

William Link

vs.

Manny Diaz

Deposition of:

C/R: Florida Board of Education (Kathryn Schneider Hebda)

August 18, 2022

Vol 1

PHIPPS REPORTING

Raising the Bar!

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CASE NO. 4:21cv271-MW/MAF

WILLIAM A. LINK, et al.,

Plaintiffs,

vs.

MANNY DIAZ, JR., in his
official capacity as Florida
Commissioner of Education,
et al.,

Defendants.

VIDEO-RECORDED DEPOSITION OF REPRESENTATIVE PERSON
DESIGNATED BY THE FLORIDA BOARD OF EDUCATION
(KATHRYN SCHNEIDER HEBDA)

Thursday, August 18, 2022

9:10 a.m. - 6:21 p.m.

GRAY|ROBINSON

301 South Bronough Street, #600

Tallahassee, Florida 32301

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1 The following Zoom proceedings began at 9:10 a.m.

2 THE VIDEOGRAPHER: We are now on the
3 record. The time is now 9:10 a.m. This is the
4 video-recorded deposition of Kathryn Hebda, a
5 corporate representative of the Florida Board
6 of Education, in the matter of William Link v
7 Manny Diaz.

8 This deposition is being held in
9 Tallahassee, Florida, on August 18, 2022.

10 The videographer is Jordan McHugh, and the
11 stenographer is Sandi Nargiz, both in
12 association with Phipps Reporting.

13 Will counsel please announce their
14 appearances for the record after which the
15 court reporter will swear in the witness.

16 MR. HANCOCK: William or Liam Hancock from
17 Elias Law Group on behalf of plaintiffs.

18 MS. FROST: Elisabeth Frost, also with
19 Elias Law Group, on behalf of plaintiff.

20 MS. JASRASARIA: Jyoti Jasrasaria, also on
21 behalf of plaintiffs, of Elias Law Group.

22 MS. GAY: Amanda Gay with the Florida
23 Department of Education.

24 MR. MOORE: Tim Moore, GrayRobinson, on
25 half of the defendants.

1 THE STENOGRAPHER: Would you raise your
2 right hand, please? Do you swear or affirm
3 that the testimony you are about to give will
4 be the truth, the whole truth, and nothing but
5 the truth?

6 THE WITNESS: I do.

7 THE STENOGRAPHER: Thank you.

8 Thereupon,

9 KATHRYN SCHNEIDER HEBDA,
10 AS REPRESENTATIVE PERSON DESIGNATED BY THE FLORIDA
11 BOARD OF EDUCATION,

12 having been first duly sworn or affirmed, as
13 hereinafter certified testified as follows:

14 DIRECT EXAMINATION

15 BY MR. HANCOCK:

16 Q **Good morning. How are you doing?**

17 A Good morning.

18 Q **My name is Liam Hancock. I'm an attorney**
19 **for the plaintiffs in this lawsuit. Could you**
20 **please state your full name for the record?**

21 A Kathryn Schneider Hebda.

22 Q **And what would you like me to call you**
23 **today?**

24 A Kathy.

25 Q **Kathy? Sure.**

1 **Have you ever been deposed before?**

2 A I have.

3 Q **How many occasions?**

4 A Roughly five or six.

5 Q **When was the most recent?**

6 A Probably -- I guess the adequacy lawsuit
7 was probably the most recent.

8 Q **And when was that?**

9 A That was around 2015.

10 Q **Okay.**

11 A 2015.

12 Q **And in that deposition, were you deposed
13 in your personal capacity?**

14 A My capacity in working for the Department
15 of Education.

16 Q **Of course.**

17 **And then what was the -- before that?**

18 A Actually, there probably was one more
19 recent than that. I was deposed I think for a
20 personnel case at the agency. I was chancellor at
21 the time, but it was -- the case started back when I
22 was chief of staff, and so I was a witness for the
23 agency.

24 Q **Understood.**

25 **And do you understand that today you'll be**

1 giving testimony on behalf of the board itself?

2 A Yes.

3 Q In any of those prior depositions were you
4 also giving testimony on behalf of the board itself?

5 A I don't think so.

6 Q So is this your first time giving a
7 deposition on behalf of the board itself?

8 A I think so.

9 Q I'll just go over some ground rules real
10 quick. I'll be asking a series of questions, and
11 your counsel may object to some of the questions,
12 but unless he instructs you not to, you must answer
13 the question.

14 Do you understand that?

15 A Yes.

16 Q And the court reporter will be making a
17 record of everything we say, so it's important to
18 give answers verbally instead of nods or gestures;
19 is that fair?

20 A Yes.

21 Q And we'll take breaks periodically, but if
22 you ever need to take a break, just let me know.
23 All I ask is if there's a pending question, we
24 address that first and then take a break.

