

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

)	
KELVIN LEON JONES, et al.,)	
)	
Plaintiffs,)	Case No: 4:19cv300-RH
)	
v.)	Tallahassee, Florida
)	May 5, 2020
RON DESANTIS, in his official)	
capacity as Governor of)	
Florida, et al.,)	
)	9:00 AM
Defendants.)	VOLUME VI
)	

**TRANSCRIPT OF VIDEOCONFERENCING PROCEEDING - BENCH TRIAL- DAY 7
BEFORE THE HONORABLE ROBERT L. HINKLE
UNITED STATES DISTRICT JUDGE
(Pages 1338 through 1518)**

**** As no daily roll call is afforded, only counsel speaking are reflected on the Appearance page.**

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*Proceedings reported by stenotype reporter.
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P R O C E E D I N G S

1
2 (Call to Order of the Court at 9:00 AM on Tuesday, May 05,
3 2020.)

4 THE COURT: Good morning. This is Judge Hinkle.

5 MR. GABER: Good morning, Your Honor.

6 MR. JAZIL: Your Honor, we're getting the witness now.

7 THE COURT: All right.

8 MR. GABER: Your Honor, before we start with
9 Ms. Matthews, I thought I would raise that we had spoken
10 yesterday with defense counsel about the scheduling for the rest
11 of trial and for closing arguments, and both sides agreed, if
12 Your Honor would agree, that having those arguments tomorrow
13 morning would give the parties time to make them the most
14 effective and efficient and synthesize the material from
15 yesterday and today.

16 THE COURT: All right. That will work.

17 MR. GABER: Thank you, Your Honor.

18 MR. JAZIL: Your Honor, Director Matthews is here if
19 the Court is ready for her.

20 THE COURT: Yes, we're ready for her.

21 Good morning Ms. Matthews.

22 THE WITNESS: Morning, Your Honor.

23 THE COURT: You are still under oath.
24
25

1 Mr. Gaber, you may proceed.

2 MR. GABER: Thank you, Your Honor.

3 CONTINUED CROSS-EXAMINATION

4 BY MR. GABER:

5 Q. Good morning, Ms. Matthews. I want to start with a few
6 follow-up questions from yesterday, and then I will move on to
7 new topics.

8 Do you recall testifying yesterday about one of the
9 plaintiffs in this case, Mr. Steve Phalen?

10 A. Yes.

11 Q. And you testified that you thought he was eligible to vote
12 now because he was released from probation by the Wisconsin
13 court, and in Wisconsin that results in vote rights restoration.

14 Was that your testimony?

15 A. Yes, we believe the governing -- whatever the restoration
16 law in the state of conviction is the one that governs.

17 Q. Now, as Mr. Phalen's Wisconsin court records reflect, he
18 moved to Florida while he was still on probation in Wisconsin
19 and was a resident of Florida when the Wisconsin court
20 terminated his probation in November of 2017.

21 Does that information alter the answer that you provided
22 yesterday about Mr. Phalen's eligibility to vote in Florida now?

23 A. I don't believe so, no.

24 Q. So is it your understanding that if someone moves into
25 Florida, having not had their rights restored under the other

1 states' laws, that they nonetheless get the benefit of those
2 laws?

3 A. That was the law under which they were convicted, so that's
4 the law that governs. Now, if they commit and are convicted of
5 another crime here in Florida, then that's different.

6 THE WITNESS: F5?

7 MR. JAZIL: F5, yeah.

8 BY MR. GABER:

9 Q. I believe Ms. Matthews is -- are you okay?

10 A. Yes, I did refresh.

11 Q. Thank you.

12 Now, you also testified that you've had conversations with
13 clerks of the courts regarding their internal audit systems,
14 which that information related to collection agency payments.

15 Do you recall that?

16 A. Yes.

17 Q. That would be an audit system regarding payments that were
18 forwarded from the collection agency to the county; is that
19 right?

20 A. My understanding is that that audit system would capture
21 more information than may be available through CCIS or their
22 clerk court records.

23 Q. But you don't have any reason to believe that that system
24 would be able to capture the collection agency fees that the
25 collection agency just kept internally and didn't provide

1 information about to the county; is that right?

2 A. I don't know that. I believe -- I think we had a
3 conversation with them in which they represented that there was
4 information that they would capture that had been paid even to a
5 collection agency.

6 Q. But you don't know whether that was about the fee or
7 whether that was about the payment that's actually due to the
8 county; right?

9 A. At this time I haven't gotten an example of an audit
10 record.

11 Q. Okay. Now, yesterday you also testified that the Secretary
12 interprets costs of supervision to accrue after sentencing and
13 that they are thus not part of the amount ordered and must be
14 paid before someone can vote.

15 Do you remember that?

16 A. Let me get the law again so I know I'm replying on the
17 exact language. May I?

18 Q. Sure. And my question was actually just -- I think
19 Mr. Jazil asked you on direct that costs of supervision would
20 accrue later.

21 Do you remember testifying to that?

22 A. Anything after the judgment and sentence that accrued after
23 that, based on what the language of the law is, that's the
24 position we take, yes.

25 Q. Okay. And I'm specifically -- I mean, you testified to it

1 yesterday, so I just --

2 A. We confirmed, and the answer is yes.

3 Q. I'm asking specifically about costs of supervision.

4 A. It's the cost that accrues after, yes --

5 Q. Okay.

6 A. -- supervision, yes.

7 Q. Okay.

8 MR. GABER: Ashley, can you please pull up DX10.

9 And, Ms. Matthews, I'm having them pull up the
10 statute, so if it's easier for you to look at the copy you have
11 -- oh, I'm sorry. DX10, Ashley.

12 MR. JAZIL: Your Honor, if I may, I'll hand
13 Ms. Matthews this copy from yesterday?

14 THE COURT: You may.

15 MR. GABER: And if you could zoom in on Section (5.b),
16 Ashley. Thank you.

17 BY MR. GABER:

18 Q. Ms. Matthews, do you see that section?

19 Subsection (5.b) says, "Full payment of fines or fees...,"
20 and it goes on to say include those that are "ordered by the
21 court as a condition of any form of supervision, including, but
22 not limited to, probation, community control, or parole."

23 A. Correct.

24 Q. Can you explain the basis for the Secretary's conclusion
25 that this provision does not require costs of supervision to be

1 included as part of the amount due for purposes of SB 7066?

2 A. It states on the subsequent one, subparagraph (c.).

3 THE WITNESS: Do I need to refresh again?

4 MR. JAZIL: Your Honor, the screen in front of
5 Director Matthews isn't showing what Mr. Gaber has, so she's
6 going to hit F5.

7 THE WITNESS: Subparagraph (c.) is read in conjunction
8 with subparagraph (b.). And in that it says, "...do not include
9 any fines, fees, or costs that accrue after the date the
10 obligation is ordered as part of the sentence."

11 BY MR. GABER:

12 Q. So is this a case where the later provision that requires
13 parts of this statute that are susceptible to more than one
14 interpretation to be read in favor of the registrant?

15 A. Well, this is an example of where you have one -- one
16 section or paragraph that then is modified by a subsequent one
17 saying notwithstanding, this is what happens as to that that was
18 stated in the above. I mean, that would just be statutory
19 construction on that part. I don't see that as being anything
20 other.

21 Q. Are there any costs of supervision, probation, community
22 control, or parole that you're aware of that would not accrue
23 after the date of sentencing?

24 A. At this time I do not know. That doesn't mean it doesn't
25 exist, but I do not know.

1 Q. Okay. You're only familiar with the types of those costs
2 that do accrue after sentencing; is that fair?

3 A. Yes.

4 Q. The April 17th policy that we've been discussing, DX167, I
5 believe, that does not tell reviewers that costs of supervision
6 should not be included in the amount due; is that right?

7 A. May I look at this?

8 MR. JAZIL: Your Honor, there's a copy of DX167 on the
9 table from yesterday, and Director Matthews has picked that up,
10 for the record.

11 THE WITNESS: That level of detail is not in this --
12 in this document itself. This is just at a much -- at a little
13 higher level. Again, training would be -- and this is just what
14 an examiner creates, and then there's going to be multiple
15 layers of review based on that. We expect that we would be
16 training them based on what we're finding from these cases that
17 we've been reviewing.

18 BY MR. GABER:

19 Q. How many -- tell me a little bit -- all I know is that
20 there are reviewers. So what is the process? The examiner
21 creates the file, and then if the examiner doesn't have
22 questions or doesn't believe that there is anything that would
23 require further review, does that -- does the examiner have the
24 power to validate the match?

25 A. No.

1 Q. Okay. So how many layers of review have to happen?

2 A. So with the initial automated match, then there -- the
3 examiner is the one that initiates the case file creation. So
4 they are the ones that are looking for all the records,
5 determining first if this is the right -- confirming identity
6 match, confirming felony conviction, and then based on whatever
7 the felony is, the path that they're supposed to take to find
8 out if rights have been restored.

9 And so the examiner is the one that creates all of that.
10 Then they make their initial determination, valid or invalid.
11 Then that is submitted to a reviewer, and the reviewer looks at
12 it and determines if they agree with what the examiner said.
13 That's at this current process. If there's a discrepancy
14 between that, then it's bumped up to the next level of their
15 supervisor, and so --

16 Q. Are the reviewers using the same policy for how to validate
17 matches as the examiners are?

18 A. Yes.

19 Q. You mentioned yesterday that one of the documents that can
20 be in the packet that you would send down would be a document
21 called an "Order of Probation." Do you recall that?

22 A. Yes.

23 Q. If that order of probation required the person to pay costs
24 of supervision, would that also -- regardless of whether it was
25 in the order of probation or the costs of supervision were

1 listed in the sentence or judgment, that would all be a cost
2 that would be considered to accrue later; is that correct?

3 A. Yeah, the fact that you have a document that may -- that
4 may be included in the package is to give the whole story of
5 what's there so that the supervisors can also review and see if
6 they agree. Yes.

7 Q. The process for that right is that the Supervisors have
8 seven days that -- under the statute, they have to after seven
9 days send the notice; is that correct?

10 A. Correct.

11 Q. Okay. So the Secretary's office has substantially longer
12 time to work on a file and think about it and gather information
13 than the Supervisors do; is that right?

14 A. In terms of getting the packet together, yes, because by
15 the time they get it, they have the packet in its entirety.

16 Q. So if -- taking the example of Mr. Mendez from yesterday
17 that we went through -- remember he had the fine that couldn't
18 be disaggregated between the misdemeanor and the felony?

19 Do you recall that example?

20 A. Yes, I remember Mr. Mendez.

21 Q. Your office could look at that for several months and then
22 finally come to the conclusion, perhaps, to validate the match
23 and then the Supervisor of Elections in Mr. Mendez's county
24 would have seven days; is that correct?

25 A. It would not take us several months to look at it. What

1 takes time is gathering the documentation, but it's not several
2 months. It may take, you know, 30 days or 45 days to get
3 documentation -- supplemental documentation from the
4 Supervisor -- from the clerk of the court. That doesn't mean
5 that entire time we're examining or working on that case.

6 Q. In the test cases that you ran on the individual plaintiffs
7 in this case, did the examiners and reviewers who looked at
8 those make any initial determinations as to whether they would
9 be valid matches under this policy?

10 A. I did look at the case file review certificate, which is
11 something that we send to all Supervisors of Elections. So the
12 examiners probably -- I do believe they did. They marked what
13 they thought.

14 Q. Okay. And you just don't -- do you recall from Mr. Mendez
15 what was marked?

16 A. No, I don't. I don't recall.

17 Q. Were any -- do you recall whether any of the plaintiffs
18 were marked as an invalidated match?

19 A. Honestly, that wasn't where my focus was. My focus was on
20 what was in what they collected as part of the packet.

21 Q. Not the conclusion of the policy application?

22 A. Certainly not at this point, no, I did not.

23 MR. GABER: Ashley, can you please pull up DX17-L?

24 And turn to page 2, please.

25

1 BY MR. GABER:

2 Q. Ms. Matthews, do you see this on your screen?

3 A. Yes, I do.

4 Q. So this is a conviction record for Plaintiff Lee Hoffman.
5 We looked at one of his yesterday. This is a different one.

6 MR. GABER: Ashley, could you please turn to page 14
7 of the PDF?

8 BY MR. GABER:

9 Q. Do you see where Mr. Hoffman was sentenced on April 12,
10 2002, to probation and it says "restitution ordered"?

11 A. Yes.

12 MR. GABER: Now, Ashley, if you could turn to page 15.
13 And let me see. Toward the -- I'm sorry -- the third -- the
14 third entry from the top.

15 BY MR. GABER:

16 Q. Do you see where it says "Other Restrictions: Stay away
17 from victim"?

18 A. Yes.

19 Q. Mr. Hoffman has no records of this restitution order. Do
20 you -- would you advise him to contact the victim in order to
21 determine whether the victim had any records of the restitution
22 payment?

23 MR. JAZIL: Objection; argumentive.

24 THE COURT: Overruled.

25 THE WITNESS: No, I would not.

1 BY MR. GABER:

2 Q. So given this restriction that was put on him and given
3 that he doesn't have records, he may have no way to find any
4 records about this restitution order, is that fair, given that
5 it was ordered to be paid to the victim?

6 A. I would still have him contact the clerk of the court to
7 find out what records, if any, they have and whether -- and I
8 don't know in this case if he was sentenced to prison or
9 supervision, the Department of Corrections -- exercise as much
10 due diligence to try to find out if there is anything.

11 Q. Now, do you see that Mr. Hoffman's restitution order is
12 from April 2002?

13 MR. GABER: And, Ashley, if you could please pull up
14 the Florida Statute 775.089.

15 And, Your Honor, this is not an exhibit and it wasn't
16 on Ms. Matthews' list, but I thought it would be helpful for us
17 actually to look at the text of it.

18 BY MR. GABER:

19 Q. And I want to draw your attention to section 3(d) of this
20 statute.

21 Have you reviewed the restitution statute in your
22 preparation for the Work Group and trying to understand the
23 meaning of LFOs?

24 A. I may have, but I don't recall this specifically, no.

25 Q. Okay. Do you see that the statute says: "If not otherwise

1 provided by the court in the subsection, restitution must be
2 made immediately"?

3 And then: "If the restitution ordered by the court is not
4 made within the time period specified, the court may continue
5 the restitution order through the duration of the civil judgment
6 provision set forth in subsection (5) and as provided in section
7 55.10."

8 Do you see that?

9 A. Yes.

10 Q. Now, I won't make us go to section 55.10, but that's the
11 provision that has the 20-year limit on enforceability of civil
12 judgments, civil liens. And we talked about that at your
13 deposition, and you testified yesterday that your office's
14 understanding is that civil liens would then -- you know, that
15 amount of the civil lien would not be counted after it was no
16 longer enforceable; is that correct?

17 A. For purposes of our discussion, that is correct.

18 Q. Right.

19 Now, is this the first time that you've looked at this
20 provision?

21 A. I know I've looked at the civil restitution lien statute
22 and -- I may have looked at this, you know, in the past, but,
23 you know, I'm looking at a lot of things trying to learn how all
24 this process works, so --

25 Q. Yeah. And I don't mean to suggest that there's anything

1 wrong, but my question is: Looking at this, does the Secretary
2 have a policy today as to whether a restitution order that is
3 past the 20-year period for which the judge could continue it --
4 if that amount is still considered an amount due for purposes of
5 the first-dollar policy.

6 A. Honestly, if it's in the statute, that's going to be a
7 governing position on that. If it says that it's not a
8 financial obligation after that time, then we wouldn't count it.

9 Q. And so -- and I just want to make sure that the record is
10 clear so that folks who have this know the answer.

11 The Secretary views the fact that an order is no longer
12 enforceable to mean that the obligation is not counted for
13 purposes of SB 7066 in determining how much they need to pay
14 yet; is that a fair characterization?

15 A. So what you are saying is if the amount was 100, 50 percent
16 or \$50 of that was restitution; and then after 20 years that
17 civil restitution lien expired, then the obligation amount would
18 now be \$50 in lieu of \$100?

19 Q. I believe so, but I missed the first part of that. So I
20 guess I'm just -- to reverse it, I'm just -- I think you've
21 already testified to this, but I want to make sure that we all
22 understand it and it's clear.

23 If either a restitution order or any civil lien or civil
24 judgment has gone past the period of time for which it can be
25 enforced under Florida law, the amount that was ordered and

1 subject to those orders and liens is no longer included as a
2 debt or obligation that the voter would need to pay off before
3 they could vote?

4 A. That is our current position, yes.

5 Q. Now, that is not reduced to writing in the policy; right?

6 A. That's correct, it's not spelled out there. It's in the
7 law.

8 Q. So the reviewers, the examiners, at least at this point,
9 would have no reason to check the date of the order to see
10 whether, in fact, it might still be in effect or still be
11 something that would be enforceable; is that right?

12 A. We're still in process of learning these things, that
13 the -- the exercise up to this point was to gather the documents
14 that -- the kinds of documents that would -- that we would see
15 in these kinds of cases. The training hasn't stopped yet. We
16 will be continuing with that.

17 We're also going to work with F-COR because they have
18 experience on this and they can lend a great deal of expertise
19 on this, and I expect that they will be helping us a great deal
20 with that training and learning how to review these records and
21 interpret them.

22 Q. Did the issue of any of the plaintiffs -- the date of any
23 of their liens or restitution orders come up to you in the test
24 cases that were run?

25 A. We -- we sat down and discussed what the examiners had seen

1 and collected. As I said, we wanted to get an idea of the
2 variety of records that are out there and what they're named and
3 how they look. So I certainly elicited from them what their
4 thoughts were and --

5 Q. Ms. Matthews --

6 A. -- what they have seen. Yes.

7 Q. I'm sorry. I don't mean to interrupt, but was this one of
8 the thoughts that came up, the date of the restitution order,
9 the date of the civil lien?

10 A. I don't know that we specifically mentioned this, no.

11 MR. GABER: Ashley, if you could, turn to DX17-L again
12 and return to page 14, and the fifth entry on the line.

13 BY MR. GABER:

14 Q. Do you see, Ms. Matthews, where it says "SAO to find out
15 restitution amount for defendant to be sentenced," and that the
16 defendant entered the plea on 4-9-2002?

17 Do you see that?

18 A. Yes.

19 Q. So the restitution obligation for Mr. Hoffman is announced
20 on the day of his sentencing hearing, April 12, 2002; is that
21 correct?

22 A. It appears so.

23 Q. But it also appears, right, that the amount was to be set
24 at a later date? Correct?

25 A. Correct.

1 Q. Am I correct from your testimony yesterday that in the
2 Secretary's view, the amount of the restitution does not need to
3 be specified in the four corners of the sentencing document to
4 be considered part of the amount due for purposes of SB 7066?

5 A. I believe our position is that if the court reserves or if
6 there is evidence that the court is reserving the amount, that
7 yes, it would still be encompassed as part of the sentencing
8 document.

9 MR. GABER: Ashley, can you please pull up DX10 again?

10 BY MR. GABER:

11 Q. And this is the text of SB 7066, Ms. Matthews.

12 MR. GABER: And let's look to subsection (2)(a)(5.c).

13 BY MR. GABER:

14 Q. And we've gone over this section a couple of times, and I
15 think it's cited to in the policy as actually the basis for the
16 first-dollar policy; is that right?

17 A. Yes.

18 Q. And it says that the amount specifically ordered by the
19 court as part of the sentence is what is counted as an
20 obligation due and amounts that, quote, accrue after the date
21 the obligation is ordered as part of the sentence do not.

22 Is that a correct phrasing of this provision?

23 A. Yes.

24 Q. If the court enters a sentencing order today on May 5th and
25 says the defendant must make restitution, isn't May 5th the date

1 the restitution obligation is ordered as part of the sentence?

2 A. We don't take that position right now, no.

3 It says here: Subsequent to that, such modification shall
4 not infringe on a defendant or victim's rights --

5 (Court reporter asks for clarification.)

6 THE COURT: Ms. Matthews, wait. Stop.

7 THE WITNESS: Yes.

8 THE COURT: Ms. Matthews, you have to speak up
9 clearly. So when you are kind of reading, looking down, under
10 your breathe, we can't get it.

11 So for both sides, especially when you're reading
12 material, speak up loudly and go slowly --

13 THE WITNESS: Okay.

14 THE COURT: -- so we get it all.

15 I think what we got was -- this is in response to the
16 question -- now I've lost Ms. Matthews off the screen. She may
17 be refreshing.

18 Ms. Matthews, can you hear me?

19 THE WITNESS: Yes.

20 THE COURT: The question was about the timing of the
21 sentencing order and restitution. Ms. Matthews gave an answer
22 dealing with a modification, not infringing on the victim's
23 rights.

24 Ms. Matthews, I'm not sure what you were reading from.

25 THE WITNESS: Your Honor --

1 THE COURT: And let me just say, it certainly -- I
2 certainly don't know what makes you think that a victim has a
3 right to prevent the defendant from voting, but that's a
4 substantive comment.

5 Let me get you to give your answer again and indicate
6 where it is that -- what in the statute it is you are relying on
7 about the victim's rights.

8 THE WITNESS: Absolutely, Your Honor.

9 I actually would just stick with subparagraph (c.),
10 which clearly says: "The financial obligations required under
11 subparagraph or sub-subparagraph (a.) and (b.) includes only the
12 amounts specifically ordered by the court as part of the
13 sentence and do not include any fines, fees or costs that accrue
14 after the date the obligation is ordered as part of the
15 sentence."

16 Restitution is not mentioned in that.

17 BY MR. GABER:

18 Q. So it's --

19 THE COURT: And now, Mr. Gaber, before you ask the
20 next question -- Ms. Matthews, hit F5 so we can bring your
21 picture back up.

22 THE WITNESS: Oh, yes, sir.

23 THE COURT: Got it. Thank you.

24 Mr. Gaber, you may proceed.

25

1 BY MR. GABER:

2 Q. And so it's your understanding that restitution is excluded
3 from the accrual provision; is that right?

4 A. Yes.

5 Q. My understanding of your testimony yesterday was that the
6 first-dollar policy in some cases may result in the victim
7 receiving zero dollars in restitution payments because the
8 policy just counts the total payments made, and those can be
9 made to fees and surcharges and trust funds, entries and
10 whatnot. Is that right?

11 A. That's true. They -- yes.

12 Q. Okay. Do you think the accrual provision is susceptible to
13 a reading that would say that a restitution amount ordered
14 months or possibly years after the rest of the sentence is
15 imposed doesn't actually accrue until that later date?

16 A. Unfortunately, the way the statute reads right now,
17 restitution is teased out from fines, fees and costs.

18 Q. And so is -- so it's not susceptible is your view?

19 A. Not susceptible to?

20 Q. To the interpretation I gave.

21 A. No.

22 MR. GABER: Ashley, could you please turn to page 4 of
23 DX167.

24 BY MR. GABER:

25 Q. And I want to talk now, Ms. Matthews, about the interstate

1 cases aspect of the policy.

2 If a person for felony -- for people with felony
3 convictions from another state's court -- and we've talked a
4 little bit about this -- the policy provides that the examiner
5 should use, quote, "...the state of conviction guideline for
6 voting rights restoration as notated in ProCon," end quote; is
7 that correct?

8 A. Yes.

9 Q. And the policy provides a hyperlink to the ProCon.org
10 website; is that correct?

11 A. Correct.

12 Q. And so the office's policy is that the examiner should
13 click on this link and use the information provided on that
14 website to determine the other state's law for voting rights
15 restoration; is that right?

16 A. That's the starting point, absolutely.

17 Q. The policy does not say "starting point"; right?

18 A. It says "Work out of state fed cases by using the state of
19 conviction guideline."

20 Q. You're familiar with the ProCon website that's linked to in
21 this policy?

22 A. Yes.

23 Q. What is the ProCon website?

24 A. It's a website that's up there that has a compendium of
25 voting rights laws across the country.

1 Q. And more broadly than that, have you looked at the ProCon
2 website beyond just the felony voting page?

3 A. Not recently; my focus would be just on this.

4 Q. Do you understand it to be a presentation of the pros and
5 cons of various public affairs issues?

6 A. That I do understand.

7 Q. And do you understand that the website is most frequently
8 used for classroom education in schools?

9 A. No. I have no idea how it's being used.

10 Q. Who maintains the website?

11 A. I do not know. It's an organization that has seen -- that
12 has been around, it seems like, a long time and is providing a
13 resource.

14 Q. Do you know whether -- like what type of organization it is
15 in terms of, like, a business or a nonprofit or other type?

16 A. I have not delved into that, no.

17 Q. Do you know who funds the ProCon organization?

18 A. No.

19 Q. Do you know how many people are employed at the ProCon
20 organization?

21 A. No.

22 Q. Do you know whether any of the ProCon staff who maintain
23 the information on the website are -- have legal background?

24 A. No.

25 Q. Have you vetted the information on the ProCon website to

1 confirm its accuracy?

