q. Okay.

MS. ZARAGOZA: Eric, could you zoom out again, please. Okay.

Q. So if you can see there in the first paragraph, so you were informed that there was a curbside voting -- let's see. It's cutting off on my screen as well. So you were informed, Judge Davis, that there was a curbside voting option on the Poll Pad. Do you see that?

A. I see what's in that email. But that's not the same system we have in Mobile County. That's the KNOWINK poll pads. We're using a product manufactured by 10 X.

Q. Okay. And you don't know whether it has a curbside voting option?

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A. I'm not certain. The way -- what I can share with you about 10 X and their electronic poll notebooks that we tell them the features to be programmed in for the poll pads to provide. And there may be an -- I don't know for certain. There may be some option in 10 X where 10 X could provide -- facilitate curbside voting. But because -- I'm not certain. But if it did, we would have told them, well, curbside voting is not permitted by Alabama law, so we don't need that feature. If they did that.

Q. Okay. But you are aware -- in the middle of the paragraph, right after that sentence, do you see, "You are informed that the option can be removed or added?

A. I know. But that's the KNOWINK poll pad system. That's not the 10 X.

Q. Understood. But some counties have the KNOWINK poll pads, to your knowledge?

A. Yes, I believe so.

Q. Okay.

MS. ZARAGOZA: Eric, could you go to the third page.

Q. Perhaps not in Mobile County, but for the counties that have KNOWINK, do you see that curbside option?

A. Yes, I see that on the exhibits.

Q. And you see that's an assistance required option?

A. I'm sorry. I didn't understand your question.

Q. And just do you see that assistance required option to the left of the curbside option?

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A. Yes.

MS. ZARAGOZA: Your Honor, at this time, Plaintiffs would move to enter PX 180, which is this document. And apologies. I overlooked entering PX 195, which was the previous document. That was the email of recommendations from Judge Davis.

THE COURT: Mr. Speegle, any objection to these emails either sent by Judge Davis or received by him coming in?

MR. SPEEGLE: No objection, Your Honor.

THE COURT: Thank you. 180 and 195, I believe, are in.

MS. ZARAGOZA: Thank you, Your Honor.

Q. Judge Davis, you testified that some voters with disabilities use the Automark machine, correct?

A. Yes.

Q. And voters with disabilities are entitled under Alabama law to request assistance, correct?

A. Correct.

Q. And a voter can bring someone to assist them at the poll, correct?

A. Correct.

Q. And on occasion, a poll worker can be the person to provide that assistance, correct?

A. Correct.

Q. And in fact, you have trained poll workers on the fact that a person can ask of their assistance at the poll, correct?

A. Correct.

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Q. And you testified that under Alabama law, the only -- the only people who cannot provide such assistance are an employer or union representative; is that correct?

A. Correct. That's generally speaking, yes.

Q. Okay. But other than that, there are no other limitations on the assistance a voter can receive on Election Day, correct?

A. Correct.

Q. Okay. So you testified that sometimes a voter can request assistance filling out a ballot, correct?

A. Correct.

Q. And the voter can request assistance feeding the ballot into the machine, correct?

A. Correct.

Q. And you testified that this is acceptable because the voter is watching the ballot the whole time; is that correct?

A. Right. It's in their direct presence.

Q. But this is not true of a blind voter requesting assistance, correct?

A. It still would be in the direct presence of the blind voter

Q. So, Judge, you said that the polling places you have visited are all ADA compliant; is that correct?

A. Correct.

Q. What do you mean by that?

A. Well, I know that they have marked handicapped parking that is very close to the entrance of the poll that's clearly

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delineated for handicapped persons. I know that they have sidewalks, smooth sidewalks that -- where a person, a voter could enter the poll without having to encounter any kind of steps or impediments into entering the poll. I know that the floor level is level -- the floor is level and appropriate to walk and/or to have a wheelchair to go across. I know that there are handrails if there's any kind of ramp to go up into a facility, that there are going to be handrails there. I'm trying to think. I know that the width of the door is larger than a normal say residential door that most of our homes have. I know that the door handles on the doors are -- facilitate a person with disabilities being able to utilize them easier. Those are the things that readily come to my mind. I know the bathrooms are bigger. Those are things that readily come to my mind.

Q. Okay.

MS. ZARAGOZA: Eric, can you pull up the ADA regulation section 11-9-11. Okay.

Q. And do you see this, Judge Davis?

A. I can see it.

Q. Okay. And do you see that it says 36 CFR sections 1191.1, accessibility guideline. Do you see that?

A. Yes.

Q. Above that, you know, it says, part 1191, Americans with Disabilities Act accessibility guidelines for buildings and facilities architectural barriers act and accessibility guidelines.

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A. Yes.

Q. Okay. And you see where it says the accessibility guidelines for buildings and facilitates covered by the Americans with Disabilities Act are set forth in appendices B and D to this part?

A. Yes.

Q. Okay.

MS. ZARAGOZA: Eric, could you pull up appendix D. Okay. And, Eric, could you -- so we'll start with 302.1.

Q. Do you see that, Judge Davis?

A. Yes.

Q. And can you read that requirement?

A. "Floor and ground surfaces shall be stable, firm, and slip resistant and shall comply with 302."

Q. Okay. And when you visited these polling locations, are you testing them for slip resistance?

A. I'm not testing them for slip resistance, no, ma'am.

Q. Okay.

MS. ZAREAGOZA: Eric, can you go to the next page. Okay.

Q. Could you read 303.3 beveled?

A. I okay. 303.3 beveled. "Thank you very much. Changes in level between a quarter inch (6.4 millimeters) high minimum and one half inch (13 millimeter) high maximum shall be bevelled with a slope not steeper than 1:2.

Q. Okay. And thank you. And, Judge Davis, have you measured the slopes of the ramps that you have seen at the

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polling locations?

A. No, ma'am, I have not measured them.

Q. Okay.

MS. ZARAGOZA: You can take that down, Eric. Thank you.

Q. So Judge Davis?

MS. ZARAGOZA: And actually, excuse me. Your Honor, at this time, Plaintiffs would move and ask the Court to take judicial notice of the ADA accessibility guidelines with respect to architecture including appendix B.

THE COURT: Any objections, Mr. Speegle?

MR. SPEEGLE: Well, Your Honor, all I would say is certainly, Your Honor is free to review any federal laws and regulations. However, I would not stipulate that those are the most recent versions or that apply in this case because I just don't know that.

THE COURT: That's fair. I will take judicial notice of the general regulations that have been referenced and will make sure that if we cite them, we cite the most recent and updated version.

Ms. Zaragoza, does this mean you're about to go into new area? If so, can we take our break now? If not, I'll let you finish questions related to ADA compliance before we break.

MS. ZARAGOZA: That is my final question with respect to the ADA compliance. Thank you, Your Honor. We can take a break.

THE COURT: In light of that, let's stop for -- I don't see how we're going to finish three other witnesses today. Let's just take

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our normal 15-minute break. So you guys can stretch your legs and perhaps think ahead or find ways to potentially streamline -- although, again, I was not expecting the trial to be done today at all.

We are in recess until 3:15 so roughly 13-minute break. Thanks, everyone.

(Recess.)

THE COURT: Judge, are you ready, sir?

THE WITNESS: Yes, sir.

THE COURT: Ms. Zaragoza, are you ready as well?

MS. ZARAGOZA: Yes, Your Honor.

THE COURT: You may continue with your cross, please.

MS. ZARAGOZA: Thank you, Your Honor.

Q. Judge Davis, you're familiar with curbside voting, correct?

A. I'm familiar with as I outlined earlier.

Q. And do you agree that no provision of Alabama law expressly prohibits curbside voting, correct?

A. It's prohibited by the constitution.

Q. Judge Davis, you would agree that no provision of the Alabama constitution or Alabama code mentions curbside, correct?

A. Correct.

Q. And you would agree that some probate judges would like to see curbside voting, correct?

A. I'm informed of that.

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MS. ZARAGOZA: Eric, would you pull up PX 195 again, please. Thank you.

Q. And, Judge Davis, do you see the middle of the second paragraph there, the sentence beginning with, "And the problem is complicated."

A. Yes.

Q. Okay. Could you read just that sentence, please.

A. "And the problem is complicated because you have some elected officials across the state (probate judges, county commissioners, and others) who politically would like to see curbside voting and direct mail voting and elimination of the existing absentee ballot procedure."

Q. Okay. Could you read the rest of the paragraph, please?

A. "Things are even tricky right now within the Alabama probate judges association because a majority of the current officers are Democrats, and in between the APJA's business meetings, the APJA's executive committee (*i.e.* officers) make the decisions."

Q. Okay.

MS. ZARAGOZA: Could you take that down, Eric. Okay.

Q. So you testified that you're aware that some judges would like to see curbside voting. Judge Davis, you cannot speak to whether curbside voting is practicable in another county, correct?

A. I'm sorry. I didn't -- you broke up a tad for me in the middle.

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Q. I apologize. Judge Davis, as a practical matter, you cannot speak to whether curbside voting is practicable in another county, correct?

A. Correct.

Q. And, Judge Davis, you cannot speak to whether other counties, polling places are in ADA compliance, correct?

A. Correct.

Q. Okay. Now, Judge Davis, you testified that you mandated poll workers to wear masks in Mobile County, correct?

A. While they're interacting with the public, yes.

Q. But you agree that voters are not required to wear masks, correct?

A. That's correct.

Q. And you can't turn voters away if they're sick, correct?

A. That's correct.

Q. Okay. Turning briefly to absentee ballots, you testified that regular absentee ballots are those without known issues, correct?

A. I think that's correct as I recall.

Q. Okay. And absentee poll workers examine the regular absentee ballots for witness signatures on Election Day, correct?

A. Yes, ma'am.

Q. And you train the absentee poll workers together with all other poll workers, correct?

A. No. That's not correct.

Q. Did I cut out?

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A. That's not correct.

Q. Do you train absentee poll workers?

A. They are provided training immediately before the commencement of the processing of the absentee ballots on Election Day.

MR. SPEEGLE: I'm not sure that everyone heard the judge's first answer which is, no, they're not. They're not trained the same.

MS. ZARAGOZA: I heard that Mr. Speegle. Thank you.

MR. SPEEGLE: I thought you --

MS. ZARAGOZA: I appreciate that.

Q. But poll workers are not trained on how to do anything other than check that a signature or a notary stamp is there, correct?

A. They are trained as to what to look for in terms of the absentee ballots, that they're looking for a marked reason. They're looking for a signature or mark. And they're looking for witnessing. Whether there's two persons to witness it or the notary to witness the signature or mark of the voter. That's what they're trained to look for.

Q. Okay. And you testified that provisional ballots are those that do have an issue such as missing ID, correct?

A. Correct.

Q. Okay. And the canvassing board reviews provisional ballots, correct?

A. Right. The provisional ballots, the provisional absentee

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ballots, on Election Day, they go into the custody of the sheriff, and they're locked up until the following week. When we do the canvas one week after the election, the -- all of the provisional ballot boxes that the sheriff has are brought to the court house where the canvassing is taking place, the room.

And when the board of registrars, they will give us to the canvassing board and announce to everyone present those provisional ballots that should be counted including absentee provisional ballots. When they get to the absentee provisional ballot group, the sheriff will open up the absentee provisional ballot box and pull out the ones that the board of registrars that's reported to the canvassing board should be processed and counted. Then those provisional absentee ballots are handed to the three members of the canvassing board, and then we review them for the same things I outlined a moment ago that we instruct the absentee ballot poll worker to review them for on Election Day as to the other absentee ballots. And --

Q. Understood. And since you said, we, you are a part of that canvassing board, right, Judge Davis?

A. The three of us are -- the sheriff, circuit clerk, and me except when we are running for reelection. We are running for reelection. And then we are temporarily disqualified from serving.

Q. Okay. And so you just testified that the canvassing board including yourself unless you're running for reelection reviews

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the provisional absentee ballots for witness signatures?

A. Correct.

Q. And you just look to see whether there are two witness signatures or a notary stamp, correct?

A. Correct.

Q. Okay. Judge Davis, if there's a change in voting law, you usually announce the change to the public via a press release and radio and television and PSAs, correct?

A. It depends on the nature of the change and the -- and when it occurs, but, yes, we're going to get the message out to our voters. In every reasonable means we can.

Q. If the Court were to enjoin the voter ID and witness requirements in this case, you would just need to inform the public of those changes via press release and TV and radio public service announcements, correct?

A. It would depend on the status of the litigation, the opinion, whether or not it was on appeal, whether or not it was being stayed by an appellate court. Those would be factors that would be considered also. But we would get the message out as fast and as best we can to our citizens.

Q. Okay. Now, you made mention of the Mobile Public Library. Do you remember that?

A. Yes.

Q. Okay. And you mentioned that they have curbside printing and copying services, correct?

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A. And notary services.

Q. Okay. But you are not -- you don't control whether these curbside services will continue through November, correct?

A. No. I don't have any supervision of the Mobile Public Library.

MS. ZARAGOZA: I have no further questions.

THE COURT: Before I go back to Mr. Speegle --

MS. ZARAGOZA: Thank you, Judge Davis.

THE COURT: Thank you, Ms. Zaragoza. Before I go back to Mr. Speegle, Mr. Engelhardt, any questions for the judge?

MR. ENGELHARDT: I have no questions for Judge Davis.

THE COURT: Thank you. Mr. Webb?

MR. WEBB: No questions, Your Honor.

THE COURT: Thank you. Anyone from the State?

MR. SINCLAIR: Yes, Your Honor.

THE COURT: Mr. Sinclair, your witness.

MR. SINCLAIR: Thank you, Your Honor.

Q. Judge Davis, you referred to a ballot counter. Is that the same thing as a tabulator?

A. Yes.

Q. Do poll workers actually need to touch driver's licenses when you're using e-books, e-poll books? Do you know that?

A. I'm not certain of that. I'm not certain.

MR. SINCLAIR: One moment, Your Honor.

(Pause.) That's all the questions I have, Your Honor.

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THE COURT: Thank you. Mr. Speegle, your witness again.

MR. SPEEGLE: Yes. Very quickly. Ms. Massey, would you pull up Plaintiffs' Exhibit 195.

Q. Judge Davis, do you recall questions asked about this email you sent on July 19, 2020?

A. Yes.

MR. SPEEGLE: Ms. Massey, would you agree to the second page of this exhibit, please. Thank you.

Q. Do you see item 3?

A. Yes.

Q. What did you mean when you made that statement with regards to your comments about curbside voting?

A. I pointed out or attempted to point out that the CDC guidelines contain provisions that do not comport with Alabama election law, and I was noting that to their attention.

Q. What part did not comply with the Alabama election law that is part of the CDC pandemic guidelines?

A. Curbside voting.

THE COURT: I'm sorry, Mr. Speegle. Are you done, sir?

MR. SPEEGLE: Yes, Your Honor. Those are all the questions I have at this time.

THE COURT: Sorry, I missed that. Ms. Zaragoza, any redirect -- any recross, excuse me.

MS. ZARAGOZA: Nothing, Your Honor.

THE COURT: Thank you. Judge, have a good afternoon, sir.

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THE WITNESS: Thank you. You too.

THE COURT: Are the Defendants ready with your next witness, or do you need some time to line that individual up? Mr. Davis, Mr. Sinclair?

MR. DAVIS: No, Your Honor, we're --

MR. SINCLAIR: Your Honor, it's going to take us a moment to reconfigure down here for the questioning attorney. It will be just a moment, sir.

THE COURT: Okay.

MR. DAVIS: They're setting up, and we're going to call Mr. Clay Helms, Your Honor, and they'll set him up a spot, my colleagues will. And while we're waiting on that, I'll let the Court know that we originally -- and I think we realistically anticipated four witness today.

THE COURT: We had all sorts of technical glitches on my end. That's part of the reason why I said I don't think we can do that.

MR. DAVIS: No, that's okay. And that was before the hurricane required us to rearrange a little bit to make sure Judge Davis had the opportunity to testify. So while we did have some delay this morning, I do not believe that we are wildly off track at all.

THE COURT: Okay.

MR. DAVIS: I don't think we'll get beyond Mr. Helms today. I think that would be very overly optimistic. So some of the

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witnesses we had scheduled for today would be pushed to tomorrow. And then we'll have some of the Mobile County officials. The others we hope will testify on Thursday. I think we're still okay.

THE COURT: Okay. Thank you, Mr. Davis.

Mr. Helms, good afternoon.

THE WITNESS: Good afternoon, Your Honor.

THE COURT: Mr. Davis, are you doing Mr. Helms's direct?

MR. DAVIS: I am, and I'm ready, Your Honor.

THE COURT: Okay. Mr. Helms, can I get you to raise your right hand, please, so you can be sworn in.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Clay Helms, C-L-A-Y, H-E-L-M-S.

THE COURTROOM DEPUTY: What city and state do you reside in, Mr. Helms?

THE WITNESS: Sorry. I didn't get that.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: Montgomery, Alabama.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Davis.

MR. DAVIS: Thank you.

Q. Where do you work, Mr. Helms?

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A. I work for the Alabama Secretary of State.

Q. What is your title?

A. I am the director of elections and the deputy chief of staff.

Q. How long have you served as the director of elections?

A. Close to two years now.

Q. And how long have you worked in the office of the Secretary of State?

A. Approaching nine years.

Q. What positions have you held over the course of your employment with the Secretary of State's office?

A. I served as an intern, then a student professional trainee, then an election specialist, then an elections analysts, then the supervisor of voter registration, and then the director of elections. So pretty much every job in the elections division.

Q. What is the role of the Secretary of State's office in elections, Mr. Helms?

A. The Secretary of State's the chief election official in the state. Generally, providing guidance to all county election officials which would include the probate judge, the absentee election manager who is also mostly the circuit clerk. The three board of registrars in each county except for Barbour and Talladega who have four registrars. Providing guidance to the public, maintaining the state centralized voter registration election management database, the state centralized electronic reporting campaign finance database, ducova voting electronic

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ballot delivery and return. We prepare publications, calendars, assist voters, the general public, things like that.

Q. Got you. Let's talk about some of those local election officials you mentioned. And before I do, you and I both, Mr. Helms, tend to start talking a little fast when we get going. Let's remember our court reporter, and I'll do my best to try to speak slowly. Let's try that.

A. Yes, sir.

Q. On probate judges, Mr. Helms, does the Secretary of State appoint probate judges?

A. No, sir.

Q. Could he fire or discipline a probate judge?

A. No, sir.

Q. What about absentee election managers? Does the Secretary of State appoint absentee election managers?

A. No, sir.

Q. Could he fire or discipline an absentee election manager?

A. No, sir.

Q. Are either the probate judges or the absentee election managers on his payroll?

A. No, sir.

Q. Does the Secretary of State decide where polling places will be located?

A. No, sir.

Q. Who does that?

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A. County commission in each individual county.

Q. Does the Secretary of State appoint poll workers?

A. No, sir.

Q. Does he supervise poll workers?

A. No, sir.

Q. Does he count any ballots?

A. No, sir.

Q. Does the Secretary of State check to see if an application for an absentee ballot was properly submitted?

A. No, sir.

Q. Does he check to see if absentee ballots comply with the signature requirement -- the witness signature requirement or the photo ID requirement?

A. No, sir.

Q. Does the Secretary of State or anyone under his supervision check to see if an absentee ballot was properly submitted?

A. No, sir.

Q. Does the Secretary of State arrange for the layout of polling places, decide what goes where?

A. No, sir.

Q. Who decide the number of poll workers assigned to a polling place, Mr. Helms?

A. Generally speaking, it will be the probate judge.

Q. And the county commission is involved too with establishing polling places and the layout thereof, correct?

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A. That's correct.

Q. What about making sure there are tabulation machines in each polling place?

A. Probate judge would generally be responsible for that.

Q. Do you have a sense for how many tabulation machines are typically located in a polling place?

A. I believe the law says there has been to be at least one per 2,400 voters. As far as how many per polling place, I would not know, no, sir.

Q. Okay. Well, let's say that an election official determines that we ought to get a couple of additional tabulation machines for this polling place. Who pays for that?

A. Normally it's the county that pays for that. If it's a state election, they could potentially be reimbursed partially by the state control for election expenses.

Q. Are there machines at the polling sites that are set up to be used by persons with disabilities?

A. Yes, sir. The answer to that question was yes, there are handicapped accessible machines at the polling place.

Q. Mr. Helms, we've heard testimony in this case about a machine called an Automark machine. Is that the machine that's set up to be used by persons with disabilities?

A. Yes, sir, for most all counties, the Automark is the machine used. There's also an ExpressVote machine which is a newer one. But for most of all counties, they use the Automark.

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Q. Do you know whether there is either an Automark machine or an ExpressVote machine at each polling place in the state?

A. We give out guidance prior to each election that they must have disability accessible machines to fall under federal law and be compliant with federal law. We don't go and inspect each polling place to see if there's a machine there.

Q. Do you know how much those machines cost, either the Automark machine or the ExpressVote machine?

A. I believe those are fairly expensive machines. I believe they would be in the thousands of dollars. I don't know how many.

Q. Are they more expensive than say the tabulation machines?

A. Usually they are, yes, sir. To my knowledge.

Q. If your office were to get a report, Mr. Helms, that there was concern that a polling place may not comply with the ADA, the Americans with Disabilities Act, what, if anything, would your office do?

A. Yeah. If we're made aware of an issue with ADA or other types of problems, we would immediately reach out to the local probate judge who is the chief election official in the county, make them aware firstly, and then inquire about what the issue was, if it has any validity, and cure the problem as soon as possible if it was determined it was a problem.

Q. Is there any provision in the law to your knowledge, Mr. Helms, allowing people of certain ages or with certain disabilities to go to the front of the line at a polling place?

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A. Yes, sir.

Q. What is that provision to your knowledge?

A. I believe it's over 65 years of age. And you can ask for the ability to move to the front, and the poll worker will escort you to the front of the line. There's also posters at every polling place that are required to be put that tells the general public when they walk up that that's available.

Q. Let's talk about the absentee voting process, Mr. Helms. First, is the first step that the voter needs to request an absentee ballot?

A. Yes, sir.

Q. How can a voter do that?

A. In order to request an absentee ballot, a voter simply needs to fill out the absentee ballot application and hand or mail that in to their local absentee election manager there in the county of registration along with a valid photo identification unless they are exempt from that.

Q. Okay. And did you say that the voter can either mail it to the AEM or hand it in personally?

A. Yes, sir.

Q. And once the voter submits an application for an absentee ballot, what does the AEM do with that application?

A. So the absentee manager would receive the application, they would compare it to the voters list to make surety the voter's registered to vote and that the address information, everything

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lines up, also check to make sure that valid ID is provided. And at that point, assuming it's within 55 days of the election, they would mail a ballot out to the voter, and then it would be in the voter's court again at that point.

Q. Okay. Once the voter receives the ballot from the AEM, what happens next?

A. Yes, sir. So the voter receives the ballot. They receive also envelopes with the ballot for it to be -- the affidavit for it to be signed by the witnesses or the notary and the secrecy envelope so that it comes securely through the mail. The voter fills out the ballot however they wish. They sign it, get the witnesses or the notary requirement. They seal it up and mail it or hand it back in to the absentee manager there in their county.

Q. Once the ballot is returned to the absentee election manager, the completed ballot, what does the AEM do with the ballot?

A. Essentially, they just store it until it needs to be counted at noon or afterwards on Election Day beginning at noon. So they would usually mark it as accepted in terms of we have just received this ballot from this individual. They don't do anything else with it. The absentee poll workers are the ones that would check the affidavit for completeness and then put it into the tabulator all done at noon or afterwards on Election Day. So the AEM, absentee election manager, is simply the recipient of that ballot until Election Day.

Q. Okay. And what does she do with the ballots on Election Day?

A. At that point, the absentee poll workers would open the envelopes -- open the envelope, check the affidavit for completeness, and that it is -- it has the excuse checked, it has the witnesses or notary filled out, it has the voter's signature, things like that. If all of that has been done correctly, then they would open up the affidavit envelope and -- open the secrecy envelope and insert the ballot into the tabulator there at that location. If the affidavit is incomplete and not properly filled out according to the instructions, then they would put that in a separate pile, and that ballot would not count.

Q. Great. I'll ask my -- let's look at Exhibit 156, please Mr. Helms. My colleagues will hand you a notebook that will contain State Defendants' Exhibit 156. Do you recognize this document, Mr. Helms?

A. Yes, sir.

Q. And what is it?

A. This is the 2020 statewide election administrative calendar that our office prepares for ourselves and for local election officials for dates and deadlines for the 2020 cycle.

Q. Is this calendar available to the public on your website?

A. Yes, sir.

Q. Okay. When it comes to absentee ballots, Mr. Helms, when does absentee voting begin?

A. Yes, sir. By law, absentee ballots must be delivered to the absentee election manager -- and if I say AEM, that's all I'm meaning is absentee election manager -- 55 days prior. They must receive their ballots on that day. They are advised to begin delivering absentee ballots to everyone that's requested an absentee ballot that day or effectively the day after that just as a functional deadline.

Q. Okay.

A. So 55 days simply.

Q. All right. Look at page 7 of Exhibit 156, please, Mr. Helms.

A. Okay.

Q. So by this point in the calendar, we're getting to the events that take place for the November 3rd general election, correct?

A. Yes.

Q. All right. And under the entry for Labor Day, what is the next entry under that?

A. That is Wednesday, September 9, 2020, which is the 55th day, the last day for absentee ballots and supplies to be delivered to the AEM.

Q. Okay. And when do ballots go out to UOCAVA voters, Mr. Helms?

A. Yes, sir. So the last day that UOCAVA ballots can be sent out by federal law is the 45th day. However, in that ten-day period from 55 to 45, we're pushing UOCAVA ballots anyway because we can.

Q. Sure. Even though -- well, first off, the 45th day, the last day for them to go out is September 19th, according to this calendar, correct?

A. Yes, sir.

Q. But absentee election manager perhaps are already sending out ballots to UOCAVA voters. Is that what you're saying?

A. Yes, sir. The absentee election managers enter them into the statewide system, and we actually on a daily basis send them via our UOCAVA vendor to UOCAVA voters because these go out electronically through the country and in other countries. So we kind of handle that centrally here.

Q. Of course. Some UOCAVA voters receive their ballots by email, right?

A. Yes, sir.

Q. And the Secretary of State's office has a role to play in that, correct?

A. Yes, sir.

Q. Have you already submitted any ballots to UOCAVA voters, to your knowledge?

A. Oh, yes.

Q. Do you know how many?

A. Probably getting up near 1,000.

Q. Okay.

A. So far. I know we had 600 on the first day, and we've since pushed more.

Q. Now, these UOCAVA voters, would they have contacted the AEMs in their own home counties to request an absentee ballot?

A. Yes, sir.

MS. REED: Your Honor, if I may, I'm going to object. One, I don't think we have defined UOCAVA. Hoping I'm saying that correctly. And also, Plaintiffs don't have any claims on behalf of military or overseas voters. So I think I object to this line of questioning.

THE COURT: Mr. Davis, you want some leeway I guess as general background on what his office does?

MR. DAVIS: It's that too, Your Honor. And it just also goes to show that there are people already voting.

THE COURT: Okay.

MR. DAVIS: That's the only purpose, and I have nothing else on this subject.

THE COURT: Okay.

Q. (BY MR. DAVIS:) Mr. Helms, do you have any knowledge as to whether absentee election managers are already fulfilling requests for absentee ballots in the state?

A. Yes, they are.

MR. DAVIS: Your Honor, I move to admit this administrative calendar, Exhibit 156.

THE COURT: Ms. Reed, any objections?

MS. REED: No objection, Your Honor.

THE COURT: Thank you, Ms. Reed. 156, State Exhibit, is

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admitted.

Q. (BY MR. DAVIS:) Mr. Helms, were you involved in assisting your office in monitoring the COVID-19 pandemic and what its effect might be on elections?

A. Not much. Just from a general standpoint, yes, I guess so.

Q. Are you aware that the office was monitoring the pandemic and that it has in some ways responded to that by teaching certain election rules and procedures?

A. Oh, yes, sir. No doubt.

Q. Mr. Helms, are you aware of guidance that your office may have offered to election officials concerning issues related to the pandemic?

A. Yes, sir.

Q. Now, you submitted a declaration in this case early on, correct?

A. Yes, sir.

Q. And have you had a chance in the last day or two to review the exhibits to your declaration which for the record are marked as Exhibits 2 through 47?

A. Yes, sir. Generally.

Q. And, Mr. Helms, are Exhibits 2 through 47, are they all either press releases issued by the Secretary of State's office or health orders related to the pandemic that your office received or correspondence to and from the Secretary of State's office?

A. Yes, sir. That's correct.

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MR. DAVIS: Your Honor, we may address a few of these individually. But to save time, I'll move to admit State Defendants' Exhibits 2 through 47, which were originally attached as exhibits to Mr. Helms's declaration.

THE COURT: Ms. Reed, any objections?

MS. REED: No objection, Your Honor, to the mass introduction. We however object to the extent there is any hearsay or other objectionable content.

THE COURT: Okay. The exhibits are in. That's State Exhibits 2 through 47. To the extent that you have any specific objections, we'll deal with them as they come in, please.

Q. (BY MR. DAVIS:) Turn, if you would please, to State's Exhibit 9, Mr. Helms. And can you identify this document for me?

A. This is an email from chief of staff Deputy Secretary of State David Brewer to -- appears to be county commissioners and probate judges in the counties.

Q. Did you become aware that some local government buildings may have been temporarily closed or had their hours shifted during the pandemic?

A. Yes, sir.

Q. Okay. And did your office provide any guidance to local officials about what should happen in that event?

A. Yes, sir.

Q. And what did you tell them?

A. Well, in most cases, the absentee election managers and/or

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the board of registrars are in those commission overseeing building. So we reached out to the county commissioners and to those local election officials to make sure that services were still being offered, absentee voting, individuals could still come in or set up an appointment to vote absentee, and that individuals that needed to get a free photo voter ID for voting purposes were still able to come into the registrar's office and receive those services.

Q. Okay. And is that one of the messages that Mr. Brewer was giving to county commissioners and probate judges in this Exhibit 9?

A. Yes, sir.

Q. Did the Secretary of State -- well -- strike that, Mr. Helms.

Was the July -- what is the primary runoff election in 2020 rescheduled?

A. Yes, sir.

Q. Okay. And it was from around late March to July 14th, correct?

A. Yes.

Q. And is Exhibit 13, is that the Attorney General's opinion that your office received concerning the legality of rescheduling the runoff election?

A. Yes, sir.

Q. Did Secretary Merrill take any action that changed procedures for the July 14th runoff?

A. Yes, sir.

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Q. And what did he do?

A. The Secretary of State, Secretary Merrill, adopted, promulgated, whatever, an emergency administrative rule to allow anyone that was concerned of spreading or contracting COVID-19 or coronavirus to be allowed to vote absentee using the second I believe option or excuse on the absentee ballot application that I have a physical illness or infirmity which prevents my attendance at the polls.

Q. Look at Exhibit 17, Mr. Helms, and tell me if that is a copy of that emergency rule?

A. Yes, sir, it is.

Q. Now, look at Exhibit 25 please, Mr. Helms. That is a proclamation by Governor Ivey, correct?

A. Yes, sir.

Q. To your knowledge -- and I'm going to look at page -- let's see. About page 4, in section 3 of that. To your knowledge, did Governor Ivey make any rules, promulgate any rules, or issue any proclamations that affected the way that notaries public could do business in the state?

A. Yes, sir.

Q. And what in effect do you understand that she did?

A. Effectually allowing notaries to notarize documents electronically through video conference. Things like that.

Q. And this is the proclamation through which she did that?

A. Yes, sir, correct.

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Q. Mr. Helms, did any funds become available for local governments to use to address voting in the pandemic?
A. Yes, sir.
Q. Where did that money come from?
A. That money came from Congress in the form of CARES Act funding, which was given partially to the state for the 2020 general election among other things. So we -- our office divvied that up and offered it to the counties via their county commission because the county commission is the entity in the county level that's in charge of the money, paying and receiving the money. So they were to apply to us and then receive that funding in the form of reimbursement for certain sanitary and health products.
Q. Got you. And look at Exhibit 35, please, Mr. Helms. Is that a press release issued by your office?
A. Yes, sir.
Q. Is it related to these funds? And does it discuss means by which counties might apply for those?
A. Yes, sir.
Q. Okay. And look at Exhibit 40, please. And identify that for me, if you would?
A. This is a PowerPoint presentation whereby our office, specifically our finance director and chief of staff laid out the process for the counties to request or apply for the funds, receive the funds, what they could use it on, things like that. So it was

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just an instructional document.
Q. Did counties in fact apply for funds under the CARES Act?
A. Yes, sir, definitely.
Q. And were those distributed?
A. Yes, sir, they were distributed, and they will be distributed again for the general election.
Q. Do counties have to submit a separate application to apply for CARES funds for the November election than they did from the July 14th runoff?
A. Generally, yes, sir, unless -- I guess if they had leftovers, they could use that for the general election. But in most all circumstances, they're going to have a separate application with a separate application period deadline.
Q. Let me ask that a better way. You answered what I asked, but I asked a bad question. If a county requested funds for the runoff, do they still have the ability to request additional funds for the November election?
A. Yes, sir.
Q. Flip back one to Exhibit 39, please, Mr. Helms. Is that a press release from the Secretary of State's office?
A. Yes, sir.
Q. And what is the subject of this press release?
A. This is where our office created an absentee ballot application or absentee ballot process video I believe that we posted on line and helped emphasize on how to request, receive,

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and vote your absentee ballot. It also discusses the application period and certain deadlines related to absentee balloting.
Q. Does your office regularly make efforts to inform the public and to educate the public of how to apply for an absentee ballot?
A. Yes, sir.
Q. Do you regularly issue releases reminding the public about the deadlines for requesting or submitting an absentee ballot?
A. Yes, sir, I think every Tuesday.
Q. Okay. And I forgot to ask you this, Mr. Helms, when were looking at the administrative calendar. But I don't think you'll need it in front of you. What is the deadline for a voter to submit an absentee ballot application?
A. That is five days prior to the election. So effectively the Thursday before that Tuesday.
Q. Okay. And what is the deadline for a voter to return an absentee ballot?
A. In person, it would be the day prior to the election. By mail, they have to mail it -- postmark it by the day prior to to the election, and it can be received up to noon on Election Day.
Q. Okay. So you gave two different means. There's different deadlines depending on how the ballot is returned?
A. Yes, sir.
Q. And if a voter wishes to return a ballot by hand and deliver it personally to the absentee voter, what is that deadline?
A. That would be the day prior to the election. So November

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2nd.
Q. Does the voter -- if the voter is going to hand deliver a ballot to the absentee election manager, does the absentee election manager have to be in any particular location?
A. No, sir.
Q. Okay. But if I understand you correctly, it would not be permissible for a voter to hand deliver an absentee ballot directly to an absentee election manager on Election Day; is that correct?
A. That's correct.
Q. The provision that Secretary Merrill entered for the runoff election that allows voters to vote absentee if they have concerns about COVID-19, did he do something similar for the November election?
A. Yes, sir.
Q. Okay. And has he done it for other elections?
A. Yes, sir.
Q. To your knowledge, how long does that rule extend?
A. I believe it extends through the end of the year. Because I know we at least have one special election that's going to take place on November 15th. And if we haven't already produced that rule, we will that covers that day period. There's also one on November 17th after the general election.
Q. Let's look at a few more exhibits. And here, I want to go through a few pretty quickly, Mr. Helms, to get you to identify them and to make good use of our time and the Court's time.

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Let's start with 57 and 58. First off, your office kept up with the emergency rules and proclamations issued by the Governor and state health officer, correct?

A. Yes, sir.

Q. And are 57 and 58 orders issued by the state health officer?

A. Yes, sir.

Q. Did you answer, Mr. Helms?

A. I'm sorry. Is that what you were asking about 58 and -- 57 and 58?

Q. Yes. 58 and 58, are those orders issued by state health Officer Scott Harris?

A. Yes, sir.

MR. DAVIS: Move to admit, Your Honor.

THE COURT: Any objections?

MS. REED: No objection, Your Honor.

Q. (BY MR. DAVIS:) And now, Mr. Helms, if you would please, I want you to flip through Exhibits 59 through 72 and just tell us if those are in fact press releases issued by the Secretary of State's office?

THE COURT: 57 and 58 are received.

A. To 72, you said?

Q. (BY MR. DAVIS:) Correct.

A. Yes, sir, they are Secretary of State press releases.

MR. DAVIS: Then I move to admit the press releases marked as Exhibits 59 through 72.

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THE COURT: Any objections, Ms. Reed?

MS. REED: No objection, Your Honor, subject to ability to object to hearsay therein.

THE COURT: Okay. 59 through 72, if they're shown to the witness again and you believe there are any hearsay objections, please flag them at that time.

Q. (BY MR. DAVIS:) Mr. Helms, would you now look at Exhibit 73, and can you tell me what this is, State Defendants' Exhibit 73?

A. You said tell you what this is?

Q. Please.

A. Okay. This is a printoff of the web page on our website where we list mobile unit -- you'll here me say that -- firm locations. That's where our office travels throughout the state upon request or upon our initiation to visit each county at least once per year and offer the free photo voter ID to individuals in need as well as voter registration services. So these reveal the locations that individuals have requested or that we've called and set up.

Q. So is this a shot of the Secretary of State's website?

A. Yes, sir.

Q. And does this tell us where any -- well, what does this tell us about where the mobile unit traveled?

A. This tells us the county where we're visiting, the date and location and time. We also -- as you'll see on the link there, we

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produce a flier for -- sometimes we get requests from individuals saying, hey, we want to promote this, but we don't have a flier. Can you prepare one for us or help us get the word out? So we just go ahead and prepare one that they can use to post on Facebook or put on light poles or put on community boards, things like that.

Q. Okay. So did the mobile unit travel to Birmingham, Alabama on July 7th and July 11th of this year?

A. Yes, sir.

Q. And who sponsored that event?

A. That was an event that we worked in conjunction with the Greater Birmingham Ministries. They were promoting a Get Out The Vote event, and they had absentee applications and notaries and people there to provide that service. So we joined them.

Q. What activities -- let's start again. This mobile unit, would somebody from your office attend this event?

A. Yes, sir.

Q. And what equipment would they carry with them, if any?

A. They would carry -- well, we get the question, a lot of people think we have like a blood drive van or an ice cream truck. But we just have a car, and we have tables and chairs and a laptop and a printer, a camera in order to take their picture, produce the ID, print the ID, and give them the temporary ID which is just the paper copy like when you get your license, and the real one comes a few weeks later. It's on the heat sensitive paper. And

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you get your hard copy ID in the mail. So the temporary ID is valid for up to 45 days in case you had an election the next week or something like that.

Q. So these IDs that you're issuing, they're photo IDs, correct?

A. That's correct. Yes, sir.

Q. And they could be used by a person who is voting?

A. Yes, sir, most definitely.

Q. Does a person pay any fee in order to receive this photo ID?

A. No, sir.

MR. DAVIS: Move to admit Exhibit Number 73, Your Honor.

THE COURT: Ms. Reed, any objection to Exhibit Number 73?

MS. REED: No objection, Your Honor.

THE COURT: Thank you. 73 is received.

MR. DAVIS: I would like in the interest of completeness now to move to admit three proclamations by the Governor which are marked as State Defendants' Exhibits 84, 85, and 86.

THE COURT: Any objections?

MS. REED: No objection, Your Honor.

THE COURT: Thank you, Ms. Reed. Those exhibits are received, 84 through 86.

MR. DAVIS: One more, Your Honor, which is Exhibit 151 which is a Safer at Home order issued by Alabama state health officer, the State Defendants' Exhibit 151 I move to admit.

THE COURT: Any objections?

MS. REED: No objection, Your Honor.

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THE COURT: Thank you. 151 is received as well.

Q. (BY MR. DAVIS:) Mr. Helms, do you have any concern if the Plaintiffs in this case have asked that voters have the ability to go in concern on Election Day to their polling site and vote from their cars? Do you as an election official believe that such a procedure is feasible or practical?

A. No, sir.

Q. Why not?

A. Resources, first of all. As I put in my either interrogatory answers or declaration -- I can't remember which one -- I discussed.

THE COURT: Mr. Helms, you broke up there briefly. Can you start again? Resources and then et cetera, et cetera.

THE WITNESS: Yes, sir, Your Honor. Certainly. In my declaration and/or interrogatory response -- I can't remember which one -- I discussed why it was impractical, curbside voting. And a lot of that deals with the resources. We already have resource issues in general as of now. You are -- as you've probably seen about poll worker recruitment efforts. You'd have to have additional workers. You'd have to have additional electronic poll books if you have electronic poll books at all. Those electronic poll books would have to be mobile or able to be moved. Some vendors don't have poll books that attach from a stand. You'd need additional vote machines in every single voting place, which there's not enough machines in existence that

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we could get our hands on to perform curbside voting in which the ballot is secret, and the voter, if they are receiving assistance, can assure that their ballot is being inserted in the tabulator and that their vote's counting. So a multitude of things that scare me to death on that.

Q. (BY MR. DAVIS:) Mr. Helms, as you understand election procedures, is it permissible for a poll worker to take a ballot from a voter and to remove it from the voter's line of vision to take it out of sight?

A. No, sir, I don't see that being permissible.

Q. Now, there are means in the law, are there not, that allow elections officials and poll workers to give voters assistance if requested?

A. That's correct.

Q. What is the difference, if any, in your mind to a voter in the polling place at the tabulation machine asking for assistance inserting the ballot into the tabulation machine versus a voter in the car asking the poll worker to take the ballot inside the polling place and outside of the voter's sight?

A. Well, chain of custody is just as important as the ballot being secret. I mean, and if you take my ballot and you don't like the way I look or you don't like -- you don't think I'm going to vote your way and then all of a sudden that ballot's tucked into the trash can nice and neat as you walk into the polling place, just as an example.

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Q. Okay.

A. But if the voter can't see you inserting the ballot, then the process -- there's an obstacle. There's a separation there that's being created. Voters definitely deserve assistance if they request it, and they do sometimes in the polling place where they're able to see what's happening. They're authorizing an individual to help them. They should be able to see what they've authorized to happen.

Q. Do you have any information, Mr. Helms, about whether there may be difficulty with tabulation machines if the ballots get damp?

A. We have had issues where ballots get damp. And when a ballot gets damp, it increases in size, okay? It gets wider. And while it is that way, it does not insert into the machine properly. It can't be read properly. The machine doesn't like it in simple terms. And that has happened in some counties.

Q. Do you know who would manage traffic if a line of voters -- or if a large number of voters line up in their car to vote curbside assuming that were permissible?

A. I would assume additional poll workers.

Q. What is your understanding of the age of poll workers usually?

A. 65-plus, 70-plus sometimes.

Q. Are you saying on average, they tend to be older individuals who volunteer to serve as poll workers?

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A. Yes, sir, just as a general statistic, this is what we've seen.

Q. Look at Exhibit 1, please, Mr. Helms. Do you recognize this Exhibit, State Defendants' 1?

A. Yes, sir.

Q. And what is that?

A. This is my declaration, my initial declaration.

Q. Okay. And have you had the occasion to review it since the time it was first submitted?

A. Yes, sir.

Q. And was this declaration true and correct at the time that you submitted it?

A. Yes, sir.

Q. And as you sit here today, is it still true and correct?

A. Yes, sir.

MR. DAVIS: Move to admit State Defendants' Exhibit Number 1, the declaration of Clay Helms, Your Honor.

THE COURT: Ms. Reed, any objections?

MS. REED: Well, Your Honor, I don't understand why we need Clay Helms's declaration when we have Clay Helms testifying right now. So, yes, I object.

THE COURT: That's the general rule, Mr. Davis. The witness is here. He's testifying in court. So let's go with his testimony. If there's anything in the declaration that he's not testified to that you want him to go through, you obviously have the right and the time to do so. But the actual declaration itself, based on my

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standard practice, I will sustain the objection.

MR. DAVIS: Fair enough. Then I would like to try something else. Just that I think would be an aid to the court. I'll move to admit it for the sole purpose of identification of Exhibits 2 through 47, because in Mr. Helms's declaration, he identifies what exhibits those exhibits are. And I think it would save an inordinate amount of time. I do not understand that to contain a lot of so-called testimony. Simply, I move that the Court be allowed to consider it simply for the purpose of examining those exhibits.

THE COURT: Those exhibits are in. In fact, my notes before they came in said they are exhibits from his declaration.

Ms. Reed, there's no dispute that Exhibits -- State Exhibits 2 through 47, which I've admitted with your reservation on any hearsay grounds, but there's no dispute that those are the exhibits that Mr. Helms referenced in his declaration, is there?

MS. REED: No, there's no dispute, Your Honor.

THE COURT: Okay.

MR. DAVIS: Very well. I withdraw my request, Your Honor.

THE COURT: Thank you.

Q. (BY MR. DAVIS:) Mr. Helms, when a voter fills out an absentee ballot, are they typically voting in the presence of poll workers?

A. Say that again, please.

Q. Yes. When a voter completes an absentee ballot, are they

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typically voting in the presence of poll workers? I mean, in the same way they would do if they went to their polling place on Election Day?

A. No, sir.

Q. Does anyone check their ID at the time that they cast their ballot? An absentee voter?

A. No. Their ID is checked at the time of application for the absentee ballot.

Q. Okay. Do you know whether your office has received any questions from voters about how to comply with absentee requirements during a pandemic?

A. Yes.

Q. What are the types of questions that you have received?

A. The biggest question we get is which box to check, which the administrative rule covers, but -- and you've got people want to go follow up with that and make sure that they don't need to write COVID on the side or something additional. We get questions still about the ID requirement which used to be -- the ID would be required to be returned with the ballot.

THE COURT: Mr. Helms, we lost you there towards the latter end of your answer. Can you please try again, please.

THE WITNESS: Yes, sir, Your Honor. So the biggest question we've been getting is which box do I check related to COVID, which the absentee emergency rule covers, and we clarify that for them. The second something we get a lot of or some of is, do I

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turn my ID in with the application or the ballot, and we've gotten some questions about witness requirement, notary, and things like that.

Q. (BY MR. DAVIS:) Okay. Have you been involved in responding to any questions about the witness requirement or notary?

A. Yes.

Q. And what response have you given to voters or advice have you given to voters in response to such questions?

A. Well, the only specific one I remember -- and I think I went over this in my deposition -- was an individual that was wanting to understand the witness requirement, and I was explaining that I could have someone come to their house or make it work for them where they could leave the ballot out and get the witness signatures because that was what they were talking about needing, and then they determined at the end that they really didn't want to be helped. They were just -- I don't know. They wanted to cause a problem more than get a solution. But I was willing to do what we needed to do to help them. Other than that, general questions, is it required, do I have to know them, things like that.

Q. Got it.

MR. DAVIS: And I will alert my colleagues that in a moment, I'm going to ask the Court for just a few seconds to consult with you. And if you have any additional questions, should the Court

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grant that request, this will be the time to get them to me, and I'll let Ms. Reed know that the witness will soon be hers, I think.

Q. Mr. Helms, a voter -- can a voter vote absentee in the absentee election manager's office?

A. Yes, sir.

Q. How many trips does that take? Or a better way to ask it might be, can the entire process be completed in one trip to the absentee's office?

A. Yes, sir, most definitely. You can go and apply and get your absentee ballot and vote your absentee ballot in the same outing, same sitting.

Q. Back to the questions from voters. If your office received what you believe a sincere requests from a voter for assistance, whether it's with the witness signature requirement or the photo ID requirement or anything related to the absentee election process, would your office seek to assist that voter?

A. Yes, sir, most definitely. We will do everything that we could and that was available through us to help the voter. And I haven't -- I haven't personally come across an instance when we were asked for help, and we said you were out of luck. Can't help you. I haven't found that. May take some more effort, but I haven't found that.

MR. DAVIS: May I have a moment to consult with my colleagues, Your Honor?

THE COURT: You may.

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MR. DAVIS: Thank you.

I will be brief, and then I'll be ready to pass the witness.

Q. Mr. Helms, you discussed that there's a provision that allows some voters if they request to be able to go to the front of the line at the polling place?

A. Yes, sir.

Q. Okay. And you mentioned people who were over a certain age. Is anyone else entitled to go to the front of the line at the polling place should they so request?

A. Individuals with certain physical disabilities would get that same access. Upon request, they would get escorted to the front.

Q. Thank you. And the mobile units, we looked at two to Greater Birmingham Ministries events. Have there been other mobile unit events during the time of the pandemic?

A. Yes, sir, most definitely. I think we've done at least -- at least 40 events during the time of the pandemic.

Q. Do you know if any others are scheduled to take place between now and Election Day?

A. Yes, sir, most definitely. We're getting requests for those as well as reaching out to counties that we've yet to go to. So it's an ongoing weekly thing. We've gone this week. We actually -- other next week, we go on the weekend. So it's an ongoing thing that we do regardless of COVID.

Q. Got you. And the changes that Governor Ivey made to notaries, do you know whether they apply only to notaries who

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are employed by attorneys or whether they extend to all notaries?

A. I believe that was opened up to extend to all.

Q. Thank you. And from your perspective and your position in the Secretary of State's office and managing elections, is it important that election laws be uniform throughout the state?

A. Yes, sir, most definitely.

MR. DAVIS: Your Honor, I have no further questions.

THE COURT: Thank you, Mr. Davis.

Ms. Reed, your witness.

MS. REED: Thank you, Your Honor.

Q. Hi, Mr. Helms, how are you?

A. Hey, I'm doing well.

Q. Good. I want to start with your testimony about the role your office plays and local election officials offices's play with respect to election management. You are the director of elections in the Secretary of State's office; is that correct?

A. Yes, ma'am.

Q. And you exercise supervisory authority within the Secretary of State's office; is that correct?

A. Yes, sir.

Q. And you oversee a staff of about seven people; is that right?

A. Correct.

Q. Okay. Now, with respect to in-person election procedures, the probate judges are the chief election officials at the county level; is that correct?

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A. Correct, yes, ma'am.

Q. Okay. And their responsibilities include working with county commissions to designate polling places; is that correct?

A. That's correct.

Q. And as long as the way in which probate judges manage in-person voting locations is lawful, you defer to local election officials on how to handle voting logistics; is that correct?

A. As long as it's lawful, yes, ma'am.

Q. But if a probate judge were conducting an election in a manner that the Secretary viewed as unlawful, your office would intervene; is that correct?

A. Yes, ma'am.

Q. And this is the same for if an absentee election manager or circuit clerk were conducting the election in a manner that the Secretary viewed as unlawful, your office would intervene; is that correct?

A. Yes, ma'am.

Q. And with respect to assessing what is and is not lawful as far as election management and election procedures, would you agree that county election officials defer to the Secretary of State's office regarding what is and is not lawful?

MR. DAVIS: Object to the form. I'm not sure that's been established in testimony. Mr. Helms only spoke of guidance.

THE COURT: Overruled. Mr. Helms, you can answer if you understand the question, sir.

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THE WITNESS: Can you ask it again, Ms. Reed, just so I can --

Q. (BY MS. REED:) Absolutely. In general, would you agree that county election officials defer to your office regarding what is and is not lawful administration of elections?

A. County probate judge or county election officials rely on us for guidance on carrying out their duties. Now, in terms of the law, I wouldn't say we so much as interpret the law for them. The law is the law, and they carry out the law. If they have questions on administrative guidance, that's what we're there for. Kind of yes and no, I guess. I'm sorry. That's not a greater answer.

Q. No, that works. Thank you. Now, regarding absentee voting requirements specifically, you testified about the Secretary of State's emergency rule allowing voters who fear contracting COVID-19 to vote absentee. Do you recall that?

A. Yes, ma'am.

Q. And that rule you testified currently runs through the end of the year, you believe?

A. We have multiple emergency rules pertaining to the individual elections themselves. So the last one I remember if I remember correctly goes to at least November 17th, and I thought there was one that went to as far as December 15th. So, yes, ma'am.

Q. Okay. Okay. And you are aware that there are elections after the November 3rd general election, correct? You just testified there's that one December 15th?

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A. Yes, ma'am.

Q. And are you aware of any elections in early 2021?

A. There is an election scheduled, a special election scheduled for January 19th of 2021. We have like four going on. So I can't tell you if that one's going to have candidates on both sides to actually take place. But it is scheduled.

Q. Okay. Thank you. And you testified that you and your office have received questions from voters about absentee voting requirements during the pandemic; is that correct?

A. Yes, ma'am.

MS. REED: And I'd like to pull what's been premarked as Plaintiffs' Exhibit 231, if you would, Eric. Thank you.

Q. Mr. Helms, do you see that email?

A. Yes, ma'am.

Q. What does the subject line read?

A. Ballot question.

MS. REED: Eric, if you could scroll to the bottom of the email. It's actually the bottom of page 1, top of page 2 where we have the initial email from.

Q. And I don't know if you can see that very clearly, Mr. Helms. But my question is, you testified that your office has received questions generally about which excuse to check for absentee voting and about photo ID requirement and maybe some about the witness requirement. I'm just showing you an example of an email. Would you mind reading the email aloud for the record,

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please?

A. Which part of the email are you wanting me to read? Because I'm only -- I'm only seeing under the subject, then it goes to another page, and then it seems like it's a different paragraph entirely.

Q. Right. So the email is broken up over two pages. And so I had Eric, my nifty trial tech, to zoom in on the portion of the initial email received from the constituent and also from -- that's over the course of the two pages. If you could start with, "I'm one of the 65-plus group?

MR. DAVIS: Your Honor, I'm not sure it's necessary to have the witness read out loud into the record. I do not object to admitting this exhibit for the purpose of showing that the Secretary of State's office received this email and sent the rest of the document, the email in response.

THE COURT: I've been allowing the lawyers generally when they show documents to ask the witness to read them. Ms. Reed, if you want him to, he may.

MS. REED: Your Honor, I will take Mr. Davis up on that and just go ahead and move this email into the record. First, I just want to have a quick conversation with Mr. Helms about it, if that's okay.

THE COURT: You may proceed.

MS. REED: Thank you, Your Honor.

Q. And, Mr. Helms, I understand that this email went to

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Mr. John Merrill, but would you agree that your office has also received emails from constituents who have concerns about safely satisfying absentee voting requirements in the State of Alabama such as this one?

A. Sorry. I'm trying to figure out what this email is about exactly. I've never seen it.

Q. Take your time.

A. Yes. I would say we have received questions about this -- this is about ID and witness requirements. So we received questions about both of those things.

Q. Okay. Thank you, Mr. Helms.

MS. REED: And at this time, Your Honor, I'll move to admit Plaintiffs' Exhibit 231.

THE COURT: In light of Mr. Davis's position, Plaintiffs's 231 is received.

MS. REED: Thank you, Your Honor.

Eric, you can pull down PX 231. And would you please pull up Plaintiffs' Exhibit 235. Thank you.

Q. Mr. Helms, do you see that this is also another email, an election question from Melanie Willard to Mr. Ed Packard?

A. Yes, ma'am.

MS. REED: And, Eric, would you please scroll down to the initial email from Ms. Willard. One page further down. Thank you.

Q. And, Mr. Helms, is this another email from a constituent

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about absentee voting requirements during the pandemic?

A. Yes, ma'am. This one's for a city election.

Q. Thank you. And just to confirm, this is -- who is Ms. Willard, Melanie Willard, do you know?

A. I don't know her. But her signature says she's the city clerk slash or dash treasurer for the city of Madison, Alabama.

Q. Yes. I wanted to get that on the record. Apologize for referring to her as a constituent.

MS. REED: Your Honor, Plaintiffs move to admit what's been premarked as Plaintiffs' Exhibit 235 into evidence.

THE COURT: Same position, Mr. Davis, no objection?

MR. DAVIS: Same position. No objection to show that this question was received.

THE COURT: Thank you. 235 is received.

MS. REED: Thank you. And, Eric, you can go ahead and pull down Plaintiffs' Exhibit 235. And would you pull up Plaintiffs' Exhibit 22. Thank you.

Q. Mr. Helms, do you recognize this document?

A. Yes, ma'am.

Q. And what is it?

A. This is the generic absentee application of the State of Alabama.

Q. Perfect. And when a voter wants to vote absentee, they must complete one of these applications; is that correct?

A. Generally speaking, yes, ma'am.

Q. And subject to limited exceptions on the face of the application, voters must submit a photocopy of their photo ID with the absentee ballot application to vote absentee; is that right?

A. Aside from the exemptions, yes, ma'am.

MS. REED: And, Eric, if you can zoom in on -- yes. That portion under, "I am applying." Thank you.

Q. A lack of a photo ID does not exempt a voter from any of the photo ID requirements when they're voting absentee; is that correct?

A. No, ma'am. That's correct. I'm sorry. Yes, ma'am.

Q. And the lack of a photocopier does not exempt a voter from the requirements to submit a photo ID on this application; is that correct?

A. Yes, ma'am.

Q. And having a medical condition that places a voter at higher risk of contracting COVID-19 by itself does not exempt a voter from the photo ID requirement on the face of this application; is that correct?

A. Assuming that they don't also fall under the elderly or Handicapped Voting Act which is number 3, then, yes, ma'am, that's correct.

Q. That's right. And having COVID-19 does not exempt a voter from the photo ID requirement; is that correct?

A. Assuming, again, that it didn't fall under number 3 as well,

yes, ma'am.

Q. Thank you.

MS. REED: Eric, you can take down Plaintiffs' Exhibit 22.

Q. Mr. Helms, you testified that people have called your office requesting assistance to satisfy the absentee voting requirements; is that correct?

A. Yes, ma'am.

Q. And some people have requested assistance obtaining copies of their photo ID; is that correct?

A. Yes, ma'am.

Q. And some of these requests have come in through text message or emails; is that right?

A. Yes, ma'am, I believe so.

Q. Your office has in fact provided voters with photocopies of the IDs that they might send via emails or text message; is that right?

A. That's my understanding, yes, ma'am.

Q. But your office has not advertised this as a service of the Secretary of State's office; is that correct?

A. Well, our office advertises that we are the entity to help voters in all aspects, and we do that constantly. So we are their source for anything they need help with. So I don't know who they would think to go to with questions or needs.

Q. You said you don't know who else people would go to meet their absentee voting or their photo ID photocopy needs; is that

right?

A. That's right.

Q. But yet your office has not for example issued a press statement advertising the service of providing photocopies of photo IDs to the general public; is that right?

A. Aside from what we offer with the free photo voter ID as far as making a photocopy, like texts, and things like that -- I'm guessing that's the scenario you're referring to, right?

Q. I'm not sure exactly whether we're on the same page there. I'm just asking whether, you know, for example, on the website, is there a section on the website that says, send or text a picture of your photo ID, and we'll send you a copy?

A. Yes. I just want to be clear in my response that we do publicize issuing a photo ID including home visits and things like that. So if the question is a voter in need of an ID, are you targeting them, are you publicizing that, the answer is question. If the question is, are you publicizing that they can text it and you print it off and mail it to them in that specific scenario, then the answer is no.

Q. Thank you.

MS. REED: Eric, would you please pull Plaintiffs' Exhibit 22 back up. Thank you. And can you zoom in on the box general voter information. Thank you, Eric.

Q. Mr. Helms, the absentee ballot application requires applicants to provide their driver's license number or the last

four digits of their social security number; is that correct?

A. Sorry. There was some noise. Did you say it requires that?

Q. I'm sorry. There was some noise for me too. Did you -- you asked a question? I'm sorry. I want to answer it.

A. Can you ask it to me again? I didn't get all of it.

Q. Absolutely. The absentee ballot application requires voters to provide either the driver's license number or the last four digits of their social security card; is that correct?

A. I would say the application requires voters to provide identifying information in order to match them to their voter record. So I'm not saying that if you -- if an absentee manager had an application with everything but those and they could verify that voter, I think it would be the absentee manager's prerogative to decide whether it could be issued or whether they should reject it or request more information. So I don't know of anything legally that says you must provide one or the other like there is in the voter registration application.

Q. Okay. But it does require voters to provide identifying information; is that correct?

A. Yes, ma'am.

Q. Okay. And it is a crime to falsify a ballot or -- let me back up.

It is a crime to falsify a ballot or verification document under Alabama law; is that correct?

A. Yes, ma'am.

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Q. It's a felony, right?

A. I haven't looked at those criminal statutes in a long time to be honest, but it's a crime.

Q. Okay.

MS. REED: Eric, could you actually scroll down to the second page of the absentee ballot application and zoom in on the penalty section. Thank you.

Q. And just to confirm, under section A, about four lines down, at the top of the -- it mentions a Class C felony to violate section 17-17-24 of the Alabama code; is that correct?

A. Yes, ma'am.

Q. Okay.

MS. REED: Eric, would you please pull down Plaintiffs' Exhibit 22.

Q. Mr. Helms, to have their vote counted, an absentee voter must submit a completed absentee ballot with an absentee ballot affidavit; is that correct?

A. Yes, ma'am.

Q. And the absentee ballot affidavit requires either two witness signatures or a notary signature stamp; is that right?

A. Yes, ma'am.

Q. And you testified earlier that Alabama permits a person to have their ballot affidavit notarized via video conference; is that correct?

A. Yes, ma'am.

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Q. A notary who witnesses an absentee ballot affidavit via video conferencing still has to sign the same ballot as the voter; is that correct?

A. Same affidavit, yes, ma'am.

Q. And thank you for clarifying that. So the notary and the voter must still find a way to actually sign the absentee ballot affidavit; is that right?

A. Correct.

Q. Now, regarding the two witness option, the witness requirement for absentee ballot affidavits does not require the witness who signs the absentee ballot affidavit to know the voter; is that right?

A. That's correct.

Q. But it does require that both witnesses who sign the absentee ballot affidavit watch the voter sign in their presence; is that right?

A. That's my understanding, yes, ma'am.

Q. And -- let's see. The witness requirement doesn't require the witness to identify the voter; is that correct?

A. No, ma'am.

Q. Your office has suggested that, you know, strangers -- including postal service workers, can witness a voter's absentee ballot; is that correct?

A. Yes, ma'am. Civilians can witness an absentee ballot, yes.

Q. Are you aware that the post office forbids employees from

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witnessing ballots?

A. No, I'm not -- I haven't looked into any of that. I have no answer.

MS. REED: Eric, would you please pull up what's been premarked as Plaintiffs' Exhibit 53. Thank you.

Q. Mr. Helms, do you recognize this to be a news article from the Anchorage Daily News?

A. I don't know the Anchorage Daily News. But that's what it says on the header. So that's -- I'll say that much.

Q. Okay. That works.

MS. REED: And, Eric, would you please zoom into the first two lines on the article.

Q. And, Mr. Helms, does this reflect that in a nationwide rule change, the United States postal service has now prohibited USPS employees from signing absentee ballot as witnesses while on duty?

MR. DAVIS: I object, your Honor. I think Mr. Helms has already said he wasn't aware of such a rule. This article is hearsay with no witness I can cross-examine about it.

THE COURT: Correct. Article will not come in. To the extent that Ms. Reed is asking Mr. Helms if this is what the article said, the article speaks for itself as reflected on the screen. But he obviously as a witness cannot bring this in as evidence.

MS. REED: Thank you, Your Honor.

Eric, would you please pull down Plaintiffs' Exhibit 53.

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Thank you.

Q. Mr. Helms, absentee poll workers are responsible for checking an absentee ballot for compliance with the witness requirement; is that right?

A. Correct.

Q. And they do so under the supervision of the absentee election manager?

A. The absentee election manager is present, but they don't work for the absentee election manager.

Q. Okay. Well, would you agree that the absentee poll workers when they're reviewing the absentee ballot affidavit for compliance with the witness requirement, they take the signatures of the witnesses at face value; is that correct?

A. Generally speaking, yes, unless they have reason to investigate further. Like for instance, if a candidate with opposition is one of the witness signatures, then they're not going to take that at face value because that can't be done. That person can't be a witness. So they are vetting the signatures to an extent. It's not just an erroneous task.

Q. Does your office train the absentee poll workers on what would be suspicious or what they'd need to investigate further on an absentee ballot application -- affidavit?

A. Well, the only thing that comes to mind, the only experience I have with that is I know that it's a law that a candidate with opposition can't be a witness. That's the first thing. They would

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need to have knowledge of who the candidates are and be able to match that.

You know, we're not signature experts. So if you see people -- the same person signing multiple witness signatures, I guess you'd have some reason to investigate that. I'm not an expert on signatures so. It's also used in terms of election contests I think in the past, determining fraud, determining who witnessed it. But at the time that absentee poll workers are checking it, the biggest thing is, is this person a candidate.

Q. Thank you. I want to transition to in-person voting. Well actually, really quickly, nothing in state law, Alabama state law prohibits a person from witnessing multiple absentee ballots; is that correct?

A. No quota, to my understanding, yeah. There's no limit.

Q. Okay. And then moving on to in-person voting, there are close to 2,000 polling places in the State of Alabama; is that right?

A. Yes, ma'am.

Q. I think the Secretary testified on Friday there are 1,980. Does that number sound familiar to you?

A. Yeah. It was 1,980 at the time, but it's probably changed.

Q. Okay. That's fair. Your office is responsible for ensuring that all polling places comply with ADA requirements; is that right?

MR. DAVIS: Objection. That assumes facts not in evidence.

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THE WITNESS: Can you ask it again, Ms. Reed?

THE COURT: Hang on, Mr. Helms.

MS. REED: Wait for the judge to --

THE COURT: All right. I will rephrase the question. Mr. Helms, is your office responsible for ensuring that polling places comply with ADA requirements?

THE WITNESS: Thank you, Your Honor. Am I good to answer?

THE COURT: Yes, sir.

THE WITNESS: Okay. Our office, as I said earlier, sends out guidance that reminds counties that they must follow the ADA. If we're given notice that someone is not following the ADA, then we initiate ourselves. However, it's the county's responsibility to adhere to the ADA.

MS. REED: Thank you, Your Honor, and thank you, Mr. Helms.

Q. So as your office surveyed all polling places in the State of Alabama to determine whether they are ADA compliant?

A. No, ma'am, we have not.

Q. So you don't know or your office doesn't know for certain that all 1,980 polling places in the State of Alabama are accessible under the ADA; is that right?

A. That's right. I don't think it's an obligation of ours to survey all 1,980 polling places.

Q. Okay. Thank you. Is that the same for tabulation machines

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for people with disabilities? Do you know whether or not all polling places have working tabulation machines for people with disabilities?