25 Does that sound good?

1 A Okay.

2 Q So a moment ago, the court reporter swore
3 you in, correct?

4 A Yes.

5 Q And do you understand this is the same
6 oath you would take if you were testifying in court?

7 A Yes.

8 Q And is there any reason why you would be
9 unable to testify fully and truthfully today?

10 A No.

11 Q Are you taking any medications that might
12 affect your attention or memory today?

13 A No.

14 Q If at any point you don't understand my
15 question, will you let me know?

16 A Yes.

17 Q And if at any point you realize you may
18 have forgotten something or you need to correct your
19 testimony, will you let me know?

20 A Yes.

21 Q How did you first become aware of this
22 lawsuit?

23 A I don't -- I don't know exactly.

24 Q Do you recall about when you found out
25 about this lawsuit?

1 A I don't know. I'm -- I'm sure I got an
2 e-mail from someone in the general counsel's office
3 with a copy, but I don't know.

4 MR. MOORE: I'll instruct the witness not
5 to answer to the extent it reveals
6 attorney-client communication.

7 THE WITNESS: Okay.

8 BY MR. HANCOCK:

9 Q If I represent to you that this lawsuit
10 was filed in the summer of 2021, would that refresh
11 your recollection?

12 A I suppose.

13 Q Who do you understand to be the plaintiffs
14 in this lawsuit?

15 A There's a person whose name is Link. And
16 then I understand -- I don't remember all the
17 plaintiffs.

18 Q That's fine.

19 A I'm sorry.

20 Q And who do you understand to be the
21 defendants in this lawsuit?

22 A There's a list, and I -- it includes the
23 Board of Education and the commissioner in his
24 capacity as commissioner.

25 Q And you understand that this lawsuit is

1 **challenging the constitutionality of a bill enacted**
2 **in 2021, right?**

3 A Yes.

4 MR. HANCOCK: So I'll introduce what's
5 being marked as Exhibit 1.

6 (Exhibit 1 was marked for identification.)

7 BY MR. HANCOCK:

8 Q **Do you recognize this document?**

9 A That looks like the Florida version of the
10 legislation that was passed.

11 Q **And this is House Bill 233, right?**

12 A Yes.

13 Q **We'll come back to Exhibit 1 a few times,**
14 **but we can set that aside for now.**

15 What -- are you aware that other
16 depositions have already been taken as part of this
17 lawsuit?

18 A I don't know that any have been taken.

19 Q **Have you reviewed transcripts from any**
20 **depositions in this lawsuit?**

21 A Oh, that's true. Yes. Two.

22 Q **Which transcripts are those?**

23 A Alex Kelly and Jon Rogers.

24 Q **And when did you review those transcripts?**

25 A In the past week.

1 Q And you understand your testimony today is
2 on behalf of the Board of Education itself?

3 A Yes.

4 Q I'll show you what's being marked as
5 Exhibit 2.

6 (Exhibit 2 was marked for identification.)

7 BY MR. HANCOCK:

8 Q Do you recognize this document?

9 A Yes.

10 Q So you have seen this document before?

11 A I have.

12 Q If you'd turn to page 7, do you see the
13 start of a list of topics?

14 A Yes.

15 Q Have you reviewed these topics previously?

16 A I have.

17 Q Are you prepared to testify regarding each
18 of these topics today?

19 A Yes.

20 Q We can set Exhibit 2 aside for now.

21 In addition to your deposition today, how
22 else have you been involved in this litigation?

23 A I don't understand that question.

24 Q Sure. Have you reviewed any filings on
25 behalf of the board?

1 A Yes.

2 Q Do you recall which filings?

3 A The ones I recall are the responses to
4 interrogatories that we would have filed. Is that a
5 filing?

6 Q Sure. Setting aside the interrogatories,
7 do you recall any other filings you may have
8 reviewed on behalf of the board?

9 A I don't recall.

10 Q I will hand you what's being marked as
11 Exhibit 3.

12 A Okay.

13 (Exhibit 3 was marked for identification.)

14 MR. MOORE: Let's go off the record for a
15 moment.

16 THE VIDEOGRAPHER: We are now going off
17 record at 9:19 a.m.

18 (Discussion off record.)

19 (A recess took place from 9:19 a.m. to
20 9:21 a.m.)

21 THE VIDEOGRAPHER: We are now going back
22 on record at 9:21 a.m.

23 BY MR. HANCOCK:

24 Q So I'm presenting you with what's been
25 marked as Exhibit 3.

1 Do you recognize this document?

2 A Yes.

3 Q And this is the Board of Education's
4 initial answers to plaintiffs' first set of
5 interrogatories, right?

6 A Correct.

7 Q And you turn to the third-to-the-last
8 page, you see -- is that your signature at the
9 bottom?

10 A Yes.

11 Q And so is this one of the interrogatories
12 you mentioned reviewing --

13 A Yes.

14 Q -- as part of this litigation?

15 A Yes.

16 Q All right. Let set that aside for now.

17 (Exhibit 4 was marked for identification.)