2 A. What we do is we link to that, then to the statute, and
3 then we get the court docs that relate to that, to the case
4 file.

5 Q. Okay. So I want to unpack that a little bit. You link to
6 the website, and the examiner looks to the website to see what
7 the law is that's presented in terms of rights restoration; is
8 that right?

9 A. We have used this website for a number of years and have
10 found it sufficiently credible.

11 Q. How many years have you been using it?

12 A. I believe since maybe as far back as 2006 when the State
13 started getting into the business of case files for felons.

14 Q. And the policy that the examiner is reviewing, it doesn't
15 specify the step that you gave of going to the statute; right?

16 A. Well, that training would have been provided a number of
17 years ago, and as new people get on board, it's not going to
18 have every single thing written down in it.

19 MR. GABER: Ashley, can you please pull up DX56.

20 BY MR. GABER:

21 Q. Is this the training document that you're referring to?

22 A. This is one for interstate -- yes, this is one -- a
23 supplemental document, yes.

24 MR. GABER: Okay. And, Ashley, if you could turn to
25 page 6.

1 BY MR. GABER:

2 Q. And if you go down to the bottom, you see there's a section
3 called ProCon.

4 A. Right.

5 Q. And so this is the section of the training document that
6 talks about determining the law of the other state of
7 conviction; correct?

8 A. Correct.

9 Q. And then -- so in that paragraph, you see at the end it
10 says, "Use the ProCon website to determine if the voter has had
11 his or her rights restored"; right?

12 A. Correct.

13 Q. So this doesn't say that this is the starting point and
14 they should read -- go to the statutes of that state, for
15 example, does it?

16 A. It says what it says.

17 Q. Has anyone from your office's general counsel's office
18 vetted the information on the ProCon website to confirm it's
19 accuracy?

20 A. I don't know that we have asked them to do that anytime
21 recently, no.

22 Q. Do you know how frequently the information on the ProCon
23 website is updated?

24 A. No, I do not.

25 Q. Who decided that the ProCon website should be used in

1 determining the eligibility of Floridians with out-of-state
2 convictions?

3 A. In determining whether this was a reliable website that
4 could be used to determine rights restored out of state, we
5 consulted -- we looked at the National Council of State
6 Legislatures, their reference to this website. My colleagues in
7 other states have also -- go to this website to rely on it.

8 And when I was in the general counsel's office, this was a
9 website that I also looked at and found that the resource was --
10 at least this was the only place that we would find a compendium
11 of all the state laws on it.

12 Q. So I think my question was who decided. Was -- was it you
13 or someone else in the general counsel's office, or who?

14 A. It's been a number of years, so, like I said, I would have
15 been involved in it when I was the election lawyer down there
16 and would have counseled the bureau chief at the time that this
17 would be a source that might be credible to use to determine
18 rights restored in another state.

19 MR. GABER: Now, Your Honor, we provided the Court
20 with a demonstrative exhibit and opposing counsel the other day.

21 Ashley, could you please pull that up.

22 BY MR. GABER:

23 Q. And, Ms. Matthews, the first slide shows the link to the
24 policy. We just went over that from the website -- or the link
25 to the website ProCon.org from the policy.

1 Do you see that?

2 A. Yes.

3 MR. GABER: And then we can turn to the second slide,
4 Ashley.

5 BY MR. GABER:

6 Q. Do you recognize this as the chart that appears when you
7 visit the felony voter restoration rights part of the ProCon
8 website?

9 A. It looks like it, yes.

10 Q. So what ProCon does is they sort the states into five
11 columns, based generally on the severity of the state's rights
12 restoration restrictions; is that right?

13 A. It's based on what the conditions are for restoration.

14 Q. And those range from "may lose vote permanently," and
15 that's where Florida has a check box, all the way to "may vote
16 from prison" -- and it's not shown on here, but that's Maine and
17 Vermont -- is that your understanding?

18 A. Yes.

19 Q. And then some of the states have a little note, a little
20 notation, that says "notes" in parentheses; is that right?

21 A. Yes.

22 Q. And Florida is among those states; right?

23 A. Correct. Usually the notes will be at the bottom of the
24 webpage.

25 MR. GABER: Ashley, if you could turn to the next

1 slide.

2 BY MR. GABER:

3 Q. Now, this is -- we looked at the first part of this, at the
4 training guide, DX56. This is the second part of that, and I've
5 highlighted some text.

6 You see that it says to the examiners: "Use the ProCon
7 website to determine if the voter has had his or her rights
8 restored," and then it instructs the examiner not to just rely
9 on that, the five categories of -- in the chart; right?

10 A. Right.

11 Q. And it says, "Define specific details regarding when a
12 convicted felon is able to vote for a particular state. Click
13 on notes or on the state of conviction."

14 And that last part refers to the hyperlink for each state;
15 is that right?

16 A. Yes.

17 MR. GABER: And, Ashley, if you could turn to the next
18 slide, please.

19 BY MR. GABER:

20 Q. And so if we were -- if we were looking to Florida to see
21 using this website what the restoration law was in the state of
22 Florida, this slide demonstrates if you click on that, what
23 appears is a March 9, 2011 press release from former Governor
24 Rick Scott, and it's titled, "Governor Scott and Florida cabinet
25 discuss amended rules of executive clemency."

1 Do you see that?

2 A. Yes.

3 Q. And now, for the record, March of 2011 was a little over
4 nine years ago; is that right?

5 A. Correct.

6 MR. GABER: Now if you turn, please, to the next
7 slide, Ashley, and focus in on the second page that's
8 illustrated there, the first page of the press release.

9 And if you could make that a little bit bigger.

10 BY MR. GABER:

11 Q. Now, the press release says that, "Felons seeking
12 restoration of rights will also be required to demonstrate that
13 they desire clemency by applying only after they have shown they
14 are willing to abide by the law."

15 Did I read that correctly?

16 A. That's what this document says, yes.

17 Q. And then it lists three requirements. The first two are on
18 this page; the third appears on the next page. We'll start with
19 the first two.

20 And the first requirement that's listed is that someone who
21 wants to have their rights restored has to submit an
22 application; is that right?

23 A. Either -- yes.

24 Q. And then the second requirement is that the clemency board
25 will review each application individually and, quote,

1 "Restoration of civil rights will not be granted automatically
2 for any offenses."

3 That's what this says?

4 A. Yes.

5 Q. And then the third point, the press release says that there
6 will be a waiting period for felons before they are eligible to
7 apply; correct?

8 A. Yes.

9 Q. And then the slide says -- or the press release, rather,
10 says that for those applicants whose crimes are, quote, serious
11 enough, end quote, they must attend a hearing and can only apply
12 after being conviction free for seven years.

13 Do you see that?

14 A. Yes.

15 Q. And then it notes that for others, they will not be
16 required to attend a hearing so long as they are conviction and
17 arrest free for a period of five years.

18 That's what the press release says?

19 A. Yes.

20 Q. Ms. Matthews, does this March 2011 press release provide
21 accurate information about Florida's current laws regarding
22 voting rights restoration?

23 A. No.

24 Q. The press release doesn't address Amendment 4 and its
25 automatic restoration of rights for those who have completed all

1 terms of their sentence; right?

2 A. That is correct.

3 Q. And that's because it predates Amendment 4 by seven years;
4 correct?

5 A. It predates the amendment, yes.

6 Q. And, in fact, it doesn't even reflect the current clemency
7 rules for the state of Florida, does it?

8 A. I am not familiar with the current clemency rules. It
9 changes with each board.

10 Q. Do you recall there being a change to the clemency rules
11 this year -- earlier this year before the Eleventh Circuit
12 argument in this case?

13 A. I understand there were rules that were amended, yes.

14 Q. And so those rules wouldn't be reflected in this 2011 press
15 release?

16 A. These rules reflect clemency rules in process at the time
17 of Governor Scott's administration.

18 Q. The document doesn't contain any links to any Florida
19 Statutes, does it?

20 A. I don't know because I don't know if this is the entirety
21 of the document.

22 Q. I will represent to you that this is, in fact, the entirety
23 of the document if you click on Florida on the website.

24 So on these pages before you, you don't see any links to
25 the -- any Florida Statutes or the Florida Constitution; right?

1 A. Again, I don't know if underlying might be hyperlinked.
2 You know, if you're representing that and these are the only two
3 pages and those aren't hyperlinked for restoration of civil
4 rights, then there is no hyperlink.

5 THE COURT: Mr. Gaber, I think I've got it.

6 MR. GABER: Yes, Your Honor. If you could turn to the
7 next slide, please.

8 BY MR. GABER:

9 Q. And this is -- the next step, right, is that the examiner
10 would look to click on the notes section? Correct?

11 A. Yes.

12 MR. GABER: And, Ashley, if you could expand just the
13 paragraph so that it's larger for Ms. Matthews.

14 BY MR. GABER:

15 Q. And I won't go through all of this, Ms. Matthews, but if
16 you could focus -- if you could read for us -- do you see where
17 it says "On February 19, 2020..."? And read the rest of the
18 paragraph aloud.

19 A. "On February 19, 2020, the US Court of Appeals for the
20 Eleventh Circuit ruled that the law violates the Equal
21 Protection Clause of the Constitution because it prevents a
22 class of felons from voting based solely on wealth."

23 Q. And then also the last sentence, please -- everything
24 through to the end.

25 MR. JAZIL: Objection, Your Honor; this is argument.

1 THE COURT: Well, he can publish the information.

2 And, Ms. Matthews, when you read it, please read it
3 slowly.

4 Or, Mr. Gaber, you can also publish it by reading it
5 yourself, but whoever reads it needs to read it slowly.

6 And, Mr. Jazil, he's entitled to publish it and then
7 to ask questions about it.

8 MR. JAZIL: Thank you, Your Honor.

9 BY MR. GABER:

10 Q. So, Ms. Matthews, would you mind reading starting with
11 "Governor DeSantis" and then just read through the end of the
12 paragraph.

13 A. It states, "Governor DeSantis appealed the decision.
14 However, on April 7, 2020, US District Judge Robert Hinkle ruled
15 that former felons are allowed to vote, even if they owe fines
16 and fees."

17 Q. Ms. Matthews, other than the preliminary injunction that
18 was entered in this case that your office has applied to the 17
19 individual plaintiffs, are you aware of any ruling from this
20 Court that former felons are allowed to vote, even if they owe
21 fines and fees?

22 A. This -- no.

23 Q. If that were the case, we wouldn't be here today; right?

24 MR. JAZIL: Objection, Your Honor.

25 THE COURT: Well, it is getting argumentive, but so

1 that there's no question in the record, obviously this is wrong.

2 There's been no such ruling. The preliminary injunction didn't

3 make such a ruling, and there's been no ruling since then.

4 MR. GABER: Ashley, if you could remove this focus,

5 and then if you could blow up the sources that are listed below

6 this.

7 BY MR. GABER:

8 Q. Ms. Matthews, do you see that the ProCon website cites to,

9 I think, two *Washington Post* articles, and then I believe it's

10 three articles from thehill.com? Do you see that?

11 A. Yes.

12 Q. There are no citations to any Florida Statutes or

13 constitutional provisions included in the notes section for

14 Florida; is that fair?

15 A. I don't see any in this section, no.

16 MR. GABER: And, Ashley, if you could remove that

17 expanded section and then, right below that, everything from the

18 bottom down to Iowa.

19 BY MR. GABER:

20 Q. The remainder of the citations for the notes section, is it

21 -- do you see it's a quote from the Florida Rights Restoration

22 Coalition website -- it's just a quote. There's no citation

23 that -- it's about folks who have had their rights restored

24 before they became a Florida resident.

25 Do you see that?

1 A. Yes.

2 Q. And then there's nothing more; it moves on to Iowa. Is
3 that correct?

4 A. Yes.

5 Q. Ms. Matthews, would you say that this paragraph and the
6 prior press release we looked at provides credible and reliable
7 information about the status of Florida's rights restoration
8 laws?

9 A. I'm not looking at this website for Florida law.

10 Q. Have you looked at the website's presentation of Florida's
11 law before?

12 A. Not recently.

13 Q. Does the presentation of Florida's law on this website give
14 you reason for concern that the presentation of other states'
15 laws may be similarly inaccurate?

16 A. Perhaps it gives me pause.

17 Q. Now, Ms. Matthews, I will represent to you that I reviewed
18 the "About Us" page, and the ProCon organization has three staff
19 members. The founder and CEO has an Associate of Arts degree.
20 One employee has a Ph.D. in English, and the other has an MPP
21 with a counterterrorism and national security concentration.

22 I'm not in any way disparaging those qualifications, but
23 would you hire people with these qualifications to provide you
24 legal advice about the laws of another state?

25 A. Sir, this is a resource. It's not the final document

1 that -- or only document or only resource we are going to rely
2 on. We still have to collect the court records, and it still
3 goes through a review.

4 Q. Ms. Matthews, anywhere in the training guide or in the
5 policy does it say that anyone from the general counsel's office
6 will be involved in reviewing the laws of other states? I
7 didn't see it in there.

8 A. No.

9 MR. GABER: Ashley, if you could please pull up DX167
10 and turn to page 4.

11 BY MR. GABER:

12 Q. And I want to talk just briefly about Section 6(b), and
13 this is the section on federal -- people with prior federal
14 convictions; is that correct?

15 A. This is the section that deals with fed felons, yes.

16 Q. Now, I think yesterday, Ms. Matthews, you testified that
17 the plan was to look on PACER for federal court records; is that
18 right?

19 A. Correct.

20 Q. Are there -- what other sources for federal convictions
21 would you look up?

22 A. We would also contact the -- if we can, the clerk of court
23 to follow up, just the same as we do for state.

24 Q. Now, the actual text in the policy for the federal section
25 is rather brief. Is it meant to incorporate the process from

1 earlier for state convictions, or what is -- why is this so
2 brief?

3 A. This is just one of several documents that an individual
4 would be trained on for the process of doing fed felons. So,
5 yes, I would say that the other is incorporated into it. We
6 don't have it all in one document. Not everybody handles fed
7 felons.

8 THE COURT: Let me interrupt before we go further.

9 Mr. Jazil, I think you've got a microphone on there
10 where you're moving the papers around, which, while it's fairly
11 quiet, sounds like a train.

12 MR. JAZIL: Your Honor, I'm just going to move the
13 microphone head to Ms. Matthews. And if I have an objection,
14 I'll just walk up, if that's okay with the Court?

15 THE COURT: Yeah. I mean, it doesn't have an off
16 switch on it?

17 MR. JAZIL: Your Honor, unfortunately, it will turn
18 off the phone that's in front of Director Matthews as well. I
19 apologize.

20 BY MR. GABER:

21 Q. I think I had asked you, Ms. Matthews, what the other
22 sources were, and you said that you'd contact the clerk of
23 courts; is that right?

24 A. If the records are not available on PACER, yes.

25 Q. And --

1 THE COURT: Let me interrupt again.

2 Mr. Jazil, I think I made it worse by moving the
3 microphone up where we've got two microphones too close
4 together. Maybe you can put it in a shoebox.

5 MR. JAZIL: Your Honor, if you'll bear with me for a
6 minute, I'll just unplug it.

7 THE COURT: Perfect.

8 MR. JAZIL: Is that better, Your Honor?

9 THE COURT: I think so, yes. Thank you.

10 BY MR. GABER:

11 Q. Ms. Matthews, when you're talking about the information
12 that you'll gather for federal convictions, is that also
13 determining the amount that's due and then looking to see what
14 records of payments there are?

15 A. If that's part of the laws of the state of conviction.

16 Q. Okay. And that's because for federal convictions, you
17 apply the same rule, that it -- where the federal conviction
18 happened, that's the rights restoration law that applies?

19 A. Correct.

20 Q. And where do you look for the payments? That's not on
21 PACER; right?

22 A. I don't know at this point if that information is in it.
23 We're not -- I don't know that we have worked a fed file that
24 involves legal financial obligations.

25 Q. So you haven't -- you haven't looked at this point at any

1 federal conviction records for someone that had a fine or a fee
2 or restitution or costs imposed as part of their federal
3 conviction?

4 A. I'm not aware if we have. I would have to ask my staff.

5 Q. The policy doesn't state that the examiners should look for
6 whether the district -- the federal district court clerk issued
7 an abstract of judgment so that the restitution victim could
8 record a civil lien in a jurisdiction in which the defendant had
9 property; is that right?

10 A. That level of detail is not contained in this document.

11 Q. Okay. So the examiner looking at the document would not
12 know that one place they could look to see if payments had been
13 made were to see if there were recorded satisfactions of liens
14 in a jurisdiction in which the defendant owned property; is that
15 right?

16 A. I don't know if they've come across that kind of case that
17 that would be a question that they had.

18 Q. Now, it says: "If the information is indeterminate, we
19 will need to invalidate based on incomplete information."

20 What does it mean by "indeterminate" here?

21 A. It can be a range. It can be if it's -- the match -- the
22 identity mismatch, or if the identity cannot be confirmed, if it
23 can't be confirmed if it's definitely a felony, or if it's been
24 adjudicated, or if it's -- or if there's just not enough
25 documentation to be able to support the case file.

1 Q. Now, those items that you all listed were on the -- I guess
2 what I would call the "amount due" part of the ledger and kind
3 of the "pre-amount due" part of the ledger too; right?

4 A. Your point about fed legal financial obligation cases?

5 Q. I wasn't very clear and I apologize.

6 I guess what I'm trying to get at is whether or not the
7 indeterminate category here applies to the -- whether it's
8 indeterminate that the amount of money that's been paid toward a
9 federal conviction LFO requirement can't be determined.

10 A. At this point it could be read that way, but I don't know
11 if it's been applied that way.

12 Q. How should it be applied?

13 A. Again, it should be a law that governors in the state of
14 conviction.

15 Q. No. I'm sorry. I mean how should the policy -- where it
16 says, "If the information is indeterminate, we will need to
17 invalidate..." should that be applied to if the amount of
18 payments is indeterminate?

19 A. Again, I would have to know what the law of the other state
20 is. This is not Florida fed felons. We are talking about out
21 of --

22 Q. So if you know -- I'm sorry.

23 A. Oh, I'm sorry. I apologize. We are talking about Florida
24 fed felons. Yes, it would govern. The same principle would
25 apply.

1 Q. Okay. And does that mean if you know, for example, that
2 there could be records of payments, but you don't have those
3 payments -- is that an example of an indeterminate information?

4 A. You are saying that I find records that there have been
5 payments made?

6 Q. No. If you are aware that there are records that could be
7 obtained, but you don't have them, is that an indeterminate
8 information as to the amount of payments made?

9 A. If there's a gap and that we can't get the documents at all
10 to be able to make that determination, that -- it could very
11 well be a basis for invalidating it.

12 Q. Ms. Matthews --

13 MR. GABER: And you can take this exhibit down,
14 Ashley. Thank you.

15 BY MR. GABER:

16 Q. I'm going to read to you a statement from your counsel from
17 this case and I'll have a question for you afterwards.

18 The quote is: "If the Secretary of State's Office, after
19 consulting with the clerk of court, either cannot find the
20 judgments or the judgment and sentence is illegible, that
21 particular returning citizen will not need to pay back any legal
22 financial obligations to have his or her" right -- "his or her
23 vote restored," end quote.

24 Is that a correct statement of the first-dollar policy
25 that's reflected in DX167?

1 A. Can you read that one more time, please?

2 Q. I can.

3 "If the Secretary of State's Office, after consulting with
4 the clerk of court, either cannot find the judgments or the
5 judgment and sentence is illegible, that particular returning
6 citizen will not need to pay back any legal financial
7 obligations to have his or her vote restored."

8 A. That appears to be because you're not able to determine
9 what the amount is.

10 Q. Now, the last part of that, Ms. Matthews, was that they do
11 not need to pay it back to have his or her vote restored.

12 Isn't it the case that your view is that -- and I think we
13 went over this yesterday -- is that if the judgment is illegible
14 or lost and it's not in the state records that you will
15 invalidate the match, and so the person will be able to vote,
16 but you are not able to say or you won't say whether they are
17 eligible to vote? Is that correct?

18 A. At that point they are eligible to be registered to vote.

19 Q. Okay. So if the judgment is lost or the judgment is
20 illegible, is it your testimony that the person is eligible to
21 be registered to vote from the perspective of is the voter
22 following the law by registering to vote?

23 A. If there is a belief that there isn't something owed and
24 the person is able to swear to that on their application, and we
25 are not able to identify them as potentially ineligible because

1 we can't find the documentation or it's not legible, at that
2 point, yes, it's true that person is eligible to be registered
3 to vote.

4 Q. What if the voter doesn't know and so can't swear?

5 A. If I were in the voter's position, I don't know that I
6 would be swearing under oath if I wasn't sure about that or had
7 a true belief of that.

8 Q. Do you agree that statements like this are -- have the
9 potential to be confusing to the voting public?

10 A. It is certainly a challenge and something that we are
11 trying to make sure if someone has a question that we can try to
12 answer it, and that's why we offered up the advisory opinion, to
13 see if that would give them some cover.

14 Q. Okay. And I do want to turn now to advisory opinion
15 testimony, and we talked a fair bit about this yesterday and I'm
16 not going to reread some of the questions that Judge Hinkle
17 asked you that I had otherwise planned to. But I do have some
18 more -- some more questions about that.

19 Now, so it's your testimony that if someone is worried
20 about the questionable status of their outstanding LFOs, that
21 you think they are eligible to seek an advisory opinion under
22 the statute; right?

23 A. Correct.

24 MR. GABER: Ashley, could you please pull up PX921?
25

1 BY MR. GABER:

2 Q. And this is the statute for advisory opinions, and I just
3 want to focus in on subsection 2 at the bottom.

4 And yesterday you answered questions from Judge Hinkle
5 about the types of people that can seek the advisory opinion, so
6 I'm not going to go over that again. But I do want to drill
7 down on the safe harbor provision and how that applies.

8 And so in the first part it lists the people who can seek
9 an advisory opinion, and then it says that they can seek it as
10 to any provisions or possible violations of Florida election
11 laws; correct?

12 A. Yes.

13 Q. And then at the bottom in the safe harbor provision. It
14 says that prosecution is limited to -- or that the safe harbor
15 applies to prosecutions under this chapter; is that right?

16 A. Yes.

17 Q. This is the Chapter 106 on campaign finance; is that right?

18 A. Yes.

19 Q. Now, I know that you've testified that it's your office's
20 understanding that this applies more broadly than it says, but
21 would you agree that your office actually is not the office that
22 would be interpreting what this safe harbor provision means?

23 A. What do you mean?

24 Q. Well, if a prosecutor, if a state's attorney took a more
25 literal approach and perhaps argued that the legislature knew

1 what it meant when it said "election laws broadly" up above and
2 had the safe harbor provision be as to campaign finance laws --
3 if a state prosecutor brought a case for a violation of the
4 false affirmation law on voter registration forms,
5 notwithstanding an advisory opinion your office had issued,
6 isn't it the judge in that state criminal case who would decide
7 what criminal penalty is provided for in this chapter means?

8 A. I think there is some other provision in 106 that rescinds
9 this section, and I don't remember what it is, that we believe
10 would expand that to include any possible violations of the
11 Florida Election Code. And that safe harbor would apply --
12 would apply to protect anyone who had requested the advisory
13 opinion.

14 Q. I think that -- I got what I think I thought you might have
15 meant by that, and we'll look at that. And if it's not, then
16 I'm sure Mr. Jazil can correct me or you can.

17 MR. GABER: But, Ashley, if you could pull up PX920.

18 BY MR. GABER:

19 Q. And, Ms. Matthews, this is the department's regulation or
20 rule on advisory opinions.

21 Does that look right to you?

22 A. It looks like 1S-2.010?

23 Q. Right.

24 A. Yes.

25 MR. GABER: And then, Ashley, if you could turn to

1 page 2 of this document and focus in on No. 1 at the top.

2 MR. JAZIL: Your Honor, the screen in front of
3 Director Matthews is not working. May I hand her a copy of the
4 rule? It's just the printout.

5 THE COURT: Surely. And if you need to refresh the
6 screen, feel free to do that as well.

7 THE WITNESS: Thank you.

8 BY MR. GABER:

9 Q. So, Ms. Matthews, the rule says under No. 1: "General:
10 The Division of Elections has the responsibility to render
11 advisory opinions as to the application of Chapters 97 through
12 106, Florida Statutes."

13 Is that right?

14 A. Yes, yes.

15 Q. Is this the provision that you were referring to when you
16 said that it specified more chapters than just 106?

17 A. No, I thought it was another section of 106.

18 Q. Okay. Well, we don't, I guess, need to do the statutory
19 interpretation on that now, but I do want to talk a little bit
20 about the substance of this rule.

21 And one -- I guess before I do that, I have one question
22 from your testimony yesterday. When you were referring to what
23 you thought was another provision of 106 that specified the
24 chapters, you thought that Chapter 104 was excepted from that
25 list.

