

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 4, 2020
RON DESANTIS, in his official	)	
capacity as Governor of	)	
Florida, et al.,	)	
	)	9:00 AM
Defendants.	)	VOLUME V
	)	

**TRANSCRIPT OF VIDEOCONFERENCING PROCEEDING - BENCH TRIAL- DAY 6**  
**BEFORE THE HONORABLE ROBERT L. HINKLE**  
**UNITED STATES DISTRICT JUDGE**  
**(Pages 1115 through 1337)**

**\*\* 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.*  
*Transcript produced by Computer-Aided Transcription.*

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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 Monday, May 04,  
3 2020.)

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

5 I have Mr. Meros.

6 MR. MEROS: Good morning.

7 THE COURT: Good morning.

8 I do not yet see the plaintiffs' attorneys.

9 There we are.

10 MR. MORALES-DOYLE: Good morning.

11 THE COURT: Where we left it on Friday afternoon, in  
12 part, was that there was a motion of the Raysor plaintiffs to  
13 join the Supervisor of Elections in Hillsborough County as a  
14 defendant. Over the weekend, there were filings indicating that  
15 the Supervisor does not object to being joined on the  
16 understanding that the plaintiffs would not attempt to enforce  
17 against him any recovery of costs or attorneys' fees.

18 I had left it a little uncertain on when the Secretary  
19 or Governor were to respond. The goal was as soon as possible,  
20 maybe by 9 o'clock Monday morning and not necessarily if it took  
21 more time.

22 As far as I have been able to tell, nothing has been  
23 filed; and in light of the Supervisor's position, perhaps the  
24 Secretary doesn't plan to respond.

25 But, Mr. Jazil, tell me what the status is.

1           MR. JAZIL: Your Honor, having conferred with our  
2 clients, we take no position on the motion to add Defendant  
3 Latimer. We would simply note for the record that there appears  
4 to be an agreement between the plaintiffs and Defendant Latimer  
5 on an attorneys' fee issue. Should the case proceed to that  
6 point, we intend to ensure that whomever is an appropriate  
7 defendant is responsible for their fair share of the fees; but  
8 with that caveat, Your Honor, we take no position on the motion  
9 itself.

10           THE COURT: I will grant the motion to join the  
11 Supervisor -- Mr. Latimer as a defendant on the Raysor  
12 complaint.

13           We are on the defense case. Please call your next  
14 witness.

15           MR. MEROS: Your Honor, we call Professor Mary Adkins.

16           THE COURT: Ms. Adkins, if you're there, turn on your  
17 video.

18           There she is.

19           Please raise your right hand.

20           **PROFESSOR MARY ELIZABETH ADKINS, DEFENSE WITNESS, DULY SWORN**

21           THE COURT: Please tell us your full name.

22           THE WITNESS: Mary Elizabeth Adkins.

23           THE COURT: Mr. Meros, you may proceed.

24           MR. MEROS: Thank you, Your Honor.

25

## Direct Examination - Professor Adkins

1 DIRECT EXAMINATION

2 BY MR. MEROS:

3 Q. Professor, good morning. Can you hear me all right?

4 A. Yes, I can. Can you hear me?

5 Q. Yes, thank you.

6 By whom are you employed, Professor?

7 A. The University of Florida.

8 Q. And how long have you been employed by the University of  
9 Florida.

10 A. Just over 15 years.

11 Q. And in what capacity do you serve as an employee of the  
12 University of Florida.13 A. I teach at the law school, the Fredric G. Levin College of  
14 Law -- at the law school.

15 Q. Can you tell us your educational background?

16 A. Yes. I have a Bachelor of Science in journalism from the  
17 University of Florida. I have a Master of Arts in history from  
18 the University of Florida and a Juris Doctor from the University  
19 of Florida.

20 Q. And --

21 A. While in law school, I was an editor on the *Law Review*.22 Q. Now, Professor, your report is in the record, and so I'm  
23 going to not go over the report in perfect detail, but just get  
24 some highlights.

25 So tell us first -- your report indicated that you authored

1 a book published in 2016. If you could tell us the name of that  
2 book and briefly summarize its content.

3 A. Yes, the book is called *Making Modern Florida: How the*  
4 *Spirit of Reform Shaped a New State Constitution*. It tells the  
5 story of how Florida changed from the early '60s to the late  
6 '60s from a backward government held enthralled by rural  
7 legislatures known as the Pork Chop Gang to adopt a new  
8 constitution that was -- that was drafted by reformers and  
9 adopted by voters in 1968.

10 Q. Was this book subject to peer review?

11 A. Yes, it was.

12 Q. What prompted you to write this book?

13 A. I became interested through reading other books. I was  
14 interested in Florida politics and how they changed and  
15 particularly how it looked like they had been changing from  
16 about the 1960s. Each book that I read mentioned, in passing  
17 really, that there was a new constitution in 1968, and I began  
18 to be curious when no book dealt with it in any detail at all.  
19 So I started looking around, and I started with my own law  
20 library at the law school and found that there were excerpts  
21 from transcripts, quite a few large volumes, from this  
22 Constitution Revision Commission that had drafted this  
23 constitution.

24 I became curious to find out if there was more information,  
25 and I discovered that there were a lot of oral histories that

1 had been taken earlier from members of the Constitution Revision  
2 Commission. I went to the Florida Supreme Court library because  
3 I knew that a couple of the members had been justices. That  
4 library had a few papers, but they directed me to the Florida  
5 State Archives, where I found kind of the mother lode -- many,  
6 many boxes of records, full transcripts of the proceedings,  
7 correspondence files, administration files, committee notes.

8 Then I began to -- I'm sorry. Go ahead.

9 Q. Oh, forgive me for interrupting.

10 Did -- was this the research that you utilized -- reviewed  
11 and utilized in preparation of this book?

12 A. Yes.

13 Q. Was there any other research or information gathering that  
14 you did in -- I guess specifically I would ask -- you mentioned  
15 interviews. Did you conduct any interviews with individuals?

16 A. Yes. For the book, I interviewed 17 people, 5 by telephone  
17 and 12 live. Of those people, four of them were living -- yet  
18 living members of the Constitution Revision Commission. That  
19 was four of the five that were still living at the time --  
20 excuse me -- four of the six that were living at the time. I  
21 also interviewed the governor who had been elected during the  
22 period that the CRC met, Governor Claude Kirk.

23 And for later articles and a planned book on the history of  
24 the CRC, I have also interviewed members from the subsequent  
25 Constitution Revision Commissions in the last 50 years.



1 Q. Now, after publication of this book, have you followed up  
2 with additional research and writings about Florida's  
3 constitutional revision district?

4 A. Yes. The following year, I wrote an article called "The  
5 Same River Twice," which was a history of the Constitution  
6 Revision Commissions of 1978 and 1998. It was published just  
7 before the next Constitution Revision Commission was scheduled  
8 to start.

9 Also, last month an article dated fall 2019, but it came  
10 out in March 2020 in the *Rutgers Law Review* by me was published,  
11 "A Critique of the Florida CRC Process and Suggestions for  
12 Improvement."

13 Also, in 2018 I was the guest editor for the *Florida Bar*  
14 *Journal's* special section on the 2018 Constitution Revision  
15 Commission.

16 Q. The research -- the research and sources of data and  
17 information that you described, is this the type of information  
18 upon which historians reasonably rely in publishing historical  
19 works?

20 A. Yes, primary sources corroborated, yes, that is the type of  
21 information historians rely upon.

22 Q. Are you aware of any historical works concerning Florida's  
23 Constitution Revision Commission that has been published in as  
24 much detail as your book?

25 A. No, sir, I don't believe there are any.

1 Q. Are you presently in the process of publishing other legal  
2 or historical works?

3 A. Yes, I have a biography of Chesterfield Smith, who was the  
4 chair of the original 1966 Constitution Revision Commission. It  
5 is nearly complete and should be coming out toward the end of  
6 this year. I'm also coauthoring a casebook on Florida  
7 constitutional law, which should come out at about the same time  
8 or a little bit later.

9 Q. As a part of your research and analysis in publishing this  
10 book, did you have occasion to review the 1838 and 1885 Florida  
11 Constitutions?

12 A. Yes, not in as much detail as the 1968 Constitution, but,  
13 yes.

14 Q. And why did you review those Constitutions?

15 A. I wanted to get the context of what was going on in Florida  
16 at the various times that it adopted new constitutions. 1838  
17 was in anticipation of statehood. There was another one in 1861  
18 for the purpose of seceding from the Union. There was one in  
19 1865 that was written and never adopted because it did not  
20 provide for other than white men to vote. There was one in 1868  
21 that was adopted during Reconstruction. And then when  
22 Reconstruction was over, there was an 1885 Constitution. That  
23 was the one in place in 1968 -- or until 1968.

24 Q. I interrupted you yet again. I apologize.

25 MR. MEROS: Your Honor, the Secretary offers

1 Professor Adkins as an expert in Florida's constitutional  
2 revision history.

3 THE COURT: Mr. Morales Doyle, any questions at this  
4 time?

5 I'm not hearing you. You may not have your mic turned  
6 on.

7 (Pause in proceedings.)

8 MR. MORALES-DOYLE: Can you hear me now?

9 THE COURT: Yes, thank you.

10 Any questions at this time?

11 MR. MORALES-DOYLE: I do have some questions at this  
12 time, Your Honor. I am without video, and so can you give me  
13 just one second, please?

14 THE COURT: Well, be careful how you act because we  
15 can see you.

16 MR. MORALES-DOYLE: All right. I've just now received  
17 video feed, so hopefully I'm good to go. I'm not sure what  
18 happened. I'm sorry about that.

19 THE COURT: All right. I am getting some echo from  
20 you. I know you were trying to use the headphones earlier. You  
21 might want to try those again. It certainly will make the sound  
22 better if we have the sound.

23 MR. MORALES-DOYLE: Let me try that, Your Honor.

24 (Pause in proceedings.)

25 MR. MORALES-DOYLE: Is this working?

1 THE COURT: It is working. Thank you. That's better.

2 And, Professor Adkins, at the same time -- one thing  
3 we find is that the sound is improved if your microphone is off  
4 while the other person is speaking. And as we noticed in some  
5 of the direct, it works better if -- it works better, just like  
6 in open court with everybody present, if only one person talks  
7 at a time.

8 So if you would, Mr. Morales-Doyle, make sure you wait  
9 until Ms. Adkins has finished her answer and vice versa.

10 So you may go ahead on questions about credentials.

11 MS. MORALES-DOYLE: Thank you, Your Honor.

12 VOIR DIRE EXAMINATION

13 BY MR. MORALES-DOYLE:

14 Q. Professor Adkins, you're not here to offer any expert  
15 opinion on the intent behind Senate Bill 7066; is that right?

16 (Reporter requested clarification.)

17 THE COURT: The court reporter is waving. I heard  
18 every word, but it didn't get through apparently. Perhaps we  
19 are getting some echo.

20 Having told everybody to turn their microphones off, I  
21 did not turn mine off. I will turn it off now. Let's try one  
22 more time, and then we may have to go back without your  
23 headphones. Just everybody be a little patient. We'll figure  
24 out how to get the best sound we can.

25 MR. MORALES-DOYLE: Am I doing okay now? All right.

## Direct Examination - Professor Adkins

1 Professor Adkins, you're not offering any expert  
2 opinion on the intent behind SB 7066; is that right?

3 THE WITNESS: Correct.

4 MR. MORALES-DOYLE: Because you're not an expert on  
5 evaluating whether laws are enacted with racially discriminatory  
6 intent; right?

7 THE WITNESS: Because I was not asked to give an  
8 expert opinion on the intent behind Senate Bill 7066.

9 MR. MORALES-DOYLE: I'm sorry. The host just -- I was  
10 just muted by the host for a second, but I think y'all can hear  
11 me now; right?

12 THE COURT: Yes.

13 MR. MORALES-DOYLE: You are not an expert on whether  
14 or not laws are enacted with any particular intent; right?

15 THE WITNESS: I do not have professional training on  
16 intent.

17 MR. MORALES-DOYLE: And you're not here to offer any  
18 expert opinion on that issue?

19 THE WITNESS: I'm sorry. Can you be specific as to  
20 what issue?

21 MR. MORALES-DOYLE: In this case you were asked only  
22 to determine whether the 1968 Florida Constitution's felony  
23 disenfranchisement provision was created with racial animus;  
24 right?

25 THE WITNESS: Yes, that and subsequent Constitution

1 Revision Commissions.

2 MR. MORALES-DOYLE: But you don't take any position on  
3 whether the answer to that question is relevant to whether  
4 Senate Bill 7066 was passed with racial animus; right?

5 THE WITNESS: Correct.

6 MR. MORALES-DOYLE: And to prepare your report for  
7 this case, you only conducted historical analysis on the '68  
8 Florida Constitution and subsequent CRCs; is that right?

9 THE WITNESS: That is right.

10 MR. MORALES-DOYLE: You did not consider the factors  
11 established by the Supreme Court in the *Arlington Heights* case  
12 in conducting your analysis of the 1968 Florida Constitution; is  
13 that right?

14 THE WITNESS: Correct.

15 MR. MORALES-DOYLE: And you are not an expert on those  
16 factors or that case; correct?

17 THE WITNESS: Correct.

18 MR. MORALES-DOYLE: And you are not offering an  
19 opinion here about which facts in this case are relevant to  
20 those factors?

21 THE WITNESS: Except -- that is true, except to the  
22 extent that any facts in this case are -- overlap with the facts  
23 involved in any of the Constitution Revision Commission from '66  
24 through 2018.

25 MR. MORALES-DOYLE: And when they do overlap, are you

1 offering an opinion as to whether those facts are relevant to an  
2 analysis under the *Arlington Heights* factors?

3 THE WITNESS: Respectfully, it would depend on which  
4 facts.

5 MR. MORALES-DOYLE: Are you here to offer an opinion  
6 about whether any facts are relevant to an analysis under an  
7 *Arlington Heights* -- the *Arlington Heights* factors?

8 THE WITNESS: No.

9 MR. MORALES-DOYLE: And you don't think that  
10 Dr. Kousser's analysis of the intent of Senate Bill 7066 fails  
11 even if you are right about the 1968 Constitution; right?

12 THE WITNESS: Fails in what way? Could you clarify?

13 MR. MORALES-DOYLE: Do you think that Dr. Kousser's  
14 analysis about the intent of the Senate Bill 7066 fails if you  
15 are right about your understanding of the 1968 Florida  
16 Constitution in any way?

17 MR. MEROS: Objection, Your Honor. This is far afield  
18 from her qualifications. She's said nothing about Dr. Kousser.

19 THE COURT: I think that's right, Mr. Morales-Doyle.  
20 I think this is cross-examination, not voir dire.

21 MR. MORALES-DOYLE: Well, Your Honor -- and that's  
22 fine. I can stop here if Your Honor wishes.

23 But it's the plaintiffs' position that  
24 Professor Adkins is not here to offer up an opinion that's  
25 relevant to a determination of some fact in issue in this case.

1 The plaintiffs are not attempting to prove that the 1968 Florida  
2 Constitution was enacted with racial animus for purposes of this  
3 case.

4 We don't think that -- one of the factors under Rule  
5 702, of course, is that the expert's analysis will help the  
6 trier of fact understand an issue and -- a fact in issue. We  
7 just don't think that's the case, and I'm trying to understand  
8 how Professor Adkins believes her opinion is relevant to  
9 Dr. Kousser's opinion or any other fact at issue in this case.

10 So I'm happy to stop the voir dire here, but we would  
11 move to exclude this testimony in that it is not relevant to any  
12 of the facts at issue in this case.

13 THE COURT: Well, I'm going to allow the testimony.  
14 If all that was going on was a trial in the district court -- I  
15 am, of course, the fact finder, and I know what may affect the  
16 outcome and what may not.

17 If you want to stipulate that the 1968 constitutional  
18 revision was not done with racial animus, was not racially  
19 discriminatory, was not discriminatory based on gender, then I'm  
20 certain the defense would accept the stipulation.

21 Beyond that, I'm not the end of the line. There is  
22 likely to be an appeal in the case, and so I have deliberately  
23 not cut people off during the trial when they were addressing  
24 things as to which it's clear to me what the finding will be.

25 And so, candidly, it's pretty clear to me from all



1 that I've read ahead of time and reading Ms. Adkins' report and  
2 the other material that the 1968 Constitution Revision  
3 Commission did not continue the felony disenfranchisement out of  
4 discriminatory motive. I think you are right that doesn't have  
5 anything to do with the question that I'm dealing with, but an  
6 appellate court might decide otherwise, and the defense is  
7 certainly entitled to make their record about the 1968 revision.  
8 So I'm going to allow the testimony.

9 MR. MORALES-DOYLE: Your Honor, I understand that  
10 ruling.

11 I would just also ask -- you know, Ms. Adkins has said  
12 she's here to offer an opinion on the -- whether or not the 1968  
13 Florida Constitution was enacted with racially discriminatory  
14 intent, and I believe that's precisely the opinion that  
15 Your Honor said should be excluded in your ruling on the  
16 defendants' motion in limine. So I would ask that the Court not  
17 take her opinion on that issue as a part of the evidence in this  
18 case.

19 THE COURT: Fair enough. Let me take a minute to  
20 address this. Mr. Meros is the one that put on Mr. Meade and  
21 had me sit through that whole rather slow and lengthy  
22 deposition. This really doesn't go so much to Ms. Adkins, but  
23 since the issue has been raised, let me address it with you.

24 And, Mr. Meros, this is one of those where I would ask  
25 that the State of Florida decide what the State's position is.

1           Let me explain it this way: I have presided over  
2 scores, maybe at this point more than 100, employment cases  
3 against the State of Florida. In Tallahassee we have an  
4 aggressive plaintiffs bar in employment cases. When someone is  
5 terminated or fails to get a promotion for -- let's just wait  
6 until we straighten things out with the court reporter.

7           (Pause in proceedings.)

8           THE COURT REPORTER: I'm good, Your Honor. Thank you  
9 for pausing.

10          THE COURT: It happens frequently that when there is a  
11 termination of a state employee or a failure to promote a state  
12 employee, there is a lawsuit asserting that the reason was race  
13 or gender.

14           It happens frequently in those cases that the  
15 plaintiff would like to testify "The reason the supervisor did  
16 not promote me," or "The reason the supervisor terminated me was  
17 my race." Many, many times there are other employees in the  
18 same office -- now I've lost the picture of Mr. Morales-Doyle.  
19 He may be refreshing. Let's just wait a moment.

20          (Pause in proceedings.)

21          MR. MORALES-DOYLE: I'm still here, Your Honor. I'm  
22 having trouble with my video connection, but I can hear you just  
23 fine.

24          THE COURT: It also happens many times that there are  
25 other employees in the same office who propose to testify -- the

1 plaintiff would like to have testify that the reason the  
2 plaintiff was not promoted or the reason the plaintiff was  
3 terminated was race or gender.

4           The State of Florida always asserts that the testimony  
5 is not admissible, and I always sustain the objection. This is  
6 important. The reason I sustain the objection is because one  
7 person can't testify to what is in someone else's mind. The  
8 plaintiff can testify to what the supervisor said or did, but  
9 the plaintiff cannot testify the reason the plaintiff -- the  
10 supervisor said it or did it was because of, for example, racial  
11 animus. This is an important ruling. Many times in those cases  
12 I deny summary judgment, but many times in those cases I grant  
13 summary judgment. It just depends in each case on what the  
14 evidence is.

15           If the State of Florida now wants to change its  
16 position on the Rules of Evidence and assert that testimony like  
17 Mr. Meade gave, that he knows what was in somebody else's mind  
18 and it was not discrimination, I think what that means is a  
19 person also can testify that he knows what was in the  
20 decision-maker's mind and it was discrimination. And if that  
21 testimony is admissible, the State would probably never again  
22 get a summary judgment in an employment case because the  
23 plaintiff will always be happy to testify that the real reason  
24 was discrimination.

25           So the State has asserted again and again in this

1 case -- I've read Mr. Meade's testimony before trial; I've read  
2 it in the State's summary judgment papers; and then the State  
3 insisted that I sit through that deposition, apparently  
4 believing that that testimony is not only relevant, but highly  
5 persuasive.

6           So my question to the State is: What's it going to  
7 be? Because you don't get to read the Rules of Evidence one way  
8 in this case and another way in another case.

9           So, Mr. Meros, now doesn't need to be the time. We  
10 don't need to take up Ms. Adkins' time with this. But I'm going  
11 to want a straight answer out of the State of Florida. If  
12 Mr. Meade's testimony about what was in Representative Grant's  
13 mind is admissible, than why isn't the same rule applicable in  
14 every employment discrimination case?

15           And I submit that -- straighten that out with the Attorney  
16 General before you go asserting that it's admissible because I  
17 think in the long run it's going to be very much not in the  
18 interest of the State of Florida.

19           That's longer than we need to deal with here. I'm going to  
20 deal with Ms. Adkins on this question the way I did with  
21 Dr. Kousser. Her ultimate conclusion about intent is not going  
22 to have anything to do with my decision on the case. I'm going  
23 to listen to what she says about this whole process and, as I  
24 said, what these people said and what they didn't say, what they  
25 did and what they didn't do, and then her conclusion that what

1 that means is that what was in their mind was not  
2 discrimination. That's not going to persuade me any, just like  
3 it didn't with Dr. Kousser.

4 I treat the objection as fully preserved. You don't need  
5 to interrupt each time when she gets just to that point. The  
6 defendants can make their case and they can include the proffer  
7 of her testimony on intent as part of the examination. That's  
8 where we are.

9 Mr. Meros, you may proceed.

10 CONTINUED DIRECT EXAMINATION

11 BY MR. MEROS:

12 Q. Professor Adkins, going past 1968 as a -- well, going past  
13 the 1968 Constitution Revision Commission -- but let me go back  
14 a minute to 1962.

15 At that period of time, how could Florida's Constitution be  
16 amended?

17 A. There were only two ways: One was by a full constitutional  
18 convention; the other way was by the legislature.

19 Q. And did there come a time after 1962 that the legislature  
20 elected to create a Constitution Revision Commission?

21 A. Yes. In 1965 the legislature passed a joint resolution  
22 creating a Constitution Revision Commission that would be  
23 appointed, would work to draft a new constitution and would  
24 submit it to the legislature for final approval before going to  
25 the voters.

1 Q. Now, let me go back farther in time to 1920 to 1966.

2 Can you tell us whether or not Florida demographically and  
3 politically changed during that period of 1920 to 1966?

4 A. Yes. In 1920, Florida was still a rural state. The  
5 majority of its population lived within 50 miles of Georgia and  
6 Alabama. The whole state had less than a million people.

7 There were -- there was more than one population boom in  
8 Florida during those decades. Post-World War II began a  
9 sustained influx of people moving to Florida, and during --  
10 during the years between 1920 and 1960, for example,  
11 Dade County, now Miami-Dade, went from 42,000 people to nearly a  
12 million people. Broward County went from 5,000 people to a  
13 third of a million people.

14 So what happened was that all the -- the great majority of  
15 the new residents of Florida moved to the south and central.  
16 There was little appreciable growth in the north of Florida  
17 during those years.

18 You asked about politically. It went from almost  
19 universally Democrat to still predominantly Democratic, but  
20 certain areas on the west coast of Florida had begun to be more  
21 Republican.

22 Q. Now, in 1967, did Florida's electorate vote for a newly  
23 apportioned Florida House and Florida Senate?

24 A. Yes.

25 Q. And can you tell us if that -- if the Florida House and

1 Senate after that vote -- how that compared with the Florida  
2 House and Florida Senate prior to 1967, demographics, politics?

3 A. Yes. The great influx of people to the south and central  
4 parts of Florida resulted in legislative malapportionment  
5 because the 1885 constitution had drawn its legislative district  
6 lines accurately according to the population of that time, so  
7 most districts were in the north.

8 It also had strictures on how -- on how apportionment could  
9 be changed, so it made it very difficult for meaningful  
10 apportionment to happen under that constitution, which meant  
11 that as the south and central parts of the state filled up with  
12 people, there was very -- they had very little representation.  
13 A county with 3,000 people in the north would have one  
14 representative, but Dade County could constitutionally have no  
15 more than three.

16 This malapportionment was the subject of a lawsuit known as  
17 *Swann versus Adams* in which residents of Dade County sued for  
18 fair apportionment post-*Baker v. Carr*, and it was ultimately  
19 successful and the reapportionment occurred to make the  
20 districts fair and to give proper representation across the  
21 population of the state.

22 So -- I'm sorry -- I actually didn't get to the last part  
23 of your question which was how did it change when the  
24 populations elected the new legislature. That new legislature  
25 was more -- younger, much more urban, more Republican, more of

1 a -- it was really the first time that Florida had a viable  
2 two-party status.

3 Q. Now, let's turn to the 1978 Constitution Revision  
4 Commission. Can you describe the makeup of that Commission, the  
5 1978 Commission, politically, racially and by gender?

6 A. Yes. That new 1968 constitution provided for more ways to  
7 be amended, and one of them was a then, and now, unique  
8 automatically occurring Constitution Revision Commission that  
9 had the power to put proposals on the ballot straight to the  
10 voters.

11 That first Constitution Revision Commission, 10 years after  
12 the new constitution, was headed by Sandy D'Alemberte who was  
13 appointed by the governor, Reubin Askew at the time as chair.  
14 By appointing authority -- every appointing authority was  
15 Democrat. Although some were old-style conservative Democrats,  
16 some were newer progressive Democrats.

17 The membership of that CRC was 33 Democrat to 4 Republican.  
18 It had two African-American members, two Hispanic members and  
19 five women.

20 Q. Now, did the 1978 Constitution Revision Commission propose  
21 or pass a proposal to restore felon voting rights?

22 A. Yes, it did. It proposed restricting the  
23 disenfranchisement only to people currently serving a prison  
24 sentence, and part of the same phrase in the constitution is  
25 "adjudged mentally incompetent," and it also said that only



1 people actually institutionalized would not have the right to  
2 vote.

3 Q. How many proposals, constitutional revision proposals were  
4 there, approximately, in 1978?

5 A. There were nine; eight were proposed by the Constitution  
6 Revision Commission and one was a citizen's initiative to  
7 legalize casino gambling.

8 Q. Was that -- was the casino gambling provision hotly  
9 contested in the state?

10 A. Very much so. And Governor Reubin Askew actually -- rather  
11 than give much support to the Constitution Revision Commission's  
12 proposals, Governor Askew launched a big "Just Vote No" campaign  
13 to defeat that casino gambling initiative.

14 Q. What happened with regard to all of the other proposals,  
15 the 1978 proposals, when they went to the electorate?

16 A. Every single one of them failed, including -- and also the  
17 casino gambling initiative failed.

18 Q. Turning to the 1998 Constitution Revision Commission, can  
19 you tell us some of the members of that commission, to the  
20 extent you can recall?

21 A. Yes. It was -- it was nearly evenly divided between  
22 Democrats and Republicans at that time. Jon Mills, Martha  
23 Barnett, James Harold Thompson, Ellen Freidin were on it; an  
24 architect named Carlos Alfonso was on it. The Chief Justice,  
25 Gerald Colvin, was on it, and Bob Butterworth, the attorney

1 general.

2 Q. How about Alan Sundberg, was he on it?

3 A. Yes, former Justice Alan Sundberg was also on that CRC.

4 Q. What were the issues, the primary issues, involved with the  
5 1998 CRC?

6 A. There were a few that got more attention than the rest:  
7 One was reducing the size of the elected cabinet in Florida; one  
8 was making public schooling a priority; and one was changing the  
9 funding of the court system in Florida.

10 Q. Can you tell us briefly how that -- how the funding issue  
11 ended up with regard to a proposal to the electorate of 1998?

12 A. Yes. And just a little brief history why it needed to be  
13 changed, before the 1968 constitution, there was kind of a crazy  
14 quilt of courts that were not uniform throughout the state. The  
15 1968 constitution actually -- the judicial article was the only  
16 one that was passed a few years later in 1972 making a uniform  
17 state court system.

18 The piece that didn't get done as well as the rest was the  
19 funding, so by the time 1998 rolled around, the funding was like  
20 this: Judges were paid by the state, most court personnel and  
21 all the physical plants costs were paid by each individual  
22 county, and the clerks of court paid for some of their own costs  
23 as well.

24 This made a very uneven load on the counties. Rich  
25 counties had, you know, dry cleaning services for the judicial

1 robes. They would also be able to afford teen court and other  
2 kinds of -- translators, things like that, whereas poor counties  
3 couldn't -- couldn't afford very much at all, and some poor  
4 counties were maxed out on their millage and just -- it was a  
5 huge burden and a very uneven load across the state.

6 So this -- because the counties also at the time had to pay  
7 for state attorneys and public defenders. So what this funding  
8 bill did in 1998 was change the funding so that the state paid  
9 for all judicial personnel, including state attorney and public  
10 defender. The counties remain funders of just the physical  
11 plants, and then the clerks of court were paid by user fees, by  
12 the fees that -- such as traffic fines and that kind of thing  
13 that came into their own coffers.

14 And to the extent that the fees and fines generated by the  
15 clerks of courts were not sufficient to pay their -- to pay  
16 their expenses, the -- this funding proposal provided that the  
17 legislature would appropriate funds to make it adequate -- to  
18 make funding the clerks of court adequate.

19 Q. Now let's turn to the 2018 Constitution Revision  
20 Commission, Professor.

21 And first, if you would, describe the makeup of the members  
22 of that commission.

23 A. Yes. That commission was politically a mirror image of the  
24 1977 one. It had 33 Republicans and 4 Democrats. Most of the  
25 appointing authorities, with the exception of the chief justice,

1 were Republicans.

2 That Constitution Revision Commission had 6  
3 African-Americans, 5 Hispanic members, and 15 women.

4 Q. Did that Commission consider any felon restoration  
5 proposals?

6 A. Yes, it did. In fact, it had three proposals generated or  
7 brought forward by members.

8 Q. And at the time that these proposals were being considered,  
9 what, if anything, was happening with the initiative petition  
10 to -- the felon restoration initiative petition?

11 A. It was going apace. It was in the signature-gathering  
12 phase during much of this CRC and, in fact, I was asked more  
13 than once what happens if you end up with something proposed by  
14 the CRC on the ballot and also an initiative that does a similar  
15 thing that's also on the ballot, and the answer basically is,  
16 you know, if they're both adopted, they all become part of the  
17 constitution; but, yes, that citizen's initiative was in the  
18 works and gaining signatures.

19 Q. Did -- was Senator Chris Smith from Broward County a member  
20 of the Constitution Revision Commission?

21 A. Yes, he was, and he was the sponsor of one of the three  
22 proposals. Its co-introducer on that proposal was Arthenia  
23 Joyner, another African-American Democrat member of the -- of  
24 the CRC. So yes, his -- his proposal actually used the  
25 identical language of the citizen's initiative so that -- well,

1 I'll leave it at that. It used the identical language.

2 Q. Okay. And what occurred -- was there a point in time  
3 during this process that the initiative petition gained  
4 sufficient votes, sufficient signatures to go to the voters?

5 A. Yes, it did. On January 23, 2018, the initiative sponsors  
6 announced that they had enough signatures to go to the ballot,  
7 and three days later Senator Smith withdrew his proposal.

8 Q. Did Senator Smith ever indicate why he withdrew his  
9 proposal?

10 A. Yes. He said at a committee meeting that he was -- had  
11 actually brought forth his proposal in identical language to the  
12 initiative, in recognition that initiatives are a lot of work, a  
13 lot of effort and involve a lot of heart, and he wanted to make  
14 sure that just in case the signatures were insufficient, that he  
15 would be putting forward a way to get the same language onto the  
16 ballot.

17 At a meeting I attended he said, "If the signatures are  
18 good, you have my word I'll withdraw my proposal," and that's  
19 what happened.

20 Q. And do I understand correctly that his proposal and the  
21 Amendment 4 language was identical?

22 A. Yes. I've checked that. It was identical language.

23 MR. MEROS: Thank you. That's all I have.

24 THE COURT: Cross-examine?

25 MR. MORALES-DOYLE: Briefly, Your Honor.

1 THE COURT: Let me hold you up a minute. I did have a  
2 couple of questions. As I've done several times, let me ask  
3 that before you start the cross.

4 MR. MORALES-DOYLE: Your Honor, do you mind if I hit  
5 refresh while we are in between things for a second? I've got a  
6 very fuzzy video going on.

7 THE COURT: Yes. And we'll wait for you to come back,  
8 so go ahead and refresh.

9 MR. MORALES-DOYLE: I appreciate that.

10 Thank you.

11 (Pause in proceedings.)

12 MR. MORALES-DOYLE: I'm back.

13 THE COURT: Ms. Adkins, I've got a couple of questions  
14 about 1978 and then about 2018. And I think you already told me  
15 the information about 1978. I'm just going to make sure I  
16 understood it.

17 In 1978, the CRC put, I think you said, 8 proposals on  
18 the ballot, each a single subject; yes?

19 THE WITNESS: No. The single subject rule does not  
20 apply to Constitution Revision Commissions; and no, few of those  
21 were single subject.

