

STATEMENT OF UNDISPUTED MATERIAL FACTS

Section 177 of the Alabama State Constitution disenfranchises those “convicted of a felony involving moral turpitude . . . until restoration of civil and political rights.” Ala. Const. VIII, § 177(b). Until 2017, there was “no comprehensive list of felonies that involve moral turpitude which disqualify a person from exercising his or her right to vote,” and “[n]either individuals with felony convictions nor election officials ha[d] a comprehensive, authoritative source for determining if a felony conviction involves moral turpitude and is therefore a disqualifying felony.” Ala. Stat. § 17-3-30.1(b)(1)(b). In 2017, the Alabama Legislature passed the Felony Voter Disqualification Act, which “provide[s] a comprehensive list of acts that constitute moral turpitude for the limited purpose of disqualifying a person from exercising his or her right to vote.” *Id.* § 17-3-30.1(b)(2)(c). The felonies listed in § 17-3-30.1 are “the only felonies for which a person, upon conviction, may be disqualified from voting.” *Id.* § 17-3-30.1(e).

Even after the passage of the Felony Voter Disqualification Act, Alabama’s Mail-In Voter Registration Form (the “State Form”) did not specify the voter eligibility requirements for people with felony convictions. Instead, the State Form stated that each voter must “[n]ot have been convicted of a disqualifying felony, or if [s/he has] been convicted, [s/he] must have had [his or her] civil rights restored.” Doc. 95-1 at 6. It then required each voter to sign under penalty of perjury the following statement: “I am not barred from voting by reason of a disqualifying felony conviction.” *Id.* On March 1, 2018, Plaintiff Greater Birmingham Ministries (“GBM”) filed a supplemental complaint alleging that the State Form violates the National Voter Registration Act (“NVRA”) because it fails to “specif[y] each eligibility requirement.” Doc. 93 at 21 (alteration in original) (quoting 52 U.S.C. § 20508(b)(2)(A)). Plaintiff GBM also alleged that the state-specific instructions on the National Mail Registration Form (“Federal Form”)—which instructed Alabama

voters that to register to vote “you must: . . . not have been convicted of a felony involving moral turpitude (or have had your civil and political rights restored)”—violated the NVRA. *Id.* at 5. Further, GBM alleged that the Secretary had failed to notify the Election Assistance Commission (EAC) of the changes in its voter eligibility requirements pursuant to 11 C.F.R. § 9428.6 after the passage of the Felony Voter Disqualification Act. *Id.* at 21. Plaintiff GBM uses the State Form to conduct its voter registration activities and specifically works to help people with felony convictions register to vote where they are eligible. Ex. 1 (Douglas Dep.) at 33:22-38:4; 73:8-12.

On April 11, 2018, Secretary Merrill sent the then-Executive Director of the EAC, Brian Newby, a letter informing the EAC of the Felony Voter Disqualification Act. Plaintiffs agreed that this action rendered their NVRA claim against Secretary Merrill moot with respect to the Federal Form. Doc. 108 at 1 n.1.¹ On July 25, 2018, staff from the EAC contacted Secretary Merrill’s office and asked it to “advise how the Felony Voter Disqualification Act will change [Alabama’s] existing instructions.” Ex. 2 (Packard Emails with EAC) at 7. In response, Ed Packard, who then served as Administrator of Elections, drafted at least three versions of proposed instructions to send the EAC. Ex. 3 (Packard Dep.) at 279:10-282:8. One version included the full list of moral turpitude felonies, including the statutory code sections; another included the full list of moral turpitude felonies, but without the statutory code sections; and the final version did not include the list of moral turpitude felonies but instructed voters they must “not have been convicted of a felony involving moral turpitude (or have had [their] civil and political rights restored)” and then referred voters to the Secretary of State’s website for the list of moral turpitude felonies. Ex. 4 (collected draft EAC instructions). Ed Packard sent only the latter draft—referencing the website in lieu of

¹ Plaintiffs did not admit that the Federal Form complied with the requirements of the NVRA to specify eligibility requirements but merely acknowledged that Secretary Merrill had fulfilled his role and was no longer the proper Defendant for such a claim with respect to the Federal Form.

the list of disqualifying felony convictions—to the Election Assistance Commission, because “it was the decision of the team that it was more concise and pointed people to the right information rather than being a lengthy exposé on all the crimes.” Ex. 3 (Packard Dep.) at 282:11-14. The Federal Form now contains the precise language recommended by the Secretary of State’s office:

9. Signature. To register in Alabama you must: • be a citizen of the United States • be a resident of Alabama and your county at the time of registration • be 18 years old before any election • not have been convicted of a felony involving moral turpitude (or have had your civil and political rights restored). The list of moral turpitude felonies is available on the Secretary of State web site at: sos.alabama.gov/mtfelonies	• not currently be declared mentally incompetent through a competency hearing • swear or affirm to “support and defend the Constitution of the U.S. and the State of Alabama and further disavow any belief or affiliation with any group which advocates the overthrow of the governments of the U.S. or the State of Alabama by unlawful means and that the information contained herein is true, so help me God”

Ex. 5 (Federal Form) at 1.

Around the same time, the Secretary’s office began to consider revisions to the State Form. Ex. 3 (Packard Dep.) at 285:13-23. As of September 2018, the Secretary’s office was considering a draft State Form that retained all of the same language but added a box stating the following: “The Code of Alabama designates a number of felony convictions that cause a voter to be considered ineligible to vote unless they have met certain parameters outlined in information provided by the Alabama State Department of Corrections. For a full list of these crimes, please visit alabamavotes.gov/felony or text MT to ALVOTE (2586837).” Ex. 6 (draft state form) at 1. The text message option contemplated in that draft was never implemented. In March 2019, the Secretary of State gave notice of proposed changes to the State Form, which were approved on June 27, 2019. *See* Doc. 161 at ¶ 1; Doc. 171-1 at ¶ 3. The only relevant change on the new State Form is the inclusion of a reference to the Secretary of State’s website for a list of disqualifying

felonies in the voter declaration box. The relevant portions of the State Form now appear as follows:

To register to vote in the State of Alabama, you must:

- ▶ Be a citizen of the United States.
- ▶ Live in Alabama.
- ▶ Be at least 18 years of age on or before election day.
- ▶ Not have been convicted of a disqualifying felony, or if you have been convicted, you must have had your civil rights restored.
- ▶ Not have been declared "mentally incompetent" by a court.

Voter Declaration - Read and Sign Under Penalty of Perjury	
▶ I am a U.S. citizen	I solemnly swear or affirm to support and defend the constitution of the United States and the State of Alabama and further disavow any belief or affiliation with any group which advocates the overthrow of the governments of the United States or the State of Alabama by unlawful means and that the information contained herein is true, so help me God.
▶ I live in the State of Alabama	
▶ I will be at least 18 years of age on or before election day	
▶ I am not barred from voting by reason of a disqualifying felony conviction (The list of disqualifying felonies is available on the Secretary of State's web site at: sos.alabama.gov/mtfelonies)	
▶ I have not been judged "mentally incompetent" in a court of law	

Ex. 7 (2019 State Form) at 1. Nothing on the State Form specifies which felony convictions are disqualifying.

LEGAL STANDARD

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see* Fed. R. Civ. P. 56(c); *Strickland v. Norfolk S. Ry. Co.*, 692 F.3d 1151, 1154 (11th Cir. 2012).² Facts are only material when their

² “When evaluating cross-motions for summary judgment, the Court analyzes each individual motion on its own merits and thus views the facts on each motion in the light most favorable to the respective nonmovant.” *Adega v. State Farm Fire & Cas. Ins. Co.*, No. 07-20696-CIV, 2009 WL 3387689, at *3 (S.D. Fla. Oct. 16, 2009).

resolution will affect the outcome of the lawsuit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). As explained herein, there are no genuine disputes of material fact with respect to Plaintiff's NVRA claim and Plaintiff is entitled to summary judgment as a matter of law.

ARGUMENT

Plaintiff GBM's NVRA claim raises a straightforward question of statutory interpretation. Under the NVRA, Alabama's State Form must "include a statement that . . . specifies each eligibility requirement (including citizenship)." 52 U.S.C. § 20508(b)(2); *see also* 52 U.S.C. § 20505(a)(2) (stating that "a State may develop and use a mail voter registration form that meets all of the criteria . . . [of] 52 U.S.C. § 20508(b)"). As this Court has noted, "'[s]pecify' is defined in BLACK'S LAW DICTIONARY as 'to mention specifically; to state in full and explicit terms; to point out; to tell or state precisely or in detail; to particularize; or to distinguish by words one thing from another.'" Doc. 178 at 21 (quoting BLACK'S LAW DICTIONARY (6th ed. 1990)). But Alabama does not state in full and explicit terms its eligibility requirement related to felony convictions. Under Alabama law, only certain felony convictions are disqualifying. And while the State Form mentions the existence of "disqualifying felonies," it does not specify. Accordingly, because Defendant Merrill has violated and will continue to violate the NVRA, this Court should grant Plaintiff GBM summary judgment on Count 18.

I. Alabama's Vague Reference to "Disqualifying Felonies" Does Not Satisfy the Plain Meaning of the Statute.

"It is well established that, when the statutory language is plain, [federal courts] must enforce it according to its terms." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009); *see also Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000); Doc. 178 at 20. In other words, where the language of a statute "is 'unambiguous,' '[the] inquiry begins with the statutory text, and ends there as well.'" *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617,

631 (2018) (quoting *BedRoc Limited, LLC v. United States*, 541 U.S. 176, 183 (2004) (plurality opinion)). And “[i]n interpreting the language of a statute, [courts] generally give the words used their ordinary meaning.” *In re Griffith*, 206 F.3d 1389, 1393 (11th Cir. 2000) (quoting *Moskal v. United States*, 498 U.S. 103, 108 (1990)) (internal quotation marks omitted); *see also Bostock v. Clayton County, Ga.*, 140 S.Ct. 1731, 1738-39, 1754 (2020).

The NVRA provides that any state-issued mail-in voter registration form used to register voters for federal elections “*shall* include a statement that . . . specifies each eligibility requirement (including citizenship).” 52 U.S.C. § 20508(b)(2)(A) (emphasis added). The meaning of this command—to *specify* eligibility requirements—is plain and unambiguous. It requires a State to not merely reference the existence of eligibility requirements—*i.e.*, “disqualifying felonies”—but inform the reader of the *specific* eligibility requirements that apply. When Congress uses the word “specify,” it means “to name or state explicitly or in detail.” *Kucana v. Holder*, 558 U.S. 233, 243 n.10 (2010) (quoting WEBSTER’S NEW COLLEGIATE DICTIONARY 1116 (1974)); *see also* Doc. 178 at 21 (collecting similar definitions of “specify” such as “to mention or name in a specific or explicit manner,” and “to give a specific character or application to”).

The State Form does not “specify” the voter eligibility requirement related to felony convictions in Alabama. Indeed, Defendants’ position that the State Form satisfies the NVRA by obliquely referring to “disqualifying felon[ies]”—when in fact there are 46 *specific* disqualifying felonies and all other felonies are *not* disqualifying—is foreclosed by the plain meaning of the word “specify.” As the Supreme Court has explained, “marginally ambiguous” language does not suffice to “specify” something. *Kucana*, 558 U.S. at 243 n.10 (internal quotation omitted). And “disqualifying felonies” is not a “marginally ambiguous” phrase; it is wholly ambiguous. A reader could not even begin to guess which felonies are disqualifying based on the State Form. Indeed,

given the lack of additional specifications, a reader could reasonably interpret the word “disqualifying” to be *describing* felonies as disqualifying rather than *modifying* the term felonies to indicate that only a discrete set of felonies is disqualifying. This is not a marginal point: most felony convictions in Alabama are not disqualifying, *see* Ala. Code § 17-3-30.1(c), and most people with felony convictions in Alabama are not disqualified due to their criminal records, *see* Ex. 8 (Smith Report) at 22 & tbl.1 (concluding that less than forty percent of people with felony convictions have disqualifying convictions).

Although the State Form provides people notice that there *is* an eligibility requirement generally related to felony status, it does not *specify* what that eligibility requirement is. This stands in contrast to the Form’s specification of citizenship, residency, and age eligibility requirements. The Form specifies these requirements by providing that one must “[b]e a citizen of the United States,” “[l]ive in Alabama,” and “[b]e at least 18 years of age on or before election day.” Ex. 7 (2019 State Form) at 1. The Form would violate the NVRA if it instead provided that one must “not be disqualified by reason of country of citizenship,” “not be disqualified by reason of state of residency,” or “not be of a disqualifying age.” Like the current statement regarding disqualifying felonies, these statements would provide notice that citizenship, residency, and age eligibility requirements existed, but they would not specify what those requirements were. *See* Doc. 178 at 19 (“[T]he form does not merely state that there is a minimum age requirement, but instead specifies that to register to vote, a person must be at least 18 years of age on or before Election

Day.”).³ The NVRA requires that the actual eligibility requirements be specified,⁴ not merely that the *subject matter* of those requirements be listed.

II. The NVRA’s Structure, Purpose, and Legislative History Support Its Plain Meaning.

The plain meaning of 52 U.S.C. § 20508(b)(2)(A) is reinforced by the structure, purpose, and legislative history of the statute. The mandate that States provide accurate and specific information to prospective voters about voter eligibility requirements runs throughout the NVRA. This fundamental prerequisite to a functional voter registration system is included in every provision related to the various avenues of registration established by the Act as well as in the general provision governing the responsibilities of states under the Act.

Like mail registrations, which are governed by 52 U.S.C. § 20508(b)(2)(A), voter registration applications completed through a State’s motor vehicle agency must “include a statement that . . . states each eligibility requirement.” 52 U.S.C. § 20504(c)(2)(C). And, again,

³ Notably, before the State realized that the NVRA actually does use the term “specify,” it suggested that the term’s alleged absence was meaningful because if “Congress intended the forms to ‘specify’ eligibility requirements, Congress would have used a word like ‘describe,’ ‘explain,’ ‘detail,’ or ‘specify.’” Doc. 95 at 21. In other words, the State’s own definition of specify “supports the Plaintiffs’ interpretation that specify means more than what the State has included on its form.” Doc. 178 at 21.

⁴ Despite Defendants’ assertion to the contrary, this would not require the State to list every out-of-state or federal conviction that falls under the Felony Voter Disqualification Act’s catchall provision. Alabama’s voter eligibility requirements include a set of Alabama convictions that are disqualifying and a catchall provision to encompass convictions in other jurisdictions “which, if committed in [Alabama] would constitute” one of the specified convictions. Ala. Code. § 17-3-30.1(c)(48). That “aspect of the eligibility requirement [could] be placed on the form,” Doc. 178 at 24, by including all of the named disqualifying convictions and this catchall provision as well. By doing so, the Form would “specify” the eligibility requirements outlined in Alabama law even if it did not “interpret” the requirement as applied to various factual scenarios. Voters would have all the information in the law available to assess their eligibility. In any event, Defendants’ argument proves too much. If the catchall provision is not specific enough to advise voters of the eligibility requirements and allow them to assess their eligibility, it raises much more serious constitutional concerns.

with respect to voter registration at designated agencies, the forms used must “specif[y] each eligibility requirement (including citizenship.)” *Id.* § 20506(a)(6)(A)(i)(I); *see also id.* § 20506(a)(6)(A)(ii) (allowing use of an agency-created form so long as it meets the requirements of § 20508(b)). Finally, the NVRA restates in § 20507 the general requirement that States “inform” applicants that apply through the various means of registration of the “voter eligibility requirements.” *Id.* § 20507(a)(5).

The reason for these exhaustive provisions is obvious on its face. In order to create a functional voter registration system that “promote[s] the exercise of [the fundamental] right [to vote],” *id.* § 20501(a)(2), potential voters need to be able to easily assess their eligibility when using the various avenues for registration provided by the NVRA. Providing ample access to voter registration—the primary goal of the NVRA’s provisions—is relatively useless if voters using those avenues are not able to determine whether they are eligible to register.

The legislative history of the Act confirms the importance of these requirements to the overall scheme of facilitating several avenues of registration through mail-in forms and various public service agencies. In both the House and Senate reports for the NVRA, Congress noted the importance that every applicant “be advised of the voting requirements and the need to decline to register if he or she does not meet the requirements,” and explained that “[t]he bill provides that all registration requirements should be set forth in the application to register to vote so that they will be readily available for each applicant to review during the application process.” S. Rep. No. 103-6, at 24 (1993); H.R. Rep. No. 103-9, at 7-8 (1993) (similar).⁵ The reports also noted the

⁵ As both this legislative history and the provisions regarding registration at agencies indicate, merely including a link to the State’s website does not satisfy the NVRA’s standard. After all, someone seeking to register to vote while at a motor vehicle agency or other government agency may have no access to the Internet at the time, defeating the purpose of allowing registration in those locations. In any event, the NVRA was passed in 1993, before the Internet existed; it clearly

importance of the voter eligibility specifications to maintaining accurate lists of only eligible voters and preventing fraud. S. Rep. No. 103-6, at 11 (“Under the provisions of this bill, every application for voter registration must include a statement that sets forth all the requirements for eligibility, including citizenship, and requires that the applicant sign an attestation clause, under penalty of perjury, that the applicant meets those requirements.”); H.R. Rep. No. 103-9, at 8 (similar).

Finally, and importantly in this case, both reports note that the requirement of specific eligibility requirements on all registration forms allows the potential voter to determine privately their eligibility from the face of the application without disclosing personal private information, such as past criminal convictions. H.R. Rep. No. 103-9, at 7-8 (“Since some of the reasons for declining to register to vote may involve matters of personal privacy, such as ineligibility under State law due to mental incompetence or a criminal conviction, an individual who declines to register to vote shall not be questioned as to the reasons for such action.”); S. Rep. No. 103-6, at 24 (same).

Congress included the numerous provisions requiring states to specify eligibility requirements on all registration forms to ease voting access by allowing voters to assess their eligibility at the point of potential registration—whether it be at a voter registration drive, a motor vehicles department, or another public interest agency. But, simply put, the State Form does not allow people with past convictions to do that. The language on the State Form does not provide the key information necessary for a prospective voter with a past felony conviction to assess his or her eligibility at the point of registration. Defendants do not argue otherwise.

did not contemplate that states could specify eligibility requirements by pointing potential voters to a website instead of specifying the requirements on the registration forms themselves.

Congress indicated that another purpose of these provisions was to ensure that only eligible voters register to vote. By failing to provide enough information for voters to assess their eligibility, the Form also undermines this goal. The legislative history also indicates that Congress was sensitive to the privacy concerns associated with past convictions, and by requiring written qualifications, sought to avoid potential voters having to disclose that information to determine eligibility. On this count, too, the Form also fails.

These provisions also serve another function. They ensure that agencies that do not focus on elections can fulfill their own voter registration duties under the NVRA. The NVRA strictly and unambiguously requires that agencies conducting voter registration provide “the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms.” 52 U.S.C. § 20506(a)(6)(C); *see also United States v. Louisiana*, 196 F. Supp. 3d 612, 673 (M.D. La. 2016) (“[I]n light of the NVRA’s plainness, this Court reads Section 7 to prescribe strict compliance with its commands, finding no support for any other standard in the NVRA’s plain and unambiguous language.”), *vacated because of settlement*, No. 11-CV-470, 2017 WL 4118969 (M.D. La. Aug. 21, 2017).

As the statements of representatives of several such agencies make clear, however, the Alabama Secretary of State has provided no guidance to agencies on how to assess whether a prospective voter is disqualified due to felony conviction. *See* Ex. 9 (Deposition of Chief Deena Pregno, Alabama Law Enforcement Agency) at 41:9-11 (“We did not receive any information from the Secretary of State’s Office.”); *see also* Ex. 10 (Medicaid Resp. to Subpoena) at 2 (finding that the agency had “no responsive documents” regarding what crimes are disqualifying for voter registration). As a result, agencies do not assist potential voters with past convictions in assessing their eligibility. Ex. 9 at 27:9-11 (“We tell them we don’t have that information [about voter

eligibility], they need to contact the voter registration office.”). This does not meet the NVRA standard of providing “the same degree of assistance . . . as is provided by the office with regard to the completion of its own forms.” 52 U.S.C. § 20506(a)(6)(C). If the Form itself provided adequate eligibility information, this shortcoming in NVRA compliance would be largely resolved.

Finally, the current instructions on the State Form undermine the overall goals of the NVRA:

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- (3) to protect the integrity of the electoral process; and
- (4) to ensure that accurate and current voter registration rolls are maintained.

52 U.S.C. § 20501(b). By providing ambiguous and incomplete information about eligibility requirements, the instructions will both dissuade eligible voters from registering and undermine the effectiveness of the perjury attestation as a means to ensure that ineligible individuals are not registered.

CONCLUSION

Plaintiff’s NVRA claim raises a straightforward question of statutory interpretation. There are no disputed facts material to that question. The NVRA’s requirement is plain and unambiguous. Alabama must specify its voter eligibility requirements on its voter registration form, and its oblique reference to “disqualifying felonies” does not do so. This Court should grant Plaintiff GBM summary judgment on Count 18.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 2, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record as listed below.

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EXHIBIT 1

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

TREVA THOMPSON, et al.,

Plaintiffs,

CIVIL ACTION

VS.

FILE NO. 2:16-cv-783-WKW-CSC

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

Defendants.

* * * * *

COPY

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DEPOSITION OF **SCOTT DOUGLAS**, taken on
behalf of the Defendants, pursuant to the
stipulations set forth herein, before Jeana S.
Boggs, Certified Court Reporter and Notary Public,
at the offices of Boggs Reporting & Video, 2160
Highland Avenue South, Birmingham, Alabama,
commencing at approximately 10:30 a.m., Tuesday, May
8th, 2018.

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* * *

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1 * * *

2 STIPULATIONS

3 It is hereby stipulated and agreed by and
4 between counsel for the respective parties and the
5 witness that the deposition of SCOTT DOUGLAS is
6 taken pursuant to notice and stipulation on behalf
7 of the Defendants; that all formalities with respect
8 to procedural requirements are waived; that said
9 deposition may be taken before Jeana S. Boggs,
10 Certified Professional Reporter and Notary Public in
11 and for the State of Alabama At Large, without the
12 formality of a commission; that objections to
13 questions, other than objections as to the form of
14 the questions, need not be made at this time, but
15 may be reserved for a ruling at such time as the
16 deposition may be offered in evidence or used for
17 any other purpose as provided for by the Federal
18 Rules of Civil Procedure.

19 It is further stipulated and agreed by and
20 between counsel representing the parties in this
21 case that the filing of the deposition of SCOTT
22 DOUGLAS is hereby waived and that said deposition
23 may be introduced at the trial of this case or used

1 in any other manner by either party hereto provided
2 for by the Statute, regardless of the waiving of the
3 filing of same.

4 It is further stipulated and agreed by and
5 between the parties hereto and the witness that the
6 signature of the witness to this deposition is
7 hereby not waived.

1 **SCOTT DOUGLAS,**
2 of lawful age, having been first duly sworn, was
3 examined and testified as follows:
4

5 DIRECT EXAMINATION

6 Q Good morning, Mr. Douglas.

7 A Good morning.

8 Q My name is Misty S. Fairbanks Messick,
9 and I represent the State of Alabama and
10 some State officials in a lawsuit that
11 has been filed challenging Alabama's laws
12 and procedures respecting felon
13 disenfranchisement. This deposition is
14 an opportunity for us to get your
15 testimony in this matter.

16 You know there is a Court
17 Reporter here. She will be creating a
18 transcript of everything that is said.
19 For that reason, it's important that we
20 answer questions yes or no, rather than
21 shaking heads or saying things like
22 uh-huh (positive response) and uh-uh
23 (negative response), because it's not

1 clear on the transcript later. We also
2 need to be careful not to talk over each
3 other, because that makes it really hard
4 to read the transcript later. Is that
5 okay?

6 A Works fine.

7 Q If you don't understand a question,
8 please let me know. I am happy to
9 rephrase it. I want to be sure that
10 you're answering the question I am
11 asking, and that we stay on the same
12 page.

13 A I understand.

14 Q Sometimes a witness will give an answer
15 and then later in the day before the
16 deposition is over realize that the
17 answer was not complete or that it was
18 wrong in some way. If that happens, you
19 can let me know or let your counsel know,
20 and we will give you a chance to correct
21 it on the record.

22 A Thank you.

23 Q We will occasionally take breaks. If you

1 need a break and I haven't called for
2 one, feel free to ask. The only rule is,
3 I don't want you to take a break while
4 there is a question on the table. So, we
5 will answer the question, and then we
6 will take the break.

7 Is there any reason you cannot
8 provide complete and truthful testimony
9 here today?

10 A No.

11 Q Do you have any questions before we get
12 started?

13 A How long will we go?

14 Q I think we will probably be here until
15 about four or five, with a lunch break?

16 A Oh, wow.

17 Q I am hoping that we won't be here later
18 than that.

19 A Okay. Good.

20 Q Would you please state your name for the
21 record.

22 A My name is Scott Douglas, the Third.

23 Q And how are you employed?

1 A I am executive director of Greater
2 Birmingham Ministries.

3 Q And are you familiar with the lawsuit
4 concerning felon voting?

5 A Yes, I am.

6 Q I am going to show you what I am marking
7 as Defendant's Exhibit One.

8 (AT WHICH TIME, THE REFERRED-
9 TO DOCUMENT WAS MARKED AS
10 Defendant's Exhibit No. 1 for
11 identification).

12 Q I would ask you to take a look at that
13 document and tell me if you recognize it.

14 MS. LANG: Thank you.

15 Q Have you seen this document before?

16 A Yes.

17 Q What do you understand it to be?

18 A I understand it to be a request for
19 information about Greater Birmingham
20 Ministries and its role in seeking to
21 redress the problems affecting former
22 felons voting.

23 Q Do you understand that you are testifying

1 here today as a representative of Greater
2 Birmingham Ministries?

3 A Yes.

4 Q And do you understand that your answers
5 will legally bind Greater Birmingham
6 Ministries?

7 A Yes.

8 Q Have you had the opportunity to review
9 the topics in this amended notice before
10 today?

11 A Yes.

12 Q Did you, in fact, review the topics
13 before today?

14 A What do you mean "review the topics"?

15 Q Have you reviewed the topics that are
16 listed in that document?

17 A Oh, yes. Yes.

18 Q And are you prepared to testify on those
19 topics today?

20 A Yes.

21 Q What did you do to prepare?

22 A When we received this request, we did a
23 search to find the documents that

1 complied with your request to respond to
2 the questions and request for documents.

3 Q Okay. Now, there was a separate -- There
4 is a separate document that I sent your
5 counsel asking for documents. Do you
6 understand -- Do you think that this
7 Exhibit One is asking for documents or
8 asking for testimony today?

9 A Oh, this is asking for testimony today.

10 Q And you said you were prepared to testify
11 on these topics. So, what -- how did you
12 prepare for this deposition here today?

13 A Can I ask you to clarify the question?
14 The corporate structure with the
15 document -- the income annual budget is a
16 document. So, that's why I said
17 "documents." Yes.

18 Q Okay. So, you looked at some documents
19 that are responsive to these topics?

20 A Yes.

21 Q Is there anything else that you did to
22 prepare?

23 A Oh, I had conversations with our staff

1 who were engaged in voter registration
2 for the last several years about their
3 encounters with the affected groups and
4 voters, or people trying to vote.

5 Q And who did you talk to GBM?

6 A Primarily, Tari Williams.

7 Q How do you spell that first name?

8 A T-A-R-I.

9 Q And what is her title or role?

10 A She is the organizing director at Greater
11 Birmingham Ministries.

12 Q Was there anyone else you spoke with at
13 GBM?

14 A No.

15 Q Did you bring any documents with you here
16 today?

17 A No, I did not.

18 Q I don't want you to tell me what you
19 talked about, but did you also meet with
20 counsel in preparing for this deposition
21 today?

22 A Yes, I did.

23 Q And when was that?

1 A Yesterday.

2 Q Were there any documents that you
3 reviewed in getting ready to testify here
4 today that you haven't given to your
5 counsel to give to us?

6 A No.

7 Q I am marking a document as Exhibit Two.

8 (At which time, the referred-
9 to document was marked as
10 Defendant's Exhibit No. 2 for
11 identification).

12 Q And ask you to take a look and tell me
13 what this is.

14 A This is an organizational chart with
15 Greater Birmingham Ministries.

16 Q Is it current?

17 A Yes, it's current.

18 Q There is a row here that's got eight
19 boxes on it just below the GBM board of
20 directors governing, the row that starts
21 with Economic Justice Work Group.

22 A Yes.

23 Q Can you tell me what those eight boxes

1 represent?

2 A Sure. Those eight boxes represent our
3 key workgroups and administrative
4 committees.

5 Q Are those groups and committees of the
6 board of directors, or -- I am confused
7 because they are above executive
8 director. Are they within GBM, or are
9 they part of the Board?

10 A They are part of the Board. They are
11 part of the Board. That is why they are
12 above the executive director. I need to
13 make one correction.

14 Q Okay.

15 A I looked at this and said it was current.
16 There is no longer a constitutional
17 reform task force. That ended as of
18 2016.

19 Q You said that Tari Williams was the
20 organizing director?

21 A Yes.

22 Q Where would she fit on here?

23 A She would fit under systems change,

1 staff.

2 Q What does "systems change" mean?

3 A Part of our mission statement is GBM
4 exists to assuage the wounds of the poor
5 and work with the poor and non-poor to
6 change systems that affect the poor
7 unjustly. Systems: Housing is a system.
8 Healthcare is a system. Education is a
9 system. Transportation is a system.
10 Voting is a system.

11 Q Do you have a team of people dedicated to
12 each of those different systems?

13 A Yes, ma'am. Each of the different
14 systems?

15 Q Right.

16 A No, not all of them currently.

17 Q Do you have a team devoted to systems
18 change with respect to elections?

19 A Yes. That would come under the economic
20 justice workgroup.

21 Q Okay. Help me explain -- help me
22 understand how -- okay. Tell me about
23 the workgroups --

1 A Sure.

2 Q -- for the board of directors?

3 A Sure. There are essentially three
4 workgroups. GBM's motto is "Serve
5 People, Build Community, Pursue Justice."
6 Those three workgroups are serving people
7 with direct services. That is how we
8 work to provide emergency assistance of
9 families in crisis. For instance, your
10 rent, utilities, food pantry, clothes
11 closet, direct assistance to emergencies.

12 The second one is faith in
13 community workgroup. We are inter --
14 interfaith organization. We are
15 Christian, Jews and Muslims. And it
16 facilitates conversations and projects
17 between and among the different faith
18 communities for shared understanding and
19 appreciation of each other's faiths.

20 The last one is systems change
21 workgroup, which is -- actually, it makes
22 a few interchangeable economic justice
23 workgroup, which is about identifying

1 systems that affect the poor unjustly in
2 terms of policies, procedures, laws.

3 Q And the workgroups and the committees
4 that are in that row of eight boxes,
5 seven if you drop constitutional reform
6 task force, those are workgroups or
7 committees of the Board?

8 A Of the Board, correct.

9 Q And then how do they interact with the --
10 How does the systems change workgroup
11 interact with the systems change staff?

12 A The systems change -- We have a working
13 board, and those board members who opt to
14 volunteer to work alone in that area of
15 GBM's work, provide both volunteer
16 support and advisory support to the
17 staff.

18 Q Are you able to tell me how many people
19 GBM has working on elections issues,
20 whether they be staff members or Board
21 members or volunteers or interims?

22 A Yes. We have 49 Board members, most of
23 whom work on -- you said election -- at

1 least voter registration issues.

2 Volunteer to do people's tables and that
3 such; all our staff do at different
4 seasons of the year.

5 For instance, in our direct
6 services, we ask people are they
7 registered to vote; and if they are not,
8 try to help them to obtain the voter
9 registration.

10 In terms of volunteers, that
11 really depends on what time of year it
12 is. If it's a period approaching an
13 election, that could be up in the 75 or
14 80.

15 Q What about interns?

16 A Interns are spotty. We don't have any
17 currently. We have had them in 2014, '15
18 and '16. I don't think we had any in '17
19 or '18.

20 Q I am showing you a document I have marked
21 as Defendant's Exhibit Three.

22 (At which time, the referred-
23 to document was marked as

Defendant's Exhibit No. 3 for
identification).

Q Can you tell me what this is, please?

A This is a year-to-date financial report
for the year 2013.

Q Was it completed at the end of the fiscal
year?

A Yeah. Our fiscal year is the calendar
year, and the current month is November.
So, that looks -- it looks to me as a
month short. Our fiscal year is January
through December.

Q Am I reading this right, that you had
nearly \$745,000 come in in fiscal year
2013, as of November 2013?

A That's correct.

Q The revenue category at the top, are any
of those items specific to election work,
or this?

A All of our election work is tied to "Get
Out The Vote". In the -- and those funds
are paid for through our foundations.

Q Okay. So, under "Revenue," there is a

1 line called "Foundations"?

2 A Yes.

3 Q And that is the money that is available
4 for elections work?

5 A Yes. That's monies available primarily
6 for systems change work, period. Yeah.

7 Q So, that -- Is that the only place in
8 revenue where elections money comes in,
9 money that you can spend on election
10 work?

11 A Also the Branscomb Endowment at the top.

12 Q What is the Branscomb Endowment?

13 A Louise Branscomb was Alabama's first
14 female OBGYN, and she died in 1999. And
15 she left us an endowment that was
16 dedicated to systems change work.

17 Q Are there any other line items under
18 "Revenue" on Exhibit Three where that
19 money can be used for elections work?

20 A Individuals.

21 Q And is that just donations coming in from
22 individual citizens?

23 A Correct.

1 Q Is there anywhere that I can look on
2 Exhibit Three to see how much of the
3 money that was available for system
4 change work was actually spent on
5 elections work?

6 A Not on this exhibit.

7 Q I am handing you a document that I have
8 marked as Exhibit Four.

9 (At which time, the referred-
10 to document was marked as
11 Defendant's Exhibit No. 4 for
12 identification).

13 Q Would you please take a look and tell me
14 what this is.

15 A This is an end-of-the-year 12-month,
16 year-to-date financial statement -- well,
17 comparison report for the month -- for
18 the year of 2014.

19 Q And is it true, again, that for revenue
20 the available sources would be the
21 Branscomb Endowment, the foundations, and
22 the individuals?

23 A Correct.

1 Q The first column says "Current Period."

2 A Yes.

3 Q Is that period December, 2014?

4 A Yes, it is.

5 Q So, if you look at the revenue line for
6 individuals -- am I reading this
7 correctly that you had nearly \$52,000
8 come in in December alone?

9 A Correct.

10 Q But about \$141,000 total for the year?

11 A That's correct.

12 Q In foundations, you had about \$500 come
13 in out of \$311,000 for the year?

14 A Correct.

15 Q Is there anywhere that I can look on this
16 document, Exhibit Four, and see how much
17 money was spent on elections work?

18 A No, not directly.

19 Q I am handing you a document that I have
20 marked as Defendant's Exhibit Five.

21 (At which time, the referred-
22 to document was marked as
23 Defendant's Exhibit No. 5 for

1 identification).

2 Q I would ask you to take a look and tell
3 me what this document is.

4 A This is the year-to-date report for the
5 year 2015.

6 Q Year-to-date as of when; do you know?

7 A December.

8 Q So, do you think this was final for 2015?

9 A Yes.

10 Q At the top, it appears that it's dated
11 February 17th.

12 A That could be the print -- not the print
13 date, but that's in the header. But
14 based on the amounts of the -- based on
15 the amounts represented, that's for a
16 full year.

17 Q While documents --

18 A You know, this may be my mistake in
19 submitting it. This is a budget, not a
20 year-to-date expenses, because there is
21 no year-to-date columns on it. Where
22 year-to-date actual versus budget, there
23 is no actual versus budget.

1 Q Okay. So, this is a budget. It doesn't
2 show what actually happens?

3 A Right.

4 Q It shows what your planning was?

5 A That's right. This is my error. It's
6 too many zeros for it.

7 Q That's a good point.

8 And is it true again, that the
9 Branscomb Endowment, the foundations and
10 the individuals are the money that you
11 would be available -- would be available
12 to use on elections work?

13 A Correct.

14 Q And is there anywhere on this sheet that
15 it tells me what you expected to spend on
16 elections work in 2015?

17 A Not directly.

18 Q I am handing you what I have marked as
19 Defendant's Exhibit Six.

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

1 Q Please take a look at it and tell me what
2 this document is.

3 A This is a budget for the year 2016.

4 Q And it's like the last one we looked at;
5 this is an anticipated?

6 A Correct.

7 Q And is it true, again, that the money
8 that would be available as the Branscomb
9 Endowment, the foundations and the
10 individuals?

11 A Correct.

12 Q And is there anywhere that I can look on
13 here and see what you anticipated
14 spending in 2016 on elections work?

15 A Not directly.

16 Q I am handing you what I have marked as
17 Defendant's Exhibit Seven.

18 (At which time, the referred-
19 to document was marked as
20 Defendant's Exhibit No. 7 by
21 the Reporter).

22 Q I will once again ask you to take a look
23 and tell me what it is.

1 A This is a budget for the year -- an
2 annual budget for the year 2017.

3 Q And is it, again, true that the revenue
4 that would be available for the elections
5 work is that revenue under Branscomb
6 Endowment, foundations, and individuals?

7 A Correct.

8 Q And is there anywhere on this budget
9 where I can see what you anticipated
10 spending on 2017 on elections work?

11 A Not directly.

12 Q Is there a document like this for 2018?

13 A Yes. There is a budget for 2018, yes.

14 Q There is a budget for 2018. And
15 that's -- currently exists in written
16 form?

17 A Correct.

18 Q And did you review that document before
19 you came to testify here today?

20 A Yes, I did.

21 Q Does that document say what money GBM is
22 planning to spend on election work in
23 2018?

1 A Correct. It does.

2 Q So, is your format different for 2018
3 than it is for the prior years?

4 A No. It's essentially the same.

5 Q What does the 2018 budget say about GBM's
6 spending for election work in 2018?

7 A The budget for -- This is our general
8 operating budget. And it would not
9 direct you from the general operating
10 budget on the resources we spend on
11 Get-Out-The-Vote work in 2018. It would
12 be primarily inside the foundations grant
13 agreements.

14 Q What do you mean "grant agreements"?

15 A When you apply to a foundation for a
16 grant, you tell them how you are going to
17 spend it. And it is not micro line item,
18 but it's civic engagements. Is the word
19 they use for nonpartisan Get-Out-The-Vote
20 activities.

21 Q Does GBM have grant agreements dating
22 back to 2013 for the grants that involve
23 election work?

1 A They are not every year. Definitely, I
2 know from '14 forward. And maybe before
3 2013, but not 2013.

4 Q Broadly speaking, what kind of elections
5 work does GBM engage in?

6 A Broadly speaking, we do work around,
7 particularly, voter registration, voter
8 registration among low income people,
9 particularly. And we do nonpartisan
10 Get-Out-The-Vote activities. We have
11 helped coordinate -- We don't provide
12 rides to the polls, but we let people
13 know what groups or what churches are
14 doing it. And we have worked to restore
15 voting for ex-felons.

16 Q Anything else?

17 A Oh, we help produce printed materials,
18 especially when the voting -- when the
19 voter ID law came into effect and what
20 the new form of ID were acceptable. We
21 produced -- and still do -- produce cards
22 with the proper form of ID the people
23 would need to register to vote.

1 Q As you sit here today, do you know how
2 much money Greater Birmingham Ministries
3 intends to spend on voter registration
4 activities in 2018?

5 A We don't have broken out in terms of
6 voter registration. That's primarily a
7 function of time -- staff time and
8 volunteer time. And so, I don't -- I
9 can't give you an accurate number. We
10 have civic engagement plans to phone
11 bank, produce printed materials. I know
12 the printed materials, we will do about
13 \$10,000, \$12,000. Volunteer time is
14 free.

15 Q Can you quantify what you spend on staff
16 in order to do elections work?

17 A I don't have a number, but the percent of
18 time that staff use for voter
19 registration, voter information and Get
20 Out The Vote varies, depends on their
21 assignments. From at peak times, up to
22 75 percent of the most involved one or
23 two people, to 40 percent, down to

1 20 percent for the least involved. I
2 won't say 20 percent -- 10 percent for
3 the least involved.

4 Q How many people does GBM have on staff
5 who are actually receiving salaries?

6 A We have eight full-time and two-part
7 time.

8 Q Do all of the full-time employees
9 sometimes work on election matters?

10 A I am trying to think who doesn't.

11 Q Okay.

12 A At the smallest level, even our
13 bookkeeper would reimburse people for gas
14 if it's done to Get-Out-The-Vote work, or
15 something like that. So, she touches it
16 even, that way. That would be the
17 smallest one.

18 I direct service -- I can't
19 think -- yeah, there are two people who
20 would not. That's -- those are the
21 part-time and full-time receptionists.

22 Q Do you have the ability to quantify how
23 much GBM has spent for the last five

1 years helping felons register to vote?

2 A Not immediately. It would be a research
3 project of staff, what their salary
4 were -- was at the time, and the times --
5 how many hours, you know. But we don't
6 have billable hours systems.

7 Q Is that a research project that you have
8 undertaken in the last couple of years?

9 A No.

10 Q Do you have a sense of how your spending
11 on helping felons, say, for the last year
12 compares to the years before that?

13 A I would say that '17 was more than '16
14 and '15. Yeah. That's right. And '16
15 is was more than '15, for that matter.

16 Q Why was 2016 more than 2015?

17 A We interview our clients who come to us
18 for things like utilities or food and
19 clothing. And we ask -- We do voter
20 registration at the same time that they
21 are there, some 50 families a week, at
22 least.

23 And at the beginning of '15, it

1 kept coming up more and more. Two things
2 that were hurting people's incomes were
3 helping family members pay fines and
4 fees. And uncertainty, first, about what
5 kind of voter ID was needed; that started
6 in '14. But increasingly uncertainty
7 about: I am a former felon; I can't
8 register to vote statements. And we
9 started paying increasing attention by --
10 well, researching about whether they
11 could vote or not.

12 Q So, you said that you started
13 recognizing -- I am sorry. You started
14 hearing about problems with paying those
15 fines and fees and around felon voting in
16 2015?

17 A We started hearing about it in the
18 context of make -- trying to make sure
19 people understood where proper ID was
20 in -- after 2014. But in asking those
21 questions, we started getting responses
22 about: I am an ex-felon; what are you
23 asking the questions for.

1 Before '14, we just did
2 straight voter registration, and we
3 assumed that reentry groups were doing
4 the ex-felons work much more.

5 Q So, if that started in 2015, what made
6 GBM spend more resources on it in 2016
7 than it had in 2015?

8 A Oh, we did research on it, well,
9 particularly on what identification was
10 needed to vote. We produced flyers and
11 postcards to let people know to get the
12 information out. And we started
13 inquiring of other people, particularly
14 reentry groups and others -- not just in
15 Birmingham, but around the country -- on
16 what do we need to know in order to help
17 ex-felons, you know, get your voting
18 rights restored.

19 Q And then you said the spending would have
20 increased further in 2017. So, what
21 would have accounted for that?

22 A We spent more time.

23 Q And what did you spend that time doing?

1 A Oh, we spent more time in doing things
2 like, in addition to work with people who
3 came to our doors. We actually go places
4 we could find people who -- where there
5 would be likely a higher population of
6 people affected, by felony
7 disfranchisement. And so, we go to the
8 Central Bus Station in Birmingham. We
9 had a regular table at Cooper Green
10 Hospital in the waiting room -- in the
11 lobby, rather. And just asking people at
12 the same time we register people to vote.
13 But we also ask if -- if we are a
14 response back, well, I am an ex-felon,
15 then we would be able to respond with
16 them with the CERV applications or other
17 ways to help them. We did more of it.

18 Q You said you did more of it. Was there
19 any of the work that changed? Was there
20 any difference in the kind of work you
21 were doing in 2017 over 2016 besides --
22 you reached out to people instead of
23 having them come to you, but were you

1 doing all the same work with those
2 people?

3 A Yes. Yes. In addition to those coming
4 to us, we reached out more.

5 Q I am handing you what I have marked as
6 Defendant's Exhibit Eight.

7 (At which time, the referred-
8 to document was marked as
9 Defendant's Exhibit No. 8 for
10 identification).

11 Q Is this the CERV application that you
12 were just referring to?

13 A Yes, it is.

14 Q Did GBM create this document?

15 A We got the information to create it,
16 yeah. But this is not -- we did not
17 create it.

18 Q Do you know who did?

19 A ACLU.

20 Q Have you worked with the ACLU on
21 providing services to help felons
22 register to vote?

23 A In a small way for years. Since they

1 have an office in Montgomery, they would
2 sometimes walk through applications from
3 Birmingham, because the mails were
4 unreliable.

5 Q How is this document used at GBM?

6 A As I mentioned before, primarily it was
7 used as we were interviewing clients
8 throughout the week. And we got to the
9 point on our intake form that says: Are
10 you a registered voter?

11 And they answered: No.

12 We would ask: Why not?

13 And if their response to that,
14 well, I am a former felon, I can't vote,
15 then we would ask them if they wanted to
16 try to register to vote if they
17 qualified. And this -- then they would
18 leave the waiting room and have a
19 one-on-one conversation with one of our
20 staff who would go through this
21 application with them.

22 Q Does any of GBM's money come from the
23 State?

1 A No. Actually one time. That was Katrina
2 relief.

3 Q As part of your document production to
4 us, you have given us two large stacks of
5 CERV applications that have been
6 completed. I don't want to introduce
7 them as exhibits. I do want to talk
8 about them.

9 MS. MESSICK: Danielle, do you --

10 Well, Jim, do you have a
11 position on whether we need
12 to deal with the protective
13 order and an agreement to be
14 bound with this witness, or,
15 no, because they are his
16 documents?

17 MS. LANG: No, because they are
18 his documents.

19 MS. MESSICK: Okay.

20 MS. LANG: And as -- So long as we
21 don't discuss the
22 confidential information,
23 there is no need to introduce

1 it into the record and
2 include it in, you know, the
3 court record.

4 MS. MESSICK: Right. What I want
5 to do is hand you copies to
6 look at that will not be
7 exhibits.

8 MS. LANG: Okay.

9 BY MS. MESSICK:

10 Q And I will give you a chance to look at
11 these if you need it. But really, my
12 first request is why are there two
13 stacks? I don't know if that was a
14 function of scanning or if
15 organizationally the two stacks of people
16 are different in some substantive way,
17 and I would like to understand that.

18 A This stack is thicker than the other one.
19 Let's look for some duplications. I
20 don't see any duplicates.

21 Q All right. Do you know why there might
22 be two separate stacks?

23 A No, I do not.

1 Q Would all of these forms represent people
2 who GBM has assisted in applying for a
3 CERV?

4 MS. MESSICK: Let me strike that
5 and ask you something else
6 first.

7 Q I notice a number of these actually refer
8 to the ACLU, and they don't refer to GBM.

9 A Uh-huh (positive response). What do you
10 mean by "refer to"?

11 Q There is no GBM logo --

12 A Oh.

13 Q -- and no GBM name on many of these
14 documents. Would any of these documents
15 be from people who interacted with ACLU
16 and did not also interact with GBM?

17 A Oh, no. I think -- I will try to find
18 it -- that you probably -- that's not
19 true every place. We use up the ones
20 without the logo, you know, as long as we
21 have them. But we also do some with our
22 logo, and the -- yeah, for reasons to
23 make it more user friendly to the people

1 who came to GBM.

2 Q Okay. So, you started out with the ACLU
3 for, used it up?

4 A That's right.

5 Q And added your logo to the next batch?

6 A Right.

7 Q The ACLU applications, would you agree
8 that those direct the applicant to fill
9 out the information and return the
10 document to the ACLU?

11 A Yes.

12 Q When GBM used the ACLU form, did you ask
13 people to follow that instruction or to
14 do something else?

15 A We kept a copy, so we have got these.

16 Q Okay.

17 A Right.

18 Q Did the original get sent to the ACLU?

19 A Yes. Yes. We had a working relationship
20 with the ACLU that went back to years
21 ago.

22 Q And are you exclusively using the form
23 that has the GBM logo on it now?

1 A Now we are.

2 Q And are you keeping a copy for GBM and
3 then having the applicant send the form
4 to Pardons and Paroles?

5 A Correct.

6 Q Do you do any kind of followup after the
7 CERV application has been sent to Pardons
8 and Paroles?

9 A Yes. After a time, our staff makes an
10 inquiry to Pardon and Paroles. Or, if
11 the -- yeah, follow up with that. See if
12 they -- We also check with them to see if
13 they have been contacted independently by
14 the Pardon and Paroles.

15 Q How many of the GBM employees actually
16 help your clients fill out the CERV
17 application?

18 A It ranges from two to three.

19 Q Did those employees get any kind of
20 special training to do that work?

21 A Yes.

22 Q What kind of training did they get?

23 A We have had training by the ACLU.

1 Q Do you remember substantively what the
2 training covered?

3 A I didn't take the training myself because
4 I don't help to fill these out.

5 Q Who -- who is currently employed at GBM
6 did take the training?

7 A Tari Williams.

8 Q Anyone else?

9 A I am not sure about Mary Jones, but Tari
10 could have trained her.

11 Q Is Tari Williams an attorney?

12 A No, she is not.

13 Q Did Martha Shearer take the training?

14 A Yes, she did.

15 Q And she is a former employee of GBM?

16 A She's a former employee, yes.

17 Q I will represent to you that GBM's
18 website says that Tari Williams actually
19 does have a law degree from the
20 University of Baltimore School of Law.
21 Is it fair to say, though, that she
22 doesn't do any work as an attorney for
23 GBM?

1 A That's correct.

2 Q Okay. Looking at the CERV application
3 stack that is clipped together rather
4 than stapled, it looks like a lot of them
5 are dated for October 2016. There are a
6 number of them the 14th, the 15th, the
7 21st, 22nd, 23rd. I am seeing a number
8 in that time period.

9 A Uh-huh (positive response).

10 Q Was there any kind of special event or
11 any reason that would explain why so many
12 came in at the same time?

13 A I could think -- I don't see where they
14 were collected from, but there could have
15 been an event.

16 Q Actually, looking at the stapled stack,
17 it looks like there is also a number from
18 that same time period. That would have
19 been shortly before an election. When
20 there is a major election coming up, do
21 you have people come to GBM specifically
22 for help getting registered to vote?

23 A There is a slight increase of people

1 coming, but it's a great increase in our
2 going out, you know, for events.

3 Q Thank you.

4 A Uh-huh (positive response).

5 Q If somebody comes to you for services,
6 say they need help from the food pantry
7 and your staff starts talking to them
8 about registering to vote, and they tell
9 you that they are not because they have a
10 felony, do your staff have information
11 about which felonies are
12 disenfranchising?

13 A Yes. We have a document with a list of
14 the disqualifying felonies.

15 Q Is that list based on the 2017 change in
16 law?

17 A Yes, ma'am.

18 Q Did you have any list or any kind of
19 reference before the 2017 law?

20 A No, ma'am. Moral turpitude.

21 Q Right. So, if somebody came in in
22 October of 2016, when it looks like you
23 interacted with so many people, if

1 somebody came in and said that their
2 crime was robbery third or possession of
3 contraband, what was your -- what was
4 GBM's process at that point in time for
5 helping that person?

6 A Well, this CERV application, that was
7 uncertainty, we had to ask people to the
8 best of their knowledge did they have a
9 disqualifying -- we used the word then.
10 Were you qualified to have this
11 application filled out and sent, you
12 know. So...

13 Q Well, were you asking them if they knew
14 what their crime was, or were you asking
15 them if they knew if their crime was one
16 that would stop them from voting?

17 A You mean the one before the law was
18 passed?

19 Q Yes.

20 A Oh, okay. Yeah. We asked them if there
21 was a crime that they knew would stop
22 them from voting. Right. Because there
23 was some belief that any felony would

1 keep them from voting -- right? -- or in
2 some cases misdemeanors, they believed.

3 Q Does GBM ever run into people they are
4 trying to help who have felonies and they
5 are not sure what they were convicted of?

6 A Yes.

7 Q Is that something that GBM spends time
8 and resources trying to help people
9 figure out what their actual conviction
10 was for?

11 A Yes. Time and research, best we could
12 find out what they were convicted for,
13 not just what they were charged with.

14 Q How do you go about researching that?
15 What information do you have access to?

16 A We have access to, basically, to go
17 online and Google it.

18 Q So, you're looking for news stories about
19 the conviction or is there something
20 else that the --

21 A I have got the -- Pardon and Paroles.
22 They have a list of -- I haven't done the
23 research myself.

1 Q I am trying to figure out if -- if John
2 Doe client comes in and he is not sure
3 what he was convicted of, as you
4 acknowledge. Sometimes you are charged
5 with one thing and you are convicted of
6 something else. So, how do you -- How
7 does GBM figure out what John Doe is
8 convicted of, and I understood you to say
9 that they Google?

10 A I am saying they went online. And -- but
11 I didn't do this. I mean, I didn't do
12 the research myself. We don't have
13 subscription to Alacourt. Sometimes the
14 question is: What's crime -- what's the
15 name of the crime? What people say is
16 not necessarily the name of the crime,
17 official name of the crime. So, trying
18 to figure that out is just part of it,
19 too, actually.

20 Q If you don't have Alacourt, is there
21 anything that you do have that helps you
22 get a definitive answer to that question
23 of what crime John Doe was convicted of?

1 A We have had access just to figure out
2 what the crime was, so, with some legal
3 people in Birmingham, but I didn't have
4 any contact with them, you know.

5 Q I am sorry. I didn't follow.

6 A I mean, with people who are attorneys in
7 Birmingham, well, we have some who are
8 friends of ours on the board. But I did
9 not make the contact with them, so I
10 can't say who it was in determining what
11 the actual crime the person was convicted
12 of. Right.

13 Q So, there are some lawyers who are
14 friends of GBM who will look up the crime
15 or conviction?

16 A Correct.

17 Q Presumably in Alacourt? Or --

18 A Correct. Well, I assume, yeah.

19 Q Do any of GBM's staff ever go down to,
20 like, the Jefferson County courthouse and
21 look for records there?

22 A They have.

23 Q Do they go in any of the other counties?

1 A No.

2 Q And do they go to any other states?

3 A No.

4 Q You do sometimes have people come to GBM
5 for help who were convicted of felonies
6 in other states; is that right?

7 A Yes.

8 Q Other than the attorneys that you
9 mentioned who sometimes assist GBM in
10 figuring out what felonies somebody was
11 convicted of, is there somebody else who
12 you contact for help with that?

13 A Other than Pardons and Paroles, I guess,
14 I can't think of any -- don't have any
15 names.

16 Q So, what contact was -- does GBM have
17 with Pardons and Paroles about felon
18 voting?

19 A I haven't had any directly. But our
20 staff -- I know that our staff have tried
21 to contact -- made contact sometimes with
22 the Department of Pardons and Paroles
23 about the disposition of a person's

1 conviction.

2 Q And I understood you to say earlier that
3 you would call Pardons and Paroles to
4 follow up on a CERV application.

5 A Application, yes.

6 Q But you are saying now you will also
7 sometimes call Pardons -- you, GBM, will
8 sometimes call Pardons and Paroles to
9 find out what the conviction was for?

10 A The status of -- and the status of what a
11 person is in terms of their -- you know,
12 once you are out of incarceration, fees,
13 fines, whatever, probation, whatever.

14 Q What about things like whether they are
15 still on probation or parole?

16 A That I know to be true, yes.

17 Q So, you ask Pardons and Paroles for that?

18 A Yes.

19 Q Do you have an estimate of how many
20 people GBM has helped register to vote
21 since 2013?

22 A Not off the top of my head.

23 Q And do you have an estimate of how many

1 felons GBM has tried to help register to
2 vote since 2013?

3 A No, I do not.

4 Q Is the ACLU a resource for you in
5 figuring out which felony a client has
6 committed -- or been convicted of?

7 A Yes.

8 Q I am handing you a document that we have
9 marked Exhibit Number Nine.

10 (At which time, the referred-
11 to document was marked as
12 Defendant's Exhibit No. 9 for
13 identification).

14 Q Would you please take a look and see if
15 you recognize this document?

16 A I believe it to be -- yes.

17 Q What do you believe it to be?

18 A I am -- I believe it to be the current
19 list of crimes of moral turpitude.

20 Q Do you know if this is the list that GBM
21 is using?

22 A Yes.

23 Q This exact list?

1 A Well, it's not -- it doesn't look like
2 this.

3 Q It doesn't look like this?

4 A Yes. It has the same detail.

5 Q The list that GBM is using, do you know
6 where that one came from?

7 A No, I don't.

8 Q Who would know?

9 A Tari Williams would know.

10 Q I am handing you Defendant's Exhibit Ten.

11 (AT which time, the referred-
12 to document was marked as
13 Defendant's Exhibit No. 10
14 for identification).

15 Q And ask you if you recognize this
16 document, and can you tell me what it is?

17 A Yes. This is a spreadsheet of CERV
18 applications conducted by GBM for a
19 certain time period.

20 Q And is this spreadsheet used for tracking
21 the clients whom you help with CERV
22 applications?

23 A I am sorry. It is a tracking we use to

1 help with our voter registration
2 applications as well, but it includes
3 CERV applications.

4 Q And do you know what time period this
5 document covers?

6 A I would base this on my memory but not by
7 sight. But '16 to '17. 2016 to 2017.

8 Q Now, I gave you two stacks of CERV
9 applications earlier, which we are not
10 attaching to the deposition. They are
11 not exhibits. But would all of those
12 people presumably be on this Excel
13 spreadsheet?

14 A No.

15 Q Okay. So, why does somebody go on this
16 spreadsheet?

17 A It was an instrument that's primarily
18 used by staff person no longer there, and
19 it pretty much stopped when she left.

20 Q Which person?

21 A Martha Shearer. There are stacks here
22 that have dates after she left, so, I
23 mean, the hard copies.

1 Q Okay. For the CERV applications that are
2 not being attached or that are not
3 exhibits, if they came in while Martha
4 Shearer was still employed at GBM, would
5 they have been included in this
6 spreadsheet?

7 A Yes.

8 Q And who else would be in this
9 spreadsheet?

10 A These are primarily people who came by
11 GBM to register to vote, and we would
12 follow up on whether they got their voter
13 registration information.

14 Q So, people who simply were registering,
15 but didn't have a felony could also be
16 included in the spreadsheet?

17 A Correct. Yeah.

18 Q Would this involve all the people that
19 GBM helped register to vote for the time
20 period that it covers?

21 A It would not, because it would not
22 include the people GBM registered to
23 vote. This was Martha's way of us

1 becoming more systematized, but we
2 continued doing the voter registration,
3 just making a hard copies and keeping
4 hard copies. Right.

5 Q So, when you help somebody register to
6 vote, you keep a copy of that
7 application?

8 A Yeah, until they can get -- find out what
9 the status is. Right.

10 Q Does the person you are helping submit
11 the application to State officials, or do
12 you?

13 A We can give people an envelope and a
14 stamp that they can mail it themselves.

15 Q I want you to look at Defendant's Exhibit
16 Ten. There is a column on the right side
17 of the page called "Comments." There is
18 a --

19 A You just left my visibility.

20 Q Here.

21 A Oh, I see it now. Okay.

22 Q One of the comments near the top says,
23 "Told him his polling place."

1 A Yes.

2 Q Would somebody go on this list if that
3 was the only thing that GBM did for them?

4 A Yeah. I think so, yes.

5 Q Your counsel emailed me this document
6 that we have made Exhibit Ten. And I am
7 getting a copy of it up on my iPad and
8 making it larger so that you can see.
9 There are several references to this --
10 or to a reconciler. What is a
11 reconciler?

12 A It refers to Church of the Reconciler,
13 which is a homeless assistance
14 organization church.

15 Q There are some that have this comment, a
16 "D/C." What does that mean?

17 A It's in the same column that has -- can I
18 see what the top says? I don't want to
19 mess you up, but most of those talk about
20 whether -- it has both the phone number
21 and felony in there. So...

22 Q Well, I don't want to you guess. If you
23 don't know, you don't know.

1 A No. I think it would be disconnected,
2 because most of the notes are about phone
3 messages.

4 Q Does GBM ever call the courts to find
5 out?

6 A Call courts?

7 Q Call courts, like circuit clerks in the
8 courts, or --

9 A Not that I know of.

10 Q Does GBM ever call the Department of
11 Corrections to get information about
12 whether -- about what a felon was
13 convicted of and whether he is on
14 probation or parole, things like that?

15 A Yes.

16 Q Corrections is a big organization. Do
17 you know who they call?

18 A No, I do not.

19 Q Does GBM ever interact with the Board of
20 Registrars' offices?

21 A Yes, we do.

22 Q Okay. Tell -- When would GBM interact
23 with the Board of Registers' office?

1 A I haven't done it myself, but other staff
2 have gotten voting information, polling
3 place change information.

4 Q What do you mean "voting information"?

5 A I am going to say polling place change
6 information, for where people vote, or to
7 vote.

8 Q Does GBM ever follow up with registrars
9 about whether somebody has been
10 registered to vote?

11 A We have.

12 Q Does GBM ever contact the Secretary of
13 State's office for assistance with a
14 particular felon who wants to vote?

15 A Not for a particular felon. Secretary of
16 State's office?

17 Q Uh-huh (positive response)?

18 A No, I don't believe.

19 Q Is there any information available from
20 the Department of Corrections online that
21 GBM uses to help felons who want to vote?

22 A I don't have any direct knowledge.

23 Q I am handing you Defendant's Exhibit 11.

1 Would you please look at this document
2 and tell me if you recognize it.

3 (At which time, the referred-
4 to document was marked as
5 Defendant's Exhibit No. 11
6 for identification.)

7 A Yes. This is a flyer on the post to
8 vote.

9 Q It looks like the flyer says there is
10 supposed to be a backside but I don't
11 have here. Do you know if this is
12 complete or if there should be a list on
13 the back?

14 A Yes. There should be a list on the back.

15 Q What is this document used for?

16 A As a -- It's to make user friendly the
17 information that came out about what
18 was -- what was a crime of moral
19 turpitude, after the '17 law, for people
20 who were not -- who were confused by the
21 legalese of it.

22 Q There are some logos in the bottom right
23 corner; is that right?

1 A Correct.

2 Q And GBM is one of those?

3 A Yes.

4 Q And the NAACP is there?

5 A Correct.

6 Q And the Legal Defense Fund?

7 A Correct.

8 Q Who else is on this form, the logos at
9 the bottom?

10 A TOPS: The Ordinary People Society.
11 Yeah. And I don't know who the -- the
12 yellow, blue and red.

13 Q I don't either. Thank you for making me
14 feel better about not knowing.

15 Do you know how this flyer was
16 put together?

17 A It was put together, researched by the
18 LDF. And I know they contacted us and
19 other groups to -- if we would mind if we
20 would put our logos on it to make it more
21 user friendly in the State.

22 Q What is The Ordinary People Society?

23 A That's a group that works with

1 ex-offenders. I think it's in Dothan,
2 based in Dothan.

3 Q Do you know who runs it?

4 A What's his name? Yes.

5 Q Reverend Kenneth Glasgow?

6 A Reverend Kenneth Glasgow. Thank you.

7 Q With respect to this flyer, did GBM work
8 with TOPS or Reverend Glasgow, or were
9 you just both separately contacted by LDF
10 to add you logos?

11 A We were separately contacted.

12 Q So, is there any work that you did with
13 them concerning this flyer?

14 A No.

15 MS. MESSICK: Can we go off the
16 record for five seconds.

17 (Thereupon, a discussion was
18 held off the record.)

19 Q I am handing you what I have marked as
20 Exhibit 12.

21 (At which time, the referred-
22 to document was marked as
23 Defendant's Exhibit No. 12

1 for identification).

2 Q Can you tell me what this document is?

3 A Yes. This was a -- I don't know what
4 they call it, but a color coded guide
5 towards the -- after the first page of
6 white vote, and attempts to work with
7 disenfranchised clients, was a guide our
8 steps -- volunteers of steps to go
9 through with the clients, and kind of
10 what track to put people on.

11 Q Okay. So, the first page is basically
12 blank. The next page, there is
13 something -- the first line -- the first
14 line under the headings talks about ACLU
15 form, Crimes of Moral Turpitude. What is
16 that in reference to?

17 A Oh, I see. I was going back all the way.
18 Okay.

19 Q Am I supposed to start at the back?

20 A Yeah. Yeah.

21 Q It looks like it make more sense if I do
22 that?

23 A No, actually you are doing okay I think.

1 I am trying to figure out -- because the
2 other side has a way of figuring out who
3 you are talking to.

4 Q Okay. So, there is a page that is
5 labeled -- or the title is "Why Vote?"
6 So, is that kind of a good place to
7 start?

8 A Yes.

9 Q Is this something that gets shared with
10 the clients, or is this something for
11 your staff to --

12 A It's for staff and volunteers.

13 Q Okay. And then the page in front of that
14 the title is "Basic Voter
15 Qualifications"?

16 A Yes.

17 Q And the page in front of that is titled
18 "Voter Registration Forms"?

19 A Correct.

20 Q And are those -- Those are just things to
21 make sure you include on the forms?

22 A That's correct. And to check for it,
23 yeah.

1 Q Okay. And then the remaining two pages,
2 one is that review of the voter
3 restoration packet and one is tips for
4 working with disenfranchised clients; is
5 that right?

6 A Correct.

7 Q Okay. So, let's go to the page that says
8 "Review of Voter Restoration Packet."
9 And I see a yellow and a green. Is there
10 a red somewhere?

11 A There is a red. Make it out from this
12 copy.

13 Q But there is one?

14 A There is one.

15 Q Is red for somebody who has committed a
16 felony who is not eligible for a CERV?

17 A Correct. And no need to further pursue
18 it.

19 Q Does GBM help people get pardons?

20 A No, we do not. We refer people to other
21 groups that can or may, but we don't.

22 Q So, this page that we are looking at,
23 Review of Voter Restoration Packet, is

1 this basically saying to look at some
2 ACLU form that has a list of crimes of
3 moral turpitude, and then if the crime is
4 not on it -- on that list, then they can
5 get a voter registration form?

6 A That's correct.

7 Q And if it is on the list and they are
8 eligible for a CERV, then you go to this
9 yellow stage in the middle?

10 A That's correct.

11 Q Then if they are not eligible for a CERV,
12 then that's the red stage?

13 A That's correct.

14 Q And the yellow section of the voter
15 restoration packet page, underneath
16 yellow CERV application, there is
17 response time, follow up and appeal
18 process. What are those about?

19 A That the volunteer staff person, who is
20 assisting, needs to go through the --
21 know that they are going to have to go
22 through these steps. That -- to make
23 sure the client person gives a response

1 in a reasonable amount of time, know when
2 they get it, know where it is, not just
3 do the application and then forget about
4 them. Any followup they may need to do,
5 they are prepared to do that. And if
6 there is any appeal and what information
7 the decision was made on.

8 Q Is it your understanding that there is an
9 appeal process if the CERV application is
10 denied?

11 A Yes. If there a, For instance, an error
12 in the reading an address or lack of
13 information.

14 Q Okay. And what do you mean by appeal in
15 that context? Like, are you just saying,
16 if you saw an error, you would go back
17 and tell them, or are you saying that
18 there is an appeal to another body?

19 A No. No. If a person moves between the
20 time they do the application and the --
21 they move after they file the application
22 and the address is no longer accurate,
23 then we can make that -- make a

1 correction on that. That's what I'm
2 saying. That's a real case.

3 Q I am handing you what I have marked as
4 Defendant's Exhibit 13.

5 (At which time, the referred-
6 to document was marked as
7 Defendant's Exhibit No. 13
8 for identification).

9 Q Can you please tell me what this document
10 is?

11 A Yes. This was a volunteer sign-in sheet
12 that we adopted from our regular
13 volunteer sign-in sheet for people who
14 wanted to volunteer around former
15 incarcerated voting rights.

16 Q What were the volunteers signing in for?

17 A This is our sign-in sheet for a meeting
18 that was apparently held March 30th,
19 2016. And we just adapted our regular
20 volunteer sign-in sheet for -- to use.

21 Q Was this for training of volunteers on
22 how to help felons register to vote?

23 A This was a meeting about -- it wasn't a

1 training. It was a meeting about the
2 needs for training. This was a meeting
3 of formally incarcerated people about
4 what they wanted to see happen in terms
5 of expanding their knowledge and
6 information that former incarcerated
7 people have.

8 Q Okay. I am sorry. Were there -- You're
9 saying there were felons at the meeting?

10 A Right. The felons were the volunteers.
11 This was a meeting of felons by felons.

12 Q And they are talking about what kind of
13 information that would be helpful for
14 them to have?

15 A Right. And where to distribute it, and
16 how to distribute it, so that that
17 population can get the information they
18 need. It was called a roundtable
19 discussion. I think it was also called a
20 focus group.

21 Q Would these felons, who are volunteers,
22 also be clients of GBMs?

23 A Some were. Yeah. Not all.

1 Q Have you had other meetings like this
2 one?

3 A This is one I know that we had, and there
4 have been others where there wasn't
5 sign-up sheets that were hosted by GBM.
6 And the -- for more we just attended.

7 Q Were the people who attended this
8 roundtable discussion and signed in,
9 would they have knowledge about how GBM
10 processes or helps felons register to
11 vote?

12 A I wasn't at this meeting. I knew of it.
13 But I know some would. I know, because I
14 know some who were there.

15 MS. MESSICK: Let's go ahead and
16 take a lunch break.

17 (At which time, a recess was
18 taken).

19 BY MS. MESSICK:

20 Q Okay, Mr. Douglas. Welcome back.

21 A Thank you.

22 Q I want to hand you what's marked as it be
23 Defendant's Exhibit 14.

(At which time, the referred-
to document was marked as
Defendant's Exhibit No. 14
for identification).

Q Do you recognize that document?

A Yes, I do.

Q And what is that?

A Alabama's Mail-In Voter Registration
Form.

Q Does GBM use this form in helping to
register clients to vote?

A Yeah, clients -- yes, and others. Yeah.

Q Okay. I guess I thought clients was
everyone you work with. Tell me who
clients are and who everybody else is.

A For instance, if we go to a public
housing community or a low-income
neighborhood, they will not be clients we
have served, but they are part of our
constituencies. So, that's another word.
Low-income people. We try to register
low-income people, period, our primary
base of our clients.

1 Q Okay. Are clients then people who come
2 to GBM for services?

3 A Yes.

4 Q Okay. And so, this is a form that GBM
5 uses?

6 A Correct.

7 Q Does GBM use any other forms to help
8 register people to vote?

9 A Not -- to my knowledge, not for straight
10 voter registration.

11 Q I am handing you Defendant's Exhibit 15.
12 (At which time, the referred-
13 to document was marked as
14 Defendant's Exhibit No. 15
15 for identification).

16 A Okay.

17 Q And I would ask you to take a look and
18 tell me if you know what that document
19 is.

20 A It's the federal form.

21 Q Okay. Is it the form that GBM uses to
22 help anybody register to vote?

23 A We don't use it.

1 Q Now, I will hand you Defendant's Exhibit
2 16.

3 (At which time, the referred-
4 to document was marked as
5 Defendant's Exhibit No. 16
6 for identification).

7 Q And could you take a look at that and
8 tell me what that document is, if you
9 recognize it.

10 A Yes, I do recognize it.

11 Q Okay. What is this?

12 A It's like a manual training book for
13 voter registration work.

14 Q Is this a document that GBM uses in its
15 work?

16 A Yes.

17 Q How do you use it?

18 A To train ourselves -- to equip ourselves
19 with the knowledge to help ex-felons,
20 former incarcerated folks to register to
21 vote.

22 Q Is your GBM logo on the front page?

23 A Yes, it is.

1 Q And Southern Poverty Law Center is there
2 as well?

3 A Yes.

4 Q Do you have relationship with Southern --
5 does GBM -- you, GBM -- have a
6 relationship with Southern Poverty Law
7 Center with respect to felon voting?

8 A No, we do not.

9 Q Between your logo and SPLC's, there is
10 something called ANVO, or A-N-V-O
11 organization; do you know what that is?

12 A I do not.

13 Q Okay. Would you look for me in this
14 document at -- okay. I have got a page
15 number issue.

16 In the bottom right-hand
17 corner, there is a number that starts
18 P00.

19 A Uh-huh (positive response).

20 Q Would you look at P001627.

21 A I have got it.

22 Q Is that the list of felonies that GBM
23 uses in its daily work?

1 A Yes. It appears to be the same.

2 Q Now, I have shown you a list earlier, and
3 you said, you know, substantively the
4 same, but it wasn't that form. So, I am
5 trying to find out, is this the one that
6 you use?