1 Do you know what the basis of that belief was?

2 A. No. I think it was just because it had a number of -- it's
3 not about -- well, no, I'm not sure why I mentioned it. It's
4 just the chapter that deals with violations of the code, a
5 number of things.

6 MR. GABER: Ashley, if you could focus in on the
7 screen on -- under subpart 4, "Form of Request," and then blow
8 up everything down through (i).

9 Q. So, Ms. Matthews, the department's rule says that "An
10 advisory opinion request shall occur only in the form of a
11 written request to the Florida Department of State, Division of
12 Elections," and then it goes on to say that it "...must be
13 accompanied by pertinent attachments, exhibits, and memoranda,"
14 but that it must contain the following information in the body
15 of the request, and then it lists items (a) through (i).

16 Do you see that?

17 A. Yes.

18 Q. If a voter was unsure of his or her eligibility because of
19 outstanding or unknown LFOs, that voter would be required to
20 send in a written formal request under these rules; is that
21 right?

22 A. Yes.

23 Q. And the voter would be required to have -- list their name,
24 the address, the statutory provisions of Florida election law
25 that they're seeking an opinion on, a description of how those

1 provisions may or does affect the requester, the possible
2 violation of Florida election laws on which they're seeking an
3 advisory opinion, the precise factual circumstances giving rise
4 to the request, the points on which the requester seeks an
5 opinion and additional relevant information, as well as a
6 statement of necessity that might trigger an expedition of the
7 Division's response.

8 Is that a correct characterization of the rules,
9 requirements for the written advisory request?

10 A. Yes.

11 Q. Now, operationally, can you tell me a little bit more about
12 what happens when the Department of State receives an advisory
13 opinion request? Who does it get forwarded to?

14 A. So an advisory request may come in through as an e-mail or
15 it may come in through the mail. Sometimes we get advisory
16 requests orally, and then we tell them that they have to,
17 obviously, put this down in writing.

18 Once I receive that, we acknowledge receipt and we forward
19 onto our election lawyers to do the basic legal analysis and
20 then we -- we provide the assistance to -- if there's anything
21 that involves the operational aspect of the Division of
22 Elections, gathering the information that they may need for
23 that.

24 And then that opinion is drafted; I review it. If I'm good
25 with the -- I mean, there's a number of folks who end up

1 reviewing it, starting with the person who drafted it initially,
2 to the general counsel, the Assistant Secretary and the
3 Secretary and myself, not necessarily in that order.

4 But once I'm -- once we all sign off on it, then that is
5 published; it's given to the individual as well to whom the
6 request was received; and it's published online.

7 Q. How long does that take?

8 A. It really depends on what the subject of the opinion is.

9 Q. What's the average time for an advisory opinion from start
10 to finish?

11 A. It really is going to depend on what is going on in the
12 office at the time and how complicated the subject of the
13 request is.

14 I really -- I haven't tracked as to how long it takes to
15 get an opinion.

16 Q. Okay. So let's at least try to get a range. What's the
17 low end of how long you would say, in your experience, it's
18 taken from receipt to release?

19 A. I can't guess. All I can say -- you know, sometimes you
20 get opinion requests that may be very obvious and
21 straightforward; the people just don't know where to look for
22 that information. So I really can't guess.

23 Q. Okay. And I'm not asking you to guess. My understanding
24 is that you're integrally involved in these advisory opinions
25 from your testimony and you sign off on them, so I'm asking for

1 your experience.

2 How -- if you have one of these really easy ones that you
3 mentioned, how long would it take to get the research, get the
4 answer, have the draft, send it to the Secretary, the general
5 counsel, yourself, and everyone else who needs to review it and
6 then release it, if it's an easy question?

7 A. Well, it's not less than 24 hours, and it's probably not
8 going to be less than 48 hours. And if you had multiple levels
9 of review, give a day for each of those individuals to be able
10 to look at it, I would take -- I would say, you know, upwards of
11 a week.

12 Q. And that's for an easy question that perhaps the person
13 could have just gleaned from -- themselves from the statute; is
14 that --

15 A. Again, it also depends on what the urgency of that opinion
16 is. That could expedite matters, and we'd focus on that. I
17 mean, we're going to adjust according to whatever that topic is
18 because there -- sometimes it's an opinion request for something
19 that is time sensitive, such as someone asking about a candidate
20 qualifying, or something else for which they need a rapid
21 answer. So it could be expedited sooner than that.

22 Q. Can you -- are you aware of any advisory opinions that were
23 issued in a week's time frame?

24 A. I don't recollect.

25 Q. Now, on the other end of the scale for the more difficult

1 issues that you've encountered with advisory opinions, what is
2 the longest it's taken, in your experience, to receive the
3 request and then publish the result?

4 A. Again, it depends on -- the more complicated, the longer
5 it's going to take, and sometimes it's because it involves going
6 back and forth with the individual who requested the
7 information. I just haven't tracked that type of information.

8 Q. Can you give me a general sense of an example of a
9 difficult issue and how long it took?

10 A. Something maybe related to -- something related to early
11 voting or vote-by-mail.

12 Q. And how long did those take?

13 A. I've told you I don't -- I don't track that. I guess it's
14 more than a week.

15 Q. Could it take months?

16 A. Again, it's possible. It just depends on the complexity of
17 the issue. I certainly hope it wouldn't take that long.

18 Q. Is there any statutory requirement or requirement in the
19 agency's rule that requires that the opinion be issued in a
20 certain amount of time?

21 A. The rule says that it shall be -- a written response to the
22 request shall be prepared in a timely manner.

23 Q. Do you have a -- there's nothing beyond that, though,
24 right? I mean, does the agency have an interpretation of what
25 it means by "timely" in this rulemaking?

1 A. Unless it says in the law, no, we have not spelled out what
2 timely is. I'm sure it's tied in with -- again, with what --
3 the level of analysis that's needed. Sometimes we also get a
4 request that's multiple questions.

5 Q. Now, we've gone over a number of examples of difficult
6 plaintiff case files, and you've said that this is, you know, a
7 case-by-case determination with respect to folks who have
8 outstanding LFOs.

9 Is that a fair general characterization of our discussion
10 over the past two days?

11 A. I think we've seen some complex cases, yes.

12 Q. Is there anything about the advisory process -- sorry --
13 advisory opinion process that would make it such that your
14 office could come to a decision about some of these files
15 quicker than it has under its less formalized process?

16 A. It's possible depending on what the -- what the question is
17 to be -- something, you know, very simple, does it -- am I
18 eligible to be registered to vote or to vote is --

19 Q. Well, is that -- I'm sorry. That's not necessarily an easy
20 question. I mean, if my advisory opinion request is: Is
21 Mr. Mendez eligible to vote if he owes the \$1,000, how long
22 would that take?

23 A. I don't know until we look at it. I mean -- well,
24 obviously, with Mr. Mendez we already have a case file that
25 we've kind of put together, so arguably that's a little quicker.

1 Q. That's quicker?

2 A. It's quicker because we have the case file which would help
3 with the --

4 Q. Ah.

5 A. -- with the analysis of the opinion.

6 Q. Okay.

7 You haven't come to a conclusion about Mr. Mendez's \$1,000
8 fine; right?

9 A. No.

10 Q. And so --

11 A. I haven't imposed the advisory opinion.

12 Q. Advisory opinions are published on the Secretary of State's
13 website; is that right?

14 A. Yes.

15 Q. And so that's a public record?

16 A. Yes.

17 Q. So if a voter submitted a request for an advisory opinion,
18 the advisory opinion would have the voter's name and address,
19 along with a description -- a narrative description of their
20 question and the basis for the department's answer to that
21 question; is that right?

22 A. It's -- it will include who asked for it, what the basis
23 was for the request, what the questions were, and, to the extent
24 necessary, to include the facts and circumstances that may
25 dictate what the conclusion is, that could potentially be in

1 there.

2 Q. And so that could include information about the person's
3 convictions, their -- how much money they have, how much money
4 they think they owe, their outstanding financial obligations for
5 their convictions, and other information like that; is that
6 right?

7 A. Yes. That would be public record, I would think.

8 Q. And then that would be published on the Secretary of
9 State's website as a published advisory opinion?

10 A. Yes.

11 MR. GABER: And, Ashley, could you pull up PX922,
12 please.

13 BY MR. GABER:

14 Q. Ms. Matthews, do you recognize this as a copy of the
15 Secretary's webpage regarding advisory opinions?

16 A. Yes.

17 Q. The webpage does not specify that voters can submit
18 advisory opinions, does it?

19 A. No. It's any person or organization engaged in political
20 activity.

21 Q. It does not include any sort of online submission link
22 where one can submit their advisory opinion, does it?

23 MR. GABER: And you can scroll down, Ashley, too, so
24 Ms. Matthews can see the entire printout of the page.

25 THE WITNESS: The rule -- no, the website itself

1 doesn't say to whom it -- well --

2 MR. GABER: I think if you go up to the top paragraph,
3 Ashley.

4 THE WITNESS: No, we don't have a specific e-mail box
5 for submissions of requests for an opinion. The rules state
6 that the opinion requests shall be submitted to the Division of
7 Elections.

8 BY MR. GABER:

9 Q. The website doesn't say that it must be submitted to the
10 Division of Elections, does it?

11 A. No, it doesn't expressly state that.

12 Q. It doesn't -- the website doesn't say that it has to be in
13 a written form, does it?

14 A. Can you scroll up, please?

15 No, it does not.

16 Q. It doesn't give any instructions for how to submit an
17 advisory opinion request; is that right?

18 A. It does provide some guidance of what the -- other than the
19 beginning part, who may request -- legal effect of an opinion,
20 however you might derive that information from this, but, no, it
21 does not otherwise.

22 Q. It has a large section, though, on the legal effect of an
23 opinion, and it -- that section warns the viewer of this page
24 that: "An advisory opinion posted on this site may not apply to
25 anyone other than the requester"; is that right?

1 A. Yes.

2 MR. GABER: And, Ashley, if you can just scroll down a
3 little bit so that full paragraph is in view. Thank you.

4 BY MR. GABER:

5 Q. And the paragraph says that: "Before drawing any legal
6 conclusions, based upon the information in the database, you or
7 an attorney engaged on your behalf should refer to the current
8 Florida Statutes, rules adopted by the Division of Elections and
9 applicable case law"; is that right?

10 A. Yes.

11 Q. And so someone coming to this page might conclude that the
12 information on the -- in the advisory opinions that may be of a
13 similar nature may not apply to them, and they may have to seek
14 help from an attorney under Florida Statutes; is that fair?

15 A. Because you, or an attorney engaged on your behalf --
16 because it's very fact and circumstance specific, you don't want
17 them -- we don't want raising the impression that the advisory
18 opinion may apply exactly in their case.

19 Q. You're not aware of any voters who have themselves actually
20 sought an advisory opinion; is that right?

21 A. Review of the advisory opinions that I have done is that
22 either a lawyer has asked on behalf of the -- I think maybe a
23 lawyer had asked on behalf of someone who was martial -- I mean
24 a military conviction, and then the rest have been submitted on
25 behalf -- the Supervisor of Elections has submitted on behalf of

1 a voter that was presented to them.

2 Q. And your testimony was that was about five or six
3 submissions on behalf of voters from Supervisors, and that those
4 were sometime in the past; is that correct?

5 A. Yes, the last one was 2004.

6 Q. Ms. Matthews, I want to change topics from this now.

7 The 2019 registration form that resulted from SB 7066, has
8 that been adopted by rulemaking by the Secretary of State?

9 A. The post-7066 that contains those three statements?

10 Q. Right.

11 A. No, it has not. It's been -- it's part of a rulemaking
12 process, but it is being used or available.

13 MR. GABER: Ashley, can I have you pull up DX169,
14 please? And if you could actually, Ashley, below the section
15 below that -- I'm sorry. Yes.

16 BY MR. GABER:

17 Q. This is the four-box form, for lack of a better phrase; is
18 that right?

19 A. Yes.

20 MR. GABER: And, Ashley, if you can blow up the fourth
21 box in Section 2, the last one there.

22 BY MR. GABER:

23 Q. Now, this says, "If I have been convicted of a felony, I
24 affirm that my rights have been restored pursuant to federal law
25 or the laws of another state." Is that right?

1 A. Yes.

2 Q. Are you aware of any federal law that restores voting
3 rights?

4 A. No, but I wanted to make sure in case a scenario arose that
5 we're not aware of.

6 Q. Does the form indicate anywhere that someone who has an
7 out-of-state conviction -- other than this box, I suppose, does
8 the form actually specify somewhere the eligibility requirements
9 for someone with an out-of-state conviction, that you look to
10 that state's law, regardless, apparently, of when you moved to
11 Florida, if you had completed those terms or not?

12 A. No.

13 Q. Does this form include any reference to -- and, obviously,
14 it doesn't say the first-dollar policy. We've coined that in
15 the past week, but does it have any reference to the policy
16 behind the first-dollar approach and that that is the method
17 that a voter should use in trying to determine his or her own
18 eligibility?

19 A. Are you saying this statement itself, or are you just
20 saying the form as a whole?

21 Q. Well, anywhere on the form.

22 A. No, the form just contains the statements regarding
23 restoration by clemency and then restoration by constitutional
24 Amendment 4.

25 MR. GABER: Ashley, could you please pull up DX170,

1 and you can just blow up on Section 2 there, Ashley. Thank you.

2 BY MR. GABER:

3 Q. Now I guess we'll call this the five-box form. The idea
4 here, right, is that if someone has been convicted of a -- or if
5 someone has a genuine inability to pay and, say, the Court rules
6 in plaintiffs' favor on that claim, that they would be able to
7 check this box to assert that inability? Is that correct?

8 A. That was the thinking.

9 Q. You testified yesterday that the Secretary had considered
10 the idea of using something like the indigency forms used by
11 courts as part of a process for implementing an inability-to-pay
12 procedure.

13 Did I understand that correctly?

14 A. Yeah, we've been looking at the criminal and the civil one
15 to see if that's a form that could be used as a basis for
16 someone to be able to assert or declare that they are unable to
17 pay their financial obligation.

18 Q. The Secretary hasn't come to any conclusion as to whether
19 that's something that would be done; is that right?

20 A. No. We're looking at the forms, and I've been working
21 on -- on thinking how we could use those forms to create another
22 one.

23 Q. The Secretary doesn't actually have a proposed procedure
24 for implementing an inability-to-pay process if it's ordered by
25 this Court; is that right?

1 A. We don't have anything final at this point. We've just
2 been chatting about it.

3 Q. And so the Secretary has not provided any guidance to
4 Supervisors of Elections either; correct?

5 A. No, that would all be encompassed as part of that whole
6 plan that I talked about; once we get firm on what the process
7 will be, that we then educate the Supervisors about it.

8 Q. And so I believe it's the case then that voters haven't
9 been provided with any guidance either; is that correct?

10 A. Again, that would -- part of the plan would be educating
11 voters, making sure our website provides the information in an
12 understandable and easy way for them so that everybody is on the
13 same page as to what the process is.

14 Q. Now, the examiners in the Secretary's office are able to
15 obtain information from court records or other information that
16 the State receives about, say, public benefit eligibility and
17 the like that may bear on someone's ability to pay outstanding
18 LFOs; is that correct?

19 A. Are you saying that during the course of the review of
20 dockets that there might be an indigency application that was
21 filed?

22 Q. Right. Or if someone is assigned a public defender or any,
23 you know, other types of determinations, conversion to civil
24 liens, types of determinations that are made as part of the file
25 that demonstrate, at least to the decision-maker at that time,

1 that the person is unable to pay, you come across those as part
2 of the file that you collect; is that right?

3 A. There have been those things. Of course, that's a point in
4 time.

5 Q. And the State also has -- you know, perhaps not your office
6 right now, but the State has -- collects information about
7 people's wealth and people who are eligible for various
8 benefits. That's based off an unwealth; is that right?

9 A. I'm sorry. Say that again.

10 Q. Someone who is eligible, for example, for WIC or for food
11 stamps or other public benefits program, the State has
12 information about those people, that they've made that
13 determination; is that right?

14 A. There are state agencies with that information. I don't
15 have that information.

16 Q. Have you explored -- I know that you did an interagency
17 agreement with the Florida Commission on Offender Review.

18 Have you explored entering into an interagency agreement
19 with other agencies that do collect information about ability to
20 pay that might permit that information to be exchanged with your
21 office?

22 A. I don't believe so. Right now with those indigency forms
23 there's a criteria in the law regarding if -- the basis for a
24 determination of indigency, and one of the things included is
25 whether the person is receiving public benefits.

1 Q. The indigency form looks only at the person's financial
2 status kind of in a vacuum; right? It's a certain amount
3 that -- and above or below that amount, the person is deemed
4 indigent; is that correct?

5 A. My reading of the two provisions that govern those forms is
6 that if it's 200 percent below the poverty level guideline or --
7 and, of course, it's not the same for both of them. One of them
8 considers whether they're a public -- if they're receiving
9 public benefits.

10 Q. Those forms wouldn't shed any light on people who may be,
11 you know, not indigent or just barely not indigent, but who owe
12 a substantial amount that they can't pay; is that right?

13 A. The form is just devised -- apparently, the way the form
14 reads right now is it gathers information on assets,
15 liabilities, debt, how frequent those -- the income and the
16 dependents and other information. That's what the forms are
17 right now.

18 Q. I want to ask a couple of questions about the federal
19 registration form that the State accepts.

20 Florida is required under the NVRA to accept the federal
21 voter registration form; is that right?

22 A. Yes.

23 Q. The federal form does not require the voter to disclose
24 that they have a felony conviction; is that correct?

25 A. The -- it doesn't have the same statements that the

1 statewide form has.

2 Q. And that's because the federal form has a set of
3 instructions that it lists for all the 50 states; right?

4 And then what you do, if you fill it out, is you affirm
5 that you are eligible under the vote -- or under the law of that
6 state; is that right?

7 A. Yes.

8 Q. And so has the Secretary of State considered -- strike
9 that.

10 If the Court rules in plaintiffs' favor on the
11 inability-to-pay claim, the Secretary would have to continue
12 accepting the federal form; is that right?

13 A. But that has nothing -- yes, that form is -- by law, it has
14 to be accepted.

15 Q. And if -- would it be the Secretary's position that a voter
16 who filled out the federal registration form and had an
17 inability to pay, that by asserting -- by affirming that they
18 were eligible, that would be a proper way to assert that
19 inability to pay on the federal form?

20 A. I don't know that I -- we considered that. The bottom line
21 is it doesn't matter what anybody fills out on that. We're
22 still going to do a cross-check afterwards once they are
23 registered. That's just the normal process right now.

24 Q. So the -- the assertion box, the fifth box on the form,
25 your plan is you wouldn't actually really use that; right? You

1 would just continue to do the matching process you currently do.
2 You would continue to send down the files -- well, let me stop
3 there.

4 You would continue to do the matching process; is that
5 right?

6 A. Right. Whatever box anyone checks off on that -- I mean,
7 somebody -- in order to be registered, that Row 2, one or more
8 of those boxes has to be checked and -- in order for your
9 application to be considered complete.

10 It doesn't mean that the State is not going to -- after --
11 within 24 hours of a new application or a new registration, we
12 are still going to cross-check. That's what the law has us
13 doing. So you could affirm that you're not. We're still going
14 to cross-check you. I could affirm, same thing. So -- and
15 regardless of what form is used, that will still be the case.

16 Q. Is -- am I correct that the Secretary -- I know you
17 mentioned that -- you just sort of chatted about procedures or
18 possible forms you might use or information you might use.

19 Is it the case that you don't have a position as to whether
20 that process should occur -- whether the determination of
21 inability to pay should occur at the level of the Secretary of
22 State's Office or whether it should occur at the level of the
23 Supervisor of Elections?

24 A. We've entertained that.

25 Q. Which?

1 A. That it could either be done at the state or local level.

2 Q. But you haven't decided on what you would -- what you would
3 prefer that it be?

4 A. We believe it's appropriate at the local level because that
5 is at the time that the individual can present that information
6 to the Supervisor of Elections in terms of their -- you know,
7 whether they're denying that the information is accurate or not
8 and if it comes into play at that point.

9 Q. In your experience -- so there's the existing process where
10 if a file is sent down, the Supervisor has seven days to send a
11 removal notice, and then that's a piece of mail that goes out --
12 is it certified mail?

13 A. Verified, certified. Yes, it has to be verified type of
14 mail, so that could be a certification, sure.

15 Q. Is that verification of delivery receipt or that the person
16 to whom it is addressed actually got it in their hands?

17 A. I believe that it's -- I don't know. I'd have to look at
18 the law, the way it reads. I don't have it in front of me.

19 Q. In your experience with notices -- with government notices
20 that go out to people, do you agree that it's often the case
21 that those don't get understood or don't get read or someone
22 might toss them before the person to whom they're addressed sees
23 them?

24 MR. JAZIL: Objection; argumentive, speculation.

25 THE COURT: Sustained.

1 BY MR. GABER:

2 Q. Are you aware, Ms. Matthews, of research that's been done
3 on the open rate and the response rate to government mailings,
4 in particular government mailings related to voter registration?

5 A. No.

6 Q. Okay. The law as it stands now is that there's one mailing
7 that's done, and then if that comes back as undeliverable,
8 there's a publication in the newspaper; is that right?

9 A. Yes.

10 Q. Now, if someone had asserted a genuine inability to pay on
11 their form, on the form that you have proposed as a -- the
12 five-box form, would your office consider that credible and
13 reliable evidence of the person's inability to pay?

14 A. You mean if someone submitted it to us?

15 Q. Right. Or if someone -- you know, they check the fifth box
16 and then they swear by signing their name that they're eligible
17 and that the information on the form is true, is that
18 affirmation credible and reliable evidence that the information
19 is true?

20 A. You're talking about the proposed statement on the voter
21 registration application?

22 Q. Right.

23 A. At this point we don't do that at the state, accepting
24 those applications. That's done by the Supervisors of
25 Elections.

1 And the law says that if it's completed on its face
2 sufficient for the Supervisors to make a determination at that
3 point that that person is eligible to register, then that's the
4 standard. Again, there has been law that says afterwards we
5 have to cross-check that information.

6 Q. So has the -- has one of the ideas the Secretary of State's
7 Office entertained that the voter could affirm their inability
8 to pay on the form, and then that affirmation could be accepted
9 as true?

10 A. I'm sure -- we've talked about a number of things about
11 what we can do, exploring. I mean, nothing is set in stone at
12 this time.

13 Q. Now, if the -- if the existing procedure for removal and
14 the due process notice procedure were used, and if someone had
15 asserted their inability to pay on the form, do you think that
16 the notice and the undeliverable and the publication aspect of
17 the procedure would be sufficient to provide a real opportunity
18 for the person who'd already asserted their inability to pay to
19 come in and provide additional evidence?

20 MR. JAZIL: Objection, Your Honor.

21 BY MR. GABER:

22 Q. Do you think that the notice aspects of the procedure would
23 need to be bolstered to make that work better?

24 THE COURT: The objection is overruled.

25 THE WITNESS: I'm not sure I quite understand. So --

1 if you would, please -- I apologize -- repeat again so that I --

2 BY MR. GABER:

3 Q. Sure. And I'm just trying to, you know -- and I'm
4 certainly not trying to argue with you. I'm trying to
5 understand from the perspective of the voter.

6 So they've taken the first step, and they've checked the
7 box that says "I'm unable to pay." So they submit that.

8 They -- the voter presumably believes they are registered
9 at that point; right?

10 A. Yes.

11 Q. And then your office does the -- you know, that's sort of
12 set aside for the moment, at least -- maybe, maybe not, but
13 assume it is.

14 You do the matching process, and you determine that the
15 person does, in fact, have an amount of outstanding LFOs that
16 they haven't made payments sufficient to meet that amount.

17 Are you with me?

18 A. Yes.

19 Q. And then that file gets sent down to the Supervisors who
20 have to act within seven days; right?

21 A. Well, they have to act -- notice to the voter in seven
22 days.

23 Q. And so what I'm trying to get at and -- I'm just trying to
24 understand your view or the Secretary's view of what a procedure
25 would need to look like in order to ensure that the voter had a

1 real opportunity.

2 Do you -- does the Secretary think that the procedure would
3 need to be changed so that the notice aspect of it that
4 currently exists had some more meat to it; that maybe you
5 reached out to them by e-mail, you call them, you use other
6 information available so that it's not just a notice in the
7 mail? Do you think that that would be a necessary component of
8 the procedure?

9 A. At this juncture, if there is going to be an
10 inability-to-pay component added in -- there's already a
11 statutory framework for the notice and publication if mail is
12 undeliverable.

13 But if you are going to incorporate an inability to pay,
14 then the notice would need to include -- if that is the
15 decision, to have a form that that person could fill out.

16 The case file would also -- if an application form included
17 a check box, that check box about the person affirming that they
18 are unable to pay, that application would be included as part of
19 the case file. So I do see that changing.

20 I don't know that the law precludes a Supervisor from
21 reaching out under any other means. I know what the statute
22 requires at a minimum.