18 BY MR. HANCOCK:

19 Q I am going to present you with what's
20 being marked as Exhibit 4. Do you recognize this
21 document?

22 A Yes.

23 Q And is this the Board of Education's
24 amended answers to plaintiffs' first set of
25 interrogatories?

1 A It is.

2 Q And if you turn to the second to the last
3 page, is that your signature there?

4 A Yes.

5 Q And is this dated May 13, 2022?

6 A Yes.

7 Q All right. Let's set that aside for now
8 as well.

9 MR. HANCOCK: I am going to present the
10 witness with what's being marked as Exhibit 5.

11 (Exhibit 5 was marked for identification.)

12 BY MR. HANCOCK:

13 Q Do you recognize this document?

14 A Yes.

15 Q And what is this document?

16 A It's my declaration.

17 Q Was this drafted by you?

18 A What do you mean was it drafted by me?

19 Q Like the -- the -- your statement.

20 A I am sorry. Drafted has lots of meanings.
21 This is my statement, if that's what you are asking
22 me.

23 Q Did you have any assistance in putting
24 together this statement?

25 A Yes.

1 Q And if you would turn to page 6, it has
2 your signature, right?

3 A Yes.

4 Q And this is dated March 31, 2022?

5 A Yes, it is.

6 Q You can set that one aside for now as
7 well.

8 MR. HANCOCK: And then last one, I
9 promise. I am presenting the witness with
10 what's being marked as Exhibit 6.

11 (Exhibit 6 was marked for identification.)

12 BY MR. HANCOCK:

13 Q Do you recognize this document?

14 A Yes.

15 Q And what is this document?

16 A State Board of Education second amended
17 answer to plaintiffs' first set of interrogatories
18 Number 2 and first amended answers to plaintiffs'
19 first set of interrogatories Number 3, 6, and 12.

20 Q And if you would turn to the second to the
21 last page, this one also bears your signature,
22 right?

23 A Yes.

24 Q And this is dated August 17, 2022; is that
25 right?

1 A Yes.

2 Q Did you do anything to prepare for today's
3 deposition?

4 A Yes.

5 Q What did you do to prepare?

6 A I reviewed the interrogatories, I read the
7 legislation, reviewed some of the documents that
8 have been submitted as part of discovery.

9 Q Anything else?

10 A I reviewed the -- the depositions I
11 mentioned earlier.

12 Q Did you speak with anybody about the
13 deposition today?

14 A Attorneys.

15 Q And who did you speak to?

16 A Attorneys in the Department of Education
17 and attorneys at GrayRobinson. I also spoke to my
18 supervisor at work.

19 Q Who is your supervisor at work?

20 A Henry Mack, senior chancellor.

21 Q And on how many occasions did you speak
22 with the department lawyers?

23 A I don't know the number.

24 Q Do you know roughly when those
25 conversations occurred?

1 A They have been ongoing since -- I guess
2 since the beginning of the legislation.

3 Q Do you know --

4 A I mean the -- the filing of the suit.
5 Pardon me.

6 Q Understood.

7 In terms of discussing the deposition, do
8 you have a sense of when those discussions with the
9 department lawyers began?

10 A The last several weeks. I really don't
11 have a good date to give you.

12 Q Do you have a sense of approximately how
13 long you spent speaking to the department lawyers in
14 the last several weeks?

15 A No.

16 Q And the other counsel you spoke to were --
17 were -- were those folks from GrayRobinson?

18 A Yes.

19 Q And when did those conversations start?

20 A I don't have an exact date, but it's --
21 it's been in preparation for this, whatever --
22 whatever the time frame was for that.

23 Q Would it be a similar time period to the
24 preparation discussions with the department lawyers?

25 A Probably shorter.

1 Q Do you recall roughly how many occasions
2 you spoke with GrayRobinson lawyers?

3 A I don't have a good number.

4 Q Do you have an approximation as to how
5 much time you spent speaking with GrayRobinson
6 lawyers?

7 A No.

8 Q So aside from your supervisor at work,
9 lawyers for the department, and lawyers from
10 GrayRobinson, did you seek to anybody else to
11 prepare for today's deposition?

12 A Yes. I spoke with my executive
13 vice-chancellor, Carrie Henderson, and once with
14 Jeremy Katz who is an analyst in my division.