22 THE COURT: So few of them were. So many were not?

23 THE WITNESS: That's correct.

24 THE COURT: And I know the single subject rule didn't  
25 apply. I did not realize in 1978 they had bunched things as

1 well.

2 In any event, there was a separate item for casino  
3 voting which, of course, was at a time when Florida had no  
4 casinos; correct?

5 THE WITNESS: I'm not an expert on the history of  
6 casinos in Florida, but I believe there were not casinos in  
7 Florida at the time.

8 THE COURT: In any event, that was very controversial;  
9 true?

10 THE WITNESS: Yes, it was.

11 THE COURT: And the governor ran the "Just Say No"  
12 campaign and every proposal failed; true?

13 THE WITNESS: That's correct, yes.

14 THE COURT: In 2018 the CRC put some number -- I've  
15 forgotten how many, but they were all -- I think all went beyond  
16 a single subject; is that right?

17 THE WITNESS: Your Honor, two of them were single  
18 subject. The other five were not.

19 THE COURT: All right. So total of seven, five of  
20 them bunched proposals. And in the bunched proposals, I've  
21 heard it said -- and I'm asking you, but the approach was to  
22 find something that seemed to be quite popular, and so for each  
23 of the five there was something that looked likely to pass, and  
24 maybe some things got dragged along with the approval. Is that  
25 a fair description?

1           THE WITNESS: Your Honor, I'm not sure that it is a  
2 fair description. I was not privy to, and nor did I attend,  
3 meetings of the style and drafting committee that made the  
4 decisions about grouping the proposals. But I've -- I  
5 understand that's a popular interpretation of how it was done,  
6 but I am -- I do not have any evidence that that is why they  
7 were grouped the way they were grouped.

8           THE COURT: All right. I'm glad I asked. That was my  
9 question. I guess I had heard the popular interpretation.

10           In any event, all 7 of those passed; is that right?

11           THE WITNESS: Yes.

12           THE COURT: And you'll know the answer to these -- and  
13 I'm asking just because I lived through the process. I want to  
14 say there were 12 proposals on the ballot and 11 of them passed,  
15 is that -- are those numbers right?

16           THE WITNESS: I confess, Your Honor, that I'm not sure  
17 that I know how many of the non-CRC ones passed, but that sounds  
18 correct to me; all CRC proposals plus all but one of the non-CRC  
19 proposals.

20           THE COURT: All right. Thank you. I think that's my  
21 questions.

22           Mr. Morales-Doyle?

23           MR. MORALES-DOYLE: Thank you, Your Honor.

24           Give me one second. I'm sorry.

25



1 CROSS-EXAMINATION

2 BY MR. MORALES-DOYLE:

3 Q. Ms. Adkins, again, your primary opinion that you offer here  
4 today is about the drafting of the 1968 Florida Constitution and  
5 whether or not that was motivated by race discrimination; is  
6 that right?7 A. That, and the subsequent Constitution Revision Commissions;  
8 1978, '98 and 2018.9 Q. And with regard to the 1968 constitution, is it fair to say  
10 that your opinion is based primarily on an assessment of the  
11 people who were involved in drafting and their overall goals in  
12 drafting?

13 (Reporter requested clarification.)

14 MR. MORALES-DOYLE: Sorry.

15 I apologize. I'll move slower, and hopefully I can  
16 keep it from being garbled, though I'm not sure I have that  
17 power.

18 BY MR. MORALES-DOYLE:

19 Q. Ms. Adkins, is it fair to say that your opinion is based  
20 primarily on an assessment of the people who were involved in  
21 the drafting of the '68 constitution and their overall goals in  
22 drafting that constitution?23 A. My opinion is based partially on that, and partially on  
24 what my readings of the transcripts and the minutes said about  
25 what the people actually did and said as they met.

1 Q. And with regard to the felony disenfranchisement provision  
2 specifically, you don't have any specific evidence one way or  
3 the other about the intentions with respect to that provision;  
4 is that right?

5 A. Race was never mentioned in any of the materials that I  
6 read regarding the work that the group did on the felon  
7 disenfranchisement provision.

8 Q. Okay. And so is that the basis for your conclusion that  
9 they weren't acting with racial animus with respect to that  
10 provision?

11 A. That is part of it. And also -- as I said, also who the  
12 people were. So both.

13 Q. Okay. So your basis for concluding that the felony  
14 disenfranchisement provision in the 1968 Florida Constitution --

15 MR. MORALES-DOYLE: Sorry. I'm moving fast again.

16 BY MR. MORALES-DOYLE:

17 Q. Your basis for your conclusion that that provision of the  
18 constitution was not enacted with rationally discriminatory  
19 intent is based on the people who were involved in drafting it  
20 and the fact that they didn't explicitly bring up race during  
21 their discussions of that provision; is that right?

22 A. Yes.

23 MR. MEROS: Your Honor, I did not go into the 1968  
24 constitution, and I --

25 THE COURT: The objection is overruled.

1 MR. MORALES-DOYLE: Your Honor, if I understand  
2 Mr. Meros correctly, he's saying that the direct didn't get into  
3 the 1968 constitution, and if we want to just agree that the  
4 opinions of the 1968 constitution are not part of the evidence  
5 in this case, we would agree to that and I could move on.

6 I just want to be sure we are not having a fight over  
7 nothing.

8 THE COURT: Well, Mr. Meros, the reason I overruled  
9 the objection is because the report is in evidence, too.

10 MR. MEROS: Your Honor, Dr. Kousser testified that his  
11 opinion -- he has no opinion that the 1968 constitution was  
12 invalid because of discriminatory animus.

13 MR. MORALES-DOYLE: Your Honor, it's our position, as  
14 I said earlier, that this is not relevant to the -- sorry.

15 THE COURT: Let's just go on. Ask your next question.  
16 I overruled the objection. You can ask what you wish.

17 MR. MORALES-DOYLE: Okay.

18 BY MR. MORALES-DOYLE:

19 Q. The provision in the 1968 constitution on felony  
20 disenfranchisement didn't change much from the 1885  
21 constitution; is that right?

22 MR. MORALES-DOYLE: I don't have any audio.

23 THE COURT: Your microphone is off, Ms. Adkins.

24 A. Sorry.

25 That's not correct. The language was examined,

1 streamlined, simplified.

2 BY MR. MORALES-DOYLE:

3 Q. Okay. Did the -- did the provision in the 1968  
4 constitution change in substance from the 1885 constitution in  
5 any way?

6 A. Yes. It changed -- it got rid of a list of specific  
7 offenses and made it just felons that the provision applied to  
8 and, of course, those adjudged mentally incompetent.

9 Q. But isn't it true that you don't actually know whether the  
10 changes in the 1968 provision narrowed the offenses that were  
11 covered by the 1885 constitution?

12 A. I'm not sure I said that they did narrow it.

13 Q. Okay. So you said it was limited to just felons, but you  
14 are not saying the 1885 constitution wasn't limited to just  
15 felons; are you?

16 A. I believe that at least one of the offenses listed in the  
17 1885 constitution was a misdemeanor.

18 Q. You don't actually know whether the offenses listed in the  
19 1885 constitution were misdemeanors or felonies; right?

20 A. I don't know that as to everything listed, no.

21 Q. And you don't know whether the 1968 provision narrowed the  
22 offenses that were disenfranchising from the 1885 constitution;  
23 right?

24 A. Because I have not -- because I do not know for sure  
25 whether everything listed in 1885 was a felony or not, it would

1 follow that I cannot be absolutely sure whether the 1968  
2 constitution narrowed the class of offenses.

3 Q. Okay. So if you can't say whether it narrowed the people  
4 who the disenfranchisement provision was applicable to, then in  
5 what way was the 1968 felony disenfranchisement provision  
6 substantively different in its application than the 1885  
7 provision?

8 A. Again, the definition of who could not vote under that  
9 provision was made simpler.

10 Q. So the language was simplified, is what you mean?

11 A. Correct.

12 Q. But not the definition of the -- the definition of who was  
13 disenfranchised, you don't know whether that changed; correct?

14 A. Correct.

15 Q. And you think that the felony disenfranchisement provision  
16 in the 1885 constitution was likely put there for racist  
17 reasons; correct?

18 A. No, I don't.

19 That felony -- some version of a felony disenfranchisement  
20 provision has been in every Florida Constitution beginning  
21 before African-Americans had the vote. So, at it's outset --

22 Q. So --

23 A. -- it could not have been racially motivated, and it has  
24 stayed there ever since.

25 Q. So the fact that it was originally put in the constitution

1 before black men were allowed to vote means that it couldn't  
2 have been put there for a racist reason in 1885?

3 A. If somebody already can't vote, then why would you -- why  
4 would you say something about whether a different group of  
5 people, people who have committed some sort of crime, can't  
6 vote.

7 Q. Okay. So you're telling me that you don't think it's  
8 likely that the felony disenfranchisement provision in the 1885  
9 constitution was racially discriminatory?

10 A. Again, it was continued in every constitution.

11 Q. Do you think it's likely that it was included for racially  
12 discriminatory reasons in 1885?

13 A. I think there were a lot of racially discriminatory  
14 provisions in the 1885 Constitution. I don't have an opinion as  
15 to whether that one was.

16 Q. You don't have an opinion?

17 Do you remember a few weeks ago I took your deposition,  
18 Professor Adkins?

19 A. Yes.

20 Q. And I'm going to turn to page 52 of that deposition, lines  
21 2 through 9.

22 A. Okay. Shall I pull it up?

23 Q. You don't need to. I'm going to read you a portion of  
24 that, and you can tell me if you remember this question and this  
25 answer. I identified that portion for my opposing counsel's

1 benefit.

2 Do you remember I asked you this question and gave you this  
3 answer? Question --

4 MR. MEROS: Counsel, could you give me a page number  
5 again?

6 MR. MORALES-DOYLE: And I'll slow down. Pages 52,  
7 lines 2 through 9.

8 BY MR. MORALES-DOYLE:

9 Q. Do you recall I asked you this question and you gave this  
10 answer?

11 MR. MORALES-DOYLE: I just lost all video, so I hope  
12 y'all can still hear me.

13 THE COURT: We can hear you.

14 MR. MORALES-DOYLE: Okay.

15 THE COURT: And I, at least, have the deposition  
16 you're talking about on my screen.

17 MR. MORALES-DOYLE: Okay. Great. I don't need it, so  
18 we'll just proceed.

19 BY MR. MORALES-DOYLE:

20 Q. Do you recall I asked this question and you can gave this  
21 answer?

22 A. Yes.

23 Q. "Do you offer an opinion" -- just let me ask the question,  
24 please, sorry.

25 "Do you offer an opinion as to whether or not the felony

1 disenfranchisement provision in the 1885 Constitution was  
2 racially discriminatory?"

3 Answer: "I think that it's likely that it was because of  
4 the politics at the time that Reconstruction was over. The  
5 southern segregationists were back in power, and the  
6 constitution that they enacted in 1885 was not a very good one  
7 for a lot of people, blacks among them."

8 Do you recall that?

9 A. Yes.

10 Q. So isn't it true that you do think it's likely that the  
11 felony disenfranchisement provision was placed in the 1885  
12 constitution for racist reasons?

13 A. Sure, I'll -- well, racially discriminatory, yes. I'll  
14 stand by that.

15 Q. Okay. Great.

16 And after being drafted by the Constitution Revision  
17 Commission in 18 -- in 1968 -- excuse me -- that constitution  
18 had to be approved by the Florida Legislature; isn't that right?

19 A. Yes.

20 Q. And you take no position on whether that legislature acted  
21 with racially discriminatory animus; correct?

22 THE COURT: Turn your mic on.

23 THE WITNESS: The evidence would suggest two things:  
24 One, that the legislature did not do much about that felony  
25 disenfranchisement provision; second, that that legislature was



1 the most progressive in the history of Florida since  
2 Reconstruction.

3 BY MR. MORALES-DOYLE:

4 Q. Okay. In coming to your conclusion that the 1968  
5 constitution was not enacted with racial animus, you didn't  
6 consider whether the felony disenfranchisement provision had a  
7 disparate racial impact; right?

8 A. At that time?

9 Q. At any time.

10 A. Well, what would be relevant would be whether it had a  
11 disparate racial impact at that time. I do know that that time  
12 preceded mass incarceration. It also was just after *Gideon v.*  
13 *Wainright* which resulted in quite a few felons getting out of  
14 prison.

15 Q. Ms. Adkins, you don't have any expertise on whether or not  
16 there was structural inequality in the criminal justice system  
17 in Florida in 1968; right?

18 A. Correct.

19 Q. And you didn't actually consider whether or not the  
20 provision had a racially disparate impact in coming to the  
21 conclusions in your report; correct?

22 A. Correct.

23 Q. In fact, you didn't think that the racial impact of that  
24 provision was relevant to an assessment of whether or not it was  
25 racially discriminatory; is that right?

1 A. I don't believe I've said that, but you're right; I did not  
2 consider that.

3 Q. You don't think you said that it wasn't relevant to your  
4 assessment?

5 A. If you've got something that says I said that, then I'll  
6 stand by it.

7 Q. Okay. So do you think that the racial impact of the felony  
8 disenfranchisement provision in the 1968 Florida Constitution is  
9 relevant to an assessment of whether or not the law was  
10 intentionally racially discriminatory?

11 A. No, I don't, and here's why: Unless the people crafting it  
12 knew about that -- knew about the impact, I don't know how it  
13 could affect their intent.

14 Q. Did you consider whether the people crafting it knew about  
15 that impact?

16 A. No, but I read the minutes of the committee that drafted  
17 it, and there was never any mention of any impact.

18 Q. But you don't whether they knew about the impact when they  
19 drafted it?

20 A. Correct.

21 Q. And you didn't consider that in coming to your opinion?

22 A. Correct.

23 Q. I want to talk a bit about these other CRCs. You note that  
24 the 1977-78 CRC did propose a constitutional amendment to limit  
25 felony disenfranchisement; right?

1 A. Right.

2 Q. And they proposed that change to the 1968 Constitution in  
3 part to remedy historical discrimination; is that right?

4 A. I don't know their intent.

5 Q. Okay. Do you think that part of the purpose of that  
6 revision was to remedy historical discrimination?

7 A. I don't know.

8 Q. Okay. Turning back to your deposition transcript, page 85,  
9 lines 3 to 5, do you recall that I asked you this question and  
10 you gave this answer?

11 Question: "Do you know whether that CRC offered up that  
12 amendment in part to remedy historical discrimination?"

13 Answer: "Yes, that's one way you could put it."

14 A. I see that, yes. I don't doubt that I said that.

15 Q. Do you recall -- is it fair to say that Governor Askew and  
16 the 1977-78 CRC were aware of the racially discriminatory impact  
17 of felony disenfranchisement in Florida?

18 A. I don't know specifically whether Governor Askew was aware  
19 of the racial impact. I do know that he was routinely restoring  
20 voting rights to felons by a rule that he had promulgated and  
21 wanted to see it put into the constitution so that it would be  
22 unassailable, I suppose; but when I read the transcripts, there  
23 was no mention of race.

24 Q. Now, moving to the 2017-2018 CRC, you mentioned that that  
25 CRC also considered a number of amendments limiting felony

1 disenfranchisement; right?

2 A. Correct.

3 Q. In fact, you say in your report that the CRC "considered  
4 the restoration of voting rights of felons a priority and stated  
5 it was ready to place it on the ballot even if the citizens'  
6 initiative had not been able to"; right?

7 A. Correct. And I possibly misspoke saying that the entire  
8 CRC considered it a priority. However, three members -- four  
9 members did consider it enough of a priority to put forward  
10 proposals. It had been mentioned at nearly all, if not all, of  
11 the public hearings that preceded the CRC's work, and these  
12 proposals each passed committee meetings -- committee votes,  
13 which was -- which was about all that any proposal could do in  
14 the CRC, because it did all of its work through committees and  
15 met as -- in plenary session very, very little.

16 Q. So you don't stand by the statement that the whole CRC  
17 considered rights restoration a priority in 2017 to 2018?

18 A. That's correct. I think I need to recede from saying that  
19 the entire CRC considered it a priority.

20 Q. And your statement now is that four members of the CRC  
21 considered it enough of a priority to propose the amendment; is  
22 that right?

23 A. Yes. And the committees that they brought these proposals  
24 before voted them up, yes.

25 Q. Okay. You don't take any position as to whether or not the

1 actions of the CRCs since the 1968 constitution have any  
2 relevance to an assessment of whether or not Senate Bill 7066  
3 was enacted with a particular intent, do you?

4 A. Not as to 1978 and 1998 CRCs.

5 Q. So you take a position that the actions of the 2017-2018  
6 CRC are relevant to an assessment of the intent behind Senate  
7 Bill 7066?

8 A. Not directly.

9 Q. How about indirectly?

10 A. The appointment process for CRC members is that out of the  
11 37 members, 18 are appointed by the leadership of the House and  
12 the Senate. It is unlikely, just according to logic, that  
13 someone with appointing authority would appoint people they  
14 believed would have priorities at war with their own priorities.  
15 So, again, that's why I say indirectly. We had 18 members of  
16 the CRC who had been appointed by members of -- or by the  
17 leadership of the House and the Senate.

18 Q. So your position is that because the members of the  
19 2017-2018 CRC were at least, in part, with some portion of the  
20 legislature, that that then tells us something about whether a  
21 law passed later by a different legislature was passed with a  
22 particular intent or not?

23 A. This is a matter of human logic. This is not science.  
24 This is what our own experience as human beings tells us about  
25 human nature.

1 Q. So is this based on your historical expertise or just your  
2 experience as a human being?

3 A. The link, if any, between the 2018 CRC members appointed by  
4 the speaker and the president of the Senate and the legislature  
5 that met the next spring is a matter of human logic. It is not  
6 a matter of historical expertise.

7 Q. Now, in your report, you also take issue with Dr. Kousser's  
8 use of newspaper articles; is that right?

9 A. Yes.

10 Q. And your opinion is that it is inappropriate to rely on  
11 newspapers to inform what the newspaper's readers are thinking;  
12 right?

13 A. Yes. I think it is a leap to say that because someone  
14 reads something in a newspaper, that that is what the reader is  
15 thinking as opposed to what the writer is thinking.

16 Q. But you don't dispute that contemporaneous newspaper  
17 articles might show the information available to voters at the  
18 time they voted on Amendment 4; right?

19 A. They would show some of the information available to  
20 voters.

21 Q. And you don't dispute that voters sometimes rely on  
22 information in newspapers --

23 (Reporter requested clarification.)

24 MR. MORALES-DOYLE: Sorry. I apologize.

25

1 BY MR. MORALES-DOYLE:

2 Q. You don't dispute that voters sometimes rely on information  
3 in newspapers to inform their voting behaviors, do you?

4 A. That would make logical sense. No, I don't dispute that.

5 Q. And you don't dispute that the information available to  
6 voters in the newspaper might be relevant to determining those  
7 voters' understanding of the amendment; do you?

8 A. It would be -- could be one issue.

9 Q. Give me one second here.

10 Ms. Adkins, you don't think that Dr. Kousser's analysis of  
11 the intent of Senate Bill 7066 or the factors relevant to the  
12 intent behind that bill fails even if you are right about your  
13 conclusions about the 1968 constitution; right?

14 A. Can you repeat the question, please?

15 Q. Sure. You don't think that Dr. Kousser's analysis of the  
16 factors relevant to the intent behind Senate Bill 7066 fails  
17 even if you're right in your opinion about the 1968 Florida  
18 Constitution; right?

19 A. I think those are two different things. I do not  
20 believe -- I do not agree with every one of his analyses of  
21 those factors.

22 Q. But you're not here to offer an opinion on his analysis of  
23 the different factors; right?

24 A. I'm here to offer an opinion on the evidence of racial  
25 animus in the 1968 Constitution Revision Commission and

1 subsequent CRCs.

2 Q. And you don't think that Dr. Kousser's analysis fails if  
3 you are right in your opinion about those issues; correct?

4 A. If you're asking whether I think that if I'm right, he must  
5 be wrong -- is that what you are asking?

6 Q. I'm just asking if you think his analysis fails if you are  
7 right.

8 A. I don't think that the failure or not of his analysis  
9 depends in large part on whether I'm right.

10 Q. Okay. So if you're correct about your analysis as to the  
11 1968 constitution, does that mean that Dr. Kousser is incorrect  
12 with the intent or the factors relevant to the intent of Senate  
13 Bill 7066?

14 A. I believe I just answered that.

15 Q. And why don't you answer it again.

16 A. I don't think that there is an "if/then"; if I am right,  
17 then he is wrong.

18 Q. Okay.

19 MR. MORALES-DOYLE: I have nothing further,  
20 Your Honor.

21 THE COURT: Ms. Adkins, before I turn it back to  
22 Mr. Meros for any redirect, I do have a couple of questions  
23 following up on the subjects that Mr. Morales-Doyle discussed  
24 with you, and I'm probably going to expand it out a little bit.

25 One of things you mentioned was felon



1 disenfranchisement started in Florida in 1838. During the  
2 course of the trial and in some of the papers submitted  
3 previously, there were inconsistent references to some of this.  
4 Sometimes it was an assertion that this was a Jim Crow law and  
5 the fact that it first came in in 1838. I think you're right  
6 that shows that the original purpose of the felon  
7 disenfranchisement provision could not have been to keep  
8 African-Americans from voting because they weren't allowed to  
9 vote at all.

10 I do want to ask a little bit about which crimes  
11 prevented a person from voting. One thing I looked at a little  
12 bit early in the case -- I haven't looked at it in a long time.  
13 Neither side seems to have made anything out of it, and I think  
14 I decided there wasn't much to it. But let me find out if you  
15 know anything about this.

16 There was a provision in the act of Congress  
17 readmitting Florida to the nation that dealt with this subject  
18 and, as I recall it, basically said Florida cannot expand the  
19 disenfranchisement of felons beyond some category. I don't  
20 remember specifically how it was described.

21 Have you dealt with this at all?

22 THE WITNESS: No, Your Honor, I have not.

23 THE COURT: Was there any change that you know of in  
24 the disenfranchisement provision between 1838 and 1885?

25 THE WITNESS: Your Honor, I'm pretty sure there was,

1 but I do not know it by heart.

2 THE COURT: Fair enough.

3 We've also had some reference, I think in the  
4 testimony during the trial, but if not, during -- in materials I  
5 read that are part of the record, about black codes coming in in  
6 the 19th Century, I suppose later parts of the 1880s, perhaps  
7 sometime along in there; and the assertion was that new things  
8 were defined as crimes with the goal of being able to prosecute  
9 African-Americans and, therefore, disenfranchise them.

10 Have you looked at all at that?

11 THE WITNESS: Not in detail, Your Honor. I'm aware of  
12 what -- I'm aware of writing about that; that certain crimes  
13 would be included in a disenfranchisement because they were  
14 considered to be black crimes and that certain others would be  
15 not in there because they were not considered to be black  
16 crimes.

17 THE COURT: In any event, you don't have any  
18 information about whether any of that was still going on, say,  
19 in 1968 when the new constitution was dealt with?

20 THE WITNESS: No, I don't know, Your Honor, if you are  
21 referring to in general or with the group that wrote this new  
22 constitution. I'm sure there were still plenty of racists in  
23 Florida by the mid-'60s. I'm sure there have never not been  
24 plenty of racists in Florida and everywhere else. But the group  
25 in the lead on this 1966 CRC was looking to make Florida a more

1 egalitarian place.

2 THE COURT: That was my questions.

3 Before I go back to Mr. Meros, Mr. Morales-Doyle, do  
4 you have questions just to follow up on mine?

5 MR. MORALES-DOYLE: I do not, Your Honor. Thank you.

6 THE COURT: All right. Mr. Meros.

7 BY MR. MEROS:

8 Q. Professor Adkins, tell us, if you would, who was the  
9 chairman of the Constitution Revision Commission in 1968?

10 A. That was the lawyer Chesterfield Smith.

11 Q. I apologize. Let me ask a better question.

12 In the lead-up to the 19 -- passage of the 1968  
13 constitution, can you tell us who the chairman was of the CRC as  
14 of 1966, I believe?

15 A. Yes, the chair of that commission was a lawyer from Bartow  
16 named Chesterfield Smith. He was a -- he was a reformer at  
17 heart.

18 He had been a captain in World War II in the European  
19 Theater. One thing he did, his battalion occupied a town that  
20 had a prison camp adjacent. The conditions were horrible. This  
21 was a German town. And Smith came in and looked at it and  
22 ordered the townspeople out of their houses and into the prison,  
23 and the prisoners out of the prison into the townpeople's homes,  
24 and said it would stay that way until the townspeople cleaned up  
25 the prison. He never bragged about that one. His own son never

1 knew about that until he, himself, was middle-aged and found out  
2 about it from a former fellow soldier of Smith.

3         Smith went on to become president of the ABA, was one of  
4 the first to denounce the corruption in the Richard Nixon  
5 administration. When he came back to his law firm, he made sure  
6 that black lawyers and women lawyers were not only hired but  
7 also promoted and supported. During the AIDS scare in Miami in  
8 the 1980s, Smith was not afraid to have an openly gay lawyer who  
9 the firm then promoted to partner. He also helped his firm  
10 become the first ever to have a community services team that was  
11 dedicated to doing nothing but pro bono cases.

12 Q.     What, if any, particular impact did Chesterfield Smith have  
13 on this committee?

14 A.     As you might guess, he had a pretty forceful personality.  
15 And although I only interviewed four members, there were other  
16 interviews of lots of the members, and they would say things  
17 like, "Chesterfield Smith never asked you for advice. He would  
18 just tell you what you needed to do and you would do it"; also,  
19 that Smith insisted that all the commissioners, no matter if  
20 they were a justice or a senator elsewhere, they would all be  
21 just commissioner. In his commission -- but then -- as one of  
22 them said, But everybody knew who the king was, and that was  
23 Chesterfield Smith. They would even call him Lord Chesterfield  
24 behind his back.

25         So he was a strong leader. He made it very clear what he

1 wanted to happen in that CRC and elsewhere in life.

2 Q. Please tell us, if you would, whether Richard Pettigrew was  
3 involved in the commission and what role did he play in the  
4 process?

5 A. Richard Pettigrew was a young legislator at the time. He  
6 was a young representative, was surprised to be named to the CRC  
7 because he was so young and liberal and from Miami. But he --  
8 he was a student of government. He cared a lot about good  
9 government. He was one of three members who formed a kind of  
10 liberal majority on the Suffrage and Elections Committee that  
11 considered this felon disenfranchisement language.

12 Q. If you would, something about Richard Earle and what role  
13 he played in the commission.

14 A. Richard Earle was also a member of the commission and a  
15 member of the Suffrage and Elections Committee. He was  
16 courageous. Not too many years after this commission, there was  
17 a scandal in the Florida Supreme Court which resulted in a  
18 majority of the justices being -- leaving or being removed.

19 And Richard Earle was a lawyer who actually prosecuted one  
20 of the justices in his JQC -- excuse me -- in his impeachment  
21 which, if you think about it, is a pretty courageous thing for a  
22 lawyer who is going to have to report to a justice some day to  
23 do. So, yes, he was a courageous man.

24 Q. What role, if any, did Warren Goodrich have on this  
25 commission?

## Cross-Examination - Professor Adkins

1 MR. MORALES-DOYLE: Objection, Your Honor.

2 THE COURT: Sustained.

3 Mr. Meros, look, we are not going to go through each  
4 of these people. Let's -- if you want to make a little bit of  
5 your record, that's fine, but let's get right through this.

6 MR. MEROS: Yes, sir. This is my last question.

7 May she proceed, Your Honor?

8 THE COURT: Yes.

9 THE WITNESS: Warren Goodrich was a law school  
10 classmate of Chesterfield Smith who was head of the Democratic  
11 Party of Florida at the time. He was also on the Suffrage and  
12 Elections Committee and actually was a person who suggested  
13 language that would have restricted disenfranchisement only to  
14 people actually in prison, so they were -- they were looking  
15 closely at this language.

16 MR. MEROS: That's all I have.

17 THE COURT: Thank you, Professor Adkins. This  
18 concludes your testimony. You're welcome to monitor the rest of  
19 the proceedings as you wish or to go about your business, but  
20 please make sure if you stay on that you turn off your video and  
21 mute your microphone.

22 Mr. Meros, we'll take a morning break at some point.  
23 Tell me what's next so we can kind of plan out the day.

24 MR. MEROS: Mr. McVay will do that, Your Honor.

25 THE COURT: All right. Mr. McVay.

1 MR. McVAY: Hi, Your Honor. Good morning.

2 We had a matter we would like to discuss at a sidebar  
3 if that's appropriate. Ms. Lang and I have been talking and she  
4 recommended we do that before our next witness, who will be  
5 Ms. Matthews.

6 THE COURT: All right. And you say at a sidebar. Is  
7 it something that needs to be not public?

8 MR. McVAY: Yes, sir.

9 THE COURT: I think the best way to do that is to call  
10 in. You've got --

11 MR. McVAY: Yes, sir.

12 THE COURT: -- the number we've used to call in, so if  
13 you'll place that phone call, we'll arrange to do it.

14 Is this something -- we had one matter that didn't  
15 have anything to with the merits of the case and didn't need to  
16 be on the record. Should I have the court reporter or not?

17 I see you nodding head, yes. I'll have the court  
18 reporter available when you call in.

19 MR. McVAY: Yes, sir. Five minutes from now okay with  
20 Your Honor?

21 THE COURT: Five minutes from now is fine. Yeah,  
22 that'd be good.

23 For those monitoring the call, I'm going to say  
24 15-minute break. It may wind up being longer than that, but  
25 I'll plan to come back -- well, let's do this. Let's stretch it

1 out to 10:55. That's 19 minutes. I'll plan to come back on to  
2 the trial at 10:55.

3           Somebody else was saying "Your Honor." Is there  
4 somebody else that wishes to be heard before we break?

5           MR. ROSENTHAL: It's Mr. Rosenthal from Miami-Dade  
6 County, sir. I didn't know if this matter required the presence  
7 or would be of interest to the county's position in this case?  
8 I trust both the State and the plaintiff to include us in the  
9 call if it's something we need to be present for.

10           THE COURT: How about it, Mr. McVay? Do you know off  
11 the top of your -- is this something that Mr. Rosenthal is going  
12 to be interested in?

13           MR. McVAY: I don't believe so, Your Honor.

14           MS. LANG: I don't think so, Your Honor.

15           THE COURT: All right. Mr. Rosenthal, if something  
16 comes up that sounds like -- sounds like to me you'd be  
17 interested in, we'll make sure to add you to the call.

18           MR. ROSENTHAL: Thank you, Your Honor.

19           THE COURT: All right. Thank you, all.

20           (Recess taken at 10:37 AM.)

21           (Following conference held at sidebar was not transcribed  
22 and is under sealed.)

23           (Resumed at 11:15 AM.)

24           MR. JAZIL: Your Honor, I will be doing the direct for  
25 Ms. Matthews.



1 THE COURT: Wait just a minute. Wait until we get the  
2 plaintiffs on.

3 MR. JAZIL: Yes, sir.

4 THE COURT: This is Judge Hinkle. I'm back.

5 (Pause in proceedings.)

6 MS. EBENSTEIN: All right. Your Honor, this is Julie  
7 Ebenstein. I believe we're waiting for my colleague, Mark  
8 Gaber. I will check in with him now and see if he's having  
9 technological issues. Sorry for the delay.

10 THE COURT: That's all right. While we're waiting for  
11 Mr. Gaber -- well, we'll wait a moment because I think I lost  
12 Ms. Ebenstein while she checks on Mr. Gaber.

13 MS. EBENSTEIN: He is trying to get online now.

14 There we go.

15 MR. GABER: Can you hear me, Your Honor, and see me?

16 THE COURT: Yes.

17 MR. GABER: Okay.

18 THE COURT: An explanation for those who were not on  
19 the phone call, the phone call dealt with scheduling matters.  
20 You may think because it took so long -- excuse me -- that there  
21 was something complicated or extensive. Actually, what happened  
22 was I indicated we would take up the conversation on the line  
23 that I use for audio hearings, thinking that we would have the  
24 two or three people that needed to be on the call.

25 As people were checking in, there were already 20

1 participants, which leads me to believe some of the participants  
2 in the trial, and probably some members of the public, are  
3 astute enough to figure out what that phone number was, so we  
4 had to rearrange how to conduct a hearing. And that's  
5 technology that's been in use since, I don't know, the 1960s or  
6 longer, but it wasn't as easy as you might have thought. We  
7 eventually got it taken care of, and now we're back at the video  
8 trial.

9 And, Mr. Jazil, please call your next witness.

10 MR. JAZIL: Your Honor, we'd call Director Matthews to  
11 the stand.

12 Would it be appropriate, Your Honor, for me to stand  
13 in front of Director Matthews so that I'm closer to the phone?  
14 I'm happy to also ask questions from the podium, but that may  
15 affect the sound quality. I don't know if the Court needs me to  
16 be on screen or not.