7 A Yes, it is.

8 Q You believe it is? Okay.

9 A I think it's organized differently.

10 Q Okay. So, this isn't the -- exactly the
11 list that your people are referring to?

12 A Now, this is organized different than the
13 one you showed me before.

14 Q Right. Okay.

15 A Yes, it is.

16 Q So, this is the one?

17 A Yes, ma'am.

18 Q Will you please turn to page P001638.

19 A Okay.

20 Q See at the bottom of that page, there is
21 a reference to the Alabama Nonviolent
22 Offenders Organization?

23 A Yes, ma'am.

1 Q I think perhaps that is the organization
2 for which we found the logo on the first
3 page.

4 A Oh.

5 Q Does that name ring any -- Does that name
6 help you? Is that an organization that
7 you work with?

8 A I have not worked with them.

9 Q Okay. On the next page, there is a
10 reference to The Ordinary People Society
11 out of Dothan.

12 A Uh-huh (positive response).

13 Q Have you done any work with them with
14 respect to this manual?

15 A No, ma'am.

16 Q Does GBM work with The Ordinary People
17 Society at all?

18 A No, ma'am.

19 Q It looks like there are two more copies
20 of the list in here, pages 1637 and then
21 at 1640 and 41 -- I am sorry, 1639 --

22 A Right.

23 Q -- through 1641. Do you know if your

1 organization uses those lists as well?

2 A Yes, ma'am.

3 Q Okay. This is a book -- a manual that we
4 would find on hand at GBM?

5 A Yes, ma'am.

6 Q Before the 2017 law that listed which
7 crime -- which felonies involve moral
8 turpitude, how did GBM approach the
9 question of determining whether a felony
10 involved moral turpitude in trying to
11 help somebody register to vote?

12 A Before 2017, we didn't even often use the
13 term "moral turpitude." We tried to get
14 legal advice on someone -- which felonies
15 disqualified people.

16 Q So, there were one or more lawyers who
17 you could call and ask that question?

18 A Yes. And sometimes they would refer us
19 to other people, other lawyers.

20 Q Did you ever seek advice from anyone else
21 about that -- trying to make that
22 determination?

23 A No.

1 Q Like the Board of Registrars, or the
2 Secretary of State's office?

3 A Not -- well, no, not successfully.

4 Q Do you know if you asked?

5 A I do know we asked and went -- in several
6 cases we have got different responses.

7 Q And did you ever ask the Board of Pardons
8 and Paroles that question?

9 A No, I did not.

10 Q But did GBM?

11 A Yes.

12 Q So, how did things change for GBM in
13 terms of helping people with felony
14 convictions register to vote when the
15 2017 law was passed?

16 A It gave us a list, separate from the
17 registration form, that we could use to
18 assure people who were ex-felons that
19 they were indeed -- or tried to assure
20 people who were ex-felons that they
21 could, indeed, qualify to register to
22 vote.

23 Q So, did that make the process of helping

1 those felons easier or harder?

2 A Administratively, it made it easier. But
3 it made us more assured that the -- than
4 the client.

5 Q Okay. I am not following you. You are
6 saying it was easier for GBM to perform
7 its work?

8 A It was easier that we could follow up
9 with confidence that we were doing the
10 right thing and telling the person the
11 right thing. It was less assuring most
12 of the times to the clients.

13 Q And why would -- and why is that?

14 A Because the list of disqualifying
15 felonies was not on the voter
16 registration form. The -- right. The
17 State issued document, right.

18 Q So, your clients felt more assured when
19 there was no list at all than they do to
20 have a list that's not on a vote
21 registration form?

22 A Our clients would feel more assured if
23 the list of disqualifying felonies was on

1 the voter registration form.

2 Q Okay. I'm asking you to compare the time
3 before there was a list and the time
4 after there was a list, not to compare
5 the current state to what you want to be
6 in the future.

7 So, in April of 2017, a client
8 comes in. There is no list at all. The
9 law hasn't past yet. How did they
10 respond to your advice about whether
11 something involved moral turpitude or
12 not? And how -- what I am trying to get
13 at is, how does that change when there is
14 a list?

15 A The thing is that we got -- no client
16 that I have heard from or met ever
17 mentioned the word "moral turpitude."
18 They want to know -- the -- in the
19 discussions was about, did the crime I
20 was convicted of qualify me or disqualify
21 me to register to vote. I don't recall
22 using -- until maybe months or weeks
23 before when the public discussion came

1 up.

2 Q Right.

3 A Yeah. But that was not our experience.

4 Q All right. Well, when you advised -- or
5 when GBM advised somebody in April of
6 2017 about whether their crime was
7 disqualifying, did they say to you: I
8 don't trust your advice; it is not on a
9 State form?

10 A No. Not in those exact words. But,
11 then, "I am still not sure. I don't want
12 to get in trouble." Those are two main
13 things, "I am still not sure. And I
14 don't want to get in trouble."
15 Variations of that.

16 Q And so, then the law passed. Do you have
17 a copy of that law --

18 A Yes.

19 Q -- at GBM? When the law passed, and so
20 now there is a list, did you start
21 showing that list to the people you were
22 helping register?

23 A Not immediately, but almost within days,

1 yes.

2 Q And was it the list that's in the Act, or
3 is it more like the ones we have looked
4 at in the CLC manual?

5 A It's ones like we looked in the CLC
6 manual, without the notations, you know.

7 Q Have you ever shown anybody, who
8 expressed hesitation about whether they
9 could vote, the actual law?

10 A Not that I know of.

11 Q Did the people you were helping become
12 less sure about whether they could vote
13 once there was a list and a statute?

14 A Less sure than what?

15 Q Than they had been before the 2017 law
16 was passed.

17 A I don't think -- In my experience, they
18 still weren't assured. I can't say they
19 became less sure.

20 Q Okay.

21 A Right. There was no improvement. Yeah.

22 Q Was there any decline?

23 A There was still people declining to

1 register to vote, because they may get in
2 trouble.

3 Q Was there any way in which the creation
4 of a definitive list created more
5 confusion or uncertainty among the people
6 you were helping?

7 MS. LANG: I am going to object as
8 asked and answered, for the
9 record.

10 Q Okay. You can answer anyway.

11 A I can't measure more. I do know it
12 continued. Yeah. Confusion continued
13 after the list was presented.

14 Q Okay. And we've been focusing on prelaw
15 and current. And you've said that you
16 think that people would be more assured,
17 more comfortable if the list was actually
18 printed on the voter registration form;
19 is that right?

20 A Correct.

21 Q And why do you think that?

22 A The voter registration form, people
23 that's seen it before -- including people

1 who have once voted and lost their right
2 to vote -- it's one of the more familiar
3 documents. You asked me earlier did I
4 show people the law. They would have no
5 way of knowing that I didn't type that
6 law up and just made copies of it.

7 With it being on an official
8 form from the State, it would be
9 assurances to people that what we are
10 saying is reflected on this State
11 document -- is on this State document,
12 and this document is going to the State.

13 Q Has anyone that GBM has been working to
14 help register to vote expressed to you
15 that they would feel more comfortable if
16 the list was actually on the voter
17 registration form?

18 A Not to my knowledge.

19 Q Okay. So, why do you think that they
20 would feel more comfortable? You have
21 told me -- I think you have explained why
22 you believe that a person might be more
23 comfortable, but on what basis do you

1 make this statement that there are people
2 out there who would feel more
3 comfortable?

4 A It is our experience in dealing with
5 people who have less education -- formal
6 education anyway, less financial
7 resources, that the way we can engage
8 them and get them involved in civic
9 engagement is largely, trust.

10 One of the same -- one of the
11 reasons -- the reason we put our logo on
12 some of the materials that we distributed
13 was to let people know that -- that if --
14 they already feel comfortable with GBM,
15 so, they can feel comfortable with the
16 information GBM is distributing. And
17 that if we -- when people come to us who
18 are formerly incarcerated, with the
19 belief -- true or -- whether true or not,
20 that I will never be allowed to vote
21 again. That's a rumor that's out there
22 sometimes.

23 Then we are trying to inform

1 them that, yes, if you qualify, you can
2 vote again. Then it's our estimate
3 that we -- and we have gotten better
4 responses, but I can't measure it by
5 percentages -- that trust matters and
6 that we believe that if we could -- they
7 could see the disqualifying felonies on
8 that State issued form, we could be a lot
9 more convincing or more convincing sooner
10 in the conversation than it takes.

11 Q Would you look through your giant stack
12 there for me and find Exhibit Nine, which
13 was the first list of felonies involving
14 moral turpitude that I showed you today.

15 A Oh, thank you. You gave them to me in
16 order. Here we go. Yep.

17 Q So, I'll represent to you that I took
18 this off the Secretary of State's
19 website.

20 A Uh-huh (positive response).

21 Q If this document had the Secretary of
22 State's seal, you know, if it was printed
23 on his letterhead or had his picture on

1 it, something like that, that made it
2 more clear looking at it that it came
3 from the Secretary of State's office,
4 would that be sufficient, or is there
5 something about it being on the actual
6 voter registration form?

7 A In my opinion, there is something about
8 it being on the actual vote registration
9 form, because that's what they sign. And
10 there are people who don't even know we
11 have a Secretary of State.

12 Q So, you have, as Exhibit 14, the actual
13 voter registration form that GBM uses?

14 A Yes.

15 Q And as we are looking at it here today,
16 it looks like two pages. But it's
17 actually front and back of one piece of
18 paper, right?

19 A Uh-huh (positive response).

20 Q So, how would you put the content of
21 Exhibit Nine into Exhibit 14?

22 A How would I put it?

23 Q Yeah.

1 MS. LANG: Objection. It calls
2 for speculation. You can
3 still answer.

4 A Hire a graphic designer.

5 Q Are there things that you think can be
6 deleted? Would you want the form to be
7 longer? How do you -- I get that you
8 might need a graphic designer to make it
9 look pretty. But substantively, how do
10 you get this list onto this form?

11 A Two things: One, the graphic designers
12 don't make things prettier. They can
13 also make things more efficient, like a
14 graphic organizer. I'm trying to see
15 here.

16 You could have some county
17 specific forms to get rid of 66 other
18 counties. That could be only used for
19 one county.

20 Q Oh, so, do one form for each county?

21 A Yes. I wouldn't make the print any
22 smaller. Yeah.

23 Q If the felonies listed on Exhibit Nine

1 were somehow to be incorporated into
2 Exhibit 14, would that solve your
3 concerns about the list of crimes being
4 involved -- or the list of crimes being
5 included in the voter registration form?
6 And I want to be very clear: These are
7 the Alabama provisions. So, when you are
8 dealing with somebody with a federal
9 conviction or a conviction from another
10 state that would still not be on the
11 voter registration form?

12 MS. LANG: Objection. Misstates
13 facts. The final provision
14 on here discusses state and
15 federal convictions.

16 Q Please answer if you understand the
17 question.

18 A Repeat the question.

19 Q If the Secretary of State somehow
20 incorporated this list into this
21 document, would that be sufficient for
22 GBM? Would that erase the concerns that
23 you have about the list not being in the

1 form?

2 A It would help. It wouldn't erase the
3 concerns. It would help our clients
4 trust what we are saying about any crimes
5 they may have committed in-state.

6 Q And why would it not erase the concerns?
7 What would be left?

8 A Well, for us -- I don't know. I can't
9 speak for all the clients. Because the
10 list is a list of crimes that disqualify
11 them. What would be left for us is to
12 get rid of most of the rest of the list,
13 you know, and add some other things. I
14 mean, you say what would be satisfying to
15 us?

16 Q I am trying to understand, if this list
17 that is Exhibit Nine gets put into this
18 document that is Exhibit 14 --

19 A Uh-huh (positive response).

20 Q -- if that erase -- if that addresses all
21 of your concerns about the form having
22 the list or whether you would have
23 remaining concerns. And I understood you

1 to say you would still have concerns, and
2 so I would like to know what those
3 concerns are?

4 A All right. My remaining concerns would
5 be my dis -- our disagreement with what's
6 on the list and what's not on the list.
7 Crimes that are not on the list as well
8 as what's on the list.

9 Q Okay. Putting aside the issue of which
10 felonies you believe should or should not
11 be disenfranchising, I am trying to get
12 at is whether incorporating the list of
13 Exhibit Nine into the document of Exhibit
14 14 would satisfy your concerns about
15 people being informed about which
16 felonies are disenfranchising under
17 current law.

18 A Yeah. Like I said earlier, it would ease
19 our concerns.

20 Q Do you -- Easing concerns suggests that
21 there are some remaining. Do any of your
22 remaining concerns -- Are any of your
23 remaining concerns about people not

1 understanding which felonies are
2 disenfranchising, or is it just a
3 disagreement about which felonies are
4 disenfranchising?

5 A Oh. Like I said, it would satisfy our
6 concerns about people knowing which crime
7 is disqualifying.

8 Q Okay. But you would still have concerns,
9 because you disagreed with the list?

10 A And other things, yeah.

11 Q Okay. Tell me what the other things are.
12 We are going to talk -- We are going to
13 talk about the list and then --

14 A Okay.

15 Q -- if you have got a list of other -- I
16 am using same words over and over again.

17 If you have a list of other
18 concerns, let's get them down so we can
19 address them.

20 A Yeah. Fees and fines as being a
21 condition of regaining your right to
22 vote.

23 Q Anything else?

1 A What I understand is permanent
2 punishment.

3 Q Okay. Anything else coming to mind as
4 you sit here now?

5 A Just a basic piece of that -- the bottom
6 qualify -- character of this is the
7 racial discriminatory intent.

8 Q And anything else?

9 A Just finally the -- even with the list,
10 what this degree of difficulty with the
11 fees and fines sends to people who are
12 trying to reenter society, and we are
13 putting barriers in their way that is
14 insurmountable to some people.

15 Q Why do you say it is permanent
16 punishment?

17 A In one sense, for people making low wages
18 to have a lot of fees and fines, they
19 will never be able to pay them off, not
20 committing crimes.

21 Q What's makes it punishment?

22 A What makes it punishment? When I pay a
23 traffic ticket, I get -- my punishment is

1 to pay the ticket.

2 Q So, the Court fines and costs, that's
3 part of finish the punishment?

4 A That's correct.

5 Q How is not allowing someone to vote until
6 they have completed their fines and fees
7 make the inability to vote also
8 punishment.

9 A The nature of the fines and fees are
10 missing some payments. They grow. And
11 the incomes of most people who are being
12 released are not sufficient to catch up
13 with that growth and pay them in a
14 reasonable amount of time. So, they
15 never will catch up. They never can
16 catch up.

17 Q If somebody commits a felony that's on
18 the list, and so it would disqualify them
19 from voting, but they are not assessed
20 any fines or fees or Court costs, they
21 don't owe a single dollar, is it still
22 punishing them for them to not be able to
23 vote because they were convicted of that

1 felony?

2 A No, I don't believe so.

3 Q So, it's the fines and the fees that are
4 punishment, not the disqualification from
5 voting?

6 A What I am missing is, the fines and fees
7 are part of the punishment as well as
8 disqualifying from voting as far as the
9 punishment. There should be no
10 disqualifications of voting, if you have
11 finished -- done your time and your
12 restitution or whatever, you know, and
13 your parole period.

14 Q You are saying different things. What do
15 you understand restitution to be?

16 A Restitution is to be, out of the standard
17 is, remittances to cover support for the
18 victim of the crime.

19 Q So, would you treat restitution
20 differently from, like, Court fines and
21 fees when you are looking at whether
22 imposing those monies is a punishment?

23 A People disagree on whether restitution as

1 punishment. It hasn't always been there
2 since the crimes that -- before was
3 established. But I do think that the
4 exorbitant fees and fines and the payment
5 schedules are punishment. Yeah,
6 restitution is part of the punishment.
7 It's part of the -- the way it's
8 discussed is part of paying for your
9 crime.

10 Q And do you see somebody being
11 disqualified from voting as further
12 punishment for the crime?

13 A Yes.

14 Q And why?

15 A Because there should be -- when you know
16 part of being in society -- a civil
17 society is to know that there are
18 punishments for crime. And
19 disqualifications from voting, in
20 addition to the punishment or serving
21 your time, is one unfairly applied. The
22 crimes that are listed are unfairly
23 applied. It's mostly class-based crimes,

1 not elite-based crimes. A few white
2 collar crimes, a few ethical crimes,
3 those in public office.

4 So, they are disproportionately
5 applied to poor people and people of
6 color. It shouldn't be there at all.
7 The only crime that makes you ineligible
8 to vote may well be capital punishment,
9 because you are not around to vote
10 anyway.

11 Q Before or after you are dead?

12 A Generally afterwards.

13 Q Because you understand, you can vote --

14 A Yeah. In some states you can still vote
15 from prison.

16 Q And Alabama is one of them.

17 A Yeah.

18 Q You know that, right?

19 A Yeah. Yes. Yes.

20 Q You can vote absentee, if your felony --
21 if you are not convicted of a felony
22 involving moral turpitude?

23 A Right.

1 Q If I rear-ended you this morning coming
2 in here, and you sued me for damage to
3 your car and I had to pay you \$2,000,
4 would that be punishment as you are using
5 the term, if a civil judgment against me
6 to pay money?

7 A If you -- if your car rear-ended mine and
8 then what?

9 Q And then you sue me.

10 A I sue you.

11 Q And the Court orders me to pay money.

12 A Uh-huh (positive response).

13 Q Am I being punished?

14 MS. LANG: Objection. It calls
15 for a legal conclusion.

16 Q You can answer the question.

17 A If it's \$2,000, you are not being
18 punished enough if you rear-ended my car.

19 Q You got a nice one?

20 A Yeah. It's paid for is the thing.

21 Q I am trying to understand what makes
22 something punishment. Because I feel
23 like I have answered the -- I have asked

1 the question repeatedly, and I don't feel
2 like I have an answer yet.

3 MS. LANG: Objection. It calls
4 for a legal conclusion, and
5 asked and answered.

6 MS. MESSICK: Well, my statement
7 was it was asked and not
8 answered. So...

9 MS. LANG: I understand. Making a
10 record.

11 A What makes fees and finds punishment?

12 Q What makes disqualifying someone from
13 voting a punishment? I am trying to
14 understand how you are defining
15 punishment. I understand that the fine
16 and the fee that's associated with the
17 criminal conviction, the fine and the fee
18 is punishment. What I am trying to
19 understand is why you believe that the
20 disqualification from voting is also
21 punishment?

22 A Oh, I am sorry. Three strikes and a home
23 run. I fully believe in civic

1 engagement -- citizen engagement as being
2 part of a living a full, wholesome,
3 participatory, good neighbor life. And I
4 think that people who have made mistakes
5 and who are being excluded for that, for
6 whatever time period, are being treated
7 as less than, and it hampers and impedes
8 their return to a -- I hate to use the
9 word reentry, but their return to full
10 participation in civic and community
11 life.

12 There's a -- it's a stigma --
13 embarrassing stigma, a scarlet letter,
14 and it -- to me I think it impairs
15 people's recovery to being full
16 participatory citizens.

17 Q You have mentioned fines and fees. What
18 work, if any, does GBM do around felons
19 who want to vote and have filings and
20 fees and such Court ordered monies?

21 A The best of my recollection on repayment
22 of those fines and fees is if we can help
23 them find a better paying job. But

1 nothing else more than that, or help them
2 find a reentry program that has a better
3 record in helping with some graduates
4 students find better paying jobs. That's
5 all I can think of.

6 Q You've mentioned reentry programs a
7 couple of times.

8 A Uh-huh (positive response).

9 Q What are those?

10 A I don't know all of them. But the ones
11 closest to us is the Dannon Project.
12 There is another organization; I have met
13 there, but I haven't met some of the
14 other ones. These are mostly -- well,
15 some of them are faith-based programs
16 that provide training, education, GED
17 training.

18 MS. MESSICK: Can we go off the
19 record for one second.

20 (Thereupon, a discussion was
21 held off the record.)

22 Q And what do these organizations do?

23 A Well, to -- to my knowledge, I have only

1 met with some representatives once.
2 They -- some of them have facilities at
3 which they attract, invite, recruit
4 ex-offenders to get the skills and
5 trainings they may need to prepare them
6 for reentry into community life. And
7 some of those are job training, job
8 interview skills, dressing for -- proper
9 dress for interviews, and GED and
10 literacy, financial management.

11 Q You said also that you believe that there
12 is a racial discriminatory intent and
13 disqualifying balance. Why do you
14 believe that?

15 A The -- I know there is a definition of
16 it, but crimes of moral turpitude were
17 originally race-baited crimes -- as a
18 matter of fact, in Birmingham, so was
19 vagrancy -- in other areas around the
20 state that was used to control the
21 African-American population in the state
22 through a Constitution that was a
23 southern redeemer Constitution in 1901,

1 that its founder John Knox said at its
2 convention, the purpose of the
3 Constitutional convention was to, quote,
4 establish white supremacy by law. That's
5 why I happen to believe that in many
6 cases the Constitution of 1901, though
7 amended many times and many parts of it
8 either suppressed or rendered ineffective
9 or gotten rid of by Congress or the U.S.
10 Supreme Court. It still remains. Its
11 framework, its structure, its intent
12 still has its core birth defects, so to
13 speak. That was the intention, to
14 maintain white supremacy in the State.

15 Just -- so, just taking out the
16 racist words; for instance, the poll tax
17 that's in there doesn't mention race.
18 And they were very cautious of trying to
19 get around the Fourteenth and Fifteenth
20 Amendments.

21 So, I just think that a lot of
22 the infrastructure of that constitution
23 is worse than when we had in 1819, the

1 first constitution in Alabama. Because
2 even though women couldn't vote in 1819,
3 and slavery was certainly there in 1819,
4 the intent was, incorporate this new
5 State in the United States, and not
6 devoted to perpetuating slavery by other
7 means.

8 MS. MESSICK: Let's take a
9 ten-minute break.

10 (At which time, a recess was
11 taken).

12 BY MS. MESSICK:

13 Q Are you familiar with Secretary of State
14 Merrill's voter disenfranchisement and
15 restoration of voting Rights exploratory
16 committee?

17 A I just heard of it.

18 Q You were not part of it?

19 A No, ma'am.

20 Q Was anybody on GBM's staff a part of that
21 committee?

22 A No.

23 Q Did GBM have a role in passing the law

1 that became the Act Number 2017-378, the
2 law that lists which felonies involve
3 moral turpitude?

4 A No.

5 Q Did you have any input on the drafting of
6 that law?

7 A No.

8 Q Did you lobby anyone about that law?

9 A No.

10 Q Are there any steps that GBM took as a
11 result of the implementation of that law
12 that we haven't already talked about
13 today?

14 A No.

15 Q Has -- Other than this litigation that we
16 are here about today, has GBM taken any
17 steps to try to change Alabama's laws on
18 felon voting?

19 A No. We are a 501(c)(3) and we can't
20 lobby. We can go to public hearings, but
21 we haven't been to any.

22 Q Okay. Has GBM made any efforts to
23 educate the public generally about the

1 passage of the 2017 law?

2 A Yes.

3 Q Okay. What efforts have those been?

4 A We include, once it passed, a general
5 articles in our newsletters that we send
6 out electronically. We have produced
7 something just -- exhibits you've seen
8 here, flyers for our waiting room. We
9 conduct voter registrations activities
10 weekly at our office in waiting room.

11 Q You said GBM is a nonprofit and cannot
12 lobby. Does that mean that GBM did not
13 have any contact with any individual
14 members of the legislature when the law
15 was being considered?

16 A That's correct.

17 Q Does GBM have an understanding about how
18 the list in the 2017 law was developed?

19 A No more than what we read in the papers
20 or online.

21 Q I am going to hand you what I am marking
22 Defendant's Exhibit 17.

23 (At which time, the referred-

1 to document was marked as
2 Defendant's Exhibit No. 17
3 for identification).

4 Q Have you seen this document?

5 A Yes.

6 Q And can you tell me what it is?

7 A This is the complaint of GBM and other
8 plaintiffs on the -- I'll say the
9 implementation of the 282.

10 Q I am going to hand you Defendant's
11 Exhibit 18.

12 (At which time, the referred-
13 to document was marked as
14 Defendant's Exhibit No. 18
15 for identification).

16 Q Do you recognize this document?

17 A Yes, I do.

18 Q And what is this?

19 A This is a later document providing
20 supplemental information about our
21 complaint.

22 Q Have you reviewed both of these
23 documents?

1 A Yes, I have.

2 Q You said the original complaint document,
3 or Exhibit 17, was about 282. Are you
4 referring to the 2017 law there?

5 A Correct.

6 Q Okay. This complaint was filed before
7 that law was passed, wasn't it?

8 A It was. Yes, it was.

9 Q At the top of the page.

10 A Yeah. Yeah.

11 Q Was GBM in favor of the passage of the
12 2017 law?

13 A No.

14 Q Why not?

15 A We were in favor when discussion first --
16 there was discussion publicly that came
17 up. And there was a debate about what
18 was moral turpitude and what was not.
19 And that just signaled to us as heading
20 in the wrong direction. That we prefer
21 that a person who had committed a crime
22 upon release and pardoned and paroled
23 will be a full citizen with the right to

1 vote, period.

2 Q Do you understand what it -- what kind of
3 change it would take legally to make that
4 happen, separate from a lawsuit?

5 A Yeah. It was taken to legislation.

6 Q Would it be legislation or a
7 constitutional amendment?

8 A Yeah.

9 MS. LANG: Objection. It calls
10 for a legal conclusion.

11 A It may be legislation that calls for a
12 constitutional amendment.

13 Q Is a constitutional amendment something
14 that GBM is allowed to lobby for? Is
15 that --

16 A Actually, we cannot lobby for a
17 constitutional amendment as it goes to
18 the legislature, but we can publicly
19 support a constitutional amendment on the
20 ballot. That's allowed. Because in a
21 constitutional amendment on the ballot,
22 the people are the legislature.

23 Q In the original complaint, I would like

1 you to turn to count 11, which is on page
2 51. And then all of these counts are
3 also in the supplemental complaint. So,
4 in the supplemental complaint I would
5 also refer you to page 14. Do you know
6 what the ex post facto clause is?

7 A I sure don't.

8 Q Okay. How is GBM harmed by the State
9 disenfranchising people who may not have
10 known at the time of their conviction
11 that they would be disenfranchised?

12 A In our services to our clients and our
13 constituencies, GBM is harmed because we
14 must put additional personpower,
15 additional time into, one, reaching those
16 people and acquainting them with the
17 information, educating them, seeing if
18 they qualify for -- see if their
19 conviction was qualified or disqualified
20 them from regaining their votes back.
21 And when we divert our energies there
22 with limited time and energy, we could
23 have spend it on some other things, which

1 is what we did mostly before, which was
2 increasing people who were qualified to
3 vote but just didn't. And our role then
4 was just educating people on why the vote
5 was important to them in things they care
6 about. So...

7 Q Okay. But if you have two clients who
8 walk in and GBM's staff started talking
9 to them about whether they can register
10 to vote, is there a difference for GBM
11 based on, one of them it's been clear to
12 GBM the entire time it's been helping
13 felons vote that this crime is
14 disqualifying.

15 MS. MESSICK: Hold on -- strike
16 that. Let me figure out how
17 to ask this.

18 Let me take a short
19 break.

20 (At which time, a recess was
21 taken).

22 Q Two people walk into GBM for services.
23 They were both convicted of a crime in

1 2010. For one of them the law has been
2 clear since 1940 that that is a crime
3 that involves moral turpitude. For the
4 other one, the second person who was
5 convicted in 2010, the Alabama Supreme
6 Court just said in 2012 that that's a
7 disqualifying crime that stops you from
8 voting.

9 So, neither one of them can
10 vote based on crimes committed in 2010.
11 One of them the law was established
12 before 2010. One of them the law was
13 established after 2010. In both cases,
14 the law is established before they walk
15 in your door. Does GBM treat them any
16 differently? Does it impact GBM
17 services, which one is which?

18 A I can't figure it out. They would both
19 get -- if we had the resources for the
20 services they came in for, because nobody
21 comes in for --

22 Q Right. Nobody comes in for voting?

23 A Right.

1 Q They both came in for the pantry.

2 A Yeah, right.

3 Q And you started talking to them?

4 A Right. So, they get our services.

5 Q Right.

6 A But if we find out -- We don't have the
7 legal expertise on staff to figure out
8 the difference between what we can do or
9 if we can do anything. If they said one
10 was already disqualified the -- at the
11 time of the conviction, it was
12 disqualifying. And the other one was
13 more recently, before he came in, the
14 Supreme Court had, I guess, retroactively
15 included that crime into disqualifying,
16 because it was at the time he was
17 convicted, you said.

18 Q Right. Well, what I am saying is that,
19 when they were both convicted, the crime
20 for one of them was clearly disqualified.

21 A Clearly disqualified, right.

22 Q The other one, it became clear after they
23 were convicted but before they walked in

1 and asked for their services. Is it more
2 work for GBM to help one of them than it
3 is to help the other.

4 A It would be work for GBM to figure out if
5 there was more work or not. We are not
6 lawyers.

7 Q But when they walk in the door, both of
8 them have clearly committed -- they have
9 been convicted of felonies that are
10 disqualifying, that it's known to you are
11 disqualifying when they walk in the door.
12 So, does it matter if they knew it was
13 disqualifying at the time they
14 committed -- or were convicted of the
15 felony?

16 A Does it matter if they knew?

17 Q Does it matter to the services that are
18 required of you to help them?

19 A Okay. When we encounter people, since we
20 are not, you know, legally qualified, we
21 would have to research, is there a path
22 for either or both.

23 Q What do you mean, "a path"? Why would it

1 not just be helping them both fill out a
2 CERV?

3 A Well, you are right. The CERV -- because
4 we would know in both cases regardless
5 that both of them were dis -- had
6 disqualifying convictions at the time
7 they came in the door.

8 Q Right. That's the hypo. You know when
9 they walk in the door that they are both
10 disqualified?

11 A And if there was a list, we would know.
12 Yeah. I can't see any difference in
13 terms of the -- filling out the CERV in
14 either case.

15 Q Okay. Two different people walk in the
16 door. One of them committed theft of
17 property, second, and the other committed
18 murder and -- or they were convicted of.
19 I'm sorry. One was convicted of theft of
20 property, second, one was convicted of
21 murder. They both come in for pantry
22 services, and you talk to them about
23 voter registration. Does it impact the

1 work that GBM does with those two people
2 in helping them register to vote, that
3 they have different underlying crimes?
4 Does the difference between murder and
5 theft of property make a difference in
6 the effort that GBM puts into helping
7 those people?

8 A Well, I don't have the list in front of
9 me.

10 Q Assume they are both disqualifying,
11 because that's certainly what I was going
12 for.

13 A Uh-huh (positive response). So, the
14 question is, it's the same as the first
15 one: The two people come in with
16 officially disqualifying crimes. Then we
17 don't fill out CERV's for disqualifying,
18 because you are not looking for an
19 exception to disqualification.

20 MS. MESSICK: I think it's been a
21 long afternoon.

22 MS. LANG: It has.

23 Q You would only do the CERV if they were

1 disqualified. If they committed theft,
2 third, and never lost their right to
3 vote.

4 A You're right.

5 Q So, it's all --

6 A Say it again.

7 Q So, two people walk in --

8 A Okay.

9 Q -- who have committed felonies that are
10 on all of our lists.

11 A Uh-huh (positive response).

12 Q One of them has committed theft of
13 property, second.

14 A Uh-huh (positive response).

15 Q One of them has committed murder. They
16 are both disqualified and cannot vote
17 unless they get a CERV or a pardon.

18 A Oh, okay.

19 Q When it comes to GBM helping those two
20 people, is there a difference in the
21 resources that GBM has to put into
22 helping them that is based on one
23 committed theft of property and one

1 committed murder? Is it harder for you
2 to deal with the person who committed
3 murder? Does it take more resources to
4 deal with one or the other?

5 A No.

6 Q Okay. I would like you to look at count
7 13 in each complaint. So, in Defendant's
8 Exhibit 17, count 13 is on page 53.

9 And --

10 A And Defendant's Exhibit who?

11 MS. LANG: Page 53, on 13, on the
12 big one.

13 Q And I will let you go back.

14 A Okay.

15 Q And then I also want you to
16 simultaneously look at, in the
17 supplemental complaint which is Exhibit
18 18, look at page 15 for count 13.

19 A Yeah. Yeah.

20 Q So, this is the claim about paying fines
21 and fees and such, correct?

22 A Uh-huh (positive response).

23 Q When I look at the original complaint, I

1 do not see that this is a claim that GBM
2 is bringing; do you see that?

3 A The original complaint?

4 Q Right. The big thick one.

5 A Uh-huh (positive response). I mean, yes.

6 Q Okay. And then in the supplemental
7 complaint, GBM is bringing claim 13; is
8 that right?

9 A Yes. It's listed.

10 Q So, what changed in the year-and-a-half
11 between when these complaints were filed
12 that GBM now has a claim on the payment
13 of the fines and fees, et cetera. And I
14 am not asking you to sit here and try and
15 figure out the claims. I am asking you:
16 Has something changed at GBM concerning
17 things like fines and fees and other
18 court ordered monies in the services that
19 you provide in this year-and-a-half time
20 period between the two complaints?

21 A Yeah. The only thing that changed is
22 that -- give me the one that has your
23 time period, beginning and end.

1 Q So, the first complaint was filed
2 September 2016.

3 A Okay.

4 Q And the supplemental complaint was filed
5 in March of this year.

6 A Yeah. GBM -- yeah. We increased the
7 amount of contact, number of people,
8 places we went, getting in contact with
9 people who were formerly convicted,
10 dramatically. Yeah, of that period,
11 through that period. And we was making
12 contact with more people. Heard more
13 stories of how it was impacting them.
14 That was the main thing.

15 We had a -- we hired a person
16 who had -- where themselves were formerly
17 incarcerated. And we had more access and
18 attracting more people. Yeah. I mean,
19 the number of people we saw who had prior
20 convictions increased during that period;
21 that's what it was.

22 Q Okay. So, in that time period, you have
23 served more people, and you have been in

1 contact with more people?

2 A Yes.

3 Q Have the services that you provide to
4 those people changed with respect to the
5 court order of monies, things like fines
6 and fees and restitution?

7 A Have what now? The services we provided?

8 Q Right.

9 A Only since that -- since they are a
10 bigger part of the population we served,
11 we did more -- more services, you know,
12 were there, but, no.

13 Q Is it more work for GBM if somebody -- a
14 felon you are trying to help owes Court
15 ordered monies?

16 A Yes.

17 Q Okay. How so?

18 A The people who owe -- The clients we
19 serve who owe Court ordered monies are
20 harder to reach than they are a
21 possibility of getting their vote back,
22 of getting their vote. The morale is
23 low. They tend to feel more excluded,

1 and they feel -- in talking to us,
2 anyway, and that's talking to some
3 myself, that's insurmountable for them to
4 get their voting rights back.

5 Q So, how does that, though, increase the
6 work for GBM?

7 A They need more resources. And what I
8 mean by "resources," they need more time
9 to walk through different pieces of it.
10 W.

11 E cannot -- We feel anyway, we
12 shouldn't be in a position -- We do feel
13 that we should be in a position of
14 encouraging them to try and make the
15 effort anyway, but it's harder for them.

16 Q Does GBM do any work helping felons
17 figure out whether they owe money and how
18 much they owe?

19 A Yes.

20 Q What do you do?

21 A Well, the staff who work on that try to
22 get out -- work with the Board of Pardons
23 and Paroles, contact the Board of Pardons

1 and Paroles. They get the current
2 specifics of what their status is.

3 Q Is there anybody they contact besides
4 Pardons and Paroles?

5 A Yes. And I can't recall the name of the
6 organization. It's two blocks away from
7 us. It's where people go to check in in
8 their paroles. The local office and
9 people on parole have to go there and
10 check in and records are kept on them
11 there as well in the Birmingham/Jefferson
12 County area.

13 Q Is that just the local pardons' office?

14 A Yes, it is. I'm sorry.

15 Q Okay.

16 A I don't know what the official name of it
17 is.

18 Q Let's put the original complaint aside
19 and focus on the supplemental.

20 A Is that 18?

21 Q Yes. Very helpfully, count 16 is on page
22 16. Do you know what that count is
23 about?

1 MS. LANG: Objection. It calls
2 for a legal conclusion.

3 A Generally.

4 Q If everything that the supplemental
5 complaint says about count 16 is true,
6 how does it harm GBM?

7 MS. LANG: Objection. It assumes
8 knowledge.

9 A For us, any barrier that gets between
10 people and full participation, especially
11 barriers that are unproductive and
12 useless and stands in the way of that,
13 harms us, because that's work for us to
14 do to either try to work with others to
15 remove that barrier or to find ways for
16 people to overcome that barrier.

17 And since we can't lobby, we
18 spend a lot of time helping people
19 overcome barriers, even those who will
20 never get their right to vote back.

21 Q This is going to sound stupid, but I just
22 want it absolutely clear on the record.

23 Does GBM itself have a right to

1 cast a ballot at any election?

2 A The organization?

3 Q Right.

4 A No.

5 Q Okay. And has GBM ever been convicted of
6 a felony?

7 A No.

8 Q In Exhibit 18, I would like you to turn
9 to page eight. I ask you to read
10 paragraph 30.

11 A Okay.

12 Q Do you know what that means?

13 A Yes.

14 Q Would you please tell me?

15 A It's my understanding that, with the
16 retroactive implementation of HB282, the
17 population of people affected by the law,
18 that someone thought was prospective,
19 grows tremendous.

20 Q How so?

21 A Because it includes everyone whose crimes
22 who are covered happened before the law
23 was passed as well as those after the

1 law was -- when the law was passed going
2 forward for those crimes.

3 Q Are there more people disenfranchised in
4 Alabama today than there were in 2016?

5 A I have no way of knowing the totals, you
6 know.

7 Q Since --

8 A They have passed new laws since 2016 now
9 probably.

10 Q Since the 2017 law was passed, have you
11 had people come in for services and
12 talked to them about registering to vote
13 and learned that, well, before the 2017
14 law we would have done a CERV but, as it
15 is, you can just go on and vote without
16 one? Has that happened?

17 A I am sorry. I'm sorry. I misunderstood
18 you. I was talking about when people
19 was, you know, convicted now than then.
20 I said, of course they were. Okay.
21 Repeat the question.

22 Q Yeah. I am really focused on whether the
23 number of crimes that are

1 disenfranchising has increased or
2 decreased.

3 A Okay.

4 MS. LANG: Objection. It calls
5 for a legal conclusion.

6 Q Has it been GBM's experience that after
7 the 2017 law was passed that people have
8 come in that you have been trying to help
9 vote who would have been disenfranchised
10 before the 2017 list and now are not?

11 A Yeah. I mean, yes, in the sense that
12 there are -- there are fewer
13 interpretations of what crimes are
14 listed, that are covered. So, in that
15 since, yes.

16 Q You don't have a sense of whether more or
17 fewer crimes are covered?

18 A I have a sense that fewer crimes are
19 covered, because at least people agree on
20 the number. There was a disagreement on
21 the number before and where you were in
22 the State and what judge you were before,
23 and all that kind of stuff.

1 Q If the 2017 law were implemented such
2 that it only affected people whose
3 crime -- whose convictions are after the
4 2017 law passed, and if that meant that
5 anyone whose conviction was before 2017
6 would be subjected to the old system
7 where there was no list but there was
8 still disenfranchisement, would that be
9 easier for GBM than the current system
10 where you would look at one list for
11 everyone, or would it be harder for GBM?

12 MS. LANG: Object to the form.

13 You can answer.

14 A It would be easier to deal with just
15 going from the law forward -- from the
16 time the law was passed forward.

17 Q Why?

18 A It would be a smaller number.

19 Q I think you are fighting the hypo. You
20 would have everybody whose conviction was
21 from 2017 forward.

22 A Right.

23 Q You would have the list.

1 A Right.

2 Q Everyone who was convicted before the
3 2017 law took effect.

4 A Uh-huh (positive response).

5 Q They would still be just disenfranchised
6 under the old system that was in place
7 before the law took effect. Is that
8 world easier or harder than the one we
9 have now where we would use the list for
10 everyone?

11 A That's hard to figure out. At least
12 under the old law you can get different
13 interpretations in different parts of the
14 State of what was moral turpitude.

15 Q So, you are saying that was sometimes
16 helpful?

17 A I said, no, it would be different. I
18 don't know if it's helpful or not
19 helpful. It would be different because
20 of it. Yeah.

21 Q All right. Take it as a given that
22 Alabama is going to be able to
23 disenfranchise those who commit felonies

1 involving moral turpitude. Would you
2 rather Alabama do that in a system with a
3 list or without one?

4 A Well, definitely with one.

5 Q Why?

6 A Depending on what's on the list. You
7 could have an equitable list, first of
8 all, that wasn't class biased or race
9 biased.

10 Q I am trying to get at administratively
11 what's easier.

12 A Okay. Administratively, it's better to
13 have a list that specifies clearly
14 whether it's disqualifying or it's not if
15 you wanted to do that, you know.

16 Q And is it your understanding that if the
17 2017 law did not apply to felonies
18 committed before then that all those
19 people would simply be allowed to vote?

20 A It's my feeling that some would and some
21 wouldn't as it was back then, even some
22 people convicted of the same crime in
23 different parts of the state or different

1 courts.

2 Q Okay. In paragraph 30, are you saying
3 that it is more work for GBM to have a
4 single list that applies to everybody,
5 than it would be to have a list for some
6 people and no list for others?

7 A Yeah.

8 MS. LANG: Objection. Asked and
9 answered. It calls for a
10 legal conclusion, and to the
11 form.

12 A Yes.

13 Q I am trying to understand why that would
14 be the case.

15 A This one example is, after the law was
16 passed, there was much more interest in
17 formerly people with convictions, in
18 talking about it than there was before,
19 because before, it was like a dead-end
20 street, you know. It got some publicity.
21 They didn't know exactly how to do it.
22 But there were more interest in talking
23 to people with conviction after the law

1 was passed, because they were interested
2 in their gain.

3 Q Okay. So, you were dealing with more
4 people. But for each person, did it take
5 more or less time to help that individual
6 person?

7 A Oh, at least more. In my experience, it
8 took just as much time, because the key
9 was, there was interest but not belief
10 that it could work for them, and could
11 the information that we had -- the more
12 time, too.

13 Before, from my experience was,
14 we got access to people who -- the
15 diehard committed to getting their voting
16 rights back. After the list was made and
17 became public, we spent a lot more time
18 reaching out to formerly convicted people
19 and convicted people to -- to let them
20 know that we, at least, have a list that
21 we could, you know, use to determine if
22 they were qualified to get their votes
23 back, which direction to go.

1 MS. LANG: Should we take a break?

2 It's hot in here, and I need
3 to use the restroom.

4 (At which time, there was an
5 off-the-record discussion.)

6 BY MS. MESSICK:

7 Q Mr. Douglas, is it harder to decide or
8 determine whether a particular felony is
9 disqualifying now that there is a list of
10 felonies that are disqualifying when GBM
11 is helping clients?

12 A I really can't figure that out, because I
13 don't do it directly.

14 Q Who would I need to ask?

15 A Mary Jones or Tari Williams, who are
16 right across the table.

17 Q What are you -- What is GBM hoping to get
18 out of this lawsuit? What relief are you
19 seeking?

20 A I don't know the legal terminology. We
21 are trying to reduce the barriers to
22 people who have -- all the barriers that
23 the people who have -- who were formerly

1 convicted have between them and full
2 voting franchise.

3 Q Is it GBM's position that felons should
4 be allowed to vote once they have been
5 released from prison?

6 A Yes.

7 Q Is it GBM's position that felons should
8 be allowed to vote while they are in
9 prison?

10 A Yes.

11 Q Are there any felons that should not be
12 allowed to vote in GBM's view?

13 A No. And that's because Alabama has made
14 it plain, at least until this day, it's
15 incapable of making an equitable decision
16 on which felons those should be.

17 Q If GBM opened a branch office in
18 Connecticut, would it have different
19 views on whether felons can vote?

20 MS. LANG: Objection. It calls
21 for speculation.

22 A It calls for speculation. We couldn't
23 even -- that's not the south. I don't

1 know.

2 Q Well, it sounded like you are saying that
3 you believe Alabama is uniquely
4 disqualified from being able to make a
5 decision about which felons can vote.

6 A Yes, with where the Legislature is,
7 specifically.

8 Q Why do you clarify it that way?

9 A The argument that we read about in the
10 news about which ones should be, which
11 ones shouldn't be, was immature.

12 Q It was what, sir?

13 A Immature. Childish.

14 Q What do you mean?

15 A Silly. Well, at least that was the point
16 in the media.

17 Q What do you remember about -- well --

18 A That no white-color crimes were included
19 or elected officials.

20 Q Was there anything else that GBM thought
21 was negative in a way that the 2017 law
22 was passed? Were there -- Are there
23 other criticisms that GBM has of the

1 list?

2 A Not that's not included in the legal
3 documents, no.

4 Q You're talking about the complaints?

5 A Complaint, yes.

6 Q Do you know whether the 2017 law was the
7 result of compromise between various
8 legislators?

9 A I don't have any direct knowledge of
10 that, no.

11 Q Do you know whether any black legislators
12 supported that law, the 2017 law?

13 A Not specifically, no.

14 Q I am going to hand you what I am marking
15 as Defendant's Exhibit 19.

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

20 Q Can you tell me if you recognize this
21 document?

22 A Yes.

23 Q Can you tell me what it is, please.

1 A What date is that? I thought the first
2 one -- it's a request for documents from
3 GBM.

4 Q How much time did GBM spend gathering
5 documents in response to this request?

6 A I didn't record the time, but it happened
7 over a period of days.

8 Q Is a period of days less than a week?

9 A Maybe a little more.

10 Q Is it less than two weeks?

11 A Less than two weeks.

12 Q Was it all day for that time period, or
13 there was some time on each day for
14 several days, not exceeding two weeks?

15 A I would say several hours a day, not
16 to -- not to -- definitely not to exceed
17 two weeks, but over a week. That's from
18 the date we got the request until we
19 produced what -- that you have.

20 Q Okay. Does GBM have any grant agreements
21 that specifically target felon voting or
22 helping felons vote as opposed to
23 elections generally?

1 A No.

2 Q Has GBM received any donations from
3 individuals that were specifically given
4 for the purpose of helping GBM help
5 felons to vote?

6 A Not specifically, no.

7 Q Does GBM have documents that would show
8 me how much money or other resources GBM
9 is devoting to helping felons vote?

10 A No.

11 Q Is Martha Shearer currently associated
12 with GBM in any way?

13 A No, she is not.

14 Q Does GBM ever engage in written
15 correspondence with the Alabama
16 Department of Corrections with respect to
17 helping felons vote?

18 A Not recently.

19 Q Has it in the last five years?

20 A No.

21 Q Does GBM ever engage in written
22 correspondence with any Board of
23 Registrars with respect to helping felons

1 gain the right to vote?

2 A No.

3 Q Does GBM ever engage in written
4 correspondence with Alabama Board of
5 Pardons and Paroles with respect to
6 helping felons get the right to vote?

7 A Not in the last five years.

8 Q Does GBM engage in written correspondence
9 with the Secretary of State's office with
10 respect to the helping felons get the
11 right to vote?

12 A No.

13 Q And does GBM engage with written
14 correspondence with any courts with
15 respect to helping felons get the right
16 to vote?

17 A No.

18 MS. MESSICK: I don't have any
19 further questions.

20 CROSS-EXAMINATION

21 BY MS. LANG:

22 Q Okay. I want to start talking a little
23 bit about the topic of voting as a

1 punishment. Ms. Messick asked you a
2 number of questions about whether or not
3 voting is -- or the inability to vote,
4 not voting -- on whether the inability to
5 vote is a punishment.

6 Could you tell us about how
7 people you work with experience the
8 inability to vote because of a prior
9 conviction?

10 A One-on-one -- in general, first, we are
11 out trying to get -- register people to
12 vote. And we ask people are they
13 registered to vote. They say, no. Then
14 we say, why not? Then those who are
15 convicted say, I am sorry, almost
16 apologetically, I have been convicted of
17 a felony and I can't vote. That's their
18 belief. So, they feel they can't
19 participate.

20 Q And how -- Have they expressed to GBM how
21 that makes them feel?

22 A Yes. I've had the experience of, ranging
23 from people saying, it's really hard out

1 there for us ex-felons, to the extreme
2 is, we don't -- I don't feel wanted. I
3 don't feel wanted is the -- yeah, what I
4 heard.

5 Q Has anyone ever expressed to GBM that
6 they feel like it's a punishment to be
7 unable to vote?

8 MS. MESSICK: Object to the form.

9 A Yes.

10 Q Could you elaborate on what they have
11 said about that?

12 A Yeah.

13 MS. MESSICK: Object to the form.

14 Q I'll rephrase. Could you tell us about
15 any time a voter has talked about how
16 they perceive the inability to vote?

17 MS. MESSICK: Object to the form.

18 A Yeah. In terms of, I am still being
19 punished. I am out of prison, but I am
20 still being punished.

21 Q You mentioned just a moment ago that when
22 you approach people in the field -- and
23 when I say "you," I mean GBM more

1 broadly -- the response from people with
2 prior convictions is usually that they
3 cannot -- they believe they cannot vote.
4 When you confront people with convictions
5 or encounter people with convictions, do
6 you find that they understand the law or
7 don't understand the law?

8 A It is not everyone, but it's a general
9 assumption that most people you first
10 come in contact with, that if they have
11 been convicted of a felony -- that they
12 know. But they assume that they still
13 cannot vote.

14 Q How many people would you say you
15 encounter that have kind of have a full
16 understanding of HB282 and all its
17 components?

18 A How many people I -- I personally
19 have encountered less than three.

20 Q What about GBM more generally?

21 A Oh, yeah. I would say for GBM staff and
22 our lead volunteers, maybe 20 to 25
23 people who understand the intricacies

1 of -- yeah.

2 Q How many people does GBM encounter, that
3 are people with convictions that you are
4 trying to register to vote, that
5 understand HB282 and its requirements?
6 And people you encounter in the field --

7 A Yeah.

8 Q -- with convictions, how many of them,
9 before you talk to them, know about HB282
10 and the list of disqualifying crimes?

11 A Very few know about HB282 anyway. And --
12 yeah. And the vast majority don't know
13 of 282, don't know anything has changed.

14 Q What would you say are some of the causes
15 of the continued confusion about who can
16 vote in Alabama?

17 A Our experience is that one cause is the
18 lack of multiple channels of information
19 to people either from the media, the
20 Board of Pardon and Paroles, the
21 Department of Corrections -- the media,
22 Department of Corrections, proactively
23 engaging ex-felons of the process that

1 give the right -- and the qualifications
2 to get their right to votes back. And I
3 say proactively, I mean, people have to
4 dig and do research.

5 Q What are some other potential official
6 forms that you think of communication
7 there could be?

8 A One of the things that we encounter is
9 that people want to -- are more
10 comfortable with documents that make them
11 feel that they won't get in trouble, that
12 they are not being tricked or, even
13 innocently, misled. So, if the
14 information can be provided on the voter
15 registration form that's issued by the
16 State.

17 Q Which voter registration forms?

18 A The Alabama mail-in voter registration
19 forms.

20 Q Any other ones?

21 A The CERV form.

22 Q What about the Federal form?

23 A Oh, the Federal form would help even

1 better because everybody doesn't use the
2 Alabama -- including the Federal form
3 because everybody doesn't use the -- the
4 Alabama form and online forms.

5 Q Okay. I would like you to look what I
6 believe is marked as Defendant's Exhibit
7 14. You should look at your original.
8 And do you see the box down at the bottom
9 that says "voter declaration" towards the
10 bottom right above the signature line?

11 A Oh, yeah.

12 Q Could you read the -- that box?

13 A Okay. (As read) "I am a U. S. citizen.
14 I live in the State of Alabama. I will
15 be at least 18 years of age on or before
16 election day. I am not barred from
17 voting by reason of a disqualifying
18 felony conviction. I have not been
19 judged mentally incompetent in a court of
20 law. I solemnly swear or affirm to
21 support and defend the Constitution of
22 the United States and the State of
23 Alabama and to further disavow any belief

1 or affiliation with any group which
2 advocates the overthrow of the Government
3 of the United States or the State of
4 Alabama by unlawful means, and that the
5 information contained herein is true, so
6 help me God." Signature line, and date
7 line. "If you falsely sign this
8 statement, you can be convicted and
9 imprisoned for up to five years."

10 Q Has any voter or potential voter
11 expressed concern to GBM about signing
12 this declaration?

13 MS. MESSICK: Object to the form.

14 A Yes.

15 Q How so?

16 A We have had --

17 MS. MESSICK: Object to the form.

18 MS. LANG: I'll rephrase.

19 Q What have your constituents told you
20 about this declaration?

21 MS. MESSICK: Object to the form.

22 A The question with this one is, if you
23 falsely sign this statement, you could be

1 convicted and in prison up to five years.
2 They ask us questions about, what does
3 "falsely" mean and have us go back over
4 it just to make sure. It's not about --
5 it's not about address even if -- for
6 instance, spelling your name. If you
7 have gotten remarried or not, those kinds
8 of questions come up about the falsely
9 part.

10 Q Are there any continuants, in particular,
11 that expressed concern about signing this
12 declaration?

13 A Yeah. People who are ex-felons are --
14 and that's in general. For people who
15 have never voted, there are some older
16 people that's never voted, not just young
17 people. But for ex-felons, questions --
18 they don't want to get in trouble.

19 Q And what -- What have your constituents
20 said about what they understand
21 disqualifying felony conviction to mean?

22 MS. MESSICK: Object to the form.

23 A What does that mean?

1 Q Uh-huh (positive response).

2 A "Does it include me."

3 Q And what do you think -- Without any
4 additional information, what would you
5 think disqualifying felony conviction
6 means?

7 A What the list says.

8 Q What if you didn't know that there was a
9 list. What would you think disqualifying
10 felony conviction means?

11 A I would be at a loss and confused.

12 Q All right. Do you think it would help
13 your constituents to have more
14 information on this form?

15 A It will be helpful to our constituents if
16 they had State sanctioned more
17 information on this form.

18 Q And what form could that additional
19 information take?

20 A It can be a list of the disqualifying
21 convictions, and it could be attached to
22 the form itself with the State's
23 imprimatur or State's logo on it or name

1 on it just so that they know this is an
2 official State document and not an
3 attachment I pulled out somewhere.

4 Q You testified earlier that voting
5 registration work for people with
6 convictions is time consuming.

7 Can you tell us what makes it
8 so difficult and time consuming to do
9 this work?

10 A One thing is being able to find a
11 significant group of people to try to do
12 a group education process. And that's --
13 that's difficult and time consuming
14 because you have to do it different hours
15 of the day. Low income workers work all
16 shifts. Everybody is not available for a
17 nine-or-noon meeting. Secondly -- or we
18 end up going to places where we like to
19 find a large number of people, such as
20 Cooper Green Hospital or the service
21 station -- not service station -- Central
22 Station for transit or, as they come
23 through our door, where we do the bulk of

1 folks; and that is, we have to make a
2 group talk and then ask people who are
3 ex-felons seeking the right to vote to
4 self-identify. And then we will have to
5 pull them aside and have a conversation
6 with them one-on-one.

7 Q So, for people with convictions, you have
8 one-on-one conversations?

9 A Yes. Yes.

10 Q If people with convictions were not
11 disenfranchised in Alabama, what would
12 you do with your time that is currently
13 spent on felony disenfranchisement work?

14 A If we didn't have to spent as much time
15 on one-on-ones and having special group
16 meetings, we could focus our voter
17 engagement work on larger number of
18 peoples over shorter periods of time and
19 become much more effective in reaching
20 more people in any given period of time.

21 Q In your experience, does GBM encounter
22 more people that were convicted of crimes
23 after 2017 or more people who were

1 convicted of crimes sometime before
2 August 1, 2017?

3 A I have no way of knowing that.

4 Q Okay. Would you say overall there are
5 more people that have been convicted any
6 time before 2017 or more people who have
7 been convicted of crimes after
8 August 1st, 2017?

9 MS. MESSICK: Before he answers,
10 can you read that back? I'm
11 sorry.

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

14 A Yes.

15 Q There are more?

16 A There are more convicted prior to 2017
17 than after 2017 to this date.

18 Q And when you are thinking about your
19 resources for helping people, what's the
20 most important factor of how many
21 resources you are going to need to help
22 people? Is that a --

23 MS. LANG: I will rephrase it.

1 Q Is the amount of resources you need to do
2 any direct service work related to the
3 size of the population that needs that
4 work?

5 A Yes. And the size of the number of staff
6 we need to address that. Yeah.

7 Q So, if there is more people that need the
8 service, that will take more of your
9 resources?

10 A Yes.

11 Q Earlier you testified that often you will
12 help -- GBM will help individuals fill
13 out CERVs and they will send those CERVs
14 to the Board of Pardons and Paroles
15 themselves. Do you sometimes send the
16 CERVs for them?

17 A Yes.

18 Q Counsel showed you earlier two sets of
19 documents that were not admitted as
20 exhibits. And they were copies of CERV
21 applications that GBM has assisted with.
22 Are those the copies of 100 percent of
23 the CERVs that GBM has assisted with?

1 A No.

2 Q And why not?

3 A Most of those CERVs that we reproduced
4 were provided by one staff person over a
5 short period of time, not all of them,
6 but over a short period of time, because
7 we were trying to track her work more
8 effectively.

9 Q So, you do not have in your possession
10 all the copies of all CERVs that you have
11 assisted with?

12 A No, I not. We would have to find those.

13 Q Is it possible you just don't have copies
14 of all of them?

15 A It's possible. They weren't permanent
16 records for us.

17 Q Similarly, the spreadsheet that you
18 looked at, which was mark as Exhibit
19 Ten -- you testified that Exhibit Ten is
20 a spreadsheet that tracks some of GBM's
21 voter registration work.

22 A Right.

23 Q Is that -- Does it track all of the

1 people that GBM assisted with voter
2 registration?

3 A No, it does not.

4 Q And why not?

5 A Like the hard copies, the spreadsheet was
6 a form to record the work of a staff
7 person more accurately to make sure
8 that -- to remind herself, too, that has
9 she collected all the information from
10 filing, to response, to followup.

11 Q I am going to refer you to Exhibit 13,
12 Defendant's Exhibit 13. And this was a
13 sign-in sheet from a meeting on
14 March 30th, 2016. You testified that
15 this was a meeting where people with
16 convictions were discussing the law.

17 Can you discuss who else was at
18 that meeting?

19 A At that meeting were people with
20 convictions. At that meeting, were some
21 legal experts. At the meeting were some
22 allies for GBM as well.

23 Q And what was the meeting about?

1 A I wasn't in attendance. I saw the sheet,
2 and I heard about it afterwards. But it
3 was discussing ways to engage the
4 community on the new law.

5 Q When you --

6 A Well, to get -- on felon registration,
7 rather.

8 Q Uh-huh (positive response). When you
9 assist people in applying for CERVs, how
10 does the issue of fines and fees come
11 into play?

12 A It's been our experience, when we assist
13 people with -- in the CERVs, that's the
14 one hurdle they can't overcome in the
15 near future or, in some cases, ever. And
16 -- right.

17 Q Is it sometimes the case that you will
18 start to assist somebody with a CERV
19 application and then discover that they
20 are not eligible because of fines and
21 fees?

22 A Not only will -- yes. Sometimes cases.
23 Sometimes the clients will -- it will be

1 the first time they find out, too, as
2 well.

3 Q So, is it sometimes the case that you
4 will also fill out an application in its
5 entirety, turn it in, and it's rejected
6 because of failure to pay fines and fees?

7 A Yes.

8 Q How often would you say that happens?

9 A It's not every time, but I would say at
10 least 10 percent of the time.

11 Q Okay. And do you some -- Do your staff
12 sometimes have to do research, try to
13 figure out if someone still has
14 outstanding fines and fees?

15 A Yes. We find out there are communication
16 problems from the Department of
17 Corrections with the people on their
18 status at different levels, and that's
19 one of them.

20 Q And so, do you sometimes call officials
21 to try to determine fines and fees
22 status?

23 A Yes.

1 Q Okay. Earlier you testified that if
2 2017 -- if the 2017 law was applied
3 retrospectively only, it may be the case
4 that some people with convictions prior
5 to 2017 would still be disenfranchised.

6 Can you elaborate on what you
7 meant by that?

8 A My best elaboration on it was that I
9 can't elaborate on it. It's that I was
10 speculating being a different part of
11 history, different times, and comparing
12 the results of two places in history. I
13 have no way of knowing that.

14 Q Okay. Is that your best guess as to what
15 Alabama might do in that case?

16 A Yes, it is.

17 Q Is it GBM's position that anybody
18 prior -- with a conviction prior to 2017
19 should be disenfranchised?

20 A Prior -- to be disenfranchised?

21 Q Yes. Is it GBM's position that under the
22 2017 law and current Alabama law that
23 anybody with a conviction that came

1 before HB282 should be disenfranchised?

2 A It is not GBM's position that it should
3 be, but the law says they should be.

4 Q No. I'll rephrase it.

5 A Okay.

6 Q In this lawsuit, is it GBM's position
7 that people with convictions before
8 August 1st, 2017, which is when the new
9 law went into effect, should not be
10 disenfranchise, as in, should be able to
11 vote?

12 A Oh, yes.

13 Q And why is that the case?

14 A The crimes for which they are convicted
15 was not part of the environment in which
16 the crimes were committed. So...

17 Q Right. Is it another way of saying that
18 they did not have notice at the time --

19 A Yes.

20 Q -- that they would be disenfranchised?

21 MS. MESSICK: Object to the form.

22 A Correct.

23 Q Did you -- Prior to 2017, when clients

1 came into your office, did they have an
2 understanding that moral turpitude
3 applied to their felony conviction; did
4 they understand that?

5 A No.

6 Q Did anyone in your staff have a way of
7 understanding what moral turpitude meant
8 or how it applied?

9 A Maybe one -- no. One person had heard of
10 it.

11 Q But did that person know what it meant --

12 A No.

13 Q -- or how it applied?

14 A No.

15 Q Was it GBM's experience that county
16 registrars had a uniform application of
17 moral turpitude?

18 A No.

19 Q Was it GBM's experience that there was a
20 dis-uniform application?

21 A Yes.

22 Q Just one last question. In your
23 experience working with people with prior

1 convictions, how did they feel about the
2 use of the term "felon" as it applied to
3 them?

4 A Like an unmoveable stereotyping tattoo
5 that meant that they were less than or
6 considered by the rest of society as less
7 than others, undeserving, and will be
8 punished in perpetuity. Out of prison,
9 but not free.

10 Q And what language does GBM typically use
11 to describe people with past convictions?

12 A A couple: Former felons, ex-felons,
13 formerly incarcerated people.

14 MS. MESSICK: That's all I have.

15 REDIRECT EXAMINATION

16 BY MS. MESSICK:

17 Q Mr. Douglas, I have got a few follow-up
18 questions.

19 I have just heard you tell
20 Ms. Lang that very few people know about
21 the 2017 law that anything changed. But
22 I had understood you to tell me earlier
23 that, when the 2017 law change, it

1 started a public dialogue that brought
2 more people -- generated more people
3 interested in regaining their rights.

4 So, can you help me reconcile
5 those positions; help me understand what
6 happened?

7 MS. LANG: Object to the form.

8 A After the law passed, not during the
9 debate about it, more people didn't come
10 to us, but we found out more people were
11 aware that something had happened, but
12 not what. They couldn't talk about the
13 content of the law or what the
14 disqualifying crimes, convictions were.
15 They knew something had happened --

16 Q Okay.

17 A -- or some change had been made. Yeah.

18 Q Do you remember me asking you earlier
19 about --

20 MS. MESSICK: Strike that.

21 Q The round table discussion that is the
22 subject of Defendant's Exhibit 13, that
23 was in March of 2016, was that a public

1 meeting?

2 A It wasn't a public meeting as far as
3 there was a public announcement. I know
4 people were more or less invited to a
5 meeting. Yeah.

6 Q Could any member of the public have
7 attended?

8 A Yeah. If they found out about it, they
9 could attend, yes. The room holds 20
10 people, so, you know.

11 Q You said that there were legal experts at
12 that meeting?

13 A Yeah, some. But I wasn't at that
14 meeting. Yeah.

15 Q But did those lawyers -- Did those people
16 have an attorney-client relationship with
17 the people in the room?

18 A No.

19 Q If somebody -- If GBM was talking to a
20 client in April of 2016 about whether
21 they could register to vote and that
22 person had a felony conviction, how did
23 GBM go about figuring out whether that

1 felony disqualified the person from
2 voting?

3 A That would be the old way of -- there is
4 a form -- I forgot what it was called
5 now -- that we would send to the
6 Department of Pardons and Paroles in
7 Montgomery, and we would wait to hear a
8 response about that.

9 Q So, GBM never tried to make an assessment
10 about whether a crime was disqualifying;
11 you just -- you always asked Pardons and
12 Paroles?

13 A Yes.

14 Q And the form that you sent wasn't a CERV
15 application?

16 A It could have been a CERV. But I only
17 got familiar with the CERV application
18 after the -- I personally got familiar
19 with it after the March '17, because I
20 didn't do that work. But I knew there
21 was a form. I never looked at the type
22 of form that it was that we would send
23 to -- mail to Montgomery to the

1 Department of Pardons and Paroles. Yeah.

2 Q Okay. Thank you.

3 MS. MESSICK: We're done?

4 MS. LANG: We're done.

5

6 (Deposition concluded at

7 approximately 4:33 p.m.)

8 * * * * *

9 FURTHER DEPONENT SAITH NOT

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1 R E P O R T E R ' S C E R T I F I C A T E

2 STATE OF ALABAMA)

3 ELMORE COUNTY)

4 I, Jeana S. Boggs, Certified Professional
5 Reporter and Notary Public in and for the State of
6 Alabama at Large, do hereby certify on Tuesday, May
7 8th, 2018, that pursuant to notice and stipulation
8 on behalf of the Defendants, I reported the
9 deposition of SCOTT DOUGLAS, who was first duly
10 sworn by me to speak the truth, the whole truth, and
11 nothing but the truth, in the matter of TREVA
12 THOMPSON, et al., Plaintiff, versus JOHN H. MERRILL,
13 in his, Defendant, Case Action No.
14 2:16-cv-783-WKW-CSC, now pending in the United
15 States District Court for the Middle District,
16 Northern Division of Alabama; that the foregoing
17 colloquies, statements, questions and answers
18 thereto were reduced to 166 typewritten pages under
19 my direction and supervision; that the deposition is
20 a true and accurate transcription of the
21 testimony/evidence of the examination of said
22 witness by counsel for the parties set out herein;
23 that the reading and signing of said deposition was

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1 not waived by witness and counsel for the parties.

2 I further certify that I am neither of
3 relative, employee, attorney or counsel of any of
4 the parties, nor am I a relative or employee of such
5 attorney or counsel, nor am I financially interested
6 in the results thereof. All rates charged are usual
7 and customary.

8 I further certify that I am duly licensed
9 by the Alabama Board of Court Reporting as a
10 Certified Court Reporter as evidenced by the ABCR
11 number following my name found below.

12 This the 25th day of May, 2018, in the
13 year of our Lord.

14
15
16
17 _____
Jeana S. Boggs, CCR
18 ACCR NO. 7, Exp 9/30/2018
Certified Court Reporter and
Notary Public
19 Commission expires: 8/6/2018
20

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E R R A T A S H E E T

I, SCOTT DOUGLAS, the witness herein, have read the transcript of my testimony and the same is true and correct, to the best of my knowledge, with the exception of the following changes noted below, if any:

Page / Line /	Change	/ Reason

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SCOTT DOUGLAS

Sworn to and subscribed before me,
this the _____ day of _____, 2018.

Notary Public

My commission expires: _____

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EXHIBIT 2

From: "Packard, Ed" <Ed.Packard@sos.alabama.gov>
Sent: 8/17/2018 11:36:36 AM -0500
To: David Kuennen <dkuennen@eac.gov>
CC: "Brewer, David" <David.Brewer@sos.alabama.gov>; "Bennett, John" <John.Bennett@sos.alabama.gov>; "Beal, Brent" <Brent.Beal@sos.alabama.gov>; "Helms, Clay" <Clay.Helms@sos.alabama.gov>; Cliff Tatum <ctatum@eac.gov>; Brian Newby <bnewby@eac.gov>
Subject: RE: NVRA Instructions

David ...

Thank you. I look forward to hearing from you when the form is translated and posted to the EAC web site.

--Ed

Ed Packard

Administrator of Elections

Office of the Secretary of State

State of Alabama

Phone: 334-242-4845

Cell: 334-324-6246

FAX: 334-242-2444

From: David Kuennen [mailto:dkuennen@eac.gov]
Sent: Friday, August 17, 2018 9:08 AM
To: Packard, Ed <Ed.Packard@sos.alabama.gov>
Cc: Brewer, David <David.Brewer@sos.alabama.gov>; Bennett, John <John.Bennett@sos.alabama.gov>; Beal, Brent <Brent.Beal@sos.alabama.gov>; Helms, Clay <Clay.Helms@sos.alabama.gov>; Cliff Tatum <ctatum@eac.gov>; Brian Newby <bnewby@eac.gov>
Subject: Re: NVRA Instructions

Thank you, Ed. We'll be in touch once the form is translated and posted on our

EXHIBIT 49

ED PACKARD

9/19/2018

website.

David

David Kuennen

Senior Research Program Specialist

U.S. Election Assistance Commission

dkuennen@eac.gov | www.eac.gov

On Thu, Aug 16, 2018 at 1:57 PM, Packard, Ed <Ed.Packard@sos.alabama.gov> wrote:

David ...

We approve the English language proof of the NVRA instructions you sent to us that reflected the change we made in the instructions for item #9.

Please let me know if you need further information from us.

Thank you.

--Ed

Ed Packard

Administrator of Elections

Office of the Secretary of State

State of Alabama

Phone: 334-242-4845

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From: David Kuennen [mailto:dkuennen@eac.gov]

Sent: Monday, August 13, 2018 4:11 PM

To: Packard, Ed <Ed.Packard@sos.alabama.gov>

Cc: Brewer, David <David.Brewer@sos.alabama.gov>; Bennett, John <John.Bennett@sos.alabama.gov>; Beal, Brent <Brent.Beal@sos.alabama.gov>; Helms, Clay <Clay.Helms@sos.alabama.gov>; Cliff Tatum <ctatum@eac.gov>; Brian Newby <bnewby@eac.gov>

Subject: Re: NVRA Instructions

Dear Ed,

Please find attached the updated English language proof for your review and approval.

David

On Fri, Aug 10, 2018 at 10:39 AM, Packard, Ed <Ed.Packard@sos.alabama.gov> wrote:

Thank you, David.

--Ed

Ed Packard

Administrator of Elections

Office of the Secretary of State

State of Alabama

Phone: 334-242-4845

Cell: 334-324-6246

FAX: 334-242-2444

From: David Kuennen [mailto:dkuennen@eac.gov]

Sent: Friday, August 10, 2018 9:39 AM

To: Packard, Ed <Ed.Packard@sos.alabama.gov>

Cc: Brewer, David <David.Brewer@sos.alabama.gov>; Bennett, John <John.Bennett@sos.alabama.gov>; Beal, Brent <Brent.Beal@sos.alabama.gov>; Helms, Clay <Clay.Helms@sos.alabama.gov>; Cliff Tatum <ctatum@eac.gov>; Brian Newby <bnewby@eac.gov>

Subject: Re: NVRA Instructions

Thank you, Ed. No problem. I will send you the updated English proof soon, hopefully today.

David

On Fri, Aug 10, 2018 at 10:37 AM, Packard, Ed <Ed.Packard@sos.alabama.gov> wrote:

David ...

We have reviewed the proof of our requested changes to the NVRA form instructions for Alabama. During that review process, we determined that we needed to make one further edit to the requested changes. I have attached a new PDF file with our requested changes to the instructions for item 9.

In summary, we edited the URL in the revised instructions to remove the ".html" extension.

Please make this additional change and then send us another English-language proof

for our review and approval.

Thank you for your understanding and assistance.

--Ed

Ed Packard

Administrator of Elections

Office of the Secretary of State

State of Alabama

Phone: 334-242-4845

Cell: 334-324-6246

FAX: 334-242-2444

From: David Kuennen [mailto:dkuennen@eac.gov]

Sent: Thursday, August 9, 2018 1:23 PM

To: Packard, Ed <Ed.Packard@sos.alabama.gov>

Cc: Brewer, David <David.Brewer@sos.alabama.gov>; Bennett, John <John.Bennett@sos.alabama.gov>; Beal, Brent <Brent.Beal@sos.alabama.gov>; Helms, Clay <Clay.Helms@sos.alabama.gov>; Cliff Tatum <ctatum@eac.gov>; Brian Newby <bnewby@eac.gov>

Subject: Re: NVRA Instructions

Dear Ed,

Please review the attached English-language proof of your requested changes to the NVRA form instructions. Once we receive your approval, we will finalize the form and have it translated. This process typically takes 1-2 weeks, but please note that we are processing another state's request at the same time and this may add a small amount of time to the estimate.

Let us know if you have any questions.