23 Q. Okay. So the statute certainly wouldn't prevent a process
24 that had a more robust notice procedure; is that your
25 understanding?

1 A. Anything a Supervisor does, they have to be very cognizant
2 about what the law already requires, make sure that it's
3 uniformly applied to everybody.

4 Q. Okay.

5 THE COURT: We need to get a break in here at some
6 point. We've been running for almost two hours.

7 Mr. Gaber, where are we on the outline?

8 MR. GABER: We are nearly -- we are in the last
9 section, Your Honor, so -- we are about to turn to the last
10 section, so -- and it's not nearly -- it's not as long as some
11 others were. I suspect we don't have --

12 THE COURT: I won't ask you how many sections we've
13 covered so far, but the -- my recollection is that's like
14 640 acres, but that was a long time ago.

15 Let's take a break. We'll come back at 11:05.

16 (Recess taken at 10:53 AM.)

17 (Resumed at 11:05 AM.)

18 THE COURT: I'm back.

19 We're missing a witness.

20 MR. JAZIL: Your Honor, Director Matthews is just
21 getting off a call and walking through the door momentarily.

22 THE COURT: All right.

23 MR. JAZIL: I see her coming, I believe.

24 I apologize for the delay, Your Honor.

25 THE COURT: All right. Ms. Matthews, you are still

1 under oath.

2 Mr. Gaber, you may proceed.

3 MR. GABER: Thank you, Your Honor.

4 BY MR. GABER:

5 Q. Ms. Matthews, I'd like to ask you some questions about the
6 Restoration of Voting Rights Work Group that was set up by
7 SB 7066.

8 The Secretary was the chair of the Work Group; is that
9 right?

10 A. I'm sorry? You said the --

11 Q. I can repeat it. No worries.

12 The Secretary of State was the chair of the Work Group on
13 the restoration of voting rights that was set up by SB 7066; is
14 that right?

15 A. Yes.

16 Q. And there were eight members on the Work Group; right?

17 A. I think there were about eight, yes.

18 Q. Four of whom were appointed by Governor DeSantis; is that
19 right?

20 A. Correct.

21 Q. Was the Work Group unanimous in the recommendations that it
22 issued?

23 A. I believe so, yeah. They have to in order to be able to do
24 the draft -- I mean, to do the final report to the legislature.

25 Q. And so the Secretary of State was in agreement with the

1 recommendations?

2 A. They all signed off on it, yes.

3 Q. Now, the report itself is in evidence, and I don't want to
4 take up too much of our time, but I do want to point out -- or
5 ask you about a couple particular things.

6 MR. GABER: Ashley, if you could please pull up PX279
7 and turn to page 18 of the PDF, which is also 18 of the
8 pagination.

9 BY MR. GABER:

10 Q. Now, this -- do you recognize this as the section of the
11 report about the consolidation of all relevant data necessary to
12 verify the eligibility of a voter?

13 A. Yes.

14 MR. GABER: And then, Ashley, if you'd turn to page
15 19, please.

16 BY MR. GABER:

17 Q. We spoke at your deposition in January about each of these,
18 and do you recall testifying that none of the five
19 recommendations had been fulfilled? Is that -- do you recall
20 that?

21 A. If I said that at that time, I would have spoken
22 truthfully, to the best of my knowledge anyway.

23 Q. And it's the case, right, that these five recommendations
24 in this section have still not been fulfilled? Is that right?

25 A. So I can't -- I really can't speak to the clerk of courts

1 in terms of what progress they've made in terms of their
2 accounting system. I know that they are obviously -- you know,
3 subsequent to this report, that they're very attuned to the fact
4 that their financial accounting system needed to be enhanced and
5 that they were doing some rollouts on, you know, information --
6 making information available to voters. So I can't speak to
7 what progress they have made in enhancing their accounting
8 system.

9 And in terms of four and five, both of those are directed
10 to the Florida Legislature, and I do not know if the Florida
11 Legislature provided funding to the clerks of court for
12 temporary additional manpower to get their records up to date.
13 And I believe the effort to -- for the -- the last
14 recommendation I do not believe was successful in passage.

15 MR. GABER: Okay. If you could turn, please, to page
16 23 of the PDF.

17 BY MR. GABER:

18 Q. And in the second-to-last paragraph, the last sentence,
19 Ms. Matthews says that: "Some judgments and sentences provide
20 that public defender or state attorney fees be paid directly to
21 those offices."

22 Do you see that?

23 A. Yes.

24 Q. The first-dollar policy that we were discussing earlier
25 does not require the examiners to reach out to those offices to

1 determine whether those payments have been made, does it?

2 A. That doesn't mean that there might not be recorded in the
3 clerks and CCIS, or the clerk's website, or during our outreach
4 to the clerks they may have that information available in their,
5 you know, financial audit system. I don't know yet because we
6 haven't played that out that far.

7 Q. The Work Group report, at least, says that there's no
8 requirement that all fines, fees and restitution be paid through
9 the clerk of courts, and then it goes on to say this piece about
10 the amounts that are paid to the public defender and state
11 attorney; is that right?

12 A. Yeah. The statement was to reflect that there are a
13 variety of ways in which restitution may be paid.

14 Q. So when the Work Group report was drafted and issued, you
15 knew at that point, right, that issues like the ones we see here
16 might not be reflected in the CCIS balance due report; is that
17 right?

18 A. That's why we look at CCIS, the clerk of court's website,
19 and reach out to the clerk of court.

20 Q. But my specific question was that you knew at that time,
21 right, that CCIS balance due reports wouldn't include some items
22 such as restitution or these types of items that are paid
23 directly to third parties? Is that right?

24 A. We recognize, yes, that there would be some differences,
25 yes.

1 MR. GABER: If you turn, Ashley, please, to the next
2 page, page 24 of the PDF.

3 BY MR. GABER:

4 Q. The fifth recommendation on the page is for the legislature
5 to eliminate the three-check box that it had added in SB 7066.

6 That did not happen in the legislative session; that's
7 right?

8 A. No, up until the very last day of the legislative session.

9 Q. And then if you could turn, please, to page 25 of the PDF.

10 Recommendation 7 recommends that the legislature expand the
11 existing relief in SB 7066 regarding modification and waiver of
12 LFO payments and community service. Do you see that?

13 A. Yes.

14 Q. And there are two proposals for the legislature; is that
15 right?

16 A. Two -- two examples, yes.

17 Q. One of them is about folks who are uncertain, and one is
18 about folks who are unable to pay; is that right?

19 A. Yes.

20 MR. GABER: Now, I want to dig in a little bit on the
21 first one.

22 Ashley if you can please pull up PX733, and then turn
23 to page 5.

24 And I guess, first let's back up maybe to page 1 so
25 Ms. Matthews can see what the document is.

1 BY MR. GABER:

2 Q. Do you recognize this document as a draft version of the
3 Work Group findings and recommendations?

4 A. You mean this is something that's not in the final report?

5 Q. Right.

6 MR. GABER: I guess, Ashley, if you'll scroll down all
7 the way -- maybe expand out and then scroll down to the bottom.

8 BY MR. GABER:

9 Q. Do you see at the bottom it says, "Draft M. Matthews' edits
10 for the RVR report, 2019"?

11 A. Yes.

12 Q. Is this a draft version of the findings and recommendations
13 that you would have worked on in preparing the final report?

14 A. Yes.

15 Q. Okay. If then we turn to page 5 and the second bullet,
16 this is the recommendation to -- or a draft recommendation to
17 develop an affidavit of due diligence search that the
18 prospective voter could complete and affirm that they've made a
19 good-faith effort to determine what they owed, that they
20 believed they'd paid that amount, and then presumably they could
21 then register to vote.

22 Is that what the discussion was with respect to this
23 affidavit option?

24 A. Yes.

25 Q. Why did the Work Group recommend that -- ultimately that a

1 prospective voter would have to obtain a judicial determination
2 rather than this affidavit option?

3 A. I don't remember how the discussion evolved to that, but
4 that's -- that was their collective decision as to how to
5 proceed with -- or to determine -- or to come up with their
6 recommendation.

7 Q. How far into the Work Group proceedings did the affidavit
8 option survive?

9 A. Well, is this form dated?

10 Q. Unfortunately, I don't think it is.

11 Do you recall? I mean, you were the one that wrote this;
12 right?

13 A. I helped draft initial things. I do a lot of that, but, I
14 mean, to get a context of, you know, when this was lobbed out
15 there as a possibility based on what I was initially -- or what
16 we initially construed the Work Group to be interested in to
17 what was final in the draft, I kind of -- I mean, the time frame
18 will best be represented by whenever this form was created and
19 then whatever date the final, you know, language or the news --
20 the other language appeared.

21 But I don't have a recollection of the date. I'm sorry.

22 Q. Okay. At the bottom of the paragraph in brackets -- so
23 before the brackets, it says, "The form may require that they
24 include case number, county of conviction, offense," and then it
25 has a Q, question, "Reasonable to expect that they would have or

1 even know this level of detail?"

2 A. Yes.

3 Q. Was that -- who raised that question? Who was that comment
4 from?

5 A. If these are my edits, then it would be my question.

6 Q. So at the time did you think it possibly would not be
7 reasonable to expect that folks would know this level of detail
8 in order to provide it and do that search?

9 A. I think it was a question that I wanted to raise for the
10 Work Group.

11 MR. GABER: Ashley, if you could please turn back to
12 PX279 and then page 25.

13 BY MR. GABER:

14 Q. Ms. Matthews, the Work Group's final recommendations, 7(b),
15 recognizes that some courts will not be inclined or able to
16 waive a person's obligation to pay their LFOs or convert them to
17 community service; is that correct?

18 A. Yes, it states that.

19 Q. And so the Work Group recommended that the legislature
20 amend SB 7066 to allow a court to determine that the person was
21 unable to pay their LFO; is that right?

22 A. Yes. Well, I don't know that it said a court. It just
23 said some type of judicial -- well, I guess that was going to be
24 a court. I was going to say quasi-judicial, but, no, that's not
25 what it says.

1 MR. GABER: Ashley, could you please pull up -- excuse
2 me -- I'm losing my voice, which is probably because I've been
3 talking for so long.

4 If you could please pull up DX10 and turn down -- this
5 is the codified version of SB 7066. And if you could please
6 magnify part (5.e).

7 BY MR. GABER:

8 Q. And so I just want to get a sense for how this
9 recommendation would work. If the final recommendation about an
10 inability-to-pay process were added into SB 7066, the statute
11 would provide that LFOs are considered completed upon the
12 determination of an inability to pay.

13 That's how that would work; right?

14 A. Well, that's -- it would be -- it would fall into what it
15 considered actual payment of the obligation in full.

16 Q. If the recommendation says to put it in part (e.) and part
17 (e.) begins "Financial obligations required under the above
18 paragraphs are considered completed in the following manner or
19 in any combination thereof...", then presumably we would add in
20 a part four that would say something like "Upon determination of
21 inability to pay"; is that -- that's right?

22 A. Well, the recommendation was to the legislature to amend.
23 I mean --

24 Q. I'm just trying to walk through what that amendment would
25 be.

1 And if they want to amend Section (5.e), that is what this
2 could say then; is that -- that's fair?

3 A. I don't know how the legislature would word it. I mean, it
4 could be something as simple as, you know, "inability to pay
5 will constitute satisfaction of the obligation in full," or it
6 could be something more complex.

7 Q. And that would be -- they could do that? The Work Group
8 concluded they could do that --

9 A. -- it has broad discretion, yes, to establish policy.

10 Q. Just a few more questions, Ms. Matthews.

11 You have experience implementing election laws that dates
12 back prior to 2013; is that right?

13 A. Yes.

14 Q. And before 2013, you're aware that changes to election laws
15 in various jurisdictions would have required preclearance; is
16 that right?

17 A. Yes. And I forget the year exactly, but, yes.

18 Q. I think it was June 25, 2013, if I recall the big day for
19 voting.

20 A. Very good, yes.

21 Q. Now, is it your understanding in your experience then that
22 SB 7066 would have required to receive preclearance under
23 Section 5 at that time?

24 A. For those five counties that would have had to implement
25 it, and, of course, by virtue of that, it would have been the

1 entire state, yes.

2 Q. And the new rule that implements the new voter registration
3 form, that also would have had to receive preclearance; is that
4 correct?

5 A. Based on past experience, we did submit it, yes, for
6 preclearance.

7 Q. And if you promulgated any other rules to implement SB
8 7066, including this first-dollar policy, that also would have
9 been required to receive preclearance; is that correct?

10 A. I believe so.

11 Q. Thank you, Ms. Matthews.

12 MR. GABER: I have no further questions.

13 THE COURT: Redirect?

14 MR. JAZIL: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. JAZIL:

17 Q. Ms. Matthews, I'd like to start off with my friend's last
18 section about the Work Group.

19 How, if at all, did your serving as staff to the Work Group
20 inform your implementation of Amendment 4 in Senate Bill 7066?

21 A. Well, in terms of -- I mean, I was obviously -- our
22 division provided the administrative support. We also were in
23 attendance and listened to all the presentation and the meeting.
24 So based on that, that was sort of guiding us as to how we
25 figured we'd have to proceed or what would be best the manner to

1 proceed for the procedures.

2 Q. Okay. We talked about the advisory opinions process. And
3 suppose that you had a thousand advisory opinion requests; 500
4 of them asks you a question about whether or not the State has a
5 first-dollar principle as part of this policy.

6 In responding to those 500 requests, would the State issue
7 500 separate advisory opinions?

8 A. I don't know because I don't know that we have ever
9 collectively done an advisory opinion. It would be -- it could
10 be that it's directed to all those people that are asking the
11 same question. It's possible. Right now it envisions that it's
12 one requester.

13 Q. Director Matthews, my friend also talked to you about the
14 felon match numbers early on in his cross-examination. And my
15 understanding is, based on your testimony -- and you correct me
16 if I'm wrong -- is that the State currently has approximately
17 85,000 felon files.

18 When you said "felon files," are we talking about felon
19 match files?

20 A. No, what we're talking about are matches, 85,000 plus, that
21 they're matches. This is just the automated data match that
22 starts our manual review process.

23 Q. Okay. And you talked to my friend about how the time that
24 it takes to work through those files could vary. Some files
25 take less time; some files take more time. Help me to

1 understand why it is that some of those files take less time.

2 Can you give me a better breakdown of how it is you resolve
3 those 85,000 files?

4 A. Again, it's going to be the process of, you know,
5 determining identity, determining the -- if it's a felony
6 conviction, the adjudication on what type of felony. If it's a
7 felony involving murder, felony sexual offense, prison, or
8 supervision, and it can be validated on that, then that's going
9 to be an expedited process because all we're looking for at that
10 juncture is if clemency has been granted.

11 Q. Do you see duplicates?

12 A. There are duplicates in there. That's why I can't give you
13 a firm figure until we actually start that process. All I can
14 be firm about are what we have identified as being validated
15 felon case files that have been sent to the Supervisors.

16 Q. Other than duplicates, what other categories do things fall
17 under for those 85,000?

18 A. You mean besides being murder or -- I'm not sure I
19 understand the question.

20 Q. Do some of those matches come from people who are still in
21 FDOC custody, for example?

22 A. Yes. So, again, the first thing we're going to look for is
23 can we validate it based on being a conviction for felon -- for
24 murder, for felony sexual offense, or if the person is in prison
25 or supervision.

1 Q. The felon match manual at the top talks about matching
2 three demographic factors.

3 Do some of those 85,000, just on further review, have
4 incorrect demographic information?

5 A. They do. That's where the identity match has to be
6 confirmed. If we can't make that identity match confirmation,
7 which is where the three demographics come in, then we're not
8 able to proceed any further. Or it could be, too, that it's
9 recorded as a felony conviction, but when we look at the court
10 records, it's a misdemeanor or it's been overturned or it's been
11 nolle prossed. All those things could end up invalidating a
12 potential match from being created as a case file.

13 Well, let me correct. Every match that we look at we do
14 end up creating a case file to be able to support our
15 determination of being valid or invalid.

16 Q. Now, you looked with my friend at excerpts from the records
17 of certain individuals.

18 Do you recall that?

19 A. Yes.

20 Q. When you and your staff are processing felon files, are you
21 only going to be looking at excerpts? How would your process
22 differ from what you discussed with my friends?

23 A. With a comprehensive approach to it. We are going to be
24 looking at all the records that are available to take -- to give
25 us at least a determination that we -- of whether it's credible

1 and reliable, valid, or credible and reliable, invalid.

2 Q. Okay. So as you are looking at all the records and not
3 just the excerpts, if you see in all the records that there are
4 multiple felonies, how does your staff deal with an instance
5 where there are multiple felonies for the same person? Do you
6 review every single one? What -- how do you go about matching
7 the information provided?

8 A. So if -- a match can come in where there is a -- a match
9 between the voter and several different federal cases -- I mean,
10 not federal -- felony cases, or it could be that there's a one
11 to one, but there can be multiple counts in the -- in the -- in
12 the case -- in one case.

13 So it's going to be what the individual can determine.
14 What they are trying to rule out is being able to validate
15 any -- any felony, whether it's a count in a case or it's a case
16 that just has one count of felony convictions.

17 Q. You said "validate any felony," so let's be a bit more
18 precise.

19 Suppose you have a file for an individual who has five
20 felonies. They range in time from last month to 40 years ago.
21 How does your staff decide which of those items you're going to
22 validate? You said you could validate any one, so how do you go
23 about deciding which of those five felonies that range from last
24 month to 40 years ago you and your staff are going to start
25 working on?

1 A. We are going to work with the most recent one, and the
2 reason for that is if there's clemency and it postdates all
3 those felonies, we don't even need to get to all those other
4 felonies.

5 All we are trying to do is find out if there is a valid
6 case file in -- but in the order of the most recent, and then if
7 the most recent isn't able to be validated, then we move on to
8 the next one chronologically backwards.

9 Q. You discussed with my friend instances where a third party
10 might pay off legal financial obligations, so a person who -- we
11 have testimony in this case, I'll represent to you, that the
12 FRRC is doing precisely that; they are working to pay off
13 outstanding legal financial obligations.

14 If a third party pays off outstanding legal financial
15 obligations, does the State care for voter restoration purposes?

16 A. I think I said this yesterday. The way we are reading the
17 law, it doesn't say who's paying it off. It just says -- it's
18 the payment of the obligation is paid in full.

19 THE COURT: Mr. Jazil, I think Ms. Matthews is right
20 that she said that yesterday. I may have said this to the
21 lawyers here before: I promise never to rule based on who says
22 something last or who says the same thing the most times. I've
23 been very patient, but we've got a two-hour witness who has been
24 on the stand for coming on ten hours. Let's get to any new
25 value, and then count on me to remember what she said yesterday.

1 MR. JAZIL: Yes, Your Honor.

2 BY MR. JAZIL:

3 Q. Director Matthews, in --

4 MR. JAZIL: Here, Your Honor, I am a bit confused
5 about the testimony, so I beg the Court's indulgence on this one
6 issue.

7 BY MR. JAZIL:

8 Q. Director Matthews, do you still have 98.0751 in front of
9 you?

10 A. Yes.

11 Q. Can you take a look at subsection (2) (a) (5.a)?

12 A. Yes.

13 Q. So based on your review of that provision, if restitution
14 is ordered as part of someone's sentence, is it required for
15 purposes of voting restoration?

16 A. Yes, you have to pay all terms of your sentence. If that's
17 part of your sentence, then yes, you have to pay it.

18 Q. Now, if a judgment is silent on restitution and doesn't
19 specify the restitution will be ordered, what is the
20 department's position on whether that obligation is required for
21 voting purposes?

22 A. If it's not preserved or mentioned in the judgment or
23 sentence, then it's not part of the calculation.

24 MR. JAZIL: Your Honor, I have no further questions.

25 Thank you.

1 THE COURT: Thank you, Ms. Matthews. This concludes
2 your testimony. You are free to go about your business. You
3 are free to stay on the link if you wish, but if you go to
4 another station, please turn off the microphone and the video.

5 THE WITNESS: I've got work to do. I'm going to go
6 back to the office.

7 Thank you very much.

8 THE COURT: Thank you.

9 Mr. Jazil, please call your next witness.

10 MR. JAZIL: Your Honor, we have no additional
11 witnesses. However, I would note that, rather than having the
12 Court watch additional legislative materials, with Your Honor's
13 permission, can we just file a brief document with the Court
14 pointing to legislative material, videos that have been admitted
15 into evidence that we believe are relevant to rebut the
16 testimony that was put forward by the plaintiffs through their
17 videos, just so the record is complete.

18 THE COURT: Absolutely. And, of course, arguments and
19 so forth entail the entire record, regardless of whether it was
20 published during the trial. Some of those materials I've
21 already seen and have reviewed, but certainly you can do it that
22 way.

23 MR. JAZIL: Thank you, Your Honor.

24 THE COURT: That gets us back to the rebuttal case.
25 We had a witness we were working on scheduling, a possible

1 stipulation, and then one witness.

2 Ms. Lang, tell me where we stand.

3 MS. LANG: Sorry. I was on mute. Can you hear me?

4 THE COURT: I can.

5 I should say for all of us that I too tried to speak
6 on mute a couple of times, and most of the lawyers have once or
7 twice. In the defense of all of us, I can say that the report I
8 read, I think this morning, of the Supreme Court's argument
9 yesterday suggested that one of the justices tried to do the
10 same thing, so we're not the only ones that have failed to push
11 the button.

12 MS. LANG: Thank you, Judge Hinkle.

13 Yes, I believe that what we are going to do now is
14 call Ms. Marconnet, Amber Marconnet.

15 THE COURT: All right.

16 MS. LANG: I was informed that she would be available,
17 so perhaps Mr. Jazil could let us know if that's still the case.

18 THE COURT: All right. Mr. Jazil.

19 MR. JAZIL: Your Honor, I was here with
20 Director Matthews. I can find Mr. McVay. Perhaps a brief
21 recess is appropriate just to let me find Mr. McVay. I don't
22 believe he's here at the moment.

23 THE COURT: Well, let me --

24 MS. LANG: I have no objection to -- go ahead.

25 THE COURT: We may just break at lunch, and then you

1 can find her and have her available.

2 Let me ask a couple of other logistical questions.

3 You had been working on a stipulation about Ms. Davis. Did that
4 work out?

5 MS. LANG: Yes, Your Honor. We've sent a joint notice
6 over to the defendants, as a procedural matter, to sign off on
7 the joint notice to the Court for the admission of the
8 declaration. But I have the signed declaration in hand, and we
9 intend to submit it momentarily, as soon as we get defense
10 counsel to sign off on the form of the notice to file.

11 THE COURT: All right. And then you do have one
12 expert?

13 MS. LANG: Yes, Your Honor. And we have not gotten a
14 report on the other witness's availability. Given the current
15 report, we've decided to call Ms. Marconnet.

16 THE COURT: All right. Do we need a report on the
17 other witness, or are you satisfied without her?

18 MS. LANG: I'm satisfied at this point, Your Honor.
19 Thank you.

20 THE COURT: All right. I was just going to ask --

21 MS. LANG: For Your Honor's procedural, logistical
22 consideration, the testimony from Ms. Marconnet I expect to be
23 very short. So as you are planning whether or not you want to
24 take lunch or not, I'm happy to just let you know that I do plan
25 it to be quite brief.

1 THE COURT: All right. So first spell the name of the
2 witness for me, Ms. --

3 MS. LANG: M-a-r-c-o-n-n-e-t. And I will confess that
4 I think that's how I heard Ms. Matthews pronounce it yesterday,
5 but I could be mispronouncing her name.

6 THE COURT: All right. So we can talk in just a
7 second about whether she's there to put her on now before lunch.
8 It would be better -- if she's there and available, we can do
9 it. That's fine. If not, we can do it after lunch.

10 Let me note a couple of other things while I have your
11 attention here for a moment.

12 First, I have all of these exhibits because they were
13 all prefiled. They are filed in different places at different
14 times, and so when I go to look for them, there's always an
15 extra step in there. In preparing the opinion in the case, I am
16 certain I am going to be looking at the exhibits multiple times.
17 I've pulled them up sometimes during the trial, and I've noticed
18 they are always on the screen before I can get to mine.

19 Some people have a telephone where they say "Siri,"
20 and Siri does whatever they ask or look it up. Some people have
21 an application at home where they say "Alexa," and Alexa does
22 whatever they want or looks it up. The plaintiffs' lawyers have
23 an application where they say "Ashley" and up the document
24 comes.

25 I take it that this Ashley system is not using the

1 same ECF numbers that I am but has all the exhibits right there
2 together handy, and I'm guessing you could file courtesy copies
3 that would make my life a lot easier. If you would send in a
4 thumb drive of the exhibits in sequence, that would be much
5 appreciated.