A. Very similar, yes, ma'am. Again, we send out guidance prior to the election that they must adhere to that, that an Automark or ExpressVote, which are brands of disability accessible machines, must be at every polling location including the absentee polling location. Prior to each election, we remind me that they must be tested and make sure that it has ink, et cetera. We also advise that poll workers themselves use the machinery. Because if you don't use it yourself, you may not know how it works. You may not be able to assist that individual in need with the machine. As far as surveying, same answer. We don't survey every polling place to make sure the machine is set up.

Q. Okay. Mr. Helms, all election officials take an oath of office before they perform their duties at the election; is that correct?

A. Generally, yes, ma'am.

Q. And this includes precinct election officials, right?

A. That's my understanding, yes, ma'am, the poll workers are supposed to do so.

Q. The poll workers are supposed to do so? Is that what you just testified to?

A. Yes, ma'am.

Q. That was my next question. So I just wanted to know whether you obviated it. So on Election Day, poll workers are

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entrusted with helping administer elections; is that right?

A. Yes, ma'am, they're employed to do so.

Q. You're familiar with curbside voting or drive-through voting; is that correct?

A. On a very general basis, yes, ma'am.

Q. The Alabama code's election-related provisions are silent on curbside voting; is that right?

A. Correct.

Q. Your office does not have the authority to prevent a local jurisdiction from offering curbside voting if the voting method fully complies with state law; is that correct?

A. Can you ask me that again? That's a big one.

Q. Absolutely. Yeah. And I can -- well, we'll try to break it down, but it is a long one. So your office, the Secretary of State's office, does not have the authority to prevent a local jurisdiction from offering curbside voting if the voting method fully complies with the state law; is that correct?

A. Well, my answer on that would be, first, I'm not an attorney. Our office is run by Secretary Merrill. His stance has been as the Secretary of State that curbside voting is not listed in the law, it's not covered. Therefore, it is not legal according to law. My answers, my stances come from practicality standpoint, because I'm just an administrative. I'm not the Secretary of State. I'm not the attorney. Can it be done? And my answer has been, I don't think so. No.

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Q. When you say can it be done, you don't think so. Can you explain or clarify that?

A. Well, the ways that curbside voting has been done thus far from my understanding has not been legal, not been according to law, if the law did mention it, ballot secrecy, things like that that. And as I mentioned earlier in the testimony, the resource issue. There's not enough machines, there's not enough poll workers, there's not enough poll books. The polling stations, as some of your judges that testified can probably tell you, are not set up for curbside voting. There's a multitude of issues that, you know, just blunt honesty, 44 days before the election, you just don't try to do. I mean, states that have curbside voting spent years establishing a method for curbside voting. They don't do it in 40-something days. My answers are more from a practical standpoint. I'm sorry I'm drifting from your question.

Q. So you just testified that it's your belief that prior instances of curbside voting were illegal; is that correct?

A. From my limited understanding, yes, from a ballot chain of custody standpoint. I've never herd of a tabulation machine being outside of the polling place, of an electronic pollbook ever being outside of a polling place. In those instances, electronic poll books weren't even in those counties at that time from my understanding. So I wasn't there on site. That's what I understand. Now, I could be wrong. But my testimony is just what I -- what I truthfully understand to be true.

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Q. Uh-huh. And do you understand -- is it your understanding that the majority of counties will have electronic poll books ahead of the or for the November 3rd general election?

A. I think at this point, we are in the high 50s. A lot of those have been very recent. So again, you're taking a county that is just learning a brand new program countywide with electronic poll books. And in this scenario, you're also asking them to move it outside and offer something that's never been offered from a countywide standpoint or statewide standpoint in the history of the state. So just because they have them doesn't mean you want to tack on a brand new program to completely destroy their ability to carry out an election.

Also depending on the brand of electronic pollbook, they are connected to a stand which cannot be removed. So you are toting around something that's twice as large as a briefcase. You're going to tote that in and out of a polling place? So I just wouldn't get too hung up on 50-plus counties have poll books, therefore, yay, it's all going to work out. There's a lot more specificity to it.

Q. Well, why don't we do a couple things. One, I want to walk through the prior instances of curbside voting which we have discussed previously. So you've previously identified instances in Perry, Hale, and Chilton County; is that right?

A. You know, I tried to remember that. I don't remember of an instance in Chilton County. I'm not aware of anything on that. Not saying it didn't happen. But I'm more aware of Perry and

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Hale.

Q. Okay. Let's start with Perry and Hale, and then we can -- I'll discuss Chilton later.

MS. REED: Actually, Eric, would you mind pulling up State's amended responses to our rogs, please. Perfect.

Q. Mr. Helms, do you recognize this document?

A. Yes, ma'am, generally.

MS. REED: And, Eric, can you scroll down to the last page. And go up one, I'm sorry. Thank you.

Q. Is that your signature, Mr. Helms?

A. Yes, ma'am.

Q. Okay.

MS. REED: Eric, would you please go to, I believe I'd like to start on page numbered 16. Okay.

Q. And, Mr. Helms, do you see at the bottom of that page, interrogatory 9, asking you to identify with specificity each instances the Alabama Secretary of State has enforced the curbside voting prohibition?

A. Yes, ma'am.

MS. REED: And, Eric, would you jump down to page 17, please. Perfect. Let's see.

Q. The first instance you discuss starts about midway down is Perry County; is that right?

A. Yes, ma'am.

Q. Perfect. And the Perry County instance of curbside voting

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occurred in 2018; is that correct?

A. Yes, ma'am.

Q. And Ed Packard and Hugh Evans, two employees of the Secretary of State's office were observing the counting of absentee ballots in that county; is that correct?

A. Yes, ma'am. They were sent to Perry County.

Q. Okay. And while there, they learned that an inspector delivered a ballot to a voter's car because the voter was not mobile enough to enter the polling place; is that correct?

A. The inspector made the statement that the voter was not mobile enough, yes, ma'am.

Q. In that instances, you represent that the polling place was not inaccessible to handicapped persons. How do you know that?

A. Well, that's according to -- I wasn't there on site. So Ed Packard and Hugh Evans would have talked to the inspector and determined that it was accessible.

Q. Okay.

MS. REED: Eric, would you jump down to page 18.

Q. And the second instance you discussed, Mr. Helms, starts at the top of page 18. It's Hale County; is that right?

A. Yes, ma'am.

Q. And Mr. -- or Secretary Merrill learned about this occurrence from a voter, a constituent, I'm sorry; is that correct?

A. Yes, ma'am.

Q. And upon learning about this, Secretary Merrill called the

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probate judge and told them to cease providing curbside voting; is that right?

A. Yes, ma'am, Judge Crawford.

Q. And the probate judge, Judge Crawford, stated that he was providing curbside voting as a convenience for the voters; is that correct?

A. Yes, ma'am.

Q. And then jump down to the Chilton County instance that's discussed towards the end. That occurred in 2016, right?

A. Yes, ma'am.

Q. Okay. And I won't ask anymore questions about that since you've already testified you can't recall that instance specifically.

MS. REED: Eric, can you pull down rogs, please, rog responses.

Q. Mr. Helms, your office did not refer these instances of curbside voting to the Attorney General, did it?

A. I don't have direct knowledge on that.

Q. Okay. Do you know whether your office referred these instances of curbside voting to the DA for criminal prosecution?

A. Don't know that as well.

Q. Okay. And just quickly regarding the Perry County instance of curbside voting, you testified that either Ed Packard or Hugh Evans would have known whether or not the polling precinct was accessible; is that correct?

A. Well, I think they would have conferred with the county,

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probably the inspector and the probate judge. Since the county is determining and complying with the ADA, I don't think our staff would be going and saying is this ADA compliant. The county would be verifying it.

Q. Okay.

MR. DAVIS: Your Honor, if I may interrupt just briefly, we have been going for about two hours with this witness. I'm fine.

THE COURT: That's fair. That is more than valid. Let's take a 10-minute break, please. We will come back at -- well, let's just make it 5:20, please.

Ms. Reed, do you have a general idea how much longer you have with this witness?

MS. REED: Your Honor, I am anticipating --

THE COURT: I'm not saying that to rush you. I just want to know if we should plan to break and bring Mr. Helms back tomorrow or if we can get him done today.

MS. REED: Your Honor, I believe we can wrap up with Mr. Helms today. I'm thinking another 20 minutes or so.

THE COURT: Based on what folks have heard so far, Mr. Webb, let me go to you since I see you. Do you believe you'll have questions for Mr. Helms?

MR. WEBB: No, Your Honor.

THE COURT: Okay. Mr. Engelhardt, same question for you. Do you believe you will have questions for him? I thought I saw you on there briefly.

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MR. DUNGAN: No, Your Honor.

THE COURT: Thank you, Mr. Dungan. All right. Let's take a break. We'll come back at 5:20, please. And I will make arrangements to try to stay until 6:00. Thanks, everyone.

(Recess.)

THE COURT: Mr. Helms, are you ready to begin?

THE WITNESS: Your Honor, yes, sir. My attorneys are coming back in to sit down so just about ready.

THE COURT: Perfect. Okay. Yes, sir.

THE COURT: Mr. Davis, Ms. Reed?

MR. DAVIS: Ready, Judge.

MS. REED: Yes, Your Honor.

THE COURT: Ms. Reed, you may.

MS. REED: Thank you, Your Honor.

Q. Mr. Helms, you are aware that Alabama law authorizes election officials to sign a voter's name on the poll list if the voter because of physical disability is unable to write their own name, correct?

A. Yes, sir.

Q. And specifically referencing the instances of curbside voting we discussed previously in Perry, Hale, and Chilton Counties, you don't know whether the voters in those instances of curbside voting had a physical disability that impeded their ability to write their own name on a poll list, do you?

A. No, ma'am.

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Q. And you are aware that Alabama law authorizes a voter to seek assistance from a poll worker or another authorized person; is that right?

A. Yes, ma'am, assuming it's not breaking other laws.

Q. The voters in those instances could have requested the assistance of a poll worker or inspector who assisted them; is that correct?

A. Yes, ma'am, a voter can request assistance.

Q. And just to be sure my question's clear, speaking specifically about the instances of curbside voting in Perry, Hale, and Chilton Counties, you don't know whether or not the voters in those instances of curbside voting did in fact request assistance from the poll worker or inspector who assisted them, do you?

A. No, ma'am.

Q. And with respect to Perry, Hale, and Chilton Counties, you previously expressed concern that these instances of curbside voting violated three specific provisions of the Alabama election code. Do you recall that?

A. Very vaguely. I'd need to probably look at that document again to --

THE COURT: Mr. Helms, we lost the last part of your testimony. Please try it again.

THE WITNESS: Yes, sir, Your Honor. I said I have a very vague recollection of that. I'd want to look at that document

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again before I gave a legitimate answer to that question.

THE COURT: Thank you, sir.

MS. REED: Thank you.

Eric, would you please pull up the State Defendants' amended responses to Plaintiffs' Exhibit's first interrogatories. Thank you. And would you go to page -- would you go to page 7, please.

Q. And, Mr. Helms, in the penultimate paragraph, there is a string of Alabama code sections. I'm sorry. In the final paragraph, not the penultimate paragraph. A string of Alabama code sections right there about the middle. Do you see that?

A. Yes, ma'am.

Q. And do you recall citing those as examples of the Alabama code provisions, the curbside voting examples violated?

A. Yes, ma'am, in terms of secrecy and signing the book.

Q. Okay. And I want to walk through those. I won't take you through the statutory text or ask you to interpret it understanding you're not a lawyer. But I will put it up and ask that we just briefly discuss. The first is Alabama Code Section 17-17-15.

MS. REED: Eric, would you mind just pulling that up, please. Thank you.

Q. And, Mr. Helms, that provision governs the signing the name of another person on the poll list; is that right?

A. Yes, ma'am.

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Q. You don't know whether the instances of curbside voting in Perry or Hale or Chilton Counties violated this provision, do you?

A. Ask me that again, please. I'm sorry.

Q. No. Absolutely. You don't know whether the instances of curbside voting in Perry, Hale, or Chilton Counties violated this specific statutory provision, do you?

A. Well, in Perry County, it was represented to me that it was breaking that chain of custody. So from my understanding, the pollbook wasn't taken outside and the machine wasn't outside. So in terms of not knowing, I can't fully give you a, yes, that's true on that answer.

Q. Okay. And is -- you referenced the chain of custody and previously, you know, watching the voter, you know, sign the poll list or watching the voter place that -- the ballot in the tabulation machine. Is any of that in the statute or in any Alabama statute?

MS. REED: And, Eric, you can pull down the section 17-17-15.

A. Well, signing a pollbook yourself is in the statute aside from the exception you gave where you need assistance. And the chain of custody is in the statute in terms of voting a secret ballot and putting that in the tabulator or receiving assistance to put it in the tabulator. So I would say summarily, yeah, it is, because of those statutes.

Q. Okay. But the statute you just referenced about ballot secrecy, does it contain the words, "Chain of custody" or -- in the

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statute itself, do you know?

A. No, ma'am, I don't believe it does.

Q. Okay. And you testified before that another potential issue with the instances of curbside voting in Perry, Hale, and Chilton Counties was that it violated ballot secrecy, right?

A. Yes, ma'am.

MS. REED: Eric, do you mind just pulling up really quickly Alabama code section 17-17-18.

Q. Mr. Helms, this is the statute you cited regarding ballot secrecy in the rog responses we just discussed. It says it prohibits an inspector clerk or other person from disclosing how any elector voted. Do you know whether in any of the instances of curbside voting we have discussed this provision was violated?

A. No, ma'am, I don't have specific knowledge of that being violated. However, I would say it would be a lot more easily violated.

Q. Okay. But you don't know whether an inspector or elector actually disclosed how an elector voted in any of the instances of curbside voting?

A. That's correct.

Q. And, finally, you referenced ballot security and voters placing their own ballot in the tabulation machine as a potential issue in the three instances of curbside voting we have discussed, correct?

A. Yes, ma'am.

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Q. And the provision you cite was Alabama Code Section 17-17-21.

MS. REED: Eric, would you please pull that up. Thank you. Can you scroll down.

Q. And, Mr. Helms, this provision prohibits an elector from removing their ballot from the polling place before the close of the polls. You see that?

A. Yes, ma'am. Let me -- can I read it really fast? I haven't seen this in a while.

Q. Absolutely. Uh-huh.

A. Okay.

Q. In the instances of curbside voting --

MS. REED: Eric, you can take down this statute.

Q. In the instances of curbside voting, Mr. Helms, that we have discussed previously, it was not based on your recollection the voter who took the ballot outside of the polling place; is that correct?

A. That's my understanding. I'm not an attorney. But however, that statute does say an elector from removing any ballot from the polling place. It doesn't say their own ballot so.

Q. Okay. Well, is it -- you don't have any knowledge of an elector -- and when you're referring to -- let me back up.

When you're referring to elector, are you also referring to polling workers?

A. They've got to be electors so you could potentially -- I'm not

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an attorney. So I don't want to comment --

Q. I'm not going push that. Let's move on from this. I was just trying to seek clarification on your understanding.

A. Yes, ma'am.

Q. Would you agree that Alabama regulations specifically contemplate a poll worker assisting voters with placing a ballot in a tabulation machine?

A. Ask me that again. I'm sorry.

Q. No problem. Would you agree that Alabama regulations specifically contemplate a poll worker assisting voters with placing their ballot in the tabulation machine?

A. Yeah, I think it would include that.

Q. Okay.

MS. REED: And Your Honor, if I may -- Eric, would you please pull up the 2019-2020 election handbook. It's Lee, Lowndes, and Wilcox's Exhibit 1. Thank you. I'm doing this primarily for the benefit of Mr. Davis. I'd like to move this into evidence.

Q. Mr. Helms, are you familiar with this document? Sorry.

A. Yes, ma'am.

Q. Okay. And what is it?

A. It appears to be the Alabama election handbook prepared by Alabama Law Institute in conjunction with election officials.

Q. Okay.

MS. REED: Your Honor, Plaintiffs move to admit Lee, Lowndes, and Wilcox Defendants' Exhibit Number 1 into evidence.

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THE COURT: Any objections?

MR. DAVIS: Judge, may I ask Mr. Helms briefly what he knows about this book and if he agrees with it before I decide whether I have an objection? Or could Ms. --

THE COURT: Yeah. The exhibit itself may be able to come in. Whether or not he's sufficiently familiar with it to answer any specific questions may be a separate issue. But since this is at least -- I think it's Mr. Webb's exhibit. This may not be the right person for it. But any objections to it coming in through this witness nonetheless?

MR. DAVIS: For the State Defendants, Your Honor, I do not object to authenticity if Mr. Helms knows this is something that the Alabama Law Institute does. I cannot vouch for this document beyond that. I simply don't know if it's accurate. I have no reason to doubt it. But I do not know one way or the other.

THE COURT: Okay. It will come in since Mr. Helms had said ALI. Well, I don't know if he said that.

Mr. Helms, do you know if the Alabama Law Institute as part of its mission publishes an election handbook from time to time?

THE WITNESS: Yes, sir, Your Honor, they do.

THE COURT: Okay. The document will come in. And then we can deal with other objections related to any questions that are asked. You may continue, counselor.

MR. WEBB: Thank you, Your Honor. Can you hear me okay?

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I had to switch my microphone source.

THE COURT: Yes, ma'am.

MS. REED: Thank you, Your Honor.

Eric, would you please scroll down to page 416. Thank you.

Q. Mr. Helms, do you see where reg 307-X-1-.10-1 reads "appointment and duties of poll officials"?

A. Yes, ma'am.

Q. And looking down at subsection 4, which is again cut off.

MS. REED: So we'll have to split the screen, Eric. Apologies for making you work this Tuesday afternoon.

Q. But is this provision subsection 4 -- I'll give you an opportunity to read it.

A. Yes, ma'am.

Q. Thank you, Mr. Helms. Would you agree that this provision -- this is the provision that contemplates a poll worker assisting voters with placing a ballot in the tabulation machine without disrupting ballot secrecy?

A. Yes, ma'am. This is where it's mentioned.

Q. Okay.

MS. REED: Eric, you you can pull that down, please.

Q. Mr. Helms, you testified regarding logistical issues with curbside voting including parking and other issues. Do you recall that?

A. Yes, ma'am.

Q. I guess vehicle traffic and other issues?

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A. Yes, ma'am.

Q. You don't know whether the instances of curbside voting in Perry, Hale, or Chilton Counties created these logistical issues, do you?

A. I'm getting some feedback. No, ma'am. I don't have specific knowledge of that.

Q. And you testified earlier that absentee election managers -- that absentee voters could drop their absentee ballots off to absentee election managers; is that correct?

A. That they can drop it off to the absentee managers? Yes, ma'am.

Q. The Secretary of State has suggested that AEMs can offer curbside services to voters in the pandemic; is that correct?

A. I don't know that he used the term curbside services. But he did say that absentee managers themselves could go out, you know, and meet a voter. So, yes, ma'am.

Q. Your office -- you testified before that your office has received money from the federal government to assist --

THE COURT: Ms. Reed, did you hear that, the end of the the question faded out.

MS. REED: Yes. Give me just one second. There's a lot of background noise here. Can you hear me okay?

THE COURT: We can. Well, I can.

MS. REED: Okay. Great. Thank you.

Q. Your office has received money from the federal government

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to assist with election administration during a pandemic; is that correct?

A. Yes, ma'am.

Q. And the Secretary of State's office is the custodian of these funds; is that right?

A. Yes, ma'am.

Q. And you have reimbursed local election officials for sanitation supplies, correct?

A. Yes, ma'am.

Q. And does this include for masks, gloves, hand sanitizer, and other personal protective equipment for use in upcoming elections?

A. Yes, ma'am.

Q. You believe voters can safely vote in person with these materials in November; is that correct?

A. From a general standpoint, yes, ma'am.

Q. Uh-huh. Would you agree that wearing a mask creates a safer environment, a safer voting environment during the pandemic?

A. I'm not a health expert. But that's what the health experts say. So I'll have to take their word for it.

Q. Masks are not required in the polling places, are they?

A. Not for voting purposes, no, ma'am.

Q. And so voters who go vote in person on Election Day could vote without wearing a mask, correct?

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A. Yes, ma'am.

Q. And local election officials cannot turn away a voter who is sick on Election Day; is that correct?

A. Yeah, for being sick or appearing to be sick. They're not experts on that.

Q. And does this include if the voter is suspected of or confirmed to have COVID-19?

A. Yeah. A voter has the right to vote. Now, most all counties -- most counties, they have separate places to vote for individuals who appear to be sick or if they have COVID or something like that. That's not your question, but, yes, ultimately they still get to vote.

Q. But not all counties have this requirement, the separate sick from non-sick voters; is that right?

A. I can't confirm that all do. But since I can't, I would not say all.

Q. Okay.

MR. REED: And, Eric, would you please pull up Plaintiffs' Exhibit 215. Thank you.

Q. Mr. Helms, do you recognize this document?

A. Yes, ma'am. Vaguely, but yes.

Q. What is it?

A. Well, it looks like -- at the bottom, it's a piece of an email that I sent. And then it's a response to my email from Mobile County probate judge Don Davis.

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Q. Thank you.

MR. REED: Your Honor, Plaintiffs move to admit Plaintiffs' Exhibit 215 into evidence.

THE COURT: Any objections, Mr. Davis?

MR. DAVIS: No objection for the purpose of showing that this correspondence was exchanged between Judge Davis and Mr. Helms.

THE COURT: Thank you. Plaintiff's 215 is received.

MS. REED: Thank you. And, Eric, would you please also pull up Plaintiffs' Exhibit 232.

Q. Do you recognize this, Mr. Helms?

A. Yes, ma'am.

Q. And what is it?

A. It's a letter from Secretary Merrill to all probate judges in the state.

Q. And what is it discussing?

A. Let's see. It talks about changing polling places. It also talks about making sure that the owners and operators of these polling places do not have policies in place that will prevent individuals from voting, that they need to check with them prior to. And if they do have those policies in place they need to change the polling place.

Q. Okay. Thank you.

MS. REED: Your Honor, Plaintiffs move to admit PX 232.

MR. DAVIS: No objection, Judge.

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THE COURT: Thank you. Plaintiff's 232 is received.

MS. REED: Thank you, Your Honor. And, Eric, you can go ahead and pull this down. If you give me just one second, Your Honor, I'm wrapping up. I just want to make sure I don't have -- I'm not missing anything.

THE COURT: Take your time.

MS. REED: Okay. Just a few more. Eric, would you please pull up Plaintiffs' Exhibit 237. And can you -- for ease of identification by Mr. Helms, could you please scroll down to the second page.

Q. Mr. Helms, are you familiar with this document?

A. Yes, ma'am.

Q. What is it?

A. It is a letter from Secretary Merrill to county commissioners and circuit judges with similar guidance that they not prevent the -- let's see -- absentee managers from performing their job via county facility policies.

MS. REED: Okay. Your Honor, Plaintiffs move to admit Plaintiffs' Exhibit 237.

MR. DAVIS: No objection.

THE COURT: Thank you. Plaintiffs' Exhibit 237 is in.

MS. REED: Thank you.

Q. And, Mr. Helms, just a few more questions. Alabama law does not require that a person receiving assistance at the polls actually watch the person assisting them place their ballot into

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the machine, does it?

A. It doesn't speak to that. However, I don't see how you could meet the other standards of the law by allowing that to happen.

Q. I'm sorry. I didn't hear you. Would you mind repeating your answers?

A. Yes, ma'am. It doesn't specifically speak to having eyes on that. However, I would question how the other statutes can be met as far as secrecy and -- the statutes we just went over, by not being able to see it being put in the machine. But it's not specifically referenced, no, ma'am.

Q. Okay.

MS. REED: Your Honor, I will pass the witness at this time. Thank you, Mr. Helms.

THE WITNESS: Thank you.

THE COURT: Mr. Davis, I have a hard stop at 6:00.

MR. DAVIS: Understood. My redirect --

THE COURT: You want Mr. Helms to come back tomorrow?

MR. DAVIS: My redirect will be three minutes or less, Your Honor.

THE COURT: Okay. Then you may continue.

MR. DAVIS: Thank you.

Q. Mr. Helms, I believe you testified that if an absentee election manager or probate judge did something that your office believed to be unlawful that you would intervene. Did I understand that correctly?

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A. Right.

Q. Beyond telling them that you believe their action was unlawful and that they should change it to bring it within the law, what could you do?

A. They don't too much answer to us. There's not much we could do.

Q. Okay.

A. Call the cops, call whichever authority it is that ultimately oversees that.

Q. You testified that counties are responsible for ensuring ADA compliance with polling sites, correct?

A. Yes, sir, that's correct.

Q. Which part of county government, if you know, is responsible for deciding where polling sites will be located?

A. That is the charge of the county commission.

Q. And if something needs to be changed physically at a polling site, do you know who in the county governments are authorized to make those changes?

A. Yes, sir. It would still be the commission.

Q. Thank you. You said that you understood that at least some absentee election managers were in the room when ballots were counted -- when absentee ballots were counted. If an absentee election manager says that that in fact is not the case, would you defer to the absentee election manager?

A. Yes, sir.

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Q. And the press releases that we discussed, are press releases of your office, Mr. Helms, are they business records kept in the ordinary course of business and made available on your website?

A. Yes, sir. It's my understanding that they're all available on the website as soon as we put them out.

Q. If a qualified voter goes to a polling place to cast a ballot, Mr. Helms, during the pandemic, is it the Secretary of State's belief that they should as a responsible person wear a mask?

A. Yes, sir.

Q. If they decline, is it the Secretary's position that nonetheless, they should be allowed to exercise their right to cast a ballot?

A. Right.

MR. DAVIS: No further questions, Judge.

THE COURT: Thank you. Before I go back to Ms. Reed, I skipped the other defendants based on their earlier representations to not have any questions. But let me turn the floor back to you. Anyone else have any questions for Mr. Helms before I turn it back over to Ms. Reed?

MR. WEBB: No, Your Honor.

THE COURT: Thank you, gentlemen. Ms. Reed?

MR. DUNGAN: No, Your Honor.

MS. REED: No further questions from me, Your Honor.

THE COURT: Thank you. We will start hopefully no later than 9:10 in the morning. The play in the morning will take a

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little bit longer than normal -- oh, I'm sorry. Mr. Helms, you're free to go. Have a good evening. You obviously are free to stick around as well. But you are excused.

(Witness excused.)

THE COURT: The pleas tomorrow and Thursday involve interpreters. Those generally take a little bit longer than the 25 or 20 minutes that a standard plea will take. But assuming the technology is in order, we should be able to start a lot earlier than we did today. Before we wrap up for today, any additional debriefing that anyone needs or wants me to take up?

MR. DAVIS: Your Honor, I would say that based on -- I know today didn't seem like we got a lot done. We actually did, and I believe we are in good shape. I think we can keep our regular lunch hours and still finish this week. I think we're on track. I really do. I know that if my codefendants think I am being Pollyanne-ish they will speak up, but I think we're okay.

THE COURT: Anyone want to push back on that point or should I stand down on my earlier statement that I will truncate the lunch break to 30 minutes?

MR. ENGELHARDT: Your Honor, are we still planning on running late one night, like a 6:00ish?

THE COURT: Correct.

MR. ENGELHARDT: I think under those circumstances, Mr. Davis is probably right. I don't think we're going to go -- I think we're on schedule.

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THE COURT: Okay. All right. One hour for lunch tomorrow, standard 15-minute morning and afternoon break with the right to call an audible if things change in the course of the testimony.

Mr. Ross, anything from you as the point person for the Plaintiffs' side on these debriefing issues?

MR. ROSS: No, Your Honor, except to ask when would the Court like us to submit these briefs. I assume soon.

THE COURT: I have carried the motions with the case. The Defendants will obviously renew their motions at the close of their cases. Between now and then is your deadline. So generally by Thursday based on what folks are saying today with how things are going with respect to the Defendants' cases.

MR. ROSS: Thank you, Your Honor.

THE COURT: Anyone else? Thank you, all. I hope to see all of you no later than 9:10. And I know my courtroom deputy has voiced her displeasure with my IT people. So hopefully things will go off without any issues in the morning. Have a good evening, everyone.

TAB H

9/16/2020
Rough Transcript

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CASE NO. 2:20-cv-00619-AKK
PEOPLE FIRST OF ALABAMA, et al.,
v.
JOHN MERRILL, et al.,

THE COURT: Good morning, everyone. I just need a few minutes to boot up my system.

(Pause.)

THE COURT: Good morning, everyone. Plaintiffs ready?

MR. ROSS: Yes, Your Honor.

MR. ENGELHARDT: Your Honor --

THE COURT: Mr. Ross.

MR. ROSS: That was Mr. Engelhardt, Your Honor. Plaintiffs are ready.

THE COURT: Thank you. Who is the first witness this morning?

MR. ENGELHARDT: Your Honor, before we all start on the defense side, I wanted to give the Court an update about the hurricane that hit Mobile last night. And it's still raging. I'm the only one of the Mobile people who has power and internet access. So I'm using a hot spot and came up to the office. Mr. Speegle and Ms. Holifield and Mr. Hale all have power outages, no internet, no Wi-Fi and damages to their houses as do many of my colleagues, but everybody is physically safe. So I wanted to let Court know we have been in contact with them, and we've come to two sort of arrangements with everyone, if that's all right with

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the Court.

The first is that Mr. Biggs's testimony today, we're going to let him testify since he has traveled a distance to be able to do this, and I will defend on behalf of my client and perhaps a bit on -- I'll look out for the interests of Judge Davis and the probate judge. But by agreement, we will provide the transcript to Mr. Speegle, and if they want to ask some questions that do not get asked, with the Court's permission, we'll recall him just to allow them to ask their questions at the time they're able to join.

And then the second thing that we talked about was after Mr. Biggs, perhaps we could take a break of some time to see what's going on with our storm and if any power has been restored and if they're able to join or not. And if not, we would ask the Court to consider delaying for the rest of the day until they're able to participate.

THE COURT: That's a valid request. It's one that I will grant as I mentioned earlier when you first raised the issue about the storm I think on Monday. They are defendants in this case who need to participate. And if we run into any issues, then I will stop the trial.

Let me make sure I understand, though. Are you saying that you have permission from them to go forward with Mr. Biggs this morning and that I should not be concerned, I guess, about Mr. Speegle's team not being present at least as it relates to Mr. Biggs?

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MR. DAVIS: Your Honor, this is Jim Davis, and I will -- Mr. Biggs is our witness. Mr. Smith from our team will be leading his direct. And I'll represent to the Court that we proposed this to counsel for Judge Davis. And they responded that they have no objection to us proceeding with Mr. Biggs.

THE COURT: Okay.

MR. DAVIS: On the understanding that if necessary, we will bring Mr. Biggs back at a later time for them to ask questions.

THE COURT: Okay.

MR. DAVIS: But they could -- I think that's unlikely. But we have that understanding with them.

THE COURT: Okay.

MR. ENGELHARDT: And they echoed that to me as well. So it's not just Mr. Davis that they expressed that to.

THE COURT: All right. Mr. Engelhardt, I'm glad to hear the report about safety. Obviously, physical damage is always a major inconvenience, but it's secondary to personal safety. I was glad when I saw your face on the screen. I just assumed that you and the rest of the Mobile folks were okay. So thank you for letting me know. I don't think the Plaintiffs will push back at all, but I will give the plaintiffs a chance to chime in. The proposal to go forward with Mr. Biggs -- is it Biggs or Gigs? Mr. Biggs. I'm sorry and then stop and reassess and then perhaps stop for the day if necessary. Mr. Ross.

MR. ROSS: Your Honor, Plaintiffs don't have an objection.

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THE COURT: Mr. Ross, your microphone. It may just be my hearing.

MR. ROSS: It may be -- can you hear me at all or no?

THE COURT: I can. Now, I can.

MR. ROSS: Okay. Plaintiffs don't have an objection to going forward with Mr. Biggs --

THE COURT: Mr. Ross, we lost you again. But I think the gist of your point is the Plaintiffs are not objecting to us going forward with Mr. Biggs and then reassessing and revisiting the situation later.

MR. ROSS: Yes, Your Honor.

THE COURT: Thank you.

Mr. Biggs, good morning.

THE WITNESS: Good morning, Your Honor.

THE COURT: Would you please raise your right hand so you can be sworn in, please.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Gregory Marion Biggs, B-I-G-G-S.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: I did not understand you, I'm sorry.

THE COURTROOM DEPUTY: What city and state do you reside in?

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THE WITNESS: State?

THE COURT: Where do you live, Mr. Biggs?

THE WITNESS: Oh, I'm sorry. Titus, Alabama.

THE COURT: Thank you.

THE COURT: Mr. Smith, your witness. You may.

MR. SMITH: Thank you, Your Honor.

Q. Good morning, Mr. Biggs.

A. Morning.

Q. Thank you for being with us today. Mr. Biggs, starting out, what is your professional background?

A. I graduated from law school in 1985, Cumberland School of Law. After I passed the bar, I became an assistant district attorney in Morgan County, Alabama, that's Decatur for approximately two-and-a-half years. Then I had an opportunity to become a special agent with the FBI, and I took that position, and I stayed for about a year or so, and family life and children was not conducive to being an FBI agent. So I came back home.

I practiced law a little while in Decatur, Alabama. And in 1995, I came to Montgomery to work with the Attorney General's office, and I worked in a capital murder, public corruption, and voter fraud cases. I stayed with the Attorney General's office for six, seven years, left, and went out and was in private practice with George Beck for a while, then got tired of that and came back to the State and worked for the State of Alabama Department of Education general counsel's office, then the Alabama Department

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of Corrections general counsel's office. I ended my career with the state with the Alabama Securities Commission prosecuting securities fraud cases.

I retired in 2017, attempted to practice law as a solo practitioner. I ended up quitting after about a year, and I fully retired, and the only thing I do now is pro bono cases, people can't afford an attorney. And I do international missions to Cuba, Ukraine, and any other place I'm led. So and that's where I am fully retired now, just doing that.

Q. Thank you, Mr. Biggs. You stated that while you were's at the AG, you prosecuted vote fraud?

A. Yes, sir.

Q. And in the course of prosecuting vote fraud, did you become familiar with the methods that a fraudster might use to manipulate the results of elections?

A. Yes, sir, some of them, yes, sir.

Q. And did you become familiar with the different ways that a person might investigate voter fraud?

A. Yes, I did.

Q. And, Mr. Biggs, based on your experience, what is voter fraud?

A. Well, voter fraud can include many different things. Fraud can be one act of fraud, or it can be a scheme to defraud. It can involve one person. It could involve several people in a conspiracy to use -- to defraud the voter. So it's far reaching. It's

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not limited at all. Just like securities fraud, if the fraudster can be creative in knowing what the system is and then manipulate that system in order to steal votes, it's possible.

Back in the '90s when I was investigating voter fraud and prosecuting voter fraud, they used the absentee ballot process with the application. Fraudsters can use an application. Sometimes they would go to in the victim voter's mailbox and steal the voting materials out of a mailbox and then use those materials to falsely vote and forge names to either the voter, victim voter, or the witnesses on the absentee affidavit envelope. So again, that's -- fraud is a very broad term. There's all sorts of definitions or ways to manipulate the system to steal a vote.

Q. And, Mr. Biggs, how many counties in Alabama did you investigate and prosecute instances of voter fraud?

A. We had successful convictions in four. Wilcox County, Hale County which included the municipal election of the City of Greensboro, Greene County, and Winston County in North Alabama.

Q. And, Mr. Biggs, generally what were the facts of the Wilcox County case as best you can remember?

A. I don't really recall the specific facts because that was long ago, and I haven't reviewed anything in preparation for my testimony today. But as I recall, that there was a mother and daughter, either one or both, worked in the clerk's office, and they were able to manipulate the process in order to defraud the

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voters.

Q. And do you recall whether that case resulted in a conviction?

A. As I recall, I think Doris Mason entered a plea of guilt to a misdemeanor offense of absentee or voter fraud.

Q. And, Mr. Biggs, the Greene County case, what were the facts of that as you can remember?

A. The Greene County case was investigated cooperatively with the U.S. Attorney's Office for the Northern District of Alabama. It was a joint effort between the Attorney General's office and the FBI and the U.S. Attorney's Office. That case involved months of investigation and prosecution. It also involved the absentee ballot process. The typical means of that case was they -- I'm going to call them fraudsters -- would gain control over either the application for absentee ballot and then forge a name to the application and put a central address or P.O. Box on the application to which the clerk would send the absentee voter materials to that P.O. Box. To those that went to that P.O. Box, several co-conspirator fraudsters would take the ballots, the blank information, put the voter's name, vote the vote that the fraudster wanted to vote, and then forge the names of the witnesses that purportedly witnessed the victim voter sign his name.

Q. And, Mr. Biggs, how did they gain control over the ballot materials themselves? Was there any way besides the P.O. Box?

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A. Yes. As I recall when you would apply for an absentee ballot, the clerk's office would publish your name on a bulletin board outside the clerk's office. The fraudsters were very well aware of that. They would see when that person applied for absentee ballot. Then they would follow the mailman, follow the mailman, and recognize from a distance that he's putting the absentee ballot materials in the mailbox.

They would go to the mailbox and steal the materials. Or if it got in the hands of the victim voter, they would persuade that voter to give them the information or manipulate the voter to think that he or she was voting by merely signing their name to the absentee envelope. A lot of people thought they were voting just by signing their names. They were unaware that there was a ballot inside the envelope. So again, there's several different ways to manipulate the system. Winston County was different than Greene County.

Q. And, Mr. Biggs, in Greene County, do you remember the identities of the conspirators in the scheme?

A. Somewhat. I think there was a county commissioner. And I know there was Gary Spencer, Frank Smith. I don't recall the rest of the names; I'm sorry. It's been a while.

Q. No worries.

THE COURT: Mr. Smith, you faded out briefly. Can you repeat that question, please.

MR. SMITH: I apologize, Your Honor. Yes.

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Q. Mr. Biggs, at least some of the individuals involved, did they work in the county government?

A. I believe so, yes.

Q. Mr. Biggs, did the witness signature requirement help you in your investigation in Greene County?

A. Yes. Yes, it did. It gives a person a lead or an investigator a lead as to whether or not it's a proper and lawful vote. The signature -- once there's allegations of voter fraud, then the investigation team will gather all the voted absentee ballots, examine the signatures. If it appears a signature might be suspicious comparing it with a driver's license, then we would actually go to the victim voter and say -- or ask, "Is this your signature?" And they would say yes or they would say no. If it's no, then it's a forged signature. So the signatures are one of the many leads or clues that you would use to help ferret out what was a legal vote or a stolen vote.

Q. And the double witness signature requirement, how would that provide a lead?

A. In examining all the hundreds of ballots that you would get after you collected all the counted absentee ballots, you would group -- you could possibly group those envelopes that had the same signatures of witnesses. So after looking at that all and comparing each ballot, you could possibly -- as we did in Greene County -- have a stack of absentee ballot envelopes with the same witnesses. Witness number one would be the same person.

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Witness number two would be the same person.

So again, that's another lead that you would use that take those because it's suspicious in nature to have the same witnesses witness that many voters. So again, we would take that information and then go to the victim voter and say, "Did you sign your name, and were these two people present when you signed your name?"

Q. And, Mr. Biggs, in your investigation, did you ever discover whether stolen absentee materials were completed in an assembly line-type process?

A. Yes, sir. That's what happened in Greene County. Once the fraudsters, the conspirators gained access to the blank absentee ballot materials, in that case, they met and there would be an assembly line. That is, they would pass the envelopes around. Somebody would be in charge of signing the victim voter's name, one would be a witness, the next one would be a next witness. So it was an assembly line process in order to complete the absentee ballots, and then those would be filed with the clerk's office or probate office to cast the votes, for which the victim voter has no idea.

Q. And, Mr. Biggs, to the best of your memory, what were the facts in the Hale County case?

A. The Hale County case involved a city election, involved a candidate by the name Aaron Evans. I believe he was either the -- on the city council and/or the chief of police. And in that case,

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again, the idea would be to gain access to the absentee ballot material. He used his position and influence to approach victim voters, convince them that if they would just sign their name on the envelope, that they had voted. Or in some instances, he would use his influence and power to threaten or coerce a victim voter to give up their absentee ballot material. We tried that case. And that case by the U.S. Attorney's office and the FBI. That case was collaboratively was done only by the State of Alabama and the Alabama Bureau of Investigation.

Q. And, Mr. Biggs, did the witness signature requirement help you investigate that case?

A. Of course, yes. Yes. And you would -- again, you would find the absentee ballot affidavit envelope. You would group those, and you would see that there was a lead or suspiciousness signatures, and then you would go and ask the victim voter, "Is this your signature? Did you vote? Did you know what you were doing when you were voting?" In some cases, people thought that by signing their name, that they were voting. And the fraudsters would not tell them that there was a ballot inside the envelope of which they could make their selections to vote for whoever they wanted to vote for. The signatures always gives a lead for the investigator to use to ferret out voter fraud.

Q. Mr. Biggs, based on your investigations, were the victim voters involved -- did they typically not understand the process of voting very well?

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A. Yes. I would have to say yes. They didn't understand the process. Either they were threatened and they thought that they'd have to give up their information, or they were schemed out of their absentee ballot convincing them that by signing their name that they had voted.

Q. Were they sometimes voters that did not read or write well?

A. Often. Often it was pitiful that they could not read or write, and they relied upon their trust of the fraudsters to be honest and up front with them, and sometimes they couldn't even sign their name. Sometimes they would just have to put a mark on their affidavit.

Q. Mr. Biggs, to the best of your memory, what were the facts of the Winston County case?

A. Winston County case was a little different. In that case, you had people that held offices. We had a district judge. We had the sheriff. We had the circuit clerk. Then we had maybe one more county official and a couple of bootleggers. And they had conspired in Winston County to obtain absentee ballots in a quid pro quo situation where the sheriff would go to the evidence room and seize illegal liquor -- because Winston County was a dry county. And the bootleggers would be the -- the bootleggers and the sheriff would be the ones approaching the victim voter, and, would you like to have a six-pack of beer. If you do, I'll give you a six-pack of beer, and you give me your absentee ballot information. All were convicted.

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Q. And, Mr. Biggs, did you said county officials were involved?

A. Yes.

Q. Did they ever use info from their position to execute the scheme in your experience?

A. Yes. I think -- I don't remember exactly in Winston County, but I'm sure they used their -- well, I'll take that back. I do recall a video that the FBI -- the FBI helped on that case. Well, one of the bootleggers became an informant, and we put a camera on the bootlegger's house, and the sheriff drove up in his black and white, in his unit, and backed it up to the door of the bootlegger and started unloading the illegal liquor that the bootlegger was going to use to exchange for votes.

Q. And, Mr. Biggs, did the witness signature requirement help you investigate in Winston County?

A. Yes. Again, we would take the materials, and we would approach the victim voter -- because we had the bootlegger was cooperating. So we would -- we would know or have some idea who the victim voters were, and we would go to the victim voters and say, "did you exchange or did you get beer or liquor for your vote?" And they would say yes. "Is this your signature? No, I never signed anything."

Q. And, Mr. Biggs, backing up a little bit, I asked you a moment ago about information that those elected officials used to further their scheme?

A. Uh-huh.

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Q. Did you see that in any of the other instances where you prosecuted voter fraud?

A. Maybe in Wilcox County. She used some information. I don't remember. I do remember one case in Jefferson County where we indicted the sheriff and his attorney where they had in order to further their civil election contests unlawfully used NCIC. So if they have access -- I guess the point I'm trying to make is if public officials have access to information, they typically, if they are a fraudster, can and will use that information.

Q. The Jefferson County case, that wasn't a case of absentee fraud, was it?

A. Not as I've been testifying. It was using the NCIC to get information to determine who might be a convicted felon or not a convicted felon.

Q. And, Mr. Biggs, in your experience as a whole, have you seen fraud in both the application for absentee ballots as well as with the ballot itself?

A. Yes.

Q. And, Mr. Biggs, are you familiar with the antifraud measures that accompany the ballot itself?

MR. ROSBOROUGH: I'm going to object there based on vagueness. We're not clear what time period the question refers to.

THE COURT: That's fair. Mr. Smith, you're talking about

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while he was prosecuting election cases for the state?

MR. SMITH: Yes, Your Honor.

THE COURT: Okay. Mr. Biggs, you may answer.

THE WITNESS: Yes. Could you restate the question, please.

MR. SMITH: Of course.

Q. Mr. Biggs, based on your experience in the '90s prosecuting voter fraud, are you familiar with the antifraud measures that accompanied the ballot itself?

A. Yes, sir, I am. Back then, yes.

Q. And was the double witness signature requirement the primary antifraud measure then that accompanied the absentee ballot itself?

A. Yes.

Q. And was it the primary tool that you used in your investigations to obtain a lead and investigate instances of absentee fraud?

A. Yes. The absentee affidavit can be signed by two witnesses or a notary. Most of the times where there's voter fraud, people did not use a notary -- the fraudsters would not use a notary. They would use the same or many witnesses to sign the fraudulent affidavit.

Q. And, Mr. Biggs, to the best of your memory as you recall, what were the race of the victim voters in your cases?

A. Did you say race?

Q. Yes, sir.

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A. Both black -- African-American and white.

Q. Mr. Biggs, what was the race of the candidates in the elections in these instances of voter fraud that you prosecuted?

A. African-American and white.

Q. And, Mr. Biggs, have you ever prosecuted someone on the basis of their race?

A. No, sir. Never.

MR. SMITH: Your Honor, may I have a moment just to consult with my colleagues?

THE COURT: You may, Mr. Smith.

(Pause.)

MR. SMITH: Mr. Biggs, thank you. Your Honor, I have no further questions.

THE WITNESS: You're welcome.

THE COURT: Thank you, Mr. Smith. Mr. Biggs, let me start with Mr. Rosborough. Are you ready, counselor?

MR. ROSBOROUGH: I am. Thank you, Your Honor.

THE COURT: Thank you.

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

A. I'm fine. How are you, sir?

Q. Doing well, thank you. Mr. Biggs, your last voter fraud prosecution closed about 20 years ago, correct?

A. Yes, sir.

Q. Okay. And during the period you worked on these issues, this was primarily in the mid to late '90s; is that right?

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A. Yes, sir.

Q. Okay. And I believe you testified at that time that the two witness or notary requirement was in place?

A. Yes, sir.

Q. Okay. And at that time, on the absentee ballot application, the last four digits of the individual's social security number or driver's license number was not requested on the absentee ballot application form; is that correct?

A. I think they only asked for address and date of birth but not social security.

Q. Okay. And do you understand that it's requested on the form now?

A. I think so, yes.

Q. Okay. And during that time period, the absentee ballot list, you testified was posted at the clerk's office which allowed people to know who the absentee ballots were going out to; is that right?

A. Yes, sir. Yes, sir, that's right.

Q. Okay. You understand that that's no longer the case; is that correct?

A. I don't know.

Q. Okay. Are you aware of whether that's -- you're not aware of whether that's the case anymore?

A. No, sir.

Q. And you also testified about problems where an absentee

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ballot was mailed to a central address but not an address of the voter who was trying to acquire the ballot; is that right?

A. Yes, sir.

Q. Okay. And that was because absentee ballots could be mailed to any address?

A. Yes.

Q. You understand that now, absentee ballots must be mailed to either the voter's residential or mailing address or handed directly to the voter?

A. I don't know.

Q. Okay.

MR. ROSBOROUGH: Eric, could you pull up Alabama code 17-11-5 A.

UNIDENTIFIED MALE SPEAKER: We don't have that link.

MR. ROSBOROUGH: Okay. We'll move on from that.

Q. Mr. Biggs, you talked about prosecutions primarily in four counties; is that right?

A. Yes, sir.

Q. Okay. And I want to get more into depth with some of these. But just generally, in Wilcox, the situation was that there was someone who worked in the clerk's office and her daughter who used that position to manipulate votes, correct?

A. I don't know if they manipulated votes. They did something incorrectly. I don't remember exactly what they did. I'm sorry.

Q. That's all right.

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MR. ROSBOROUGH: Eric, can you pull up Mr. Biggs's deposition and go to page 32, please. Okay.

Q. Mr. Biggs, you remember you were deposed in this case several weeks ago?

A. Yes, sir.

Q. Okay. And you swore to tell the truth and testified under oath at that time?

A. Yes, sir.

Q. Okay. Now, I'd like to direct you to line 13 on page 32, a question was asked, "Okay, well, I'd like first to go to"K -- I'm sorry. Let me reread that. "Okay. I'd like to first go to the accident you spoke about in Wilcox County."

A. Yes, sir.

Q. "How did this issue -- what were the the facts there?" Can you read your answer, just those first couple of lines of your answer there?

A. Answer, line 18, answer on paragraph 8, "I can't remember. I just can't remember specifics of that allegations. I know that Doris Mason worked in the clerk's office, and she and her daughter, I believe, used that ability to have access to materials to manipulate votes."

Q. Okay. Thank you.

MR. ROSBOROUGH: You can take that down, Eric.

Q. Now, in Winston County, the situation, right, was where the sheriff, district judge, and the circuit clerk were working with

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bootleggers to actually buy votes with liquor, and the voters were willingly selling their ballots; is that correct?

A. Yes, sir.

Q. Okay. And then in Hale County, the individual who was prosecuted was both a police officer and a city councilman and was using his position to deceive and threaten people; is that right?

A. Yes, sir.

Q. Okay. And then in Greene County, most of the individuals involved were also people in positions of power used those positions to gain access to information and to threaten and coerce and bribe voters; is that correct?

A. Some. Some.

Q. Okay. So most of the prosecutions you worked on involved people in power manipulating the process or the voter; is that right?

A. People in power and people who wanted those people to remain in power.

Q. Okay. In your view, regardless of any of the attempted safeguards like the two witness requirement or the current photo ID requirement, anyone in a position of control over the voter process has the ability to alter the outcome; is that right?

A. Just depends. Are you talking about back then or now?

Q. Well, let me just -- yeah. So regardless, really, you know, regardless of safeguards, whichever we're talking about, the two

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witness requirement, the photo ID requirement, regardless of any safeguards, anybody that's in a position of control over the voting process has the ability to alter the outcome, correct?

A. Well, there's different levels. The more safeguards, you have, the harder it is for the fraudster to steal the ballot. So the safeguards now, I would assume, are more strong than they were back in the '90s. But like with any other fraudster, they are creative, and they can use their minds to come up with all sorts of schemes to manipulate the system. So the more safeguards, the better.

Q. Okay.

MR. ROSBOROUGH: Eric, can you pull up Mr. Biggs's deposition at page 35, please. Okay. And actually, can you just scroll back one page to the bottom of page 34, first. Okay.

Q. Mr. Biggs, do you remember being asked about whether the type of incidents that you were discussing in the '90s could be carried out today?

A. Yes, I remember asking questions, yes -- answering questions.

Q. And this was during your deposition a few weeks ago I'm referring to, correct?

A. Uh-huh.

MR. ROSBOROUGH: Can you scroll to the next page, please, Eric.

Q. Mr. Biggs, can you read your answer at the top of page 35

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from your deposition?

A. Yes, sir.

Q. Thank you.

A. Line 1, answer, "Well, anyone that's in the position of control over the voting process have the ability to alter the outcome. They just have to have the right motive and the right opportunity and the desire and passion to try to change the election, change the outcome for whatever purpose. I think I can say that if you're given the opportunity and you want to, people in government, people in the post office, anyone is capable of stealing."

Q. Okay. Thank you.

MR. ROSBOROUGH: You can take that down, Eric.

Q. And, Mr. Biggs, Alabama's photo ID requirement likely does not help where voters are being manipulated, right?

A. I can't say that. I can't -- it could be another barrier, another safeguard that would keep the fraudsters from getting access to the ballot materials. If the person seeking his vote would use the voter ID, that might make another level of insulation between the ballot bandit as I call them, the fraudsters, and the person who's trying to cast their vote.

Q. Okay.

MR. ROSBOROUGH: Eric, can you pull pull up Mr. Biggs's declaration from the Greater Birmingham Ministries case, please, and go to paragraph 24.

Q. Now, Mr. Biggs, do you remember that you submitted a

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declaration sworn under penalty of perjury in the Greater Birmingham Ministries v. Merrill case?

A. Yes, sir, back in September of 2017.

Q. All right. And do you recall testifying that Alabama's photo ID requirement likely does not help where voters are being manipulated?

A. I'm trying to read in context what I said. I said that photo ID was a generally proactive way to protect the integrity. But based on my experience back then, Alabama's photo ID requirement likely does not help where voters are being manipulated. But it would slow down the instances of ballot brokers casting ballots without being involved with the votes.

MR. ROSBOROUGH: Thank you, Eric. You can take that down.

A. Thank you.

Q. And now -- okay. I just want to go back to one question I had earlier. I have the actual exhibit that I was talking about now. I think I had asked you about whether you're aware that contrary to when you were prosecuting voter fraud cases that the clerk now must mail the absentee ballot to the voter's residential or mailing address or hand directly to the voter. Do you recall that question?

A. Not really, no.

Q. Okay. Well, do you know the answer to that?

A. Ask the question again.

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Q. Sure. Are you aware that in contrast to when you were prosecuting voter fraud cases were absentee ballots were being sent directly to a central address and then manipulated, that now Alabama law requires that the ballots be mailed directly to the voter's residential dress or handed directly to the voter?

A. If there's a proper application, then I think you're right.

Q. Okay. And now, you mentioned, I believe, in your testimony on direct people who could not read or write well. Do you recall that? Having some trouble?

A. Yes, sir.

Q. And you'd agree that people with literacy struggles have more trouble with the absentee balloting process?

A. Especially when they're being manipulated, yes, sir.

Q. Okay. But and you're referring to voters with these literacy issues in Hale County; is that correct?

A. Yes, sir. I think it was the city of Greensboro election, yes.

Q. Okay. Was that the case in Greene County as well?

A. Yes, sir. Greene County too, yes.

Q. Okay. And what about in Wilcox County?

A. No. No, I don't remember any of that in Wilcox County.

Q. Okay. And Hale County is a majority black county in the Black Belt; is that correct?

A. I don't know.

Q. Okay. Well, we'll come back to that.

Now, Mr. Biggs, you mentioned that the sheriff and -- there

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was a reference to a prosecution in Bessemer in Jefferson County. Do you recall that?

A. Yes, sir. Yes, that was the one where the sheriff and the -- his counsel was the Republican Executive Chairman were indicted and later convicted of misuse of NCIC.

Q. Okay. And in that case, it was the sheriff and his attorney who illegally accessed the database on people convicted of felonies to argue that people had illegally voted; is that right?

A. That's right. Yes, sir.

Q. And they were unable to prove anything about illegal voting, and they were instead prosecuted by the federal government; is that correct?

A. I don't know if they got positive results from the use of the NCIC. I just knew and we all knew that the use of NCIC for a personal reason or a civil reason that's not related to law enforcement is illegal.

Q. Thank you.

Now, I'd like to turn to Wilcox County. Wilcox County is a majority county in the Black Belt, correct?

A. I know it's in the Black Belt, but I don't know what the demographics. I don't know.

Q. Okay.

MR. ROSBOROUGH: Eric, could you pull up State Defendants' exhibit 185, please. Okay. And then could you please go to the link that's provided by the Defendants there in 185 for census

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bureau statistics for Wilcox County. And can you scroll down to race and Hispanic origin. I'm sorry. Can you scroll to the top again. I think we're looking for -- sorry. For Wilcox County in particular. There we go. Perfect.

Q. Mr. Biggs, do you see where the census bureau indicates that Wilcox County is approximately 71.1 percent black with African-American alone?

A. Okay. That would be one, two, three, four... nine lines down?

Q. Yes. Yes.

A. Yes, sir. I see that now.

Q. Thank you. All right.

MR. ROSBOROUGH: Eric, you can take that down now.

Q. In the case you prosecuted there, it was situation where the defendant and one of her daughters used the position in the clerk's office to access materials to manipulate votes, right?

A. Yes.

Q. Okay. And so if a clerk tried to carry out this type of scheme today, they would be able to do so in spite of the voter protection, right?

A. I don't know.

Q. Okay.

MR. ROSBOROUGH: Eric, can you pull up Mr. Biggs's deposition, page 34, please. Okay.

Q. And, Mr. Biggs, we discussed your deposition a few weeks

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ago in this case, and you were asked on line 18, "So Ms. Mason and her daughter, if there were copycats in the clerk's office today, could this type of theft be carried out today?" And how did you answer that question?

A. I said, "Of course."

Q. Okay.

MR. ROSBOROUGH: You can pull that down, Eric. Thank you.

Q. Now, I'd like to talk about Greene County. Greene County is also a majority black county in the Black Belt, correct?

A. I'm going to assume that you're correct.

Q. Okay. And are you aware that Greene County was the first county in Alabama and one of the first in the nation where political power shifted to black residents after the Voting Rights Act of 1965?

A. I have no idea of that.

Q. One of the defendants in this case you prosecuted was spider. Do you recall that?

A. Yes. Spider.

Q. All right. And are you aware that earlier convictions around allegations of voter fraud against him were overturned and that the Eleventh Circuit noted a statement particularly by the Department of Justice that the investigations purported in the Black Belt were part of a quote new policy brought on by the arrogance of blacks in these counties?

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A. I have never heard that before.
Q. Okay.
MR. ROSBOROUGH: Eric, could you please pull up U.S. v. Gordon. Okay. And can you please scroll to the highlighted portion, please.
Q. And I'm going to read this for you. I'll represent to you that this is from an Eleventh Circuit opinion concerning Mr. Gordon. "Gordon presents one piece of direct evidence, a statement made by a Department of Justice spokesperson who allegedly explained to a college student that the investigations were part of a quote new policy brought on by the arrogance on the part of blacks in these counties unquote." Despite your prosecution of Mr. Gordon, you're not familiar with that history?
A. No, sir.
Q. Okay.
MR. ROSBOROUGH: You can take that down, Eric.
Q. And you testified that in that case, issues -- sorry. Let me step back. In your Greene County prosecutions that the issues that came to your attention there were due to a larger number of absentee ballots that were submitted than usual?
A. I believe so.
Q. Okay. And were you aware that many leaders in the black community there though this had organized a substantial Get Out The Vote campaign that year after witnessing attempts at voter suppression?

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A. I have no idea of that.
Q. Okay. And now in Greene County, the allegations was that the defendants gained access to the absentee ballots of a number of voters, correct?
A. I'm sorry. Ask it again.
Q. Sure. I'm sorry. I'll slow down a little there too.
A. Okay.
Q. Now, in Greene County, the allegation was that the defendants gained access to the absentee ballots of a number of voters, correct?
A. I'm sorry. It sounded like some children were talking over.
Q. Sorry. Not in the background here.
A. No, the last part of that question got --
Q. Sure. I heard that too. I heard that too. Let me ask it again.
Now, in Greene county, you had stated that the issue was that the defendants there had gained access to the absentee ballots of a number of voters, correct?
THE COURT: Karen, can you mute the person with the last name Ang, A-N-G. It should be okay going forward. Go ahead with the question and answer please.
THE WITNESS: I'm sorry, Your Honor. I think the answer is yes because I think you're saying that the collection of absentee ballots were used to manipulate the system . Is that what you're asking me?
Q. (BY MR. ROSBOROUGH:) Close to that, yeah. Let me just just

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repeat it so we're for the record.
A. Sorry you're repeating it four times.
Q. It's not your fault. That's not a problem it happens. In Greene County, the issue that you had described was that the defendants there had gained access to the absentee ballots of a number of voters; is that correct?
A. That's correct.
Q. Okay. And they did that in a couple of ways, right? In some cases, an individual had actually applied to vote absentee, but the defendants or their agents would reference a list that was posted in the clerk's office of the absentee ballots that were going out, and then they would follow the postal worker and steal ballots out of the mailbox?
A. Yes, sir. That's -- if my memory is correct, that's what happened.
Q. Okay. And then in other cases, they used the information form to track down the absentee voter, and using their positions of power, they either made threats or attempted to bribe the voter to give up their ballots; is that right?
A. Yes, sir, I believe so.
Q. Okay. And you believe that despite the photo ID requirement in place now and the two witness notary requirement that was in place then and is still in place, that same scheme could happen today, correct?
A. If you're talking about possibilities, yes, based upon the

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enthusiasm of the fraudster and all the different schemes that could come up. But more levels of protection, the better.
Q. Okay.
MR. ROSBOROUGH: Eric, can you pull up Mr. Biggs's deposition at page 44 to 45, please. Okay. Thank you very much.
Q. Now, Mr. Biggs, do you recall that you were asked regarding the scheme that happened in Greene County if it could happen today?
A. Yes, sir.
Q. Okay. And could you read your answer to that?
A. "Of course."
Q. Okay. All right.
MR. ROSBORUGH: You can take that down.
Q. Now, in Greene County, you also believed that it was easy for the people involved in the scheme to provide two witnesses for the forged ballots, correct?
A. Was easy?
Q. Yes.
A. Okay. They had people that were there to act in the role as the witness -- for the witnesses. Yeah, I guess it was easy.
Q. Okay. And because this was an abuse of people in positions of power, including the photo ID requirement with the absentee application wouldn't have made much of a difference, right?
A. No. It could have made a big difference.
Q. Okay.

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MR. ROSBOROUGH: Can you pull you up, Eric, Mr. Biggs's declaration in the Greater Birmingham Ministries case in paragraph 24, please. Okay.

Q. Mr. Biggs, you recall testifying in that case, the Greater Birmingham Ministries case under oath by way of declaration?

A. Yes, sir.

Q. Okay.

A. Yes, sir.

Q. And do you recall saying that Alabama's photo ID requirement likely does not help where voters are being manipulated?

A. Yes, sir. But I finished it by saying it would slow down the instances of ballot brokers casting ballots without the involvement of the voter. Again, it's just another layer of protection.

Q. Thank you, Mr. Biggs.

MR. ROSBOROUGH: You can bring that down, Eric.

Q. Now, Mr. Spider Gordon in pleading guilty admitted that he had asked a person who lived outside of Greene County to fill out an absentee ballot and list a Greene County address. Is that your recollection?

A. I don't remember that. He probably did.

Q. All right. But you're aware today that the absentee election manager must check to ensure that the voter is on the county's registered voter list?

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A. I don't know that.

Q. Okay.

MR. ROSBOROUGH: Eric, could you pull up Alabama code 17-11-5 A, please. Okay.

Q. And can you read the first sentence there, please.

A. Under paragraph A?

Q. Yes, sir.

A. " Upon receipt of an application for an absentee ballot as provided in section 17-11-3, if the applicant's name appears on the list of qualified voters produced from the state voter registration list in the election to be held or if the voter makes an affidavit for a challenged vote or provisional ballot, the absentee election manager shall furnish the absentee ballot to the applicant by" -- you want me to continue?

Q. Well, actually, yeah, let me pose another question to you there. You recall we were talking about now the different method by which absentee ballots must be provided to applicants as compared to when you were prosecuting cases, correct?

A. I believe so, yes, sir.

Q. Okay. So can you go ahead and continue reading there, please?

A. Okay. "(1, forwarding it by United States mail to the applicant's or resident voter's address or upon written request of the voter to the address where the voter regularly receives mail or, 2, by handing the absentee ballot to the voter in person or, in

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the case of emergency voting, his or her designee in person."

Q. Okay. And you also are aware that if the absentee election manager now has reasonable cause to believe that the applicant has given a fraudulent address on the application ballot that the absentee election manager must turn over the ballot to the district attorney?

A. That's what I'm reading.

Q. Okay.

MR. ROSBOROUGH: You can pull that down. Thank you, Eric.

Q. Now, I believe you also testified that Mr. Darius Spencer was one of the defendants you prosecuted?

A. As I remember, yes, sir.

Q. Okay. Are you aware that he later received a pardon?

A. No, sir.

Q. Okay. I'd like to move on to Hale County. I believe that was one of the other counties you testified about.

A. Yes, sir.

Q. All right. Are you aware that Hale County is a majority black county in the Black Belt?

A. I know it's in the Black Belt and probably -- you're probably correct.

Q. Okay. And in Hale County, it was just one individual, Aaron Evans, who is prosecuted, correct?

A. Yes, sir.

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Q. Okay. And you testified that Mr. Evans was both either the chief or a police officer and also a city councilman; is that correct?

A. Yes, sir.

Q. Okay. And Mr. Evans used his positions of power to gather absentee ballots, correct?

A. Yes, sir.

Q. And in some cases, he threatened to throw people in jail if they didn't turn over ballots?

A. Yes, sir. I remember one particular victim voter that he threatened.

Q. Okay. And for other voters, he used his position as a police officer to manipulate them to turning over their ballots?

A. I believe so, yes, sir.

Q. Okay. And so because this was an abuse of a position of power, you know, including a photo ID requirement with the absentee application wouldn't have made much of a difference, right?

A. Yes, you're right. If the victim voter had used their ID to get the absentee ballot material, they still could be threatened by the chief of police or someone in authority bodily harm or arrest if they don't turn over their information.

Q. Thank you, sir. And the witness requirement didn't provide any extra protections in that case, did it?

A. Okay. Well, are you talking about the particular absentee

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ballots that were obtained by Mr. Evans as a result of duress or coercion?

Q. Yes, sir. Specifically as to the case involving Mr. Evans?

A. Okay, yeah, it could. Because if he manipulated the victim voter to give up the absentee materials, that absentee ballot had to be completed. So it had to be signed by someone, and it had to be witnessed by someone.

Q. Okay.

A. So if they are manipulated out of their information. Or if they're manipulated to believe that just by signing their name that they're voting, it still has to be signed by witnesses or a notary.

Q. Okay.

A. That's the end of the scheme.

Q. Got it.

MR. ROSBOROUGH: Eric, could you pull up Mr. Biggs's deposition at pages 69 to 70, please. Okay.

Q. I direct you to line 16 of page 69. Do you recall Mr. Biggs, during your deposition in this case, you were asked, "So did the witness requirement provide any extra protections in this case?" And do you see where I asked that?

A. Yes, sir.

Q. Okay. And could you read your answer from your deposition, please?

A. Line 18. Answer, "Well, it should have, but it didn't because

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they gained access to affidavit envelopes, and then they were witnessed by people who really didn't witness the voter's signature. There should have been another layer of security, but it wasn't. It was misused by the fraudster who wanted" -- and I can't see the page.

MR. ROSBOROUGH: Yes, could you zoom in there, Eric. Perfect. Thank you.

A. "Who wanted to -- I guess do whatever -- to take whatever the system was at the time and then manipulate it so that he could steal the vote. Looking now at the present applications, it's really nice to see all the different layers of protection that comes that will try to defeat any would-be fraudster from stealing votes."