Kind regards,

David

On Thu, Aug 2, 2018 at 2:02 PM, Cliff Tatum <ctatum@eac.gov> wrote:

Thanks Ed,

We will review.

Regards,

Cliff

On Thu, Aug 2, 2018 at 1:31 PM, Packard, Ed
<Ed.Packard@sos.alabama.gov> wrote:

Mr. Tatum ...

I am responding to your email to Clay Helms regarding how the State of Alabama's Felony Voter Disqualification Act will change our existing NVRA instructions.

Attached is a PDF file that contains the modifications to the instructions found in item #9, specifically the fourth bullet point addressing felony moral turpitude convictions.

We request that the NVRA instructions for Alabama be updated to reflect this language.

If you have any questions about the proposed language, please do not hesitate

to contact me. Thank you.

--Ed

Ed Packard

Administrator of Elections

Office of the Secretary of State

State of Alabama

Phone: 334-242-4845

Cell: 334-324-6246

FAX: 334-242-2444

From: Cliff Tatum [<mailto:ctatum@eac.gov>]
Sent: Wednesday, July 25, 2018 11:00 AM
To: Helms, Clay <Clay.Helms@sos.alabama.gov>
Cc: David Kuennen <dkuennen@eac.gov>
Subject: NVRA Instructions

Hey Clay,

I hope this message finds you well.

I just left you a voicemail to call me regarding your NVRA instructions. I am attaching a copy of your current instructions for review. Please advise how the Felony Voter Disqualification Act will change your existing instructions. You can send back a marked up version of the attached, reflecting any required changes.

Thanks

Cliff Tatum
General Counsel
301-563-3957

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--

David Kuennen
Senior Research Program Specialist
U.S. Election Assistance Commission
dkuennen@eac.gov | www.eac.gov

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--

David Kuennen

Senior Research Program Specialist

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David Kuennen

Senior Research Program Specialist

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EXHIBIT 3

EDWARD PACKARD 9/19/2018

Page 1

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

TREVA THOMPSON, et al.,
Plaintiffs,

vs. Civil Action No. 2:16-cv-783ECM-SRW

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

* * * * *

DEPOSITION OF EDWARD PACKARD, taken
pursuant to notice and stipulation on
behalf of the Plaintiffs, at the Office of
the Attorney General, 501 Washington
Avenue, Montgomery, Alabama, before
Bridgette Mitchell, Shorthand Reporter and
Notary Public in and for the State of
Alabama at Large, on September 19, 2018,
commencing at 10:07 a.m.

1 APPEARANCES

2

3 FOR THE PLAINTIFFS:
4 Mark P. Gaber, Esquire
5 Danielle Lang, Esquire
6 CAMPAIGN LEGAL CENTER
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12 dlang@campaignlegalcenter.org

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20 FOR THE DEFENDANTS:
21 Misty Fairbanks Messick, Esquire
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23 OFFICE OF THE ATTORNEY GENERAL
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25 501 Washington Avenue
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27 334.353.9110
28 mmessick@ago.state.al.us
29 wsinclair@ago.state.al.us

30 ALSO PRESENT:
31 Brent Beal, Esquire
32 Hugh R. Evans, III, Esquire
33 OFFICE OF SECRETARY OF STATE
34 Alabama State Capitol
35 600 Dexter Avenue
36 Suite E-207
37 Montgomery, Alabama 36130
38 brent.beal@sos.alabama.gov

1 STIPULATIONS

2 It is hereby stipulated and agreed
3 by and between counsel representing parties
4 that the deposition of ED PACKARD is taken
5 pursuant to the Federal Rules of Civil
6 Procedure and that said deposition may be
7 taken before Bridgette Mitchell, Shorthand
8 Reporter and Notary Public in and for the
9 State of Alabama at Large, without the
10 formality of a commission; that objections
11 to questions, other than objections as to
12 the form of the questions, need not be made
13 at this time, but may be reserved for a
14 ruling at such time as the deposition may
15 be offered in evidence or used for any
16 other purpose as provided for by the
17 Federal Rules of Civil Procedure.

18 It is further stipulated and agreed
19 by and between counsel representing the
20 parties in this case that said deposition
21 may be introduced at the trial of this case
22 or used in any other manner by either party
23 hereto provided for by the Federal Rules of

1 Civil Procedure.

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1 COURT REPORTER: Usual

2 stipulations?

3 MS. LANG: Yes.

4 MS. MESSICK: Except that we would
5 like to read and sign.

6 EDWARD PACKARD, having first been
7 duly sworn or affirmed to speak the truth,
8 the whole truth, and nothing but the truth,
9 testified as follows:

10 EXAMINATION

11 BY MS. LANG:

12 Q. Good morning, Mr. Packard. My name is
13 Danielle Lang, and I'm an attorney for the
14 plaintiffs in this case. Have you been
15 deposed before?

16 A. Yes, I have.

17 Q. How many times have you been deposed?

18 A. Just once.

19 Q. Just the once. And what was that for?

20 A. It was in the photo voter ID lawsuit.

21 Q. So you've likely gone over some of these
22 instructions before, but I'll just refresh
23 your recollection. During the deposition,

1 I'll be asking you some questions, and the
2 court reporter must be able to record my
3 questions and your answers, so it's
4 important that we not speak over each
5 other. So I'll do my best not to interrupt
6 you and if you could do your best not to
7 interrupt me. It is also important that
8 you give a verbal answer. The court
9 reporter can't take down a nod or an uh-huh
10 or uh-hmm. So, you know, yes-or-no answers
11 and the like will be easier to take down on
12 the record.

13 If I ask a question that you don't
14 understand, please let me know and I'll do
15 my best to correct the question or clarify.
16 But if you don't tell me otherwise, I'll
17 assume you understood the question. Is
18 that okay?

19 A. Yes.

20 Q. Are you taking any medications today that
21 would affect your ability to answer my
22 questions truthfully and completely?

23 A. No.

1 Q. Is there any other reason you cannot answer
2 my questions truthfully today?

3 A. No.

4 Q. All right. If you think of something after
5 a question has been answered that you'd
6 like to add or amend your answer to make it
7 more complete or more truthful, just let me
8 know and we can go back and add to the
9 record additional responses to a prior
10 question.

11 If you need a break, let me know.
12 We'll try to take, you know, some regular
13 breaks every hour or so. But if you need a
14 break, just let me know. The only rule is
15 that I'll ask that you answer whatever
16 question I've already posed. And then once
17 you've finished answering that question, we
18 can go ahead and take a break. Good
19 enough?

20 A. That's good.

21 Q. All right. Can you tell me a little bit
22 about your educational background?

23 A. Yes. I have a master's in public

1 administration from Auburn University as
2 well as a bachelor of public administration
3 from Auburn University.

4 Q. And what year did you graduate from your
5 master's program?

6 A. 1994.

7 Q. And you currently work for the secretary of
8 state's office; is that correct?

9 A. Yes.

10 Q. How long have you worked for the secretary
11 of state's office?

12 A. Approximately 21 years.

13 Q. What's your current position with the
14 secretary of state's office?

15 A. Administrator of elections.

16 Q. And what are your job duties as
17 administrator of elections?

18 A. I oversee compliance with the National
19 Voter Registration Act. Also oversee
20 compliance with the Uniformed and Overseas
21 Citizens and Absentee Voting Act. And I
22 work with our campaign finance law, the
23 Fair Campaign Practices Act. Plus any

1 other assigned duties that may be assigned
2 by the chief of staff.

3 Q. And who's the chief of staff?

4 A. David Brewer.

5 Q. Can you tell me kind of what other
6 positions you've held in the secretary of
7 state's office, however is easiest; it may
8 be by chronological order. And I'd like to
9 have a sense of at least generally what
10 years you held each position.

11 A. Okay. I was director of elections
12 immediately preceding the position I'm in
13 now, and that was approximately from 2013
14 to early 2017. Prior to that, I was the
15 supervisor of voter registration. And I
16 don't recall right offhand when I took over
17 that position. And then prior to that, I
18 was in the administrator of elections
19 position, and that was -- that began in
20 1997.

21 Q. So you started as administrator of
22 elections?

23 A. Right.

1 Q. Which is your current position now?

2 A. Right.

3 Q. Okay. What are the duties of the
4 supervisor of voter registration position?

5 A. The supervisor of voter registration
6 oversees the voter registration programs
7 that are assigned to the secretary of
8 state's office under state law. Supervisor
9 of voter registration also oversees the
10 boards of registrars, generally speaking.
11 He's not like a normal line supervisor of
12 registrars but he does oversee their work
13 and provides training and support to them,
14 or that position provides training and
15 support to the boards of registrars,
16 handles different administrative tasks
17 related to voter registration such as
18 selling voter lists to the public and,
19 again, coordinating with the boards of
20 registrars.

21 Q. And can you tell me your best estimate of
22 how many years you served in that position?
23 I know you can't recall the exact years and

1 that makes sense to me, but approximately
2 how long you served in that position until
3 2013?

4 A. It was approximately six or seven years.

5 Q. Okay. And what's the job responsibilities
6 of the director of elections?

7 A. The director of elections oversees the
8 entire elections division in the secretary
9 of state's office and coordinates all the
10 elections functions that are assigned to
11 the secretary of state's office under state
12 law and federal law. Director of elections
13 manages the staff of the elections
14 division.

15 Q. And who's in that position now?

16 A. That position is vacant right now.

17 Q. How long has it been vacant?

18 A. Since February of 2017.

19 Q. Who is manning those responsibilities in
20 the absence of a director of elections?

21 A. Well, Clay Helms is the assistant director
22 of elections, and so he performs a lot of
23 the duties that would normally go to the

1 director of elections. But also David
2 Brewer, the chief of staff, has a very
3 hands-on role with the elections division.

4 Q. Okay. And why did you leave that position?

5 A. I was demoted.

6 Q. Are you familiar with the topic of this
7 litigation?

8 A. Yes, ma'am.

9 Q. How does your job currently and how did
10 your job as director of elections and
11 supervisor of voter registration touch on
12 issues related to felony
13 disenfranchisement?

14 MS. MESSICK: Object to the form.

15 A. Generally my job now has very little to do
16 with felony disenfranchisement. As
17 director of elections and as supervisor of
18 voter registration, I would generally field
19 questions related to felony
20 disenfranchisement, or I would receive
21 questions, anyway, and then -- but even
22 then determinations on what was a moral
23 turpitude crime we would refer to our legal

1 counsel in the office and they would handle
2 addressing those questions.

3 Q. Okay. I don't want to dwell on this
4 subject for too long, but can you tell me
5 why your position was changed and you were
6 demoted?

7 A. Yes. There was a ballot measure that was
8 to be on the ballot in 2016 and there were
9 some oversights in the elections division.
10 The -- part of the ballot measure was
11 omitted from the ballot. And when the
12 situation came to light, we addressed the
13 situation and had to have ballots reprinted
14 statewide and ultimately they demoted me.
15 They held me accountable for that and
16 demoted me.

17 Q. Okay. So I've organized my plan for the
18 deposition today somewhat chronologically
19 since I thought that might be a good
20 organizational structure since you've been
21 here for quite some time. We have to kind
22 of go over how felony disenfranchisement
23 scheme has changed over time.

1 When you began working for the
2 secretary of state in 1997, what was your
3 understanding of the felony
4 disenfranchisement law then?

5 A. My understanding of the law then was that
6 all felonies led to disenfranchisement. I
7 was unaware that while I was working at my
8 prior job that the State of Alabama had
9 passed a constitutional amendment that
10 changed the language to include the moral
11 turpitude language. So at the time, I
12 thought -- I thought that all felonies led
13 to disenfranchisement.

14 Q. And what was your prior position before you
15 joined the secretary of state's office?

16 A. I was with the North Carolina State Board
17 of Elections as an education and training
18 specialist.

19 Q. Okay. So there was no list of moral
20 turpitude crimes at the time that you
21 joined the secretary of state's office?

22 A. Right. That is correct, yes.

23 Q. And so would I be correct in saying that at

1 that time, the administrative office of
2 courts was sending all felony convictions
3 to the registrars for removal?

4 A. That's my understanding. In my -- my job
5 role at that time, I was not directly
6 involved with training registrars on felony
7 disenfranchisement or any of those issues.
8 There was a supervisor of voter
9 registration -- or, actually, it was
10 director of voter registration -- that
11 handled the registrar duties, so I wasn't
12 directly involved in that, but that is my
13 understanding.

14 Q. Do you recall who was in that position at
15 that time?

16 A. Yes. Her name was Anita Tatum.

17 Q. So I'm going to hand you a document that
18 I'll mark as Packard Exhibit 1. I think it
19 will largely confirm what we've just
20 discussed.

21 (Packard Exhibit 1 was marked for
22 identification.)

23 Q. So I've tabbed the relevant page, so if you

1 could take a look at where I've tabbed,
2 it -- this is a guide to conducting a
3 successful voter registration drive, and
4 it's issued by the office of Secretary of
5 State Nancy Worley. Now, I don't know
6 exactly what year this guide was issued,
7 but my understanding is that Nancy Worley
8 was secretary of state in the early 2000s;
9 is that correct?

10 A. That is correct.

11 Q. And if you look at the tabbed page, what
12 does it say about the eligibility
13 requirements related to felonies?

14 A. States: Must not have been convicted of a
15 felony, unless his or her voting rights
16 have been restored.

17 Q. So at this time when this guide was issued,
18 the guidance from the secretary of state's
19 office was that all felonies were
20 disqualifying?

21 MS. MESSICK: Object to the form.

22 A. That's what it appears from this document.

23 Q. Okay. Thank you. So I'd like to talk a

1 little bit about how that guidance
2 ultimately changed from all felonies to
3 felonies involving moral turpitude. Do you
4 recall a lawsuit being filed in 2005 by the
5 NAACP LDF, or rather those were the
6 attorneys on the lawsuit, and it was
7 originally Gooden v. Worley and then later
8 captioned Chapman v. Gooden?

9 A. I'm generally familiar with that lawsuit.

10 Q. And can you share as you remember it the
11 changes that occurred in the administration
12 of the felony disenfranchisement law in
13 late 2005 when this lawsuit was filed?

14 A. Can you restate the question?

15 MS. MESSICK: Object to the form.

16 Q. Yes. The Gooden v. Worley lawsuit was
17 filed in late 2005, and it alleged that the
18 secretary of state was incorrectly
19 disenfranchising all felonies -- people --
20 all people with felony convictions when the
21 law as stated should have only been
22 felonies involving moral turpitude. My
23 understanding is that the secretary of

1 state's practice changed after the filing
2 of this lawsuit. I'm wondering what you
3 can share with me about those changes.

4 A. The only thing I can recollect that changed
5 was the Administrative Office of Courts and
6 the attorney general's office came up with
7 a list of moral turpitude crimes that were
8 then made available to the boards of
9 registrars for them to be able to
10 administer the law.

11 Q. Okay. So the AOC and the office of the
12 attorney general came up with a new list to
13 use in lieu of all felony convictions?

14 A. Yes, that's correct.

15 Q. Okay. And I want to give you what I will
16 mark as Packard Exhibit 2. And this is the
17 supreme court decision in that case. I'm
18 mostly interested in looking at it because
19 it makes some factual allegations about
20 what happened during that time, and I want
21 to know if they accord with your
22 recollection.

23 (Packard Exhibit 2 was marked for

1 identification.)

2 Q. So on page 9, in the second column, the
3 third paragraph down starts, In November
4 2005. Do you see that paragraph?

5 A. Yes.

6 Q. Can you read that paragraph and tell me if
7 that is an accurate description of what
8 happened in November 2005?

9 A. In November 2005, this secretary of state
10 conducted a series of meetings with
11 registrars throughout the state under the
12 topic of ex-felon registration. She
13 advised registrars at those meetings to
14 continue longstanding practice until
15 receipt of a response by the attorney to
16 her May 2005 inquiry.

17 Q. And that's all you need to read. And is
18 that your recollection of what happened
19 first in response to this litigation?

20 A. I don't have a recollection of this.

21 Q. One way or another?

22 A. One way or another.

23 Q. Fair enough. And on the next page, the

1 last paragraph on the first column says
2 that on January 10, 2006, a copy of the
3 attorney general's March 18, 2005 opinion
4 was sent to every board of registrars in
5 the state and the registrars were invited
6 to seek the advice of the attorney general,
7 if necessary, in determining whether a
8 particular felony involved moral turpitude.
9 By May 8, 2006, the secretary of state had
10 promulgated revised voter registration
11 forms for statewide use.

12 Is that an accurate reflection of what
13 happened in 2006, to the best of your
14 recollection?

15 A. That is accurate to the best of my
16 recollection.

17 Q. Okay. So beginning in 2006, registrars
18 were told that they should only
19 disenfranchise people with convictions
20 involving moral turpitude.

21 MS. MESSICK: Object to the form.

22 Q. Is that correct?

23 MS. MESSICK: Object to the form.

1 A. That's my recollection.

2 Q. Okay. At that time, what guidance were
3 registrars given in making a decision about
4 whether a crime involved moral turpitude or
5 not?

6 A. I'm not aware of any guidance that was --
7 that may have been given to the registrars
8 related to that.

9 Q. What was your understanding of how
10 registrars should make that decision?

11 MS. MESSICK: Object to the form.

12 A. I'm not sure I understand your question.

13 Q. In 2006, you were working at the secretary
14 of state's office. What was your
15 understanding of how registrars should
16 decide if a crime involved moral turpitude
17 or not?

18 MS. MESSICK: Object to the form.

19 A. You're asking how they should use their
20 judgment to determine?

21 Q. If a registrar were to come to you in 2006
22 and say, I see this guidance that says I
23 should not -- I should only disenfranchise

1 people who have been convicted of moral
2 turpitude crimes, how do I make that
3 determination, what would you tell them?

4 MS. MESSICK: Object to the form.

5 A. What I would have told them in that
6 situation, because it wasn't part of my job
7 to make determinations about moral
8 turpitude crimes, is I would have referred
9 them to our legal counsel so that the legal
10 counsel could assist them in making their
11 decision or giving them guidance on how to
12 make that decision.

13 Q. When you took over as supervisor of voter
14 registration, how would you have guided
15 registrars generally in making that
16 determination?

17 A. Generally, we would have referred them --

18 THE WITNESS: I'm sorry.

19 MS. MESSICK: Object to the form.

20 A. Generally we would refer them to the
21 attorney general's opinion at that point as
22 well as to the Alabama Election Handbook to
23 the list of moral turpitude crimes there.

1 And if they needed further assistance, then
2 I would have guided them to the legal
3 counsel.

4 Q. Thank you. After this change was made in
5 2006, was anything done in the secretary of
6 state's office to rectify the people whose
7 voter registration applications had been
8 rejected but -- for felony convictions but
9 whose felony convictions were not
10 disqualifying?

11 MS. MESSICK: Object to the form.

12 A. Not to my knowledge.

13 Q. I'm going to hand you what I'm going to
14 mark as Packard Exhibit 3. And these are
15 Voter Registration Advisory Board meeting
16 minutes from 2007.

17 (Packard Exhibit 3 was marked for
18 identification.)

19 Q. Do you recognize this document?

20 A. I don't have any recollection of this
21 document.

22 Q. Okay.

23 MS. MESSICK: Give me a chance to

1 look at it, please.

2 MS. LANG: Sure.

3 (Ms. Messick and witness review
4 document.)

5 MS. LANG: If it's helpful, it's
6 Section IV that I'm going to ask about.

7 (Brief pause.)

8 A. Okay.

9 Q. Just waiting for your counsel.

10 MS. LANG: You ready?

11 Q. So Section IV, subheader (a), says that
12 there was a discussion at this meeting of
13 the case pending on moral turpitude
14 definition before the Alabama Supreme
15 Court. So this is, I believe, the same
16 case that we've been discussing that
17 challenged the failure to apply the moral
18 turpitude law prior to its filing. Do you
19 recall what guidance was given to the
20 secretary of state's staff and to board of
21 registrars about how to handle this issue
22 while this litigation was pending?

23 (No immediate response given.)

1 Q. And I don't want you to reveal any
2 conversations -- and this is a general
3 rule. I'm going to ask you a number of
4 questions about conversations. I only want
5 you to reveal conversations that you had
6 not with counsel or the -- you know, or
7 when -- not with any counsel that was
8 representing you or anyone in the room, not
9 providing legal advice.

10 A. I don't -- I don't have any recollection of
11 what the specific guidance was at that
12 time.

13 Q. Do you remember what the period of time was
14 when -- strike that.

15 The Section IV (a)(i) says that
16 registrars were encouraged to call either
17 Judge Brown or Misty Fairbanks in the
18 attorney general's office to ask about
19 crimes that might fall into this category.
20 Do you recall during what period of time
21 registrars were encouraged to contact
22 Ms. Fairbanks about crimes of moral
23 turpitude?

1 A. Well, Judge Brown was our legal counsel --

2 Q. Right.

3 A. -- at the time, so in terms of Ms. Chapman
4 who was presiding at this meeting, was
5 secretary of state at the time, this would
6 have -- this particular advice would have
7 started with her -- with her term of
8 office --

9 Q. And would it --

10 A. -- and when Judge Brown -- I'm sorry.

11 Q. I apologize.

12 A. -- and when Judge Brown came on as legal
13 counsel.

14 Q. And with respect to advice from the
15 attorney general's office about moral
16 turpitude crimes, when did that continue
17 until?

18 A. I don't recollect when that continued
19 until.

20 Q. Do you recollect there being a period of
21 time in which registrars were told to
22 consult with the attorney general's office
23 about which crimes were moral turpitude and

1 which were not?

2 A. I do recollect that they were -- there was
3 a period of time when they were advised,
4 the registrars were advised, to seek
5 guidance from the attorney general's
6 office. I just don't recollect what time
7 period that was.

8 Q. And was it your understanding that that
9 guidance would be binding on the
10 registrars?

11 A. No. My -- my understanding was not that it
12 would be binding. It would be guidance to
13 the registrars for them to -- to assist
14 them in making their decision as to what is
15 moral turpitude or not.

16 Q. Would it have been appropriate for a board
17 of registrar to disagree with the guidance
18 from the attorney general's office and make
19 a different determination?

20 MS. MESSICK: Object to the form.

21 A. Well, the statutory duty fell to the
22 registrars to make their decision as to
23 what was moral turpitude crime. They were

1 judicial officer -- they are judicial
2 officers who can make those decisions. So
3 whatever guidance they may have gotten from
4 the attorney general's office or from our
5 legal counsel was -- my understanding was
6 it was guidance and advice, but they didn't
7 necessarily have to agree with it.

8 Q. And if they did not agree with it, would
9 that have been a reason to dismiss them for
10 cause?

11 MS. MESSICK: Object to the form.

12 A. I don't know the answer to that question.

13 Q. Do you think that you were supervisor of
14 voter registration by 2007?

15 MS. MESSICK: Object to the form.

16 A. Somewhere around that time I became
17 supervisor of voter registration, but the
18 power to dismiss registrars for cause
19 rested with the secretary of state.

20 Q. Would you have recommended removal for
21 cause if a registrar was routinely ignoring
22 the -- or disagreeing with the advice of
23 the attorney general's office with respect

1 to what crimes involved moral turpitude?

2 MS. MESSICK: Object to the form.

3 A. I think if there was a registrar who was
4 consistently ignoring the advice of the
5 attorney general or our legal counsel it
6 might be grounds to investigate and see,
7 you know, what the circumstances are, but I
8 don't know that it would automatically be
9 grounds for removal.

10 Q. And if you investigated that matter and the
11 registrar just had a difference of opinion
12 with the attorney general's office, would
13 that have been grounds for removal for
14 cause?

15 MS. MESSICK: Object to the form.

16 A. Well, I can't speak for who was secretary
17 of state at that time, but my personal
18 opinion would be if an investigation showed
19 that a registrar was being arbitrary and
20 capricious in the way they were removing
21 people for moral -- for what they
22 considered moral turpitude crimes, then
23 that could be grounds for removal.

1 Q. I don't mean to harp on this question, but
2 I am going to ask a couple more. If they
3 weren't being arbitrary and capricious, if
4 they had a list and it was a list they
5 believed in but it was a list that differed
6 from the advice of the attorney general,
7 would that have been removable for cause?

8 MS. MESSICK: Object to the form.

9 A. I'm not aware of there being any other such
10 list, so I'm not sure how to answer that
11 question.

12 Q. Are you not aware of registrars sometimes
13 keeping their own list or at least
14 augmenting other lists with their own
15 determinations for crimes of moral
16 turpitude?

17 MS. MESSICK: Object to the form.

18 A. I was -- I had heard that registrars would
19 take the advice given from the AG or from
20 our legal counsel if there was a crime that
21 was determined to be moral turpitude that
22 wasn't on one of the published lists either
23 through the attorney general's opinion or

1 from the administrative office of courts
2 and they might add that to that list, but I
3 wasn't aware of registrars having some --
4 some list, other kind of list, that they
5 would consider authoritative.

6 Q. Okay. Thank you. Can you tell me about
7 the time period when Governor Riley became
8 responsible for the voter registration
9 system and the implementation of HAVA?

10 A. I'm not sure what exactly you're asking on
11 that question.

12 Q. Do you remember when that occurred?

13 A. Yes.

14 Q. Do you know when exactly that occurred, the
15 year, not the date?

16 A. Would have been somewhere around 2006.

17 Q. And how did your role or duties change
18 because of that change in who was in
19 control of the voter registration system?

20 A. At that -- at that point in time, that was
21 the latter part of the Worley
22 administration and my duties with regard to
23 boards of registrars had been restricted,

1 and so my job really didn't change due
2 to -- due to that.

3 Q. And in what way had your role with the
4 board of registrars been restricted?

5 A. Basically, the secretary of state had
6 assigned those tasks to other people and
7 had told me that it was no longer part of
8 my job to work with boards of registrars.

9 Q. Do you know why that is?

10 A. Quite frankly, it was because of
11 personality differences between me and the
12 secretary.

13 Q. Were there any particular incidents in
14 which you had personality differences?

15 A. Well, I say it's personality differences.
16 But basically the situation was, as a
17 professional administrator, I always felt
18 that my job was to provide the elected
19 official with information so that he or she
20 could make the best decisions that they
21 could make in their job, and she didn't
22 necessarily agree with that -- that view of
23 public administration. And so sometimes

1 we -- I or other staff would give her
2 information that she didn't necessarily
3 want to hear and then she became hostile to
4 that.

5 Q. Can you provide an example of information
6 you provided that she didn't want to hear?

7 (Brief pause.)

8 MS. MESSICK: We're discussing
9 whether to object because it's irrelevant,
10 wildly irrelevant. But go ahead and answer
11 to the best of your recollection.

12 A. Yes. There was a situation early in
13 Ms. Worley's term of office when she had
14 advised registrars -- well, she had advised
15 the chair of each board of registrars to
16 fill out travel claims for themselves and
17 for any other registrars that came to a
18 secretary of state sponsored function. And
19 so instead of -- instead of each registrar
20 who traveled filling out their own travel
21 claim form and turning that in to -- to
22 claim their per diem and travel expenses,
23 the chair was supposed to claim all of that

1 reimbursement themselves and then
2 distribute the money to each member of the
3 board of registrars instead and -- which
4 was a direct violation of state personnel
5 or state comptroller regulations. And when
6 I advised her of that, she didn't take too
7 kindly to that because she felt it was --
8 there was more accountability in the way
9 she wanted to do it.

10 Q. Do you recall any times when you had a
11 difference of opinion or some sort of
12 conflict with Secretary Worley that related
13 to felony disenfranchisement issues?

14 A. No.

15 Q. Okay. After the governor took control of
16 the voter registration system, do you
17 recall the governor taking any actions
18 related to felony disenfranchisement?

19 MS. MESSICK: Object to the form.

20 A. My understanding was at some point when he
21 was special master, his office had come up
22 with a list of disqualifying felony crimes
23 that would then be utilized within the

1 voter registration system to inform
2 registrars of persons who had been
3 convicted of disqualifying crimes.

4 Q. Yeah. And do you recall how many crimes
5 were on the governor's list?

6 A. I do not recall how many were on the list.

7 Q. Do you recall the relative size of the
8 governor's list as compared to the AOC
9 list?

10 A. I do not.

11 MS. MESSICK: Object to the form.

12 Q. Okay. Do you know if the governor's list
13 was implemented at some point?

14 A. I don't -- I don't know whether it was
15 implemented or not.

16 Q. I'm going to ask you some questions you
17 probably don't know the answer to given
18 that response. Do you know if the
19 governor's list included any crimes that
20 the attorney general opinion said did not
21 involve moral turpitude?

22 A. Actually, let me go back and amend my
23 answer to that question. To my knowledge,

1 at that -- back at that time, no list was
2 actually implemented, that all felony
3 convictions were transmitted over from
4 Administrative Office of Courts to our
5 office. That's my understanding of what
6 happened at the time and, therefore, the
7 governor -- by logic, the governor's list
8 was not implemented.

9 Q. Was the governor's list given to boards of
10 registrars?

11 A. I'm not aware of it ever being distributed.

12 It may have been, but I'm not aware of it.

13 Q. Okay. Do you know if the governor's
14 list -- so I don't think I got an answer
15 from my prior question because you amended
16 the prior answer, so I'll ask again.

17 Do you know if the governor's list
18 included any crimes that the attorney
19 general's opinion said did not involve
20 moral turpitude?

21 A. No, because I never actually saw the
22 governor's list.

23 Q. Okay. Do you recall what the secretary of

1 state's office's reaction was to the
2 existence of this list created by Governor
3 Riley?

4 MS. MESSICK: Object to the form.

5 A. The only recollection I have is a vague
6 recollection that -- or vague understanding
7 that our office didn't believe it was
8 within the governor's purview to issue a
9 list of moral turpitude crimes because it
10 fell to the registrars to determine what
11 was a moral turpitude crime.

12 Q. In a September 24th memo, Griffin Sikes
13 wrote about this issue. Do you recall
14 talking to Griffin Sikes about felony
15 disenfranchisement during this time period?

16 A. I don't recall talking to him.

17 Q. Do you know who Griffin Sikes is?

18 A. If memory serves, he used to be with the
19 Administrative Office of Courts.

20 Q. That's correct. And he represented that in
21 2008 the secretary of state insisted that
22 the AOC and not the governor's office make
23 the determination of what felonies involved

1 moral turpitude. Does that accord with
2 your recollection?

3 A. I don't -- I don't recollect that.

4 Q. Do you believe that was untrue?

5 MS. MESSICK: Object to the form.

6 A. I just don't have a recollection of it.

7 Q. You don't remember one way or another?

8 A. One way or the other, right.

9 Q. Do you remember anything about the --
10 strike that.

11 I will represent to you that the
12 governor's list was approximately 480
13 crimes long and much longer than the
14 subsequent AOC list. Do you recall
15 anything about the rationale behind the
16 governor's list?

17 MS. MESSICK: I'm going to object
18 to the form. I need you to explain your
19 representation better because --

20 MS. LANG: We have documents, so we
21 can use the documents.

22 MS. MESSICK: Okay. That would be
23 helpful, because, like, you can say murder

1 or you can say 13 ways to commit murder, so
2 I don't -- we all understand 480 is bigger
3 than whatever the other number you gave
4 was, but I'm not sure how they're all
5 counting and if it's apples to apples.

6 MS. LANG: Yeah.

7 Q. (By Ms. Lang) I think what would be most
8 helpful now is to mark as Packard Exhibit 4
9 a November 2007 memo written by Griffin
10 Sikes.

11 (Packard Exhibit 4 was marked for
12 identification.)

13 Q. And as you recall, Griffin Sikes worked for
14 the Administrative Office of Courts, and
15 this letter was written to the governor's
16 office. And it's a lengthy document, but
17 he -- he opens the document by saying that
18 he'd been asked to come up with a list of
19 felonies involving moral turpitude. And at
20 the end of this document, he provides the
21 Administrative Office of Courts' list that
22 I believe was regularly used thereafter; is
23 that correct? And you can find the list on

1 the last two pages.

2 A. What's your specific question on this one?

3 I think you had a compound question there.

4 Q. I think I probably did.

5 A. Okay.

6 Q. If you look at the last two pages of this

7 document, is this the Alabama Office of

8 Courts' list that was included in

9 election -- in the Alabama Election

10 Handbook thereafter?

11 (Witness reviews document.)

12 A. It appears to be. I would have to see a

13 copy of the actual handbook to see if it's

14 an exact list.

15 Q. Okay. Do you recall seeing this memo at

16 any point in time from Mr. Sikes?

17 A. I don't have a recollection of seeing it.

18 Q. Okay. On page 2, could you read to

19 yourself Footnote 1, and then I'd like to

20 discuss it.

21 (Witness reviews document.)

22 A. Okay.

23 Q. In this footnote, Mr. Sikes expresses

1 concern about the use of the moral
2 turpitude standard because it was rooted in
3 racial discrimination; is that correct?

4 A. Right. He has a concern about its use
5 given what the supreme court had ruled in
6 this particular case about this Court's
7 conclusion that it was motivated by a
8 desire to discriminate.

9 MS. MESSICK: I want to make clear
10 for the record -- you asked what Griffin
11 Sikes said, and he told you what Griffin
12 Sikes said. Griffin Sikes is giving a
13 legal opinion, and it is an incorrect
14 interpretation of the law. So I want you
15 to be careful not to be asking him for
16 legal interpretations or getting into any
17 of that. He can tell you what this says.

18 MS. LANG: I'm not going to.

19 MS. MESSICK: But we're not -- by
20 saying he said that, we're not saying it's
21 right.

22 MS. LANG: I don't -- agreed.

23 MS. MESSICK: I'm just saying.

1 Okay.

2 Q. (By Ms. Lang) Were you aware that Mr. Sikes
3 had raised concerns about the moral
4 turpitude standard and its roots in racial
5 discrimination?

6 MS. MESSICK: Object to the form.

7 A. I don't -- I don't recollect being aware of
8 that. I may have been, but I don't
9 recollect it.

10 Q. Do you recall anyone ever talking about
11 concerns regarding racial discrimination
12 and the moral turpitude standard?

13 A. Not back at the time this was written.

14 Q. When do you recall --

15 MS. MESSICK: And I would remind
16 you of her earlier advice on our behalf not
17 to reveal privileged communications since
18 that's obviously the subject of this
19 lawsuit.

20 Q. Yes.

21 A. Right. The -- the subcommittee that
22 Secretary Merrill put together to look at
23 drafting legislation to define what the

1 moral turpitude crimes were or are during
2 meetings of that committee, there were
3 individual members of that committee that
4 brought up the argument -- brought up this
5 argument that it was racially
6 discriminatory to use that standard of
7 moral turpitude.

8 Q. And can you recall any concerns being
9 raised about racial discrimination and the
10 moral turpitude standard before the
11 subcommittee was formed in 2015?

12 A. I don't recall anything before then.

13 Q. Okay. Do you know if after this list was
14 created in 2007 if it was circulated to the
15 board of registrars?

16 MS. MESSICK: "This list" is the
17 AOC list?

18 Q. The AOC list in the 2007 memo.

19 A. Yes. It became part of the Alabama
20 Election Handbook and so it would have been
21 distributed to the registrars through
22 that -- that medium if not some other
23 medium.

1 Q. And in this memorandum, Mr. Sikes quite
2 strongly recommends that this list be used
3 exclusively to disenfranchise people with
4 past convictions and he makes the legal
5 argument that only these crimes should be
6 used and no others to disenfranchise people
7 with convictions. Are you aware of that
8 communication being made to the board of
9 registrars?

10 MS. MESSICK: Let me have an
11 opportunity to read the memo and make sure
12 that it is consistent with your
13 representation.

14 (Ms. Messick reviews document.)

15 MS. MESSICK: Actually, Court
16 Reporter, Bridgette, would you read back
17 the end of the first long sentence that was
18 just in that question?

19 (Court reporter reads back the last
20 question.)

21 Q. I would direct you to the last paragraph of
22 page 5.

23 MS. MESSICK: Okay. If the last

1 paragraph of page 5 is the basis for your
2 question, I object to the form.

3 MS. LANG: And the beginning of
4 page 6.

5 MS. MESSICK: I still think these
6 say what AOC is willing to do and not what
7 other people should do, so I still object
8 to the form.

9 MS. LANG: Okay.

10 Q. (By Ms. Lang) It was the AOC's belief that
11 this should be the exclusive list of
12 disenfranchising crimes. Was that view
13 ever transmitted to the board of
14 registrars?

15 A. I'm having a problem answering that
16 question because they leave the door open
17 for attorney generals' opinions being a
18 source of defining a moral turpitude crime
19 and so that would make this particular list
20 nonexclusive prospectively in the future.
21 But to -- you know, given that concern
22 about your question, I'm not -- I'm not
23 aware of that information being passed on

1 to the board of registrars.

2 Q. You're not aware of any time in which the
3 registrars were told that if a crime is not
4 in an Alabama attorney general opinion as a
5 crime of moral turpitude or has been
6 identified by the courts as a crime of
7 moral turpitude, then it should not be
8 disqualifying?

9 A. Or in an attorney general's opinion.

10 MS. MESSICK: Object to the form.

11 Q. I'll ask again. Are you aware of a time in
12 which registrars were told the following:
13 Do not disenfranchise anyone with a
14 conviction unless that conviction appears
15 specifically in either an attorney general
16 opinion or an Alabama court opinion as a
17 crime of moral turpitude?

18 A. I'm not aware of them being told that.

19 Q. Do you know -- strike that. We're going to
20 discuss a few of Mr. Sikes' memos. Are you
21 aware of any of those memos ever being
22 transmitted to the board of registrars?

23 MS. MESSICK: Object to the form.

1 I don't think that's a fair question until
2 you identify the memos.

3 Q. We'll ask it with respect to each memo --

4 MS. MESSICK: Thank you.

5 Q. -- but are you aware of any memos from
6 Mr. Sikes being sent to the board of
7 registrars, to the best of your
8 recollection?

9 A. I don't have a recollection of memos being
10 sent one way or the other.

11 Q. Okay. During this period of time, what
12 information was available to people with
13 convictions about which crimes were
14 disqualifying and which crimes were not
15 disqualifying?

16 MS. MESSICK: Object to the form.

17 A. I don't recall there being any information
18 available. We would field questions in the
19 office when they called, when people
20 called, and we would direct them to legal
21 counsel, but I'm not familiar with any
22 documentary information that was provided.

23 Q. So unless a member of the public called,

1 there was no information available to them
2 from the secretary of state's office about
3 what crimes were disqualifying?

4 A. I don't recall there being any.

5 MS. MESSICK: You're using the word
6 "crimes" a lot. Do you mean felonies? Can
7 we agree that that's what you mean or do
8 you think you --

9 MS. LANG: We can agree that that
10 is what I mean.

11 MS. MESSICK: Okay.

12 MS. LANG: If I mean misdemeanors,
13 I will say so specifically.

14 MS. MESSICK: Okay.

15 Q. (By Ms. Lang) Can we agree on that?

16 A. Okay.

17 Q. Okay. Thank you.

18 MS. LANG: I appreciate that
19 clarification.

20 Q. Okay. I'm going to mark as exhibit --
21 Packard Exhibit 5 an e-mail chain.

22 (Packard Exhibit 5 was marked for
23 identification.)

1 Q. It involved you from 2008 -- from this time
2 period. I'd like to give you a moment,
3 everyone a moment, to review the e-mail
4 that you sent to Secretary Chapman in 2008.

5 (Witness reviews document.)

6 Q. Most importantly, on the second page,
7 towards the bottom, there is a paragraph
8 that starts, During this conversation, and
9 discusses a conversation you had with
10 Griffin Sikes.

11 (Witness reviews document.)

12 A. Okay. I'm ready.

13 Q. Do you recall having this conversation that
14 is recounted in this e-mail with Griffin
15 Sikes?

16 A. I do not recall it.

17 Q. Do you recall ever talking to Griffin Sikes
18 about who was being flagged as having a
19 crime of moral turpitude and who was being
20 flagged as not having a crime of moral
21 turpitude?

22 A. No, I don't recall that.

23 Q. And in this e-mail, you say that Griffin

1 pointed out that at the time the system was
2 utilizing a much broader list of
3 disqualifying felons, parens, approximately
4 470 crimes compiled by the governor's
5 office, end parens, compared to a shorter
6 list implemented in October or November,
7 parens, a hundred crimes compiled by AOC.

8 Does this e-mail refresh your
9 recollection that there was a shift from a
10 broader list to a smaller list of felonies
11 involving moral turpitude?

12 MS. MESSICK: Object to the form.

13 A. Well, he certainly seems to be making that
14 claim.

15 Q. In the e-mail, do you refute that claim or
16 suggest it's incorrect?

17 A. No.

18 Q. Do you have any reason to believe that
19 that's not an accurate description of what
20 occurred at that time?

21 MS. MESSICK: Object to the form.

22 A. I don't have any reason to doubt that this
23 is an authentic representation of what was

1 occurring at the time.

2 Q. Okay.

3 A. Even though it contradicts what I said
4 earlier about not knowing whether the match
5 list had been implemented or not.

6 Q. Okay. And according to this e-mail, he
7 asked you if any steps had been taken to
8 restore anyone who had been removed using
9 the broader list. Do you recall if any
10 steps were taken to restore anyone who had
11 been removed using the broader list?

12 A. I don't have a recollection of that.

13 Q. Do you remember any time there was kind of
14 a restoration process for people who had
15 been incorrectly removed under the moral
16 turpitude provision?

17 MS. MESSICK: Object to the form.

18 A. At any point in time?

19 Q. Yes.

20 A. I'm not aware of any systematic program to
21 do that, but there have been cases where
22 registrars had inadvertently removed
23 people; and when they became aware of their

1 mistake, they went back and corrected the
2 records.

3 Q. Okay. So if I'm hearing you correctly,
4 individual registrars have made individual
5 corrections, but there has never been a
6 systemic effort to fix prior flaws in the
7 administration of the moral turpitude law?

8 A. Not that I can recall.

9 Q. In -- I apologize. I have another question
10 about that exhibit. In the following
11 paragraph after the paragraph we were just
12 discussing, you discuss a potential meeting
13 with Mr. Sikes that you were going to
14 arrange. Do you recall if that meeting
15 occurred?

16 MS. MESSICK: Object to the form.

17 A. I don't recall whether that meeting
18 occurred.

19 Q. Okay. I'll hand you what we're going to
20 mark as Packard Exhibit 6.

21 (Packard Exhibit 6 was marked for
22 identification.)

23 Q. And this is an e-mail from Griffin Sikes on

1 September 18, 2008, so a few weeks after
2 the last e-mail we discussed. And it is to
3 the governor's office, Ken Wallis, who was
4 the chief legal counsel for the office of
5 the governor at the time. But you are
6 copied on the e-mail as well; is that
7 correct?

8 A. Yes. It appears from this that I was
9 copied on the e-mail.

10 Q. And in this e-mail, Mr. Sikes expresses his
11 concern that the smaller AOC list has not
12 been utilized and that people were
13 continuing to be disenfranchised on the
14 basis of the governor's list of moral
15 turpitude felonies. Is that an accurate
16 description of the first paragraph?

17 A. Yes.

18 Q. Okay. And then he says, This is a -- this
19 exact circumstance is what I had thought
20 you, meaning Ken Wallis, assured me, Jean
21 Brown, and Ed Packard was not occurring.

22 Do you recall ever having a meeting
23 with Ken Wallis about felony

1 disenfranchisement?

2 A. I don't recall having a meeting with him
3 about felony disenfranchisement.

4 Q. Do you remember anything about these
5 conversations with Mr. Sikes about how
6 felony disenfranchisement should be
7 implemented?

8 A. I do not recall any conversations on this
9 matter.

10 Q. Do you remember ever talking to Mr. Sikes
11 about felony disenfranchisement generally?

12 A. I remember having conversations with
13 Mr. Griffin Sikes, but I can't recall the
14 content of any of those conversations or
15 what we discussed. It's been a long time.

16 Q. Fair enough. Do you have any reason to
17 doubt the authenticity of what's been
18 represented here by Mr. Sikes?

19 MS. MESSICK: Object to the form.

20 A. I don't -- I don't have any reason to doubt
21 the authenticity of this e-mail.

22 Q. Having read this e-mail, do you have any
23 contrary recollection than Mr. Sikes --

1 what Mr. Sikes has recounted?

2 MS. MESSICK: Object to the form.

3 A. No, I don't have a contrary recollection
4 either.

5 Q. Okay.

6 A. So either way, I don't have any
7 recollection.

8 Q. All right. We're going to have to continue
9 along this topic because Mr. Sikes did
10 communicate with you quite a bit about this
11 issue at the time.

12 A. And apparently my memory has gone quite a
13 bit.

14 Q. That's all right. I'm going to mark
15 Packard Exhibit 7. It's from a few days
16 later, on September 24, 2008.

17 (Packard Exhibit 7 was marked for
18 identification.)

19 Q. And it is a memorandum from Mr. Sikes to
20 the chief justice, but you are copied on
21 the memorandum as the supervisor of voter
22 registration at that time; is that correct?

23 A. Yes.

1 Q. I'd like to give everybody a chance to at
2 least peruse it. And I'll direct you to
3 some paragraphs in particular.

4 (Witness reviews document.)

5 MS. MESSICK: Danielle, on page 2
6 of this document, it says that his
7 November 8th of 2007 memo is attached, and
8 it's not. Can you represent that that is
9 the same memo that you have given us as
10 Exhibit 4 and also all other attachments
11 are here?

12 MS. LANG: I can confirm that the
13 November 2007 memo referenced is the one
14 marked as Exhibit 4 and that all other
15 attachments that I am aware of are
16 included. This is a document that was
17 pulled from defendant's production.

18 MS. MESSICK: Does that last line
19 suggest you're not the one who removed that
20 exhibit? You think it was produced to you
21 this way?

22 MS. LANG: I am not aware of any
23 additional attachments. I think that's all

1 I can represent at the moment.

2 MS. MESSICK: Okay.

3 A. Okay.

4 Q. (By Ms. Lang) Does this memo refresh any of
5 your recollection about the events of 2008
6 and the implementation of the felony
7 disenfranchisement scheme at that time?

8 A. No. I still don't recall this happening.

9 Q. I'd just like to put on the record that we
10 gave you plenty of time to read the
11 document.

12 A. Yes.

13 Q. And although this memo recounts several
14 meetings that you were involved in, you
15 don't recall anything about these events?

16 MS. MESSICK: Object to the form.

17 A. Correct. I don't recall the meetings.

18 Q. And you don't recall anything about the
19 change from the -- well, strike that.

20 You don't recall any of the events
21 recounted in Mr. Sikes' memo?

22 A. No, I do not.

23 Q. Okay. You've had an opportunity to read

1 this memo?

2 A. Yes.

3 Q. Do you have any contrary recollections
4 about how the felony disenfranchisement
5 scheme was implemented during this time?

6 MS. MESSICK: Object to the form.

7 A. No, I do not.

8 Q. Like, do you have any different memories of
9 how the felony disenfranchisement scheme
10 was implemented during this time?

11 A. No, I do not.

12 MS. MESSICK: Object to the form.

13 Q. Okay. On page 3, paragraph 2, Mr. Sikes
14 recounts that of the approximately 575
15 felonies existing under Alabama law,
16 Mr. Wallis's offices's list -- so the
17 governor's list -- included approximately
18 480 felony offenses that they believed
19 would involve moral turpitude. Does that
20 refresh your recollection that there was a
21 much longer governor's list of
22 disqualifying crimes?

23 MS. MESSICK: Object to the form.

1 A. No, that doesn't refresh my recollection.

2 Q. Three paragraphs down, Mr. Sikes recounts
3 that it was his understanding that based on
4 the secretary of state's insistence, the
5 AOC's list would be used to determine what
6 felony conviction information would be
7 provided to the board of registrars for the
8 purpose of determining voters' eligibility
9 to vote and voter applicants' eligibility
10 to register to vote. Do you recall there
11 ever being a conversation that restricting
12 which felonies were sent to the board of
13 registrars to those that appear on the AOC
14 list?

15 MS. MESSICK: Object to the form.

16 MS. LANG: Can you clarify what the
17 issue with the question is?

18 MS. MESSICK: Asked and answered.
19 He already told you repeatedly he doesn't
20 remember anything about this. You're just
21 asking him the same thing over and over in
22 different ways. You asked it clearly, but
23 you asked it again.

1 MS. LANG: Okay. Thank you.

2 Q. (By Ms. Lang) I'd like an answer.

3 A. Yeah, I don't have any recollection of that
4 happening -- of that occurring.

5 Q. Is it your understanding that the list that
6 was sent from the AOC to the board of
7 registrars was all felonies?

8 A. My recollection was that at some point the
9 only information that was being sent over
10 was all felonies. Now, this intervening or
11 this other -- these other occurrences that
12 happened in the interim, from my
13 recollection, I don't recall this
14 happening. But I thought at some point we
15 got to the point where the only thing being
16 sent over were all felonies and the
17 registrars had to determine for themselves
18 which ones were the moral turpitude
19 felonies.

20 Q. Is it possible that at some points the AOC
21 was screening which felonies it was sending
22 either based on the governor's list or the
23 AOC's list?

1 MS. MESSICK: Object to the form.

2 A. Who was screening them?

3 Q. The AOC as in -- I'll rephrase. And I'm
4 going to ask your counsel.

5 MS. LANG: Could you clarify when
6 you are -- when the only objection is asked
7 and answered? because I want to make sure
8 that I'm asking the question clearly. So
9 if the only objection is asked and
10 answered, it would really help me if you
11 could say that.

12 MS. MESSICK: Okay.

13 MS. LANG: Thank you.

14 Q. (By Ms. Lang) Is it possible that at some
15 point prior to HB 282 the AOC was not
16 sending all felonies to the board of
17 registrars but instead was sending either
18 only the felonies on the governor's list or
19 only the felonies on the AOC list?

20 MS. MESSICK: Asked and answered.

21 A. It may be possible, but I don't have any
22 recollection of that.

23 Q. Okay. On page 6, about halfway down the

1 page, there's a one-sentence paragraph that
2 says, I asked what needed to be done to
3 correct this. Mr. Wallis said that the,
4 quote, big list was, quote, in the system
5 and that taking it out would be, quote,
6 very expensive.

7 Do you think that cost is an
8 appropriate reason not to change a system
9 that is incorrectly disqualifying people
10 from voting?

11 MS. MESSICK: Object to the form.

12 A. No, I don't think cost should be a factor.
13 The system should operate properly and
14 only -- if it's going to be used to report
15 disqualifying felonies, it should work that
16 way and cost shouldn't be a factor.

17 Q. Thank you. And the last page, which is an
18 attachment, appears to be kind of the
19 transmission of felony convictions from the
20 AOC, and the last -- the second to last
21 column says "list from" and it says the
22 governor. Are you familiar with this
23 format of a database?

1 MS. MESSICK: Object to the form.

2 Q. Is this document familiar to you in any
3 way?

4 A. No, this document is not familiar to me.

5 Q. Does this document appear similar to
6 documents you've seen before, the format?

7 A. Specifically related to felon
8 disenfranchisement or any kind of reports
9 coming out of the system?

10 Q. Any kind of reports.

11 A. I mean, because there's various reports
12 that they look similar but not deal with
13 felony disenfranchisement in any way.

14 Q. Okay. You've never seen one that deals
15 with felony disenfranchisement --

16 A. No.

17 Q. -- that looks like this?

18 A. I have not.

19 Q. Okay. Thank you. If you can pick that
20 back up. I went too quickly. On page 6 --
21 I believe it's on page 6. Strike that.

22 Mr. Sikes in one of his memos raises
23 the issue of noticing that sometimes felony

1 convictions -- or people who were charged
2 with felonies but ultimately convicted of
3 misdemeanors were sometimes in the AOC
4 transmission leading to people with
5 misdemeanors being disenfranchised. Are
6 you aware of that ever happening?

7 MS. MESSICK: Object to the form.

8 A. I was -- I was aware that sometimes
9 misdemeanor crimes would be reported.
10 Whether or not anyone was actually
11 disenfranchised based on that, no, I don't
12 know. But I was aware of the reporting of
13 the misdemeanors.

14 Q. If misdemeanors were reported, was there a
15 way that registrars could know that it was
16 actually a misdemeanor based on the report?

17 A. Well, from what the memo says, no.

18 Q. Are you aware of what was done if -- strike
19 that.

20 If such an issue was identified for an
21 individual voter who'd already been
22 disenfranchised, how would that issue have
23 been resolved?

1 A. Well, hopefully they would have fixed the
2 situation and they would have restored the
3 voter, but I'm not aware of any case where
4 they actually disenfranchised anyone who
5 was reported with a misdemeanor.

6 Q. And you would define "fixed" as restored
7 the voter to active status?

8 A. Correct.

9 Q. Would you think it was appropriate to send
10 the voter a notice?

11 A. Yes.

12 Q. Okay. If you had become aware of such an
13 issue, would you have advised the registrar
14 to send a notice?

15 A. Yes.

16 Q. After these memos were sent on which you
17 were copied, do you recall sending any
18 instructions to the registrars about which
19 list to use when determining whether a
20 felony involved moral turpitude?

21 MS. MESSICK: Object to the -- I'm
22 sorry. Asked and answered.

23 A. I don't -- I don't recall.

1 Q. Do you recall there ever being any public
2 education done about the AOC list as a list
3 of disqualifying crimes?

4 A. I don't recall there being any --

5 Q. At any time?

6 A. -- public instruction, no.

7 Q. Did anybody ever suggest doing public
8 education around which crimes were
9 disqualifying?

10 A. I don't -- I don't recall anyone suggesting
11 that. They may have. I just don't recall.

12 Q. Did it ever occur to you to do public
13 education around which crimes were
14 disqualifying?

15 A. Well, I'd like to say yes, but I don't
16 recall because -- because I worked on a lot
17 of our voter outreach materials at the
18 time, but I don't recall there being a
19 discussion of that.

20 Q. And you don't recall ever including that
21 information in any of the materials you
22 worked on?

23 A. Right. We just always referred to not

1 being convicted of a disqualifying felony.

2 Q. Was it your experience that voters

3 understood what that meant?

4 A. If they didn't understand what that meant,

5 then we advised them to call their board of

6 registrars to find out whether or not it

7 was a disqualifying crime or to contact the

8 state board of pardons and paroles.

9 Q. Was that written somewhere on the

10 materials, that if they did not know what a

11 disqualifying felony was they should

12 contact the board of registrars or the

13 board of pardons and paroles?

14 A. No, not to my knowledge.

15 Q. If you were not an election administrator

16 and you were just a person with a past

17 conviction and you read that people with

18 disqualifying felony convictions could not

19 register to vote, do you think you would

20 have understood what that meant?

21 A. I think I would have had to call someone

22 for help.

23 Q. Do you think it's possible some people

1 thought that that meant that felonies were
2 disqualifying in and of themselves?

3 MS. MESSICK: Object to the form.

4 A. It's possible, yes.

5 Q. Okay. If in fact there was a change in the
6 list that was being used from the
7 governor's list to the AOC list as
8 Mr. Sikes represents, would it then be the
9 case that somebody who had registered in
10 2007 may have been rejected because of
11 their felony conviction but a person with
12 the exact same conviction who registered in
13 2008 would have been accepted?

14 MS. MESSICK: Can I ask the court
15 reporter to read that back, please?

16 MS. LANG: Yes.

17 (Court reporter reads back the last
18 question.)

19 MS. MESSICK: Object to the form.

20 A. It's possible.

21 Q. Is it perhaps even likely given the
22 difference in the size of the governor's
23 list and the AOC list?

1 MS. MESSICK: Object to the form.

2 A. I'm not an oddsmaker, so -- but maybe so.

3 Q. If a list --

4 A. It might have been more likely, yeah.

5 Q. -- of 475 felonies was being used at one
6 point and then a list of approximately 70
7 felonies was being used at a different
8 point, it would be likely that the time at
9 which someone registered would affect
10 whether or not they were accepted?

11 MS. MESSICK: Object to the form.

12 A. It's possible.

13 Q. Okay. Would you agree that it's likely?

14 MS. MESSICK: Object to the form.

15 A. I'll give you it's likely.

16 Q. Okay. Would you agree that anyone with a
17 conviction on the governor's list that was
18 not on the AOC list, whether or not they
19 were accepted would depend on when they
20 registered to vote?

21 MS. MESSICK: Object to the form.

22 A. It's possible.

23 Q. Okay. I'm going to mark Packard Exhibit 8,

1 which is, surprise-surprise, another memo
2 from Mr. Sikes.

3 (Packard Exhibit 8 was marked for
4 identification.)

5 Q. And this one is dated just a few days
6 later, on September 30th. Now, you may not
7 have received this memo, but it was sent to
8 all circuit clerks, all probate judges, and
9 all sheriffs.

10 (Witness reviews document.)

11 Q. And I would refer you to the last page,
12 which I'd like to ask you some questions
13 about. So if you could just read that last
14 page.

15 (Witness reviews document.)

16 A. All right. I'm ready.

17 Q. Mr. Sikes represents that Judge Brown from
18 your -- from the secretary of state's
19 office committed to changing which felonies
20 would be transmitted through the electronic
21 system to the registrars and committed
22 further to looking into people who had been
23 inappropriately disenfranchised under the

1 governor's list and seeking to notify them.

2 To your knowledge, did either of the --
3 well, to your knowledge, did the change in
4 which felonies were transmitted to the
5 registrars actually occur?

6 MS. MESSICK: Object to the form.

7 A. Well, to my knowledge, there was a change
8 at some point in what felonies were being
9 transmitted. The particular nature of that
10 change may be different based on whether it
11 was an AOC list or the governor's list or
12 not filtering it at all. But based on my
13 understanding, there was a change in the
14 way they were being reported. Just like
15 I've testified before, at some point they
16 began sending all felony convictions, not
17 just ones from any particular list.

18 Q. Do you know when that change occurred?

19 A. I don't recall when that change occurred.

20 Q. But more recently, your representation is
21 that registrars were receiving all
22 felonies?

23 MS. MESSICK: Object to the form.

1 A. Prior to the passage of the new law, yes.

2 Q. So immediately prior to the passage of the
3 new law, registrars were receiving all
4 felonies?

5 A. That's my understanding, yes.

6 Q. Okay. And that's true despite the events
7 that occurred in 2008 where there were
8 discussions of limiting which felonies were
9 transmitted to the registrars?

10 A. That's my understanding.

11 Q. Okay. Thank you. I'm going to mark as
12 exhibit -- Packard Exhibit No. 9 an e-mail
13 chain.

14 (Packard Exhibit 9 was marked for
15 identification.)

16 Q. And at the bottom of this e-mail chain,
17 Mr. Sikes had sent an e-mail to you in the
18 same time period, on September 25, 2008,
19 and includes copies of two op-eds. And
20 these op-eds refer to voter registration
21 drives in state prisons. And specifically
22 these op-eds allege that the corrections
23 commissioner, Richard Allen, stopped

1 attempts at voter registration drives in
2 state prison and acted, quote, under
3 pressure from the Alabama Republican party,
4 end quote, mainly from party chairman Mike
5 Hubbard.

6 Are you -- do you recall which
7 particular --

8 (Interruption.)

9 MR. SINCLAIR: Let's go off the
10 record.

11 MS. LANG: Yes.

12 (Off the record.)

13 Q. (By Ms. Lang) Before we took a break, I had
14 handed you Packard Exhibit 9, which was an
15 e-mail chain directed from Griff Sikes to
16 you around the same time period of
17 September 2008 that we've been discussing,
18 but the topic is a bit different. And he
19 discusses a few op-eds that discuss events
20 around voter registration drives in
21 prisons. Are the op-eds correct in saying
22 that there was an attempt at a voter
23 registration drive and was shut down by the

1 corrections commissioner, Richard Allen, in
2 2008?

3 MS. MESSICK: Object to the form.

4 A. I don't have any recollection of this
5 event.

6 Q. During your tenure at the secretary of
7 state's office, have you addressed --
8 strike that.

9 During your tenure at the secretary of
10 state's office, have issues been raised to
11 you about the ability to conduct voter
12 registration drives in prisons?

13 A. There -- I don't recall any situation where
14 they've expressly talked about conducting
15 voter registration drives, but there have
16 been cases of -- or reports where
17 individual inmates wanted to know what
18 their voting rights were and how they
19 could -- how they could vote and
20 participate in the process.

21 Q. And how were those incidents resolved?

22 A. We usually -- whatever -- and normally
23 those reports came from advocates that were

1 helping the inmates, and so we advised
2 them, you know, that as long as their crime
3 wasn't a disqualifying crime, that they
4 still maintained their voting rights. And
5 we would provide forms, absentee forms, and
6 voter registration forms to the advocates
7 that they could use to -- to go in and
8 assist the inmates.

9 Q. Was one of those advocates Pastor Glasgow?

10 A. Yes.

11 Q. And Mr. Glasgow actually filed a lawsuit in
12 order to be able to conduct this activity
13 in prisons; isn't that correct?

14 A. To my knowledge, that is correct.

15 Q. And that was in 2008; is that correct?

16 A. I don't remember the exact year.

17 Q. And how was that lawsuit resolved?

18 A. My understanding is they ruled in his favor
19 to the order -- and ordered the system,
20 the -- the detention facilities to allow
21 them to conduct the voter drives. That's
22 my understanding.

23 Q. Okay. I believe there was a settlement,

1 I'll represent to you.

2 A. Okay.

3 Q. But that was the accurate result.

4 A. I may not have had complete information.

5 Q. Yeah. And I do believe that you are

6 correct that that was the result of the

7 lawsuit, that he was allowed to conduct

8 these drives. Would you find it

9 appropriate for legislators or party

10 officials to get involved in whether or not

11 voter registration activities should happen

12 in prisons?

13 (Brief pause.)

14 MS. MESSICK: I'm sorry. Go ahead.

15 THE WITNESS: Okay. I didn't know

16 if you -- giving you a moment to do your

17 thing.

18 MS. MESSICK: Thank you.

19 A. Well, I certainly think they can have their

20 opinion on whether or not that can occur.

21 But in terms of trying to insinuate

22 themselves into the process and work to

23 deprive people of their ability to

1 participate, I personally would find that
2 inappropriate.

3 Q. So you would personally find it
4 inappropriate if someone pressured the
5 corrections commissioner to not allow this
6 activity?

7 A. Right. That's correct.

8 Q. Why would you find it inappropriate?

9 A. Because -- because I don't think a
10 legislator ought to be using their power,
11 power of their position, to deny people of
12 their ability to participate in the
13 democratic process. And given that it's a
14 special population that we're talking about
15 due to their incarceration, I think
16 accommodations need to be made to assist
17 them in being able to exercise their right
18 to vote.

19 Q. I agree. Why do you think a party chairman
20 might oppose voter registration drives in
21 prison?

22 MS. MESSICK: Object to the form.

23 A. Well, I can't really speculate what's --

1 what might be in their mind.

2 Q. Have you ever heard anyone, any -- strike
3 that.

4 Have you ever heard any Alabama-elected
5 official or party official suggest that
6 they would prefer that people with
7 convictions not be able to vote?

8 A. Yes, I've heard a lot of people say that.

9 Q. And have you ever heard any party official
10 or elected official suggest that that
11 population would vote for democrats?

12 A. No, I've not heard that -- that specific
13 line.

14 Q. Are you -- could I refresh your
15 recollection of whether or not you ever
16 heard of Roy Moore suggesting that this
17 population would vote for democrats?

18 A. I'll be honest with you, I don't recall
19 hearing Roy Moore say much of anything
20 because I don't tend to listen to what he
21 says, so -- personally. Personally.

22 Q. All right. Thank you. I'm going to give
23 you what we'll mark as Packard Exhibit 10.

1 (Packard Exhibit 10 was marked for
2 identification.)

3 Q. It's another e-mail chain. It's just a
4 little bit after the time that we were
5 discussing in which Mr. Sikes was urging
6 that only the AOC list be used to
7 disenfranchise people with convictions.
8 And this e-mail chain that begins on the
9 second to last page with an e-mail from
10 yourself to the board of registrars in
11 October of 2008, it is a message from
12 Secretary of State Beth Chapman in which
13 she advises that registrars should
14 determine themselves whether or not people
15 are qualified or not qualified and whether
16 a felony offense involves moral turpitude
17 or not, and then she advises them to seek
18 legal advice if they so need. Do you know
19 why Secretary Chapman and yourself decided
20 not to advise the board of registrars to
21 only use the AOC list as Mr. Sikes
22 recommended?

23 A. May I finish --

1 Q. Absolutely.

2 A. -- looking over the document?

3 (Witness reviews document.)

4 A. I don't -- I don't recall why there was a
5 determination made to not advise them to
6 use the AOC list.

7 MS. LANG: I'm sorry. Can you read
8 back that response?

9 (Court reporter reads back the last
10 answer.)

11 Q. This memorandum does not advise them to use
12 only the AOC list; is that correct?

13 A. Correct.

14 Q. Why didn't you advise board of registrars
15 to only use the AOC list?

16 MS. MESSICK: Asked and answered.

17 A. I don't know the reason why Secretary
18 Chapman did not advise them to use the AOC
19 list.

20 Q. As supervisor of voter registration, would
21 you have been involved in this decision-
22 making process?

23 A. Given -- given the way the office was

1 structured, not necessarily.

2 Q. Were you involved in this decision-making
3 process?

4 A. As to which list to use?

5 Q. As to the decision to tell registrars to
6 make their own determinations and not use
7 only one guiding list.

8 A. To my recollection, I was not involved in
9 the decision-making process on that.

10 Q. Do you think that this was the right
11 decision to make?

12 MS. MESSICK: Object to the form.

13 A. I think -- I don't know that there was
14 anything particularly wrong with this
15 decision, because certainly people were
16 aware of the AOC list and Jean Brown would
17 have been aware of the AOC list. And given
18 the way the system has evolved where we
19 eventually published the AOC list in the
20 handbook and advised them to use the AOC
21 list, I don't -- I don't see anything
22 necessarily inappropriate with what they --
23 what was put into this particular document.

1 Q. But the AOC list was not used exclusively;
2 is that correct?

3 MS. MESSICK: Asked and answered.

4 A. Correct.

5 Q. And for convictions that did not appear on
6 the AOC list, board of registrars were left
7 to make their own determinations?

8 A. Or seek legal advice from the DA, county
9 attorney, or our legal counsel in the
10 secretary of state's office.

11 Q. But ultimately they were told to make the
12 determination after consulting?

13 A. Right. Ultimately it's up to them to make
14 the final decision based on whatever
15 assistance they may have gotten from a list
16 or from any of those officials.

17 Q. Would it have provided more uniformity if
18 just the AOC list had been used exclusively
19 as Mr. Sikes had suggested?

20 A. Certainly there would be more uniformity if
21 only one singular list or one source was
22 being used.

23 Q. But Secretary Chapman decided instead not

1 to use an exclusive list?

2 A. Apparently so.

3 Q. Would there have been anything wrong with
4 using one exclusive list, the AOC list, to
5 determine whether or not a crime was one
6 involving moral turpitude?

7 MS. MESSICK: Object to the form.

8 A. No, there wouldn't have been anything wrong
9 in using an exclusive list. In fact, I
10 think that's where we tried to head,
11 particularly with the legislation that was
12 recently passed.

13 Q. And, in fact, that would have ensured that
14 people were only disenfranchised if there
15 had been a court determination or attorney
16 general determination that that crime
17 involved moral turpitude?

18 A. Correct.

19 Q. And what level of education are board of
20 registrars required to have?

21 A. Just a high school diploma.

22 Q. How many of them have law degrees?

23 A. I'm not sure any of them now have law

1 degrees, but we have had at least one that
2 had a law degree at one time.

3 Q. Would you say the majority do not have law
4 degrees?

5 A. Yes.

6 Q. The vast majority do not have law degrees?

7 A. Yes.

8 MS. MESSICK: Asked and answered.

9 Q. Who do you think is best suited to make
10 decisions about whether or not a felony
11 involves moral turpitude?

12 A. Well, personally I think -- I think the
13 legislature is the best source to define
14 that.

15 Q. And in the absence of a legislative
16 decision, who do you think would be best
17 suited to make those determinations?

18 A. I think coming from a court would be the
19 best source.

20 Q. All right. Thank you. Given the lack of
21 uniform determinations about felonies
22 involving moral turpitude, were you ever
23 personally concerned that this could create

1 arbitrary results?

2 A. I was personally concerned that it -- that
3 there could be some arbitrariness, that
4 certainly there could be inconsistency.

5 Q. And were you ever concerned that the system
6 could create differential results racially?

7 A. I don't know -- I don't know that I saw
8 that as a purposeful outcome of that, but I
9 don't know that I really gave it any
10 thought in that regard. I was concerned
11 about the inconsistencies, but in general.

12 Q. Your response raises a question, which is
13 were you ever concerned that even if folks
14 were not intentionally or purposefully
15 racially discriminating, the results could
16 end up being racially biased?

17 A. I don't think I ever gave it that much
18 thought on the racial angle.

19 Q. Did the office ever do a study of the
20 inconsistent results of this system?

21 MS. MESSICK: Object to the form.

22 A. Not to my knowledge.

23 Q. Did the secretary of state ever do a study

1 of the racial results of the system?

2 A. Not to my knowledge.

3 Q. Did anybody ever suggest doing a study of
4 the inconsistent results of this system?

5 A. Not that I'm aware of.

6 Q. Did anyone ever suggest doing a study of
7 the racial results of this system?

8 A. Not that I'm aware of.

9 Q. Did anybody ever tell Mr. Sikes that it was
10 decided that they would not -- that the
11 secretary would not follow his
12 recommendation to use solely the AOC list?

13 A. Not that I recall.

14 Q. Whose responsibility would that have been
15 to inform Mr. Sikes?

16 A. Whomever the secretary designated to tell
17 Mr. Sikes.

18 Q. Would that have potentially fallen within
19 your responsibilities as supervisor of
20 voter registration?

21 MS. MESSICK: Object to the form.

22 A. It potentially could have.

23 Q. Okay. If we could refer back to Packard

1 Exhibit 10. As we discussed, the e-mail
2 chain begins with a message from Secretary
3 Chapman, but then there is a dialogue
4 between Robin Foster and yourself. Who was
5 Robin Foster?

6 A. Robin Foster was a registrar from
7 Tallapoosa County.

8 Q. And could you take a quick read of this
9 e-mail chain?

10 (Witness reviews document.)

11 A. Okay. I'm ready.

12 Q. In the e-mail, you appear concerned about a
13 registrar relying on the board of pardon
14 and paroles to make a moral turpitude
15 determination; is that correct?

16 A. My concern was that they appeared to be --
17 what seemed to be the case was that it
18 appeared they were letting pardons and
19 paroles to make the decision for them as to
20 who was disqualified from voting.

21 Q. And would it be improper for the board of
22 registrars to rely on the board of pardons
23 and paroles' determination?

1 MS. MESSICK: Object to the form.

2 A. I think that they could make -- they could
3 use some -- strike that. It would be
4 acceptable for them to collect information
5 based on pardons and paroles'
6 interpretation of the law, but ultimately
7 it's the registrars' call to make the
8 decision.

9 Q. Okay. The board of pardons and paroles did
10 have to make the determination, though, in
11 deciding who to give a certificate of
12 eligibility to register to vote; is that
13 correct?

14 A. Yes, that's correct.

15 Q. Did it ever -- did having two different
16 decision-makers about which felonies
17 involved moral turpitude ever cause a
18 problem?

19 MS. MESSICK: Object to the form.

20 A. I'm not aware of any instance where it
21 actually caused a problem.

22 Q. Let me ask you more specifically. Did you
23 ever encounter a circumstance with a voter

1 where the board of pardons and paroles told
2 that voter they were not eligible for a
3 CERV because their crime was not one
4 involving moral turpitude but that when
5 they attempted to register to vote, the
6 registrar determined that their crime was
7 one involving moral turpitude?

8 A. I don't -- I don't recall one offhand.

9 Q. Would that have been a possible outcome of
10 this system?

11 A. Yes, that's a potential outcome of the
12 system.

13 Q. And where does that leave the voter?

14 A. Well, if the voter was denied the ability
15 to register to vote by the board of
16 registrars, they have an appeal right to
17 the probate judge to have that decision
18 reconsidered.

19 Q. And what if the probate judge decided that
20 it was also involving moral turpitude?

21 A. If the voter still feel -- or the
22 prospective voter still feels that the
23 decision's in error, they can appeal it to

1 the circuit court.

2 Q. Let's say it goes all the way through the
3 court process and it's determined that it's
4 a crime of moral turpitude. What does the
5 voter do then?

6 MS. MESSICK: Object to the form.

7 Q. What should the voter do in that
8 circumstance if the voter wishes to get --
9 restore their right to vote?

10 MS. MESSICK: Object to the form.

11 A. Well, hopefully at that point pardons and
12 paroles, if there were court decisions
13 saying it's a moral turpitude crime, they
14 would take notice of that and do the proper
15 investigation and administration of the
16 CERV process.

17 Q. Yeah. Do you know how long an average
18 court case regarding moral turpitude takes?

19 MS. MESSICK: Object to the form.

20 Q. An appeal -- let me rephrase. Do you know
21 how long an appeal from a board of
22 registrar's determination of moral
23 turpitude takes to be decided by a probate

1 judge?