6 Then I was going to make a note about the transcript
7 in the case. We are -- and the -- what we've done with the
8 video trial, I can tell you that from my perspective in a case
9 like this, which is not a "Who done it?" case or a credibility
10 of fact witnesses case, but involves experts and people like
11 Ms. Matthews, who are professionals and deal with this kind of
12 material, I don't think I've lost a thing in the process. I've
13 been able to see the witnesses and hear all of the testimony. I
14 think the outcome will be exactly what it was if we had been
15 able to try the case in the traditional matter.

16 There have been occasions when it went a little
17 slower, but there also have been occasions where it probably
18 went a little faster. Sometimes it takes a minute to get a
19 witness on the stand, like it may with Ms. Marconnet, but that
20 happens in real trials too. When the witness is outside the
21 witness room and it's time for the witness to testify, the
22 witness may not be there, may have gone out to the restroom, may
23 have gone to deal with something else. Nobody knows then they
24 are going to testify, so their variability is every bit as good
25 in a video trial as it would have been in an actual trial.

1 We've also had some instances of some people trying to
2 talk over one another. The video equipment doesn't deal with
3 that very well, but neither does a real trial. And so in a -- I
4 shouldn't say "a real trial." Neither does an in-person trial.
5 So when we are in the courtroom and people speak over one
6 another, the court reporter does her best and gets as much as
7 can be gotten, but, frankly, if people are both a touch
8 bullheaded even in court and they talk for a line or two over
9 one another, the court reporter gets as much as is humanly
10 possible to get and not any more than that.

11 I think I may have mentioned to you once before as we
12 were talking about this what one of my prior court reporters
13 used to say was that when two people were talking at the same
14 time, if one was the judge, everything the judge said got taken
15 down, the other person's got lost in the shuffle.

16 When that happens in a courtroom, the transcript will
17 reflect what the court reporter is humanly able to take down,
18 which corresponds with what the judge is able to hear and get or
19 the jury is able to hear and get, and sometimes there will be a
20 couple of dashes indicating that somebody got cut off, something
21 like that.

22 On the first couple of days of this transcript when
23 that happened, sometimes the entry in the transcript says
24 something like "indecipherable." I think that's just a
25 difference in the way it was being transcribed when compared to

1 a live trial. At the live trial it wouldn't have said that, but
2 it would have been functionally exactly the same.

3 I don't believe that anything of substance was lost at
4 all in the transcript. I think it's an accurate transcript of
5 what was said in the trial, but I think if somebody didn't
6 monitor the trial and look at what was going on, they'd -- and
7 just read and saw that there were references to something being
8 indecipherable, they might worry that something had been lost in
9 the making of the record.

10 I don't think that's happened, but I bring it to your
11 attention so that if either of you thinks that happened, you can
12 speak up and we will fix the record.

13 I have asked the court reporter to keep the audio
14 recording so that if there is any question about the accuracy of
15 the transcript, we can confirm its accuracy. If somebody thinks
16 something was left out, we can get the audiotape and confirm
17 that it was two seconds or five seconds, so I don't think that
18 will be any issue, but I just want to put it on the record so
19 that you both know it, and we can get any issue along those
20 lines squared away.

21 After a couple of days when I -- when that came to my
22 attention -- you might be surprised to hear I was not reading
23 transcript at the end of the day. I know you were getting daily
24 copy and that, by the way, contributed to this because the court
25 reporter has done an outstanding job. One court reporter taking

1 daily copy, that's an extraordinarily difficult thing to do.

2 Frankly, I've never done daily copy with a single
3 court reporter before. Usually a reporter can do a couple of
4 hours and then has to leave and the new court reporter comes in,
5 but we've got a court reporter who has done a terrific job of
6 being able to get all this done with assistance in the typing in
7 the background after she has done it.

8 But I think that process and the need to prepare it on
9 a daily basis contributed to the entries in there
10 "indecipherable." So we'll look back at that and make sure you
11 don't think there's any error with any of that, and we'll make
12 sure that we have a complete and accurate transcript. I believe
13 we will.

14 Now, that may have been enough time to find
15 Ms. Marconnet and, Mr. Jazil, where do we stand?

16 (Reporter requested clarification.)

17 MR. JAZIL: Your Honor, can you hear me?

18 Your Honor, we touched base with Ms. Marconnet, and
19 she is currently watching her kids, but we will use the lunch
20 break to make sure that her equipment is working and have her
21 available to be called after lunch, if that's amenable to the
22 Court.

23 THE COURT: That will work just fine. It's -- it's a
24 couple of minutes before 11:50. Let's take a break until 12:50,
25 and we'll put her on at that point.

1 MR. JAZIL: Thank you, Your Honor.

2 MS. LANG: Thank you, Your Honor.

3 THE COURT: We'll be in recess until then.

4 (Recess taken at 11:48 AM.)

5 (Resumed at 12:52 PM.)

6 THE COURT: I am back. I believe where we are is that
7 the defense has rested, and we are on the plaintiffs' rebuttal
8 case.

9 Ms. Lang, please call your first witness.

10 MS. LANG: Your Honor, defense counsel has let me know
11 that they would like some more time to make Ms. Marconnet
12 available. We just found this out. So Ms. Ebenstein has
13 contacted our other rebuttal witness, and he is hurriedly
14 getting to his computer and should be available very quickly,
15 Your Honor.

16 THE COURT: All right. We'll be at ease until he's
17 available.

18 MS. LANG: Thank you, Your Honor.

19 (Pause in proceedings.)

20 MS. LANG: And there he is.

21 THE COURT: Please your right hand.

22 **TODD DONOVAN, PHD, REBUTTAL WITNESS, DULY SWORN**

23 THE COURT: I saw your lips say "I do," but I did not
24 hear you.

25 THE WITNESS: Can you hear me?

1 THE COURT: Yes.

2 THE WITNESS: Okay. I do.

3 THE COURT: All right. Thank you.

4 Please tell us your full name.

5 THE WITNESS: Todd Donovan.

6 THE COURT: Ms. Ebenstein, you may proceed.

7 MS. EBENSTEIN: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MS. EBENSTEIN:

10 Q. Dr. Donovan, can you hear me all right?

11 A. Yes, I can.

12 Q. Okay. Can you please tell us what is your profession?

13 A. Professor of Political Science at Western Washington
14 University.

15 Q. And how long have you held that position?

16 A. 28 years.

17 Q. Where did you earn --

18 THE COURT: Ms. Ebenstein, let me stop you for just a
19 moment. I don't see the defense. They may have gotten dropped.
20 Let's make sure we've got everybody back on the same page.

21 MR. WENGER: Your Honor, this is Edward Wenger on
22 behalf of the defense.

23 It says that I'm sending video, but let me try F5 to
24 see if I can refresh.

25 Did that work?

1 THE COURT: Yes, that worked. We have you.

2 For Dr. Donovan, let me say this: What we have found
3 is that the sound works better for everybody if all the
4 microphones are off except that of the speaker. So if you could
5 mute your microphone while Ms. Ebenstein is asking you a
6 question and then vice versa, that will help us.

7 Thank you.

8 MS. EBENSTEIN: Okay. Thank you.

9 BY MS. EBENSTEIN:

10 Q. Dr. Donovan, again, could you tell us your profession and
11 where you work?

12 A. Professor of political science at Western Washington
13 University.

14 Q. And how long have you held that position?

15 A. 28 years.

16 Q. Could you briefly tell us your educational background?

17 A. Ph.D. in political science at the University of Virginia in
18 Riverside, B.A. degree in economics and government at Cal State,
19 Sacramento.

20 Q. And as a political scientist, what are your areas of focus?

21 A. I study public opinion, elections and representation,
22 direct democracy, American politics, and state and local
23 politics.

24 Q. Okay. And if I could ask you to speak a bit slower for the
25 sake of our now-nodding court reporter, I think that would help.

1 What exactly does direct democracy entail?

2 A. Initiative, referenda and recall, either referenda put on
3 the ballot by legislators or citizens petitioning to put
4 legislation on the ballot.

5 Q. Okay. Have you taught courses related to that topic?

6 A. Yes, I've done a senior seminar on it. My State and Local
7 Politics class also includes sections on direct democracy.

8 Q. Have you taught graduate level courses on these topics as
9 well?

10 A. Yes, State and Local Politics class that also included a
11 component on direct democracy.

12 Q. Beyond direct democracy, in your other areas of focus, have
13 you taught additional classes on those topics?

14 A. I teach Campaigns, Elections, Public Opinion, Introductory
15 Statistics, and American Politics.

16 Q. And --

17 THE COURT: Let me jump in and interrupt again. My
18 screen is showing that there's a Hopping Green microphone on.
19 Whoever at Hopping Green has the microphone on, if you will turn
20 it off, that will improve our sound.

21 BY MS. EBENSTEIN:

22 Q. Dr. Donovan, I was just asking have you published
23 peer-reviewed articles on direct democracy and related topics?

24 A. Yeah, 100 articles and book chapters. Probably 30 of the
25 articles are on direct democracy; 25 of the chapters are on

1 direct democracy; a couple of University Press books on direct
2 democracy; and another 10-odd books on other issues on campaigns
3 elections and representation.

4 MS. EBENSTEIN: Your Honor, just to save time, I would
5 just note for the record that Dr. Donovan's CV is in PX886. A
6 list of his publications are from pages 30 to 43.

7 BY MS. EBENSTEIN:

8 Q. Dr. Donovan, what are some of your most significant or
9 cited works in your field that relate to ballot initiative
10 campaigns?

11 A. A book from University of Michigan Press called *Demanding*
12 *Choices: Opinion and Voting on Ballot Propositions* [sic];
13 another book that I contributed to called *Citizens as*
14 *Legislators: Direct Democracy in the United States*; journal
15 articles in the *Journal of Politics* and *Public Opinion*
16 *Quarterly*, they are fairly highly cited.

17 Q. And what's the significance in your field of something
18 being highly cited, if you could just explain that for us?

19 A. It reflects the impact that a piece of work has had on the
20 cumulative social science literature.

21 Q. Along with your publications, do you review the academic
22 work of other political scientists?

23 A. Yes, fairly regularly.

24 Q. How often --

25 A. Oh, you were going to ask -- I got two or three review

1 requests last week, so I probably get -- I can't do as many as
2 I'm asked, but maybe three or four a month.

3 Q. Okay. And are you on the editorial board of any journals?

4 A. I'm on the editorial board of *Politics and Governance*, an
5 international journal. I'm on the editorial board of *State*
6 *Politics & Policy Quarterly* and *Political Research Quarterly*.

7 Q. And do you present your research to peers, at least under
8 normal circumstances?

9 A. Yeah, when we can travel. Usually a couple few times a
10 year.

11 Q. Okay. Dr. Donovan, do you also focus on statistics and
12 social science research methods?

13 A. I have a book that's now in it's 11th edition, *Social*
14 *Science Research Methods*, and I teach introduction --
15 introductory statistics classes and research methods classes.

16 Q. Are you a member of any professional associations related
17 to political science?

18 A. Yeah, I'm past president of the Pacific Northwest Political
19 Science Association. I've been active in the American Political
20 Science Association's section on elections and representation.
21 I've previously been on the executive council of the Midwest
22 Political Science Association and the Western Political Science
23 Association.

24 Q. And have you ever held elected office?

25 A. Yes, I am a county councilperson in Whatcom County,

1 Washington.

2 Q. Is that a partisan position?

3 A. No, it's nonpartisan.

4 Q. Are you registered with any political party?

5 A. No, I'm not.

6 Q. Does the county council have any role in election
7 administration?

8 A. We oversee the auditor. The auditor runs elections. She's
9 separately elected, but as -- when I was vice chair of the
10 council, I served on the canvassing board, so trained in
11 signature verification, voter intent on ballots that are marked
12 improperly.

13 Q. Okay. Have you been retained as an expert witness before
14 in other election-related cases?

15 A. Yes.

16 Q. Who retained you -- well, how many times, approximately,
17 have you been retained as an expert?

18 A. Ten to twelve. It's usually the State of Tennessee a
19 couple of times, State of Alaska, State of Washington a few
20 times, State of Montana. I just recently had a case on
21 initiative petitions in Arizona.

22 Q. And was your expert work for state AGs in both state and
23 federal court?

24 A. Mostly in federal, but, yeah, the Arizona one was in state
25 court.

1 Q. Have you also been retained by plaintiffs in
2 election-related matters?

3 A. Yes, a couple; one in Washington and then at a remedy phase
4 in San Mateo, California.

5 Q. Okay. And have you participated as an amicus in any
6 federal election-related cases?

7 A. Yeah, I've been asked to work on about a dozen of those --
8 I'm sorry -- half a dozen.

9 Q. Have your amicus briefs been recognized or cited by the
10 Supreme Court?

11 A. Yeah, one of them, the *Schuetz v. Coalition for*
12 *Affirmative Action* [sic]. I'm not quite sure about the case.
13 Justice Sotomayor referenced the brief and of my publications on
14 direct democracy in her opinion.

15 Q. And that would be in dissent; right?

16 A. Yeah, it was in dissent.

17 Q. Okay. Have you ever been precluded from testifying before
18 a court as an expert?

19 A. No.

20 Q. Okay.

21 MS. EBENSTEIN: Your Honor, I move to qualify
22 Dr. Donovan as an expert in the field of representation in
23 electoral systems, political behavior in electoral politics,
24 public opinion, and direct democracy, and statistics and social
25 science research methods.

1 THE COURT: Mr. Wenger, any questions at this time?

2 MR. WENGER: No, Your Honor.

3 THE COURT: Ms. Ebenstein, you may proceed.

4 MS. EBENSTEIN: Thank you, Your Honor.

5 BY MS. EBENSTEIN:

6 Q. Dr. Donovan, briefly could you tell us what you were asked
7 to do in this case?

8 A. I was asked to review a report that Dr. Barber wrote on
9 Amendment 4.

10 Q. And would that be, if you recall -- if we could pull up
11 DX66 -- the report by Dr. Barber issued on March 2, 2020?

12 A. Yeah, that's the one.

13 Q. Okay. And did you prepare a rebuttal report to this
14 report?

15 A. I did.

16 Q. Okay.

17 MS. EBENSTEIN: And just for the record, that's
18 available at PX886.

19 BY MS. EBENSTEIN:

20 Q. Did you hear Dr. Barber testify in court on Friday?

21 A. Yes, I did. I listened in.

22 Q. Based on the testimony and the report of Dr. Barber, what
23 do you view as the preliminary -- or the primary opinion and
24 conclusion in Dr. Barber's testimony and report?

25 A. His main claim seems to be that ballot language in

1 Amendment 4 was, in his words, pivotal and instrumental to the
2 amendment passing in 2018.

3 Q. And did you form an opinion on Dr. Barber's conclusions
4 after review of his report and his testimony?

5 A. Yes, I did.

6 I -- sort of summarizing, I guess, my report, it's my
7 opinion that he misstates the academic literature on ballot
8 language and framing effects; he ignores a substantial amount of
9 literature, if not most of the literature on voting on ballot
10 initiatives; the data he uses is suspect; his logic doesn't
11 really make much sense, mainly because most of the language that
12 he's claiming to be consequential in his report was not actually
13 on the ballot.

14 Q. Okay.

15 MS. EBENSTEIN: And if we could take those one by one
16 and start with Dr. -- pulling up, Ashley, Dr. Barber's report,
17 DX66 at 7, that paragraph "In the context..."

18 BY MS. EBENSTEIN:

19 Q. You mentioned a moment ago that you had questions about the
20 literature review done by Dr. Barber.

21 What were some of the central sources that Dr. Barber cited
22 in his report?

23 A. Well, in -- I think if you read that first sentence --
24 well, it's -- he says, "In the context of ballot initiative
25 referenda, past research has found that changes in the

1 presentation of the frame or the question can change the
2 expressed opinion of voters."

3 And then much, if not most -- I'd say most literature that
4 he cited is not looking at ballot initiatives or framing effects
5 of ballot initiatives, and the ones that he does, he
6 misrepresents those studies.

7 But even if you look at that, the first citation there has
8 nothing to do with ballot initiatives or referenda.

9 The second citation is a study about dropoff on
10 participating on initiatives, has nothing to do about how people
11 actually vote on them.

12 The third citation actually does -- is a study on framing
13 effects of ballot initiatives, but he doesn't cite the
14 conclusion of Professor Hobolt that the framing effects are
15 mitigated by campaigns.

16 The fourth citation there has nothing to do with ballot
17 measures, initiatives, referenda.

18 And the report just goes on like that. Actually --

19 Q. And if you --

20 A. I'm sorry. Go ahead.

21 Q. Go ahead.

22 A. I was just -- there was a statement that he made on Friday
23 that in my report I've cited thousands of articles on ballot
24 initiatives and framing effects, and there aren't thousands of
25 articles. There's a handful of them.

1 And there's another paragraph -- maybe it's on the next
2 page -- where, again, he finds a few studies, but he
3 mischaracterizes them. Many of those studies conclude that the
4 framing effects that are found in these sort of artificial
5 survey settings evaporate or become insignificant in the face of
6 campaigns or endorsements.

7 Q. And I believe you were referring to DX66 at 9.

8 Some of this is in your report, so we don't need to go
9 through it in -- it starts with "Similar studies..." at the top
10 of the page there. We don't need to go through it in great
11 detail, but if you could summarize at the macro level the issues
12 that you have with the citations that Dr. Barber uses.

13 A. Yeah. I don't have the actual papers in front of me, but
14 one of those papers is actually titled "The Mitigation of
15 Framing Effects," because they show that the effects are --
16 disappear in campaigns. The Moses and Farley paper doesn't have
17 any data. It's from an education journal. It's not a study of
18 framing effects. I didn't find the Deborah 2001 one, so I can't
19 actually comment on that.

20 But all of those other papers are -- they make a point of
21 saying that they find insignificant effects of framing when
22 there is campaigns or when voters have information. Those are
23 important conclusions that those authors make that are not
24 represented in this review of the literature.

25 Q. Okay. If we could turn to DX66 at 8, does Dr. Barber cite

1 any articles that he offered within his report?

2 A. Yes, that 2017 paper, which I pointed out he did not
3 mention that on -- there were five hypothetical initiatives that
4 people were asked about, just a sample of people who didn't
5 necessarily live in the states where initiatives were being
6 conducted.

7 And on -- when he breaks it down at the end of the paper
8 and looks at them individually -- and I have this wrong in my
9 report. I said that one of them was -- the effect becomes
10 insignificant. It's actually two of them the effect became
11 insignificant.

12 But he in the paper points out that if it's an issue people
13 are aware of, same-sex marriage, for example, that they have
14 some level of awareness that the framing effect becomes
15 statistically insignificant. That's not mentioned in the
16 report.

17 Q. Okay. And what were, if you recall, those two categories
18 of voters that -- to whom the framing effects were not
19 statistically significant?

20 A. It was -- I think he was trying to make the argument in
21 that paper that it was where there was more information, but it
22 was the one of -- the hypothetical initiative where voters
23 reported the least familiarity and also then the one where they
24 reported the most familiarity the effect was statistically
25 insignificant.

1 Q. Okay. Were you familiar with this article before you read
2 his report?

3 A. Oh, no, I was not.

4 Q. And do you recall who Dr. Barber used as subjects for his
5 research?

6 A. It's a platform that Amazon manages called Mechanical Turk
7 that a lot of social scientists do research on. It's not
8 representative. You need to really kind of massage and weight
9 the data to make it a representative sample. It's not possible
10 really -- at least it wasn't clear from the article that you had
11 control over what states in the country people are living in
12 when you are giving these hypotheticals. But the platform is
13 called Mechanical Turk.

14 Q. To that last point about the states that people are living
15 in, by that do you mean that you could survey somebody about an
16 issue in one state although the survey participant is not
17 actually a resident of that state?

18 A. I'm not sure about that so much as the -- you are doing
19 research on hypothetical initiatives and what the status quo is;
20 you know, that you're testing to see if the effect of framing
21 changes whether it's a status quo or not status quo
22 presentation. But those people could be living in a state like
23 Delaware that doesn't have initiatives, and you are not
24 accounting for what the status quo is in those. I'm -- but
25 it's -- you know, it's a platform that a lot of social

1 scientists use.

2 Q. Okay. In your view, overall does Dr. Barber's own article
3 that he cited in his report support what you've described as the
4 thesis or the conclusion of Dr. Barber's report?

5 A. No, actually I think it contradicts it because he shows in
6 that study -- again, he doesn't cite this in his report -- that
7 when people have information about an issue, that the framing
8 effect may be mitigated or statistically insignificant. So I
9 don't think that part of the paper supports his report.

10 Q. Okay. Overall, just to wrap up the issue about the
11 literature, do you think that the articles that Dr. Barber cites
12 in his report support his conclusions?

13 A. No, no.

14 Q. Okay. In Dr. Barber's March 2nd report, did he discuss
15 factors other than framing and the effects that they have on
16 ballot initiatives?

17 A. No. And I guess that's what I was saying earlier. One of
18 the more striking things about the report is framing would not
19 be something somebody would think was the first, second, third,
20 or fourth most important thing in how people vote on
21 initiatives. There's large literature on that that was not
22 referenced in his report.

23 Q. Okay. Let's turn to those other factors now.

24 Given what you just told us about the extensive literature
25 on the effects or lack of effects of framing, what are the

1 topics that affect voters when it comes to their support or
2 opposition to ballot initiatives?

3 A. Preexisting partisan predispositions, campaigns,
4 information searches, endorsements; those provide shortcuts for
5 people when they are making decisions on ballot measures. None
6 of that was covered in his report.

7 Q. All right. Let's go through those factors just briefly to
8 explain them.

9 You said first people's partisan lens.

10 MS. EBENSTEIN: If we could look at PX886 at 14.

11 Ashley, if you are there.

12 There we go.

13 And I'm looking at 14, based on the numbering on the
14 bottom. Unfortunately, we've committed the great sin of having
15 the ECF number or the report page number not exactly line up to
16 the exhibit number. This is Exhibit 886 at 14.

17 BY MS. EBENSTEIN:

18 Q. Now, have you written --

19 (Reporter requested clarification.)

20 Q. Have you written on the impact of partisanship or a
21 partisan lens on voters' choice for initiatives or other direct
22 democracy devices?

23 A. Yes.

24 Q. And what have you found in your work as far as the effect
25 of partisanship on initiative campaigns?

1 A. Just like voting on candidate races or almost anything --
2 it's not just my work; it's some of the work that's cited in
3 that paragraph -- a person's party identity or party affinity is
4 a pretty consistent -- very consistent predictor of how they
5 vote across a wide range of issues on the ballot.

6 Q. Okay. Could you explain for the Court exactly what the
7 effect is of party identification on voters' support or
8 opposition for initiatives?

9 A. Yeah, and it's not just initiatives. Generally at least
10 two-thirds of people in the country report an identification
11 with one of the two major parties, and that reflects kind of,
12 you know, the stock -- their world view or a stock in
13 information they may bring to any issues. Whether they're
14 talking about taxes or marriage or voting, Republicans and
15 Democrats tend to look at those things differently. You know,
16 that might move in the course of a campaign, but that
17 predisposition is a powerful predictor in terms -- one powerful
18 predictor in how people vote generally, but also on ballot
19 measures.

20 Q. Does that hold true even if there are no party labels on
21 the ballot initiative or if you have a nonpartisan or bipartisan
22 campaign?

23 A. I mean, a campaign -- a campaign can move, perhaps.
24 People's party predispositions, that's part of what campaigns
25 are all about. But, yeah, most issues that get on the ballot

1 people before the campaign probably have their predisposition
2 that might give them some inclination to support it or not
3 support it.

4 Q. And how consequential would you say partisanship is in
5 ballot initiative votes?

6 A. Again, it depends on maybe how the campaign plays out, but
7 it's -- it's a predisposition, like a starting point that people
8 have when they approach issues. It also then overlaps with the
9 effect of cues and endorsements. People get shortcuts about
10 what might otherwise be somewhat complicated measures by finding
11 out who is for it, whose against it, whether their groups are
12 elected officials. So if you have an affinity toward certain
13 groups or elected officials from a particular party and they
14 take a position on a ballot measure, that's one of the things
15 that's pretty well known in the literature as a factor that
16 determines how people vote.

17 Q. Okay. And before we turn to endorsements, if I could just
18 ask you, did Dr. Barber mention or discuss the impact of
19 partisan cues as a factor in voter support for Amendment 4
20 anywhere in his report?

21 A. No. He did mention something about there were no party
22 labels so somehow that would potentially amplify framing
23 effects, but the fact that there aren't party labels does not
24 mean people do not have partisan predispositions.

25 Q. All right. Turning now to endorsements, one of the other

1 factors that you mentioned related to initiative campaigns. Can
2 you explain what you mean by the influence of endorsements?

3 A. Yeah, there's -- maybe the most highly cited work in the
4 academic literature on voting on ballot initiatives calls these
5 shortcuts; that people knowing who's for something or who's
6 against something can transmit a ton of useful information to
7 people. So campaigns are about getting those endorsements and
8 those cues out there, and voters respond to them by, If X is for
9 it and I like X, you know, I'm going to vote for something.