15 Q Did you speak to anybody else?

16 A I don't recall speaking to anybody else
17 about the deposition.

18 Q Did you speak to anybody from the Board of
19 Governors in preparation for today's deposition?

20 A Not in preparation.

21 Q Did you speak to anybody employed by a
22 Florida college in preparation for today's
23 deposition?

24 A No.

25 Q Did you speak to anybody from the

1 **Governor's Office in preparation for today's**
2 **deposition?**

3 A Not in preparation for the deposition, no.

4 Q **In terms of your conversation with Henry**
5 **Mack --**

6 A Yes.

7 Q **-- what topics were discussed with him?**

8 A Primarily, the -- the preparation of the
9 survey and the schedule of when I would be away from
10 the building and things like that.

11 Q **And what topics did you discuss with**
12 **Carrie Henderson?**

13 A Some of the preparation of the survey, but
14 primarily the -- the process of intake on the data
15 and the portions you see in the interrogatories
16 that -- where her name is mentioned.

17 Q **And what topics did you discuss with**
18 **Jeremy Katz?**

19 A I asked him specifically about the portion
20 you see in the -- the interrogatories where it
21 mentions his involvement with looking at the data
22 and trying to determine the computer-generated
23 responses on the survey.

24 Q **Earlier you mentioned that you reviewed**
25 **the interrogatories and documents produced as part**

1 **of discovery.**

2 **Were there any other documents that you**
3 **reviewed in preparation for today's deposition?**

4 A Yes. I mentioned earlier that I read the
5 legislation again, I read the -- the transcript of
6 Alex Kelly's deposition, I read -- I reviewed some
7 of the documents that were submitted for discovery,
8 e-mails and things like that.

9 Q **And did you go to college?**

10 A Yes.

11 Q **Where?**

12 A I went to Newberry College in Newberry,
13 South Carolina for my undergraduate degree and
14 Florida State University for my master's degree.

15 Q **In terms of the undergraduate degree, when**
16 **did you obtain that degree?**

17 A In 1985.

18 Q **And what did you study there?**

19 A Music education, choral conducting.

20 Q **And is that what the degree is in?**

21 A Yes. It's a bachelor's in music
22 education.

23 Q **And then the -- did you do anything in**
24 **between Newberry College and Florida State?**

25 A No, I didn't.

1 Q And what was --

2 A I am sorry. Let me ask you, what do you
3 mean "do anything"?

4 Q Was there a gap in terms of time between
5 when you graduated from Newberry and when you began
6 studying at Florida State?

7 A Just the end of the spring semester when I
8 graduated and the fall when that semester started.

9 Q Sure. And what did you study at Florida
10 State?

11 A Music education.

12 Q And you said you received a master's. Is
13 that in music education?

14 A Yes.

15 Q And did you pursue any further education
16 after that?

17 A I took a few courses to renew my teaching
18 certificate, but I didn't pursue any additional
19 degrees.

20 Q And those courses you mentioned, are those
21 sort of occasional over time in the years since?

22 A Yes.

23 Q But aside from those courses, have you
24 returned to school any point in your career?

25 A No.

1 Q Did you study survey administration at any
2 point?

3 A No.

4 Q Have you ever taken a course on conducting
5 research on human subjects?

6 A No.

7 Q Have you ever taken a course in
8 statistical methods?

9 A No.

10 Q Have you ever been certified by the
11 Institutional Review Board?

12 A No.

13 Q So what is your -- your current
14 occupation?

15 A I am the chancellor of the Florida College
16 System and the division of Florida colleges in the
17 Department of Education.

18 Q And how long have you served in that
19 position?

20 A Since 2019.

21 Q And how did you get that position?

22 A I was employed by Commissioner Richard
23 Corcoran.

24 Q And so that was a decision made by Richard
25 Corcoran?

1 A Yes.

2 Q Did you have to go through any form of
3 confirmation process?

4 A No.

5 Q Does your current occupation have a set
6 term?

7 A No.

8 Q Do you have any current plans to leave
9 your position?

10 A No.

11 Q And I know you mentioned Henry Mack
12 earlier. Is there anybody else that you report to?

13 A We report to the commissioner in the org
14 chart. And then the -- the senior chancellor --
15 there are two senior chancellors. Henry Mack is the
16 senior chancellor over most post secondary areas in
17 the department. And then Jacob Oliva is the senior
18 chancellor for early learning and K-12.

19 So the senior chancellors organize the
20 divisions underneath them for the commissioner.

21 Q And so in terms of -- how often would you
22 report to Jacob Oliva?

23 A I don't.

24 Q And do you have anyone who directly
25 reports to you?

1 A Yes.

2 Q **About how many people?**

3 A Five.

4 Q **And who are those people?**

5 A Carrie Henderson, Caleb Hawkes, Lisa Cook,
6 Yvette Hargreaves, and Pam Posey.

7 Q **And what are your roles and**
8 **responsibilities at the department?**

9 A As the chancellor for the division of
10 Florida colleges, I'm in the position you might
11 think of as division director. So I supervise that
12 division and the activities the division is
13 responsible for, which include technical assistance
14 to colleges, the Florida College System,
15 implementation of rules, and those rules implemented
16 by Florida statutes.