2 A. No, I don't.

3 Q. Are you aware of any such cases being
4 filed?

5 A. My understanding is that that's happened a
6 fair amount in Jefferson County, they've
7 had appeals in Jefferson County.

8 Q. Okay. And are you aware of the outcomes of
9 those cases?

10 A. Not specific ones, but I understand that in
11 some cases they've said the person is
12 eligible to register to vote even though
13 the registrars felt they weren't.

14 Q. And has the secretary of state tracked
15 those decisions in order to determine when
16 a court has decided that a specific crime
17 is one involving moral turpitude or not?

18 A. No, not to my knowledge.

19 Q. And would there be any way of -- for boards
20 of registrars across the state to know that
21 a judge had determined that a specific
22 conviction was disqualifying or not?

23 MS. MESSICK: Object to the form.

1 A. Not to my knowledge.

2 Q. Do you think it would be important for
3 registrars to have known if there were
4 court decisions deciding a specific felony
5 was either disqualifying or not?

6 MS. MESSICK: Object to the form.

7 A. Personally, I would think that would be
8 important to know.

9 Q. So under the system that was in place, a
10 judge could decide that a crime was not
11 disqualifying in Jefferson County and yet
12 voters in another county could still be
13 disqualified for that felony?

14 A. Correct. That's my understanding.

15 Q. Do you think that likely happened?

16 MS. MESSICK: Object to the form.

17 A. It's possible.

18 Q. If a voter was left in the position that we
19 discussed a moment ago in which board of
20 pardons and paroles said that a crime was
21 not disqualifying and the board of
22 registrars said that it was, would the
23 voter likely be able to resolve that issue

1 before the upcoming election?

2 MS. MESSICK: Object to the form.

3 A. How close to the election?

4 Q. Let's assume that they registered to vote
5 at the end of the registration deadline.

6 A. I would -- I would suspect it would be very
7 difficult to -- to be able to challenge
8 that decision and get that worked out
9 before the deadline.

10 Q. Yeah. So imagine a voter becomes eligible
11 for a CERV a couple months before the
12 registration deadline and applies for CERV
13 and the board of pardons and paroles gets
14 back to them within the statutory time
15 frame, which is 45 days, and leaves them
16 just enough time -- and tells them that
17 they are ineligible for a CERV because
18 their crime is not disqualifying, at which
19 point they seek to register to vote and the
20 registrar determines that crime is not
21 disqualifying -- was disqualifying. Under
22 the system that was in place, that voter
23 was likely to be disenfranchised in the

1 upcoming election; is that correct?

2 MS. MESSICK: Before you answer,

3 can you read it back, please?

4 (Court reporter reads back the last
5 question.)

6 MS. MESSICK: Object to the form.

7 A. Not necessarily, because the voter would
8 have the opportunity to cast a provisional
9 ballot and then -- which could be reviewed
10 during the seven days after the election,
11 which not being familiar with the way the
12 probate court handles its appeal option or
13 appeal procedure, they might could make a
14 decision during that time as to whether or
15 not the ballot could count.

16 Q. If a decision -- if a lawsuit was not --
17 strike all that.

18 If a voter did not both file a lawsuit
19 and get a decision within 21 days, that
20 voter would be disenfranchised; is that
21 correct?

22 MS. MESSICK: Object to the form.

23 A. That's correct.

1 Q. Do you know how much it costs to file a
2 lawsuit?

3 A. No, I don't.

4 MS. MESSICK: Object to the form.

5 Q. Have you ever hired a lawyer?

6 A. Yes, I have.

7 Q. How much do you pay for -- how much have
8 you paid for an hourly rate for an
9 attorney?

10 A. It was quite a lot.

11 Q. Okay. Thanks. Give you what I'll mark as
12 Packard Exhibit 11.

13 (Packard Exhibit 11 was marked for
14 identification.)

15 Q. This is an e-mail from yourself to a man
16 named Jeff Campbell in 2008. Do you know
17 Jeff Campbell?

18 A. No, not that I have any recollection of
19 him.

20 Q. Could you take a moment to read the e-mail
21 chain?

22 (Witness reviews document.)

23 A. Okay.

1 Q. Mr. Campbell's a prospective voter; is that
2 correct? Someone who wishes to register to
3 vote?

4 A. Yes.

5 Q. And he's asking you for guidance on whether
6 or not he is eligible to register to vote?

7 A. Yes.

8 Q. And he represents to you that he was
9 convicted of possession only of
10 hydrocodone; is that correct?

11 A. Yes.

12 Q. And what was your response to him?

13 A. The ultimate response was to speak with the
14 state board of pardons and paroles to see
15 whether he lost his voting rights and could
16 have them restored.

17 Q. Why did you refer him to the board of
18 pardons and paroles instead of to the
19 registrars' office?

20 A. I think the reason I referred him to
21 pardons and paroles was because he already
22 had the conviction and it was a crime that
23 could well have been disqualifying, so it

1 seemed -- it seemed more prudent to put him
2 on the path of getting his rights restored
3 as opposed to sending him to register
4 first.

5 Q. Are you aware that the board of pardons and
6 paroles had a policy of determining that
7 possession-only drug crimes were not
8 disqualifying and not eligible for a CERV?

9 MS. MESSICK: Object to the form.

10 A. I don't know that I knew about it at this
11 particular time, but -- but I was aware at
12 some point that simple possession without
13 intent to distribute was not moral
14 turpitude.

15 Q. So you are aware that at some point the
16 board of pardons and paroles decided that
17 possession only --

18 A. Right.

19 Q. -- was not involving moral turpitude?

20 A. Right.

21 Q. Okay. Given the policy of the board of
22 pardons and paroles, was it ever
23 communicated to the registrars that there

1 should be a uniform policy of treating all
2 possession crimes as not disqualifying?

3 MS. MESSICK: Object to the form.

4 A. My recollection is that at some point the
5 registrars were told that if something --
6 if a case involved only simple possession,
7 that it wasn't disqualifying.

8 Q. By whom were they told that?

9 A. By the secretary of state's office.

10 Q. By whom in the secretary of state's office?

11 A. I don't remember offhand.

12 Q. And when was that?

13 A. I don't -- I don't recall offhand.

14 Q. It was clearly after 2008?

15 A. Clearly after this, yes.

16 Q. Do you have any recollection if it was more
17 recently or less recently?

18 A. Less recently.

19 Q. Okay.

20 A. I know they've been working with that
21 understanding for quite a number of years.

22 Q. Are you sure that all registrars were
23 implementing the law such that possession

1 crimes were not disqualifying prior to
2 HB 282?

3 MS. MESSICK: Object to the form.

4 A. Well, not knowing what every registrar has
5 done, I can't -- I can't really make that
6 kind of definitive statement.

7 Q. You're not confident that this was being
8 administered uniformly?

9 A. Right.

10 MS. MESSICK: Object to the form.

11 A. Correct.

12 Q. I'll give you what I'll mark as Packard
13 Exhibit 12.

14 (Packard Exhibit 12 was marked for
15 identification.)

16 Q. And this is an e-mail chain from yourself
17 to a person in the board of registrars
18 office of Marion County from 2014; is that
19 correct?

20 A. Yes, that's correct.

21 Q. And the staff member, Ms. Enlow, was
22 requesting advice about several crimes and
23 whether or not they are disqualifying or

1 not; is that correct?

2 A. Right. That is correct.

3 Q. And what guidance did you give her?

4 A. I advised her to contact our legal counsel,
5 Jean Brown.

6 Q. So how often did you refer these issues to
7 Judge Brown?

8 A. At that time, when any of them came in,
9 I -- we didn't get a lot of calls or
10 e-mails about that, but at that time,
11 during that administration, it would --
12 that would have been the practice.

13 Q. And which administration was that?

14 A. This would either have been -- I'm not --
15 by the date, I don't recall if this was
16 right before Ms. Chapman resigned or right
17 after she resigned and Secretary Bennett
18 came in to fulfill the rest of her term,
19 but this was the established practice at
20 that time.

21 Q. Established practice under Ms. Chapman or
22 Secretary Bennett?

23 A. It began under Secretary Chapman and then

1 continued under Secretary Bennett.

2 Q. And did that practice continue -- when did
3 that practice continue until?

4 A. Well, even now if we get calls, even though
5 we have the legislation if we have any
6 questions, if people have questions about
7 whether a crime is moral turpitude, then
8 they send them to our legal counsel.

9 Q. And when did that practice begin?

10 A. Sending them to the legal counsel? Some of
11 that goes back to under Ms. Worley.

12 Q. And what do you mean by "some of that"?

13 A. Referring registrars to legal counsel in
14 the agency to get guidance on moral
15 turpitude crimes. To the best of my
16 recollection, it began under Ms. Worley and
17 then continued under Ms. Chapman.

18 Q. And was the requirement that all inquiries
19 go to Judge Brown?

20 MS. MESSICK: Object to the form.

21 A. At some point that became the policy. I
22 can't -- I don't know exactly when that
23 became the exclusive policy.

1 Q. Were there any exceptions to that, for
2 example, if -- well, were there any
3 exceptions to that policy?

4 A. Like my own e-mail addressing sending the
5 person to pardons and paroles instead of to
6 legal counsel?

7 Q. Yes.

8 A. Yeah. The best I can recall was at some
9 point they made it clear they wanted those
10 questions to go to legal counsel rather
11 than trying to field any of them ourselves.

12 Q. And who would be the "they" in that?

13 A. The secretary of state.

14 Q. I'll give you what we'll mark as Packard
15 Exhibit 13.

16 (Packard Exhibit 13 was marked for
17 identification.)

18 Q. And this is an e-mail from Judge Brown to
19 Harry Butler. And who is Harry Butler?

20 A. Harry Butler is a registrar in Etowah
21 County.

22 Q. And in this e-mail, Mr. Butler, per the
23 protocol that you've established, asked

1 Judge Brown about a number of crimes of
2 moral turpitude, or a number of crimes
3 asking if they were ones involving moral
4 turpitude, and Ms. Brown responds: I do
5 have a list of crime codes, semicolon;
6 however, other than the attorney general's
7 opinion that specifically addresses crimes
8 that have and have not been determined by
9 the courts to constitute a crime of moral
10 turpitude, the decision must be made by the
11 registrars on a case-by-case basis and I'm
12 happy to provide assistance if you have
13 questions regarding specific crimes.

14 Were you aware of Judge Brown having a
15 list of crime codes that she considered
16 involving moral turpitude or not?

17 MS. MESSICK: Object to the form.

18 A. I knew she was -- I was aware -- let me
19 start over. I was aware that she had a
20 list of the codes that are sent over by AOC
21 to identify which crimes someone was guilty
22 of committing. I wasn't aware that that
23 was -- had been -- she had compiled that

1 into a list of moral turpitude crimes.

2 Q. Do you know where such a list would have
3 been kept by Judge Brown?

4 A. No.

5 Q. So you did not have a copy of her list?

6 A. No.

7 Q. Do you think that it would have provided
8 more uniformity if Judge Brown told all
9 registrars about crime codes that she had
10 determined involved moral turpitude?

11 MS. MESSICK: Object to the form.

12 A. I think any -- yes, I think there would be
13 more uniformity if there -- if she had
14 shared the information with all registrars.

15 Q. And then she goes on to say that it was her
16 belief that MCS, which is identified in the
17 e-mail as unlawful manufacturing of
18 controlled substance, would definitely be a
19 crime involving moral turpitude. Do you
20 know what kinds of resources Judge Brown
21 relied upon in coming to those
22 determinations?

23 A. No, I do not.

1 Q. Do you think that unlawful manufacturing of
2 a controlled substance is definitely a
3 crime involving moral turpitude?

4 A. Under the --

5 MS. MESSICK: Object to the form.

6 A. Under the current law?

7 Q. No. Under the prior law.

8 A. Under the prior law? That wasn't part of
9 my job to determine whether it was moral
10 turpitude or not and so I don't have an
11 opinion on that.

12 Q. Do you know what the governing definition
13 of moral turpitude was prior to the passage
14 of HB 282?

15 A. No.

16 MS. MESSICK: Excuse me. Why is
17 his copy highlighted? Did you do that?

18 MS. LANG: Oh, I'm sorry.

19 THE WITNESS: No.

20 MS. MESSICK: So you're going to
21 switch? So take the sticker off.

22 MS. LANG: For the record, I
23 accidentally gave Mr. Packard a copy that

1 had been marked up by myself.

2 (Packard Exhibit 13 was re-marked
3 for identification.)

4 MS. MESSICK: Thank you.

5 MS. LANG: Thank you, Misty.

6 Q. (By Ms. Lang) So I think we left off with
7 you saying that you do not know what the
8 governing standard for moral turpitude was
9 prior to HB 282?

10 MS. MESSICK: Object to the form.

11 A. Correct.

12 Q. Do you have any sense of how to define
13 moral turpitude?

14 A. Well, the -- the only -- the only
15 definition that I've heard -- and I'm not
16 sure where I heard it at -- was a crime of
17 moral turpitude would be something that
18 would be inherently wrong even if it was
19 not illegal.

20 Q. And is it inherently wrong to manufacture
21 controlled substances if there was no law
22 against it?

23 MS. MESSICK: Object to the form.

1 A. If there was no law against it. Not
2 having -- you know, you're asking me on the
3 spur of the moment to make a decision like
4 that; but offhand, I would -- if there's no
5 law against it, I would say no.

6 Q. Thank you. I'm going to give you what I'll
7 mark as Packard Exhibit 14.

8 (Packard Exhibit 14 was marked for
9 identification.)

10 Q. And this is another e-mail involving Judge
11 Brown in which Jacqueline Knighten sent an
12 e-mail to Judge Brown saying that she had
13 tried numerous times to get ahold of her
14 about whether certain crimes involved moral
15 turpitude or not. Were you ever aware of
16 long delays between Judge Brown and
17 registrars in responding to whether or not
18 crimes involved moral turpitude?

19 MS. MESSICK: Object to the form.

20 A. No, I was not aware of any long delays.

21 Q. If there was a delay, could that lead to a
22 voter being disenfranchised in a given
23 election?

1 MS. MESSICK: Object to the form.

2 A. Potentially, depending upon the timing of
3 the request.

4 Q. Thank you. I'm trying to understand the
5 sources that were available to the board of
6 registrars in deciding whether a crime was
7 involved -- involved moral turpitude during
8 this era. One of the sources that was
9 available to them was the AOC list in the
10 election handbook; is that correct?

11 A. Right.

12 Q. Another source was the 2005 attorney
13 general opinion to Mr. Segrest about which
14 crimes involved moral turpitude or not; is
15 that correct?

16 A. That's correct.

17 Q. I do not --

18 MS. MESSICK: Do you need copies of
19 something?

20 MS. LANG: I do.

21 MS. MESSICK: Okay.

22 MR. SINCLAIR: I can do it.

23 MS. LANG: Thank you.

1 Q. We're going to --

2 MR. SINCLAIR: It's five minutes
3 till one.

4 MS. MESSICK: I'll just run it
5 right there.

6 MR. SINCLAIR: I've got it.

7 MR. GABER: Thank you.

8 MS. LANG: Thank you. We can go
9 off the record.

10 (Off the record.)

11 (Packard Exhibit 15 was marked for
12 identification.)

13 Q. (By Ms. Lang) So I just marked Packard
14 Exhibit 15, which is a board of registrars
15 handbook and -- or a portion of the board
16 of registrars handbook that's dated May 14,
17 2015. The final two pages of this excerpt,
18 there is a chart that has on one column
19 crimes involving moral turpitude and
20 another crimes not involving moral
21 turpitude. Do you know how this list was
22 created?

23 A. I do not know how this list was created. I

1 know it was created by John Bennett, but I
2 don't know how he came up with the list.

3 Q. This list was personally created by John
4 Bennett?

5 A. My understanding is it was created by John
6 Bennett.

7 Q. Were you involved in the creation of this
8 list?

9 A. No.

10 Q. Do you know if anyone else other than John
11 Bennett was involved in the creation of
12 this list?

13 A. I'm not aware of anyone else who may have
14 been involved. There may have been
15 somebody else, but I understood that John
16 Bennett had compiled this list.

17 Q. What was the position of John Bennett at
18 that time?

19 A. He was assistant to the chief of staff or
20 something like that. This was right when
21 they first came into office, so I don't --
22 I don't remember exactly what his title
23 was, but I think it might have been

1 assistant to the chief of staff.

2 Q. The front page confirms your belief --

3 A. Oh, there you go.

4 Q. -- that it was John Bennett, assistant to
5 the chief of staff. Do you know if anyone
6 was consulted in the creation of this list?

7 MS. MESSICK: Asked and answered.

8 A. I don't have any knowledge about how the
9 list was prepared.

10 Q. Okay. Thank you. Another potential source
11 is the list that Judge Brown may have been
12 keeping. But you are not aware of that
13 list being distributed; is that correct?

14 A. I'm not aware of that.

15 Q. Do you know if the board of pardons and
16 paroles kept a list of crimes that were and
17 were not involving moral turpitude?

18 A. I do not know.

19 Q. And are you aware if there were any
20 registrars that treated everything except
21 the few -- strike that.

22 In the 2005 attorney general opinion,
23 there are a few crimes that are identified

1 as definitively not involving moral
2 turpitude; is that correct?

3 A. I believe that's correct.

4 Q. Driving under the influence is --

5 A. Right.

6 Q. -- one example? To my knowledge, that's
7 the only source that has crimes that are
8 definitively not involving moral turpitude;
9 is that correct?

10 MS. MESSICK: Object to the form.

11 A. To my knowledge, that's correct.

12 Q. Were there any registrars, to your
13 knowledge, that treated everything except
14 the few crimes identified as not involving
15 moral turpitude in the 2005 AG opinion as
16 disqualifying?

17 A. I don't have any information on that.

18 Q. Do you think that may have been the case?

19 MS. MESSICK: Asked and answered.

20 A. I don't know.

21 Q. Do you know if registrars kept their own
22 internal list?

23 A. I don't know for a fact they did.

1 Q. In your declaration last year, you stated
2 that the secretary of state has also
3 provided individual guidance by phone to
4 registrars about whether a particular crime
5 is disqualifying. Is it true that most of
6 these inquiries were handled by phone
7 rather than e-mail?

8 A. I would suspect that they were mostly
9 handled by phone rather than e-mail.

10 Q. And did you handle some of these inquiries
11 by phone?

12 A. Yes. I took calls and then routed them to
13 whoever needed to assist them, the legal
14 counsel.

15 Q. Does the secretary of state have any
16 tracking system to ensure that the internal
17 guidance provided by the secretary of
18 state's office about specific crimes was
19 consistent?

20 MS. MESSICK: Object to the form.

21 A. I'm not aware of any tracking system of the
22 guidance given.

23 Q. But yourself, Clay Helms, and Judge Brown

1 all gave guidance at some point or another
2 about which crimes involved moral
3 turpitude; is that correct?

4 MS. MESSICK: Object to the form.

5 A. Well, I know Jean Brown did. I don't know
6 whether Clay has given -- what information
7 he may have given out. And I've given out
8 some information, but there's not been a
9 tracking system.

10 Q. Okay.

11 MS. LANG: We'll go off the record
12 now.

13 (Lunch recess.)

14 MS. MESSICK: We're back on the
15 record after lunch, and I am handing to
16 Danielle a production of Bates No. D150682
17 and D150683. And, also, Danielle, you were
18 going to let us have one moment to clarify
19 some testimony earlier about other
20 depositions that Mr. Packard might have sat
21 for.

22 A. Right. You had asked me if I had
23 participated in any previous depositions,

1 and I had neglected to mention -- I forgot
2 to mention that I had participated in a
3 deposition in a lawsuit regarding the
4 Uniformed and Overseas Absentee Voting Act
5 litigation.

6 Q. (By Ms. Lang) Thank you, Mr. Packard.

7 A. Thank you. I'd like to -- I'm going to
8 hand you a document that will be marked as
9 Packard Exhibit 16.

10 (Packard Exhibit 16 was marked for
11 identification.)

12 Q. This is an e-mail chain between yourself --
13 sent to you from Mr. Harry Butler. And I
14 believe we've established that Mr. Butler
15 is a registrar in Etowah County; is that
16 correct?

17 A. Yes.

18 Q. He references in the e-mail that Laural
19 Bunn had sent around to all of the
20 registrars a list of additional criminal
21 codes that she had determined with Judge
22 Brown involved moral turpitude, and
23 Mr. Butler asks you if it was appropriate

1 for one registrar to send such a list to
2 the whole registrar -- to all of the
3 registrars. Do you recall this e-mail?

4 A. Uh-uh. I do not recall this e-mail.

5 Q. Do you think it would be appropriate for
6 one registrar to send a list of crimes that
7 they believe are disqualifying to the
8 remainder of the board of registrars?

9 A. Yes. I don't -- I wouldn't have any
10 concern about that.

11 Q. Did anyone from the secretary of state's
12 office ever clarify with the registrars
13 whether they should follow this list that
14 Ms. Bunn had sent around?

15 A. I'm not aware of any communication like
16 that that was sent out.

17 Q. Let me give you what I'm going to mark as
18 Packard Exhibit 17, which is an e-mail from
19 Lucy Kynard. I apologize if I'm
20 mispronouncing her name.

21 (Packard Exhibit 17 was marked for
22 identification.)

23 Q. Who is Lucy Kynard?

1 A. She is a registrar in Perry County.

2 Q. And can you read this e-mail and then

3 explain to me what it's about?

4 A. Read it aloud or --

5 Q. You don't have to read it out loud, no.

6 (Witness reviews document.)

7 A. Okay. This is an e-mail from Lucy Kynard.

8 She also references the e-mail that Laural

9 Bunn sent out with the list of codes and

10 whether they're moral turpitude or not that

11 Jean Brown assisted her with. Then she

12 also mentions that that list is not

13 reflected in the election handbook and that

14 she also got information from Pinky

15 Reichert of Coosa County about another

16 criminal conviction code CHAB as supposedly

17 having been determined that it was moral

18 turpitude but it's not in the handbook

19 either. And then she reports that the

20 felon match list that comes out each week

21 has names on it that -- she says it has

22 names on it that are not on the list. I'm

23 not sure what she means there. And then

1 apparently -- and apparently the felon
2 match list includes names of people who
3 have been convicted of moral turpitude
4 crimes but they've got a record of pardons
5 on file with them so they've reinstated
6 them, because I guess they had been
7 previously removed.

8 Q. Great. So is it correct to report that
9 Ms. Kynard still didn't know two years
10 later if she should follow the guidance
11 that had been sent around by Ms. Bunn?

12 A. That appears to be the case, yes.

13 Q. And based on what's reported from
14 Ms. Kynard, does it appear as though
15 decisions were made that certain crimes
16 involved moral turpitude by Judge Brown but
17 that guidance given by the secretary of
18 state to the registrars was not updated to
19 include those conviction codes?

20 MS. MESSICK: Object to the form.

21 A. Can you restate the question?

22 Q. Yes. Judge -- it does appear that Judge
23 Brown was making individual determinations

1 that certain convictions were
2 disqualifying; is that correct?

3 MS. MESSICK: Object to the form.

4 A. I think that she was advising them of
5 certain crimes that she felt were moral
6 turpitude crimes, or had concluded were
7 moral turpitude crimes.

8 Q. And some of those codes were included in
9 Ms. Bunn's e-mail?

10 A. Correct.

11 Q. And some of those -- one of those was
12 included in an e-mail from Ms. Pinky
13 Reichert?

14 A. Yes.

15 MS. MESSICK: Object to the form.

16 A. Well, I'm not sure. The one -- the e-mail
17 from Pinky Reichert, I don't know if that
18 came from Jean Brown or if that was from
19 some other source.

20 Q. Fair enough. Thank you. At least with
21 respect to Ms. Bunn's e-mail, those codes
22 were not added to any official guidance in
23 the election handbook or board of

1 registrars handbook after Judge Brown made
2 those determinations?

3 MS. MESSICK: Object to the form.

4 A. Right. That's correct.

5 Q. I'll hand you what I'm going to mark as
6 Packard Exhibit 18.

7 (Packard Exhibit 18 was marked for
8 identification.)

9 Q. This is an e-mail chain between yourself
10 and Jody Campbell. Who is Jody Campbell?

11 A. Jody Campbell is the circuit clerk in
12 Baldwin County and also serves, when she's
13 able, as the absentee election manager.

14 Q. And Jody Campbell reported to you on
15 September 16, 2016, that a voter had been
16 denied registration on the basis of an
17 unlawful-possession-of-a-controlled-
18 substance conviction; is that correct?

19 A. Yes.

20 Q. And she was writing to you in confusion
21 because she believed that possession was
22 not a disqualifying crime; is that correct?

23 A. That is correct.

1 Q. And you ultimately referred her to Jean
2 Brown?

3 A. Yes, that's correct.

4 Q. And you were not clear as to whether or not
5 unlawful possession of a controlled
6 substance not marijuana was a disqualifying
7 conviction?

8 MS. MESSICK: Object to the form.

9 A. Right.

10 Q. According to this e-mail, you were not
11 clear in 2016 that unlawful possession was
12 a disqualifying offense; is that correct?

13 A. Right.

14 MS. MESSICK: Object to the form.

15 A. Right. That's correct.

16 Q. Earlier in your testimony, you let me know
17 that at some point, the board of registrars
18 had been told that unlawful possession of a
19 controlled substance was not a
20 disqualifying offense; is that correct?

21 A. That's correct.

22 Q. Does this e-mail refresh your recollection
23 about when that may have occurred?

1 A. When I came to know that it was a moral
2 turpitude -- or not a moral turpitude
3 felony? No, it doesn't help me recall when
4 I became aware of that.

5 Q. Would it be sometime after this e-mail was
6 sent?

7 A. It would be after this e-mail, yes.

8 Q. So up until September of 2016, it was not a
9 clear practice that unlawful possession of
10 a controlled substance was not a
11 disqualifying felony?

12 A. It was not within my knowledge.

13 Q. And it appears that it was also not within
14 the knowledge of the board of registrars in
15 Shelby County?

16 MS. MESSICK: Object to the form.

17 A. Correct. According to the -- according to
18 the prospective voter, yes.

19 Q. Thank you. I'm handing you what I'll mark
20 as Packard Exhibit 19.

21 (Packard Exhibit 19 was marked for
22 identification.)

23 Q. This is a pretty lengthy e-mail chain

1 between yourself and a prospective voter
2 named Richard Bearden. Do you recall
3 talking to this gentleman?

4 A. I don't recall the communications with this
5 gentleman.

6 Q. So he starts out the e-mail chain by just
7 asking you how he can get registered to
8 vote, but it becomes apparent through your
9 e-mails that he does have a felony
10 conviction, at which point you ask him for
11 his convictions. And he provides them to
12 you, and that's on page 4 of this e-mail
13 chain -- 5 of this e-mail chain. Do you
14 see that?

15 MS. MESSICK: Object to the form.

16 A. Yes, I see that.

17 Q. And he clarifies in the following page that
18 he only actually has one felony conviction,
19 and that is for unlawful manufacturing of a
20 controlled substance in the first degree;
21 is that correct?

22 A. Yes, I see that.

23 MS. LANG: If we can go off the

1 record.

2 (Off the record.)

3 Q. (By Ms. Lang) And he asks you on April 21,
4 2017, if he can be reasonably sure that he
5 did not lose his rights -- that he did lose
6 his rights with his prior felony
7 conviction. And he tells you that he's
8 just really not sure if that would be
9 disqualifying or not and that he would
10 think there would be a database that would
11 allow him to know if he had the right to
12 vote or not. And he also says it is
13 incredibly difficult to figure it out and
14 that he doesn't want to get himself in
15 trouble; is that correct?

16 A. That --

17 MS. MESSICK: Object to the form.

18 A. That is correct.

19 Q. What did you end up telling Mr. Bearden?

20 A. Well, I gave him a couple different pieces
21 of advice. I gave him advice that he could
22 speak with the board of pardons and paroles
23 since he indicated he completed all the

1 terms of his sentence, that they could
2 restore his voting rights, and that he
3 could speak to them about how to have his
4 rights restored to carry a firearm. When
5 he continued to ask about whether he was
6 disqualified or not, I recommended that he
7 speak to the Jefferson County Board of
8 Registrars since he was from Jefferson
9 County and that they could tell him for
10 sure whether he was disqualified from
11 voting or not.

12 Q. And why didn't you refer Mr. Bearden to
13 Judge Brown?

14 A. I don't recall why I didn't.

15 Q. Okay. Do you agree with Mr. Bearden that
16 it could be very difficult for the average
17 person to determine whether or not their
18 felony conviction was disqualifying or not?

19 MS. MESSICK: Object to the form.

20 A. Yes, I would agree with that.

21 Q. He engaged in a two-week-long e-mail
22 exchange with the director of elections and
23 did not get to a result of whether or not

1 he was eligible to vote or not; is that
2 correct?

3 A. That's correct.

4 MS. MESSICK: Object to the form.

5 Q. I'll give you what I'll mark as Packard
6 Exhibit 20.

7 (Packard Exhibit 20 was marked for
8 identification.)

9 Q. I'd also like to give at the same time what
10 I'll mark as Exhibit 21. These are related
11 e-mails.

12 (Packard Exhibit 21 was marked for
13 identification.)

14 Q. Both relate to an original e-mail sent on
15 October 6, 2016 from a woman named Beverly
16 Jo Jones who's alleging that she's
17 improperly being disenfranchised on the
18 basis of a prior felony conviction and
19 threatens to file a lawsuit because of it;
20 is that correct?

21 MS. MESSICK: Danielle, could you
22 give us a minute to look at it, please?

23 MS. LANG: Absolutely.

1 (Witness reviews document.)

2 MS. MESSICK: When he's done
3 reading, I'm going to ask the court
4 reporter to read back your characterization
5 of what the e-mail said now that we've
6 had -- once we've had a chance to read it.

7 A. Okay. I'm ready.

8 (Court reporter reads back the last
9 question.)

10 MS. MESSICK: Thank you.

11 A. Yes, that appears to be correct.

12 Q. And David Brewer sent you an e-mail the
13 following day asking you to inform
14 Secretary Merrill of this matter?

15 A. That is correct.

16 Q. Did you do that?

17 A. I don't have a recollection of doing that,
18 but that would have been the normal
19 practice.

20 Q. And why -- when was it the normal practice
21 to advise Secretary Merrill of an issue
22 like this?

23 MS. MESSICK: Object to the form.

1 A. Well, it depends on the seriousness or the
2 nature of the questions or charges that are
3 being contained in the message that comes
4 in. And so David Brewer, the chief of
5 staff, he'll make determinations at times
6 that certain things need to be reported to
7 the secretary and other things don't.

8 Q. And then David Brewer also says that,
9 quote, we will discuss together, parens,
10 our team of staff and report to him
11 thereafter. Who would be the, quote, team
12 of staff in that e-mail?

13 MS. MESSICK: Object to the form.

14 A. Generally that would have included at that
15 time Jean Brown, Brent Beal, Clay Helms --
16 Jean being legal counsel, Brent Beal being
17 legal counsel, and Clay Helms who at that
18 time would have been supervisor of voter
19 registration -- and then David Brewer
20 himself and John Bennett, the assistant to
21 the chief of staff.

22 Q. And do you recall what you -- what this
23 group discussed about Ms. Jones?

1 MS. MESSICK: Object to the form.

2 A. I don't -- I don't recall the actual
3 conversation that we had.

4 Q. And then on October 12th, you responded to
5 Ms. Jones; is that correct?

6 A. Yes.

7 Q. And what was the summary of your response?

8 A. Well, basically, we advised her that we
9 appreciated her contacting us and that the
10 secretary of state's office doesn't make
11 the determination as to whether someone is
12 eligible to vote; that's the registrar's
13 responsibility. We also explained further
14 the election process, that we don't tally
15 the election returns, and then provided
16 information about restoration of voting
17 rights and directed her to the pardons and
18 paroles website.

19 Q. Thank you. Do you know if yourself or
20 Mr. Helms or any other member of the
21 secretary of state's office followed up
22 with the board of registrars in Ms. Jones'
23 county, in Mobile County, to determine

1 whether or not she was being properly
2 disqualified?

3 A. I'm -- I don't have any recollection that
4 anybody followed up with the registrar's
5 office.

6 Q. Would it ordinarily be the practice of the
7 secretary of state's office to follow up on
8 this type of matter?

9 A. Again, it depends on the -- the particular
10 circumstances. In this case, it's hard to
11 tell from her letter whether this would
12 have triggered us to launch a review or
13 not.

14 Q. And you don't recall if you launched a
15 review or not?

16 A. I don't recall there being a review.

17 Q. Was this as far -- strike that. I'm going
18 to give you what I'm marking as Packard
19 Exhibit 22.

20 (Packard Exhibit 22 was marked for
21 identification.)

22 Q. And this is an e-mail chain that originated
23 from a woman named Shirley McDonald to

1 yourself and Clay Helms and Daniel Dean and
2 Janice McDonald and then you followed up
3 with the internal secretary of state team.

4 Who is Shirley McDonald? Do you know?

5 A. All I can tell from the e-mail is that she
6 was a prospective voter.

7 Q. Okay. Who's Janice McDonald?

8 A. Janice McDonald is a member of our staff,
9 formerly the director of elections and
10 currently a retired state employee working
11 in the office.

12 Q. And who is Daniel Dean?

13 A. And Daniel Dean was another employee in the
14 office. He works in the elections
15 division.

16 Q. And what was his title?

17 A. I'm not sure what his title was at the
18 time.

19 Q. Okay. And Ms. McDonald reported to her --
20 reported to you her belief that the
21 chairman of the board of registrars in
22 Limestone County was giving out false
23 information about the eligibility of people

1 with convictions and was doing so
2 intentionally to stop minorities from
3 voting.

4 MS. MESSICK: Object to the form.

5 Q. Is that correct?

6 A. That's correct.

7 Q. And you write back, I am handling this one,
8 to the secretary of state team; is that
9 correct?

10 A. That is correct.

11 Q. How did you handle this one?

12 A. To the best of my recollection, I contacted
13 Lee Liveoak and advised him what the proper
14 restoration-of-rights procedure is and
15 that -- to make sure he understood that
16 once they served their time and they've
17 completed all the terms of their sentence,
18 they could get their voting rights back to
19 the pardons and paroles board if it had
20 been a moral -- you know, a disqualifying
21 felony conviction.

22 Q. Did you also talk to him about how all
23 felony convictions were not disqualifying?

1 A. Right, that is correct. I would have.

2 Q. Do you recall this conversation in
3 particular?

4 A. I do. I do recall speaking to Lee Liveoak
5 about this particular matter.

6 Q. And was Mr. Liveoak receptive to your
7 comments?

8 A. Yes, he was.

9 Q. Did you tell him that there was an
10 allegation that he was racially
11 discriminating against voters?

12 A. Yes. I shared with him the content of this
13 letter.

14 Q. And what was his response?

15 A. He -- he was surprised and -- and said that
16 he wasn't discriminating. That's about all
17 I can recall about his reaction to it.

18 Q. Did your office do any further
19 investigation into whether or not there was
20 a racially discriminatory pattern in
21 Mr. Liveoak's behavior?

22 A. I'm not aware that there was any other
23 investigation to look into it deeper.

1 Q. Did you speak to Shirley McDonald any
2 further?

3 A. I don't recall. It would have been normal
4 practice to have responded, but I don't
5 recall responding to her.

6 Q. And you didn't speak to her on the phone?

7 A. Not that I recall.

8 Q. No one visited her to talk about her
9 allegations?

10 A. Not that I can recall.

11 Q. Earlier in your testimony I asked if -- if
12 you'd heard of racial -- racially-charged
13 allegations about the administration of
14 felony -- the felony disenfranchisement
15 law. Does this refresh your recollection
16 that you have heard such allegations?

17 MS. MESSICK: Object to the form.

18 A. I'm trying to remember my comment that I
19 made to you earlier.

20 Q. It would make sense to me --

21 A. But, yeah, this does -- this does -- this
22 does remind me that I've heard some
23 racially-charged allegations before.

1 Q. And are you certain this is the only one?

2 MS. MESSICK: Object to the form.

3 A. I can't be certain.

4 Q. Do you think this is the only one?

5 MS. MESSICK: Object to the form.

6 A. I can't be certain that it's the only one.

7 Q. Thank you. I'm going to hand you what

8 we'll mark as Packard Exhibit 23.

9 (Packard Exhibit 23 was marked for
10 identification.)

11 Q. If you could just take a moment to review
12 this e-mail chain between yourself and Clay
13 Helms and Barry Stephenson.

14 (Witness reviews document.)

15 MS. MESSICK: I know there wasn't a
16 question, but I'm going to object to the
17 statement because it's not -- it starts
18 with Barry Stephenson, but then he's not
19 part of the entire chain. Different people
20 come in and fall off.

21 MS. LANG: Yes. That's accurate.

22 A. Okay. I'm ready.

23 Q. In May 2016, Mr. Stephenson wrote to Clay

1 Helms -- strike that.

2 Who is Barry Stephenson, to start?

3 A. Barry Stephenson is the chairman of the
4 Jefferson County Board of Registrars.

5 Q. How long has he held that position?

6 A. That's been many years. I can't remember
7 when he took office.

8 Q. Great. And he is reporting that in one
9 week he received 2,258 electronic voter
10 registrations from ALEA, which is the
11 agency that processes driver's licenses; is
12 that correct?

13 A. That is correct.

14 Q. Do you know why there was a sudden uptick
15 in the number of driver's license voter
16 registration forms that were received by
17 the board of registrars?

18 A. Well, they -- well, earlier that year in
19 2016, we revamped our compliance process
20 with the National Voter Registration Act to
21 where ALEA performed electronic voter
22 registration through their offices, and so
23 actually Jefferson County had been seeing a

1 high volume of registrations ever since
2 that began, which would have been several
3 months before this.

4 Q. And did they find a way to make it
5 sustainable? He says it's unsustainable
6 here.

7 MS. MESSICK: Object to the form.

8 A. They're processing the applications.
9 That's all I know. I don't know if the
10 volume is still the same or -- you know.

11 Q. Okay. And he's particularly concerned that
12 a higher number of people with felony
13 convictions were coming through this
14 system; is that correct? He characterizes
15 them as criminals.

16 A. Yes, that is correct.

17 Q. And his proposal is to put up a disclaimer
18 that if a person has a criminal conviction,
19 they need to check with the pardon and
20 parole board to see if their rights have
21 been restored; is that correct?

22 A. Yes, that's correct.

23 Q. When you saw this e-mail, were you

1 concerned that Mr. Stephenson thought that
2 would be an appropriate response?

3 A. Yes, as I think my e-mail shows.

4 Q. Yeah. You let Clay know to tell
5 Mr. Stephenson that that would not be
6 appropriate because not all felonies are
7 disqualifying; is that right?

8 A. Right.

9 MS. MESSICK: Object to the form.

10 A. Right.

11 Q. Did anybody check Jefferson County Board of
12 Registrars to determine whether or not the
13 county was disenfranchising all people with
14 felony convictions after this e-mail was
15 received?

16 A. I don't have any knowledge of anybody
17 checking on that.

18 Q. And the second part of your response said
19 that, We cannot appear to be putting up a
20 barrier to registration for those
21 individuals who do not need or have to get
22 their rights restored; is that right?

23 A. Right. That's correct.

1 Q. What did you mean by you didn't want to
2 appear to be putting up a barrier?

3 A. Well, we wouldn't have wanted to instruct
4 people to check with pardons and paroles if
5 they didn't -- if they weren't convicted of
6 a disqualifying felony.

7 Q. Was there any training given to the
8 driver's license agency about how to advise
9 people with felony convictions about
10 whether or not they were eligible to vote
11 or not?

12 MS. MESSICK: Object to the form.

13 A. No. The only training that was conducted
14 with the driver's license offices were how
15 to administer the computer system with the
16 electronic registration and that they had
17 to post in their offices the list of
18 requirements, but there's nothing specific
19 about how to answer the questions if
20 someone is -- has a question about being
21 potentially disqualified.

22 Q. And the list of requirements put up in
23 driver's license agencies says what about

1 felony convictions?

2 MS. MESSICK: Object to the form.

3 A. It's the same verbiage from the voter
4 registration application that says that
5 I've not been convicted of a disqualifying
6 felony.

7 Q. And no --

8 A. Or had my rights restored, right.

9 Q. And no additional information was given to
10 the driver's license agency either in the
11 form of training or public education
12 materials about what "disqualifying felony"
13 meant?

14 MS. MESSICK: Object to the form.

15 A. No, not to my knowledge.

16 Q. Let me give to you what I will mark as
17 Packard Exhibit 24.

18 (Packard Exhibit 24 was marked for
19 identification.)

20 Q. The e-mail and the attached document are
21 from Mr. John Bennett about the difficulty
22 administering the moral turpitude
23 provision, and I want to call your

1 attention in particular to the memorandum
2 he sent you. The second sentence says, One
3 issue that has been voiced from the
4 beginning is related to the legally
5 ambiguous term "moral turpitude" being one
6 qualifying aspect to a registrant's
7 possible inability to register.

8 Would you agree with Mr. Bennett that
9 the term was ambiguous?

10 MS. MESSICK: Object to the form.

11 A. Yes, I think that's one way you can
12 characterize the phrase "moral turpitude."

13 Q. And then the last sentence of his -- this
14 first paragraph says, Additionally, we have
15 found some issues related to this
16 disqualifying factor that might change
17 depending on whether the individual was
18 attempting to vote in a local election as
19 opposed to a national election.

20 Are you aware of any circumstances
21 surrounding the implementation of the moral
22 turpitude provision that differed depending
23 on whether the individual was attempting to

1 vote in a local election as opposed to a
2 national election?

3 A. No, I'm not aware of any difference based
4 on type of election.

5 Q. Did you talk to Mr. Bennett about this
6 memorandum?

7 A. I don't -- I don't recall any conversation
8 with them or what that conversation may
9 have been if I did. This was prior to the
10 secretary, the current secretary, taking
11 office and before John Bennett was an
12 actual employee of the office.

13 Q. So what was John Bennett's position at that
14 time?

15 MS. MESSICK: Object to the form.

16 Q. Or how was John Bennett employed at the
17 time he sent you this?

18 MS. MESSICK: Object to the form.

19 A. I'm not sure -- I'm not sure how he was
20 employed, but he was working with Secretary
21 Merrill on the transition into office after
22 being elected.

23 Q. So this was during the transition period?

1 A. Right.

2 Q. Okay. Do you know what Mr. Bennett's role
3 was on the transition team?

4 A. I do not know what his role was on the
5 transition team.

6 Q. Thank you. I'll give you what's going to
7 be marked Packard Exhibit 25.

8 (Packard Exhibit 25 was marked for
9 identification.)

10 Q. And this is your response to Mr. Bennett's
11 memo. And we don't have to go into the
12 details. I believe you correctly laid out
13 the reasons why Mr. Bennett's solution in
14 which everyone would have to go through the
15 CERV process would not be proper under the
16 law. Do you recall if there were any kind
17 of further conversations with Mr. Bennett
18 about his proposal?

19 A. I don't recall anything after this.

20 Q. Okay. I'm going to shift gears a little
21 bit away from talking about the old system
22 and talking a little bit about how we got
23 to the new law that was passed. I'm very

1 used to calling the new law HB 282. It
2 came up in yesterday's deposition that
3 that's really not the proper term. The
4 proper term is Act 2017-378. I'm going to
5 continue to refer to the bill as HB 282
6 because otherwise I think I'm likely to
7 make a lot of errors. Can we all agree
8 that when I refer to HB 282, I'm referring
9 to the law that passed in 2017 that's
10 Act 2017-378?

11 A. That's fine.

12 MS. MESSICK: Which is the act --

13 A. That's fine.

14 MS. MESSICK: -- that lists the
15 moral turpitude crimes.

16 Q. Okay.

17 A. That's fine with me.

18 Q. Thank you. It's just really for my own
19 comfort. After Secretary of State Merrill
20 took office, when did he first raise with
21 you the possibility of drafting a law that
22 would define moral turpitude?

23 MS. MESSICK: Object to the form.

1 A. I don't remember when he first raised that
2 issue with me.

3 Q. When did you start working on potential
4 drafts of a moral turpitude bill?

5 MS. MESSICK: Object to the form.

6 A. I don't remember exactly when I started,
7 but it was after we formed the subcommittee
8 on -- or formed the committee to look at
9 voter disenfranchisement and restoration of
10 rights. I don't recall there being
11 anything before that.

12 Q. Do you remember working with Representative
13 England on a potential bill before the
14 committee was created?

15 A. I don't, but I guess you've got something
16 that says there might be.

17 Q. I'm going to mark as Exhibit 26 a document
18 that may refresh your recollection.

19 (Packard Exhibit 26 was marked for
20 identification.)

21 A. In February of 2015, you sent a draft bill
22 to Representative England that Secretary
23 Merrill hoped he would review.

1 A. Okay.

2 Q. Is that right?

3 A. Yes, that's what this document is.

4 Q. Who drafted this version of the bill in
5 2015?

6 A. I would have been the primary drafter on
7 it, to the best of my recollection.

8 Q. Okay. And when was this committee created?
9 Do you remember?

10 A. I don't remember the date it was created.

11 Q. Okay. If I told you that the first meeting
12 of the exploratory committee was on
13 November 18, 2015, does that sound correct
14 to you?

15 A. That would -- that sounds like that could
16 be correct.

17 Q. I'm happy to show you the minutes.

18 A. Okay.

19 Q. If you could confirm that the first meeting
20 was on November 18, 2015.

21 A. Yes.

22 Q. Okay.

23 MS. MESSICK: Can I just see if it

1 says it's the first meeting as opposed to
2 just a meeting?

3 MS. LANG: I mean, there's a bunch
4 of documents that say that there were three
5 meetings, and these were all the minutes
6 that were provided to me.

7 (Ms. Messick reviews documents.)

8 MS. MESSICK: Okay.

9 Q. (By Ms. Lang) Okay. So this e-mail to
10 Representative England predates the
11 exploratory committee; is that right?

12 A. Yes, that's correct.

13 Q. And you would have been the primary drafter
14 of this bill?

15 MS. MESSICK: Asked and answered.

16 A. To the best of my recollection, yes.

17 Q. Okay. And how did you determine what
18 convictions to put on this list of 32
19 convictions in the draft bill?

20 A. I really don't remember what that process
21 was, but it looks like it's -- just from
22 looking at it, it looks like it's mainly
23 based on the AOC list.

1 Q. And would Secretary Merrill have been
2 involved in working with you to determine
3 which crimes should be included or not?

4 A. There -- there would have been a group
5 effort.

6 Q. Who would have been --

7 A. But I --

8 Q. -- part of that group?

9 A. I don't remember who all may have
10 participated.

11 Q. Did Secretary Merrill participate?

12 A. He would have reviewed the legislation. I
13 don't remember if he gave any input on the
14 actual list of crimes, but he would have
15 reviewed the legislation before it was sent
16 out to anybody.

17 Q. He would need to sign off on it --

18 A. Right.

19 Q. -- before it was sent out?

20 A. Correct.

21 Q. Okay.

22 A. And he would have directed me to send it to
23 Representative England.

1 Q. Who else may have been involved in helping
2 you draft this bill?

3 MS. MESSICK: Object to the form.

4 A. Again, I'm not sure that anybody else was
5 involved, but on some of these things, we
6 would have had a team effort. But I don't
7 recall who may -- who else may have been
8 involved.

9 Q. And since you were the drafter of this
10 legislation, is there a reason why you
11 excluded public corruption crimes such as
12 bribery, public corruption, and perjury
13 from this list?

14 MS. MESSICK: Object to the form.

15 A. No, there wasn't any particular reason for
16 excluding them.

17 Q. Would you think that bribery would be a
18 crime involving moral turpitude?

19 A. It could be.

20 Q. A number of drug crimes are included on
21 this list. Can you tell me why drug crimes
22 are crimes involving moral turpitude?

23 A. Why drug crimes are crimes of moral

1 turpitude?

2 Q. Yes.

3 MS. MESSICK: Object to the form.

4 A. Again, I believe this list is -- is
5 primarily based on the AOC list, so we took
6 what the courts had previously decided had
7 been as moral turpitude crimes and included
8 them in this particular bill.

9 Q. Thank you. I'm going to give you what
10 we'll mark as Packard Exhibit 27, and it's
11 an e-mail and its attachment, which is why
12 there's a paper clip.

13 (Packard Exhibit 27 was marked for
14 identification.)

15 Q. And this is an e-mail from you
16 approximately a month later to
17 Representative Jones about the moral
18 turpitude bill; is that correct?

19 A. Yes, that's correct.

20 Q. So was Secretary Merrill hoping that both
21 Representative Jones and Representative
22 England would support this bill?

23 MS. MESSICK: Object to the form.

1 Do you have the other attachments?

2 MS. LANG: No.

3 MS. MESSICK: Okay.

4 A. To the best of my knowledge, since we were
5 e-mailing both of them then, I would
6 suspect Secretary Merrill was hoping that
7 they would both support the bill.

8 Q. And you talk about arranging a meeting with
9 Representative Jones. Did that meeting
10 occur?

11 A. I don't recall the meeting, but -- I don't
12 recall the meeting.

13 Q. Have you ever met with Representative
14 Jones?

15 A. I don't -- I don't recall meeting with him.
16 We may have, but I just don't recall it.

17 Q. And in this e-mail, you say Secretary
18 Merrill plans to attend if he can. Did
19 Secretary Merrill meet with legislators
20 about legislation that he's supporting?

21 A. He would have communicated or talked with
22 them with legislators when he was
23 interested in their support.

1 Q. And the attachment, or one of the
2 attachments to the e-mail, is headed
3 "crimes to potentially include in moral
4 turpitude bill." Who created this list?

5 A. To the best of my recollection, I was the
6 one that created this list.

7 Q. And do you know how you -- how you chose
8 these crimes to suggest adding to the bill?

9 A. I don't recall the exact process used for
10 identifying these crimes.

11 Q. Do you have any memory of why you might
12 have chosen these crimes?

13 A. Well, they seemed like to me that they were
14 serious enough and of great enough
15 importance that they should be included.

16 Q. Did you look at a code?

17 A. I would have looked at the Code of Alabama.

18 Q. Did anybody else provide input on this list
19 of nine additional crimes?

20 A. I don't remember -- I don't recall anybody
21 providing any further input on it, but
22 there may have been other input after they
23 saw the list.

1 Q. I'll give you what's marked as Packard
2 Exhibit 28.

3 (Packard Exhibit 28 was marked for
4 identification.)

5 Q. And in this e-mail, you send to a woman
6 named Karen a draft of the moral turpitude
7 bill. Who is Karen in this e-mail?

8 A. I am not sure, because I -- that e-mail
9 address looks familiar, but I can't think
10 of who that person is.

11 Q. Do you think you might be able to determine
12 who that is if you were to look at your
13 e-mail?

14 A. I might be able to. Not sure.

15 Q. Do you remember sharing the draft of the
16 bill with anyone other than Representative
17 Jones or Representative England?

18 MS. MESSICK: Object to the form.

19 A. No, I don't recall offhand.

20 Q. What happened to this draft bill that was
21 finalized on or before March 9, 2015?

22 MS. MESSICK: Object to the form.

23 A. I -- I don't have a recollection of what

1 happened to the bill, because they had a
2 different team that actually worked on the
3 legislative effort.

4 Q. And who was that?

5 A. That would have been Brandon Walters
6 coordinated our legislative effort for the
7 secretary. And, of course, the secretary
8 would have been involved.

9 Q. And Brandon Walters, was he involved in the
10 passage of HB 282 as well?

11 A. No.

12 Q. Who was involved in the legislative side of
13 HB 282 from the secretary of state's
14 office?

15 A. Brent Beal.

16 Q. Brent Beal. Thank you. And was the
17 secretary personally involved in helping
18 ensure that HB 282 was passed?

19 A. I don't have any personal knowledge that he
20 was, but I suspect he was.

21 Q. I'm just trying to determine if anyone is
22 looking for a breaking point.

23 A. I'm okay right now.

1 MS. MESSICK: Keep going.

2 Q. So I'd like to shift gears and talk about
3 the exploratory committee that you've
4 mentioned a couple of times. And I'm going
5 to mark as Exhibit 29 the minutes for that
6 committee.

7 (Packard Exhibit 29 was marked for
8 identification.)

9 Q. And these minutes were included as an
10 attachment to your declaration in this case
11 last year, and that's why you'll see the
12 court header at the top that indicates what
13 document number it is on the docket. Who
14 prepared the minutes for the exploratory
15 committee?

16 A. My recollection is that David Brewer
17 prepared them. Well, no. Actually, I
18 don't recall who prepared the minutes for
19 this committee.

20 Q. We're going to have to switch copies again.
21 I just saw that I've written on your copy.
22 I apologize.

23 (Packard Exhibit 29 was re-marked

1 for identification.)

2 Q. So you're not sure who --

3 A. Yeah.

4 Q. -- prepared the minutes?

5 A. Right. I don't recall who prepared the
6 minutes.

7 Q. Secretary Merrill signed off on the
8 minutes; is that right?

9 A. Yes.

10 Q. Yeah. Do you remember if John Bennett
11 attended any of these meetings to take
12 notes?

13 MS. MESSICK: Object to the form.

14 A. I don't have a -- I don't have a memory of
15 that.

16 Q. Okay. So could you tell me a little bit
17 about why this exploratory committee was
18 created?

19 MS. MESSICK: Object to the form.

20 A. Well, Secretary Merrill had heard the
21 concerns about there not being an
22 authoritative list of moral turpitude
23 felonies to be used for disenfranchising

1 voters and so he wanted to do something
2 about that. And so he decided to form a
3 committee where he could get the input from
4 various people across a wide spectrum to --
5 so that there would be an authoritative
6 list that could be used by registrars in
7 determining who should be disenfranchised
8 or not.

9 Q. Right. He had already drafted a bill, or
10 rather you had already drafted a bill --

11 A. Right.

12 Q. -- for him; is that right?

13 A. Right. That's correct.

14 MS. MESSICK: Asked and answered.

15 And object to the form.

16 Q. So why after the fact did Secretary Merrill
17 want to create a committee to explore the
18 issue?

19 A. Well, because the first draft didn't go
20 anywhere, so -- there may have been
21 political reasons. I'm not sure.

22 Q. Okay. I'd love to talk a little bit about
23 how the members of this committee were

1 selected. Who decided who the members on
2 the committee would be?

3 A. Secretary Merrill.

4 Q. Did he put together the original proposed
5 list of members?

6 A. That's my recollection.

7 Q. Did you have input on who was going to be
8 on the committee?

9 A. No.

10 Q. But you attended the meetings; is that
11 correct?

12 A. I did attend the meetings, yes.

13 Q. If you don't mind, I'm going to talk
14 through the members of the committee. Who
15 is Ms. Darlene Biehl?

16 A. Well, as it says here, she's a volunteer
17 crime victims advocate. She works in that
18 area.

19 Q. Do you know what office she works with or
20 volunteers for?

21 A. I do not know where she works right now.

22 Q. Okay. Then Ms. Holly Caraway was there
23 representing State Senator Linda Coleman.

1 And then the next member is Mr. Michael
2 Coleman, who's the executive director of
3 Hope Ministries. Do you know what Hope
4 Ministries is?

5 A. Yes. It's a local community-outreach type
6 organization that's faith-based here in
7 Montgomery.

8 Q. Do you know if Secretary Merrill knows
9 Michael Coleman?

10 A. To my knowledge, he does.

11 Q. Did he know him before this committee was
12 created?

13 MS. MESSICK: Object to the form.

14 A. I don't know what the nature of their
15 relationship was before this committee.

16 Q. So you're not sure why Secretary Merrill
17 chose to include him?

18 A. No. I don't have any personal knowledge of
19 why he selected him.

20 Q. Do you know anything about the relationship
21 between Secretary Merrill and Darlene
22 Biehl?

23 A. No.

1 Q. Jefferson Dunn is the Commissioner for the
2 Alabama Department of Corrections. Is that
3 still the case, if you know?

4 A. I don't know --

5 Q. Okay.

6 A. -- to be honest with you.

7 Q. Ms. Carol Hill is a registrar for the
8 Shelby County Board of Registrars, and she
9 was included in the committee. Do you know
10 why Ms. Carol Hill was selected rather than
11 a different registrar?

12 A. I don't know.

13 Q. Who is Mr. Quin Hillyer?

14 A. Well, as it indicates, he was a freelance
15 journalist that for whatever reason
16 Secretary Merrill thought he would be
17 useful on the committee.

18 Q. Do you have any sense of what that
19 "whatever reason" is?

20 MS. MESSICK: Object to the form.

21 A. No, I don't.

22 Q. After attending three meetings of this
23 committee, do you have an understanding of

1 why Mr. Hillyer was included in the
2 committee?

3 MS. MESSICK: Object to the form.

4 A. No. Maybe I'm dense, but no.

5 Q. I don't understand it. Did anybody ever
6 raise the question of why Mr. Hillyer was
7 included in the committee?

8 A. Not to my knowledge.

9 Q. Okay. Do you know if Secretary Merrill and
10 Mr. Hillyer have a personal relationship?

11 A. I do not.

12 Q. Okay. And then Judge Jolley was included
13 on the committee. Do you know why he was
14 selected?

15 A. No, I don't know why he was selected over,
16 say, some other circuit judge.

17 Q. There was a circuit clerk included,
18 Mr. Cliff Walker, who's the chairman of the
19 Alabama Board of Pardon and Paroles, some
20 members of the ACLU, someone who was
21 representing the director of the Alabama
22 Office of the Courts, and the secretary of
23 state was present. The minutes also list

1 two members that were absent,
2 Representative Chris England and State
3 Senator Cam Ward. Were there any other
4 members of the committee that are not
5 discussed in this opening paragraph of the
6 November 18, 2015 minutes?

7 MS. MESSICK: Object to the form.

8 A. You left off David Faulkner as an absent
9 member.

10 Q. Oh, yes. Thank you.

11 A. I don't -- I don't remember there being
12 others that were absent or anything
13 offhand.

14 Q. And then it says that you --

15 MS. MESSICK: I'm sorry. I'm
16 talking to him (indicating).

17 MS. LANG: Okay.

18 Q. (By Ms. Lang) And Mr. Laird from the
19 secretary of state's office was also
20 present; is that correct?

21 A. That is correct.

22 Q. Okay. So the minutes of the first meeting
23 of the committee discuss the issue of

1 automatic restoration of voting rights and
2 whether or not people who completed their
3 sentence should have their right
4 automatically restored. Was Secretary
5 Merrill in favor of an automatic
6 restoration process?

7 MS. MESSICK: Object to the form.

8 A. I don't recall him ever stating a position
9 on that.

10 Q. Okay. At the end of the meeting, he -- he
11 asked if there was anyone that disagreed
12 with automatic restoration. Who voiced
13 concerns? It says Quin Hillyer and a few
14 others. Who would be the others?

15 MS. MESSICK: Object to the form.

16 A. I don't recall who the others would have
17 been.

18 Q. And what was Mr. Hillyer's objection to
19 automatic restoration?

20 MS. MESSICK: Object to the form.

21 A. I don't recall what his objection was.

22 Q. And Mr. Hillyer talked about whether or not
23 automatic restoration -- well, strike that.

1 In addition to automatic restoration,
2 it appears that the issue of whether or not
3 fines and fees should be required to be
4 paid before restoration of voting rights
5 was an issue that was discussed.

6 A. Right.

7 MS. MESSICK: Object to the form.

8 A. Correct. That is correct.

9 Q. During this initial meeting, how did folks
10 react to the idea that fines and fees
11 should not be included in the requirements
12 for restoration of voting rights?

13 MS. MESSICK: Object to the form.

14 A. There was a -- there was a mixture of
15 opinion. There were some people like
16 Mr. Hillyer, as the minutes indicate, he
17 proposed removing the court costs and fees
18 and the requirements for
19 re-enfranchisement, but there were other
20 members that said they felt that that was
21 part of the, you know, original sentence
22 and should have to be taken care of just
23 like any other part of the sentencing.

1 Q. And there was, it sounds like, a discussion
2 about whether or not fines and fees were
3 part of the punishment. Was there a
4 conclusion about whether or not fines and
5 fees were part of the punishment?

6 MS. MESSICK: Object to the form.

7 A. I don't remember what the conclusion was on
8 that.

9 Q. And why was it relevant? Why would it be
10 relevant whether or not fines and fees were
11 part of the punishment in determining
12 whether or not voting rights should be
13 restored without payment of fines and fees?

14 MS. MESSICK: Object to the form.

15 A. Can you restate the question?

16 Q. Yeah. For those who believed that
17 automatic restoration should not occur
18 until after fines and fees were paid, why
19 was it relevant that fines and fees were
20 part of the punishment for the crime?

21 MS. MESSICK: Object to the form.

22 A. Well, they felt it was part of the sort of
23 paying your debt to society, that that's

1 part of the sentence just like any
2 potential jail time.

3 Q. Yeah. And is loss of voting rights kind of
4 wrapped up in part of that punishment as
5 well?

6 MS. MESSICK: Object to the form.

7 A. They felt like that was all a package deal,
8 that if you were sentenced to jail or
9 prison for so many years or whatever and
10 then you have these other fines and fees
11 and restitution, that that was all part of
12 the package and that paying all that --
13 completing all those different aspects of
14 the sentence were what you needed to do to
15 repay your debt to society before you
16 obtained your right to vote back.

17 Q. So the loss of voting rights should be
18 lifted when the punishment's complete.

19 MS. MESSICK: Object to the form.

20 Q. Is that another way of stating the view of
21 those in the committee?

22 MS. MESSICK: Object to the form.

23 A. Yes, I think you could characterize it that

1 way.

2 Q. Uh-huh. So is it correct that during this
3 first meeting of the committee the
4 discussion was largely on automatic
5 restoration instead of moral turpitude
6 issues?

7 A. Yes, from the minutes, that appears to be
8 the case.

9 Q. And is that your recollection?

10 A. I don't -- I don't have a clear memory of
11 how that was -- what percentage of time it
12 took up.

13 Q. Okay. I'm going to mark as Exhibit 30,
14 Packard Exhibit 30, a memorandum from the
15 ACLU December 9, 2015.

16 (Packard Exhibit 30 was marked for
17 identification.)

18 Q. And it appears in the documents I've taken
19 a look at that the ACLU and Alabama
20 Appleseed provided several memorandum to
21 share with the committee; is that right?
22 Is that your recollection?

23 MS. MESSICK: Object to the form.

1 A. Yeah. Yes.

2 Q. And so this memorandum that was sent to you
3 on December 9th about automatic voter
4 rights restoration and how it works in
5 various states, was that sent out to the
6 entire committee?

7 A. To the best of my recollection, it was.

8 Q. And what was the ACLU's position on
9 automatic restoration?

10 MS. MESSICK: Object to the form.

11 A. They were -- they were supportive of
12 automatic restoration of voting rights.

13 Q. I'm going to mark as Packard Exhibit 31
14 another memorandum from the ACLU dated
15 December 18, 2015.

16 (Packard Exhibit 31 was marked for
17 identification.)

18 Q. And I apologize. I did have one remaining
19 question about Exhibit 30, which is was
20 this memorandum circulated to the entire
21 committee?

22 MS. MESSICK: Asked and answered.

23 MS. LANG: Thank you.

1 MS. MESSICK: He said he thought it
2 was.

3 MS. LANG: Okay. I have just lost
4 track.

5 MS. MESSICK: That's
6 understandable.

7 Q. (By Ms. Lang) So I guess I have the same
8 question for Exhibit 31. Was this
9 memorandum from the ACLU sent around to the
10 entire committee?

11 A. To the best of my recollection, it was.

12 Q. And going to the last page, what were the
13 recommendations that the ACLU made to the
14 committee?

15 A. Well, they recommended defining the
16 felonies involving moral turpitude and they
17 provided a list that included -- or they
18 recommended a list that included no more
19 than 15 felonies, which were felonies that
20 were specifically already mentioned in
21 state law in the voting rights restoration
22 section, and then they recommended criteria
23 for restoration of rights upon the

1 completion of any period of incarceration
2 and the payment of all outstanding court-
3 ordered restitution, and of the restoration
4 of rights when that criteria has been met.

5 Q. Great. Thank you. I'm going to mark
6 Packard Exhibit 32.

7 (Packard Exhibit 32 was marked for
8 identification.)

9 Q. This is an e-mail with an attachment from
10 you to the committee members sending along
11 information from Cliff Walker, the chairman
12 of the Alabama Board of Pardons and
13 Paroles. I would like to talk about the
14 contents of Mr. Walker's proposals. What
15 was, in your own words, the role of pardon
16 and paroles' preferred outcome for the
17 restoration of rights for people with
18 convictions?

19 MS. MESSICK: Object to the form.

20 A. Can you restate the question?

21 Q. Did the board of pardons and paroles have a
22 position on automatic voter restoration or
23 how voting rights restoration should

1 proceed?

2 A. Yes. They were supportive of automatic
3 restoration of voting rights. And
4 according to Mr. Walker, they also didn't
5 believe that the fines or fees needed to be
6 paid. As they put it, the court monies
7 would not disqualify the individual from
8 automatic restoration.

9 Q. Right. So they laid out three possible
10 recommendations, and their top
11 recommendation was automatic restoration?

12 A. Right.

13 Q. And no payment of court monies?

14 MS. MESSICK: Object to the form.

15 A. Right.

16 Q. But all three would involve automatic
17 restoration for people with convictions; is
18 that correct?

19 MS. MESSICK: Object to the form.

20 A. Right. That is correct.

21 Q. The document also references a pardon
22 backlog of up to four years. Did
23 Mr. Walker talk about that backlog during

1 the committee meetings?

2 A. Not to my recollection.

3 Q. Have you ever spoken to Chairman Walker or
4 anyone from the board of pardons and
5 paroles office about the pardons backlog?

6 A. Not to my recollection.

7 Q. Have you ever talked to anybody at the
8 board of pardons and paroles office about
9 the backlog for issuing certificates of
10 eligibility to register to vote?

11 MS. MESSICK: Object to the form.

12 A. Not to my recollection.

13 Q. I'd like to mark as Packard Exhibit 33 an
14 e-mail chain on which you were copied
15 between Representative Faulkner and
16 Secretary Merrill dated December 18, 2015.

17 (Packard Exhibit 33 was marked for
18 identification.)

19 Q. Representative Faulkner lets Secretary
20 Merrill know that he's not going to be able
21 to make the second meeting of the
22 committee, but he was concerned that
23 decisions might be made in his absence and

1 so he asks Secretary Merrill if they can
2 meet; is that right?

3 (Witness reviews document.)

4 A. I'm sorry. Could you repeat the question?

5 Q. Yeah. Representative Faulkner says he's
6 not going to be able to make the upcoming
7 meeting, but he's concerned that, quote, he
8 doesn't want to, quote, commit to anything
9 I disagree with, and so he asked to set up
10 a meeting just with Secretary Merrill and
11 you; is that right?

12 MS. MESSICK: Object to the form.

13 A. That's basically correct. I think when he
14 talks about who they were going to meet
15 with, it would have been Secretary Merrill,
16 Representative Faulkner, and Senator Ward.

17 Q. But not other committee members?

18 A. Right.

19 Q. And Secretary Merrill agrees to have this
20 meeting and offers to come to Birmingham if
21 necessary; is that right?

22 A. Right. That's correct.

23 Q. When did that meeting happen?

1 MS. MESSICK: Object to the form.

2 A. I don't recall when that meeting occurred,
3 if it occurred.

4 Q. You don't know if Secretary Merrill ever
5 spoke to Representative Faulkner about the
6 committee?

7 A. I don't --

8 MS. MESSICK: Object to the form.

9 A. I don't recall it.

10 Q. Did you speak to Representative Faulkner
11 after this e-mail?

12 A. Not to my recollection.

13 Q. When you say "not to your recollection," is
14 it that you believe that you did not meet
15 with Representative Faulkner or that you --
16 you're simply having a memory lapse?

17 MS. MESSICK: Object to the form.

18 A. I just don't recall. I'm not saying I did
19 or didn't. I just don't recall.

20 Q. Have you ever met with Representative
21 Faulkner outside of the committee?

22 A. I don't remember ever meeting with
23 Representative Faulkner.

1 Q. Did you ever maybe talk to him on the
2 phone?

3 A. I really don't recall.

4 Q. And did Secretary Merrill ever talk to you
5 about his discussions with the
6 representatives on the committee about
7 potential bills?

8 A. Say that -- can you repeat the question?

9 Q. Did Secretary Merrill ever communicate with
10 you about his discussions with elected
11 officials about potential moral turpitude
12 bills?

13 A. Only -- only in general terms as to who
14 might carry the legislation or something
15 like that. I don't -- I don't recall
16 getting any particular feedback about
17 bills, although there may have been some.
18 I just don't recall.

19 Q. Okay. I'm going to mark Packard
20 Exhibit 34.

21 (Packard Exhibit 34 was marked for
22 identification.)

23 Q. This is an e-mail between Secretary Merrill

1 and Cam Ward, Senator Ward and
2 Representative Faulkner, on the same day
3 saying -- Secretary Merrill responding to
4 Senator Ward and saying that we, quote,
5 need to talk about this after the first of
6 the year. Why was it necessary that there
7 be a meeting between Secretary Merrill,
8 Representative Faulkner, and Senator Ward?

9 MS. MESSICK: Object to the form.

10 A. Well, it appears from the communication
11 that Representative Faulkner wanted to meet
12 with Secretary Merrill and Senator Ward to
13 discuss what he says -- to discuss the
14 draft legislation from, quote/unquote, the
15 legislative perspective, so --

16 Q. What do you think that means?

17 MS. MESSICK: Object to the form.

18 Q. What does the, "quote/unquote, from the
19 legislative perspective" mean to you?

20 A. Honestly, I have no earthly idea, unless
21 they were talking about what kind of
22 legislative strategy would be necessary to
23 pass the legislation.

1 Q. Could they have been talking about how the
2 bill needed to be drafted in order to pass
3 the legislature?

4 A. It could be.

5 MS. MESSICK: Object to the form.

6 A. It could be, yes.

7 Q. And if I wanted to find out if this meeting
8 happened or what was said in this meeting,
9 I would need to ask Secretary Merrill?

10 MS. MESSICK: Object to the form.

11 A. Certainly that would be one way of finding
12 out if the meeting occurred.

13 MS. LANG: I'm going to get into a
14 big document now, so --

15 MS. MESSICK: Yeah, let's take a
16 break.

17 MS. LANG: -- I'm going to propose
18 that we take a break and come back. We'll
19 go off the record.

20 (Short recess.)

21 Q. (By Ms. Lang) I'm going to mark as Packard
22 Exhibit 35 the materials that were attached
23 to the agenda for the second meeting of the

1 exploratory committee on December 21.

2 (Packard Exhibit 35 was marked for
3 identification.)

4 Q. The first few pages includes statistics
5 from Shelby County, Tallapoosa County, and
6 Tuscaloosa County about the number of
7 rejections or removals on the basis of
8 felony conviction sent out in 2013, 2014,
9 and 2015. Why was the committee interested
10 in this data?

11 MS. MESSICK: Object to the form.

12 A. I don't think that -- I don't think it's
13 that they expressed particular interest in
14 the data. It was just volunteered, to the
15 best of my recollection.

16 Q. Who is Carol Hill?

17 A. Carol Hill is --

18 MS. MESSICK: Asked and answered.

19 A. Carol Hill is a registrar in Shelby County.

20 Q. And the third document here is an e-mail
21 from Laural Bunn to Carol Hill saying here
22 are statistics for the years you requested.

23 A. Correct.

1 Q. So do you know why Ms. Hill requested this
2 data?

3 A. I don't know why she requested the data.

4 Q. How might this data have been helpful to
5 the committee?

6 MS. MESSICK: Object to the form.

7 A. I'm not sure how it would have been -- how
8 it was helpful or in what way it was used.
9 It certainly is not a representative
10 sampling of the state to provide any
11 particular guidance on anything.

12 Q. And then the following page is a document
13 entitled Quin Hillyer's Proposal to Amend
14 Act 2013-415. Do you know what
15 Act 2013-415 is?

16 A. If my memory serves me correctly, that's
17 the legislation that set up the
18 certificate-of-eligibility-to-register-to-
19 vote process.

20 Q. I believe that is right. And Mr. Hillyer
21 was proposing to amend that. And do you
22 know what his proposal was?

23 A. His proposal was to delete the word "fees"

1 from the list of requirements of things
2 that needed to be taken care of by the
3 individual before they could have the
4 certificate-of-eligibility issue.

5 Q. And did he support an automatic voter
6 restoration system or did he support
7 continuing the requirement of applying for
8 a certificate of eligibility to register to
9 vote?

10 MS. MESSICK: Object to the form.

11 A. He was -- to the best of my recollection,
12 he was supportive of continuing the
13 certificate-of-eligibility process.