10 Q. Okay. So to take an example, if we could go to 886 at page
11 14 going on to 15, you discuss here party elite endorsements.
12 If you could just provide an example or two of what you mean by
13 that so we understand the shortcut framework.

14 A. I'm having a little trouble reading what's there, but I
15 think --

16 Q. Very.

17 A. Okay. So I think you just asked me could I come up with
18 examples of -- those are examples I put --

19 Q. Sure. Just --

20 A. Yeah, in my report I pointed out that there were prominent
21 Democrats who had taken positions in favor of this: Mayor
22 Gillum, Senator Castor, Senator Saunders. There were a couple
23 of Republicans who took positions against this. But, yeah,
24 that -- those are pieces of information that are likely to
25 affect how Democrats might view the thing and how Republicans

1 might view the thing.

2 And, again, a campaign is about, you know, if there's far
3 more consensus in the cues in terms of, like, bipartisan
4 messaging, that would likely bring voters from one party maybe
5 away from their preexisting predispositions.

6 But the only point -- the main point of that in the report
7 is these partisanship cues, endorsements, shortcuts are known to
8 be very important in how people vote, and those are not
9 considered in Dr. Barber's report.

10 Q. Thank you.

11 Looking briefly at page 19 -- 886 at 19, you discuss
12 endorsements of organizations.

13 In your research on Amendment 4, did you identify
14 organizations that endorse the amendment?

15 A. Yeah, and I think I listed some of those. There's groups
16 that are probably fairly well known to be both conservative and
17 maybe more liberal that took positions in favor of Amendment 4:
18 Christian Coalition of America, Florida Education Association,
19 Florida TaxWatch, National Organization for Women. So you're
20 seeing endorsements on sort of both sides of the political
21 spectrum there.

22 Q. And how would --

23 A. And endorsements -- sorry.

24 Q. How would endorsements from a broad range of organizations
25 affect the ballot initiative campaign?

1 A. In this one -- and I didn't cite this paper -- I have a
2 paper that's recently published called *Partisan Predispositions*
3 *and Making It Easier To Vote* [sic], which is a range of
4 proposals about voting that -- we can see from something like
5 that, you know, Republics [sic] and Democrats differ, whether
6 you're talking about voter ID or making elections a holiday or
7 being able to vote over the Internet. So, you know, Republicans
8 are different than Democrats in that they're not as willing to
9 expand. So that's what I mean by predispositions maybe.

10 But now you see cues like those from conservative groups.
11 I would think then that's going to send messages to
12 conservatives that they might move away from their
13 predispositions, but it's -- again, I'll say it -- it's well
14 known in the literature that voters look for those shortcuts,
15 and they use those when they're voting.

16 Q. Okay. And we can get rid of the document on the screen and
17 just go ahead with your testimony.

18 As another topic, you mentioned newspaper coverage and
19 newspaper endorsements.

20 Could you briefly tell us how that impacts an initiative
21 campaign?

22 A. Yeah. Again, it's the same thing. It's another signal;
23 it's another piece of information that when voters finally start
24 paying attention to an initiative campaign, they're looking for
25 information.

1 I've got other research that I've done that I think I've
2 cited in my report where we surveyed voters in California and
3 Washington, and we're asking them, you know, What information do
4 you use? And I think we got a list of about 12 things: Radio,
5 newspaper, news coverage, editorial coverage, information sent
6 out by the state in terms of ballot pamphlets, talking to
7 people, word-of-mouth conversations.

8 And they report -- it can be averages of, like, at least
9 three different sources of information, but newspaper editorials
10 was one that was cited -- people actually still read
11 newspapers -- as something that people considered important
12 information when they're voting on ballot measures.

13 Q. And did Dr. Barber survey or consider the range of
14 newspaper articles and endorsements related to the Amendment 4
15 campaign?

16 A. No. There was a reference to one article, I think, on news
17 article from --

18 Q. Okay. And you just mentioned a wide variety of sources of
19 information.

20 Are you aware whether these sources had information
21 available during the Amendment 4 campaign?

22 A. Say that again. I didn't follow.

23 Q. You mentioned a number of different types of information:
24 Newspapers, ballot language, all the different ways that voters
25 gather information.

1 Were those sources of information available to voters
2 during the Amendment 4 campaign?

3 A. Yes. Another key source of information that we see during
4 ballot measure campaigns is Google searches. So, yeah, I mean,
5 newspaper editorials were there; party cues were there; elite
6 endorsements were there. There was an active campaign there.

7 But, yeah, I forgot to -- that's another documented source
8 of information, that if there's a topic on the ballot, you will
9 see a spike in searches on Google for that topic around the time
10 of the campaign -- I'm sorry -- around the time of the election.

11 Q. Okay. And I'd like to ask you a couple of questions about
12 timing before we turn to some of the polling issues.

13 When do voters generally gather information about a ballot
14 initiative?

15 A. It's very -- fairly close to the election. I've got
16 another paper where we had survey data -- I think it's from
17 California -- like four months out, two months out, and then a
18 couple of weeks out from the election. And you get far higher
19 levels of people just saying they don't know or they haven't
20 heard of the initiative when you're six months out or even three
21 months out. So it's -- it's -- they can be getting information
22 earlier, but they're really not paying attention much until the
23 last couple of weeks before the election.

24 Q. So is it common for voters to gather information a year or
25 years before a valid initiative -- before an election on a

1 ballot initiative?

2 A. No, they wouldn't know about it.

3 Q. And this may sound like a silly question, but is it common
4 for voters to gather information on how they're going to vote on
5 a ballot initiative after the election where the ballot
6 initiative is on the ballot?

7 A. That wouldn't be possible.

8 Q. Okay. Turning now to just one discrete part of
9 Dr. Barber's testimony -- you mentioned this before. I just
10 wanted to make sure that it's clear.

11 Do you recall Dr. Barber testifying about the effect of
12 factors other than -- sorry -- the effect of framing if there's
13 a campaign without much opposition?

14 A. Yes, I do. I think, yes.

15 Q. And I believe there was a pushing-on-a-door analogy in
16 there, if you recall?

17 A. Yeah. I think, if I was following him, he was saying that
18 the framing effect would be larger because there was no campaign
19 in opposition -- not much of a campaign in opposition, that when
20 you have opposing -- I guess he used this metaphor of a door
21 pushing against a door, but having no opposing campaign, the
22 door would be wide open for the framing effect. I think that's
23 what he was saying, but I didn't quite follow that.

24 I mean, in terms of the way he was describing the framing
25 effect and the language in his report, there's no door there

1 because he was talking about fines and fees and restitution as
2 being the frame. So I'm not sure how to --

3 Q. So do you --

4 A. -- comment on the metaphor.

5 Q. Putting the metaphor aside for a moment, do you agree with
6 Dr. Barber's conclusion that in the absence -- or in his view,
7 in the absence of opposition that the framing effect would
8 necessarily grow significantly?

9 A. No, that doesn't make sense, because, I mean, as I just
10 said, there's still a campaign. There's still groups making
11 endorsements. There's still elite elected officials making
12 positions. There's still newspapers editorials. The
13 information environment is becoming richer during the campaign,
14 and that's essentially -- all that literature we were just going
15 over that misrepresents -- that's the point they're making is
16 you might see a framing effect in an artificial setting of a
17 survey experiment, but then if you give people cues, if you
18 expose them to information, the framing effects become
19 statistically insignificant or mitigated, so it doesn't matter.

20 Q. And did the --

21 A. I'm sorry.

22 Q. I'm sorry. Go ahead.

23 A. I'm getting used to this.

24 It doesn't matter if it's a one-sided campaign. It's a
25 campaign. That's the point.

1 Q. Okay. And then we're all getting used to this. So thank
2 you, Dr. Donovan, for your patience here.

3 Did Dr. Barber provide any real-word examples of framing
4 effects in the context of actual real-world campaigns?

5 A. He -- in one section of his report, he mentioned three:
6 Prop 8 in California, Initiative 1631 in Washington, and
7 Initiative 7 -- I can't remember the exact number in Washington.
8 He didn't fully go into those because I think each of those
9 cases contradicts his claims about framing effects.

10 Q. And how so, if you're familiar with those real-world
11 campaigns?

12 A. Well, he brings up the discussion of Proposition 8 in his
13 report saying that the proponents wanted one wording, and the
14 wording was changed to have -- eliminate the right to marriage,
15 and that was a frame that was supposed to damage Prop 8. It
16 passed anyway. That was one.

17 The other two -- and these are the only three in that
18 section of his report that he had. And the other two cases from
19 Washington, he described one initiative as a carbon tax, and
20 there was another initiative as a carbon fee. And so he was
21 treating the words "taxes" and "fees" as a frame, when, in fact,
22 those are distinct policy differences. You can't spend money
23 generally from a fee as you can on a tax.

24 But it doesn't matter because both of those were voted down
25 overwhelmingly, one by 58 percent and one by 56 percent. So in

1 those three examples -- that's only three real-world examples --
2 the outcomes actually contradict the idea that a frame is
3 consequential in the outcome.

4 Q. Okay. Turning now to the polls that Dr. Barber discussed
5 in his report -- well, first of all, as it relates to polling,
6 how do you identify likely voters in a particular election when
7 you're undertaking polling?

8 A. It's difficult, and it's sort of kind of a house secret a
9 lot of polling frames have; but at the end of the day, you're
10 asking the subject, How often have you voted in the past? Are
11 you planning on voting this November and this election?

12 There may be some demographic modeling, too, but it's
13 really sort of a self-reported behavior. You're limited to
14 registered voters at the time when you're doing your example,
15 and then you ask them, On a scale of zero to ten, how likely are
16 you going to vote?

17 But, yeah, it's -- it's difficult.

18 Q. And could you, for example, determine likely voters four or
19 five years before an election date for survey -- for polling
20 purposes? So could I right now determine likely voters for 2024
21 and beyond?

22 A. That wouldn't make sense. I mean, you could try. You
23 would not get a very robust estimate of what those likely voters
24 might be. You wouldn't get --

25 Q. What are some other -- go ahead.

1 A. You wouldn't get a very robust representation of what the
2 population might look like four years later in a sample taken
3 four years earlier.

4 Q. And what are some of the reasons that you might not get a
5 robust sample of the population for an election four years
6 later?

7 A. Even a year later, it's really -- I do some work on polling
8 and presidential primary elections, and voters' opinions are
9 really sort of ill-formed even six months before, say, the Iowa
10 Caucuses. And we have a lot of polling, and if we looked at
11 that polling over the last several years, we would have had Joe
12 Lieberman and Herman Cain and Rudy Giuliani as presidential
13 nominees. And those polls that are just taken a year or six
14 months before the primaries begin.

15 If you're going four years out, it's not only that you
16 have -- you know, people are in an information vacuum when
17 you're asking about that stuff, but you're also dealing with a
18 sample that is not going to include a significant amount of the
19 electorate, that will be registering between then and four years
20 or coming of age to vote, moving through the jurisdiction. So
21 it doesn't make sense.

22 Q. And so overall is it scientifically sound to use a 2014
23 poll to predict a 2018 election?

24 A. No. I mean, the state of the art when we do preelection
25 polling is to try -- if you are interested in November 2020, you

1 want to know how people are voting. You want to be in the field
2 with your survey the week of the election, right around the
3 election. Dr. Barber's actually got a paper, one of his earlier
4 papers, on the methodology of preelection polling, including
5 polling in Florida, and they're polling one week before the
6 election. That's the state of the art.

7 Q. Okay. Turning now to the specific polls that Dr. Barber
8 does cite.

9 MS. EBENSTEIN: If we could go to DX32.

10 BY MS. EBENSTEIN:

11 Q. Okay. Now, Dr. Barber references this poll in DX66 at 12.

12 First of all, what is the date of this -- of this poll?

13 A. Oh, we don't know. That was -- it looks like PowerPoint
14 slides from September of 2014, but that doesn't say when the
15 poll was done.

16 Q. All right. And you've looked through this document;
17 correct?

18 A. Yes.

19 MS. EBENSTEIN: If we could have the page up for now.

20 BY MS. EBENSTEIN:

21 Q. Did it indicate the response rate for the polling that it
22 describes?

23 A. No, I don't think for any of the polling that was
24 presented.

25 Q. Did it indicate anything at all about who was polled?

1 A. There's a few different polls that are mentioned in this
2 exhibit and maybe one of the other exhibits, and one or two of
3 them said it was registered voters, I believe. So it would be
4 registered voters.

5 MS. EBENSTEIN: If we could turn to page 3 of this
6 document.

7 BY MS. EBENSTEIN:

8 Q. Okay. Based on this information, does it indicate what
9 survey respondents were asked?

10 A. No. Actually, most of this we don't have the actual -- the
11 question wording. We could assume maybe -- we can infer from
12 this what respondents were asked, but in none of these exhibits
13 do we have the actual response options. So it's difficult to
14 glean what was actually asked.

15 Q. Okay. And does it say anywhere -- in relation to those
16 polls, does it indicate what respondents' options or possible
17 responses were?

18 A. No, that language isn't given. We can --

19 Q. Okay. You may have said this a moment ago, but does it say
20 what language was actually tested?

21 A. No. And, again, there's -- the same information is
22 reported in different appendices, but we don't have standard
23 descriptions of the polling methods in any of those.

24 Q. All right. Looking at the polling results or what we can
25 tell about the polling results based on this page, can you tell

1 whether 42 percent and 47 percent -- whether there's a
2 statistically significant difference without knowing the number
3 of people surveyed?

4 A. No, you would need to know the number of people who are
5 surveyed, and I think that is in -- it is in one of the other
6 appendix. I think the 2013 data that underlied these data --
7 that these are summarizing did say, I believe, 507 people were
8 surveyed.

9 Q. Right. Okay. I'm sorry. I have -- I pulled up the wrong
10 page on the same poll, and I'll show you that other page in a
11 second.

12 But if we do know that 507 people were surveyed, could you
13 then determine a confidence interval and whether that difference
14 was statistically significant?

15 A. Yes.

16 Actually, Dr. Barber was asked about that Friday. I think
17 somebody asked him why he did not calculate a confidence
18 interval, and he said you would need the question wording. He
19 did calculate confidence intervals on another difference of 70
20 versus 77 percent with the exact same information.

21 You do not need -- it's wrong to say that you need the
22 wording. To calculate a confidence interval, all you need is
23 the 47 percent, the 42 percent, and the sample size. It's a
24 simple formula that you can plug it in.

25 Q. Okay. We'll discuss whether there's other issues with

1 calculating a confidence interval in a moment.

2 But purely numerically -- so you could, in fact, calculate
3 a confidence interval once you have the number of people
4 surveyed here?

5 A. Yeah. I did it. It took about 30 seconds.

6 Q. If -- well, let's leave that.

7 MS. EBENSTEIN: If we could go to DX34.

8 And I believe this is the document that describes
9 three different polls, the 507 registered voters in the poll
10 that we just discussed. But if we could turn to what's called
11 Phase 3 on the next page.

12 Yes. Thank you.

13 BY MS. EBENSTEIN:

14 Q. And I believe you've mentioned these numbers, but first
15 just looking at the background for this poll, does this document
16 indicate the response rate for the polling?

17 A. No.

18 Q. Does it indicate anything at all about who was polled?

19 A. It says registered voters, and it has some demographics
20 there on race and party identification.

21 Q. Does it indicate what respondents were asked exactly?

22 A. No, not even close to exactly. I mean, if you read that,
23 they could be asking about whether people would sign a petition;
24 they could be asking about whether people would vote on this. I
25 think we're assuming that they are asking that this is about

1 whether you would vote on it, but we can't tell.

2 Q. Okay. And does it indicate the responses or response
3 options that were provided to survey participants?

4 A. No.

5 Q. All right. And I believe that you highlighted that this
6 poll is also discussed in footnote 28 of Dr. Barber's report.

7 MS. EBENSTEIN: If we could pull up -- I believe it's
8 DX66 at page 16, footnote 28.

9 Yes. Thank you.

10 BY MS. EBENSTEIN:

11 Q. What's happening here?

12 A. That's not an easy question. He has -- I mentioned earlier
13 that the logic of the report as much as the data are
14 challenging. He's taken that 70 versus 77 percent value rather
15 than the 42 versus 47 percent value. He's chosen to take the
16 7 percent value and then put a confidence interval around it as
17 if to say the 7 percent difference that was observed in this
18 poll from 2014 we could then infer to the general population in
19 2018 with 95 percent certainty that the, quote, effect of the
20 frame is somewhere between 2.7 and 11.3 percent.

21 Another way to put that is -- and then he goes on to make
22 this argument that that 7 percent is greater than the
23 4.5 percent that measure -- Amendment 4 passed by; therefore,
24 this is instrumental or pivotal.

25 But even if you look at -- if you -- forgetting that the

1 data are, you know, sort of murky and inappropriate -- I mean,
2 if we put all that aside, this is still saying we can't be
3 95 percent confident that the 7 percent difference was actually
4 big enough to make a difference in the election. That's what
5 that confidence interval would be telling us, that it could be
6 between 2.7 and 11.3 percent.

7 So it's difficult to say what's going on here. I think the
8 main thing is you shouldn't be taking a 7 percent difference
9 cherry-picked from a survey and then somehow extrapolate four
10 years out that has any meaning. That is just inappropriate.

11 Q. And is this -- is this methodology sound according to the
12 generally accepted practices of experts in your field?

13 A. No. It would never get published, this sort of reasoning
14 or those sort of data.

15 Q. And when you say "published," do you mean -- would it hold
16 up under peer review?

17 A. No. That's what I meant. No, it would not.

18 Q. Okay.

19 A. And --

20 Q. Go ahead.

21 A. I was going to say if you go back to the exhibit that had
22 the Phase 1 and the Phase 3 polling, he could have -- he has the
23 exact same information. The -- both -- that survey that has the
24 7 percent difference between 70 and 77 has a sample size. If
25 you -- back to the Phase 1 where the difference was smaller, it

1 also has a sample size.

2 Had he calculated a confidence interval difference between
3 proportions for the other survey, it would have not been
4 significant, and the difference between 47 and 42 was not
5 significantly different than the margin that Amendment 4 passed
6 by. I don't know why you would take that 70 versus 77 percent
7 rather than the other one, except that it just didn't fit the
8 argument.

9 And, in fact, the one in Phase 1 on the other page, if you
10 look at that, this is one of the only things where they actually
11 use the words "fines and fees" in any of these polling, and the
12 difference between 42 and 47 percent when those words are used
13 is not statistically significantly different. That's not in the
14 report that Dr. Barber presented.

15 Q. Okay.

16 MS. EBENSTEIN: And we can take the report off the
17 screen.

18 BY MS. EBENSTEIN:

19 Q. Just as a general matter, what's the usual confidence
20 interval used by political scientists?

21 A. 95 percent. It's science generally.

22 Q. Do you recall Dr. Barber in his testimony on Friday
23 discussing a 64 percent confidence interval?

24 A. Yeah. He was asked about that 95 percent confidence
25 interval producing a point estimate that we could not be

1 95 percent confident was larger than the margin that Amendment 4
2 passed by, and in testimony he said if it was a 64 percent
3 confidence interval, then it would be. And then he was asked --
4 it's in the transcripts -- is that standard, you know, a level
5 of uncertainty to talk about in your field.

6 UNIDENTIFIED SPEAKER: Trying to get back in?

7 MS. EBENSTEIN: I'm not sure -- I think we may have
8 lost Judge Hinkle and we need him, so let's just pause one
9 moment.

10 (Pause in proceedings.)

11 THE COURT: I'm back. I was dropped there
12 momentarily.

13 The last thing I had was a question saying there had
14 been a 64 percent interval, I think was what was said, and then
15 I dropped off.

16 MS. EBENSTEIN: Okay. We'll just go through those
17 quickly.

18 THE COURT: Wait a minute.

19 MS. EBENSTEIN: Sorry.

20 (Pause in proceedings.)

21 BY MS. EBENSTEIN:

22 Q. A few moments ago I asked you --

23 (Reporter requested clarification.)

24 THE COURT: Wait just minute.

25 MS. EBENSTEIN: I'm sorry.

1 THE COURT: Well, I think what happened was a number
2 of people probably got dropped, and so we've got people coming
3 back on with open mics. So let's just give a second for
4 everybody to turn their mics off.

5 (Pause in proceedings.)

6 THE COURT: At this point it looks like all the mics
7 are off, and hopefully it will do better.

8 So, Ms. Ebenstein, back to you.

9 BY MS. EBENSTEIN:

10 Q. Okay. Dr. Donovan, do you recall Dr. Barber testifying on
11 Friday about a 64 percent confidence interval?

12 Now you are still on mute.

13 A. I got it. Yeah. And I might repeat what I said earlier
14 because I'm not sure when people got cut off.

15 Q. That's fine.

16 A. Yeah. In reference to that footnote 28 and the fact that
17 his point estimate of 7 wasn't 95 percent confident, larger than
18 the margin Amendment 4 passed by, he said something about if it
19 was a 64 percent confidence interval, then that would somehow be
20 significant. Then he was asked is that a standard in public
21 opinion or social science and didn't answer the question.

22 The answer is that's not a standard that would be called
23 statistically insignificant. We don't have a 64 percent
24 confidence interval. That's getting closer to sort of flipping
25 a coin, so we don't report -- if we have something at that level

1 of confidence, we report it as not statistically significant.

2 Q. And, Dr. Donovan, you testified earlier that you have
3 published probably over 100 *Law Review* articles and book
4 chapters; is that right?

5 A. Not law review articles.

6 Q. Sorry. Peer review articles -- peer-reviewed articles.

7 A. Yes. I do have a couple of *Law Review* articles as well.

8 Q. I'm sorry. No offense.

9 So experts in your field rely on polling results with a
10 64 percent level of certainty?

11 A. No. Again, that would be called statistically
12 insignificant.

13 MS. EBENSTEIN: Okay. That's all the questions --
14 that's all the questions that I have at this moment.

15 Thank you, Dr. Donovan.

16 THE COURT: Cross-examine.

17 MR. WENGER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. WENGER:

20 Q. Can you hear me all right?

21 A. Yes.

22 Q. Okay. Just want to make sure.

23 Dr. Donovan, it's good to see you again. Good afternoon.

24 A. Good morning.

25 Q. I forgot you're on the West Coast out there, so I'll be

1 brief about this.

2 You criticized Dr. Barber for allegedly not considering
3 other factors relating to voting practices on ballot measures
4 outside of the framing effect; is that correct?

5 A. Yes.

6 Q. Is it your position that the framing effect does not exist
7 at all?

8 A. No.

9 Q. But in your view, the campaign surrounding Amendment 4
10 drowned out the framing effect; correct?

11 A. That is pretty well established in the literature.

12 Q. You're aware that there was no concerted effort against
13 Amendment 4's passage; correct?

14 A. Yes. I mentioned that.

15 Q. Is it your position that a campaign itself can't be a
16 continuation of the initial framing effect?

17 A. I'm not sure I'm following that question.

18 Q. So you've criticized Dr. Barber for not considering that a
19 campaign can drown out a framing effect.

20 Is it your position that the campaign can't ever amplify a
21 framing effect?

22 A. My report was more than just that. I don't believe, in my
23 opinion, that Dr. Barber established there was any framing
24 effect to be drowned out.

25 Q. But my question for you is: Is it your position that a

1 campaign cannot ever amplify a framing effect?

2 Just a yes or no question, Doctor, would be great.

3 A. Say it again. Campaign can't amplify --

4 Q. Is it your position, Doctor, that a campaign cannot ever
5 amplify a framing effect?

6 A. I don't have an example that's coming to mind. My report
7 was on Amendment 4, and my conclusion was that Dr. Barber did
8 not demonstrate that there was a framing effect.

9 Q. But assume for the sake of a hypothetical that a framing
10 effect does exist. It doesn't have to be Amendment 4.

11 Is it your position that a consistent campaign cannot ever
12 amplify a framing effect that does exist?

13 A. That's a lot of hypotheticals there, but I could
14 hypothetically say no, that's not my position, if there weren't
15 too many -- I don't want to have a double negative in there,
16 but --

17 Q. Okay. That's fair enough.

18 Whenever we did your deposition, you testified that because
19 the words "legal financial obligations" did not appear in the
20 ballot, you found unconvincing Dr. Barber's framing effect; is
21 that correct?

22 A. Yes.

23 Q. Now, Amendment 4 states that rights are restored upon,
24 quote, "completion of all terms of sentence." Is that
25 consistent with your understanding?

1 A. Yes.

2 Q. And at your deposition you testified that we can't assume
3 that people would construe the phrase, quote, "all terms of
4 sentence," end quote, to include legal financial obligations;
5 isn't that correct?

6 A. That is correct, and --

7 Q. If you bear with me for just a moment, I'm going to pull up
8 Defendants' Exhibit 26. And let me make sure that I have this
9 done correctly.