17 Q **And can you help me understand the**
18 **difference between the Board of Education and the**
19 **Department of Education?**

20 A Yes. The -- the Board of Education is
21 actually the agency head. The commissioner
22 functions as a CEO, if you will. And the Board of
23 Education are members appointed by the governor.
24 And they're in staggered terms. And then they
25 select a commissioner who then sort of runs the

1 agency on a day-to-day basis.

2 Q And when you say "agency," is that the
3 Department of Education?

4 A Yes.

5 Q In terms of implementing all of the things
6 the Board of Education oversees, is all of that
7 implementation carried out by the Department of
8 Education?

9 A Yes.

10 Q And is the Florida College System a part
11 of the Department of Education?

12 A The Florida College System is the 28
13 colleges that make up the Florida College System.

14 Q Is it fair to say that "Florida College
15 System" is just a term to refer to those group of
16 institutions?

17 A Yes.

18 Q And so would it be fair to say that the
19 division of Florida colleges at the Department of
20 Education is the agency that oversees the Florida
21 College System?

22 A We're part --

23 MR. MOORE: Object to form.

24 You can answer.

25 A We are part of the agency that oversees

1 the Florida College System. We have the most direct
2 contact. It's our -- it's our responsibility
3 day to day to work with the Florida colleges.

4 BY MR. HANCOCK:

5 Q And does the division of Florida colleges
6 have jurisdiction outside the Florida College
7 System?

8 A No.

9 Q But there are other Department of
10 Education divisions that have jurisdiction over the
11 Florida College System in some areas?

12 A I don't know if its jurisdiction. But
13 there's certainly the agency -- for example,
14 accountability, research and measurement division is
15 the division that reports data. There's a division
16 that collects data from institutions just like we
17 collect it from school districts.

18 So there are a number of divisions that
19 support the Florida College System and participate
20 in the implementation and duties of the department.

21 Q And what position did you hold before
22 becoming chancellor?

23 A Chief of staff.

24 Q And who were you chief of staff to?

25 A Pam Stewart, Commissioner Pam Stewart.

1 Q How long were you chief of staff for
2 Commissioner Stewart?

3 A I think it was about five years.

4 Q And how did you get that position?

5 A She employed me in that position.

6 Q Is it fair to say you were chief of staff
7 for the duration of Commissioner Stewart's tenure?

8 A Yes.

9 Q And how did Pam Stewart start her career?

10 A I believe she started as an elementary
11 teacher, but I -- I would have to go back and check
12 if that was exactly right.

13 Q Is it your understanding that she had
14 worked as a teacher prior to becoming commissioner?

15 A Yes.

16 Q And was it your understanding that she had
17 worked in education or education policy for decades
18 prior to her employment?

19 A Yes.

20 Q And she had worked at the Florida
21 Department of Education prior to becoming
22 commissioner, right?

23 A Yes.

24 Q Had you worked with Commissioner Stewart
25 prior to her becoming commissioner?

1 A Yes.

2 Q She stepped down at the end of 2018, does
3 that sound right?

4 A About then, yes.

5 Q Do you know why she stepped down?

6 A I don't.

7 Q Do you know if she was asked to step down?

8 A I don't know.

9 Q And she was succeeded by Richard Corcoran,
10 right?

11 A Correct.

12 Q Do you know if Mr. Corcoran had previously
13 been a teacher?

14 A I don't think so, but I'm not positive.

15 Q Do you know if Mr. Corcoran had previously
16 worked at the Department of Education?

17 A I don't believe so.

18 Q Do you know if he had previously worked
19 for either the Board of Education or the Board of
20 Governors?

21 A I don't believe so.

22 Q Do you know if he had previously worked
23 for a college or university?

24 A I don't know.

25 Q And Mr. Corcoran has now been replaced by

1 **Commissioner Diaz; is that right?**

2 A Yes.

3 Q **And Commissioner Diaz has previously been**
4 **a teacher, right?**

5 A Yes.

6 Q **What job did you have before working as**
7 **Commissioner Stewart's chief of staff?**

8 A I was deputy chancellor for educator
9 quality in the K-12 division at the Department of
10 Education.

11 Q **And what were your responsibilities in**
12 **that role?**

13 A The responsibilities for educator quality
14 deputy chancellor included the bureaus that worked
15 on -- they focused on areas that dealt with
16 teaching -- or teachers and school leaders.

17 So an example would be educators'
18 certification, the bureau of educator recruitment,
19 development and retention, and professional
20 practices services.

21 Q **And how long did you work in that role?**

22 A I don't know exactly. It might have been
23 around four or five years also. It could have been
24 longer. I would have to check.