14 Q. And why did he support that process?

15 MS. MESSICK: Object to the form.

16 A. I don't recall what his reasoning was
17 behind that.

18 Q. Did he voice any -- any explanation for his
19 proposal?

20 A. I don't -- I don't recall anything he spoke
21 in -- you know, to support his proposal.

22 Q. Did others during the meeting agree with
23 Mr. Hillyer's proposal to continue

1 requiring a certificate of eligibility to
2 register to vote?

3 MS. MESSICK: Object to the form.

4 A. To the best of my recollection, there were
5 other members that supported continuing the
6 CERV process, the certificate-of-
7 eligibility process.

8 Q. And which members were that -- which
9 members was that --

10 A. Which members were they?

11 Q. Were they.

12 MS. MESSICK: Object to the form.

13 A. I don't recall an exact list of names at
14 this time.

15 Q. Are there any members you remember
16 supporting Mr. Hillyer's proposal?

17 MS. MESSICK: Object to the form.

18 A. To do away with the fees but to continue
19 the CERV process? I don't remember exactly
20 which ones were in favor of the way this is
21 worded.

22 Q. If you could return to the exhibit given to
23 you of the minutes of the exploratory

1 committee.

2 A. Okay.

3 Q. Thank you. Page 4 begins the minutes of
4 the December 21 meeting.

5 A. Okay.

6 Q. Secretary Merrill is -- the minutes say
7 that Secretary Merrill directed members --
8 and this is on the second page of the
9 minutes -- directed members that the intent
10 is to give a complete package to the
11 legislative team that will carry the bill
12 so that there are as few policy concerns as
13 possible.

14 MS. MESSICK: I'm sorry. Where is
15 that?

16 MS. LANG: It's page 2 of the
17 December 18, 2015 minutes. Page 62 of 87
18 on top, if that makes sense.

19 MS. MESSICK: Okay. So the
20 December 21 minutes, page 2.

21 MS. LANG: Top of the page.

22 MS. MESSICK: Okay. You started on
23 the second sentence of that paragraph.

1 Thank you. The first paragraph of that
2 page.

3 MS. LANG: Yes.

4 MS. MESSICK: And I'm sorry. Can
5 you read back the question?

6 MS. LANG: I didn't ask a question,
7 I don't think.

8 MS. MESSICK: Okay. Well, then go
9 ahead. We're all in the same place.

10 Q. (By Ms. Lang) What kind of policy concerns
11 was Secretary Merrill worried about?

12 MS. MESSICK: Object to the form.
13 (Witness reviews document.)

14 A. I'm not sure what he meant by that
15 language.

16 Q. Was the goal of the committee to draft a
17 bill that could pass the legislature even
18 if it was not the preferred outcome of the
19 committee members?

20 MS. MESSICK: Object to the form.

21 A. No. The goal was always to come up with a
22 bill that had the support of all the
23 committee members even if committee members

1 didn't agree with particular aspects of the
2 bill, that they ultimately vote on a bill
3 altogether that they could all support even
4 if it didn't go their way, so to speak, in
5 particular instances.

6 Q. And was Secretary Merrill's -- strike that.

7 Was the goal of your office to approve
8 a bill that could pass the legislature?

9 MS. MESSICK: Object to the form.

10 A. I'm not sure I understand the question.

11 Q. Certainly there are some bills that one
12 might think are a good idea but one knows
13 will not pass a certain legislature. I'm
14 sure we all have things we wish Congress
15 would pass but we know that they will not;
16 right?

17 A. Right.

18 Q. In creating this committee with the goal of
19 coming out with a bill that Secretary
20 Merrill would support, was the goal to have
21 a bill that could pass the legislature?

22 MS. MESSICK: Object to the form.

23 A. The goal of the committee was to come up

1 with a bill that would pass the
2 legislature.

3 Q. So would Secretary Merrill have been
4 unhappy if a bill came out of this
5 committee that had no chance of passing the
6 Alabama legislature?

7 MS. MESSICK: Object to the form.

8 A. I can't say how he would have responded in
9 that situation.

10 Q. Was it your goal to come up with a bill
11 that could pass the legislature?

12 MS. MESSICK: Object to the form.

13 A. Personally? Well, as a member of the
14 staff, I hoped that we would come up with a
15 bill that would pass the legislature.

16 Q. And was that part of the consideration in
17 deciding how to draft the bill?

18 MS. MESSICK: Object to the form.

19 A. Yes, I would say that's always a
20 consideration when you're drafting
21 legislation.

22 Q. And Senator Coleman says in the minutes
23 that members need to be intentional about

1 what laws they select because legislatures
2 will be hypercritical before passage. Does
3 that suggest that Senator Coleman was also
4 focused on whether or not the bill would
5 ultimately pass the legislature?

6 MS. MESSICK: Object to the form.

7 A. I would say yes.

8 Q. The minutes suggest that during this
9 meeting Secretary Merrill started with a
10 list of 15 crimes that were already in
11 state law as crimes of moral turpitude in
12 the CERV statute and then proceeded to ask
13 if any additional crimes should be added.
14 Why did he start with this list of 15
15 crimes?

16 MS. MESSICK: Object to the form.

17 A. Is there a place in the minutes where it
18 refers to that?

19 Q. Yeah. So same page that we were already
20 looking at, page 2, five bolded names down,
21 Secretary Merrill posed the following
22 question: With the exception of the 15
23 laws already included in the current laws

1 requiring a pardon, are there any that
2 anyone would wish to add.

3 A. Okay.

4 MS. MESSICK: What was the
5 question?

6 Q. Why did Secretary Merrill start the
7 conversation with these 15 crimes?

8 MS. MESSICK: Object to the form.

9 A. My understanding is he started with those
10 15 because they were already listed in
11 statute whereas other moral turpitude --
12 what could be moral turpitude crimes were
13 not already listed in the statute. So
14 since these had been, they were a starting
15 point or jumping-off point for identifying
16 other crimes.

17 Q. And do you remember the group deciding to
18 add human trafficking to the list?

19 A. Yes, I do remember that.

20 Q. And then there was also a discussion about
21 terrorism, but there was no conclusion.
22 What were the pros and cons discussed at
23 the meeting about including terrorism?

1 MS. MESSICK: Object to the form.

2 MS. LANG: Can you clarify the
3 objection?

4 MS. MESSICK: You didn't lay a
5 foundation. You said that the discussion
6 happened. You didn't ask him if he
7 remembers that or if it's true. You just
8 read the minutes.

9 MS. LANG: Okay. Thank you.

10 Q. (By Ms. Lang) The minutes say that a group
11 consensus was reached regarding the
12 addition of human trafficking and a
13 discussion of the inclusion of terrorism
14 followed but no conclusion was reached. Is
15 that accurate?

16 A. To my recollection, that's accurate.

17 Q. And during the meeting that you were --
18 attended, what were the pros and cons
19 discussed about including terrorism?

20 A. I don't remember the exact pros and cons or
21 any of the pros and cons other than the
22 fact that, you know, people have a -- they
23 generally consider terroristic behavior to

1 be heinous.

2 Q. Yeah. Do you remember why there wasn't a
3 final conclusion about that?

4 A. No, I don't.

5 Q. And if you look at the exhibit of materials
6 we were looking at just a moment ago,
7 after --

8 MS. MESSICK: Is that 35?

9 MS. LANG: That is 45, yes.

10 MS. MESSICK: 35.

11 MS. LANG: 35. Thank you.

12 A. 35.

13 Q. So keep the minutes out because we're going
14 to refer to them again. But if you look at
15 Exhibit 35 and after the list of moral
16 turpitude felonies according to Alabama
17 courts, there's a page that has some
18 handwriting on it. I'll find it.

19 MS. MESSICK: It's the page right
20 after the single-spaced page titled 2015
21 Research?

22 MS. LANG: Yes.

23 A. Okay. Yes, I have that.

1 Q. Do you recognize the handwriting here?

2 A. It looks similar to Secretary Merrill's
3 handwriting.

4 Q. Okay. And it has handwritten the addition
5 of human trafficking and terrorism to this
6 list of 15 crimes.

7 A. Right.

8 Q. Is that accurate? And those are the two
9 crimes we just discussed potentially adding
10 during the December 21 meeting?

11 A. Yes, that's correct.

12 Q. And then the bottom one says, to the best
13 of my ability to read, parent, slash,
14 guardians permitting a child to engage in
15 obscene matter. Do you remember there
16 being a discussion about adding that
17 conviction during the meeting?

18 A. I don't recall. I don't recall.

19 Q. Okay. And during this meeting, did John
20 Pickens present on his research of the
21 racial discrimination behind the term
22 "moral turpitude"?

23 A. Yes.

1 Q. What do you remember about Mr. Pickens'
2 presentation?

3 A. I just remember generally him speaking
4 about how crimes of moral turpitude were
5 developed to racially discriminate against
6 African-Americans in the post Civil War era
7 as a way of racially discriminating against
8 African-Americans.

9 Q. And was that the first time you'd ever
10 heard that?

11 A. To my recollection, yes.

12 Q. And did everyone -- strike that.

13 Was there anyone who objected to John
14 Pickens' presentation?

15 MS. MESSICK: Object to the form.

16 By "objected," do you mean what they
17 thought or what they said?

18 MS. LANG: What they said.

19 A. I don't -- I don't recall anybody objecting
20 to what he said.

21 Q. Did Secretary Merrill comment on
22 Mr. Pickens' presentation?

23 A. I don't -- I don't recall him commenting on

1 it.

2 Q. Did anybody agree with Mr. Pickens'
3 presentation?

4 A. I don't recall anybody commenting.

5 THE WITNESS: I'm sorry.

6 MS. MESSICK: And object to the
7 form. Again, it's spoken or thought?

8 MS. LANG: I think it's clear that
9 it's spoken. He cannot read minds when we
10 ask if someone in a meeting agreed. It
11 would be vocally.

12 MS. MESSICK: I agree that he
13 can't, but I think you've asked a lot of
14 questions about what other people think,
15 and that's why I've been objecting. So
16 those were not as clearly -- those could
17 have been construed to be okay, so I'm
18 trying to help you make them okay.

19 Q. (By Ms. Lang) Mr. Packard, when I ask if
20 somebody agreed or disagreed or objected or
21 did not object, I mean to you and not what
22 their feelings were about something. I
23 want -- when I ask if somebody -- why

1 someone did something, I want to know to
2 your knowledge what you were told about the
3 reasons someone did something and not for
4 you to read the minds of anyone. Does that
5 make sense?

6 A. Yes, that makes sense.

7 Q. Thank you. Further down in the minutes
8 under the comment by Win Johnson, it
9 appears that the conversation returned to
10 the issue of fines and fees, court costs
11 and restitution, and the minutes only say
12 that there was an extensive discussion with
13 disagreement as to whether or not fines,
14 fees, and court costs are an aspect of
15 punishment or not and whether or not they
16 should be included in the requirements for
17 reinstatement. Who on the committee voiced
18 the opinion that fines, fees, and court
19 costs should not be included in the
20 requirements for reinstatement of voting
21 rights?

22 MS. MESSICK: Object to the form.

23 MS. LANG: Can you clarify the

1 objection?

2 MS. MESSICK: The paragraph doesn't
3 say anything about restitution, so your
4 first sentence laying the predicate for the
5 questions was a misrepresentation of the
6 document.

7 Q. The minutes say that there's an extensive
8 discussion and presence of some
9 disagreement as to whether or not fines,
10 fees, and court costs are an aspect of
11 punishment or not and whether or not they
12 should be included in the requirements for
13 reinstatement. Who on the committee voiced
14 the opinion that fines, fees, and court
15 costs should not be included in the
16 requirements for reinstatement?

17 A. If my memory serves me, Michael Coleman of
18 Hope Ministries, he said they should not be
19 included, as well as Will Harrell for the
20 American Civil Liberties Union. They were
21 two that I remember made that argument.

22 Q. And who thought that fines, fees, and court
23 costs are a part of punishment?

1 A. Win Johnson held that position.

2 Q. And Mr. Johnson held that position in --

3 I'll say this. Mr. Johnson -- the minutes
4 suggest that Mr. Johnson thought that part
5 of the reason for maintaining fees as part
6 of their requirement was, quote, the idea
7 that they might not get paid. Is that what
8 he was talking about?

9 A. Correct.

10 Q. And was his concern as he voiced it that
11 the CERV requirement that you pay fines was
12 an incentive for people to pay those fines
13 and removing it would remove an incentive
14 for payment of fines?

15 A. It would remove --

16 THE WITNESS: Sorry.

17 MS. MESSICK: Object to the form.

18 A. It would -- removing that from the
19 requirement would remove an incentive for
20 paying the fines.

21 Q. Did anybody agree with that concern?

22 A. There were others that just had the general
23 concern that they needed to be paid as part

1 of, you know, the complete sentencing
2 package. I don't remember if anyone agreed
3 with that exact point about the incentive.

4 Q. Who were the others that had concerns about
5 removing the fines and fees requirement for
6 reinstating voting rights?

7 A. Summer Scruggs, the circuit clerk of Clarke
8 County, had a concern about that as well.

9 Q. And did she say what her specific concern
10 was?

11 A. Best I can recall on her is she just felt
12 they needed to be paid because they were
13 part of the sentencing package.

14 Q. Anyone else?

15 A. Not that I can recall offhand.

16 Q. Was the majority or minority view that
17 fines and fees should be removed as part of
18 the requirement for reinstatement of voting
19 rights?

20 A. The final view that they came up with was
21 that they needed the fines and fees and
22 restitution and court costs that were
23 originally imposed as part of the original

1 sentence needed to be paid. The final
2 agreement was that those needed to be paid.
3 But if there were any additional court
4 costs or fines added because, say, they
5 were late paying or something like that,
6 would -- would not be part of what would be
7 required to get your voting rights back.

8 Q. Yeah. At the December 21 meeting before
9 final agreement was made, during this
10 discussion, was the majority or minority
11 view that fines and fees should be removed
12 from the requirement for reinstatement of
13 voting rights?

14 A. I don't -- I don't recall whether it was in
15 the majority or minority at that particular
16 meeting.

17 Q. Did Secretary Merrill voice an opinion?

18 A. Not that I can recall.

19 Q. Did Secretary Merrill voice an opinion to
20 you about whether or not fines and fees
21 should be part of the requirement for
22 reinstatement of voting rights?

23 A. Not that I recall.

1 Q. Did you voice an opinion about whether or
2 not fines and fees should be a requirement
3 for the reinstatement of voting rights?

4 A. I didn't take a position on that point.

5 Q. Do you personally have a position on that
6 issue?

7 A. Yes, I do.

8 Q. What is that position?

9 A. I don't believe that the fees and fines or
10 court costs should factor into obtaining
11 one's voting rights back.

12 Q. And why not?

13 A. Because I think once someone -- if
14 someone's been incarcerated, I think that
15 once they're released from incarceration,
16 they ought to be able to vote once they're
17 released.

18 Q. And what is your view about the purpose of
19 felony disenfranchisement? What purpose,
20 social purpose, does having a law that
21 disqualifies people from voting because of
22 a past conviction serve?

23 A. I don't know. I haven't really given that

1 a lot of thought.

2 Q. Did anyone at this committee talk about the
3 potential purposes of felony
4 disenfranchisement and what social purpose
5 it might serve?

6 A. Not -- not that I recall.

7 Q. There's a discussion of punishment here in
8 the minutes. Was it the view of any
9 committee members as voiced that losing
10 your voting rights is part and parcel of
11 the punishment for wrongdoing for a crime?

12 A. I don't recall anyone stating that
13 position.

14 Q. Do you remember why people were talking
15 about whether fines and fees were
16 punishment if not because that related to
17 whether voting rights should be restored or
18 not?

19 MS. MESSICK: Asked and answered.

20 A. Yeah, I don't recall.

21 Q. Earlier you testified that, I believe --
22 and I will not be able to exactly repeat
23 your testimony, but I believe that you

1 testified that there were folks on the
2 committee who believed that you should not
3 get your voting rights back until you've
4 paid the full punishment for your crime.

5 Is that accurate?

6 A. I don't know that I used the word
7 "punishment." Maybe -- maybe I did. But
8 it was -- the idea was that they felt that
9 people should complete the complete
10 sentence that had been imposed by the Court
11 to be able to get their voting rights back.

12 Q. And why would that be?

13 MS. MESSICK: Object to the form.

14 Q. Did anyone voice why it was important that
15 people serve their full sentence before
16 they get their voting rights back?

17 A. Well, they said they needed to pay their
18 debt to society, and that's how the debt
19 was meted out, was through the penalties or
20 what the Court decision -- what the
21 sentence of the Court was.

22 Q. And if I'm understanding you correctly,
23 folks voiced that once people had fully

1 paid their debt to society, their voting
2 rights should be restored?

3 A. They should be eligible for their vote to
4 be restored.

5 Q. Thank you. Who came up with the idea to
6 create a subcommittee on moral turpitude?

7 A. That would have been Secretary Merrill's
8 decision.

9 Q. And on page 3 of these minutes, the next
10 page, the members of the subcommittee are
11 identified as yourself, Carol Hill, Judge
12 Jolley, Win Johnson, Pastor Glasgow, and
13 Senator Coleman, and Judge Laird. Who
14 selected these subcommittee members?

15 A. To my recollection, Secretary Merrill
16 selected the committee members --
17 subcommittee members.

18 Q. Okay. Did he explain why he chose this
19 subgroup?

20 A. No.

21 Q. You put together a meeting of the
22 subcommittee in January. Did Secretary
23 Merrill give you any instructions about

1 what the goal of the subcommittee was?

2 MS. MESSICK: Object to the form.

3 A. Basically, the subcommittee was put
4 together to determine which -- which crimes
5 would be considered the moral turpitude
6 crimes and come up with input for the
7 legislation regarding that.

8 Q. And did he give you any instructions about
9 what the secretary of state's office's
10 position should be as a member of this
11 subcommittee?

12 A. No. He just asked me to lead the
13 subcommittee and to work with the other
14 members.

15 Q. So you did not present a view at the
16 subcommittee meeting?

17 MS. MESSICK: Object to the form.

18 A. I don't -- I don't recall anything about a
19 subcommittee meeting. I know we did -- we
20 had some e-mails that were sent, but I -- I
21 recall there being some e-mails, but . . .

22 Q. Did you express a view to the subcommittee
23 in any way about what crimes should be

1 moral turpitude in the draft bill?

2 A. The only ones I can remember expressing
3 anything in particular about were the
4 terrorism-related ones since I had come up
5 with those. I had identified those before.

6 Q. And so it was your position that those
7 terrorism- --

8 A. That they would --

9 Q. -- related crimes should be included?

10 A. That they should consider including them,
11 yes.

12 Q. Turning to Exhibit 35, which I believe you
13 have in front of you, after the Alabama
14 Appleseed memo, there's a list of crimes
15 that are -- is headed Additional Alabama
16 Crimes of Moral Turpitude. And in
17 handwriting at the top, it says Judge
18 Jolley. Is that Secretary Merrill's
19 handwriting?

20 A. I can't say for sure, but it appears to be
21 his handwriting.

22 Q. Okay. And was this a list that was
23 provided by Judge Jolley of crimes he

1 wanted to be considered as potentially
2 involving moral turpitude?

3 A. That's my recollection, yes.

4 Q. And this last document, last three pages,
5 is a fee summary. How did you obtain this
6 document?

7 MS. MESSICK: Object to the form.

8 A. I don't recall the source on this document.

9 Q. Do you remember who asked to see a -- who,
10 if anyone, asked to see a summary of fines
11 and fees?

12 A. No, I don't recall.

13 Q. Do you remember reviewing this document?

14 A. I remember seeing it, but I don't remember
15 anything beyond that.

16 Q. Were you surprised by the totals of amounts
17 ordered, amounts paid, and balances due?

18 A. I don't -- I don't recall my reaction to
19 those figures.

20 Q. Okay. When you look at them now, do you
21 find them surprising?

22 A. I don't necessarily find them surprising
23 personally because I know that a lot of --

1 you know, you have convicted individuals
2 who may not have the means to be able to
3 pay their fines, so that doesn't surprise
4 me.

5 MS. MESSICK: It appears there's a
6 page missing. I don't know if it was
7 missing when we gave it to you or -- okay.
8 You're not aware of --

9 MS. LANG: I am not aware of a page
10 missing. Which page?

11 MS. MESSICK: Well, it looks like
12 the last page probably --

13 MS. LANG: Oh, yeah.

14 MS. MESSICK: -- goes with another
15 17 counties, is my guess.

16 MS. LANG: It does seem as though
17 that would be the case.

18 MS. MESSICK: I don't know for
19 sure.

20 MS. LANG: This is the document as
21 produced.

22 MS. MESSICK: Okay.

23 Q. Okay. I'll give you a document that we'll

1 mark as Packard Exhibit 36.

2 (Packard Exhibit 36 was marked for
3 identification.)

4 Q. And I think this might have been at least
5 one of the e-mails that you were
6 referencing, and it's an e-mail from
7 yourself dated January 5, 2016 to the
8 members of the subcommittee on moral
9 turpitude crimes; is that correct?

10 A. Yes, that's what it appears to be.

11 Q. And you suggested that the committee uses a
12 reference guide/several different lists
13 that were available of moral turpitude
14 felonies; is that right?

15 A. That's correct.

16 Q. Okay. And I have as attachments to this
17 exhibit a list of crimes required -- that
18 required a full pardon for restoration of
19 rights under the CERV statute, a list of
20 felony crimes identified as moral turpitude
21 crimes in a 2015 bill called HB 344, a list
22 of proposed crimes from Judge Jolley, and
23 then another list from the pardons and

1 paroles board. Calling your attention to
2 the additional felony crimes identified as
3 moral turpitude crimes in HB 344, parens,
4 2015 regular session, do you know if HB 344
5 was the draft bill Secretary Merrill gave
6 to Representative England?

7 A. That's my recollection, was that that is
8 that legislation.

9 Q. Okay.

10 Q. I'll mark as Packard Exhibit 37 a document
11 labeled SOS Merrill's bill sponsored by
12 Representative Mike Jones, 2015 legislative
13 session, classification of crimes listed in
14 said bill.

15 (Packard Exhibit 37 was marked for
16 identification.)

17 (Witness reviews document.)

18 Q. And the second page indicates that this was
19 a document prepared by John Pickens of
20 Alabama Appleseed. Was this document
21 circulated to the subcommittee?

22 A. I don't recall whether this one was
23 circulated to the committee or not.

1 Q. On the second page, Mr. Pickens includes a
2 breakdown of classification of above-
3 referenced crimes, and he breaks them down
4 by their class, A, B, and C. Do you know
5 if John Pickens -- do you know what the
6 purpose of this bill -- this document was?

7 A. No, I don't know what the purpose of it
8 was.

9 Q. Do you know if the purpose of this document
10 was to demonstrate to the committee that
11 there was a very broad range of severity of
12 crimes included on this list?

13 MS. MESSICK: Asked and answered.

14 A. No, I don't know if that was his purpose.

15 Q. Would you be concerned if people with
16 convictions ranging in severity from
17 Class A murder and Class C theft, for
18 example, both ended up being punished with
19 disenfranchisement for the remainder of
20 their life?

21 MS. MESSICK: Object to the form.

22 A. Can you repeat the question?

23 Q. Would you be concerned if there was a

1 legislative scheme in which somebody who
2 was convicted of Class A murder and someone
3 who was convicted of Class C theft both
4 were punished the same when it comes to
5 voting rights and both lost their voting
6 rights permanently?

7 MS. MESSICK: Object to the form.

8 A. Personally I would have a concern about
9 that.

10 Q. And why would that be?

11 A. Because obviously one crime is much more
12 heinous than the other crime.

13 Q. Let me mark as Packard Exhibit 38 the
14 following exhibit.

15 (Packard Exhibit 38 was marked for
16 identification.)

17 Q. And this is a letter dated January 13, 2016
18 from John Pickens of Appleseed and Shay
19 Farley about the Alabama Appleseed. On
20 page 2 of this letter, they suggest two
21 approaches. One is to define felony
22 involving moral turpitude as limited to the
23 15 felonies included in the CERV statute.

1 And the second alternative approach is to
2 define felonies involving moral turpitude
3 to include only the Class A felonies in the
4 2015 bill that Secretary of State Merrill
5 had supported. Do you remember reading
6 this memo?

7 A. I do not remember reading this memo.

8 Q. Did you discuss these proposals with
9 Secretary Merrill?

10 A. I don't recall discussing these with
11 Secretary Merrill.

12 Q. I'm going to mark as Exhibit 39 another
13 exhibit.

14 (Packard Exhibit 39 was marked for
15 identification.)

16 Q. This is a January 13 memo sent to yourself,
17 Joel Laird, and John Merrill from Will
18 Harrell and Marissa McCall Dodson of the
19 ACLU and includes a proposed statutory
20 language that would lead to the automatic
21 restoration of voting rights for people
22 with convictions after completion of
23 sentence and payment of restitution but

1 excluded payment of court-ordered fines and
2 fees; is that accurate?

3 MS. MESSICK: Hold on just a
4 minute. I was trying to listen to you and
5 read this. Let me look at it and then I'm
6 going to ask her to repeat your question.

7 (Ms. Messick and witness review
8 document.)

9 MS. MESSICK: Can you repeat the
10 question, please?

11 (Court reporter reads back the last
12 question.)

13 MS. MESSICK: Thank you.

14 A. Yes.

15 Q. Did your office consider this proposal in
16 deciding what draft legislation to bring to
17 the final meeting of the committee?

18 A. I don't recall what consideration we gave
19 to this memo.

20 Q. Did you consider the idea of an automatic
21 restoration bill in deciding what draft
22 legislation to bring to the January
23 meeting?

1 A. To my recollection, we didn't -- we may
2 have considered automatic restoration, but
3 that wasn't what we -- we didn't see that
4 as the goal of the legislation.

5 Q. What did you see as the goal of the
6 legislation?

7 A. Well, that it would revise the procedure we
8 already had and just further define the
9 moral turpitude crimes and streamline the
10 restoration process.

11 Q. And why did you think -- did your office
12 think the goal should be streamlining the
13 process instead of changing it to automatic
14 restoration?

15 A. There just wasn't support for automatic
16 restoration.

17 Q. Wasn't support from who?

18 A. There wasn't -- either from the committee
19 or from Secretary Merrill on having
20 automatic restoration --

21 Q. Secretary Merrill --

22 A. -- to my recollection.

23 Q. Secretary Merrill did not support an

1 automatic restoration process?

2 A. I don't -- I don't recall him having any
3 support for automatic restoration.

4 Q. Because in the original minutes we
5 reviewed, there was a potential
6 discussion --

7 A. Right.

8 Q. -- about automatic restoration.

9 A. Right.

10 Q. But the draft legislation that Secretary
11 Merrill brought to the January meeting did
12 not include an automatic restoration bill?

13 A. Right.

14 MS. MESSICK: Object to the form.

15 A. Right. That's correct.

16 MS. MESSICK: Have we seen the
17 legislation he brought to the January
18 meeting?

19 MS. LANG: I mean, it's in here,
20 yes.

21 MS. MESSICK: In the exhibits we
22 already have?

23 MS. LANG: No.

1 MS. MESSICK: Okay.

2 MS. LANG: Mr. Packard was there
3 and was the one who drafted the legislation
4 and he remembers, so I wanted to get a
5 sense of his recollection --

6 MS. MESSICK: Okay.

7 MS. LANG: -- of what was decided.

8 MS. MESSICK: No, that's fine. I
9 just --

10 MS. LANG: Yeah, there's a lot of
11 documents.

12 MS. MESSICK: I haven't seen -- I
13 don't know what that says, so --

14 MS. LANG: Yeah.

15 MS. MESSICK: -- I don't know --

16 MS. LANG: Fair.

17 Q. (By Ms. Lang) When you and Secretary
18 Merrill came to the final meeting of the
19 exploratory committee, you had with you
20 some draft legislation; is that correct?

21 A. Right. That's correct.

22 Q. And one of those pieces of legislation
23 altered but did not remove the certificate-

1 of-eligibility-to-register-to-vote process?

2 A. That's my recollection.

3 Q. And the other bill defined moral turpitude;
4 is that correct?

5 A. That's my recollection.

6 Q. Who drafted those bills?

7 MS. MESSICK: Object to the form.

8 Q. Who drafted the moral turpitude bill that
9 you brought to the final meeting of the
10 committee of the exploratory committee?

11 A. I did.

12 Q. And who drafted the CERV-related bill that
13 you brought to the last meeting of the
14 exploratory committee?

15 A. I did, based on the input from the
16 committee, to the best of my recollection.

17 Q. According to the minutes that we've
18 reviewed, there was not a conclusion as to
19 what crimes should be included as moral
20 turpitude or not during the committee
21 meeting; is that accurate?

22 A. Yes.

23 Q. So when you drafted that bill, how did you

1 decide which crimes to include and which
2 crimes to exclude?

3 A. Well, we started, again, with what was on
4 the AOC list, and then we added in the ones
5 that had been discussed, even though there
6 had been no final determination as to what
7 to include. And then at the final meeting,
8 we went over the bill crime by crime to see
9 if anyone had any objections to what was
10 included.

11 Q. And when you say "we" with respect to the
12 original drafting, do you mean yourself and
13 Secretary Merrill?

14 A. I mean me.

15 Q. Did Secretary Merrill tell you to go about
16 drafting the bill by using the AOC list as
17 a guide?

18 A. That's my recollection. That was our
19 starting point.

20 Q. Do you know why that was the starting
21 point? because the minutes did not discuss
22 including all of the AOC crimes.

23 A. Right.

1 MS. MESSICK: Object to the form.

2 A. Just seemed like a natural starting point
3 because they were crimes that had been
4 previously deemed by a court or attorney
5 general's opinion to be moral turpitude
6 crimes.

7 Q. So you and Secretary Merrill -- and tell me
8 if this is correct or not -- that both you
9 and Secretary Merrill thought that should
10 be the starting point despite proposals by
11 the ACLU, Alabama Appleseed, and others
12 during the committee meetings that
13 suggested a more limited approach based on
14 the CERV statute crimes?

15 A. That was my understanding of my charge when
16 I drafted the legislation.

17 Q. And do you know why the idea of a more
18 limited list was rejected by Secretary
19 Merrill in giving you that charge?

20 A. I'm sorry.

21 Q. That's okay.

22 A. It's been a long day.

23 Q. It's been a very long day. And we can take

1 a break after this question, if you'd like.

2 A. Yeah. I think -- I think it was based --
3 my understanding was it was based on the
4 fact, the way the discussions of the
5 committee went, talking about and adding
6 human trafficking and things like that, and
7 that even though they discussed the more
8 limited range, we still thought that the
9 AOC list was the proper starting point.

10 Q. Is it possible that your charge was
11 influenced by discussions Secretary Merrill
12 had with the representatives thinking
13 through the legislative perspective?

14 MS. MESSICK: Object to the form.

15 A. I wasn't personally influenced by that. I
16 don't know -- because I -- I don't even
17 recollect what those discussions were. I'm
18 not even sure I was involved in them. I
19 think it was just going to be a starting
20 point given the way the discussions in the
21 committee, the exploratory committee, had
22 gone.

23 Q. And was there any discussion in deciding on

1 that longer list of the ability of the
2 legislation to pass the legislature?

3 A. I don't -- I don't recall any discussion of
4 that.

5 Q. Okay. Would you like to take a break?

6 A. Yeah, let's take a break.

7 Q. Thank you.

8 MS. LANG: Let's go off the record.

9 (SHORT RECESS.)

10 Q. (By Ms. Lang) I'm going to mark as
11 Exhibit 40 a document that will be
12 presented to you.

13 (Packard Exhibit 40 was marked for
14 identification.)

15 Q. And this is an e-mail from yourself to the
16 members of the committee, exploratory
17 committee, circulating a letter from Judge
18 Jolley. And the letter that is attached is
19 dated January 19, 2016 from Judge Jolley,
20 and he states as follows: After carefully
21 considering the obvious problem associated
22 with defining felony involving moral
23 turpitude, I believe the definition for

1 purposes of a disqualifying felony should
2 be narrow rather than broad. The more
3 felonies included in the traditional
4 concept of, quote, moral turpitude as
5 provided in the legislation proposed last
6 year would provide a number of challenges
7 from people convicted of similar crimes not
8 included. And then if you can skip down
9 the second -- on the next page, the second
10 paragraph from the end, he says, I am in
11 favor of a narrow construction that
12 includes the 18 or so felonies discussed at
13 our last meeting. I also feel they each
14 need to be specified by Alabama Code
15 section so there's no confusion concerning
16 which statutes are involved.

17 Do you recall that earlier today we
18 discussed a list of felonies involving
19 moral turpitude that Judge Jolley had
20 proposed?

21 A. Yes.

22 Q. But in this later letter, he said that
23 after consideration he -- he proposed a

1 narrower list of the 18 or so felonies
2 discussed in the last meeting?

3 A. Yes.

4 Q. And by the 18 or so felonies, do you
5 understand him to be referring to the 15
6 included in the CERV statute plus terrorism
7 and human trafficking and potentially this
8 one about parents permitting children to
9 engage in obscene matter?

10 A. I assume that's what he's referring to --

11 Q. Okay.

12 A. -- when he says 18.

13 Q. Did Secretary Merrill consider Judge
14 Jolley's letter in deciding what
15 legislation to bring to the final -- final
16 committee meeting?

17 MS. MESSICK: Object to the form.

18 A. I don't know whether he did or didn't.

19 Q. Did he discuss it with you?

20 A. I don't have a recollection that he
21 discussed it with him, no.

22 Q. In this letter, Judge Jolley talks about
23 his concerns that having a longer list will

1 almost certainly butt up against the issue
2 of people with similar convictions that did
3 similarly bad things being treated
4 differently. Was that a concern that was
5 discussed in any of the committee meetings?

6 A. I don't recall that issue being discussed.

7 Q. No?

8 A. I don't recall it being discussed.

9 Q. Was there any discussion of Judge Jolley's
10 letter in any of the meetings you attended?

11 A. Not to my recollection. We sent it out to
12 the committee members, but I don't remember
13 any discussion of it.

14 Q. I'm going to hand you a document marked
15 Exhibit 41.

16 (Packard Exhibit 41 was marked for
17 identification.)

18 Q. For the moment, I only give you this
19 document as an easy way for us to have a
20 list of the members of the committee. Can
21 you take a quick look at this committee
22 list and see if you think anyone is
23 missing?

1 (Witness reviews document.)

2 MS. MESSICK: The question was who
3 are the members and not who actually
4 attended; right?

5 MS. LANG: Exactly.

6 (Witness reviews document.)

7 A. It looks correct to me.

8 Q. Okay. Let's review who we know -- strike
9 that.

10 I'd like to review what the documents
11 suggest about the various positions of
12 people in the committee, starting with Will
13 Harrell from the ACLU. The letters we
14 reviewed suggested that the ACLU supported
15 a list limited to the 15 crimes in the CERV
16 statute; is that correct?

17 A. Yes.

18 Q. And Judge Jolley we just discussed
19 supported a limited list of approximately
20 18 crimes; is that correct?

21 A. Right. That's correct.

22 Q. Do you recall what Pastor Glasgow's view
23 was of how many crimes or which crimes

1 should be defined as involving moral
2 turpitude?

3 A. I don't -- I don't recall.

4 Q. Are you aware of Pastor Glasgow's advocacy
5 on this issue in general?

6 A. I am in general.

7 Q. And what is his general position about
8 access to the right to vote for people with
9 convictions?

10 A. Well, he believes in it being more open for
11 them to vote.

12 Q. Okay. Mr. Coleman from Hope Inspired
13 Ministries, do you recall his position on
14 how the committee should define moral
15 turpitude?

16 A. No, I don't remember his position.

17 Q. What about Senator Coleman?

18 A. I don't remember her position either.

19 Q. What about Darlene Biehl?

20 A. I don't remember her position.

21 Q. Representative England?

22 A. He generally wasn't at the meetings.

23 Q. Representative Faulkner?

1 A. I don't know his position either.

2 Q. What about Quin Hillyer?

3 A. I don't know his -- I don't remember his
4 position on moral turpitude.

5 Q. Carol Hill?

6 A. I don't know hers. I don't remember hers.

7 Q. What about Rich Hobson?

8 A. I don't -- I don't recall. He was
9 represented by a representative. I don't
10 remember.

11 Q. Cliff Walker?

12 A. I don't remember his position either.

13 Q. Summer Scraggs?

14 A. I don't remember her position on moral
15 turpitude.

16 Q. Senator Ward?

17 A. I don't remember his either.

18 Q. Jeff Williams?

19 A. No, I don't remember.

20 Q. Okay. So can you identify anyone on this
21 list that suggested a longer list of crimes
22 that you recall from the meeting?

23 MS. MESSICK: Did you cover Jeff

1 Dunn?

2 MS. LANG: I think I did.

3 Q. But Jeff Dunn?

4 A. Yeah. I don't recall his position.

5 MS. MESSICK: In that case, asked
6 and answered.

7 Q. I'd still like you to respond because you
8 may not remember -- you may not have
9 remembered when we do it individually, but
10 can you identify anyone that had suggested
11 a longer list of crimes?

12 A. When you say "longer," you mean --

13 Q. Longer than 18 --

14 A. Longer than 18?

15 Q. -- which is the one we've identified as the
16 longest so far.

17 A. Well, ultimately the committee voted to go
18 with the longer list, so.

19 Q. I'm talking about before --

20 A. Before then?

21 Q. Before the presentation of the bill that
22 your office drafted.

23 A. I don't recall offhand anybody supporting a

1 longer list.

2 Q. Even if you can't identify the specific
3 person, can you remember someone suggesting
4 a longer list before the presentation of
5 that list --

6 A. Well, of the --

7 Q. -- on January 20th?

8 A. Other than Tim Jolley had originally,
9 although he changed his position. So, no,
10 I don't -- I don't recall support for a
11 longer list.

12 Q. Okay. And we will come back to this, so we
13 might want to put it aside. If you could
14 return to the minutes and turn to the
15 January 20th minutes. Do you recall
16 that --

17 MS. MESSICK: I'm sorry. Can you
18 let me read this?

19 MS. LANG: Sure. I'm going to ask
20 a question that's unrelated to this
21 document, so --

22 MS. MESSICK: Oh, okay.

23 MS. LANG: -- I'll go ahead and

1 ask.

2 Q. (By Ms. Lang) Do you recall that the
3 subcommittee on moral turpitude met on
4 January 20th for an hour before the full
5 committee met?

6 MS. MESSICK: Object to the form.

7 A. No, I don't remember -- I don't recall
8 that.

9 Q. If you can look at Exhibit 41 on page 2,
10 the last sentence of the second paragraph
11 says, However, this subcommittee did meet
12 for an hour preceding the January 20th
13 committee meeting and apparently -- I'll
14 just leave it there.

15 (Brief pause.)

16 MS. MESSICK: Is there a question?

17 MS. LANG: I'm sorry.

18 Q. Does that refresh your recollection as to
19 whether or not the subcommittee met for an
20 hour preceding the January 20 meeting?

21 A. I still don't recall that. Not to say it
22 didn't happen. I just don't recall it.

23 Q. Were you charged with leading the

1 subcommittee?

2 A. Right.

3 MS. MESSICK: Asked and answered.

4 Q. Returning to the January 20th minutes, the
5 first section reports that you provided a
6 summary of the subcommittee's work and a
7 discussion of which felony crimes in
8 Alabama should be defined as moral
9 turpitude crimes. Mr. Packard related that
10 a majority of the members of the
11 subcommittee were leaning towards defining
12 as moral turpitude felonies only those
13 crimes currently identified in state law as
14 requiring a full pardon from the board of
15 pardons and paroles for restoration of
16 voting rights.

17 So did the subcommittee vote or -- or
18 decide that you would let the full
19 committee know that they favored the list
20 of 15 crimes in the CERV statute?

21 A. I don't have any recollection of that.

22 Q. You have no memory --

23 A. I have no memory of that meeting. I just

1 don't.

2 Q. But you actually came to this meeting with

3 a draft bill already; isn't that correct?

4 A. Right, we had a draft bill ready for the

5 full exploratory committee.

6 Q. And that was not of the 15 crimes?

7 A. That was not of the 15 crimes.

8 Q. So assuming that these minutes are not

9 incorrect, you had a subcommittee

10 discussion in which they favored a list of

11 15 crimes, but you had already drafted a

12 longer list before that meeting occurred?

13 A. Right.

14 Q. Did you consider changing that longer list

15 in light of these views?

16 A. Not to my recollection.

17 Q. And so after you reported that the

18 subcommittee that was tasked with deciding

19 this question favored a list of 15 crimes,

20 it says that Secretary Merrill led a

21 discussion of the draft bill. Is that to

22 your recollection?

23 A. Right, that's my recollection.

1 Q. And that that draft bill was prepared by
2 you?

3 A. Right. That's correct.

4 Q. And am I correct in saying that that draft
5 bill had over 40 crimes on it?

6 A. I don't know the exact number, but it's
7 certainly more than the 15.

8 Q. If you look at Exhibit 41, the last
9 paragraph on page 2 before the SB 231
10 definition of moral turpitude, it starts,
11 At the committee's final meeting. I'll
12 just read these two sentences to you. At
13 the committee's final meeting on
14 January 20, 2016, Ed Packard reported that
15 the majority of the subcommittee was in
16 favor of only listing the 15 crimes from
17 Alabama Code Section 15-22-36.1(g) plus the
18 three other offenses. However, after a
19 brief discussion of the 15 offenses,
20 Secretary of State Merrill redirected the
21 discussion to the full list in the draft
22 bill patterned after the 2015 House bill
23 that passed the House and led the committee

1 in a discussion of each numbered offense
2 listed in that bill.

3 Does that accord with your recollection
4 of the meeting?

5 A. Well, except for not recollecting the
6 subcommittee part of it. The rest of it
7 accords with my memory, that he did lead a
8 discussion on the draft bill which had the
9 longer list. And we went through each
10 offense to see if anyone thought that any
11 of them should be removed.

12 Q. And did anyone voice objection with the
13 change from a listing of 15 to the longer
14 listing that Secretary Merrill was
15 proposing?

16 A. I don't recall any objection.

17 Q. Would you be surprised that no one would
18 object given that an hour previous there
19 had been a vote for a smaller list?

20 MS. MESSICK: Object to the form.

21 A. I just don't have a recollection that there
22 was any objection, but -- so it's possible
23 someone may have. I don't know whether I

1 would have been surprised or not, but.

2 Q. Did Secretary of State Merrill suggest that
3 one of the reasons this list was a good
4 idea was because it was patterned on a bill
5 that had already passed the House?

6 A. I don't recall him ever stating anything to
7 that effect.

8 Q. Was that one of the reasons that the
9 secretary supported this bill?

10 MS. MESSICK: Object to the form.

11 A. I can't speak for why he supported it or
12 thought it was a good idea.

13 Q. Do you think that the committee's input
14 ultimately made a major change in the
15 secretary of state's position on what
16 crimes to include in a proposed bill?

17 MS. MESSICK: Object to the form.

18 A. In Secretary Merrill's position?

19 Q. Yes.

20 A. I can't speak on behalf of him.

21 Q. I understand that, but you were heavily
22 involved in the process at every stage; is
23 that not -- is that correct?

1 A. I was very involved, yes.

2 Q. You drafted all of the bills that Secretary
3 of State --

4 A. Right.

5 Q. -- Merrill supported?

6 A. On the moral turpitude issue, yes.

7 Q. Yeah. And he had drafted a bill in 2015
8 that was based on the AOC list --

9 A. Right.

10 Q. -- prior to this committee?

11 A. Right. That's correct.

12 Q. This committee was convened and met several
13 times. The vote on the issue recommended a
14 list of 15 crimes, but before that vote
15 even occurred, the secretary of state had
16 instructed you to draft a bill based on the
17 AOC list and bring it to this meeting; is
18 that correct?

19 MS. MESSICK: Object to the form.

20 A. Right. That's correct.

21 Q. So based on those facts, do you think that
22 the positions of the members of the
23 committee had a major impact on the

1 secretary of state's position?

2 MS. MESSICK: Object to the form.

3 A. Well, I think the subcommittee wanted to go
4 with a lesser number, but the full
5 committee hadn't expressed its opinion so
6 we brought -- so the fact that they took up
7 a longer list and then went through the
8 crimes one by one, I don't -- I don't think
9 there's -- even though they ended up with a
10 different result, I don't know that that
11 speaks to whether the committee
12 influenced -- had an influence on the
13 outcome of the draft bill.

14 Q. Well, did -- and did the committee have an
15 influence on the draft bill? Did
16 comments -- strike that.

17 Did comments from the committee lead to
18 changes in the draft bill that you proposed
19 during this meeting?

20 A. Yes. Some of the minutes reflect that,
21 that kidnapping was included, aggravated
22 child abuse was included, and drug
23 trafficking was included.

1 Q. And who suggested those changes?

2 A. I couldn't tell you exactly who. I don't
3 recall that.

4 Q. Who abstained from voting?

5 A. I don't remember who abstained.

6 Q. Can you remember even one of the
7 abstentions?

8 A. No. I couldn't remember the vote.

9 Q. Were any crimes removed from the list based
10 on the committee's comments?

11 A. Not to my recollection.

12 Q. And prior to Secretary Merrill presenting
13 this draft bill, had theft of property been
14 discussed as a potential crime of moral
15 turpitude in any of the prior meetings?

16 A. I don't recollect any specific discussion
17 on that.

18 Q. And we've reviewed the minutes. Did any of
19 the minutes suggest discussion of this
20 longer list of crimes before Secretary
21 Merrill presented it at the last meeting?

22 MS. MESSICK: Object to the form.

23 A. No, I don't believe so.

1 Q. Why was it proposed to add drug trafficking
2 to the list?

3 A. I don't recall why they chose to add -- to
4 vote for adding drug trafficking.

5 Q. Was there a discussion in the committee
6 about whether or not drug crimes are ones
7 involving moral turpitude?

8 A. I don't remember any particular discussion
9 on that.

10 Q. How do you think it is that you got to a
11 unanimous vote when there were people who
12 had voted only a few hours earlier for a
13 different list?

14 MS. MESSICK: Object to the form.

15 A. I don't know, because I can't speak for
16 what's in people's minds.

17 Q. There was nothing said in the meeting that
18 suggested why people were changing their
19 vote?

20 A. Not that --

21 MS. MESSICK: Object to the form.

22 A. Not that I recall.

23 Q. With respect to the CERV bill that you

1 drafted, why did the secretary of state
2 support a bill that continued to include
3 fines and fees despite prior discussions in
4 the minutes regarding only including
5 restitution?

6 MS. MESSICK: Object to the form.

7 A. Well, I believe even -- I think the
8 consensus in the committee from the
9 discussion was that they wanted the fines
10 and fees to stay but only the ones that
11 came with the original sentence, not with
12 the ones that came -- that might have been
13 tacked on later. And so that's the way the
14 bill was drafted.

15 Q. When you say the consensus, when do you
16 think that that consensus was built or
17 agreed upon?

18 A. Maybe consensus is not the right word, but
19 the sense of what the committee wanted.

20 Q. Because I was not at the meeting. But from
21 reading the minutes, I did not get the
22 sense that that was agreed upon or -- or
23 the majority feeling until the minutes at

1 the January 20 meeting and the bill had
2 already been drafted at that point. So
3 could you explain to me when this consensus
4 was built and who supported keeping fines
5 and fees as part of the requirement?

6 A. No, I can't explain that.

7 Q. And I think it's my understanding that your
8 personal position is that fines and fees
9 should not be included?

10 MS. MESSICK: Object to the form.

11 A. Right. That is correct.

12 Q. Did you voice that opinion to the secretary
13 of state?

14 A. I don't recall ever voicing that to him.

15 Q. At any point during the committee's work
16 did anyone suggest looking at the racial
17 impact of what crimes you chose?

18 A. I don't recall anybody raising a racial
19 angle to it.

20 Q. Well, there was a discussion about race in
21 the meeting; right?

22 A. But in terms of selecting the actual crimes
23 and whether that was a basis for it, I

1 don't recall a discussion about that.

2 Q. I will represent to you that at least

3 Alabama Appleseed and ACLU did represent in

4 their memos that part of the reason to keep

5 the list limited was because of racial

6 impact. Was that issue discussed in the

7 committee meetings?

8 A. Not to my recollection.

9 Q. And did you ever look at any data about how

10 the list you chose that ended up in the

11 draft bill would play out with respect to

12 race?

13 A. No.

14 Q. Would you be surprised to find out that the

15 list of crimes that were selected as

16 disenfranchising may be more racially

17 discriminatory or had greater racial

18 disparate impact than the overall felony

19 conviction -- than the group of felony

20 convictions overall?

21 A. I don't know. Is that the case?

22 Q. It does appear to be the case.

23 A. Okay.

1 Q. But I do not have the evidence to show you
2 now, so just asking if that would be
3 surprising to you or not.

4 A. I don't know. I haven't given that any
5 real thought.

6 Q. When you were discussing which crimes to
7 include on the list and going through them
8 one by one as Secretary Merrill did, what
9 standard was guiding the discussion of
10 whether something should be included or
11 not?

12 MS. MESSICK: Object to the form.

13 A. The purpose behind the discussion was to
14 see what their thoughts were on each of
15 those crimes. I don't know that there was
16 a spoken, verbalized standard as to what
17 constituted, you know, whether it was moral
18 turpitude or not.

19 Q. What, if any, standard did you think should
20 guide whether a crime should be included or
21 not included?

22 A. I don't -- I don't recall my own thoughts
23 on that from the time.

1 Q. And there was no set criteria that the
2 committee was using to decide which crimes
3 should go in or out?

4 A. Correct. To my knowledge.

5 Q. Did anybody mention any criteria that they
6 personally were using?

7 A. I don't remember anybody mentioning any
8 personal criteria that they were using.

9 Q. When somebody said yes, I agree with that
10 crime being included, do you recall any
11 reasons people gave for why a crime should
12 be included?

13 A. No.

14 Q. You don't remember any reasons anyone gave
15 for any conviction being included?

16 A. No.

17 Q. I guess I'm trying to understand how this
18 conversation unfolded if -- if people
19 weren't providing reasons for or against
20 including certain crimes. Could you try to
21 explain to me what happened in this
22 conversation in which you went through each
23 crime?

1 A. Well, we literally just went down through
2 the list and said what the crime was and
3 asked if people thought it should be
4 removed from the list, and they, you
5 know -- and it went from there.

6 Q. Was there much discussion or was it just
7 Secretary Merrill reading aloud a list and
8 there being no objections made?

9 A. I don't recall there being that much
10 discussion about it.

11 Q. So primarily this was a discussion in which
12 Secretary Merrill read aloud the list that
13 he had prepared?

14 A. Right.

15 MS. MESSICK: Object to the form.

16 Q. Actually, Secretary Merrill read aloud a
17 list that he charged you with preparing?

18 MS. MESSICK: Object to the form.

19 A. Well, he provided them the opportunity to
20 speak on it if they wanted to.

21 Q. But they did not?

22 A. Right. To my recollection.

23 Q. Was there any discussion of including

1 bribery on the list?

2 A. I don't remember any discussion on bribery.

3 Q. Was there any discussion of including
4 public corruption on the list?

5 A. I don't -- I don't remember any discussion
6 on that.

7 Q. Voter fraud?

8 A. I don't remember any discussion on that.

9 Q. In the prior draft bill that you had
10 prepared in 2015 --

11 MS. MESSICK: You're looking for
12 the one attached to the e-mail to
13 Representative England, so that's
14 Exhibit 26.

15 Q. -- I believe that the last crime listed is
16 impeachment; is that correct?

17 A. Impeachment was listed as the first crime.

18 Q. Oh, first crime. Thank you. Was there any
19 discussion of including impeachment on this
20 list?

21 A. I don't recall there being any discussion
22 of that.

23 Q. Do you know why you did not include

1 impeachment in the bill you drafted in late
2 2015 even though it was included in the
3 bill earlier in the year?

4 MS. MESSICK: Object to the form.

5 A. Because we used as a starting point the AOC
6 list again, and it wasn't on the AOC list.

7 Q. Now, you told me that you used the AOC list
8 as the starting point for the 2015 bill as
9 well.

10 A. Right.

11 Q. How did impeachment end up on that bill?

12 A. I don't recall. That's been a long time
13 ago.

14 Q. Yeah. But it was not included in the late
15 2015 bill?

16 A. Right.

17 MS. MESSICK: Object to the form.

18 Q. As I understand it, impeachment in the
19 state of Alabama is -- only applies to
20 public officials that can be impeached by
21 the legislature for crimes involving moral
22 turpitude or other reasons. Is that your
23 understanding?

1 A. Generally speaking, that's my
2 understanding.

3 Q. So is it right that as compared to the
4 earlier 2015 bill, this bill removed a
5 crime that would only apply to elected
6 officials?

7 A. Right.

8 Q. All right. Do you know if any changes were
9 made between -- sorry. I'll hand you an
10 exhibit marked Packard Exhibit 42.

11 (Packard Exhibit 42 was marked for
12 identification.)

13 Q. I will represent to you this was produced
14 by your office alongside an e-mail
15 distributing this bill on January 22, 2016.
16 Is this the bill that you prepared after
17 the January 20th meeting?

18 MS. MESSICK: Did you say
19 January 22nd e-mail?

20 MS. LANG: I did.

21 (Witness reviews document.)

22 A. It appears to be the bill that I worked on.

23 Q. Do you know what changes, if any, were made

1 between the draft bill that you wrote and
2 the one that passed in May of 2017?

3 A. Actually, I don't recall any changes that
4 may have occurred. I didn't work
5 closely -- I wasn't on the legislative
6 team, and I don't work as closely with the
7 moral turpitude felonies now.

8 Q. And you said that the person that worked
9 most closely on the legislative team with
10 Secretary Merrill was Brent Beal; is that
11 correct?

12 A. Yes.

13 MS. MESSICK: Asked and answered.

14 A. That's correct.

15 MS. MESSICK: Let the record
16 reflect Mr. Beal did join the deposition a
17 few minutes ago.

18 Q. And I'll mark as Exhibit 43 your
19 declaration from this case.

20 (Packard Exhibit 43 was marked for
21 identification.)

22 Q. Do you recall writing and signing this
23 declaration last year?

1 A. Yes, I do.

2 MS. MESSICK: And for the record,
3 this is the declaration without exhibits.

4 MS. LANG: Yes.

5 MS. MESSICK: Just to be clear.

6 Q. In paragraph 10 of this declaration, to lay
7 the foundation, in paragraph 9, there's a
8 discussion of your understanding of
9 plaintiffs' request that there be some sort
10 of mailing to people who might be eligible
11 given the new law. And in paragraph 10,
12 you said that the mailing would likely
13 cause confusion. I understand paragraph 9
14 to talk about why it would be impractical,
15 in your view, to do this, but could you
16 explain to me why you think this mailing
17 would cause confusion?

18 A. Well, it would cause -- it potentially
19 could cause confusion, because the person
20 may be convicted -- I think convicted later
21 of additional crimes that might fall under
22 the new legislation and we don't even know
23 if the individuals even meet the other

1 qualifications. We don't know if they're
2 still a resident of Alabama or they have
3 some other issue that keeps them from being
4 able to vote.

5 Q. Yeah.

6 A. And it's -- the way our system is set up is
7 it states in the declaration -- the system
8 doesn't identify specifically which crime a
9 person's been convicted of in any way that
10 we can automate this process, so you have
11 to go through the records individually.
12 And that even assumes that the registrars
13 have even put any notes or images of
14 information to let you know what the
15 conviction was and which -- my
16 understanding is not all of them do.

17 Q. Could a mailing have been crafted that said
18 there's been a change in the law, here is
19 what the change in the law is; based on our
20 records, that may mean that you are
21 eligible to vote if you meet other
22 qualifications and have not been convicted
23 of one of the crimes listed above?

1 MS. MESSICK: Object to the form.

2 A. Theoretically you could come up with some
3 kind of mailing like that, but you don't
4 get to the answer of whether you can
5 actually get it to the people you're trying
6 to get it to because the addresses in the
7 database may be stale from --

8 Q. Right.

9 A. -- individuals moving around and that sort
10 of thing.

11 Q. And I understand that practicality part, so
12 I just want to put that aside and say if
13 you were to craft an e-mail -- or a
14 mailing -- that said what I just related,
15 do you think that would likely cause
16 confusion?

17 A. Based -- based on my dealing with the
18 public, it could.

19 Q. Would it create more confusion than having
20 people who had been told that they could
21 not vote because of their felony conviction
22 and were never told otherwise? Would it
23 make those people more or less confused

1 about their rights?

2 MS. MESSICK: Object to the form.

3 A. I think it would -- I don't know how to
4 quantify confusion, but --

5 Q. Okay.

6 A. -- I think they would be just as
7 confused -- some people would be just as
8 confused if they received that letter and
9 they may misinterpret what it means and
10 what their -- what options they have
11 available to them at that point.

12 Q. Yeah. Undoubtedly there are people, many
13 people, who were told by boards of
14 registrars that they were not eligible to
15 vote because of their felony conviction who
16 are now eligible under the new law; is that
17 correct?

18 MS. MESSICK: Object to the form.

19 A. Right. There are some number of people,
20 yes.

21 Q. For those people, if they received a
22 mailing, would those people be more or less
23 likely to understand that they can now

1 vote?

2 MS. MESSICK: Object to the form.

3 A. More or less likely?

4 Q. Yes.

5 A. It gets again to the issue of being able to
6 quantify confusion when people see a letter
7 and based on circumstances that we don't
8 know about the particular situation.

9 Q. No. Mr. Packard, I'm talking about in the
10 aggregate. I understand that individual
11 people may have been confused. But if
12 there is a group of a hundred people who
13 have been previously told that they are
14 ineligible to vote --

15 A. Right.

16 Q. -- and they are -- and that's the only
17 information they've ever received but
18 they're actually in fact eligible to vote
19 now, there's that group of people; they're
20 eligible to vote but they've been told they
21 are not and they've never received
22 additional information from the secretary
23 of state. And there's a group of a hundred

1 people who were previously told they were
2 ineligible to vote who are now eligible and
3 they received a mailing from the secretary
4 of state saying the law has changed, here's
5 the new law, you may be eligible to vote.

6 In the aggregate, which group is more
7 likely to understand their voting rights?

8 MS. MESSICK: Does your
9 hypothetical assume that each group could
10 be conclusively determined?

11 MS. LANG: Yes. I said a hundred
12 people and their specific characteristics.

13 A. Can you give me the two groups again?

14 MS. MESSICK: Hold on. Have the
15 court reporter read it back.

16 (Court reporter reads back the last
17 question.)

18 A. Probably the second group.

19 MS. MESSICK: I'm sorry. I need a
20 five-minute break. Can I take that while
21 you're looking for your next question?

22 MS. LANG: Yes, Misty.

23 MS. MESSICK: Thank you.

1 (Short recess.)

2 Q. (By Ms. Lang) Before we took the break, we
3 were looking at your declaration. And I'd
4 like you to look at paragraph 15 in which
5 you wrote and signed that felons are not
6 prejudiced by the fact that specific
7 disqualifying crimes are not listed on
8 form. And then you go on to provide the
9 reason for that belief as registrars often
10 receive registration forms with incomplete
11 or inaccurate information when a person
12 attempts to register to vote and
13 incorrectly states that he or she has not
14 been convicted of a disqualifying felony;
15 the registrar simply denies that person's
16 registration.

17 I will represent to you that
18 plaintiffs' position was not that people
19 would necessarily be prejudiced because
20 they would be prosecuted for incorrectly
21 turning in a form but that people would be
22 deterred from turning in a form because
23 they did not know if they were eligible.

1 Are you aware that the form requires people
2 to declare under penalty of perjury that
3 they are eligible to vote?

4 A. Yes, I'm aware of that.

5 Q. And so do you think it's possible that some
6 people who do not know if they have a
7 conviction for a disqualifying felony would
8 refrain from signing that and turning in a
9 form even if you know that the reality is
10 that person would not be prosecuted?

11 A. Yes.

12 MS. MESSICK: Object to the form.

13 A. Yes, I can see that.

14 Q. You have no reason to believe that people
15 are, in the regular course, committing
16 perjury, do you?

17 A. Repeat the question.

18 Q. Do you have any reason to believe that
19 people are regularly signing things under
20 penalty of perjury that they don't know to
21 be true?

22 A. No.

23 Q. All right. People ordinarily try to

1 refrain from signing under penalty of
2 perjury things that they don't know to be
3 true?

4 A. Right.

5 MS. MESSICK: Object to the form.

6 Q. Given that concern that it's not that
7 people will be prosecuted but that people
8 who are eligible to vote might be deterred
9 from registering to vote, do you stand by
10 your statement that felons are not
11 prejudiced by the fact that specific
12 disqualifying crimes are not listed on the
13 form?

14 A. I would -- I would have to alter that
15 statement to more fully reflect what you
16 discussed.

17 Q. That there is a possibility of --

18 A. Yes.

19 Q. -- prejudice?

20 A. Yes.

21 Q. Thank you. We will mark as Exhibit 44 your
22 second declaration in this case.

23 (Packard Exhibit 44 was marked for

1 identification.)

2 Q. I think you were referring to this
3 declaration earlier. And what I understand
4 this declaration to be saying is that you
5 did not know how in the computer system to
6 create a list of people who had been denied
7 or purged on the basis of felony conviction
8 for a specific time period.

9 MS. MESSICK: Object to the form.

10 A. Um --

11 Q. I'll give you a moment to read your
12 declaration first.

13 A. Yeah.

14 (Witness reviews document.)

15 A. Okay.

16 Q. Last summer your office produced a list of
17 people with felony convictions who had been
18 removed or denied registration on the basis
19 of their felony conviction and provided it
20 to the plaintiffs in this case. Plaintiffs
21 asked if that list could provide a date of
22 removal or date of denial or date of
23 registration so that we could cull down the

1 list to people who'd most recently
2 attempted to register to vote, and your
3 declaration responded to that request; is
4 that right?

5 A. Right.

6 Q. And you indicated that your knowledge of
7 the computer system did not allow you to do
8 that in an automated way.

9 MS. MESSICK: Object to the form.

10 MS. LANG: Can you clarify?

11 MS. MESSICK: Your question and the
12 one before where you asked him to read this
13 suggests that it can be done and he doesn't
14 know how. I understand his declaration to
15 say it can't be done.

16 MS. LANG: Okay.

17 Q. (By Ms. Lang) You suggest in your
18 declaration that it can't be done in an
19 automated way; is that correct?

20 A. Right. That's correct.

21 Q. I will represent to you that your office
22 has since provided such a list that
23 includes a date of status change and a date

1 of registration. Of course the screen shot
2 that I created does not appear.

3 MS. MESSICK: Do we need to take a
4 break?

5 Q. Let's see what we can do with this. I'm
6 going to mark as Exhibit 45 a screen shot.

7 (Packard Exhibit 45 was marked for
8 identification.)

9 Q. This is a screen shot of a list that has
10 been provided to me by your counsel that
11 includes --

12 MS. LANG: Can we go off the record
13 for a moment?

14 (Off-the-record discussion.)

15 Q. I've been provided an Excel spreadsheet of
16 everyone who's been removed or denied on
17 the basis of felony conviction, and this is
18 a screen shot of part of that spreadsheet.
19 I tried to capture, but evidently failed,
20 that there is a date of status change and a
21 date of registration column in this Excel
22 spreadsheet that has allowed me to
23 personally and systematically sort people

1 by the date that their status was changed
2 and the date that they registered. Given
3 that information, would you change your
4 view that it's not possible to gather this
5 type of information automatically through
6 the computer system in the secretary of
7 state's office?

8 MS. MESSICK: I'm going to object
9 to the form. As you said, this doesn't
10 show that, and we have produced a lot of
11 different databases.

12 MS. LANG: Okay. I think we should
13 take a break, then.

14 (Off-the-record discussion.)

15 MS. LANG: I'm going to re-call
16 Exhibit 45 from the record.

17 Q. (By Ms. Lang) Mr. Packard, I'm going to
18 show you on a computer screen an Excel
19 spreadsheet that is titled D009606. It's a
20 document that's been produced by your
21 office to the plaintiffs by your counsel.
22 And it is described by counsel as
23 containing a May 28 snapshot of all records

1 who have a status of not eligible or
2 disqualified and a status reason of
3 criminal conviction, slash, moral
4 turpitude. And this contains a little over
5 80,000 records. So I'm going to show you
6 this document on the screen. And can you
7 confirm to me that in this document there
8 is a column entitled status change -- date
9 of status change or something along those
10 lines?

11 A. Can I widen the column so --

12 Q. Yes.

13 A. -- I can read the heading?

14 Q. Absolutely.

15 A. Okay. Yes, there is a field called status
16 change date.

17 Q. And then if you were to tab over until
18 after the date of birth, I believe, there
19 is a date-of-registration column as well?

20 A. Right. That's correct.

21 Q. Now, you told me, or you put in your
22 declaration, that last summer there was
23 produced a document of approximately 60,000

1 felons who had been removed from voter
2 lists or denied registration, and you
3 prepared that list.

4 A. Right.

5 Q. Is that right?

6 A. That is correct.

7 Q. But that list did not include a status-
8 change date or a date-of-registration
9 column; is that correct?

10 A. In which file again?

11 Q. Last year you prepared a file of voter
12 information for approximately 60,000 felons
13 who were removed from voter lists or denied
14 registration, and you said that you
15 prepared that list.

16 A. Right. That's correct.

17 Q. And that list did not include a status-
18 change date column or a date-of-
19 registration column.

20 A. I'm assuming that's correct about the file
21 from last year --

22 Q. Okay.

23 A. -- not having it to look at.

1 Q. All right. If you could take that as an
2 assumption, then you indicated, as far as I
3 can understand in your declaration, that at
4 least based on your knowledge of the system
5 you were not able to determine the date-of-
6 status change, the date someone was
7 removed, without clicking through each
8 individual voter file.

9 A. Right. That's correct.

10 Q. But this list does provide a date of status
11 change for people in that circumstance; is
12 that right?

13 MS. MESSICK: Object to the form.

14 A. It does, although it doesn't give it for
15 every -- everybody similarly situated.

16 Q. But it does have a date-of-status change
17 column?

18 A. Yes.

19 Q. Do you know who prepared this list?

20 MS. MESSICK: By which you're
21 referring to the one on the computer?

22 Q. Yes, the one you're looking at now that was
23 produced in May.

1 A. If I remember correctly, I'm the one that
2 produced this file.

3 Q. Do you know how you created this file?

4 A. Yeah. There's a -- it's a swap pick in the
5 software where you can choose the variables
6 you're going to output, so that's why I'm
7 not -- I'm a little bit at a loss. I know
8 we had some enhancements done to our
9 computer system related to status-change
10 dates, and I don't know if that was
11 something that was added in, because we did
12 this earlier this year. We enhanced our
13 system to be able to pull out some
14 information like this. So I don't know if
15 that was an enhancement that was made after
16 last year, but before this particular date,
17 a file was pulled. I would have to look
18 into that.

19 Q. Do you have any other potential
20 explanations for why that field was not
21 included last time you produced a similar
22 document?

23 A. Unless I just at the time didn't know it

1 was available.

2 Q. Did you consult with ES&S about the
3 possibility of creating this list before
4 you wrote this declaration?

5 A. No.

6 Q. Okay. Moving on. I'm going to mark
7 Exhibit 45.

8 (Packard Exhibit 45 was re-marked
9 for identification.)

10 Q. And this is an e-mail chain between
11 yourself and Cookie Adair in July 2017.
12 Who is Cookie Adair?

13 A. Cookie Adair is a registrar in Talladega
14 County.

15 Q. And so I'd like to give you a moment to
16 read Cookie's e-mail, your response, and
17 then her response.

18 (Witness reviews document.)

19 A. Okay. I'm ready.

20 Q. So Cookie Adair was contacting you about a
21 voter who had a conviction whose code was
22 FTAV. I will confess to not knowing what
23 that crime is. But he felt certain that

1 under the new law that had passed, HB 282,
2 it was not one of moral turpitude. And
3 Ms. Adair seems confused, one, as to
4 whether or not this charge code falls
5 within the new law and, two, about whether
6 or not she can allow him to register to
7 vote even if it is not disqualifying under
8 the new law because the registration
9 deadline was July 31st but the effective
10 date for this law was August 1. My
11 understanding, based on representations by
12 counsel, was that boards of registrars were
13 implementing the new law in July such that
14 people were allowed to register to vote
15 under the new law in order to vote in the
16 election that would happen after August 1.
17 Is that your understanding of the
18 implementation date of HB 282?

19 A. I don't recall that provision being made.
20 It may have been made, but I don't recall
21 that provision being made.

22 Q. Was this after you had left your
23 responsibilities as director of elections?

1 A. Yes.

2 Q. Okay. And so you were not aware one way or
3 another if HB 282 was governing voter
4 registration in July of 2017?

5 A. I don't recall that.

6 Q. And you asked Ms. Adair if pardons and
7 paroles had ever told her that this crime
8 was disqualifying and whether that was in
9 writing or not. Do you know if you
10 followed up with Ms. Adair after she told
11 you that it was verbal and if she was able
12 to clarify whether this gentleman should be
13 able to register despite the effective date
14 of August 1 for the new law?

15 A. I don't --

16 MS. MESSICK: Object to the form.

17 A. I don't remember this correspondence. I
18 don't remember the eventual resolution of
19 it.

20 Q. Do you know when the codes were sent out to
21 the board of registrars for the crimes
22 involving moral turpitude under the new
23 law?

1 A. I don't recall when they went out.

2 Q. Okay. Given the change in your position

3 that I was not aware of, you might not know

4 the answer to this question either, but

5 I'll ask you. We'll mark as Exhibit 46 a

6 template letter that says, Dear Registrar

7 blank, signed by -- or the template is as

8 if it would be signed by Mr. Beal informing

9 a registrar or registrars that due to their

10 comments in a news story that suggested

11 they were improperly implementing the new

12 law, they were asked for their resignation.

13 Are you aware of any registrars being asked

14 for their resignation because of their

15 failure to implement HB 282?

16 (Packard Exhibit 46 was marked for

17 identification.)

18 A. May I finish reading this?

19 Q. Yes.

20 A. Thank you.

21 (Witness reviews document.)

22 A. Could you restate the question? Or not

23 restate it. Just repeat it.

1 Q. Are you aware of any registrars that were
2 asked to resign as a result of their
3 failure to implement HB 282 correctly?

4 A. I'm not aware.

5 Q. Were you aware of any registrars that were
6 implementing HB 282 improperly?

7 A. I remember this particular news story that
8 was in the media.

9 Q. Do you remember any meetings within the
10 secretary of state's office about how to
11 respond to this news story?

12 A. No, I don't recall any meeting.

13 Q. Okay. I'm going to mark as Exhibit 47 this
14 e-mail chain between yourself and -- again,
15 I apologize for name pronunciation -- Linda
16 Pickelsimer.

17 (Packard Exhibit 47 was marked for
18 identification.)

19 Q. She sends you a draft of a notice that
20 she's planning to use. It says, Dear
21 Mr. Blank, Upon review of your voter
22 status, the Cherokee County Board of
23 Registrars has determined that your past

1 conviction did not involve a moral
2 turpitude offense. Your current voting
3 status is active.

4 And you approved of this notice. My
5 question is, what circumstances led to
6 Ms. Pickelsimer to need to create this
7 notice?

8 MS. MESSICK: Object to the form.

9 A. I don't -- I don't remember what the
10 circumstances were that led to the creation
11 of this notice.

12 Q. Okay. I'll mark this Exhibit 48, going
13 back in time a bit, to 2008 e-mail from
14 Shannon Curtis.

15 (Packard Exhibit 48 was marked for
16 identification.)

17 Q. Do you know who Shannon Curtis is?

18 A. Shannon Curtis was an employee of ES&S, the
19 election company that provides our voter
20 registration software.

21 Q. And I'll give you a moment to read it, but
22 the e-mail suggests that there was an error
23 made in the ES&S system that led to the

1 removal of people who were in fact eligible
2 to vote, that their criminal records
3 erroneously show that they were ineligible.

4 (Witness reviews document.)

5 Q. And the error had to do with a change from
6 the initial charge code to the final
7 disposition code. Is that accurate?

8 A. Yes.

9 Q. And in the last -- second to last
10 paragraph, the second sentence says, It is
11 the discretion of each county registrar if
12 you wish to send any corrective
13 communications or correspondence to any
14 affected voters. My understanding is that
15 these voters were improperly removed or
16 denied on the basis of incorrect
17 information about their convictions; is
18 that accurate?

19 A. That's my --

20 MS. MESSICK: Object to the form.

21 A. That's my understanding based on the
22 content of the e-mail.

23 Q. And do you recall this event?

1 A. I do not recall this event.

2 Q. And if these voters were rejected or denied
3 because of a felony conviction, they would
4 have been sent a notice telling them they
5 were ineligible. Isn't that also true?

6 A. That is correct.

7 Q. And yet it says that it was in the
8 discretion of each county registrar whether
9 or not to correct that notice and inform
10 voters that they were eligible to vote; is
11 that right?