Q. Okay.

MR. ROSBOROUGH: You can pull that down. Thank you, Eric.

Q. Now, finally, Mr. Biggs, you discussed Winston County, correct, your prosecution there?

A. Yes, sir.

Q. All right. And so Winston County, the issue there was the county district judge, the sheriff, and then the circuit clerk conspiring with bootleggers to bribe people to give up their ballot, right?

A. Yes, sir.

Q. So the voters there in that case were willingly selling their

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votes for liquor; is that correct?

A. That was the scheme, yes.

Q. Okay. And despite the photo ID and two witness requirements, the same scheme could happen today, correct?

A. It could happen. The scheme could happen, yes.

Q. Okay.

A. But you have those extra safeguards that you would use to -- if you had to investigate it later, you could determine if in fact they were forgeries or if there really was witnesses or were witnesses, I'm sorry.

Q. But despite the requirements in place now, that same scheme could take place, correct?

A. Yes. There are always sheriffs that want to -- well, I don't know. Yeah. In a dry county, yeah, I guess bootleggers can get with sheriffs and do whatever.

MR. ROSBOROUGH: Your Honor, if I could just have one second.

THE COURT: You may.

MR. ROSBOROUGH: Thank you, Your Honor. Mr. Biggs, thank you very much. Your Honor, I have no further questions of Mr. Biggs at this time.

THE COURT: Thank you. Mr. Webb?

MR. WEBB: Yes, Your Honor.

Q. Mr. Biggs, what was the race of the victim voters in Wilcox County?

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A. African-American.

Q. What was the race of the perpetrators or fraudsters in Wilcox County?

A. African-American.

Q. What was the race of the victor and the loser in the elections in Wilcox County?

A. African-American.

Q. Would the same be true in -- for all of these for the victim voters, fraudsters, victor and loser of the elections in Hale County, city of Greensboro, and Greene County?

A. Yes, sir. But I want to change my answer on the victim voter. The victim voter whose actually vote was stolen through the use of the absentee ballot process, they were a victim witness. The other victims in the county are the legitimate voters who had their votes diluted by all the fraudulent votes. So they're actually victims as well, as well as the candidates who rely upon a good and fair election. And those victims are the candidates in that county. And if you start tallying up the votes throughout the state, then there's statewide victims who are wanting fair elections. So the actual people on the ground in those counties who actually were victimized were the victim voters who were African-American. But the victims of this crime is broader than just that race. It's the candidates and the other voters who were trying to cast votes for a fair election.

Q. Mr. Biggs, what was the race of the victim voters in Winston

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County?

A. All white.

Q. And how about the race of the perpetrators or fraudsters?

A. All white.

Q. How about the victors and losers of the elections within Winston County?

A. I think they were all white Republicans.

MR. WEBB: No further questions.

THE COURT: Thank you, Mr. Webb. Mr. Engelhardt?

Q. Good morning, Mr. Biggs.

A. Good morning.

THE COURT: We lost you. Mr. Engelhardt, try again, please. The hotspot may be failing you.

MR. ENGELHARDT: All right. Thank you, Your Honor.

Q. Mr. Biggs, in your experience prosecuting election fraud cases, would the photo ID requirement have been a tool that was useful to you?

A. Yes. In the investigation of the scheme, that would be one of the first things that we would ask the clerk's office or the absentee ballot manager or anybody in the process from the voter to the people handling the ballots, yes.

Q. And the same question as regards to the two witnesses or notary requirement. Would that have been a useful tool for you in prosecuting cases of election fraud?

A. It was.

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MR. ROSBOROUGH: Objection. Asked and answered.

MR. ENGELHARDT: Those are the only questions I have. Thank you for your time, Mr. Biggs.

THE COURT: Thank you, Mr. Engelhardt.

Mr. Smith, redirect?

MR. SMITH: Yes, Your Honor. Briefly.

Q. Mr. Biggs, do you recall Mr. Rosborough putting up the United States v. Gordon case from 1987?

A. Yes, sir.

Q. Were you a prosecutor in that case?

A. No. I've never read that case.

Q. And, Mr. Biggs, in the Greene County case, was there a selective prosecution defense raised in that case?

A. It was.

Q. And how did the district court act on that defense?

A. He denied that there were selective prosecution that went on in that case.

Q. And was that appealed?

A. I think so.

Q. Do you recall how the Eleventh Circuit acted on that?

A. I think they affirmed it.

Q. Mr. Biggs, do you recall being shown some Alabama statutes?

A. Yes, sir.

Q. Would you know whether those are the most up-to-date

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versions of those statutes or not?

A. No. I'm not familiar -- I just read it on the screen. So I don't know.

Q. Thank you, Mr. Biggs. Mr. Biggs, how much protection against fraud do you think we would get from a request for a driver's license number if there are government officials involved in the fraud who may have access to that information?

MR. ROSBOROUGH: I'm going to object here, Your Honor. Mr. Biggs is tendered as a fact witness, not an expert. He's already testified about his experience in the '90s, and this goes beyond that.

THE COURT: Okay. I'll sustain the objection.

Q. (BY MR. SMITH:) Mr. Biggs, even if a witness signature requirement would not stop all instances of voter fraud, did it help you detect, investigate, and prosecute voter fraud?

A. Yes, very much so. Yes, sir.

MR. SMITH: One moment, please, Your Honor.

THE COURT: Okay.

(Pause.)

Q. (BY MR. SMITH:) Mr. Biggs, in the cases you have prosecuted, did some of those involve government officials who may in fact have had access to driver's license information?

MR. ROSBOROUGH: Objection. Leading.

THE COURT: I'll allow it.

THE WITNESS: It's possible.

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MR. SMITH: Thank you, Mr. Biggs. No further questions, Your Honor.

THE COURT: Recross?

MR. ROSBOROUGH: Just one question, Your Honor.

Q. Mr. Biggs, you were asked about the selective prosecution defense in Greene County. Do you recall that?

A. Yes, sir.

Q. Do you also recall that the court found sufficient evidence, I believe the Eleventh Circuit found sufficient evidence on that defense to hold -- require multiday hearings as to whether there was selective prosecution involved?

A. I don't remember any of that. I just remember I had to testify as a prosecutor.

MR. ROSBOROUGH: Thank you very much. No further questions for me, Your Honor.

THE COURT: Mr. Webb?

MR. WEBB: No further questions, Your Honor.

THE COURT: Thank you. Mr. Engelhardt?

MR. ENGELHARDT: No further questions.

THE COURT: Thank you. Mr. Biggs, you are a free go, sir. Have a good afternoon. Enjoy the rest of the day.

(Witness excused.)

THE COURT: All right. Let's take -- well, let's take a short break. I will come back at 10:30 to get an update on Mr. Speegle and company, and then we will make the call as to what we do for

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the rest of the day at that point. Thanks, everyone.

(Recess.)

THE COURT: What's the latest on the folks affected by the storm?

MR. ENGELHARDT: Absolutely, Your Honor. We have been in touch with counsel for Judge Davis. And Jennifer says she is on her way downtown. She's going to come here to my office and try to piggy back on my hot spot. Worse comes to worse, we'll share a camera. But she says if she has about 30 minutes, they can be ready to continue.

THE COURT: Okay. Have you made contact with Mr. Speegle? Is he okay with us going forward with Ms. Holifield?

MR. ENGELHARDT: He's on the same chain. I haven't seen a response from him yet, and I sent him a text. And we've tried to call him too. But, I mean, they're in the same firm. I can't imagine he has an issue with his partner doing it. But I'll be glad to call him again.

THE COURT: Well, let's stop and wait. You said it will take Ms. Holifield about 30 minutes to get to your office? We'll reconvene --

MR. ENGELHARDT: I think she said that about five minutes ago. I'm going to guess she's enroute.

THE COURT: Okay. Let's reconvene at the top of the hour. Ms. Woodall, I'm assuming you're my next witness, ma'am. Good morning. Sorry to make you wait.

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MS. WOODALL: Good morning.

THE COURT: But we will reconvene in 30 minutes, top of the hour to be exact, and then we will start at that point. Thanks, everyone.

MR. ENGELHARDT: Thank you.

(Recess.)

THE COURT: Mr. Engelhardt, is Ms. Holfield with you?

MR. ENGELHARDT: She is. She actually has got a hot spot of her own. She needs to get let in. Just as I said that, she is in. And also I just talked to Mr. Speegle, and Mr. Speegle is on his way as well. So he'll be here in an a little bit. But for now, we're good to go. Jennifer is here.

THE COURT: Thank you very much.

Ms. Holifield, good morning.

Ms. Woodall, would you please raise your right hand so you can be sworn in.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Carla Woodall.

THE COURT: Can you spell it.

THE WITNESS: C-A-R-L-A, W-O-O-D-A-L-L.

THE COURTROOM DEPUTY: What city and state do you reside in, Ms. Woodall.

THE WITNESS: Dothan, Alabama.

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THE COURT: Mr. Weber, you may begin.

Q. Good morning, Ms. Woodall. Could you please describe your professional background for the Court?

A. Currently, I am the circuit clerk for Houston County. And prior to that, I served as a court reporter for ten years with the State of Alabama. And prior to that, I was a court reporter owning my own freelance firm for approximately five years.

Q. How long have you been the circuit clerk?

A. I was sworn in the first time in 2007. So continuously since January of 2007.

Q. Could you provide a brief overview of the duties of the circuit clerk?

A. We might be here a while. Essentially, we take all filings in every jurisdiction of courts involving district court, circuit court, juvenile court. All motions. We docket cases. We process all orders. We handle jury summons, warrants, subpoenas, exhibits, appeal transcripts, essentially everything that is filed in any case in the district, circuit, and juvenile courts.

Q. With regard to elections, what are the circuit clerk's duties?

A. As the circuit clerk, I have the option to serve as the absentee election manager for Houston County.

Q. And do you in fact serve in that rule?

A. I do.

Q. What are the duties of the absentee election manager?

A. As the absentee election manager, I accept applications for

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absentee ballots. I process and review those applications. I issue ballots. I receipt ballots. We notarize ballots. And then I secure those ballots until such time as they are turned over to the poll workers for counting on Election Day. And as circuit clerk, whether I serve as absentee election manager or not, I also serve on the canvassing board along with the probate judge and the sheriff.

Q. You mentioned poll workers who are involved in the absentee process.

THE COURT: Mr. Weber, we lost you briefly. Please try again.

Q. (BY MR. WEBER:) Ms. Woodall, you mentioned poll workers who assist in the absentee process. Tell us more about them. Who are they, and what do they do?

A. Well, poll workers are appointed by the canvassing board. They are residents and registered voters of the county. At a minimum, we have to have four at each precinct. So the canvassing board actually appoints the poll workers at each precinct. Are you asking for all precincts or just the absentee poll workers?

Q. Right now I'm specifically asking about the absentee poll workers.

A. The absentee poll workers, once I turn the ballots over to the poll workers, they review the affidavit for substantial compliance. And then at that point, they begin the process of

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opening up affidavit envelope, removing the secrecy envelope, separating the two, opening the secrecy envelope, taking the ballot out, and then actually placing the ballot into the machine for counting and tabulating.

Q. I'd like to ask you to break down that process a little bit. But first, what is your role in relation to the absentee poll workers? Do you train them?

A. I do the poll school for the absentee precinct poll workers.

Q. And in terms of actual counting of the absentee ballots, first of all, when does that start?

A. By law, the process can begin at noon on Election Day.

Q. And then can you walk me through sort of step by step how that counting is actually done?

A. The ballots are turned over in a secure environment. The poll workers prior to the process beginning, they have completed the poll school. They have also been sworn in as election officials. The -- there is a chief inspector as well as additional poll workers. Majority of that depends on the number of absentee ballots we have absolutely processed. But as I said previously, the minimum is four.

They review the affidavit to ensure that it has been completed, that it has the voter's signature, that the signature has either been notarized or has two witnesses. At that point, the affidavit envelope is opened, the secrecy envelope is taken out, and then that is passed to another individual who opens the

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secrecy envelope, takes out the ballot. That is passed down.

Once they start building a stack of ballots, they begin putting the ballots into the machine. If they complete the process prior to 7:00 p.m., then they just sit and wait. At 7:00, when the polls close, then they begin the process of closing down machine and tabulating the results. In other words, that's when they mash the button, the ticker tape starts coming out, and results are revealed.

Q. You mentioned that the absentee poll workers, as they are doing that counting, are looking to see if the envelope contains two witness signatures or a notary; is that correct?

A. Correct.

Q. What happens if the envelope does not contain either of those two signatures or a notary?

A. If the voter has not complied with Alabama law to obtain the notary and the two witnesses, the poll workers by law cannot open that ballot envelope and retrieve that ballot to place it in the machine, and it is therefore not counted.

Q. What role, if any, do you have as absentee election manager in screening those ballots for compliance with either having two witness signatures or a notary?

A. The actual screening of whether that is opened or not, as the absentee election manager, I have none. When voters come into the office and vote in person, then I as an election official can notarize their signature.

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Q. Very well. And we'll talk about the in-person process in just a little bit. I do want to back up. As absentee election manager, what role do you have in the application for absentee ballots?

A. I maintain applications in the office. Whenever anyone either comes in or calls the office, then I can supply them an application. The application I supply has to be the front and back of the application. So if I have to make copies if I run low, then I have to make sure I copy the back side as well. And then I -- I mail them out or provide them for absentee voters who request them.

Q. When a voter submits an absentee ballot application, what identification does the voter need to supply with that application?

A. Once they have completed the application, then they must also submit a valid photo ID with the application.

Q. And if the voter mails in that application to you, how is that photo ID supplied?

A. A copy of the photo ID is attached to the application.

Q. If the voter turns in that application at your office in person, how is the photo ID requirement handled?

A. They actually show an original. They -- typically it is a driver's license. Military ID. But a valid photo ID. The voter actually shows me in person the ID, and we review it to ensure that it is compliant, it is valid, meaning it's not expired, and that their photo is on their ID, and that that person is also standing in

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front of me.

Q. Are you aware in your role as absentee election manager of any exceptions to that photo ID requirement?

A. Yes. If a voter submits an application by mail and they mark the third reason on the application that they have such disabilities and they are over a certain age -- not or but and -- then the photo ID is not required. Additionally, the military, if they are voting due to service in the military, they are what's called a UOCAVA voter, and they do not have to supply an ID.

Q. Mr. Woodall, I think many people think of absentee balloting as something conducted over the mail. But you mentioned another option to do absentee balloting in person. What do you mean by that?

A. The absentee election manager's office is open to the public for anyone that has reasons to need to vote absentee that are in compliance with the application and the law. Then they can come into the office, apply for an absentee ballot. We process it with them standing right in front of us, and we supply them their ballot. They can vote their ballot, complete the affidavit envelope, seal it, and turn it right back in. Or if they choose, they can take it with them and return it by mail or bring it back in person. And we can notarize it for them, and then we maintain it in a secure area until such time as they are turned over to the poll workers.

Q. And so I do understand you to say that both the application

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for an absentee ballot and the actual voting itself can be done in one visit to your office if that voter desires?

A. Oh, definitely, yes.

Q. With regard to the November election, when could a voter conduct this in-person absentee balloting?

A. When?

Q. Yes.

A. I received my ballots September 9th. Prior to that, we were accepting applications for absentee voting after the primary runoff ended. And once -- they can do it now.

Q. What hours is your office open to do in-person absentee balloting?

A. The absentee election manager hours by law are the same hours as the circuit clerk's office. And my office is open Monday through Friday from 8 a.m. to 4:30 p.m. And our building is closed from 12:00 to 1:00 for lunch. Although I will say, if someone comes in and it comes up to 12:00, even though the office is closed, we remain open for them to be able to complete their ballot and finish their business and turn it back in. And generally the week of -- the last week that we can process applications, we normally just stay open because people are just revolving. So if we need to stay open during that time period, we are.

Q. As the circuit clerk and the absentee election manager in Houston County, do you participate in discussions, meetings, or

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other professional forums with your counterparts in the other counties throughout Alabama?

A. Yes, I do on a routine basis.

Q. And based on your knowledge from these events, is this option that you described for in-person absentee voting just an option in Houston County, or is it an option for other voters as well?

A. It is statewide.

Q. Now, you said people can take advantage of this option starting now or in fact last week. How long does that option exist leading up to Election Day?

A. The last day that you can apply for an application for an absentee ballot is five days prior to to the election. So for the current general election, that would be Thursday, October 29th. The purpose for that five days is to ensure that application -- ballots that are issued have time to get to the voters if it's by mail, and that they can vote them and time for the ballots to come in. That is for a regular absentee application.

We also ensure that as poll books or poll registers are printed on Fridays by the probate offices that are taken to the precincts, anyone that votes absentee after that Thursday, that their name is removed from that printed list that's used at the precinct. So that's the purpose of the five days. But if someone has an emergency that arises that they did not know about five days prior to the election, then they can vote emergency

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absentee.

Q. If someone comes into your office to vote absentee in person, what sort of safeguards or protective measures are in place to protect those voters from contracting coronavirus or COVID-19?

A. On the desk where you come to make application, we have plexiglas shields such that it protects both the voter as well as the worker. The workers have masks. We also have one pen per person, that if they need to have a writing instrument, we have clean pens. And then we have bins set to the side that after they use the pen, they put the pen in the bin, and those are sanitized nightly. They are sprayed down at the end of the business day, laid out to dry, and then replaced. They are replaced with workers who are wearing gloves as well.

We have sanitizing products on the tables. We have not only wet wipes to be able to sanitize, but we also have spray bottles and pop-up towels for people to pick which they prefer to use for sanitizing. We also clean the area in the morning, at lunch, and the close of business. We wipe down the tables, the chairs. We have waste baskets beside each voting area. The tables and chairs are six feet apart. The hallway, we have signage asking voters to please remain six feet apart.

Q. You said that in-person absentee voting began last week. Have you had people actually take advantage of that option yet?

A. As of 20 minutes ago, we had processed just shy of 1,000

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applications at this point. And probably I would say at this point, 60, 70 percent of those are mail in. The other 30 at this point are walk-ins. Experience has taught me the walk-ins are slow to walk in this early in the process. But give us another two weeks, and it will increase. And at that point, it will generally be about 50/50 of the applications that we receive.

Q. Perhaps it varies, but if the voter was to walk into your office, say this afternoon to vote in person, what sort of crowds could that voter expect?

A. Well, today, none because of Hurricane Sally. Although we have had some walk-in voters this morning. But as far as pre-Hurricane Sally or post-Hurricane Sally, we are experiencing -- I think the most we've had at any given time is five. And when I say five, that would be people standing at the entrance of the office to submit their application inclusive of those who are actually at tables to vote their ballot or complete their application. We have two very large rooms. One is our grand jury room set up for people to utilize as well as our jury assembly room for people to utilize to ensure the social distancing.

Q. If I was a voter in Houston County and I called up your office wanting to vote in person and asking for advice as to when a good time would be to come in when the place was not crowded, what sort of accommodations could you make for my request?

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A. Oh, we've already done that. What I find is that generally anytime after 8:30 is the best time. Because if people are coming into the building for court, and coming into the front entrance, it may be, you know, a little crowded. But we don't have jury trials ongoing at this point. So, you know, I tell people, you can sleep late if you want to, or you can get up and early bird catches the worm and come on. You know, at this point, it's -- as far as crowds go, it's not been an issue because things are so spread out.

Q. And again, in terms of your personal knowledge from participating in meetings or other professional forums with your counterparts, what personal knowledge do you have about protective measures that are being taken across the state by your counterparts?

A. On a daily basis, I have spoken with various absentee election managers throughout the state, and we have all shared ideas. And everyone is utilizing masks, shields, sanitizing products, pens, pretty much the same thing that I am doing as well as signs reminding and asking for social distancing.

Q. About this in-person absentee voting being an option for November, was this an option for the July 14th primary runoff as well?

A. Yes.

Q. Did you have anybody who contacted you specifically concerned about COVID-19 where this became an option for

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them?

A. Yes. I had several people to contact me concerned about whether to utilize mail or to come in, and I advised the process that we were putting in place. In fact, I had a woman, her son, and daughter-in-law. The son and daughter-in-law are both visually impaired, and they had been quarantining. And once I explained the processes that have been place, having offered to take the Automark machine to their home if they wanted to vote at their home, they said no, they felt comfortable to come to the courthouse, and they scheduled a date, time. And they came, and we had everything set up. And as the son left, he said that this was such an enjoyable experience, could he do it again for the general election. And they have actually already come in, and we've done the same process for them this election as well.

Q. The option for in-person absentee voting, to your knowledge, who is that available to for the November election?

A. Any registered voter.

Q. And can that in-person absentee voting in Houston County be done only in your office, or do you have the option to do that at other locations as well?

A. My office is the only approved office by the county commission at this point. So just -- my office is the only place in Houston County that voters can come. And that is what we advertise.

Q. Now, you also mentioned, I believe, that a voter could

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simply vote a ballot at home and then turn it in in person at your office; is that correct?

A. Correct.

Q. Have you had any occasions where you've made special accommodations for voters outside the four walls of your office, either delivering absentee ballot applications, or in picking up those ballots that they seek to deliver to you?

A. Most definitely. Every election since 2007 that I have served as absentee election manager, due to extenuating circumstances or hardships, significant hardships, then I have certainly accommodated those voters whether it be a centralized meeting sites if it was after hours. Or I have gone to their homes, many people's homes and assisted them and been able to perfect any matter that they had to ensure that their vote was counted and received.

Q. Do you have an example or two where you've made those special accommodations for voters?

A. A couple where, if a ballot was lost in the mail or they never received it or they spoiled their ballot and needed a replacement ballot, then I have taken affidavits for them to be able to complete that affidavit that either they didn't receive the ballot or there was an issue or problem with their ballot and taken a replacement ballot and actually stayed while they completed their ballot and was able to notarize it for them.

I have met people in their homes. I've gone to nursing

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homes when residents of a nursing care facility needed a ballot. I have met people on dirt roads in the county area when they were passing through town because they did not get their ballot in the mail, and I have helped them and given them a replacement ballot and made sure there was ample and sufficient documentation. I have met people behind the courthouse on a Sunday morning as they were coming through town, college students and not been able to get their ballot or they spoiled it.

I had watched many a TV shows sitting in people's homes while they completed the process. I have had many a mangy dog jump in my lap and lick and rub all over me while people completed the process. And I have had the enjoyment of being able to see a lot of the elderly who may not get a whole a lot of visits from people. And it's a thrill for them to be able to continue to be able to vote and me assist them. So, you know, it's actually a very rewarding part of my job when I encounter an issue, and I'm able to help them and make sure that their ballot is cast and counted.

Q. Are you aware -- is your office located in a building that is considered compliant with the Americans with Disabilities Act?

A. Yes, my office is.

Q. And despite that, have you accommodated voters who have physical disabilities in going outside your office to pick up ballots?

A. Yes. There's been multiple occasions. I had a gentleman

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whose daughter was a paraplegic, and he brought his daughter's ballot in. I explained I could not accept it because it had -- could only be accepted by the voter in person or by mail, and he explained his daughter was in the car. And I said, well, let me walk out there so you won't have to load her up. And I went out -- he took the ballot back out to her. I went out and met her. He gave the ballot to her, and then she handed it to me.

I've had husbands who've brought a spouse's ballot in, explained I can't accept it, and they said, well, they're out in the car. And I said, well, let me go meet them. And so they always take it back, and I walk outside, and the voter actually hands it to me.

Q. And so am I correct that the voter has to personally hand you that ballot?

A. Yes. I can only accept a ballot -- application or ballot by the voter in person or by mail. Mail can be either U.S. mail or a commercial carrier.

Q. And so in a situation like what you've described where you will go out to a parking lot or driveway, say, to meet a voter with a disability, that voter will hand you the ballot, and then you go inside. What do you do with that ballot then?

A. I then enter that the voter -- that I received the ballot. I notate how I received it, whether it was mail, electronic, or in person. Electronic being the UOCAVA overseas voters. And then I stamp it in at the date that I received it, and I secure it.

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Q. And why is that not a problem for you to take that ballot into your building, out of the line of sight of the voter, in an absentee balloting situation?

A. I'm sorry. You beeped out. Why is that a what?

Q. Why is that not a problem for you to take that ballot into your building, out of sight of the voter, in an absentee voting situation?

A. Because that ballot is sealed in a secrecy envelope and sealed in an affidavit envelope. And because the voter handed it to me in a sealed condition, I can then take it and log it in and secure it as it's sealed.

Q. Now, we've talked about your role as absentee election manager. In your role as circuit clerk, do you have personal knowledge as to protective measures that are being put in place for in-person voting in November in your county?

A. At the various precincts? The chief election officer, which is also our probate judge, has obtained face shields. He has obtained disposable styluses for voters to be able to use only once to sign into Poll Pads. Every precinct has sanitizing products. The Poll Pad, they actually after each voter uses it, the poll worker sanitizes it and wipes it down. Every precinct is handicapped accessible.

As serving on the canvassing board, the efforts that our probate judge makes for these precincts is communicated to myself and the sheriff. The sheriff also has deputies that rotate

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among the precincts to make sure that there is order and security. So there have been extra precautions taken to sanitize the area as well as setting tables up with social distancing.

Q. And despite these measures, if someone called you and expressed concern about voting in person due to fears from COVID-19, expressed concern that they didn't have a way to safely obtain witness signatures or a copy of a photo ID, what would you recommend to that voter?

A. Well, first, anyone that had an issue concerning voting, I would do everything I could to perfect them being able to complete the process. If they said they did not have a friend, a family member, or anyone that could witness their ballot, then I would make arrangements, and I would go to notarize it. If they did not want me in their presence, I would literally say, go to a window, and I would watch them through a window. That is the offer I have actually made to voters. So, you know, if there are extenuating circumstances that someone communicates to me as absentee election manager, I'm going to do everything I can to meet those circumstances.

Q. And have you actually had calls were people expressed fears about voting during the pandemic?

A. I've had a few. I've had probably more concern of the mail, people not wanting to utilize the mail. And I explain the processes that are in place. If something gets lost in the mail, we can correct that also. Once they determine that and realize that

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there are additional steps that we can reissue a ballot and spoil that first one and we keep a record of that, then they feel much better. And so they then make the decision.

But when I explain as far as in-person, all the avenues that we've taken to ensure that there is social distancing and sanitizing the area, then they come in, or they say, you know, what? I think I'm going to go ahead and just vote by mail as well. We even have tape available and glue sticks so people are not licking the envelopes or anything like that.

Q. And so have you had a situation where a voter called you with concerns about voting safely during the pandemic and you could not reach a solution that was satisfactory to that voter?

A. No. Not at all. I've had a son who contacted me on behalf of his father. The biggest concern was that he is bedridden and all of his mail is forwarded to his son in another county, who lives approximately two hours away. So I realized that any mail we sent was just going to keep getting forwarded and keep getting forwarded.

So I said I would go to -- just to call me back, and I would hand deliver an application to his father and bring it back to the office, process it, and hand deliver a ballot. If I'm ever going to go to someone's home or a nursing home or anything like that, I first ensure that they don't have a problem with me coming and that there are safety measures in place if I need to stay outside the door. I let them know that I do have not only a mask but a

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shield as well and gloves.

Q. You described a number of special accommodations that you have made for voters whether that be going to meet them, whether that be working through their individual circumstances, whether that be, you know, going to a driveway or a parking lot to meet them. Do you have personal knowledge as to whether you're unique in that regard among your colleagues across the state?

A. Circuit clerks have two conferences a year and many continuing education courses throughout the year. And one thing particularly every other year that is discussed frequently is absentee voting. And the circuit clerks who serve as absentee election managers all have stories just like mine where they make special efforts to ensure that any voter that contacts them who desires to absentee vote, that we accomplish that. That is our job.

MS. ROBSON: Objection, Your Honor. Hearsay.

THE COURT: It is. Not being offered the truth of the matter.

Q. (BY MR. WEBER:) Ms. Woodall, I'd like to turn to the issue of voter fraud. In your role as circuit clerk and the absentee election manager, have there been times when you have reported suspected voter fraud?

A. Yes.

Q. Let's start, you know, toward the beginning of your time. When did you first become aware of instances of what you

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suspected were voter fraud?

A. The first -- actually, the second election that I served as absentee election manager, wherein it was individuals running for --

THE COURT: Would you please repeat the answer.

THE WITNESS: The first election that I served as absentee election manager was a constitutional amendment. So my second election, which would have been the presidential preference in 2008 -- because we had four elections that election cycle. I started seeing red flags or suspicious activity as it relates to absentee voting. In that that was my first election, I wasn't -- I didn't have the experience to understand the gravity of what I was seeing.

But I knew something didn't look right when I was getting applications all in the same handwriting, albeit the signatures looked differently on each application. And then the same handwriting on the affidavit envelopes when they would come in. And I could line the applications up by street name and number, meaning next-door neighbor, next-door neighbor, next-door neighbor, all coming down various streets. Because I really didn't have anything to compare it to, I did not know if this was normal or not. Experience then later taught me it was not normal.

Q. What role, if any, did the witness signatures on those envelopes play in raising what you described as red flags in your mind?

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A. The applications all in the same handwriting -- when the ballots came in, the handwriting was the same on the affidavit envelope as what I had seen on the application. This continued for 2008 and 2010 and 2012 elections. It was the same individuals who were witnessing voters's affidavit envelopes. Even more so, it was the same purple pen that was being utilized by a specific individual witnessing. And it was all in various neighborhood -- same neighborhoods, same streets.

I reported it in 2010 to no success of it being investigated. And I reported it in 2012 as well to no success of it being investigated. And then in 2014, because we had had a municipal election wherein the same issues were brought to the attention of investigators by a candidate, I knew it had been investigated that election. And in 2014, when the issue started to arise in the primary, I confronted my district attorney and my sheriff. And at that point, there was enough probable cause for warrants to be issued, and arrests were made.

Q. And are you aware whether any legal action came about as a result of those arrests?

A. Yes. Convictions were obtained in Houston County for all four defendants that were arrested.

Q. Did you participate in that case?

A. I did. I participated in educating the investigators on the actual process, assisting to obtain questionnaires that investigators used as they went out to interview the various

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voters, as well as testified in the trials.

Q. Why did you report what you were seeing over the course of a few years?

A. Well, because it looked like criminal activity was taking place. And as a sworn election officer, that is my duty to report it.

Q. Did you have any knowledge at the time that you reported those instances or in 2014 when legal action actually came about as to whether the fraud that you saw, the suspected fraud, had any impact on the outcome of the municipal elections?

A. Yes. The absentees, as if -- the fraudulent absentees, had they not been counted, would have resulted in the candidate that was proclaimed the winner not having been certified as the winner had they not been counted.

Q. And you said that convictions resulted from your information and the investigations. Do you know what those convictions were for?

A. Absentee voter fraud. Multiple counts.

Q. And again, in terms of the witness signature requirement, can you explain for me what role, if any, that played in raising red flags in your mind that led you to report this information?

A. The witnesses were also signing as a witness on the application, and then the same witness was signing on the affidavit envelopes. The -- both witnesses were actually not present when the voter signed the affidavit envelope. Some

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voters did not actually sign the witness -- just witnessed that they did. But they were working in unison and together. But they were not actually present when it was signed.

Q. The convictions that resulted from that municipal election, did that end instances of suspected voter fraud that you observed?

A. Most definitely. In 2014, I had a candidate contact me regarding applications that were being worked and that the envelopes were addressed to the wrong absentee election manager and they already had postage, did not want to waste the postage. My suggestion was to put a label over the wrong absentee election manager's name and address and put mine on it. Two days later, I received approximately 30 applications and envelopes in the mail all with labels over the city municipal absentee election manager's name. So it confirmed with who I had given that advice to. At that point, I opened up those applications and saw that all of the same handwriting was the same, and it appeared to go door to door to door to various neighborhoods.

I knew that what had been experienced in the previous election years was starting up. I contacted my sheriff, my district attorney, and told them that there was enough evidence to make arrests. I had assisted in the investigation. And if they did not go make arrests, I would resign as absentee election manager. I would not be part of any more fraudulent activity in absentee

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voting, and I would not only resign. But I would publicly explain the reasons for my resignation. That afternoon they went and obtained warrants. The people were arrested. I no longer received the rest of the election cycle any applications in all the same handwriting in all the same purple pen.

Q. Apart from the convictions that arose from the Dothan municipal election, are you aware of any additional convictions that have resulted in Houston County for fraudulent use of absentee ballots?

A. Yes. A municipal election in Gordon, Alabama, wherein the mayor was declared the winner. He was charged and prosecuted and convicted of absentee voter fraud.

Q. What role did you play in reporting that information or in investigating that situation?

A. Various individuals were making complaints to the sheriff's department. The sheriff's department consulted with me regarding the complaints as it related to voter registration of individuals who did not actually live in Gordon. I explained that they needed to consult with the board of registrars.

We also reviewed the interview questions that had been used in the previous investigations. We found that we didn't need to update those questions. And then they used those interviews and went and investigated and discussed with the voters had they actually cast votes or not, and voters said they had not, and convictions were held -- or obtained against the

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mayor, Elbert Melton, where he was actually getting applications and ballots for individuals who did not they themselves apply for it. And he was actually the one that also notarized the affidavit.

Q. And so one of the issues in that case was not only fraud in the actual voting but fraud in the absentee ballot application process; is that correct?

A. Correct.

Q. And as -- in your role in assisting in the investigation, did you assist investigators in reviewing the photo ID copies that had been provided with those applications?

A. That was approximately two to three years ago. To specifically say I looked at the IDs and the applications and the ballots, I could not say that I did, because you have to have a court order to open that up and to look at it. And at that time, the law was such that the ID came with the ballot, not the application.

Q. Having been through a few instances of voter fraud in your county and having reported voter fraud, generally speaking, what have you observed in terms of the value that the witness signature requirement has for detecting possible voter fraud?

A. Most photo IDs -- wait. Ask that question again.

Q. Certainly. I'm asking about the witness signature requirement right now. What have you observed in terms of any value that has in helping you detect instances of possible voter fraud?

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A. The signature is extremely helpful, because you have the signature on the application whereby the voter is certifying that they're voting or they are asking for an absentee ballot and their name to be stricken from the rolls as having obtained a ballot. And then the signature on the affidavit envelope is significant and helpful to ensure that you've got two signatures, one on the application, one on the affidavit, that if there is suspicion or concern or complaints, that you have something to compare to. And that voter saying and affirming that they are the ones that cast their vote, not someone else's vote but their own vote.

Q. Same question for the photo ID requirement. What value does that have for you being able to detect instances of possible voter fraud?

A. The photo ID is extremely helpful to ensure that that voter is casting their own vote and not someone else's vote. It protects the integrity of the election and that I am issuing the ballot to who that person is. Unfortunately, we do have situations where people come in and think that they can get someone else's ballot. We have parents who come in and want their children's ballots who are off at college and off at school. We have spouses who come in and think that they can get their spouse's ballot.

But the law is that each person has one vote. And, you know, so having the photo ID ensures that it is that person's vote. And if it's done by mail, we maintain a copy of that person's ID so that if there is complaints or there are issues, then we are able to

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know who to go investigate and what that person's supposed to look like.

Q. I want to circle back for just a second. With regard to the 2016 Gordon municipal election, are you aware whether the voting fraud that you were involved in -- that you reported and helped investigate, did that have any outcome on the results of the election?

A. Mr. Melton stayed in office until the convictions were obtained. I do not remember the totals of that race and how close it was and if it would have made a difference or not. Not in the Gordon election. I do remember it was close enough to make a difference in the city of Dothan election.

Q. And what convictions are you aware of that resulted from the Gordon election?

A. Absentee voter fraud.

Q. And who was convicted?

A. Elbert Melton.

Q. Who is Mr. Melton?

A. He was the mayor of the town of Gordon.

Q. I want to turn to the issue of curbside voting. But I neglected to ask one question earlier when you described precautions that are in place for people who choose to vote absentee ballot in person in your office. Did you say that your office is located within the courthouse?

A. Yes. It is on the first floor of the courthouse. In fact, we

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used to have the absentee election manager's office on the fourth floor. So that we could maintain social distancing and make things easier and people not have to use stairs or the elevator, we have actually moved it down to the first floor.

Q. Does the courthouse have any requirements in place with regard to wearing of masks?

A. It is suggested and asked. But if a voter says, I don't want to wear one, then court security has been informed that they have to come -- they have to allow them to come in. They cannot stop them from coming to cast their vote. Now, if they're going to court, that may be a different story.

Q. Are all the personnel in your office wearing masks when they interact with the public?

A. Yes.

Q. Okay. Let's talk about curbside voting. And when I use that term, I'll define it loosely to mean the ability for an in-person voter on Election Day to cast a ballot without leaving his or her car. As so defined, has that process been used in Houston County during your time as circuit clerk?

A. No.

Q. Why not?

A. Not that I'm aware of.

Q. Why not?

A. Well, we have approximately 27 precincts. Taking ballots outside of a precinct without them being secure concerns the

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integrity of the election. The voter is the one that puts the ballot in the actual machine. The machines for weather purposes and security purposes are within the precinct. So as far as taking a Poll Pad, going out to cars, that has not been done to my knowledge. If anyone is not able to go into an actual precinct, then they have for 46, 56 days prior to the election the ability to do -- vote absentee whether it's by mail or in my offices. That's the purpose of absentee voting.

Q. And so if a voter -- so if on Election Day, a voter completed a ballot in his or her car, handed that ballot to a poll worker, and that poll worker walked the ballot inside the building and fed the ballot into a tabulation machine, would that raise concerns from your view?

A. It's a lot of liability on a poll worker, in my opinion, and I personally would not advise it unless they have a court security officer or a security officer with them and there were extenuating circumstances that that person didn't have the ability or able to absentee vote and something developed from the time of absentee voting or on Election Day that they physically couldn't go in and vote. But to just carte blanche open up curbside voting, the manpower, the security of the ballots, weather condition, the security of the machines, the security of the Poll Pads would all be very concerning from a practical and reality standpoint.

Q. You described earlier a situation where you on an absentee

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voting basis might meet a voter quote unquote curbside and take that voter's absentee ballot into your office. What distinction do you see between that situation and the situation I just described on Election Day with a poll worker taking the ballot out of the sight of a voter?

A. Because with absentee, you have the ability to seal those envelopes, and they have the voter's identifying information and signature on them, and then they are secured. You do not have electronic equipment going in and out of a building. With various -- on Election Day, you can't control the weather. Heaven forbid if today was Election Day and Hurricane Sally is coming through our state. So by having everything inside a building, you are protecting those ballots. You are protecting the equipment. You are protecting everything. Where absentee, it's all protected by being in those sealed envelopes. The machines are protected as well. And you only have one opportunity to do an election, and you want to make sure you do it right.

Q. You described a situation on Election Day where there might be some sort of emergency situation where a voter might want to vote curbside. If I as a Houston County voter had an emergency situation the day before the election, and I called your office saying, hey, I don't think I can go in to the polls for some reason, could you make some accommodation for me short of me voting curbside on Election Day?

A. Most definitely. Five days prior to an election is the

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deadline for a regular application. But then we have emergency applications. If someone has a medical condition that has arisen or if they have a business emergency that they did not know about and they're expected to be out of town or if they are a caregiver for a family member that has a medical situation, then they can come in, and they can do emergency voting on that Friday before the election as well as the Monday before election. And if someone calls me at home on Saturday or Sunday and they have an issue, I'll come open the office and let them vote on that day.

Q. Does Houston County have any difficulties obtaining a sufficient number of poll workers on Election Day?

A. We have had challenges and obstacles in obtaining poll workers. Majority of our poll workers are retired. They are older. They are elderly. With COVID, yes, there has been concern. We have done some poll worker recruitment through various senior citizen places. Jurors who come to serve as jury duty, we offer people to volunteer to sign up to be a poll worker.

So it's not something that you snap your fingers and have a plethora of poll workers at your disposal. We work very hard to keep poll workers updated. We always have to do extra poll worker training prior to every election because we either have new people or people just forget the process and the duties that they have. But we have several days of poll school prior to the election.

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So the biggest challenge is we may have people, an abundance of people wanting to serve as poll workers, but yet they don't live in that precinct where we need them. The State of Alabama allows us to have 12 roving poll workers. A poll worker must be a registered voter for the precinct that they are working. But you are allowed 12 roving. In other words, if I am a registered voter at the Dothan Civic Center but I am a roving poll worker, I can go to another precinct to work. But we can only have 12 of those.

Q. If curbside voting, as I've loosely defined it, is mandated for the November election, do you have any sense as to what issues that would create in terms of the number of poll workers required?

A. I would imagine we would have to greatly increase the number of poll workers, because many of our poll workers would not be such that they are mobile to go back and forth, back and forth in a building, outside, in a building, outside. They're fine to go in. They're fine to sit at tables and do their work. But I would imagine that we would have to have a lot of extra work, tents set up, extra chairs set up, extension cords, additional battery packs, all of that to try to implement curbside voting which essentially defeats the purpose of absentee voting.

Q. Have you studied issues such as traffic flow or additional purchases of, say, electronic poll books and tabulation machines and what might be necessary to implement curbside voting in

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that regard?

A. Have I studied?

Q. Yes, ma'am.

A. I have not studied. I have been in consultation with my probate judge as it relates to Poll Pads and the efforts for us to obtain them for Houston County, and they are extremely expensive. Houston County has been blessed to be able to purchase them for our pole workers, and we have them at each one of our precincts. But I can not say that for every county in the State of Alabama. Many still print out poll books, the written. And as a voter comes up, they are actually marked off by hand.

Q. We're talking today September 16th. Do you have any additional concerns in terms of implementing curbside voting for the November 3rd general election?

A. Very much so. The idea of curbside voting and getting the supplies, the training, the additional security just for traffic flow would be an absolute nightmare not only for my probate judge but for the sheriff as well as poll workers. Curbside voting -- if poll workers knew they could not sit outside in an air-conditioned building in south Alabama and sit outside possibly in the heat or the rain, they would not sign up, and they would forego serving as poll workers. They aren't paid enough.

Q. Do you have personal knowledge as to whether all polling locations in Houston County are ADA compliant?

A. Every one of our precincts are ADA compliant in Houston

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County. Most definitely.

MR. WEBER: For the benefit of the Court and fellow counsel, I'm now getting into my last section of questioning. It should be just a few more minutes.

Q. Ms. Woodall, if the witness requirement was no longer in place for the November election, if the Plaintiffs got relief as a result of this lawsuit with regard to the witness requirement, what problems would that create in preparing and administering the November election?

A. The witness requirement is especially protective of the integrity of the election as it relates to mail-in ballots. The in-person, they are in front of election officials. It's just like at the polls. You don't have to have that ballot before you enter it, witness or notarized.

But for those that are in the mail, it is an added security feature that that ballot belonged to that voter, and the two witnesses or the bonded notary is confirming that that's who that person is when they sign that affidavit and mail in or deliver their -- return their ballot. So to do away with that requirement essentially does away with the integrity of that ballot and protecting that ballot and protecting our election as a whole for all mail-in ballots.

Q. And, Ms. Woodall, I believe you said before that absentee ballots are already going out to voters for the November election; is that correct?

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A. Correct.

Q. Do those ballots state that those ballots have to have two witnesses or a notary when returned?

A. Yes. There's an instruction sheet that is in the ballot packet that instructs the voter exactly what to do and specifies the obtaining of a notary or two witnesses. And on the back side of the envelope, the affidavit envelope, the affidavit is preprinted, and below the signature of the voter, there are lines -- the left-hand side for the notary to be able to notarize, and the right-hand side has two places for the witnesses and their address.

Q. And am I correct that you are also receiving absentee ballot applications for the November election?

A. Correct.

Q. Those absentee ballot applications, do they inform voters that unless they meet an exemption, they must submit a copy of their photo ID; is that correct?

A. I missed the first part of that question.

Q. Certainly. Those absentee ballot applications, do they state that an applicant must submit a copy of a photo ID unless they meet an exemption?

A. Yes. The applications are printed in black and in red. And in the top of the application, as the voter begins the process, it has the language to include a valid photo ID.

Q. And so if relief was granted on the witness requirement, the

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photo requirement, or both, what work would your office need to do to correct information that voters have already received?

A. I would have to redo every application. Are you saying if the photo ID requirement was not required?

Q. Correct.

A. Then the beginning process, we would have to redo all of our applications. I know I have approximately at this point 4,000 applications preprinted with the return address up at the top. I have approximately 4,000 applications with a preprinted return address up at the top that we have purchased. Every application in my office as well as statewide as well as on the websites would have to be completely redone and that language removed.

Q. And, Ms. Woodall, are you aware of a preliminary injunction that the Court granted in this case in advance of the July 14th election?

A. I'm aware that one was issued. I have not personally read it.

Q. Are you generally aware that that granted relief on the photo ID and witness requirements?

A. For certain counties, yes.

Q. Did you personally -- were you personally contacted by any voters who expressed confusion as a result of that preliminary injunction?

A. Yes. I had a voter call very angry because he said he did not have to supply his ID anymore because law had changed and I should stay current on the law. And after a few choice words that

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he made that I would never repeat myself, I explained to him that while I appreciated him trying to stay current on the law, that law did not apply to Houston County, and that I was sworn to uphold the law as it relates to Houston County and he might want to go back and reread the article, and he did. And then he apologized and said, why are rules different for one county and not our county, and why are we changing -- why are we changing the rules in the middle of the football game. And I told him I didn't make the rules; I just had to abide by them.

MR. WEBER: Thank you. Your Honor, may I have just one moment?

THE COURT: You may.

(Pause.)

MR. WEBER: Thank you, Your Honor. I have no further questions.

THE COURT: Ms. Robson, I'm assuming your cross-exam will go for more than 30 minutes?

MS. ROBSON: You are correct, Your Honor.

THE COURT: Okay. Let's go ahead and break now for lunch. Ms. Woodall, I'll bring you back. Well, let me get an update from Mobile. Mr. Engelhardt, Ms. Holifield, one hour or more time or less time?

MR. ENGELHARDT: Regular time will be fine, Your Honor. Mr. Speegle has arrived. He's looking not much worse for wear. So I think we're good to go on whatever schedule the Court needs.

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THE COURT: Okay. We'll come back at just before 1:20, please. Does anyone need anything before we break? All right. See you folks back in an hour. Thanks, everyone. Lunch.

THE COURT: I think I have everyone back that I need to get started. Good afternoon everyone. Let's go on with the cross-examination, please.

MR. DAVIS: Your Honor, briefly if I may.

THE COURT: Mr. Davis.

MR. DAVIS: I just want to alert the parties that because of some reshuffling during the storm that we expect our next witness to be Margie Calhoun and then Quentin Kidd to follow. I believe that we may have suggested a slightly different order before possibly. But we expect at this point in time for Margie Calhoun to be our next witness after we complete Ms. Woodall's examination.

THE COURT: Thank you, Mr. Davis. Ms. Roboson, you may proceed with your cross-exam.

MS. ROBSON: Thank you, Your Honor.

Q. Good afternoon, Ms. Woodall.

A. Hi.

Q. Thank you for being here this afternoon. We appreciate it. I just want to clear up a couple things quickly beginning at your examination. Ms. Woodall, you were not retained by the state to serve as an expert witness in this case, correct?

A. Correct.

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Q. You didn't submit an expert disclosure in the case, right?
A. Correct.
Q. You didn't do an analysis or study of the efficacy of the witness requirement in preventing voter fraud?
A. Correct.
Q. You didn't submit an analysis or study of the efficacy of the photo ID requirement in preventing voter fraud?
A. Correct.
Q. Are you did not submit an analysis or study of the feasibility of offering curbside voting?
A. Correct.
Q. You did not submit an analysis or study of potential voter confusion if voters are told that they don't have to comply with the photo ID or witness requirement to vote absentee?
A. Correct.
Q. And you didn't conduct any analysis or study into voter fraud in the State of Alabama for this case?
A. Repeat that question one more time.
Q. Certainly. You didn't conduct any analysis or study into voter fraud in the State of Alabama for this case?
A. Correct.
Q. Okay. So you're here today testifying as a fact witness?
A. Correct.
Q. Okay. In the scope of your duties as an absentee election manager, it's your duty to remain alert for any signs of

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suspicious or fraudulent activity related to absentee voting, correct?
A. Correct.
Q. You take that responsibility seriously?
A. Very.
Q. Yeah. You spent hundreds of hours taking that responsibility seriously?
A. Hours upon days upon weeks upon years.
Q. So your role provides an extra level of security against voter fraud, right?
A. My role as an election official?
Q. Yes.
A. Yes. In doing my job.
Q. And you look for certain red flags in absentee voting activity that would raise suspicions of fraud; is that right?
A. I'll look for compliance. And if there is not compliance, that creates a red flag. I don't search out the red flags. But I look for compliance with the laws as it relates to absentee voter -- voting.
Q. Fair enough. And you noticed red flags in the 2008, 2010, 2012, and 2014 elections; is that right?
A. Correct.
Q. One of those red flags was that multiple ballot applications were mailed in identical envelopes; is that correct?
A. Correct.
Q. And how did you notice the envelopes were identical?

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A. All the same handwriting, all the same brand of envelope, all the same taping of the envelope, all the same color pen.
Q. Okay. So you compared the envelopes visually, right?
A. Correct.
Q. Okay. And you didn't need a photocopy of an ID to tell that you those envelopes looked identical?
A. Correct.
Q. And you didn't need the signatures of two witnesses on the affidavit envelope to tell you that those envelopes looked identical?
A. Correct.
Q. Another red flag is when absentee ballot applications are filled out in identical handwriting; is that right?
A. Correct.
Q. Okay. And again, in order to identify that red flag, you compared the ballot applications visually?
A. Correct.
Q. You don't need a photocopy of an ID to tell you that the handwriting filling out the ballot information looks identical?
A. Correct.
Q. And you don't need the signatures of the two witnesses on the affidavit envelope to tell you that the handwriting filling out the ballot applications looks identical?
A. Correct.
Q. Okay. Another red flag -- and you mentioned this a little bit

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ago is when the absentee ballot applications are filled out in the same pen; is that right?
A. Yes.
Q. Okay. And again, you noticed that it was filled out in the same pen by comparing the ballot applications visually; is that right?
A. That is correct.
Q. And again, you didn't need a photocopy of an ID to tell you that the same pen was used to fill out the applications, right?
A. That is correct.
Q. Another red flag is when multiple absentee ballot applications come from the same address; is that right?
A. An abundance, yes.
Q. And again, you noticed that the ballot applications are coming from the same address by comparing them; is that right?
A. That is correct.
Q. And again, you didn't need the signatures of two witnesses to tell you that the addresses were the same, right?
A. Correct.
Q. And you didn't need the photo ID to tell you that the addresses were the same?
A. Correct.
Q. Another red flag you noticed is when multiple ballot applications come from the same voters and streets in a pattern; is that right?

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A. Correct.
Q. And you picked up on that pattern by noticing over time that many of the suspicious absentee ballot applications came from the same streets and the same voters, right?
A. On the same day.
Q. On the same day. Okay. Is that correct?
A. Yes. The totality of that put together, yes. Not the single event. But the totality of everything when combined create the red flags.
Q. Very observant. Now, the photocopies of the photo IDs wouldn't have helped you to observe that pattern, right?
A. Correct.
Q. And you didn't need the signatures of two witnesses on the affidavit envelope to notice that pattern; is that right?
A. That is correct.
Q. Now, one of the other red flags that you mentioned is when multiple absentee ballots are witnessed by the same individuals?
A. Correct.
Q. Now, Alabama law does not set a cap on how many absentee ballots a person can witness, right?
A. Correct.
Q. So in of itself, it's not fraudulent for the same person to witness multiple absentee ballots, right?
A. Unless they're the candidate.
Q. Oh. Fair enough. A noncandidate. It's not fraudulent for

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them to witness multiple absentee ballots, right?
A. Correct.
Q. So in the instances of fraud you reported, there were other red flags that were suggesting fraud in addition to those witness signatures; is that right?
A. Correct.
Q. And in fact, speaking to the situation with Olivia Reynolds, Janice Heart, Lisa Coleman, and Daniel Reynolds, and just to provide a little bit background, that was one of the -- one of the instances of fraud that you noticed and reported was related to those individuals; is that right?
A. Correct. The city of Dothan municipal case.
Q. Okay. And in those cases, the fraudulent ballots that were submitted had two witness signatures on them; is that right?
A. They did have two witness signatures on them, yes.
Q. Okay. But even though those individuals had signed the witness affidavit, you were able to discover the fraud, right?
A. The investigators were able to discover the fraud and present that to a court.
Q. And with respect to that incident, those individuals were also able to comply with the photo ID requirement, right?
A. In those cases, I didn't accept the ID, so I could not testify to that.
Q. Okay. Were you aware that in those instances, the individuals who were convicted had been driving around

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neighborhoods in a van that had a photocopier that could be used to copy the voter's ID?
A. Yes.
Q. Okay. And one of the things that sticks in your head about that instance is that those fraudsters were actually keeping copies of the IDs on file?
A. That is the allegations, yes.
Q. Okay. Now, in the Gordon City incident that you testified about, you were told that there were complaints about voters who were registering to vote and signing addresses where they did not actually live; is that right?
A. Correct.
Q. Okay. Basically, a mass of people coming in to register to vote on a specific street at a specific location that turned out to be a candidate's home, right?
A. Correct.
Q. Okay. And in fact, there were more people than the house would hold registered there, right?
A. That is my understanding.
Q. And again, that didn't have anything to do with the photo ID requirement? You did not -- they were able to discover that those individuals were coming from the same house by visually comparing the addresses of each of these individuals registered in that house; is that right?
A. I can't testify to what the town of Gordon did or did not do,

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because I wasn't the one actually there. I can testify to the complaints regarding the another step --

THE COURT: Ms. Woodall, let me interject. It's not fault to you specifically. Internet connection. So can you please reanswer that question, please.

THE WITNESS: Yes, sir. If I understand the question correctly, it was in regards to the ID and the registration. Am I understanding the question correctly?
Q. (BY MS. ROBSON:) Yes. Let me put it differently. When that mass of people came in to register to vote, the red flag that was identified was that a mass of people were coming in registering to vote on a specific street at a specific location that was a candidate's home; is that right?
A. That is my understanding of the complaints made to the sheriff's department and that those people that were registering, the people who complained did not -- or had knowledge that the people did not live at that location. They actually lived outside of Gordon.
Q. Okay. Now, in your role as absentee election manager, you are aware that Alabama has laws to prevent fraud by absentee voting; is that right?
A. I'm aware -- yes, if you want to classify it as prevent. Protect the election.
Q. Right. And those laws carry serious penalties if you do in fact commit fraud; is that right?

A. Violate those laws, correct, there are consequences where it is a criminal offense.

Q. Returning to the first set of instances you mentioned regarding the 2010 and 2012 individuals who were committing fraud, those individuals were actually convicted of committing voter fraud; is that right?

A. No one was charged in 2010 and 2012.

Q. But when they were charged -- well, what year were they charged in, Ms. Woodall?

A. Those individuals were charged in 2014 based upon the activity with the City of Dothan municipal election. As it relates to the 2008, '10 and '12, where I was the absentee election manager, they were not charged. They did have connections with the election, but so did others.

Q. Okay. And those individuals, when they were charged, were convicted of crimes for engaging in electoral fraud; is that right?

A. Correct.

Q. And you were hopeful that those convictions would deter future fraud; is that right?

A. That's a fair assumption.

Q. Okay. And in your opinion, it did help to deter future fraud?

A. In 2014, the day that the arrests were made, we were in the middle of a primary election, and I no longer had applications that came in that raised red flags at all in 2014. I mean, immediately it stopped.

Q. Between the arrest of Cynthia Long, Olivia Reynolds, Lisa Coleman, and Janice Heart in 2014 and when you were deposed in 2017, you did not personal knowledge of voting irregularities in Houston County; is that right?

A. Go back. You said Cynthia Long. She was never arrested.

Q. My apologies. Between the arrests of Olivia Reynolds, Lisa Coleman, and Janice Heart in 2014 and when you were deposed in 2017, you did not have personal knowledge of voting irregularities in Houston County, right?

A. What do you mean by voting irregularities? Because I was aware that there were issues beginning in 2018 up until the time that they were arrested.

Q. Well, I asked between 2014, when they were arrested, and when you were deposed in 2017?

A. So after 2014, as serving as absentee election manager, I did not see the issues I had seen prior to the arrests up until whatever time you're talking about. Even to today's date, I have not seen issues that I saw prior to the arrests. Is that what you're asking?

Q. That is what I am asking.

A. I'm sorry.

Q. So that's okay. That's a great -- thank you.

Now, Ms. Woodall are you aware that the CDC has recommended offering alternative voting methods to minimize direct contact and reduce crowd size at polling locations where

available?

A. No. I have not specifically gone on the CDC's website to read anything as it relates. I'm aware of what they're relating of reduced crowd controls, not just as it relates to voting, but just living in general.

Q. Are you aware that one of the alternatives that the CDC that has recommended for consideration includes drive-up voting for eligible voters if allowed in the jurisdiction.

A. I'm not aware of that. I haven't read anything.

MS. ROBSON: Mr. Ang, could you pull up Exhibit P 450 for me very quickly. Let's pause on that, Mr. Ang. My apologies. Let me ask one question.

Q. MS. Woodall, are you aware that the CDC has also recommended considering curbside voting for sick voters?

A. I'm not aware that have.

MS. ROBSON: Mr. Ang, now could you bring up Exhibit P 450 for me, please. And could you turn to pages 11 to 12.

Q. And, Ms. Woodall, do you see there where it says where possible in your jurisdiction offer at alternative options for voters with symptoms, those who are sick or known COVID-1919 positive?

A. I see that.

MR. WEBER: Your Honor, I object based on relevance. The witness has testified that she has not reviewed this document.

THE COURT: She has testified and was not aware of that.

What is the question? Now that you have seen this -- now that you have shown her this document?

MS. ROBSON: Yes.

Q. Now, that I've shown you this document, Ms. Woodall, do you understand that the CDC has recommended among other things curbside voting for sick voters?

MR. WEBER: Your Honor, objection. Relevance. This witness does not need to confirm the CDC's recommendations.

THE COURT: That's true. Do you have any reason to doubt that the CDC has made recommendations related to voting? Ms. Woodall?

THE WITNESS: I'm sorry, Judge.

THE COURT: I'm sorry for not being clear. Do you have any reason to doubt that the CDC has made recommendations related to voting in the time of a pandemic?

THE WITNESS: No, sir, I have no reason to doubt the CDC.

THE COURT: Okay.

MS. ROBSON: Okay.

THE COURT: Let's move on, please. Thank you Ms. Woodall.

Q. (BY MS. ROBSON:) Ms. Woodall, for people who become sick or known COVID-19 positive within less than five days before Election Day, their only options would be to vote in person or to not vote; is that correct?

A. No, it is not.

Q. Okay. And that's because you've testified about the

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emergency voting requirements in Alabama?

A. Correct.

Q. Okay. And your testimony was that if someone becomes ill -- I'm sorry. Why don't you tell us again. What does the emergency voting requirement allow?

A. As it relates to a medical issue, then the voter can complete the application, have a physician, medical personnel to sign off that that is in fact the case, and they actually can appoint a designee to bring the application to me, and I can actually give the ballot to the designee, and they can take it to the voter, have the voter complete it, as well as return the voted ballot to me as the designee.

Q. Okay. And just to underscore a few things on what you just said. In order to qualify for the emergency absentee ballot, you have to be under the emergency treatment of a licensed physician; is that correct?

A. I don't know that you have to be under emergency treatment. You just have to be under treatment of a physician that signs off on it.

Q. Okay.

MS. ROBSON: Mr. Ang, could you pull up Alabama statute 17-11-3. And we're going to turn to subsection C.

Q. And, Ms. Woodall, do you see where it says in the statue, "Any registered elector who requires emergency treatment of a licensed physician within five days of an election may apply for

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an emergency absentee ballot for the election"?

A. Yes.

Q. And do you also see there where it says, "The attendant physician shall describe and certify the circumstances as constituting an emergency on a special form designed by the Secretary of State and provided by his or her office to local absentee election managers." Do you see that as well?

A. I do.

Q. So in order to vote absentee, you would both have to be under the emergency treatment of a licensed physician, and that physician would have to describe and certify the circumstances constituting the emergency; is that right?

A. Yes. I misunderstood. I thought you meant that it had to be like an emergency room doctor. What I meant was just any physician can sign off on it, and if they say that the illness or the medical reason is an emergency, then that's different. I misunderstood.

Q. Oh. Fair enough, Ms. Woodall. Are you aware that during the pandemic, Texas has been encouraging curbside voting not only for voters with special needs but also for voters who feel symptomatic or may have been exposed to COVID-19?

MR. WEBER: Objection. Relevance.

THE COURT: Overruled. If you're aware, yes or no.

THE WITNESS: I am not aware of anything happening in Texas. I'm only concerned and aware of Alabama. That is my

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responsibility.

Q. (BY MS. ROBSON:) Okay. And are you aware that during the pandemic, Ohio has required local boards of elections to offer curbside voting for any voter who is concerned about the risks of exposure to COVID-19 from in-person voting?

MR. ROSS: Same objection.

THE COURT: Overruled. Same answer, ma'am?

THE WITNESS: Same answer.

Q. (BY MS. ROBSON:) And are you aware that many other states also offer curbside voting on a regular basis?

MR. WEBER: Objection.

THE COURT: Overruled again. Ms. Woodall?

THE WITNESS: I am not aware of what other states offer or what they don't offer or what's in compliance with their laws or not.

Q. (BY MS. ROBSON:) Okay. Thank you, Ms. Woodall.

Do you recall giving an interview in June 2020 to wtby.com?

A. Yes.

Q. Okay.

A. I think that was -- I think in June for the primary. I don't remember if both -- if all the TV stations were here or not or if that was a singular interview.

Q. Okay. And do you recall this in that interview you promised to provide curbside assistance to accommodate special needs at the poll during the July 14th primary election?

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A. I don't recall specifically. But I can tell you I have done that as it relates to absentee. Which is a difference than at the polls.

Q. And you do that because it's important to you that all eligible voters are able to vote, right?

A. COVID or no COVID, if a voter contacts me and has issues or problems, I'm going to do everything in my power and within the law to assist them and help them make that vote.

Q. And as the absentee election manager, you're willing to accommodate special needs?

A. Yes.

Q. For the polls? Okay. And you have a busy office because not only are you an absentee election manager, you're also the circuit clerk; is that right?

A. That is correct.

Q. And I think you've testified before that you have one assistant to help you with your absentee election manager job?

A. Previous elections, correct.

Q. Okay. And how many do you have for this election? I'm sorry. For the July 14th election, how many assistants did you have?

A. For the July 14th, I had two individuals to assist. And for this election, I have four with the possibility as the workload mandates to bring in more if necessary.

Q. Now, you mentioned on direct testimony that all the polling places in Houston County are ADA compliant. Do you remember

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testifying to that?

A. I do, yes.

Q. And how do you know that?

A. Because my probate judge and sheriff and I as the canvassing board have discussed it.

Q. Okay. Have you personally measured the door widths?

A. No.

Q. Have you personally measured the slope of the ramps of the polling places?

A. No.

Q. Do you personally know that each ramp has handles on it?

A. No.

Q. Okay. Now, you testified a little earlier to voter confusion if there were changes in the requirements for absentee voting. Do you remember that?

A. I do.

Q. Okay. And do you remember that earlier this year, Secretary Merrill changed the requirements for absentee voting to lift the requirement that voters qualify under one of the already preexisting excuses? Do you remember that?

A. To make sure I understand your question, are you talking about the administrative rule wherein -- administrative order wherein Secretary Merrill issued that people could vote -- due to COVID reasons, select number 2 on the application that they had an infirmity that prevented them from going to the polls?

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Q. Correct.

A. I'm aware of that.

Q. Okay. And when that occurred, you didn't have to change the application for the absentee ballot, correct?

A. Correct.

Q. Okay. Instead, Secretary Merrill and others informed the public that they could simply check the second box that says, "I have a physical illness or infirmity which prevents my attendance at the polls ID required;" is that right?

A. That is correct.

Q. So if voters were told that they could check the third box on the application for absentee ballot, they would not have -- you would not have to change this form either, correct?

A. I disagree.

Q. And why is that?

A. Because the definition of an infirmity is quite broad. The things that are spelled out on item number 3 are quite specific.

Q. But in administering and issuing his administrative rule, what Secretary Merrill informed the public was that fear of COVID-19 would qualify as either a physical illness or an infirmity for the purposes of the absentee ballot for this election; is that right?

A. That is my understanding.

Q. Okay. And if the Court ordered your office to count all the unwitnessed absentee ballots, you wouldn't need to reprint the

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absentee ballot either; is that right?

A. If the Court ordered me as the absentee election manager to count the ballots? Not the poll workers?

Q. Oh, I'm sorry. If the Court ordered the poll workers or ordered that all the absentee ballots were to be counted, that would not require a change to the ballot either, correct?

A. To the ballot? Or the affidavit envelope?

Q. To the affidavit envelope. Thank you, Ms. Woodall. You're correct.

A. If it's not a requirement, then I don't see how we can continue to issue things for voters, require them to do it. I would -- I mean, it would need to be taken off so then you don't create confusion. Do they have to do it, or they don't have to do it?

Q. In the case of the application for the absentee ballot, it was sufficient -- or Secretary Merrill found it sufficient to simply tell voters that they could check that second box saying that they have a physical illness or infirmity in order to qualify for the application for the absentee ballot; is that right?

A. That is correct.

Q. Okay.

A. Their infirmities.

Q. Could Secretary Merrill similarly issue -- or the state similarly issue an instruction that it would not be necessary to submit witness signatures or a photo ID with an absentee ballot?

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MR. WEBER: Objection. That's outside the scope of this witness' testimony or knowledge.

MS. ROBSON: Your Honor, she testified as to whether voters would be confused.

THE COURT: I'll overrule the objection.

THE WITNESS: My experience has been that anything that we submit that goes into effect needs to be within the current law. So if we put that photo ID is required, it needs to be on the application. If all of a sudden the rules change or the laws change midstream, then we would need to remove that requirement.

Q. (BY MS. ROBOSON:) Ms. Woodall, you testified a little bit earlier about the possibility of voters coming into your office to vote; is that right?

A. Correct.

Q. And your office is located at 114 North Oat Street in Dothan, Alabama?

A. It is.

Q. Okay.

MS. ROBSON: Eric, could you pull up the map of Houston County county for us.