10 Can you see that okay, Doctor?

11 A. I'm seeing part of the page. It looks like the PDF.

12 Q. Let me go ahead and let me see if I can do -- close up to
13 the top.

14 Let me know whenever you're ready.

15 A. I see the beginning of the document. It's kind of
16 blinking.

17 Q. Okay. Now, you are aware that the Florida Supreme Court
18 construed the phrase, quote, "all terms of sentence," end quote,
19 for purposes of Amendment 4; isn't that correct?

20 A. Your document is blinking. What's the date of that?

21 Q. This is January 16, 2020.

22 MR. WENGER: Let me see if I can get this cleared up a
23 little bit.

24 Your Honor, I apologize for the technical
25 difficulties. I'm trying to make it stop flashing.

1 I might go ahead and just refresh real quick,
2 Your Honor, and see if that solves our problem.

3 THE COURT: Well, let me try it first.

4 Watch this. Ashley, pull up Defendants' 26.

5 MR. WENGER: Okay. That works.

6 I appreciate that, Your Honor.

7 And thank you for that, Ashley. Much appreciated.

8 BY MR. WENGER:

9 Q. Dr. Barber, can you see that now?

10 A. Dr. Donovan.

11 Q. I'm so sorry.

12 A. I had it there a minute ago. Now I've just got four
13 screens of the two attorneys, the court reporter, and,
14 Your Honor's squares there. I don't have the document.

15 MS. EBENSTEIN: Mr. Wenger, I don't want to interrupt
16 you, but Dr. Donovan may have that document in hard copy, DX26,
17 and that could be easier as an option.

18 BY MR. WENGER:

19 Q. Absolutely. Do you have that, Doctor?

20 A. I see it now. I see it now. It's there.

21 Q. So back to what we were discussing, are you aware that the
22 Florida Supreme Court has construed the phrase, quote, "all
23 terms of sentence," end quote, for purposes of Amendment 4?

24 A. I'm aware that that document suggests they did that after
25 the election.

1 Q. That's correct. But you -- they did -- you would agree
2 that they did construe that phrase, correct?

3 A. I will -- I haven't read that data, but I'll take your word
4 for that. But, yes, that -- there was an advisory opinion after
5 the election.

6 Q. If we could scroll down to pages 6 to 7 of the slip copy.

7 And, Doctor, if you wouldn't mind terribly, on my copy the
8 last sentence on page 6 begins with "We conclude..."

9 Could you read that for us until the end of that sentence
10 on page 7?

11 A. Sure.

12 "We conclude that the phrase, when read and understood in
13 context, plainly refers to obligations and includes all, not
14 some, LFOs imposed in conjunction with an adjudication of
15 guilt."

16 Q. Thank you, Doctor. I appreciate that.

17 MR. WENGER: You can take that down now.

18 BY MR. WENGER:

19 Q. Now, I understand that you listened to Dr. Barber's
20 testimony earlier; correct?

21 A. Friday, yes.

22 Q. And you're aware that Dr. Barber disclaims any assertion
23 that as a matter of absolute fact Amendment 4 would not have
24 passed without the phrase "completion of all terms of sentence";
25 correct?

1 A. I believe he did. It was a little less definitive than in
2 his report.

3 Q. And you're aware that the proponents of Amendment 4 did, in
4 fact, message test the language "completion of all terms of
5 sentence"; correct?

6 A. Yes. And I pointed out in my report there was no evidence
7 in Dr. Barber's report that that was consequential in the
8 campaign in terms of how voters were reasoning about
9 Amendment 4.

10 Q. But you're also aware that the proponents of Amendment 4
11 chose the language that polled better; correct?

12 A. I have only the exhibits that were in Dr. Barber's report,
13 so I'm not making conclusions about what the campaigns did based
14 on that information.

15 Q. Thank you, Doctor.

16 You also discuss, among the other factors that could affect
17 the way a ballot initiative comes out, that party identification
18 is one that Dr. Barber did not consider; isn't that correct?

19 A. Yes.

20 Q. Are you aware that both Republicans and Democrats supported
21 Amendment 4 as it was written?

22 A. Yes; not all, but many.

23 Q. You also discussed endorsements as a factor that affects
24 ballot initiative voting patterns.

25 Isn't it true that well-known individuals from both

1 political parties endorsed the passage of Amendment 4 as it was
2 written?

3 A. I don't know if these endorsements were based on as it was
4 written. I know they endorsed it.

5 Q. You also discuss newspaper endorsements or newspaper
6 editorials.

7 Now, you didn't look in to see how many of those newspaper
8 articles used the phrase, quote, "all terms of sentence," did
9 you?

10 A. Nor did Dr. Barber in his report.

11 Q. And, finally, you're aware that voters are given a summary
12 of the initiative on the ballots whenever they go into the
13 ballot box, aren't you, Doctor?

14 A. Yes.

15 Q. And you're also aware that Amendment 4's ballot summary
16 told voters that returning citizens would get their right to
17 vote once they have completed, quote, "all terms of their
18 sentence"? Are you familiar with that, Doctor?

19 A. Yes; did not mention fines, fees or restitution.

20 Q. And that's the same phrase that was message tested by
21 Amendment's 4 proponents; correct, Doctor?

22 A. Which phrase?

23 Q. "Completion of all terms of sentence."

24 A. We have exhibits that have polling with various different
25 words that were used or not used. Again, I'm not going to make

Redirect Examination - Dr. Donovan

1 conclusions about what the campaigns were doing.

2 MR. WENGER: Okay. Thank you. No further questions,
3 Doctor.

4 THE COURT: Redirect.

5 MS. EBENSTEIN: Very briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. EBENSTEIN:

8 Q. Dr. Donovan, is a legal interpretation always equivalent to
9 a voter's understanding?

10 A. I don't think voters pay much attention to legal
11 interpretations --

12 Q. And --

13 A. -- particularly those after -- I'm sorry -- particularly
14 those after the election.

15 Q. And opposing counsel just read you an excerpt from the --
16 from the advisory opinion. I'd like to read you one sentence.
17 This is at the top of page 13: "Indeed our opinion is based not
18 on the sponsor's subjective intent or campaign statements, but,
19 rather, on the objective meaning of the constitutional text."

20 Based on what you just described as voters gathering
21 information from campaigns, if an interpretation is based not on
22 the sponsor's campaign statements, would that legal
23 interpretation necessarily be considered by voters?

24 A. Again, it was after -- after the fact, but, I mean, there's
25 fairly plain language in the title of this measure. We're

1 really getting into the weeds and maybe beyond voters' reasoning
2 if we're talking about how they might think like the Florida
3 State Supreme Court. They don't.

4 MS. EBENSTEIN: Okay. No further questions,
5 Your Honor.

6 Thank you, Dr. Donovan.

7 THE COURT: Thank you, Dr. Donovan. That concludes
8 your testimony. You're free to go about your business. You
9 could also continue to monitor the trial if you wish, but if you
10 do, please turn off your video and your audio.

11 THE WITNESS: Thank you.

12 THE COURT: Thank you.

13 And then for the defense, please call your next
14 witness -- I mean, for the plaintiffs.

15 MR. PERKO: Your Honor, excuse me. This is Mr. Perko
16 on behalf of defense. We have Ms. Marconnet available, but she
17 just needs to test her hook-up. Could we take a ten-minute
18 break to allow for that?

19 I'm sorry, Your Honor. I can't hear you.

20 THE COURT: Yes, let's start back at 2:15. That's
21 12 minutes from now.

22 MR. PERKO: Thank you, Your Honor.

23 (Recess taken 2:03 PM.)

24 (Resumed at 2:15 PM.)

25 THE COURT: I'm back. I see Ms. Price for the

1 defense.

2 MS. PRICE: Your Honor, we've been testing the system
3 with Ms. Marconnet. I can wait until plaintiffs' counsel gets
4 here.

5 There she is.

6 THE COURT: There's Ms. Lang.

7 MS. LANG: I apologize. I had to refresh.

8 MS. PRICE: We've been testing since before the break
9 began, both -- on our defense practice area, and the entirety of
10 the break we've been testing with the live.

11 We're having a problem with getting the witness's
12 camera to project her picture. She can apparently see us, but
13 we can't see her.

14 I spoke with Mr. Johansen. I understand he was coming
15 up to the courtroom to help. I'm not sure if the Court would
16 give us another 10 or 15 minutes to try to work this out, or if
17 you would prefer to go by phone.

18 THE COURT: No, we can -- we can wait a few minutes.
19 I think this is the last witness, is it not, Ms. Lang?

20 MS. LANG: Yes, Your Honor.

21 THE COURT: All right. Keep working on it and then
22 let the courtroom deputy when you've worked it out. If it can't
23 be done, we can do it by phone, but it would be better to get
24 her by video if we can.

25 So we'll be in recess until we can work out the

1 issues.

2 MS. LANG: Thank you, Your Honor.

3 MS. PRICE: Thank you, Your Honor.

4 (Recess taken at 2:17 PM.)

5 (Resumed at 2:20 PM.)

6 THE COURT: All right. I see that we seem to have
7 everyone.

8 Ms. Marconnet -- I hope I've said that right -- please
9 raise your right hand.

10 **AMBER MARCONNET, PLAINTIFFS WITNESS, DULY SWORN**

11 THE COURT: Please tell us your full name and spell
12 your last name for the record.

13 THE WITNESS: It's Amber Marconnet, and the last name
14 is M-a-r-c-o-n --

15 THE COURT: All those hands went up because we had
16 some difficulty with the audio, perhaps because I didn't turn my
17 speaker off quickly enough. One thing we were all looking for
18 was to make sure we pronounce your name correctly, and I think
19 the audio kicked out just as you were saying your last name.

20 So, once again, say your last name and spell it.

21 THE WITNESS: My last name is Marconnet, and it's
22 spelled M-a-r-c-o-n-n-e-t.

23 MR. McVAY: Your Honor, can you see and hear me
24 because I can't see myself on the --

25 MS. LANG: I can see you, Mr. McVay.

1 MR. McVAY: Okay.

2 THE COURT: Yes. We have you, and sometimes if you
3 roll your cursor over the bottom left of the screen, you see
4 your own image.

5 MR. McVAY: There I am. Okay. Thank you, Your Honor.

6 THE COURT: Ms. Lang, you may proceed.

7 MS. LANG: Thank you.

8 DIRECT EXAMINATION

9 BY MS. LANG:

10 Q. Good afternoon, Ms. Marconnet. My name is Danielle Lang,
11 and I am an attorney for the plaintiffs in this case.

12 We've not met until just now; is that right?

13 A. Correct.

14 Q. And you've received a subpoena to testify today; is that
15 also right?

16 A. Correct, I believe my legal team did.

17 Q. Yes. And have you listened or watched any of the
18 proceedings in this trial up to just now?

19 A. No, ma'am.

20 Q. Okay. And so you didn't watch any of Ms. Matthews'
21 testimony earlier today or yesterday?

22 A. No.

23 Q. And did you talk to anybody about the contents of
24 Ms. Matthews' testimony?

25 A. No.

1 Q. Okay. Is anybody with you where you are, or are you just
2 remote on your own? Excluding your family, your counsel or
3 anyone else like that with you?

4 A. No, I'm on my own besides my family.

5 Q. Okay. And do you happen to have any notes with you in
6 preparation for this testimony?

7 A. I do not have anything in front of me, no.

8 Q. Okay. And can you tell the Court your employer and your
9 position with your employer?

10 A. Yes, I'm currently employed with the Department of State,
11 Division of Elections, and I'm the assistant division director
12 for the Division of Elections.

13 Q. And how long have you held that position?

14 A. Just since February of this year.

15 Q. Okay. And what was your position before that?

16 A. Before that I was in the Bureau of Voter Registration
17 Services, and I was a senior management analyst supervisor.

18 Q. Okay. And how long did you hold that position?

19 A. I was in that position for seven years.

20 Q. Okay. And in the past year, you've been pretty involved in
21 developing and implementing the LFO requirement -- the LFO
22 requirements of SB 7066; is that correct?

23 A. The felon requirements from Amendment 4?

24 Q. Yes.

25 A. Yes.

1 Q. And specifically I'm talking about the LFO requirements,
2 and by that I mean requirements that people with felony
3 convictions pay off legal financial obligations before their
4 rights are restored.

5 If I say "LFOs," will you understand what I mean?

6 A. Yes.

7 Q. Okay. And my understanding, as I just previously said, is
8 that voters seeking rights restoration need only to pay the LFOs
9 in their sentencing document in order to vote; is that correct?

10 A. Yes.

11 Q. Okay. And there's been some focus in this past week of
12 trial on how to decide if the voter has paid those initial
13 sentencing LFOs.

14 And so my questions are going to mostly pertain to the
15 Division's policy on deciding whether or not the LFOs that
16 have -- that are disqualifying have been fully paid; okay?

17 A. Okay.

18 Q. All right. And my understanding is you and your team have
19 been working for some time to try to implement these
20 requirements; is that right?

21 A. Correct.

22 Q. And over time you've been working out a policy for
23 implementing the LFO requirements, and that policy has developed
24 over time; is that right?

25 A. Correct.

1 Q. Okay. And early on when you were trying to decide if the
2 LFOs that were in the sentencing document had been completed for
3 purposes of SB 7066, it's true that your office was looking at
4 the court records to see if the specific LFO that was ordered
5 had been satisfied; is that right?

6 A. I'm sorry. Can you repeat that? It kind of broke up a
7 little bit.

8 Q. Sure. And it's a complicated scenario.

9 So we're trying to decide -- I have this fine that has been
10 imposed for say \$10,000, and the question is whether or not
11 that's been completed so that I can vote.

12 Are you following me?

13 A. Yes.

14 Q. And early on, say last September, my understanding is that
15 your office was looking to see whether or not the clerk's office
16 had determined that that specific fine had been satisfied; isn't
17 that right?

18 A. I'm sorry. It cut out again. So I'm missing -- I see your
19 hand motion, but I'm missing the words. Can you repeat it?

20 Q. Okay. I'll try again.

21 The question is, if you're trying to determine whether or
22 not a disqualifying fine, say a \$10,000 fine, had been completed
23 --

24 A. Is the \$10,000 fine what was issued from the judgment and
25 sentence?

1 Q. Yes.

2 A. So original --

3 Q. So we know what's in the sentencing document. It's a
4 \$10,000 fine. And I'm just trying to talk about your office's
5 policies for determining whether or not that fine had been paid.

6 Are you following me?

7 A. Yes.

8 Q. Okay. And isn't it true that early on in, say, September
9 of last year, in order to determine whether or not that fine had
10 been satisfied, your office was looking to the clerk or to the
11 records to show whether or not that specific fine had been paid?
12 Isn't that right?

13 A. If I'm understanding the question correctly, yes, we were
14 working -- or trying to work with the clerk of the court to
15 obtain -- to see if these fines and fees were paid. We were
16 looking at what we would need.

17 Q. Right. And so in September of last year, for example, if I
18 also had \$10,000 in nondisqualifying probation costs, things
19 that accrued later, late fees, and so I had paid \$10,000, but it
20 had all been allocated towards different types of fees and fines
21 and whatnot, your office would have considered that fine to not
22 have been satisfied last year; isn't that right?

23 A. Well, we're only concerned with what was mandated with the
24 judgment and sentence, not --

25 Q. Right.

1 A. -- anything accrued after.

2 Q. Yes. So that's exactly my point, Ms. Marconnet.

3 So if I have a total balance of \$20,000 and \$10,000 of it
4 is a fine that is disqualifying -- you following me?

5 A. Yes.

6 Q. And \$10,000 is a bunch of other stuff that I don't have to
7 pay -- are you following me?

8 A. Yes.

9 Q. But I, Voter A, had paid \$10,000 to the clerk, but the
10 clerk has had allocated all of that \$10,000 to the other stuff,
11 isn't it true that last September you would have said that the
12 fine was not completed?

13 A. I guess I'm not sure about last September. When you're
14 referencing last September, I guess --

15 Q. Okay. Let's pull up -- well, at any time was that your
16 office's understanding of how you might implement the LFO
17 requirements?

18 A. Then I guess we're concerned with them only -- you know,
19 payments towards what is in the judgment and sentence -- what is
20 contained in that judgment and sentence.

21 Q. Right. Ms. Marconnet, maybe I'll try to explain a little
22 bit of the confusion.

23 There has been a lot of discussion about the new policy
24 that your office has that says you look at the total amount paid
25 and if it exceeds the total amount ordered in the sentencing

1 document, then the voter is free and clear.

2 Do you understand that to be your current policy?

3 A. Repeat that. I'm sorry.

4 Q. So if I've been ordered \$10,000 in my sentencing document,
5 and I've paid the clerk \$10,000, under the current policy, that
6 voter is free and clear; is that right?

7 A. That voter has showed that he has made payments to the
8 10,000 that was ordered for his judgment and sentence for his
9 conviction?

10 Q. Exactly.

11 A. Yes.

12 Q. So under the current policy, as long as I've paid \$10,000,
13 I have been considered to have satisfied my fine for purposes of
14 voting; is that right?

15 A. Correct.

16 Q. And that's true even if all of that \$10,000 was, in fact,
17 allocated by the clerk to other things like payment of
18 supervision or late fees or things that don't count. If the
19 money was all allocated to other things, your office will still
20 count those payments for purposes of clearing the voter to vote;
21 isn't that correct?

22 A. I mean, I guess if we know that those payments went to the
23 overall cost of what was due in the judgment and sentence.

24 Q. Yes.

25 MS. LANG: Let's pull up Defendants' Exhibit 167. And

1 if we can scroll down and look at the -- Ashley, if we can
2 scroll down and look at the part that pertains to NMSO, so
3 determinations to be made.

4 THE COURT: Ms. Lang?

5 MS. LANG: Yes.

6 THE COURT: Let me interrupt you for just a moment and
7 see if I can get something that will help me out.

8 Ms. Marconnet, let me ask you a different
9 hypothetical, I guess.

10 Suppose the amount of financial obligation in the
11 sentence is a total of \$300. Fees or costs of \$300 are imposed,
12 and it's not paid immediately, so it gets turned over to a
13 collection agency. The person pays \$100 to the collection
14 agency. The collection agency keeps \$40 as its own fee. So \$60
15 goes to the clerk of the court, and the clerk of the court on
16 its records reflects that there was a \$300 fee; there's been a
17 \$60 payment, the net amount received from the collection agency;
18 so the balance is \$240.

19 How much does the person have to pay -- under your
20 understanding right now of the Secretary of State's policies,
21 how much does the person have to pay to the clerk of the court
22 to be able to vote?

23 THE WITNESS: As far as I'm aware, you know, they are
24 issued the amount at the judgment and sentence, and then if it
25 is shown that they have, you know, made payments to that amount,

1 then they would still retain their right to vote.

2 THE COURT: Well, what is the amount they have to pay?
3 The clerk's balance shows \$240. Do they have to pay the \$240?

4 THE WITNESS: Well, it would be whatever was in the
5 judgment and sentence. So if it's \$300 and if they had paid
6 \$300, then that would be shown that they've made that \$300
7 payment, and we would --

8 THE COURT: No, they haven't paid \$300. The amount in
9 the judgment is \$300. The person has paid \$100 to the
10 collection agency. The collection agency keeps \$40 because
11 that's the collection agency's fee. \$60 goes to the clerk of
12 the court and gets credited against the original \$300. So the
13 balance now shown on the clerk of the court's books is \$240.

14 The person shows up at the clerk of the court's office
15 and says, I want to be able to vote; how much do I have to pay?

16 So that's my question. What does the person have to
17 pay in order to be able to vote?

18 THE WITNESS: I mean, they would have to pay the
19 amount that was on the judgment and sentence at the time of the
20 conviction.

21 THE COURT: Humor me for just a minute and do the
22 arithmetic. Give me a number that person has to pay.

23 You've got all the information there is. There's a
24 \$300 original amount. There's the \$100 payment to the
25 collection agency. \$60 goes back to the clerk. The balance at

1 the clerk of court is \$240.

2 So those are the only numbers you need. Give me a
3 dollar number the person has to pay.

4 THE WITNESS: So you're still saying that they owe
5 \$240 of the original judgment and sentence that was issued at
6 the time of the conviction?

7 THE COURT: Yes.

8 THE WITNESS: So they would -- I mean, they would have
9 to pay what was issued at the time of the judgment and sentence.

10 THE COURT: Ms. Marconnet, a number. Is the number
11 240?

12 THE WITNESS: Yes, if that's what's outstanding.

13 THE COURT: All right. Those are all my questions.

14 BY MS. LANG:

15 Q. Thank you, Ms. Marconnet.

16 Ms. Marconnet, can you tell me what your role is in the
17 felon match case file process?

18 I know that there are reviewers and examiners. Where do
19 you fit in in that process?

20 A. I currently am not an examiner or a reviewer.

21 Q. And so what role do you have? Are you -- do you supervise
22 those reviewers or examiners, or what role do you have?

23 A. I no longer supervise those reviewers and examiners.

24 That's within the Bureau of Voter Registration Services.

25 Q. But you used to supervise those reviewers and examiners; is

1 that correct?

2 A. Yes, yes, in the past.

3 Q. Up until when?

4 A. Up until April, I believe, of 2018.

5 Q. Okay. And what role, if any, did you -- have you had in
6 the felon match case file process since then?

7 I see that you're involved in a lot of the documents and
8 e-mails that I see on this topic, so what exactly is your role?

9 A. Helping with the procedures.

10 Q. So you've helped develop this procedure that is drafted
11 here, 167?

12 A. Yes.

13 Q. And if I understand correctly, part of 167 is this idea
14 that if a voter has paid \$50 towards their -- has paid \$50 on a
15 case, that'll get credited towards their originally imposed
16 LFOs, regardless of how the clerk allocates it; is that right?

17 A. As far as my understanding, yes.

18 Q. Okay. And we've been calling this the first-dollar policy,
19 so just bear with me. I'm going to call it that. And that's
20 the idea that if a clerk -- even if my clerk -- even if the
21 clerk in the county takes that \$50 and puts it towards interest
22 or a surcharge, your office would credit that towards the
23 original LFOs imposed.

24 Will you understand what I say if I say first-dollar
25 policy?

1 A. Yes.

2 Q. Okay. And it's not the case that your office was always
3 following, a first-dollar policy, when you were first developing
4 how you would go about implementing LFOs. That wasn't your
5 first inclination; isn't that right?

6 A. I mean, honestly, I do not recall what the first thing was
7 when we started talking about LFOs.

8 Q. Okay. So let's go to Exhibit 854.

9 And we'll blow this up for you.

10 This is an e-mail from you; is that right?

11 A. Correct.

12 Q. See on the top there.

13 And it's from September 2019; is that right?

14 A. Yes.

15 Q. And you were e-mailing felonycorrespondence@hillsclerk.com.

16 Is that a contact that you have for talking about these rights
17 restoration issues with the Hillsborough clerk?

18 A. I mean, it wasn't a rights restoration. It was just I had
19 a clerk of the court question, so I would have sent it to them.

20 Q. Okay. So this is a contact that you have for their -- for
21 the clerk's office?

22 A. Yes.

23 Q. Okay. And you write that you are looking at a specific
24 case, and it was a case that entered in the financial summary,
25 and I'm going to read the -- it's like the second -- third

1 sentence starting with --

2 MR. McVAY: Your Honor, can I ask Ms. Lang to show the
3 exhibit? I haven't -- I don't have it up and --

4 MS. LANG: It's up on the screen.

5 MR. McVAY: Okay.

6 Can you see it, Ms. Marconnet?

7 THE WITNESS: I can, yes.

8 MR. McVAY: Okay. Good. That's all that matters.

9 All right. Thank you.

10 BY MS. LANG:

11 Q. And so it says -- in CCIS, under financial summary, it
12 indicated an assessment due of 16,000 odd dollars, and 1,500 odd
13 dollars had been paid to date, and there was a balance of
14 \$15,146, right? Do you see that?

15 A. Uh-huh, correct.

16 Q. But then the next line says, "I'm trying to determine if
17 the fee of \$513 as indicated on the judgment was paid in full."

18 So if I understand correctly, there was a judgment for this
19 felon case file that only had \$513 worth of fees imposed. So
20 you wanted to know if that fee had been paid, even though total
21 there had been paid over \$1,500; isn't that right?

22 A. Correct.

23 MS. LANG: Okay. And, in fact, if we look to the next
24 page of the exhibit, we can actually look at the judgment.

25 And a little bit farther down, Ashley.

1 BY MS. LANG:

2 Q. There's a "fees total," and it's that \$513; is that right?
3 That's what you were looking at, and that's what you wanted to
4 know, if that was paid?

5 A. Correct.

6 Q. Okay. And if you -- if we continue down in this exhibit to
7 page 5 of the exhibit, we'll see some further correspondence
8 between you and the Hillsborough clerk.

9 And if we can go down first to the e-mail from the
10 Hillsborough clerk, you received an e-mail on September 27th, so
11 shortly thereafter, and that explained that while -- that all of
12 the money that had been paid, over \$1,500 that had been paid,
13 "No payment has been applied to the \$513 court cost"; is that
14 right?