12 A. That's what the e-mail states.

13 Q. Who would have made the decision that it
14 was in the discretion of the county
15 registrars whether or not to send such a
16 notice?

17 MS. MESSICK: Object to the form.

18 A. I don't know who made that decision.

19 Q. Do you think that that was the right
20 decision?

21 A. No, I personally don't think that's the
22 right decision.

23 Q. So there were -- all of the voters on this

1 list were improperly disenfranchised,
2 identified as such, but not necessarily
3 notified of that fact; is that correct?

4 MS. MESSICK: Object to the form.

5 A. Well, if they didn't -- if they didn't have
6 a disqualifying felony, because it does
7 state unless there's another reason beyond
8 the conviction record, particular
9 conviction record. Of course, we don't
10 know if any of the counties actually sent
11 notices or decided not to send the notices,
12 but if they didn't send the notice, then
13 the voter didn't know the situation and
14 should have known the situation.

15 Q. Thank you. All right. I'd like to move on
16 to one of our last topics, which has to do
17 with the voter registration forms and edits
18 to the voter registration form. I'm going
19 to mark as Exhibit 49 an e-mail chain
20 amongst members of your office and
21 officials in the election assistance
22 commission.

23 (Packard Exhibit 49 was marked for

1 identification.)

2 Q. We don't need to go through the e-mail
3 chain in depth, but can you tell me what
4 happened that led to a change in the
5 NVRA -- well, in the state-specific
6 instructions on the national mail-in voter
7 registration form for Alabama?

8 MS. MESSICK: I don't think you
9 finished that sentence.

10 Q. Let's start over. Can you tell me what
11 happened that led to a change in the state-
12 specific instructions on the national
13 mail-in voter registration form for Alabama
14 with respect to felony disqualification?

15 A. Okay. Well, it's indicated in the e-mail
16 correspondence there was a
17 correspondence -- there was correspondence
18 to Clay Helms from the EAC, Cliff Tatum,
19 general counsel for the EAC, where he was
20 asking how the new Felony Voter
21 Disqualification Act will change our
22 existing instructions. And I was
23 instructed by David Brewer, our chief of

1 staff, to communicate with Cliff Tatum to
2 let them know what our changes would be to
3 the instructions on the federal form
4 related to that act.

5 Q. And did you draft the new instructions?

6 A. It was -- I made the initial draft and then
7 it was approved through a team process
8 within the office.

9 Q. And who was on that team?

10 A. Brent Beal, David Brewer, Clay Helms, John
11 Bennett.

12 Q. And were there several drafts considered?

13 A. Yes, there were multiple drafts.

14 Q. Yeah. So I'm going to mark as Exhibits 50,
15 51, and 52 what I believe to be three
16 drafts of potential instructions.

17 MS. MESSICK: And I'm going to ask
18 that you make it very clear to me which is
19 which as you hand them to me.

20 MS. LANG: Yes.

21 (Packard Exhibits 50, 51, and 52
22 were marked for identification.

23 MS. LANG: Here is Exhibit 50.

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1 MS. MESSICK: Thank you.

2 MS. LANG: Here is Exhibit 51.

3 MS. MESSICK: Thank you.

4 MS. LANG: And here -- oh, 52.

5 That's 52, the one I just handed you.

6 Q. (By Ms. Lang) So did you prepare all three
7 of these drafts?

8 A. Yes, I did.

9 MS. MESSICK: This isn't right. 51
10 appears to be page 2 of something.

11 MS. LANG: Return 51 to me.

12 Q. So did you prepare these three drafts?

13 MS. MESSICK: Can you give him a
14 paper clip? And let's make sure 51 is --
15 I thought I gave you four.

16 MS. LANG: Of?

17 MS. MESSICK: I thought there were
18 four of these files.

19 MS. LANG: I have only seen three
20 drafts.

21 THE WITNESS: There were three
22 drafts. Do you have all three? Do you
23 have 50?

1 MS. MESSICK: I have the three
2 she's given us today, but my recollection
3 was that I had gotten four files from you,
4 so I'm just going to check that while you-
5 all continue.

6 Q. (By Ms. Lang) So did you draft at least
7 these three versions?

8 A. Yes.

9 Q. And why did you ultimately determine to use
10 Exhibit 50?

11 A. Well, it was -- it was the decision of the
12 team that it was more concise and pointed
13 people to the right information rather than
14 being a lengthy exposé on all the crimes.

15 Q. And why did your team decide that any
16 change at all was worth making?

17 MS. MESSICK: Object to the form.

18 A. Just so the voters would have notice of
19 what crimes were potentially disqualifying
20 for them.

21 Q. And do you know what event precipitated
22 you getting a -- Clay being contacted by
23 the Election Assistance Commission?

1 A. No, I don't know what precipitated that
2 unless it was -- I don't know if it was
3 based on some previous e-mail
4 correspondence he had.

5 Q. Yeah. I'll represent to you that Secretary
6 Merrill sent a letter in April of 2018
7 advising the Election Assistance Commission
8 of the new law. Do you have any reason
9 why -- do you know of any reason why
10 Secretary Merrill waited until April of
11 2018 to advise the Election Assistance
12 Commission of that new law?

13 A. No.

14 MS. MESSICK: Object to the form.

15 A. No, I don't.

16 MS. MESSICK: Also, I want to be
17 clear for the record, we did give you four
18 documents. There was the one that includes
19 the codes, the one that doesn't include the
20 codes, and I thought that there were two
21 versions with the URL list -- or with the
22 URL reference, so I don't know if this is
23 the first or second version of that --

1 MS. LANG: Thank you.

2 MS. MESSICK: -- as Exhibit 50.

3 MS. LANG: Okay.

4 Q. (By Ms. Lang) You ultimately decided to use
5 some version that only directs voters to a
6 URL?

7 A. Right.

8 MS. MESSICK: Object to the form.

9 Q. Do you know when that change was actually
10 made to the form?

11 A. It's in the -- well, it would have been
12 late -- late August, early September.

13 Q. Thank you.

14 A. Because we did get confirmation back from
15 the EAC that they made the change.

16 Q. Do you think it would be helpful to make a
17 similar change to the state voter
18 registration form?

19 A. Yes, personally I think it would be helpful
20 to make a similar change to the state form.

21 Q. And is that currently under consideration
22 within your office?

23 A. Yes, that is.

1 Q. Has any decision been made about whether or
2 not to make that change?

3 A. We've been drafting mockups of that, but no
4 final decision has been made as to what
5 form that will take.

6 Q. How many different drafts have been made
7 up?

8 A. To my knowledge, only one.

9 Q. And did you make that draft?

10 A. No.

11 Q. Who made -- who put that draft together?

12 A. John Bennett.

13 Q. Okay. And do you know when your office
14 began considering making a change to the
15 state form?

16 A. I don't remember exactly.

17 Q. Can you give me an approximate -- one
18 month, two months, six months, a year?

19 A. I know my knowledge of it goes back to when
20 we made the change with the federal form
21 and we were talking about mirroring the
22 information onto the state form.

23 Q. Yeah.

1 A. But whether anything predates that, I'm not
2 aware.

3 Q. But you were aware last summer that
4 plaintiffs had asked you to make a change
5 to the form; is that correct?

6 A. Yes.

7 Q. Was there any followup to that discussion
8 at that time?

9 A. Not that I'm aware of.

10 Q. What's changed?

11 A. All -- I can only tell you my role in it,
12 and that was they asked me to come up with
13 the language for the national form so that
14 we could respond to the EAC.

15 Q. And who asked you to do that?

16 A. David Brewer, our chief of staff.

17 Q. Okay. I'm going to mark as Exhibit 53 the
18 draft I have of potential change in the
19 state form.

20 (Packard Exhibit 53 was marked for
21 identification.)

22 Q. And my understanding is that the change is
23 in Box 12; is that right?

1 A. Right. That is correct.

2 Q. And can you read aloud the text in that
3 box?

4 A. The Code of Alabama designates a number of
5 felony convictions that caused a voter to
6 be considered ineligible to vote unless
7 they have met certain parameters outlined
8 in information provided by the Alabama
9 State Department of Corrections. For a
10 full list of these crimes, please visit
11 alabamavotes.gov/felony or text MT to
12 ALVOTE, and then it gives the number for
13 the texting.

14 Q. Do you know if that text capacity is
15 already working or is that a proposal for
16 the future?

17 A. I'm not aware that it's -- it's activated
18 yet.

19 Q. So if I text MT to this number now, there's
20 no reason to believe that would work now?

21 A. I'm not aware of it being active now.

22 Q. Okay. Do you know of a timeline in which
23 your office is planning on making a

1 decision about how to change the state
2 form?

3 MS. MESSICK: Object to the form.

4 A. I do not know the timeline on that.

5 Q. Has anyone discussed a need to change the
6 form before the voter registration deadline
7 for this upcoming election cycle?

8 A. Let me think on that. You talking about
9 for the November election?

10 Q. I am.

11 A. There's been -- there's been some general
12 comments made that we wouldn't be able to
13 implement it that fast because of the
14 printing.

15 Q. Would it be possible to make a change on
16 the website immediately?

17 MS. MESSICK: I'm going to object
18 to the form.

19 A. Well, we have to promulgate -- our forms
20 are promulgated under administrative rule,
21 and so they would have to be promulgated
22 that way before they could go live on the
23 website, so that's -- my understanding of

1 the timeline under the Administrative
2 Procedures Act is there wouldn't be enough
3 time to do this before the election even on
4 just the website.

5 Q. If it was possible to promulgate this on an
6 emergency basis that would allow a faster
7 time rate, putting aside any Administrative
8 Procedures Act issues, do you think it
9 would be helpful to voters to have this
10 information available to them during this
11 registration cycle?

12 MS. MESSICK: Object to the form.

13 A. Well --

14 MS. MESSICK: This information in
15 Box 12? I just want to be sure that's what
16 you're asking.

17 MS. LANG: That is what I'm asking.

18 MS. MESSICK: Okay.

19 A. Well, this is draft language --

20 Q. Yeah.

21 A. -- that needs to be modified.

22 Q. I was going to ask that question as well.

23 MS. MESSICK: Well, I thought you

1 might be avoiding it with this witness with
2 the time, so that's why I just wanted to be
3 sure, so go ahead.

4 A. Yeah. So there would need to be work on
5 that.

6 Q. Yeah. So let me ask you that question. Do
7 you think this is written in a way that's
8 accessible, that the average person would
9 understand?

10 A. I think that this is language that's a
11 little more complicated than it needs to
12 be.

13 Q. Okay. Do you think that having information
14 available on the form that explained to
15 people that there was a list of
16 disqualifying felonies and that list was
17 limited would be helpful to voters during
18 this registration cycle if it was possible?

19 A. Personally, I think that would be helpful.

20 Q. Thank you. The current language on the
21 state base -- the current language about
22 disqualifying felony conviction, is that
23 the same across all voter registration

1 forms created by the Alabama Secretary of
2 State?

3 A. Yes, it should be.

4 Q. And so that --

5 A. It's all based on the same template.

6 Q. And that would include the agency?

7 A. Yes.

8 Q. Have there ever been any instructions given
9 to the agencies that do voter registration
10 work? And by that I mean the agencies
11 under the National Voter Registration Act
12 that must provide voter registration
13 services. Has there any -- has any
14 training been given to those people with
15 respect to HB 282 and what crimes are
16 disqualifying?

17 A. Not to my knowledge.

18 Q. Has any guidance been sent to those
19 agencies regarding HB 282 and what are
20 disqualifying crimes?

21 A. Not to my knowledge.

22 Q. I'd like to mark Exhibit 54.

23 (Packard Exhibit 54 was marked for

1 identification.)

2 Q. And this is an e-mail to you from a
3 Ms. Beverly Nix on March 27, 2018, or
4 rather her -- the original e-mail came from
5 Jerri Oliver from the department of --
6 Franklin County Department of Human
7 Resources March 26th, and then it reached
8 you through Beverly Nix, who's the
9 assistant director of the food assistance
10 division. And what Jerri Oliver says is
11 that he wanted to know what was meant by
12 disqualifying felony on the voter
13 registration form. And he indicates
14 that -- or she -- that she had assumed that
15 all felony convictions were disqualifying
16 before, but now she realizes that the
17 phrase "disqualifying felony" might mean a
18 more limited set. And your advice was that
19 those individuals would need to go to the
20 board of registrars in order to determine
21 if the crime was one involving moral
22 turpitude; is that correct?
23 A. Right. That's correct.

1 Q. So would that make it such that people with
2 felony convictions weren't able to use the
3 voter registration services of NVRA
4 agencies the same way that everyone else
5 could because they would need to go to the
6 board of registrars to determine their
7 eligibility?

8 MS. MESSICK: Object to the form.

9 A. They could still avail themselves of it.
10 And like we've stated before, we don't feel
11 they're prejudiced if they go ahead and
12 fill out a form and then turn it in.

13 Q. But would they -- would some people feel
14 uncomfortable signing a form under penalty
15 of perjury to something that they could not
16 know if it was true or not?

17 MS. MESSICK: Object to the form.

18 A. That's -- that is correct, to go back to
19 our previous discussion.

20 Q. And no -- and these agencies were not
21 trained to explain to people that they
22 could go ahead and turn in the form
23 notwithstanding --

1 MS. MESSICK: Object to the form.

2 Q. -- their felony conviction?

3 A. Right. That's correct.

4 MS. MESSICK: Object to the form.

5 Q. That's all I have on that.

6 (Packard Exhibit 55 was marked for
7 identification.)

8 Q. I'm going to mark Exhibit 55. This
9 document is normally much larger because I
10 think it's in poster form, but this is a
11 voting rights poster created by the board
12 of pardons and paroles. Are you familiar
13 with it?

14 A. Yes, I am.

15 Q. And my understanding is that the Office of
16 the Alabama Secretary of State worked with
17 the board of pardons and paroles to create
18 this updated poster that includes the list
19 of disqualifying convictions.

20 A. Right. That is correct.

21 Q. But I'd like to ask you this question.

22 Well, strike that.

23 First, were you involved in helping to

1 draft this document?

2 A. I was involved in the review process.

3 Q. I'd like you to imagine for a moment

4 bringing fresh eyes to this poster.

5 Imagine that you do not know that Alabama

6 has a law that says that people with

7 convictions involving moral turpitude are

8 ineligible to vote and that people without

9 convictions involving moral turpitude are

10 not ineligible to vote and can vote.

11 Looking at this poster, is there anywhere

12 on this poster that explains that first

13 fact, that would be the crimes on the right

14 are disqualifying and all other crimes are

15 not?

16 A. No. That information is not there.

17 Q. Do you think it would be helpful if that

18 information was presented on this poster?

19 A. It probably would be helpful.

20 Q. My understanding is that this poster is

21 used by the secretary of state's office at

22 photo ID events; is that correct?

23 A. Yes. We have hand-distributed them at some

1 photo ID events.

2 Q. Does your office have any other kind of
3 public education materials about voting
4 rights for people with convictions other
5 than this poster?

6 A. This is the only one I'm familiar with.

7 Q. Were you involved in the drafting of the
8 2018 voter guide?

9 A. Yes.

10 Q. Did anybody suggest including information
11 about HB 282 in the 2018 voter guide?

12 A. I don't recall anyone recommending that.

13 Q. And do you know if that information was
14 included?

15 A. I don't believe it was, to the best of my
16 recollection.

17 Q. Okay. Can you explain to me the system for
18 removing voter registrants based on a
19 felony conviction? And I'm not concerned
20 at this point with, you know, whether a
21 crime is disqualifying or not -- we've been
22 over that -- but, rather, kind of how are
23 registrars told to go through the process

1 systemically of removing people that they
2 become aware have a felony conviction?

3 MS. MESSICK: Object to the form.

4 A. Do you mean the actual process of removing
5 them in the computer system --

6 Q. Well --

7 A. -- and notifying the voter of that
8 determination?

9 Q. Yes. Is there a regular kind of weekly or
10 monthly or biweekly process by which the
11 registrars get new notices and then go
12 through them, determine who is
13 disqualified, and remove those people?

14 A. They should be. The information that's
15 provided to them through what's called
16 Agency Central is provided to them on a
17 regular basis, and I believe it is weekly
18 or biweekly or every two weeks, something
19 like that. And they're advised that they
20 need to work those batches when they come
21 in and not let them get stale.

22 Q. Yeah. So they get batches?

23 A. Right.

1 Q. And then they remove that batch?

2 A. Right.

3 Q. And then they get a new batch?

4 A. Right.

5 Q. And then they remove that batch?

6 A. Right. They process the batch, because
7 they may end up deciding that the person
8 doesn't need to be removed.

9 Q. They remove when appropriate?

10 A. Right.

11 Q. I understand. And when do they have to
12 stop doing that before an election?

13 A. We generally advise them to discontinue
14 work on that 45 days before an election.

15 Q. Okay. Does your office provide any
16 guidance to people who are arrested after
17 the absentee ballot deadline but before
18 election day about how they can vote?

19 A. Only if they somehow communicate with us
20 for that information.

21 Q. That guidance isn't publicly available?

22 A. I'm sorry?

23 Q. That guidance isn't publicly available in

1 some format?

2 A. No, ma'am.

3 MS. MESSICK: Did you say the
4 question was somebody was arrested after
5 the deadline for securing an absentee
6 ballot?

7 MS. LANG: Yes.

8 MS. MESSICK: Okay. Then I object
9 to the question and the follow-up question.

10 MS. LANG: Can you provide the
11 basis?

12 MS. MESSICK: If you've missed the
13 absentee ballot deadline, you've missed the
14 absentee ballot deadline. I'm not aware of
15 any special provision that would let you
16 vote --

17 MS. LANG: Well, that's --

18 MS. MESSICK: -- because you were
19 thereafter arrested, and I think --

20 MS. LANG: Right.

21 MS. MESSICK: -- that you presumed
22 that there was something and --

23 MS. LANG: I did not.

1 MS. MESSICK: -- you're asking him
2 how they notify people about that, so --

3 MS. LANG: I will clarify, then.

4 MS. MESSICK: Thank you.

5 Q. (By Ms. Lang) Does your office provide any
6 way for people who are arrested after the
7 absentee ballot deadline to nonetheless
8 receive an absentee ballot and vote?

9 A. No, because state law doesn't provide an
10 option in that case for someone to vote by
11 absentee ballot.

12 Q. So those people, even though they have the
13 right to vote, will have no opportunity to
14 do so; is that correct?

15 A. That is correct.

16 MS. MESSICK: Object to the form.

17 MS. LANG: Can you clarify?

18 MS. MESSICK: Those people might be
19 disqualified for all kinds of other reasons
20 and they don't have -- you said they have
21 the right to vote, but they don't, because
22 the only way they'd be able to vote at that
23 point is absentee and they missed the

1 deadline.

2 Q. (By Ms. Lang) If otherwise eligible voters
3 are planning to vote at their polling
4 location on election day and then they are
5 arrested after the absentee election
6 deadline, those people will not be
7 permitted to vote in the state of
8 Alabama -- is that correct? -- if they are
9 still incarcerated at the time of election
10 day?

11 A. That is correct.

12 Q. Do you have a system in place for ensuring
13 that incarcerated individuals understand
14 how to obtain an absentee ballot?

15 A. We don't have a program to educate them on
16 that.

17 Q. Have you had communications with the
18 department of corrections about that issue?

19 A. I'm not aware of communications with the
20 DOC about that.

21 Q. What would an eligible voter do if they
22 were incarcerated and could not afford the
23 postage to seek an absentee ballot?

1 A. I -- I have no knowledge on that.

2 MS. LANG: I don't have any further
3 questions.

4 MS. MESSICK: Okay. Well, by my
5 count, we've got only about 15 minutes, so
6 I'm going to follow up on a very limited
7 set of things.

8 EXAMINATION

9 BY MS. MESSICK:

10 Q. Mr. Packard, you discussed earlier with
11 Ms. Lang the board of registrars -- I'm
12 sorry -- the board of pardon and paroles'
13 position on possession of drugs. Do you
14 remember that coming up earlier today?

15 A. Yes.

16 Q. Is it your understanding -- what is your
17 understanding of what the board of pardons
18 and paroles' position was on the possession
19 of drugs prior to the 2017 list of moral
20 turpitude crimes?

21 A. My understanding is that if someone simply
22 possessed drugs but it was not with an
23 intent to distribute, then that was not a

1 moral turpitude crime. But if they possess
2 the drugs with the intent to distribute,
3 then that was a moral turpitude crime.

4 Q. And when you discussed with Ms. Lang the
5 fact that that position had been clarified
6 down the road, was that with respect to a
7 difference about simple possession versus
8 intent to distribute or with respect to the
9 drugs at issue?

10 MS. LANG: Object to the form.

11 Q. And I'd ask you to answer the question.

12 A. And clarify as to which drugs were covered.

13 Q. Right. What happened was that the board of
14 pardons and paroles took the position that
15 it didn't matter what drugs were being --

16 A. Right.

17 Q. -- possessed.

18 A. Correct.

19 Q. But the board of pardons and paroles, to
20 your knowledge, continued to understand
21 that there was a line between simple
22 possession for personal use and possession
23 with the intent to distribute?

1 A. Yes, that's correct.

2 Q. Do you know where that line came from?

3 A. I do not know where that line came from.

4 Q. Ms. Lang showed you on her computer a May
5 2018 snapshot that you testified that you
6 thought you had prepared in this case. Do
7 you remember that?

8 A. Yes.

9 Q. And do you remember that that snapshot
10 included a field that concerned date of
11 registration?

12 A. Yes.

13 Q. And do you remember that that snapshot
14 contained a field that concerned date of
15 status change?

16 A. Yes.

17 Q. If a voter applied to register to vote
18 three times in 2018, what date is supposed
19 to be on the date of registration field?

20 A. It's supposed to maintain whatever the
21 original date of registration was.

22 Q. Do you --

23 A. Not updated -- not updated based on new

1 registrations or updates.

2 Q. And who is "they"?

3 A. Boards of registrars.

4 Q. If a voter had multiple status changes,
5 what date is supposed to be the date of
6 status-change field?

7 A. If the status has actually been changed,
8 then it should be the date of the last
9 change.

10 Q. So if there were multiple changes, only the
11 last change would show?

12 A. That's my understanding.

13 Q. If I was in a car accident on the way to
14 the polls and was hurried off in an
15 ambulance to the hospital, would I have an
16 ability to vote by absentee ballot if I --
17 be it from my hospital room or if I got out
18 of the hospital later that day and was
19 confined to my bed at home?

20 MS. LANG: Object to the form.

21 A. Before noon or after noon?

22 Q. By the time I'm released, it's after noon.

23 A. Then no.

1 Q. Are there other circumstances that might
2 occur that would prevent somebody from --
3 who planned to vote at the polls from being
4 able to vote at the polls?

5 A. Yes.

6 Q. I want to refer you back to Exhibit 48,
7 which was an e-mail from Shannon Curtis
8 concerning an error that had been made in
9 some files that were sent apparently in
10 late -- the second half of 2007. Do you
11 have that e-mail in front of you?

12 A. In 2007?

13 Q. So the e-mail is dated 2008.

14 A. Okay.

15 Q. But she's referring to an error that
16 occurred in late 2007.

17 A. Okay. Yes, yes. I see that.

18 Q. First of all, can you tell from this e-mail
19 whether it was actually sent to the boards
20 of registrars?

21 A. No, you can't tell from the e-mail.

22 Q. Who is the -- who is listed in the "from"
23 field?

1 A. Shannon Curtis.

2 Q. And who is listed in the "to" field?

3 A. Shannon Curtis.

4 Q. Do you know whether this e-mail was ever
5 sent to the boards of registrars?

6 A. I have no knowledge of that.

7 Q. At the time that Ms. Curtis -- well, on
8 January 7, 2008, the date of this e-mail,
9 was -- who had control of the voter
10 registration system? Was it the secretary
11 of state's office or the special master's
12 office?

13 A. I believe at this time it was still under
14 the special master.

15 Q. And the special master was appointed by the
16 federal court?

17 A. Yes.

18 Q. And that special master was Governor Riley?

19 A. Yes.

20 Q. January 7th of 2008, who was secretary of
21 state?

22 A. Beth Chapman.

23 Q. Okay. Ms. Lang has asked you a lot of

1 questions today about things that have
2 happened as recently as last month and as
3 long ago as 2007. Do you work on other
4 things at the secretary of state's office
5 besides felon voting?

6 A. Yes, I do.

7 Q. Do you actually work on a great many other
8 things besides felon voting?

9 A. Yes, I do.

10 Q. Is it fair to say that felon voting takes
11 up a very small percentage of your time?

12 A. Yes.

13 Q. The other matters that you work on, are
14 they all related to elections?

15 A. Yes.

16 Q. Are you aware of the United States
17 government suing the State of Alabama for
18 an alleged UOCAVA violation on at least one
19 occasion since 2007?

20 A. Yes.

21 Q. Are you aware of the State of Alabama
22 implementing -- or passing and implementing
23 and being sued about a photo ID law?

1 A. Yes.

2 Q. Are there a lot of aspects to voter
3 registration besides felon voting?

4 A. Yes.

5 MS. MESSICK: I'd like to take a
6 quick break to consult with my co-counsel
7 about whether I have additional questions.

8 MS. LANG: Okay.

9 (Short recess.)

10 MS. MESSICK: I just want to say
11 that I misspoke in my haste at the end.
12 These gentlemen, of course, are not
13 co-counsel. They're representatives here
14 today of the secretary of state's office.
15 They have not entered an appearance in the
16 case. And given the absence of time to
17 cover other things, I'm going to stop
18 there.

19 MS. LANG: Okay. I will have, at
20 most, two minutes of questions.

21 MS. MESSICK: Okay.

22 EXAMINATION

23 BY MS. LANG:

1 Q. Ms. Messick asked you about the e-mail from
2 Shannon Curtis that was marked Exhibit
3 forty- --

4 MS. MESSICK: 48, I believe.

5 Q. -- eight.

6 A. Okay.

7 Q. This document was produced to plaintiffs
8 from the secretary of state's office, so
9 that would mean that somebody in the
10 secretary of state's office received that
11 e-mail; is that correct?

12 A. Right. That would be correct.

13 Q. And, you know, it's common for there to be
14 a BCC line in e-mails where it doesn't show
15 who all the recipients of e-mail are; is
16 that also right?

17 MS. MESSICK: Object to the form.

18 A. That is correct.

19 Q. Okay. And this e-mail is addressed to
20 Alabama registrars; is that correct?

21 A. Yes, it is.

22 Q. All right. Ms. Messick asked you about
23 what might happen if someone were to get in

1 a car accident or have some other
2 circumstance arise in their life that might
3 cause them to miss voting on election day.
4 Can you think of another circumstance other
5 than incarceration in which it is the state
6 that is responsible -- I'll rephrase.

7 Can you think of any other circumstance
8 that would result in someone missing voting
9 on election day because the state will not
10 allow them to go to a polling place?

11 A. Not offhand, no, I can't think of one.

12 MS. LANG: I don't have any further
13 questions.

14 MS. MESSICK: I've got one
15 question.

16 EXAMINATION

17 BY MS. MESSICK:

18 Q. Do you remember -- well, I have one line of
19 questions. Do you remember Super Storm
20 Sandy?

21 A. Yes.

22 Q. And do you remember there being an issue
23 with national guard being called up?

1 A. Yes.

2 Q. And do you remember any details of that?

3 A. Yes. Provisions were made for them to be
4 able to vote by absentee ballot because
5 they weren't here locally to be able to
6 vote in person.

7 Q. Were provisions made for those people
8 responding to Super Storm Sandy or were
9 those provisions made for the next time it
10 happens? Basically, was Super Storm Sandy
11 a learning experience?

12 A. I don't remember the chronology on that.

13 Q. Okay. And do you remember specifically
14 what the provisions are if there would
15 still -- ultimately my question is going to
16 be isn't there going to be a deadline? If
17 the guard got called up the day of the
18 election, there's no provision we can make,
19 is there?

20 A. Right. That is correct.

21 MS. MESSICK: No further questions.

22 MS. LANG: No further questions.

23 (The deposition of Edward Packard

EDWARD PACKARD 9/19/2018

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1 concluded at 7:19 p.m. on
2 September 19, 2018.)
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1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA)
3)
4 ELMORE COUNTY)

5
6 I do hereby certify that the above and
7 foregoing transcript was taken down by me
8 in stenotype, and the questions and answers
9 thereto were transcribed by means of
10 computer-aided transcription, and that the
11 foregoing represents a true and correct
12 transcript of the testimony given by said
13 witness.

14 I further certify that I am neither of
15 counsel, nor any relation to the parties to
16 the action, nor am I anywise interested in
17 the result of said cause.

18 I further certify that I am duly
19 licensed by the Alabama Board of Court
20 Reporting as a Certified Court Reporter as
21 evidenced by the ACCR number following my
22 name below.

23
Bridgette Mitchell
Certified Court Reporter and
Commissioner for the State of
Alabama at Large
ACCR No. 231 - Expires 9/30/19
MY COMMISSION EXPIRES 12/15/21

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EXHIBIT 4

9. Signature. To register in Alabama you must:

- be a citizen of the United States
- be a resident of Alabama and your county at the time of registration
- be 18 years old before any election
- not have been convicted of a felony involving moral turpitude* (or have had your civil and political rights restored)

*List of Moral Turpitude Felonies:

Murder; manslaughter; assault; kidnapping in the first or second degree; rape in the first or second degree; sodomy in the first or second degree; sexual torture; sexual abuse in the first or second degree; sexual abuse of a child less than 12 years old; enticing a child to enter a vehicle for immoral purposes; facilitating solicitation of unlawful sexual conduct with a child; electronic solicitation of a child; facilitating the on-line solicitation of a child; traveling to meet a child for an unlawful sex act; facilitating the travel of a child for an unlawful sex act; human trafficking in the first or second degree; terrorism; soliciting or providing support for an act of terrorism; hindering prosecution of terrorism; endangering the water supply; possession, manufacture, transport, or distribution of a destructive device or bacteriological or biological weapon; selling, furnishing, giving away, delivering, or distribution of a destructive device, a bacteriological weapon, or biological weapon to a person who is less than 21 years of age; possess, manufacture, transport, or distribution of a detonator, explosive, poison, or hoax device; possession or distribution of a hoax device represented as a destructive device or weapon; attempt commit an explosives or destructive device or bacteriological or biological weapons crime; conspiracy to commit an explosives or destructive device or bacteriological or biological weapons crime; hindrance or obstruction during detection, disarming, or destruction of a destructive device or weapon; possession or distribution of a destructive device or weapon intended to cause injury or destruction; treason; dissemination of public display of obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts; possession and possession with intent to disseminate obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts; parents or guardians permitting children to engage in production of obscene matter; production of obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts; distribution, possession with intent to distribute, production of obscene material, or offer or agreement to distribute or produce; trafficking in cannabis, cocaine, or other illegal drugs or trafficking in amphetamine or methamphetamine; bigamy; incest; torture or other willful maltreatment of a child under the age of 18; aggravated child abuse; prohibited acts in the offer, sale, or purchase of securities; burglary in the first or second degree; theft of property in the first or second degree; theft of lost property in the first or second degree; theft of trademarks or trade secrets; robbery in the first, second or third degree; forgery in the first or second degree; or any crime as defined by the laws of the United States or by the laws of another state, territory, country, or other jurisdiction, which, if committed in this state, would constitute one of the offenses on this list.

- not currently be declared mentally incompetent through a competency hearing
- swear or affirm to "support and defend the Constitution of the U.S. and the State of Alabama and further disavow any belief or affiliation with any group which advocates the overthrow of the governments of the U.S. or the State of Alabama by unlawful means and that the information contained herein is true, so help me God"

EXHIBIT 52

ED PACKARD

9/19/2018

D150348

9. Signature. To register in Alabama you must:

- be a citizen of the United States
- be a resident of Alabama and your county at the time of registration
- be 18 years old before any election
- not have been convicted of a felony involving moral turpitude* (or have had your civil and political rights restored)

*List of Moral Turpitude Felonies:

- Murder – Section 13A-5-40 (A) 1-19
- Murder (Non-Capital, Reckless, Felony Murder, etc.) – Section 13A-6-2
- Manslaughter – Section 13A-6-3 Exceptions: 13A-6-20 (A) (5) and 13A-6-21
- Assault 1st Degree – Section 13A-6-20
- Assault 2nd Degree – Section 13A-6-21
- Kidnapping 1st Degree – Section 13A-6-43
- Kidnapping 2nd Degree – Section 13A-6-44
- Rape 1st Degree – Section 13A-6-61
- Rape 2nd Degree – Section 13A-6-62
- Sodomy 1st Degree – Section 13A-6-63
- Sodomy 2nd Degree – Section 13A-6-64
- Sexual Torture – Section 13A-6-65.1
- Sexual Abuse 1st Degree – Section 13A-6-66
- Sexual Abuse 2nd Degree – Section 13A-6-67
- Sexual Abuse of a child less than 12 years old – Section 13A-6-69.1
- Enticing a child to enter a vehicle, house, etc. for immoral purposes – Section 13A-6-69
- Facilitating solicitation of unlawful sexual conduct with a child – Section 13A-6-121
- Electronic solicitation of a child – Section 13A-6-122
- Facilitating the on-line solicitation of a child – Section 13A-6-123
- Traveling to meet a child for an unlawful sex act – Section 13A-6-124
- Facilitating the travel of a child for an unlawful sex act – Section 13A-6-125
- Human Trafficking 1st Degree – Section 13A-6-152
- Human Trafficking 2nd Degree – Section 13A-6-153
- Terrorism – Section 13A-10-152
- Soliciting or providing support for an act of terrorism – Section 13A-10-153
- Hindering prosecution of terrorism – Section 13A-10-154
- Endangering the water supply – Section 13A-10-171
- Possession, manufacture, transport, or distribution of a destructive device or bacteriological weapon, or biological weapon – Section 13A-10-193
- Selling, furnishing, giving away, delivering, or distribution of a destructive device, a bacteriological weapon, or biological weapon to a person who is less than 21 years of age – Section 13A-10-194
- Possession, manufacture, transport, or distribution of a detonator, explosive, poison, or hoax device – Section 13A-10-195
- Possession or distribution of a hoax device represented as a destructive device or weapon –
- Section 13A-10-196 (c)
- Attempt to commit an explosives or destructive device or bacteriological or biological weapons crime – Section 13A-10-197
- Conspiracy to commit an explosives or destructive device or bacteriological or biological weapons crime – Section 13A-10-198

EXHIBIT 51

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D150346

- Hindrance or obstruction during detection, disarming, or destruction of a destructive device or weapon – Section 13A-10-199
 - Possession or distribution of a destructive device or weapon intended to cause injury or destruction – Section 13A-10-200
 - Treason – Section 13A-11-2
 - Dissemination or public display of obscene matter containing visual depiction or persons under 17 years of age involved in obscene acts – Section 13A-12-191
 - Possession and possession with intent to disseminate obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts – Section 13A-12-192
 - Parents or guardians permitting children to engage in production of obscene matter – Section 13A-12-196
 - Production of obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts – Section 13A-12-197
 - Distribution, possession with intent to distribute, production of obscene material, or offer or agreement to distribute or produce – Section 13A-12-200.2
 - Trafficking in cannabis, cocaine, or other illegal drugs or trafficking in amphetamine and methamphetamine – Section 13A-12-231
 - Bigamy – Section 13A-13-1
 - Incest – Section 13A-13-3
 - Torture or other willful maltreatment of a child under the age of 18 – Section 26-15-3
 - Aggravated child abuse – Section 26-15-3.1
 - Prohibited acts in the offer, sale, or purchase of securities – Section 8-6-17
 - Burglary 1st Degree – Section 13A-7-5
 - Burglary 2nd Degree – 13A-7-6
 - Theft of Property 1st Degree – Section 13A-8-3
 - Theft of Property 2nd Degree – Section 13A-8-4
 - Theft of Lost Property 1st Degree – Section 13A-8-7
 - Theft of Lost Property 2nd Degree – Section 13A-8-8
 - Theft of trademarks or trade secrets – Section 13A-8-10.4
 - Robbery 1st Degree – Section 13A-8-41
 - Robbery 2nd Degree – Section 13A-8-42
 - Robbery 3rd Degree – Section 13A-8-43
 - Forgery 1st Degree – Section 13A-9-2
 - Forgery 2nd Degree – Section 13A-9-3
 - Any crime as defined by the laws of the United States or by the laws of another state, territory, country, or other jurisdiction, which, if committed in this state, would constitute one of the offenses on this list.
- not currently be declared mentally incompetent through a competency hearing
 - swear or affirm to “support and defend the Constitution of the U.S. and the State of Alabama and further disavow any belief or affiliation with any group which advocates the overthrow of the governments of the U.S. or the State of Alabama by unlawful means and that the information contained herein is true, so help me God”

9. Signature. To register in Alabama you must:

- be a citizen of the United States
- be a resident of Alabama and your county at the time of registration
- be 18 years old before any election
- not have been convicted of a felony involving moral turpitude (or have had your civil and political rights restored). The list of moral turpitude felonies is available on the Secretary of State web site at: sos.alabama.gov/mtfelonies
- not currently be declared mentally incompetent through a competency hearing
- swear or affirm to "support and defend the Constitution of the U.S. and the State of Alabama and further disavow any belief or affiliation with any group which advocates the overthrow of the governments of the U.S. or the State of Alabama by unlawful means and that the information contained herein is true, so help me God"

EXHIBIT 50

ED PACKARD

9/19/2018

EXHIBIT 5

State Instructions — ALABAMA**Form Updated:** 08-31-2018

Registration Deadline — Voter registration is closed during the fourteen days preceding an election. Applications must be postmarked or delivered by the fifteenth day prior to the election.

6. ID Number. If you have one, you must provide your Alabama driver's license number or Alabama nondriver identification card number. If you do not have an Alabama driver's license or nondriver identification card, you must provide the last 4 digits of your Social Security number. If you have not been issued any of these numbers you must write the word "NONE" and a unique identifier will be provided for you.

7. Choice of Party. Optional: You do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

8. Race or Ethnic Group. You are required to fill in this box; however, your application will not be rejected if you fail to do so. See the list of choices under the Application Instructions for Box 8 (on page 2).

9. Signature. To register in Alabama you must:

- be a citizen of the United States
- be a resident of Alabama and your county at the time of registration
- be 18 years old before any election
- not have been convicted of a felony involving moral turpitude (or have had your civil and political rights restored). The list of moral turpitude felonies is available on the Secretary of State web site at:

sos.alabama.gov/mtfelonies (<http://sos.alabama.gov/mtfelonies>)

- not currently be declared mentally incompetent through a competency hearing
- swear or affirm to "support and defend the Constitution of the U.S. and the State of Alabama and further disavow any belief or affiliation with any group which advocates the overthrow of the governments of the U.S. or the State of Alabama by unlawful means and that the information contained herein is true, so help me God"

Mailing Address:

Office of the Secretary of State

P.O. Box 5616

Montgomery, AL 36103-5616

EXHIBIT 6

Draft

State of Alabama Mail-In Voter Registration Form

NVRA-2
2017.06.13

FOR USE BY U.S. CITIZENS ONLY ♦ FILL IN ALL BOXES ON THIS FORM ♦ PLEASE USE INK ♦ PRINT LEGIBLY

You can use this form to:

- ▶ Register to vote in Alabama.
- ▶ Update your voter registration record, if you have changed your name or address.

Deadline for submitting application:

Voter registration and updating of voter records is closed during the 14 days prior to each election in Alabama.

To register to vote in the State of Alabama, you must:

- ▶ Be a citizen of the United States.
- ▶ Reside in Alabama.
- ▶ Be at least 18 years of age on or before election day.
- ▶ Not have been convicted of a disqualifying felony, or if you have been convicted, you must have had your civil rights restored.
- ▶ Not have been declared "mentally incompetent" by a court.

ID requested: You may send with this application a copy of valid photo identification. You will be required to present valid photo identification when you vote at your polling place or by absentee ballot, unless exempted by law. For more information, go to www.AlabamaVoterID.com or call the Elections Division: 800-274-8683.

① Are you a citizen of the United States of America? ☐ Yes ☐ No
 ② Will you be 18 years of age on or before election day? ☐ Yes ☐ No

ATTENTION! If you answer "No" to either of these questions, do not complete this application.

③ Print Your Name:

First Middle Last Suffix

Alabama Driver's
License or Non-
Driver ID Number:

STATE	NUMBER

④ Print Maiden Name / Former Name (if reporting a change of name)

First Middle Last Suffix

IF YOU HAVE NO ALABAMA DRIVER'S LICENSE
OR ALABAMA NON-DRIVER ID NUMBERLast four digits of Social
Security number:

☐ I do not have an Alabama driver's license or Alabama non-driver ID or a Social Security number.

⑤ Date of Birth (mm/dd/yyyy) ⑥ Primary Telephone ⑦ Email Address

()

Addresses	Current	Address where you live: (Do not use post office box)	Home Address (include apartment or other unit number if applicable)	City	State	ZIP
	Old	Address where you receive your mail:	Mailing Address, if different from Home Address	City	State	ZIP
		Address where you were last registered to vote: (Do not use post office box)	Former Address	City	County	State

⑨ Sex (check one)

☐ Female ☐ Male

⑩ Race (check one)

☐ White ☐ Black
☐ Asian ☐ American Indian
☐ Hispanic ☐ Other

⑪ Place of Birth

City County State Country

⑫ Disqualifying Felony Convictions

The Code of Alabama designates a number of felony convictions that cause a voter to be considered ineligible to vote unless they have met certain parameters outlined in information provided by the Alabama State Department of Corrections. For a full list of these crimes please visit alabamavotes.gov/felony or text MT to AL.VOTE (2586837).

⑬ Did you receive assistance?

If you are unable to sign your name, who helped you fill out this application? Give name, address, and phone number (phone number is optional).

REGISTRARS USE ONLY

DATE ☐ APPROVED ☐ DENIED

(mm/dd/yyyy)

County Pct

City Pct

Board member

Board member

Board member

Voter Declaration - Read and Sign Under Penalty of Perjury

▶ I am a U.S. citizen ▶ I live in the State of Alabama ▶ I will be at least 18 years of age on or before election day ▶ I am not barred from voting by reason of a disqualifying felony conviction ▶ I have not been judged "mentally incompetent" in a court of law	I solemnly swear or affirm to support and defend the constitution of the United States and the State of Alabama and further disavow any belief or affiliation with any group which advocates the overthrow of the governments of the United States or the State of Alabama by unlawful means and that the information contained herein is true, so help me God.

YOUR SIGNATURE

DATE (mm/dd/yyyy)

If you falsely sign this statement, you can be convicted and imprisoned for up to five years.

The decision to register to vote is yours. If you decide to register to vote, the office at which you are submitting this application will remain confidential and will be used only for voter registration purposes. If you decline to register to vote, your decision will remain confidential and will be used only for voter registration purposes.



John H. Merrill - Secretary of State Questions? Call the Elections Division at 1-800-274-8683 or 334-242-7210

Draft

EXHIBIT 53

ED PACKARD

9/19/2018

D150682

Draft

To mail, put the address of your county Board of Registrars on the lines below.

AUTAUGA COUNTY
PO Box 680036
Prattville 36068-0036
(334) 358-6740

BALDWIN COUNTY
PO Box 1507
Bay Minette 36507-1507
(251) 937-0305

BARBOUR COUNTY
303 E Broad St Rm 108
Eufaula 36027
(334) 687-1585

BIBB COUNTY
8 Court Square W
Centerville 35042
(205) 926-3102

BLOUNT COUNTY
220 Second Ave E Rm B-5
Oneonta 35121
(205) 625-4182

BULLOCK COUNTY
217 Prairie St N Rm 101
Union Springs 36089-1659
(334) 738-5372

BUTLER COUNTY
700 Court Sq Rm 8
Greenville 36037-2308
(334) 382-5685
(334) 382-6829

CALHOUN COUNTY
1702 Noble St Ste 113
Anniston 36201-3889
(256) 241-2930

CHAMBERS COUNTY
18 Alabama Ave E Rm 101
Lafayette 36862
(334) 864-4313

CHEROKEE COUNTY
260 Cedar Bluff Rd Ste 106
Centre 35960-1403
(256) 927-5336

CHILTON COUNTY
PO Box 640
Clanton 35046-0640
(205) 755-3820

CHOCTAW COUNTY
117 S Mulberry Ave Ste 1
Butler 36904-0132
(205) 459-2531

CLARKE COUNTY
PO Box 10
Grove Hill 36451-0010
(251) 275-3062

CLAY COUNTY
PO Box 446
Ashland 36251-0446
(256) 354-7815

CLEBURNE COUNTY
120 Vickery St Rm 103
Heflin 36264-1166
(256) 463-5299

COFFEE COUNTY
6 County Complex
New Brockton 36351-9791
(334) 894-5347

COLBERT COUNTY
201 N Main St
Tuscumbia 35674-2095
(256) 386-8535

CONECUH COUNTY
111 Court St Rm 102
Evergreen 36401
(251) 578-7024

COOSA COUNTY
PO Box 218
Rockford 35136-0218
(256) 377-2418

COVINGTON COUNTY
228 Hillcrest Dr
Andalusia 36420-2570
(334) 428-2685

CRENSHAW COUNTY
PO Box 328
Luverne 36049-0328
(334) 335-6668 x251
(334) 335-6568 x253

CULLMAN COUNTY
500 2nd Ave SW Rm 112
Cullman 35055-4135
(256) 775-4750

DALE COUNTY
PO Box 1101
Ozark 36361-1101
(334) 774-9038

DALLAS COUNTY
PO Box 987
Selma 36702-0987
(334) 874-2534

DEKALB COUNTY
111 Grand Ave SW Ste 105
Fort Payne 35967
(256) 845-8598

ELMORE COUNTY
100 E Commerce St Rm 205
Wetumpka 36092-2746
(334) 567-1150

ESCAMBIA COUNTY
PO Box 557
Brewton 36427-0557
(251) 867-0243
(251) 867-0312

ETOWAH COUNTY
800 Forrest Ave Ste 206
Gadsden 35901-3651
(256) 549-5384

FAYETTE COUNTY
103 First Ave NW Ste 4
Fayette 35555-2627
(205) 932-5432

FRANKLIN COUNTY
PO Box 70
Russellville 35653-0070
(256) 332-8849

GENEVA COUNTY
PO Box 430
Geneva 36340-0430
(334) 684-5655

GREENE COUNTY
PO Box 224
Eutaw 35462-0224
(205) 372-9669

HALE COUNTY
905-D Centerville St
Greensboro 36744-1536
(334) 624-4672

HENRY COUNTY
101 Court Square Ste K
Abbeville 36310-2135
(334) 585-6080

HOUSTON COUNTY
PO Box 6406
Dothan 36302-6406
(334) 677-4776

JACKSON COUNTY
102 E Laurel St, Box 5
Scottsboro 35768
(256) 574-9339
(256) 574-9335

JEFFERSON COUNTY
716 R. Arrington Jr Blvd N
Ste A-410
Birmingham 35203-0115
(205) 325-5550

LAMAR COUNTY
PO Box 338
Vernon 35592-0338
(205) 695-6348
(205) 695-9187

LAUDERDALE COUNTY
PO Box 1059
Florence 35630-1059
(256) 760-5840
(256) 760-5841

LAWRENCE COUNTY
14451 Market Street Ste 340
Moulton 35650
(256) 974-2557
(256) 974-2461

LEE COUNTY
PO Box 1530
Opelika 36803-1530
(334) 737-3635

LIMESTONE COUNTY
100 Clinton St S Ste E
Athens 35611-2665
(256) 233-6405

LOWNDES COUNTY
PO Box 311
Haynesville 36040-0311
(334) 548-2389
(334) 548-2080

MACON COUNTY
101 E Rosa Parks Ave Ste 100
Tuskegee 36083-1735
(334) 724-2617

MADISON COUNTY
819 Cook Avenue NW
Ste 150
Huntsville 35801-5983
(256) 532-3510

MARENGO COUNTY
PO Box 480715
Linden 36748-0715
(334) 295-2249
(334) 295-2086

MARION COUNTY
PO Box 964
Hamilton 35570-0964
(205) 921-3625

MARSHALL COUNTY
424 Blount Ave Ste 106A
Guntersville 35976-1122
(256) 571-7740

MOBILE COUNTY
151 Government St Ste 165
Mobile 36602
(251) 374-8586
(251) 374-8587

MONROE COUNTY
PO Box 972
Monroeville 36461-0972
(251) 743-4107 x141

MONTGOMERY COUNTY
PO Box 1667
Montgomery 36102-1667
(334) 832-1215

MORGAN COUNTY
PO Box 668
Decatur 35602-0668
(256) 351-4660
(256) 351-4663

PERRY COUNTY
PO Box 555
Marion 36756-0555
(334) 683-2218 x5

PICKENS COUNTY
PO Box 173
Carrollton 35447-0173
(205) 367-2074

PIKE COUNTY
120 W Church St Rm B2
Troy 36081
(334) 566-1757
(334) 566-6449

RANDOLPH COUNTY
PO Box 215
Wedowee 36278-0215
(256) 357-2138

RUSSELL COUNTY
PO Box 700
Phenix City 36868-0700
(334) 298-1443
(334) 448-1508

SHELBY COUNTY
PO Box 1642
Columbiana 35051-1642
(205) 669-3913

ST. CLAIR COUNTY
1815 Cogswell Ave Ste B-25
Pell City 35125
(205) 338-3954

SUMTER COUNTY
PO Box 783
Livingston 35470-0783
(205) 652-7902

TALLADEGA COUNTY
PO Box 5170
Talladega 35161-6170
(256) 761-2131
(256) 761-2132

TALLAPOOSA COUNTY
125 N Broadnax St Rm 20
Dadeville 36853-1371
(256) 825-1081

TUSCALOOSA COUNTY
2501 7th St Ste 200
Tuscaloosa 35401-1801
(205) 349-3870 x415

WALKER COUNTY
PO Box 1472
Jasper 35502-1472
(205) 384-7279

WASHINGTON COUNTY
PO Box 1224
Chattam 36518-1224
(251) 847-3255

WILCOX COUNTY
PO Box 661
Camden 36726-0661
(334) 682-9753

WINSTON COUNTY
PO Box 459
Double Springs 35553-0459
(205) 489-3966

SECRETARY OF STATE
ELECTIONS DIVISION
PO Box 5616
Montgomery 36103
(334) 242-7210
(800) 274-8683

YOUR ADDRESS:

PUT
FIRST
CLASS
STAMP
HERE

MAIL TO:

BOARD OF REGISTRARS

Draft

D150683

EXHIBIT 7

State of Alabama Mail-In Voter Registration FormNVRA-2
2019.03.20

FOR USE BY U.S. CITIZENS ONLY ♦ FILL IN ALL BOXES ON THIS FORM ♦ PLEASE USE INK ♦ PRINT LEGIBLY

You can use this form to:

- ▶ Register to vote in Alabama.
- ▶ Update your voter registration record, if you have changed your name or address.

Deadline for submitting application:

Voter registration and updating of voter records is closed during the 14 days prior to each election in Alabama.

To register to vote in the State of Alabama, you must:

- ▶ Be a citizen of the United States.
- ▶ Live in Alabama.
- ▶ Be at least 18 years of age on or before election day.
- ▶ Not have been convicted of a disqualifying felony, or if you have been convicted, you must have had your civil rights restored.
- ▶ Not have been declared "mentally incompetent" by a court.

ID requested: You may send with this application a copy of valid photo identification. You will be required to present valid photo identification when you vote at your polling place or by absentee ballot, unless exempted by law. For more information, go to www.AlabamaVoterID.com or call the Elections Division: 800-274-8683.

① Are you a citizen of the United States of America?	☐ Yes ☐ No	ATTENTION! If you answer "No" to either of these questions, do not complete this application.
② Will you be 18 years of age on or before election day?	☐ Yes ☐ No	

③ Print Your Name: First _____ Middle _____ Last _____ Suffix _____	Alabama Driver's License or Non-Driver ID Number: STATE NUMBER
④ Print Maiden Name / Former Name (if reporting a change of name) First _____ Middle _____ Last _____ Suffix _____	IF YOU HAVE NO ALABAMA DRIVER'S LICENSE OR ALABAMA NON-DRIVER ID NUMBER Last four digits of Social Security number:
⑤ Date of Birth (mm/dd/yyyy) ⑥ Primary Telephone ⑦ Email Address 	
☐ I do not have an Alabama driver's license or Alabama non-driver ID or a Social Security number.	

Addresses	Current	⑧ Address where you live: (Do not use post office box)	Home Address (include apartment or other unit number if applicable)	City	State	ZIP
	Old	Address where you receive your mail:	Mailing Address, if different from Home Address	City	State	ZIP
	Address where you were last registered to vote: (Do not use post office box)	Former Address	City	County	State	ZIP

⑨ Sex (check one) ☐ Female ☐ Male	⑪ Place of Birth City _____ County _____ State _____ Country _____
⑩ Race (check one) ☐ White ☐ Black ☐ Asian ☐ American Indian ☐ Hispanic ☐ Other	⑫ Map / Diagram If your home has no street number or name, please draw a map of where your house is located. Please include roads and landmarks.
	⑬ Did you receive assistance? If you are unable to sign your name, who helped you fill out this application? Give name, address, and phone number (phone number is optional).

REGISTRARS USE ONLY	
DATE ☐ APPROVED ☐ DENIED	
(mm/dd/yyyy)	
County Pct _____	
City Pct _____	
Board member _____	
Board member _____	
Board member _____	

Voter Declaration - Read and Sign Under Penalty of Perjury	
▶ I am a U.S. citizen ▶ I live in the State of Alabama ▶ I will be at least 18 years of age on or before election day ▶ I am not barred from voting by reason of a disqualifying felony conviction (The list of disqualifying felonies is available on the Secretary of State's web site at: sos.alabama.gov/mtfelonies) ▶ I have not been judged "mentally incompetent" in a court of law	I solemnly swear or affirm to support and defend the constitution of the United States and the State of Alabama and further disavow any belief or affiliation with any group which advocates the overthrow of the governments of the United States or the State of Alabama by unlawful means and that the information contained herein is true, so help me God.
YOUR SIGNATURE _____	DATE (mm/dd/yyyy) _____
If you falsely sign this statement, you can be convicted and imprisoned for up to five years.	

The decision to register to vote is yours. If you decide to register to vote, the office at which you are submitting this application will remain confidential and will be used only for voter registration purposes. If you decline to register to vote, your decision will remain confidential and will be used only for voter registration purposes.



John H. Merrill - Secretary of State Questions? Call the Elections Division at 1-800-274-8683 or 334-242-7210

AUTAUGA COUNTY PO Box 680036 Prattville 36068-0036 (334) 358-6740	CHILTON COUNTY PO Box 640 Clanton 35046-0640 (205) 755-3820	CRENSHAW COUNTY PO Box 328 Luverne 36049-0328 (334) 335-6568 x251 (334) 335-6568 x252 (334) 335-6568 x253	FRANKLIN COUNTY PO Box 70 Russellville 35653-0070 (256) 332-8849	LAWRENCE COUNTY 14451 Market Street Ste 340 Moulton 35650 (256) 974-2460 (256) 974-2461	MONROE COUNTY PO Box 972 Monroeville 36461-0972 (251) 743-4107 x141	SUMTER COUNTY PO Box 783 Livingston 35470-0783 (205) 652-7902
BALDWIN COUNTY PO Box 1507 Bay Minette 36507-1507 (251) 937-0305	CHOCTAW COUNTY 117 S Mulberry Ave Ste 1 Butler 36904-0132 (205) 459-2531	CULLMAN COUNTY 500 2nd Ave SW Rm 112 Cullman 35055-4135 (256) 775-4750 (256) 755-4697	GENEVA COUNTY PO Box 430 Geneva 36340-0430 (334) 684-5655	LEE COUNTY PO Box 1530 Opelika 36803-1530 (334) 737-3635	MONTGOMERY COUNTY PO Box 1667 Montgomery 36102-1667 (334) 832-1215	TALLADEGA COUNTY PO Box 6170 Talladega 35161-6170 (256) 761-2131 (256) 761-2132
BARBOUR COUNTY 303 E Broad St Rm 108 Eufaula 36027 (334) 687-1585	CLARKE COUNTY PO Box 10 Grove Hill 36451-0010 (251) 275-3062	DALE COUNTY PO Box 1101 Ozark 36361-1101 (334) 774-9038	GREENE COUNTY PO Box 224 Decatur 35462-0224 (205) 372-9669	LIMESTONE COUNTY 100 Clinton St S Ste E Athens 35611-2665 (256) 233-6405	MORGAN COUNTY PO Box 668 Decatur 35602-0668 (256) 351-4660 (256) 351-4663	TALLAPOOSA COUNTY 125 N Broadnax St Rm 20 Dadeville 36853-1371 (256) 825-1081
BIBB COUNTY 8 Court Square W Centreville 35042 (205) 926-3102	CLAY COUNTY PO Box 446 Ashland 36251-0446 (256) 354-7815	DALLAS COUNTY PO Box 987 Selma 36702-0987 (334) 874-2534	HALE COUNTY 905-D Centerville St Greensboro 36744-1536 (334) 624-4672	LOWNDES COUNTY PO Box 311 Hayneville 36040-0311 (334) 548-2389 (334) 548-2080	PERRY COUNTY PO Box 555 Marion 36756-0555 (334) 683-2218 x5	TUSCALOOSA COUNTY 2501 7th St Ste 200 Tuscaloosa 35401-1801 (205) 349-3870 x415
BLOUNT COUNTY 220 Second Ave E Rm B-5 Oneonta 35121 (205) 625-4182	CLEBURNE COUNTY 120 Vickery St Rm 103 Heflin 36264-1166 (256) 463-5299	DEKALB COUNTY 111 Grand Ave SW Ste 105 Fort Payne 35967 (256) 845-8598	HENRY COUNTY 101 Court Square Ste K Abbeville 36310-2135 (334) 585-6080	MACON COUNTY 101 E Rosa Parks Ave Ste 100 Tuskegee 36083-1735 (334) 724-2617	PICKENS COUNTY PO Box 173 Carrollton 35447-0173 (205) 367-2074	WALKER COUNTY PO Box 1472 Jasper 35502-1472 (205) 384-7279
BULLOCK COUNTY 217 Prairie St N Rm 101 Union Springs 36089-1659 (334) 738-5372	COFFEE COUNTY 6 County Complex New Brockton 36351-9791 (334) 894-5347	ELMORE COUNTY 100 E Commerce St Rm 205 Wetumpka 36092-2746 (334) 567-1150 (334) 567-1197	HOUSTON COUNTY PO Box 6406 Dothan 36302-6406 (334) 677-4776	MADISON COUNTY 819 Cook Avenue NW Ste 150 Huntsville 35801-5983 (256) 532-3510	PIKE COUNTY 120 W Church St Rm B2 Troy 36081-1913 (334) 566-1757 (334) 566-6449	WASHINGTON COUNTY PO Box 1224 Chatom 36518-1224 (251) 847-3255
BUTLER COUNTY 700 Court Sq Rm 8 Greenville 36037-2308 (334) 382-5685 (334) 382-6829	COLBERT COUNTY 201 N Main St Tuscumbia 35674-2095 (256) 386-8535	ESCAMBIA COUNTY PO Box 557 Brewton 36427-0557 (251) 867-0243 (251) 867-0312	JEFFERSON COUNTY 716 R Arrington Jr Blvd N Ste A-410 Birmingham 35203-0115 (205) 325-5550	MARENGO COUNTY PO Box 480715 Linden 36748-0715 (334) 295-2249 (334) 295-2086	RANDOLPH COUNTY PO Box 215 Wedowee 36278-0215 (256) 357-2138	WILCOX COUNTY PO Box 661 Camden 36726-0661 (334) 682-9753
CALHOUN COUNTY 1702 Noble St Ste 113 Anniston 36201-3889 (256) 241-2930	CONECUH COUNTY 111 Court St Rm 102 Evergreen 36401 (251) 578-7024	ETOWAH COUNTY 800 Forrest Ave Ste 206 Gadsden 35901-3651 (256) 549-5384	LAMAR COUNTY PO Box 338 Vernon 35592-0338 (205) 695-6348 (205) 695-9197	MARION COUNTY PO Box 964 Hamilton 35570-0964 (205) 921-3625	RUSSELL COUNTY PO Box 700 Phenix City 36868-0700 (334) 298-1443 (334) 448-1508	WINSTON COUNTY PO Box 459 Double Springs 35553-0459 (205) 489-3966
CHAMBERS COUNTY 18 Alabama Ave E Rm 101 Lafayette 36862 (334) 864-4313	COOSA COUNTY PO Box 218 Rockford 35136-0218 (256) 377-2418	FAYETTE COUNTY 103 First Ave NW Ste 4 Fayette 35555-2627 (205) 932-5432	LAUDERDALE COUNTY PO Box 1059 Florence 35631-1059 (256) 760-5840 (256) 760-5841	MARSHALL COUNTY 424 Blount Ave Ste 106A Guntersville 35976-1122 (256) 571-7740	SHELBY COUNTY PO Box 1642 Columbiana 35051-1642 (205) 669-3913	SECRETARY OF STATE ELECTIONS DIVISION PO Box 5616 Montgomery 36103 (334) 242-7210 (800) 274-8683
CHEROKEE COUNTY 260 Cedar Bluff Rd Ste 106 Centre 35960-1403 (256) 927-5336	COVINGTON COUNTY 228 Hillcrest Dr Andalusia 36420-2570 (334) 428-2685			MOBILE COUNTY 151 Government St Ste 165 Mobile 36602 (251) 574-8586 (251) 574-8587	ST. CLAIR COUNTY 1815 Cogswell Ave Ste B-25 Pell City 35125 (205) 338-3954	

YOUR ADDRESS:

PUT
FIRST
CLASS
STAMP
HERE

MAIL TO:

BOARD OF REGISTRARS

EXHIBIT 8

Exhibit 12

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

TREVA THOMPSON, *et al.*,

Plaintiffs,

V.

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

Defendants.

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

DECLARATION OF DR. DANIEL A. SMITH

I. Background and Qualifications

1. My name is Daniel A. Smith. I am Professor and Chair of Political Science at the University of Florida (“UF”). I received my Ph.D. in Political Science from the University of Wisconsin-Madison in 1994. I served as the Director of UF’s Political Campaigning Program (2007-2011), which offers a Master of Arts degree in political science with a special emphasis on political campaigning and practical politics. I am also President of ElectionSmith, Inc., a consulting firm based in Gainesville, FL, specializing in empirical research on electoral processes in the American states.

2. For more than two decades, I have conducted research on electoral politics in the American states, focusing on the effect of political institutions on political

behavior. I am widely regarded as a leading expert on voting and elections in the American states. I have written extensively on electoral processes in the American states, including the effects of felony disenfranchisement laws, and have published more than 80 articles and book chapters, including many that have appeared in the discipline's top peer-reviewed journals. My research has been cited over 3,000 times by fellow scholars. I have published two academic books on electoral politics in the American states and I am the coauthor of a leading college textbook, *State and Local Politics: Institutions and Reform*, which includes a discussion of state voting laws related to people convicted of a felony as well as various issues related to Alabama politics. In addition, I have taught an array of undergraduate and graduate courses focusing on American political institutions and political behavior in the American states.

3. I have testified before the U.S. Senate and state legislatures on voting and election issues. A former Senior Fulbright Scholar, I have received numerous grants and awards for my work on campaigns and elections, including from the U.S. Department of State and the American Political Science Association (“APSA”), and am past-President of the State Politics and Policy Section of the APSA. In 2010, I was the lead author of the “Direct Democracy Scholars” *amicus* brief in *Doe v. Reed*, which was successfully argued by the Attorney General of the

state of Washington before the U.S. Supreme Court, and my scholarship has been cited in an opinion of the U.S. Supreme Court.

4. I have served as an expert in election-related litigation in several states, hired by both plaintiffs and defendants (including serving as an expert for the State of Florida and the State of California defending their election laws). Most recently, I provided written reports and testified at trial in *Jones v. Ron DeSantis, etc. et al.*, (Consolidated Case No. 4:19-cv-300, N.D. Fla.), where the court has cited my analysis of individuals convicted of a felony in Florida who are eligible, but for legal financial obligations, to have their voting rights restored, and *American Civil Rights Union v. Snipes* (Case No. 16-cv-61474, S.D. Fla.), where the court accepted my opinion in whole; and provided written reports for successful plaintiffs in *Fair Fight Action v. Crittenden* (Case No. 1:18-cv-05391, N.D. Ga.), *DNC Services Corporation et al. v. Lee et al.* (Case No. 4:18-cv-520 (RH/MJF, N.D. Fla.), *MOVE Texas Civic Fund, et. al. v. Whitley, et. al.* (Case No. 3:19-cv-00041, S.D. Tex.), for defendants in *Judicial Watch, Inc., Election Integrity Project California, Inc., et al. v. Dean C. Logan, et al.* (Case No. 2:17-cv-08948-R-SK, C.D. Cal.), for successful plaintiffs in *Rivera v. Detzner* (Case No. 1:18-cv-00152, N.D. Fla.), for plaintiffs in *Ohio A. Philip Randolph Institute, et al. v. Secretary of State, Jon Husted* (Case No. 2:16-cv-00303, S.D. Ohio), for successful plaintiff-intervenors in *Florida Democratic Party v. Scott* (Case No. 4:16-cv-

00626, N.D. Fla.), for successful plaintiffs in *Florida Democratic Party v. Detzner* (Case No. 4:16-cv-00607, N.D. Fla.), and for successful plaintiffs in *League of Women Voters of Florida v. Detzner* (Case No. 4:18-cv-00251, N.D. Fla.).

5. My curriculum vitae (including a list of cases in which I have served as an expert witness) is provided in Appendix A. I am being paid \$350 an hour for work in this case, plus any related expenses.

II. Data Utilized and Summary of Opinions Offered

6. I was retained by counsel for the Plaintiffs to analyze several data files and opine on issues relevant to the litigation, including but not limited to the discriminatory impact of Alabama's felony disenfranchisement scheme over time and the burden imposed by Alabama's requirement that legal financial obligations be satisfied before voting rights are restored to people with felony convictions.

7. As a preview of my findings, my analysis of these numerous data files provides consistent evidence of the discriminatory impact of Alabama's felony disenfranchisement scheme for poor and Black individuals residing in Alabama, both pre- and post-implementation of H.B. 282 (on August 1, 2017). My analysis reveals a consistent pattern across Alabama's 67 counties that Black individuals—who disproportionately have less household income and are more likely to live in poverty in Alabama compared to Black households and individuals nationally, as well as compared to White households and individuals residing in Alabama—are

disproportionately more likely to be convicted of, or plead guilty to, a felony that disqualifies them from exercising their right to vote because the felony falls under the classification of “moral turpitude.” This pattern existed at the time Alabama implemented H.B. 282, and it has remained true for new felony convictions after the implementation of H.B. 282. I find similar patterns regarding the decisions about what crimes of moral turpitude should be included (and excluded) that were made by Alabama Secretary of State John Merrill’s “Voter Disenfranchisement and Restoration of Voting Rights Exploratory Committee” in December 2015: that is, Black individuals are disproportionately more likely to have had a felony conviction for a crime of “moral turpitude” compared to White individuals, even when controlling for the disproportionate rate of felony convictions generally in the Black community. Finally, regardless of race, the prevalence of individuals with significant amounts of outstanding LFOs, combined with the lower economic status of individuals with felony convictions in Alabama, serve as a large barrier to voting rights restoration for Alabamians.

8. In formulating my opinions in this report, I use standard sources in political science analyses and I draw on data provided to me by counsel, as well as publicly available data downloaded from the United States Census Bureau. In my report I offer both individual-level and aggregate-level (county) analyses. My analysis draws on the following data files provided to me by counsel:

- a. “ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1/1/1983 THRU 5/1/2019,” a Microsoft Excel data file on felony convictions in Alabama furnished by the Alabama Office of Courts (AOC) dated July 14, 2019 that contains 696,583 rows;
- b. D200069, a Microsoft Excel file provided by the Board of Pardons and Paroles in July 2019 that is a result of a merge conducted by the Board and contains 2,618 rows from April 1, 2018 through June 25, 2019. This file can be appended to D005349, a Microsoft Excel file produced by the Board of Pardons and Paroles in May 2018 that contains 22,365 rows of data;¹
- c. “Disqualifying Key,” a data file provided by counsel detailing which felony offenses under H.B. 282 constitute the 46 disqualifying felonies (with 121 discrete crimes) under which voting rights are lost due to “moral turpitude” or not;

¹ According to a letter from Misty S. Fairbanks Messick, Assistant Attorney General, to Danielle Lang at the Campaign Legal Center, dated July 3, 2019, D005349 is the product of data from D005351 (pardon and CERV applications) that the Board of Pardons and Paroles merged with race/address/gender data “from a separate docket file” maintained by the Administrative Office of the Courts, that includes applicants from 2008 through May 2018. D00069 is the result of a similar merge conducted by the Board of Pardons and Paroles that includes applicants from April 1, 2018 through June 25, 2019. It is my understanding that earlier denied applications are overwritten in both databases. Merging on unique Alabama institutional serial (“AIS”) numbers, there are 416 rows in D005349 (corresponding to 410 unique individuals) who are also in D200069. The D005349 records for these individuals are dropped. In addition, all CERV applications that have a “vrstatus” field that includes “out of state” are dropped.

- d. “Alabama No CERV Conviction List,” a file provided by counsel detailing which felony offenses constitute the 15 disqualifying felonies (with 46 discrete crimes) under which voting rights would be lost due to “moral turpitude,” drawn from the “Voter Disenfranchisement and Restoration of Voting Rights Exploratory Committee” headed by Alabama Secretary of State John Merrill (hereafter referred to as the “Exploratory Committee”;
- e. D200071 (an update of D064502), a statewide Alabama voter list produced by the Secretary of State’s office in July 2019, containing 5,183,569 records of registered voters regardless of “registrant status.”
- f. By construction, D200071 includes all the data contained in D200070 (an update of D009606), a data file produced by the Secretary of State’s office in July 2019, of 82,554 registered voters whose registrant status at the time of the snapshot is “not eligible” or “disqualified”, and whose registration “status reason” is “Criminal Conviction/Moral Turpitude,” also referred to as “CRM”.²
- g. D064537 (an update of D014404), “Files on Disc,” a pdf created by the Secretary of State’s office with registrant status codes in the Alabama voter list;

² D200071 contains 82,555 individuals with a registrant reason of CRM, one more individual than contained in D200070, specifically an individual from Jefferson County who has a registrant reason status of CRM, but whose registrant status is listed as “active,” rather than “not eligible” or “disqualified.”

h. D200072 and D200073 (updates of D014404 and D064537, respectively), “Registrant reason codes,” contains codes of registrant status reason in the Alabama voter file;

i. “Exploratory Committee Notes 12.21.15,” a pdf provided by counsel with the Exploratory Committee Agenda from its December 21, 2015 meeting, and related materials.

9. In addition, my analysis relies on publicly available data from the United States Census Bureau, specifically Table B19013A (White alone) and Table B19013B (Black (or African American) alone) median household income, drawn from the 2014-2018 *American Community Survey 5-Year Estimates* (ACS), as well as ACS 5-Year Estimates for Citizen Voting Age by Race and Ethnicity (White alone and Black (or African American) alone) for Alabama and its counties.

10. My analysis of the number of persons in Alabama with felony convictions excludes all individuals with an out-of-state or federal felony conviction. As such, my findings are biased *against* inflating the number of persons with felony convictions who might be eligible to have their voting rights restored under H.B. 282.

III. Financial Barriers for People with Felony Convictions

11. An analysis of the literature on individuals who have been incarcerated for a felony conviction and income is clear: a high percentage of persons with a past

felony conviction will be unable to pay their outstanding LFOs. Why might this be? First, income is lower among people incarcerated, even before their incarceration.³ Second, after a conviction, there is a significant incarceration “wage penalty” estimated to range between 10–30% between those with a conviction and those without,⁴ with earnings decreases in the first year following release from incarceration.⁵ The unemployment rates among formerly incarcerated persons between the ages of 25-44 years old exceed 27%—over four times that of the general public (5.8%) and greater than the total U.S. unemployment rate during any historical period, including the Great Depression (24.9%).⁶ Homelessness rates are also higher for persons formerly incarcerated, as “2% of formerly incarcerated people were homeless in 2008 (the most recent year for which data are

³ See Prison Policy Initiative (2015), available at: <https://www.prisonpolicy.org/reports/income.html>, (“[I]ncarcerated people had a median annual income of \$19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages.”)

⁴ See, Sara Wakefield and Christopher Uggen, “Incarceration and Stratification,” *Annual Review of Sociology* 36 (2010): 387-406.