Q. Ms. Woodall, does that look accurate to you?

A. It does.

Q. Okay. Now, Crosby, Alabama is part of Houston County; is that right?

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A. Pardon?
Q. Crosby, Alabama is part of Houston County; is that right?
A. I'm not aware of where Crosby is. Is it a street? Is it a town? Is it a municipality.
Q. It is -- well, I believe it is a town within Houston County, Alabama. But let's move on to a different example. Are you familiar with Gordon?
A. I'm familiar with Gordon.
Q. Okay. And you've been to Gordon as a matter of fact, right?
A. I've been through Gordon.
Q. Okay. And are you aware it takes approximately 25 minutes to drive from Gordon to your office in Dothan?
A. I am.
Q. Okay. And are you familiar with Wicksburg, Alabama?
A. I am.
Q. Okay. And are you aware that it takes about 25 minutes to drive from Wicksburg to your office in Dothan?
A. I am not. I would have thought it would have been less than that.
Q. Okay.
A. 8:00 in the morning and school traffic and work traffic, it may take that long.
Q. Okay. How about Williams, Alabama? You're familiar with that?
A. Williams?

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Q. Yes.
A. I'm not familiar with Williams, Alabama.
Q. Let's move on to a different example. Are you familiar with Lucy, Alabama?
A. I am familiar with Lucy.
Q. And are you aware that it would take about 25 minutes to drive from Lucy to your -- excuse me -- 30 minutes to drive from Lucy to your office?
A. I would think it would be less than that.
Q. But around 35 -- 30 minutes?
A. I would think less than 30 minutes.
Q. Around 25 to 30 minutes?
A. It would depend on what time of day.
Q. Okay. Now, Ms. Woodall, not all electors in Houston County have cars, correct?
A. Correct.
Q. And do you know how many of the electors in your county don't have cars?
A. I do not.
Q. Ms. Woodall, the probate judge is in charge of operating in-person voting on Election Day; is that right?
A. He is the chief election official for the county.
Q. Okay. And your role as absentee election manager is specific to Houston County, Alabama; is that right?
A. That is correct.

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Q. So you can't speak to other counties's willingness to offer curbside voting; is that right?
A. I have personal knowledge what's been communicated to me.
Q. Okay. But you have no personal knowledge of another county's willingness to offer curbside voting; is that right?
A. I can speak to what another absentee election manager's willingness to offer curbside voting in their county. As for all 68 offices in the State of Alabama, I can not.
Q. Okay. One of the things that you -- oh. One of the things that you recommended in that article that we looked at was that if an elector wanted to seek curbside assistance at the polling place or at the polls, they should call ahead to request assistance. Do you remember that?
A. At the poll or at my office?
Q. Well, the article says at the poll.
A. Then they misquoted me.
Q. Okay. Well, then at your office?
A. I wouldn't be responsible for at the polls. But I would for my office. And they could call ahead to me.
Q. Okay. And if a voter called ahead to request curbside voting at the polling place, a poll worker wouldn't need to sit outside, right?
A. Well, first of all, the polling places don't have telephones.
Q. There's no telephone on site at any of the polling places?

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A. I can't speak to every one of them. But I know many of the polling sites, for example, Westgate Park, the poll -- the actual machines and process is in a very large gymnasium within the recreational park. Many of them are that way. There are at senior citizen centers. So designated lines for designated poll workers on a designated Election Day, they don't have them. So to call ahead, I don't know that that's feasible.
Q. But you're speaking to a designated line. Do those locations have telephones available?
A. I can't speak to all 27 precincts.
Q. Okay. But you also can't -- okay. That's fine. Ms. Woodall, the absentee voting list of people who request ballots is no longer posted in your office; is that correct?
A. The law does not require it to be posted anymore, correct. It is confidential until the day after the election.
Q. Now, you testified earlier about Houston County's struggle to identify poll workers. Do you remember that?
A. I do.
Q. And that's going to mean that some precincts could have longer lines on Election Day; is that right?
A. No, it does not.
Q. Why not?
A. Well, it may be a struggle to find them. It doesn't say that it's not going to happen. We are working extra hard to ensure that we have poll workers and adequate and sufficient and most

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likely an abundance of more than we're going to need to ensure that everyone's needs are met and that the lines are not long.

Q. Okay. Do you currently have adequate numbers of poll workers signed up to work at your polls to assure that?

A. I have not looked at the polling list. I have been in communication with the elections specialist who secures poll workers who has actually communicated to me that we are having the people volunteer to work the polls.

Q. And have you currently signed up a sufficient number of poll workers to ensure that there will not be longer lines on Election Day?

A. We are still in the process of signing them up. The deadline has not expired. So we are still processing all of that. Whether it was a normal, non-COVID election or small election or not, we would still be in the same position of securing poll workers and confirming their attendance and willingness to serve. We do this every election cycle.

Q. You don't think that the existence of COVID-19 is effecting the willingness of poll workers to sign up for that duty?

A. The primary and primary runoff, we did have individuals who had always served in the past to decline the duty. And so we started the securing of other poll workers, people who had never worked the polls before, and getting people to sign up. We had the blessing of school not being in session. We were able to utilize college students.

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So we had sufficient and more than needed numbers for the primary and primary runoff. Because colleges have started back in session, we have lost some of those poll workers for the general election. But we have actually had individuals to call and volunteer and request to serve as a poll worker. So we are in that process literally as each day unfolds. It changes.

Q. Ms. Woodall, the voters in those lines at the polling places, they can't be required to wear masks, can they?

A. Correct.

Q. And they can't be temperature checked; is that right?

A. Correct. That's my understanding.

Q. In fact --

THE COURT: Ms. Woodall, what was your answer the last things you just said.

THE WITNESS: My answer was that's correct. That's my understanding.

THE COURT: Thank you.

Q. (BY MS. ROBSON:) So in fact, a voter could actually know he or she has COVID-19 and still be allowed to wait in the line and ultimately vote; is that right?

A. And come in to absentee vote. They cannot be turned around just because they're positive.

MS. ROBSON: Thank you, Ms. Woodall. I appreciate your time. Your Honor, I have -- I'll pass the witness at this time.

THE COURT: Thank you. Any questions from the folks in

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Mobile?

MR. ENGELHARDT: Thank you, Your Honor. I have a -- just one question or two.

Q. Good afternoon, Ms. Woodall. My name is Todd Engelhardt and I am an attorney for the circuit clerk of Mobile County, JoJo Schwarzauer. And the questions I just wanted to ask you, you testified on direct about your role as circuit clerk and the canvassing board. And I believe you testified that the canvassing board appoints poll workers who will work at the polls; is that correct?

A. That is correct.

Q. Do you retain any supervisory powers over those poll workers once they are appointed?

A. I personally as circuit clerk and absentee election manager have never supervised them. Whether I have authority or not, as canvassing board, I think we serve as guidance if they have questions of how something is done.

Q. Right. Are there people on site where those poll workers are performing their functions who do have supervisory role over them?

A. Generally, no. You have a chief -- a chief inspector, and then you have poll workers that work under the chief inspector. Chief inspector is the one that would more or less supervise those poll workers.

Q. Okay. Great. And then the only other question I had for you

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has to do with the questions that you took about the driving time to your office. I have relatives in Dothan. Isn't it true that you can spend 25 minutes on the circle over by the Walmart and by the mall going maybe a mile?

A. Yes.

Q. So when you start talking about the distance in Houston County, from one end of it to your office, would you say 25 minutes is about the maximum it would take?

A. Based upon jurors communicating to me when they report for jury service, yes. When we do our round trip miles for jury service, anything over 60, we know is not accurate, and we start questioning. And that would be round trip there and back. You know, generally, you can travel most places within Houston County in a very quick amount of time. It's not like Atlanta or Birmingham. But it's -- a lot of it is going to depend on the time of day.

Q. Right. You get on the circle at the wrong time of day, you're done?

A. Right. You could keep going in circles.

Q. Absolutely.

MR. ENGELHARDT: Well, thank you. I don't have anymore questions.

THE COURT: Mr. Speegle, Miss Holifield?

MS. HOLIFIELD: We don't have any questions, Your Honor.

THE COURT: Thank you. All right. Mr. Webb?

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MR. WEBB: Yes, Your Honor. I just have one question.

Q. Ms. Woodall, who appoints the poll workers? Is it the canvas board or the appointing board?

A. My understanding, they're synonymous. The appointing board and canvassing board all consist of the sheriff, the probate judge, and the circuit clerk.

Q. But they're listed as two separate boards under the law, are they not?

A. I can just tell you as circuit clerk, I have always met with my sheriff, my probate judge, and we have appointed the poll workers. And then seven days after the election, the sheriff and myself and the probate judge canvas the election returns for general elections.

MR. WEBB: Thank you. No further questions, Your Honor.

THE COURT: Thank you. Mr. Weber, your witness.

MR. WEBER: No redirect, Your Honor.

THE COURT: Thank you. Ms. Robson, as to the questions asked by the lawyers for the circuit clerk and for Mr. Webb -- by Mr. Webb, excuse me, any follow-up?

MS. ROBSON: Just one.

Q. Ms. Woodall, you were asked about being a circuit clerk and on the canvassing board. As in those roles, do you count ballots?

A. Provisionals.

MS. ROBSON: Thank you. That's all, Your Honor.

THE COURT: Mr. Webb, any follow-up?

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MR. WEBB: No, Your Honor.

THE COURT: Thank you. Mr. Engelhardt?

MR. ENGELHARDT: No questions, Your Honor.

THE COURT: Thank you. Mr. Weber, may I release your witness?

MR. WEBER: Yes, Your Honor.

THE COURT: Thank you. Ms. Woodall, thank you. Have a good afternoon. Enjoy the rest of the week.

(Witness excused.)

THE WITNESS: Thank you. Stay safe, everyone.

THE COURT: Thank you. Plaintiffs ready -- I'm sorry. Are the Defendants ready, or do you need a few minutes for your next witness?

MS. HOLIFIELD: We need just a couple minutes to get our witness. If we could have a brief recess, we'd appreciate it.

THE COURT: Will do. Let's reconvene in roughly five minutes, please. Thank you.

MS. HOLIFIELD: I'm sorry, Your Honor. We did not hear what you said.

THE COURT: Let's reconvene in five minutes, or do you need more time than that?

MS. HOLIFIELD: Five minutes should do.

THE COURT: Thank you.

(Recess.)

MS. HOLIFIELD: Judge, we are we're working on getting our

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witness in right now. I believe our witness is now waiting to be admitted. Margie Calhoun.

THE COURT: Thank you.

Ms. Calhoun, good afternoon.

MR. SPEEGLE: Judge, I'm showing that I'm on video, but I'm not seeing it. Hold on.

THE COURT: Mr. Speegle, I can hear you, but I can not see you, as you deduced. I hope you can hear me.

MR. SPEEGLE: I can hear you and --

THE COURT: It's been a challenge with the technology from day one.

MR. SPEEGLE: There you are.

THE COURT: Good.

MR. SPEEGLE: Had a little help here. And --

THE COURT: Ms. Calhoun, can you hear me, ma'am?

THE WITNESS: Yes, I can. Can you hear me?

THE COURT: I can hear you.

THE COURT: Your connection seems to be a little choppy.

THE WITNESS: Oh, okay. I may have to dial in on my --

MR. SPEEGLE: Yes. Ms. Calhoun, we're seeing a message that says your network band width is low. You're just a little choppy.

THE WITNESS: Oh, okay. Should I go back and try and join by telephone?

THE COURT: You can. But let me ask the lawyers, including Ms. Short. Any objections to Ms. Calhoun in the event she only

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testifies by phone instead of by video?

MS. SHORT: We wouldn't object to that, Your Honor.

MR. SPEEGLE: I'm sorry. I'm sorry, Ms. Short.

MS. SHORT: I was just going to say we would be okay with that.

MR. SPEEGLE: Judge, and I don't know how important the video is. I could hear Ms. Calhoun. And it's going to be a short direct examination anyway.

THE COURT: Okay.

MR. SPEEGLE: But whatever Your Honor prefers.

THE COURT: Well, let's plug along and see if we can do it as is.

Ms. Calhoun, may I request that you raise your right hand, please, so you can be sworn in.

THE WITNESS: Certainly. Okay.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: My name is Margie Calhoun.

THE COURT: Can you spell that for us, please, ma'am?

THE WITNESS: M-A-R-G-I-E, C-A-L-H-O-U-N.

THE COURTROOM DEPUTY: What city and state do you reside in, Ms. Calhoun?

THE WITNESS: I'm sorry.

THE COURT: What city and state do you live in?

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MR. SPEEGLE: I think we lost her, judge.

THE WITNESS: Mobile, Alabama.

THE COURT: Thank you.

THE COURT: Mr. Speegle, you may attempt to do your exam. We may need to go to plan B. But let's see what we can do.

MR. SPEEGLE: Thank you, Judge. I appreciate that. And we may have to.

Q. Ms. Calhoun, good afternoon. Thank you for during the -- these times appearing in our case for us. As you know, I represent the probate judge of Mobile County. And I have a few questions to ask, and then some of the other lawyers may have some questions, also.

First, let me ask you what position you hold as far as employment, ma'am?

A. I'm the director of the Mobile Public Library.

Q. And how long have you held that position?

A. I have been director since August 16th. But I have 35 years experience with the library, and I was the assistant director since 2017.

Q. Thank you. Now, I want to ask you some questions about some of the services that the Mobile Public Library offers. The question is, does the Mobile Public Library offer any copying and notary services at its branches?

A. And also free copying services.

THE COURT: Ms. Calhoun, we lost the first part of your

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answer.

THE WITNESS: Okay. We offer free notary service as well as free copying service.

Q. (BY MR. SPEEGLE:) Now, is it correct that the actual buildings of the public library are closed for the -- closed to the public during the COVID pandemic?

A. We have been closed since March 17th. But starting on September the 8th, we opened up our buildings for computer by appointment. And at the same time, we have allowed the public to come in. They can come to the library through curbside service and they can get notary service and they can get copy service. But they can always do the copying.

Q. I'm sorry. So say a voter who wants to vote absentee can come to the library and have a Mobile County Library employee come out to their automobile and make a copy of their ID; is that correct?

A. We would ask the customer to bring it to our table. There is a table outside each branch. And that's where we conduct the curbside service. We -- that point, take it inside and make a free copy, bring it back to them, and verify all of their work. After we verify their paperwork, the notary will sign off on it.

Q. So you offer curbside at your outside table notary and copying service for a photo ID; is that correct?

A. That's correct.

Q. At which branches do you offer these services?

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A. We have it at Main Library, Saraland Branch Library, Toulminville Branch Library, West Regional Library, and the Semmes Library.

Q. Now, the Toulminville Branch, I think that is over close to USA; is that correct?

A. That's correct. We are directly across from USA, the hospital. The University of South Alabama Hospital. We are on the corner of Stanton and Gilliard.

Q. And that is close to the Prchard city limit, is it not?

A. It's not that far from the Prichard city limits. If you -- no, it's not -- I would say probably it's less than five miles.

Q. Thank you. Now, when your employees at the library come to provide the curbside service, are they wearing any type of protective gear?

A. Yes. We do. We insist that the staff wear protective gear. They have gloves, and they also have masks. And when we give customers items, we put their items in a plastic bag and give them to them. And when we take things from customers, we make sure we have on gloves.

Q. Now, how long have you been offering this free curbside service for photocopying and notary services?

A. We started the curbside service in May. In June. It was in June.

Q. Of this year?

A. That's right.

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Q. Do you have any plans to continue those free services through the November 3rd election date?

A. I'm sure we will continue through November 3rd.

Q. I'm going to ask you -- oh. Have you publicized thee services of the public library in any way, these curbside services?

A. Yes, sir. We have it posted on our home page. If a person clicks on any branch, there's an item at the bottom that tells them that we now have computers by appointment and also that we have notary service and also -- which include faxing, copying, of course delivering materials to them, and several other things that they can sometimes do -- give them program information, that kind of thing.

Q. I'm going to show you now what we have marked in this case as Defendant Don Davis's Exhibit 7. It should appear on your screen shortly.

A. Okay.

Q. Do you recognize this document, Ms. Calhoun?

A. Yes. There's a post -- and it was information about the curbside service and notary service.

Q. We missed a little. Did you say that was a post on your Facebook page, the public library Facebook page?

A. That's right.

MR. SPEEGLE: Your Honor --

THE WITNESS: -- notary service and curbside service.

MR. SPEEGLE: Thank you. Your Honor, we would offer

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Plaintiff Don Davis Exhibit 7 into evidence.

THE COURT: Ms. Short, any objections?

MS. SHORT: No objections, Your Honor.

THE COURT: Judge Davis Exhibit 7 is received.

Q. (BY MR. SPEEGLE:)

Q. Ms. Calhoun, next I'm going to show you Judge Don Davis's Exhibit 8.

A. Okay.

Q. Do you recognize this --

A. That's our curbside -- yes. That's from our home page, advertising our curbside service.

MR. SPEEGLE: Your Honor, at this time we would offer into evidence Don Davis's Exhibit 8.

THE COURT: Ms. Short?

MS. SHORT: No objections.

THE COURT: Thank you. Judge Davis's Exhibit 8 is received.

Q. (BY MR. SPEEGLE:) Have you publicized in any other media these services of the Mobile Public Library other than Facebook and your web page?

A. Okay. We -- we took out an ad just last week in the Lagniappe. The issue is September the 9th through the -- September 9th through 15th. We took out an ad. We've taken out ads before to advertise the curbside service. But this past week we took out one because we wanted to highlight the notary service. It's on page 27 of the Lagniappe.

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Q. Any other ways that you have advertised these services, Ms. Calhoun?

A. On occasions, we've had handouts in customers's materials letting them know what services we have.

Q. And that you're offering these services to assist voters who might want to vote absentee in the next Mobile County election?

A. We have been doing notary service for well over a year now. But obviously, it will be helpful to people who want to apply for absentee ballots. But we've had the service going now just about a good year.

MR. SPEEGLE: Ms. Calhoun, those are the only questions I have at this time. I may ask you some more later. But I'll pass this witness, Judge.

THE COURT: Thank you. Ms. Short, your witness.

MS. SHORT: Thank you, Your Honor.

Q. Good afternoon, Ms. Calhoun.

A. Good afternoon.

Q. My name is Caren Short. I represent the Plaintiffs in this case. I hope you can hear me okay.

A. I can.

Q. Okay. Thank you, ma'am. I just have a few questions for you related to what Mr. Speegle just discussed with you. And let me know if you can't hear me at any point or if you need me to repeat myself.

A. Okay.

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Q. You just testified about services that are offered by the Mobile Public Library, correct?

A. Correct.

Q. And the availability of those services depends on the hours of the library, correct?

A. That's correct.

Q. And, for example, the library is closed on Sundays and federal and state holidays, right?

A. That's correct.

Q. And are you familiar with Mobile County probate judge Don Davis? Do you know who that is?

A. Yes, I do know who he is.

Q. And would you agree that probate judge Don Davis has no control over the services offered to voters by the Mobile Public Library?

A. Right. He does not have control over voters.

Q. Over the services offered by the library to voters?

A. No, he does not.

Q. And would you also -- are you familiar with the Mobile County Circuit Clerk?

A. I don't know the -- okay, no, I don't know the circuit clerk.

Q. But you're aware there is a Mobile County Circuit Clerk?

A. There is a circuit clerk, yeah, but I don't know the circuit clerk.

Q. And would you agree with me that the Mobile County Circuit

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Clerk has no control over the services offered to voters by the Mobile Public Library?

A. Right. I would agree with that.

Q. Okay. Thank you. And you would agree that neither the probate judge nor the circuit clerk have any control over whether the services that are offered by the library will continue, correct?

A. Right.

Q. And, Ms. Calhoun, you testified that you've taken certain measures to notify the public about these services; is that right?

A. That's correct.

Q. And I believe Mr. Speegle showed you a post on your website that talks about the curbside services; is that right?

A. That's right.

Q. And to view this notice, a Mobile County voter would need access to the internet; is that correct?

A. Yes.

Q. And the voter would need to affirmatively navigate to the Mobile County -- the Mobile Public Library page to view that information, correct?

A. Yes.

Q. And --

A. Like I said, unless they see it in a print ad.

Q. Okay. I'll talk about the print ads in just a moment.

A. Okay.

Q. And nowhere on the curbside notice on your website does it

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mention curbside notary services; is that correct?

A. They have to make a second click. When they make the first click, they just come to the library's home page. Then when they click on any branch, that's where they would see that we have the free notary service at that branch.

Q. Okay. But the page that Mr. Speegle showed you talking about the curbside services doesn't specifically discuss notary services; is that correct?

A. Not on that front page it doesn't.

Q. And nowhere on the curbside notice that Mr. Speegle showed you does it mention providing services related to absentee ballots or voting; is that correct?

A. Not on that first page.

Q. Is there a place on the website --

A. You have to make -- they have to make another click. And if they make another click, where it says more information, there's information -- there is -- we have a link to absentee -- we can't get everything we do on that first page. We try not to keep it -- get to too cluttered. So they make another click. They will see other services, and absentee voting is one of those services.

Q. Okay.

MS. SHORT: So, Eric, can we pull up Defendants' Exhibit 8 just for a moment. So we can just scroll --

Q. Just to clarify, you're saying -- you're testifying that on this -- on this page that's on the website, there's no reference to

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absentee voting -- absentee ballot services or services for voters; is that correct?

A. Right. It's not on that page.

Q. But there is somewhere on here to click to -- where it discusses services for absentee ballots?

A. They would have to go to -- when they get to the home page.

THE COURT: Ms. Calhoun, may we get you to restate your answer, please.

THE WITNESS: Okay. If they go to our home page and click on the home page, they will see a tab for locations. When they click on our locations, that's where it will list the notary service.

Q. (BY MS. SHORT:) Understood. And is there anyplace on the website that mentions services -- specifically mentions absentee ballot services?

A. Yes. There is a place on there to -- you have to go to the home page and click on other services and you will see something that says absentee ballot. Absentee vote, I think that's what it says. Absentee vote. Let me try to --

Q. That's okay. We can move on.

A. Okay.

Q. We might come back to that.

A. Okay.

Q. And if we could --

MS. SHORT: You can take that down, Eric. Thank you.

Q. And you testified about a Facebook post that was made on --

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A. Right.

Q. -- August 21st at 8:00 p.m. that references --

A. August 21st or August 22nd.

Q. Okay.

MS. SHORT: Eric, could we pull that up. I believe it's Defendants' Exhibit 7. Just to confirm.

Q. That references notary services; is that correct?

A. Right.

MS. SHORT: Can we scroll down to the second page, Eric, please. Oh, it doesn't have the date because it was referencing a day ago instead of a date.

Q. But you're testifying that it was on August 21st or August 22nd? Is that your testimony?

A. Yes, I think that's when it was, uh-huh.

Q. And if we zoom into the upper left-hand corner, we can see the date that it was pulled, and then the date underneath the post says one day; is that correct?

A. That's right.

Q. So would it be your understanding that the post was made on August 21st?

A. Right.

Q. Okay. And similar to the library's website, a Mobile County voter would need access to the internet to view this site, this post, correct?

A. Yes. Yes, they'd have to have the internet to see it.

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Q. And to see this post, they would either have to navigate directly to the library's Facebook page and scroll down to find the post or already be a friend of the public library at the time the post was made; is that correct?

A. You don't have to be a friend of the public library. Anybody can go to the home page and find it.

Q. Thank you. And this post states that notary services are available curbside by appointment; is that correct?

A. Right. And the curbside is more of an appointment than the notary. The problem with notary is that at each branch, we normally have a notary. So we try to make sure that person is there when somebody comes for the notary service. They can walk up of course, and we would do it on the spot. But if they called, they would be assured that that person was there, because the people do go to lunch, have off days, have sick days. We try to make sure the notary is there before we tell a person to go to that specific branch. We just direct them to another branch if the notary were not available at the place they are calling.

Q. I see. And so the notary services are subject to the availability of the notary, correct?

A. But it's available every day that we're open and that person is there, and we're open six days a week.

Q. And it's -- but it's limited to those five branches, correct?

A. Right. We will soon have another one -- we will soon have another one at Grand Bay.

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Q. But this post mentions the five current locations where a notary is available, correct?
A. That's correct.
Q. And at any given time, there's only one notary available at each of these locations? Is that what I heard you say just a moment ago?
A. Right.
Q. Okay. And so the appointment is encouraged because the notary might be at another branch or at lunch? Is that what you say?
A. Right.
Q. Okay. And did you testify that both the notary services and the copying services require the person to leave their car and come up to a table to access the services?
A. That's the normal procedure. If somebody could not get out of the car, say they were handicapped when they drove up, I'm pretty sure that our staff would go to the window... if they were handicapped where they couldn't get out of their car.
Q. And going back to this post, the Facebook post, this post does not indicate whether or how much these services cost, correct?
A. This post does not. But if they click on the branch, it says free notary service.
Q. If they click on which branch?
A. Any one of the branches that offer the service. It indicates

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its free notary service. It's going to say computers by appointment and then free notary service.
Q. Okay. And we just discussed that the notary services are currently available at five library locations; is that right?
A. Right.
Q. But the library currently has nine locations, correct?
A. Right.
Q. And you testified that -- you mentioned the -- I'm going to mispronounce it. The Toulminville Branch; is that correct?
A. Yes, they have it. Yes.
Q. And you mentioned that this branch was near the city of Prichard; is that correct?
A. Yes, it's fairly close -- it's the closest one to Prichard.
Q. Isn't correct that the Trinity Gardens location is nearest to the city of Prichard?
A. Yes. But Trinity Gardens is kind of like a satellite library, and their hours are very limited. So that's why we don't offer the service there.
Q. Isn't it correct that Trinity Gardens is currently closed?
A. Yes. Because it's in a school building.
Q. But it is a location of the Mobile Public Library, correct?
A. Yes.
Q. And it is listed on the website?
A. Yes, it is.
Q. And the city of Prichard is a majority black city; is that

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correct? If you're aware?
A. As far as I'm aware.
Q. And are you aware that Plaintiffs in this case, Teresa Bettis and Howard Porter, live in the city of Prichard?
A. No, I don't know the Plaintiffs. I don't know anything about them.
MS. SHORT: Okay. Eric, we can take this down.
Q. And you testified about some other advertising that you did. You mentioned an ad?
A. Right.
Q. I believe. And that was in a local paper?
A. It's the Lagniappe.
Q. Okay.
A. It's a weekly paper that comes out in Mobile.
Q. Okay. And that was a one-time ad, or are you planning on doing that again?
A. We will do it again. We bought a certain number of ads.
Q. This was about the general curbside services available at the library?
A. That's right. Because we have been promoting the curbside service, and now like I said, we put this one in, because we have the computer by appointment, and we wanted people to know that the notary service was available too at the same time.
Q. And the ad didn't specifically target absentee voters. It was just generally advertising the curbside services available to

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anyone?
A. Information. That's right. To everybody.
Q. And I believe you mentioned handouts?
A. Yes. We did have a handout that we developed highlighting all the different services we were offering when we started the curbside service.
Q. But these didn't specifically target voters or absentee ballot voters, right?
A. No. They were targeting the citizens of Mobile. They were targeting the citizens of Mobile.
Q. Thank you. And in the newspaper ad, did you understand that the ad would also appear in the on line version as well as the hard copy version?
A. I'm not sure. What are you asking me now?
Q. In the -- I always say that word wrong. Lagniappe?
A. Lagniappe. Lagniappe.
Q. Yes, ma'am. Are you aware if the ad was only going to be placed in the hard copy version of the newspaper or if it was also going to appear on line?
A. We have it on line. The ad was up on our -- I believe it was on our Facebook page.
Q. But did the ad that you placed in the weekly newspaper appear on their on line --
A. Oh. I am not sure of that. I'm not sure whether it appeared on that on line.

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Q. Okay.
A. I didn't ask that.
Q. Okay.
A. The webmaster is the one who places the ad.
Q. I didn't quite catch that.
A. Webmaster actually placed the ad. And I am not sure whether it was on their home page or Lagniappe's website. But...
Q. Okay. I have just a few more questions. And I appreciate you taking the time to answer them. When the services that you're offering -- when people are coming up to use the services, are you requiring them to wear a mask?
A. We ask people wear masks. Yeah, we do ask people to wear masks.
Q. And would you turn anyone away for not wearing a mask?
A. We've not had to do that so far. And to be honest, not many people have come forward just yet with the notary service, because I'm not sure they were aware they could get it since the library had been closed. But I'm not sure we would turn people away if they didn't have it.
Q. Okay.
MS. SHORT: Thank you, Ms. Calhoun. Those are all my questions.
THE WITNESS: Okay.
THE COURT: Thank you, Ms. Short. Mr. Webb, any questions?

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MR. WEBB: No, Your Honor.
THE COURT: Thank you. Mr. Engelhardt, any questions?
MR. ENGELHARDT: No questions, Your Honor.
THE COURT: Thank you. Mr. Speegle --
THE WITNESS: What I would like to say --
MR. SPEEGLE: Yes --
THE WITNESS: We would be able to offer a personal mask if they came for the notary service.
THE COURT: Okay. Mr. Speegle -- I'm sorry, Ms. Calhoun. I'm turning it back over to Mr. Speegle. Counsel.
Q. Ms. Calhoun, I just had a couple of questions.
A. Okay.
Q. You had told us the hours which the library was open to provide these curbside services. You mentioned it was six days a week. What are those specific hours that the library is open to provide those services?
A. The libraries are open 9:00 to 6:00. We have everybody on that schedule now. But the service is available from 10:00 until 5:30.
Q. And is it true during the week and Saturday?
A. On the weekend as well.
Q. And you are aware that the Lagniappe is a free publication for Mobile residents, correct?
A. That's correct.
Q. And could you tell the Court where generally the Lagniappe

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is placed where it's available to the citizens?
A. The Lagniappe is all over Mobile. Nearly every restaurant or business that you go in, you're going to find the Lagniappe. And they also have newspaper bins that are on the curb, and it's free. So you just open it and get it. But the Lagniappe is very widely in Mobile. So it's not hard to find one at all. You can get it curbside. And like I say, most many business you in they have it.
MR. SPEEGLE: Thank you, Ms. Calhoun. And we thank you for your service to the citizens of Mobile and the public library.
THE WITNESS: All right. Thank you.
THE COURT: Ms. Short, any additional questions for Ms. Calhoun?
MS. SHORT: No, Your Honor.
THE COURT: Thank you. Mr. Webb? Mr. Engelhardt, any questions?
MR. WEBB: No, Your Honor.
MR. ENGELHARDT: No questions, Your Honor.
THE COURT: Thank you.
Ms. Calhoun, you are free to go. Have a good afternoon, ma'am.
THE WITNESS: Thank you.
(Witness excused.)
THE COURT: Who is the next witness for the Defendants?
MR. WEBER: Your Honor, the defense call Dr. Quentin Kidd.
THE COURT: Dr. Kidd, I know you have been waiting for a

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while. Let me make you wait just a little bit longer. The lawyers and I have been going for roughly an hour and a half. Let me give them a ten-minute break. We will reconvene at six minutes after the hour. Thanks, everyone.
(Recess.)
THE COURT: While we're waiting for Mr. Kidd, Mr. Weber, you're taking point? And then Mr. Brody, you're doing the cross for the Plaintiffs?
MR. BRODY: Yes, Your Honor.
THE COURT: Thank you. Mr. Kidd, good afternoon again. Would you please raise your right hand, sir, so could you can be sworn in.
(Witness sworn.)
THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.
THE WITNESS: Quentin Kidd. No middle initial.
THE COURTROOM DEPUTY: Could you spell it for me, Mr. Kidd.
THE WITNESS: Yes. Q-U-E-N-T-I-N.
THE COURT: What city and state do you live in, Mr. Kidd.
THE WITNESS: I live in Newport News, Virginia.
THE COURT: Thank you. Mr. Weber, your witness.
Q. Yes. Hello, Dr. Kidd.
A. Hello.
Q. Before I begin, it looks like there may be a little bit of a lag

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on the video here. So I will try to do my best not to talk over you, and we'll see how that goes. There's a little bit of static on your end. Hopefully, that is manageable. If not, we'll let you know.

Dr. Kidd, could you tell us what is your current occupation and position?

A. I'm a professor of political science at Christopher Newport University and dean of the college of social sciences at Christopher Newport University.

Q. How long have you been in that position?

A. I have been a dean, this is my fourth year as dean. I have been at this university for 24 years.

Q. And could you summarize the previous positions you've held at the university?

A. Yes. I came here right out of graduate school. So I started as an assistant professor and became an associate professor and a full professor. I served for six years as a department chair, for three years as the -- provost of the university, and then for four years as the dean of this college.

Q. What is your educational background?

A. I have a bachelor of arts degree and master of arts degree from the University of Arkansas Fayetteville and a Ph.D. from Texas Tech University, all in political science.

Q. Dr. Kidd, I'm going to show you what has been marked as State Defendants' Exhibit 133. Do you recognize this?

A. I do. I don't know what that deposition of Dr. Reingold

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Exhibit 17 says, but I do recognize my declaration.

Q. Is this the declaration that you submitted in this case?

A. It is, yes.

Q. Page 18 of that document, is this your curriculum vitae?

A. It is, yes.

Q. Is this current?

A. It's current at the last time I edited this would have been late June or early July. So it's current as of late June, early July.

Q. Would you please summarize your publications?

A. Yeah. My research is largely focused on southern politics, voting behavior, civic participation in campaigns and elections, to some extent, youth voting, the general change in the south as a political area of the United States over the last 50 or 60 years. And so I have written or edited five books in those areas, and I have written probably 30-plus peer-reviewed publications in those areas or in a couple of publications in teaching methodology and a couple of publications in quantitative analysis methodology.

Q. Have you provided expert declarations in other cases?

A. I have. In four other cases. I'd have to look at -- I'd have to look at the front of my submission to be able to recite them exactly.

Q. And that's fine. Have you -- have other Courts recognized you as an expert on political science and quantitative analysis?

A. Yes. Federal court in Louisiana most recently.

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Q. When was that?

A. Last week. I don't remember the day exactly, but it was last week, maybe the end -- it might have been ten days ago.

Q. Very well. This document --

A. Sorry I can't remember -- I was going to say sorry, I don't remember the exact date. In this coronavirus world, all the dates can be running together so...

Q. Understand. This document that's on the screen, State Defendants' Exhibit 133, does this contain your expert conclusions in this matter?

A. Yes, it does.

Q. And turning to page 16, is that your signature on the document?

A. Yes, it is.

MR. WEBER: Your Honor, we move to admit State Defendants' Exhibit 133 into evidence.

THE COURT: Mr. Brody, any objections?

MR. BRODY: Yes, Your Honor. A couple objections. First of all, I don't think Dr. Kidd has been qualified as an expert in anything or tendered as an expert in anything yet. Second, and depending on what that is, I will have an objection to what he's going to be tendered in but wanting to hear it first. But we object to the admission of the expert report, because I don't believe that Dr. Kidd has the expertise necessary to offer the vast majority of the opinions in there. And even if the Court were to decide he

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did have that expertise, that they're inadmissible under rule 702 because there's not a reliable methodology associated with it. I know this is a bench trial. But even in the bench trial setting, we would object based on the qualifications for the opinions offered and under 702 for reliability.

THE COURT: All right, let's take those in reverse order. Mr. Weber, are you tendering Dr. Kidd as an expert?

MR. WEBER: Yes, Your Honor, in political science and quantitative analysis.

MR. BRODY: Your Honor, no objection to political science. I don't think Dr. Kidd has done any quantitative analysis in this case. Certainly we haven't received any quantitative analysis from him. So I'd object to the latter. But no objection on political science.

THE COURT: Let me receive him as an expert in the area of political science.

Mr. Weber, why don't you flush out the quantitative analysis issue, and then I will hear back from Mr. Brody. His allegation or contention is Dr. Kidd has not done any of that in this case, et cetera, et cetera.

MR. WEBER: Yes, Your Honor.

Q. You have a Ph.D. in political science. What sort of education does that require in the field of quantitative analysis?

A. Was that a question to me?

Q. Yes, Dr. Kidd. Did you understand?

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A. I don't think I heard all of it.

Q. Dr. Kidd, you possess a Ph.D. in political science. What sort of education did that require in terms of quantitative analysis?

A. It -- almost every graduate level course in my field of political science, which is the School of American Politics. That's what I did my dissertation is. That's what I did my comprehensive exams in, are quantitative in nature. I had 12 credit hours, just four courses in quantitative analysis. And by quantitative analysis, obviously things can be very sophisticated or very simple in some ways. And so the most simple kind of quantitative analysis one could produce is a descriptive analysis. The more complex analysis would be a predictive modeling and things like that. And so this paper, this study involves more descriptive analysis than predictive analysis. I'm not doing any predictive analysis. But I am doing prescriptive analysis in here.

Q. The publications that you have done, have any of them required you to engage in quantitative analysis?

A. Yeah, the vast majority of them have been at some level or another quantitative analysis in nature in terms of the methodology used.

Q. And to what degree have you taught subjects in the area of quantitative analysis?

A. Until I became a dean -- I teach less now. But every semester at least once a year, most of the time every semester, I taught a quantitative analysis course at the undergraduate level. I've also

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taught it at the graduate level in the past.

MR. WEBER: Your Honor, at this point, we again tender Dr. Kidd as an expert in both areas.

THE COURT: He may have addressed this, but I missed it. I think Mr. Brody's argument, as I understand it, is based based in part or perhaps all that he does not believe that Dr. Kidd did any quantitative analysis in this case. His expert report does not address that.

Mr. Brody, why don't you pick up and make sure I do not misstate your objection, please.

MR. BRODY: That's correct, Your Honor. Exactly. You know, I have no question that in the course of his education and his long career as a political scientist that Dr. Kidd has done quantitative analysis. The point is simply that he has not done any quantitative analysis or original quantitative analysis in this case. He is simply reporting on what other data sources say.

THE COURT: Okay. Dr. Kidd, is that description of your analysis in this case correct? And if not, why don't you address it, please.

THE WITNESS: No, I would disagree with that. What I have done is very simple descriptive analysis here. What might be considered cross tabulation descriptive analysis. I'm cross tabulating trend line data with coronavirus cases. I'm sorry. Trend line coronavirus cases with election dates and drawing some conclusions about coronavirus cases related to that. It's

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admittedly very simplistic descriptive analysis. But it certainly is quantitative descriptive analysis.

THE COURT: Mr. Brody, why is that not an issue for you to point out even more fully the weaknesses of the analysis on cross-exam. To the extent that his analysis is not quantitative, he seems to acknowledge that, and says it's very descriptive et cetera, et cetera.

MR. BRODY: That's fine, Your Honor. I can address it on cross-examination.

THE COURT: The other thing that I think you said is that you don't believe the analysis is based on sufficient facts or data under 702 and some other objections as well, which I want to make sure I address before I move on.

MR. BRODY: Thank you, Your Honor. The other objection was to the admission of the expert report, because the vast majority of the expert report, I believe it's the -- at least the first 14 out of the 15 substantive pages in the expert declaration are about whether exposure at certain election events or potential exposure to coronavirus led to increased numbers of cases of coronavirus. And that is really -- I mean, it's a question of public health. It's a question. Infectious disease. It's a question of infectious disease transmission. And it's not within the realm of political science as an area of expertise.

THE COURT: How is that argument different from the criticism of Dr. Cotti's work? I think he was the econ person

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who -- I think it was economics. But it's -- let me piggy back on Dr. Kidd's point. In the age of corona and several with the trial testimony, dates all tend to blend in. But he was a social scientist who used the tools available to him in his discipline. The guy from U Wisconsin Oshkosh. I think it's Dr. Kidd -- Cotti. Excuse me. But he used his either economics or polysci background to analyze the Milwaukee election from March, I believe, and then he was open to criticism I think both by Dr. Kidd and by the lawyers who cross-examined him.

And then I think also, the professor from Northwestern, although she did some surveys. So it may have been the professor from UAB used tools that were not necessarily in their immediate discipline to draw certain conclusions. And then the weaknesses of that analysis, if any, was addressed through very effective cross-examination. What distinguishes I guess what Dr. Kidd has done here from your point of view that some of those other witnesses that I have accepted as experts so far in this case?

MR. BRODY: Sure. And I think the direct parallel is Dr. Cotti, and the difference, Your Honor, is Dr. Cotti. And Dr. Could an economist who specializes in public health and looked at the election in Milwaukee specifically and conducted his own study, his own econometric analysis. He actually performed a regression analysis where he controlled for various public health and social science factors in that regression that he did in order

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to isolate the dependent variable number of coronavirus cases from the explanatory variable, the election that was held in Wisconsin.

And so that's the difference. He took his area of expertise, health economics, and applied it directly to his study of the data, and as part of that study, undertook a very real quantitative analysis in the form of his regression analysis in the paper that he and his colleagues published to explain what happened in that election. That's very different than what we have here. And that's the distinction I would draw.

THE COURT: Let me receive Dr. Kidd conditionally in the sense that you may renew your objection later. Let me hear his analysis and then your cross-exam and then fully have what I need to address the arguments at that point.

MR. BRODY: Yes, Your Honor.

THE COURT: Thank you.

Mr. Weber, you may begin your examination of the merits -- of the substance, I should say.

Q. (BY MR. WEBER:) Dr. Kidd, we retained you to provide assistance in this matter. What issue were you asked to study in this case?

A. I was asked to look very simply at whether the act of holding an election where any number of people vote in person seems to have an impact at a descriptive level, at the descriptive level in the trend lines, the 7-day averages of coronavirus cases as

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reported, you know, in publicly available data. So I was retained in part to better understand elections that have been held in the age of coronavirus, and I didn't have a long amount -- large amount of time to do this. And I was attempting to take a big picture look at elections in the age of coronavirus.

And so what I came back with -- and I initially told you all that I would look at it and tell you, you know, what I could come up with. And so what I came back with was this very admittedly simplistic -- but I think in some ways simplistic works really well in helping us understand what's going on here. A simplistic descriptive analysis that looks at an event, which was an election, and the period before and the period after that event as it relates to the trend 7-day moving average in coronavirus cases. And I -- in the amount of time I had, I decided to look at cases where the coronavirus trend was essentially plateaued. It wasn't moving -- you know, it was not spiking or declining. It wasn't surging or declining. It was plateaued. Because in some ways that proved easy to do a hypothesis test, if you will, a simplistic hypothesis test. And that is if you hold an election were thousands of people show up in person to vote, can you demonstrate that that will lead -- will demonstrate, or can you visually see an increased number of coronavirus cases during this incubation window after the election. And so that was really what I did in this report.

Q. And so let me see if I can summarize this, and you tell me if I am right or wrong. Did we ask you to look at elections that have

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been held during the pandemic and simply see whether there was a sharp increase in coronavirus cases reported following those elections?

A. Yes, that is correct.

Q. Did we ask you to go into greater detail to rule out whether any individual voter contracted coronavirus at any specific polling location?

A. No, you did not.

Q. And did we ask you to do this on a state by state level, or did we ask you to go polling location by polling location?

A. It was a state level, not polling locations, not really at a level of analysis below a state. Although there were some elections that were held, municipal elections that were held during the summer months as well.

Q. And what methodology did you use in an attempt to answer this question?

A. So I needed to -- I needed to -- in order to know whether coronavirus -- whether an election, holding an election, bringing thousands of people together, had an effect on the moving average of coronavirus cases, I needed to have some sense of timing. And so I used the Centers for Disease Control description of the incubation period for coronavirus cases.

The Centers for Disease Control essentially says that there is basically a 14-day incubation period, that the median time from exposure to symptom is about five days, and that by about 11

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days, 97 or 98 percent of people who have been exposed and will exhibit symptoms will have done so. So that became the window at which I looked out past the election at the moving average, the 7-day moving average trend line.

And so because it's a descriptive analysis, I needed some window in which to understand or attempt to understand the trend line and what I should expect from the trend line if there was going to be a spike or a surge in coronavirus cases as a result of an election, which means if there was going to be a spike or surge as a result of bringing thousands -- hundreds of thousands of people together to do something, then I needed a window in which to look for that. And so the Centers for Disease Control guidance became that window for me.

Q. Did you examine specific states in the course of conducting the study?

A. Yes. So there have been dozens and dozens of elections held around the country. And so in thinking about -- during the coronavirus pandemic, there have been dozens and dozens of elections. And in thinking about how I could do this in the short amount of time I had to put it all together, I understood that the pandemic sort of started on the east coast and west coast, and then it sort of shifted south. I wanted to try to get comparable states to Alabama. And I wanted -- I needed -- in order for me to be able to demonstrate that an election caused the spike or surge, which is what I was trying to do, I needed to have states where

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the trend line in coronavirus cases was essentially plateaued, was not -- I needed states that weren't in a -- a period where they were spiking or in a period where they were dropping. And so the states that I included in the analysis are essentially states where I could easily see a spike or a surge if there was going to be one post an election. And so that's where I came down with the five states I looked at. I also looked at Wisconsin simply because it's been -- it's probably the most studied state as it relates to coronavirus and elections.

Q. And you talked before about the reason for the 14-day window. I believe you said it was the fact that the vast majority of people who would develop symptoms would do so within that 14-day window. Did you consider going beyond the 14 days following a state's election?

THE COURT: Can you rephrase your question, Mr. Weber.

MR. WEBER: Yes.

Q. Dr. Kidd, can you hear me?

A. I -- let me take off these air buds. I think the air buds are not working. So let me disconnect these, and I will... I think -- can you hear me?

Q. I can. Can you hear me?

THE COURT: I can as well.

THE WITNESS: I can. Okay. So now I'm ready. I'm sorry about that.

Q. (BY MR. WEBER:) Not at all. Dr. Kidd, you talked before

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about the reason that you chose a 14-day window for your study. And I believe you said that part of your reasoning was that the vast majority of people according to the CDC would develop symptoms within that 14-day window following an exposure event. Did you consider exploring a broader time frame?

A. Yeah. I do recognize that there are delays, there are lags in testing, there are lags in reporting. My concern about delaying -- about extending that two-week window out was that those are variable by state. Some states are much quicker in reporting and testing. Some states are less quick in reporting and testing. Some states had more resources than others. And at various times during these elections -- you know, these elections occurred at various different times. At some times, some states were better at it than other states. And so I didn't have a systematic reason or explanation about why I would tend it three weeks or four weeks or five week. But I did have a systematic window from the two-week period which was the CDC guidelines.

And I also understand that some states have gone back and adjusted their trend lines to reflect days when symptoms are first reported versus days when tests come back. And so given the uncertainty of any window outside of that two-week period, I decided to stick to the two-week period because I had what I would consider to be a rational explanation for doing it, which is that two-week incubation period.

Q. What drawbacks did you consider going through your

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process would there be in extending the window to say 21 days following an election?

A. Well, the problem is I don't -- I know the two-week window. I know the two-week incubation window based upon CDC guidance. I don't know anything about the three-week window or the four-week window. I don't know what -- I don't know what -- I couldn't explain a moving trend line three or four weeks out as related to the election outside of that two-week window. And so I -- there's a degree of uncertainty that is injected into the three-week window or the four-week window. And I just -- I didn't feel like I could rationally make an explanation about what was going on three weeks out or four weeks out and link it to anything that might be related to the election.

Q. Let's talk about the specific dates that you indicated in your report. And I'll show that document on the screen. And I'll start with figure 4, the 7-day moving average, COVID-19 cases, and Election Day count for Wisconsin. Do you see that on your screen?

A. I do, yeah.

Q. What data are you representing in this figure?

A. So this is the 7-day moving average reported by the Johns Hopkins University COVID-19 project. There are -- the reason that I had used this source is it's a widely respected -- highly respected and widely used source. And so I used it because there's a level of consistency in terms of their data collection and

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their data cleaning. And so I wanted to use a consistent source for the coronavirus trend data.

What I am demonstrating in that figure is the 7-day moving average, seven days prior to and two weeks after the election. I need the seven days prior in order to be able to have a trend line on the Election Day. If it's the 7-day moving average, I've got to have seven days's worth of data to have the moving average from Election Day forward. And then that blue bar represents the current case count on Election Day. And then the bracket on the bottom represents the incubation window as described by the CDC, and the arrow points to what would be the median. So that would be the date at which half of the people who had been exposed on Election Day and were going to exhibit symptoms would have exhibited symptoms. And so that's what that trend line essentially -- that's what that graph or that figure is showing.

Q. I see that below the graph, you have a source listed, and it says accessed August 7th, 2020. Was that the last time that you viewed this data from Johns Hopkins before you submitted your report?

A. That is correct. I submitted the report to you, I believe, on the 9th or 10th.

Q. What conclusions were you able to draw as a result of the data listed in this graph?

A. So what I did is I described what I would be looking for if I was -- in looking for a surge in coronavirus cases post the

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election. And so I describe -- I created a hypothetical figure that modelled the CDC guidance. So what I'm looking for is a surge in cases postelection that looks somewhat like the figure 1 there. I demonstrated two states that had had surges similar to this happen. I don't know what caused them. I didn't look at what caused them. I was looking for data visualization that demonstrated in actual data what a surge might look like.

And so what I'm doing is -- when I'm producing these figures for each state, what I'm doing is I'm looking for the evidence of a surge in coronavirus cases during the incubation window following an election. And so I don't find that in the Wisconsin case. If you look at that just visually, it isn't the complicated analysis, I'll admit that. It's visually -- I think, it tells a lot simplistically in a visual way if the election Mr. Wisconsin where -- I don't remember exactly how many -- but several hundred thousand people voted in person, if that election were to have caused a surge in coronavirus cases, it would be visible in that figure. You would see it demonstrated in that figure. And the conclusion I drew was that there were no -- there was not a surge in coronavirus cases postelection in Wisconsin. And then I referenced some other studies there that also argued that voting on April 7th in Wisconsin was not an event that caused a widespread outbreak in coronavirus cases.

Q. Thank you. Let's turn to figure 5, the next figure in your report. 7-day average COVID-19 cases and Election Day count for

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Virginia. Again, Dr. Kidd, what data is represented in this figure?

A. So this is again statewide coronavirus 7-day moving average trend lines in Virginia for the June 9th municipal elections. They were state wide. There were elections across the state, but they were local municipal elections. I think there were something -- there were over 100 elections held around the state on this day.

The reason that I looked at Virginia was that Virginia's coronavirus outbreak was happening at this point in its urban areas. And so some of the larger cities were driving the coronavirus cases in Virginia. And it just so happened that two of those cities had municipal elections. Two of the larger cities had municipal elections. And but because elections were held all over the state, it looked like a good case to me.

And again, it's a simple figure. All it does is it's looking at the 7-day moving average trend line and the Election Day and looking at whether or not there's a surge in cases in the incubation window after that election. And, of course, you don't see that. You see what might be considered sort of a wandering upward trend, you know, after a pretty flat, you know, five or six days after the election, a slightly wandering upward trend, a gentle uptick over a six-day period. But you don't see the surge as you might expect if in fact an election was going to be a coronavirus producing event.

Q. And so what conclusion did you draw as a result of this data?

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A. Again, very simplistic admittedly, but I don't see a surge in coronavirus cases post-Election Day in Virginia using the 7-day moving average as an indication of that during that incubation window.

Q. And again, the last time you viewed this data before submitting your report was August 7th; is that correct?

A. Correct, yeah.

Q. You have two figures on the next page of your report, figure 6 and figure 7 reflecting moving average of cases and Election Day count for West Virginia and Georgia. Let's take those up together. Again, what data are we looking at in these graphs?

A. Yes. And I put these together only because they held their election on the same day. So for whatever reason in my mind, I was organizing it by day going from furthest out to most recent. And there were several hundred thousand people that voted in person in West Virginia. There were hundreds of thousands of people that voted in person in Georgia. I don't remember the exact number. I want to say six or seven hundred thousand people that voted in Georgia.

And again, I'm doing the same thing that I have been doing. This is again a simplistic way -- view of it. But I think sometimes there's power in simplicity. I'm looking for evidence of a surge in coronavirus cases after the election where thousands and thousands of people come to a polling location and vote. And you don't see that in either West Virginia or Georgia.

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You see these trend lines in -- I'm sorry. The trend line in West Virginia is essentially flat for the first week after the election. It begins to wander up the second week after the election. And again in Georgia, the trend line sort of -- it's not quite flat. But it's relatively flat, and then it starts to wander up towards the last part of of the two-week window. And so I conclude that neither of these cases or these elections were producers of a coronavirus surge as demonstrated by the 7-day moving average in the data.

Q. Let's move to the next page, figure 8. What are we looking at in this figure, Dr. Kidd?

A. Yeah, again, the same sort of pattern in terms of how I'm looking at this. I don't remember exactly how many people. But I think three or four hundred thousand people voted in Kentucky on Election Day. So they went to a polling location and voted. If you'll remember, there were all those scenes about people going to vote in that big arena. I think it was in Louisville, or it may have been Lexington.

But again, the same thing. Did we see a surge? Can I demonstrate a surge in coronavirus cases during the 7-day incubation window post an election? I don't see that in Kentucky. And again, all of these states are states where coronavirus trend lines are relatively flat in the sense that they're not surging or spiking already. And so in Kentucky, we see what I would call just sort of a gentle rise in coronavirus cases, a slight drop

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toward the end of the 14-day incubation window, and then it begins to move back up at the end of the 14-day incubation window. So again, I don't see a surge here that I can link to the election in the context of the 14-day incubation window.

Q. And we'll get to the last thing you looked at, Alabama in just a minute. We have looked at five states thus far, Wisconsin, Virginia, West Virginia, Georgia and Kentucky. Did you consider any other states in your study?

A. I did. I didn't -- so part of the reason that I stuck to the states that I have stuck to here is that I didn't have a lot of time. But I was also again trying to look at states where it would be easily discernible if there was a spike in coronavirus cases that occurred in that 14-day incubation window. So these are all states where the trend line, the 7-day moving average, was relatively plateaued. It was either -- you know, it wasn't spiking. It wasn't declining. It was relatively plateaued.

So an election occurred at a time when there was a relative plateau in coronavirus cases. In that environment, bringing thousands of people together in an election, if that was going to cause a spike or a surge, you would be able to see it in that 7-day moving average trend line. So it was the -- these elections were the simplest way for me to show that an election in-person voting caused a surge. So that was really why I chose these states.

Q. And is it fair to say that by selecting states that had a relatively level number of cases in the seven days leading up to

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an election, was this an attempt to control for a variable outside of an election that might explain a surge or spike in cases?

A. Yes. I mean, if the 7-day moving average is relatively stable and flat in some ways prior to an election, then I think we can discount other things causing a surge if a surge were to be demonstrated around an election. And so these states in my mind were the easiest states to prove that an election would cause a surge, because there was nothing going on prior to that election that, you know, whether moving -- in terms of the trend line of the data that one could look to and say, well, what about that is causing the surge.

Q. Dr. Kidd, did Florida hold an election since the middle of March?

A. Yeah. Florida held an election in August, I think 18th. And they were just coming off of a -- actually, most -- many states have been coming down from spikes that happened, you know, at some point earlier. And so Florida's election was held toward the bottom end of their declining number of coronavirus cases. So I think it was August 18th when they held the election.

Q. Let's turn to Alabama, which is next in your report. And let's look at figures 9 and 10. What do these figures represent?

A. So figure 9 -- so the reason I have figure 9, which is the first time that you'll see this figure in here is because all those other states, the 7-day moving average was relatively stable, flat, whatever you want to call it, plateaued. But the Alabama election

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that occurred June 9th I believe. I don't remember the exact date. The Alabama election -- June 14th. Sorry. Occurred at a point where Alabama was reaching the peak of its surge in coronavirus outbreaks that began, you know, some time earlier.

And so I needed to -- I needed to put figure 10 into some context. And so figure 9 is the context in which figure 10 exists. And so if you look at figure 9, the box, the window in which figure 10 demonstrates the trend line, the yellow bar there is the day of the election or near the day of the election. It should be the day of the election. And so what you can see essentially is everything to the left -- to the right of that yellow bar inside that black box is an incubation window. And then figure 10 zooms in on that black box there essentially.

And so what I am arguing here is that the election -- the July 14th election in Alabama occurred at a point where Alabama was near the peak of a surge in coronavirus cases, but that peak actually peaked around a week after the election and declined. So it doesn't appear to me that the election itself exacerbated the surge in coronavirus cases in Alabama. I'm not saying any individual person couldn't have contracted coronavirus in any of these elections. What I'm saying is I don't see evidence of a surge in cases as a result of these elections. And in Alabama, it looks like the surge that the state was already going through began to recede about midway through the incubation period, which is not what you would expect if in fact the election itself caused a

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surge.

Q. With regard to all these graphs and figures that we have looked at, Dr. Kidd, I believe you just testified to this, but could you -- does the data available to you rule out a conclusion that any voter ever contracted coronavirus at an election?

A. No. I'm not -- I would not testify to that. I have no ability to say that. You know, as best I know, you know, from everything that we've done at my university to try to keep people safe, I mean, people get coronavirus in all kinds of ways. All I'm looking for here is, is there evidence of a surge in coronavirus cases demonstrated in the 7-day moving average during the incubation window after an election. And so no, I would not say that.

Q. And given the data in the time available to you, were you able to control for every possible variable that might explain a state's case counts going up or down?

A. No. Given the time available to me, an effort to take sort of a big picture look at elections, the influence of elections on the potential for a surge in coronavirus cases, this is essentially what we would call a bi-vary analysis. I mean, essentially a descriptive independent variable and a descriptive dependent variable. That's really all it is. Again, it's a very simplistic analysis. But I think visually very compelling. It demonstrates that at least in these cases hear, the elections didn't lead the surges in coronavirus cases.

Q. Dr. Kidd, have you submitted reports that looked at similar

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data in other cases?

A. Yes. I've -- I have in a couple of other cases. And I've had a little bit more time to do some additional elections. And I've done a little bit more of what we're looking at right here, states where there are surges already in place, states where there are declines already in place and an election is held. So you referenced the Florida election in August.

MR. BRODY: Your Honor, just before Dr. Kidd continues, I'd object if he's going to talk about any analysis that he's done subsequent to providing his expert report in this case and analysis that has not been disclosed to us.

THE COURT: Mr. Weber, I think that's a fair objection.

MR. WEBER: Yes, Your Honor. I'm happy to move on.

THE COURT: Thank you.

Q. (BY MR. WEBER:) Dr. Kidd, is one of the cases that you submitted in your report containing similar data the case you mentioned in Louisiana where you testified recently?

A. I didn't hear the whole question.

Q. Yes. Dr. Kidd, you stated that you have submitted reports with similar data in other cases. Was one of those cases the case in Louisiana where you stated you recently testified?

A. Yes, it was.

Q. And in that case, were you recognized as an expert in political science and quantitative analysis?

A. Yes, I was.

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Q. Dr. Kidd, I want to turn to the last page of -- substantive page of your report. Specifically, section 5 titled does the pandemic hurt voter turnout. Dr. Kidd, why did you examine this question in your report?

A. It was mentioned by one of the experts, Dr. Burch, that holding elections in the fashion that Alabama plans to do it has the potential to suppress turnout. And so all I was -- I really think of this as sort of a comment on that claim. I'm not -- I didn't do any independent analysis. But I -- there was a -- there was a report out on a highly respected elections website called 538.com that had commented on how -- that had looked at turnout in elections during the pandemic. And it demonstrated that there were states where turnout was lower than 2016. There were states where turnout was higher than it was in 2016.

Recognizing that there are variables that are different in some states. In some states, you know, the presidential primary in 2016 drew more people. In some states, it drew less people. All I was pointing out is evidence of lower voter turnout in 2020 as a result of the pandemic isn't as clear cut. There are states with higher turnout in 2020 than there were -- than in 2016. There are states with turnout very similar to 2016. And so that's really all it was. It was just a comment to say it isn't the case that turnout is across the board lower because of the pandemic. And I would just say in that recent Florida election, turnout set an 18-year record. And so I think this comment sort of continues,

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really.

Q. The article from 538, as somebody who is -- an academic in elections and statistics, is that considered a reputable source for information on election statistics?

A. Yeah. I mean, it's not an academic publication. It's a place where I think a lot of elections scholars and election practitioners go to look at, for example, election forecasting and the latest news and information on election. But I wouldn't -- I certainly wouldn't call it an academic publication.

MR. WEBER: Your Honor, may I have a moment to confer?

THE COURT: You may.

(Pause.)

BY MR. WEBER: Sorry. Your Honor, I don't believe the court has admitted or ruled on the admission of Dr. Kidd's report. So at this time we move to admit State Defendants' Exhibit 133.

THE COURT: All right. Let's -- Mr. Brody, you're standing up. Let me hear from you.

MR. BRODY: I ask the Court to reserve on that question until after examination is completed.

THE COURT: Will do. It's conditionally in but I will revisit the issue after the cross-exam.

MR. WEBER: And likewise, Your Honor, we understand that we have tendered Dr. Kidd -- the Court's accepted him as an expert in the area of political science.

THE COURT: Correct.

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MR. WEBER: And quantitative analysis. And do I understand that the Court has reserved ruling on that until after cross-examination?

THE COURT: Correct. He is -- there was no objection. But there's no doubt, I mean, as to political science. That's his area of his expertise. The issue as I sat through his direct that I will come back to is how does that political science expertise dovetail into the testimony that he's given here minus, from my perspective, the section 5 of his report where he talks about voter turnout which to me is directly in his field. And I don't believe that Mr. Brody has challenged that part of it. It's the other part that raised some concerns as well. But so let's -- I will take that up after I hear the cross-exam and get better appreciation of Mr. Brody's point.

MR. ROSS: Yes, Your Honor.

THE COURT: Thank you.

MR. WEBER: At this point, we pass the witness.

THE COURT: Thank you. Mr. Brody, your witness.

MR. BRODY: Thank you.

Q. Thank you. And good afternoon, Dr. Kidd. Nice to see you again.

A. You too.

Q. You -- all three of your degrees, your bachelor's degree, your master's degree, and your Ph.D. are in political science, correct?

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A. That's correct.
Q. You don't have a medical degree?
A. That is correct.
Q. And you don't hold yourself out as a medical expert, do you?
A. That is correct.
Q. You don't have a degree in epidemiology?
A. Correct.
Q. No degree in biostatistics?
A. Correct.
Q. You've never published on disease transmission?
A. Correct.
Q. You've never published on risk factors for disease transmission?
A. Correct.
Q. You've never published on infectious disease, have you?
A. No, I have not.
Q. You've never published on risk factor for infectious disease either, correct?
A. Correct.
Q. You don't have degrees in economics, do you?
A. No. Correct.
Q. You don't have degrees in public health either, right?
A. Correct.
Q. And you don't have any degrees in health economics, correct?

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A. Correct.
Q. So in talking about your areas of expertise, one of the questions that you were asked was whether you had been qualified as an expert in political science and quantitative analysis in a case where you testified in Louisiana, correct?
A. That's correct.
Q. And when you testified in that case, you presented analysis that was very similar to the -- at least I'll call the first four-fifths of your testimony today where you were talking about whether there were spikes or surges in coronavirus cases after elections held during the pandemic, right?
A. That's correct.
Q. Are you aware that that court which heard you testify I believe you said last week; is that right?
A. Either last week or the end of the week before last.
Q. Are you aware that that court today issued an opinion finding that your expert opinions in that case were irrelevant?
A. I was not aware of that.
Q. Let's talk about what you did in this case. Shift gears a little bit here. As we heard, you examined numbers of confirmed COVID infection in certain states that have held elections during the course of the pandemic, right?
A. That is correct.
Q. And you looked at six states total. I think we heard you talk about all of them, Virginia, Kentucky, West Virginia, Georgia,

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Wisconsin, and Alabama; is that right?
A. Uh-huh. Yes.
Q. And you were looking at the trend line in new cases, looking at a 7-day average and looking at how the trend line looked both immediately prior to and in the 14 days after the election, correct?
A. That is correct.
Q. And you tried to identify somewhere you felt the trend line was consistent in the time period immediately prior to the election, correct?
A. That is correct.
Q. As you said, had plateaued, right?
A. Flat, plateaued, yeah. However you want to describe it.
Q. Right. Although that was not the case in Alabama, was it?
A. That was not the case in Alabama.
Q. Right. And specifically, that was not the case in Alabama before I believe you said June 14th. I think you meant the July 14th primary runoff election in Alabama?
A. Correct.
Q. And then when you looked at that then 14-day window postelection, that's where you were looking at do I see a surge, do I see a spike, right?
A. Correct.
Q. Now, you did mention that you ruled out looking at Florida because it was pretty much on the down side of some number of

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increased cases. And I believe you mentioned spring break factored into one of their elections, and so you -- you looked at that in Florida, right?
A. Well, it wasn't on the down side. It was on the -- so the very beginning of the window would have been zero -- would have been essentially at the very beginning of the pandemic. And I couldn't separate the effects of spring break on the effects.
THE COURT: Dr. Kidd, could you repeat the last part of your answer, please.
THE WITNESS: Yeah. So Florida's election, its early election, Florida's had two elections during the pandemic. And its early election occurred really before the pandemic took off. And the election occurred about the same time that the spring break season began in Florida. So because I couldn't effectively distinguish in any way the influence of spring break on the election, I didn't look at Florida.
Q. (BY MR. BRODY:) Right. But outside of that spring break event in Florida which was fairly well publicized in the news, as I recall, you didn't examine for purposes of the states you considered whether there were things like mask mandates, restrictions on the size of social gatherings, stay-at-home orders, school closures, those types of things that were put into effect around the time of those states's elections, correct?
A. That is correct.
Q. Now, in offering the opinion that when you did your

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graphing and you took a look at, you didn't see surges or spikes. You were operating based on some definitions that you included in your expert report, correct?

A. Correct.

MR. BRODY: And, Mr. Ang, if we can bring up Dr. Kidd's expert declaration. And I want to turn to page 5 where those definitions occur. If we can call those out.

Q. And these are the definitions that appear in your expert report, correct?

A. That is correct.

Q. And for spike, you define a spike as a considerably large derivative why Y is cases and X is days would visually appear as a spike trend line on a graph with a considerably large increase in daily cases relative to prior day's cases over a small number of days say a few days to a week, right?

A. Correct.

Q. And then the second bullet that we see on the screen there, that's your definition of surge, right?

A. Say that again.

Q. The second bullet there, that's your definition of surge, right?

A. Correct. Sorry.

Q. And you indicated it is a relative large derivative where where Y is cases and X is days would visually appear as a surge trend line on a graph with a relatively large increase in daily

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cases relative to prior day's cases over a longer number of days say two weeks or longer, right?

A. That's correct.

Q. So you used the phrase relatively large increase in daily cases there in your surge definition. But you don't define a relatively large increase in daily cases in any specific way, do you?