15 A. Correct. That's what the e-mail states.

16 Q. Okay. And if we go up and see your response, you e-mailed
17 Ms. Matthews later that day to say to her that the court costs,
18 fees, as in the \$513, are still outstanding; isn't that correct?

19 A. Correct.

20 Q. So at that time in September of 2019, it was your
21 understanding that even though this person had paid over \$1,500
22 into the case system, they were not eligible because the \$513 in
23 court costs that had been imposed at sentencing were still
24 outstanding; isn't that correct?

25 A. Say that again. I'm sorry. It broke up just at the end.

1 Q. Sure.

2 So at this time, in September of 2019, it was your
3 understanding that even though the voter, or prospective voter
4 in this case, had paid over \$1,500, they would not be eligible
5 under SB 7066 because the court cost, fees in particular, that
6 were imposed at sentencing were still outstanding and no payment
7 had been applied to those court costs; isn't that correct?

8 A. Correct.

9 Q. Okay. Now under the current April 2020 policy, isn't it
10 the case that this voter would be in the clear because they had
11 paid over \$1,500, even though it had not been applied to the
12 specific court costs in the judgment?

13 A. As far as I understand, yeah, if they've made -- they have
14 paid the amount that was due at the time of their conviction
15 then yes, that's -- but I would -- if I had any questions about
16 that, I would need to speak with, you know, my supervisor or our
17 legal team.

18 Q. Right. But under the first-dollar policy, I think everyone
19 agrees that that would be the way that that would now be
20 applied. Do you agree?

21 A. Yes.

22 Q. Okay. So I hope that that refreshed your recollection that
23 at least in September of 2019 this idea of the first-dollar
24 policy was not yet governing how your office looked at these
25 issues; isn't that right?

1 A. I don't recall exactly what was happening in September of
2 2019, but, yes, I can see this e-mail.

3 Q. Okay. And if we look at Plaintiffs' Exhibit 654. This is
4 an e-mail from you to Ms. Matthews in which you were drafting
5 questions, I think, potentially for the Work Group; is that
6 right?

7 A. Can I see, like, the top of it?

8 Q. Yep. That's the top of the exhibit.

9 A. Yes, because it -- yes, the e-mail states the questions for
10 RVR.

11 Q. And RVR was shorthand for the Work Group; is that right?

12 A. Correct.

13 Q. Okay. And you were involved in drafting these questions;
14 is that right?

15 A. Correct.

16 Q. Yes. And if we look towards the bottom of the first page,
17 one of the questions -- COC there stands for clerks of courts;
18 is that right?

19 A. Correct.

20 Q. And one of -- the second question is asking whether or not,
21 you know, court -- financial -- whether or not LFOs are tracked
22 and whether or not the system, quote, tracks -- or whether --
23 "Does the system track and break out by amount originally
24 ordered by category, by what was accrued subsequent to and by
25 what was converted to civil lien?" Do you see that?

1 A. Yes.

2 Q. And would it make sense to you that you were hoping that
3 they would track payments by category because you were trying to
4 determine whether or not a certain category of LFO had been
5 satisfied, just as you were in the prior e-mail that we looked
6 at; is that right?

7 A. Yes, we were wanting to know if it broke it out by
8 category.

9 Q. Okay. And were you involved in the Work Group drafting of
10 the recommendations at all?

11 A. Not the recommendations.

12 Q. Okay. I'd like to pull up Plaintiffs' Exhibit 279.

13 And if we could look at page 22 of the exhibit, it's page
14 19 of the attachment, but page 22.

15 If we look at the second recommendation.

16 The Work Group ultimately recommended enhancing the clerk
17 of court's financial accounting system to track payment of
18 financial obligations ordered as part of the terms of sentence
19 to determine the total amount due, the balance owed or paid in
20 full.

21 And then it says, "Payment should be tracked for each
22 conviction and by category."

23 Under your new first-dollar policy, does it actually matter
24 if payments are tracked by category if you're going to count
25 every payment towards satisfaction of the original LFOs?

1 A. I'm sorry. Say that again.

2 Q. Here there's a recommendation from the Work Group that
3 payments need to be tracked by each conviction and by category.

4 Do you see that?

5 A. Yes.

6 Q. Okay. Under the new first-dollar policy where all payments
7 count towards satisfaction of the original LFOs, would you need
8 the payments to be tracked by category anymore?

9 A. I mean, I still think that we need to know what exactly
10 was, you know, issued as part of the judgment and sentence at
11 the time of the conviction.

12 Q. Yes. And that has to do with the first side of the
13 equation, what needs to be paid, but I'm talking about tracking
14 of payments.

15 You don't need to track the payments to specific categories
16 now, do you?

17 A. Well, I'm not sure if restitution is always a part of it --
18 a part of the conviction unless it's done at the time of the
19 conviction.

20 Q. Right. Ms. Marconnet, I'm not talking about what the --
21 you're going to figure out through the judgment and other
22 documents what needs to be paid. I understand that.

23 But the second half of the equation is what has the voter
24 paid; is that correct?

25 A. Yes.

1 Q. And under the first-dollar policy, it doesn't matter if the
2 payments are allocated to any particular county; isn't that
3 right?

4 This isn't a "gotcha" question. I really -- I think that
5 this is already your testimony and already Ms. Matthews'
6 testimony, but I just want to make sure.

7 A. Payments --

8 MR. McVAY: I would object to duplicate questioning.
9 If it's designed just to impeach a witness, that's not improper.

10 MS. LANG: No, I'm just trying to --

11 THE COURT: If it's just argumentive -- if you've got
12 all the facts and you can already make the argument, let's move
13 on. If you are setting up the next question, I understand it,
14 but if you are just repeating, we don't need it.

15 MS. LANG: No, Your Honor, I'm just trying to make
16 sure I understand to set up the next question. I'm trying to
17 ask whether or not this recommendation about tracking payments
18 is something that is necessary in light of new first-dollar
19 policy under Ms. Marconnet's understanding since she has worked
20 closely with this.

21 THE COURT: All right. So that's a question for
22 Ms. Marconnet.

23 MS. LANG: Yes.

24 THE WITNESS: Okay. Can you rephrase your question --
25 or restate it, I mean?

1 BY MS. LANG:

2 Q. Sure. Understand the new policy -- the new first-payment
3 policy, do you really need payments to be tracked anymore to
4 each category? You need to know how much has been paid, but do
5 you need it to be pegged to a specific category?

6 A. From my understanding, we just need the amount that's been
7 paid.

8 Q. Okay. Fair enough. So you -- fair enough. We'll move on.

9 So I think what we've established is at some point your
10 office moved from a policy that was going from --

11 MR. McVAY: Objection; counsel testifying, Your Honor.

12 THE COURT: Overruled. This is an employee --
13 high-ranking employee of an adverse party. She can
14 cross-examine.

15 MS. LANG: Thank you, Your Honor.

16 BY MS. LANG:

17 Q. So my understanding is that when we looked at the e-mail
18 from September of 2019, you were asking clerks specifically
19 whether or not the specific LFO had been specifically satisfied;
20 isn't that right?

21 A. For that one, yes.

22 Q. Okay. But at some point your office moved towards a policy
23 in which you would just look at how much was paid total, rather
24 than if it was allocated to a specific fine or fee or
25 restitution; isn't that right?

1 A. From my understanding, yes.

2 Q. So when was the first time you heard from anyone in your
3 office about a policy that would focus solely on how much had
4 been paid, regardless of how it was allocated?

5 A. I don't recall when that was first brought up.

6 Q. Who was the first person to tell you about this idea for a
7 policy?

8 A. I don't recall that either.

9 Q. Was it Ms. Matthews?

10 A. I don't recall, like, who the person was or, you know, when
11 I heard it. I don't recall.

12 Q. When was there a move in your office to start thinking
13 about this in terms of total amount paid rather than were these
14 specific LFOs satisfied?

15 A. I do not recall when.

16 Q. Was it before or after December of last year?

17 A. I do not recall when.

18 Q. Ms. Marconnet, you've been working closely with these
19 documents; isn't that right?

20 A. Correct.

21 Q. Do you know whether or not this happened in the last three
22 months? Or the last four months? Or the last eight months?

23 A. Are you talking about when a document was -- I guess I need
24 to know, like, what are you talking about as far as -- you said
25 when I heard about it. But are you trying to --

1 Q. Well --

2 A. -- ask about a specific document?

3 Q. -- I would like to know all of that, Ms. Marconnet, so I'd
4 like to understand -- my own personal -- my understanding is
5 that you would have an idea, you would talk about it, and it
6 would be implemented in policy if everyone agreed upon it. Is
7 that -- or if the decision-maker agreed upon it.

8 Is that the general process in your office?

9 A. If we had a policy, we would discuss it, and then a
10 decision would be made, yes.

11 Q. So when was it first discussed, approximately?

12 A. But what? Just original LFOs or --

13 Q. The first-dollar policy; the idea that instead of looking
14 to see whether or not a specific LFO had been satisfied, like
15 you were doing in September of 2019, to just looking at total
16 amount paid.

17 A. And I do not -- I don't recall when the first-dollar policy
18 first started being talked about, because you were asking when
19 we first started talking about it. I don't recall when that
20 first started being talked about.

21 Q. Okay.

22 THE COURT: Let me jump in. Here's what I would like
23 to know: When was the decision made to change your approach?

24 THE WITNESS: To change -- to change the approach for?

25 THE COURT: The old way, the way reflected in your

1 September e-mail, and, for that matter, in the Work Group
2 material that Ms. Lang just showed you was to allocate payments
3 to particular obligations. The new way is to ignore the
4 allocation and just look at the total amount of payments.
5 That's a change.

6 I'd like to know when the change was made.

7 THE WITNESS: Well, like I said, I don't recall an
8 exact date, but I know that we have been talking about, you
9 know, the LFOs and what we have now for the past couple of
10 months, but I don't know when -- I can't give you a start date.
11 I can't tell you --

12 THE COURT: Sometime in the last couple of months?

13 THE WITNESS: Yes.

14 THE COURT: And you don't know who made the decision?

15 THE WITNESS: No.

16 THE COURT: Thank you.

17 That's my only questions, Ms. Lang.

18 MS. LANG: I'd like to look at Defendants' Exhibit
19 144.

20 Great. And if we can -- thank you, Ashley.

21 BY MS. LANG:

22 Q. So this is an exhibit, and I will represent to you that it
23 was produced to plaintiffs in early March, so well over a month
24 ago now.

25 And it includes some of the -- if you could take a look, it

1 includes some of the same information about the first-dollar
2 policy that we've been discussing; isn't that right?

3 A. Correct.

4 Q. Okay. Who -- who does the drafting of these policy
5 procedures, as in who actually types them up and does the first
6 draft of these procedures?

7 A. Of the procedure in front of me?

8 Q. Yes, of the Bureau of Voter Registration Services internal
9 procedures related to felony matching. We have a few different
10 versions that everyone has seen.

11 Who is generally responsible for typing those up?

12 A. Well, if it's an old -- you know, older procedure document
13 with BVRS, it would have been a joint effort between myself and
14 my supervisor.

15 Q. And who is your supervisor?

16 A. In BVRS it was Toshia Brown.

17 Q. Okay. So did you likely draft this document that we are
18 looking at that was drafted sometime before March 9th?

19 A. No, this document in front of me, I believe, was drafted by
20 legal.

21 Q. It was drafted by legal.

22 Do you know who in legal drafted this?

23 A. I believe it was Colleen and Brad.

24 Q. Okay. And do you know when you first saw this draft?

25 A. I don't have an exact date, but it was probably March.

1 Q. Okay. Was it while you were still in BVRS?

2 A. I do not recall. Well, no, I wasn't in BVRS in March.

3 Q. Okay. So you received this from legal sometime in March;
4 is that your understanding?

5 A. I'm not sure who I received it from, but I believe it was
6 March.

7 Q. Okay. You didn't type this up, legal did; is that right?

8 A. I did not type this up, no.

9 Q. And it's your understanding that the legal department did?

10 A. Correct.

11 Q. Okay. And do you know who signed off on this policy on
12 April 17th, 2020?

13 A. Any policies would need to be signed off by the division
14 director.

15 Q. Okay. And between early March and April 17th, 2020, did
16 this policy change substantially?

17 A. Say the dates again.

18 Q. Between early March when you saw this draft and the
19 procedures that were formally adopted on April 17th, do you know
20 if they changed substantially?

21 A. I do not believe they changed substantially.

22 Q. Thank you very much, Ms. Marconnet.

23 MS. LANG: I don't have any further questions.

24 THE COURT: Mr. McVay.

25 MR. McVAY: No questions.

1 THE COURT: All right. Thank you, Ms. Marconnet.
2 That concludes your testimony. Thank you for rearranging things
3 to be available for us.

4 THE WITNESS: No problem.

5 MS. LANG: Thank you.

6 THE COURT: What says the plaintiffs?

7 MS. LANG: So my understanding is that the only detail
8 remaining is Ms. Davis' declaration. As I said, I have it on
9 hand, but I was just waiting to get the submission approved by
10 Mr. McVay or one of his colleagues.

11 With that we would rest, with the understanding that
12 that will be submitted and should be labeled Plaintiffs' Exhibit
13 923 when it is submitted.

14 THE COURT: All right. And mechanically the way you
15 are going to submit it is to file it on the docket?

16 MS. LANG: Yes, as a joint notice of a new exhibit.
17 That was our intention, Your Honor, but if there's an easier way
18 to do it, we are happy to do that as well.

19 THE COURT: No, that probably is the easiest way to do
20 it. That will be just fine.

21 (PLAINTIFFS EXHIBIT 923: Received in evidence.)

22 THE COURT: We are going to break here in just a
23 moment, and we will start back at 9:00 in the morning for
24 closing arguments.

25 Ms. Lang, or somebody on your side, how long do you

1 think you need?

2 MS. LANG: Let me just see if I can get some input
3 from my colleagues. I think -- I think that we were thinking
4 between one and a half and two hours, Your Honor. I know that's
5 long, so we'll take our cue from you, Your Honor, as far as how
6 much you want to hear.

7 THE COURT: Look, it's important and there's some
8 details, so we'll spend some time. Maybe this is the time to
9 tell you my usual story, which is this: When they dedicated the
10 battlefield at Gettysburg, the main speaker was a Harvard
11 professor who went on for two hours or so. Very few people in
12 the world know who he was or what he said. The other guy spoke
13 for about two and a half minutes, and what he said is on the
14 wall at the memorial.

15 Now, I don't expect anybody to be quite so succinct or
16 eloquent and -- but sometimes shorter is better. There are some
17 details here, and I've raised a few questions as we went along,
18 and so I don't want to cut you short. But I -- but I don't want
19 to go on unnecessarily either.

20 Let me check a couple of things I needed to deal with.

21 Oh. Mr. McVay, I said at the beginning of the trial
22 that there had been some authenticity objections; I didn't think
23 any of those were going to be sustained, but if there was an
24 authenticity problem that came up with anything as we went along
25 to let me know. I have not heard any issues about authenticity,

1 and I don't think there's any questions about whether the
2 documents that have been presented are what they purport to
3 be -- a lot of questions about what they show or don't show, but
4 I think they are what they purport to be.

5 Are there any of the authenticity objections that I
6 need to deal with?

7 MR. McVAY: No, sir, Your Honor. I think we are -- I
8 looked around the room, and I think we are all clear on that.
9 So no, sir.

10 THE COURT: Let me tell you a couple of things that I
11 would like to hear from you on as part of your argument
12 tomorrow.

13 First, as the Eleventh Circuit reminded us all in
14 *Jacobson*, it matters who the plaintiffs and defendants are and
15 so forth. I think I had indicated earlier that I wanted to hear
16 from the defense about the position on who needs to be sued,
17 Secretary or Supervisors.

18 I also have a question about the governor. In most of
19 these cases over the last 23 years when the governor has been
20 sued, I have gotten a motion from the governor saying, I should
21 not be sued, not just in election cases, but in a number of
22 other kinds of cases. And I've almost always dismissed the
23 governor, not, frankly, without -- not based on any ruling that
24 the governor couldn't be sued, but almost always the governor is
25 unnecessary.

1 And so, for example, when the Secretary of the
2 Department of Corrections gets sued, if the plaintiff sues the
3 governor, the governor often asks to get out, and I usually
4 grant the motion. But here the governor has wanted to stay in,
5 and, of course, this issue came up on appeal. And so I do need
6 to hear from the governor whether you -- whether the governor
7 wishes to stay in the case.

8 On the plaintiffs' side, one of the things the defense
9 has said consistently is that everything in SB 7066 was already
10 required by Amendment 4, so there's no standing -- nothing to be
11 accomplished.

12 In some respects, the argument is obviously wrong.
13 There are things in SB 7066 that nobody could read into
14 Amendment 4 by itself. And we can talk about this tomorrow,
15 but, for example, the judicial lien provision I think is one of
16 those. I don't think you read Amendment 4 and know the outcome
17 on judicial liens -- conversion to judicial liens.

18 What I had said earlier in the case in dealing with
19 this was my understanding is the plaintiffs challenge the
20 requirement to pay LFOs as a condition of voting as applied to
21 the plaintiffs. The defense hasn't characterized it that way.
22 The defense has said, Oh, no, the plaintiffs don't challenge
23 application of Amendment 44; they only challenge the application
24 of 7066.

25 So one of the questions I'll be asking is, Is that

1 right? Are you saying, Don't touch Amendment 4 or its
2 application to us? We're only challenging the application of
3 7066? So I'll need you to answer that question.

4 And then let me give a heads-up to both sides. Maybe
5 I mentioned this. It will be primarily a question to the
6 defense. Here's at least a preliminary view of no one could
7 read the evidence. The defense expert, Dr. Barber, was
8 testifying, and he testified essentially that race wasn't in the
9 legislators' minds. And, of course, the defense put on
10 Mr. Meade's testimony, and Mr. Meade says that race wasn't in --
11 racial animus was not in the legislators' minds.

12 I asked Dr. Barber how is it that every Republican
13 voted for this and every Democrat voted against it? And he
14 said, Well, they don't always understand. And basically his
15 testimony was it was a misconception that this statute -- this
16 requirement would favor Democrats -- I mean, would favor
17 Republicans and disfavor Democrats.

18 So here's what one might look at this evidence to
19 establish. One might take Dr. Barber's testimony to say, well,
20 yeah, it was 100 percent Republicans in favor and 100 percent
21 Democrats against because of the perception that this would help
22 Democrats and not help Republicans.

23 Dr. Barber also said, That's not true; actually,
24 they're right that African-Americans tend to vote Democrat. And
25 there is a disproportionate share of African-Americans in the

1 prison population, the former felons, but there are a lot of
2 other people, too. There are actually more whites than
3 African-Americans. And if we add them all up, Dr. Barber says
4 it doesn't really help the Democrats.

5 But if all the Republicans voted for this because they
6 thought it would help the Democrats -- I mean, help the
7 Republicans -- I'm sorry. Let me say it again. If all of the
8 Republicans voted for this because they thought giving the vote
9 to more felons would help Democrats, and the only reason they
10 thought that is because a disproportionate share of prisoners or
11 felons are African-American, why doesn't that establish the
12 racial discrimination case?

13 That was not my best description of it, but I hope you
14 got the drift. The idea is the legislature voted one way
15 because of the partisan -- perceived partisan impact, and the
16 only reason they perceived that to be the partisan impact is
17 race.

18 Let me see if I can give you a citation you can look
19 at while you're deciding how you're going to respond to these
20 questions tomorrow.

21 Give me just a second.

22 (Pause in the proceedings.)

23 THE COURT: The citation I was going to give you is
24 *North Carolina State Conference of NAACP v. McCrory*. It's 831
25 F.3d 204. It's a Fourth Circuit 2016 case.

1 You might also want to look at *Hunter v. Underwood*,
2 which I think is in the papers, 471 U.S. 222, a 1985
3 United States Supreme Court case.

4 So we'll need to talk about those things tomorrow.

5 (Pause in proceedings.)

6 THE COURT: And then I'll give you a heads-up.
7 Another question I'm going to ask you -- this probably doesn't
8 go to -- this does not go to substance and probably doesn't go
9 much to the ruling, but one of the things you asked Dr. Barber,
10 I think on redirect -- the plaintiffs had cross-examined him on
11 the fact that two other district judges had found his testimony
12 not credible. And let me just tell you that I don't think that
13 makes any difference at all. I probably would have sustained an
14 objection to it. That's somebody else's opinion of the
15 witness's credibility, and it just doesn't matter.

16 But then on redirect to try to rehabilitate him -- and
17 I can't remember who was doing the examination -- the question
18 was, Well, didn't a plaintiff try to hire you? And the answer
19 was, Well, they approached my partner.

20 And so here's going to be my question. That does seem
21 to me it might go to credibility. If I understand it, here's a
22 potential expert approached at a time when there is no duty to
23 disclose. I'm certain the people who approached him would not
24 appreciate him telling the other side, let alone the whole
25 world, that they had approached him. And here he brings it

1 up -- first he told you, and then he brought it up and testified
2 to it at trial. So I kind of wonder about that.

3 That's my -- that's my list of heads-up.

4 What else -- well, we need to talk about time, I guess.

5 How long do you think on the defense side, Mr. McVay?

6 MR. McVAY: About an hour, Your Honor, is what seems
7 fair.

8 THE COURT: Yeah, that really does seem more
9 realistic.

10 You probably all know this by now. I may be the worst
11 in the federal judiciary at several things, but one thing I
12 think I'm clearly the worst at is keeping time and calling
13 people when they use it all up. But it really does help if we
14 get focused. So let's plan on one hour, and I'll try to improve
15 my record of keeping time.

16 Anything else we can accomplish this afternoon,
17 Ms. Lang?

18 MS. LANG: Your Honor, if I can just grab the Court's
19 indulgence for just -- if I could ask for the Court's indulgence
20 for just one moment, we wanted to say a great heartfelt thanks
21 to a lot of folks who helped put on this trial in a bizarre
22 circumstance, not least of which is our friend Ashley, who is
23 not a robot but an extraordinary IT support who has been helping
24 us with our exhibits; Ms. Hague, Jerry, and Tran from the court
25 personnel for really heroic efforts in putting this on with very

1 few hitches.

2 So from the plaintiffs' side, we just wanted to send a
3 heartfelt thanks to some of the folks who are not seen,
4 especially Ashley, who has been a silent hero during our
5 examinations.

6 Thank you, Your Honor.

7 THE COURT: Well, if we're doing shout-outs, I do
8 appreciate the cooperation back and forth in putting that up. I
9 do -- I've come to recognize through a long number of cases that
10 people cooperate back and forth with their IT and so forth, and
11 it does help when both sides can call on that. So I may have
12 been out of line asking Ashley, but I was quite sure that you
13 would be willing to share. So I do appreciate it, and I've said
14 this before: I appreciate the lawyers cooperating
15 professionally to get this put together.

16 I've asked questions a time or two about the substance
17 and how fast people are going, and you get cases where it makes
18 a difference to everybody how fast something goes. Sometimes it
19 can make a substantive difference, but in this case the lawyers
20 have absolutely cooperated to let this get done. And it was
21 important to get it done quickly and people have done it. So I
22 appreciate the good work on both -- the professionalism on both
23 sides to bring it off. So thanks.

24 Anything we need to do today on your side, Mr. McVay?

25 MR. McVAY: The only item I have, Your Honor, is

1 Mr. Rosenthal, I've been told, has asked for five minutes from
2 Miami-Dade County for closing.

3 THE COURT: Absolutely.

4 And, yeah, Mr. Rosenthal has had an insight or two on
5 behalf of the Supervisors. It's been helpful in the past, and
6 he's certainly welcome to it.

7 MS. LANG: And I forgot Ms. Markley. So I just don't
8 want to have said thank you to all the court staff and not have
9 mentioned Ms. Markley, but thank you very much.

10 THE COURT: They all appreciate it.

11 I said earlier that I was going to dock the plaintiffs
12 ten minutes because of part of the presentation. There was
13 probably some on both sides, and you -- at one point in the
14 trial, you got your ten minutes restored, so I think we are good
15 to go.

16 I probably will add -- I'll let Mr. Rosenthal have his
17 five minutes he's asked for without taking it out of the
18 Secretary's share.

19 MR. McVAY: Thank you, Your Honor.

20 MS. LANG: Thank you, Your Honor.

21 THE COURT: All right. I'll be back at 9 o'clock
22 tomorrow morning. Thank you all.

23 MS. LANG: Thank you.

24 (Proceedings recessed at 3:20 PM on Tuesday, May 05, 2020.)
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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Any redaction of personal data identifiers pursuant to the Judicial Conference Policy on Privacy is noted within the transcript.

/s/ Megan A. Hague 5/5/2020
Megan A. Hague, RPR, FCRR, CSR Date
Official U.S. Court Reporter

I N D E X

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E X H I B I T S

PLAINTIFFS' EXHIBITS OFFERED RECEIVED

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