⁵ Adam Looney and Nicholas Turner, “Work and opportunity before and after incarceration,” The Brookings Institution, March 2018, available at: https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

⁶ See Prison Policy Initiative, “Out of Prison & Out of Work: Unemployment among formerly incarcerated people,” July 2018, available at: <https://www.prisonpolicy.org/reports/outofwork.html>.

available), a rate nearly 10 times higher than among the general public.”⁷ In short, it is clear that individuals face significant economic barriers as a result of a felony conviction. As such, formerly incarcerated individuals are usually unable to pay their assessed LFOs because they face significant economic barriers.

IV. Median Household Income and Levels of Poverty in Alabama

12. I begin my analysis by comparing Alabama’s overall poverty rate compared to the poverty rate for the entire nation, and also comparing Alabama’s median household income with the median household income for the entire nation.

13. The ratio of income to poverty for Alabama families, compared to families in the United States, is dramatic: Alabama has a disproportionate number of impoverished families as compared to families across the entire United States, and this gap has persisted for years. An “income-to-poverty ratio” can be used to measure the relative poverty level in a jurisdiction.⁸ Ratios below 100% of the poverty level indicate that those living in the jurisdiction fall below the official poverty level, with ratios below 50% of the poverty level (so, income is less than

⁷ Prison Policy Initiative, “Nowhere to Go: Homelessness among formerly incarcerated people,” August 2018, available at: <https://www.prisonpolicy.org/reports/housing.html>.

⁸ Alemayehu Bishaw and Brian Glassman, “Poverty: 2014-2015,” *American Community Survey Briefs*, U.S. Census Bureau, available at: <https://www.census.gov/content/dam/Census/library/publications/2016/acs/acsbr15-01.pdf>.

half the poverty threshold) indicating severe poverty, and ratios above 100% but below 125%, indicating near-poverty levels. According to the Census Bureau's *2014-2018 American Community Survey 5-Year Estimates*, specifically Table B17026, nearly 213,000 families in Alabama, or 17.3% of Alabama families, are classified by the Census Bureau as falling under the 1.25 income-to-poverty ratio; in contrast, 13.7% of the 78.7 million families in the United States fall under the 1.25 income-to-poverty ratio.⁹

14. Median household income is another useful indicator to reveal the financial challenges affecting Alabama households at a higher rate than households across the United States. The most recent available data indicates that median household income in Alabama is about \$14,000 less than national household income.

According to the Census Bureau's *2014-2018 American Community Survey 5-Year Estimates*, specifically Table B19019, the median yearly household income for a three-person household in Alabama was \$63,659 (with a margin of error of +/- \$926). In contrast, the median yearly household income for a three-person household in the United States was \$77,463 (with a margin of error of +/- \$275).¹⁰

⁹ Ibid.

¹⁰ Data from U.S. Census Bureau's "Median Household Income in the Past 12 Months (in 2018 Inflation-Adjusted Dollars) by Household Size" (Table B19019) available at:

V. Black and White Median Household Income and Levels of Poverty in Alabama

15. It is also possible to examine differences in Black median household income and White median household income within Alabama. Median household income in Alabama reveals a stark racial gap. According to the most recent available United States Census data, the median household income of Black individuals is substantially less than that of White individuals across all of Alabama's 67 counties. As such, it is possible to infer that there is a disproportionate burden imposed on Black individuals residing in Alabama by the state's requirement that legal financial obligations must be satisfied before the restoration of voting rights.

16. Within Alabama, there are stark differences in the median incomes of Black and White households. Again, I draw on the Census Bureau's *2014-2018 American Community Survey 5-Year Estimates*, specifically Tables B19013A and

https://data.census.gov/cedsci/table?q=United%20States&table=DP05&tid=ACSDT5Y2018.B19019&g=0100000US_0400000US01&lastDisplayedRow=29&vintage=2018&layer=state&cid=DP05_0001E&t=Income%20%28Households,%20Families,%20Individuals%29&d=ACS%205-Year%20Estimates%20Detailed%20Tables&y=2018.

Data from U.S. Census Bureau's "Ratio of Income to Poverty Level of Families in the Past 12 Months" (Table B17026) available at:

https://data.census.gov/cedsci/table?q=United%20States&table=DP05&tid=ACSDT5Y2018.B17026&g=0100000US_0400000US01&lastDisplayedRow=29&vintage=2018&layer=state&cid=DP05_0001E&t=Income%20%28Households,%20Families,%20Individuals%29%3AOfficial%20Poverty%20Measure&d=ACS%205-Year%20Estimates%20Detailed%20Tables&y=2018.

B19013B.¹¹ According to the Census Bureau’s latest 5-Year estimates, the median income for Black households in Alabama in 2018 inflation-adjusted dollars was \$32,188 (with a margin of error of +/- \$381). The median income for Black households nationally, for comparative purposes, was \$40,155 (with a +/- \$116 margin of error). In contrast, the median income for White households in Alabama according to the 2018 ACS was during the same period was \$55,265 (with a margin of error of +/- \$446), compared to \$63,917 (with a +/- margin of error of \$126) for White households, nationwide. In simplest terms, the median White household income in Alabama is nearly 72% higher than the median Black household income, which translates to more than \$21,000 annually in household income (2018 inflation-adjusted dollars).

¹¹ Data from U.S. Census Bureau’s “Median Household Income in the Past 12 Months (in 2018 inflation-adjusted dollars) (Black or African American Alone Householder)” (Table B19013B), *2014-2018 American Community Survey 5-Year Estimates*, available at: https://data.census.gov/cedsci/table?q=United%20States&table=DP05&tid=ACSDT5Y2018.B19013B&g=0100000US_0400000US01&lastDisplayedRow=29&vintage=2018&layer=state&cid=DP05_0001E&t=Income%20%28Households,%20Families,%20Individuals%29%3ARace%20and%20Ethnicity&d=ACS%205-Year%20Estimates%20Detailed%20Tables&y=2018, and the “Median Household Income in the Past 12 Months (in 2018 inflation-adjusted dollars) (White Alone Householder)” (Table B19013A), *2014-2018 American Community Survey 5-Year Estimates*, available at: https://data.census.gov/cedsci/table?q=United%20States&table=DP05&tid=ACSDT5Y2018.B19013A&g=0100000US_0400000US01&lastDisplayedRow=29&vintage=2018&layer=state&cid=DP05_0001E&t=Income%20%28Households,%20Families,%20Individuals%29%3ARace%20and%20Ethnicity&d=ACS%205-Year%20Estimates%20Detailed%20Tables&y=2018Black.

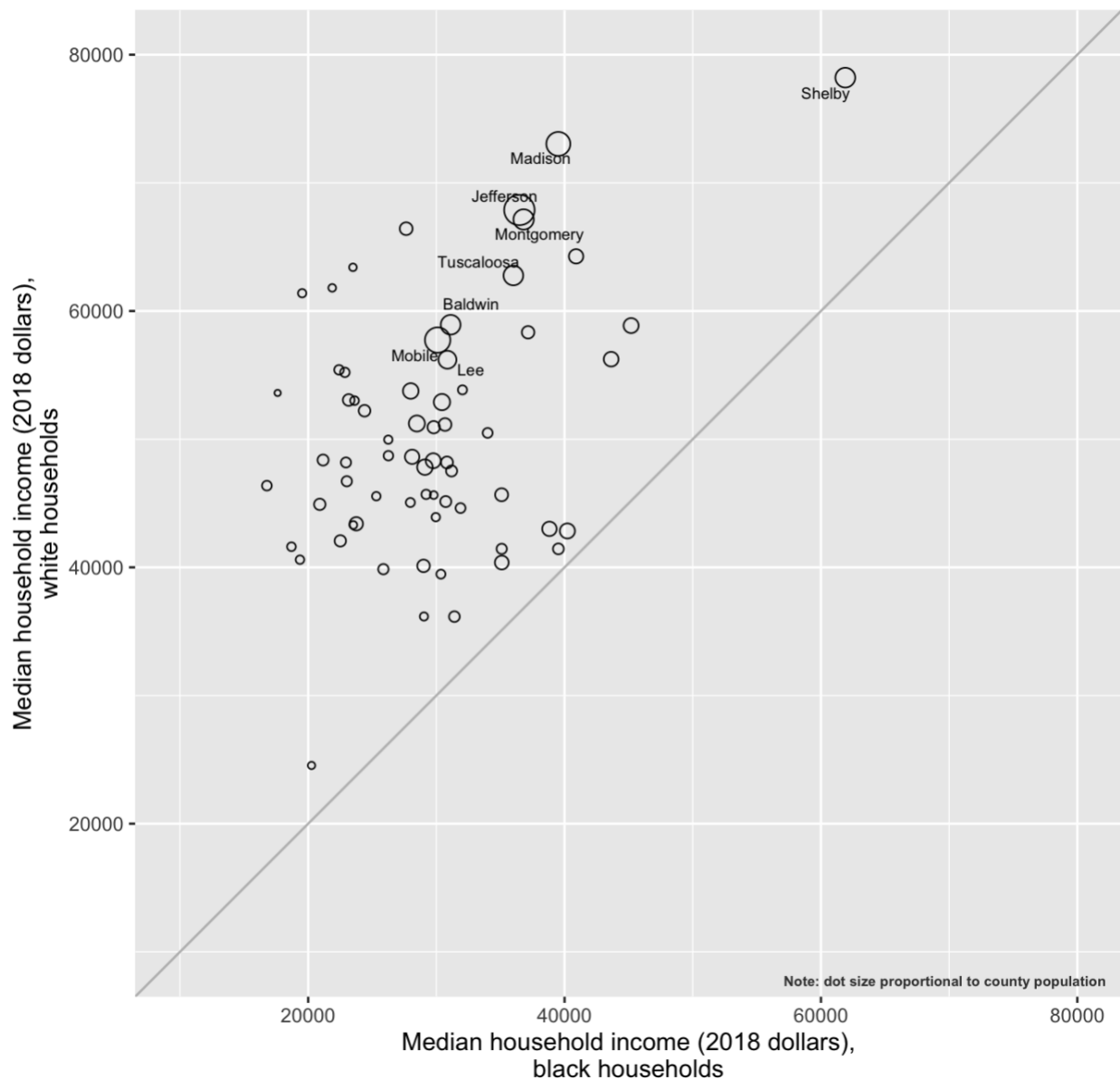
17. Figure 1 displays the disparity in Black and White median household incomes in Alabama. Figure 1 has a diagonal line fixed at a 45° angle. The X-axis (horizontal), labeled “Median household income (2018 dollars), Black households,” is the dollar amount (from \$0 to \$80,000) of Black household income; the Y-axis (vertical) is labeled “Median household income (2018 dollars), White households,” with the same range of dollar amounts. The diagonal 45° line allows us to easily visualize how across every one of Alabama’s 67 counties, Black household income is *lower* than White household income, according to the Census Bureau’s latest 2014-2018 5-Year estimates.¹² Every county circle is *above* the 45° line, indicating White household income is greater than Black household income.

18. In roughly one-third of Alabama’s counties, the difference in median household income for Black individuals and White individuals is greater than \$25,000 in 2018 inflation-adjusted dollars. For example, the Census Bureau estimates that the median income in Lee County for White households is \$56,201 (+/- \$2,852), whereas it is only \$30,862 (+/- \$2,608) for Black households, a difference of roughly \$25,000. Disparate White and Black household income is important when trying to understand the differential rates of individuals with a

¹² The 2014-2018 American Community Survey 5-Year Estimates does not provide estimates of Black median household income for Winston County.

felony conviction who are unable to pay outstanding debts to the Alabama court system.

Figure 1: Black and White Median Household Income (2018 dollars), by County



VI. Analysis of Alabama Administrative Office of Courts (AOC File) on “Felony Convictions and Guilty Pleas”

19. As mentioned previously, the data file, “ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1/1/1983 THRU 5/1/2019,” provided by the Alabama Administrative Office of Courts and which I refer to as the “AOC file”, has 696,583 rows and provides information about individuals convicted of a felony or who plead guilty to a felony. (For simplicity, throughout, I refer to both types of adjudications as a “felony conviction.”)

20. Because some rows contain multiple convictions, there are more convictions than rows in the AOC file. There are a total of 741,932 convictions in the AOC file. Each felony conviction includes a “court action” date, ranging from January 1, 1983 through May 1, 2019. Counsel informs me that not all of Alabama’s counties were using the state’s central database system until the early 1990s. As such, 97,356 observations with a court action date occurring prior to January 1, 1993, relying on the *DISPOSED_ON* date variable in the AOC file, are not included in the analysis. In addition, I did not include 37 of the 741,932 felony convictions from the analysis because they contain the word “copies” in the defendant “name” field, as it is indicative of an AOC data entry problem.

21. Unfortunately, the AOC file contains a limited amount of personal information about individuals in Alabama convicted of a felony. Although the

AOC file includes an individual's name, race, and the county¹³ in which the court action took place, the file has missing data in fields containing an individual's birthdate, an individual's six-digit AIS Number, and an individual's last four digits of a Social Security number.¹⁴ In addition, the file contains no information about an individual's gender or address. As such, because some individuals appear in the file more than once (i.e., an individual convicted of more than one felony may have more than one case number), and not all rows contain AIS numbers, it is not possible to definitively link all individuals in the file.¹⁵

¹³ In a few cases, the county field in the "ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1-1-1983 THRU 5-1-2019.xlsx" data file lists a city rather than a county. For Alex City, Bessemer, Eufaula, and Pell City, each case is grouped with its associated county. The exception is "Enterprise City," a municipality that straddles two counties (Coffee and Dale); all cases whose county field name is Enterprise City are excluded from any analyses that rely on Census data.

¹⁴ The "ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1-1-1983 THRU 5-1-2019.xlsx" data file has 696,583 rows. Of these rows, there are 8,849 rows with missing birth dates, 50,924 rows with missing last-four Social Security numbers, and 271,738 rows with missing AIS numbers. Because of these missing data issues, records within the AOC data file are linked with an exact match of name, birth date, and county.

¹⁵ Research by Marc Meredith and Michael Morse indicates that state corrections records maintained by the Alabama Department of Corrections include information about an individual's date of birth and that each individual in the state corrections system is provided a unique Alabama institutional serial (AIS) number. They write, "We also observe each applicant's full name, unique Alabama institutional serial (AIS) number, date of birth, date of application, and granted date if applicable." See Marc Meredith and Michael Morse, "Discretionary Disenfranchisement: The Case of Legal Financial Obligations," *The Journal of Legal Studies* 46 (2017): 309-338, p. 322.

22. Given the limited personal information contained in the AOC file that is complete (i.e., name, race, county), attempting to identify and then match unique individuals who might be listed multiple times within the data file—as well as linking unique individuals in the data file to other data files—may lead to “false positives (matches between files that in fact correspond to different individuals) and false negatives (failure to match records on two files that correspond to the same individual).”¹⁶ To mitigate these possible error types, a unique string of characters from the three available fields (name, race, and county) with near-complete data in the AOC file is concatenated into new field.¹⁷

23. Following these steps, even though the AOC file lacks a common identifier for many individuals, it is possible to distinguish the full name, race, and county of a person with a felony conviction. As constructed, grouping rows in the AOC file by the unique concatenated lower-case string of an individual’s name, race, and county creates an individual-level unit of analysis, yielding 363,511 unique individuals who have at least one felony conviction. Of these unique individuals with at least one felony conviction identified in the AOC file, 171,628 are Black

¹⁶ Stephen Ansolabehere and Eitan D. Hersh, “ADGN: An Algorithm for Record Linkage Using Address, Date of Birth, Gender, and Name,” *Statistics and Public Policy*, 4 (2017), 1–10. Available:

<https://doi.org/10.1080/2330443X.2017.1389620>. (Internal citation omitted).

¹⁷ For example, SMITH DANIEL A who resides in ALACHUA county and is WHITE would be concatenated into a string, “smithdanielaalachuaw”.

(47%) and 187,278 (52%) are White, and the remaining 4,605 (1%) are of other races/ethnicities. Thus, while Black individuals represent just over a quarter of the citizen voting age population, they represent nearly half of all felony convictions in Alabama. See Table 2, *infra*.

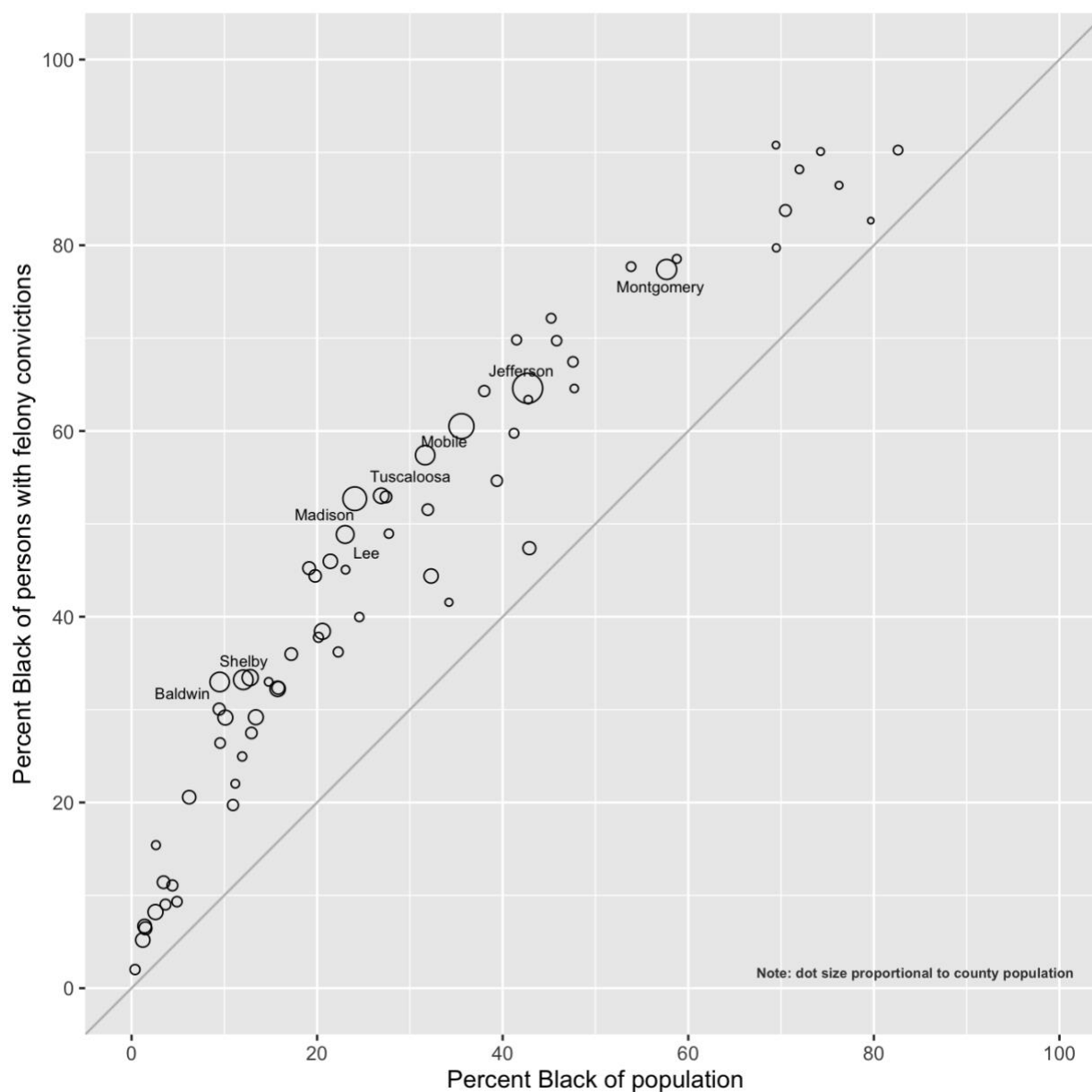
VII. Percent of Black Population Convicted of a Felony Conviction, by County

24. Drawing on the AOC file, following the steps outlined above, it is possible to compare the percentage of Black individuals residing in each county with the percentage of Black individuals with a felony conviction in each county. I begin, as shown in Figure 2, with a simple plot that provides clear evidence that the percentage of Black individuals with a felony conviction is consistently greater than the percentage of Black population across all 67 of the state's counties. Along the X-axis is the percentage of Black residents in each Alabama county (according to the Census Bureau's 2014-2018 ACS 5-year Estimates); along the Y-axis is the percentage of citizens with felony convictions who are Black in each county, according to the AOC file. Counties with at least 150,000 residents are labeled. Every Alabama county is above the diagonal 45° line, indicating that the share of Black individuals with a felony conviction (from data in the AOC file) is greater than the share of Black individuals (ACS data) residing in the county.

25. As should be clear from Figure 2, in several counties—including more populous counties of Tuscaloosa and Mobile—Black individuals make up less than

40% of the population but they account for over 50% of individuals in the county convicted of a felony. In Montgomery County, even though Black individuals make up less than 60% of the population, they comprise nearly 80% of those convicted of a felony.

Figure 2: Percent Black Population (2018 ACS) in a County and Percent of Individuals with a Felony Conviction who are Black (AOC File) in a County



26. Next, by using the felony “Disqualifying Key,” a data file provided by counsel detailing which felony offenses under H.B. 282 constitute the 46 felony categories (out of a total of 586 total felony offenses) that are disqualifying under H.B. 282, it is possible to determine which felony convictions in the AOC file fall under H.B. 282’s definition of felonies constituting moral turpitude for the limited purpose of disqualifying a person from exercising his or her right to vote.¹⁸ By using the race of an individual convicted of a felony in the AOC file, it is possible to determine the rate of those convicted of a felony that disqualifies voting rights, or does not disqualify voting rights, for both Black and White individuals across the state’s 67 counties. Using the methodology described above to identify unique individuals in the AOC file, it is possible to calculate the number of Black and White individuals with a felony conviction and to calculate the number of Black and White individuals with a felony conviction that constitute moral turpitude under H.B. 282.

27. Table 1 summarizes these calculations. As the first two columns of Table 1 reveal, Black individuals comprise 26.2% of Alabama’s Citizen Voting Age Population (CVAP), but they constitute 47.2% of all individuals in the state with a

¹⁸ The 46 felony convictions detailed in Alabama H.B. 282, §17-3-30.1(b)(2)(c.), translate into 121 discrete criminal codes in the AOC file.

felony conviction.¹⁹ White individuals, who comprise 69.4% of the state’s CVAP, account for just 51.5% of individuals convicted of a felony.

Table 1: Count (& Percent) of White and Black Citizen Voting Age Population, and Individuals with Felony Convictions, with H.B. 282 Felony Convictions, and with H.B. 282 Felony Convictions Pre- and Post-Implementation of H.B. 282

Race	Citizen Voting Age Pop. (CVAP) & Percent	Total Felony Convictions & Percent	H.B. 282 “Moral Turpitude” Felony Convictions & Percent	H.B. 282 “Moral Turpitude” Felony Convictions Pre-Implementation & Percent	H.B. 282 “Moral Turpitude” Felony Convictions Post-Implementation & Percent
White	2,548,850 (69.4%)	187,278 (51.5%)	65,409 (48.2%)	61,167 (48.5%)	4,242 (44.5%)
Black	960,075 (26.2%)	171,628 (47.2%)	68,428 (50.5%)	64,880 (51.5%)	3,548 (37.2%)
Total	3,671,110	363,511	135,579	126,047	9,532

28. As Table 1 shows, of the 363,511 individuals with a felony conviction according to the AOC file, 135,579 individuals—some 37%—have at least one felony conviction that constitutes a crime of moral turpitude under H.B. 282. It is notable that Black individuals, again who make up just over one-quarter of the state’s CVAP, account for over half of the 135,579 individuals with a felony

¹⁹ Percentages do not total 100% because there are other races/ethnicities not included in the table who make up the state’s CVAP and individuals with felony convictions.

conviction, who under H.B. 282 are disqualified from having their voting rights restored. Cut differently, of the 171,628 unique Black individuals identified with a felony conviction in the AOC data file, 68,428 (40%) have a felony conviction identified by H.B. 282. Of the 187,278 White individuals identified with a felony conviction in the AOC data file, only 65,409 (35%) have a felony conviction as identified under H.B. 282 that disqualifies them from voting.

29. In sum, not only are Black individuals in Alabama disproportionately more likely than White individuals to be convicted of a felony, they are more likely to have been convicted of a felony that *disqualified* them from exercising their right to vote under H.B. 282. So, not only does Alabama's population of people with felony convictions skew sharply by race, but H.B. 282 further skews the racial gap with respect to disenfranchisement by disproportionately impacting Black individuals.

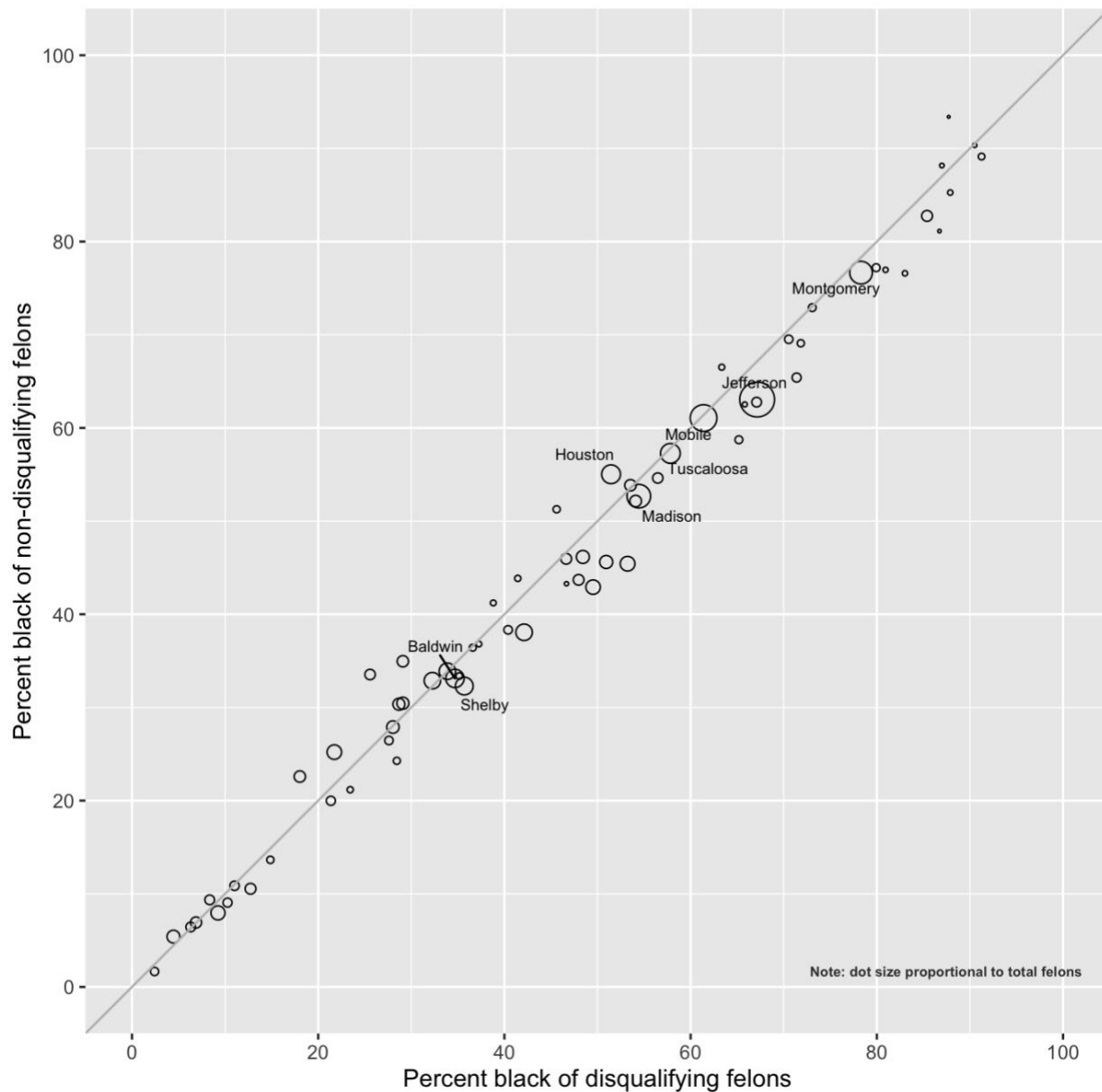
30. Figure 3 provides a visualization across Alabama's 67 counties of the percentage of Black individuals who had a disqualifying felony conviction and the percentage of Black individuals who had a non-disqualifying felony conviction for the period *prior* to the implementation of H.B. 282 (that is, January 1, 1993 through July 31, 2017). (See Table 1, second-to-last column.) Each circle in Figure 3 represents an Alabama county, and the size of the circle is proportional to the total number of individuals with a felony conviction in that county during the

time period.²⁰ The diagonal line is fixed at a 45° angle. The X-axis (horizontal), labeled “Percent Black of disqualifying felonies,” is the percentage (from 0% to 100%) of all Black individuals in a county convicted of a felony (from January 1, 1993 through July 31, 2017) disqualified from exercising their voting rights under H.B. 282. The Y-axis (vertical), labeled “Percent Black of non-disqualifying felonies,” is the percentage of all Black individuals in a county convicted of a felony (from January 1, 1993 through July 31, 2017) that does not disqualify them from exercising their voting rights.

31. The diagonal 45° line allows us to easily see—from January 1993 through July 2017—that across most of Alabama’s counties, Black individuals were *more* likely to be convicted of a felony that constitutes moral turpitude under H.B. 282 compared to Black individuals convicted of a felony that does not strip them of their voting rights. That is, more than two-thirds of the county circles fall *below* the 45° line, indicating that in these counties, Black individuals convicted of a felony are disproportionately more likely to have a felony conviction that disqualifies them of their voting rights under H.B. 282.

²⁰ For reference purposes, Figure 2 lists the counties with the largest felon populations: Baldwin, Houston, Jefferson, Madison, Mobile, Montgomery, Shelby, and Tuscaloosa.

Figure 3: *Pre-Implementation of H.B. 282, Percent Black of Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” January 1993-July 2017*



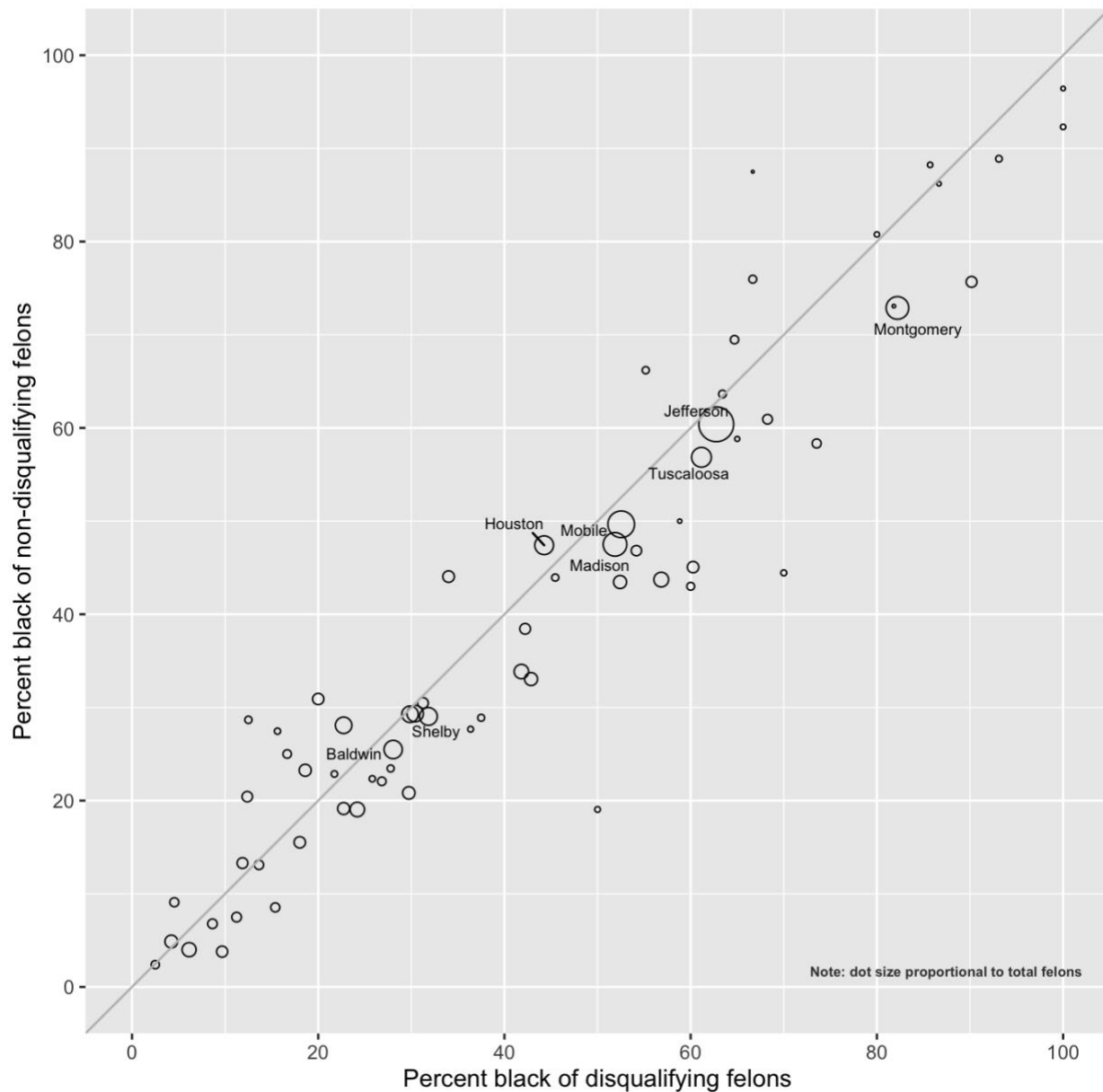
32. Figure 4 uses the same methodology, but for a more recent time period—plotting all Black individuals convicted of a felony *after* the implementation of

H.B. 282 on August 1, 2017.²¹ The figure provides circles representing each of the state's 67 counties, a diagonal 45° line, and the “percent Black of disqualifying felons” on the X-axis (horizontal) and the “percent Black of non-disqualifying felons” on the Y-axis (vertical) according to the definition of felonies constituting moral turpitude under H.B. 282.

33. There is considerably more variance in Figure 4 than in Figure 3, reflecting a lower number of total felony convictions of Black individuals between August 1, 2017 and May 1, 2019, as compared to between January 1, 1993 and July 31, 2017. (See final column of Table 1.) Still, Figure 4 looks remarkably similar to Figure 3: most of the counties fall below the 45° line. Since H.B. 282's implementation, across more than two-thirds of Alabama's 67 counties, according to data in the AOC file, Black individuals continue to be more likely to be convicted of a felony that disqualifies them of their voting rights. The evidence is clear that post-H.B. 282, Black individuals across the state are disproportionately more likely to be convicted of a felony that is classified as moral turpitude, thereby disqualifying them from voting.

²¹ For reference purposes, Figure 2 lists the counties with the largest felon populations: Baldwin, Houston, Jefferson, Madison, Mobile, Montgomery, Shelby, and Tuscaloosa.

Figure 4: *Post-Implementation of H.B. 282, Percent Black of Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” August 2017-May 2019*

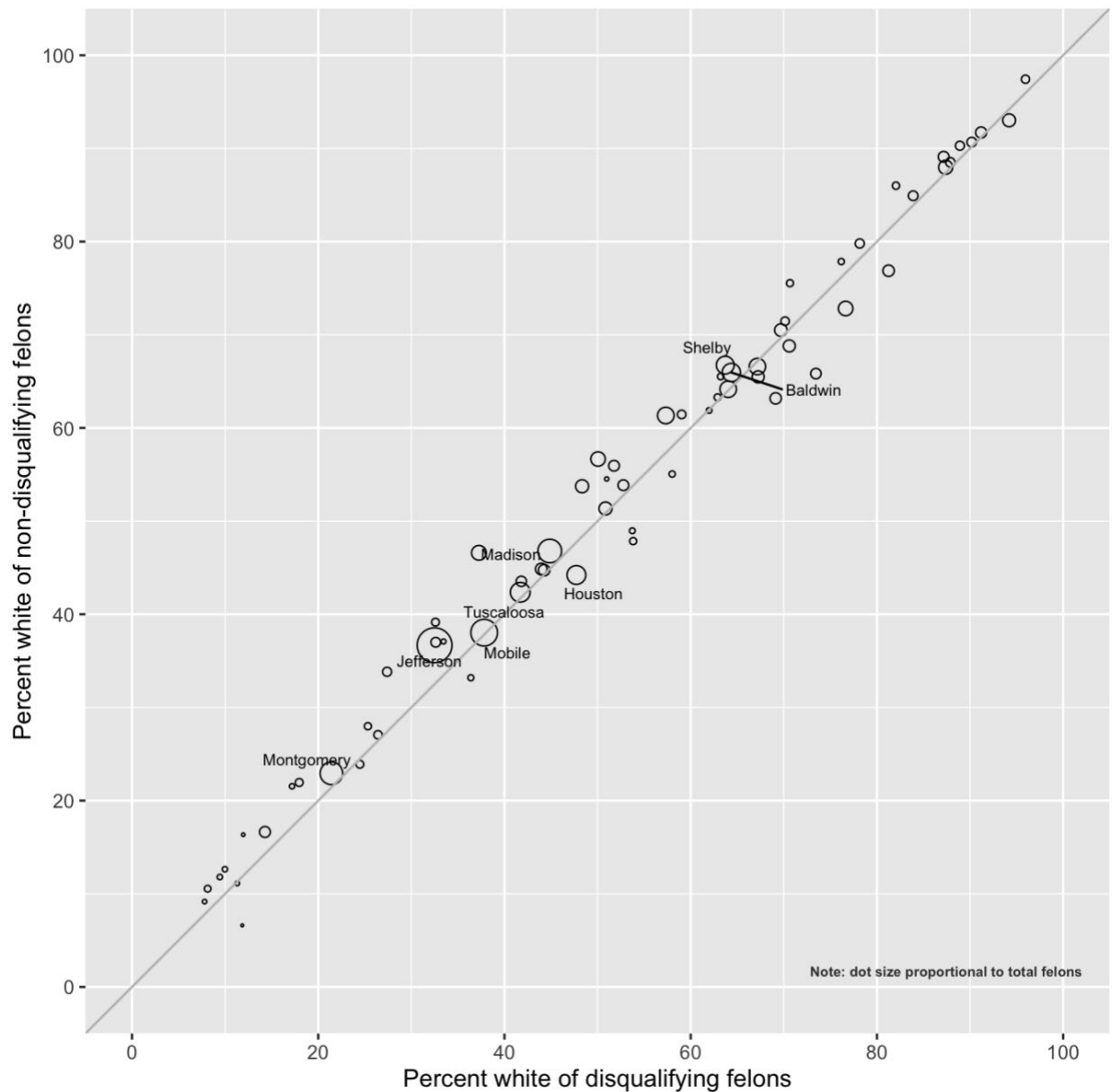


34. Using the AOC file, I conduct the same exercise for White individuals convicted of a felony, both pre- and post-implementation of H.B. 282, to determine which White individuals are disqualified and which are not disqualified of their voting rights under the statute.

35. Figure 5 provides a visualization for the period prior to the implementation of H.B. 282 (January 1, 1993 through July 31, 2017). Each circle in Figure 5 represents an Alabama county, and the size of the circle is proportional to the felon population in the county during the period. The diagonal line is fixed at a 45° angle. The X-axis (horizontal), labeled “Percent White of disqualifying felons,” is the percentage (from 0% to 100%) of all those in a county convicted of a felony (from January 1, 1993 through July 31, 2017) who are White and who are disqualified from exercising their voting rights under H.B. 282. The Y-axis (vertical), labeled “Percent White of non-disqualifying felons,” is the percentage of all those in a county convicted of a felony prior to August 1, 2017 who are White and who are *not* disqualified from exercising their voting rights under H.B. 282.

36. The diagonal 45° line serves as a visual reference. Prior to the implementation of H.B. 282, across most of Alabama’s counties White individuals with felony convictions were *less likely* to have been convicted of a felony that constitutes moral turpitude under H.B. 282. That is, more than two-thirds of the county circles are *above* the 45° line, indicating that in these counties, White individuals with felony convictions less likely to have a felony conviction that disqualifies them of their voting rights due to moral turpitude.

Figure 5: *Pre-Implementation of H.B. 282, Percent White of Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” January 1993-July 2017*

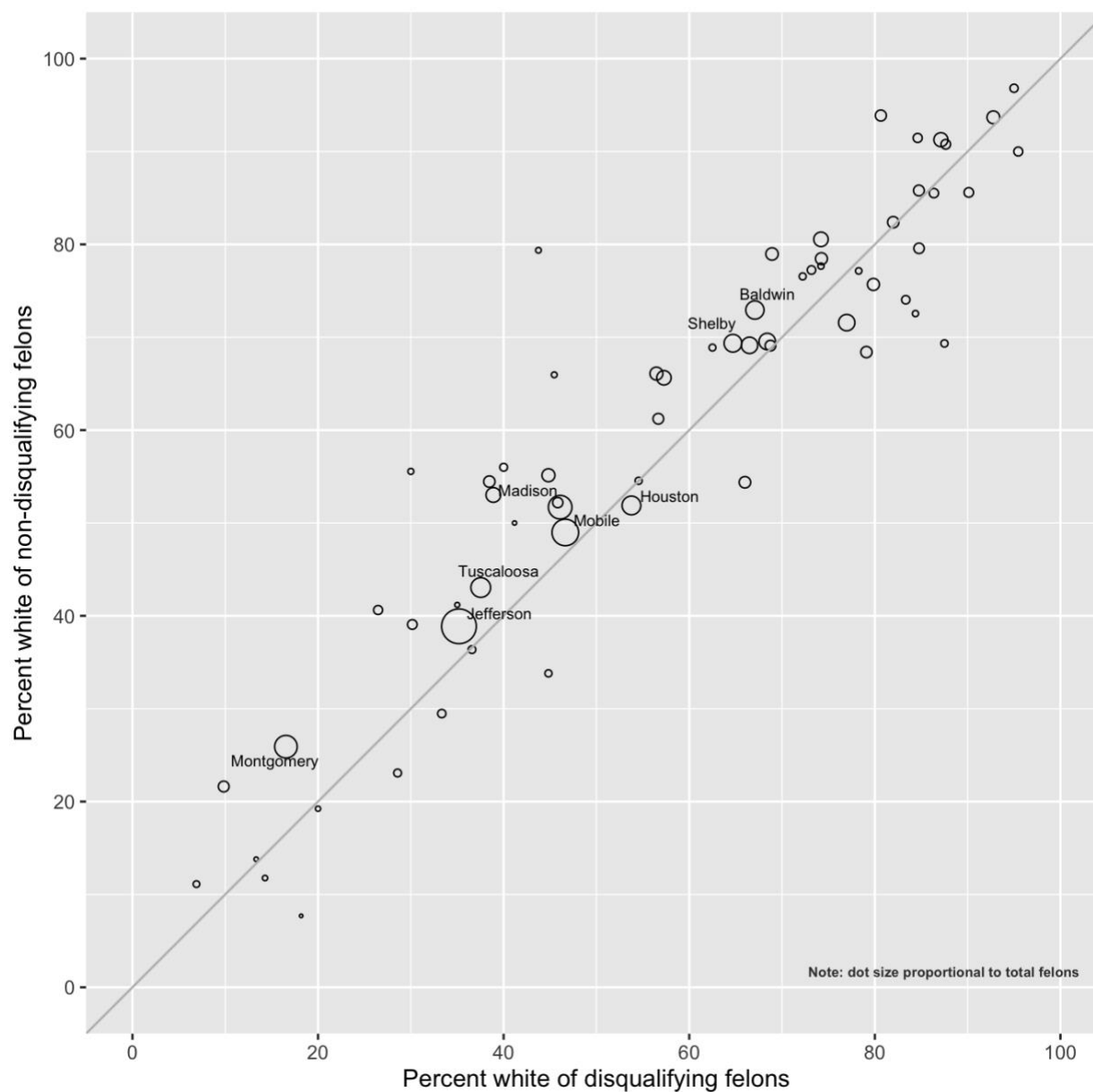


37. Figure 6 plots the rate of White individuals across Alabama’s counties who were convicted of a felony in the nearly two-year period since August 1, 2017, that either does or does not disqualify them of their voting rights. Even with the

increased variance due to the fewer number of cases through May 1, 2019, it is clear from Figure 6 that roughly two-thirds of the circles, each representing one of the state's 67 counties, are *above* the diagonal 45° line. This again indicates that White individuals are disproportionately more likely to be convicted of a felony that is not on H.B. 282's list disqualifying a person from voting. Figure 6 is remarkably similar to Figure 5, indicating that both pre- and post-implementation of H.B. 282, White individuals with a felony conviction in the AOC file are *less likely* to have been convicted of a felony that disqualifies them from voting.

38. In my opinion, based on my analysis of felony convictions for both White and Black individuals both *prior* to and *after* the implementation of H.B. 282, there is clear evidence that Black individuals are disproportionately more likely to be convicted of felonies, and that White individuals are disproportionately less likely to be convicted of felonies that, under H.B. 282, disqualify them of their voting rights because the felony constitutes moral turpitude.

Figure 6: *Post-Implementation of H.B. 282, Percent White of Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” August 2017-May 2019*



VIII. Analysis of Alabama Administrative Office of Courts (AOC) Data file on “Felony Convictions and Guilty Pleas” Considered by Exploratory Committee

39. Counsel also provided to me a list of 15 disqualifying felonies (with 46 discrete crimes) under which voting rights *would* have been lost due to “moral turpitude,” if a smaller, more narrow list of felonies constituting moral turpitude had been advanced out of Alabama Secretary of State John Merrill’s “Voter Disenfranchisement and Restoration of Voting Rights Exploratory Committee” (“Exploratory Committee”). I understand from counsel that this narrow list was the emerging consensus from the Exploratory Committee up until the final meeting when Secretary Merrill introduced his proposed list. The narrower list of these 15 disqualifying felonies, what I refer to as the “Alabama No CERV Conviction List,” can similarly be linked to the AOC file of felony convictions, particularly to a timeframe (January 1, 1993 to December 21, 2015) prior to the recommendations made by the “Exploratory Committee.” This raises an informative counterfactual question: What would the distribution of felony convictions by Black individuals and White individuals have looked like had the Exploratory Committee recommended to the legislature, and had the legislature adopted, its narrower list of felonies constituting moral turpitude?

40. I use the same methodology described above for the pre- and post-H.B. 282 analysis but under the Exploratory Committee’s narrower list of initial recommendations. Drawing on the AOC file, I am able to identify slightly more

than 15,000 individuals convicted of a felony between January 1, 1993 and December 21, 2015 who, under the Exploratory Committee's narrower recommended list, would be classified as having committed a felony constituting moral turpitude. Contrary to the findings discussed above regarding H.B. 282, Black individuals comprise only 46% (6,773) of those ineligible to vote under the Exploratory Committee's recommendations. In contrast, White individuals under the Exploratory Committee's narrower list of recommendations comprise 53% of those with a felony conviction constituting moral turpitude in the AOC file.

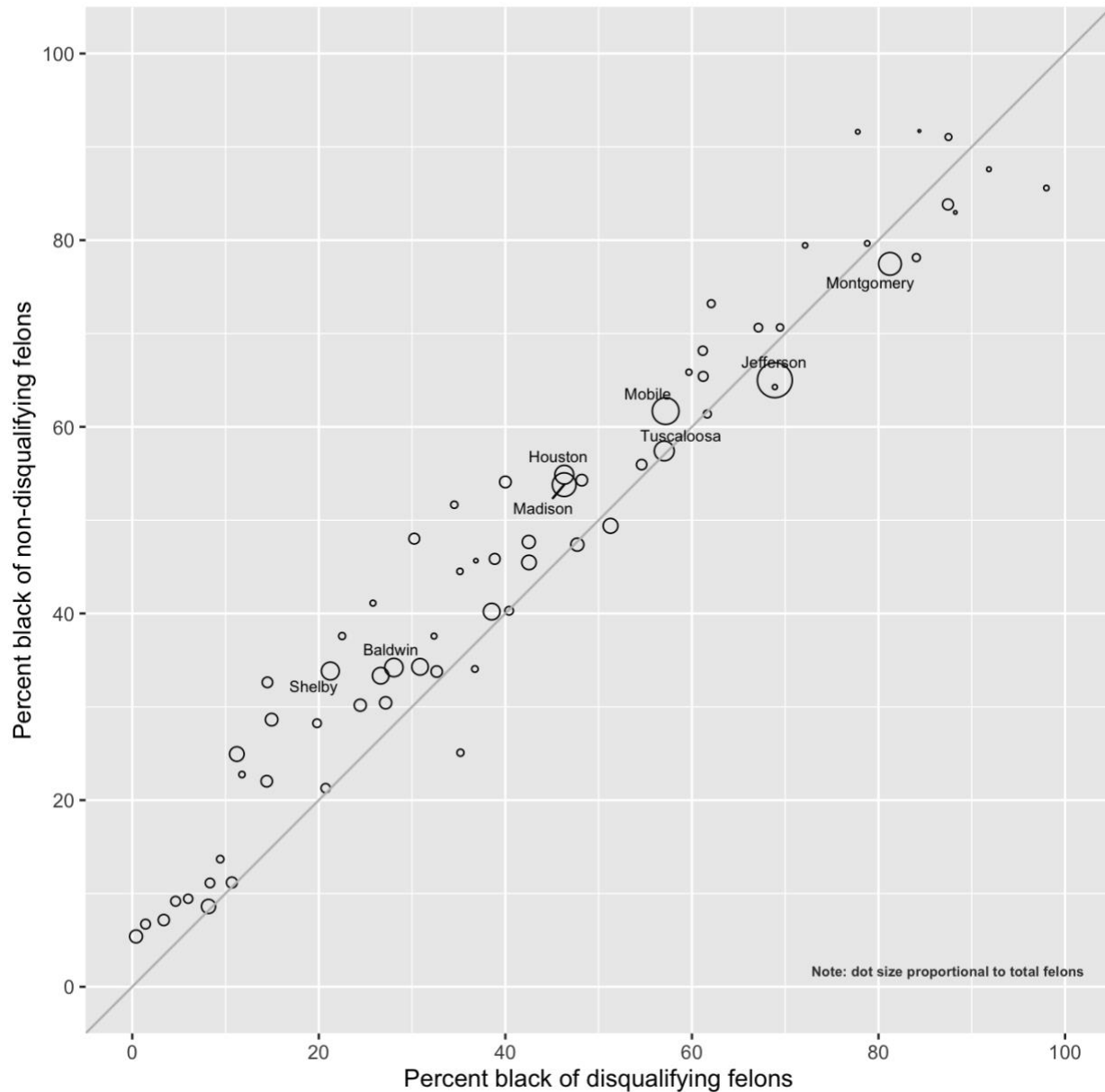
41. As such, had the Exploratory Committee's recommendations been adopted, it at least would not have exacerbated the already-existing overrepresentation of Black individuals with a felony conviction compared to the overall population. That is, the rate of Black individuals convicted of a felony conviction under the Exploratory Committee's list of felonies constituting moral turpitude would have been considerably *lower* (46%) than under the H.B. 282 statute ultimately adopted by the legislature (50.5%). In contrast, under the Exploratory Committee's narrower list, White individuals in the AOC file would have constituted a *higher* rate (53%) of all individuals convicted of a felony constituting moral turpitude, unlike their lower rate under H.B. 282 (48.2%).

42. Figure 7 and Figure 8 provide visualizations for Black individuals and White individuals, respectively, across Alabama's counties of such a hypothetical

exercise for the time period January 1, 1993 to December 21, 2015, *prior* to the legislature's decision to expand the list of felonies constituting moral turpitude. Again, each circle represents an Alabama county, and the size of the circle is proportional to the total number of felons in the county during the timeframe. The diagonal 45° line serves as a visual reference.

43. As Figure 7 shows, under the narrower set of felonies of moral turpitude considered by the Exploratory Committee but not ultimately advanced by Secretary Merrill, between January 1993 and December 21, 2015, Black individuals with felony convictions would have been less likely to have their voting rights disqualified under the committee's narrower definition of moral turpitude. Over three-quarters of the state's 67 counties are *above* the 45° line in Figure 7—the inverse of the observed values under H.B. 282, with the more expansive set of felonies of moral turpitude (see Figure 2). In short, had the Exploratory Committee's narrower set of 15 felonies constituting moral turpitude been recommended to and then adopted by the state legislature, a substantially greater share of Black individuals with a felony conviction would have been eligible to vote.

Figure 7: Exploratory Committee’s Narrow List of Moral Turpitude Felonies, Percent Black Individuals with Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” January 1993-December 2015

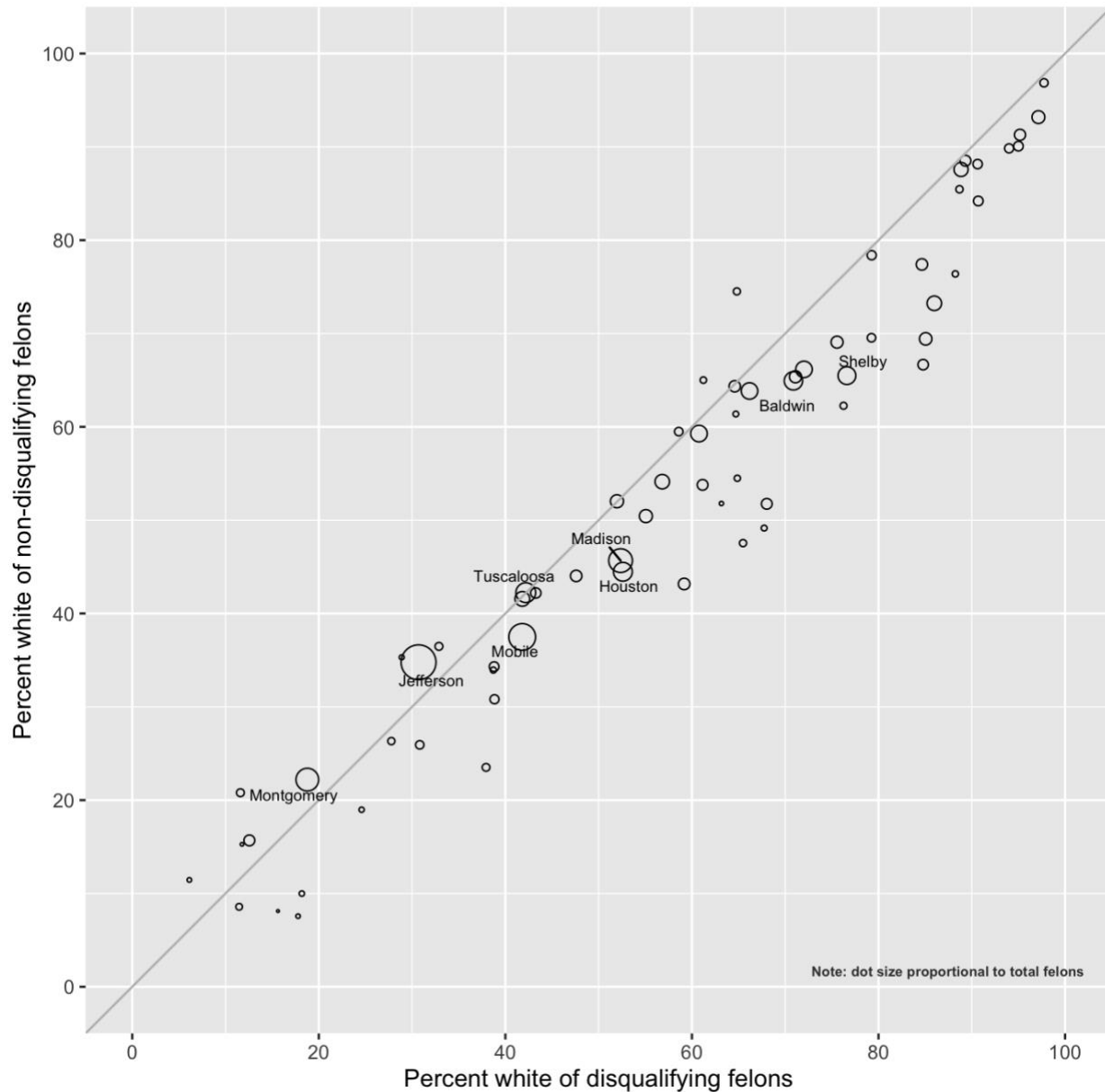


44. Figure 8 plots the same relationship for White individuals in the AOC file from January 1993 to December 21, 2015, again using the narrower set of felonies

of moral turpitude that was considered by the Exploratory Committee, but not advanced by Secretary Merrill in the final month of 2015. As Figure 8 shows, had the Exploratory Committee's narrower set of 15 felonies of moral turpitude been adopted, White individuals with felony convictions would be *more* likely to be disqualified from voting. Indeed, over three-fourths of the state's 67 counties fall *below* the 45° line.

45. In my opinion, it is clear that had the Exploratory Committee recommended, and the legislature adopted, the narrower set of 15 felonies constituting moral turpitude instead of the more expansive list under H.B. 282, Black individuals with would be much less likely to be convicted of a disqualifying felony, and thus more likely to be eligible to vote. Although their convictions and sentences would not have changed, a lower percentage of Black individuals with felony convictions across Alabama's 67 counties would have been disqualified from voting had the legislature adopted the Exploratory Committee's narrower list of felonies constituting moral turpitude.

Figure 8: Exploratory Committee’s Narrow List of Moral Turpitude Felonies, Percent White Individuals with Disqualifying and Non-Disqualifying Felons, by County, “Alabama Felony Convictions and Guilty Pleas,” January 1993-December 2015



IX. Rates of Black and White Registered Voters who are Ineligible to Vote Due to “Criminal Conviction/Moral Turpitude”

46. As I have already documented, there is striking evidence that the percentage of Black individuals with a felony conviction who have lost their voting rights due to a crime of moral turpitude under H.B. 282 is consistently greater than the percent Black population across all 67 of the state’s counties. There is no clearer evidence of this than the Secretary of State’s own statewide voter registration database.

47. I begin by examining the status of Black and White registered voters in the statewide voter file, specifically, a “snapshot” of “Active” and “Inactive” registered voters as of July, 2019, and the rate of Black and White registrants as identified in the voter file who are “Not Eligible” or “Disqualified” due to a “Criminal Conviction/Moral Turpitude,” also referred to as “CRM,” across Alabama’s 67 counties. My analysis draws upon data from D200071 (an update of D064502), a statewide Alabama voter list produced by the Secretary of State’s office in July 2019.

48. Although D200071, a data file of more than 5 million registered voters, is static, that is, it is a snapshot in time of all individuals in Alabama’s statewide voter registration system, it offers useful individual-level information, specifically, the race and status of each individual who has registered in the state, including those who have been taken off the voter rolls. The data file D200071 contains

personal information for 82,554 individuals whose “registrant status” at the time of the snapshot is “not eligible” or “disqualified”, and whose registration “status reason” is CRM. The personal information included for each individual is typical for statewide voter registration databases: an individual’s first, middle, and last name (and any suffix to the name), gender and race, voter identification number, and address, including county of residence.²²

49. Of the 82,554 individuals in D200071 who have a “Registrant Status” of “Not Eligible” (“N”) or Disqualified (“R”), and a registrant reason status of CRM, I again draw on the July 2019 statewide voter list. There are 45,601 (55.2%) Black individuals and 34,290 (41.5%) White individuals. To put these figures into perspective, recall that according to the 2014-2018 ACS 5-Year Estimates, the Census Bureau estimates Alabama’s citizen voting age population (CVAP) to be 69.4% White alone, and 26.2% Black (or African American) alone.²³ As such, the percentage of Black individuals with a CRM status retained in the

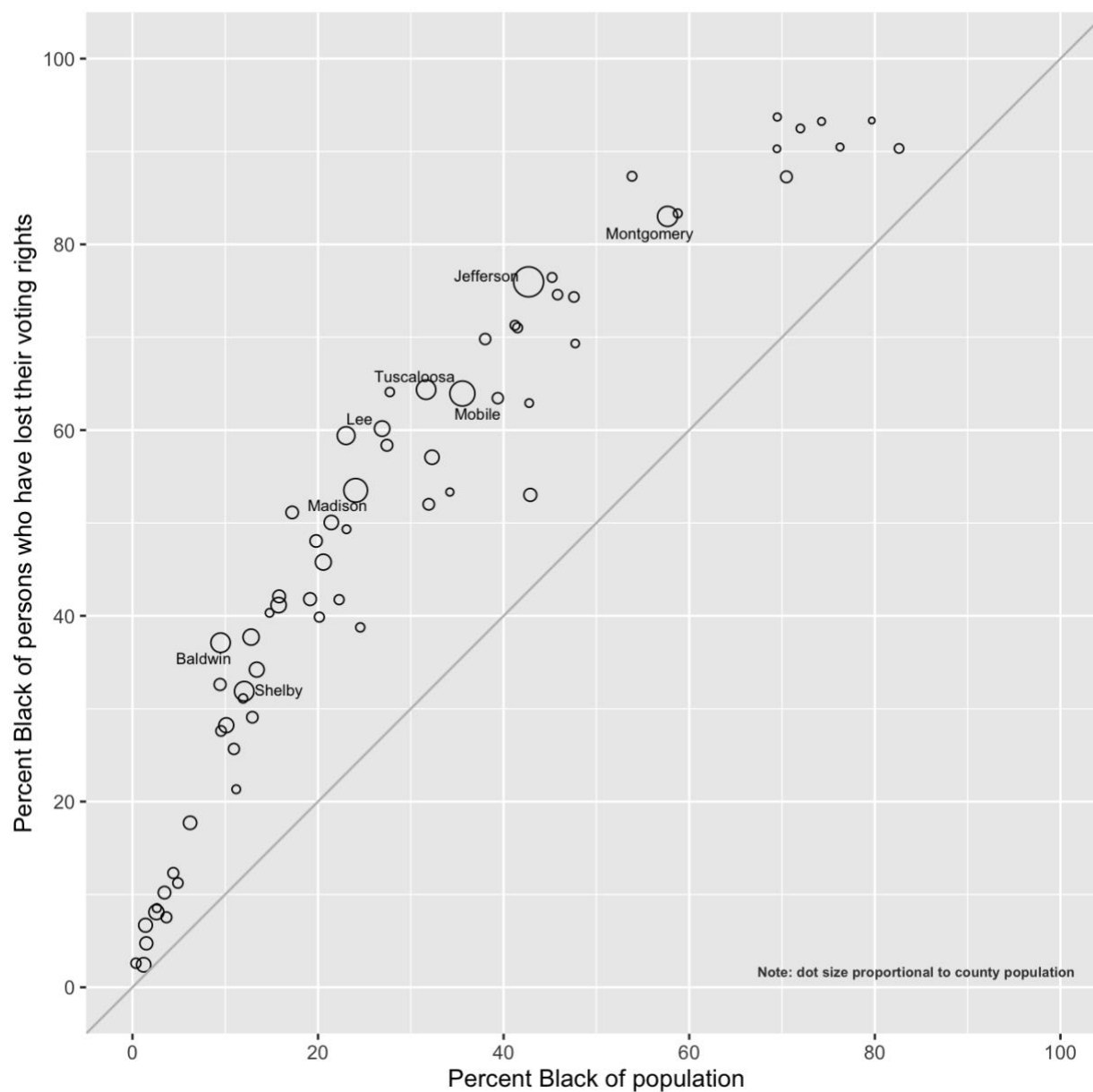
²² See, for example, Michael C. Herron and Daniel A. Smith. 2013. “House Bill 1355 and Voter Registration in Florida,” *State Politics and Policy Quarterly*, 13: 279-305; Enrijeta Shino and Daniel A. Smith. 2018. “Timing the Habit: Voter Registration and Turnout in the American States.” *Electoral Studies* 51: 72-82.

²³ Data from U.S. Census Bureau, “Citizen Voting Age by Race and Ethnicity, 2014-2018,” *American Community Survey 5-Year Estimates*, available for download, here: <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap/2014-2018-CVAP.html>.

July 2019 statewide voter file (D200071) is more than double the percentage of Alabama's Black CVAP, according to the 2014-2018 ACS 5-year Estimates.

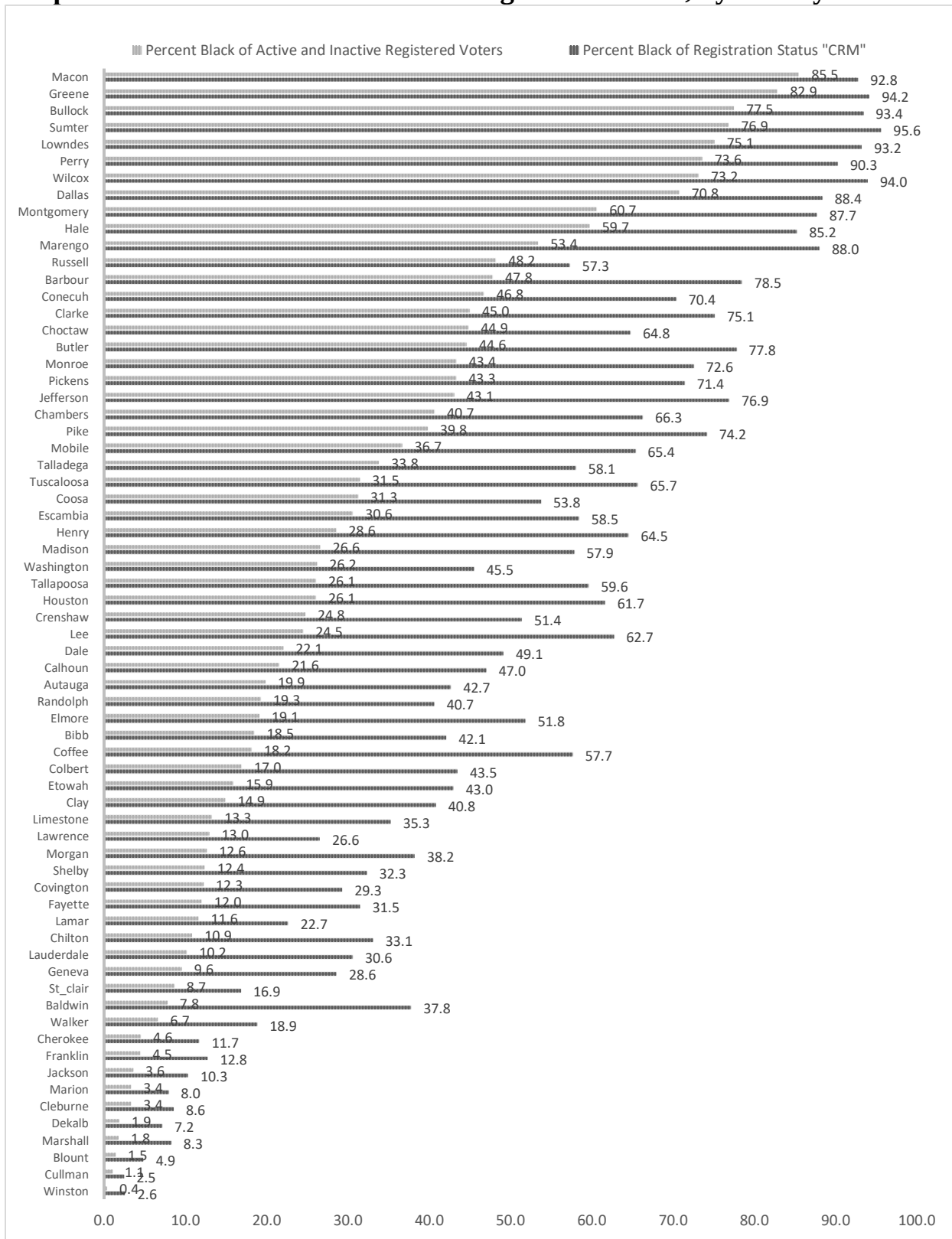
50. In Figure 9, I plot along the X-axis the percentage of the Black CVAP population in each Alabama county (using the 2014-2018 ACS 5-year Estimates), against the Y-axis that provides the percentage of individuals who are Black in each county (using D200071 file) who have been rejected or purged from the voter rolls due to a felony conviction. Counties with at least 150,000 residents are labeled. As is clear in Figure 9, every county in Alabama is above the diagonal 45° line, indicating that the share of Black individuals who are disqualified from voting due to a felony conviction is greater than the share of Black individuals (CVAP) residing in the county. From counties where over 70% of the CVAP is Black to those where the percentage of the population that is Black is under 5%, the rate of Black individuals disqualified by registrars due to felony conviction exceeds the percent of Black CVAP in the county.

Figure 9: Percent of Black CVAP in a County and the Percent of Individuals with a Felony Conviction who are Black in a County and have Lost their Voting Rights (CRM), (D200071)



51. I also compare across Alabama's 67 counties the percentage of Black individuals and White individuals registered to vote (active and inactive) in each county using the statewide voter file (D200071), and compare it to the percentage of Black individuals and White individuals in a county who were removed from the voting rolls due to a CRM felony conviction. Figure 10 shows the percentage of Black registered voters (out of Black and White, only) who are not eligible to vote in each county due to CRM status (as of July 2019) and the percentage of active and inactive Black registered voters (out of Black and White, only) in each county. The data are sorted by the percentage of registered voters in a county who are Black (high to low). The percentage in a county who are Black active and inactive voters is represented by a light grey bar. The percentage in a county who are Black and have been removed from the rolls due to a disqualifying CRM status is represented by a dark grey bar. For example, in Macon County, nearly 86% of all active and inactive registered voters are Black individuals, but nearly 93% of all voters removed from the rolls due to a CRM status are Black individuals. In contrast, in Winston County, less than 1% of all active and inactive registered voters are Black individuals, but nearly 3% of all removed voters due to CRM status are Black individuals.

Figure 10: Percent Black Registrants with “Criminal Conviction/Moral Turpitude” Status and Percent Black Registered Voters, by County



52. A clear pattern emerges in Figure 10, regardless of the percentage of Black registered voters who are active and inactive in a county: visually, every county's dark grey bar extends further than its accompanying light grey bar. That is because in every Alabama county, as of July 2019, the rate of Black individuals removed from the voting rolls because of a CRM status exceeds the rate of Black registered voters (active and inactive) in the county.

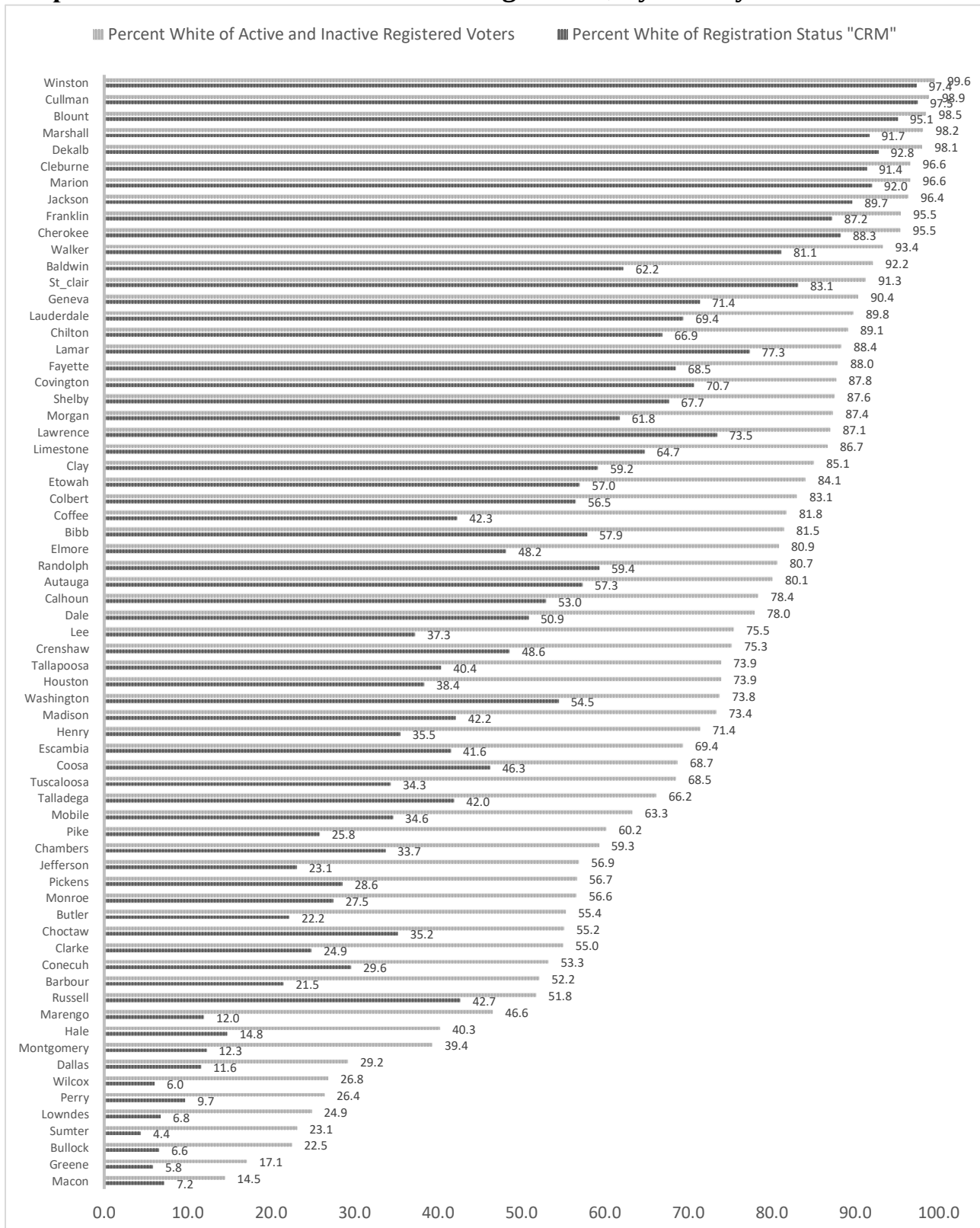
53. In some counties, the gap is sizeable. In Coffee County, for example, Black registrants make up 18% of active and inactive registered voters, but they comprise 58% of removed registered voters classified as CRM as of July 2019, a gap of nearly 40 percentage points. In Marengo County, as of July 2019, Black registrants make up 53% of active and inactive registered voters, but they comprise 88% of removed registrants with a status of CRM. This pattern holds for counties with both large and small percentages of active and inactive Black registered voters. In Sumter County, where 77% of active and inactive registered voters are Black individuals, 96% of those who were registered but deemed ineligible due to a CRM status are Black individuals. And in Baldwin County, where fewer than 8% of registered active and inactive voters are Black individuals, nearly 38% of formerly registered voters who are now ineligible because they have a criminal conviction of moral turpitude are Black individuals.