A. Well, I describe it. I don't define it.

Q. Right. So you don't define what a relatively large increase in daily cases is, do you?

A. Correct. I describe it. I don't define it, yes.

Q. And there's no specific percentage that would satisfy your definition of relatively large increase in cases relative to prior day's cases, is there?

A. That is correct.

Q. There is nothing that says if we see say an X percent increase over Y number of days, that constitutes a surge. And if we don't hit that metric, it does not, right?

A. There is nothing there that says that, that is correct.

Q. Right. And the same is true of spikes. You don't have a particular percentage in mind that would tell us what a considerably large increase in daily cases relative to a prior day's cases would be, correct?

A. That is correct.

Q. Instead, whether there is a surge or a spike is just a visual

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thing, isn't it?

A. If you're looking at a trend line, it is a visual thing, yes.

Q. Right. And that's what it was for you in connection with the work you did in your case. You recreated the tables that we see in your expert report. And for you, it's just a visual thing, right?

A. It's a visual interpretation -- it's an interpretation of the -- it's an interpretation of the trend line, yes, the visual interpretation of the trend line.

Q. Right. And it's fair to say there's no empiricism to that visual assessment other than that you're looking at how you chose to graphically represent the data that we're going to talk about that you pulled from the Johns Hopkins coronavirus dashboard, right?

A. All right, say that again. The question -- I didn't hear all of it.

Q. I'm sorry. It's fair to say there is no empiricism -- if I may use that term -- to that visual assessment other than you're looking at a graphical representation of the underlying data?

A. I would -- I mean, there's descriptive empiricism. There's not mathematical empiricism if that's what you're wanting, yes.

Q. There's certainly no predictable empiricism, is there?

A. It is not a predictive analysis at all. It is not a predictive model at all.

Q. In fact, I believe you don't think or know what kind of increase constitutes a relatively large increase so as to be a surge

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or a spike until we're on the other side of the coronavirus, right?

A. That actually -- that actually may be true at the end. However, look, we can find surges and spikes in trend lines, and so we know what they look like.

Q. Dr. Kidd, you were deposed in this case just three or four weeks ago, right?

A. That's correct.

Q. I believe it was August 21st.

MR. BRODY: Mr. Ang, can we bring up the August 21st deposition transcript. And I want to go to page 37, if we can. And let's look at line.

THE COURT: Mr. Broad, we lost you briefly. Page 37 was the last thing I heard. And then the line number that you referred him to did not come through.

MR. BRODY: I'm sorry.

Q. It's starting at line 9. You were asked, "And that's not a very specific time. So I'm going to have to ask you what is a relatively large increase in daily cases for purposes of your definition? And you responded it is not -- I don't define it in any specific way in part because I don't think it is definable easily that way. I think that it's difficult to determine in part because we're in the middle of it. We don't have an end basis in which to say -- to look back and say, you know, generally a surge was, you know, 20 percent more cases per day than the previous day. I think at some time we'll be able to do that when we're on the other side of this

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virus." That was your testimony on August 21st, correct?

A. That is correct.

Q. All right. And we do know -- and I think you testified to this in your direct examination -- many people get coronavirus, correct?

A. Yes, that is correct, as far as I can tell, yes.

Q. Many people are getting coronavirus today, right?

A. Correct, yes.

Q. The United States is in the middle of the COVID-19 pandemic, is not it?

A. Yes. Unfortunately.

Q. And I assume you're aware -- I believe the last time I checked there had been over 6 million confirmed cases of COVID-19 in the United States. Are you familiar with that?

A. I'm familiar. I don't know the exact number. But I would take that as accurate.

Q. And you understand that some people infected with COVID-19 do not show symptoms, correct?

A. I do understand there are asymptomatic, yes.

THE COURT. Mr. Brody, we lost you at the start of that question. Please rephrase.

MR. BRODY: Sure.

Q. That means that the number of actual cases is probably well in excess of what we see as confirmed cases, correct?

A. I would have no basis on which to say that. I don't know.

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Q. All right. You're aware that more than 190,000 Americans have died from COVID-19, correct?

A. Unfortunately, yes.

Q. And you are aware that unfortunately, the number of cases and deaths extends throughout the United States including to Alabama, correct?

A. I am aware of that, yes.

Q. Now, in order to confront this pandemic, you believe that Americans should follow the guidance of the Centers for Disease Control on things like social distancing, don't you?

MR. WEBER: Objection. This is outside the scope of the direct. Dr. Kidd did not offer opinion testimony on this issue.

MR. BRODY: Your Honor, I think it goes directly to his statements about the impact on turnout.

THE COURT: Okay.

MR. BRODY: And the value of his testimony for purposes of the issues in this case.

THE COURT: All right. Since I can see the relation to section 5 of his report, I'll allow it.

MR. BRODY: Thank you.

Q. Dr. Kidd, you have yourself no basis to disagree with CDC recommendations and guidance on social distancing, correct?

A. I have no basis.

THE COURT: Mr. Kidd, I think your answer is, I have no basis. But is there anything else that you may have said that we

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did not get because of the connection?

THE WITNESS: No, that's accurate. I have no basis to disagree.

Q. (BY MR. BRODY:) And likewise, I assume you have no basis to disagree with CDC's assessment that social distancing is especially important for people who are at high risk for severe illness from COVID-19, correct?

A. I have no basis on which to disagree with that.

Q. And you also agree that an increase in coronavirus cases is a public health concern whether that increased number of cases is something that you would visually call a surge or a spike or not, correct?

A. Yeah, I have no basis upon which to disagree with that.

Q. Any additional coronavirus case and any additional coronavirus death, if we can prevent it, I assume you would agree we should prevent it, right?

A. Certainly.

Q. And you yourself, by the way, I know we had the opportunity to discuss this to a degree back in August, but you're generally familiar with the CDC's findings on racial disparities in COVID-19, correct?

A. Yes, I am.

Q. And you understand the CDC has found during the pandemic that minority communities have been hit harder by COVID-19 than nonminority communities, correct?

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MR. WEBER: Objection. Again outside the scope of direct.

THE COURT: I'm assuming this is all part of your section 5 response?

MR. BRODY: It is, Your Honor.

THE COURT: Okay. I will allow it since I stated earlier that's to me, at least -- Mr. Brody may disagree. But section 5 is within this witness' expertise to opine on. So you may continue, Mr. Brody.

MR. BRODY: Thank you.

Q. And, Dr. Kidd, you would agree that given the scale of the pandemic and the CDC's guidance on social distancing, it would not be unreasonable for somebody to be concerned about contact with others while voting during an election, correct?

A. I would have to reason to disagree with it.

Q. So I want to -- I want to come back to voter turnout. But before I do, I want to talk about surges and spikes a little bit more if it's okay with you. You made a certain chart on how to portray COVID cases after elections. For instance, you used a 7-day moving average to depict the trend of confirmed coronavirus cases, correct?

A. I did, yes.

Q. And again, that's the confirmed cases. That doesn't pick up any asymptomatic person who never got a test, right?

A. That's correct.

Q. And it doesn't pick up somebody who was experiencing

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symptoms that may be coronavirus symptoms but again never felt the need to go and be tested, correct?

A. That's correct.

Q. You pulled your data from the Johns Hopkins coronavirus dashboard, correct?

A. That is correct.

Q. And you plotted that data, you looked backwards for seven days prior to to the election and then forward 14 days afterwards, correct?

A. Yes. I needed the seven days prior to produce the trend line that began at the election, yes.

Q. You understand and you addressed this briefly in your direct examination questions by Mr. Weber. You understand that there is a difference between the onset of symptoms and confirmation of COVID-19 through a positive test, don't you?

A. Yes.

Q. That is, there's a lag in time from when a person first experiences symptoms to when a positive test result is ultimately received by that person, correct?

A. There is. It's variable. It's inconsistent, but yes, there is some lag, yes.

Q. And I don't know if I missed it, but I didn't see in your expert report in this case citation to any of the studies that have been done that actually quantify that lag time; is that right?

A. Correct.

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Q. All right. Now, even before we get to that lag tame, as you acknowledge, there is a lag time between exposure to COVID-19 and the onset of symptoms, isn't there?

A. Say that again . Ask that question again.

Q. Sure. Even before we get to that lag time between onset of symptoms and ultimate receipt of a confirmed coronavirus test result, there's an initial lag time between exposure and the onset of symptoms, right?

A. I suppose there could be. I don't know that there's a consistency to it. So I couldn't tell you.

Q. You actually account for that in your expert report by citing to CDC's indication that about 50 percent of people will clinically have symptom onset within four to five days, correct?

A. That is correct.

Q. That is something you were aware of?

A. That I cite, yes. I'm saying that's correct what I cite, yes.

Q. Right. So but you didn't take the next step and try to figure out how long between symptom onset and return of that positive test, right?

A. That is correct.

Q. Someone might develop symptoms but not suspect that they were COVID symptoms right away, correct?

A. That could be.

Q. Even if they thought the symptoms were related to COVID, they might not get a test right away, correct?

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A. That very well could be, yes.

Q. For any number of reasons, right?

A. For any number of reasons, yes.

Q. And you have no discussion of those reasons in your analysis in this case, do you?

A. That is correct.

Q. You are familiar, however, that there have been widespread reports about the lack of availability of COVID-19 testing, aren't you?

A. Yes, that is -- I have read those reports.

Q. There was a lot of commentary saying that every American should be able to get a test but a lot of consternation about the fact that that was far from true, right?

A. I have read all of that, yeah.

Q. In other words, people who wanted tests it has been reported have at times had difficulty getting them, correct?

A. I have read reports like that, yes.

Q. Now, if you were to assume that there is, say, a two to 3-day lag time between the onset of symptoms and COVID tests, adding that to the four or five days for the onset of symptoms for the first 50 percent of people, we're now six to nine days out from exposure, right?

A. Yes, based upon your description, yes.

Q. Right.

MR. BRODY: Can we take a look at -- and, Mr. Ang, this is --

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you have it referenced as Kidd 2. And, Your Honor, if we may just for the record reference this as -- I'm going to pick a number that is not going to overlap with another number. Can we reference this as Plaintiffs' Exhibit 500, please.

Q. And, Dr. Kidd, if you can see the screen, we see this is the state of the nation, a 50-state COVID-19 survey, report number 8, failing the test, waiting times for COVID diagnostic tests across the U.S., correct?

A. I do see that, yes.

MR. BRODY: And, Mr. Ang, if he can turn to page 4. And if you can bring out the first paragraph.

Q. You see the indication -- and Dr. Kidd, can you read this along with me?

A. Yes.

Q. The findings here, they indicate that ideally test results should be available the same day but that the United States is not currently performing testing with nearly enough speed." And this was a survey conducted between July 10th and July 26th, asking whether respondents had been tested and how long they had waited to get results. The average wait time, they found, was 4.1 days. And this represented only a one-tenth of a day decrease in time since April where it was 4.2 days, correct?

A. Yeah, I do see that, yes.

Q. Now, are you familiar with the testimony from Dr. Cotti in this case?

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A. I read his report. I did not see his testimony.
Q. All right. Well, if you read his report, you're aware that he actually looked at data in Wisconsin from the Wisconsin Department of Health Services, that showed that the total time between symptom onset and return of a positive coronavirus test in Wisconsin was seven-and-a-half days. Are you familiar with that?
A. Yes.
Q. Right. And a seven-and-a-half day lag time from a four to five-day delay before exposure brings us to 11-and-a-half to 12-and-a-half days, right?
A. Yes.
Q. And taking that 4.1 day figure -- and let's give ourselves a range, three to five days around that, we had talked about a two to 3-day delay between symptom onset and a test putting us at days 6 to 9. You recall that, correct?
A. I do.
Q. And then if we were to add another three to five days to get test results back, we're at days 9 to 14, right?
A. Yes. I can follow your math, yes.
Q. And the seven-and-a-half days that Dr. Cotti found when he looked at the data in Wisconsin puts us right in the middle of that 9 to 14-day range, correct?
A. Yes.
Q. Now, if we are then going to look at the 7-day moving

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average of coronavirus cases and starting with day 9, the first time that the 7-day moving average will exclude the period before day 9 will be plus 7, day 16, right?
A. Yeah, I follow your math.
Q. Right. And the earliest time period where the 7-day moving average will exclude the time before day 14 in looking at our 9 to 14-day range, that will be day 21, right?
A. Yeah.
Q. And if we're going to be -- if we were to look at a 14-day period starting either at day 16 where we weed out the pretest result period in our model that we have been talking about and we go 14 days forward, we'd be looking at day 16 to 30, right?
A. Well, yeah. I wouldn't weed out the early part of it. I mean, I -- there's no reason to exclude the first 14 days.
Q. Right. Okay. So you wouldn't necessarily have to exclude it. But in order to capture the 14 days from that 16-day period, you would have to go out to day 30, fair?
A. Fair.
Q. And to capture the 14 days starting at that day-21 point, which is where we see 7-day moving averages from day 14 forward, we would have to look from day 21 to day 35, correct?
A. Yes. Yes. Based on how you have described that as accurate.
Q. Right. Now, I take it because you relied on and used the Hopkins data, you felt that the Johns Hopkins data was reliable

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for the purposes of doing the analysis you did?
A. I did feel like it was reliable, yes.
Q. All right. I want to take a look at what that data shows us in some of the states that you looked at. And why don't we start with Georgia. And we've created some demonstrative exhibits that we're going to show on the screen here.
MR. BRODY: And, Mr. Ang, can you bring up what I'll call Kidd demonstrative 1.
Q. Now, Dr. Kidd, this is your figure 7 from your expert report, correct?
A. It is.
Q. And what we see here is you have put the June 9th -- a big bar where we see the June 9th election, correct?
A. Right. And that's the daily case count for that day.
Q. Right. And then we see a little arrow if we move toward the right as we're looking at it, which is I believe five days out. And that's the symptom onset according to CDC for 50 percent of persons who are exposed on the 9th, right?
A. Correct.
Q. All right. Now, what I want to do is -- and again, that's just symptom onset. That's not receipt of a positive test, correct?
A. That's correct.
Q. All right. Now, what I want to do is I want to take a look at what the Hopkins data looks like.
MR. BRODY: Can we bring up the full Hopkins data there,

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Mr. Ang. Thank you.
Q. Dr. Kidd, you recognize that as the way the data is presented in the source, correct?
A. That is correct.
Q. And give me a moment here. I'm going to adjust my screen so that I can actually see it. Thank you for the indulgence. So you recognize that as the data, correct?
A. Correct. Yes, I do.
Q. And it actually looks different than what you portray, because in your graph, you extended the X axis so that there is a much smaller 21-day time period shown in a greater amount of space, correct?
A. Yeah, that's -- my graph is just zeroing in on 21 days of that larger graph.
Q. Right. And when you extend that time period on the X axis that ultimately is going to impact the slope of the 7-day trend line, correct?
A. Well, it's going to be an accurate slope within that 21 days.
Q. But it is going to impact the way it looks visually, correct?
A. Well, it comparatively will look differently if you're looking at say mid January to mid August as opposed to early June to mid -- middle to late June. Yeah.
Q. Because when you --
A. If the implication is any deception, then I would reject that. It's simply a different time frame that you're looking at the same

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data.

Q. And I wasn't implying any deception at all. The point, Dr. Kidd, was simply that by expanding that X axis, it impacts the way it looks visually, right?

A. I -- I'm not sure what you're asking, actually.

Q. Well, let's take a look. And I want to zero in actually on the -- a slightly broader time period around the election in Georgia. And what we have done is we have zoomed in on the source data, the Hopkins data. And we marked the Election Day as well as day 16, that date we talked about, and 14 days later, day 30. Can you see that?

A. Yes.

Q. And you would agree --

MR. WEBER: Excuse me. I'd like to object at this point. So Dr. Kidd's expert report clearly noted that he viewed the data as of August 7th. He testified that he can and do -- periodically go back and revise that data. And we have no way of knowing whether this information is consistent with the information cited in his report.

MR. BRODY: Your Honor, may I ask Dr. Kidd a question.

THE COURT: You may.

Q. (BY MR. BRODY:) Dr. Kidd, are you aware of any evidence that since the time we last looked at your data on August 21st, that the Johns Hopkins data coronavirus dashboard, the source that you found to be reliable has gone back and change its

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presentation of data for the state of Georgia?

A. I am not -- I did not go -- I have not gone back and looked at whether they have changed any of that data.

Q. Right. Same question for any other state for which Johns Hopkins and the Johns Hopkins dashboard provides data?

A. No, I have not gone back and looked to see if they have changed anything.

Q. Right. And you would agree with me, Dr. Kidd, that what we see is an uptick in the number of coronavirus cases, confirmed coronavirus cases in Georgia on between days 16 and 30 after the Georgia election, correct?

A. Yes, that's what the graph shows, yes.

MR. BRODY: And, Mr. Ang, if we can move our lines over and pull up days 21 and 35.

Q. We also see that uptake continue out to day 35, don't we?

A. I do see that.

Q. All right. Let's talk about another of the states that you took a look at. Let's talk about West Virginia. That was one of the states you looked at, correct?

A. It is.

Q. And West Virginia held an election on June 9th of this year, correct?

A. Correct.

MR. BRODY: And, Mr. Ang, can we bring up Dr. Kidd's table, figure 6 from your expert report, correct?

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A. That is correct.

Q. And again, same methodology that we went through before looking backwards seven days from the election, plotting the actual number of cases that were confirmed on Election Day, and then including an arrow at day 5 before extending out 14 days, correct?

A. Correct.

Q. Right.

MR. BRODY: Mr. Ang, can we bring up the Johns Hopkins source presentation data for West Virginia.

Q. And you recognize this, Dr. Kidd, as the West Virginia data that is available as part of the source that you used to create your graph, right?

A. That is correct.

Q. And again, we zeroed in on the time around the election and plotted days 16 through 30.

MR. BRODY: Mr. Ang, can we bring that up.

Q. Dr. Kidd, can you see that on your screen?

A. I can.

Q. And you agree with me that as in Georgia, in West Virginia between day 16 and 30, we see a rising number of confirmed coronavirus cases in the state of West Virginia, correct?

A. I do see that, correct.

Q. And that dark orange line that we see, you understand that that's the 7-day moving average, correct?

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A. I do.

Q. And it's hard to see on this graph, but there's some very faint bars behind that. Those represent the actual counts on any given day, correct?

A. Correct.

MR. BRODY: Mr. Ang, can we move toward and take a look at days 21 through 35.

Q. And again, we see at day 21 that upward trend line continue before it starts to come down just before day 35, correct?

A. That is correct.

Q. Would you call that a spike?

A. I would call that a surge given the days, the day -- the number of days involved.

Q. Okay. Fair enough. So let's take a look at Wisconsin now. And I believe you did not -- I believe you said you chose Wisconsin because it has been the subject of expert analysis by some of the experts on the Plaintiffs' side, right?

A. It generally had been studied. Not specifically because it had been studied by anybody on the plaintiffs' side.

Q. Okay. But for example, you were away of Dr. Cotti's analysis?

A. Say that again. I didn't hear all of that question.

Q. You were aware of Dr. Cotti's analysis, right?

A. I -- yes. It was -- I read it more fully in his report here.

Q. Okay. Were you aware of his analysis prior to preparing

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your expert report in this case?

A. Yeah, he -- well, there's something -- a paper that he and his colleagues was -- he has a paper. I assume, it's a draft of a paper up on the Social Science Research Network which is where I initially saw it.

Q. Okay. And the -- for the benefit of the Court, the Social Science Resource Network, can you tell us what that is?

A. Research network.

Q. Research network. Excuse me.

A. Did you want me to say what it is?

THE COURT: Is that like SRNET.

THE WITNESS: It's SSRN. And it's sort of a repository of academic papers and things that are published or prepublication. It's a repository of stuff like that.

Q. (BY MR. BRODY:) Okay. And that's where you came across Dr. Cotti's analysis initially, fair?

A. Fair.

Q. All right. Now, let's do what we have done with Georgia and West Virginia, and let's take a look at your figure 4 where you displayed the same thing we have seen previously for Wisconsin. And the depiction and the method of the depiction is the same, right?

A. It is.

Q. Good. We can move through it a little more quickly then. I want to bring up the source presentation. That's the Johns

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Hopkins coronavirus dashboard presentation of data for the state of Wisconsin, correct?

A. Correct.

Q. And again, you -- what you did in yours is you pulled that 21 days out over a longer X axis than is used.

MR. BRODY: And, Mr. Ang, if you can do back just slightly.

Q. Than is used on the presentation we see from the JHU's source, correct?

A. No. So I think are you're confusing the X and the Y axis. So the reason that my trend line might like a little bit differently is because of the Y axis. On the Johns Hopkins graph, it goes from 0 to 1,000. On my graph, it goes from 0 to 200. That's what's making that trend line look different. It's not the X axis. It's the Y axis.

Q. Fair enough. Regardless, the scaling is slightly different in the two, and that results in a difference in how they look visually when we put them up side by side, correct?

A. Yes.

Q. All right. So what we did is we zoomed in again at days 16 to 30 after the election. And you would agree that between day 16 and 30, we see an uptick, an upward slope in the number of confirmed coronavirus cases in the Wisconsin, correct?

A. Yeah, I agree with that.

Q. You -- now, you didn't go beyond the visual depiction that we had displayed here as your figure 4 and drill down say to the

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county level in Wisconsin, did you?

A. I did not. This is a statewide -- state level analysis.

Q. And you didn't look at things like county population, population density, voting density, differences in social distancing habits, anything like that surrounding that Wisconsin election, correct?

A. Correct.

Q. And if we move out to days 21 to 35, we see a bit of a plateau in those rising number of cases before we hit the day 35 in Wisconsin, correct?

A. That's correct.

Q. I'm going to go through these last few states pretty quickly here, Dr. Kidd, so that we can get you off of the witness stand. Same methodology for Kentucky.

MR. BRODY: And this is Kidd demonstrative 4. And for the record, that was Kidd demonstrative 3 that we just looked at for Wisconsin.

Q. Kidd demonstrative 4, that's your figure 8 from your expert report, correct?

A. Correct.

Q. And that's the same methodology for the visual representation there, correct?

A. Correct.

Q. And you recognize what we see on the right-hand side as we are looking at the screen as the source data as it exists on the

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Hopkins coronavirus dashboard for the state of Kentucky, correct?

A. I do, yes.

Q. And I believe the date of the election in Kentucky was June 23rd, 2020; is that right?

A. That is correct.

Q. All right. So what we have done is we have zoomed in around that date and plotted 16 out of 30 days out in the state of Kentucky. And you would agree with me that the number of coronavirus cases was rising during that time period in Kentucky, correct?

A. That is correct.

Q. And it starts to flatten out just before day 35, that rising trend as we shift and zoom in on days 21 to 35, correct?

A. That is correct.

Q. All right. Let's talk very briefly about Virginia. That's one of the states you looked at in connection.

MR. BRODY: You can pull that down, Eric. Thank you.

Q. You looked at Virginia as well, correct?

A. Correct.

Q. Your home state, right?

A. Yes.

Q. And you indicated that the elections that were held in Virginia were municipal elections, correct?

A. Correct.

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Q. There wasn't anything like a statewide senate primary, correct?

A. Correct. There were hundreds of towns, cities, and counties that had elections all on one day.

Q. All right. You did not in the course of your work consider the percentage of the total voting population in any state -- let me start that question over and ask it this way.

You didn't consider the number of voters as a percentage of state total population as part of your analysis of whether there was a surge or a spike following an election, did you?

A. I did not.

Q. You do know, however, that there were only about 115,000 people who voted in the Virginia election, correct?

A. Yes, I'm aware of that.

Q. And I believe that you're also aware that approximately half, 50 percent, voted absentee, correct?

A. Correct.

Q. So that means that only about -- well, I mean half of 115,000 we could agree is 57,500, right?

A. Correct.

Q. And Virginia has roughly, I believe you told me, about four-and-a-half million people; is that right?

A. That's about right, yeah.

Q. And so that means that just over 1 percent -- I guess, of the Virginians voted in person in those municipal elections, correct?

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A. Correct.

Q. And you didn't conduct any sort of analysis to determine whether the -- let me ask you this. You understand that Virginia maintains records of the number of persons who vote in each polling location, right?

A. Yes.

Q. And you indicated that there were major cities in Virginia that were part of those municipal elections, correct?

A. Correct.

Q. Now, but I didn't see this in your expert report. You didn't -- and so I assume you didn't do this. You didn't actually go in and look at the number of people who voted at each polling location in Virginia, did you?

A. By polling location, you mean city or precinct?

Q. Let's start with precinct?

A. No, I did not. After that deposition, I did go look at two cities --

Q. I -- that's quite all right. I'm asking about your work in this case.

A. Yeah. No, I did not.

Q. I'm simply focused on the work that was disclosed to us as well as the Plaintiffs?

A. Correct.

Q. You -- by the way, you know that Virginia also maintains data on new coronavirus cases at the local level around the state,

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correct?

A. Correct.

Q. You didn't look at that data as part of your work in preparing your expert report in this case, did you?

A. Correct, not as a part of this report.

Q. And so let me ask you this question since you do live in Virginia. I assume you know that Virginia allows for curbside voting for people ages 65 and older and for people physically disabled without access to polling places?

A. I do -- I am aware of that, yes.

Q. And I assume you're also aware that the state of Virginia expanded access to curbside voting to anyone with symptoms of illness for the 2020 primary in light of the coronavirus pandemic?

A. That is correct. For the election I analyzed, that wasn't the case. But after the May municipal elections, they did do that.

Q. Okay. And so that was after the elections that you said were statewide municipal elections but only drew 115,000 people total and 57,500 people in person, right?

A. Correct.

Q. All right. You also talked about Alabama. And I believe we discussed early that in the states that you analyzed, you didn't look at other things that may have been going on in different states such as stay-at-home orders, mask mandates, school closures, and the like, correct?

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A. Correct.

Q. And so I take it that you were not aware when you did your analysis of the potential impact of the July 14th primary runoff election that Alabama issued a mask mandate the day after that election on July 15th, were you?

A. I do realize -- I do know that now. But that's not in my report.

Q. That was not part of your -- that was not a part of your analysis, was it?

A. That is not part of my analysis, right.

Q. All right. So let's talk -- I want to shift gears a little bit and talk about voter turnout, and then then I will be done.

THE COURT: Mr. Brody, give me a general time for how long you think this part will take.

MR. BRODY: Your Honor, I would say -- I would say 20 minutes perhaps.

THE COURT: Okay. Let's stop. Dr. Kidd has been on the witness stand for almost close to two hours now. Let's take a ten-minute break. Come back at 10 after 5:00, please, everyone. Thank you.

(Recess.)

THE COURT: I know the three of you are ready to go. I told everyone else ten after. So let's wait just to make sure that I don't deprive anyone of the opportunity to hear fully the testimony.

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Dr. Kidd, are you ready, sir?

THE WITNESS: I am.

THE COURT: Thank you. Mr. Brody, if you're ready, you may resume your examination.

MR. BRODY: Thank you, Your Honor. I am ready.

Q. Dr. Kidd, as I mentioned before our short break, I wanted to turn and talk about your testimony on voter turnout. The entirety of your analysis of voter turnout is captured in three paragraphs in your expert report, isn't it?

A. That is correct.

MR. BRODY: And if we bring that up, Mr. Ang, it is State's Exhibit 133 at 15.

Q. And we see there, Dr. Kidd, you can see it as well, section 5. It's titled does the pandemic hurt voter turnout. And that is the entirety of your expert declaration in this case on that question of voter turnout, isn't it?

A. It is.

Q. And your sole source that you cite for the opinions that you have offered on voter turnout in your expert declaration was -- what would you call it? An article? A blog post, from 538? How would you describe it?

A. Yeah. An article from 538.

Q. Okay. And this is something that is available on the 538 website, correct?

A. That is correct.

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Q. And I believe as you said it during your direct examination, it's certainly not something that is peer reviewed, correct?

A. That is correct.

Q. It's not published in, you know, any kind of scholarly journal, correct?

A. That is correct.

Q. Certainly it's not in any of the political science publications where you have published some of your own work, correct?

A. That is correct.

Q. The -- I want to talk about some of the conclusions that you reached that you put forward in your expert report as support for your opinions. And if we look at the --

MR. BRODY: I want to pull out the second paragraph there, Mr. Ang.

Q. And we see there that you indicated based on numbers that were drawn from that 538 website, you reported on states that have seen the biggest turnout increases over the same election, comparable election in 2016, right?

A. Comparable years, yes.

Q. So the comparable election. So, for example, we'll get into this for Alabama. So what 538 did is it said that we're going to look at voter turnout for the primary runoff in 2016 and --

A. Right.

Q. -- we're going to compare that to the primary runoff, the comparable election, in 2020; is that right?

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A. Yes, that's right.

Q. I apologize. That's what I meant by comparable election. I just wanted to be sure we're on the same page with that. You did not again, review anything else in arriving at the bottom line conclusions that you reached in your expert work in this case, did you?

A. Correct.

Q. For example, you didn't review or rely on publications on public attitudes toward social distancing, correct?

A. Correct.

Q. You are aware that there have been surveys on public attitudes towards social distancing, correct?

A. That is correct.

Q. You didn't rely on or look at surveys on how Americans want elections to be run during the COVID-19 crisis, did you?

A. That is correct.

Q. And so you didn't look at surveys that might have been suggestive of how fears associated with in-person voting could deter people from voting in person, did you?

A. That is correct.

Q. Your analysis was limited to, again, looking at the 538 website article, correct?

A. That is correct.

Q. And looking at Alabama specifically, you didn't consider any research about how Alabamians might have concerns about

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in-person voting and how that might affect turnout in the upcoming election, did you?

A. That is correct.

Q. Nor did you consider how restrictions on absentee voting options and in particular requirements for absentee voting could deter voters who have a strong preference for voting by mail during the pandemic, did you?

A. That is correct.

Q. And so you don't know whether some Alabama voters who are afraid to vote in person will opt not to vote at all if they feel that they cannot safely comply with requirements on absentee voting, correct?

A. I am not aware of any individual opinions. But I take your larger point.

Q. Which is --

A. I'm not aware of any individual, yes.

Q. Right. Not something you looked at one way or the other as part of your investigation to prepare your expert report here, right?

A. Correct.

Q. All right. I want to look at the source material itself. And I believe it was marked as Exhibit P 47.

MR. BRODY: Mr. Ang, can we bring that up. And if we can zoom in on the title there. Perfect. Thank you.

Q. And, Dr. Kidd, you recognize this as the 538 website post or

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article that you cited?

A. I do.

Q. Let's turn to page 7. And I want to focus in on the final full paragraph on the page.

MR. BRODY: It starts some states, Mr. Ang. Thank you.

Q. We see the author of this website piece said, "some states like Idaho, Iowa, Nebraska, New Mexico, North Dakota, and South Dakota have risen to the challenge, greatly expanding their use of absentee voting and reporting few problems at the polls." Do you see that?

A. I do.

Q. And Mr. Rickage states, "these states also saw increases in turnout relative to the equivalent election in 2016," correct?

A. I do. I agree with that, yes.

Q. And he goes on to say similarly -- this is the last sentence -- "Arizona, Colorado, Montana, Oregon, and Utah also scored highly because they already conduct their elections mostly via absentee ballot and thus were able to avoid major problems," correct?

A. Yes, I see that.

Q. Did you look at absentee ballot requirements for any of the states that are mentioned here by Mr. Rickage?

A. No, I did not.

Q. Now, if we go to the next paragraph, starting at the very bottom of the page.

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MR. BRODY: It starts, "On the other hand." Mr. Ang, if we could bring that up. Perfect.

Q. We see the indication from the article that you are citing, "On the other hand, states like Illinois, Indiana, Pennsylvania, and Wisconsin bungled their execution of their primaries. They did little to expand mail-in voting, although many voters cast absentee ballots anyway, and their turnout fell which may or may not be related to the first two points." Correct?

A. I do read that, yes.

Q. Now, you understand that absent a requirement like, say, notarization or witness signatures, voting by mail does not implicate the concerns with potential exposure to COVID-19 that you're aware of from the CDC guidelines on things like social distancing right?

A. I don't know that I have a basis to make a judgment. I mean, I'll take your point.

Q. Okay. It seems somewhat intuitive, doesn't it?

A. Yes.

Q. Now, your work in this case specifically doesn't account for the impact of state efforts to expand absentee voting on voter turnout, correct?

A. Correct.

Q. And it --

MR. BRODY: If we can go back to your expert report, States Exhibit 133. Excuse me, Your Honor. I want to -- actually, I want

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to go to the expert report which is States Exhibit 133. Perfect. Thank you, Mr. Ang. And if we can go back to that second paragraph.

Q. Now, you reported, Dr. Kidd, that the states that have seen the biggest turnout increases over 2016 include Colorado, Alabama, Iowa, and Nebraska, correct?

A. Correct.

Q. And again, that was based on the 538 website, correct?

A. Correct.

Q. Let's talk about Alabama first. You note that there was a plus 15 percent increase in turnout during the Alabama election that was just held in 2020 and the primary runoff that was held in 2016, correct?

A. Correct.

Q. And you know that the most recent Alabama election included the senate runoff between Jeff Sessions and Tommy Tuberville on the Republican side, correct?

A. Correct.

Q. That was a statewide Republican runoff, correct?

A. Correct.

Q. It was highly publicized, correct?

A. That is correct.

Q. In fact, it was the subject of stories on the national news, not just the news in Alabama, wasn't it?

A. Correct.

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Q. And as a political scientist, you understand that turnout in elections can be driven by the issues, by the candidates, or the seats that are on the ballot, don't you?

A. Yes.

Q. But you made no effort to determine how the offices on the ballot in the special primary runoff in 2020 in Alabama compared to the offices on the ballot in the 2016 special primary runoff, did you?

A. Correct.

Q. You know now after your deposition in this case, however, that the 2016 special primary runoff elections didn't feature any statewide offices, correct?

A. That is what you informed me of, yes.

Q. Well, you don't have to take my word for it. We can bring up Kidd Exhibit Number 8.

MR. BRODY: What I have as Kidd 8, Mr. Ang, and we can refer to this as Plaintiffs' Exhibit 502, I believe.

A. I do know that now because of the deposition.

Q. Okay. And we see here the -- this is from the Alabama Republican party, correct?

A. Correct.

Q. And it certifies the results of the April 12th, 2016 Republican primary runoff election, correct?

A. Correct.

Q. And we see that the only seats that were up in that election

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were two district state Board of Education seats, district 1 and district 7, two judge elections, circuit 18 and circuit 39, and the election for district attorney in circuit 20, right?

A. Correct.

Q. There are no statewide Republican offices on the ballot in the April 2016 election, are there?

A. That is what it appears to me, correct.

Q. And what that ultimately means for purposes of the Republican primary voters in the State of Alabama is that there were only certain districts and circuits where Republicans were permitted to vote in April of 2016, correct?

A. Correct.

Q. And you are also aware, I believe, based on the deposition that you gave in this case that the only Democratic offices on the ballot in April 2016 were circuit judges in the 10th district, correct?

A. Correct.

Q. And you would agree with me that comparing these circuit and district elections in 2016 and the turnout there to the turnout in an election like the 2020 election with a highly publicized statewide Republican senate runoff is an apples and oranges comparison, wouldn't you?

A. I think that is a fair criticism.

Q. All right. Let's talk about Colorado. Colorado, you noted in your expert report, saw according to 538, a 21 percent increase in

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turnout from its 2016 primary to the same primary in 2020, correct; is that right?

A. Correct, yes.

Q. All right.

MR. BRODY: And let's go back to P 47 if we can, Mr. Ang. And I want to turn to page 2. And if we can bring up the chart there.

Q. This chart lists the percentage of absentee voting by state, correct?

A. Yes.

Q. Is that right?

A. That is correct. Sorry if I didn't say that loud enough.

Q. That's okay. And as we -- it's probably just my hearing. So if we go down the chart, we can see Colorado. And the percentage of voters voting by absentee in the most recent election in Colorado was 99 percent, correct?

A. Correct.

Q. All right. If we could, I want to turn to look at -- let me ask you this. Did you look at what the requirements are to vote absentee in Colorado?

A. I did not.

Q. Let's look at --

MR. BRODY: Mr. Ang, we have this as Kidd 6. And, Your Honor, if it's okay, we'll refer to this as Plaintiffs' Exhibit 503.

THE COURT: That's fine.

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MR. BRODY: Thank you.

Q. This is from the National Conference of State Legislatures, correct?

A. Correct.

Q. And it's a table that summarizes how states verify voted absentee ballots, correct?

A. That is what it looks like, yes.

Q. And state by state, correct?

A. That is -- I see a state. I assume the rest of them --

Q. All right.

MR. BRODY: So let's go to page 3 if we can, Mr. Ang. And we see Colorado. And if we can bring the columns that are at the top out as well, Mr. Ang, that would be helpful just so we can see exactly what questions are being answered there.

Q. So there's a question, "Copy of ID required?" And then a question about "notary or witness signatures on return envelope required?" And we see that for each of those questions in Colorado the answer is no, correct?

A. Correct.

Q. All right. Do you know -- actually, you don't know, I take it, how Colorado's absentee voting requirements compare to what is required in Alabama, do you?

A. I don't know. But I -- I assume that they are different. I assume Alabama is more restrictive.

Q. That's not something you looked at in connection with your

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work in this case, is it?

A. Correct.

Q. And you made no effort to account for the extent to which Colorado's absentee voting policies had an impact on its voter turnout, did you?

A. Correct.

Q. All right.

MR. BRODY: Let's turn back to to the 538 article and if we can go to Plaintiffs' 47, page 3.

Q. And that's the continuation of our chart of absentee voting percentage in the elections that Mr. Rickage looked at, correct?

A. Correct.

Q. All right.

MR. BRODY: And if we can bring out Alabama there.

Q. We see that the percentage of absentee voting in Alabama was only 5 percent, correct?

A. Correct.

Q. And again, you didn't look at the extent to which absentee voting requirements impacted that disparity between Colorado's 99 percent absentee and Alabama's 45 percent absentee, did you?

A. Correct. I did not.

Q. Let's talk about Iowa. In your analysis, you noted that Iowa saw a 14 percent increase in turnout from its 2016 primary to the 2020 primary. That's in your expert report, correct?

A. Correct.

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Q. All right.

MR. BRODY: So let's look it page 2 of P 47, Mr. Ang. If we could look back one page. And I want to pull up Iowa.

Q. We see the percentage of absentee voting in Iowa was 78 percent, correct?

A. Correct.

Q. And that represented a 59 percent increase from the 2016 election to the equivalent election in 2020, correct?

A. Correct.

MR. BRODY: Mr. Ang, if we can go back to Plaintiffs' Exhibit 503, the National Conference of State Legislatures Summary. And I want to go to page 9 and look at Iowa. And if we can pull out the -- perfect.

Q. And we see the reference there to the Iowa code, copy of ID required, no. Notary or witness signatures on a return envelope required? And the answer there is no as well, correct?

A. Correct.

Q. And by the way, you have no basis to disagree with the National Conference on State Legislatures analysis of this issue, do you?

A. I do not.

Q. You didn't compare Iowa's absentee voter's policies to what's required to vote absentee in Alabama, did you?

A. Did not.

Q. Okay. The last one that you cited specifically was Nebraska.

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And I believe you noted in your expert declaration that Nebraska saw a 13 percent increase in turnout from its 2016 to its 2020 primary, right?

A. Correct.

MR. BRODY: So again, let's go back to P 47 -- which is the 538 web page article. And I want to look, if we can, at page 2 at Nebraska.

Q. And, Dr. Kidd, you see that the source that you relied on for your turnout analysis reports that 84 percent of any Nebraskans voted absentee in the election that Mr. Rickage looked at, correct?

A. Correct.

Q. And that was a 63 percent increase in the use of absentee ballots from the comparable election in 2016, wasn't it?

A. Correct.

Q. All right.

MR. BRODY: For the last time, we can go back to plaintiff's 503, and I want to look at absentee voting requirements for Nebraska. We are at page 17.

Q. And we see here that there's no ID requirement -- ID copy requirement, excuse me, and no notary or witness signatures on a return envelope required in Nebraska, correct?

A. Correct.

Q. And again, you made no effort to compare Nebraska's absentee voting regulations to Alabama's regulations and requirements, did you?

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A. Correct.

MR. BRODY: Thank you. Dr. Kidd, those are all the questions I have for you at this time. Your Honor, we would ask that the Court either admit Plaintiffs' Exhibit 503 or in the alternative take judicial notice of the absentee voting requirements on the state by state basis that we went through as the statutory sections governing those requirements are set out in Plaintiffs' Exhibit 503. And I'm asking for the alternative judicial notice of state requirements in anticipation that I'm going to get at that hearsay objection to admitting 503.

THE COURT: Any objections to 503, Mr. Weber?

MR. WEBER: Your Honor, we certainly don't object to you taking judicial notice of the underlying legal authorities that are cited within that document.

THE COURT: Okay. I will do the latter. 503 will be in related to the underlying data that's cited in there and judicial notice of it. Mr. Brody, anything else?

MR. BRODY: Your Honor, at this point based on the testimony, based on the lack of qualification, and based on reliability under 702, namely, the lack of any empirical standard for the spike or surge analysis from Dr. Kidd, we maintain our objection to the Court receiving the first 14 pages of his expert declaration as an exhibit as evidence in the case.

THE COURT: I will explain in full later. The motion is due to be granted for the reasons that you outline briefly. But so that

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the record is complete, in the event this issue comes up on appeal, let's go forward with the examination so that there will be a complete record. And at the end of the day or first thing in the morning, I will formally rule and outline my reasons for granting the objection with respect to the first 14 pages.

Mr. Webb, are you ready to examine Dr. Kidd?

MR. WEBB: I'll pass, Your Honor.

THE COURT: Let me go to Mobile. Mr. Speegle, Ms. Holifield, or Mr. Engelhardt, any questions for this witness?

MS. HOLIFIELD: Mobile for Judge Davis, no questions.

MR. SPEEGLE: Nothing for the circuit clerk of mobile. Thank you.

THE COURT: Mr. Weber, back to you. Redirect? Let me apologize in advance and perhaps to Dr. Kidd as well in the event he has to come back in the morning. Unfortunately, I have a hard stop at 6:00 today.

Mr. Weber, you may begin your redirect, please.

MR. WEBER: Yes, Your Honor. I expect my redirect to be brief. In part, because I'm told that our colleagues in Mobile have a 7:00 p.m. curfew due to the hurricane. So we need to let them get back.

THE COURT: I did not know that. Thank you for let meeting know.

MR. WEBER: Yes. Your Honor, and because my redirect will be brief and because you have indicated a desire to make sure

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that the record is complete on this issue, may I briefly be heard on the issue of the admissibility of Dr. Kidd's report?

THE COURT: You can be heard. Is there a way -- can you defer that until after your redirect?

MR. WEBER: I can do that if that's the Court's preference.

THE COURT: Let's do that, please.

MR. WEBER: Yes, Your Honor.

Q. Dr. Kidd, you described the methodology you used to study the questions that were put before you. Did you employ that methodology to reach a predetermined outcome in this case?

A. No, I did not. In fact, when you and I first spoke about this, I told you that I would look at it. And I had no preconceived notion of what I would find, that I would look at it, you know, with an eye toward whether I could be helpful to your case or not.

Q. Dr. Kidd, you used a 7-day moving average to track the numbers of cases in the states you studied. Why did you use a 7-day moving average versus a daily count?

A. A 7-day moving average is very commonly used. It's used by Johns Hopkins and other -- most other sources that track coronavirus cases because it smooths out the daily ups and downs of reporting coronavirus cases. And so that's really the reason to use the 7-day moving average.

Q. Mr. Brody a number of times showed you what he represented as information from Johns Hopkins showing the number of cases between a 16 and 35-plus day period following

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elections in these states. Why did you not include that time frame in your report?

A. I'm using -- I was using the Centers for Disease Control's incubation period, which is the 14-day period. I recognize and I noted in my report that there are cases -- there are situations where reporting of cases happens beyond the 14-day window. But it's -- it's erratic. It's unpredictable. And it varies from state to state. Sometimes it varies week to week depending upon a state's ability to get tests done. And so the most systematic way to do this was to stick within that 14-day incubation window.

Q. Mr. Brody asked you some questions about delays in either obtaining a test or in those test results being reported back as positive. Is it fair to say that in a number of the states you examined, there was I believe what you described as an uptick in cases toward the end of the 14-day period that you looked at?

A. That's fair, yes.

Q. And if there was a delay in either obtaining a test, having those test results reported back as positive, or both, what does that tell you in terms of whether some of those positive test results toward the end of the 14-day period were or were not the result of the elections that you studied?

A. I couldn't -- that's -- that was part of my problem is I couldn't say what -- I couldn't say with any level of confidence in myself own ability to say it what was causing upticks outside of the 14-day incubation window. Which is precisely why I didn't go

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beyond the 14-day incubation window.

Q. Let's say you saw an uptick in cases on day 13 following an election. If a given person experienced a 3-day lag after the onset of symptoms in obtaining a test and a 7-day lag in that being reported as positive, could you conclude whether that exposure was due to the election or not?

A. I couldn't. But again, I didn't look at any individual cases. I'm looking at really an aggregated state level. I'm looking at bigger, broader trends in coronavirus exposure as a result of an election and seeing that exposure manifested in the 7-day moving average.

Q. Dr. Kidd, you had some questions from Mr. Brody about the visual depiction of the data that you represented. If the scale of the vertical axis is changed, will that change the visual depiction of the data?

A. The X axis won't. It's the Y axis that would, because, you know, that will range from 0 to 2,000 or 0 to 200, et cetera.

Q. Why did you choose the ranges that you did for your Y axis?

A. They were reflective of the highest case -- 7-day trend line case count. So it -- you know, if I had -- the highest case count was 200, then I set my Y axis at 300 for example. So that we could get a better visualization of what was happening in that window, that 21-day window.

Q. Mr. Brody asked you questions about 538.com and the source you relied upon in your voter turnout analysis. Is it

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unheard of to rely on non-peer-reviewed sources to establish data in your field?

A. No. I mean, in elections -- people who do election forecasting and election analysis, it's the area in political science where we crossed over from practitioner's world to academic world all the time. And so, you know, bouncing back and forth in terms of sources is not uncommon at all.

Q. Mr. Brody showed you some language from that articles that indicated words to the effect of greatly expanded use -- states that you used -- had greatly expanded use of absentee voting experienced larger turnout during the pandemic. Are you aware whether Alabama has expanded its use of absentee voting during the pandemic?

A. Based on my reading, I am aware of that. It wasn't in my report. All I was -- all I was simply saying in that last section of my report was it isn't the case that across the board turnout is going down. I recognize there are different reasons why turnout would go up or down in states. But my point was the record isn't absolute that turnout is going down. There's actually a lot of difference across the country in turnout level during this pandemic. That was the only point I make. And I recognize there are reasons for those differences in turnout -- turnout declines and increases.

Q. And, Dr. Kidd, in summarizing your conclusions, is it more accurate to say that you found definitive evidence that shows

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that no state who experienced an increase in cases directly due to an election, or would it be more accurate to say you found an absence of evidence to indicate that states experienced a surge or spike in cases?

A. It would be the second, your second statement. I don't find evidence that the event of an election is related to descriptively surges or spikes in coronavirus cases during the 14-day incubation window when you would -- when people who were exposed at an election, according to the CDC, would exhibit those symptoms and presumably be tested. I recognize there is probably some erratic lag across the different states. But there's no evidence that I can find in that 14-day window that would suggest that elections are causing or are a cause of surges. At least in these states that I looked at.

Q. Are there professionals within the field of quantitative analysis that would consider absence of evidence in and of itself a form of evidence?

A. Certainly. We know hypothesis tests all the time. And there are many times when we confirm it and many times when we fail to confirm it.

Q. And, Dr. Kidd, I believe my last question, can you expand upon -- you mentioned earlier descriptive quantitative analysis. Can you expand upon what you mean by that term?

A. Yeah. So, you know, it is perfectly legitimate and consistent to say I'm going to try to describe, analyze an event in a

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descriptive way using data, right. So it would be descriptive quantitative analysis. So in this case, I'm not trying to predict using a regression analysis or a logit analysis. I'm not trying to predict anything. I'm trying to analyze the descriptive trends in data as it relates to an election. So that's really all I'm doing. It's a pretty simple analysis admittedly. But I think in this case, the simpler the better in the sense of can we see a surge or a spike in an incubation period after an election. It made the most sense to me given the time I had to do the analysis.

MR. WEBER: Thank you, Dr. Kidd. I have no further questions.

THE COURT: Thank you. Mr. Brody?

MR. BRODY: Three questions, Your Honor.

THE COURT: You may.

Q. Dr. Kidd, the CDC incubation period that you referred to on redirect is for symptoms not test results, correct?

A. Correct.

Q. And the data that you graphed was positive test results, correct?

A. It is correct.

Q. And you graphed the 7-day moving average of that. That is what the orange line on the source data from Johns Hopkins that we showed in the demonstrative where we actually showed the source data, that orange line was that 7-day moving average, wasn't it?

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A. That is correct.

MR. BRODY: Thank you, Dr. Kidd.

THE COURT: Anything else for Dr. Kidd? Mr. Weber?

MR. WEBER: No, Your Honor.

THE COURT: Thank you. Dr. Kidd, you are excused. Thank you, sir. Have a good evening.

Mr. Weber, you wanted to be heard.

MR. WEBER: Yes, Your Honor, briefly. Just on the issue of the admissibility of Dr. Kidd's reports, I would just point out a few things. Mr. Brody cited to a Louisiana decision in reference to that. I believe he's referring to Harding v. Bell Edwards.

THE COURT: We lost you. Louisiana case reference, blah blah blah. Harding v. Edwards is the last thing we picked up. Try again, please.

MR. WEBER: Yes, Your Honor. So that case number is 320-CV-00495. And I would just point out that of course Your Honor can review that decision, but that case is simply not relevant here. The reasons that the court chose not to consider Dr. Kidd's report in that case, he's not disputing that this -- that other states.

THE COURT: Mr. Weber, looks like Ms. Lewis has lost you again.

MR. WEBER: Yes, Your Honor. Dr. Kidd is not disputing that other states's experiences, you know, necessarily predict what's going to happen in another state, and that's what the Louisiana

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court keyed in on. A couple other points. Dr. Kidd has testified numerous times that descriptive quantitative analysis is a form of quantitative analysis, and he's certainly in a position to know that. He also stated a number of times that he was under some pretty significant time limitations in this case. You know, Your Honor can certainly take note of the scheduling order in place in this case. And while Plaintiffs might, you know, state that they were under time pressures as well, you know, they have had since the beginning of the pandemic theoretically to know what the case they want to bring.

We really could not employ an expert until we saw what experts they had. We really had about a three-week window to do that while taking a number of depositions. And so I think given the due process concerns that the defendant has raided in this case, we suggest that the Court should grant significant latitude to us.

Lastly, Your Honor has noted that Dr. Cotti has been allowed to have his report admitted. They are -- you know, they are very similar in the fact that they're not public health experts. They're not medical experts. They're simply bringing the tools from their fields to bear on statistical analysis of COVID-19 and elections. And lastly, of course as Your Honor is aware, you know, there are limitations that were due to the time schedule here, and what Dr. Kidd was able to accomplish should really go to the weight and not the admissibility. Thank you, Your Honor.

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THE COURT: Thank you. Generally, my standard position with experts, I still let them in and then just deal with the issues through vigorous cross-examination, the presentation of contrary evidence, *i.e.* the quintessential battle of experts. Here, however, the reason why I believe I need to factor or consider more my gatekeeping role -- and this is what gives me concern in listening to Dr. Kidd. I'm not sure that his field of expertise necessarily qualifies him to reach these areas that he's opining on.

And in that respect, he's different from the testimony and the analysis or the study that Dr. Cotti has done. In particular, among other things -- and Dr. Kidd acknowledges this, he has no expertise in the areas of public health. He's not done any research in these topics. Frankly, I'm not sure what political science methods that would allow him to do what he has done hear. As I see it and to be blunt about it, and I could very well be wrong. But to be blunt about it, what he has done from my perspective is no different than what a lay person, including lawyers, can just go into the Johns Hopkins data and look at 7-day reports and report on that data.

As he acknowledged himself, he has not taken -- to undertake any regression analysis. He certainly, I don't believe, has controlled for any various public health factors. To borrow from Dr. Cotti's terminology, I don't necessarily know what his counter factuals are in this case. All of these concerns give me pause and lead me to conclude that under rule 702, I don't

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believe for the testimony related to the surge after the election that he's offering is based on any knowledge, skill, experience, training, or education that he has.

And certainly, I do not believe that his technical or other specialized knowledge that he has will help me to understand the areas that he's opining on. I don't believe that his testimony was based on any sufficient facts or data, and I also have some concerns about the reliability of his methods. But ultimately, even if I let in his report -- and I don't know what happened in Louisiana. But from what I understand, the judge in Louisiana accepted him as an expert. So I'm not sure that that is a strike against him. But I have not factored that into account.

What I factored into account instead is even if his report comes in, based on the cross, his admissions that he has not failed to account for a 7-day method that he undertook here does not account for the lag time between a person's exposure and when he or she experience an onset in symptoms, the lag time between that onset, and when he or she obtains a test. The lag time between the test and when the results are provided lends more reasons for me to conclude that his report, subtracting the last part of it, which was also addressed effectively on cross, but leads me to conclude that as to his opinion that he was not able to conclude that the elections that he analyzed led to a surge in COVID cases, all that leads me to conclude that that testimony that he has provided is not helpful based on that critical

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omission on his part.

And I think he said on redirect that he just is not sure or did not know how one could look at post-14-day positives and attribute them to an election as a triggering event when there are individuals including some who quibble with including Dr. Cotti who have done studies in this area and who challenge, at least as I understand the testimony, will challenge Dr. Kidd's testimony in this case.

So again, I don't think under 702 it comes in. But even if it does, it's not helpful. Based on the cross-exam, will not help me to discount the study by Dr. Kidd, which again looks specifically at Wisconsin. And as you guys pointed out on cross-exam, is not Alabama-based at all. So for all those reasons -- but the record again, it's here. I understand fully. I have said this at least in orders, but I do need to point out what Mr. Weber has pointed out clearly on the record.

This was an expedited discovery case. The time frames were not the ones that I normally employ in my standard cases where typically, I think I mentioned on the phone one day off the record. But I need to say this again, although I have addressed it in part in two orders that I have issued. But generally, in my cases, although I think the rocket docket out of the Eastern District of Virginia is quite effective in proving that people can do discovery in three months. But for my practice, because this is what people do in Alabama typically will give at least nine

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months with some variations depending on the complexity of the case, sometimes more, and sometimes less. In this case, I have not done that.

And I said this again, and I'll say it again in response to Mr. Weber's valid point that his expert did not have a time perhaps to do a full analysis that addresses these problems that the Court has addressed and that Mr. Brody has pointed out. The Court did not pick and choose its cases. And the Court certainly was dealt with one that challenges an election that's coming up. And because of that and to give the parties, as I mentioned, plenty of time to respond to whatever I ultimately do, I felt that the best that I could do to give the parties at least some time to do some discovery in this case was to try this case beginning last week.

It is not in any way fair to the parties, both the Plaintiffs and the Defendants in this case. But I don't know how else I could have handled it given that the challenge is related to the election while also being fair to the parties, the Plaintiffs in particular, who some of their claims, I've dismissed. And I don't know what I'm going to do with the rest of them, so they can have time in the event I rule against them to take me up.

And related to that, obviously, in the event I side with them on some of the remaining claims or on all of the claims so that the Defendants can have time to take me up, including if we have a scenario where we had one related to the TRO. If the panel that

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reviews the case initially agrees with whatever I did, that the appellant can also have time to get some relief from the highest court of the land.

But it is a valid concern that Mr. Weber has raised. He is not alone in raising it. Each time it's been raised -- I think the first time was Mr. Davis on a phone call. I have acknowledged it is a legitimate concern. It's not one that the Court should easily dismiss. But this case came to me not by choice, and it's been all hands on deck since it landed here.

As you all have been able to deduce, I've had to juggle and move things on my calendar so I can try this case. I've had to take up things at 8:30 in the morning and yesterday at 12:15 in the afternoon as well just to make sure I'm able to give you guys the time that you need not only to present your cases, but also hopefully to be able to give you a decision within sufficient of a window so you can at least have a month in front of the Eleventh Circuit. In any event, I wanted to put all of that on the record.

Last thing I will say, Mr. Weber is absolutely correct. Typically, the Plaintiffs will designate an expert, and then the Defendants will then scramble to find someone to counter-designate. Dr. Kidd has mentioned in his testimony the time constraints that he had. And so had the other experts that the Plaintiffs presented in their case as well.

Thank you, all. Tomorrow morning, 9:10 again. Hopefully, we can reconvene and begin. I have a plea in a criminal case at

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8:30.

Thanks, everyone. We will begin perhaps on time. But obviously, that will be subject to my Mobile contingent being able to participate, obviously. And similar to today, if you guys need time, we will give it to you. I appreciate, Mr. Engelhardt, you making your offices available to Judge Davis's lawyers. And hopefully, we will not have any issues tomorrow. But if we have them, we will deal with them the same way today. We will pause and resume whenever we can. Okay.

Thanks, everyone. I'm sorry that we cannot do a debrief today. But we will spend some time in the morning taking up any issues that you guys want before we begin. Have a good evening, everyone. Thank you, all.

TAB I

9/17/2020
Rough Transcript

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CASE NO. 2:20-cv-00619-AKK
PEOPLE FIRST OF ALABAMA, et al.,
v.
JOHN MERRILL, et al.,

THE COURT: Mr. Engelhardt, Mr. Speegle, I see you. Let me make sure all is relatively okay this morning down in Mobile?

MR. ENGELHARDT: Yes, Your Honor. Things are going very well.

THE COURT: Good. Ms. Holifield, same report from you? You are ready to go as well?

MS. HOLIFIELD: Yes, we are ready, Your Honor.

THE COURT: All right. Any other preliminary matters that I should take up before we go back to the presentation of the evidence?

MR. DAVIS: Nothing to take up, Your Honor. But I will inform the Court and the parties that we have three witnesses for today. Everything looks in place for those. We do have one witness scheduled for tomorrow. This witness is located in Orange Beach. As of right now, there's no internet. We are in a wait-and-see pattern for that. But we will keep the Court apprised.

THE COURT: Okay. Are you ready to begin?

MR. DAVIS: The State Defendants are ready. And our witness, Justice Glen Murdock, I see is already on.

THE COURT: Justice Murdock, good morning, sir.

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THE WITNESS: Good morning, Judge.

THE COURT: Would you please raise your right hand so that Ms. Humphrey can swear you in.

WITNESS,

duly sworn, was examined and testified as follows:

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Glen Murdock, M-U-R-D-O-C-K.

THE COURTROOM DEPUTY: What city and state do you reside in, Mr. Murdock.

THE WITNESS: Birmingham, Alabama.

THE COURT: Mr. Davis, you may begin.

MR. DAVIS: Thank you, Your Honor.

Q. Good morning, Justice Murdock?

A. Good morning.

Q. Have you served on the Alabama appellate bench, Justice Murdock?

A. I have.

Q. What courts and what years approximately, please?

A. I was elected in the year 2000. I ran in 1998 the first time but was not elected. I was elected to the bench for the first time in the year 2000 and took office in January of 2001. Then I served until January of 2018. The first court I served on was the Alabama Court of Civil Appeals from January '01 to January '07.

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In 2006, I was elected to the Alabama Supreme Court and served on that court from January '07 until January '18.

Q. And what did you do professionally before serving on the Alabama Court of Civil Appeals?

A. After law school, I clerked for a federal judge in Birmingham, the late Clarence Allgood. Then I went to a law firm that at the time was known as North, Haskell, Slaughter, Young, and Lewis and has changed names and I think is no longer in existence.

After four years of that, I went in-house at Vulcan Materials Company. Vulcan was a -- oh, in my private practice at has Haskell Slaughter, I did commercial litigation. But when I went in-house after four years of litigation, I spent six years at at fortune 500 company named Vulcan Materials Company, did corporate work, securities work, transaction work, et cetera. Around '92, I think it was, I left and went back to litigation with the law firm of Wallace, Jordan, Ratliff & Brandt where I engaged in a practice that had several components. Did some commercial litigation but also spent a lot of my time doing election litigation and constitutional -- some constitutional law litigation and things of that nature. I ran as I said for the court of civil appeals -- I'm sorry -- for the Supreme Court in 1998. That was not a successful bid. And then in the year 2000, I ran for the court of civil appeals. So I was in that law firm for about eight years.

Q. Thank you. During your time at the Wallace Jordan firm, did

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you work on any cases related to an election contest?

A. Several. The case that we discussed in my deposition involving the chief justice election dispute, a case involving then private citizen Robert Bentley who was running for his first public office, the Alabama senate. He had an election dispute. And then there were a couple other election contests that I was involved in.

Q. Let's focus on the race for chief justice. What year was that, and who were the the candidates, please?

A. 1994. The candidates were Perry Hooper, the Republican and Sonny Hornsby, the Democrat.

Q. How did you come to be involved in litigation concerning that election?

A. Yeah. Our law firm was contacted by either another lawyer or some of the people supporting Judge Hooper, who was a former judge at that point. One of my partners called me and asked me to participate with him. There had been an effort underway up to that point to -- at that point, the Alabama Supreme Court was made up entirely of Democrats and the tort reform that had passed in the '80s in the legislature, much of it had been struck down. And so there was a movement afoot to try to put people on the court that the -- that their backers thought would be more even handed in their approach to those issues.

Q. So you were representing Judge Hooper's campaign, correct?

A. I was. Yes, that's right. And we represented -- and of

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course, as you undoubtedly know, we represented an individual voter or two as well as Mr. Hooper himself.

Q. Fair enough. How soon after Election Day was your firm contacted?

A. I believe it was the very next morning. We went to bed on election night, and it looked like -- and of course at that point, I had no -- really any connection to the campaign. But at that point, it looked like the campaign that was going to prevail by some maybe 600 -- no, I'm sorry. When we went to bed, we were ahead by like 10,000 votes. Excuse me. We woke up the next morning to learn that -- and of course, all these vote counts are unofficial at this juncture.

But we learned that the unofficial vote count being reported in the media had us behind by about 600 votes the next morning. At that time, I got a phone call from my partner and the thinking was that something had gone wrong overnight. It was not the first time that those that I was involved with had, you know, felt like vote fraud had occurred in Alabama. There was somewhat of a legacy of it, a history of it. So we were hired to see initially if we could simply find evidence of the vote fraud enough to change those votes, that vote total, 600 votes.

Q. Okay. So just to make sure the record is clear, on election night, it appeared that Judge Hooper was ahead by several thousand votes. But the next morning --

A. About ten --

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Q. About 10,000 votes?

A. Right.

Q. But the next morning, it appeared that Judge Hornsby was ahead by about 600 votes?

A. Correct.

Q. Okay. So in the course of your work on that litigation, did you and the lawyers on your team in fact look for evidence of voter fraud?

A. Yes. What we did was we hired teams of investigators and former investigators and lawyers and we had two-man teams. Each team was comprised of a law enforcement-type person and an active practicing attorney. The law enforcement would be either off-duty agents, but typically, it would be a retired FBI agent or a retired ABI agent or a retired sheriff's deputy or something of that nature.

Q. Okay.

A. So we had those two-man teams. We had had some preliminary reports already. The campaign had already received some phone calls and some preliminary reports of vote fraud. So we had some --

MR. ROSBOROUGH: I'm going to object here, Your Honor to hearsay. He's talking about reports he heard of voter fraud.

THE COURT: Yes, not taking them as being presented for the accuracy but just more so as to why he was hired and what his investigation produced and the actions that he took. Mr. Davis,

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what is your response to Mr. Rosborough's objection?

MR. DAVIS: Your Honor, I have several responses, and I'm going to establish this. We're going to go going through some of the evidence that Justice Murdock uncovered and that he's kept all these years. And I will tell the Court we are not offering it for the truth of the matters asserted. But we're going to show that Justice Murdock became a public advocate for election reform including reforms that address issues in this case -- witness signatures, voter ID.

We're going to show that he in fact testified before the legislature, when the legislature was considering this and presented this evidence to the legislature. It goes, we believe, to Alabama's interest not only in protecting election security but in promoting public confidence. So this evidence is going to show, Judge, what the public conversation was about voter fraud, what information was available to the legislature, and that this was a grass roots movement motivated not by racial bias as Dr. Bagley argued for the Plaintiffs but by genuine concern over evidence of voter fraud.

MR. ROSBOROUGH: Your Honor, in response to that, you know, I'm aware I think of probably what Mr. Davis is going to try to bring in and it has multiple layers of hearsay. Plaintiffs will gladly stipulate that Justice Murdock was a public advocate for these issues. We don't need these multiple layers of hearsay documents to come in to show that.

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THE COURT: Okay. I will deal with the documents as they are introduced. Mr. Davis, you have heard the stipulation, but you may continue as you see appropriate at this point.

MR. DAVIS: Thank you, Your Honor.

Q. Justice Murdock, as a result of your work in the Hooper Hornsby campaign and the evidence that you saw, did voter fraud and election reform become an issue of concern for you?

A. Of great concern, because these teams of the -- the nature of the reports that we began to receive, the affidavits from individual voters, the investigator reports, they took up a large part of a box, and they were quite voluminous, and it was all over the state. And I became greatly concerned and went back and started reading about some of the allegations of the same thing in the decade prior to this. Yeah, I became concerned.

Q. Did you continue to work on this issue and become a public advocate for this issue even after the Hooper Hornsby litigation was completed?

A. Well, to explain -- the short answer is yes, but to explain how that happened -- if I may. This evidence that we gathered did not have to be used --

MR. ROSBOROUGH: Your Honor, I'm going to object. He's answered the question. This is nonresponsive to the question at this point.

THE COURT: I will sustain the objection. Mr. Davis, you know how to respond.

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MR. DAVIS: Yes.

Q. Justice Murdock, would you explain in greater detail why this had become a matter of interest to you?

A. Sure. We had these reports of and allegations and affidavits of vote fraud. They began to pile up to the point that we thought we could prove well over 600 votes needed to be changed for the outcome of the election. In fact, it was reaching into the thousands. We had 1,100 in question in Greene County, almost 600 in Wilcox County, Winston County. There were reports in Cullman County and throughout the state.