25 Q **Sure.**

1 A It's been a long time.

2 Q Yeah. Over your career, how many years
3 have you spent working for the Department of
4 Education?

5 A It will be 30 years in October.

6 Q And aside from chancellor, chief of staff
7 to the commissioner, and the educator quality role,
8 what other roles have you held at the Department of
9 Education?

10 A I was bureau chief of the bureau of
11 educator recruitment, development and retention. I
12 was a policy analyst in the K-12 division for
13 governmental relations. And I was -- I had several
14 roles in the bureau of educator certification. When
15 I started, I was a Program Specialist, and then I
16 think I became a Program Specialist II and then a
17 Program Specialist IV, something like that.

18 Q When did you first start working at the
19 Department of Education?

20 A In October of 1992.

21 Q And when did you receive your degree from
22 Florida State?

23 A In 1987.

24 Q And what did you do between 1987 and 1992?

25 A I was a middle school teacher.

1 **Q Where was that?**

2 A I taught one year in Leon County at
3 Fairview Middle School, and I taught four years in
4 Cobb County, Georgia.

5 **Q Have you ever worked at a college or**
6 **university?**

7 A No.

8 **Q Have you ever testified in court?**

9 A Yes.

10 **Q How many times would you say?**

11 A I think the adequacy lawsuit was the only
12 time I testified in court.

13 **Q And remind me, when was that lawsuit?**

14 A I think it was around 2014. It went on
15 for a number of years, but I think the culmination
16 was in 2014.

17 **Q And what was the subject of that lawsuit?**

18 A A suit was brought against -- I know it
19 was brought against the Board of Education, but it
20 could have been other -- other entities encompassed
21 in the suit. But there was a claim that Florida's
22 education system didn't meet the adequacy provisions
23 in the constitution.

24 **Q Have you ever served as an expert witness?**

25 A Yes.

1 Q How many times?

2 A Once.

3 Q And when was that?

4 A During the adequacy lawsuit.

5 Q Oh, yeah. So as part of that, you were
6 offered as an expert witness?

7 A Yes.

8 Q Do you recall whether the court accepted
9 your testimony as an expert?

10 A Yes.

11 Q And is your -- and is your recollection
12 that they did accept it?

13 A That's my recollection.

14 Q Have you ever testified in an
15 administrative proceeding?

16 A If a -- if a challenge to a rule
17 includes -- is an example of administrative
18 proceeding, then yes.

19 Q And when would that have happened?

20 A That was when I was the bureau chief and
21 educator recruitment, development and retention, so
22 it would have been around somewhere between 2004 and
23 2006 or '7.

24 Q Have you ever been subpoenaed as part of a
25 legislative investigation?

1 A I don't think so.

2 Q The -- the Board of Education has seven
3 members, right?

4 A Yes.

5 Q Are all seven members appointed by the
6 governor?

7 A Yes.

8 Q And then they're subject to confirmation
9 by the Senate?

10 A Correct.

11 Q Do they serve for set terms?

12 A They do. They're staggered terms.

13 Q And how long are those terms?

14 A I believe they're four years, but I would
15 have to go back to the statute and read it to be
16 sure.

17 Q And do you know if board members are term
18 limited?

19 A What do you mean "term limited"?

20 Q Do you know if there's a cap on how many
21 terms they're allowed to serve?

22 A I believe there is.

23 Q Do you know what that cap is?

24 A I think it's two terms, but I also think
25 that there is a -- this is a legal question, but I

1 think there is a provision that you can continue to
2 serve in the capacity until you are replaced if you
3 do hit the end of your term.

4 Q Do you know how often the board meets?

5 A Yes. It's not exactly once a month or
6 every other month. There is a schedule set for each
7 year.

8 Q Would it be approximately 12 times a year?

9 A No. It's fewer than that. I think this
10 coming year is somewhere between seven and eight
11 times a year.

12 Q Can a member of the board be fired?

13 A It's a voluntary position to be a state
14 board member, so they are not employees.

15 Q Understood.

16 Do you -- is there a way for somebody to
17 be removed from the board after being appointed?

18 MR. MOORE: Object to form to the extent
19 it calls for a legal conclusion.

20 You can answer if you know.

21 A There probably is, but I don't know
22 exactly what it is.

23 BY MR. HANCOCK:

24 Q Sure.

25 Is the commissioner considered a member of

1 the board?

2 A No. He is the secretary of the board, I
3 think.

4 Q Is the commissioner appointed by the
5 governor?

6 A No. By the State Board of Education.

7 Q And is the commissioner subject to
8 confirmation by anybody?

9 A No.

10 Q Do you know if the commissioner serves for
11 a set term?

12 A He does not.

13 Q And is it fair to say that the Board of
14 Education has jurisdiction over all public education
15 with the exception of the State University System?