17 THE COURT: No, and the explanation to that is you and  
18 Ms. Matthews are in the same room, I guess conference room at  
19 your law office, and that's okay. You can be wherever you wish  
20 as long as you can be heard.

21 Ms. Matthews has the best seat in terms of the video  
22 quality, so you can inquire from where you wish to inquire.

23 Ms. Matthews, if you would, please, raise your right  
24 hand.

25 **ISABEL MATTHEWS, DEFENSE WITNESS, DULY SWORN**

1 THE COURT: Please tell us your full name and spell  
2 your last name.

3 THE WITNESS: My name is Maria Matthews -- well,  
4 Isabel Matthews, if you want to go with the full name, and the  
5 last name is spelled M-a-t-t-h-e-w-s.

6 THE COURT: Mr. Jazil, you may proceed.

7 MR. JAZIL: Your Honor, one other preliminary matter.

8 THE COURT: Let me do this, though. I think I need to  
9 change my answer to your earlier question. No, you may not be  
10 in front of Ms. Matthews in a position where I cannot see you.  
11 I think the other side gets to see you if you're in position  
12 where the witness can see you.

13 So you can certainly inquire from that podium you've  
14 got set up behind her, if you have a microphone there.

15 MR. JAZIL: Yes, Your Honor.

16 I'm going to rearrange things and just step behind  
17 Director Matthews at 6 feet distance so that I can be in the  
18 frame.

19 (Pause in proceedings.)

20 MR. JAZIL: Can the Court hear me, Your Honor?

21 THE COURT: I can. If you keep your voice up, it will  
22 help.

23 MR. JAZIL: Thank you, Your Honor.  
24  
25

## Direct Examination - Director Matthews

1 DIRECT EXAMINATION

2 BY MR. JAZIL:

3 Q. Director Matthews, could you please state your current  
4 position for the record?

5 A. I am currently the director for the Florida Division of  
6 Elections.

7 Q. How long have you served as the director of the Florida  
8 Division of Elections?

9 A. I have been the director since January 2013.

10 Q. What was your position before that?

11 A. I was chief of the Bureau of Voter Registration Services  
12 within the Florida Division of Elections.

13 Q. And what was your position before you served as the chief  
14 of the Division of Voter Registration?

15 A. Before I served as the chief for the Bureau, I was also an  
16 assistant general counsel in the Florida Department of State.

17 Q. How long were you assistant general counsel to the Florida  
18 Department of State?

19 A. From October -- well from 2004 to 2012.

20 Q. Okay. And, Director Matthews, you -- I'd like to get a  
21 better sense of your duties and your responsibilities as  
22 director of the Division of Elections, so could you tell us what  
23 your current responsibilities are?

24 A. I currently oversee the director -- the Director's Office,  
25 the three bureaus -- Bureau of Election Records, which deals

## Direct Examination - Director Matthews

1 with campaign finance and qualifying; with the Bureau of  
2 Voter -- Voting Systems Certifications, which deals with  
3 certification of voting systems and approval of peripherals; and  
4 then I also oversee the Bureau of Voter Registration Services,  
5 which deals with voter registration and voter eligibility.

6 Q. In your capacity as the Division director, did you have any  
7 role whatsoever with the Restoration of Rights Work Group?

8 A. I'm sorry. Repeat the question.

9 Q. Did you have any role whatsoever as part of the Restoration  
10 of Rights Work Group that was set up by the Florida Legislature?

11 A. Yes. The Division of Elections served as the  
12 administrative support and whatever other needs were required by  
13 the work group.

14 Q. How many of the work group's meetings did you attend?

15 A. There were five meetings, and I attended all five of them.

16 Q. And I'd like to get a sense of how hands-on you are with  
17 the Division of Elections. Could you share what specifically  
18 you do from time to time as the director of the Division?

19 A. Well, obviously each bureau has a chief, but depending on  
20 what special projects or needs are, I may get much more  
21 involved. And obviously, with the Bureau of Voter Registration  
22 Services being the largest bureau and also dealing with very  
23 timely issues about voter registration and eligibility, I will  
24 usually have a much more hands-on with that particular bureau  
25 than I do even with the other two.

## Direct Examination - Director Matthews

1 Q. And, Director Matthews, the record in this case shows that  
2 the Division has a voter systems hotline. Do you have any role  
3 whatsoever with that hotline?

4 A. Well, yes, that falls within the Bureau of Voter  
5 Registration Services, so obviously I would have a hand in it or  
6 at least know what's going on with the types of calls that might  
7 come in. We usually use that as a -- to take the pulse of what  
8 kinds of issues might be bubbling up or the interest of what  
9 people have when they're calling on it.

10 Typically it's going to be what's -- where am I registered,  
11 am I registered, where's my precinct, where do I request a  
12 vote-by-mail ballot. Those kinds of things are usually the top  
13 questions that come in on the line.

14 Q. Do you, yourself, answer that phone line from time to time?

15 A. I have been known to answer them, yes. In hurricane season  
16 or whenever they need someone to take on some extra calls, I'll  
17 do it.

18 Q. Director Matthews, just to give everyone context, I'd like  
19 for you to tell us what the Division of Elections did in the  
20 months immediately after passage of Amendment 4.

21 A. Well, after passage of Amendment 4 -- that obviously was in  
22 November -- we realized we were going to have to do some  
23 considerable work in just researching how we were going to have  
24 to modify our processes. Obviously we were already involved in  
25 identifying potentially ineligible voters based on felony

1 convictions, but with the adoption of the Amendment 4, the  
2 questions and the process became a little more complex in terms  
3 of we would need to know -- it became important to know what  
4 was -- what type of felony. And then -- and then what the  
5 sentences were.

6 But it became apparent, too, that there was some  
7 clarification that we believed was necessary, so it became clear  
8 early on that the legislature was going to get involved in this  
9 to help clarify what a murder was, what a felony sexual offense  
10 was, and even what was the completion of a sentence.

11 Q. Now, I'd like to get a bit more specific about some of the  
12 things you mentioned. Which stakeholders, which agencies did  
13 you talk to immediately after the passage as you were getting a  
14 handle on things?

15 A. Well, we reached out to our current -- which we were  
16 already engaged with the part -- our partners, the Florida  
17 Department of Law Enforcement, because that's -- we use their  
18 criminal -- we work with them to obtain criminal records  
19 information.

20 We work also with the Florida Department of Corrections  
21 because their database is information that we also use and were  
22 already using in connection with our felony matching process.

23 We worked with the -- we did outreach with the clerk of  
24 courts to find out what kinds of record's online, as well as  
25 available on their clerk website.

1           We also reached out to the Florida Commission on Offender  
2 Review because they have experience in handling clemency  
3 processes, obviously, and so they had some -- they have  
4 expertise in court records which we -- we had not had up to that  
5 point at that level.

6 Q.    And outside of the state agencies you mentioned and the  
7 clerks you've mentioned, did you talk to any other interested  
8 stakeholders about implementation of Amendment 4?

9 A.    We also had input from advocacy groups, and I don't  
10 remember exactly the timing of when we met with them. I think  
11 it was at least once that we met with them, if not twice. We  
12 also had -- there was an advocate from the coalition that  
13 actually served on the work group, the working support group.

14 Q.    And then you mentioned you met with advocacy groups? Do  
15 you remember which ones?

16 A.    Obviously the ones that come to mind are ACLU and the  
17 League of Women Voters, and I forget if it's Latina or Latino  
18 Project. It was a coalition of advocacy groups.

19 Q.    Could you summarize for us in a sentence or two what their  
20 input was at this point in time?

21 A.    Well, they obviously had a great deal of interest in  
22 knowing what the procedures were going to be going forward.  
23 And, you know, everything from -- well, most particularly I  
24 think their interest was the fines, fees, costs, and restitution  
25 and how that was going to be handled.



1 Q. What was their perspective, to you, on how it should be  
2 handled?

3 A. Well --

4 THE COURT: Let me interrupt. Let me interrupt you  
5 just a second, Mr. Jazil. You need to refresh your video.

6 MR. GABER: Your Honor, I was going to object to  
7 hearsay on that question.

8 THE COURT: Well, it's not hearsay. The objection is  
9 overruled.

10 BY MR. JAZIL:

11 Q. Director Matthews --

12 THE COURT: It's not hearsay because the purpose for  
13 which it would be admitted does not turn on whether it's true or  
14 not.

15 BY MR. JAZIL:

16 Q. Director Matthews, I asked if you could summarize for me in  
17 a sentence or two what the perspective, as you understood it,  
18 was of the advocacy groups with whom you met.

19 A. First of all, I want to say this is well over a year ago;  
20 however, I do remember that the advocacy groups had pretty well  
21 spelled out what their interests and what their focus was and,  
22 you know, obviously wanting to have a fair process, which I  
23 share that same interest in making sure that people would have  
24 an opportunity to be able to, you know, complete their sentence  
25 or find ways if they couldn't to be able to do it.

1 I still would probably defer to the multipage letter that  
2 they submitted to us because we pretty much followed along that  
3 line.

4 Q. Thank you. Now that we have --

5 MR. JAZIL: Your Honor, can you see us?

6 THE COURT: Yes.

7 MR. JAZIL: I apologize.

8 BY MR. JAZIL:

9 Q. Now that we have a little context about the month  
10 immediately after Amendment 4's passage, with the Court's  
11 indulgence and Director Matthews', what I'd like to do is do  
12 four things: number one, walk through the registration removal  
13 process generally; number two, talk about how the passage of  
14 Amendment 4 and Senate Bill 7066 changed that process; number  
15 three, with the Court's indulgence and to answer some of the  
16 questions the Court has asked -- I'd like to walk through two of  
17 the declarations in this case so we can have actual examples of  
18 how that process is being implemented; and, number four, I'd  
19 like to walk through some of the more complex examples that the  
20 Court has provided and the parties have asked questions about  
21 during the course of this proceeding.

22 So with that as a road map, Your Honor and  
23 Director Matthews, I'd like to begin by talking about  
24 registration and removal generally.

25 Director Matthews, how many ways can a voter register to

1 vote in Florida?

2 A. There are three basic forms that are accepted: There's the  
3 statewide voter registration application form that's prescribed  
4 in law; and then our state law also says that the national  
5 mail-in form, which derives from the National Voter Registration  
6 Act form, is also to be accepted; and then the federal postcard  
7 application form which is used by those that are overseas or  
8 military.

9 Q. Now, Director Matthews, what advantage, if any, is there to  
10 using one of these three forms over another?

11 A. There's no advantage. It's just, you know -- it's whatever  
12 form the person ends up choosing to use, as long as they provide  
13 all the information that's necessary to be able to determine  
14 whether they're eligible at that point by the Supervisor of  
15 Elections. Those forms are either in paper, or it could be an  
16 electronic intake process, or it could be online.

17 Q. Okay. So now the form is filled out, what happens next?

18 A. So if the Supervisor of Elections reviews the form and it's  
19 complete on its face, and then the social security number and  
20 driver's license number are verified, that person gets  
21 registered.

22 Within 24 hours of that process, voter registration -- any  
23 new registration or any update to an existing registration is  
24 cross-checked against the FDLE criminal records database.

25 In addition, the entire voter registration database is also

## Direct Examination - Director Matthews

1 cross-checked daily against FDLE records in case there are any  
2 new felonies that may come online or any changes to felonies  
3 that come online that may trigger an automated data match.

4 Q. Okay. So once there's a felon match through these  
5 automated databases, what happens next?

6 A. So based on that -- that's just the starting point. And  
7 what happens is we -- this is where the Bureau of Voter  
8 Registration Services kicks in. We do the manual review.

9 Our job is to determine if the information is credible and  
10 reliable, and that involves doing extensive research --  
11 everything from -- you know, first thing foremost is making sure  
12 we have the right identity match going on. And those are based  
13 on three -- we have to have a minimum of three demographics:  
14 name, date of birth, and social security number, name, date of  
15 birth, driver's license number; name, date of birth, and  
16 address, if the DL or the SSN is not available. That's the  
17 first step that has to be determined; is this the right -- are  
18 these the same people in this record, the criminal record and  
19 the voter registration records.

20 If that is the case -- or if it's not the case, rather,  
21 first, then it's invalidated. That's not considered to be a  
22 valid match. So the next step is if it is, then we proceed to  
23 determine is this a felony conviction, because it is possible  
24 that the felony conviction actually had an adjudication  
25 withheld, in which case that would invalidate it.

1           It would be that the record is actually -- actually had the  
2 felony changed to a misdemeanor, or it could be that through the  
3 course of researching with court records that the individual  
4 actually -- you know, maybe it was overturned on appeal. Those  
5 are just some of the processes.

6           Bottom line is we're -- our job is to go and collect the  
7 documentation that will substantiate a credible and reliable  
8 match. So we are looking at judgment; we are looking at  
9 sentence; we are looking at all kinds of orders that will  
10 substantiate that.

11           This is a process that existed before Constitutional  
12 Amendment 4. No different. What Constitutional Amendment 4 did  
13 is that we now had to add other levels of inquiry, and that is  
14 what type of felony is this, because based on that, that would  
15 determine how we go about determining whether something is a  
16 valid match or not.

17           The law -- the Constitutional Amendment 4 said that for  
18 murder and felony sexual offense you still follow the old  
19 process, which is you've got to determine if the clemency has  
20 been granted. If clemency has been granted, and it postdates  
21 all felonies, then that case file or match is invalidated.

22           If it's not, then it comes to the question of have the  
23 terms of the sentence been completed -- what are the terms of  
24 the sentence.

25           And the legislature, following the passage of Amendment 4,

1 came up with their list of what constitutes murder and felony  
2 sexual offense, and they also came up with what's the completion  
3 of all terms of a sentence. And right now we are still at the  
4 stage where if someone is in prison, someone is under  
5 supervision, we are processing those as being valid cases  
6 because they haven't finished those parts of their sentence.

7 Q. Okay. Director Matthews, as part of your answer you talked  
8 about how you worked through the individual felon's file, and  
9 you compile all the information you have. I'd like to get back  
10 to basics here for a minute.

11 Once you compile all that information on an individual  
12 felon, and you create that felon's file based on your review,  
13 what did you do with that file?

14 A. Once it's all compiled and we determine that it's valid,  
15 you know, that begins with the stage of an examiner, then it's  
16 reviewed. If there's any question about the file, that there's  
17 still a disagreement between the examiner and the reviewer about  
18 the validity or invalidity of a file, it gets bumped up to the  
19 supervisor. And if they can't resolve it, it gets bumped up to  
20 me to look at it. And if it's a matter that triggers on legal,  
21 or something, then we may get them involved.

22 If it is determined to be credible and reliable, the  
23 document, that case file, will be sent down to the Supervisor of  
24 Elections.

25 Supervisor of Elections, pursuant to statutory language,

1 has 7 days to send out a notice to the voter. It has to be by  
2 certified or verified mail. And that notice has to include a  
3 number of things: Statement as to basis for why they believe the  
4 person is potentially ineligible; statement as to their right to  
5 be able to ask for a hearing; and a return form to either admit  
6 or deny that the accuracy of that case file -- not that case  
7 file, but of being potentially ineligible. And then the person  
8 can either submit the returned form and either admit it, and  
9 then the supervisor makes a determination as to whether the  
10 person is eligible or not.

11 The person can return a form and deny it, but not choose a  
12 hearing, in which the case the supervisor again looks at all the  
13 records and determines whether the person is eligible or not.

14 Or the third, the person returns it, denies it and says, I  
15 want a hearing, and then a hearing is to be held. The person  
16 can bring in whatever testimony or additional documents they  
17 want at that time. It can be just an oral, you know, statement,  
18 whatever. And then the supervisor would, again, make the  
19 determination of whether the person is eligible or not. All of  
20 this is based on a preponderance of the evidence.

21 Once that determination is made, if the determination is  
22 that the person is ineligible, the person is to receive notice  
23 that they have been removed. That person then has the right to  
24 appeal, and the appeal is in circuit court.

25 If the person is unable to pay, or if it's determined that

1 the person was erroneously removed, then the supervisor covers  
2 the cost of that proceeding.

3 If even during through that process we determine that there  
4 was erroneous information sent down, that we might have made a  
5 mistake, we might have found -- you know, didn't see something,  
6 and we find that out, and it was -- you know, would have made  
7 the difference between that person being -- that case file being  
8 valid or not -- that person can be restored to the rolls at any  
9 time, and that can even include on election day.

10 So that's the process up to that point.

11 Q. Okay. And correct me if I'm wrong, but it seems that the  
12 legal financial obligations part of it is something new and so  
13 we ought to talk about it some more.

14 THE WITNESS: Oh, she is signaling something.

15 THE COURT: Absolutely. We'll take a break. We will  
16 start back in --

17 Well, Mr. Jazil, this is going to go a long time.  
18 Should we just take lunch?

19 MR. JAZIL: Yes, Your Honor. And just so everyone is  
20 clear, now is the time we are going to move on to legal  
21 financial obligations.

22 THE COURT: All right. We've had fairly urgent  
23 request for a break.

24 We'll start back at 12:45.

25 (Recess taken at 11:42 AM.)



## Direct Examination - Director Matthews

1 (Resumed at 12:45 PM.)

2 THE COURT: This is Judge Hinkle. I'm back. If you  
3 are there and participating, you should turn your video on.

4 (Pause in proceedings.)

5 THE COURT: Ms. Matthews, you are still under oath.

6 Mr. Jazil, you may proceed.

7 MR. JAZIL: Thank you, Your Honor.

8 BY MR. JAZIL:

9 Q. Ms. Matthews, prior to the break, we had started talking  
10 about the differences that have happened in the past with  
11 Amendment 4 and Senate Bill 7066. You started a discussion  
12 about legal financial obligations.

13 Go ahead.

14 A. I'm sorry. In terms of what would happen now with respect  
15 to the case file; is that what you are asking?

16 Q. Yes.

17 MR. JAZIL: With the Court's indulgence, I'd like to  
18 walk through a couple of examples based on the declarations that  
19 have been admitted into the record. These weren't listed on the  
20 list of exhibits that we would use for Director Matthews,  
21 Your Honor, but it seems to me that if we're working through  
22 this, this might be the best way to go about it.

23 I would be referring to Mr. Gruver's declaration.

24 They are admitted into evidence as Plaintiffs' 3 and 24.

25 THE COURT: Mr. Jazil, let me interrupt you for just a

1 moment. You've gotten off of video. If you'll move back.  
2 That's better. And if you would continue to speak up as loudly  
3 as you can. I think you are a long way from a microphone. We  
4 can hear you, but it helps -- the louder you speak, the better.

5 MR. JAZIL: Yes, Your Honor, I moved the connection  
6 closer to me. I hope it makes Madam Court Reporter's job a  
7 little easier.

8 THE COURT: It is, and everybody else who is  
9 listening. You and Ms. Matthews are fairly close together, and  
10 the natural tendency is to speak loudly enough for your audience  
11 to hear you, but remember there are a lot of other people in  
12 your audience, so continue to speak up loudly, please.

13 MR. JAZIL: Yes, Your Honor. So I will be referring  
14 to what's been admitted into evidence as Plaintiffs' Exhibits 3  
15 and 24, which are the Gruver declarations, and  
16 Plaintiffs' Exhibit 10, which is the declaration from  
17 Mr. Phalen.

18 MR. GABER: I don't have an objection to that.

19 MR. JAZIL: Your Honor, with your permission, may I  
20 approach the witness with copies of these?

21 THE COURT: You may.

22 You're going to be using hard copies of these and not  
23 pulling them on the screen, I take it?

24 MR. JAZIL: Yes, Your Honor. It may be difficult for  
25 me to do that at the same time as I'm doing the direct.

## Direct Examination - Director Matthews

1 THE COURT: That's okay.

2 And I can find these by the exhibit numbers. If you  
3 have the ECF numbers, that's going to make it easier for me, but  
4 I'll find them.

5 MR. JAZIL: Yes, Your Honor.

6 (Discussion was held off the record among the defense  
7 team.)

8 THE COURT: I think you told me Plaintiffs' 3 and 24?

9 MR. JAZIL: Yes, Your Honor.

10 THE COURT: And Plaintiffs' 10?

11 MR. JAZIL: Yes, Your Honor.

12 THE COURT: All right. Go ahead.

13 BY MR. JAZIL:

14 Q. Director Matthews, can I ask you to turn your attention to  
15 what's been marked as Plaintiffs' Exhibit 3 and entered into  
16 evidence? If you could go to the fifth paragraph of that  
17 declaration for Mr. Gruver.

18 A. Yes.

19 Q. Do you see where he writes, "To the best of my knowledge, I  
20 have 801 outstanding in legal financial obligations, including a  
21 court attorney, an indigent application fee, court costs, and  
22 fines. I do not have sufficient resources to be able to pay" --

23 THE COURT: Mr. Jazil, let me stop you. When you're  
24 reading and you've got your head down and you're going fast,  
25 it's not working.

## Direct Examination - Director Matthews

1 MR. JAZIL: Yes, Your Honor.

2 BY MR. JAZIL:

3 Q. Director Matthews, do you see paragraph 6K?

4 Can you read that to yourself for a moment?

5 A. Yes.

6 Q. Now if we could turn to Exhibit 24, Director Matthews, can  
7 you read paragraph 10 to yourself?

8 A. Yes.

9 Q. Now, in paragraph 6 of Exhibit 3, Mr. Gruver notes that he  
10 owes \$801. In paragraph 10, he said with intrusive fees  
11 incurred from collections, he owes approximately \$2,000.

12 If we consider the LFO process as being an exercise in  
13 figuring out the money owed and the money paid, taking what  
14 Mr. Gruver has said is true in his declarations, what figure  
15 would you place in the money-owed column?

16 A. That would be the 801. That was what was ordered, and the  
17 2,000 is obviously referring to other additional fees and costs  
18 or interest that were accrued after.

19 So in the column -- if you think about these case files,  
20 which these legal financial case files will have, it's sort of  
21 the two columns: One of what's ordered and then what's been  
22 paid, regardless of how that payment was applied, but just  
23 what's been paid. His column for amount ordered would be 801,  
24 and then what's paid at this juncture, based on his declaration,  
25 I would take it to mean zero at this point, but that he has an

1 inability to pay.

2 MR. JAZIL: Your Honor, may I approach the witness  
3 with what's been marked as Defendants' Exhibit 167? This is the  
4 felon match procedures.

5 THE COURT: Yes.

6 BY MR. JAZIL:

7 Q. Director Matthews, can you direct the Court to where in  
8 your procedures what you've just described is discussed?

9 A. This process for determining felonies that are not murder  
10 or felony sexual offense or that the person is not incarcerated  
11 or otherwise under supervision, the determination -- it's laid  
12 out on page 3 of this document and talks about what the  
13 determinations to -- are to be made, and that is determining  
14 what the amount was ordered as part of the felony judgment and  
15 sentence, and then determining whether there's evidence to show  
16 satisfactions of that -- or payments that either total or exceed  
17 the amount that was ordered as part of the judgment and  
18 sentence.

19 Q. Now, Director Matthews, if I refer to this as the  
20 first-dollar principle, is it fair to say you and I will know  
21 what we're talking about?

22 A. Yes.

23 Q. Now, what statutory basis do you have for this first-dollar  
24 principle that the Division is applying?

25 A. Well, this is -- we derived this from the Statute 98.0751.

## Direct Examination - Director Matthews

1 I don't remember -- I don't have the sub -- particular  
2 subsection, but we're basing this on what the law says. That's  
3 our reading of it.

4 Q. Would it help you, Director Matthews, if I shared with you  
5 a copy of 98.0751?

6 A. Sure. It would mean I'd have to admit that I don't have it  
7 memorized, yes.

8 MR. JAZIL: Your Honor, may I approach the witness  
9 with a copy of the statute?

10 THE COURT: I didn't turn on my microphone. I said  
11 you may.

12 And, Mr. Jazil, I appreciate your good demeanor in  
13 asking to approach the witness, but under the circumstances, you  
14 don't need to do that. You can say to Ms. Matthews, I'm handing  
15 you whatever, without asking, and that will work just fine.

16 Thank you.

17 MR. JAZIL: Yes, Your Honor. May I beg the Court's  
18 indulgence? I can refresh the witness' recollection with the  
19 statute, or just ask her to point us to the citation because  
20 it's been admitted into evidence.

21 THE COURT: You can just ask her to go through the  
22 statute. That's fine. If Mr. Gaber objects, he'll let me know.

23 MR. JAZIL: Your Honor.

24 BY MR. JAZIL:

25 Q. Director Matthews, looking at the statute, can you point us

1 to the subsection or subsections that your first-dollar  
2 principle is rooted in?

3 A. So Section 98.0751, it starts in subsection 2, paragraph  
4 (a), and then goes down to subparagraph (5) and (.e.) So that's  
5 a subparagraph (.e), so 98.0751(2)(a)(5.e).

6 Q. Does (5.c) have any bearing?

7 A. Oh, yeah. I mean, if I were to -- I would just say just  
8 (5), just stop at that. You're looking at the determination of  
9 whether something is accrued afterwards, and this section -- or  
10 paragraph -- subparagraph (.c) is dealing with the part about  
11 saying that you don't count what's been accrued after what's  
12 been ordered. So that really gets to the heart of the  
13 first-dollar principle.

14 Q. What, if any, role does 98.0751(4) play, if any, in the  
15 first-dollar principle analysis?

16 A. Well, if there's any discrepancy or any differing -- if  
17 people differ as to what has been -- it's been paid or what has  
18 been owed, it's supposed to be construed in favor of the  
19 registrant.

20 Q. Now, Director Matthews, the question is still up in this  
21 court about whether or not the Division has taken a contrary  
22 position on the first-dollar principle issue.

23 Has the Division taken a contrary position on the  
24 first-dollar principle?

25 A. No, it's still -- I mean, that's what the law says. It

1 wouldn't be contrary to that.

2 Q. Director Matthews, you testified earlier that you've been  
3 talking to the clerks as part of the implementation process.

4 Do you know -- what is your understanding of the clerks'  
5 position on how 98.0751 should be interrupted when it comes to  
6 the first-dollar principle?

7 A. Well, their position is payments, if it's -- a judgment or  
8 a sentence orders fine, fees, and costs, they are the body  
9 that's tracking that, those payments and everything else. So  
10 they are -- they're the body to which we can look for to find  
11 out information about the court records and any evidence of  
12 payment and things like that.

13 So they have their angle, which is they are to track these  
14 payments, they are to track -- what has been ordered. What we  
15 are looking at is also what's been ordered and what's been paid,  
16 but we don't care on the payment what it goes to. Clerks of  
17 court track that specifically. What we are just looking at are  
18 just total amounts.

19 Q. And are the clerks of court telling you that because of  
20 their interpretation someone's rights can't be restored if money  
21 doesn't go to a particular column?

22 A. No. I mean, they don't make that determination. They are  
23 just the body that just keeps track of this information or has  
24 court records available that can, you know, provide answers as  
25 to what was ordered and what was paid. That's not their job to



1 determine whether somebody's rights are restored or not.

2 Q. And before we delve greater into the felon match procedure,  
3 I'd like you to turn to Dr. Phalen's declaration,  
4 Plaintiffs' Exhibit 10. I'd like to turn your attention to  
5 paragraphs 2 and 7 of that declaration.

6 A. Yes.

7 Q. In paragraph 2, he states that he was convicted of a felony  
8 in Wisconsin. In paragraph 7, he says that Wisconsin restores  
9 his vote rights upon completion of supervision regardless of  
10 outstanding financial obligations.

11 Assume that what Dr. Phalen is saying in his declaration is  
12 true. Is Dr. Phalen eligible to register and vote in Florida?

13 A. Yes.

14 Q. Why is that?

15 A. Because our position has been and remains that the laws  
16 governing voting rights restoration in the state of conviction  
17 governs.

18 Q. You said that "our position has been." Can you elaborate  
19 on that? Been since when?

20 A. Well, been for at least -- I mean, we even have -- I mean,  
21 as long as we've been working on these files, our position has  
22 been that at least since then, and then we have an advisory  
23 opinion that actually was issued in -- I was looking to see on  
24 these whether anybody had asked this questions before. 2004  
25 this very question was asked.

## Direct Examination - Director Matthews

1 Q. Director Matthews, let's turn our attention back to the  
2 felon match manual.

3 MR. JAZIL: Which is Exhibit 167, Your Honor.

4 BY MR. JAZIL:

5 Q. Director Matthews, in looking at this manual, can you tell  
6 us how it is that the State deals with instances where a  
7 document concerning LFOs or even the underlying felony is  
8 unavailable to you?

9 A. It's -- assuming we are not able to find the records  
10 anywhere on any reference in the CCIS, or the clerk of courts,  
11 or even after outreaching to the clerks and their ability to be  
12 able to pull information that's available in archives or  
13 microfiche or whatever -- if we are not able to and there is --  
14 and we cannot -- and we don't have sufficient documentation to  
15 support, then we're going to declare that invalid. It could be  
16 reasons that -- you know, I don't know, a hurricane or maybe  
17 it's been misplaced and we can't find it. We are just going to  
18 err on the side of the voter in regards to that if it's not  
19 available.

20 Q. And, Director Matthews, just so the record is clear, what  
21 is the effect of deeming a felon match to be invalid?

22 A. So what we mean by that is that we aren't -- we do not  
23 proceed any further with it. We don't send it down to the  
24 clerks of court -- I mean, to the Supervisors of Elections and  
25 the individual remains on the rolls.

1 Q. And we talked about when a record isn't available. You  
2 mentioned a hurricane.

3 What happens when you're trying to determine whether a  
4 federal record exists when you get a felon match to the  
5 automated system? How do you go about figuring out whether or  
6 not someone has a federal felony that disqualifies them from  
7 voting?

8 A. Well, that's a different court record series. Fed felons  
9 are going to be identified -- they are not going to be  
10 identified through the automated process.

11 What we do is we get notices from U.S. Attorneys' Offices  
12 regarding federal felons, and so that process is -- the way we  
13 intake that information, we get it manually; we could get it  
14 through the mail; we could get it by e-mail. And then we do --  
15 we do the same manual research in putting together of the file.  
16 We consult PACER. We have -- we have a subscription to PACER.  
17 We also look at the Federal Bureau of -- prisoners' website to  
18 see if somebody is still in prison.

19 And then if it's a fed felon outside the state, we consult  
20 whatever the restoration laws are in that state, and then that  
21 would govern how we proceed further with that case.

22 Q. How do you get information when it's an out-of-state felony  
23 for a Florida resident and you are trying to determine their  
24 eligibility? How do you go about ensuring that the evidence is  
25 credible and liable?

## Direct Examination - Director Matthews

1 A. Again, the same way. We go and reach out to the clerk of  
2 court in that state to see if we can go ahead and get the  
3 records for -- if they are not available on the website.

4 Q. Okay. What happens when a clerk of court is being  
5 uncooperative and you just can't get the information?

6 A. Honestly, our experience is that they -- they're doing  
7 their best to be able to get the records to us. There are times  
8 when we might have to make a couple of requests, but it's  
9 because they may group their requests together. But generally  
10 they are trying to accommodate, and I think there is certainly a  
11 heightened awareness with the constitutional Amendment 4 and,  
12 you know, being responsive to that.

13 Q. Okay. So now I'd like to turn to some of the more nuanced  
14 or complex circumstances dealing with legal financial  
15 obligations, and a lot of these come from the questions that  
16 were asked earlier by the judge in the case, and we're hoping to  
17 get answers from you on this.

18 First, Director Matthews, suppose a fine, a fee, a cost, or  
19 a restitution order is converted into a civil lien. Is a  
20 personnel eligible to register to vote under that circumstances?

21 A. Based on the law's wording as it is right now, just merely  
22 converting it to a lien does not satisfy that, would not be  
23 considered satisfying the term of that sentence.

24 Q. Now, let's assume that the civil lien -- that the order is  
25 converted to a civil lien and then the order expires. What

## Direct Examination - Director Matthews

1 happens then as it relates to eligibility to register and to  
2 vote?

3 A. If that's the only thing remaining and it has expired, then  
4 we would deem that invalid and, therefore, the person would  
5 remain on the roll and end of story.

6 Q. Okay. Now let's assume that it's converted to a civil  
7 lien. How do you ensure under your two-column framework of  
8 amounts owed and amounts paid whether or not the money is being  
9 paid or has been paid?

10 A. So if you have a civil lien, you are going to be looking  
11 at, again, how much has been paid off of the -- of that civil  
12 lien. It doesn't matter whether it was paid towards the  
13 principal or to the interest. It will just be -- we are just  
14 looking at the total amount paid, and that will be subtracted  
15 from the amount that was ordered.

16 So if you had -- for the example of one of these  
17 plaintiffs, you had \$801 and you had a civil lien that was \$900  
18 because it included interest, whatever had been paid towards  
19 that civil lien, if it had been \$50, then \$50 would be taken  
20 away from the 801.