So we were gearing up to launch an old-fashioned election contest of this matter which we'd have to go to the legislature. As we did that for the first week to nine days after we sent our investigators into the field and all this evidence started coming in, something else was happening in this lawsuit that I was in. On the ground, in county after county, little by little, in dribs and drabs, the vote counts were being adjusted. As I mentioned a minute ago and as everyone on this call undoubtedly knows, nothing is an official vote count for a week or two after the election.

And so the publicly reported vote counts were being corrected in county after county. There was a skirmish in Dale County. And I represented our side, and Jerry Beasley represented the other side. And as a result of that, Judge McLaughlin in Dale County ordered that 300 votes changed

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because there had been a computer error in Dale County. That was half of what we needed to switch. In Madison County, a number had been incorrectly written down as a 10 when it should have been a 100. That was another 90 votes. And there were other votes in county after county that some of it had to do with absentee balloting and some of it did not. The Dale County matter had nothing to do with absentee balloting.

The point is that nine days after the election, we realized that we had pulled ahead. All the vote fraud evidence that we were gathering completely aside, that we had pulled ahead in the unofficial vote counts being reported throughout the state by 262 votes out of about 1.1 million. But we had made up -- these corrections had made up the 600 and had put us 262 votes ahead by Thursday, nine days after the election.

At that point, the other side, which already had this lawsuit pending in front of Judge Gene Reese in Montgomery circuit court, the state court, obtained a hearing that evening around 7:00 and obtained an order from Judge Reese that a batch of -- I say a batch. That's a -- that's misleading. There were 1,700 approximately absentee ballots throughout the state that had not been notarized or witnessed.

And in accordance with the requirements of the Alabama statute, Alabama election officials on Election Day nine days earlier had put those aside and had not put them in their official unofficial vote totals, if you will. They were sitting to the side

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county after county. Ten in one county, 26 in another, so on and so forth all over the state. There were 1,700 of them in total. And they convinced that the supporters -- of Sonny Hornsby convinced Judge Reese that notwithstanding the language of the Alabama statute at the time that he should order -- and he did order -- that election officials in each county open those ballots, remove the outer envelope which had the place for the voter's signature and the affidavit stating the reason for voting absentee and the placement of the witness signatures and notarization, and count those ballots. And that was on a Thursday night.

So my partner and I stayed up all night that night because we knew that the next morning, these ballots would start being opened, and in many, many counties, they would be commingled with the legitimate ballots, and we'd never be able to unscramble that egg. So we stayed up all night, and we prepared a complaint and a motion for TRO and ended up in front of Judge Propst, a Democrat, in Birmingham, Alabama the next morning. And he issued a TRO on the basis of our complaint and put a freeze on the opening of those ballots.

Now, our complaint was based on -- in part on section 5, the preclearance provisions of the voting law, the federal voting law. And the case eventually was sent to a three-judge panel. And while it was being -- after the TRO and after those ballots were frozen in place, after that TRO was issued, the State of Alabama very quickly moved and obtained an -- I guess you'd call it an

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emergency preclearance. And that lawsuit was mooted.

In the meantime, there was another lawsuit that had been failed down in Mobile County in front of Judge Alex Howell. In this lawsuit, the allegations were different. The allegations in this lawsuit were that when you have one...

THE COURT: Let's bring IT up here, please, and then we'll figure it out.

I lost you guys. I lost you guys. When Justice Murdock mentioned the lawsuit in Mobile, the system went out and looks like it did not go out on your end. But it went out on our end. So can you backtrack, please, and pick up from that lawsuit in Mobile, please.

THE WITNESS: Yeah. Judge, I'm sorry. I apologize.

THE COURT: No. The issue is on our end completely, Justice Murdock. No apologies necessary.

THE WITNESS: Okay.

THE COURT: It looks like there's some nationwide outage that is effecting the federal government phones. This may or may not be related, but hopefully the issue will be resolved quickly. Please continue, sir.

THE WITNESS: Yes, sir. As I was saying, the Birmingham lawsuit where we rushed to get a TRO to prevent irreparable harm from the opening of the illegal ballots and their commingling became moot when the state got a very quick preclearance for this -- what we claimed and what implicitly was a change in the

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lawsuit or else they wouldn't have needed a preclearance for it. But that -- a three-judge panel mooted that.

And so we thought the case was over. We thought the whole fight was over. And Judge Alex Howard contacted our local counsel in Mobile and said I read what the three-judge panel did. But you know, a week or so ago, I issued my own TRO down here on the basis of an entirely different statute that requires the preservation of election materials. At that point, we knew we still had some hope. And so I prepared an argument based on a couple of cases I found in the federal courts, one out of Washington and one out of California, that argued to the -- that amended our complaint and argued to that judge in Mobile that when you have one election law before the election and then you see the outcome based on that law and then the state, whether under the office of a judge or an executive official or whatever, changes that law or attempts to execute the election under a different law, that's so fundamentally unfair that it warrants a federal court stepping in and interfering with the state election process, which at that time was a very, very rare thing. Nobody thought we could do it. But the allegation was that it was a violation of the Fourteenth Amendment due process clause and the organic unfairness of that. And of course that same theory reached a hearing ultimately in Bush v. Gore even though the primary basis for that decision was equal protection eventually. So judge -- at that point, in December, after the November

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election, about a month after the election, Judge Howard issued a preliminary injunction on that due process theory.

Now, he did not issue an election contest injunction on the basis that there were fraudulent votes per se. In other words, all of our evidence of vote fraud, of real normal vote fraud, we didn't have to put on the table in that courtroom in Mobile. In fact, that was -- that would have been a distraction because the official vote total at that point had turned in our favor. It was our job to preserve the election and not to disturb it. And so all of that evidence we had gathered, which had accumulated to be quite a bit at that point, sort of stayed in a box in a corner of my office at that point.

Then the lawsuit proceeded for a year in federal court. As they say, it was in all the papers. At first, the morning paper, then the afternoon paper every day. And then after it drug into the second or third week, there was some title that, like three weeks into it, "Saga of absentee ballots continues." Three weeks into it. Well, nobody knew at that point that the saga had not really unfolded much yet and there was another ten months to go.

So it venerated -- it was -- it was unlike anything I'd ever been in. I'd lever been in a lawsuit -- I remember Jack Drake was in Judge Propst's library after he lost the TRO, and I overheard him on the other side of the stacks saying, who's going to go down to the newspaper and the TV cameras and spin this. I had

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never been in a lawsuit where you had to worry about spinning something for the public.

So I was in a hurricane of a lawsuit that, you know, had three or four TV trucks lined up outside the federal courthouse. And I said, you know, the -- every morning -- I'd never been in a lawsuit where every morning I was anxious to go out to the front yard to get my paper to see what they were saying about my lawsuit. I --

Q. Who ultimately prevailed in the race for chief justice in 1994?

A. Ultimately, 11 months later, Perry Hooper. But there were quite a bit of -- there were a number of stops along the way. And we had to do quite a bit of -- the Eleventh Circuit liked the theory, but they sent us back to do some more factual investigation to find out whether the statute had actually been the de facto law of Alabama. And we spent at one point about four months deposing county officials all over the state to make sure -- to find out whether we could show the Eleventh Circuit that not only had that been the law, that had been the practice so that changing the theory and the law would play into the due process violation.

The Eleventh Circuit ruled again in our favor. Then it went up to the Supreme Court. It went to the Supreme Court two other times in the process of the litigation on interlocutory matter. Eventually in November of the following year, Perry Hooper -- in October, I was at the Alabama Tennessee game, and we got word that the Alabama Supreme Court had denied cert. So in

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November, Perry Hooper finally was sworn in to the Alabama Supreme Court.

Q. Okay. So the evidence that you collected of voter fraud, you thought that would be instrumental early on in the litigation. But as it progressed, it turned out not to be the turning point of that particular case, correct?

A. Correct.

Q. Okay. But you nonetheless when that litigation was over continued to be interested in the issue of voter fraud in Alabama?

A. Yes. It was -- I felt -- yes. I felt --

Q. Okay.

A. -- I was in an unusual position, and I was in a compelling position I thought, and I just -- I felt obligated to continue to examine this and to try to do something about what I had learned in my research of news stories that had preceded the '94 election, and then there was just a ton of publicity in 1994 itself. Because this case -- you have to understand although it was a technical case about changing the rules of the election, it was conflated in the press with the stories and the testimony of a regular old-fashioned vote fraud. I mean, in front of Judge Alex Howard himself, in our preliminary injunction hearing, there's a ton of testimony about vote fraud in various counties. In fact, that got the main headline the next morning.

So there was a lot of publicity. It sort of got taken to a new level in and around this '94 case. And then as the '94 case

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subsided, all this publicity and move to shore up our voting law so this would not happen again was still out there. And here I am, I'm the guy sitting with that box in the corner of his office. And I'm thinking well, you know, maybe I'm supposed to do something. I've got something here that nobody else has. And maybe this -- maybe this falls to me to do something about it, to -- I just felt, Mr. Davis, that it was just so wrong, so unfair what had happened to some of these candidates, especially local candidates in the Black Belt counties and in other counties was just so wrong. The wrongness of it, if that's a word, just -- I couldn't leave it alone.

And, you know, I won't -- there's a cliche, and I'm sorry, but I'm going to use it. Honest government begins with honest elections. That sounds so sophomoric, but it is so true. And I love this state. I love Alabama. I wouldn't want to live anywhere else. And I had children. And I wanted it to be better than it was. But I knew that to do that, we had to have the best and the brightest taking public office. And if this was the nature of our elections, whether in the Black Belt or in these statewide elections, you couldn't attract good honest people to run and to try to solve Alabama's problems and make it better. And so I just -- all of that sort of came together and conflated in my mind. And I just said I'm going to see what else I can do now that the case is winding down.

Q. Okay. Well, let's establish a couple of things quickly, and

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then we'll go back through and look at some things in more detail. So did you, with this motivation, become a public advocate for legal reform?

A. Yes.

Q. Did you speak and write publicly about the issue?

A. I did.

Q. Did you advocate for changes -- for legislative changes?

A. Yes.

Q. Did you testify before the Alabama legislature?

A. I did. Twice.

Q. Did you present this evidence that you collected to the Alabama legislature as they were considering bills that would reform election law?

A. Yes, and later to the Attorney General's office.

Q. Okay. Let's look at some of this evidence. You have a notebook, do you not, Justice Murdock, with some of the State Defendants' Exhibit?

A. I have a couple.

Which one are you talking about?

Q. Let's look at Exhibit 95, State Defendants' Exhibit 95.

MR. ROSBOROUGH: Your Honor, I just want to -- however you want to deal with this, I firmly believe that all this is hearsay and multiple layers of hearsay here. So before we get into this, I don't know how you want to deal with this. But I'm going to be objecting to probably all of this evidence, I'm guessing. So let me

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know what the best way to deal with it is.

THE COURT: Well, you've made the objection. Mr. Davis, you are trying to bring in documents that the justice collected through his investigators, reports were given to him by third parties --

MR. DAVIS: Yes.

THE COURT: -- and who obtained information from additional third parties. And so what's the rebuttal, if any, to the multiple layers of hearsay argument.

MR. DAVIS: Your Honor, we are not presenting it for the truth of the matter asserted. We're showing the evidence that motivated Justice Murdock in his efforts to change election law that motivated an entire grass roots movement, evidence that was presented to the legislature. Plaintiffs' expert, Dr. Bagley, he issued an opinion that these legislative changes for witness signature requirements and photo ID were part of Alabama's history of racial discrimination. We are entitled to answer that, and I'm doing it by showing what his motivation --

THE COURT: Is one of your witnesses later today or tomorrow someone who was in the legislature at the time who can attest to what impact, if any, this information had on him and perhaps on the legislate that implemented the legal or the statute changes I should say?

MR. DAVIS: No, Your Honor. But we don't believe we have to do that. We can show what information was available to the

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legislature, that there is data that's supporting legislative motive other than the racial bias that Dr. Bagley presented. And plus as I said, the state has a strong, a compelling interest that's been recognized in preserving public confidence in elections.

THE COURT: Well, I don't dispute -- yeah, I don't dispute any of that. I also don't dispute that Justice Murdock was an advocate on this point. What I'm trying to figure out is how do you make the next logical or nonlogical inference, depending on which side you're on in this case, that --

THE WITNESS: Your Honor, it may be out of place for me, but may I offer a comment to you regarding --

MR. DAVIS: Don't.

THE COURT: No, sir. Unfortunately --

THE WITNESS: Sure.

MR. ROSBOROUGH: And, Your Honor, I'd also just like to object based on lack of personal knowledge beyond hearsay. These were things as we established that Mr. -- I'm sorry -- Justice Murdock was not individually personally involved in collecting. They came to him from other sources. He did not individually speak with these people. And so even to the extent that Mr. Davis wants to bring this in and thinks that it's not for a hearsay purpose, Justice Murdock does not have the requisite personal knowledge to testify about it. And additionally, Dr. Bagley is an expert here and is allowed to testify based on hearsay sources. Justice Murdock is a fact witness, Your Honor.

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THE COURT: Okay. I think the objection is due to be sustained. But as I have been doing, let me officially carry it but also, at the same time allow the evidence to come in. That way, in the event my final ruling is that it's hearsay and the appellate court disagrees, does not have to come back for that particular issue since the evidence and the testimony will all be in.

Mr. Davis, you may go forward. The exhibits can come in conditionally so it can be a part of the record.

MR. DAVIS: Thank you. Okay.

Q. Justice Murdock, we were looking at Exhibit 95. Can you identify this exhibit for the Court?

A. Mr. Davis, this is a -- looks like -- yeah. This is the gathering of some of the witness statements and affidavits and investigator reports -- some of them -- that came back to us in the course of our work in that lawsuit and which were some of the documents that I presented in the Alabama legislature twice in two different committee hearings, one in a regular session, one in a special session. And I also presented them to the governor along with other members of a group called the Honest Elections Coalition that I worked with in persuading, when we met with Governor James to persuade him to call a special session and persuade him before that even to propose some absentee balloting reforms including the tightening up of that witness and notarization requirement. And also, these were presented to the Attorney General when he sought preclearance...

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THE COURT: Karen, today may be a day when we just need to get rid of this system and perhaps go in through Zoom only.

Folks, if you see me on the Zoom screen, please stop. I am going to try to find a way to get IT here so we can just perhaps just use Zoom only as opposed to the courthouse system since this one seems to be working.

Justice Murdock, the last thing that I heard is that you presented your evidence to the Attorney General. Let me see if my court reporter picked up anything else. When he sought preclearance. That's when we lost you.

THE WITNESS: Shall I continue?

THE COURT: You may. Let's try to go forward. Hang on for a minute. Karen, is anyone from IT coming up?

THE COURTROOM DEPUTY: They're on their way now.

THE COURT: Okay. IT is on its way up. Let me do this instead. Let's take a break until the top of the hour, please. Which hopefully should be plenty of time for us to go to plan B which is to just get rid of this system and just use the Zoom system that you guys are using and hopefully avoid the snafus going forward. Stay tuned. We are in recess please until the top of the hour. Thanks, everyone.

(Recess.)

THE COURT: Mr. Davis, you may resume your examination, please.

MR. DAVIS: Thank you.

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Q. Justice Murdock, I believe your microphone is still on mute. Okay, Justice Murdock. Exhibit 95, is this part of the evidence that you presented to the Alabama legislature?

A. Yes.

Q. Is this part of the evidence that motivated you to advocate for election reform?

A. Yes.

MR. DAVIS: And I'm not sure we are on the objections, Your Honor, but I do move now to admit Exhibit 95.

MR. ROSS: And I'll just renew our objection.

THE COURT: Correct. It's in for the appellate record, but you may continue.

MR. DAVIS: Thank you.

Q. Look at Exhibit 96, Justice Murdock.

A. Yes, I'm looking at it.

Q. Is this article part of the evidence that you collected in your investigation into voter fraud?

A. Yes, it is. This article is -- and it also, for what -- as a matter of interest, I mentioned a moment ago the conflation of the technical election fraud in the case and the additional election voting fraud. This article is a perfect example. The headline deals with one type of fraud, "the box voting outside of wild wild west" which is a quote from one of the members of our Honest Elections Coalition steering committee, Jesse Mason, dealt with traditional election fraud. But yes, this is something that I

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collected and maintained as part of my effort to have a catalog that I could later perhaps use to do something about it.

Q. Thank you. And is this part of what you presented to the legislature?

A. I'm sorry. Yes.

Q. Okay. There's a quote in here somewhere, and now I don't spot it. But it the some point, Justice Murdock, you're quoted as saying that absentee balloting takes ballots out of the polling place and into the marketplace. Actually, I you misspoke, Justice Murdock. That is a later exhibit. But is that something that you said in the past? That absentee ballots --

MR. ROSBOROUGH: Object again. Beyond the admission of these exhibits to hearsay based on prior out-of-court statements.

MR. DAVIS: I'm asking if Justice Murdock said that.

THE COURT: Correct. He can answer the question.

Q. (BY MR. DAVIS:) Have you been quoted or have you said that it's your belief that absentee balloting takes voting out of the polling place and into the marketplace?

A. Yes. Based on the research I did and the investigation we had and the National Federal Commission reports that were in place at that time, yes, I had -- I came to that conclusion.

Q. And what did you mean by that?

A. Well, to really explain what I meant by that, you'd have to understand how mail-in or absentee voting works and all the different types of fraud that are possible when the ballot leaves

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the polling place where election officials and poll workers can see live what is happening, who is signing it, make sure that person actually is alive, make sure that they are the person signing it, make sure that the -- you know, that they can preserve everything going on. I mean, there's so many different ways in which absentee ballots, once they leave the polling place, they're out there. And there's no -- there's not control over who accesses them or what the circumstances are when a voter votes using one of those. And so what I meant was of the, you know, dozen or two dozen different ways that absentee ballots can be abused, those are not possible if you're in the polling place. You're not in the marketplace, you're in the polling place where you have officials and you have control.

Q. Okay. Back to Exhibit 96, Justice Murdock.

MR. DAVIS: For the record, Your Honor, I move to admit 96 to show that this information was publicly reported.

MR. ROSBOROUGH: And I just -- Your Honor, if I could just have a standing objection on all these so I don't have to jump in unless there's something you need.

THE COURT: Okay. The objection is sustained. The exhibits are coming in again so they can be a part of the appellate record.

Q. (BY MR. DAVIS:) Justice Murdock, did newspaper editorial boards publicly come out in favor of the reforms that you were advocating to implement?

A. Just almost unanimously. The public, the public dialogue

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was -- I mean, it was quite a -- as I say, it was the conflation of the case that we were in. But then as that subsided and regular vote fraud became the issue, you had for the next two or three years -- well, we formed a group called the Honest Elections Coalition. I don't know if you want to get into that. But anyway, we formed a group that pushed for election reform.

And as part of that, I wrote op-ed pieces that were published in various papers. I went around and talked to civic clubs. Other members of our steering committee did the same thing. As I said before, members of our coalition went down and talked to the Governor, and we had the special session. But as a result of the kinds of activities we engaged in, I think, as well as just the organic reporting of the vote fraud, you had -- these are some of the same papers that had been talking about vote fraud in editorials from the '80s, but you had the Mobile Register -- of course, these are not under al.com at the time. They are all separately independently operated papers. You had the Mobile paper, the Huntsville paper, two Birmingham papers, the Montgomery Advertiser. They were talking -- they picked up on what Democrat Secretary of State Glen Browder had talked about in the '80s and carried it through to a higher level with their editorial content in '94, '95, '96, and '97, when we were pushing for these reference. I sort of left the movement in '98 when I ran for the Alabama Supreme Court, and others continued it.

Q. Okay. Is Exhibit 96 one of the editorials that you collected

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while you were investigating voter fraud?

A. Yes.

Q. Okay. And that editorial talks about a voter ID law, correct?

A. Yes, it does.

Q. Okay. So just to be clear -- and we'll go over this in more detail as we go along. Is it correct that you advocated for two different kinds of reform, one related to strengthening the witness signature requirement and another to require voters to show some form of identification ?

A. That would be an oversimplification of both bills.

Q. Yes. Okay.

A. The fundamental answer is yes. But we coupled both of those with provisions to make sure -- as a matter of fact, you know, in order to have the votes we wanted in the legislature, we coupled both of those provisions with other provisions to make sure that we were not depriving anybody of the right to vote.

Q. Okay.

MR. DAVIS: Move to admit 97, Judge, to show what was being publicly reported.

THE COURT: Same. It's in.

Q. (BY MR. DAVIS:) And, Justice Murdock, did you write letters to the editor and editorial submissions to express your beliefs to the public about voter fraud?

A. I did write several in the course of my work with the coalition, yes.

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Q. Yes. And is Exhibit 98 one such editorial that you wrote?

A. Yes. The editorial staff at the Birmingham News contacted me and asked me to consider writing a piece for the News, and this is the result.

Q. Okay. And on page 2 of that editorial, does that contain the comment that we spoke of earlier, your view that absentee voting takes ballots out of the polling place and into the marketplace?

A. Just a minute, please. The print's pretty small. I see Secretary of State official Billy Compton saying there is widespread abuse of absentee voting. It's being used to steal elections. Where do you see my comment?

Q. I see a heading called, "the marketplace," Justice Murdock.

A. Ah. Okay. So I wrote that Camp got it right. That's a reference to Billy Joe Camp. I think Billy Compton worked for the Secretary of State, Billy Camp at the time. I don't know. Let me see what I wrote. Oh, okay. That was a reference to the prior paragraph where Billy Joe Camp had said in a prior article that the problem is voter fraud usually does not occur with people that show up in person to get their absentee vote application. It is when the absentee ballot is mailed that the abuse most likely occurs. That was what happened. I was playing off that. I said Camp got it right.

When absentee ballots go out in the mail, they are taken out of the polling place and put into the marketplace. Outside of the watchful eyes of election observers, anything can and does

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happen. As researchers from the University of Virginia and the Wall Street Journal recently reported -- I think that was Larry Sabbat in Virginia. Quote mail-in balloting exponentially increases the chances for fraud unquote. And then I go on to explain how that has manifested itself in some cases including some where vote fraud convictions were obtained.

Q. Okay. Justice Murdock, did you become part of any citizen groups of folks who joined with you to advocate for election reform?

A. Yeah. I mentioned that a couple of times already. There was a group called Honest Elections Coalition that we put together which was comprised of -- actually it started with citizens for Better Greene County which was a group of -- actually, a majority African-Americans and some white citizens in Greene County who saw what had happened in Greene County. And they -- and even before the 9496 election, they knew what could be coming, the kind of fraud that might occur in their local races. They weren't motivated by the state races. Nobody had any idea before '94 that the state races would be this close. But they were motivated to try to preserve integrity in their local races.

That group came in, and some of their members were part of a steering committee for a new group. I think there was another group out of Hale County. I'd have to check. But we all sort of pulled together, and we had a group called Honest Elections

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Coalition that we formed with the Greene committee and then the membership group from there.

Q. Before I forget, Justice Murdock --

MR. DAVIS: But, Your Honor, I don't think I formally moved. I do move to admit 98, the editorial Justice Murdock wrote that we were on earlier.

THE COURT: Thank you. Same ruling. It's in for the appellate record. Thanks.

MR. ROSBOROUGH: And, I'm sorry. Your Honor, I'd just like to add a relevance objection onto that one too given the stipulation about Justice Murdock's advocacy.

THE COURT: Okay.

Q. (BY MR. DAVIS:) Justice Murdock, the Honest Elections Coalition, was that group bipartisan?

A. Oh, yes, it was Democrat and Republican. One of our leaders was Rufus Huffman, a three-term incumbent from Bullock County for the probate judge's position who had marched with Dr. King from Selma to Montgomery. Bill Johnson, an African-American from Greene County who won at the ballot box but lost in the absentee balloting race with ballots that ultimately were the subject of a joint federal state prosecution for vote fraud. Jesse Mason, the lady who testified in front of Judge Howard that voting in Greene County -- it was something like out of the wild wild west. She was part of our steering committee. Pam Montgomery a white lady from Greene County was very

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concerned. She was part of the leadership. I think J. D. Snoddy, a white guy out of -- a white man out of Winston County, because there had been vote fraud in Winston County.

So we had -- I don't know. I may be getting afield a little bit of your question. But we had a leadership group of roughly six or eight of us, and then we had membership that grew as we spoke to civic clubs and published pieces and worked directly with legislators. We held -- we held press conferences in conjunction with the legislative session. We held a rally on the state house steps. As I said before, we went and talked to Governor James. I helped draft the litigation personally for Governor James's office and was actually paid to do that. And then our committee members, some of them came and testified in front of the Alabama legislature. Two of our steering committee testified in front of Congress before the House oversight committee investigating vote fraud nationally.

Q. Who was that who testified before Congress, do you recall?

A. Yeah, Judge Huffman and Pam Montgomery.

Q. And you said Judge Huffman has a former political official?

A. He was a three-term probate judge, 18 years in Bullock County. And he lost to a white man. He lost his bid for a fourth term, he lost to a white man named Waters. When waters got 35 votes -- I may have my -- no, I may have that wrong. I've got it written down somewhere. But basically, Waters got like -- oh. Huffman -- I remember now. Huffman was ahead by 400 votes in

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the live in-person voting. And this is in order of magnitude of maybe a 10 percent margin. Maybe there's 4,000 votes cast. And he was ahead by 400 votes. And his opponent flooded the race with absentee ballots. And he personally testified in front of Congress, the Alabama legislature, and then stated in press conferences that he saw people paying $5 and $10 a ballot to procure people's ballots. And he saw people being pressured to hand over their ballots unsigned or to sign them unmarked and hand them over or to fill them out unsealed and hand them. He saw --

MR. ROSBOROUGH: I'm going to object on hearsay grounds here, Your Honor.

THE COURT: Sustained.

Q. (BY MR. DAVIS:) Was Judge Huffman African-American, Justice Murdock?

A. Yes, sir.

Q. And he was a part of your group?

A. Well, he was a particularly powerful voice because he had been part of the civil rights movement and had marched with Dr. King, yes.

Q. And exhibits 99, 100, 101, and 102, are those all releases from the Honest Elections Coalition?

A. 99 was a press release announcing the rally that we were going to hold during the special session of the legislature in the summer of '96. 100 was a press release that Bill Johnson, one of

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our African-American steering committee members and I were the contacts for from February of '97, which would have been after we had passed the absentee balloting reform and we were pushing for additional tightening of vote laws and reform. And then 101 was to like effect. Both 100 and 101 are press releases, yes, sir. Did you ask me about 102?

Q. I did.

A. To like effect, 102 -- actually that's a press release featuring Judge Huffman.

Q. And, Justice Murdock, did the Honest Elections Coalition produce a video that you distributed around the state?

A. We did.

Q. And --

A. And we also --

Q. And Exhibit 101, is that a release that accompanied that video?

A. The video also went to legislators, by the way. We did not give it to every single legislator, but we gave it to every legislator that was either with us or we thought we had a chance of getting their vote. But anyway, go ahead. 101?

Q. Yes. Was Exhibit 101 a release that accompanied that video?

A. Yes.

Q. Okay. Can you describe that video for the Court?

A. Sure. Bill Johnson was part of it. I spoke more than anybody, being blunt about it. I think I began the video and just

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basically asked the question how can anybody be against honest elections. Bill Johnson spoke. I think Pam Montgomery spoke. And I remember that one segment of it, we used these affidavits that were in the very first exhibit you asked me about, the investigator reports and affidavits. And we presented those in the video as some of the evidence that had motivated the group to call for better integrity and laws that would better ensure an honest process.

Q. Now, you said that you sent copies of the video to legislators. Who else did you send the video to?

A. I think we sent it around to some civic groups. Because we couldn't be in every place and we were encouraging people that were some of our supporters or that, you know, coordinated with us or contacted us, encouraged them to show it at some civic clubs around the state. I think in the course of this year I probably spoke to, you know, maybe ten civic clubs around the state, but, you know, you can't be everywhere. And we thought this was a way to multiply the effort and have something that was maybe a little different for legislators so that they could see, you know, what was going on. And I thought it would be particularly helpful for legislators who at first glance you could say, well, they may not support this. But I thought it would be helpful, you know, if they see what elections had been stolen by absentee ballots or impacted by absentee ballot irregularities. So who else did we circulate it to? I think that's all I can remember at this

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point.

Q. Okay. In the video, did you speak of any particular accounts of absentee voter fraud?

A. Yes. I know with certainty we spoke of the voter fraud in Greene County. There was a race in Greene County in which Bill Johnson received about 560 votes at the polling place and about 60 votes by absentee ballot. 565 and 55 or something like that as I recall. His opponent -- this is for the Greene County Commissioner. His opponent received about 35 votes live and far -- I'm trying to remember. Something like 600 votes by absentee ballot. You know, just a tremendous amount. Now, I may be conflating this. Hold on. I'm conflating this with Wilcox. Excuse me, Your Honor. I'm conflating my numbers with the Wilcox County prosecution as well. Trying to do this from memory. Excuse me. The point was what was featured in Greene County was the case that was eventually the subject of a joint federal state prosecution. And we explain that in Greene County on Election Day, five men appeared at the Eutaw, Alabama post office and put three suitcases on the counter to mail ballots sometime after lunch on Election Day, suitcases or duffel bags containing 1,100 ballots, one-fourth of all the ballots cast in a Greene County in November of 1994 --

MR. ROSBOROUGH: Your Honor, I'm going to object here based on lack of personal knowledge. There's no basis that Justice Murdock was involved with that case directly.

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MR. DAVIS: Your Honor, the question is what cases did Justice Murdock and the Honest Elections Coalition discuss in the video distributed to the public and to the legislature.

MR. ROSBOROUGH: If that's the case, then Justice Murdock's answer is far beyond the scope of the question.

THE COURT: I'm assuming the answer contains information that was in the video.

THE WITNESS: Yes, sir.

THE COURT: Okay. So I'll allow it.

Q. (BY MR. DAVIS:) Justice Murdock, for now, let's limit your responses to what was -- what you recall being discussed in the video.

A. Yeah, okay.

Q. So you discussed these details about Greene County in the video that you distributed to legislators and others, correct?

A. Oh, oh, yeah. Absolutely. We spent a couple minutes on this case.

Q. Okay.

A. It was about a ten-minute long video. We spent a chunk of time on this because it was so compelling. And it changed the outcome of that election. And so the evidence that was presented that we were able to put in the video and talk about in the video, as best I can recall, Your Honor, is that these three suitcases contained approximately 1,100 ballots. They swamped the election, so to speak, in favor of one candidate, a county

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commissioner named Spencer, Aria Spencer I think who won his race over Bill Joanson with the use of these ballots. And these ballots had been prepared by -- in part, with the use of inmates at the Greene County jail and that these ballots were brought in after having basically been forged en masse and were the subject of a federal -- a joint federal state investigation.

Q. Okay. Did you discuss any other instances of voter fraud that had come to your attention in the video?

A. I am absolutely sure we discussed the Greene County. Yes. We did. I'm sure of this too now. It just clicked in. I was hesitant until now. I'm 99 percent sure we discussed the Wilcox County dispute in which -- that's where the numbers that I was grasping for a moment ago came from.

Q. Okay. And what details of that situation do you recall discussing in the video?

A. I recall discussing the fact in Wilcox County, one candidate had -- I discussed, as I recall, that one candidate had 560 votes on Election Day and about 60 votes by absentee ballots, which would be on the high side to get 10 percent of your vote in that time frame would be on the high side. And I discussed in the video that the typical percentage of absentee balloting given the restrictions on how it could be used was somewhere between -- I think I used percentage 3 or 4. I might have said 5 or 6. But it was 5 percent or less. So 10 percent of that candidate's vote coming from absentee would be a little bit on the high side but

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not completely unremarkable. But that his opponent received something like 34 ballots live and 597 votes by absentee balloting and that a state election official had testified in court in a state prosecution that resulted in convictions that no more than six people, perhaps as few as four, had filled out all the voters's signatures and all the witness signatures on all 597 of those ballots.

MR. DAVIS: Your Honor, I'll move to admit these releases from the Honest Elections Coalition as 99 through 102.

MR. ROSBOROUGH: Same objections.

THE COURT: Received under the same conditions.

Q. (BY MR. DAVIS:) And look at Exhibit 103, please, Justice Murdock.

A. Yes, sir.

Q. Is this an article about your advocacy for changes to election laws?

A. Yes. I think I spoke to a civic club, yes, Kiwanis Club. I don't remember which one it was. But it was a civic club in Dothan. And this was a news story in the Dothan Eagle.

Q. Okay. So you were speaking to the Dothan Kiwanis Club, correct?

A. According to this second paragraph, I was. I don't independently remember that.

Q. Okay. Well, you spoke to several civic clubs though, correct?

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A. Yes.

Q. And whether you remember specific instances or not, what generally was the topic of conversation when you were speaking to these civic clubs?

A. The topics are fairly well reported in this and the other stories that are in these exhibits about my topic. And I -- so, you know, I would be introduced as one of the lawyers in the Hooper Hornsby case, but I would explain the story of how we thought we had to overturn the vote totals in that case and so we were looking for evidence of traditional vote fraud. And before that evidence ever had to be put on the table in a courtroom, the numbers switched, and so that evidence was put aside but that, you know, consistent with what they may have been reading in news stories for years and years, here's what really happened in '94 that should alarm everyone and that I basically was able to look at the evidence we gathered and conclude that there were thousands of votes, perhaps 10,000 votes that clearly would have affected some statewide elections.

Q. Okay. When you spoke to these civic clubs, did you urge your audience to take any action?

A. We did. We urged them to write their legislator or call their legislators. I remember in Mobile one time I think I gave out the number for governor -- Lieutenant Governor Siegelman's office. I'm sure he appreciated that. We had these petitions. We asked people to sign petitions. You know, and I have kept a few of

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them as you can see in that original exhibit. And or to write their legislator, yes.

Q. Okay.

MR. DAVIS: Move to admit Exhibit 103.

THE COURT: Received. Same conditions.

Q. (BY MR. DAVIS:) And look at Exhibit 104, please, Justice Murdock. Is this also an article about your efforts?

A. Yes, it is. This is in the Tuscaloosa News.

Q. And I see in the second paragraph, it says -- you're reported as saying I need your help contacting your legislator or Don Siegelman's office or Speaker Jimmy Clark's office over in the house of representatives. And what were you urging them -- well, first off, did you in fact urge them to contact legislators and other public officials?

A. That would typically be what I would do at the -- near the end of my presentation to all the civic clubs I spoke to around the state.

Q. And what would you urge them to tell their legislators or other public officials?

A. Well, just the obvious, that they are concerned about vote fraud. Really, to try to be a voice for what I knew was in the press. My -- you know, what later was confirmed for me in some polling that I did for my race is that really just try to be a voice for the typical Alabamian who had seen all this stuff and was alarmed by it and to tell a legislator that or to tell the Lieutenant

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Governor or Speaker Clark and to say they wanted -- they wanted the enactment of laws that would help prevent vote fraud in the first place and make our process more secure.

Q. All right. Let's do some of these as a group. Look at 105 and 106, Justice Murdock, and tell me, A, if these are also articles about your efforts that were publicly reported, and B, if this is part of the collection that you used to share with legislators and others?

A. All of these are part of the collection that we have discussed, and yes, 105 is from the Anniston Star, who incidentally later editorialized -- no conservative bastion newspaper there. They editorialized in our favor. Mobile -- that's the Mobile Lion's Club article that I mentioned speaking in Mobile a moment ago.

Q. Okay.

MR. DAVIS: Move to admit 104, 105, and 106, Your Honor.

THE COURT: Received again as part of the appellate record.

Q. (BY MR. DAVIS:) And Exhibit 7, Justice Murdock?

A. Yes, I think that's the second of two op-ed pieces I wrote during this time frame.

Q. Okay.

A. Again for the Birmingham News. And again, I think at their request.

Q. And this was publicly reported, correct?

A. Yeah.

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Q. Is this part of the information that you shared with legislators?

A. Yes, sir.

Q. Let's pause here -- oh.

MR. DAVIS: Move to admit 107.

THE COURT: Same. Received.

Q. (BY MR. DAVIS:) And, Justice Murdock, tell me about the occasion when you testified before a legislative committee. What bill was at issue, do you recall?

A. Yes. Both a voter ID bill and an absentee ballot bill.

Q. Okay.

A. The absentee ballot bill was a bill that would have done -- and eventually did do a number of things. I testified for it in both the regular and special sessions in '96. That bill would have -- and did eventually -- take the language that was on the pro forma affidavit saying your signature must be witnessed but two adults or a notary public and made it more explicit saying that if it is not, it may not be counted. And it also put that language in the text of the statute that referred to the form of affidavit and said that -- it had some statement about the purpose of this legislation is to prevent fraud and that these ballots will not be counted as a preventative measure if not notarized or witnessed because that had been -- I don't know if we talked about it much, but when Judge Reese had a preliminary hearing and entered that order, he used this concept out of Florida called

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substantial compliance. And it basically was that, well, if you marked a reason for voting absentee, you had your correct name, and you had a correct address, well, that's three out of four requirements. You know, that's substantial compliance. And so since we wanted in this statute, first and foremost, to make sure that any courts in the future would understand that that's not enough.

We also felt lake that we wanted to clear up what had happened in Greene County. We wanted -- if you're going mail absentee ballots, we didn't want you to wait and see what was going on on Election Day and then mail a bunch of ballots. We wanted it postmarked the day before. We increased criminal penalties for a couple of different types of vote fraud. What we found was that all of this fraud that we had uncovered and that was the subject of the prosecutions was -- not all of it, but like 90 percent of it was absentee balloting where the voter just checked the reason that quote "out of county" as his reason for voting absentee. Unlike illness or job requirements or in college or military, "out of county" is very hard to verify.

And so those who were forging ballots and filling out ballots and pressuring people to hand over their ballots, you know, for fear of, you know, losing some implied loss of government benefit or whatever, those ballots almost always checked out of county, and it was very hard to verify. And so between that and the intimidation and the forgeries, we felt like we had a problem

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and that we needed to stop this out of county, this wide gaping hole in the integrity of our elections. And yet if we just cut that out altogether, then there would be some people who were legitimately out of the county who couldn't vote.

So to prevent any diminution in access to polling, we proposed in this bill that you just asked about two alternative days of early voting, the Tuesday before and the Saturday ten days before the election. And that -- and frankly, my goal was that would be it. It was not a constitutional requirement that entitles you to absentee vote. That would be it. And if you couldn't get there on one of those three days, then you might be foreclosed. But I was persuaded and, you know, we got some African-American support in the legislature. And what they wanted, and I thought this was a good thing eventually, what they wanted was, okay, well, we'll do the early voting, and that's going to make people tell a bigger lie, a more verifiable lie about being out of town on all three of these days including a weekend day but that if someone after looking at those three alternative voting days still was going to be out of they county on all of those, they could still claim that they were out of the county or check that as their reason and still vote absentee.

Q. Okay.

A. So in that regard, it was a very, I thought, a liberal approach to the problem that we thought, you know, could help the problem. And so I was testifying about that bill. And that's

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when -- I know in the special session, which is the session it past then. But I think I did it in the regular session first, when some member of the committee challenged that there was no evidence of actual fraud, that's when I took my box full of exhibits, and I put them on the table and started reading from some of them.

Q. Okay. So you actually read from some of this material to the legislative committee?

A. Oh, yes, sir.

Q. Did you also outside of the committee meetings speak to legislators one on one about these issues?

A. Sure. Yeah. I mean, there were a number of times -- I remember being in John Knight's office one time talking to him about it, sharing information with him. He was one of the leaders on the African-American side of the legislature. I talked to white and black legislators alike, probably both -- probably violated the lobbying laws.

Q. Don't say that in court.

A. Yeah. Okay. So, you know, Governor James had hired me to be his consultant and to help draft this. So to some extent, I was representing him. But more than that, I just was representing the coalition in our efforts. And, you know, we held press conferences during the session. We had this rally that legislators attended. I remember being in private rooms with John Amari and Dwight Adams from the Wiregrass and John Knight coming in or maybe -- I think we held that meeting in John's office. But, you

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know, making legislation is like making sausage as they say, and there were a lot of meetings, small groups, and one on ones. And I participated in countless such meetings.

Q. Did you specifically share with these legislators the evidence that you had seen about voter fraud occurring in Alabama?

A. Yeah. You know, the way we did that more than in these private my attention, although, you know, I would share as needed in order to buttress a point. But we typically had our supporters take photocopies of these things and put them on legislators's desks during -- or early in the morning sessions. That's how we distributed most of this stuff to legislators.

Q. Look at Exhibits 108 and 109, Justice Murdock, and tell me if these are editorials about your efforts that are part of your collection?

A. 108is an editorial about the effort to have election reform and it talks about the evidence. It says anyone who doubts absentee voter fraud should remember the 1994 Wilcox County commission race. In which a person voted three months after her death, and there were -- that's the race with all these people who forged 597 ballots that resulted in a conviction. This was more about the movement. There's no reference to me.

Q. Okay.

A. I certainly felt like our movement had -- this was our movement as much as anybody's. And so to that extent, the

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answer is yes.

Q. Okay. And what about 109?

A. Yes. Same -- I'd give you the same answer for that as I scan over it. Yep.

Q. Thank you.

MR. DAVIS: Move to admit 108 and 109.

THE COURT: They are received under the same conditions.

Q. (BY MR. DAVIS:) And Exhibit 110, Justice Murdock, is that one of your writings that appeared in a major newspaper?

A. It was in the Montgomery Advertiser. Yes, it is.

MR. DAVIS: Move to admit 110.

THE COURT: Same. Received.

Q. And what is Exhibit 111, Justice Murdock?

A. I have referenced today a couple of times -- more than a couple times -- the Greene County case. In Greene County, I mentioned that there were convictions as a result of a joint federal state investigation of the people who were responsible for the 1,100 ballots in those three suitcases. This is a joint press release by U.S. Attorney Doug Jones who was the Northern District U.S. Attorney at the time obviously, a Democrat. And the Alabama Attorney General at the time who was a Republican, announcing that there had been a joint federal state investigation that involved the FBI. The FBI had been involved, ABI had been involved. I think that's in this press release.

And -- and this was announcing indictments of six people

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including three or four public officials and a candidate for the Greene County Commission, Aria Spencer, Booker Cook who was head of the Greene County Planning and Development Council, Spider Gordon. And a total of about -- one of these people's wives was there. I guess it was Spencer's wife. And it goes on to explain that there's been an indictment handed down as a result of the joint federal investigation alleging that persons registered to vote who were not residents of Greene County, that ballots were mailed to false addresses that were not the the addresses of the voter, that applications for absentee ballots were made without the knowledge of the voter in question, and that there were instances where defendants had procured people's ballots and had signed their names without their knowledge or had procured their ballots and had their -- had the voter sign their names but didn't let the voter mark the ballot first and just had it -- anyway, that's an announcement that have indictment of the case that I have mentioned previously.

Q. Okay. Is this part of your collection and part of what you shared publicly?

A. Yes, sir.

MR. DAVIS: Move to admit 111.

A. Let me say this.

MR. DAVIS: Just a minute, Justice Murdock, please. Move to admit 111.

THE COURT: Received, same conditions.

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MR. ROSBOROUGH: And I'd just like to add for the record, Your Honor, one more objection for this particular exhibit, that this is not the right witness the right witness to lay a proper foundation in addition to my hearsay and personal knowledge objections.

THE COURT: Sustained. I think Justice Murdock wanted to say something.

THE WITNESS: I was just going to say that the -- this indictment came about because of the evidence supplied by the Honest Elections Coalition to the Attorney General. So we saw a direct result of our efforts in this indictment.

Q. (BY MR. DAVIS:) Thank you. Last one in this notebook -- or in my investigation of this notebook. What is 112, Exhibit 112, Justice Murdock?

A. I think another press release.

Q. From the Honest Elections Coalition?

A. By the Honest Elections Coalition, yes, sir.

MR. DAVIS: Move to admit 112.

THE COURT: Received. Same conditions.

Q. (BY MR. DAVIS:) And, Justice Murdock, I want to speed this up a little. So I want to look at several exhibits and for you to tell me, before we go back and discuss a few in more detail, let's affirm for the Court that these exhibits are part of your collection, part of what you shared publicly, part of what motivated you. First is Exhibit 158.

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A. Yes.

A. Yes. Absolutely.

Q. 159?

A. Yes.

Q. 160?

A. Yes.

Q. 161?

A. Yes.

Q. 162?

A. That was a Montgomery Advertiser editorial, yes.

Q. 163?

A. On 162 -- and let me say this. There may be a few of these that came out in 1998. I started running for the Supreme Court in 1998. And Rufus Huffman and Pam Montgomery took over and were calling the shots. So I may have to double -- I guess I was probably still involved in January of '98. But anyway, I don't -- I couldn't specifically say that I did anything with 162 but --

Q. Okay.

A. To be honest.

Q. Well --

A. 163 is an editorial that actually takes the whole theme and the legacy of vote fraud in Alabama back to the enactment -- I'm sorry -- the adoption of the Alabama 1901 constitution and explains that vote fraud has been going on for 100 years in Alabama as evidenced by the fact that the 1901 constitution

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which many believe is racist in many provisions would not have passed without a vote margin in its favor out of the Black Belt counties and that that was the use of fraudulent voting by the white supporters of the 1901 constitution in order to get that passed.

Q. Well, 162, Justice Murdock, whether you shared this with anyone or not because of its date, this is part of the information you collected, correct?

A. Yes, sir. I didn't know where the end of my involvement would come -- where it would come. So I kept -- I kept collecting these as part of the coalition.

Q. And so this was -- and this was publicly reported, correct?

A. Well, I mean, this editorial was published in the Montgomery Advertiser.

Q. Thank you. Okay. 163?

A. Yeah. That's what I just finished discussing and yes --

Q. Part of your collection. 164?

A. Yes. That's an article about my speaking to the Jackson County Republican club.

Q. 165?

A. Yes, editorial by the Birmingham News. That was at the time of our first special session where we got the absentee ballot law enacted.

Q. 166?

A. Yep. That's not my article. But that's a published article by

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the -- I think she was an AP reporter, Robin Demonia, who wrote about the write-in, the mail-in votes in Wilcox providing the margin in that race.

Q. Okay. And that's 1994, correct? The date the article was published?

A. That was published in 1994, yes.

Q. So this would have been -- this particular one would have been information you shared with legislators and others?

A. Yes.

Q. Yes. 167?

A. Yes. It's an article about the Greene County case we discussed a moment ago.

Q. 168?

A. Yes. This is a publication Birmingham Post Herald, the morning paper, February of 1998. I just would have to say the earlier the article, the more likely it is that it was part of the package that we put on legislators's desks. February of '98? I can't specifically recall using this article as I was beginning to turn my attention to running for public office, I can't specifically recall using this article. But it's something I collected as part of my ongoing effort not knowing what would happen in may campaign.

Q. Understood. 169?

A. Yep. That was published in the Mobile Press Register.

Q. 170?

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A. Yeah. That was published in the Birmingham News.

Q. 171?

A. You know, I think this was published in the Southeast Sun, down in Enterprise, Alabama.

Q. But that is part of your collection, correct?

A. It is part of my collection no less than the others that we've discussed.

Q. Yeah. And 172?

A. That is -- that was a report in the Alabama Today magazine. I spoke to the business council of Alabama at their annual retreat in Baldwin County that year, and they wrote a magazine article about it in October of '96.

MR. DAVIS: Move to admit 158 through 172.

THE COURT: Including 162 and 168?

MR. DAVIS: Yes.

THE COURT: Remind me again what was Justice Murdock's answer. Those are the ones that I think were collected when he was campaigning. He's not sure if he presented them to the legislator, but they are part of his package.

MR. DAVIS: Correct.

THE COURT: Okay. All right. All of them will come in. Same general reservation for part of the appellate record. Mr. Davis, I think I cut you off.

MR. DAVIS: I may have interrupted you, Judge, I'm sorry. I was going to tell the Court that, yes, I do believe that was Justice

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Murdock's testimony. And we think this is relevant to show not only what was shared with legislators when in fact that's the case, but also what was publicly reported and part of the public conversation about these issues.

THE COURT: Okay. 158 through 172 are all received. Same conditions as before for the appellate record.

MR. DAVIS: Sure. Your Honor, I anticipate about 30 more minutes of direct examination. I am shifting topics.

THE COURT: It's a good time to stop, give everyone a break. Let's come back at ten after 1:00. No, definitely not. Ten after 11:00, please.

MR. DAVIS: Okay. Thank you.

THE COURT: Thank you. We are in recess for the next 15 minutes. Thanks, everyone.

(Recess.)

THE COURT: Mr. Davis, are you ready to proceed?

MR. DAVIS: I am, Your Honor.

THE COURT: Justice Murdock, are you ready, sir?

THE WITNESS: Yes, sir.

THE COURT: Thank you. Mr. Davis.

Q. (BY MR. DAVIS:) Justice Murdock, four more articles we'll do as a group. Look at 174, please. Can you identify the article marked as Exhibit 174?

A. Yes. It was part one of a four-part series that was published in the Tuscaloosa News at a point in time when the Hooper

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Hornsby election dispute was still very much in litigation and the evidence of vote fraud, traditional old-fashioned vote fraud was really coming out a lot in the public eye. And so the Tuscaloosa News did a four-part series. And this is part one.

Q. Okay. And I'm going to share my screen now, Justice Murdock, because I made a mistake in numbering some exhibits. This is Defendants' Exhibit 91. Is this part two of the four-part series?

A. Yes, it is.

Q. Okay. And 176, is that part three?

A. It is. And the next one, 177, is part four.

Q. Okay. And is this part of your collection, part of what you shared with legislators?

A. Yes, it was.

MR. DAVIS: Move to admit 174, 91, 176, and 177.

THE COURT: 191 is the one you showed on the screen?

MR. DAVIS: 91, Your Honor. Yes. Exhibit 91.

THE COURT: 91. Okay. Those exhibits are received. For the record, it's 174, 91, 176 and 177. Same reservations as before.

MR. DAVIS: Thank you.

Q. Justice Murdock, you said that you spoke with legislators of all races as you were discussing these bills, correct?

A. That is correct.

Q. And how were you received by legislators of all races?

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A. Well, I mean, there were some that were opposed and stayed opposed. Others had their minds changed. I remember that in the same house administrative committee that I testified in, a representative from Selma, an African-American named Edward Maw, testified, actually testified as member of the committee in favor of the bill.

There were other legislators who supported the legislation and helped us shape it so that it would be fair. I mentioned sort of the compromise about cutting out -- trying to reduce the amount of out-of-county voting and substituting some early voting days. They helped us shape that. There Amendments were offered in that regard by John Knight, I think, and that was adopted. Lucius Black offered an amendment. I can't remember what it was -- that was adopted. When it came time to report the bills out of committee, the motion to report House Bill 62 out of one -- the same committee he testified in front of, actually it was made by Representative Maw from Selma, and the second was from a Birmingham African-American legislator named Ernest Johnson. So, you know, consistent with the membership of our coalition and the fact that much of the fraud had been committed against black candidates either by white or other black candidates, there was -- there was some support for this legislation.

Q. Okay.

A. In the African-American delegation until the legislative.

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Q. Justice Murdock, with the efforts that you made to advocate for changes in election law to address what you believe to be a problem with voter fraud, were you in any way intending to target minority voters or to make it more difficult for them to vote?

A. Absolutely not. I think we had -- people -- plus, I failed to mention Losi Baker, an African-American legislator who supported the bill in the end. They would not have come and supported the bill. Absolutely not. I mean, if we had been doing that, then we would have been trying to shut down voting and clamp it off, that sort of thing. Look, absentee ballot fraud was at issue in white counties too. There's plenty of evidence in various predominantly white counties, Winston among them but not limited to Winston. This type of fraud had been occurring for a long time. If you go back and look at some of the editorial --

MR. ROSBOROUGH: I'm going to object to nonresponsive to the question asked.

THE COURT: I'll sustain, Mr. Davis.

Q. (BY MR. DAVIS:) Justice Murdock, did your concern over voter fraud depend in any way on the race of the person committing the fraud?

A. No, not at all.

Q. Did you, when you reviewed evidence of voter fraud over the course of your investigation, see evidence of fraud in counties of varies demographics?

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A. Yes, we did. Our reports came from all over the state, and the research that I did on my own showed fraud from predominantly white counties as well.

Q. When you ran for political office, Justice Murdock, did your campaigns do any polling?

A. Yes, we did. We hired national pollsters who polled the entire state. I can't remember who did our polling in '98 in my first Supreme Court run. But I know in 2000 and 2006, we used Jim McLaughlin who was the brother of John McLaughlin.

Q. Okay. Was one of the issues that you presented when you campaigned for office that you were a person who supported election integrity?

A. Yes. When you run for office, you obviously only want to tell the voters things about yourself that are true. But you have limited amount of time in a 30-second TV add.

Q. Okay.

A. So you have to pick which points you want to use those limited precious seconds to emphasize. And our polling showed that something like 87 percent at one point of people in Alabama would be in favor of a candidate who had fought against vote fraud.

Q. Okay. Now, when you were advocating for the bill that would have strengthened the witness signature requirement, wasn't it already against the law to commit voter fraud?

A. It was against the law to commit voter fraud. I remember

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having a -- yes. It was.

Q. Okay. Well, why after what you had seen and investigated about voter fraud, why wasn't that enough for you? Why did you still think it important to have protections against voter fraud if it was already against the law?

A. Well, just because something is against the law doesn't mean it happens. Just because you know a crime -- and we knew that the crime of vote fraud was occurring. You know, there had been convictions and contemporaneously litigated criminal lawsuits out of various counties in Alabama. Including the two I mentioned previously, Wilcox, Greene. I think Hale had a conviction. Winston County had convictions.

So just because you know a crime is coming doesn't mean you ought not to try to prevent it. And we thought it was important to -- our group thought it was important that we have systemic safeguards to deter it, to diminish it, and to prevent it. I mean, you know, look -- okay. Man slaughter with a car is a crime. But we still have speeding laws when nobody gets hurt that you can arrest and prosecute somebody or to breaking the speeding law even though nobody is hurt or killed. That helps prevent the crime of manslaughter. You have that sort of thing.

The other thing is -- I guess to finish may answer would be this. Most crimes when they happen, you know they've happened. Vote fraud by its nature is secretive, obviously. It's a stealth crime. So it's more important than on a typical crime that

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you have measures in place to prevent it from ever happening in the first place because you're never going to learn about all of the vote fraud that's out there. We wouldn't have learned -- if it had not been for a Herculean effort by the citizens group in Greene County and other people who were willing to go out on a limb and a massive movement to try to find out what happened in the '94 election, we wouldn't have that evidence of vote fraud. The Greene County convictions never would have happened. The Wilcox County convictions never would have happened.

But we felt like it was important to make it more difficult -- to have a voting system that made it more difficult. That's why we wanted to cut out the out-of-county voting, and we certainly wanted to strengthen the witnessing requirement and the other reforms we put in the absentee ballot laws to prevent it from ever happening in the first place, because it's secretive by nature. You do that, or you're going to have problems.

Q. Okay. Thank you. Look at Exhibit 173, please, Justice Murdock.

A. Yes, sir.

Q. What is this?

A. This is a document that I prepared, I shared with legislators, and later I shared it with the Attorney General's office when they asked me to consult with them in their preparation of answers to inquiries by the justice department during the preclearance process of the absentee ballot bill that we were successful in

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achieving.

Q. So is this a summary of various evidence that you collected over the course of your investigation?

A. It is a summary of -- it says, "evidence and results of absentee ballot abuse in Alabama." It's a summary of the evidence that we gathered of the publication, including national publications that had really embarrassed Alabama in the year before this was published from NBC, ABC, New York Times, Wall Street Journal, Reader's Digest. There were books published all of which were talking about vote fraud in Alabama. And, you know, and, you know, we wanted to lay all of this out for legislators to see. We had --

Q. Okay?

A. -- some statistics in here as well on the high percentages of voting by absentee that were extraordinary as well as the discussion of some of these criminal cases.

Q. Thank you.

MR. DAVIS: Your Honor, move to admit number 173.

THE COURT: Received. Same conditions.

Q. (BY MR. DAVIS:) Justice Murdock, we've talked a lot about voter fraud. We never really defined it in your mind. What do you consider to be evidence of voter fraud?

A. Wow. Okay. So to some extent, it's sort of commonsensical. But when a -- that last exhibit that we were just looking at discussed an affidavit from a lady named Helen Watts whose

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mother was an advanced Alzheimer's patient in a nursing home and couldn't even communicate with people. And this lady -- or none of her family had requested an absentee ballot on behalf of her mother, and yet one was cast on behalf of her mother in Cullman County. That would be vote fraud.

We had an affidavit of a comatose patient having a vote cast in their name. That would be vote fraud. When the absentee ballots are brought to people's mailboxes by the U.S. Postal Service and the mail truck pulls away and some sort of private vehicle pulls up behind it and pulls the ballots out of the mailbox and they follow the truck around all day during that, you can rest assured that somebody's about to commit some kind of vote fraud with those ballots.

We mentioned -- we talked about paying people for their ballots, giving them money to hand over their ballots either unsigned or at least unmarked. That ballot box, forgery of stuffing party in Greene County, forgery in Wilcox County when you're filling out somebody's name and witnessing signatures. That's forgery. We have a lot of these affidavits.

When somebody shows up at the polls to vote and they hadn't applied for an absentee ballot and they are told they can't vote because they voted absentee, somebody has committed some kind of fraud. The indictment that was brought down in the Greene County case talked about persons who were not registered to vote or who didn't live in Greene County having

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ballots cast in their names. Applications for absentee ballots on behalf of people who didn't know anything about it.

It talked about applications for absentee ballots being sent in multiple, 24 or 6 or 8 to a single address where not that many voters lived at that address. And one group of ballots was applied for and was sent to an address -- and that's what the second part of the Tuscaloosa News series starts off with -- sent to a P.O. Box that didn't exist. There was no such P.O. Box. That's evidence of fraud going on when you deal with that.

When a Democrat U.S. Attorney and a Republican Attorney General and the FBI and the ABI all put their resources together and achieve convictions of six people for forging ballots and dumping them onto the post office in Greene County, I mean, that's -- that's -- that's vote fraud. And that's part of what we were trying to share with these African-American legislators. It had nothing to do with the skin color of the victims or the skin color of the perpetrators. It had nothing to do with liberal, conservative, or Republican, Democrat. That's why there was that joint investigation. That's why the Alabama Attorney General's office investigated this in both black and white counties.

So when you have a ballot that is -- let me think of another type of vote fraud. When you have a ballot -- when you have a polling official -- we had one of these reports. A polling official who not long after the November election in tiers apologized to the losing candidate for having marked 30 ballots for that losing

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candidate's opponent.

MR. ROSBOROUGH: Objection. Hearsay.

THE WITNESS: That's vote fraud.

THE COURT: It's his definition of what he considers voter fraud, not being received for the truth of it.

THE WITNESS: Jesse Mason was one of -- as I said before, was an African-American lady in Greene County. She's the one who testified so powerfully in front of Judge Howard that Greene County voting was unlike anything she had ever seen before. She said that basically in answer to the same question you've asked me, that she saw -- she saw a balloting process with the absentee ballots where the voting process was not secret like it's supposed to be, that because it was not in the polling place, people could get to the elderly and the less-learned people and informed people and intimidate them into either taking their ballots out of the mailbox as I said to begin with or meeting with them at their homes and pressuring them with valid threats, that their participation in the federal commodities program might be at risk if they didn't cooperate and hand over their ballot so that these brokers could mark it themselves. You know, she said that this kind of pressuring and intimidation and valid threats to voters happened a lot in Greene County. And she considered that vote fraud. Bill Johnson --

MR. ROSBOROUGH: I'm going to object to that as well. I think now we're talking about somebody else's views rather than

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Mr. Murdock -- Justice Murdock.

THE COURT: Sustained.

Q. (BY MR. DAVIS;) Justice Murdock, over the course of your investigation, did you in fact see evidence that led you to believe that all of these things you just discussed had in fact occurred in Alabama?

A. Well, yes in two respects. Number one -- three, really. Number one, this was not the first time reports of this had happened. It had been coming out beginning in the '80s from Democrat party officials, Secretary of State Glen Browder, Democrat Secretary of State Billy Joe Camp, they had all launched efforts to investigate vote fraud, and they all acknowledged -- in some of these articles we have talked about, they acknowledged that absentee balloting being outside of the watchful eyes of election observers is where the fraud occurring. And they were undertaking efforts to either tighten up the laws or investigate. They had a joint task force with Democratic Attorney General Don Siegelman at one point. One of those two did. I saw all of that. That was part of it.

Part of it what convinced me was all of these reports that we got. I mean, when you have a box full of reports you can plump up on a legislator's hearing desk -- hearing table,, you know, and these reports are by African-Americans being taken advantage of by other African-Americans as well as whites being taken advantage of and vice versa across the board, there's a

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self-corroborating legitimacy to that number of reports.

And then thirdly, when you have joint federal, state investigations of vote fraud that find that this is happening and they get guilty pleas and convictions in these cases that we talked about --

Q. Okay.

A. -- that sort of nailed it down for me.

Q. And all of this evidence that we have been discussing of voter fraud, this is what you spoke about publicly and shared with legislators, correct?

A. Right.

MR. DAVIS: Your Honor, I pass the witness.

THE COURT: Mr. Rosborough, your witness.

MR. ROSBOROUGH: Thank you, Your Honor.

Q. It's still morning. Good morning, Justice Murdock. How are you today?

A. I'm fine. Thank you, Mr. Rosborough.

Q. Good to see you.

A. Thank you.

Q. Now, I believe you testified when you ran for Alabama Court of Civil Appeals and Alabama Supreme Court, voter fraud and ballot integrity was the major theme of your campaign; is that right?

A. No, I wouldn't say it was my major theme. It was a major theme. But I -- I'm not sure I could say it was the major theme.

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But it certainly was something that, you know --

Q. You wouldn't say that it was your central issue?

A. It was one of my central issues. It became the central issue in 2000, in my second race after I lost the '98. It became the single central issue in the year 2000, to my surprise, when the opposition recruited that circuit court judge in Montgomery who issued that injunction nine days after the election, Judge Reese, to order the unwitnessed illegal absentee ballots counted. I learned on the last day of qualifying that they had convinced him to switch over and run against me. Here was the judge -- I mean, I couldn't do this for myself. I thought that the issue was long gone, and I was just going to have to campaign on being a good lawyer and being, you know, a good court of appeals justice. At that time, it was the year 2000, Davin -- I'm sorry.

Mr. Rosborough.

Q. You can call me Davin.

A. It was the year 2000. All of this was in the rear-view mirror of the voting public to some extent. To a large extent. And then to my surprise, they convinced Judge Reese, the very judge who issued the order that launched the 11-month lawsuit that wound up in the U.S. Supreme Court, they convinced him to run against me. I think the Good Lord just created a blind spot in that meeting at Hare Wynn that night. I have a lot friends at Hare Wynn. But that night, I didn't have too many I guess.

But there were a lot of plaintiffs lawyers in that meeting, and

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I got a call from one of them named David Marsh the next morning and said, Glen, I hate to tell this. But I just need you to hear it from me. I was in a meeting last night, and the group decided to convince Judge Reese to run against you. And, Mr. Rosborough, my heart was pounding as he started saying that. Because up until that point, I had no serious opposition.

And he hung the phone, and I realized that something was providential here. And I dove over, and I grabbed my notepad. And I in my shade-tree political consulting mode scratched out the script of a couple of commercials about a lawyer who this fought against election fraud and the judge who had ordered the counting of illegal unwitnessed ballots. And so to my surprise in 2000, that did become, I would say in that race, the single most significant issue in terms of impacting my vote totals.

Q. Okay. Understood. Thank you. And I think you testified that you did significant polling on the issue of voter fraud and found that the issue would resonate, correct?

A. Yeah. We found that out -- in every race I ran, we found that out including back in '98 when I lost.

Q. And the polling confirmed the narrative that absentee ballots that are not cast in front of election officials on Election Day where the election officials and poll watchers can actually see who is casting the ballot and observe the process is dangerous; is that right?

A. You know, if I could pull out one of my 30-second

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commercials, I certainly talked about that on the stump, whenever I met with groups. In a 30-second commercial, I'm not sure we would have devoted as much time as it took you to say that. We would have talked about absentee ballot fraud and how I fought against it and shored up the process for making sure there were honest votes.

Q. Okay. In fact, during those early campaigns, those early campaigns, Karl Rove was part of your team in those early races, correct?

A. Only in the 1998 race, that one race. The won I lost.

Q. Got it.

A. He was my general -- he was my general consultant. And he wanted me to talk about different issues than what I wanted to focus on. And I was concerned about different things. And it wasn't a marriage made in heaven, let me put it that way.

Q. Okay. Now, switching gathers just a little bit. Justice Murdock, you have never personally been involved in any criminal case involving voter fraud, correct?

A. No. Other than providing as part of the Honest Elections Coalition and as a former lawyer in the Hooper Hornsby case where I gathered evidence to support our position in that case and perhaps providing some information to the Attorney General's office in now former Governor Bentley's case, providing the information we had about Greene and Wilcox Counties to the Attorney General's office to help lay the foundation for their

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conclusions in the investigations.

Q. Okay. So other than providing information in a couple instances to the counsel in the case, you were not personally involved as an attorney in that case; is that correct?

A. I did not participate as such -- you know, as a deputy attorney general, for example, no.

Q. Okay. And there were only two cases in which you were personally involved that you specifically recall in which voter fraud issues were implicated, correct?

A. As a lawyer in a court room, there was the Hooper Hornsby case which had two or three manifestations as we have discussed. And then there was the Bentley case. Then there was at least one more and maybe two other -- two more that I can't actually remember my clients's names. You know, when you're -- yeah.

Q. Okay. In the one where you were retained by Robert Bentley, then -- later Governor Bentley in a state senate race, the situation was that he was down by about 67 votes, and he wanted you to look into whether there had been fraud in the Tuscaloosa area such that it would influence the election; is that correct?

A. Yes, that is correct. And we were unsuccessful. You know, you have a very limited time for an election. Unlike the effort to change a law -- the law and to generate public support, when you're doing an election contest, you have a very limited time. And there was not that infrastructure like the citizens for Better Greene County, there was not that infrastructure in place that had

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already ferreted out a lot of the problem before Election Day as was the case in Greene County and was observed in Wilcox County by a poll watcher. You didn't have the time to pull it together.

Q. And you weren't aware of any criminal prosections that arose out of the that investigation, are you?

A. No, sir.

Q. And then the other case I think you talked about at length with Mr. Davis the contested Alabama Supreme Court case. I'll call the Hooper Hornsby case; is that right?