54. Figure 11 displays the same analysis for the percentage of White registered voters in Alabama in each county (high to low), as of July 2019. In doing so, it is easy to compare the percentage of White registered voters in each county who are no longer eligible to vote in each county due to their disqualifying CRM status (dark grey bars), with the percentage of active and inactive White registered voters in each county (light grey bars).

55. As Figure 11 reveals, as of July 2019, there is not a single Alabama county where the percentage of White active and inactive registered voters is lower than the percentage of White formerly registered voters who have a disqualifying CRM. For example, in Shelby County, where 88% of all active and inactive registered voters are White individuals, only 68% of all formerly registered voters with a CRM status are White individuals, roughly a 20-percentage-point gap. Even in counties with a much higher percentage of active and inactive Black registrants, White individuals in these counties who had been registered are disproportionately less likely to have a CRM status. In Green County, where just 17% of all active and inactive registered voters are White individuals, fewer than 6% of those removed from the rolls due Criminal Conviction/Moral Turpitude are White individuals. The county with the closest parity between the two rates is Cullman County, where 99% of active and inactive registrants are White individuals, and nearly 98% of registered voters with a CRM status are White individuals.

56. In sum, Figure 10 and Figure 11 clearly indicate that across Alabama's 67 counties, as of July 2019, Black registrants in the statewide voter file are disproportionately more likely than White registrants to be deemed *ineligible* to vote because they have a registrant status reason of CRM. That is, relative to their share of active and inactive registered voters, in every Alabama county active and inactive Black registrants are more likely than White registrants to be deemed "Not Eligible" or "Disqualified" from having the right to vote because of a disqualifying conviction.

Figure 11: Percent White Registrants with “Criminal Conviction/Moral Turpitude” Status and Percent White Registrants, by County



X. Black and White Voter Registration Rates Pre- and Post- H.B. 282: Active, Inactive, Not Eligible, Not Registered, Disqualified, and Suspense

57. Next, I use the statewide voter file (D200071) to assess whether there are differential rates of Black and White registered voters, circa July 2019, whose registration status is “active,” “inactive,” “not eligible,” “not registered,” “disqualified,” or “suspense.”

58. In order to assess the direct impact of H.B. 282 on voter registrations in Alabama, I limit my analysis to individuals in D200071 who are listed with a race code of either Black or White and who have a registration date on or before June 30, 2019. Overall, as of June 30, 2019, of the 5,013,246 Black registrants and White registrants on Alabama’s statewide voter list (D200071) with any status, 1,303,651 (26.0%) are Black registrants and 3,709,595 (74.0%) are White registrants. This includes Black registrants and White registrants with a registration status of “active,” “inactive,” “not eligible,” “not registered,” “disqualified,” or “suspense.”²⁴

59. In what follows, I further limit my analysis to Black individuals and White individuals listed in D200071 and who have registration dates during the 23-month period both before and after the implementation of H.B. 282, so as to compare the

²⁴ Of the 3,134,525 statewide Black registrants and White registrants (in D200071) who are listed as “active” in D200071, Black individuals account for 855,140, or 27.3%.

registration status of individuals by their race over comparable (nearly) two-year periods. Table 2 provides the “registrant status” (count and percent) of Black individuals and White individuals listed in the statewide voter list as of June 30, 2019, whose registration date is 23-months prior to, or 23-months following the implementation of H.B. 282.

60. As reported in Table 2, during the 23-month period immediately prior to the implementation of H.B. 282 (August 1, 2017), there are a total of 615,070 registrants with a “Date of Registration” from September 1, 2015, through July 31, 2017. Of these 615,070 registrants, 148,833 (24.2%) are Black individuals and 466,237 (75.8%) are White individuals.

61. Focusing on the 148,833 Black registrants who have a registration date during the 23-month period prior to the effective date of H.B. 282 and who remain on the voter rolls (any status) as of June 30, 2019, 82.6% are “Active.”

62. Of the remaining Black registrants who have a registration date during the 23-month period prior to the implementation of H.B. 282, 5.3% have an “Inactive” status, 2.3% are classified as “Not Eligible,” 0.1% are classified as “Not Registered,” 9.3% are classified as “Disqualified,” and 0.4% are classified as “Suspense.”

63. When comparing these rates of Black registrants during the 23-month period prior to August 1, 2017, with the rates of White registrants who have the same

range of registration dates, Black registrants are considerably more likely than Whites to be inactive (5.3% to 4.1%), not eligible (2.3% to 0.7%), disqualified (9.3% to 8.1%), or on the state’s suspense list (0.4% to 0.1%). In other words, during this 23-month period of voter registrations, Black registrants are three times more likely than Whites to be “Not Eligible,” four times more likely than Whites to be on the “Suspense” list, 30 percent more likely than Whites to be “Inactive,” and 15 percent more likely than Whites to be “Disqualified.”

Table 2: Registrant Status (Count and Percent) of Active and Inactive Black and White Registrants on the Alabama Statewide Voter List, June 30, 2019 (Who Registered during the 23-Month Pre- and Post-Implementation Periods)

	Pre-Implementation of H.B. 282			Post-Implementation of H.B. 282		
	Black	White	Subtotal	Black	White	Subtotal
Active	122,941	407,640	530,581	110,115	307,676	417,791
	82.6%	87.4%	86.3%	86.6%	89.4%	88.6%
Inactive	7,854	18,889	26,743	2,118	2,708	4,826
	5.3%	4.1%	4.4%	1.7%	0.8%	1.0%
Not Eligible	3,468	3,031	6,499	2,996	2,449	5,445
	2.3%	0.7%	1.1%	2.4%	0.7%	1.2%
Not Registered	97	290	387	88	136	224
	0.1%	0.1%	0.1%	0.1%	0.0%	0.1%
Disqualified	13,825	35,790	49,615	10,295	29,547	39,842
	9.3%	7.7%	8.1%	8.1%	8.6%	8.5%
Suspense	648	597	1,245	1,535	1,648	3,183
	0.4%	0.1%	0.2%	1.2%	0.5%	0.7%
Total	148,833	466,237	615,070	127,147	344,164	471,311

64. Contrast the figures during the 23-month pre-implementation period as reported in Table 2 with the 23-month period immediately following the August 1,

2017, implementation date of H.B. 282. According to the July 2019 voter file, 471,311 Black individuals and White individuals have a “date of registration” between August 1, 2017 and June 30, 2019. Of these, 127,147 (27.0%) of the registrants during this more recent period are Black registrants, and 344,164 (72.0%) are White registrants. It is notable that Black individuals comprise a higher percentage of voters with a registration date over this more recent 23-month period, compared to the rate of Black individuals who registered during the comparable 23-month period prior to the implementation of H.B. 282.

65. However, according to the “Registrant Status” field of the statewide voter file, the 127,147 Black individuals who have registration dates over the 23-month period following the implementation of H.B. 282 are still less likely to be “Active” voters than the 344,164 White individuals who registered over the same timeframe. Also, when compared to the previous 23-month period before H.B. 282 took effect, a higher percentage of Black registrants compared to White registrants are still more likely to be inactive, not eligible, not registered, and on the suspense list, indicating that Black individuals who registered to vote after the implementation of H.B. 282 *are still less likely to be eligible* to vote in Alabama. Most notably, of those who registered between August 1, 2017 and June 30, 2019, Black registrants are more than three-times as likely as Whites not to be eligible and over twice as likely as Whites to be on the suspense list.

66. The only exception to this durable pattern is that White registrants are only slightly more likely than Black registrants in the most recent period to be disqualified, according to the “Registrant Status” category. But as I discuss below, this anomaly is driven by the fact that White individuals with registration dates during this period of time and who had a “disqualified” registrant status were disproportionately more likely than Black individuals to have a “duplicate” registration, whereas during the early 23-month period, the duplicate registration rates of Black individuals and White individuals with a disqualified registrant status were similar.

67. Digging deeper into the reasons *why* a registered voter’s “Registrant Status” is coded as Active, Inactive, Not Eligible, Not Registered, Disqualified, or Suspense, I again draw on the July 2019 statewide voter list. Among other information, the statewide voter list (D200071) provides the Secretary of State’s codes for why individuals are not eligible (“N”) or are “disqualified” (“R”). According to the July 2019 statewide voter list, only 16,573 (0.33%) of the more than 5 million Black voters and White voters listed in D200071 have a registrant status of “N,” that is, they are coded as being “not eligible.”

68. There are numerous reasons why a registered voter might be coded as not eligible, including having an incomplete voter registration application or being classified as having a CRM status. According to the July 2019 voter list, of the

16,573 Black registrants and White registrants who are not eligible, 11,786 (71.1%) are unable able to vote due to CRM. Of these 11,786 registrants statewide who are not eligible to vote due to CRM, 7,009 (59.5%) are Black individuals and only 4,777 (40.5%) are White individuals.

69. I draw on the voter list to compare parallel 23-month periods—before and after the implementation of H.B. 282—to further determine if the rates of Black registrants and White registrants who were disqualified due to CRM substantially differ. Over this 46-month period, there were a total of 9,081 registrants (5,058 Black individuals and 4,023 White individuals) who had a status code of “N” (not eligible) and a registrant reason of CRM.

70. Among the 3,468 Black individuals with a registration date during the 23-month period prior to August 1, 2017, and who have a registrant status of not eligible, 79.7% have a registrant reason code of CRM. During this same 23-month timeframe, of the 3,031 White individuals with a registrant status of not eligible, 75.3% have a registrant reason code of CRM, 4.4 percentage points less than Black individuals.

71. Contrast these figures to the subsequent 23-month period *after* H.B. 282 was implemented. Some 76.6% of the 2,996 Black individuals with a registrant status of not eligible are coded as having a registrant reason code of CRM, just a 3.1 percentage point drop compared to the previous 23-month period. However, from

August 1, 2017 through June 30, 2019, only 71.1% of the 2,449 Whites with a registrant status of not eligible are coded as having registrant reason code of CRM, a 4.4 percentage point drop from the earlier 23-month period. However, the gap—5.5 percentage points between White and Black registrants *after* the implementation of H.B. 282—actually *increased* by more than a percentage point from the 4.4 percentage point gap between Whites and Black registrants that existed *prior* to the law taking effect.

72. In my opinion, these figures provide further evidence that the 46 felony convictions classified as moral turpitude under H.B. 282 has had a disproportionate effect on Black registrants. When comparing Black individuals and White individuals who applied to register to vote over the 23-months *after* the law went into effect on August 1, 2017, Black individuals were less likely to be eligible to vote because of a felony conviction classified as moral turpitude under H.B. 282.

73. According to the July 2019 statewide voter list (D200071), of the 5,013,546 Black registrants and White registrants on the statewide list, some 1,608,632 (32.1%) have a registrant status of “R,” that is, they are coded as being “disqualified.” There are numerous reasons why a registered voter might be disqualified, most commonly because they have died, moved outside of the county or state, or have been removed under a National Voter Registration Act (“NVRA”) compliant or confirmation mailing process purge. Registrants may also be

disqualified for CRM. According to the July 2019 statewide voter list, 68,105 Black individuals and White individuals on the complete statewide voter list are coded as being disqualified due to CRM. Of these 68,105 registrants who are disqualified as of July 2019 due to CRM, 38,592 (56.7%) are Black individuals and 29,513 (43.3%) are White individuals.

74. Using the complete July 2019 statewide voter list, I conduct the same pre- and post-implementation analysis as presented above with the “not eligible” subpopulation to determine the reason why an individual’s registrant status is coded as “disqualified.” Of the 13,825 Black individuals who have a registration date during the 23-month period prior to August 1, 2017, and who have a registrant status of disqualified, 31.4% have a registrant reason as CRM as of July 2019. During this same 23-month timeframe, of the 35,790 Whites who have a disqualified registrant status, only 12.0% are coded as having a registrant reason of CRM. This is nearly a 20-percentage-point gap between Black registrants and White registrants, with Black individuals being nearly three times as likely as White individuals to have a disqualifying CRM flag on the statewide voter rolls during the 23-month period leading up to the implementation of H.B. 282.

75. In the 23-month period *after* H.B. 282 was implemented, 24.7% of the 10,295 Black individuals with a registrant status of disqualified have a registrant reason code of CRM. In contrast, 8.2% of the 29,547 White individuals who

registered from August 1, 2017 through June 30, 2019 and who have a registrant status of disqualified have a registrant reason code of CRM.

76. Although the gap between Black and White individuals with a disqualified registration status due to a CRM status after the implementation of H.B. 282 has narrowed slightly by roughly 3 percentage points—from 19.4 percentage points to 16.5 percentage points—the racial gap still persists after the implementation of the law. In my opinion, it is clear that the 46 felony convictions classified by H.B. 282 have a disproportionate effect on the ability of Black individuals to register to vote in Alabama. Black applicants who have applied to register after H.B. 282 went into effect are more than three times as likely as White applicants to be disqualified because of a felony conviction that is classified as a crime of moral turpitude under H.B. 282. But equally importantly, after the implementation of H.B. 282, one in four Black individuals, and nearly one in 10 White individuals in Alabama, have a registrant reason code of CRM, disqualifying them from the voter rolls.

XI. Board of Pardons and Paroles Certificates of Eligibility to Register to Vote (CERV) and Legal Financial Obligations (Fees and Fines)

77. I was asked by counsel to examine court fines and fees assessed on Alabama felons. As other scholars have documented, court costs are not insubstantial in

Alabama.²⁵ My analysis again draws on data from the “ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1/1/1983 THRU 5/1/2019,” what I have referred to throughout this report as the AOC file, and from the D200069 and D005349 files, both Microsoft Excel files produced by the Board of Pardons and Paroles containing Certificates of Eligibility to Register to Vote (CERV) applications from 2008 forward.

78. Using the same methodology as described above to identify the 363,510 unique felons listed in the AOC file, I begin with a race-neutral analysis of the 135,579 individuals with at least one H.B. 282 disqualifying felony. Table 3 provides a breakdown of ranges of different amounts of grand total LFOs owed by the 135,579 individuals with felony convictions under H.B. 282, as identified in the AOC file.

²⁵ In article on the assessment of Legal Financial Obligations (LFOs) in Alabama, Claire Greenberg, Marc Meredith, and Michael Morse analyze a sample of cases from 1995, 2000, and 2005-2011 and find that the median amount of LFOs in cases with a felony conviction doubled from less than \$1,000 in 1995 to roughly \$2,000 ten years later. See Claire Greenberg, Claire, Marc Meredith, and Michael Morse, “The Growing and Broad Nature of Legal Financial Obligations: Evidence from Alabama Court Records,” *Connecticut Law Review* 48 (2016):1079–1120.

Table 3: “Grand Total” Balance Due for Individuals with H.B. 282 Felony Convictions, “Alabama Felony Convictions and Guilty Pleas,” 1993-2019

	Total	Total %	White	White %	Black	Black %
\$0	36,215	26.7	19,984	30.6	15,569	22.8
Up to \$100	2,033	1.5	933	1.4	1,071	1.6
Up to \$250	1,456	1.1	638	1.0	778	1.1
Up to \$500	5,905	4.4	2,287	3.5	3,531	5.2
Up to \$1,000	11,460	8.5	4,534	6.9	6,732	9.8
Up to \$5,000	41,852	30.9	18,849	28.8	22,545	32.9
Up to \$10,000	16,077	11.9	7,647	11.7	8,333	12.2
More than \$10,000	20,581	15.2	10,537	16.1	9,869	14.4
Total	135,579	100.0	65,409	100.0	68,428	100.0

79. Of these 135,579 individuals who are disqualified from gaining their voting rights under H.B. 282, only 36,215 (26.7%) do not owe any LFOs (zero dollar balance due). Very few individuals with outstanding LFOs owe small amounts. Only 7% of disqualified individuals have outstanding LFOs \$500 or under. Indeed, those with outstanding LFOs disproportionately owe more than \$1,000 in LFOs (58% of all individuals with a felony conviction covered by H.B. 282). Indeed, more individuals owe between \$1,000 and \$5,000 in LFOs than individuals who do not have any outstanding LFOs. Over 20,000 of the more than 135,000 identified individuals owe more than \$10,000 in LFOs, or 15% of all individuals with a felony conviction covered by H.B. 282.

80. Overall, from a race-neutral standpoint, my analysis of AOC data suggests that the vast majority of people with felony convictions covered by H.B. 282 have non-zero balances, and the majority have significant balances, that is, over

\$1,000.00. Given the level of household income in Alabama as discussed previously, and the income level of people with felony convictions in particular, the outstanding LFOs are likely to be a substantial barrier in the restoration of voting rights for these individuals. Most people who apply for CERV but whose application is rejected are denied because of outstanding LFOs. My analysis suggests that outstanding LFOs are the largest barrier to voting rights restoration for Alabamians regardless of race.

81. This is not to say that race is not an important factor when considering outstanding LFOs for individuals with a felony conviction. I was asked by counsel to examine court fines and fees assessed on individuals with a felony conviction to determine whether Black individuals with a felony conviction owe more to the courts than comparable White individuals. Again, I draw on data from the AOC file and from the D200069 and D005349 files, and these racial breakdowns are also presented in Table 3.

82. Using the same methodology as described above, Table 3 also provides data for the grand total balance of LFOs due for 68,428 Black individuals and 65,409 White individuals with felony convictions who are disqualified from gaining their voting rights due to moral turpitude under H.B. 282. As should be clear, outstanding LFOs do not fall along racially neutral lines. The median amount owed by the 68,428 Black individuals with a disqualifying felony conviction, for

example, is \$1,687; the median amount owed by the 65,409 White individuals with a disqualifying felony conviction is \$1,551.

83. As Table 3 reveals, of the 68,428 Black individuals with a felony conviction under H.B. 282 are nearly 8 percentage points *less* likely to have no outstanding LFOs (\$0.00) than the 65,409 Whites with a felony conviction under H.B. 282. Indeed, a higher share of Black individuals, who under H.B. 282 are disqualified from voting due to a moral turpitude felony conviction, are more likely to owe LFOs compared to Whites, all the way up to \$10,000; only in the highest category of outstanding LFOs—more than \$10,000 owed—is the share of Whites greater than the share of Black individuals who owe LFOs.

84. Figure 12 plots, for each county in Alabama, the median LFO amount owed by Black individuals and White individuals who have at least one H.B. 282 disqualifying felony. Counties where the sum of Black individuals and White individuals convicted of a disqualifying felony is at least 5,000 are labeled. On the X-axis (horizontal) the median grand total balance due for Black individuals with felony convictions and guilty pleas, and on the Y-Axis (vertical), the median grand total balance due for White individuals with felony convictions and guilty pleas in each of the state's 67 counties. As Figure 12 reveals, the median grand total balance of LFOs due for Black individuals who have at least one H.B. 282 disqualifying felony in over two-thirds of the counties is greater than that of similar

White individuals with a felony conviction in these counties. For example, in Montgomery County, the median grand total balance due for Black individuals with a H.B. 282 disqualifying felony is nearly double that for similar White individuals. In Montgomery County, the median grand total balance due for Black individuals is \$1,825, compared to the median grand total balance due of \$956 for White individuals with a felony conviction in the county.

85. There is an even more sizeable gap between Black individuals and White individuals who do not owe any Legal Financial Obligations (LFOs), according to the AOC file. For each Alabama county, Figure 13 plots the percentage of black individuals (X-axis) and white individuals (Y-axis) with a felony conviction under H.B. 282 who have a grand total balance due of zero (\$0.00). It is clear from Figure 13 that in all but one county (Marion), the grand total balance due of zero (\$0.00) is higher for White individuals with at least one H.B. 282 disqualifying felony conviction than for comparable Black individuals.

Figure 12: Median Court Fees Owed by Black and White Individuals who have at Least One H.B. 282 Disqualifying Felony Conviction, “Alabama Felony Convictions and Guilty Pleas,” January 1, 1993-May 1, 2019

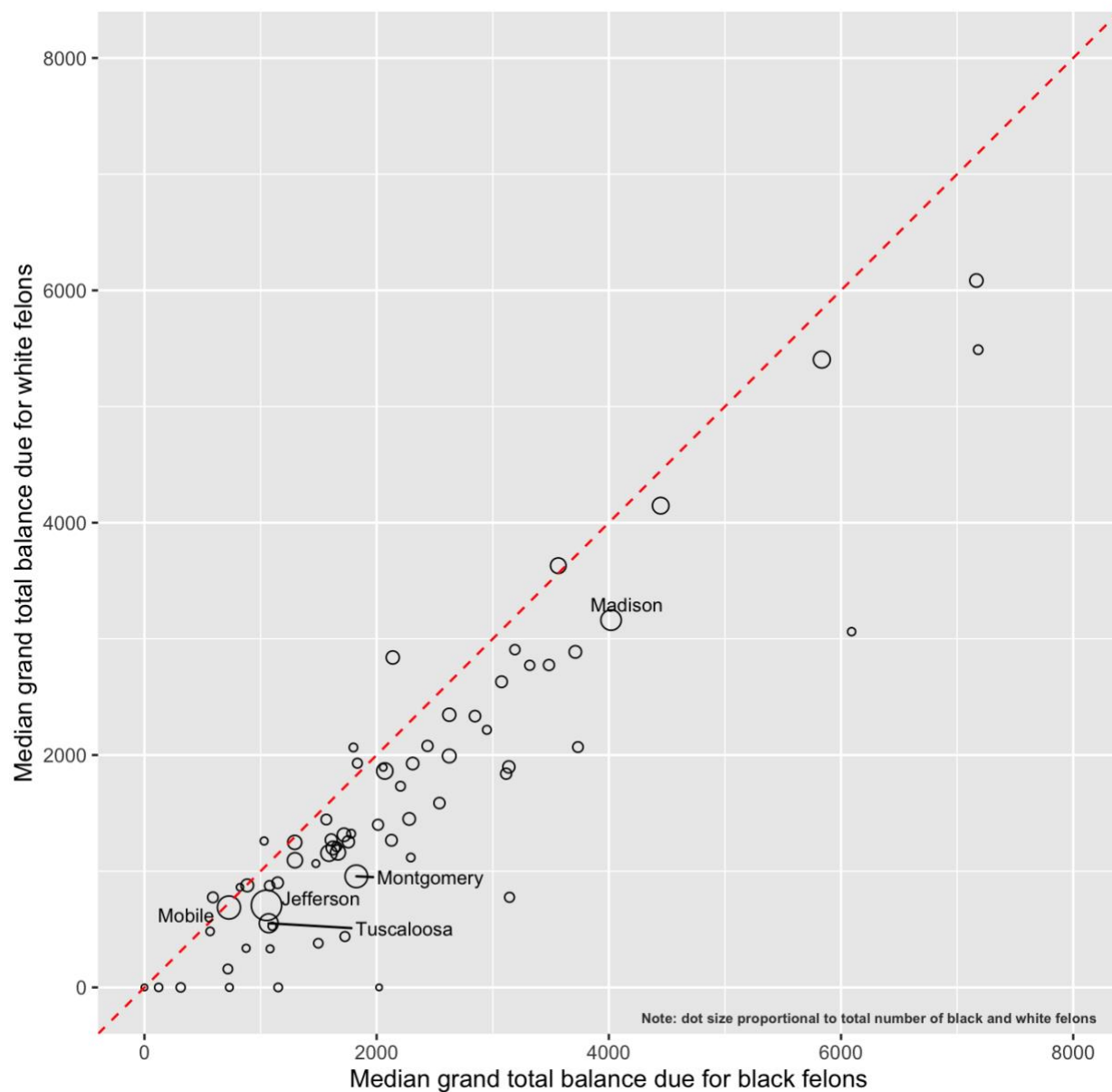
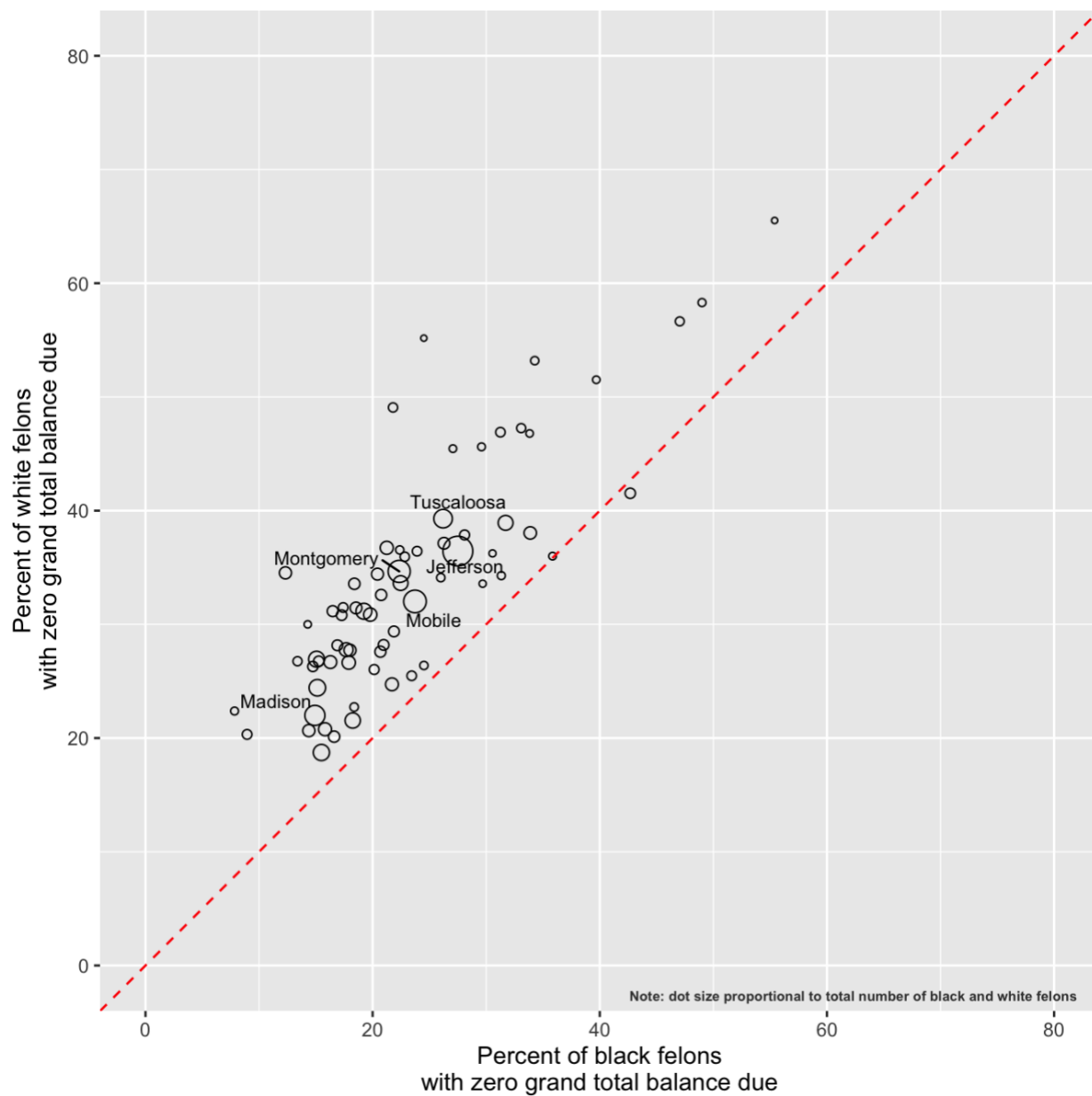


Figure 13: Percentage of Black and White Individuals in a County who have a Grand Total Balance Due of Zero (\$0.00), “Alabama Felony Convictions and Guilty Pleas,” January 1, 1993-May 1, 2019



86. Finally, given that the median court fees for Black individuals with disqualifying felony convictions is higher than for comparable White individuals across most Alabama counties, and that in nearly all of the 67 counties, Black individuals convicted of a felony that fall under H.B. 282 are less likely than White individuals convicted of a felony to not have any LFOs, it is clear that H.B. 282 disproportionately harms the ability of Black individuals to apply for Certificates of Eligibility to Register to Vote (CERV). It follows that White individuals will have a greater likelihood of success when applying for a CERV from the Alabama Board of Pardons and Paroles, although the prevalence of LFOs ensures that the likelihood of success for White individuals applying for a CERV is not high, either.

87. Analysis of data provided by the Alabama Board of Pardons and Paroles of CERV applicants provides additional evidence about the likely success of an individual with a felony conviction who applies to have their voting rights restored, which I refer to as “CERV Applications.” I draw on two data files containing information from the Alabama Board of Pardons and Paroles of CERV applicants from 2008 forward. By appending the 22,365 rows included in D005349 with the 2,618 rows included in the D200069 supplement (but retaining only the D200069 records for the 410 individuals in both files), I find that there are a total of 23,316 individuals who applied to have their voting rights restored, what I refer to as

“CERV Applications.” Among other information, the files include an individual’s first and last name, date of birth, race and sex, as well as an individual’s Alabama institutional serial (AIS) number, district supervisor, field office, and officer assigned, although some of this information is missing.

88. Utilizing the field “vrstatus” in the two data files (D005349 and D200069), it is possible to determine if Black or White individuals applying to the Alabama Board of Pardons and Paroles for a CERV are more or less likely to have their voting rights restored.²⁶ Of the 23,316 individuals in the CERV database, 20,451 are Black or White individuals who have applied to have their voting rights restored. Of these 20,451 individuals, 62.9% (12,872) had their voting rights restored. Unfortunately, given the inconsistencies in the coding convention found in the CERV database’s vrstatus field, the database provided makes it difficult to determine precisely the reasons why these individuals had their application restored or denied. I rely on a collection of terms to assess whether a CERV application was successful or not.²⁷

²⁶ Individuals in the two files who apply for a CERV but are determined to “owe” court fees and restitution, still have payments “due,” are deemed “ineligible,” or are “denied” a CERV by the Board are considered here to have been denied a CERV.

²⁷ CERV vrstatus codes include a variety of words and characters. I take the following terms to be related to a positive determination (restored, granted, no moral turpitude, no mor turpt, nmt, no mt, did not lose, did not loose, voting rights intact, already granted, misd), and the following terms to be related to a negative determination (owe, denied, due, and ineligible).

89. There is a sizeable racial disparity between White and Black individuals with felony convictions who have applied to have their voting rights restored. Of the 8,653 White applicants, 2,375 (27%) had their CERV denied. In contrast, of the 11,798 Black applicants, 5,204 (44%) had their CERV denied. Black individuals who applied to have their voting rights restored were more than 60% more likely than comparable White individuals to have their CERV denied by the Board. Irrespective of race, however, most individuals who apply for CERV are denied, and the reason many of those who are denied is because they “owe” LFOs or have amounts “due.” This suggests that financial barriers for Alabamians with felony convictions prevent many from having their rights restored, regardless of race.

XII. Conclusion

90. Based on my analysis of the data I have examined, Alabama’s felony disenfranchisement scheme has had a clear discriminatory impact on Black, but also White individuals with felony convictions. Regardless of race, the prevalence of individuals with significant amounts of outstanding LFOs, combined with the lower economic status of individuals with felony convictions in Alabama, serve as a large barrier to voting rights restoration for Alabamians.

I declare under penalty of perjury that the foregoing is true and correct. Executed
this 17 day of April 2020, at Alachua, Florida.

D. A. Smith

Daniel A. Smith, Ph.D.

EXHIBIT 9

CHIEF DEENA PREGNO 3/25/2019

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

CIVIL ACTION NO.: 2:16-CV-783-ECM-SRW

TREVA THOMPSON,

Plaintiff,

V.

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

Defendants.

DEPOSITION OF CHIEF DEENA PREGNO

March 25, 2019

Taken before Elaine Scott, CCR,
Commissioner for the State of Alabama at
Large, in the Law Offices of the Attorney
General, 501 Washington Avenue, Montgomery,
Alabama, on Monday, March 25, 2019, commencing
at approximately 11:25 a.m.

1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFF:

4 JENNER & BLOCK

5 Jennifer Yun

6 1099 New York Avenue NW

7 Suite 900

8 Washington, DC 20001-4412

9

10 JENNER & BLOCK

11 Jason P. Hipp

12 919 Third Avenue

13 New York, New York 10022-3908

14

15 FOR THE DEFENDANT:

16 OFFICE OF THE ATTORNEY GENERAL

17 Misty S. Fairbanks Messick

18 Winfield J. Sinclair

19 State of Alabama

20 501 Washington Avenue

21 Montgomery, Alabama 36130

22

23

CHIEF DEENA PREGNO 3/25/2019

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1 A P P E A R A N C E S (continued)

2

3 REPRESENTING ALEA:

4 ASSISTANT ATTORNEY GENERAL

5 ALABAMA LAW ENFORCEMENT AGENCY

6 Michael Robinson

7 301 South Ripley Street

8 Montgomery, Alabama 36104

9

10 COURT REPORTER:

11 BAKER REALTIME WORLDWIDE REPORTING & VIDEO

12 Elaine Scott

13 250 Commerce Street

14 Third Floor, Suite One

15 Montgomery, Alabama 36117

16

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20

21

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CHIEF DEENA PREGNO 3/25/2019

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CHIEF DEENA PREGNO 3/25/2019

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

2 It is hereby stipulated and agreed by
3 and between counsel representing the parties
4 that the deposition of CHIEF DEENA PREGNO is
5 taken pursuant to stipulation and agreement;
6 that all formalities with respect to
7 procedural requirements are waived; that said
8 deposition may be taken before Elaine Scott,
9 Certified Court Reporter and Commissioner for
10 the State of Alabama at Large, without the
11 formality of a commission.

12 It is further stipulated and agreed
13 by and between counsel representing the
14 parties that the filing of the deposition may
15 be introduced at the trial of this case or
16 used in any manner by either party hereto
17 provided for by the Statute.

18 It is further stipulated and agreed
19 by and between the parties hereto and the
20 witness that the signature of the witness to
21 this deposition is NOT hereby waived.

22

23

1 CHIEF DEENA PREGNO,

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

6
7 MR. ROBINSON: I would like to put
8 something on the record. The Agency objects
9 to the subpoena, that it's not properly
10 served. There's no witness fee attached.
11 Additionally we discussed with plaintiff's
12 counsel Daniel Lang that we don't have any
13 documents that are responsive with the
14 exception of one document that may be remotely
15 potentially arguably responsive that we'll
16 turn over in just a minute. Additionally,
17 that document was approved by the United
18 States Department of Justice Voting Rights
19 Section for use in Alabama.

20 In addition to that, the
21 electronic system for registration is set up
22 in coordination with the United States
23 Department of Justice Voting Rights Section,

1 and as part of that we were instructed that we
2 were to make -- take no action or make no
3 comments to any applicant that would in any
4 way be construed as discouraging them from
5 registering to vote. We have no process in
6 determining who is eligible. That's gone
7 through the appropriate election authorities.
8 And I just wanted to put on the record that
9 we've already made it clear that we don't take
10 part in the process that is being explored by
11 this lawsuit and the rule.

12 MS. MESSICK: Madame Court
13 Reporter, you were talking about the usual
14 stipulations. It's my understanding that the
15 plaintiffs did not agree to the usual
16 stipulations insofar as objections to
17 questions are generally reserved with the
18 exception of objections to the form. And I
19 have wanted to object to the form and to
20 anything that goes outside the scope.

21 So I believe that the parties are
22 stipulating to the procedural issues insofar
23 as you taking the deposition and how the

1 transcript is handled and all of those
2 matters, but we do not have an agreement as to
3 the objections, and therefore we will be
4 making objections as we proceed.

5 The other piece of that would
6 also be, Mr. Robinson, if you -- I don't know
7 what your position is on whether you want to
8 waive signature or not.

9 MR. ROBINSON: We're going to read
10 and sign.

11 MS. MESSICK: Okay. Did I
12 correctly state --

13 MS. YUN: Yes.

14 MS. MESSICK: -- the limit of our
15 agreement?

16 MS. YUN: Yes.

17 MS. MESSICK: Okay.

18

19 EXAMINATION

20 BY MS. YUN:

21 Q. Good morning.

22 A. Good morning.

23 Q. Please state your full name and

1 current business address for the record.

2 A. Deena Leigh Pregno, 301 South
3 Ripley Street, Montgomery, Alabama 36104.

4 Q. My name is Jennifer Yun, and I
5 represent the plaintiffs in this action, and
6 I'll be taking your deposition today.

7 Have you ever been deposed before?

8 A. Yes.

9 Q. When?

10 A. I don't know the actual dates.

11 Q. How many times have you been
12 deposed before?

13 A. Two.

14 Q. Will you describe approximately
15 when -- which years you've been deposed
16 before?

17 A. Last year.

18 Q. Both of them last year?

19 A. 2018, I believe.

20 Q. Let's take them one by one. The
21 first one, what kind of case was it?

22 A. I can't remember which case it
23 was. I can't recall.

1 Q. We can come back to that.

2 A. Okay.

3 Q. Do you remember whether you were
4 being deposed in an official or personal
5 capacity in the first one?

6 A. Official.

7 Q. What about the second one?

8 A. Official.

9 Q. Do you remember the nature of the
10 case, the second case?

11 A. It was concerning the depiction of
12 the person's real sex on the face of the
13 license.

14 Q. Have you ever testified at trial
15 before?

16 A. Concerning traffic cases, yes.

17 Q. And approximately how many of
18 those?

19 A. A few hundred. I'm not sure.

20 Q. And were those all in your official
21 capacity?

22 A. Yes.

23 Q. Do you understand that today you

1 will be answering questions under oath?

2 A. Yes.

3 Q. And that is the same as if you were
4 testifying in court?

5 A. Yes.

6 Q. And do you understand that your
7 testimony must be truthful and complete?

8 A. Yes.

9 Q. So I'll now go over some grounds
10 rules. You may be aware of them from your
11 depositions last year, but I will -- just for
12 the sake of reminders, I'll try to ask my
13 questions slowly and clearly and I'll ask that
14 you the same with your answers. Is that okay?

15 A. Yes.

16 Q. I would also ask that you let me
17 know if you don't understand a question. Is
18 that okay?

19 A. Yes.

20 Q. It's important that we speak one at
21 a time and that you listen to the full
22 question before giving your answer.
23 Otherwise, it is hard for the court reporter

1 to transcribe, and you'll not be sure if
2 you're answering the full question being
3 asked.

4 A. Okay.

5 Q. We also want the transcript to be
6 as complete and accurate as possible. So
7 please make sure to respond verbally to
8 questions because if you just nod or shake
9 your head, then that will not appear in the
10 transcript; is that okay?

11 A. Yes.

12 Q. Your attorney or the defendants'
13 attorney might object to one of my questions,
14 but unless he or she instructs you not to
15 answer, then when the objection is finished,
16 you should answer the question. Do you
17 understand that?

18 A. Yes.

19 Q. Let me know if you need a break.
20 However, I would ask that you not request a
21 break while one of my questions is pending.
22 Is that okay?

23 A. Yes.

1 Q. Is there any reason that you may
2 not be able to testify truthfully and
3 accurately today?

4 A. No.

5 Q. Have you ever taken -- have you
6 taken today any medications or substances that
7 may affect your memory or may impair your
8 ability to answer my questions?

9 A. No.

10 Q. Do you understand that you're here
11 today in your capacity as an employee of the
12 Alabama Law Enforcement Agency?

13 A. Yes.

14 Q. And is the Agency also commonly
15 referred to as ALEA?

16 A. Yes.

17 Q. Over the course of the day I'll --
18 if I use the terms the Agency or ALEA, I'll be
19 referring to your employer, the Alabama Law
20 Enforcement Agency.

21 A. Okay.

22 Q. Are you aware that you have been
23 designated by the Alabama Law Enforcement

1 Agency to testify as what's known as a Rule
2 30(b)(6) witness?

3 A. Yes.

4 Q. Do you understand that this means
5 that the plaintiffs in this case have
6 identified certain subject matters it wants to
7 explore in a deposition setting, and in
8 response, ALEA has designated you to testify
9 about those subject matters on behalf of the
10 Agency?

11 A. Yes.

12 Q. Do you understand that it's as
13 though ALEA itself is testifying?

14 A. Yes.

15 Q. Do you understand that we are
16 seeking institutional knowledge of the Agency?

17 A. Yes.

18 Q. Do you understand that to the
19 extent you lacked personal knowledge on some
20 of those subject matters, you are to prepare
21 by thoroughly learning the institution's
22 knowledge?

23 A. Yes.

1 Q. Are you the only designee for ALEA
2 for this particular deposition?

3 A. Yes.

4 Q. Could you describe what you did to
5 prepare for today's deposition?

6 A. I went over the subpoena.

7 Q. Without mentioning anything that
8 was discussed, did you meet with counsel?

9 A. Yes.

10 Q. For how long?

11 A. Approximately thirty minutes.

12 Q. How many times?

13 A. Twice.

14 Q. Did you review any documents other
15 than the subpoena?

16 A. Yes, the photo declaration that's
17 in front of you.

18 Q. Anything else?

19 A. No.

20 Q. Did you speak to anyone to prepare
21 to your -- prepare your testimony today as
22 ALEA's 30(b)(6) designee other than your
23 counsel?

1 A. No.

2 Q. Did you speak to any of the lawyers
3 who represent the Secretary of State Office in
4 this action?

5 A. No.

6 Q. I am now handing you what is being
7 marked as Exhibit 1. It's the subpoena from
8 the plaintiffs in this case issued to ALEA on
9 February 11, 2019.

10 (Plaintiff's Exhibit Number 1 was
11 marked for identification. A copy
12 is attached.)

13 Q. And we'll now go over the topics
14 for which -- for which ALEA is putting you
15 forth as a Rule 30(b)(6) witness.

16 The first topic on page 1 is photo
17 registration at ALEA driver's license offices.

18 Are you prepared to testify about
19 this topic?

20 A. Yes.

21 Q. When did you first learn that you
22 were being designated to testify about this?

23 A. I'll have to go look at the exact

1 date.

2 Q. Was it in the last week, in the
3 last month?

4 A. The last month.

5 Q. Do you have personal knowledge of
6 this topic?

7 A. Yes.

8 Q. Is there any reason you cannot
9 testify fully and thoroughly on this subject?

10 A. No.

11 Q. Second topic is any training or
12 guidance offered to ALEA officials regarding
13 the interpretation of Moral Turpitude Act of
14 2017, also know as House Bill 282, HB 282, or
15 Act Number 2017-378 or the effect of felony
16 convictions on voter eligibility.

17 Are you prepared to testify about
18 this?

19 A. Yes.

20 Q. When did you first learn that you
21 were being deposed on this topic?

22 A. The same time I learned about the
23 subpoena.

1 Q. Do you have personal knowledge on
2 this topic?

3 A. I'm not following your question.

4 Q. Do you -- do you have personal
5 knowledge regarding the topic that we just
6 discussed -- we just read out loud, the
7 topic -- the second topic -- the second topic.

8 The second topic starts with, "any
9 training or guidance offered to ALEA officials
10 regarding HB 282 or the effect of felony
11 convictions on voter eligibility."

12 A. There was no guidance. So yes, I
13 can testify that there was no guidance or
14 training.

15 Q. Okay. So you have personal
16 knowledge regarding --

17 A. Yes.

18 Q. -- that topic? Okay. And the
19 third topic, the last topic, is any guidance
20 ALEA officials provide to potential voters at
21 ALEA offices about the effect of voter
22 convictions and voter eligibility.

23 A. Yes.

1 Q. Are you prepared to testify about
2 this?

3 A. Yes.

4 Q. And did you learn that you were
5 being deposed about this topic at the same
6 time you read this subpoena?

7 A. Yes.

8 Q. And do you have any -- do you have
9 personal knowledge of this topic?

10 A. Yes.

11 Q. Any reason you cannot testify fully
12 or thoroughly on this subject?

13 A. No.

14 Q. Could you briefly discuss your
15 educational background?

16 A. I have a minor in business
17 administration and a computer science minor --
18 I'm sorry. I have a major in business
19 administration and a minor in computer
20 information science from Troy University,
21 certified by the Alabama Peace Officers
22 Standards and Training Commission.

23 Q. And could you tell us your

1 professional background chronologically
2 briefly?

3 A. I started the trooper academy in
4 1996, was in highway patrol for approximately
5 three years, worked in dignitary protection
6 approximately three years, worked with --
7 under the director's office until 2011 maybe,
8 and then went to highway patrol, worked there
9 for approximately two years, service division
10 I believe it was for two years. And then the
11 driver's license division in 2012 is where
12 I've been since 2012.

13 Q. And --

14 A. I've got a total of twenty-three
15 years of service. I'm not sure those years
16 are exact.

17 Q. Understood. And what is your
18 current position at ALEA?

19 A. ALEA Driver's License Division
20 Chief.

21 Q. And you said that it was around
22 approximately 2012 when you started working at
23 the driver's license division?

1 A. Correct.

2 Q. Could you tell us what -- when did
3 you become -- strike that.

4 When did you become the division
5 chief?

6 A. January of 2015.

7 Q. And could you explain what your
8 responsibilities are as the division chief?

9 A. Oversee the operations of all
10 driver's license offices in the State of
11 Alabama operated by ALEA.

12 Q. And is that because some of the
13 offices are not operated by ALEA?

14 A. That's correct.

15 Q. And who operates those offices?

16 MS. MESSICK: Object to the form --
17 I'm sorry. Objection. Irrelevant and outside
18 the scope.

19 Q. You can go ahead and answer.

20 A. They are operated by county probate
21 judges and license commissioners.

22 Q. Is there any other responsibility
23 other than overseeing the operations of the

1 driver's license offices that are operated by
2 ALEA?

3 A. The different units involved --
4 under the driver's license division as far as
5 reinstatement, CDL, medical, driver
6 improvement, safety.

7 Q. Those are all under your --

8 A. Yes.

9 Q. -- your responsibility? And who do
10 you report to?

11 A. Colonel Charles Ward.

12 Q. And what is his position?

13 A. Director of the Department of
14 Public Safety.

15 Q. Approximately how many people or
16 how many people report to you?

17 A. Two report to me.

18 Q. Who are those people?

19 A. Captain John Archer, ASA-3 Mona
20 Lisa Hall.

21 Q. And what are their job titles?

22 MS. MESSICK: Objection.

23 Relevance.

1 Q. You can answer.

2 A. Captain John Archer, he's assistant
3 division chief and administrative assistant.
4 Mona Lisa Hall is the division administrative
5 support person.

6 Q. And before you became the division
7 chief in 2015, between 2012 and 2015, could
8 you describe what your role was at the
9 driver's license division?

10 MS. MESSICK: Objection. Relevance
11 and outside the scope.

12 A. I was the district commander and
13 region commander of driver's license.

14 Q. What were you responsible -- what
15 does that job entail?

16 MS. MESSICK: Objection. Relevance
17 and outside the scope.

18 A. I was over the south region which
19 involved Montgomery, Opelika, Mobile,
20 Tuscaloosa, Selma, Dothan, all those district
21 and field offices for driver's license.

22 Q. Could you describe what ALEA does
23 with regards to voter registration in the

1 State of Alabama?

2 A. When an applicant comes in to
3 process for a driver's license or an ID card,
4 once the issuance process is almost completed,
5 if the individual is within voting age -- the
6 system is set up to identify if they're within
7 the voting age and if they are a U.S.
8 citizen. And if that is the case, the voter
9 registration tab will automatically appear and
10 it asks the question would you like to
11 register to vote today.

12 Q. So that is using an automatic
13 system?

14 A. The page appears, the examiner asks
15 the question, and then they respond yes or no
16 based on the applicant's answer to the
17 examiner.

18 Q. Understood. And you said this is
19 when people come in to apply for a driver's
20 license or an ID card. Will you explain what
21 other forms of ID cards that your offices
22 process?

23 MS. MESSICK: Object to the -- I'm

1 sorry. Objection. Scope.

2 A. Either a driver's license or
3 nondriver's identification card.

4 Q. So there's only one type of
5 nondriver's license identification card?

6 A. Correct.

7 Q. Does ALEA also provide any forms
8 that has voter registration information to
9 applicants who come to the office?

10 A. We no longer provide a voter
11 registration card with an automated process.

12 Q. So you don't use any paper forms?

13 A. No.

14 Q. The voter declaration document that
15 you brought -- that you and your counsel
16 brought with you today, is this -- is this an
17 accurate representation of what a -- what an
18 applicant will see or sign when they are going
19 through the process that you just described?

20 A. If they answer yes to the question,
21 the voter declaration is printed. They are
22 told to read all the -- all the information
23 and sign at the bottom if it is correct.

1 Q. And what about when they want to
2 either change their address -- let's take it
3 one by one.

4 What about when an applicant comes
5 in and wants to change their address?

6 A. If they change their address, a tab
7 will appear and ask if they would like to
8 update their voter registration address with
9 the new address, and it's either a yes or no
10 answer.

11 Q. Does it happen regardless of
12 whether the applicant is already registered to
13 vote?

14 A. Yes.

15 Q. So in theory, if you are not
16 registered to vote, you could register to vote
17 at that point?

18 A. Yes.

19 Q. Those applicants will also see the
20 same form, the voter declaration page that
21 is -- that you brought with you today?

22 A. Correct, if they answer yes to the
23 question.

1 Q. Could you describe what ALEA does
2 to assist applicants with voter registration
3 questions, if any?

4 A. We forward them to the local voter
5 registration office, registrar's office.

6 Q. So if they're asking those
7 questions in person while they are in front of
8 the examiner, what happens then?

9 A. We tell them we don't have that
10 information, they need to contact the voter
11 registration office.

12 Q. That is the local office of their
13 county of residence?

14 A. Yes.

15 Q. So is there a written policy on
16 that point, that employees of the ALEA
17 driver's license offices should forward all
18 questions regarding voter registration to --
19 refer them to the local voter registrar
20 office?

21 A. No.

22 Q. Are there any instructions given to
23 employees that that's how they should respond?

1 A. No.

2 Q. Is there an unwritten policy?

3 A. There's no unwritten policy. We
4 don't deal with voter registration other than
5 what's automated in the system. So we don't
6 have those answers.

7 Q. So how could -- how would an
8 employee know that the board of registrar
9 office is the place that they should refer
10 those questions to?

11 A. Because in the years past when we
12 had voter registration cards, we provided them
13 to the applicant and told them if you have any
14 questions talk to the voter registration
15 office.

16 Q. So that's been the practice of
17 driver's license offices with regards to voter
18 registration questions?

19 A. Yes.

20 Q. And that is starting from before
21 you had an automated system that popped up
22 whenever the conditions were met?

23 A. Correct.

1 Q. When did ALEA switch over to that
2 system where you don't have any paper forms?

3 A. I believe it was 2017.

4 Q. And prior to the switch, what do --
5 what forms did ALEA provide to the driver's
6 license applicants?

7 A. It was a voter registration card.

8 Q. And it was the same card that would
9 be available at voter registration offices?

10 A. Correct. That's who provided them.

11 Q. We'll actually go ahead and mark
12 the voter declaration form as an exhibit now.
13 This is the same voter registration form that
14 the witness and counsel brought with them
15 today as responsive to the subpoena that was
16 issued to ALEA.

17 (Plaintiff's Exhibit Number 2 was
18 marked for identification. A copy
19 is attached.)

20 MS. MESSICK: For the record, he
21 said might conceivably possibly may be
22 responsive. I think it's obvious it's not
23 responsive to the subpoena.

1 MR. ROBINSON: For the record, to
2 reiterate, this was approved by the United
3 States Department of Justice Voter
4 Registration Section.

5 BY MS. YUN:

6 Q. Do you also process forms for
7 renewal or duplicate license for drivers
8 temporarily out of state?

9 A. Yes.

10 Q. I'm now handing you what's being
11 marked as Exhibit 3.

12 (Plaintiff's Exhibit Number 3 was
13 marked for identification. A copy
14 is attached.)

15 Q. Does this form -- is this the form
16 that would be utilized to process that
17 request?

18 A. Yes.

19 Q. And that form also has a section
20 that is used for voter registration, correct?

21 A. Correct.

22 Q. And the voter declaration part on
23 the second page is the same as what the voter

1 declaration form of Exhibit 2 -- what the
2 voter declaration document has is the same as
3 page 2 of this form DL 100, Exhibit 2 -- I
4 mean, Exhibit 3?

5 A. That's correct.

6 Q. These applications are accepted
7 only by mail or do you also have an
8 electronic --

9 A. Only by mail.

10 Q. Do you ever accept them in person?

11 A. Yes, but if they are out of state
12 it's kind of hard to do.

13 Q. Do ALEA offices provide what
14 voter -- what the requirements are for voter
15 registration to applicants other than
16 providing them with the voter registration
17 form?

18 A. No.

19 Q. What are the goals, if any, to ALEA
20 with regard to voter registration?

21 A. Opportunity for them to register at
22 the time of issuance of an ID card or driver's
23 license.

1 Q. Has ALEA been working with the
2 Secretary of State Office to increase voter
3 registrations at ALEA offices?

4 MS. MESSICK: Objection. Scope.

5 A. Under the lawsuit through DOJ,
6 we've updated the system to provide them that
7 opportunity.

8 Q. When you say updated the system,
9 you mean switching over to the electronic
10 automated system?

11 A. Yes, that's correct.

12 Q. What are ALEA's obligations under
13 the National Voter Registration Act?

14 MS. MESSICK: Objection to scope.
15 Also you're asking her what a federal law
16 requires. She's not a lawyer.

17 Q. You can go ahead and answer.

18 A. What was the question again?

19 MR. ROBINSON: If you know.

20 A. Do I know? I don't know what's
21 required for voter registration.

22 Q. Could you describe any steps that
23 ALEA has taken to comply with the National

1 Voter Registration Act?

2 MS. MESSICK: Objection. Scope.

3 A. Update --

4 MS. MESSICK: I'm sorry. I'm
5 sorry. And also, again, it calls for her to
6 have an understanding of the federal law. The
7 subpoena asks her to talk about what happens
8 in ALEA offices, not whether it complies with
9 federal law or in what way it complies with
10 that law.

11 Q. You can answer.

12 MR. ROBINSON: But it's -- it's
13 outside the scope of the subpoena. So it's
14 going to be her opinion. It's not binding on
15 the Agency.

16 MS. MESSICK: We agree with that
17 completely.

18 Q. You can answer.

19 A. We -- through the lawsuit with DOJ,
20 we updated the system to provide that
21 opportunity for them to register to vote.

22 Q. Could you explain your
23 interactions -- ALEA's interactions, if any,

1 with the Secretary of State Office with
2 regards to voter registration services?

3 MS. MESSICK: Again, it's outside
4 the scope, and I don't see how any of it's
5 relevant. It's private.

6 MS. YUN: I would just like to note
7 for the record that the subpoena -- the first
8 topic under the subpoena is voter registration
9 at ALEA driver's license offices.

10 MS. MESSICK: You're asking about
11 another state agency now.

12 BY MS. YUN:

13 Q. Do you understand the question?
14 Should I read the question again?

15 A. Yes, please.

16 Q. Could you explain your interactions
17 with the Secretary of State Office with
18 regards to voter registration services, if
19 any? And your as in ALEA's interactions, not
20 you in your personal capacity.

21 A. ALEA takes --

22 MS. MESSICK: Well, then I object
23 again to the scope.

1 MR. ROBINSON: Same objection.

2 A. ALEA takes the information. If
3 they say they would like to register to vote,
4 then we transfer that information to the
5 appropriate authority for voter registration
6 for them to determine if they're eligible.

7 Q. So do you have any interactions
8 with the Secretary of State Office, the Office
9 of the Secretary of State?

10 A. Personally?

11 Q. Does ALEA -- does the driver's
12 license division have any interactions with
13 the Secretary of State office with regards to
14 voter registration rather than forwarding
15 the --

16 A. The data?

17 Q. -- the data?

18 A. No.

19 Q. So you do not receive any guidance
20 with regards to your practices from the
21 Secretary of State Office?

22 A. No.

23 MS. MESSICK: Objection. Scope.

1 Q. Do you receive any communication
2 from the Office of the Secretary of State with
3 regard to voter registration?

4 MS. MESSICK: Objection. Scope.

5 Q. I would like to note it is within
6 scope, but you can answer.

7 A. No. The only time we receive any
8 information from them is when someone has --
9 in the license commissioner offices there has
10 been occasion where they would erroneously
11 register someone to vote. And then the
12 Secretary of State's office would call me, and
13 we would identify which office did it and, you
14 know, try to guide them not to -- to ask the
15 right question at the time of issuance. So --

16 Q. Just to clarify, you said that's
17 when -- that's not an ALEA office. That's a
18 driver's license commission?

19 A. It could be either/or, but in the
20 past it's been a probate or license
21 commissioner office who has --

22 Q. So you would go back to them and
23 say we received this communication from the

1 Secretary of State Office, we need to fix it?

2 A. (Witness nods.)

3 Q. Would you please say --

4 A. Yes.

5 Q. Are these to fix one error or are
6 these to let them know that that was wrong and
7 therefore you should be sure to not do it
8 again?

9 MR. ROBINSON: Objection. It's
10 outside the scope.

11 MS. MESSICK: Objection. It's
12 outside the scope.

13 A. It would be to tell them this was
14 wrong, please don't let it happen again.

15 Q. And that is directed specifically
16 at only that office?

17 A. The office that made the mistake,
18 yes.

19 Q. Could you give us some examples of
20 what kind of mistakes these have been?

21 MR. ROBINSON: Outside the scope.

22 MS. MESSICK: Objection.

23 Relevance.

1 A. When someone changes their address
2 and they did not wish to register to vote but
3 the person operating the issuance system
4 marked yes.

5 Q. Any other examples?

6 A. No.

7 MS. MESSICK: Same objection.

8 Q. Were there any other communications
9 that you -- that ALEA -- your division would
10 receive other than what you just described in
11 terms of mistakes made in the process of
12 sending information over for voter
13 registration?

14 MS. MESSICK: Objection. Scope and
15 relevance.

16 A. No.

17 Q. So the only times when you receive
18 communication from the Secretary of State
19 Office is when there are discreet mistakes
20 being made to a form and then you notify that
21 office regarding the mistake. Is that -- is
22 that a fair representation of your testimony
23 today?

1 MS. MESSICK: Objection. Scope,
2 relevance, asked and answered.

3 MR. ROBINSON: Yeah, objection.
4 Scope, relevance, and asked and answered.

5 A. Yes.

6 Q. Is ALEA aware of the definition of
7 Moral Turpitude Act of 2017 also known as HB
8 282 or House Bill 282?

9 A. Yes.

10 Q. What is the Agency's understanding
11 of the effect of that law?

12 A. It deals with felony voter rights.

13 Q. Does ALEA understand the law to
14 affect voter eligibility?

15 A. Yes.

16 Q. Was that understanding communicated
17 to driver's license offices or their
18 employees?

19 A. No. I didn't have any
20 understanding of this until I received the
21 subpoena.

22 Q. And that was within the last month
23 or so?

1 A. That's correct.

2 Q. So ALEA did not send out any
3 communication to the driver's license offices
4 or their employees regarding the passage of
5 this law, HB 282, correct?

6 A. Correct, we did not.

7 Q. Was there any discussion on the
8 effect of HB 282 on the voter registration
9 within the Agency?

10 MS. MESSICK: Objection. Scope. I
11 would say any answer is limited to her
12 personal knowledge, not the Agency.

13 MR. ROBINSON: Same objection.

14 Q. Was there any discussion that ALEA
15 had with regard to HB 282 with the Office of
16 the Secretary of State?

17 MS. MESSICK: Objection. Scope.

18 Q. I would just like to note it is
19 within scope under the second topic. You can
20 answer.

21 MS. MESSICK: We disagree. She may
22 answer with her personal knowledge and not on
23 behalf of the Agency.

1 A. No, there was no discussion.

2 Q. So is it fair to say that you did
3 not receive any instructions from the
4 Secretary of State Office regarding what
5 disqualifying felony convictions are for voter
6 eligibility?

7 MS. MESSICK: Asked and answer.

8 Q. You may answer.

9 A. That is correct. We did not
10 receive any information from the Secretary of
11 State's Office.

12 Q. So any -- just to be clear, any
13 information, meaning there was no guidance
14 from the Secretary of State's Office, correct?

15 MS. MESSICK: Objection. Asked and
16 answered.

17 A. That is correct.

18 Q. And no formal or informal
19 communications from the office?

20 MS. MESSICK: Objection. Asked and
21 answered.

22 Q. Of the Secretary of State's Office?

23 A. That is correct.

1 Q. Could you describe any
2 instructions, if any, that ALEA gave to its
3 employees regarding disqualifying felony
4 convictions after HB 272 passed -- 282 passed?

5 A. There were no -- no documents
6 regarding the passage of 282 provided or
7 instructions provided to ALEA employees.

8 Q. Do driver's license offices have
9 the list of felonies that are now considered
10 disqualifying felony convictions?

11 A. No.

12 Q. Were there any public announcements
13 with regards to voter eligibility that ALEA
14 issued after HB 282 passed?

15 A. No.

16 Q. How about press releases?

17 A. Through ALEA?

18 Q. Yes.

19 A. No.

20 Q. There were no official statements
21 from ALEA, right?

22 A. No.

23 Q. And no public guidance materials

1 like posters or signs that were to be posted
2 within the office -- within the driver's
3 license office; is that correct?

4 A. Correct.

5 Q. Are there any training that is
6 given to ALEA employees with regards to voter
7 eligibility?

8 A. No.

9 Q. So there is no training given to
10 ALEA employees with regards to what counts as
11 a disqualifying felony conviction, correct?

12 A. Correct.

13 Q. Are there any materials that ALEA
14 provides to any applicants regarding voter
15 eligibility after HB 282 passed?

16 A. No.

17 Q. And ALEA does not provide a list of
18 felonies that are now considered disqualifying
19 felony convictions under HB 282, correct?

20 A. Correct.

21 Q. You stated earlier today that you
22 if an applicant is standing in front of the
23 examiner and a question pops up that you

1 should ask this person whether they would like
2 to register to vote and if they say yes and
3 they have any questions, you say that it is
4 routine practice for them to just refer those
5 questions -- refer the applicant to the voter
6 registration office. Was that the case before
7 HB 282 passed also?

8 A. Yes.

9 Q. And you know that to be the case at
10 least since 2012 which is when you started
11 working in the division, correct?

12 MS. MESSICK: Objection. Scope.

13 A. Correct.

14 Q. How do you -- are there any --
15 strike that. When an applicant comes into the
16 office they are standing there in front of the
17 examiner. If they have questions about
18 anything regarding their eligibility for a
19 form of ID, how does the examiner answer that
20 question?

21 MS. MESSICK: Object to the form.
22 Also that's incredibly vague.

23 MR. ROBINSON: Same objection --

1 MS. MESSICK: I'm sorry. I think I
2 said object to the form. It's irrelevant.
3 It's outside the scope and it's vague.

4 BY MS. YUN:

5 Q. Do you understand my question?

6 A. You're asking if they have a
7 question about issuance of an ID?

8 Q. About their eligibility for an ID,
9 whether it's a driver's license or a
10 nondriver's license ID.

11 A. No. They are trained on that.

12 Q. Do you have any written guidance
13 material on that?

14 A. Yes.

15 MS. MESSICK: I'm sorry. Objection
16 to scope and relevance.

17 Q. And are there any written materials
18 that they can reference at the desk when they
19 are asked those questions, the examiners?

20 MR. ROBINSON: Objection. Scope
21 and relevance.

22 MS. MESSICK: Objection. Scope and
23 relevance.

1 A. It may not be at their desk, but
2 they go through forty hours of training on
3 what documents are required for a driver's
4 license or ID card. So it's -- if they are a
5 good examiner, it's committed to memory.

6 Q. And that forty-hour training is
7 when they first started working at the office
8 or is it periodic?

9 MS. MESSICK: Objection. Scope and
10 relevance.

11 MR. ROBINSON: Same objections.

12 A. It's upon hiring, and then we have
13 retraining annually.

14 Q. And if any of those requirements
15 change, how are those changes communicated to
16 the employees?

17 MS. MESSICK: Objection. Scope and
18 relevance.

19 MR. ROBINSON: Objection. Scope
20 and relevance.

21 A. In writing.

22 MS. YUN: I think we are just about
23 done, but we would like to take a five-minute

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1 break just to -- just so that we have an
2 opportunity to confer.

3 MS. MESSICK: Great. Thank you.

4 (Break taken.)

5 MS. YUN: We have no further
6 questions at this time.

7 MS. MESSICK: We have no questions.
8 All right. Thank you, everybody.

9

10 (The deposition of CHIEF DEENA
11 PREGNO, concluded on March 25,
12 2019, at 12:25 p.m.)

13 FURTHER DEPONENT SAITH NOT

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1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA)

3 JEFFERSON COUNTY)

4 I, Elaine Scott, Licensed Court

5 Reporter and Commissioner for the State of

6 Alabama at Large, hereby certify that on March

7 25, 2019, I reported the deposition of CHIEF

8 DEENA PREGNO, who was first duly sworn or

9 affirmed to speak the truth in the matter of

10 the foregoing cause, and that pages 1 through

11 48 contain a true and accurate transcription

12 of the examination of said witness by counsel

13 for the parties set out herein.

14 I further certify that I am neither

15 of kin nor of counsel to any of the parties to

16 said cause nor in any manner interested in the

17 results thereof.

18 _____

19 ELAINE SCOTT, Court Reporter

20 and Commissioner for the State

21 of Alabama at Large,

22 CCR License No. 354, Expires 9/30/19

23 MY COMMISSION EXPIRES NOVEMBER 16, 2019

CHIEF DEENA PREGNO 3/25/2019

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CHIEF DEENA PREGNO 3/25/2019

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EXHIBIT 10



KAY IVEY
Governor

Alabama Medicaid Agency

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P.O. Box 5624
Montgomery, Alabama 36103-5624
www.medicaid.alabama.gov
e-mail: almedicaid@medicaid.alabama.gov

Telecommunication for the Deaf: 1-800-253-0799
334-242-5000 1-800-362-1504



STEPHANIE MCGEE AZAR
Commissioner

March 1, 2019

Mr. Joseph Mitchell McGuire
McGuire & Associates LLC
31 Clayton Street
Montgomery, AL 36104

Re: Treva Thompson, et al. v. John H. Merrill, in his
official capacity as Secretary of State, et al
Litigation Subpoena

Dear Mr. McGuire:

I have enclosed the Alabama Medicaid Agency's answers to the above referenced subpoena.

Please let me know if you have any questions.

Sincerely,

Mary-Frank Brown
Assistant Attorney General
Alabama Medicaid Agency
(334)353-5133

Enclosure

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

Treva Thompson, ex rel.,	)	
	)	
Plaintiff	)	
v.	)	CIVIL NO. 2:16-cv-783
John H. Merrill, in his official capacity	)	
As Secretary of State, et al.,	)	
	)	
Defendant.	)	

**RESPONSE OF THE ALABAMA MEDICAID AGENCY TO PLAINTIFF TREVA
THOMPSON'S REQUESTS FOR PRODUCTION OF DOCUMENTS**

The Alabama Medicaid Agency responds to the plaintiff Treva Thompson's requests for production of documents as follows:

1. All documents and communications regarding the effect, scope, interpretation, implementation, of the Definition of Moral Turpitude Act of 2017 ("HB 282"), also known as House Bill 282, HB 282, or Act no. 2017-378, or otherwise related to the Alabama Medicaid Agency's activities, responses, reactions, duties, and functions related to HB 282, including but not limited to:

a. instructions regarding the implementation of HB 282 prepared or received by the Alabama Medicaid Agency or any employees thereof;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

b. public announcements, press releases, official or unofficial statements, public guidance, and/or other forms of communication regarding HB 282 or the implementation thereof, or otherwise related to the disqualification or nondisqualification, the registration or non-registration, or otherwise related to the effect of a felony conviction on voter registration;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

c. training or guidance materials regarding HB 282 or and/or the registration to vote of citizens with felony convictions, whether formal or informal;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

d. documents or materials provided to, prepared for, or directed at any current, former, potential, potentially disqualified, or disqualified voter in Alabama regarding or related to HB 282 and/or the registration of citizens with felony convictions, and any documents or materials that contain or describe training, guidance, or other wise describe the method, means, and/or circumstances in which a citizen with a felony conviction may register to vote;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control”

e. All documents and materials regarding the disqualification of citizens with felony convictions involving moral turpitude from 2016 to the present;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

f. All documents and materials regarding the restoration of voting rights or voter registration for citizens after August 1, 2017, for citizens who were denied the right to register to vote, or to vote, on the basis of a felony conviction prior to August 1, 2017.

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

2. Documents sufficient to show records of all communications-whether oral or written-regarding the understanding of disqualifying felonies before August 1, 2017, including but not limited to:

a. Training, education, and guidance materials on which felonies disqualified an applicant or how to assess a felony’s severity;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

b. Requests for clarification on voter eligibility based on whether a felony is disqualifying, and responses to those request;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

c. Communications regarding the approval or rejection of an application for the restoration of voting rights, on the basis of a qualifying or disqualifying felony;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

d. Communications to and applicant, or policy or guidance materials regarding communications to applicants, regarding whether a felony is disqualifying.

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

3. Documents sufficient to show records of all communications-whether oral or written-regarding the understanding of disqualifying felonies under HB 282, or otherwise related to such understanding on or after August 1, 2017, including but not limited to:

a. Training, education, and guidance materials on which felonies disqualified and applicant or how to assess a felony's severity;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

b. Requests for clarification on voter eligibility related to HB 282, and responses to those requests;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

c. Communications regarding the approval or rejection of an application for the restoration of voting rights, on the basis of a qualifying or disqualifying felony;

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

d. Communications to any applicant, or policy or guidance materials regarding communications to applicants, regarding HB 282.

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control.

4. Documents sufficient to show all applications for voting rights of citizens convicted of felonies, or inquiries or requests for information related to applications(s) for voting rights of citizens previously convicted of felonies, including documents sufficient to show:

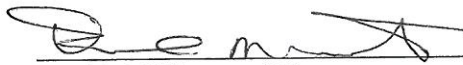
- a. The date of the request;
- b. The statutory violation and degree;
- c. The race of the applicant;
- d. Court imposed legal financial obligations, including fines, fees, and/or restitutions;
- e. The date of completion of sentence, including probation and parole;
- f. The date of payment of all legal financial obligations, or if all legal financial obligations are not complete, current state of legal financial obligations;
- g. The outcome of the application.

Response: The Alabama Medicaid Agency has no responsive documents in its possession, custody, or control for question 4 (a-g).

NO RECORD CERTIFICATION

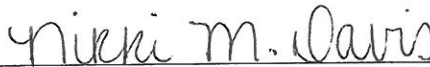
I hereby certify that a thorough search of the files kept at the Alabama Medicaid Agency pertaining to all documents and communications regarding the effect, scope, interpretation, implementation, of the Definition of Moral Turpitude Act of 2017 ("HB 282"), also known as House Bill 282, HB 282, or Act no. 2017-378, or otherwise related to the Alabama Medicaid Agency's activities, responses, reactions, duties, and functions related to HB 282, revealed no documents, records or other materials called for in the subpoena received on February 11, 2019.

Signed this 21st day of February, 2019.



Paul McWhorter, Director
Policy and Training Division
Beneficiary Services

Sworn and subscribed to before me on this 21st day of February, 2019



NOTARY PUBLIC

My Commission Expires: 02/25/2020

NIKKI M. DAVIS
NOTARY PUBLIC, STATE OF ALABAMA
ALABAMA STATE AT LARGE
MY COMMISSION EXPIRES
FEBRUARY 25, 2020

Respectfully submitted this 25th day of February 2019.

STEVE MARSHALL
Attorney General for the State of Alabama



MARY FRANK BROWN (ASB-1106-W85M)
Assistant Attorney General

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