21 Q. Director Matthews, where do you go to see if a payment has  
22 been made?

23 A. So right now, obviously -- I think with cases that are more  
24 recent, they're -- the clerk -- the CCIS, the clerk of court's  
25 website, public records, you are probably going to find much

1 more information and data available there, as well as the  
2 Department of Corrections, which also keeps track of payments,  
3 at least until the time that the individual is released from  
4 prison or custody. So that is -- that's another source of  
5 information available.

6 And then, as I said, it's not available on CCIS, it's not  
7 available on the clerk of court's website through -- or even the  
8 official record, we still do outreach to the clerk of courts,  
9 and they have databases that -- where they are responsible for  
10 keeping track of financial accounting of the payments that are  
11 made.

12 Q. Okay. And, just, again, to put things into the amount  
13 owed/amount paid framework, my understanding of your testimony  
14 earlier -- a few minutes ago is if we can't figure out what the  
15 amount owed is, then the person is not on the hook for that  
16 amount that may or may not be owed.

17 But help me understand what happens if you can't figure out  
18 who has paid what amount, so in the second column. If we know  
19 how much is owed and we can't figure out how much has been  
20 paid -- there are gaps there; you've talked to the clerks; and  
21 you said you've talked to the Department of Corrections; and  
22 you've said you've made all the calls that you could make. You  
23 have an amount owed; you have little or no information about the  
24 amount paid, what happens in that circumstance?

25 THE COURT: Let me interrupt here a moment so that the

1 record doesn't get garbled.

2           Mr. Jazil, in the lead-up to that, you said that  
3 Ms. Matthews had said the person was not on the hook for that  
4 amount of money. I don't think that's what she said, and if you  
5 think that's what she said, you need to ask her again.

6           I thought what she said was they would invalidate the  
7 match so that the Secretary of State would not then take action.  
8 I did not understand her to say the person didn't owe the money  
9 and could vote. We've had this discussion several times before.  
10 I think the difference matters, and so I didn't want the  
11 statement to go by as if the person was off the hook.

12           MR. JAZIL: Yes, Your Honor. I apologize.

13 BY MR. JAZIL:

14 Q. My understanding of the testimony, to be more precise --  
15 and, Director Matthews, you correct me if I'm wrong -- is that  
16 for voting restoration purposes the amount owed is what you find  
17 based on your review and your research.

18 A. Correct.

19           THE COURT: All right. So let me ask to make sure I  
20 understand that.

21           Ms. Matthews, what you are saying is if a person, for  
22 example, was ordered 15 years ago to pay some amount of money,  
23 but the Secretary of State cannot figure out how much money is  
24 owed, how much the original assessment minus the gross payments  
25 is, what that figure is -- if you cannot figure out that number,

## Direct Examination - Director Matthews

1 the person is now eligible to vote? Is that what you said?

2 THE WITNESS: No, Your Honor. What I meant was if the  
3 person -- if we're able to determine the amount that's owed, but  
4 we are unable to determine the amount that has been paid, at  
5 least to know -- enough to know that there has been not a  
6 payment that equals or exceeds what was ordered, then we would  
7 validate that and send that to the Supervisor of Elections for  
8 purposes of allowing the individual to be able to come forth,  
9 because at that point we have exhausted all efforts to try to  
10 find any evidence or -- evidence of payment equally or exceeding  
11 the amount that was ordered.

12 It doesn't take away from the fact that the person --  
13 regardless of what was ordered, they have to pay that to the  
14 Court. It's just -- we're just -- for our own discussion, we  
15 just know that this is what the Court ordered, and our  
16 records -- there are insufficient records to show that the  
17 individual has paid an amount that's equal or exceeds what was  
18 ordered.

19 And now it would shift to that voter in a hearing --  
20 or however they wish to do it to present evidence to the  
21 Supervisor of Elections, that, No, I did make payment, or even  
22 if they don't have any record, I would envision that the  
23 individual could swear under oath or submit a statement and say,  
24 No, I paid this, and it would then be incumbent on the  
25 Supervisor of Elections to take that statement, or any evidence



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1 that the individual presented, and under preponderance of the  
2 evidence make that determination whether that person should  
3 remain on the rolls or not.

4 THE COURT: And what if the person doesn't know? The  
5 person says, I made some payments. It was 15 years ago. I  
6 don't have any records. I don't know whether there's an amount  
7 owed or not owed.

8 THE WITNESS: Correct.

9 THE COURT: What happens then?

10 THE WITNESS: Yes, Your Honor. At that point that's  
11 the statement that I think the individual is entitled to submit  
12 and present to the Supervisor, and the Supervisor would make  
13 that determination, I believe this individual, he's having -- or  
14 she's having difficulty being able to determine this, because  
15 hopefully by then we have done, at the state level, all we could  
16 do to try to find out that information.

17 And if the individual doesn't have that information,  
18 then they can submit something to the Court, whether -- I mean,  
19 not to the Court -- to the clerk -- to the Supervisor, whether  
20 it's orally in a hearing and -- or a letter to the Supervisor of  
21 Elections, and then the Supervisor of Elections would make that  
22 determination whether they find that individual credible and  
23 reliable to believe the testimony that they have said.

24 THE COURT: Well, suppose the Supervisor says, I  
25 absolutely believe the individual, because what the individual

1 said is, I don't know. And so this person doesn't know; the  
2 Secretary of State can't find out; there are no records. You've  
3 just changed the critical amount to an amount that the State of  
4 Florida has never tracked before, because instead of the  
5 balance, all you want to do is take the original amount and  
6 subtract the gross payments.

7           So this is a number that nobody has ever tracked. If  
8 it happened 15 years ago, the person knows, I made some  
9 payments; I couldn't make anymore payments; I don't know whether  
10 the gross amount of the payments I made was as much as the  
11 original amount or not; I just don't know.

12           So the Supervisor says, This person's being completely  
13 honest. The person doesn't know, and we can't find out. And we  
14 can give you some examples how that's exactly what happens.  
15 There's no way for anybody to find out. So now what's that  
16 person to do? Can that person vote?

17           THE WITNESS: In my opinion, if I found the person  
18 credible and I, knowing what I know, which is at the state level  
19 we would do everything possible to try to find any evidence or  
20 documentary record suggesting that any payments have been made,  
21 whether it's through the Department of Corrections, whether it's  
22 through the clerk of court's records going back, whether it's  
23 online or even if it's archival, I would say, yes, that person  
24 can.

25           Now, do they still owe those -- those financial

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1 obligations to the clerk of the court? Yes, but that's not my  
2 concern. My concern is trying to figure out whether -- what was  
3 ordered and whether the person has made payments that equal  
4 or -- equal or exceed, based on what the legislature gave us as  
5 directions.

6 THE COURT: I understand that you're not going to call  
7 the collection agency.

8 Do I have that right?

9 THE WITNESS: I wouldn't even -- I mean, I suppose  
10 that's something we could entertain, but --

11 THE COURT: Ms. Matthews -- Ms. Matthews, let me stop  
12 you a minute.

13 I'm not asking what you could entertain. I read your  
14 deposition. I think what you told the lawyer asking you  
15 questions at the deposition was you don't call the collection  
16 agency. Is that right or not?

17 THE WITNESS: That's true, we do not.

18 THE COURT: All right. And we've had testimony from  
19 clerks of court that if a person makes a payment to the  
20 collection agency, the collection agency keeps part of the  
21 payment and doesn't even tell the clerk of court.

22 Do you understand that's how it works?

23 THE WITNESS: Yes. I have heard that, yes.

24 THE COURT: All right. So now we have a person and  
25 the person says, I was assessed \$300 in costs 15 years ago. I

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1 got on a payment plan. I got a fee charge for being on the  
2 payment plan. I wasn't able to keep making payments. They  
3 turned it over to a collection agency. I made some payments to  
4 the collection agency. I don't know how much I paid. I don't  
5 know if it was as much as the \$300. I was paying \$15 a month.  
6 I don't know how many months I paid. It was 15 years ago. I  
7 don't have my records. I don't have any way to find out.

8           The collection agency may not even be in business  
9 anymore. They probably don't have records from 15 years ago,  
10 even if they are in business. I don't know whether I can vote  
11 or not, and you just said, Well, the person's being honest. The  
12 supervisor believes them. Go ahead and vote.

13           Now, let me add one more part to the puzzle. It turns  
14 out somebody sees that person votes and turns it over to the  
15 state attorney. The state attorney's got a lot of subpoena  
16 authority that ordinary people don't have, and the state  
17 attorney goes and runs it down and finds the person that put the  
18 collection agency's records in somebody's attic and finds the  
19 record, and the person had paid a little bit less than the gross  
20 amount of the original fee. Now the person gets prosecuted.

21           That going to be okay with you?

22           THE WITNESS: No, that would not be okay with me, but  
23 I don't expect that we're going to have that many kind of cases  
24 like that. But I think one option available is to -- if someone  
25 is concerned about that, that they could request an advisory

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1 opinion, and that advisory opinion could serve as criminal  
2 immunity for them regarding --

3 THE COURT: Whoa, whoa, whoa, whoa, whoa. You're a  
4 lawyer; right?

5 THE WITNESS: Yes.

6 THE COURT: You remember the bar?

7 THE WITNESS: Yes.

8 THE COURT: Where is -- would I look to determine that  
9 that advisory opinion gives somebody immunity?

10 THE WITNESS: Well, I think it's in our -- it's either  
11 in the statute or in our rules.

12 THE COURT: All right.

13 Mr. Jazil, I'll be interested eventually in seeing and  
14 finding that out. I can find it if it's in the statute or rule,  
15 but if you can get it to me, that will help me.

16 MR. JAZIL: Your Honor, I can give it to you now, and  
17 I can put it in front of Director Matthews so that y'all can  
18 have this discussion since we're on it already.

19 THE COURT: All right. Well, I don't really want to  
20 run down the advisory opinion thing. I just --

21 MR. JAZIL: Your Honor, it's in the statute. It's one  
22 of the --

23 THE COURT: I didn't hear -- I didn't hear the  
24 numbers. Give me the numbers again.

25 MR. JAZIL: Your Honor, it's at Section 106.23(2).

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1 THE COURT: All right. Thank you.

2 All right. I didn't mean to interrupt that much of  
3 your examination, Mr. Jazil. I just -- when we got to the --  
4 yeah, forgive my interruption. You can go ahead.

5 MR. JAZIL: Understand, Your Honor. And these are  
6 difficult but important issues, so if it's okay with Your Honor,  
7 I'd like to unpack some of what we just talked about.

8 BY MR. JAZIL:

9 Q. Director Matthews, I want to make sure everyone understands  
10 the amount owed concept. When we're talking about amount owed  
11 for voter -- for voting restoration purposes, is that the same  
12 as the amount owed to the clerks or the victims or someone else  
13 for restitution purposes or court costs purposes or fees  
14 purposes?

15 A. No, it could be a different amount. Just like in Gruver's  
16 thing where, you know, he -- his part of his judgment and  
17 sentence was \$801 in court costs and fees. That's the number  
18 we're interested in.

19 Q. Okay. And the 2,000 number is what the clerks will remain  
20 interested in?

21 A. Absolutely. It doesn't absolve them from having any  
22 liability for that. I'm just look -- we're just looking at it  
23 for purposes of the restoration of rights.

24 Q. So it's two different concepts that we're looking at when  
25 we're talking about amount owed; is that fair?

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1 A. That's correct. I don't want to create the confusion that  
2 even once they are determined to be eligible to -- to remain on  
3 the rolls or even to register that their obligation to the Court  
4 goes away. It's just for purposes of the restoration of rights.  
5 This is the -- this is what we're focusing on, and it's based on  
6 98.051. So this is what the legislature has deemed the process  
7 that lays out our analysis.

8 Q. Okay. And, Director Matthews, you talked with the judge  
9 about the removal process, and the judge posited a situation  
10 where someone comes to the Supervisor of Elections and says at  
11 their requested hearing that he or she cannot determine the  
12 amount that they owe or the amount that's been paid.

13 When that hearing happens, would the Supervisor of  
14 Elections have your felon match files that you sent out?

15 A. Well, they definitely have that, and then they would  
16 definitely have this law that they -- that I'm sure they would  
17 seize upon, and that is under subsection 3 of 98.075.

18 Q. Okay. So I'd like to ask you, in the felon match files  
19 that the Supervisor of Elections would have -- you talked about  
20 all the work that y'all do to collect the information. Would  
21 that information that you tried getting from everywhere be in  
22 that match file if it's available?

23 A. Yes. I don't know -- Your Honor, if I had had a chance to  
24 speak before about what's contained in a case file that's sent  
25 down to the Supervisors, it involves a case review file which

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1 indicates all the information that was searched, and then it  
2 includes screenshots of our own records, of the criminal record  
3 and the voter record that started the whole initial match.

4 It contains a screenshot of the individual as may be  
5 contained in the driver's license database. It contains a  
6 screenshot of the person as may be contained in the Florida  
7 Department of Corrections' website as being either formally or  
8 currently an inmate or supervised individual.

9 It will contain screenshots of CCIS and the docket showing  
10 the documents that were there, as well as the supporting  
11 documents that we believe -- you know, at a minimum the judgment  
12 and the sentence, or sentencing documents, however you wish,  
13 because those things can be -- it can be called judgment; it can  
14 be called sentencing; it can be called order of probation -- all  
15 of that that will substantiate the amount that we determine it  
16 to be was -- it was ordered as part of the judgment and  
17 sentence; also anything from the clerk of court that we got off  
18 their website, or that we had to go and ask them for; and any  
19 search that we've done to make sure that they have not had or  
20 received clemency; and any search of any other source that we  
21 believe necessary to say we -- this is what we find and the  
22 basis for are credible and reliable.

23 Q. I'd like to pick up where you and the judge left off with  
24 the collection agency issue. As the judge mentioned, there's  
25 efforts in the record suggesting that the information that the



1 collection agencies have isn't always reflected on the clerk's  
2 database.

3 Do you know whether or not the clerks have information  
4 about payments made to the collection agencies?

5 A. This information -- and this is based on a conversation  
6 we've had with the clerk of the courts because we're trying to  
7 understand all the information that they have and where they  
8 are, you know, where it can be found if it's not on CCIS or the  
9 clerk of the court. And they apparently have an internal audit  
10 database that tracks this information as well.

11 So assuming that that's -- in your scenario, it's for any  
12 chance -- for any reason that's not there, then, yes, we  
13 wouldn't have that information. But our understanding is they  
14 do track a substantial amount of information. I just don't know  
15 the timeline how far back it might go. But that's their --  
16 that's supposed to be their requirements for their financial  
17 system.

18 Q. And just to follow up, this auditing function you were  
19 discussing with the clerks, do you -- based on your  
20 conversations with the clerks, will the clerks share this  
21 internal auditing information received from the collections  
22 agency with the Division?

23 A. Yes. I mean, we've asked them about that. And yes, it's  
24 that -- that they will. And additionally, we have been told  
25 that the clerks of court, in response to this law as well as the

1 working group recommendation, are rolling out -- where any  
2 individual who has been convicted of a felony and has a legal  
3 financial obligation question about, you know, what they may --  
4 what they owe and what payments they've made, that they will  
5 provide that information if they go to the clerk of court in the  
6 county in which they were convicted, and that they will also  
7 provide them information, contact information, to all other  
8 clerks of court if there are convictions in other counties.

9 We understand that they are rolling that out. I know for a  
10 fact that Leon County Supervisor of Elections -- not Supervisor.  
11 I'm sorry -- the clerk of court has -- on their landing page  
12 they have Amendment 4 information, and they detail very, very  
13 well what information can be made -- what's available online,  
14 the years that that information might be available, and if  
15 anything -- if it's not available there, who they can contact  
16 and how they can get additional information.

17 So I know at least for Leon County they have done that  
18 already. I haven't done a survey of all the other counties.

19 Q. You spoke just now about your understanding that the clerks  
20 would provide the contact information for the other counties  
21 where someone might have had a felony issue. Is that just going  
22 to be the 1-800 number for the clerk?

23 A. My understanding is they were going to provide a specific  
24 number. I mean, that would be the reasonable thing to do. That  
25 was what they were going to do.

1 Q. Now, I'd like to get back to the some of the other examples  
2 of -- some of the more other nuanced examples of LFOs.

3 The judge earlier in the case posited a question about  
4 someone robbing a bank years ago, someone wanting to pay back  
5 whatever restitution was issued as part of the sentence for that  
6 crime, but the bank no longer existing and it being difficult to  
7 figure out who the money is owed to because the bank and the  
8 successors have changed hands often.

9 MR. JAZIL: And, Your Honor, I apologize if I've  
10 misconstrued the example, but that's how I understood it.

11 BY MR. JAZIL:

12 Q. Director Matthews, what would happen in that circumstance  
13 where money is owed to a third party that no longer exists and  
14 it is difficult to figure out who the successors-in-interest  
15 are?

16 A. Again, our -- I think our -- if we're not able to get  
17 information from the clerk of the court, if they don't have  
18 anything that suggests that that's been paid, then we -- again,  
19 I think that would go down to the Supervisor, and the individual  
20 would have the opportunity to be able to assert that they don't  
21 have information as to the payment on that.

22 THE COURT: Mr. Jazil, if we're finishing on my  
23 hypothetical, Ms. Matthews, part of the hypothetical was the  
24 person doesn't know how much the person paid and doesn't have  
25 any records, so there's no way to find out how much is paid and

1 there's nobody to pay it to.

2 THE WITNESS: Well, then it would go to this  
3 Subsection 4; if a provision is susceptible to differing  
4 interpretations, it's going to weigh in favor of the individual.

5 If you can't -- if nobody can figure it out in terms  
6 of -- or there's a discrepancy as to what has been paid or not,  
7 that might be one of those situations that we would invoke  
8 No. 4 -- Subsection 4.

9 THE COURT: And to keep from being prosecuted there  
10 you say the person could go ask for an advisory opinion, and  
11 Mr. Jazil gave me the statute -- and, Mr. Jazil, we can talk  
12 about it later. I'm not sure that statute even applies to a  
13 voter, but maybe it does.

14 MR. JAZIL: Your Honor, I have a copy of the statute.  
15 I can put it in front of Director Matthews, and we can go  
16 through that, if that's okay.

17 THE COURT: I have it. It authorizes a number of  
18 people to file a request for an advisory opinion. The list is a  
19 Supervisor of Elections, candidate, local officer having  
20 election-related duties, political party, affiliated party  
21 committee, political committee, or other person or organization  
22 engaged in political activity.

23 Now, I wouldn't think on a list like that that a  
24 person or organization engaged in political activity means just  
25 a voter. But that's the whole list of people who can ask for

1 the advisory opinion and who can then get immunity if they act  
2 in good faith in reliance on the opinion.

3 So maybe that's another one of those that plainly  
4 means something that I just don't get, but I don't see how that  
5 applies to a voter.

6 MR. JAZIL: Your Honor, I can ask Director Matthews  
7 what the Division's position is on whether the other person or  
8 organization engaged in political activity --

9 THE COURT: Yeah, ask the opinion, and then let's find  
10 out how many voters have ever done this.

11 BY MR. JAZIL:

12 Q. So Director Matthews, if I could have you look at  
13 106.23(2) --

14 A. Yeah.

15 Q. -- Subsection 2, the language concerning other person or  
16 organization engaged in political activity.

17 The first question is this: Does that encompass a person  
18 who is trying to vote?

19 A. We believe, and it's been our -- the position that we're  
20 taking and have taken is that engaging in voter registration and  
21 voting is engaging in political activity. It's a scope of  
22 political activity.

23 THE COURT: So within the meaning of the Florida  
24 Statutes every single voter is participating in political  
25 activity -- I haven't looked through the rest of the statutes to

1 see where else that phrase is used, but what you are telling me  
2 for the Secretary of State is wherever it is used, it means just  
3 one voter going to vote?

4 THE WITNESS: We believe that it encompasses the act  
5 of registering to vote as well as voting, yes.

6 THE COURT: All right. That answered my question.  
7 Thank you.

8 MR. JAZIL: Your Honor, if we are on the statute, I'd  
9 also like to direct Ms. Matthews and the Court's attention to  
10 the section that creates the shield from liability.

11 THE COURT: I think it's the same section. It's just  
12 further down in the paragraph.

13 THE WITNESS: If I may, Your Honor, it states, "Any  
14 such person or organization, acting in good faith upon such an  
15 advisory opinion, shall not be subject to any criminal penalty  
16 provided for in this chapter."

17 And then --

18 BY MR. JAZIL:

19 Q. Now, Director Matthews, that chapter deals with campaign  
20 finance. Why do you think that creates a shield from criminal  
21 liability for violations of their registration and voting  
22 requirements?

23 A. Because there's another part, and I don't have that in  
24 front of me, that relates -- that it wraps in the Florida  
25 Election Code.

## Direct Examination - Director Matthews

1 Q. The whole Florida Election Code?

2 A. I don't know if it's all of them, or if it's 97 through  
3 just 105, with the exception of 104. I can't remember.

4 THE COURT: We've gotten off into a legal discussion  
5 that probably isn't the best way to advance the ball. So,  
6 Mr. Jazil, let me let you go back to asking questions about the  
7 facts of the case, and we can do the legal research later.

8 MR. JAZIL: Yes, Your Honor. If I could just have a  
9 moment to find where I left off.

10 THE COURT: I think I interrupted to add some stuff  
11 about the hypothetical about the bank robber. Probably not the  
12 best hypothetical to begin with.

13 BY MR. JAZIL:

14 Q. Now, Director Matthews, we've talked about the collection  
15 agencies. We've talked about a third party that no longer  
16 exists. We've talked about civil liens. Let's talk a bit about  
17 the cost of supervision.

18 The cost of supervision -- what is the department's  
19 position about whether or not under 98.0751 that accrues before  
20 or after a sentence has been pronounced?

21 A. So our position would be that we're in -- that the cost of  
22 supervision accrues after the judgment or sentence, and,  
23 therefore, would not be included as part of the total amount  
24 that was ordered; that would then fall into our, you know,  
25 dollar first, or whatever column.

1 Q. Okay. Here's another question. We went through an example  
2 earlier in the case where the sentence and judgment did not  
3 check the box for restitution. There was an order issued years  
4 after that dealt with restitution.

5 How would the Division of Elections deal with a situation  
6 like that when deciding whether or not the restitution is or  
7 isn't owed for purposes of felon vote restoration only?

8 A. At this point our position is that it wasn't ordered as  
9 part of the judgment and sentence, and unless it was reserved in  
10 the judgment and sentence where the Court would say, We've  
11 reserved jurisdiction to, you know, make a ruling, or an order  
12 on this in, you know, X number of days, then we would not  
13 consider that part of the judgment and sentence amount.

14 Q. Okay. And there was also testimony earlier in the case, I  
15 believe from a public defender from Miami-Dade County, where the  
16 discussion centered on restitution amounts being specified in  
17 the judgment, but a separate memorandum addressing costs.

18 Would the separate memorandum addressing costs be included  
19 as part of the packet of materials that you're considering in  
20 determining the amount owed for restoration of rights purposes?

21 A. Yes, because there's -- it's part of the sentencing  
22 document, the language in the statute in the sentencing  
23 document. And what we have found in reviewing these cases, or  
24 just even in our past experience, is that, you know, documents  
25 aren't -- aren't necessarily titled Judgment or Sentence, or



1 you'll have multiple things that are entered on the same day.  
2 We'll have a judgment and a sentence, and then you'll have an  
3 order of costs or some other order of restitution. So all of  
4 that encompassed together in our mind is the sentencing document  
5 entered, you know, contemporaneously.

6 MR. JAZIL: Your Honor, I'll pause there for a minute.  
7 I would like to move on from legal financial obligations, unless  
8 the Court has other questions on how legal financial obligations  
9 are determined or specific scenarios where the Division would  
10 need to determine legal financial obligations, whether they are  
11 owed or paid.

12 THE COURT: Well, I did have a follow-up question of  
13 something that Mr. Jazil asked you earlier.

14 He asked you about this first-dollar approach, and  
15 then he asked you if the department had ever taken an  
16 inconsistent position, and you said no, you had not taken an  
17 inconsistent position.

18 My question is a little different. I want to know  
19 when you took a consistent position. And let me tell you what  
20 I've seen and what I haven't seen.

21 The first thing I have seen in the case, the earliest  
22 documentation I've seen in the case, of the first-dollar theory  
23 where every payment counted toward the original amount of the  
24 sentence, regardless of how it was actually applied -- the  
25 oldest thing I've seen on that was when the Department made a

1 filing -- give me just a second. I'll try to give you the exact  
2 date.

3 I believe it was April 17th when the Department filed  
4 the protocol that you had put together showing how you were  
5 going to process these amounts.

6 Is there any piece of paper, anything, that documents  
7 the first-dollar principle prior to that?

8 THE WITNESS: We did have procedures. The last  
9 procedure before this one was dated December 2019, and we had a  
10 section in there regarding how to deal with legal financial  
11 obligations. And I don't know that it -- you know, even in  
12 these procedures, we don't say -- we don't call it first-dollar,  
13 you know, principle or anything.

14 But the concept of looking at what was ordered and  
15 what was paid I believe is reflected in those procedures as  
16 well. I don't have those before me, but the -- we did tweak  
17 more because we had been reaching out to the clerk of the court  
18 trying to find out what the available documents there are, but  
19 also just making sure that it was easy to understand for my  
20 staff, because this is -- this is definitely new stuff for them,  
21 and I wanted to have it worded in a way they could understand,  
22 but we haven't taken a different position that I can recall that  
23 countered it.

24 THE COURT: Well, I'm not suggesting that you took a  
25 different position. The earlier stuff I read, there was a lot

1 of -- there were a lot of questions at your depositions that  
2 your attorney blocked so that you didn't answer. There were  
3 other places where nothing was said about this, but let me  
4 just -- this is important to me. Let me give you some  
5 background and then see what I can find out from you. I really  
6 am looking to get the facts right. So if you can help me do  
7 that, it would be good.

8 THE WITNESS: Okay.

9 THE COURT: Here's the background. First, let me say  
10 I don't think there is anything wrong at all with a state agency  
11 continuing to look at an issue, and if it decides a position  
12 needs to be changed or refined, change or refine the issue.

13 And for the lawyers, I can tell you, I tried a case a  
14 couple of months ago -- not very long ago -- where the State of  
15 Florida indeed had a problem. It was an outlying office that  
16 had engaged in unconstitutional activity. There wasn't any  
17 question that what was done was unconstitutional. When the  
18 folks in Tallahassee figured out what was actually going on,  
19 they promptly changed the procedure.

20 And there's a lot of complicated law on voluntary  
21 cessation dealing with government units, but I found that was a  
22 voluntary cessation that essentially kept me from issuing an  
23 injunction to stop the process, because it wasn't going to  
24 happen again. And I certainly didn't criticize the State for  
25 straightening it out when the people in Tallahassee higher up

1 the list figured out what was going on.

2           And, Ms. Matthews, I raised some questions a couple of  
3 months ago maybe, probably not that long, about problems  
4 presented by the requirement to pay legal financial obligations  
5 and the way this was going to be administered.

6           What I've called the first-dollar principle -- that's  
7 a poor name for it. I'll try to think of something better, but  
8 since I said it, everybody has been saying it, too. So that's  
9 what we are calling it, and we at least know what we are talking  
10 about. I, frankly, thought the first-dollar principle was a  
11 fairly ingenious way to deal with some of the problems. Now, it  
12 may create other problems and may not solve everything, but I  
13 thought it was fairly ingenious.

14           But I have to tell you that if you can read SB 7066  
15 and divine just from reading the statute that that's how it  
16 works, my hat's off to you, because I certainly couldn't read  
17 the statute and understand that's how it worked. The first I  
18 saw of it was, like I said, on April 17th. I read your  
19 protocol, and I understood immediately that that's what had  
20 happened, and I thought it was brand-new.

21           I've read your December protocol. Maybe I just missed  
22 it when I read the December protocol, but when I go back and  
23 look at it again, I'm going to be very surprised if that's in  
24 there.

25           Mr. Jazil, you need to back up.

## Direct Examination - Director Matthews

1           So my question is, where would I go to find any  
2 documentation that anybody had used that approach prior to your  
3 most recent protocol?

4           Do you know of anything other than the December 2020  
5 protocol?

6           THE WITNESS: Your Honor, I mean, I'm -- I'm looking  
7 at paragraph (.c) of -- subparagraph (.c) of -- paragraph  
8 5(a) -- (2)(a)(5.c), and it says, "The financial obligations  
9 required under sub-subparagraph a. or sub-subparagraph b.  
10 include only the amount specifically ordered by the court as  
11 part of the sentence and do not include any fines, fees, or  
12 costs that accrue after the date the obligation is ordered" --

13           THE COURT: I understand that, but, look, here's the  
14 problem: Somebody pays \$25 to the clerk of the court, and the  
15 reason for that payment is to set up a payment plan. This is  
16 not a payment on the \$300 in costs. This is a payment to set up  
17 a payment plan.

18           The clerk of the court takes it into income as the fee  
19 to set up a payment plan. The clerk of the court now shows the  
20 balance owed is \$325, the original 300 and the \$25 to set up a  
21 payment plan. Actually, if the \$25 gets paid, the clerk of the  
22 court shows the balance as \$300 because the original amount is  
23 still owed; nothing has been paid on the original amount.

24           But now the Secretary of State, after the fact, maybe  
25 years after the fact, says even though the \$25 was paid as a fee

1 to set up a payment plan, even though everybody knew that's what  
2 it was being paid for at the time, even though that's how it was  
3 accounted for, and even though the balance still shows \$300,  
4 we're going to treat it as if the balance is \$275.

5           Nobody had ever said that before. I can tell you  
6 there's been a lot of testimony by clerks of the court in this  
7 case. Not a one of them has suggested that in that situation  
8 the balance is \$275 or that that's what matters for purposes of  
9 voting. The very first inkling of that, I think, was the filing  
10 on April 17th.

11           Now, as I said, I don't have any problem with changing  
12 it. Here's what I do have a problem with. I have a problem  
13 with the State coming in on April 17th and saying, Here are the  
14 facts, and these have always been the facts, if they haven't  
15 always been the facts.

16           So I just need to find out: Who came up with this  
17 plan? Was it you? Was it somebody else? And when did they  
18 come up with it?

19           THE WITNESS: Again, I guess going back to the 2019  
20 procedures -- obviously, since the whole thing was adopted, it  
21 has been a process to try to come up with procedures and --  
22 reading the law and coming up with procedures that we can  
23 implement and things have changed with input from our partners:  
24 The clerk of the court, FDLE, DOC.

25           I don't know that -- again, I don't know that that had

1 changed. It's just crystallized, I suppose, is what I would say  
2 in terms of what -- the procedures on April 17th. I don't know  
3 that I have anything else that ever came up with -- as you note,  
4 the term "first-dollar principle" certainly wasn't something I  
5 knew or called it at that point, but that is what we -- that is  
6 what -- that's our position, and I don't have anything else to  
7 offer at this point.

8 THE COURT: All right. So if somebody had asked you  
9 on -- let's go back and say August 1, 2019, and they had said --  
10 well, let me give you the numbers I've used a time or two, and  
11 these aren't realistic numbers in some respects, but in some  
12 respects they very much are.

13 So the costs are \$300. The person pays \$25 to set up  
14 a payment plan. The clerk gets the money and treats it as a  
15 payment for a payment plan. The person is not able to meet the  
16 payment plan, and the clerk turns it over to a collection  
17 agency. The person then pays the collection agency \$100. The  
18 collection agency keeps \$40 and sends \$60 to the clerk of the  
19 court; doesn't even tell the clerk of the court about the \$40.  
20 So all the clerk's records show is original cost \$300, payment  
21 of \$25 in a separate fee to set up a payment plan, \$60 payment;  
22 300 plus 25 minus 60, balance due \$265.

23 So if the Secretary of State called on that case and  
24 said, how much does the voter owe, the answer would be \$265. If  
25 the voter called the clerk of the court and said, how much do I

1 owe, the answer would be \$265.

2 But now, starting, as far as I can tell, on  
3 April 17th, if somebody now asks the Secretary of State how much  
4 must be paid in order to vote, the answer is \$200. If the  
5 Secretary of State can get that information, which we'll talk  
6 about in a minute -- the truth is you can't get the information,  
7 so you wouldn't know the answer. But if you knew that the  
8 collection agency kept \$40, you would say the answer is \$200.  
9 Ignore the \$25 fee. The payment was \$100 gross. 300 minus 100  
10 is 200. So you say what has to be paid to vote is \$200.

11 I submit to you that that number is not in any state  
12 record. Nobody would get that information from any source. The  
13 plaintiffs in this case hired a Harvard Ph.D. and a bunch of  
14 Ph.D. candidates from Northwestern University, pretty  
15 sophisticated people, who spent hours and hours and hours  
16 calling, looking online, and trying to deal with clerks of court  
17 to find out how much a person would have to pay to be able to  
18 vote. And I guess that Ph.D. and all those Ph.D. candidates  
19 just weren't smart enough to figure it out because they thought  
20 what they were trying to figure out was the balance owed, and  
21 they got deposed by the defense lawyers and nobody suggested in  
22 all of that they're not even looking for the right number.