A. Yes.

Q. Okay. And the Hooper Hornsby race was a hotly contested race; is that right?

A. Yes, sir.

Q. And the business community in Alabama I think you had talked about was backing Justice Hooper because they were frustrated at decisions striking down tort reform measures; is that right?

A. That's correct.

Q. They asked Karl Rove to come in and assist in assist in electing probusiness candidates?

A. Yes. And Karl Rove did so, and he helped -- I think there were five Supreme Court justices up for election that year. Five seats on the court were on the ballot. And I believe that Mr. Rove came in and consulted for all five of those candidates backed by

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the --

Q. Okay. So after the initial election results -- well, I should say the election results on the morning after the election showed Justice Hornsby ahead, your law firm was retained to represent Justice Hooper; is that right?

A. Correct.

Q. Okay. And you law firm sent out two-person investigative teams to different parts of the state to see if they could turn up evidence that might invalidate some of the votes cast between the election?

A. That would show that legal votes might have been kept out or that some of the votes counted were illegal. Other improprieties under the statute that might justify some sort of relief in what ultimately would be a hearing before the Alabama legislature.

Q. Okay. Got it. Thank you. And the press reports, the rumors and press reports of voter fraud, these teams were following up on primarily -- these were primarily though not exclusively in the Black Belt, right?

A. I don't know that that's the -- I know that they went to Covington County, Conecuh County. They went to Cullman. They went to Winston County, Madison County. They went to Scottsboro area as well as several Black Belt counties. So, no, it was a statewide effort. We probably had seven -- I would -- my recollection is it was more like seven or eight teams that divided

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up the whole state. Some people went to Mobile.

Q. Okay. And, Justice Murdock, you previously testified in a case called -- titled NAACP of Alabama v. Merrill, correct, concerning judicial elections?

A. That's right.

Q. Okay. And you gave trial testimony in that case?

A. I did.

MR. ROSBOROUGH: Eric, could you please pull up volume 6 of the NAACP trail testimony of Justice Murdock. I'm sorry.

Q. Take a look at at this first page if you can. Is this the case that I'm referring to? Does this appear to be a transcript from that case?

A. It does.

Q. Okay.

MR. ROSBOROUGH: Eric, if you could turn to page 90, please. Okay.

Q. And do you recall -- I'm going to direct your attention to line 3. Do you recall that you were asked about whether these rumors and press reports that you were following up on of voter fraud was in the Black Belt counties?

A. Right.

Q. And could you read me your answer there on line 5?

A. Yeah. "Not exclusively but primarily."

Q. Okay.

MR. ROSBOROUGH: Thank you, Eric. You can take that

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down.

Q. And Justice Murdock, you were not on any of these two-person investigative teams, right?

A. No. I was not.

Q. Okay. And although those two-person teams were speaking with individual voters and some were collecting statements, you did not speak with these individual voters yourself, correct?

A. I did speak to some of them. I couldn't specify which ones. But, you know, we would get phone calls, or somebody would call in and say, can you talk to so and so. So I had some contact. But most of it came in through our investigative teams.

Q. So for these statements, you were in fact a passive recipient of information that was come coming in from the field, correct?

A. For the ones that I do -- for the majority of them, yes. The ones that I did not talk to anybody directly.

Q. Okay.

A. I did not go physically out in the field.

Q. Okay. And you don't specifically recall talking to any of these individuals, do you? You can't remember any details about individual conversations you had?

A. No.

Q. Okay. And the idea here, right, in doing this was to see if you could on behalf of Justice Hooper contest the election using voter fraud as your basis to throw out certain votes; is that right?

A. Correct. Or add in legal votes or to find other improprieties

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that would be persuasive to the legislature because it was going to be an unusual election contest in front of the legislature.

Q. Understood. But then in the mean time, there were adjustments to the vote totals for purely technical reasons, not suspected fraud, correct?

A. That's right.

Q. Okay. And then those adjustments actually put your candidate, Justice Hooper, ahead in the race, correct?

A. They did.

Q. Okay. So this is the point when the litigation then began in earnest, correct, when Justice Hornsby's campaign filed a lawsuit and asked the court to count approximately 1,700 ballots that lacked the signatures of two witnesses or a notary, right?

A. I'm sorry. Could you repeat your question?

Q. Sure. So this is the point that the litigation actually began in earnest when Justice Hornsby's campaign filed a lawsuit and asked the court to count approximately 1,700 ballots collected statewide that lacked the signatures of two witnesses or a notary; is that right?

A. Yeah. They had filed that lawsuit previously but got their hearing on that ninth day after the election.

Q. Okay. And then ultimately a federal court certified to the Alabama Supreme Court a question of state law as to whether absentee ballots that were otherwise valid but lacked a witness or notary signature should be counted under Alabama law, correct?

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A. Yes. I think that happened not in the lawsuit that you just asked about, but I think that happened -- Davin, there was like three or four different lawsuits.

Q. Sure. Let's make it simple and say it happened as part of the general litigation about the outcome of this case, correct?

A. In the course of the litigation that eventually decided the matter --

Q. Right.

A. That was started in Judge Howard's courtroom, went to the Eleventh Circuit and to the U.S. Supreme Court, during the course of that litigation is when a certified question was posed to the Supreme Court as best I can recall.

Q. Okay.

A. It may have been in the section 5 preclearance three-judge panel case. But I don't think so.

Q. Okay. Fair enough. But in any regard, you know, I think you would testify that the Alabama Supreme Court then held that those ballots should be counted because they were in substantially compliance; is that right, at that point in the litigation?

A. Yes. They grabbed hold of a Florida precedent to do that, yes.

Q. Okay. And then ultimately back in federal court, the court ruled for your candidate, Justice Hooper, on a due process theory by finding that all but one county in Alabama had traditionally

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over the last several election cycles at least not counted such ballots. And to do so, would be changing the rules after the election, right?

A. Correct.

Q. Okay. But for those 1,700 or so ballots, there was no finding in the case that any of those ballots was cast with fraudulent intent, correct?

A. There was no finding that any of the 1,700 themselves were the actual -- were actually fraudulent, no.

Q. Okay. And then the Alabama Supreme Court in fact held that there was no evidence that any uncounted vote was tainted in any way. There was no evidence of voter fraud. There was no evidence that any irregularities and any uncounted ballot effected the sanctity of the ballots in any way. There was no evidence that the integrity of the election would be affected by counting these ballots; is that right?

A. I don't know about your last two assertions. Your first two assertions I think they said -- I think the last two might be right. But I'd have to double check. And of course, the dissenters said, no, the very reason that you have these measures is to prevent and deter fraud in the first place. And so, you know, that issue, Mr. Rose -- I'm sorry. Mr. Rosborough. That issue of actual fraud was not the subject of the litigation. So nobody put on any evidence one way or the other about that.

Q. Okay.

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A. The dissenters were trying to make the point, well, that's the reason for this safeguard in the first place.

Q. Sure. Let's just be sure then I got this right since you were on unsure about the last couple.

MR. ROSBOROUGH: Eric, could you pull up the Row case, please. The Roe v. Mobile County.

Q. Justice Murdock, do you recognize that I'm showing you the Roe case that I referred to in the Supreme Court of Alabama?

A. Yes. Do you mind if I pull away from the camera and grab my copy of it?

Q. I don't mind.

A. Thank you. I'm back.

Q. Okay.

MR. ROSBOROUGH: Now, Eric, could you please split the page to the highlight portion. There we go.

Q. And, Justice Murdock, I think for your reference, it's on -- well, it's on page 5 of my copy, but it is on -- at page 1212 of the reported -- of the federal -- I'm sorry. The Southern Reporter there.

Now, it says there, correct, "There was no evidence that any uncounted vote was tainted in any way. There was no evidence of voter fraud. There was no evidence that any irregularities in any uncounted ballot affected the sanctity of the ballots in any way. There was no evidence that the integrity of the election would be affected by the counting of that's ballots." Did I read

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that correctly?

A. Yeah, that is what they wrote. And all I was saying is I didn't remember the last two. And perhaps the reason I didn't is because the actual fraud or not was not the issue in the case. So that's why I didn't remember that they had reached out and made those kinds of assertions.

Q. Sure. Fair enough.

MR. ROSBOROUGH: You can take that down, Eric. Thank you.

Q. Based on your experience as a justice of the Alabama Supreme Court, the justices you served with were individuals that had integrity, right?

A. Pardon me?

Q. Yeah.

A. The justices I served with had integrity?

Q. Yes. Yes, Your Honor.

A. We all have integrity. You just caught me in what appears to be a mistake in my testimony. So maybe my integrity is not perfect according to your approach. But I think there's an explanation for that. But from the outside looking in, as far as I knew, I was serving with eight people that all had integrity.

Q. Absolutely. I'm not doubting your integrity, Justice Murdock.

A. Oh, I know you're not. All I'm saying is we're not perfect. Nobody's perfect.

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Q. Sure.

A. And is it possible that perhaps even subconsciously somebody is impacted by a thought process they're not even aware of or some subconscious bias? Absolutely. Is it possible that I am? Sometimes. I don't proclaim that every decision and vote I cast was the vote that God in heaven would cast with perfect knowledge and perfect goodness.

Q. Sure. But you don't have any evidence that any past, present, or either future justice of the Alabama Supreme Court would ignore their oath and instead, you know, make a decision on bias, do you?

A. I have no evidence of that.

Q. Okay.

A. Other than the fact that they disagreed with me sometimes.

Q. All right. Let's move on a little bit. Justice Murdock, do you recall testifying about your advocacy for legislative reforms to the absentee voting process?

A. Yes.

Q. Okay. And this was in the couple of years leading up to your first run for the bench, correct?

A. It was in '96, yes, sir.

Q. And you spent lots of time talking to local groups including many dozens of county Republican clubs and committees, correct?

A. Well, I don't know if I talked to dozen of Republican clubs or

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dozens of anything. But I probably talked to a dozen civic clubs around the state.

Q. Okay.

A. And some Republican clubs. But my efforts were focused more on nonpartisan organizations. I did not want it to come across as a Republican/Democrat issue.

Q. When you first began your advocacy, you were not primarily advocating for a voter ID requirement at all, right?

A. As best I recall, yes. We were. We were advocating for both absentee reform and for voter ID reform. In fact, there were parallel bills pending in both the regular '96 session and the special session in '98.

Q. Okay. You were -- let's see.

MR. ROSBOROUGH: If we can, Eric, could you bring up State Defendants' Exhibit 98. Okay.

Q. Justice Murdock, do you recognize this as one of the articles you were discussing with Mr. Davis?

A. I do.

Q. Okay. And do you recall -- well, let me ask you. This is an editorial you wrote, an op-ed in the Birmingham News review and comment section?

A. Yes, sir.

Q. Okay. You did not in this article, which was in July 1996, advocate for a voter ID requirement, did you?

A. Well, can I see the next page please?

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Q. Oh sure.

MR. ROSBOROUGH: Eric, can you flip to the next page, please.

A. Oh, that's... and then I can't see the last -- oh, let me move my picture of my window here so I can see the last. I got it, I got it. Okay. So yeah, you're correct, the focus of this was on the absentee effort. We had already gone through the regular session of the legislature in the spring of that year with both bills. Both had failed. We had both bills up again in the session of the legislature I was in. And perhaps I focused on absentee balloting because by that point in time, the writing was on the wall that it was going to be harder to get the voter ID bill passed then it would be the absentee ballot bill.

But more significantly, I think the reason I focused on it is because my conclusion and the convictions and everything else that was yet to come and that had been reported in the past, even a federal election study commission that Jimmy Carter was part of had concluded at that point that when you put ballots out in the mail, that's where the fraud happens. And I wanted to focus on where most of the fraud was occurring when I wrote this article.

Q. Okay. So let's take a little closer look at this article.

MR. ROSBOROUGH: Eric, can you zoom in on the left two columns there of that page, the second page? Okay.

Q. And you recall writing in there -- you see on the bottom of

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the first column through the top of the second column you listed a number of different practices that you mention as supporting the reforms that you were advocating for?

A. Yes, sir.

Q. Okay. Let's just walk through those. So let's take the first two together. You see in that you say 1, absentee ballots cast in the name of dead people who have long since moved out of the county, and 2, absentee ballots mailed to unregistered voters. Do you see that?

A. Yes. Number 1 is actually two things, the conjunctive and in is this. So it's people who have died but still have a ballot cast in their name, people who have moved out of the county, and ballots cast by unregistered voters.

Q. Okay. Are you aware though that under current law the absentee election manager must check the application for an absentee ballot against the registered voters list before sending it out under Alabama code 17-11-5 A?

A. Yeah, I'm aware that that is the law as, you know, as we have discussed. Even election officials are not beyond doing things that are either careless or that are overtly improper knowingly as evidenced by some of the investigations and prosecutions.

Q. Okay. And then let's go on to number 3. You wrote "vote brokers following mail trucks and removing absentee ballots from mailboxes." Did I read that right?

A. Yes. It is.

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Q. You testified they were able to do this because the list of absentee voters going out that day was posted publicly in the absentee election manager's office right?

A. That's correct.

Q. You're aware that the law has now been changed such that will public posting before the election no longer occurs, correct?

A. Correct.

Q. And then in fact, Alabama code 17-11-5 C 1 was amended to remove that provision, and it now states that quote "the list of electors voting by absentee ballot shall remain confidential until the day following the election," correct?

A. I defer to your reading of it.

Q. Okay. Let's move on to the next few categories. You list -- let me read here -- 4, "intimidation of poor and early voters who are made to fear a cutoff of their governmental assistance by local politicians if they do not quote cooperate unquote by handing over their absentee ballots. 5, pressuring and solicitation of nursing home patients. 6, vote buying at $5 to $10 a vote." Did I read that correctly?

A. You did.

Q. Regardless of a photo ID requirement, these practices can still occur, right?

A. Yes.

Q. And particularly when people in power are involved as you were just saying, correct?

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A. People in power or people with perceived connections to power.

Q. Okay. Okay, let's move on to number 7. You write, "bulk mailing of hundreds of absentee ballots by just a few individuals in some counties." Did I read that correct?

A. Yes.

Q. Okay. And that's something that should be discernible on the basis of the envelope sent in, correct?

A. Yes. The detection of that and the proof of that is facilitated by having the witnessing requirements which either requires a wrong doer to enlist other signers which creates more opportunity for someone to turn state's evidence. Or if there is other detection of it, it assists the prosecution in proving, as was the case in Wilcox County when a handwriting expert had all the signatures of witnesses that helped him prove that there was forgery going on.

Q. Okay. Are you aware that actually in this case that Carla Woodall who is the circuit clerk and absentee election manager of Houston County testified that it was in fact just based on these outer envelopes themselves that she was able to -- putting the witness signatures aside, that they was able to identify potentially fraudulent activity?

A. I'm not aware of her testimony. What I'm aware of is for example the testimony of Russ Campbell in that first exhibit we addressed this morning where he and another poll watcher were

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doing everything they could to get election officials to stop the process and let them challenge ballots. And local election officials -- this is the one where 597 ballots were signed by no more than six people. Local election officials were rampaging through the ballots according to his affidavit that's in Exhibit 96 and would not let them challenge. And they were tearing off the affidavit envelopes and separating them from the inner envelope so that nobody could challenge them.

Q. So in that case, you had a case of corrupt election officials, correct?

A. You had a case of -- well, you can say corrupt or you can say careless or you could say ignorant. But you could say mistaken. It could be any of those four things.

Q. Okay.

A. You know, this is a process run by human beings. And so the more safeguards that we have, the better it is to make up for the mistakes, whether they be intentional or inadvertent by human beings.

Q. In writing about all these different examples, you state right after that -- and incidentally, the vote brokers who gathered the ballots made sure that they bore the signatures of two witnesses so as to comply with Alabama's statute on the subject, right?

A. Correct.

Q. Okay. In fact, I think we established that in this particular editorial you don't advocate for an absentee voter ID

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requirement, correct?

A. Again, I haven't read every word of it. But I'm assuming you have and that that is correct.

Q. Okay. But rather here, you were focused primarily on eliminating the ability for someone to vote absentee based on being outside of the county on Election Day, right?

A. I was advocating -- no. That's a little bit of a misleading statement if I may explain.

Q. Well, okay. Let me back up here. I don't mean to be misleading here. But let me ask it a different way.

A. Sure.

Q. So is one of the reforms for which you were advocating including in this article to remove the reason for the excuse to be able to use an absentee ballot for someone that was out of the county on Election Day?

A. Yeah. And not just per se -- not that that was, you know, bad in and of itself, but that that was the one reason for voting absentee that was extremely hard to verify.

Q. Uh-huh.

A. If you had hundreds of people using that as was the case in various counties where ballots had been gathered and then harvested. That's an easy thing for them to check, and they know election officials can't go back and double check that. So within that pool with ballots marking that reason, that created a much wider avenue over the other types of vote fraud in the previous

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paragraph to occur.

Q. Okay. And in fact, you felt that if you cut out that excuse, it would cut out 90 percent of absentee ballot fraud right there, correct?

A. Yeah. It would cut out I guess 90 percent. I may have said that earlier. If there was no out-of-the-county voting, that you limited it to military, people who were in college, people who had a job that could be verified, and people who were sick, it's -- that's a definable, verifiable pool of people.

Q. Okay.

A. It would be very hard for the vote brokers and harvesters who engage with people on those reasons for fear that it could be established who they had lied about their reason.

Q. Now, in this bill you were speaking about earlier, I believe you testified earlier that to deal though with people you believed actually would be out of town on Election Day, the bill would add a couple of days of in-person early voting right?

A. Right.

Q. That's distinct from the absentee in-person voting that's available now, right?

A. Not completely. It was absentee in-person voting. That was -- if I said anything different at any point, I apologize. My recollection after sitting here today after looking at some things and in fact last night is that it was in-person absentee balloting that we used on those days where you still had to go in and fill

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out an affidavit and have your name checked off and that sort of thing to explain, to explain to election officials that you would not be in the county on the official Election Day. That only by certifying that on a conventional affidavit envelope could you vote your quote in-person absentee ballot on one of those two alternative days.

Q. Okay.

MR. ROSBOROUGH: And, Eric, can you -- sorry. We're going to say with this exhibit for a minute. But can you scroll out and go to the first page, please. And can you focus in on the third column there. Correct. Thank you very much.

Q. Now, in your advocacy in this editorial, you had noted some specific absentee ballot percentages from the 1994 election, correct?

A. Yes.

Q. And you noted specifically Bullock, 20 -- and that refers to 20 percent of votes that were absentee,; is that correct?

A. Correct.

Q. Okay. Green, 33. Hale --

A. Right.

Q. Hale, 26?

A. Right.

Q. Lowndes, 25?

A. Right.

Q. Perry, 30?

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A. Right.

Q. Pickens, 10?

A. Right.

Q. Sumter, 12?

A. Right.

Q. Wilcox, 20?

A. Right.

Q. And Winston, 17?

A. Correct.

Q. Okay.

MR. ROSBOROUGH: Eric, you can take that down. And actually in place of that, can you pull up the demonstrative PowerPoint slide. Okay.

Q. Are these the counties that we just listed?

A. It looks to be, yes.

Q. Okay. And you recognize that all of those counties except one, Winston, have a high percentage of black residents than of the average of the State as a whole; is that correct?

A. According to this, correct.

Q. And I'll represent that this table, you see the source there is based on State Defendants' Exhibit 185, which is the census bureau. And you recognize that based on these figures that all but Winston and Pickens are in fact majority black in population -- have majority black residents, right?

A. Based on this table, yes.

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MR. ROSBOROUGH: You can take that down. Thank you Eric.

Q. Now, Justice Murdock, you also talked about working with Governor Fob James in 1997 or so to advocate for a voter ID bill, correct?

A. I remember working for him in '96 to advocate for a voter ID bill and for an absentee ballot bill.

Q. Right.

A. And I believe that he was still pushing for that in '97, yes, and our coalition -- yeah, he was still the Governor. Yeah. And we would have been working with him.

Q. Okay. And this bill would have required a copy of some form of ID with the absentee ballot, correct?

A. Correct.

Q. Okay. And it also sought to require that both Democrats and Republicans be appointed as polling officials in every precinct?

A. Right.

Q. And it also sought to stiffen the criminal penalties for voter fraud; is that right?

A. Those are all correct.

Q. But the ID requirement in that bill was not limited to specific forms of photo ID, right?

A. Correct, in that bill.

Q. And the bill also provided that if the voter was unable to

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provide an ID, their ballot would still be considered as a challenged ballot and would still be counted except in the case of a contested election; is that correct?

A. I believe that's correct. I will defer -- if you have read that in the legislation, I'll defer to your reading.

Q. Okay. And actually, in making the public argument for this bill, that was one of its selling points, correct?

A. I don't have a clear recollection of that at this point. But I'll defer to your reading of press reports if that's what you're getting it.

MR. ROSBOROUGH: Let's pull up State Defendants' Exhibit 110 if you don't mind, Eric. Okay. And can you scroll in on the sort of top third there maybe for the moment. Okay.

Q. And, Justice Murdock, do you recognize this as one of the articles that Mr. Davis discussed with you?

A. Yes, sir.

Q. And this was an editorial that you wrote in May 1997 in the *Montgomery Advertiser*; is that right?

A. Correct.

Q. Okay.

MR. ROSBOROUGH: And, Eric, if you can scroll back out again.

Q. Now, is it true, Justice Murdock, that you noted in that editorial that the bill, the voter ID bill we were just speaking about, quote, would allow almost any form of ID, everything from

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a driver's license to a food stamp card, social security card, library card, et cetera. And if someone doesn't have any form of ID, he or she may still vote by a challenged ballot which would be tallied along with all other ballots?

A. That does sound familiar. As you read -- you know, when somebody reads to you something you've already said and/or written, it helps refresh your recollection. So that does sound right, yep.

Q. Okay.

MR. ROSBOROUGH: And you can take that down, Eric.

Q. And in another editorial, you noted the range of IDs that could be provided and asked, what could be simpler? Do you recall that?

A. I do.

Q. All right. You're aware though, however, that the current photo ID law requires copies of a specific forms of photo ID only to comply with the requirement, correct?

A. Correct. I'm aware that it requires a photograph ID.

Q. Okay. And you're aware that without providing such ID, the voter will either not receive an absentee ballot at all or will only receive a provisional ballot?

A. Right.

Q. Okay.

A. I don't know what happens if they can't provide a photo ID. I'm sorry. So again, I defer to your understanding of the law --

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Q. Fair enough.

A. Okay.

Q. Okay. Now, you recall discussing with Mr. Davis a bill that you were discussing in the legislature that you said strengthened the witness requirement?

A. Correct.

Q. Okay.

MR. ROSBOROUGH: Eric, could you please pull up the article from the Birmingham News April 12, 1996. It says "VID and absentee vote restrictions split along racial lines."

Q. Now, Justice Murdock, this appears to be an article from the Birmingham News April 12, 1996. Does that appear to be correct?

A. It appears to be.

Q. Okay. And does this article appear to be referring to the bill we were just speaking about to that you said strength the witness or notary requirement?

A. Let me see.

Q. Okay.

A. Yeah, it looks like the vote totals between the two bills were a little different in terms of the numbers for and against it. We were in the midst at that point, counsel, of trying to educate people on the extent of the fraud. Remember, look at the date on this. This is April of -- what is this? '96.

Q. Correct?

A. So this was fairly early in our process. It was our first

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attempt to educate black and white legislators as to the extent of the problem and how these bills could help improve matters.

Q. Okay. And in this attempt -- oh, I'm sorry.

A. No. I was just going to say that changed -- when you got to the special session because we had more tame -- you know, there's a lot of stuff going on in regular session. And when we got to a special session, people really were able to focus on it. That's when they were able to pay attention to some of the information we really were trying to provide them.

Q. Okay. But for this particular -- well, I guess a couple of bills, one to strengthen the witness requirement, no black house member voted for that bill, correct?

A. Yeah. And that bill did not become law.

Q. Okay. And similarly the photo ID bill referred to here, no black house member voted for that bill, correct?

A. Correct. Nothing became law during this session. The bill that became law where passed in a different session with different vote totals.

Q. I understand.

MR. ROSBOROUGH: Your Honor, if I could have one second just to see --

THE COURT: You may.

MR. ROSBOROUGH: Thank you.

THE WITNESS: May I leave my camera for just a moment?

THE COURT: Yes, sir.

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THE WITNESS: I'll be back in literally two minutes. Maybe one.

Q. (BY MR. ROSBOROUGH:) Okay. Justice Murdock, you're back. You can hear me?

A. Yes.

MR. ROSBOROUGH: Okay. Your Honor, that's all the questions I have at this time for Justice Murdock. Justice Murdock, thank you. I appreciate it.

THE WITNESS: Yes, sir.

THE COURT: Mr. Davis, get ready for your redirect. But for the other lawyers, the other defendants in the case, let me turn it over to you now, does anyone have any questions for Justice Murdock?

DAN DAN: No, Your Honor.

MR. COWELL: No, Your Honor.

THE COURT: Okay. Gentlemen, thank you.

MS. Holifield, any questions?

MS. HOLIFIELD: No, Your Honor.

THE COURT: Thank you.

Mr. Davis, are you ready, sir?

MR. DAVIS: Yes, Your Honor. And I'll just be a moment.

THE COURT: You may.

Q. Justice Murdock, did you help draft legislation that put these issues before the Alabama legislature?

A. Oh, yes. Yes, I did.

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Q. Thank you. I'm going to share something on my screen. Let's go back to Exhibit 98, that you've discussed with Mr. Rosborough. And I've zoomed in too much. My apologies. Okay. You and Mr. Rosborough discussed this third column where you list some counties. It says consider the following approximate absentee ballot percentages, et cetera. And you discuss Bullock, Greene, Hale, Lowndes, Perry, Pickens, Sumter, et cetera. But you go on to discuss other counties and the part that you did not -- that was not read to you in your cross-examination, do you not, just under that sentence?

A. I do. I see on that page you are looking at Cullman which is a predominantly white county of course. And Pickens is also at that time at least, perhaps still is. I don't know what's on the next page.

Q. I'm going to get there now. To make sure the record is complete, it says reports received after the 1994 general elections indicated absentee ballot abuse in such other counties as Cullman. And you said that's majority white to your knowledge?

A. Heavily.

Q. Houston, which you believe to be majority white?

A. At that time, I know it was.

Q. And go to the top of the next page. Lamar?

A. Majority white. As best I can recall, yes.

Q. Jackson?

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A. Strongly majority white as best I recall at that time.

Q. Pike?

A. Pike is right next to my home county of Coffee County, and, yes, it was majority white at that time.

Q. Talladega?

A. I believe so, yes, sir, majority white.

Q. And Walker?

A. I'm very clear on the fact that Walker was majority white.

MR. DAVIS: That's all the questions I have, Justice Murdock. Thank you for your time today.

THE COURT: Mr. Rosborough, any follow-up as to those questions?K

MR. ROSBOROUGH: Just one or two, Your Honor. I'll be very brief.

RECROSS EXAMINATION BY MR. ROSBOROUGH:

Q. Justice Murdock, the counties which I asked you about and were listed there, those were counties that you were listing with particularly high percentages of absentee ballots in the 1994 election, correct?

A. Yes. And, you know, when you asked me about those same counties a moment ago on part of my previous testimony, that was in reference -- and perhaps the reason I picked them for that sentence -- I don't remember -- is that our reports before the '94 and leading into the '94 Election Day, we were getting a lot of reports from those counties. But what I said earlier this morning

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was that the investigators went all over the state and procured evidence of vote fraud all over the state including the predominantly white counties that Mr. Davis just asked me about.

Q. Right.

A. That would be the difference in the question you were posing to me from page 90 of that prior transcript.

Q. Absolutely. That's why I want to get this clear. So the counties that I was asking you about were counties that were counties that you reported in that article as having high percentages of absentee ballots cast, correct?

A. Right. Because there are two ways to prove or to establish that something is amiss. One is direct reports, and one is statistical.

Q. Okay.

A. Even the Democratic Secretaries of State say there should not be more than 3 or 4 percent on average, and in an extreme case, 5 to 7 percent, and because not that many people actually will be out of the county on Election Day. And when you have 25 and 30 and 33 percent, that statistical approach was also evidence. We had anecdotal direct approach in some counties, and then we had the statistical approach which makes sense. Because we know of two cases were huge numbers of ballots were forged that resulted in actual convictions for vote fraud. So those are reflected in those higher numbers in those --

Q. Okay. So in the counties you listed there that we discussed

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were counties that you relied on evidence of -- higher than you would expect absentee ballots cast, correct, that were all but one -- all but two are majority black?

A. We didn't rely just on that. That was corroborative of the original reports and the FBI investigation in those counties, et cetera.

Q. Okay. In that article, you cited those specifically for higher than normal or higher than you would expect totals of absentee voting, correct?

A. Yes.

Q. Okay. Then the other counties Mr. Davis was asking you about, you were citing for what you believed to be reports of various voter fraud; is that correct. That's the distinction?

A. Right. Yeah. I remember people challenging the former category saying, well, the people in those counties have to work outside the county in order to have a job. And I remember we put forth evidence saying, no, that's not what's going on, and there are other counties where more people work outside the county than in these particular counties being identified, and yet their percentages are still around the 3 or 5 percent range. So that's not -- you know, that's part of the calculus.

MR. ROSBOROUGH: Understood. Thank you, Justice Murdock. Your Honor, I have no further questions.

THE COURT: Mr. Davis, any follow-up as to those questions?

MR. DAVIS: No follow-up from me, Your Honor.

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THE COURT: Thank you. Other lawyers on the phone? I mane on the call. Anyone?

MR. COWELL: No, Your Honor.

Dan Dan: No, Your Honor.

THE COURT: Justice Murdock, thank you, sir. You are released.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

THE COURT: For the rest of the team, let's plan to come back at 1:30. And, Mr. Davis, from what I understand, I guess, there are two witnesses. Is that from all Defendants or just from the State?

MR. DAVIS: From all Defendants, Your Honor.

THE COURT: Okay.

MR. DAVIS: Next up, my colleagues in Mobile will call Ms. Alleen Barnett. And then Judge English will testify later this afternoon.

THE COURT: Okay. See all of you in one hour. Have a good lunch break, everyone.

(Lunch recess.)

THE COURT: Ms. Barnett, good afternoon.

THE WITNESS: Good afternoon.

THE COURT: Counsel, are you ready.

MR. ENGELHARDT: I am, Your Honor. Because of the way our sound set up is, I'm going to speak loudly so that I come

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through Alleen's computer. Can everyone hear me appropriately?

THE COURT: I can indeed.

MR. ENGELHARDT: And the court reporter as well.

THE COURT: Mrs. Barnett, would you raise your right hand, please, so you can be sworn in.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Alleen Barnett. A-L-L-E-E-N. B-A-R-N-E-T-T.

THE COURTROOM DEPUTY: What city and state do you reside in, Ms. Barnett?

THE WITNESS: I'm sorry. Say that again.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: Oh. Mobile, Alabama.

THE COURT: Thank you, ma'am. Mr. Engelhardt, your witness.

MR. ENGELHARDT: Thank you, Your Honor.

Q. Ms. Barnett, thank you so much for coming in today and braving the storm aftermath. We really appreciate you giving us some time to talk to us.

A. You're welcome.

Q. Do you work for Mobile County?

A. Yes, I do.

Q. And please tell the Court what it is that you do for Mobile

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County?

A. I am the absentee election coordinator for Mobile County.

Q. You're the absentee election coordinator. Is there a difference between an absentee election coordinator and an absentee election manager?

A. The absentee election manager is the position awarded by the state to the circuit clerk of each county. It is constitutionally the circuit clerk's responsibility to handle absentee elections in the State of Alabama. But also the circuit clerk has the option of opting out of being the absentee election manager in their county. And if that happens, there is either an appointment of a person to handle those responsibilities in her stead or their stead. In the case of Mobile County, the county has hired an individual to take that position, and that is the absentee election coordinator position.

Q. So you were hired to handle the job responsibilities of the -- we'll use the term AEM? But you're not technically the AEM; is that fair?

A. That is fair, yes, sir.

Q. How long have you been doing this work for the county?

A. I started in September of 2010. I was actually hired into the position, I believe, in August of 2011.

Q. And did you work in elections prior to becoming the absentee election coordinator?

A. I was -- I have always worked as a poll clerk within the

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county up until my appointment in this position. And at later date, I was moved into the inspector position in polls.

Q. Do you recall when you were first brought on to work as a poll clerk or as an inspector?

A. I would not be able to give you a date about the clerkship. I know I was out of college and I was married. So some time around 1974 or '75, somewhere around in there. The inspector position was around 2004.

Q. So you have been involved in Mobile County elections for more than a minute. Is that a fair way to say it?

A. Thank you. Yes.

Q. Can you tell me outside of the election context, what was your background before that? Did you have a career? Did you work?

A. I did. I worked at the University of South Alabama, started there in 1977. And I retired from there in January of 2004.

Q. What kind of work did you do when you were at USA?

A. I worked in the college of medicine. I was involved with billing in the billing offices of the physicians. When I left there I think around 1997, I was hired or promoted into the position of manager of insurance services. So I was responsible for the staff and collections of all the insurances, the billings that were sent to insurance companies all around the state and the country.

Q. What's your educational background?

A. I have a college degree.

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Q. And where is that from?
A. From the University of South Alabama.
Q. And in what discipline?
A. Music.
Q. We won't ask you to sing today.
A. Thank you.
Q. So I want to get back to your employment by the county in relation to elections. Were you trained in the job duties of the absentee election manager?
A. Yes, I was.
Q. Who did the training?
A. I was trained by the state. They have election schools every two years, and I attended those sessions.
Q. When you say the state, is that the Secretary of State's office?
A. Yes.
Q. You said every two years. Do you go to each one every two years?
A. I do, yeah.
Q. When was the last year that you had this training?
A. In 2019. October.
Q. Can you briefly describe what your job duties are as the absentee election coordinator?
A. I direct and oversee and manage all the activities of the absentee elections office. That would be receiving applications,

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mail -- processing applications, receiving ballots, mailing out ballots, receiving ballots back in, and making sure everything stays safe and secure until Election Day.
Q. Is that a full-time job?
A. No. In Mobile County, it is a temporary, seasonal position.
Q. And during the season that you're working, do you work full-time then as well?
A. Yes.
Q. Have your job duties changed over the years?
A. Yes.
Q. In what ways have they changed?
A. Well, the Alabama code changes from time to time. And so there's different -- you know, I will still attend training sessions. But I will be updated as to what the new laws and regulations are. Over the past, I'd say, four or five years, we have become more technology forward, and I have had to change the way we do things to accommodate receiving our own ballot printer. So, you know, just things like that. The circumstances change, and I try to adapt to those circumstances.
Q. Do you have employees who work for you?
A. Yes, I do.
Q. How many employees work for you?
A. Well, in each election, it's different. I have a staff of about 16 people that I can pull from. When we are looking at a small election, I will bring in a smaller staff. This is a very large

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election. So right now, I have 10 to 12 people working at this point in time.
Q. Do you anticipate adding any other people to your staff?
A. I do.
Q. How soon will that be happening?
A. Within -- hopefully within the next two weeks. As soon as we can get paperwork completed.
Q. And who is responsible for hiring those people?
A. I am.
Q. Do you train the people who work for you?
A. Yes, I do.
Q. Have you trained them based on the training that you received from Secretary of State or from some other methods?
A. I train them from the information that I have received from the Secretary of State's office. I use the Alabama Law Handbook as a tool. I use the information that the Secretary of State's office has passed down to me. I use procedures that I have developed in order to process -- receive and process applications and mail out ballots and receive ballots back in. I have accumulated all of this into a training manual for my employees, and I personally train them.
Q. Do you retain the same employees from election to election?
A. Most of the time, yes.
Q. Where is your office located?
A. I am located in the probate court building which is at 151

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Government Street.
Q. How long has your office been in that location?
A. We just moved in in January.
Q. Where were you before?
A. Prior to that, we were on the first floor and the ninth floor of the Mobile County courthouse building. Which is 205 Government Street, right next door.
Q. So you said you moved in January?
A. Yes, sir.
Q. Does this -- how does this office look compared to the other office? Is it roughly the same size?
A. It's -- I would say it's about the same size, yes, sir. But it is complete -- it is configured differently. There is -- you know, it's a first floor area, so it's easier for the people who are voting absentee to access it. They would come through a guard entrance, you know, a security entrance and come down to the left and go down the hall, and we're immediately on the right. We have a seating area that they -- you know, normally, we would have about 50 chair out there. Right now, we don't have nearly that many. But the main difference is that we do have six windows for the voter to be able to access the clerks.
Q. As far as you know -- is this a new building? Let me ask that question first. I know it's a new place for your office. Is the building new?
A. It's relatively new. I just could not tell you. I know that I

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went to the dedication. So it's been since 2010. But I did not know exactly what year it was put into service.

Q. As far as you know -- this is the probate courthouse, is that what you said?

A. Yes, uh-huh.

Q. As far as you know, is the courthouse ADA compliant?

A. Yes, as far as I know.

Q. So tell me how a normal day in the absentee election office goes. I realize normal is a relative term for a hurricane and COVID and all that. But tell me, what's the first thing that you do in the morning? What happens?

A. Typically, we come in. It's -- you know, some people are there before 7:00. Some get in at 8:00, which is fine. But we -- you know, we can be preparing for the day. We're making absentee ballot packets, which is all the envelopes that must accompany a ballot to the voter. We might be making copies of absentee applications that are going to be sent back. You know, just cleaning up from the day before until the mail air arrives.

The mail will arrive normally around 9:30 in the morning. It is immediately stamped in and received into our office. We divide the mail up. We go through it. We process the applications that can be processed and mail out the ballots. Then we also will process the applications that could not be issued ballots, and we will return those to the voters. So that's basically our day.

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Q. Thank you. So I want to break it down just a little bit because that was a lot of stuff. Where do you get the mail from? Is it delivered to you? Do you pick it up?

A. The mail is picked up by a person from probate, from the Mobile post office, the downtown Mobile post office.

Q. About what time does it get there?

A. Around 9:30. Between 9:30 and 10:00.

Q. Do you open each envelope that comes in personally?

A. No, I do not. I have -- those are distributed among the clerks, because often, there are so many of them. It would take me all day to do that. So it's faster to distribute it among the clerks.

Q. Is there a method for the distribution, or is it --

A. It's random. It's usually one, two, three, four, five, six. You know, divided equally among the people that are processing that day.

Q. Do you take steps to establish when you receive each piece of mail that is sent to the office?

A. I do. I stamp it in with the time clock, the date and time stamp.

Q. And that date and time stamp, does it have a name or a brand name, anything like that?

A. I believe that it's Simplex.

Q. Simplex. Can you tell me just a little bit about how it works?

A. It's an automated clocking system. It has an opening, and

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you just insert the item that you want stamped into it, and it automatically stamps it. And, you know, you just continuously do that. At the end of the day when it hits midnight, it will forward the date to the next day. Yes. That's how it works.

Q. Thank you. So are all the pieces of mail stamped before they're distributed?

A. Yes.

Q. And how accurate is the date stamp and time stamp?

A. Well, it's very accurate. I've never noticed -- now, you know, if there's an interruption in power, you would have to go back and reestablish the date and the time. Such as we will probably have to do tomorrow morning. I don't know. I haven't been back there yet since the hurricane. So that was -- is the first thing we'll check in the morning to make sure that it is accurate. Also, there is -- like in a month that has 30 days instead of 31 days, you do have to make a conscious decision to go over there and change it to May 1st from April 30th.

Q. Is that date and time stamp serviced by anyone?

A. It is, yes.

Q. Have you come across any workers that you have learned altered the date or the time stamp outside of the reason you just testified?

A. No, I have no recollection of anything like that happening.

Q. If that were to happen, would that person be disciplined somehow? Would you recommend discipline?

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A. Of course, yes, I would.

Q. Okay. So they're stamped, and they're distributed. Tell me what happens next. Assuming -- assuming the piece of mail, the application for an absentee ballot, what happens?

A. The clerks will, as I said, separate them into groups of processable -- in other words, they met all the requirements to receive a ballot that day and non-processable in that there was an element that is required by law that was not present. And then the clerks will bring those to me one by one, and we go through both stacks of them together. The processable, I look at every element to make sure that we did not miss anything, that every element that is required is there. And then I will also go through their stack of unprocessable to make sure that they understand what they're looking at and that what they're saying is true and that we're not sending a ballot -- an application back to a voter unnecessarily. We want to process as many applications on any given day as we possibly can.

Q. So every application that comes in is seen by two people?

A. By two people, yes.

MR. ENGELHARDT: Joy, will you bring up Plaintiffs' 22.

Q. Ms. Barnett, I'm going to show you a document. I'd like to tell me what it is, if you recognize it?

A. That is a -- that is the application for the absentee ballot in the State of Alabama, and it seems to be blank.

Q. Okay. So it's a blank absentee ballot application?

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A. Yes.
Q. So assuming that you have received one of these in the mail, on the top line, it will say Mobile County; is that correct?
A. Correct. Usually. Sometimes.
Q. General voter information. What are you looking for in that area?
A. We look for a name, last name, first name, the street address, which the first street address line there should be the address that the voter is registered to vote from. And then oftentimes there will be a secondary address which is where they want their ballot mailed to. And then after that, I usually look for the date of birth because that is the most accurate way of determining voter, in my opinion. So if I have those three pieces of information -- the name, the address -- the street address -- and the date of birth, I usually feel like I have a good amount of data to be able to identify the voter. Sometimes --
Q. Let me stop you there just for a second.
A. Yes.
Q. You just said -- I want to ask you about -- you said that's the most accurate way of identifying the voter. Why would you do that? I don't understand. Make sure you tell me -- explain that process.
A. Why I want to accurately -- to identify the correct voter?
Q. Yes.
A. Because that voter is applying for absentee ballot. If I

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should issue the ballot to an incorrect voter, that voter would possibly show up at the polls on Election Day and receive the reply that he has already been issued an absentee ballot. He would have to be issued a provisional ballot. But there's also the fact that that is just a mistake, to issue the ballot to the wrong voter. So we go to all lengths possible for us to make sure that we issue the ballot to the correct voter.
Q. Thank you. Now, if I could, so you look at the date of birth and you look at the address and the name. What about the other information that's sought?
A. Well, if it's available to us, if the voter has included the last four digits of their social or their driver's license number, we will also verify those.
Q. What if you get an application that's missing some of this information?
A. If I can identify the voter as being the voter by either using the name, address, date of birth, name, address, last four digits of social, or the driver's license, I will still process it as long as I am sure that it is the same voter.
Q. I want to ask you --
MR. ENGELHARDT: Joy, if you could scroll down -- I'm sorry.
Q. Are there any more parts of the general voter information section that you use for any other reason?
A. Not really, no.
Q. Okay.

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MR. ENGELHARDT: Joy, can you scroll down just a little bit, please. Stop right there.
Q. So here it is for all registered voters. What do you with this section? What are you looking for?
A. In this section, we are looking for the voter to have indicated in the case of a primary or a -- well, to choose the proper election that we are issuing ballots for. So for this upcoming election, it would have to be indicated by the voter that he wishes a ballot for the general election. In the case of the primary and the primary runoff, that same statement is true; they would have to issue -- I mean, they would have to indicate that they wanted to vote in the primary or the runoff. They would also have to indicate which party affiliation they would prefer so that I can send them the correct ballot style to vote with.
Q. So there are different ballots depending on what election is being held?
A. Correct.
Q. What if someone has mistakenly marked the wrong election? For example, if it's November and someone -- for the November election, but somebody marks primary runoff election, Republican, what would you do?
A. Those are returned to the voter with a letter that states that we are processing for the general election on November 3rd, and if it was their intention to vote in that election, would they please indicate so on their application. And they are given the

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opportunity to return it to us and be processed.
Q. Okay.
MR. ENGELHARDT: Joy, can you scroll down just a little bit more. Up a little bit more. Look at the -- one more. There you go.
Q. So in the next section, it says, I am applying for an absentee ballot because. And in the parlance of this case, that's been called an excuse requirement. Can you tell me what it is that you're looking for in this section?
A. I am looking for the voter to have indicated at least one of the reasons to the left, the check box. They need to put some sort of indicator in the check box that this is their reason for voting absentee.
Q. Now, what type of verification do you do based on what reason they check? In other words, do you -- if they check, I have a physical illness, do you call their doctor?
A. No. I mean, I have no way to verify what reason they check.
Q. Now, some of these require ID and some of them do not. What happens if somebody checks a box that requires ID that does not include a copy of their ID?
A. They too receive a letter stating that I have received their application, but I could not process it because they -- according to state law, they needed to provide a photo ID, a copy of their photo ID and, you know, that they can -- please attach a copy of their photo ID and return it to me for processing.

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Q. Does the copy of the photo ID assist you in verifying the identity of the voter who's made the request for the ballot?

A. I feel like it does, yes.

Q. Do you recall or are you aware that Secretary of State Merrill has suspended the need for having a specific excuse in this area and has allowed everyone who feels that they are going to be inconvenienced by COVID to check box 2? Would that be a fair statement of your understanding of the law?

A. Yes.

Q. And box 2 does require an ID; is that correct?

A. It does. And he stated so in his emergency order, too.

Q. And some individuals, if I am interpreting this correct, who have disabilities or who are over 65, if they fit the category can check box 3, which does not require ID; is that correct?

A. Correct.

Q. When you receive applications where box 3 is checked, do you sometimes still get photo IDs?

A. We do.

Q. Why do you say that?

A. It's amazing to me especially in this election. We receive quite a few. It's more than quite a few.

Q. That's are people who are not required to turn in a copy of a photo ID but do anyway?

A. Yeah. That's are -- yes.

Q. Okay.

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MR. ENGELHARDT: Joy, can you scroll down just a little bit more. Thank you. Right there.

Q. And then in this section, do you look at this section when you're determining if the ballot is valid?

A. Are you talking about the voter signature?

Q. Yes, I am.

A. Yes, I do look at that.

Q. Do you use that signature for any reason?

A. I do. I compare it with his -- we have two ways to compare it. We have hopefully a photo ID that has his signature at the bottom, the voter's signature at the bottom, or also when the voter registered to vote, if they did it by paper hard copy rather than electronic, then there is a copy of the voter's signature on file in the computer system.

Q. And what is the purpose of verifying the signatures?

A. Well, it gives me a more confident decision that I am making the right decision, that this is the voter. I can compare the signatures. And if they are basically the same, then I feel more confident that I have identified the correct voter.

Q. Thank you.

MR. ENGELHARDT: Joy, you can take that down.

Q. So if a valid application is received by your office, what happened?

A. A valid application received by my office?

Q. Yes. What do you do?

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A. After I have reviewed it and have -- and it's valid -- that's right. Then the clerk will go back to their work station and continue to process that application. They will pull up the voter's account. They will have to enter certain pieces of information such as what was his reason for voting absentee. In the case of a primary or a primary runoff, he will have to -- the clerk will need to enter the party preference.

And then there's just -- it's a matter of the way I have established it through our software is they just issue what's called two stop. It issues the tracking number, which is an individual number issued to each voter, which is the sequence in which they were entered into the system. To voter number 1 is what, and so on. And then it will also tell us what ballot style to issue to the voter, and it will also assign a ballot number to that ballot style.

Q. How many ballot styles are there in a general election?

A. In this election, there are 132 ballot styles in Mobile County.

Q. Wow. So does the computer keep track of which ballot style goes with which application? In other words, is a person making that determination, or is the computer printing it?

A. The computer advises us based on the voter that we selected -- this is another reason it's important to get the correct voter. The computer will notify us as to which ballot style to issue to that voter.

Q. When your clerks enter the information into the -- what's the

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name of the system?

A. ES&S.

Q. ES&S. When the clerk enters the information into the ES&S, is a record generated that that ballot has been -- that the application has been received and processed?

A. Yes, and also that a ballot has been issued.

Q. So we've talked a bit about what you do with applications that are validated. Are applications ever rejected?

A. Well, I prefer to say that they are returned to the voter for -- in order to be corrected and to be resent to us. I do not like to reject an application. I would prefer to say I'm giving the voter an opportunity to make a correction.

Q. How often would you say applications are returned to voters? Do you have any estimate about that?

A. How often?

Q. Yes.

A. Daily.

Q. How many -- ballpark it. How many a day do you think get sent back?

A. Well, in this particular election, I would say that we're sending back -- it's a guess. Please just understand it's a guess. But --

Q. I don't want you to guess.

A. No guess? Okay. It's a good many. Yes. And there's a good many.

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Q. So if you're rejecting, I believe you testified you send a letter?
A. Correct.
Q. And the letter tells the applicant what?
A. How to correct their mistake and to resend their application to us for processing.
Q. And so do you send the original application back to that voter?
A. I do.
Q. Are there deadlines for applying for an absentee ballot?
A. Yes, there are.
Q. Do you know what the deadline is?
A. Yes. For this election, it is October 29th at 5:00.
Q. And did you set that deadline?
A. No.
Q. Where does that deadline come from?
A. It comes from the Alabama law.
Q. And so that changes for each election?
A. No.
Q. I mean, the date?
A. The date will change, yes, but the formulation of the date does not change.
Q. And what is the formulation of the date?
A. Five days prior to the election.
Q. What happens if you receive an application from a voter

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past that deadline?
A. An application from the voter? Well, the mail is stamped in and received that day. So it is stamped in and received. And then every envelope is written -- before anything is done with it, the word late is written on it in usually red magic marker. And at that point, we do open the applications because we have to look for voter IDs. We look -- for instance, at the end of the primary runoff, people were already sending us applications for the general. So we had to make the determination of is it a ballot for -- an application for the general election or is it a late application for the primary runoff.
Q. So in other words, even though the deadline might be past, you still open every envelope to determine what it is they sent you?
A. I do.
MR. ENGELHARDT: Joy, can you pull up the next exhibit.
Q. I'm going to show you a document and ask you if this is --
MR. ENGELHARDT: If you can scroll to the next page.
Q. Is that what an envelope that was received late would look like?
A. Yes.
Q. And do you recall this particular envelope?
A. Well, I do recall that it was -- that I found it, yes. I mean --
Q. During the course of the litigation?
A. Right. I do not of course recall it being entered into the

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office that day, because there were so many. But I did find it later, yes.
Q. And looking at this envelope, can you explain to the Court why it was determined to be late?
A. Well, because the date stamp, which I can barely read that from here.
Q. Look on the big screen. Does that help?
A. No. I'm not able to see it from here. I'm sorry. My eyes are just so dry today --
THE COURT: I think it says July 10th.
THE WITNESS: There it is. I see it. Thank you. July 10th at -- a.m., 9:48. Thank you.
Q. (BY MR. ENGELHARDT:) And why would that have been late?
A. Well, because the deadline for the primary runoff was July 9 at 5:00.
Q. So if I understand your earlier testimony, this envelope was stamped when you received it before it would have been opened?
A. Correct.
Q. Then once it was determined that it was an application received beyond the deadline, is that when late is written on the envelope?
A. Actually, late is written on the envelope before they are opened.
Q. What happens if it turns out to not be an application? Like you say, it could be an application for the next election or

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somebody sending in a copy of their ID?
A. And I do have some of those. They are general election applications, and the envelope will say late just like that.
Q. So the envelope might say late even though in those instances --
A. It's not late for the general election, true.
Q. Thank you.
MR. ENGELHARDT: We'll take that down.
Q. Now, you said that when an application is received and it's valid that you send out an absentee ballot. How does that process work?
A. Well, the computer, as we stated earlier, will assign the ballot style and the next ballot number available in that ballot style. The clerk will also print labels that has that same information. It has the voter registrant ID number. It has a bar code for that registrant ID number. It has the ballot style, the ballot number, the name of the election, and the tracking number that was issued. And then it will also have the voter's name and address.
So they will -- they will affix those labels. Those are printed out straight from the computer system at the same time that the ballot is issued. They will affix a copy of the label to the application, and they will affix a copy of the label to what is called a tracking log, which is just a complete list of all the ballots that they've issued that day. And then they will affix

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labels to the proper envelopes in the ballot packet. They will then separate the ballot from the application and fold it and put it along with the other envelopes and instructions into the mailer envelope and put it into the mail.

Q. Are those -- are they printed at one time, the mailed-in one, or is it as each one is entered as a valid application?

A. The system handles them as they are entered in real time.

Q. Okay.

A. If I'm understanding --

Q. You are. You said it much better than I have.

A. Okay.

Q. As always. On the absentee ballot itself, does it contain instructions about how to return it?

A. On the absentee ballot? No.

Q. How about what is sent with the absentee ballot?

A. How to return it. Yes. In the ballot packet -- well, there are instructions that are printed and sent to us from the state of how to mark the ballot.

Q. Well, how about for the affidavits? I understand there's a series of envelopes?

A. There is a series of envelopes. And I'm trying to decide right this moment in time -- I believe that the instructions from the state will tell them in what order to put the envelopes into each other. I can't be sure on that right now. I'm sorry.

Q. That's okay.

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A. But there is an order on the envelopes, "Place this envelope inside this envelope and then both into the mailer." And -- I'm sorry. I'm drawing a blank on that right now.

Q. That's okay. If you think of it, just let me know?

A. I will.

Q. So you talked a little bit about when voters mail in application for ballot and how the ballot process gets sent out. Let's talk about just for a second what happens when you receive an absentee ballot in the mail. This is only from in the mail. Now, they come in the same package of mail that you get on a daily basis?

A. They do.

Q. What happens? How are they handled?

A. They are stamped in along with the other mail. Usually in the past elections, they have been smaller elections. And to free up the clerks, I will take all the absentee ballots and process those myself. In a large election like this, I would not be able to do that. So we will, as they start coming in in larger numbers, I will start dividing them up just like we do the applications among the clerks.

And what will happen is they will open each envelope -- one at a time they handle each envelope, and they will remove the affidavit envelope from the mailer envelope. They will compare the tracking number from the affidavit envelope to the tracking number on the mailer envelope to make sure we are dealing with

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the same ballot inside this mailer, because sometimes husbands and wives are voting. They are around their dining room tables or whatever. And sometimes Mr. Jones will get his ballot into Mrs. Jones's mailer envelope. So we look for those situations so that we can, you know, accommodate the voter in that fashion.

And then once all the envelopes are open and they are in tracking number sequence, then I will scan them in with a bar coder which actually reads the voter ID number and logs that ballot received on that date and that time, the time that the computer is logging.

Q. During this process, do you check to see if those envelopes contain a signature from the voter?

A. No.

Q. Do you check to see if the envelopes contain witness signatures?

A. No.

Q. Do you check to see if they contain a notary stamp or signature?

A. No, sir.

Q. In that process, if you happen to see that one of the envelopes is missing one of those signatures, do you tell anyone?

A. No, sir.

Q. All right. So what happens next with the actual ballots?

A. They are then filed in tracking number order in file cabinets until Election Day.

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Q. They are locked?

A. They are locked.

Q. They are kept in your office?

A. They are kept in my file room right adjacent to my office behind a locked door.

Q. Are there deadlines for voters to return absentee ballots by mail?

A. By mail? Yes. A ballot returned by mail should be postmarked the day before by 5:00. So that in this particular election, it would be November 2nd by 5:00. And it must be received in my office no later than noon on November 3rd.

Q. Okay. And when do you release custody of those ballots? You keep them in your office. When do you give them up?

A. I take them to probate court at noon on Election Day.

Q. And who do you give them to?

A. I give them to the designee of the probate judge. Normally, he has two or three people up there who are handling it. There is also the absentee polling inspector. And so I will officially hand those over to those people.

Q. What do you do with anything that comes in after noon on Election Day?

A. I get my big old red magic marker out again, and I mark it late, and it's filed in the record of elections.

Q. We have been talking about how you handle the mail. Is there any other way for voters to receive an application?

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A. To receive an application? They can call my office and request one be mailed to them. They can access numerous websites. The Secretary of State has alabamavotes.gov, probate court has Mobile County probate court website that they can download an application from. But there are also various church groups and other civic organizations will administer and also candidates and their campaigns will issue applications.

Q. So you said one of the ways is you get phone calls. How many phone calls do you estimate your office has received from people seeking applications or questions about this particular election?

A. This particular election? Quite a few. They are receiving more phone calls. Really, we have four people answering phones. And several days last week, the phone -- phone rang every time they hung it up. So I would just have to say hundreds so far.

Q. Do you normally -- in other elections, do you have four people answering phones?

A. No.

Q. How many in the July 14th runoff?

A. In the runoff, prior to the announcement that they were extending -- yeah. I had two people. I had the main person and a person who was back up.

Q. So one of the ways they can come in -- they can come in in person and get an application too; is that right?

A. Yes, yes.

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Q. So how many people who walk in do you estimate your office is serving on a daily basis?

A. Oh. I would say 40 to 50 per day. It varies. But, yeah, 40 to 50 per day since Wednesday.

Q. And I think you testified earlier that there are six windows. Are they all open?

A. At times, they are all open. I open them according to the need. Right now, I have one person that can handle 40 to 50 people a day. And so in order to get the backlog of applications mailed out, ballots mailed out, we are using mainly one or two windows as needed. But I anticipate that will increase.

Q. What services do you offer to the voters at that window?

A. Well, we can hand them a blank application, as you testified. And also, we can accept a filled-in application from the voter in person. We cannot take applications from anyone other than the voter. We can ask them if they -- and we do ask them if they would like to vote on the premises right then, and most of them do. And so we will go through the same steps that we've already talked about and making sure that we have the correct voter.

We will ask to see their voter ID, and we will make a photocopy of that voter ID and attach it to their application for them. We will make sure that they have filled out their application correctly. I mean, we will verify for that person standing at our window that they have done everything that a mail-in application is required to do. So when they have voted,

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we have given them the ballot, and they have voted, we will check in the instance -- because they are standing at our window, we will make sure that they have signed it on the back, and then we will witness it for them.

Q. Now, if -- so if they bring you a ballot and it doesn't have a signature, you require that on the spot?

A. If it is voter in person. I can not take a ballot as well as I can't take the application from anyone but the voter. I can take a ballot from anyone other than the voter. So if they have not signed it, I will ask them to sign it there. Was that your question? I'm sorry.

Q. Yes. Yes, that's exactly my question. Ballots or applications that are provided in this way, do you process them the same way you do the ones in mail?

A. Yes. They are handled exactly the same way.

Q. Is there any fee for the service?

A. No.

Q. So essentially a voter can come into your office. What are your office hours?

A. We're 8:00 to 5:00, Monday through Friday.

Q. A voter can come to the office in probate court 8:00 to 5:00, Monday through Friday, get an application, fill out the application, hand you the application, get a ballot, and vote right then and there?

A. Correct.

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Q. How do you keep track of all the responsibilities -- you testified earlier that it changed every so often. How do you keep track of all these things?

A. Well, I generate computer reports to make sure that I'm on track with the number of applications and ballots that have been issued and that I have in my possession. We have various physical checks that we do, counting the ballots to make sure that we do agree with the reporting of the computer.

Q. How about the laws and the regulations. How do you keep up with those?

A. Oh. Well, I mean, the state does a very good job of informing me when absentee election laws have changed. They will again do training sessions. Usually there's -- they're in place before the October sessions, you know, the October training sessions, and so we will learn of them and be trained upon them in those training sessions just prior to the elections.

Q. Are any of those laws or regulations issued by Mobile County and not the Secretary of State or the state?

A. Laws? They're issued by the state legislature and promulgated by the Secretary of State. I'm not aware of any that are local election laws, no, sir.

Q. Okay. I'm going to show you a document. Earlier you testified that you train employees and you keep track of all the laws and regulations. Do you recognize this document?

A. Where?

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Q. We're getting there.

A. Oh, here it comes. Good deal. Oh, yes, sir.

Q. What is that?

A. This is my absentee election manual that I create every two years after I have received training. I will update the manual and present it to my employees in their training sessions, which will also take place just prior to the elections.

Q. And I'm sorry. I should have mentioned. This is listed as Schwarzauer Defense Exhibit 1. And so you use this? This is the manual that you keep?

A. Yes.

Q. And you refer to it when you're doing your job, if needed?

A. I do.

MR. ENGELHARDT: I'd like to enter Defense Exhibit 1 and it admitted as an exhibit, please.

THE COURT: Exhibit 1 is in. Any objections, Ms. Zaragoza?

MS. ZARAGOZA: None, Your Honor.

THE COURT: Thank you. 1 is received.

Q. (BY MR. ENGELHARDT:) Who keeps track of this manual to make sure that it's accurate and up to date?

A. I do.

Q. I want to ask you about steps that the Mobile absentee election office has taken due to COVID-19 and the outbreak there. What are you doing differently because of COVID?

A. Well, we are wearing masks in our work areas especially the

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women who -- the employees who work the six windows. We have hand sanitizer available. We have rubber gloves available. We wipe down our work areas and the voter areas. We have disinfectant spray, which we use for the limited number of chairs. I have limited it to like eight to ten chairs in our lobby area due to COVID. For one thing, you know, you just can't put 50 chairs in there that close. They would not be six feet apart. We are practicing social distancing. We do have an anteroom in which we have several voting areas for voters. We -- not sterilize, but we sanitize those frequently during the day.

Q. Who orders those supplies?

A. The probate judge orders supplies for us.

Q. Do you know if the probate judge -- never mind. Strike that question.

Were those COVID-related safety steps in place for the July 14th runoff?

A. Yes, at the latter part, yes.

Q. Are you aware of any absentee voters who are claiming to have contracted COVID after having contact with the Mobile County absentee election office?

A. No, I am not.

Q. All right. So now we know what you do. Tell me this. When does your work on the November election begin?

A. Oh, my work on the November election began back in July when we started opening all those applications that started

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coming in, and they just increased after that. We had so many applications prior to September 1st. I started -- I worked off and on weekly probably two to three days a week coming in to open the mail during my off time between July, say, 21st until about the middle of August.

On August 24th, I had three other of my staff come in because the mail was just so overwhelming, and, you know, I just kneaded some help to keep up with it. And by August 31st, I had everyone else come in, the rest of the staff, probably six more people, seven more people, something like that, to come in on August 31st and continue on. And then, you know, by then, we were pretty well ready for September 9th. But at the end of that time, by September 9th, we had accumulated thousands of applications. So I would have to say that my work did begin in July for this election.

Q. And you just testified about September 9th. Why is that date significant?

A. September 9th is 55 days prior to Election Day. And that is the date that -- or the number of days prior to the election when the probate judge should deliver supplies to the absentee election office. And recently, Secretary Merrill has required that we start issuing ballots that day. In the last few years, the last several elections, they have emphasized 55 days prior to the election we should start issuing ballots. And so I try to comply with that.

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Q. Do you have a sense of how many applications you'd received before September 9th?

A. As I said, thousands. We had -- I was going in the mail bucket. So these are applications that are already open. So I don't know if y'all can see this, but here's an application.

Q. That's Plaintiffs' 22.

A. Okay. It's just a blank I think.

Q. Yes.

A. Okay. So it would be the packet, the application package is the application in front, the voter's ID in the middle, and their envelope stapled all in one package, okay, the envelope on the back. And there were just thousands of them piled into U.S. mail buckets, the white mail buckets that are about this tall and about that wide (INDICATING) and double stacked in there. I had by the end -- by -- I would say by the end of August, I had three buckets of those, and the mail just kept increasing. And so to date, I can tell you how many applications have actually been processed. Would you like to hear that?

Q. Absolutely.

A. 2,864 through Monday afternoon. And it would have been more. But we had to close up because of the hurricane.

Q. Now, have you caught up to that backlog of sent in --

A. It would have been completely gone. But we have not been back to work since Monday. So we will be there tomorrow, and we will be there Saturday. And hopefully by the end of Saturday,

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we will be even and ready to start Monday on an even keel. Right now, the only two days that we have left were September 8th's and September 10th's were just for some reason two huge mail days, and they both filled up a bucket by themselves. So we're down to just flat-level boxes now rather than buckets. So we have come a long way. We really have.

Q. Sounds like it.

A. I'm very proud of my ladies. And I would be proud of men too if they were there, too. But we don't have any men. I keep trying to hire some to lift all that stuff.

THE COURT: It's too much work.

Q. (BY MR. ENGELHARDT:) So on the 9th, you started issuing ballots. Do you know how much ballots --

A. 2,864.

Q. To the actual -- I'm sorry. You're right. How many ballots have been returned?

A. Oh, yes. I know that number too. It's right under 200. So far 198.

Q. Those are 198 people who came in person and cast -- during the process we talked about earlier?

A. Most of them have come in person. In the mail on Monday, I received four voted ballots. So 194 walk-ins is my best guess at this point if my math is correct. And then four actually received back through the mail.

Q. All right. Thank you. And I thank you for the work you're

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doing. I have only one more question. Are you aware of whether -- maybe it's two questions. So who is the circuit clerk of Mobile County?

A. JoJo Schwarzauer.

Q. Are you aware of Ms. Schwarzauer, whether she engages in any election activities that are not delegated to you?

A. No, I'm not aware of any. No.

MR. ENGELHARDT: Okay. Let make sure I've got them all. Thank you, Ms. Barnett. I pass the witness.

THE WITNESS: Thank you.

THE COURT: Thank you. Ms. Zaragoza, you ready?

MS. ZARAGOZA: Yes, Your Honor. And I just wanted to flag, it sounds like you can still hear us. But you do appear frozen on my screen. Hopefully, that shouldn't be an issue as long as you can hear us. But I just wanted to flag that for the Court.

THE COURT: I can hear you guys indeed. I have been able to follow the testimony. I see myself frozen on the Court's screen as well.

MR. ENGELHARDT: There it is.

THE COURT: Seems to be working now. But thank you. Go ahead with your cross-exam, please.

MS. ZARAGOZA: Thank you, Your Honor.

Q. Good afternoon Ms. Barnett. How are your?

A. I'm just fine. How are you.

Q. Good. Good to see you again.

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A. Good to see you.

Q. Great. So you testified that officially, your title is absentee election coordinator, correct?

A. Correct.

Q. Okay. But at circuit clerk JoJo Schwarzauer's option, you perform the duties of the absentee election manager, correct?

A. Correct.

Q. Okay. So you testified that you supervise and oversee the daily operations of the absentee election office, correct?

A. Correct.

Q. Okay. And you --

A. Pardon me. I think I said manage, oversee. Manage, oversee, and direct.

Q. Sure. Okay. And you hire and fire the election specialists, and you train them as well, correct?

A. Correct.

Q. Okay. And so you train them on how to review the excuse requirements as well as to whether a particular applicant must include an ID based on the excuse selected, correct?