16 A That's pretty fair.

17 Q And does -- does the -- and the
18 commissioner's jurisdiction is similar to the
19 board's; is that right?

20 A Yes.

21 Q Does the commissioner also direct the
22 Department of Education?

23 A Yes. On a daily basis, his role.

24 Q So the commissioner would also have
25 jurisdiction over the division of Florida colleges

1 **in the Florida College System?**

2 A Yes.

3 Q **Is the Board of Education considered part**
4 **of the executive branch?**

5 A I think we're -- I think we are in a
6 different spot because the -- the governor does --
7 governor appoints the board members who are
8 considered the agency head, but it's different than
9 a typical state agency where there is one individual
10 who is the agency head appointed by the governor
11 which would be considered executive agency. But
12 we -- we -- we coordinate very closely with the
13 Governor's Office because he does appoint the board
14 members.

15 Q **Is the -- is the Department of Education**
16 **considered part of the executive branch?**

17 MR. MOORE: Object to form to the extent
18 it calls for a legal conclusion.

19 THE WITNESS: Right.

20 MR. MOORE: You can answer if you know.

21 A I'm sorry. It's -- it's complicated.

22 BY MR. HANCOCK:

23 Q **No. Of course.**

24 Do you understand -- do you report to
25 **anyone in the Governor's Office?**

1 A No. Directly, no.

2 Q **Does -- does Henry Mack or Jacob Oliva?**

3 A They report to the commissioner.

4 Q **And does the commissioner report to anyone**
5 **in the Governor's Office?**

6 A He reports to the State Board of
7 Education.

8 Q **Is that the only entity that the**
9 **commissioner reports to?**

10 A Yes.

11 Q **Are -- are you considered the head of the**
12 **Florida College System?**

13 A There are portions of the statute that --
14 that talk about the -- the chancellor of the Florida
15 College System, because there used to be a separate
16 board for the Florida College System years ago
17 before the constitutional change and K-20, and then
18 another constitution limit took out the board of --
19 set up the Board of Governors.

20 So I support the Florida College System,
21 but I don't run the Florida College System.

22 Q **And you said there is no longer a board**
23 **sort of governing the Florida College System?**

24 A The State Board of Education does, but
25 there is not a separate board for the Florida

1 College System as there was years ago.

2 Q Understood.

3 And you said earlier that the chancellor
4 is chosen by the commissioner?

5 A Yes.

6 Q Can you give me a sense of the structure
7 of the Florida College System?

8 A There are 28 colleges in the Florida
9 College System, and they are governed by local
10 boards of trustees. They are called "district
11 boards of trustees" because each college is assigned
12 one or more counties in Florida that's considered
13 their service district or service area.

14 Q And does every county in Florida have a
15 college assigned to it?

16 A Yes.

17 Q And how are those individual boards of
18 trustees constituted?

19 A They are appointed by the governor also.

20 Q Do you know if they are subject to
21 confirmation by the Florida Senate?

22 A They are.

23 Q Do you know if they serve set terms?

24 A I don't know.

25 Q And does each college have a president?

1 A Yes.

2 Q **And how are presidents chosen?**

3 A They are selected by the Board of
4 Trustees.

5 Q **Does the Board of Education play a role in**
6 **selecting presidents?**

7 A No.

8 Q **Do the presidents serve set terms?**

9 A That's determined by the local Board of
10 Trustees. And I would like to go back and say that
11 the boards of trustees, the members do have a set
12 term, but I don't know what the -- I don't know what
13 the length of time is.

14 Q **Sure. I appreciate that.**

15 **Are college presidents subject to review?**

16 MR. MOORE: Object to form. Object to
17 form.

18 A Review by whom?

19 BY MR. HANCOCK:

20 Q **Are they subject to review by the Board of**
21 **Education?**

22 A No. The Board of Trustees.

23 Q **Are the boards of trustees required to**
24 **inform the board in any way about the performance of**
25 **their presidents?**

1 A They do. They send us the evaluation each
2 year once the evaluation of the president is
3 completed.

4 Q And is that just an obligation on the
5 boards of trustees to report their evaluation?

6 A Yes.

7 Q Does the board sign off on that evaluation
8 in any way?

9 A No.

10 Q About how many full-time students are
11 enrolled in the Florida College System?

12 A At present about 615,000, I think is our
13 last count.

14 Q Those are full-time students?

15 A No, those are not full-time students.
16 Those are actual people, students that are enrolled.
17 If you are talking about full-time equivalent
18 students, that's a different number.

19 Q Do you have a sense what that number would
20 be?

21 A I am trying to recall from the last
22 estimating conference. I don't remember the exact
23 number. It's in the 200,000s because two-thirds of
24 our students are part-time.