23 Here's my question. If somebody had asked you back on  
24 August 1, 2019, how much must that person pay to be able to  
25 vote, are you telling me your answer would have been \$200?



1           THE WITNESS: I'll be frank. I don't like the  
2 question being asked of how much to pay to vote, but at that  
3 juncture in August, we had not yet -- the Restoration of Voting  
4 Rights Work Group was about to get started, so we hadn't really  
5 focused a great deal on how this was all going to be interpreted  
6 because we were working -- looking to the group to see how --  
7 what information it could gather about where we could find more  
8 information.

9           So I don't know that I had any concept at that time of  
10 this, quite frankly.

11          THE COURT: Well, you told Mr. Jazil a minute ago that  
12 all you have to do is read the statute to know the answer. You  
13 had read the statute. You didn't just read the statute and know  
14 the answer was \$200?

15          THE WITNESS: Your Honor, this is not the most  
16 artfully written statute, but -- and there are differences of  
17 opinion as to the way things are read, as evidenced by people,  
18 and that's -- I think that's why we would go to No. 4; if a  
19 provision is susceptible to differing interpretations, we're  
20 still always going to err on the side of the voters.

21          And perhaps that's -- I guess that's my best argument  
22 at this point for this. I don't know --

23          THE COURT: We --

24          THE WITNESS: We devised these rules and have been  
25 tweaking them based -- as we get more information from the clerk

## Direct Examination - Director Matthews

1 of the court and looking carefully. I mean, yes, I'm a lawyer.  
2 I've read statutes many times. I don't know how many times you  
3 can read something and then you read it again, and you realize,  
4 hmm, maybe this is a little different based on the facts and  
5 circumstances that have been presented.

6 And I'm certainly open to the Court's will at that.

7 THE COURT: Do you think that in the work group  
8 anybody suggested that, in my hypothetical, the amount that had  
9 to be paid to vote was \$200?

10 THE WITNESS: I -- what I -- I don't know that that  
11 was specifically addressed in the work group. The work group  
12 really focused on -- it had three things to focus on, you know:  
13 Access to information; accuracy of information; where could  
14 information be found, making information available to voters so  
15 they could figure out, you know, what they owed and what they  
16 needed to pay and how they could -- you know, so that that  
17 process could be -- that's where their focus was on. I don't  
18 know that it got down to this level of inquiry.

19 THE COURT: You told me that as of August 1st you  
20 don't know that you would have come up with the \$200 answer.  
21 When did you learn that the answer in that circumstances would  
22 be \$200?

23 THE WITNESS: By the time the work group finished, we  
24 were trying to sort of solidify what we were going to put in our  
25 internal procedures, what we wanted staff to look at in terms of

## Direct Examination - Director Matthews

1 CCIS and the clerk records; and, again, I don't know if that  
2 2019 December version explicitly talks about this particular  
3 point.

4 THE COURT: I take it from what you've told me you  
5 don't know when the Department decided this was how you do it?

6 THE WITNESS: Well, I mean, I'm part of the  
7 department. I'm part of the dialogue that occurs both with, you  
8 know, my staff who has to work these files and based on their  
9 input, based on what -- I got input from the Florida Commission  
10 on Offender Review based on their experience in going through  
11 documents and trying to figure out what somebody owes -- or not  
12 what somebody owes -- what somebody is ordered to pay, because  
13 that's a little bit different, that question, what someone owes,  
14 to include what's accrued -- the interest accrued after. What  
15 was ordered is where my focus is on, and then payment is what we  
16 were looking at, and we took that position.

17 I really couldn't tell you at a point in time when  
18 that happened, but it's not in isolation, and it's not without  
19 my input on it as well. I'm going to consult, like I said, with  
20 my staff, with partners who -- the clerk of court, the F-COR,  
21 and my chief, the executive team. And if I had questions on  
22 legal, I mean, I can also -- you know, maybe that I could  
23 consult with my general counsel's office to make sure -- I mean,  
24 we are in litigation. I'm very, very nervous about proceeding  
25 and putting anything in writing because of the very fact that we

1 are still in litigation.

2 THE COURT: Well, I understand you are. And let me  
3 just tell you that, you know, your lawyers filed something on  
4 April 17th that fundamentally changed -- I think fundamentally  
5 changed some of the issues in the case. If this had been the  
6 view all along, they probably are obligated to disclose it to  
7 somebody. Now, I haven't complained at them for disclosing this  
8 on April 17th because, frankly, I thought that it was a fairly  
9 recent development, that somebody had just come up with this,  
10 and now I'm having trouble figuring out what to make of it.

11 I've got the person who should have been the one  
12 making the decision, and you say, "I don't know why. I don't  
13 know when it came up with," some little reference to general  
14 counsel. Just, you know, somebody came up with this plan. At  
15 some point I want to know who came up with the plan and when did  
16 they come up with it, and you're the best witness we've got.

17 And I guess what you're telling me is you don't know  
18 who came up with, and you don't know when they came up with it,  
19 just "We really didn't take a position earlier, and now we've  
20 taken a position, and I don't know how we got there."

21 Now, maybe that's not fair. I really do want to be  
22 fair to you, and I want to find the facts accurately. But  
23 somebody needs to tell me what happened and when it happened.

24 MR. JAZIL: Your Honor --

25 THE COURT: You don't know any more than what you've

1 told me; is that about it?

2 THE WITNESS: Your Honor, all I -- what we have in the  
3 April 17th is the most crystalized version of what our position  
4 is. I can't say that that hasn't been discussed before. This  
5 is just what crystalized at that point on the 17th and what's in  
6 that document on the 17th. I mean, we've been talking  
7 internally for months on how we are going to proceed with this  
8 in a fair way for the individuals that are affected by this.

9 I mean, I -- I -- really, I take this very seriously.  
10 I don't want to send anything down that's not credible and  
11 reliable; I don't want to establish a process that's not fair  
12 and uniform and can be -- and understood by everybody. That's  
13 what we are struggling with here while we are having lots of  
14 people ask questions about it.

15 I am trying to do the best I can on that one. I  
16 just -- I don't have anything else other than the 12-19  
17 procedures. And there may be ones before that, but I just -- in  
18 my mind, I think that's the first time we have actually talked  
19 about legal financial obligations and then the one on the 17th.

20 THE COURT: Maybe -- I don't want to beat this to  
21 death, and I may have gotten all the information I can get from  
22 you on this.

23 Let me give you one more reference point in terms of  
24 time. We had a summary judgment hearing in this case the end of  
25 March, maybe March 26th -- I don't have the date right in front

## Direct Examination - Director Matthews

1 of me -- late in March. One of the things I asked Mr. Jazil was  
2 essentially this -- and one of the issues in the case deals with  
3 a poll tax or other tax, is there a tax that people are being  
4 required to pay.

5           And so I asked him this question, or something like  
6 this: If a person goes to the corner hardware store and buys a  
7 small, cheap grill for \$100, the person has to pay \$7 in sales  
8 tax -- I mean, it's probably \$6 to the state and \$1 local  
9 add-on, and that \$7 is a tax, and everybody calls it a tax and  
10 knows it's a tax. If, instead of going down to the corner store  
11 and buying the grill, the person slips in there and steals it,  
12 now it's a crime; and if the person goes and gets sentenced and  
13 ordered to pay \$100 in restitution, it's the same \$100. It's  
14 the purchase price.

15           Now, bear with me a minute. I understand a \$100 theft  
16 is not a felony, it's a misdemeanor, but it's easier to do the  
17 math on \$100 than on enough money to be a felony.

18           So as I understood it, the person -- in order to pay  
19 the \$100 restitution, if it's paid through the clerk of court,  
20 the person has to pay a \$4 fee -- a 4 percent fee. So my  
21 question of Mr. Jazil was: If the \$7 is a tax, why isn't the \$4  
22 a tax?

23           He couldn't answer the question, and I didn't press  
24 him on an answer. I said -- it was a summary judgment hearing.  
25 I said, Eventually you are going to have to explain that to me.

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1 Well, the next thing I really see in the case of  
2 substance is the new protocol less than three weeks later and it  
3 answers the question. The new protocol, for the first time, as  
4 far as I can tell, in the case -- for the very first time the \$4  
5 doesn't have to be paid. The perk is it being just \$100. The  
6 clerk will treat, I don't know, \$96.11, or whatever the math  
7 works out to, as payment on restitution and the \$3.89, or  
8 whatever 4 percent is of the fee. But even though that's the  
9 clerk's fee, you get first-dollar credit. So the whole \$100  
10 counts and the person can vote.

11 Now, as I said, partly that's ingenious. That solves,  
12 or at least might solve, the problem that the \$4 is plainly a  
13 tax and might well be prohibited by the Twenty-fourth Amendment  
14 to the United States Constitution. So now the State has come up  
15 with an answer to my question that the State didn't have three  
16 weeks earlier. So I'm looking at this on April 17th.

17 Now, as I said earlier, I ruled for the State not a  
18 month ago when the State changed a position. I have no problem  
19 with the State changing a position, but if that's what happened,  
20 somebody needs to fess up and tell me that's what happened. "We  
21 looked at it. We heard the question." Maybe the plaintiffs  
22 have said some of the same things in their papers. "We heard  
23 the question. We thought about it. We had a constitutional  
24 issue. We figured out we could do it this way and we could make  
25 it work."

## Direct Examination - Director Matthews

1           But I've got to tell you, I'm a whole lot more  
2 impressed if you come to me and give me that answer than when  
3 the State comes to me and says, "Oh, just read this statute.  
4 You can tell from reading the statute," and fairly artfully in  
5 direct says, "Have you ever taken an inconsistent position?";  
6 not, "Has this been your view all along," but, "Have you ever  
7 taken an inconsistent position?"

8           And then so I asked you, "Well, when did you take a  
9 consistent position?"

10           And the answer basically is, "Well, I don't know who  
11 came up with it or when they came up with it or when it  
12 happened."

13           Do you see my problem? So if there is anything you  
14 can tell me about how we got here, now's the time.

15           THE WITNESS: Your Honor, we've been working on  
16 procedures. The last set that I had before the April 20th  
17 one -- or April 17th was the one in December where we do have  
18 some language in there about legal financial obligations. We  
19 have had meetings with clerk of courts and F-COR; and in context  
20 with that, reading this, the language, I can only say that they  
21 crystalized.

22           Yes, I've talked also with my staff, with my chief,  
23 and I do talk with the general counsel's office, too. But I had  
24 not seen that and I certainly did not participate in any  
25 intentional or otherwise discussion. I had no idea about that,



1 if that's what happened. That's certainly -- that's outside of  
2 my knowledge. And, you know, I've been dealing with elections.  
3 We had our presidential preference primary. I know that this  
4 litigation is going on, and that, you know, I get little bits  
5 and pieces, and as I'm supposed to provide information, I do.  
6 But I don't have -- regardless, Your Honor, I don't have  
7 anything else to say to that.

8 THE COURT: You answered my question. I appreciate  
9 it.

10 Mr. Jazil, you offered me a chance to ask questions.  
11 You are probably sorry; you didn't mean to turn it over that  
12 long. But those are important questions to me, so I needed to  
13 ask them.

14 MR. JAZIL: No, Your Honor is the trier of fact, so I  
15 defer to the questions Your Honor deems most relevant.

16 But I would like to frame the discussion that  
17 Director Matthews had with Your Honor about the timing of this  
18 into context with two questions, if Your Honor will permit?

19 THE COURT: Well, I certainly will. I don't know that  
20 I want to do it with Ms. Matthews listening to it. I mean,  
21 you -- well, maybe I do. I mean, if she has additional  
22 information, maybe she ought to hear the explanation first. So,  
23 yeah, go ahead.

24 MR. JAZIL: No, I still, Your Honor, am intending to  
25 pose two questions to Director Matthews so that Your Honor will

## Direct Examination - Director Matthews

1 hear from her.

2 THE COURT: Sure. Oh, surely. Look, both sides  
3 always get to follow up on my questions. I -- yeah.

4 BY MR. JAZIL:

5 Q. So first question, Director Matthews: Are you currently  
6 implementing the LFO requirements?

7 A. No, these are not being -- we have not sent any files down  
8 right now. What we are doing is we are training staff based on  
9 these procedures.

10 Q. Okay. So His Honor has an understanding of the timeline  
11 you were working with, can you help us understand when it is the  
12 Division of Elections, and you specifically, planned on  
13 finalizing the internal felon match procedures, when you planned  
14 on sharing those with the Supervisors of Elections and when it  
15 is you intended to start actually implementing this LFO  
16 requirement? I think that might help everyone understand the  
17 timeline that you were working with as you were, as you put it,  
18 crystalizing some of these points.

19 A. Well, starting from when the work group wrapped up its  
20 duties, we then had scheduled to have outreach to our  
21 partners -- the clerk of court, the F-COR -- you know, have  
22 training again for my staff. We started -- we reviewed what our  
23 procedures were, and based on having staff work some of these  
24 case files, that's how we came -- you know, crystalized more  
25 what the process was going to be and our internal procedures.

1           We did come up with, you know -- the legislature was in  
2 session, so there were some -- we didn't know if there were  
3 going to be some changes based on that, because they started in  
4 January.

5           We also had the pandemic in the middle of it and then the  
6 presidential preference primary, but our goal was to start  
7 having and finalize or crystalize what our procedures, internal  
8 procedures, were going to be; establish -- excuse me -- training  
9 for the supervisors. And they had a conference that they  
10 normally hold -- excuse me.

11           Supervisors of Elections have -- had a May conference  
12 scheduled, so our idea was in April we would finalize what our  
13 internal procedures were, get a good sense of what the file was  
14 supposed to look like and what it would -- you know, including  
15 what all the levels of review would be, and then introduce it to  
16 the supervisors at the conference, then have webinars in the  
17 rest of May and then start -- launch by the end of May or June.

18           That was my plan originally starting in late December, but,  
19 like I said, I've had some -- the pandemic, the PPP -- which I  
20 knew already about, but -- and then the conference got canceled,  
21 so we're still -- that's where we are right now.

22           So, I mean, I had it planned for the launch of it, but we  
23 haven't done it yet.

24 Q.       And, Director Matthews, you talked about all the people who  
25 contribute to the Division's development of the petition, but

1 who had the final say on what this manual looks like?

2 A. Well, I'm the Division director. I sought input from my  
3 staff who looked at procedures that were -- that we had drafted  
4 to see if they understood it and could work through with it.  
5 Based on their input, we tweaked, and then also had the input  
6 obviously from my chief, and then I looked at it, and then I'm  
7 the one that -- that finalized that that's the language --  
8 that's the language we were going to go with, and we put that in  
9 the -- you know, we revised it and inserted it into our internal  
10 procedures.

11 Q. Okay. And, Director Matthews, in your timeline you talked  
12 about how you were going to finalize this thing, how you were  
13 going to roll it out to the clerks. How is it that you expected  
14 the voters to know that this is what the State's position was  
15 going to be?

16 A. Well, that's the other component of it. You have to do  
17 messaging for voters. You have to make sure our websites are up  
18 to date with the information, know what the process is going to  
19 be. And, quite frankly, we're still not sure of all of it, but  
20 this is -- I don't want to put anything -- and I said this  
21 before: I don't want to put anything out there that ends up  
22 having to suddenly change because of what the Court orders or  
23 anything else because I don't want to create confusion.

24 So we haven't done that part yet, but there would be that  
25 messaging. There would be the website, both the state and the

1 Supervisors of Elections, that we would want them to have  
2 consistent information. And that would include everything,  
3 including if we're going to go down that route of allowing for a  
4 way for them to be able to assert that they have an inability to  
5 pay.

6         So we've been looking at the forms that are used in court,  
7 the civil and the criminal, for indigency. We've been looking  
8 at the advisory opinion process to see if we can develop a form  
9 that that can be used for that as well. Those are all pieces  
10 and parts of the whole thing that -- before it can be fully  
11 rolled out.

12         I don't want you to think that we haven't thought about  
13 anything or that we -- but we -- it's all kind of just behind  
14 the scenes trying to lay the tracks for this train.

15                 THE COURT: Mr. Jazil, if you're about to move on, let  
16 me ask one more question along these lines. I've now had an  
17 opportunity to go back and look at the December 2019 protocol,  
18 and, Ms. Matthews, here's what it says when it gets down to the  
19 legal financial obligations: "If judgment and sentence indicate  
20 restitution and/or fines, fees, or court costs were ordered and  
21 the CCIS screenshot shows an outstanding balance of fines and  
22 fees owed, enter comment "NMNSO-Fees Outstanding" in the other  
23 field of the case file review certificate and the file will be  
24 invalidated."

25                 That's the end of the quotation.

## Direct Examination - Director Matthews

1           Now, I think what that says is, you go to the CCIS  
2 system, you look for an outstanding balance, and if there is  
3 one, you indicate that the person cannot vote.

4           The balance at CCIS, of course, in my hypothetical,  
5 would start with the \$300, and they would reduce it by the \$60  
6 net payment, not by the \$100 payment, and so the balance would  
7 show 240, not 200, if those were the only transactions.

8           And if the person paid another 200, it would show a  
9 balance of 40, even if no collection agency fee came out of it,  
10 so there would still be a balance. So your December 2019  
11 protocol, as I understand it, did it the way I would have  
12 thought one would do it. Look for a balance.

13           Your April 17th protocol completely changed that and  
14 said you no longer look for the CCIS balance; you give first  
15 dollar credit for every payment made now I'm trying to figure  
16 out who made the change, and from what you've told me before,  
17 the answer has been you don't know. That's still the best you  
18 can do? You don't know who made it or why it got made? You  
19 don't know why it's different; it's just different?

20           THE WITNESS: Okay. So the focus of the December 2019  
21 was based on our understanding at that point that the balance in  
22 CCIS was the order -- what was ordered in judgment and sentence.  
23 Based on our conversations with the Supervisors of -- not  
24 Supervisors -- the clerks, we determined that that was not  
25 reflective of it. It had a lot more information in it so we --

1 we did clarify that we are to look at the judgment and the  
2 order. We thought that that balance there was reflective only  
3 of the judgment and sentence of what was ordered, and that's  
4 why -- yeah, I suppose in that regard that's why we say now it  
5 has to be the judgment and the order.

6 We thought the CCIS was the judgment and the order  
7 amount, that balance, and that's what we learned through our  
8 conversations with the clerk of court.

9 THE COURT: Well, actually what this protocol says is  
10 you start with the judgment and sentence, so you have that  
11 first, and if they indicate a restitution, fines or fees, then  
12 you go to CCIS to check out the balance. We've gotten where  
13 we're going to get, so -- I said before I wasn't going to beat  
14 that dead horse any further, and now I have, but I'll stop.

15 And, Mr. Jazil, back to you.

16 MR. JAZIL: Your Honor, since Your Honor is so focused  
17 on that issue, I would direct the Court's attention to  
18 Defendants' Exhibit 144.

19 And, Your Honor, this is part of the supplemental  
20 discovery that was provided for the Court's order on the motion  
21 to compel, and on page -- on the second page of that document,  
22 Your Honor, this issue is discussed under subheading 3 as well,  
23 just so the record is clear. And this was admitted into  
24 evidence.

25 THE COURT: Under paragraph 3?

## Direct Examination - Director Matthews

1           MR. JAZIL: I believe so, Your Honor. I believe it's  
2 the asterisk. It's the asterisk of the note.

3           THE COURT: Do we know where this came from? It was  
4 filed on April 17th. This is consistent with the April 17th  
5 protocol.

6           MR. JAZIL: Your Honor, Ms. Price is telling me that  
7 this was turned over to the plaintiffs on March 9th, consistent  
8 with the order on the motion to compel.

9           THE COURT: Yeah, do we know who wrote it or when?  
10 Can we show it to Ms. Matthews and find out if she knows where  
11 it came from?

12           MR. JAZIL: Yes, Your Honor. We're going to work on  
13 that, if you'll give us a moment. We've got a lot of lawyers  
14 who are moving. We have the document in front of Director --

15           (Pause in proceedings.)

16           (Discussion was held off the record.)

17           THE COURT: I'm back. I have the document up. I was  
18 going to share it, but apparently somebody was smart enough not  
19 to allow me to start sharing screens, and so when I hit the  
20 "share screen" button, it promptly threw me out.

21           MR. JAZIL: Your Honor, Ms. Price has likewise kept me  
22 from sharing the screen, so she is doing it herself, so if  
23 you'll bear with us for a moment.

24           And, Your Honor, I apologize to the Court for  
25 continuing to move backwards and forwards. I'm trying to be as



## Direct Examination - Director Matthews

1 close to the mic as I can. I don't always succeed.

2 THE COURT: So what's on the screen is  
3 Defendants' Exhibit 144?

4 MR. JAZIL: Yes, Your Honor.

5 Your Honor, for the record, Director Matthews is  
6 scrolling through the documents. It's in front of her on a  
7 smaller screen. The larger screen directly in front of her is  
8 not showing the documents, so bear with us for a moment, please.

9 (Pause in proceedings.)

10 MR. JAZIL: Your Honor, may I proceed?

11 THE COURT: Please.

12 BY MR. JAZIL:

13 Q. Director Matthews, I'll represent to you that this document  
14 was turned over to plaintiffs as part of Secretary of State's  
15 supplemental discovery request on March 9th, and it was filed  
16 with the Court on March 23rd as part of the defendants'  
17 supplemental exhibit list.

18 Do you recognize this document, ma'am?

19 A. Yes.

20 Q. What is it?

21 A. It's a detailed -- it's a detailed rendition of what ended  
22 up in the internal procedures regarding felony NMFO convictions  
23 that are no longer incarcerated or under supervision, so  
24 essentially the LFO positions, but it's a little more detailed.

25 And I had simplified -- I told staff to simplify it a

1 little so my staff -- so staff could understand it.

2 Q. Do you know who wrote that document?

3 A. That document was prepared with -- I did not create the  
4 document entirely. We worked on -- it was based on once we had  
5 discussions with F-COR and the clerk of the court, and I think  
6 we also asked for assistance from general counsel's office.

7 Q. Does that document -- scratch that.

8 The Felon Match Manual, that has been marked as  
9 Exhibit 167, is that identical to what's listed in that  
10 document?

11 A. There are some variations in it. It's not exact.

12 There are some -- there's some things that are not included  
13 that didn't make it into the final internal procedures.

14 Q. What, if anything, can we say about the Division's process  
15 in coming up with crystalized felon match files from that draft  
16 document? I'll represent to you that it's got a watermark that  
17 says "Draft."

18 A. Well, as with anything, when we are working through the  
19 process, we are developing it and then we seek input from staff  
20 and my leadership team and me to come up with the language  
21 that -- to put in here so that it's something that my staff can  
22 easily understand.

23 MR. JAZIL: Your Honor, I'll stop and see if  
24 Your Honor has additional follow-up questions on this issue.

25 THE COURT: No. That's helpful. Thank you.

## Direct Examination - Director Matthews

1 MR. JAZIL: If you'll take that down.

2 THE COURT: If both of you would continue to speak up  
3 loudly, it will help.

4 MR. JAZIL: Yes, Your Honor, I will do my best.

5 BY MR. JAZIL:

6 Q. Director Matthews, as part of this discussion we talked  
7 about the timelines for the roll-outs. We talked about when you  
8 would expect the voters to start hearing about these felon match  
9 procedures. I'll confess I don't recall your answer, so would  
10 you mind helping us understand how it is that the voters will  
11 know that these have become the internal felon match procedures,  
12 if at all, based on the timeline that you discussed with the  
13 Court earlier?

14 A. Again, these procedures are internal. They are not --  
15 that's not what we shared with the public. It's for -- it  
16 governs what our procedures are internally. What we need to do,  
17 and are trying to do is figure out what the process is going to  
18 be for these individuals once it goes down -- either before it  
19 goes down to the Supervisor of Elections or if someone wants to  
20 find out via an advisory opinion. We develop and finalize what  
21 those forms are going to be. We need to do the training for the  
22 supervisors so that they know when they get these files what it  
23 means, because they're the ones that are going to be having the  
24 direct interaction with the voters, and we will be providing  
25 training for them.

1           And then we need to make sure that our website provides  
2 clear guidance to these individuals about either requesting an  
3 advisory opinion or establishing a process by which they can  
4 assert that they have inability to pay and whatever else that  
5 they need to know in order to be able to -- you know, to provide  
6 information about their eligibility.

7           The framework -- the statutory framework is there already  
8 for them to be able to assert whatever they need in order to  
9 show that they're eligible. What's not there right now is an  
10 inability to pay or to get an answer before they register, and  
11 that's what we're working with.

12 Q.     Director Matthews, I'd like to turn to one final set of  
13 questions about the forms and then segue into a broader  
14 discussion about the inability to pay issue.

15           MR. JAZIL: Your Honor, counsel, I am going to place  
16 in front of Director Matthews four different versions of our  
17 voter registration form. They are marked as Exhibit --  
18 Plaintiffs' Exhibit 35, Defense Exhibit 169, Defense Exhibit  
19 170, and Plaintiffs' Exhibit 36.

20           So, for the record, there are four versions of the  
21 form that, with the Court's permission, I'm handing to  
22 Director Matthews.

23           I'll take these away.

24 BY MR. JAZIL:

25 Q.     Director Matthews, can you take a look at what's been

## Direct Examination - Director Matthews

1 admitted into evidence as Plaintiffs' Exhibit 35?

2 A. Oh, yes. Uh-huh.

3 Q. Can you tell us what this is?

4 A. Exhibit 35 is our standard form that was pre-7066, meaning  
5 this is the form that's currently adopted in rule, and it is  
6 also the form that predates the changes in the statute in 7066.

7 Q. You said that it's in the existing rules. Do you know  
8 whether this form is continuing to be accepted?

9 A. This form is continuing to be accepted, and we have told  
10 the Supervisors that they need to accept this form. And from  
11 what I understand, many of the Supervisors are just -- this is  
12 the form that they promote the most.

13 Q. Why do you think this form is still appropriate for people  
14 to use to register to vote?

15 A. The reason for -- based on the issue being the felony  
16 conviction or a felony eligibility question is because it's  
17 broad enough to encompass all kinds of -- whether it's an  
18 in-state, out-of-state, federal felon question regarding their  
19 right to vote having been restored. So it's the broadest  
20 question that encompasses all of those that anybody could  
21 answer.

22 Q. Director Matthews, I'd like to turn your attention to  
23 what's been admitted into evidence as Plaintiffs' Exhibit 36.

24 Can you take a look at that and tell us what that is?

25 A. This form -- excuse me -- has not yet been formally adopted

1 in rule. It is part of our rulemaking that we've initiated.  
2 But this form is what we call the post-7066 form because it  
3 incorporated the statutory statements that the legislature  
4 enacted and said had to be included on the statewide form.

5 Q. Now, if you turn to Section 2 of the form where it has the  
6 affirmations for felonies.

7 A. Yes.

8 Q. What happens when a voter checks two of the boxes or all  
9 three of the boxes? Do you still process the form?

10 A. Yes. We have taken the position that if a person marks one  
11 or more of the boxes, any combination, that they have -- they  
12 have completed that section affirmatively.

13 Q. Director Matthews, I'd like to turn your attention to  
14 what's been marked as Defendants' Exhibit 169 and admitted into  
15 evidence as such.

16 Can you take a look at that and tell us what this is?

17 A. This form is a third reiteration of the statewide form and  
18 is actually part of our rulemaking that we recently filed, which  
19 adds a fourth block -- check box to accommodate those  
20 individuals who have been convicted of a felony outside of the  
21 state of Florida.

22 Q. Now, what happens when someone checks off two, three, or  
23 all four boxes? Is the form still processed?

24 A. Yes. Assuming everything else is correct and completed;  
25 yes.

## Direct Examination - Director Matthews

1 Q. Why did you add a fourth box in Sub-heading 2?

2 A. I don't know -- well, I take that back. I do know. The  
3 reason is because an individual who's been convicted of a felony  
4 outside of the state would not be able to affirm using any of  
5 the statements that are very explicit above. So we didn't want  
6 that to be a deterrent from it. And it was either brought to  
7 our attention, or we realized it, and, therefore, it's -- we had  
8 hoped the legislature would change the language back to that  
9 single statement, and we had hopes all the way until the end of  
10 the legislative session in March -- end of March, but they  
11 didn't, so we now have the need to add a fourth box.

12 Q. Now, Director Matthews, I see there is a watermark on this  
13 that says "Draft" and on the top left it says "Draft 4-17-20."

14 A. Correct.

15 Q. Why are these drafts?

16 A. Because they haven't been adopted in rule yet. We have, I  
17 think, a workshop scheduled, so it's been put out on our web,  
18 noticed, and to seek input from the public.

19 Q. And, Director Matthews, I'll represent to you that in prior  
20 testimony in this case it's been suggested that the instructions  
21 part of this form on the top left can be improved and ought to  
22 have more information.

23 Can you explain to us why it is that the instructions form  
24 reads the way it does?

25 A. The pardon question, I believe, is where it says "If you've

1 been convicted of a felony, you can't register until your right  
2 to vote is restored pursuant to law." So again, to me that's an  
3 umbrella expression of the fact that whatever the methodology is  
4 for you to be able to get your rights restored, you -- if you've  
5 been convicted of a felony, then that would be -- that's how it  
6 would happen. It's not necessary to break it out into all these  
7 other check boxes.

8 That being said, we do have the workshop, and we'll  
9 certainly take input from the public. And if the need -- it's  
10 determined that we need to be more specific, we'll certainly  
11 change that instruction accordingly.

12 Q. Now, Director Matthews, I'd like to turn your attention to  
13 what's been marked and admitted into evidence as  
14 Defendants' Exhibit 170.

15 Can you take a look at that, please?

16 A. Yes.

17 Q. Can you tell us what this is?

18 A. This is another proposed revision to the form which  
19 incorporates the prior change that we did -- proposed change  
20 which is about the out-of-state felony. But it also adds  
21 another box which says "If I've been convicted of a felony, I  
22 affirm that I have completed all terms of my sentence except any  
23 legal financial obligations that I am genuinely unable to pay."

24 Q. Director Matthews, why is that fifth box included on this  
25 draft form?



## Direct Examination - Director Matthews

1 A. I think the -- it has come out that there are individuals  
2 who -- who have asserted that they are not able to pay, and this  
3 is maybe an option or consideration, that they can assert this  
4 on the application form and, therefore, be able to register to  
5 vote. However, it's still -- they need to recognize that no  
6 matter what anybody checks on these boxes, we're still going to  
7 cross-check to see if they've been convicted of a felony, to see  
8 if they have had their rights restored, including whether  
9 they've had -- have completed all terms of their sentence.

10 But we could have this form become a part of the packet  
11 that gets sent down to the Supervisors of Elections, indicating  
12 that the person has said that they are unable to pay, and then  
13 maybe the notice that goes to the voter could include a form  
14 based on that civil indigency form -- that they could go ahead  
15 and complete that. That would give them -- the Supervisor  
16 notice that somebody is -- that this potential person --  
17 ineligible person doesn't have the ability to pay.

18 Q. So, Director Matthews, I'd like to unpack that. Let's  
19 start with when it is that that fifth box will be used, if ever.

20 A. I would envision that box coming into play when a person  
21 who registers is identified as potentially ineligible, and we  
22 have a credible and reliable match that we send down to the  
23 Supervisors of Elections. I would probably include a copy of  
24 this voter registration application with that or indicate that  
25 that person had marked or checked that box so that the

## Direct Examination - Director Matthews

1 Supervisor will include some form in the notice to the voter  
2 that would allow them to be able to affirmatively assert that  
3 they are unable to pay.

4 Q. Director Matthews, what, based on the Division's best  
5 thinking at this point, might that notice look like, I guess,  
6 sent to the voter?

7 A. Well, it's gonna draw on what's already in law. The law  
8 already says what the notice has to include. It has to include  
9 a statement on the basis of which you're asserting the potential  
10 ineligibility. You have to include a return form that allows  
11 the person to admit or deny the accuracy of the information  
12 that's being provided. It has to provide -- include a notice of  
13 rights to ask for -- to request a hearing, and then it could  
14 include the form that would say, I'm unable to pay based on  
15 this.

16 This is just one additional piece of information of the  
17 story or the portfolio that this person is an LFO and -- but  
18 unable to pay.

19 Q. Now, Director Matthews, you talked about a civil indigency  
20 form, but it's unclear to me where that fits into the question  
21 equation that you just described.

22 Can you be more specific about how that civil indigency  
23 form might be used?

24 A. Well, if we include that -- if the supervisors include that  
25 in the notice to voter, the voter will then have an opportunity

1 to fill out that application -- that form, submit it, and then  
2 that becomes part of the record that the supervisor considers in  
3 determining whether the person is eligible to remain registered  
4 to vote.

5 Q. Now, Director Matthews, we've talked a bit about the -- how  
6 the State would implement the inability-to-pay process were it  
7 to be required.