A. Yes.

Q. Okay. Okay. And when you process absentee ballot applications, you testified that you compare the name, the address, and the date of birth on the application to the same information in the Alabama voter registration database, correct?

A. Yes.

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Q. Okay. And so you look for those three different points of data to compare in order to verify that you have the proper voter, correct?

A. Yes. And others if they're available to me, yes.

Q. Right. So, for example, if the date of birth is not present on the application, then you would look for a driver's license or a social security number, correct?

A. Correct.

Q. Thank you. And so you have testified that if a voter selects an excuse which requires a photo ID copy, that you just make sure that the photo ID is attached to that application, correct?

A. Well, we also verify the signature on the application with the signature on the ID.

Q. Okay. Correct. And so you're not a handwriting expert, correct?

A. No.

Q. Okay. And the actual photo on the photo ID does not play any role in your verification process, correct?

A. Or it -- not in the mail-in process, no. But it -- at the window, it is -- you know, we do check to see if it's the same person, yes. At the -- you know, when they walk in. Just as they would at the poll, you know.

Q. Understood. But for the mailed-in applications, right, just to clarify so we're on the same page, for the mail-in applications where a voter has not come into your office, the photo ID does

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not play any role in your verification process, correct?

A. The picture on the photo ID does not.

Q. Apologies. Thank you. Yes. Okay. So once you review that application and you find that it has met all of the requirements, you mail an absentee ballot to the voter, correct?

A. Yes.

Q. Okay. And you testified that once the ballots are returned to you, you store them in a safe environment until Election Day, correct?

A. Yes, I do.

Q. Okay. And then that you deliver them to the designee of the judge of probate, Don Davis, correct?

A. Yes.

Q. Okay. And so for provisional absentee ballots, the circuit clerk Joe Schwarzauer reviews the provisional absentee ballots on canvassing day along with the canvassing board, correct?

A. JoJo Schwarzauer is a member of the canvassing board. So she -- it's a three-member board. She -- actually, it's the circuit clerk, the sheriff of the county, as well as the probate judge of the county formulate this board. And they are tasked by the Alabama constitution of reviewing the provisional ballots that are turned in. So, yes, she's doing her constitutional duty at that point.

Q. Understood. So JoJo Schwarzauer as part of that canvassing board reviews provisional absentee ballots, correct?

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A. She reviews the absentee ballot affidavit envelope, yes.

Q. Yes. And so as part of that canvassing board, JoJo Schwarzauer reviews the affidavit envelopes to make sure that there is a name and a signature and two witnesses or a notary and an excuse, correct?

MR. ENGELHARDT: Objection, Your Honor. This is outside the scope of direct. And also this witness can't testify to what someone else is looking for.

THE COURT: True. Ms. Barnett, if you know, you may answer.

THE WITNESS: I'm sorry. I don't --

MS. ZARAGOZA: Your Honor, if I may -- briefly, Your Honor, Mr. Engelhardt did at the end of his direct ask if JoJo Schwarzauer -- if there are any rules related to elections that she conducts that are not delegated to JoJo Schwarzauer. So I'm trying to get at which of those duties might not be delegated. Excuse me -- to Alleen Barnett.

THE COURT: Ms. Barnett may answer if she knows the answer to the question.

THE WITNESS: Well, now, I'm a little confused. But let me sort out what I think you're asking me. Okay. You're asking me if there's any duty of the absentee election office that JoJo Schwarzauer would perform on canvassing day? Is that what you're asking me?

Q. (BY MS. ZARAGOZA:) I can restate my question just so --

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A. Let's start of that one over. I want to answer your question if I can.

Q. No problem.

A. Okay.

Q. Apologies. And there's a little bit of a lag. So I'm sorry about that as well.

A. That's all right.

Q. Okay. Starting over. So JoJo Schwarzauer through her duties as circuit clerk sits on the canvassing board for provisional absentee ballots, correct?

A. Yes.

Q. Okay. And that canvassing board reviews provisional absentee ballots to make sure that there is a signature and two witnesses or a notary stamp, correct?

MR. ENGELHARDT: Going to object to that again. Same objection. That's outside of the scope of her testimony. She has not talked about what the canvassing board does or does not do, and she's not on the canvassing board.

THE COURT: Overruled. Ms. Barnett, same thing. If you know the answer, you may answer.

THE WITNESS: I really -- y'all -- I don't know the answer to that. I don't know what each member of that canvassing board is sitting there looking for.

MS. ZARAGOZA: Eric, can you --

A. May I also add one thing? They are looking at all the

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provisional ballots for Mobile County, note just absentee elections. So they have all provisional ballots from every polling location across the county that day that they are reviewing. It's not just absentee. We just happen to be one of the contributors that day.

Q. (BY MS. ZARAGOZA:) Understood. And a part of that, a part of the overall provisional ballots or -- excuse me rather -- the absentee provisional ballots are part of the overall provisional ballots, correct?

A. Absentee ballots, provisional absentee ballots are part of the overall provisional ballots, yes. They are a component of that.

Q. Okay.

MS. ZARAGOZA: Eric, if you would please bring up Ms. Barnett's deposition. Okay.

Q. And, Ms. Barnett, you remember your deposition a few weeks ago, correct?

A. Yes.

Q. And you swore to tell the truth, correct?

A. Yes, I did.

Q. Okay. And you testified truthfully, right?

A. Yes, yes.

MS. ZARAGOZA: Eric, could you take us to page 59, please. Okay.

Q. And so on page 59 there -- and apologies. I'm having trouble seeing my own screen. So -- let's see. Page -- right. Line 19.

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Could you read that question from line 19?

A. Can you blow it up just a little bit more, please.

Q. Yes.

MS. ZARAGOZA: Eric, please if you could blow that up.

A. That's a good size if you could -- oh, that's not --

Q. Okay. If you could get us through -- that's right. If you could read the question, Ms. Barnett?

A. "And to the extent that you know, do you know what the canvassing board screens all provisional ballots for?"

Q. And then could you read your -- yes. If you could just continue reading, then?

A. Then it says, "to my general knowledge." And you said yes. I'm sorry. I can't see anything after yes. Okay. And then down to the answer, "I know they look to make sure that there is a name and a signature and a witness and a reason code. That's my interpretation of what they're looking for." And that is based on my knowledge of -- and training from the handbook. It's not because --

Q. Understood.

A. Okay. Okay. Thank you.

MS. ZARAGOZA: Eric, you can take that down. Thank you.

Q. Okay. Ms. Barnett, you're familiar with the preliminary injunction order entered in this case on June 15th, correct?

A. Yes.

Q. Okay. And you're familiar with the stay order issued by the

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United States Supreme Court on July 2nd, correct?

A. Correct.

Q. And you sent a letter regarding this Court's preliminary injunction order to certain voters who had sent applications to your office between June 15th and July 2nd, correct?

A. Yes, I did.

Q. Okay.

MS. ZARAGOZA: Eric, could you please pull up the AEM letters. Okay.

Q. And do you recognize this document, Ms. Barnett?

A. Could you -- I am going to ask if you could enlarge them for me when I look, please.

Q. Of course.

A. Thank you.

Q. Feel free to request that.

A. Okay. Yes, this is one of the letters that I sent.

Q. Great.

MS. ZARAGOZA: Eric, could you -- I'm sorry about that. I think that was due to lag. Eric, could you scroll down to the bottom just so that we could confirm the signature line. Okay.

Q. And so this letter -- you sent this letter; is that right?

A. Yes.

Q. Okay.

MS. ZARAGOZA: And could you please, Eric, if you would scroll back up again. Thank you.

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Q. Could you please read from "dear absentee voter" forward?

A. "I have received your application for the upcoming runoff to be held July 14th, 2020. Please be aware of the following: Federal Judge Abdul Kallon has issued" -- I'm sorry. I just -- can I get it just a little bit larger? My eyes are very dry today. I have been through a lot this week.

Q. No problem.

MS. ZARAGOZA: Eric, help us out.

A. All right. Let's see. All right. He's going to have to bring that in just a little bit to the right because he's cutting off I think -- no. I'm sorry. The other way. Okay. Right there is good. "Federal Judge Abdul Kallon has issued a decision that will enable voters over the age of 65 and/or are disabled to apply for and receive an absentee ballot without providing a photo ID as required by state law. Your application does not meet the requirements set forth in the judge's ruling. Therefore, you must provide a photo ID with your application before I can fulfill your request." Do you want me to continue?

Q. Yes, please.

A. "I am enclosing a copy of Judge Kallon's order. Please read it. And if the ruling applies to you, please make the corrections he is requesting so that you can receive an absentee ballot. If his ruling does not apply to you, please return your application with a copy of a valid photo ID to: And then it will have the absentee election office, P.O. Box 7, Mobile, Alabama, 36601. If you have

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any questions, please feel free to call -- or to contact me."

Q. Thank you Ms. Barnett.

MS. ZARAGOZA: And so, Eric, you can take down the letter. Okay.

Q. And, Ms. Barnett, thank you for reading that notwithstanding the zooming issues. So just so that I understand correctly, if you received an application during this period between June 15th and July 2nd, you checked the application for an absentee ballot for either a copy of a photo ID or the written statement required by this Court's order, correct?

A. Yes.

Q. Okay. And if the applicant provided neither, then would have sent them this letter, correct?

A. Only if they chose box number 2, which was physical illness, ID required. All other of the reasons require a photo ID anyway. And then the instructions by the Secretary of State were to choose box number 2, ID required. Box number 3 is ID not required. So if they chose box not 3, there was no question. Their application was processed, and they were issued a ballot on that day. So it's only if they chose box number 2 and they did not provide a photo ID, they received a copy of this letter with -- along with Judge Kallon's order.

Q. Okay. Thank you. And so then if they received this letter, the voter was given the opportunity to either provide you a photocopy of the ID or the statement required by this Court's

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order, correct?

A. Exactly, yes.

Q. Okay. And so -- let me see. Okay. And so if you received an absentee ballot application during this period and they did provide either a photocopy of the ID or this written statement, then you would have issued a ballot to that voter, correct?

A. Yes.

Q. Okay. And you did receive some applications, although I understood your testimony in your deposition that you weren't sure how many. But so you did receive some applications with this statement, correct?

A. Yes.

Q. Okay. And in order to do this, you did not need to reprint those blank absentee ballot applications in order to process the applications with the written statement, correct?

A. I'm not following your question. You're asking me -- I'm sorry. Could you explain your question. I'm not following it.

Q. Absolutely. Absolutely, no problem.

MS. ZARAGOZA: And actually, Eric, if you could bring up PX 22, please.

THE COURT: Ms. Barnett, as I understand it, Ms. Zaragoza will correct me if I'm wrong. I think she wants to ascertain if you had to make a change at all to the application for an absentee ballot because of the order that I issued back in June.

THE WITNESS: Okay. So did I have to make any kind of

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change to the application, the printed application?

THE COURT: Itself.

THE WITNESS: Itself. No, sir. Those are not within my purview to do that anyway. I could not change the application. That would have to be done by the Secretary of State's office.

Q. (BY MS. ZARAGOZA:) Okay. Thank you.

MS. ZARAGOZA: And, Eric, you can take that down. I just had that up. But, thank you, Your Honor, for clarifying may question.

Q. So, Ms. Barnett, so you testified that you do not have authority to change the absentee ballot application, correct?

A. Correct.

Q. But you were still able to process those applications which did not provide ID but provided the statement as required by Judge Kallon's preliminary injunction order, correct?

A. Correct. Until the stay, yes. Uh-huh.

Q. Understood. Okay. And so similarly, you sent a letter regarding the preliminary injunction order to voters whose applications were approved, correct?

A. Now, say that again . What?

Q. Okay. And this may help us.

MS. ZARAGOZA: So, Eric, if you could please pull up PX 388. Thank you, Eric.

A. Oh. All right.

Q. Okay. And apologies that this I think was a photo. So it

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might be a little bit harder to read. But if you are able and you would indulge the Court, could you please read the first -- let's see. Yes. If you could read this letter if you're able.

A. "Enclosed is your absentee ballot for the upcoming primary runoff to be held on July 14th, 2020. Please be aware of the following: State law requires that the absentee ballot be witnessed by two people or notarized. See Alabama law" -- I can't read that part. I'm sorry. I know it's Alabama Code Section 17- -- oh, thank you. That's much better. "11-9. However, Federal Judge Abdul Kallon has issued a preliminary injunction order that removes this requirement." My eyes are drying out. "In certain circumstances in relation to the primary runoff. For your reference, I am enclosing a copy of the order. I am enclosing a copy of the decision. Please read the decision. And if it applies to you -- to your circumstances, please write the judge's requested statement on the back of the affidavit envelope near your signature. Should you have any questions, please contact me. Sincerely, Alleen Barnett."

Q. Thank you so much.

A. You're welcome.

MS. ZARAGOZA: Eric, you can take that down. Okay. And before I forget, Your Honor, Plaintiffs would offer PX 388 into evidence.

THE COURT: Mr. Engelhardt, any objections to 388?

MR. ENGELHARDT: No objection.

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THE COURT: Thank you. It's received.

Q. (BY MS. ZARAGOZA:) Okay. So as I understand from your having read the letter to the Court, in this instance you sent this letter to voters that had already sent an absentee ballot application to you. You were returning a ballot to them, and you were including this letter with them so that they -- or to inform them that they could write the statement provided by Judge Kallon in the preliminary injunction order in lieu of providing two witnesses or a notary stamp, correct?

A. Correct. That went out with every ballot that was issued between July 16th -- I'm sorry -- June 16th and July 2nd, I believe. Yes.

Q. Okay. Thank you. So -- just one moment. Looking at my notes. Okay. So other than sending these two letters that I put on the screen earlier, your absentee application review process did not change in any other way between June 15th and July 2nd, correct?

A. Not that I recall, no.

Q. Okay. And so for -- let's see. And by June 15th, by the time of this Court's order, absentee voting for the July 14th election had already started, correct?

A. Yes. It started in March of that earlier -- March of 2020.

Q. Okay. Thank you. And you testified that you were last trained -- or that you last received training with respect to your duties in October of 2019, correct?

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A. Correct.
Q. Okay. And so you were not required to undergo any training with respect to the preliminary injunction order before the July 14th election, correct?
A. Correct.
Q. Okay. Okay. I'm going to shift gears just a little bit. And, Ms. Barnett, you testified that anyone could come to your office to get an application on the same day, correct?
A. Yes.
Q. Okay. And you said that -- you testified that you'd been getting about 40 or 50 people per day; is that right?
A. Yes.
Q. Okay. And are voters required to wear masks to your office in order to vote?
A. Yes. I'm -- that there is an order that they will not -- I mean, there is a directive from Secretary Merrill that they will not be turned away if they do not have on a mask. But most people are wearing a mask, and it's never an issue. We just -- you know, we take care of our voters.
Q. Okay. But you cannot turn away a voter if they're not wearing a mask, correct?
A. And I haven't done so, that's right.
Q. Okay. Okay. And so, you know, you testified that people can come to your office to get an application the same day. But in order to do so, a person would have to have transportation to

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come to your office, correct?
A. I would assume, yes. I mean...
Q. Okay. And, Ms. Barnett, are you generally familiar with the perimeter of Mobile County?
A. The perimeter of Mobile County? The boundaries of Mobile County?
Q. Yes. Generally.
A. I would think so, yes.
Q. Okay.
MS. ZARGOZA: Eric, can you help us out by pulling up a map -- a Google map of Mobile County, please.
Q. And does that look generally familiar, Ms. Barnett?
A. Yes.
MS. ZARAGOZA: Could you zoom in perhaps, Eric. Thank you. Okay.
Q. And do you see Citronelle up there?
A. Yes.
Q. Okay.
MS. ZARAGOZA: So Eric, could you take us to the next Google map. Okay.
Q. And do you see that it's the directions from that center of Citronelle to Mobile County probate court on the top left?
A. Oh, yes, uh-huh. I can't read them very well. But I see that they're there. I couldn't tell you what it says though.
Q. Okay. Fair enough. And so do you -- and maybe Eric could

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help us out with the zoom. But do you see that it says it's about 43 minutes to your office by car?
A. Yes.
Q. Okay.
A. I can see the car icon. Are you looking at the map or the written instructions right there? I see it.
Q. So Eric is pointing on the left?
A. I see.
Q. It's about 35 miles.
A. Uh-huh.
Q. Thank you?
MS. ZARAGOZA: And so, Eric, can you pull up the -- I think the third Google map now. Okay.
Q. So I will represent to you that I have taken you as far as I can within the boundaries of Mobile County. And at the top left, if you can see, it says Beverly Jeffries Highway. But it's still an address in Citronelle, Alabama. And it shows the directions from that location, Citronelle, Alabama to the Mobile County probate court. Do you see that?
A. Yes, uh-huh.
Q. And then below all of that, it says -- you know, there's a little car icon, and it says via U.S. 45, and then that it's about 44.5 miles, and it would take maybe 53 minutes to get to the probate court. Do you see that?
A. Yes, uh-huh. Okay.

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MS. ZARAGOZA: Okay. Those are all the questions that I have. Thank you, Ms. Barnett.
THE COURT: Lets stay in Mobile. Any questions from Judge Davis's lawyers?
MS. HOLIFIELD: No, Your Honor.
THE COURT: Thank you. Mr. Webb, I saw you earlier. Do you have any questions as well?
MR. WEBB: No questions, Your Honor.
THE COURT: Thank you. Let me turn it over to the state, please.
MR. SINCLAIR: No questions, Your Honor.
THE COURT: Thank you as well. Mr. Engelhardt, redirect, please.
MR. ENGELHARDT: I have no questions for Ms. Barnett.
THE COURT: Thank you. Ms. Barnett, you are free to go. Have a good afternoon, ma'am.
THE WITNESS: Thank you, Judge.
(Witness excused.)
MS. ZARAGOZA: Thank you, Ms. Barnett.
THE WITNESS: Thank you.
THE COURT: Let's take a transition break. We'll come back at 10 after. Remind me again who is the next witness, please.
MR. DAVIS: Your Honor, the next witness is Judge English, probate judge of Lee County.
THE COURT: Okay. We'll see you guys -- everyone here --

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MS. SHORT: Your Honor.

THE COURT: Yes, ma'am.

MS. SHORT: Sorry, Your Honor. This is Caren Short for the Plaintiffs. Could we just clarify who's calling Judge English for the Defendants?

MR. DAVIS: The State Defendants are calling Judge English.

MS. SHORT: State? Okay. Thank you.

MR. DAVIS: Uh-huh.

THE COURT: 10-minute transition break. We'll see all of you shortly.

(Recess.)

THE COURT: Judge English, would you please raise your right hand, sir, so my courtroom deputy can swear you in.

(Witness sworn.)

THE COURTROOM DEPUTY: Please state and spell your first and last name for the record.

THE WITNESS: Bill, B-I-L-L, English, E-N-G-L-I-S-H.

THE COURTROOM DEPUTY: What city and state do you reside in?

THE WITNESS: Opelika, O-P-E-L-I-K-A, Alabama.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Thank you, Judge.

Mr. Davis, your witness.

MR. DAVIS: Thank you, Your Honor.

Q. Good afternoon Judge English?

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A. Good afternoon, Mr. Davis.

Q. What is your position, Judge?

A. I am the probate judge and the chairman of the Lee County commission.

Q. How long you have you served as probate judge of Lee County?

A. 20 years.

Q. And have you ever served as an absentee election manager?

A. Yes, sir. I worked for my predecessor for 18 years prior to being elected. During that time, I served as the absentee election manager on a couple of occasions.

Q. Okay. Summarize for the Court, please, your duties as probate judge as they relate to elections.

A. Okay. The code says the probate judge is the chief elections official, and I would tell you that there's almost no duties that I'm not involved with.

Q. Okay.

A. Primarily, we prepare for the elections by ordering supplies, appointing poll workers along with two other members of the appointing board, prepare facilities, make sure everything is in place on time. On a typical Election Day, I will travel to each of our 22 polling locations, checking for needs, assisting where necessary, replacing or supplying as necessary. At the end of the night, we report the results unofficially. On the Tuesday, seven days following, myself and the sheriff and the circuit clerk serve

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as the canvassing board and count the provisional ballots and then after that certify the results of the election.

Q. Thank you. And, Judge, are you expecting more absentee voting than usual for the November general election?

A. Yes, sir.

Q. What, if anything, is Lee County doing -- or you doing to prepare for absentee voting in November?

A. We have ordered significantly more absentee ballots. We appointed three assistants to help the absentee election manager and will appoint more as we get closer in.

Q. Okay. What, if anything, are you doing to prepare polling places to ensure that voters are safe who choose to vote in person doing the pandemic?

A. We had a pretty good introduction in the July runoff. Two of our precincts have had to move between the runoff and the general election. We will actually send a post card to every registered voters in those two precincts informing them of that. In one situation, the building that we have been in for years was condemned by a structural engineer. On short notice, we moved into the town hall of the town of Loachapoka. That facility is wholly inadequate. It's too small. It does not have adequate parking. It's not ADA accessible. And we have moved to the large family meeting center of a church nearby in the community of Loachapoka.

We provided significant sanitation supplies in anticipation

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of dealing with the coronavirus. We will do as much or more of that for the general as we did for the primary. We will appoint significantly more poll workers for the general election than we did for the runoff because the turnout will be much larger.

Q. Okay. So one of the things you did was maybe shift some polling places around. Who decide where the polling places are going to be located?

A. The Lee County commission.

Q. And the sanitation supplies, did you use any money that you received through the state in order to purchase sanitation supplies?

A. Mr. Davis, I don't personally oversee the purchasing or expenditures. I know that we submitted a request for a number of items through the Secretary's office, and I know that we were reimbursed, I believe for everything that we asked for, yes.

Q. Got you. What type of sanitation supplies, if you know?

A. We bought masks. We made masks mandatory for our poll workers. We made them requested for our voters. Any voter that appeared without a mask, we offered them a mask. But we were under the direction that we could not refuse them the right to vote for failure to wear a mask. We purchased alcohol wipes, disinfectant wipes, disinfectant spray. We had noncontact thermometers. We provided trash cans. We provided a measuring stick and mask tape to mark off safe distance. We also provided the face shields. We requested the voters to use the

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mask. If they were uncomfortable with that, they could wear a face shield. I saw some wear both. I did not see any poll worker not wear one or the other.

Q. Okay.

A. I did visit every precinct in Lee County on Election Day.

Q. Okay. And did you visit every precinct in the July 14th runoff election?

A. That's the election I'm referring to, yes.

Q. Sure. And so during that election, every poll worker that you saw was wearing either a mask or a face shield or both?

A. That is correct.

Q. Okay. What plans do you have in Lee County if a voter declines to wear a mask?

A. What we instructed for the runoff and will instruct again for the general election is if the facility has room, we will have a separate area designated for voters who refuse to wear a mask to attempt to minimize their contact with the other voters who are wearing masks. Most of our precincts are large enough for that. There are a few that are not simply big enough. For instance, two of your polling places are in portable classrooms. Those are not large enough to have a designated area. So what we have instructed is if a voter appears at the door with no mask and will not accept a mask, we ask that voter to wait at the door in line. We allow the voters that are currently in the room to finish their voting and exit. We then let in the unmasked voter. He goes

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through the process, he votes, and when he finishes and exits, then we open the door back for other voters. We can allow more than one in with a mask. But we'll only allow one at a time without a mask.

Q. Okay. So if there is a voter who refuses to wear a mask, one way or the other either through a separate area or through letting them go in by themselves, that voter is segregated from the other voters?

A. As much as possible, yes.

Q. Now, your visits to each precinct, you're familiar generally then with the layout of the polling sites in Lee County?

A. Very.

Q. And the buildings in which they are located?

A. That's correct.

Q. Are you aware of any problem with ADA compliance with any precinct in Lee County?

A. No, sir, all of our facilities are accessible. Many of our facilities are government owned. We use where possible especially in our two larger cities, Auburn and Opelika, we use facilities owned by the cities that are constructed that way. I believe out of nine in the two cities, there's only one that is not government owned, and it is a commercial enterprise. It's a hotel. That is constructed that way.

Q. Is that the Clarion Inn?

A. That's correct.

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Q. Have you received any reports of noncompliance with Clarion Inn? Noncompliance with the ADA?

A. No, sir. Let me mention that many years ago, I began, and part of my poll worker training informing the poll workers that we needed to be sure an any voter that had any accessibility problems was A, accommodated and B, we were notified so we could make whatever correction we needed to make. And we made a number of those I would say six or eight years ago to forestall that type of thing. I have not had any complaints about that in years.

Q. Have you been monitoring the COVID-19 situation, the pandemic, Judge English?

A. Yes, sir.

Q. What have you done to monitor that?

A. Almost every night, I access the dashboard from the Department of Public Health, and I access the dashboard from Johns Hopkins University, and I enter the data into a spreadsheet I have created. And I have done that since early April. I miss a night once in a whale, maybe one or two a month, but I update my data every night. I do that so I can keep our county commissioners informed as possible about the various trends both in Lee and in surrounding counties. I store that data for every county. I also store the death numbers for every state, and I probably enter the top 10 or 12 or maybe 15 countries from the Johns Hopkins site.

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Q. Are there any universities located in Lee County?

A. Yes, sir. Two.

Q. Two? Which are those?

A. Auburn university and Southern Union State Community College.

Q. Have either of those universities in Lee County gone back to on-campus learning in recent weeks or months?

A. Yes, sir. Both have.

Q. Okay. How many students approximately are at Auburn University, do you know?

A. 26 or 27,000 is my understanding.

Q. Okay. Have you seen any increase in COVID-19 cases in Lee County since Auburn University reopened in the fall?

A. According to local media reports, a significant increase, yes, sir.

Q. How long after the students went back to campus did it take for those upticks to occur?

A. I'm not sure if I was trying to time it. I would tell you a week, ten days maybe. It occurred fairly quickly primarily because there were a whole a lot of entertainment venues that were not observing any social distancing. College kids were in the bars, and they were not wearing masks.

Q. I want to ask you about curbside voting, Judge English. And by that, I mean, what I understand Plaintiffs to be asking for in this case, which is voters being able to go to their regular

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precinct on Election Day and voting from their vehicles. Would you consider yourself free to implement curbside in Lee County if you wanted to do so?

A. No, sir.

Q. Why not?

A. You know, I have heard that question asked and answered several tames through this trial. And there is a key point I feel like is kind of being overlooked. Alabama is a Dillon Rule state. Alabama counties do not have home rule. Every surrounding state gives counties home rule. Most states in the United States have home rule. Most counties in the United States have home rule. The difference is if the legislature does not give an Alabama county specific authority, it has no authority. You're designated agents delegated by the state.

For instance, many years ago, Lee County wanted a leash law. We cannot pass a leash law through the county commission. We have to go through the legislature and seek a local bill and we did so. But to implement a change like that would require legislation. Not to mention the voting --

MS. SHORT: Your Honor, I'm just going to object to the extent that this is a legal conclusion.

THE COURT: It may be. But I think what Judge English is saying is why he believes that he will not be able to implement curbside voting even if he wanted to, which is a different question than if ordered by a court obviously.

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Judge, you may continue with your answer, sir.

THE WITNESS: Thank you, Judge. If a new piece of voting technology appeared on the scene, and I thought it was the greatest thing and wanted to implement it, I could not implement it unless it was approved by the State of Alabama. Counties don't have that authority, and individual probate judges don't have that authority.

Now, I do believe Jefferson County has a significant amount, if not complete home rule. I believe it's the only county in the state that has that as fully as I understand it.

Q. (BY MR. DAVIS:) Okay. Judge, if you did consider yourself free to implement curbside voting, would you choose to do so?

A. Mr. Davis, the first logistical problem that comes to mind for me, and I can illustrate this by what is currently occurring with the absentee office. Many voters, I think, would take advantageous of the convenience of voting in their car and not having to find a parking place, get out, walk inside, get in line, and vote. And without some way to anticipate how many voters would be outside versus how many inside, I did not know how to prepare properly for that. Not to mention the traffic jams that it would create.

Many of our facilities, mainly those in the large -- in Auburn and Opelika have traffic issues as it is with people trying to park. If there were a line -- I kind of -- I imagine it as an elementary school with a line of moms picking up children. And I know the

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traffic jams that causes. And there are many more voters in our precincts than are kids in that elementary school. So managing traffic would be a nightmare, planning for the election, having the appropriate supplies in the appropriate locations. And of course the issue for us is also going to be how do we know if a voter comes through in his car, votes curbside, drives around the building, parks, goes inside, and votes again. And if both of those ballots have gone in the voting machine, there is no way to undo that. And there is no way to prevent it in the current system.

Q. One of the things you said is it sounds like you said you don't see a way that it could be restricted to people who really need it. Did I understand you correctly?

A. Well, Mr. Davis, it's my understanding that we cannot ask voters if they're disabled or not. So if a car's in line for curbside voting, what criteria may we apply. And what I'm seeing now in the absentee office is many people are coming in to vote absentee in person. We had a couple yesterday. And when they were asked why they were voting absentee, that question on the application, they said it was, you know, apprehension about coronavirus. Which is understandable. And as they finished voting and stood up, the wife said to the husband, honey, let's go to Cracker Barrel for lunch.

Now, they were wearing their masks in here. And I feel like they'd wear them at Cracker Barrel. But was the apprehension

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about coronavirus the reason for voting absentee since it did not seem to impede them from going to restaurant? And I feel like we would have a significant number. We are anticipating at much as three times as many absentee voters this election than we've ever had.

Q. Got it. How long do you think it usually takes a voter to go through the voting process in person? You know, once they have waited in line, once they go up to the first stand and show their ID to the time they complete their ballot and put it in the machine?

A. Our goal is no more than an hour. Most elections we meet that even in the larger precincts. Sometimes, the big precincts in a lengthy ballot can take an hour. Part of that depends on what's in the ballot in which election.

Q. Sure.

A. The runoff ballot was really short. It had two items. Voters got the ballot and marked it. Some didn't even sit down. They place the ballot in the machine and they're out of the building. The November general election ballot has I believe three federal races, seven state races, five local races, and six constitutional amendments. I'm going from memory there. And I'd like to check a sample ballot. But it's close to that.

Q. I got you. It's a pretty full ballot though in other words?

A. That's right. It will be front and book.

Q. So even if a voter walks up, and there's no one in line at the

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time, it's still going to take several minutes?

A. It will take a minute or two to check in, find the voter on the list, mark their name, have them sign the book, have us write their name in the alternate book. We use a two-book system, issue a ballot with secrecy folder. They will then go to a table area where people can sit to mark their ballot. Let's say it takes them three, four minutes to mark their ballot. The machine will occupy them for less than a minute and a half.

Q. Okay.

A. The machine is not the holdup.

Q. Now, how how many voters are typically assigned to a precinct in Lee County?

A. We have a small -- our smallest precinct is about 500 voters. Our largest is over 16,000 voters.

Q. Which one is that largest precinct?

A. That's the Clarion.

Q. Okay. And if voters who drive up, assume it were permissible, if they each take several minutes each, there's no way to do more than -- well, if you take five minutes each, that would be about 12 an hour, isn't it?

A. Yes, sir. In our system, the poll worker is going to have to get their ID, go inside and either bring the book out or sign the book for the voter if the voter requests assistance. But if the voter requests the poll worker's assistance, then the poll worker must sign the book as well.

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Q. Okay.

A. We have a question, for instance, if a poll worker comes in from outside, do they get in line in that section of the alphabet, or do they go to the head of the line? They would then be issued the proper ballot and a secrecy folder, carry it outside to the voter, hand it to them, let the voter mark it, and the voter would have to sit in the prime location until they finish their ballot, hand it back, the voter carry it back inside, and then come back and deal with the next in line.

Certainly, we would have to have quite a number of poll workers on the outside. But I do not see where that allows me to reduce the number of poll workers on the inside. It would probably close to double the number of people we would need. And that doesn't begin to address whether or not there would be a ballot tabulator outside, if there's a voting machine out as well. Other issues that come to my mind are weather. You know, July was hot in Alabama. November could be hot or cold or tornado or what. How do we provide protections? How do we ask poll workers to stay outside for 13 or 14 hours? I guess, we would rotate. As I'm sure most of you have experienced when you go to work, many of the poll workers are retirees. And that makes it even more problematic for them to work a long shift outside.

Q. Would you need any kind of coverage for elderly poll workers for them to be safe or some kind of pavilion or

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something in case of inclement weather?

A. Mr. Davis, I have tried. But I can not fathom all of the things like that that would be required. Here is another consideration. In some precincts, we have a number of campaigns actively courting voters 30 feet from the door. I believe the code section says 30 feet from the exterior door of the billing. If a polling machine is outside or -- what rules apply to the campaigners that want to influence the voters? They could be standing right there, I guess. There are so many things that have not been considered. I -- I see a lengthy list of decisions that would have to be made that I don't see contemplated in our law.

Q. Assuming it could be done and that it were legal to do so, is it likely the kind of thing that would take more than a few weeks to implement?

A. I think it would take a session of the legislature --

Q. Sure.

A. -- and see what they pass and see what rules the Secretary promulgates and then start trying to figure out what all we'll have to do, what all we'll have to purchase, what locations we can use. And in my opinion, I believe the county commission has to adopt that. Because anything we're doing to add expense or add locations is in their purview. I sit as chairman of that board and have for 20 years, and I have taken election issues to them and had them approved, and I've taken other issues and had them not approved. So, you know, it's not wholly within my purview even

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if it's adopted.

Q. I don't want to move on if you're not finished. Are there any other practical difficulties that you foresee to offering curbside voting even assuming it would be permissible for you to do so?

A. Logistics and supplies are my --

Q. Got you. Okay. Do you serve on any committees related to voting or election equipment, Judge English?

A. Yes, sir. I don't have the code section in front of me. 17-7-22 is the Alabama electronic voting committee. I serve as chairman of that. I am appointed by the Chief Justice to serve as chairman. There is one senator, one house member, the Secretary of State, and the Attorney General are the five members of that committee.

Q. And what is the purpose of that committee? What are their duties?

A. That committee is where anyone proposed election hardware or software has to go and be accepted before it's eligible for use in Alabama. If a vendor comes up with a new voting machine, they have to make arrangements, auvmirrws it to the committee. We will have a meeting. They will normally make a presentation. We'll review it. Secretary staff supports that committee. And then once we vote and accept it, then it's eligible to be sold or used in Alabama. I have served on that under three different chief justices now.

Q. Thank you, Judge.

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MR. DAVIS: Your Honor, may I have a moment to consult with my colleagues. And I'd warn the Court it may take a little bit longer than normal like a couple of minutes, because I want to talk to my colleagues who are not with me, the ones who are in Mobile.

THE COURT: Okay.

MR. DAVIS: Can I have a couple of minutes?

THE COURT: You can. We'll take a five-minute recess.

MR. DAVIS: Thank you. And I will say, Judge, I believe unless my colleagues -- well, I'm likely very, very close to done.

THE COURT: Okay. Five minutes.

THE WITNESS: Thank you.

MR. DAVIS: I don't think it's been five minutes. But, Your Honor, I'm ready to continue whenever anybody else is.

THE COURT: Judge Davis, are you ready, sir. I'm sorry. Judge English. It's been a long day. I apologize.

Mr. Davis, you may continue.

MR. DAVIS: Thank you.

Q. Judge, should you or should Lee County officials decide that it was necessary to construct some type of awning or overhang to protect poll workers who were outside, who would be needed to approve that or to pay for that?

A. The Lee County commission. Mr. Davis -- Mr. Davis?

Q. Yes.

A. Let me add we don't own many of our locations.

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Q. Okay.

A. We're in a public school. We're in a private school. We're in a church. We're in a rec center. We're at a hotel. I mean, I can go on and on and on. And I don't know that we can construct something on someone else's property.

Q. Okay. Thank you for clarifying that. Do all polling places in Lee County have Wi-Fi?

A. No, sir.

Q. Are there phones dedicated for the public and poll workers to use on Election Day in Lee County?

A. No, sir. We do not provide telephones of any kind.

MR. DAVIS: Thank you, Judge English. Your Honor, that's all I have for Judge English at this time.

THE COURT: Thank you. Ms. Short, your witness.

MS. SHORT: Thank you, Your Honor. Can you hear me okay?

THE COURT: I can.

THE WITNESS: Yes, ma'am.

Q. Good afternoon, Judge English. My name is Caren Short. I'm an attorney for the Plaintiffs. I know we haven't met before, but it's nice to see you.

A. Thank you, ma'am. You too.

Q. I just have a few questions based on what you just discussed with Mr. Davis. You testified that you were the chief elections official in Lee County, correct?

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A. Yes, ma'am.

Q. And you oversaw the administration of the most recent election in Lee County, correct?

A. Yes, ma'am.

Q. And you testified you're a member of the appointing board, right?

A. Yes, ma'am.

Q. And in that role, you appoint poll workers, correct?

A. Yes, ma'am.

Q. And that includes the poll workers who work in the absentee ballot precinct; is that right?

A. Yes, ma'am.

Q. And you testified, Judge English, that part of your role is training poll workers; is that correct?

A. Yes, ma'am.

Q. And that training includes -- it's multiple trainings, including all poll workers in the county; is that right?

A. Yes, ma'am.

Q. Including the poll workers who work in the absentee ballot precinct?

A. Yes, ma'am.

Q. And am I correct that this training takes place usually the week prior to every election?

A. Yes, ma'am. It's required by law before each election. We normally conduct it on the Wednesday and the Thursday prior.

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Because of the number of poll workers, we break it up into three or more sessions. We had three for the July runoff. We possibly will have more than that for November because of the number of workers.

Q. And so for this upcoming November election, that training will not take place until late October; is that right?

A. That's correct.

Q. And are all poll workers required to take the training prior to the election that they're serving in?

A. Yes, ma'am. And I -- I have been here long enough. That case was I believe known as Harris v. Siegelman. That goes back to when Governor Siegelman was in office. And that's required for each worker for each election.

Q. Okay. But a poll worker who didn't attend the training could still serve on Election Day; is that right?

A. Possibly.

Q. Okay. And when would that occur?

A. Many of our workers work every election and have worked for a number of years. When the appointing board meets, we make a list of names. I'll use precinct 99 has ten names. Precinct 99 has an a chief inspector. We send that list of names to that chief inspector. In the appointment letter, we inform the poll workers to let the chief inspector know if they're not going to be able to serve. Often a worker will call the chief and say, hey, I've got surgery. I can't work. And the chief will then recruit a

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replacement from his knowledge base of other workers that have worked in his precinct before.

And on occasion, there will be a different name in line 8 for precinct 99. If that poll worker notifies the chief inspector of that fact before the election schools take place, then the replacements come to the election schools. If that replacement occurs at the last minute, then the chief may recruit someone who did not attend the school. The chiefs to may knowledge have never recruited a rookie in a role like that. They recruit from the cadre of trained workers that we already have.

Q. Thank you. And all poll workers take an oath of office; is that right?

A. Yes, ma'am. Let me clarify that previous answer one more time. If we have appointed ten workers to precinct 99 and one calls in sick, the chief inspector has the discretion whether to operate with nine or seek a replacement. If he feels like nine is adequate, he may not make that replacement. If he feels like that extra person is essential, then he will recruit that replacement as I described. Now, if you'd repeat your last question.

Q. Certainly. May last question was whether all poll workers take an oath of office?

A. Yes, ma'am, they do.

Q. Okay. And am I correct that in the most recent poll worker training in Lee County ahead of the July 14th election, that training was different this year because of COVID-19?

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A. Yes, ma'am. For the first time in 25 years, it was done differently.

Q. And how was it different?

A. Rather than stand and present to the poll workers as I normally do with a PowerPoint that I produce, I played three different short videos that were provided by the Secretary of State's office.

Q. And am I correct that you explained additional precautions due to the coronavirus in addition to playing the videos from the Secretary of State and you answered questions?

A. Yes, ma'am. I explained to them at the beginning the reason this school was different was because there was a matter of litigation that I was party, and I didn't feel that it was appropriate for me to be instructing them on issues that could be in this litigation. So I addressed other things than the process that the poll workers use. I -- we had a supply box of various coronavirus items. I took one of those to the school. I pulled out each item and showed it to them and explained what it was for. I did answer questions at the end that they may have, but I did not do the actual instruction.

Q. And during this training, you also explained to the poll workers how to handle the absentee ballots that were received during the time when the preliminary injunction in this case was in effect; is that right?

A. Well, that's a yes and no. We do not provide individualized

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instructions specific to the absentee workers in the general poll workers school because they all come to the same school. The absentee workers, many of whom have worked that precinct for years, receive additional training on the absentee ballot components from the absentee chief inspector and often from the absentee election manager.

I do believe because our experienced absentee manager did not serve for the runoff that she did not provide that training, Ms. Robertson. I'm not aware whether Mr. Majors provided that training or not. So I'm not sure how that went. I do know that all but possibly one of the absentee precinct poll workers are very experienced absentee precinct workers.

Q. But during the July 14th training which includes the absentee ballot precinct poll workers, you specifically explained to them that there would be two dates that they would need to get from the -- to get, and then any ballots postmarked or received within that window would be treated a little differently, meaning the witness or notary requirement would not be applicable; is that right?

A. Yes, ma'am. I explained the three claims in the lawsuit, explained that there was a preliminary injunction, explained that it had been stayed, and so from start date to end date, there would be different standards that would need to be applied to the absentees, and that they would get that information from either the absentee election manager or from the absentee precinct

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chief inspector.

Q. And so if the Court were to enter another injunction in this case enjoining the witness requirement, you could similarly train the absentee poll workers on that injunction, correct?

A. Yes, ma'am.

Q. And you testified that you are a member of the canvassing board; is that right?

A. That's corrects.

Q. And as a member of the canvassing board, you count provisional ballots, right?

A. We count some of the provisional ballots.

Q. Okay. And you count the provisional absentee ballots; is that right?

A. Some of the provisional absentee ballots. We do not make the determination whether provisionals are eligible to be counted or not. On the night of the election or the morning thereafter, the absentee affidavits are presented of the provisional absentee voters and the provisional precinct voters are all given to the board of registrars. They start work Wednesday morning. They make a determination whether the provisional is eligible to be counted or not. Whether that's an absentee provisional or precinct provisional doesn't really matter.

On the Tuesday seven days after the election, we meet at noon. We receive their findings. The sheriff has custody of the ballots during that time. The registrars are given the affidavits.

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They're not given the ballots. The registrars bring the affidavits and their determinations. The sheriff brings the provisional ballot boxes, one from each precinct, and then the canvassing board following the directions of the board of registrars opens the one that they have deemed eligible to be counted and counts them in a manner that does not identify how a particular voter voted. And then the ones that the registrars deem not eligible to be counted are not opened at all. They are retained in the ballot box still sealed in their affidavit envelope.

Q. So the provisional absentee ballots that get counted, the canvassing board is the one to count those?

A. If the registrars have deemed them eligible, yes, ma'am.

Q. Right now, you have 23 precincts in Lee County including absentee ballot precincts; is that right?

A. Yes. It is treated just like an on-the-ground precinct in terms of numbering.

Q. Okay. And moving back to the provisional absentee ballots, I understand that you're saying that the ones that are counted or not, that that is happening before you get it. But the ones that are coming to you, at the time that they were cast or applied for, these provisions are ones that did not comply with one or more of the absentee ballot requirements. Is that your understanding?

A. That's a little bit of a yes and no answer as well.

Q. Okay.

A. If an absentee voter has failed to produce a copy of the

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photo ID, they can remedy that defect by presenting that to the regular registrars beginning the morning of the election up until -- I'm not sure the deadline. But they can produce an ID after the fact and render that ballot eligible to be counted.

Now, if the application -- I'm sorry. If the affidavit is incomplete, does not have a signature, or does not have witnesses, my understanding is that's not made provisional. That is not a defect that the registrars can remedy. So the ID can be remedied. But I don't believe the notary or two witnesses requirement can be remedied after Election Day.

Q. I see.

A. And I may can cite you to that.

Q. That's okay.

A. 17-11-7 C.

Q. Got it. And I believe you testified that you're expecting a larger in-person turnout in November; is that right?

A. I do not think it will be the largest we've ever seen. I've traced this pattern back from the mid '80s. The largest turnout Lee County has is in a general election for President in November. And we have not ever met the state average turnout. We are always lower than the state average, and I can not tell you why that is.

The next biggest turnout is the general election for Governor in November two years out. The primaries are just the opposite. The turnout in a Presidential primary is normally the lowest of

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the four elections that we have. The primary in the Gubernatorial year is always bigger because there are many more state and local offices on the ballot in a Gubernatorial year than there are in a Presidential year.

I had predicted a turnout of the July 14th runoff in the 5 percent range, and it was slightly over 10 percent and is the largest turnout in a Presidential runoff than I have seen in over 30 years here.

Q. So it would be fair to say that you are expecting a larger in-person turnout in November than usual?

A. Than usual, yes, ma'am. Our record was 63 percent, and I do not think it will exceed that.

Q. And am I correct that you expect to see at least twice the number of absentee ballots in November than any other Presidential election?

A. I would tell you more than twice.

Q. That's fair. And you're anticipating hiring an additional 50 to 100 poll workers for the November elections than you normally would for a general election; is that right?

A. Yes, ma'am. We tailor the number of poll workers to the anticipated turnout. The higher the turnout prediction, the more poll workers get appointed. I believe the most we have appointed has been about 325. Primarily because of the additional difficulties this year, we probably will go 350, 375, and could possibly hit 400. We'll have to look at that on a precinct by

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precinct basis.

Of course one of the issues involved in that is how many do we have. How many trained, experienced poll workers exist in a given precinct? I have been -- well, inundated may be too strong a word. But I have received almost 100 volunteers to work the polls for the first time. And I will tell you that we often recruit on our own for additional poll workers. Our normal practice is to break them in or train them in the small turnout elections when the pressure's not so high. And a presidential general is probably the worst time to try to break in new poll workers. But given the fact that some of our veterans probably will not work given the fact that we're staffing heavy because of all the various factors this year, we probably will have more new volunteers this year than we've ever had.

Q. And so you have the flexibility to vary to increase the number of poll workers based on the turnout that you're expecting, correct?

A. Yes, ma'am. And technically, that requirement is set by the county commission. The sheriff and I both have been in office 20 years or more. We know our commissioners. We know them pretty well. We got permission from them -- oh, I can't tell you how many years ago -- to appoint as necessary. We do not have to take a certain number for each election and go have a vote at the county commission. They give us the discretion to staff as we need to.

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Q. But the number of polling locations is the same; is that right?

A. Yes, ma'am. That is fixed and cannot be changed without their approval.

Q. And I believe you just mentioned that you had some long-time poll workers who are choosing not to work the polls, and that's because of COVID-19; is that right?

A. Ms. Short, I'm not sure I can tell you their motivation. I've had one say, look, I'm just kind of -- I'm just getting too old. I need to step back. It's nice for us when they appreciate that. Sometimes we have to make that decision for them, and that's less pleasant. Some did say that they just are apprehensive in their age bracket or with their underlying health conditions to be working.

But to be honest, when we appointed for the runoff, we had more of them agree to come work than I expected to. I was frankly pleasantly surprised how many of these volunteers, basically, were willing to step up and say, yes, I'll work and to work the runoff in the face of the coronavirus. So I can't give enough shout outs to our poll workers and their dedication.

Q. Switching gathers a little bit here. You testified about the accessibility of your polling locations; is that right?

A. Yes, ma'am.

Q. And as probate judge, you oversee all the polling locations for the elections, correct?

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A. Yes, ma'am.

Q. And you are responsible for ensuring that each of your 22 polling locations meet the ADA architectural requirements; is that correct?

MR. DAVIS: Objection. I don't believe that's what Judge English testified to.

THE COURT: Judge English can correct, Ms. Short. Judge, if you disagree, please point out the agreement.

THE WITNESS: Judge, I don't believe I testified to anything about architectural standards. I did testify to our ADA compliance. I'm not an architect. We don't have a county architect. I personally go to each precinct. I look for things like that. I'm a lawyer, not an engineer, not an architect. So if -- I heard earlier a question about the degree of slope on a ramp or something.

Ma'am, I wouldn't have a clue about that. But I will tell you that I see our voters using those ramps with wheelchairs or whatnot.

Q. (BY MS. SHORT:) Sure. So you wouldn't agree that you're responsible for ensuring that the polling locations meet ADA architectural requirements?

A. Ma'am, I don't know where the requirement says architectural. So I can't attest to that one way or the other. I am responsible for making sure that our polling places are ADA accessible, yes, ma'am. But in terms of architectural standards, I

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don't even know where they are or what they are.

Q. Okay. But you are -- well, sorry. Judge English, you gave a deposition in this case?

A. Yes, ma'am.

Q. A few weeks back, correct? And you were under oath during that deposition, correct?

A. Correct.

Q. And you testified truthfully?

A. Correct.

MS. SHORT: Eric, could we pull up Judge English's deposition. If we could go, please to -- I believe it's page 110. Sorry. Can we go back to the first page. Maybe zoom it in a little bit.

Q. I'm not sure, Judge English, how your screen appears. It's a little small for me. But do you see, Judge English, that this is your deposition?

A. Yes, ma'am.

Q. The transcript of your deposition. Okay. And that was taken on the 17th day of August this year?

A. Yes, ma'am.

Q. Okay.

MS. SHORT: Eric, if we could turn to page 110, please. And on line -- I believe it's 7.

Q. And, Judge English, if you could just read the question for me?

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A. "Who is responsible for ensuring that each of these 22 polling locations -- I'm sorry. 22 locations meet the ADA architectural requirements for compliance? The answer is, 'I am.'"

Q. Okay. And, Judge English, have you personally assessed whether each of the 22 locations meet the ADA architectural requirements?

A. Yes and no. I personally assessed every location. No, I have not reviewed any architectural requirements.

Q. Okay.

MS. SHORT: Eric, sorry to make you do this again. But if you could pull that back up, same page. Page 110. It's going to be the next line. I should have just had them both up at the same time.

A. Yes, ma'am.

Q. Would you mind reading that for me, sir?

A. "Have you personally assessed whether each and every one of your 22 locations meet the ADA architectural requirements? Yes, sir." Ms. Short, if you would like, I can explain why those sound different.

Q. Let me just ask my next question, sir.

A. Yes, ma'am.

Q. Do you feel that every polling place is ADA accessible?

A. Yes, ma'am.

Q. But you don't know the specific requirements to ensure that

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a site is architecturally accessible under the ADA, correct?

A. That's correct.

Q. For example, you don't know the maximum slope of a ramp, what that's supposed to be, correct?

A. That's correct.

Q. And you don't know what the maximum width of a door is supposed to be under ADA; is that correct?

A. I do believe that's 36 inches. But I have that knowledge from county courthouse construction more so than I have from polling place requirements.

Q. Well, okay.

MS. SHORT: Eric, could we pull up the deposition again, page 112. I believe it's line 11.

Q. And would you mind reading that for me, Judge ?

A. "Do you know what the minimum width of a door may be? No, sir, like I said, I do not know the architectural requirements."

Q. Thank you, sir.

A. That answer was in response to the question about the polling places. My knowledge of ADA and the door width would come from the recent renovations we've done in the county courthouse.

Q. Thank you, sir. And, Judge English, you testified -- you're aware that some voters with disabilities use the Automark machine in Lee County polling locations; is that right?

A. Yes, ma'am.

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Q. And a voter can bring someone in to assist them at the poll; is that right?

A. Yes, ma'am.

Q. And the person who can assist them could be a poll worker if the voter so chooses; is that right?

A. Yes, ma'am.

Q. And the only person who can not be chosen as an assistant would be an employee or a union representative; is that correct?

A. Employer.

Q. Employer. Excuse me.

A. Yes, ma'am. Or a union representative, correct.

Q. But other than that, there are no other limitations on the assistance a voter can receive on Election Day; is that correct?

A. Not to my knowledge.

Q. And a poll worker can sign the pollbook for the voter if requested; is that correct?

A. Yes, ma'am.

Q. And a voter can request assistance filling out the ballot; is that right?

A. Yes, ma'am.

Q. And the voter can also request assistance feeding the ballot into the tabulation machine; is that correct?

A. Yes, ma'am.

Q. And you talked with Mr. Davis about curbside voting, correct?

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A. Earlier this afternoon?

Q. Yes.

A. Yes, ma'am.

Q. And would you agree there's no provision in Alabama law that expressly prohibits curbside voting?

A. Ma'am, I would disagree with that statement.

Q. Okay. What provision in the law expressly prohibits or mentions curbside voting?

A. The Alabama constitution that leaves that type authority in the state government not in the county government. The home rule discussion I had earlier.

Q. But would you agree that there's no Alabama law that expressly prohibits curbside voting?

A. Okay. I will agree if I can qualify that answer. There is no Alabama law that prohibits a leash law. But this county commission can't pass one.

Q. Thank you, sir.

A. The not a law expressly prohibits curbside voting. But this county commission can't adopt that.

Q. Just going back to my question about a voter requesting assistance. I asked a question about feeding -- asking someone to assist the voter feeding the ballot into the tabulation machine. Am I correct that the voter doesn't have to watch the poll worker feeding the ballot into the tabulation machine; is that correct?

A. Well, not completely in my perception, and that is if the

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assistant that the voter requests is a poll worker, our instructions to poll workers will include, you know, you keep that ballot in sight of the voter at all times.

Now, if the voter requests assistance from some person who has accompanied the voter to the precinct, then as far as we're concerned, that's between the voter and that assistant. But we will not take a voter's ballot outside of the sight of the voter while we're assisting them.

Q. And what if the voter has a visual disability or is blind?

A. And we have some blind voters. I have a lawyer that practices in my court that's blind. And she gets assistance every election. And I know she can't see the ballot. But we don't leave her presence with her ballot. She accompanies us, whoever is helping her, to the voting machine.

Q. Thank you. And would you agree that Alabama law permits a voter to request that a poll worker sign the pollbook on their behalf?

A. Ma'am, my understanding is the voter can request assistance with any of the components of the act of voting. I don't know that there's a certain step that the voter cannot request assistance with.

Q. Thank you. And I appreciate your patience with me asking all these incremental questions. So -- sorry. Just to ask it again. So would you then agree that Alabama law permits a voter to request that a poll worker sign the pollbook on their behalf?

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A. Yes, ma'am.
Q. Okay. And if curbside voting occurred, let's say it occurred, a voter could provide their current photo ID and ask the poll worker to sign the pollbook on their behalf then, correct?
A. Yes, ma'am.
Q. And you would agree that Lee County voters would like the curbside voting option because it reduces their exposure to COVID-19; is that right?
A. I would tell you as much for that reason as for the convenience. I'm sure a lot of voters would love the convenience even if we didn't have a virus.
Q. And you testified about some of the measures that y'all are taking relating to safety inside the polling place; is that right?
A. Yes, ma'am.
Q. And you would agree that voters are not required to wear masks in the polling place, correct?
A. Yes, ma'am, that's the guidance we received from the Attorney General.
Q. And voters are not required to wear masks while waiting in line, correct?
A. Yes, ma'am.
Q. And you can't turn voters away if they're sick or exhibiting symptoms of COVID-19, correct?
A. That's correct.
Q. And you can't turn away any sick voters who refuse to wear

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masks, correct?
A. That's correct.
MS. SHORT: Just one moment, Your Honor.
THE COURT: I can give you the same five-minute courtesy if you want it.
MS. SHORT: I think I am finished, Your Honor. Thank you so much, Judge English.
THE WITNESS: Thank you.
THE COURT: Mr. Davis, any redirect?
MR. DAVIS: Yes, Your Honor.
Q. Judge English, what is your basis for believing that more people than usual will vote absentee this year?
THE COURT: Judge, before you answer that question, let me just chime in. I have not passed you to the other Defendants in this case because I assumed, Mr. Davis, any additional questions that others may have had were relayed to you during that break in your direct. But obviously, if there are other lawyers for the other defendants who need to question or want to question Judge English, you are free to do so. I don't want to prevent anyone that opportunity.
Mr. Dyar, any questions?
MR. DYAR: No questions, Your Honor.
THE COURT: Thank you. Ms. Holifield?
MS. HOLIFIELD: No questions.
THE COURT: Thank you. Mr. Webb, he's your client.

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MR. WEBB: Yes, Your Honor. No questions.
THE COURT: Thank you. All right. Sorry about that.
Judge, the question was, what is your basis for believing that more people than usual will vote absentee this year.
THE WITNESS: The turnout in the July runoff and the volume of absentees that I have witnessed outside my office -- my office hallway wall is all glass. And I have seen 8, 10, 12 people in line waiting to get into the absentee office. The wait time here in mid September can be up to 45 minutes. That's the longest I've seen. But that's normally the kind of statistic we see in mid to late October. Given the early interest, I asked our absentee manager how many have they processed. He told me that they have had about a little over 400 come in and vote in person already. We've had 600 mailed, and there are approximately 2,000 applications that have come in that are still in the mail trays that they're processing each and every day. Those numbers are close to the maximum number of absentees we've ever had in a Presidential general election, and we're still over a month out. That's why I feel that the absentee turnout is going to be much larger.
Q. (BY MR. DAVIS:) And the people that you have seen outside your glass walls, I take it you can see the entrance into the absentee election manager's office from your office?
A. Yes, ma'am. I can not see in his office. But I can see the hallway to it.

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Q. So if somebody is waiting to get in to vote absentee in the absentee election manager's office, you can see the line forming outside the door?
A. In the hallway, yes, sir.
Q. And the line seems larger for September to you than it usually does in a Presidential year?
A. Especially because of where we are in the calendar, mid September.
Q. Judge, when you were asked about architectural standards and the ADA, it sounded for a minute like there was something you wanted to explain about your deposition responses. If you remember what that is, I'd like to give you the opportunity to do that.
A. Mr. Davis, when Ms. Short showed me that from the deposition, what registered with me at the time of the deposition was ADA requirements. I did not specifically pick up on the word architectural. When she asked the question of me in person today, the word architectural stood out. And I don't have independent knowledge of specific architectural requirements. I have general knowledge of ADA requirements but no specific architectural knowledge. That was the distinction. Thank you.
Q. Certainly. And did you testify earlier that it's the county commission that decide where polling places are going to be?
A. Yes, sir.
Q. Now, let's say you got information that one of your 20

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something polling places, that there's a problem with accessibility?

A. Yes, sir.

Q. Could you then go out and move that polling place from one building to another by yourself?

A. No, sir. I would attempt to go remedy the complaint item if possible without moving the location. That would be first and foremost what we would attempt to do. And I generally can do that without going before the commission. If the polling place has to be moved, I have to place that on an agenda and have an affirmative vote. And in years past, I have proposed a precinct move, and they have declined. And this year, I proposed two moves, and they agreed. So it's their decision, not mine.

Q. I see. And what if you need money to build a ramp? Where would that money come from?

A. Mr. Davis, we actually built a couple of wooden ramps, one on someone else's property, and we leave it there.

Q. Okay.

A. They allow us to use their property on Election Day, and we have the ramp that we need. They get to use it the other 364 days, 362. Other properties are ones that we own. We have built ramps there as well. Generally, the cost of a ramp is not high enough to have to go before the commission for a budget adjustment. We normally can handle that in our operating budget and do. So I have never asked specifically of the

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commission for approval to build a ramp. That's the kind of thing we handle administratively.

Q. Got you. Now, how many polling places did you say you have in Lee County?

A. 22.

Q. 22. And one of those is the absentee?

A. No, sir. It's number 23.

Q. Okay. Got you. Okay. So I have asked some what-if questions. What if you heard something was not compliant. What if this happened. What would you do. Have you, in fact, heard or gotten any reports of any voter whatsoever having a problem with accessibility at any of the 22 precincts in use in Lee County?

A. Mr. Davis, years ago --

Q. Okay.

A. -- we had some. I have not had one in at least five or six years.

Q. Not that this hasn't been remedied then?

A. No, sir.

Q. You were asked about the fact that we're not denying someone the right to vote if they wear a mask?

A. If they refuse to wear a mask?

Q. Of course. You're right.

A. Okay.

Q. Judge, I misspoke. If they refuse to wear a mask.

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A. Okay.

Q. Sure. Would you have any concerns if somebody asked the poll workers you appoint to enforce the state health orders?

A. I explained to the poll workers for the July runoff that we are not the mask police. We are the mask encouragers.

Q. Okay.

A. We provided ample masks for all of them plus them to offer to voters. They all -- the reports that I got were most voters came with a mask. Some voters that came without a mask accepted one. And very few refused a mask. But I explained to them that we cannot turn that voter away. But we would like to do two things, and that is isolate an unmasked voter from the other voters if possible, and isolate them from the workers as much as possible.

MR. DAVIS: Judge English, thank you very much. Those are all the questions I have.

THE WITNESS: Yes, sir.

THE COURT: Any recross, Ms. Short?

MS. SHORT: Yes, Your Honor. Just briefly.

THE COURT: Okay.

Q. Judge English, you were just talking with Mr. Davis about accessibility of polling locations. And you testified that you're generally familiar with ADA requirements but not the specific architectural requirements, correct?

A. Yes, ma'am.

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Q. When you're going around and assessing what needs fixing with these polling locations with regard to accessibility, how do you know what to fix if you're not familiar with the architectural requirements with respect to ADA accessibility?

A. Ms. Short, I can eyeball and have an impression whether it's close or not. The slope of a ramp, for instance, I can look at a ramp and go, that's too steep -- and I've seen one that was too steep. I have looked at another one and seen -- I -- because I go to every precinct every day, I see all of these things in use by voters three times every other year at a minimum.

I've seen wheelchair patients, voters on ramps. I can see when they're struggling or when it's fairly simple for someone to push them or for them to push themselves. I can look at a door and say, you know, a wheelchair wouldn't fit there. Or I can look at a door and go, yes, that's the plenty wide. I'm looking at the door of the restroom in my office right now, and it's plenty wide.

But I do not measure. I don't take a yardstick. I don't know the height or the width or the slope. But as those issues -- almost every school -- I know I did this year twice. I remind the workers to be on the lookout for any voters that are having any issues voting. And whether that's an accessibility issue or a process issue, I strongly encourage especially the chief inspectors, please bring that to our attention so we can do something about it. Because if anybody notices or if anybody says anything, we want to be proactive in addressing it before someone has a problem.

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The one I can recall Mr. Davis asked about things that we've changed. We had a precinct years ago, and the door was too small. And we heard about it, went out there and looked. It was too small, and we moved that precinct. And the commission agreed to move it because I explained to them that the door was not ADA accessible.

Q. Thank you, Judge.

A. So, I mean, we have tried to be proactive about addressing those issues.

Q. Thank you. And you would agree that as probate judge in Lee County, you can only speak to conditions or what's possible in Lee County; is that correct?

A. That's very correct.

MS. SHORT: Thank you. No further questions, Your Honor.

THE COURT: Mr. Davis?

MR. DAVIS: Nothing else, Judge.

THE COURT: Thank you. Judge English, have a good afternoon, sir. You are released.

THE WITNESS: Thank you, sir.

THE COURT: Take care.

(Witness excused.)

THE COURT: By my notes, the judge was your last witness for the day. And then in the morning, you're down to one witness subject to his or her availability, the person from Orange Beach.

MR. DAVIS: Correct. Judge, we hope to call one more

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witness. We'll see if it works for us.

THE COURT: Okay. Based on what you know so far, do the Plaintiffs -- and this is a question for the Plaintiffs -- intend to do or present a rebuttal case? Or is that still to be determined?

MS. SHORT: Yes, Your Honor. We plan one to two rebuttal witnesses at this time.

THE COURT: Okay. Just a reminder again, tomorrow is a day I will -- I think the moot court is at 1:00 our time. And so we will end the day at 12:30. But we'll start at 9:00, and hopefully we can get everything done.

MR. DAVIS: Your Honor.

THE COURT: Mr. Davis.

MR. DAVIS: I assume the Court's requirement for giving each side notification of their witnesses still continues through the rebuttal phase of the case.

THE COURT: It does.

MR. DAVIS: And one other question. I'd like to ask the Court mentioned at one point the possibility of asking for closing arguments. I know the State would be very interested and, in fact, thinks it's important that we have the opportunity to present some closing arguments if the Court is open to those sometime.

THE COURT: I am open. My -- I guess my general debate now is because I'm not available tomorrow afternoon, I wonder if it may be better -- from the Court's perspective, it may be because there's a limit. But I was wondering if it would be better

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to give you guys instead the option of filing by Monday or Tuesday the latest with input from you guys as to the deadline some post-trial briefing with the caveat that it's based on an unofficial daily transcript that I think most of you have been receiving.

But if I do that, then obviously I'm thinking 10, 15 pages max. Closing arguments can perhaps one can argue will give you more of an opportunity to dive into the issues. But you will have a chance to present some wrap-up arguments. I'm undecided as of now if it's going to be in person or on paper. Think about that. And let's talk about that tomorrow as well. Okay.

MR. DAVIS: Thank you.

MS. HOLIFIELD: Thank you, Your Honor.

THE COURT: Anything else from anyone? Judge, you're still with us. Yes, sir.

THE WITNESS: Judge, may I ask one question?

THE COURT: Of course.

THE WITNESS: I have been trying to participate in this trial as much as possible.

THE COURT: Well, you are a defendant. I think you --

THE WITNESS: Lately the dial-in access has been very problematic. Would you have an objection if I participated via Zoom tomorrow with mute on?

THE COURT: Absolutely. You can. You can participate. You are still before the Court in the sense that although I think you

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guys have resolved this case, I've still been asked to retain jurisdiction to enforce the settlement. So in that respect, you're still an interested party. So by all means, Judge, you may still participate tomorrow if you are so inclined.

THE WITNESS: Thank you. Y'all allowed me in early for Ms. Barnett's testimony, and I appreciate it. I'll do the same tomorrow, and I'll stay muted.

THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: Thanks everyone. You guys have accomplished a lot. You guys collectively that is. In a very, very short time frame both for discovery but then also for the trial as well. Including the snags with the hurricane yesterday. From my perspective, I appreciate all of you and all that you've done to get this case ready. And it looks like we will be wrapping things up with one more witness from the Defendants and maybe two more from the Plaintiffs tomorrow.

Have a good evening, everyone. I will see you all at 9:00 a.m. in the morning. I will log on a few minutes earlier that than that to take up any issues before we begin the presentation of the evidence phase. Thank you, all.

MR. DAVIS: Thank you. Good night, Judge.

TAB J

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2020, I filed the foregoing Certificate of Interested Persons using the Court's CM/ECF system, which will serve all counsel of record.

/s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Counsel for Secretary of State John Merrill and the State of Alabama