8 Do you have any concerns with the process that you've just  
9 been discussing on the inability-to-pay issue?

10 THE COURT: Let me interrupt for just a minute.

11 Mr. Jazil, we've been at it a long time. We probably ought to  
12 take a break, so we may take a break and let you get into that  
13 in just a minute.

14 You're shifting off of the form, I take it?

15 MR. JAZIL: Yes, Your Honor. This is the final  
16 question. It's about the inability-to-pay issue were it to be  
17 required --

18 THE COURT: Oh, okay. I thought you were going to be  
19 on that awhile, but if it's just one question, we can do that.  
20 I don't want to keep Ms. Matthews answering questions for too  
21 long without a break. We've been at it a little more than two  
22 hours.

23 But, yeah, go ahead. One more, and then I've got a  
24 question about the form, but go ahead.

25 MR. JAZIL: Yes, Your Honor. And my intention was to

1 let the Court explore the inability-to-pay issue. Your Honor  
2 pointed out that you'd be interested in how that process would  
3 be implemented statewide if required.

4 THE COURT: Yeah, let's take a break.

5 But while we are on the form and we've got it in front  
6 of us, Ms. Matthews, here's my question dealing with the last  
7 form you dealt with that has the fifth box. I don't know that  
8 this really has anything much to do with this lawsuit other than  
9 the forms need to work.

10 A person who has a sexual offense can check that last  
11 box as if eligible to vote, and as far as I can tell, there's  
12 nothing on this form that tells them otherwise.

13 Why couldn't the person with the sexual offense who's  
14 paid all the financial obligations honestly check the last box,  
15 or same thing for murder?

16 THE WITNESS: I'm not sure I understand your question.  
17 I apologize.

18 THE COURT: All right. Let me try it again.

19 A person gets convicted of a sexual offense. It's a  
20 felony. That person cannot vote. Their rights have not been  
21 restored, but that person can check the last box honestly. The  
22 person has been a convicted of a felony, has completed all terms  
23 of sentence, except any financial obligations, unable to pay.  
24 So I guess assume the person does have financial obligations and  
25 has been unable to pay them checks the box and says, I was

## Direct Examination - Director Matthews

1 convicted of a felony; I can't pay. That's person is not  
2 eligible to vote. Isn't that a flaw in the application?

3 THE WITNESS: Well, it does create the impression that  
4 the individual knows for a fact that just by checking that  
5 off -- I have some reservations with that -- that check box.  
6 It's just a way to -- was trying to attempt to address the issue  
7 of how somebody can insert -- or at least initiate the assertion  
8 that they are unable to pay.

9 A person who has been convicted of a felony sexual  
10 offense, first of all, they may not know whether it's a felony  
11 sexual offense that's recognized under the statute as being one  
12 of those -- ones that have to have clemency to get your rights  
13 restored, not -- I mean, the legislature came up with a list of  
14 what the statute qualifies as a felony sexual offense. So an  
15 individual may not know that -- or they may -- it doesn't fall  
16 into one of those felony sexual offenses for which clemency is  
17 required. So it's possible.

18 My concern with this is that you may be creating an  
19 impression that the individual thinks that, okay, by affirming  
20 this, all is done. I can fill out this form and say, I've  
21 affirmed that I've never been convicted of a felony. That will  
22 not preclude the State from doing what it does on a daily basis  
23 to cross-check and make sure that's true, because it could be  
24 true at the time that I submitted my application, but not  
25 afterwards.

## Direct Examination - Director Matthews

1 THE COURT: Fair enough.

2 Let's take a break. Let's start back at 3:05.

3 (Recess taken at 2:51 PM.)

4 (Resumed at 3:05 PM.)

5 THE COURT: I'm back. I see Mr. Jazil's office.

6 Mr. Gaber, are you there?

7 Mr. Gaber is there.

8 Ms. Matthews, you are still under oath.

9 Mr. Jazil, you may proceed.

10 BY MR. JAZIL:

11 Q. Director Matthews, we talked a bit about the ability-to-pay  
12 process. I have one final question for you.

13 What are your concerns with the inability-to-pay processing  
14 you described that we would implement, if required by the Court?

15 A. I think putting the box on the form, my concern would be  
16 just creating the impression that that ends the discussion for  
17 the individual; that they need to realize that there will be a  
18 process that plays out behind -- after -- even after registering  
19 in which we will still be trying to identify if one is eligible  
20 to be registered and to vote.

21 It's also just a point in time that this person is  
22 asserting "I'm not able to pay," and that can change over time.  
23 I don't know that we have the wherewithal or the resources to  
24 follow up on whether an individual remains unable to pay, and  
25 that's another concern that I have as well.

## Direct Examination - Director Matthews

1 Q. Now, you discussed possibly using the civil indigency form  
2 as a way to determine whether someone is generally unable to  
3 pay. Why is that --

4 THE COURT: Wait. Wait. Stop, just a minute.

5 Mr. Jazil, I missed part of the question. You need to  
6 slide back over to your right some so we can all see you and  
7 then ask that question again. We missed part of it.

8 MR. JAZIL: Sorry, Your Honor.

9 BY MR. JAZIL:

10 Q. Director Matthews, you discussed possibly using the civil  
11 indigency form as part of the procedures for removal?

12 A. Right. What we -- because we don't have a form already  
13 created, what we were looking at were the civil and the criminal  
14 indigency forms that are promulgated by the court. There's some  
15 slight differences between the two.

16 The purpose of them is different, of course. It's really  
17 to determine the person's inability to pay at that time, and it  
18 has an end purpose. I mean, you know, a criminal proceeding has  
19 a beginning, a middle, and hopefully an end, whereas voting is  
20 ongoing -- being registered is an ongoing thing.

21 So I'm just concerned that the form is only going to be  
22 relevant at that point in time, and that's fine. That just  
23 needs to be understood that we wouldn't necessarily be following  
24 up every two months, three months, a year, to see if that's  
25 still true to determine whether somebody is still eligible to be

1 registered or to vote.

2 MR. JAZIL: Your Honor, those are all the questions I  
3 have.

4 THE COURT: Mr. Gager, before I give it back to you,  
5 let me ask the couple of questions I have so you'll have a  
6 chance to ask your questions afterward.

7 Ms. Matthews, this is something you already said, and  
8 I just want to make sure I understood it. The question is  
9 whether the person is eligible to vote if the only financial  
10 obligation at issue was converted to a civil lien and then the  
11 lien expires. So that's the only issue: Does this amount of  
12 money keep the person from voting? The amount was converted to  
13 a civil lien and the civil lien expired by passage of time. Is  
14 that personnel eligible?

15 THE WITNESS: Based on those facts, yes.

16 THE COURT: And that's what I thought you'd say. I  
17 just wanted to make sure I got it right.

18 If you get 100,000 or 500,000 applications with LFO  
19 issues, are you going to have the resources at the Division of  
20 Elections to follow this protocol in a reasonable amount of  
21 time?

22 THE WITNESS: Your Honor, are you referring to if the  
23 individuals are -- by "application," do you mean the request for  
24 advisory opinion?

25 THE COURT: No, no. No, no.



## Direct Examination - Director Matthews

1           I'm talking about people who apply, and let's say they  
2 use the old form and they say, Rights have been restored, or  
3 even they use the new form and say, LFOs, unable to pay,  
4 whatever. Anybody who is a felon, and they apply to register to  
5 vote, they fill out the form. As I understand it, the  
6 Supervisor sends that form to your office, and you find out the  
7 nature of the conviction, whether it's murder or a sexual  
8 offense; then you look at financial obligations.

9           So let's assume you get half a million applications  
10 from people who have been convicted -- not murder, not sexual  
11 offense -- you'd be looking for information on the financial  
12 obligations. You've got to process half a million of these  
13 people, and from now to voting day when the books close is,  
14 what, three months, something like that? You got the resources  
15 to do that?

16           THE WITNESS: Obviously, until we get the application  
17 and we have a chance to look at the math, I'm not going to know  
18 how many of those are actually real issues and whether they can  
19 be resolved. You know, maybe it's murder, maybe it's felony sex  
20 offense, maybe they're in prison supervision. If we can resolve  
21 it under those, or address it under those, those would make it  
22 go a little quicker.

23           But we are -- we are understaffed at this time. We --  
24 we work through the files the best we can. We have a staff of  
25 about 20 to work them. On average we're about able to do about

## Direct Examination - Director Matthews

1 57 cases a day, but that's of course -- these are not LFOs. We  
2 have not started those yet, so I don't know if it'll go quicker  
3 or slower.

4 And it's also very possible that we have a lot of  
5 those cases that they have paid; it isn't an issue anymore.  
6 Particularly on the older cases, it may be that those can go a  
7 lot quicker. I just don't know because I don't have the  
8 statistics for it yet.

9 THE COURT: But if you've got 20 people, and they do  
10 57 a day, that's a thousand a day, and if it's -- if you get  
11 500,000 applications, you'll be done sometime early 2022,  
12 something like that, maybe late 2021?

13 THE WITNESS: That assumes all those applications are  
14 LFOs.

15 We get on average about 500 --

16 THE COURT: Well, I thought you told me you were doing  
17 57 a day, even without looking at LFOs.

18 THE WITNESS: This is true.

19 THE COURT: Cross-examine, Mr. Gaber?

20 MR. GABER: Thank you, Your Honor.

21 MR. JAZIL: A follow-up question in light of  
22 Your Honor's questions about the staffing?

23 THE COURT: Surely.

24 BY MR. JAZIL:

25 Q. Director Matthews, I'll represent to you that Exhibit 168

## Cross-Examination - Director Matthews

1 in the record is an agreement between the Division of Elections  
2 and the F-COR?

3 THE COURT: Speak up for me.

4 MR. JAZIL: I apologize, Your Honor.

5 BY MR. JAZIL:

6 Q. Director Matthews, I'll represent to you that Exhibit 168  
7 in the record, which is Defendants' Exhibit 168 which is  
8 admitted into evidence is an agreement between the Division of  
9 Elections and F-COR.

10 Can you tell us whether that speaks to staffing at all?

11 A. That does speak to staffing in addition to getting --  
12 getting expertise from the F-COR to process and examine court  
13 records, this also is an agreement to augment, as necessary,  
14 staff to assist us with processing.

15 And we also have, if the need -- we have also been  
16 exploring additional temporary staff to assist with the volume.

17 MR. JAZIL: Thank you, Your Honor.

18 No further questions.

19 THE COURT: Mr. Gaber.

20 MR. GABER: Thank you, Your Honor.

21 Can everyone hear me okay?

22 CROSS-EXAMINATION

23 BY MR. GABER:

24 Q. Ms. Matthews, at your January 27th, 2020 deposition, you  
25 told me that the Secretary did not have a position at that time

1 as to which particular LFOs were disqualifying for voting  
2 purposes.

3 Do you remember that?

4 A. What do you mean by which LFOs are disqualifying?

5 Q. Well, I asked the question: "Does the Secretary of State's  
6 Office have a position as to if particular LFOs are  
7 disqualifying?"

8 And you responded, "Not at this time."

9 Do you recall that testimony?

10 MR. JAZIL: Your Honor, I object; it's improper  
11 impeachment.

12 THE COURT: The objection's overruled.

13 THE WITNESS: If you're asking me if I recall, no.

14 BY MR. GABER:

15 Q. In January 2020, did the Secretary's office have a position  
16 as to which LFOs -- which particular LFOs were disqualifying?

17 A. I guess I'm not following. What do you mean by that? Do  
18 you mean if interest was supposed to be part of that, if costs  
19 accrued afterward? Is that what you mean?

20 Q. I'm actually trying to understand what you meant,  
21 Ms. Matthews.

22 So you told me that the Secretary's office did not have a  
23 position as to which particular LFOs were disqualifying. Was  
24 that correct at that time?

25 A. I would yield to whatever it was I said at that time. I

1 just --

2 THE COURT: Mr. Gaber, maybe the point of Mr. Jazil's  
3 objection may have been telling him which page and where.

4 MR. GABER: Yes, Your Honor. This is at the January  
5 deposition, page 240, lines 2 through 5.

6 And, Ashley, if you can pull that up, it's Exhibit  
7 914, ECF 389-9.

8 BY MR. GABER:

9 Q. Now, I don't see it on my screen, but perhaps others do.  
10 Do you see -- does the deposition pull up for you, Ms. Matthews?

11 A. Yes. Yeah, I see it.

12 Q. And do you see the question at lines 2 through 5?

13 A. Yes, I see it.

14 Q. What did you mean when you said, "Not at this time?"

15 A. Not at this time, I really don't know.

16 Q. Well, did the Secretary of State's Office have a position  
17 as to which particular LFOs were disqualifying on the date of  
18 your deposition?

19 A. I guess I apologize, but I just don't understand the  
20 question now looking at it. I just don't understand it.

21 Q. Okay. Does the Secretary of State's Office believe that  
22 particular LFOs can be disqualifying under SB 7066?

23 A. Can -- I see what the LFOs are in the law. I would just be  
24 referring to what the law is right now.

25 Q. And is it your testimony that you would not have understood

1 this question to relate to the Secretary's position as to the  
2 first-dollar policy?

3 A. I -- honestly, all I know is you asked the question and  
4 that's what I answered at the time. I really don't know. I  
5 mean, in retrospect I'm not sure I fully understood what you  
6 were asking, so --

7 Q. That's fair enough.

8 Did the Secretary of State -- was the concept of the  
9 first-dollar policy in existence in January of 2020?

10 A. We -- the -- again, the procedures that we had in December  
11 and -- are a continuing effort to revise the process and make  
12 sure that it's understood in light of what we learned as a  
13 result of doing the case file. That's -- that's where we are  
14 today with the April 17th -- or at least the procedures that are  
15 dated April 17th, which did come into being beforehand.

16 Q. Okay. So my question is when did the concept arise?

17 So at the time of the January deposition, was the concept  
18 of the first-dollar policy in existence?

19 A. I didn't even use that terminology. I mean, I -- that's  
20 the first I'm actually hearing it this frequent, so I don't --

21 Q. Well, you can thank Judge Hinkle for that. It's his  
22 phrase.

23 But I guess I'm not asking in particular about those words,  
24 but what those words mean.

25 So at the time of our January deposition, was the idea that

1 you would add up the total dollar amount ordered and compare it  
2 against the total number of payments -- was that your  
3 understanding of whether someone had satisfied their LFO  
4 payments for purposes of voting at that time?

5 A. In January? Again, between December and April we were  
6 finalizing the -- or not finalizing -- crystallizing the  
7 language that was going to be in the -- in our procedures. So  
8 whether that was understood and what time and date that we  
9 suddenly came upon that idea or that's what it was, I don't  
10 know. I just know that we now have in these --

11 Q. So --

12 A. These procedures dated 4-17 is what our -- this is the  
13 latest reiteration of what our process, internal process, is.

14 Q. You used the word "crystallizing" a lot today, and actually  
15 you did use that phrase back when we talked in January. Do you  
16 recall testifying that -- at that time that your office was  
17 crystallizing a policy and that you expected it to be ready to  
18 go and begin running test cases within a week or so of our  
19 January deposition?

20 A. If I said that, that's probably what I believed at that  
21 time, sure.

22 Q. And when you told me that, was it this first-dollar policy  
23 concept that you were talking about that was crystallizing?

24 A. I can't answer. I don't know. I mean, right now -- we  
25 have had ongoing discussions trying to finalize our process in a

1 way that can be understood and implemented. So we've had  
2 multiple discussions whether I -- and that's all I can say.

3 Q. Do you also recall telling me that you were working on this  
4 daily and that you would be ready to give it -- it would be  
5 ready to go once the secretary and general counsel gave it the  
6 green light?

7 Do you recall telling me that?

8 A. Yeah. We had grand aspirations that we would be able to  
9 move faster on this than we've been able to, but we also -- we  
10 had legislative sessions in the middle of it. We've also had  
11 the PPP. We've also had a pandemic.

12 Q. Right. So -- but I'm talking about back in January. And I  
13 know that the pandemic was starting to bubble up, but it hadn't  
14 quite happened yet. And so I guess if you were telling me that  
15 within a week you thought you'd be running the test cases, do  
16 you understand why I'm concerned (crosstalk).

17 THE COURT: I've lost everybody, but --

18 Mr. Gaber, you briefly went out. You're back up now,  
19 but I missed part of that question, and I see the court reporter  
20 waving, so she did as well -- maybe just because I was talking  
21 over you, but go back and start that question up again.

22 MR. GABER: Sure. And, Ashley, if you could -- sorry,  
23 I'm getting feedback now.

24 Ashley, if you could pull up PX300 if it's not already  
25 there, and turn to -- or, I'm sorry -- PX914 and turn to page



1 300.

2 And that's 300 of the deposition pagination. I think  
3 that's Exhibit 621, I believe.

4 BY MR. GABER:

5 Q. And, again, it's not coming up on my screen. I don't know  
6 if you can see it, Ms. Matthews.

7 A. Yeah. I can see it on the big screen.

8 Q. Okay. And do you see where I ask, line 9: "You made  
9 reference to within the next week -- that the process is  
10 crystallizing in the next week. What did you mean by that?"

11 Do you see your answer: "Well, I mean it's a week-to-week,  
12 so I just said crystallizing, hoping that we can start moving it  
13 along."

14 A. Yes.

15 Q. And then if you could turn to page 301 and the question  
16 starting at line 3: "I understand you don't make the decisions,  
17 but do you have reason to believe that this is the time frame or  
18 something like that time frame for when the new procedure will  
19 be approved?"

20 And you answered that: "We're working on it daily so if  
21 and when we're directed to begin, we'll hopefully be ready to  
22 start."

23 Ms. Matthews, if you were in a position in January to be  
24 suggesting that the policy could -- the test cases could be run  
25 under the policy in the next week or two, does that help to

1 refresh your recollection as to whether you knew how you would  
2 determine whether someone was eligible to vote under the policy?

3 A. Perhaps, but that's what you get from reviewing the cases  
4 and seeing what they reveal.

5 Q. No. That's actually not my question, Ms. Matthews. I'm  
6 trying to understand if in January when you told me that you  
7 were a week -- or a week or two away from running the test cases  
8 under the new crystalized policy -- if you knew then what the  
9 framework of the policy would be, how you would determine  
10 whether someone had paid off their LFOs and could vote, or had  
11 not paid off their LFOs and could not vote?

12 A. Well, that process hasn't changed. I mean, that's still --  
13 you still have to look at all the court records to determine  
14 what has been ordered, and what -- or what has been paid.  
15 That's what we were looking at, so I was trying to do that.

16 Q. Is it your testimony that at the time when you were ready  
17 to begin running the test cases -- let's back up.

18 What is a test case?

19 A. It's taking one of these -- like these plaintiff cases or  
20 an LFO and trying to create the file from it. That's all that  
21 is.

22 Q. And so part of creating the test case is not to determine  
23 whether or not the information is credible and reliable that the  
24 person is ineligible to vote; is that what you're saying?

25 A. It is part to determine -- it is creating the case file to

1 determine -- that's necessary to determine whether it's credible  
2 and reliable. We weren't making any determinations at that  
3 point yet whether something was valid or not. We were just  
4 trying to get it to the point where we've gathered all the  
5 information that would be needed to be able to make that  
6 determination. We never sent anything down. It's just a  
7 training process.

8 Q. So it's your testimony then that in January when you said  
9 the policy was being crystalized, what you were talking about is  
10 trying to figure out which documents you needed to learn whether  
11 or not the person had LFOs outstanding?

12 A. What -- to see the variety of documents that we would get  
13 as a result of it, because we don't collect that information  
14 currently, or hadn't been. So it was to see what kind of range  
15 of documents we would get: What was it called? Were they  
16 ordered probation? Were there receipts? Is there anything that  
17 satisfies -- that showed payment? It was to get a sense of what  
18 the universe of records were out there that would be part of the  
19 evidence for determining whether someone had -- what somebody  
20 was ordered -- what someone had been ordered and what was paid.

21 Q. Ms. Matthews, do you recall at your deposition in January  
22 that I asked you to explain the Secretary's policy with respect  
23 to determining whether an LFO had been imposed at the time of  
24 the sentence versus accrued after the sentence? Do you recall  
25 us discussing that?

1 A. Again, I've had a lot of -- so if you'd like to point me to  
2 it, I'll take a look at it.

3 Q. I will. I apologize.

4 MR. GABER: Ashley, it's page 264 of the deposition.

5 BY MR. GABER:

6 Q. Do you see it there beginning on line 5?

7 A. I mean, I do see it. I'm sorry. I was just reading down  
8 to 18.

9 Q. Sure, sure.

10 So here I asked you, "What is the policy with respect to  
11 determining whether an LFO was imposed at the time of the  
12 sentence versus accrued -- an accrued obligation after the  
13 sentence?"

14 Do you see that your counsel, Ms. Davis, objected to the  
15 form and also attorney-client privilege and instructed you not  
16 to answer the question on the ground of attorney-client  
17 privilege? Do you see that?

18 A. Yes.

19 Q. Did you have a -- at the time you were instructed not to  
20 answer that question, did the Secretary of State's Office have a  
21 policy as to whether or not an LFO accrues after the time of  
22 sentencing or is part of the sentence?

23 MR. JAZIL: Your Honor, I object. This was asked and  
24 answered. We've explored this --

25 THE COURT: The objection is overruled.

1 MR. JAZIL: Thank you.

2 A. I honestly think we've had this already in place, or at  
3 least a consideration of that for the procedures.

4 THE COURT: Ms. Matthews, speak up for me, please.

5 A. Sure. In terms of what we were looking at, whether  
6 something accrued before or -- I mean after, and whether that  
7 was a consideration of what -- determining the amount ordered I  
8 think was already a part of our internal discussion. I just  
9 don't -- I mean, I may not have something expressly in writing  
10 like that, but that would have been part of our consideration  
11 when we were looking at the case file.

12 BY MR. GABER:

13 Q. So if your counsel had not instructed you not to answer the  
14 question, would you have been able to answer the question?

15 MR. JAZIL: Objection; speculation.

16 THE COURT: Overruled.

17 A. I'm assuming what I know today that I would have been able  
18 to answer that as I've answered now.

19 BY MR. GABER:

20 Q. And my understanding of when you went through the statutory  
21 text of SB 7066 in your direct, and explained where this --  
22 where this policy came from and why it had always been the  
23 policy, this accrual provision was integral to your  
24 understanding of the statute and why it requires this  
25 first-dollar policy; is that fair?

## Cross-Examination - Director Matthews

1 A. Can I -- can I get the statute in front of me that I can  
2 look at that?

3 Q. Sure. I can have it pulled up for you.

4 MR. GABER: Ashley, if you can pull up DX10.

5 MR. JAZIL: Your Honor, the screen in front of  
6 Director Matthews is not showing documents that are being pulled  
7 up. There is a television farther ahead of her that is, but  
8 it's too small. With the Court's permission, may I just hand  
9 her a copy of the statute?

10 THE COURT: Yes, please.

11 MR. GABER: Actually, Your Honor, would you mind if I  
12 refreshed my screen? I think it may help so that I can also see  
13 it.

14 THE COURT: Yes. Go right ahead.

15 MR. GABER: Thank you.

16 MR. JAZIL: Your Honor, for the record, this appears  
17 to be my copy of the statute, and I just have a mark next to  
18 Subsection (5.c), but I can't find another copy. There are no  
19 other marks on the document. I just wanted to be clear with the  
20 Court.

21 THE COURT: All right. Thank you.

22 BY MR. GABER:

23 Q. So the accrual provision is (5.c). Is that -- does that  
24 provision play a part in the first-dollar policy?

25 A. Absolutely. I mean, that's what it says in the law.

1 That's how I'm reading it.

2 Q. And that's actually the section that's cited to in the new  
3 April 17th, 2020 policy, isn't it?

4 THE WITNESS: I don't have the policy in front of me.  
5 I'm sorry.

6 MR. JAZIL: Your Honor, if I may, I will hand  
7 Director Matthews a clean copy of the policy, which is 167.

8 THE WITNESS: Thank you.

9 A. Yes, it is.

10 BY MR. GABER:

11 Q. But you couldn't answer any questions for me at your  
12 deposition in January that would have alerted me to the fact  
13 that the first-dollar policy might fall under this provision  
14 because you were instructed not to answer the question; is that  
15 right?

16 A. Negative or affirmative? I mean, your sentence form -- I  
17 mean, your question --

18 Q. Sure. I can clarify.

19 You couldn't tell me at your deposition that the  
20 first-dollar policy might derive from this provision because  
21 when I asked about this provision you were instructed by your  
22 counsel not to answer the question, that it was attorney-client  
23 privilege; that's correct, right?

24 A. I was instructed by my counsel about that, yes.

25 Q. Who was the person from whom you first heard that this

1 concept of the first-dollar should be used?

2 A. The concept -- you mean, the term?

3 Q. Not the term, not the language, not that phrase. The idea  
4 that we would look -- add up the amount due from the sentencing  
5 document and compare it against the amount of payments that have  
6 been made, what person told you that that's what SB 7066 meant?

7 A. I don't know that anyone told me. We've had discussions  
8 with staff. We've lost --

9 MR. JAZIL: Can you hit number -- just wait for it.

10 A. Again, in reviewing and working through these processes,  
11 this is what we have come to in terms of our position based on  
12 our reading of the statute. And it's been through discussion  
13 with staff. It's been in discussion with my chief. It's been  
14 in discussion, yes, even with the -- my -- our elections lawyer,  
15 just to make sure that we are all on the -- we all agree on the  
16 same page in terms of what this means.

17 BY MR. GABER:

18 Q. Do you know when the first -- who was the first person that  
19 suggested to you comparing payments versus amount due? Did you  
20 come up with the idea?

21 A. Well, it's certainly something that we have all discussed  
22 at one point or another. If we are in discussion -- I don't  
23 know who came up, specifically, and said, Oh, this idea, or they  
24 are the ones that first said it. Maybe we were thinking it. I  
25 don't -- like I said, we -- I consult with staff. I consult



1 with my executive team. I do consult with my elections lawyers.  
2 And also based on my own reading of the law.

3 Q. When was the first draft of the policy prepared? We went  
4 over DX44, and I think you have that there. Is that the first  
5 draft of this policy?

6 A. The one that looks most like what's inside the procedures  
7 now, the internal procedures?

8 Q. It's DX44.

9 A. Yeah. What we have is the -- we have the procedures in  
10 December, and then we have those draft procedures and then we  
11 have what we popped into our internal procedures, which --  
12 excuse me -- is a slight revision of what was in the draft.

13 Q. Is Defendant's Exhibit No. DX44 the only draft version, or  
14 were there others? Were there other iterations of the draft?

15 MR. JAZIL: Your Honor, just to make it clear for the  
16 record, it was DX144 not 44.

17 MR. GABER: I apologize.

18 THE COURT: Thank you.

19 A. I don't recall. This is not a dated draft, so I don't --  
20 it just says "Draft" on there. I don't know if we had some  
21 reiteration between that one and what was the language that was  
22 finally put into our internal procedures for adoption.

23 BY MR. GABER:

24 Q. Did Ashley Davis prepare what you see as draft DX144?

25 A. I don't know -- no, I don't believe she drafted that. No.

1 Q. Were members of the Secretary's litigation counsel in this  
2 case involved in drafting the -- either the draft that you see  
3 there as DX144 or the ultimate policy that was released on  
4 April 17th?

5 A. I mean I work -- we have two attorneys that are dedicated  
6 to elections division, and they may be drawn in at any one time  
7 for litigation. So, I mean, that's possible. I mean, I have --  
8 we have two attorneys who are dedicated to elections.

9 Q. Who are those attorneys?

10 A. Colleen O'Brien and Ashley Davis.

11 Q. And was any of the Secretary of State's outside counsel in  
12 this case, outside of the Department of State, involved in  
13 reviewing, editing, or approving the April 17, 2020 policy?

14 A. I'm not aware of that. I would have been the one approving  
15 these to be inserted into our procedures --

16 Q. So you're not aware --

17 A. -- and --

18 Q. I apologize.

19 You're not aware whether any of the outside counsel had a  
20 hand in formulating or devising the policy; is that right?

21 A. No, I'm not. I would not be surprised if they had seen it,  
22 yes.

23 Q. When do you think they would have seen it?

24 A. We're in litigation. You know, I'm going to -- I don't  
25 want to run afoul of anything, so I'm going to make sure I, you

1 know, check with my lawyers to make sure everything is okay.

2 This is the way I want to proceed. Is this okay? I mean,  
3 that's -- I think that's natural.

4 Q. When did you --

5 A. And that's what I do with my other processes.

6 Q. When did you check with the outside counsel to see if you  
7 weren't going to run afoul of anything with this policy?

8 A. Well, I wouldn't have run it by my outside counsel. I  
9 would with my election lawyers.

10 Q. Okay. Are you aware whether your election lawyers shared a  
11 draft with your -- with the outside counsel?

12 A. No, I don't -- I'm not aware. I don't know. I don't know.

13 Q. Okay. Would we have to ask Ashley Davis to learn the  
14 answer to that question?

15 A. I don't -- you'd have to ask the general counsel's office.

16 Q. And it's Ashley Davis or Colleen O'Brien who are the two  
17 people who you would have consulted on this issue?

18 A. Those are the two election lawyers, and we have our general  
19 counsel, and --

20 Q. Who is the general counsel?

21 A. Brad McVay.

22 Q. So Mr. McVay was involved in -- obviously, in reviewing and  
23 signing off on the policy; is that right?

24 A. He doesn't sign off on the policy. What he does is he  
25 may -- or his legal team, because that's only natural when

1 I'm -- elections is an area everybody has a great deal of  
2 interest in, and the -- when we're doing something, especially a  
3 new law, and I'm trying to implement procedures from those new  
4 laws, I want to make sure that it's a consistent reading,  
5 because, as we all know, you put five lawyers in a room and  
6 we're all going to read a statute a little bit differently. And  
7 I just wanted to make sure that we were okay with that.

8 In recognition, too -- I mean, I got to be frank; we are in  
9 litigation. So I did want to make sure that there wasn't  
10 anything here that was inconsistent or -- in any way with the  
11 law.

12 Q. Did Brad McVay draft this policy?

13 A. No. I -- again, I don't -- these procedures reflect our  
14 internal discussion that we had. I -- and my election  
15 lawyers -- or at least Colleen was involved with, you know,  
16 watching our procedures, seeing how they worked, so that when I  
17 would have to submit anything to her to review to say, Hey, is  
18 this consistent with your understanding? She sheds a lot of  
19 good legal analysis. So she would -- you know, that input may  
20 be reflected in here.

21 Q. Did Colleen O'Brien draft the policy?

22 A. I really don't know how it came to be -- we have procedures  
23 from December. Those procedures I submitted to the legal office  
24 to take a look at them and see, based on our subsequent  
25 discussions, whether anything that we were proposing to

1 change -- so these procedures reflect our internal discussions  
2 and the changes that we believe were necessary from the 2019  
3 version.

4 Q. Thank you.

5 Ms. Matthews, I'm trying to understand who typed the new  
6 words into the document. So can you tell me who did that?

7 A. Into what? Into the internal procedures document?

8 Q. Into DX167.

9 The new policy from April 17th, I presume, was the process  
10 that you started with the December policy, which was the last  
11 version, and then you edited it to make the new version of  
12 April. Is that how it happened?

13 A. We edited the version that pertains to LFOs. That's what  
14 we ended up editing, and then what was dropped in here reflects  
15 what -- our input from both our staff, our chief, me, and input  
16 from the legal office.

17 Q. Okay. And who literally typed the words into the document?

18 A. Typed it into this? It would have been one of the staff  
19 who's responsible --

20 Q. Do you know who?

21 A. -- for these procedures.

22 Q. Do you know who it was?

23 A. In the Bureau of Voter Registration Services?

24 Q. Right.

25 A. It was either Tiffany Morley, or it was Amber Marconnet.

1 Q. And then who approved the sign-off on this policy?

2 A. I did.

3 Q. Did the Secretary of State review this policy before it was  
4 released?

5 A. It's not been released. It's a -- it's an internal  
6 procedures policy. It's not released to the public.

7 Are you saying released to the litigation?

8 Q. Well, it was filed as a public filing in the docket of this  
9 case, so it's been released to the public.

10 Who decided that it was okay to release it? Was the  
11 Secretary of State involved?

12 MR. JAZIL: Objection; argumentive, Your Honor.

13 THE COURT: The question itself is whether the  
14 Secretary of State was involved. That's not argumentive. I'll  
15 overrule the objection.

16 THE WITNESS: Certainly anything that's going to be  
17 filed in a litigation suit would be through consult of general  
18 counsel, and I would expect that the Secretary would be aware.

19 BY MR. GABER:

20 Q. Do you know whether anyone from the Governor's office  
21 reviewed this policy before it was filed in this case?

22 A. No, I do not.

23 Q. Now, the documents -- the four documents -- the two voter  
24 registration forms, this policy, and then that interagency  
25 agreement -- were all filed on April 17th.

1 Did the finalization of those documents all happen to  
2 happen on that day?

3 A. The form -- oh, so the application forms, I think, had been  
4 circulating around a little bit beforehand.

5 Q. But what about the policy? Was April 17th the first day  
6 that there was approval to publicly file this policy in this  
7 case?

8 A. That -- that was the date that it was finalized so that it  
9 could be -- yes, so that we could submit it, yes. So it was put  
10 in a clean -- clean form.

11 Q. Do you have a copy of the interagency agreement which is  
12 DX168?

13 MR. GABER: Ashley, if you can pull that up, and if  
14 you go to page 3, please.

15 BY MR. GABER:

16 Q. This -- you signed this document also on April 17th; is  
17 that right?

18 A. That's correct.

19 Q. Why was there a nearly three-week delay for your signature  
20 versus the signature of the Florida Commission on Offender  
21 Review representative?

22 A. Well, I have to admit I'm not the most timely on things  
23 that I'm signing. I don't know. It's the date I signed it.

24 Q. Did you receive this back on March 27th from Ms. Coonrod?

25 A. I don't remember the date that I received it, if it was on

1 that date that it was signed, but I had already seen the  
2 agreement before that.

3 Q. Had you talked with Ms. Coonrod -- or is she your main  
4 contact at F-COR?

5 A. She is one of the contacts. She's not on a day-to-day  
6 basis, no.

7 THE COURT: Let me jump in here for a minute. There  
8 have been some references in direct and now again here to F-COR.  
9 That's the Florida Commission on Offender Review.

10 There's a reference to Ms. Coonrod. That's  
11 C-o-o-n-r-o-d.

12 MR. GABER: Thank you, Your Honor.

13 BY MR. GABER:

14 Q. And I think I had asked, Ms. Matthews, who was your  
15 contact, your primary contact?

16 A. On a daily basis we deal with Steven Hebert.

17 Q. Had you spoken to anyone from F-COR prior to April 17,  
18 2020, about the concept behind the first-dollar policies?

19 A. I don't know if we discussed that with them. What we  
20 discussed with them is trying to just, you know, get the benefit  
21 of their expertise in the way they look at court records, and,  
22 you know, how to find things a little easier because they have  
23 that experience, and they were -- they came over to the  
24 Department a couple of times to watch our process. Again, at  
25 that point we were not making and we still haven't made any, you



1 know, determinations of potential ineligibility regarding any of  
2 these -- the test cases that we were working.

3 Q. An earlier version of this policy -- do you recall seeing  
4 an earlier version of this interagency agreement?

5 A. Yeah.

6 Q. It's been through some changes; right?

7 A. I do think that there were -- there was a different -- or  
8 an earlier draft, yes.

9 Q. Do you recall that the prior draft would have required  
10 F-COR to receive the files from the Secretary of State, and then  
11 they would go through the records and make the determination and  
12 report back within 60 days? Do you recall that?

13 A. I don't remember the specifics, but I do know that we had  
14 discussions where we did envision that the Florida Commission on  
15 Offender Review would be the one that would do that analysis for  
16 us, based on their having done -- you know, doing clemency  
17 applications.

18 Q. And when you had those discussions with F-COR about the  
19 potential that they would do the back-end work, were they made  
20 aware of what the policy would be in terms of identifying  
21 whether someone had satisfied their LFOs because of the amount  
22 of money they'd paid?

23 A. I don't know that -- if we had a discussion with them about  
24 what that calculation was -- what that policy was at that point.  
25 Honestly, I think at that point we were just trying to determine

1 where -- who would be able to best be able to make these  
2 determinations on LFOs. So that's where our focus was right  
3 then and there. It was just trying to find experienced staff  
4 who have dealt with looking for court records and particularly  
5 whether -- you know, whether the sentence has been satisfied.

6 Q. Did someone ask you to sign this interagency agreement on  
7 April 17, 2020 -- that you should sign it on that day?

8 A. Yes, I was asked, Hey, have you signed this agreement yet?

9 Q. Who asked you that?

10 A. I believe it was Brad McVay.

11 Q. Okay. And do you know why that was on the same day that  
12 the policy was released?

13 A. Well, I'm -- at this juncture that's the date I was asked  
14 to sign that. That's the day we finalized the procedures. I  
15 suspect that it was in connection with the litigation.

16 Q. Did you see a copy of a letter that plaintiffs' counsel had  
17 sent that same day to your litigation counsel about asking for  
18 documents related to the new procedure?

19 A. No. I don't remember that, no.

20 Q. Okay.

21 Now -- and do you mind if I -- the first dollar --  
22 referring to it as the first-dollar policy is helpful to me.  
23 Otherwise, it's a lot of words.

24 Do you mind if I continue do that?

25 A. No. I'm sure the judge would be happy with that, too.

1 Q. Now, the first-dollar policy only clarifies how to  
2 calculate how much money a person has paid regardless of how  
3 that money has been disbursed by the clerk of court, am I right?

4 A. Yes, that's the principle. Well, I mean, the principle  
5 that we got is we've got two columns: What has been ordered as  
6 part of the judgment and sentence and what has been paid. So  
7 it's a simple addition and subtraction equation.

8 Q. Well, we'll come back to whether it's simple. I mean, you  
9 don't quite think it's simple, do you?

10 A. No.

11 Q. Many of the costs assessed to people with convictions are  
12 used to help fund the court system, prosecutors' and defenders'  
13 offices, various trust funds designed to host public services,  
14 and a host of other government services; is that right?

15 A. Based on my review of some case files, yes, there's a host  
16 of costs and fees that are ordered.

17 Q. And some of those appear in the sentencing documents; is  
18 that right?

19 A. Correct.

20 Q. And then others accrue after sentencing, for example,  
21 interest, surcharges, costs associated with supervision, and  
22 others; right?

23 A. Correct, there are -- there are costs that do accrue  
24 afterwards.

25 Q. And you talked a little bit about this on direct and in

1 response to the judge's question, but in addition to these fees  
2 and surcharges that we've discussed that are directed to  
3 government coffers, many people with felony convictions have  
4 their debt transferred to private collection agencies; isn't  
5 that right?

6 A. That's what I hear, and there's at least one example of  
7 someone who has filed a declaration saying so, yes.

8 Q. And that was Plaintiff Gruver; right?

9 A. I believe so, uh-huh, yes.

10 Q. When you look at these case files, you don't have  
11 declarations from the individuals in front of you generally, do  
12 you?

13 A. What -- oh, when I -- on these particular case files?

14 Q. Right.

15 A. I might have had them with me. If I had asked -- if I've  
16 asked for them, yes.

17 Q. A declaration --

18 A. That's not -- if they are not filed in the court -- in  
19 court records or docket, I wouldn't necessarily have it.

20 Q. Right. Okay.

21 Under Florida law, do you understand that clerks of courts  
22 are permitted to enter into contracts that allow collection  
23 agencies to retain up to 40 percent of the amount of debt?

24 A. I don't know the specifics of their arrangement. I just  
25 know that there is an arrangement.

1 Q. Okay. Well, I will represent to you that the law says that  
2 it's up to 40 percent, which we will come back to when we do  
3 some examples.

4 When a county clerk of court contracts with a private debt  
5 collection agency, they are essentially outsourcing to the  
6 private sector the collection responsibilities that would  
7 otherwise fall upon the government; isn't that right?

8 A. If you say.

9 Q. Well --

10 A. You are assigning it to some agency so they can collect  
11 the -- what is owed and then there's a fee.

12 Q. And if the government didn't have that option to assign it  
13 to the private debt collectors, the government would have to do  
14 it itself; right? There would be no one else to do it?

15 A. It would be in their interest to do so, yes.

16 Q. And so by using private debt collectors rather than have  
17 the taxpayers fund the government collection of the debt, that  
18 cost is shifted onto those who owe the debt; is that correct?

19 A. Okay. So what you're saying is that if there's something  
20 that's ordered, then the agency -- the clerk then assigns it to  
21 a collection agency, and the collection agency is now  
22 responsible for collecting it, and they can assess a fee for  
23 that, and that fee is what's charged against the individual.  
24 That's correct.

25 Q. Right. And just so we are clear, because we can -- the

1 county clerk can contract with the private debt collector, the  
2 taxpayers are saving money that they would otherwise have to pay  
3 to collect that debt. The debtor is paying that instead. Is  
4 that how that works?

5 A. Well, there's definitely a fee that's associated with  
6 collecting, and if it's assessed against the voter or the  
7 person, then, yes, that's the one that pays it.

8 Q. Now, because the first-dollar policy gives credit to a  
9 person's payment regardless of how they are disbursed, a person  
10 could complete their sentence and be eligible to vote under the  
11 Secretary's policy even though they may still have an  
12 outstanding balance for fines that were imposed at sentencing;  
13 isn't that right?

14 A. Correct.

15 Q. And the same is true for costs ordered as part of the  
16 sentence?

17 A. If it's ordered as part of the sentence, yes.

18 Q. And that's also true for restitution; isn't that right?

19 A. Whatever is -- at least currently our position -- and you  
20 are certainly trying to make me change it -- is that, yes,  
21 whatever is paid towards that amount that's ordered would then  
22 be subtracted from that, regardless of how the clerk of court  
23 applies that payment.

24 Q. I understand that, but my question was a little different.  
25 What I asked is: Because of that policy, there may be people,

1 in fact -- and we'll get to this -- perhaps a large number of  
2 people who have completed the terms of their sentence under the  
3 Secretary's understanding of the law, but who still owe  
4 restitution; is that right?

5 A. Right. This whole discussion is only about the person's  
6 ability to be able to register to vote. It doesn't take away  
7 from whatever outstanding relationship or obligation they have  
8 to the clerk of the court and/or to the victim in the case.

9 Q. And the fact that there might be outstanding restitution,  
10 that's true regardless of whether the restitution was ordered to  
11 be paid to the clerk directly or directly to the victim;  
12 correct? That doesn't change it?

13 A. Well, the fact is that restitution can be ordered to be  
14 paid to the clerk, or it could be ordered to be paid directly to  
15 the victim, or it could be ordered to be paid to the -- through  
16 a program with the -- like the state attorney's office or -- you  
17 know, as a third party, yeah.

18 Q. Right. And is that -- it was a very particular question.  
19 Whether or not there is still outstanding restitution owed, it  
20 doesn't matter whether they were ordered originally to pay to it  
21 the clerk or to the victim; that it could happen under either of  
22 those scenarios that someone would, under this policy, have  
23 their voting rights restored yet they would still owe  
24 restitution. That's correct, right?

25 A. Okay. Now you lost me.

1           So can you -- I'm sorry. I'll need you to ask that again.

2   Q.    Sure.

3           So my question is -- and you have answered that you may  
4 still owe towards the LFOs that were imposed as part of the  
5 sentence; is that right?

6   A.    Correct.

7   Q.    And my question here was just that that may be to  
8 restitution ordered directly to a victim, or it could also be  
9 restitution to the clerk; that difference doesn't matter for  
10 whether or not you might still owe restitution?

11   A.    Right. One may make it easier to find out if payments have  
12 been made.

13   Q.    So say a person is ordered to pay \$100 in restitution  
14 directly to the victim and \$100 in court costs. Okay?

15           Ms. Matthews?

16   A.    Okay.

17   Q.    Under the first-dollar policy, that person will be  
18 considered to have completed all terms of her sentence if she  
19 pays \$200; is that right?

20   A.    Right.

21   Q.    And even if she only pays \$100 in court costs, plus \$40 in  
22 collection agency fees, plus \$60 in other surcharges and fees,  
23 for a total of \$200 in total payments; is that right?

24   A.    Right.

25   Q.    And that person would be eligible to vote under the



## Cross-Examination - Director Matthews

1 Secretary's policy and the Secretary's reading of SB 7066,  
2 despite the victim receiving zero dollars of the \$100 owed in  
3 restitution; is that correct?

4 A. Hold on just a moment.

5 MR. JAZIL: Your Honor, for the record,  
6 Director Matthews is referring to the statute.

7 THE COURT: All right. Thank you.

8 THE WITNESS: Yes.

9 BY MR. GABER:

10 Q. Now, I've had an opportunity to review a good number of LFO  
11 payment records having worked in this case, and I know you have  
12 too, I'm sure, over the past year; is that right?

13 A. I have looked at a number of the plaintiff cases that we  
14 worked as test cases, yes.

15 Q. So you worked the plaintiffs' cases as test cases under  
16 this policy?

17 A. Yes.

18 Q. When did that happen?

19 A. Within the last month.

20 Q. Today is May 4th. Was it a month ago?

21 A. I would have to look at my records to see when I asked  
22 staff to go ahead and do that with this -- with this particular  
23 policy. Again, nothing is made -- determined valid or invalid.  
24 All I'm asking them to do is gather the documentation to look at  
25 it.

1 Q. Do you have a record of -- do you have a record of when you  
2 asked your staff to gather the plaintiffs' case records?

3 A. I'd have to look at when we instructed them to go ahead and  
4 do that.

5 Q. Which staff members did you instruct to do that?

6 A. It would be staff that work on case files.

7 Q. Do you have any particular names?

8 A. Let's see. It would be our -- it would be our reviewers,  
9 who are our more experienced staff. It would be Jay --

10 Q. I wasn't asking for their title. Thank you. That -- go  
11 ahead.

12 A. -- Susan Bush, and Ricky Cotton.

13 Q. And do you recall when you asked them to do this?

14 A. No, I don't. I'd have to look at my records.

15 Q. Now, it's the case, isn't it, that payments made by people  
16 who owe LFOs are frequently disbursed by clerks of court to set  
17 aside mandatory and discretionary surcharges and fees accrued  
18 after sentencing before they are disbursed to satisfy fines and  
19 fees that were imposed at sentencing? Is that your experience  
20 as well?

21 A. I'm sorry. Ask that question again, please.

22 Q. So in looking at the case files that you've seen, it's the  
23 case, isn't it, that payments made by people who owe LFOs are  
24 frequently disbursed by the clerk of court to the various fees  
25 and surcharges that have accrued after sentencing before they're

1 disbursed to show a lower balance due on the fees imposed at  
2 sentencing? Isn't that right?

3 A. I don't know that I can gather that information from what's  
4 been pulled.

5 Q. Have you looked at case files for people with LFOs other  
6 than the 17 plaintiffs in this case?

7 A. I don't believe so. I think that's where our focus has  
8 been. It's a known quantity. These are folks who have  
9 submitted, you know, declarations in the court file that they  
10 are unable to pay or that they have an LFO.

11 Q. So are the 17 plaintiffs in this case the only Floridians  
12 who have had their records run against this new policy to see  
13 how it would work?

14 A. These are our -- these are just test cases. Again, they  
15 were -- because these are folks who have asserted that they had  
16 an LFO and they have asserted an inability to pay, they were an  
17 identified easy group for us to test with this, yes.

18 Q. And when restitution is ordered to the victim, no part of  
19 that is disbursed through the clerk of courts; right?

20 A. Do you mean like if the Court orders that the restitution  
21 be paid to the clerk of court? Yes, they would have some record  
22 of it and so would -- the Department of Corrections in some  
23 cases would also have potential records.

24 And the clerk of court, from what my understanding is, even  
25 if they deal with a collection agency, they're going to have

1 some -- some record of that as well, which is what that audit --  
2 financial audit record thing is that we would ask of them.

3 Q. I'll circle back to the collection agency issue in a bit.

4 It's the case, isn't it, that the substantial proportion of  
5 people who get their voting rights restored under SB 7066 under  
6 this policy will do so by having at least a portion, and perhaps  
7 a significant portion, of their sentencing LFOs deemed completed  
8 by virtue of having paid money actually used by the clerk of  
9 court to fund various government programs instead of paying the  
10 victims back? Isn't that right?

11 A. Again, that's a conclusion that I can't come to just based  
12 on what we've reviewed to date. I don't know. I don't have a  
13 statistical basis for that. It may be --

14 Q. Well --

15 A. -- out there, but I don't -- I don't know.

16 Q. Well, let's break it apart a little bit. So there are a --  
17 you agree that there's a host of surcharges and fees that are,  
18 in many cases, mandatory that are added on after someone has  
19 been sentenced; right?

20 A. Right.

21 Q. And I gather you've only looked at the 17 plaintiffs'  
22 files, so you haven't looked at the other payments and how  
23 they're disbursed by clerks of courts? Have you asked clerks of  
24 courts how they disburse the payments?

25 A. Yeah. I did -- we did -- we did ask them and, you know,

1 every court does it a little differently.

2 Q. And in asking that, did you come across clerks of courts  
3 who disburse the payments first to the fees and surcharges that  
4 accrue after sentencing rather than to the fines and restitution  
5 if it's done through the clerk or costs associated with the  
6 sentencing? Did you come across that?

7 A. No. I have not had discussions with the 67 clerks. It's  
8 been through the association representative just asking general  
9 questions about how -- how their process works.

10 THE COURT: Ms. Matthews, it would probably help us  
11 all a little bit if you would back up some. We're kind of  
12 getting you out of the frame.

13 THE WITNESS: Okay.

14 THE COURT: Much better.

15 Thank you.

16 BY MR. GABER:

17 Q. So, Ms. Matthews, you would agree that that is possible --  
18 that that is how the policy works in theory, right? That  
19 restitution, fines and costs imposed at sentencing may still be  
20 due, but they're not due for purposes of SB 7066 because money  
21 that was sent by the clerks to fund government programs kind of  
22 count for what would otherwise have been the restitution and  
23 fine and sentencing cost payments; is that correct?

24 A. Like I said, we're -- we're focused on determining whether  
25 the individual has completed their sentence pursuant to what the

1 law directed us to make that call.

2       It's a different question and answer when you are asking if  
3 a person has completed their sentence for purposes of the clerk  
4 of court. It's true. It's -- the answer is different. And  
5 what is applied to the -- you know, to the column of what was,  
6 you know, ordered and as part of the judgment and sentence, yes.  
7 Our argument is going to be if there's evidence of payment,  
8 we're simply going to -- at least at this juncture, is that that  
9 would subtract from that. And, I mean, that errs on the side of  
10 ensuring that more people are probably able to remain registered  
11 or to vote than not.

12 Q.   And so my kind of fundamental understanding of this is that  
13 the policy treats money and payments made as sort of fungible;  
14 that is, it doesn't matter whether it goes to restitution or  
15 whether it goes to the fines, or whether it goes to the Victims'  
16 Compensation Trust Fund or to a percentage surcharge that goes  
17 to the general revenue fund. As long as the total amount of  
18 money paid is there, then SB 7066 is satisfied, and the person  
19 has paid enough money; is that correct?

20 A.   Legal financial obligations are what are ordered, and what  
21 are ordered can be everything from costs, court costs, to  
22 restitution, to fines. What the law is clear about not to count  
23 as part of all that is interest accruing afterwards. That's --  
24 that's what it says in the law.

25 Q.   So I guess my question is more operationally. If the clerk

1 of court is paying the money to the government revenue funds  
2 first, so that it's not crediting the balance due on the fines  
3 or restitution, what this policy does is treat those monetary  
4 payments as fungible, that it doesn't matter that they were --  
5 the purpose of the fine was to punish the person or that the  
6 purpose of the restitution obligation was to compensate the  
7 victim. What matters is did the person pay X amount of money  
8 into the criminal justice system collected by the clerk of  
9 courts. Do I have that right? That seems like the general  
10 thrust of it.

11 A. That -- that is the -- that is the current procedure  
12 policy, yes.

13 Q. And operationally it happens that that money actually goes  
14 to pay off first various fines and surcharges -- or, I'm  
15 sorry -- fees and surcharges and other kind of add-ons that go  
16 to fund government services; that's leaving people with  
17 restitution payments that are due. That's just how it works,  
18 isn't it?

19 A. Well, restitution, again, the individual has a remedy to be  
20 able to ensure that they get paid on that component of it. I  
21 mean, there's the civil restitution lien. There's other civil  
22 remedies that they may (crosstalk) --

23 Q. I understand that. I'm just asking for a (crosstalk) --

24 A. She's raising her hand.

25 THE COURT: Wait. Let me jump in. You're

1 cross-talking each other there, so the court reporter can't get  
2 it when you're both talking.

3 Mr. Gaber, we're getting pretty argumentative here.  
4 We've laid out these facts pretty well. Let's -- let's move  
5 this along.

6 MR. GABER: Sure.

7 BY MR. GABER:

8 Q. Ms. Matthews, you spoke a little bit about the staffing  
9 needs and the volume of files. Do you know how many -- we had  
10 talked last week and then in January that there were, you  
11 thought, 65,000 files that needed to be reviewed in your office.

12 Is that still the case?

13 A. There is still at least 65,000, yes.

14 Q. Now, you're still sending down files to the Supervisors  
15 when it's like a murder or a sex offense conviction; is that  
16 fair?

17 A. Murder, felony sexual offense, in prison or under custody.

18 Q. Is there a backlog on processing those types of files?  
19 Like, are they part of the 65,000?

20 A. Yes, they are part of the 65,000 plus. They -- when we  
21 worked with FDLE to try to establish a way that they could  
22 identify based on statutes, once the legislature passed  
23 identifying which statute, so that we could kind of pull those  
24 kind of matches out so that we could address those first, like  
25 murder and felony sexual offense, but there are also some in



1 there that are just -- may not necessarily be murder or felony  
2 sexual offense, but are -- the person is in prison or under  
3 custody based on our match with DOC data.

4 Q. In the direct examination I think you said that the rate at  
5 which the office can go through these without considering the  
6 LFOs is 57 files a day. Was that correct?

7 A. That's average.

8 Q. And is that the total amount or -- that's not the amount  
9 per reviewer; right? Like, that's the total amount per day?

10 A. That's per day.

11 Q. Are there plans to increase the number of staff that your  
12 office has to accommodate this large volume of files that could  
13 happen as a result of the policy --

14 A. Yes.

15 Q. -- now working?

16 A. Yes. There is. We are in -- considering what we need to  
17 do in terms to be able to handle the volume, and also I still  
18 refer back to the F-COR agreement that would allow us to maybe  
19 use them to augment our staffing as well.

20 Q. Is the 65,000 still the number, or is it higher than that  
21 now?

22 A. It's higher.

23 Q. How much? What is the number now?

24 A. It's probably close to 85,000.

25 Q. Is there any physical way that you'd be able to get through

1 those files by the time of the November -- or by the time of the  
2 registration deadline for the November election?

3 A. I think the judge already did the math on when -- if we  
4 were -- continued at this rate what that would be, but that's  
5 without additional personnel. And it's also -- again, it's case  
6 by case. Some of these cases may not take as much time as we  
7 think, so that could level that out as well.

8 But I'll -- but it is -- it is a substantial number, and we  
9 are looking to see how we can best, you know, go through that.  
10 It is a lot.

11 Q. I'm told that 85,000 divided by 57 is 1,491 days.

12 A. Never like it when a lawyer does math.

13 Q. No, it could very well be wrong.

14 Do you have an estimate for how long each file -- of the 17  
15 that you've done with the plaintiffs in this case, how long did  
16 it take for you to go through applying this policy for each  
17 file?

18 A. It really -- because we're still new with this, it may have  
19 taken longer because we asked staff to just, you know, explore  
20 to your -- to the nth degree to find everything that you can  
21 possibly find, so they probably -- they ended up probably  
22 copying even more court records than they should have, so that  
23 could have taken more time.

24 You know, it's really hard to say because when you have  
25 these matches, these matches may come with multiple cases, so if

1 they come with multiple cases, that means they're going to take  
2 more time to go through. We're going to try to find the first  
3 case that we can validate.

4 So voters may have multiple cases associated with them. If  
5 we can dispense with it based on murder, that's the way we're  
6 going to go with it. I mean, there could be some of those in  
7 these cases that we end up dealing with.

8 It could be anywhere from five minutes to half an hour.

9 Q. Did your office work on Pastor Tyson's case among the 17?

10 A. The name again?

11 Q. I don't know his first name, but Pastor Tyson is the --  
12 Clifford, maybe.

13 A. Oh, I don't know. I'd have to go and look. I've just been  
14 looking at the -- I've been looking at the plaintiffs' ones. I  
15 didn't look at all the 17, but I looked at some of those so --  
16 I'll have to find out.

17 Q. Was your office able to make a determination as to all 17  
18 individuals as to whether the policy generated a valid or  
19 invalid match?

20 A. No, we did not -- we did not make a conclusion, at least I  
21 don't think that they did -- I have to look at their case review  
22 file -- because this was just, like I said, tests.

23 Q. But what I mean by that is not whether you sent their files  
24 down, but did you -- like an informal conclusion sort of sending  
25 it to the Supervisor that they would be eligible or ineligible?

1 A. You know, I didn't really review their certificate review  
2 page at the front, so I don't know if they checked something  
3 off. So all I was doing was looking to see what kinds of  
4 documents are associated with trying to pull an LFO case  
5 together.

6 MR. GABER: I'd like to take a look at a couple of  
7 sentencing documents.

8 Ashley, can you pull up PX89?

9 And maybe you can magnify.

10 BY MR. GABER:

11 Q. Do you see this says "judgment" on the top? Do you see  
12 that, Ms. Matthews?

13 A. Yes.

14 MR. GABER: Now, Ashley, if you can scroll down.

15 BY MR. GABER:

16 Q. There is no -- the crime is listed here. You see that? On  
17 this judgment page, there's no dollar amount listed.

18 But, Ashley, if you scroll to the bottom of the page -- you  
19 see it says page 1 of 3?

20 A. Correct.

21 MR. GABER: Now, if you could turn to the next page,  
22 Ashley.

23 BY MR. GABER:

24 Q. Do you see -- this is called Charges, Costs, Fees on this  
25 page, and then it lists a number of statutory assessments. Do

1 you see that?

2 A. Yes.

3 Q. For a total of \$410?

4 A. Correct. That was --

5 Q. And then -- and then if you scroll to the third page, do  
6 you see that this document at the top is called Sentence?

7 A. Correct.

8 Q. And there's no monetary assessment listed on this page.

9 Would the -- under this policy, would the costs and fees  
10 that are listed on that second page between the judgment and the  
11 sentence -- would those be included in the amount due  
12 calculation?

13 A. Are these both fines on the same date, the 8th?

14 Q. If you can go to the third page, Ashley, we'll see.

15 I don't see a signature on the -- is the date that it's  
16 signed -- does that determine whether it's part and parcel of  
17 the sentence and judgment?

18 A. It certainly will play into it. Sentencing document is not  
19 defined in the statute, so we would take it -- it could be a  
20 composite of all these documents, all these orders, and I don't  
21 understand because this says 1 of 3, but then when you go down  
22 to the bottom, it says 1 of 2.

23 But, yes, we would consider the judgment, the order of  
24 costs and fees that was prior to the sentencing document, that  
25 would be what we would consider to be this sentencing document.

1 Q. And is a key factor in determining whether that is the case  
2 whether the order was a particular order issued by the judge on  
3 the same day that the order called Judgment and the order called  
4 Sentence happened?

5 A. That is certainly a very strong indicator of it. That's  
6 the cleanest. But there could be something in the judgment or  
7 an order that says reserved jurisdiction to -- you know, to  
8 order restitution, and so -- or to order other kinds of costs  
9 which might occur, you know, maybe the day after or up to, I  
10 don't know, 60 days later, or something like that. And we would  
11 consider that still part of the all-inclusive sentencing  
12 document.

13 Q. Do you think that a voter who was aware of the four corners  
14 provision in SB 7066 might look at this document and think that  
15 the costs were not included in the four corners of the sentence  
16 or the four corners of the judgment?

17 MR. JAZIL: Objection, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: You know, I don't know the -- I can't be  
20 in the shoes of someone who looks at these documents and how  
21 they construe these things. If they don't understand it, I  
22 would hope they'd ask. I mean, it's possible. It's just -- I  
23 just don't know.

24 MR. GABER: Ashley, if you can please pull up DX17-10  
25 and turn to page 2, please. And if you could blow up the top

1 part. Thank you.

2 BY MR. GABER:

3 Q. Ms. Matthews, this is the Hillsborough County court record  
4 for Luis Mendez, one of the plaintiffs in this case.

5 Do you see at the top right that Mr. Mendez is shown as  
6 having an amount due of \$1,915.

7 A. Yes.

8 Q. And then if you scroll down a bit, Ashley, under the case  
9 offense information.

10 Do you see there's two offenses here? Two offenses?

11 A. Yes, I see that.

12 Q. Okay. Thank you.

13 Now, the examiners in your office, they would not just take  
14 the amount due that's listed there, right, in determining the  
15 total amount for SB 7066 purposes?

16 A. This is a document -- a docket statement that's been  
17 printed. No, we would look at the judgment and sentence. We  
18 are looking at the sentencing documents. I don't know what this  
19 document is here.

20 Q. This is the docket report from the Hillsborough County  
21 Clerk of Court.

22 A. Okay.

23 Q. Ashley, if you could turn to page 13, please.

24 Do you see this is the judgment?

25 A. Yes.

1 Q. Okay. And then there's -- the next page has the redacted  
2 fingerprints. We don't need to look at that.

3 But, Ashley, if you can please turn to page 14 of the  
4 exhibit, and that's page 3 of the judgment document.

5 Now, do you see that this lists -- and this is part of the  
6 judgment document -- it lists the charges, costs, and fees?

7 A. Yes.

8 Q. Are these all the fees that would be included or the total  
9 dollar amount that the examiners would add up to determine what  
10 the amount due is?

11 A. Again, when would this -- is this part of the same  
12 document, the sentence?

13 Q. It is --

14 A. I don't know.

15 Q. Right. It is part of the judgment document. You see it  
16 has the "This is not a certified copy" at the top for each of  
17 them. And it's paginated, so it's pages 1 through 4 -- page 1  
18 through 5, actually. So this is page 3 of it. So it's all part  
19 of that judgment document.

20 A. Right.

21 Q. The list --

22 A. This is another way that -- or at least Hillsborough sets  
23 out this way. But I don't know -- these are charges, costs, and  
24 fees that have been assessed, and --

25 Q. And it's all on the same day. Each page is stamped



1 April 12th -- I'm sorry -- September 12th, 2005.

2 (Reporter requested clarification.)

3 THE COURT: And it will also help if you speak loudly.  
4 So time to remember to speak up loudly, and wait for the  
5 examiner to finish, Ms. Matthews, before you answer. And then,  
6 Mr. Gaber, wait for her answer before you ask the next question.

7 MR. GABER: Yes, Your Honor. I think there may be a  
8 slight delay, and that perhaps could be why.

9 BY MR. GABER:

10 Q. Ms. Matthews, I will represent to you that this is -- this  
11 list of charges, costs, and fees is paginated as part of the  
12 document called Judgment. If your examiners saw that and saw  
13 the fees listed in the judgment, are those the costs that they  
14 would add up to reach the amount due?

15 A. Yes.

16 Q. And then, Ashley, could you please turn back to page 13 of  
17 the exhibit?

18 Ms. Matthews, do you see under degree of crime for each of  
19 the two convictions one says "FT" and the other says "MF"?

20 A. Yes.

21 Q. What do you understand stand that to mean?

22 A. Well, I think one is felony traffic and the other is a  
23 misdemeanor -- I don't know what the MF -- I don't know. I'd  
24 have to look at the statute number. These look like they are  
25 associated traffic offenses. So we would be looking at the

1 statute to ensure that it's definitely a felony that we are  
2 talking about here. I wouldn't even rely on what they represent  
3 there. I would look on what the statute number is.

4 Q. My understanding of this was -- and I suppose I could be  
5 wrong -- I understood it to be felony third and misdemeanor  
6 first.

7 A. Yeah. Well, there you go.

8 Q. So this person has been convicted in the same judgment of a  
9 misdemeanor and a felony; right?

10 A. Yes.

11 Q. Ashley, could you please turn back to page 15, and scroll  
12 down to the bottom third of the page.

13 Do you see where it says, "Pay a fine of \$1,000 pursuant to  
14 Section 775.083 of the Florida Statutes"?

15 A. Yes.

16 Q. Now I won't pull up that provision, but I will tell you  
17 that that section lists what the maximum fine can be for various  
18 severity of convictions, misdemeanors of different degrees and  
19 felonies. To my recollection, none -- the \$1,000 is not over  
20 any of the ones for this conviction.

21 So are you able to tell from this judgment whether the  
22 \$1,000 fine is attributable to Mr. Mendez's felony conviction or  
23 his misdemeanor conviction?

24 A. Can you scroll back to the top?

25 Let me -- no. Just based on this page right here, no.

1 Q. What would your examiners do if -- well, first, is it --  
2 are the examiners instructed -- I didn't see it in the policy --  
3 are they instructed to look out for judgments that have both  
4 misdemeanor and felony convictions on the same judgment?

5 A. As far as I know right now, they -- I don't know if they  
6 had come across and whether -- again, they have not been  
7 reviewing these cases to make a determination of valid or  
8 invalid. It's just to get them familiar with looking for  
9 records. These cases would be created by examiners. Then they  
10 would be reviewed by reviewers. And if there was any question  
11 about whether, you know, the fees or fines or costs are being  
12 associated with the felony conviction, or pro rata, then that  
13 would be something that would be further reviewed.

14 I mean, these are kinds of things that we would learn with  
15 time, and if there's any questions about it and we can't resolve  
16 it, again, we're going to err on the side of the voter in terms  
17 of how to determine what's credible and reliable and valid to  
18 send down.

19 Q. Ms. Matthews, we are looking at one of the plaintiffs'  
20 records in this case which, as I understand your earlier  
21 testimony, is one of the test cases; is that right?

22 A. Right. I understand. But what I'm saying is, we did not  
23 reach a decision on any of these whether they were valid or  
24 invalid to the point of saying, Okay, we determined that this  
25 person is definitely -- hasn't satisfied. So these are the

1 kinds of things we would be looking at. These are case-by-case,  
2 you know, cases. We're going to look and learn from these  
3 things as to the complexity of something like this, because some  
4 of the others are much more clearly laid out.

5 Q. So do I understand your testimony to be that the Secretary  
6 of State's Office doesn't have a view, as a categorical matter,  
7 whether someone's fine that's not disaggregated between their  
8 misdemeanor and felony conviction -- whether that counts as an  
9 amount of money that they have to pay in order to vote?

10 A. All I can say right now is we would need to take this and  
11 look at this further and research this further. We are delving  
12 in criminal cases and laws, and this is an area that we are  
13 learning, so I don't have an answer for you.

14 Q. Okay. You said it's a case-by-case determination. Is  
15 there anything about Mr. Mendez's case, with respect to this  
16 fine, that could be different for someone else who has a fine  
17 that's also not disaggregated? Why is it case by case?

18 A. No, no, what I'm saying is that it could be because maybe  
19 the way the Court lays out the costs and fees, that it's clear  
20 what the fines and fees are associated. If it's like this, then  
21 we're still going to have that same situation. When I say "case  
22 by case," that's how we examine these things, fresh eyes.

23 First -- the first time we see these cases, we don't  
24 assume, oh, this is like this other case. We are still going to  
25 just take what our procedures are, and we're going to apply it,

1 because there's always something a little different with each of  
2 these cases.

3 I just don't know -- in this particular case, we would have  
4 to research it further to determine how we would figure out what  
5 was ordered.

6 And, then again, as I said, if there's a difference as to  
7 what -- opinion as to what was ordered and what was paid, we're  
8 going to resolve it -- and we have to by statute -- in favor of  
9 the voter. And I don't know what that means in terms of --  
10 would that mean that the person just stays on the rolls?  
11 Perhaps, but until we actually implement this fully, I won't  
12 know.

13 Q. So is it your testimony then that you don't have a policy  
14 as a categorical matter for a voter whose fine appears exactly  
15 as Mr. Mendez's does here?

16 A. I don't have it spelled out in the procedures as to this  
17 particular scenario.

18 Q. And as a result of that, Mr. Mendez would certainly not be  
19 able to know whether he needed to pay the \$1,000 to register to  
20 vote or not pay it; is that fair?

21 MR. JAZIL: Objection.

22 THE WITNESS: This would be an example --

23 THE COURT: Wait. Wait. Wait. Wait a minute. I  
24 need to rule on the objection.

25 The objection is overruled.

1           THE WITNESS: This would be an example that we would  
2 seek advice from our general counsel's office, or we would --  
3 could if Mr. Mendez asked and wanted to seek an advisory  
4 opinion, which would be the same thing as seeking a legal  
5 opinion, as to how to construe this.

6 BY MR. GABER:

7 Q. So you can't tell us today whether the \$1,000 on this  
8 judgment counts or doesn't count towards the total amount  
9 ordered; is that correct?

10 A. Well, it counts towards the total amount ordered. What  
11 you're trying to tell me is whether it counts towards -- to be  
12 able to associate it with a particular felony or the misdemeanor  
13 charge. I can't tell you that at this point. I'm not even  
14 familiar -- I'd have to look at Section 775.083 to see if -- how  
15 that might inform my analysis.

16 Q. I don't --

17           THE COURT: Are you moving off of that one? Let me  
18 ask a question about this.

19           Ms. Matthews, let me tell you what I think I  
20 understand from the exchange you just had with Mr. Gaber.

21           And, first off, I'll answer your last question. If  
22 this is a fine on a misdemeanor, it has nothing to do with the  
23 ability to vote. You don't have to look at the statute.  
24 Nothing that happens on a misdemeanor interferes with the  
25 ability to vote.

1           But the question was, how do you know whether this was  
2 a fine on a felony or on a misdemeanor? But let me see if I  
3 understand the exchange you just had. You've done test cases on  
4 17 plaintiffs in this case and not on anybody else. Your people  
5 looked at, at most, 17 cases. One of them had a \$1,000 fine in  
6 a case with both a misdemeanor and felony conviction and no  
7 indication on whether the fine was on the felony or the  
8 misdemeanor.

9           You've said the way you would deal with that, if it  
10 comes up again, is you'd go ask general counsel. But when it,  
11 in fact, came up, nobody even noticed the problem. You didn't  
12 check on it. You didn't ask general counsel. You just missed  
13 it until Mr. Gaber found it.

14           Is that about an accurate analysis?

15           THE WITNESS: Well, I can't say we entirely missed it  
16 because we haven't -- we didn't reach the final part, which is  
17 to go ahead and make a final determination to whether to send  
18 this or not.

19           I've just been looking at these files to just see what  
20 is all involved in it. I haven't had a chance to see every  
21 particular -- I didn't look at this Mendez case. I've looked at  
22 a couple of others. This one I didn't, but I'm not sure that I  
23 would have necessarily picked up on that.

24           But whatever the Court --

25           THE COURT: Whoever did the work didn't pick up on it,

1 and you didn't do the training. You didn't ask the general  
2 counsel. You -- the department -- I don't mean you personally.  
3 The department just missed it; isn't that right?

4 THE WITNESS: Well, we haven't sent anything -- we  
5 haven't done the final step, which is to conclude that this --  
6 that this is the amount that is ordered and that this amount has  
7 not yet been paid. We haven't done that part of it. We would  
8 have reviewed that. We just haven't gotten to that next stage  
9 of that.

10 This is certainly something that would have to be  
11 looked at, and my staff is not -- you're right; my staff is not  
12 going to know the subtleties of this particular thing. This is  
13 something that we would, you know, have to train them with, at  
14 least for the reviewer.

15 THE COURT: I guess my follow-up question is, when are  
16 you going to do that? Because this got adopted in November of  
17 2018. The statute has been in effect for now almost a year.  
18 We're a few months out from the August primary.

19 When are you going to work on this?

20 THE WITNESS: Honestly, Your Honor, when I'm  
21 comfortable that we have a process that I can -- precisely for  
22 these kinds of examples, that I don't want to -- I don't want to  
23 send something down that is -- that I think is -- that we say is  
24 valid, and then it's not. I want to be sure about our process.

25 We just continue to examine cases on that and proceed.



1 If the Court is fine with these procedures, we'll move forward.

2 THE COURT: I guess the concern is that Mr. Mendez's  
3 choices are to pay the \$1,000 that nobody seems to be sure he  
4 even has to pay under the statute or to go vote and risk  
5 prosecution.

6 THE WITNESS: We would definitely allow for the  
7 advisory opinion process and expedite that so that we can get  
8 him an answer. He does not have to pay this amount; he does not  
9 have to risk prosecution -- I would not want to advise him that,  
10 no.

11 THE COURT: Mr. Gaber, that's all I have. Back to  
12 you.

13 BY MR. GABER:

14 Q. Did I understand your last answer to be that you would  
15 advise Mr. Mendez not to just register to vote -- let me back  
16 up.

17 Say the only thing between Mr. Mendez registering to vote  
18 and being uncomfortable registering to vote was this \$1,000 fine  
19 that's on this judgment, if he paid the rest off and that were  
20 sufficient -- and I don't know whether that's the case -- was  
21 your advice that he should not register, that the avenue he  
22 should take instead is to seek an advisory opinion?

23 A. What I would say is that if he -- if he's not  
24 comfortable -- he's the one that has to swear under oath that he  
25 believes he is eligible to be registered. If he's not, then

1 that's -- I'm certainly not going to advise him to do that if  
2 he's not comfortable with that. I'm not telling him he can't  
3 register to vote. Every person has -- that's their own  
4 individual decision to make.

5 What I'm saying is that he has an option that we'll be  
6 happy to help with; and if he seeks an advisory opinion, we will  
7 give him that answer.

8 We lost Mr. --

9 MR. GABER: Sorry, Your Honor. I need to charge my  
10 earphones, so I had to switch.

11 BY MR. GABER:

12 Q. Ms. Matthews, is Bonnie Raysor's file one of the files that  
13 you've taken a look at?

14 A. No, I didn't look at that. I don't remember that one.

15 Q. Which of the ones do you remember?

16 A. Singleton I think was one. Miller was another one. Gruver  
17 I think was one. And there was two or three others, but I  
18 didn't look at the names so much as I was -- like I said, I was  
19 trying to focus on the court documents to see what kinds of  
20 range of documents you can see or orders or judgments and  
21 sentences are entered.

22 Q. So I count -- of the three names you remembered and the two  
23 to three additional, it sounds like there are about six files  
24 that you've personally reviewed of the plaintiffs; is that  
25 right?

1 A. Yeah, that I got -- that I was given. I wasn't given all  
2 17. When I opened the folders, some of them weren't in there,  
3 but I did look at a couple of them to get a sense of what they  
4 contained. I wanted to see what these three examiners and  
5 reviewers -- how they pulled things together.

6 Q. And just so the record is clear --

7 THE COURT: Let me interrupt you for just a second,  
8 Mr. Gaber. You are not on the video. You probably need to  
9 refresh.

10 MR. GABER: I will do so.

11 (Pause in proceedings.)

12 MR. GABER: Can you see me, Your Honor?

13 THE COURT: Yes, thank you.

14 MR. GABER: And I can hear much better.

15 BY MR. GABER:

16 Q. Before I cut out, Ms. Matthews, I was trying to clarify for  
17 the record that the six files you've reviewed, that's the  
18 universe; right? It's the six plaintiffs you've looked at and  
19 there are none others?

20 A. Well, I don't know if there -- I mean, it's just the  
21 plaintiffs that are in this case. I think those were the cases  
22 that we told the staff to focus on as using as test case -- test  
23 training.

24 Q. And so after having looked at -- personally at six of the  
25 files, you felt comfortable with the April 17th policy being

1 publicly released in this case?

2 A. Well, I mean, in terms of them gathering the documentation,  
3 yes, but there's still -- we're still working on that -- the  
4 process. I mean, there's going to be tweaks even along -- even  
5 as we go along, I'm still going to get input from the  
6 Supervisors, I'm sure, as to what they think about what -- the  
7 files that they get and about scenarios like you presented that  
8 maybe come up that we hadn't anticipated.

9 This is just our latest reiteration, where we are at this  
10 juncture. And, honestly, after reviewing these six files, I  
11 would be tweaking these procedures even more, and I think I have  
12 that prerogative to do that, because I don't want to have a  
13 situation where I'm sending things down that I'm not comfortable  
14 with, that --

15 Q. Are you aware that your counsel filed a notice attached to  
16 these documents that asserted that the Secretary now has a  
17 process and that that process would reduce any chance of factual  
18 vagueness or risk of error and would be pro voter? Did you see  
19 that filing?

20 A. I don't know if I saw that particular document.

21 Q. Do you agree that the process, as it stands now on the  
22 basis of reviewing just six of the plaintiff files, that it  
23 accomplishes all of the goals of resolving ambiguity and  
24 reducing risk of error and ensuring that, to the extent there's  
25 a tie question, it comes out from your office on the side of

1 voter? Are you comfortable that that has been accomplished?

2 A. I do believe that the procedure -- if there is ambiguity,  
3 it's going to be that we can't make something valid. I do  
4 believe that that gets you there. What it -- what the  
5 procedures will evolve into with time is more precision about  
6 what we can validate.

7 And that's going to change. I couldn't swear to you today  
8 this is the last version of procedures that I'm going to have.  
9 It just doesn't work that way. These are the internal  
10 procedures. We learn from the cases that we get; I learn from  
11 the staff and their input on what they see; I learn from the --  
12 my executive team; I learn from the Supervisors, who are not shy  
13 about telling us what they think could be done better, or what  
14 could be done differently, or what they would like to see in  
15 their -- in these case files so that it makes it easier for them  
16 to be able to make their determination because, I mean, frankly,  
17 they are at the front line. They are the ones facing the voter,  
18 not me.

19 Q. Do you know when the policy will actually be triggered such  
20 that files will be sent down to the Supervisors of Election?

21 A. Again, I think what plays into this is the -- because the  
22 Court has brought this up -- is the inability to pay. There's  
23 the advisory opinion process that -- I would like to get that  
24 finalized in a way that individuals can submit something there.  
25 Rather than just, you know, an informal letter, they could -- I

1 mean, they could do it that way if they want, but --

2 THE COURT: Ms. Matthews. Ms. Matthews.

3 THE WITNESS: Yes.

4 THE COURT: Ms. Matthews, let me just stop you. This  
5 is going to go a lot quicker --

6 THE WITNESS: Okay.

7 THE COURT: -- if you'll just answer the question you  
8 are asked.

9 Do you remember the question?

10 THE WITNESS: When do I think I'm going to launch?

11 THE COURT: Yes. That's a time question. That's not  
12 a "What all you are going to do?" It's a time question, if you  
13 know the answer to the question. If you don't know, say you  
14 don't know.

15 THE WITNESS: I don't know.

16 BY MR. GABER:

17 Q. Do you have any confidence that any number of the tens of  
18 thousands of match files that you have currently pending -- that  
19 those voters or potential voters will get some answer as to  
20 whether the Secretary of State's Office thinks that they might  
21 be ineligible to vote in the upcoming election?

22 A. Any person who's identified as potentially an eligible and  
23 wants to know, again, we are -- they can certainly submit an  
24 advisory opinion if the process is not already in play for them  
25 to be able to find out from a case file that we're working.

1 Q. How are you going to be able to give an answer through an  
2 advisory opinion? If I'm requesting today on behalf of  
3 Mr. Mendez an advisory opinion from your office, how does that  
4 process differ from the process of your examiners doing the  
5 match file? Is it different?

6 A. Well, it moves it to the front of the line in terms of  
7 asking for that particular voter. So we would still pull the  
8 information available for the inquiry.

9 Q. And wouldn't you need the determined policy as to  
10 categorical issues that can be applied uniformly across files in  
11 order to give an advisory opinion that answered the question?

12 A. Again, the procedures are going to be -- the procedures are  
13 going to be what's in law, what's in our internal procedures,  
14 and whatever we find out in other -- any other research. I  
15 mean, that's -- that could -- I mean, I don't know what else to  
16 say on that front.

17 Q. Ms. Matthews, at your first deposition in this case you  
18 testified that when your office receives an automated match,  
19 there are often four or five felony convictions associated with  
20 that match. Does that sound like the general number?

21 A. Yeah, it can be anything from 5 to 20.

22 Q. Now, those can result from a single court case or multiple  
23 court cases adjudicated at different times and in different  
24 jurisdictions; is that right?

25 A. Correct.

## Cross-Examination - Director Matthews

1 Q. Under this policy, does the examiner add up the total  
2 amount ordered for each court case and treat them as a separate  
3 dollar amount that must be met or exceeded by payments in that  
4 particular court case file, or does the examiner sum the total  
5 amount ordered across all of the cases with felony convictions,  
6 or --

7 A. If there are multiple cases involved in -- with a -- with a  
8 match, then what will happen is the person is going to look,  
9 first and foremost, can they resolve it based on the murder or  
10 felony sexual offense, or in prison or under custody; and if  
11 they can, then it's off the table. It's the latest case that  
12 they are going to take. If they can't validate that case, the  
13 latest case, they go to the next one and so on until they find  
14 one that may be valid or not. So each case is not aggregated  
15 among all the cases, no.

16 Q. Okay. So in determining the -- for purposes of LFOs only  
17 and not cases with murders or sexual offense, the examiner will  
18 add up the total amount ordered in the sentencing and judgment  
19 documents and the total amount of payments on the other side of  
20 the ledger just within that court case and not -- and is the  
21 result that the potential voter would need to have paid a sum  
22 that equaled or exceeded the amount ordered in each of those  
23 cases? Is that right?

24 A. Yeah. I mean, that's still the principle as you go through  
25 each case. Again, if there's multiple cases, they're going to



1 take the latest case and work that one. If they can make -- if  
2 they can determine in that one that the person has not paid an  
3 amount equal to or in excess of, then that case is validated,  
4 meaning it gets sent down to the Supervisor of Elections.

5 Q. So if someone has two cases -- two court cases, and in the  
6 first court case they were ordered -- the amount ordered is \$25,  
7 but they've paid \$50 total in that case because of various fines  
8 and surcharges and fees that accrued after the sentencing -- so  
9 they have overpaid by \$25. Do you understand that?

10 A. Yes.

11 Q. And say they have a second case that the amount ordered is  
12 \$15, but they've only paid \$10 toward that case, that person  
13 would not be eligible to vote under this policy; is that right?

14 A. Right. It's the case that's in hand. There's no rolling  
15 over the amount; you pay more in one case and now you get to  
16 apply that to the other one. No.

17 Q. But if those same convictions happened in the same case and  
18 the money was all paid toward the same case, that person would  
19 be eligible to vote under the policy, wouldn't they?

20 A. You are talking about convictions -- several convictions in  
21 one case?

22 Q. Right.

23 A. Correct.

24 Q. Now, if the -- we were looking at Mr. Mendez's file. If  
25 that had turned out differently and the sentencing judge had

1 disaggregated the fines between the felony and the misdemeanor,  
2 I take it from our discussion last weekend that the -- in your  
3 deposition that your office would not count the separately  
4 assigned misdemeanor count -- fine on the "how much was ordered"  
5 side of the ledger; is that right?

6 A. That's right. I mean, you can't -- yes, that is correct.

7 Q. Okay. But the policy doesn't say that specifically, does  
8 it?

9 A. Our policies are geared toward felon matches, so that's  
10 what it's about. It's felony convictions.

11 Q. Now, in that same case, if the person makes payments to  
12 that file, you're not going to look to see whether they go to  
13 the misdemeanor or to the felony; is that right?

14 A. Well, I don't know about that now. Given what I'm seeing  
15 in the case file, I'm going to have to look to see what was --  
16 if the amount that was ordered -- we can figure out what the  
17 amount was ordered for the felony and then we figure out what  
18 the amount was paid -- actually, as I'm talking about it, I  
19 think I would have to research that further.

20 Q. Okay.

21 So you can't say today whether payments that were made and  
22 attributed by the clerk of courts to the misdemeanor fine would  
23 go to the -- would go to the total amount of payments that you  
24 consider for purposes of SB 7066; is that correct?

25 A. Unless -- I would have to look at the record to see if

1 there is a way that the clerk of court is able to give me that  
2 information. I don't know. It's a hypothetical that I can't  
3 answer at this point.

4 MR. GABER: Ashley, could you please pull up DX17-11  
5 and turn to page 26?

6 BY MR. GABER:

7 Q. And, Ms. Matthews -- does it come up on your screen,  
8 Ms. Matthews?

9 A. Yes.

10 Q. Okay. This is the court case file from Hillsborough County  
11 for one of the plaintiffs in this case, Lee Hoffman.

12 Is Mr. Hoffman's files among one of the ones that you have  
13 reviewed in this case?

14 A. I don't recall it, no.

15 Q. Okay. This particular case is from 1995 and you see in the  
16 upper left corner it says "Case Type Felony"?

17 A. Yes.

18 Q. And do you see below that Mr. Hoffman was charged with two  
19 offenses, one misdemeanor and one third-degree felony? Do you  
20 see that?

21 A. Yes.

22 MR. GABER: Ashley, if you can turn to page 28.

23 BY MR. GABER:

24 Q. Is that on your screen?

25 A. Yes.

1 Q. Do you see the first entry says "Notice of Nolle Pros" with  
2 respect to the grand theft -- or to the third-degree felony?

3 A. Uh-huh, yes.

4 Q. Now, the case type we saw on the first page still lists  
5 felony. When your office -- when a -- when a felony conviction  
6 or a felony charge is either dismissed, as it was in this case,  
7 or the person is adjudicated not guilty, does it often happen  
8 that the case type remains "felony" on the file?

9 A. Yes. It's still possible.

10 Q. And so when that happens, would this have matched to a  
11 voter registration record because the case type was coded as  
12 felony?

13 A. Yes, it's possible. That's why staff is directed to go  
14 look at the docket and the records, to ensure that nothing has  
15 changed. Sometimes the information doesn't get to FDLE court --  
16 their records.

17 Q. I want -- I'm sorry. I want to, for the moment, assume  
18 that this were actually a felony conviction for me, okay?

19 A. Okay.

20 MR. GABER: And, Ashley, can you turn to page 27 of  
21 the exhibit?

22 BY MR. GABER:

23 Q. Do you see the notation in the middle of the page that says  
24 "Restitution Joint/Severally Liable" on 11-13-1995? Well, they  
25 are all that date.

1 A. I see restitution orders filed.

2 Q. So go three down from there.

3 A. Okay.

4 Q. And then it says restitution to be paid by defendant is  
5 400, and that that's joint and several liability with the  
6 codefendant; correct?

7 A. Yes.

8 Q. If I have a codefendant and I'm ordered jointly and  
9 severally liable for a restitution order and my codefendant pays  
10 the amount ordered in full, does that count as the LFO being  
11 satisfied under the first-dollar policy?

12 A. Well, if it's joint and severally liable -- I'd have to see  
13 the documents that ordered this, as well as whatever the Court  
14 said that -- the satisfaction of that, because I see there's  
15 still restitution orders filed. So I don't know what that --  
16 oh, that's just an order that was entered.

17 Q. Okay. So I guess I'm just asking not as a -- you know,  
18 anything about this particular case, but if someone is ordered  
19 to have joint and several liability and if the restitution is  
20 paid by the codefendant, that there's -- does that payment count  
21 towards the person who did not make the payment in terms of  
22 determining whether they've paid the total amount due?

23 A. I would look towards the statute that says "actual payment  
24 of the obligation in full," and if that's -- I don't -- it  
25 doesn't say that the defendant paid the obligation in full. It

1 simply says "actual payment of the obligation in full."

2 So based on that, if that obligation is now satisfied  
3 because it was paid by his codefendant, and that was the only  
4 thing outstanding in terms of the legal financial obligation,  
5 and assuming, of course, that he was convicted of a felony and  
6 it wasn't nolle prossed, then my initial conclusion would be  
7 that this would be an invalid case.

8 Q. So whether I regain my right to vote can depend upon  
9 whether someone else pays the restitution order; is that right?

10 A. It's what I said right now, that the Court has determined  
11 it to be -- that this person -- that the restitution is joint  
12 and severally liable, and so they are tied at the hip with  
13 respect to the restitution.

14 Q. And assume that the codefendant hasn't paid the full amount  
15 off, but that they've made some payments toward it. Those  
16 payments also would count toward my amount due -- or my amount  
17 of payments; is that right?

18 A. Again, I guess it would depend on how the court is  
19 recording this, but it would seem that that would be the case.

20 Q. Now, the policy doesn't say anything about joint and  
21 several restitution orders, does it?

22 A. No, you're going to have -- we're not going to be able  
23 to -- I wouldn't be able to have enough paper to be able to  
24 accommodate every possible scenario that is presented. We're  
25 going to -- you know, case by case, after awhile we'll probably

1 see some patterns regarding this. This is all new area for us.

2 Before all we had to do was find out if somebody was  
3 convicted of a felony and whether they got clemency or not, and  
4 now we are having to look at what their underlying felony is and  
5 what all their terms of their sentence are. So it is a little  
6 more complex.

7 I -- so it will take some time to accommodate and learn  
8 about the different types of things that may come up. And,  
9 again, if we can't figure it out, if there's a difference of  
10 opinion, if there's a gap in anything or we can't -- no  
11 document, we're going to err on the side of the voter.

12 Q. How would -- Ms. Matthews, how would your -- are your  
13 examiners -- do any of them have legal degrees?

14 A. No.

15 Q. Do any of the reviewers have legal degrees?

16 A. No.

17 Q. Do you think that your reviewers and examiners know what a  
18 joint and severally liable order is?

19 A. I haven't asked them.

20 Q. Do you have any confidence that one of your examiners  
21 looking at this file would know that they should look to see  
22 whether someone else has made payments?

23 A. What they're going to look for is is there a record of a  
24 payment made. I don't know that they would necessarily care who  
25 it is that made the payment as long as it's reflected in the

1 case -- the court records that a payment has been made.

2 Q. Well, actually, for this they wouldn't, right, because for  
3 restitution payments that are ordered to be provided directly to  
4 the victim, your reviewers don't look for those at all; right?

5 A. No, we wouldn't -- I didn't say that. We may -- we would  
6 try to see if we can find information about that. We would  
7 still try to go to the clerk of the courts and see if there is  
8 any way that they have any of this information, or the  
9 Department of Corrections, if they have that information. It's  
10 possible that we might not have it, but -- or be able to access  
11 it, but we're still going to try to see if we can find that  
12 information.

13 Q. But you don't try to go look with the person to whom the  
14 restitution order was -- sorry, I did not phrase that well.

15 You don't ask the person who is the beneficiary of the  
16 restitution order or the organization or business that's the  
17 beneficiary of restitution order; right?

18 A. That's correct. But what we have are -- or at least my  
19 staff has indicated that there are times that there are records  
20 in the court records that are like payments that have been made.  
21 So there may be something in there. We're going -- that's why  
22 we're going to look at the court records. There might be  
23 something that they didn't say that the restitution had to be  
24 paid to the court, but maybe the defendant decided to file  
25 something with the court or in the official record somewhere or



1 some satisfaction that even the victim might have decided to  
2 file, which the law also allows them to do if they want.

3 Q. So assume for me, please, that your office does all of  
4 those steps, and they come up dry, and they've added up what's  
5 been paid, but it's not enough to cover what you've determined  
6 to be the amount due, and you know that there is a restitution  
7 order payable directly to the victim. I understand your  
8 testimony from last weekend to be that you don't call those  
9 people; is that what you -- is that correct?

10 A. We don't -- we don't call which people?

11 Q. The restitution -- the payee to whom the restitution is  
12 due.

13 A. That's correct; we do not.

14 Q. And that's even when you know that it is possible that  
15 payments have been made to that person, organization, or  
16 business; right?

17 A. Correct.

18 Q. So this policy, in essence, treats the fact that someone  
19 was ordered to pay restitution to a victim as credible and  
20 reliable evidence that the person has not paid that restitution,  
21 doesn't it?

22 MR. JAZIL: Objection, Your Honor.

23 THE WITNESS: I'm sorry. Say that again.

24 THE COURT: Yeah. Let me get in here on the  
25 objection.

1 I overrule the objection.

2 And, Mr. Gaber, you're probably going to have to  
3 remember the question, but let me jump in and find out where we  
4 are. We've been in session for a little more than two hours.  
5 I'd love to finish with Ms. Matthews tonight, but I also want to  
6 be reasonable. This -- the level of intensity required in a  
7 trial is some for the judge and more for the lawyers and more  
8 for the witness. So when the same witness has been on the stand  
9 a long time, we may need to break.

10 How long do you think we're going -- how much more do  
11 you have?

12 MR. GABER: Unfortunately, Your Honor, I have quite a  
13 bit of material. If we did -- if we were to -- we would be here  
14 for quite a while tonight, I think, if I were to try to get  
15 through all of this. And so that's my reflection on it.

16 I think certainly if Ms. Matthews comes back tomorrow  
17 morning, then I will have some time to reflect on the  
18 examination that's happened and can hope to reduce it.

19 THE COURT: What I had asked you is -- I mean, some of  
20 this is argumentative in the sense that it's a closing argument  
21 rather than really much of an effort to get information out of  
22 the witness. A certain amount of that is okay, but if you can  
23 minimize that going forward, that would probably help.

24 We're going to break for the evening, but, first, you  
25 had started a question. I'm happy to let you finish up with

1 that if you wish.

2 MR. GABER: Thank you, Your Honor.

3 BY MR. GABER:

4 Q. Ms. Matthews, the question was -- and I'm going to have to  
5 back up a little bit just to give you the context of the  
6 question. Sorry.

7 So we had just talked about the fact that your office under  
8 this policy would plan to send down files to the Supervisors  
9 knowing that there were restitution orders to be paid directly  
10 to a victim, but without doing the research to determine whether  
11 that victim had been paid. Okay?

12 A. Correct.

13 Q. And so my question is, the policy, in essence, treats the  
14 fact that someone was ordered to pay restitution to a victim as  
15 credible and reliable evidence that the person has not paid that  
16 restitution; isn't that what the policy does?

17 A. What it does is it shifts the burden, because we cannot  
18 find any evidence, to the person in the notice and due process.  
19 That's where they're going to have their opportunity to be able  
20 to either assert it, present evidence to that fact, or if we  
21 incorporate an inability to pay, that as well.

22 MR. GABER: Your Honor, can I just have a follow-up to  
23 that?

24 THE COURT: Surely.

25

1 BY MR. GABER:

2 Q. So is it my understanding then that under the Florida  
3 Statute -- and I don't know the number -- that says that only --  
4 only when the Secretary of State has credible and reliable  
5 evidence may the removal process begin, that in your view the  
6 lack of evidence in your possession can constitute triggering --  
7 a triggering mechanism under that statute that shifts the burden  
8 of proof to the voter? Is that -- my understanding of your  
9 testimony correct?

10 A. What we have at that point is an order of restitution and  
11 no evidence that it has been paid. We don't have that, assuming  
12 we can't find it and we tried.

13 MR. GABER: Okay. I can end there, Your Honor, for  
14 the day.

15 THE COURT: Very well.

16 On the plaintiffs' side, is there anything we need to  
17 do this evening before we break?

18 MR. GABER: I do not believe so, but if someone -- I  
19 have not been focused on anyone else, so --

20 THE COURT: You've been trying a case, yeah.

21 If there's somebody else on the plaintiffs' side, I'm  
22 sure their picture will show up and they'll say it; otherwise,  
23 I'll assume no.

24 Ms. Ebenstein, anything else?

25 MS. EBENSTEIN: I was just coming on to say, no,

1 Your Honor. We still don't have clarity on witnesses available  
2 for tomorrow morning. So my understanding is we'll finish up  
3 with Ms. Matthews, and then Mr. Donovan is our rebuttal witness;  
4 but as far as I know, we have not received additional  
5 information on the two other employees of the Department of  
6 State.

7 THE COURT: All right. And part of that was a  
8 personal matter that we were discussing offline, and we could do  
9 that.

10 Mr. Jazil, other than witness availability, is there  
11 anything from the defendants this evening before we break?

12 MR. JAZIL: No, Your Honor, but I would urge my friend  
13 to look at an e-mail from Mr. McVay sent at 5:07 p.m.

14 THE COURT: Ms. Ebenstein, if you can look at that and  
15 see if that means we need a phone call separately or --

16 MS. EBENSTEIN: Sorry, Your Honor. One moment.

17 (Pause in the proceedings.)

18 MS. EBENSTEIN: I believe that e-mail includes  
19 information about one of the witnesses and not the other, and  
20 we're still waiting to hear information about the availability  
21 of the other; but we can talk about it offline if that's more  
22 helpful.

23 THE COURT: It probably is. I see Ms. Lang has come  
24 up as well. She's the one involved in this issue.

25 MS. EBENSTEIN: She might be better.

## Cross-Examination - Director Matthews

1 THE COURT: Let me tell -- Ms. Matthews, you're  
2 through for the day, so you're welcome to listen to this  
3 conversation or not. You've had a long day, I know.

4 Ms. Lang, is this -- do you need me? If nobody needs  
5 me tonight, we'll be in recess until 9:00 in the morning. If we  
6 have anything else we need to discuss, another telephone  
7 conference, tell me, because if it comes up an hour from now,  
8 I'll have trouble putting that together.

9 MS. LANG: I don't think so, Your Honor. Anything  
10 that we would need to discuss I think we could handle tomorrow  
11 morning.

12 THE COURT: All right. I'll plan to come back on the  
13 video for the trial at 9 o'clock.

14 If there is a separate discussion we need to have  
15 separately, the equivalent of a sidebar, if somebody will let  
16 the courtroom deputy know that, she'll be there in the morning.  
17 If you call in earlier, I'll certainly be here, and we can get  
18 that done so that we can start the trial right at 9 o'clock.

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

20 THE COURT: If I don't hear that, I'll be back in at  
21 9 o'clock tomorrow. Thank you.

22 We'll be in recess for the day.

23 (Proceedings recessed at 5:27 PM on Monday, May 04, 2020.)

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## Cross-Examination - Director Matthews

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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

5/4/2020

Megan A. Hague, RPR, FCRR, CSR  
Official U.S. Court Reporter

Date

**I N D E X**

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