25 Q About how many faculty members are

1 **employed by the Florida College System?**

2 A I don't know the exact number. I am going
3 to say it's over 30,000, but I am not positive.

4 Q **Do -- does the Florida College System have**
5 **tenure for teaching faculty?**

6 A Tenure is not in the statute. Some
7 faculty have what's called "continuing contract."

8 Q **Do you know if the Florida College System**
9 **used to have tenure by that name?**

10 A I don't believe so.

11 Q **How does the continuing contract operate?**

12 A That's a -- many, many years ago, the
13 Florida colleges individually came from school
14 districts, they were originally assigned to school
15 districts decade ago. And so that's a -- the
16 continuing contract was something that they brought
17 with them from local school boards.

18 And so that -- that contract -- there is a
19 rule that implements the continuing contract in the
20 statute, and there are requirements that the Board
21 of Trustees -- the boards of trustees set forth for
22 someone to qualify for a continuing contract and to
23 maintain it.

24 Q **Is there a standard length of time for a**
25 **continuing contract before it's renewed?**

1 A I don't know if there is a standard time,
2 meaning one required by the statute. I am not sure.

3 Q Do you know if the board rule implementing
4 a statute prescribes a set time?

5 A I didn't review that prior to this
6 deposition, so I would have to go back and look at
7 the rule to be sure.

8 Q Does the Board of Education retain
9 authority to alter that rule regarding continuing
10 contracts?

11 A Yes.

12 Q How are decisions made on behalf of the
13 board?

14 A What do you mean?

15 Q Are there some decisions that require a
16 vote by board members?

17 A Yes.

18 Q And in general, what are the kinds of
19 decisions that require a vote by board members?

20 A An example would be a new State Board of
21 Education rule or an amendment to an existing rule
22 or repeal of an existing rule.

23 Q And are those votes just simple majority
24 votes among the board members?

25 A Yes.

1 **Q Are there any other kinds of decisions**
2 **that require a vote by the board members?**

3 A There are -- there are some things in the
4 statute that require the State Board of Education to
5 adopt something, but it doesn't require that they do
6 it in a rule. So they would vote on that kind of
7 adoption at the state board meeting.

8 **Q What -- what form of adoption would they**
9 **vote on that's not a rule?**

10 A I think there are things like the -- I
11 want to say that the -- at the previous board
12 meeting they adopted the list of approved
13 accrediting agencies or recommended accrediting --
14 accrediting agencies for colleges to -- to choose
15 from. And that's not in the state board rule, but
16 it's something they are required to adopt by
17 statute.

18 **Q And where did that list initially come**
19 **from?**

20 A It was developed through a process of
21 collaboration between the division of Florida
22 colleges and the Board of Governors.

23 **Q And so the division and the Board of**
24 **Governors created a list of recommended**
25 **accreditation agencies?**

1 A Yes.

2 Q And the board adopted that list?

3 A They did.

4 Q Are there decisions that can be made by
5 the commissioner alone?

6 A Yes.

7 Q What sorts of decisions does -- can the
8 commissioner make independently?

9 A There are a number of employment decisions
10 he can make independently, and then also the board
11 has the ability to delegate authority to the
12 commissioner for specific things.

13 Q Can the commissioner ever require the
14 board to act?

15 MR. MOORE: Object to the extent it calls
16 for a legal conclusion.

17 You can answer if you know.

18 A I can't think of an occasion where he can
19 require the -- the commissioner can require the
20 board because he reports to the board.

21 BY MR. HANCOCK:

22 Q Understood.

23 Are there actions by the Department of
24 Education that require sign-off from the
25 commissioner?

1 A Yes.

2 Q What -- what kinds of actions require
3 sign-off?

4 A Memoranda that would go to college system
5 institutions or school districts.

6 Q Would that -- that applies to memoranda
7 distributed by the department?

8 A Yes.

9 Q Is anyone authorized to sign off on those
10 in the commissioner's place?

11 A I don't know. The commissioner has the
12 ability to delegate authority, just -- just like the
13 board does, but I don't know what specifically his
14 authority has been -- where his authority's been
15 delegated.

16 (Exhibit 7 was marked for identification.)

17 MR. HANCOCK: I'm going to present the
18 witness with what's been marked as Exhibit 7.

19 BY MR. HANCOCK:

20 Q Do you recognize this document?

21 A Yes.

22 Q And what is this document?

23 A This is an example of a form we would call
24 a purple sheet because -- we distinguish it by color
25 because it gets passed around for routing through

1 the department when there's a memorandum or some
2 other document that needs approval for distribution.

3 Q And do you see that this document has a
4 couple of dates on it, one is May 17, 2021, and the
5 other --

6 A Yes.

7 Q -- is May 20, 2021?

8 A Yes.

9 Q And above that, do you see where it says
10 presentation to this acronym?

11 A Yes.

12 Q What is that acronym?

13 A MISATFOR is the acronym for the MIS
14 directors in the Florida College System. It's their
15 association. So this is -- it looks like it's a
16 cover sheet for a presentation -- a set of
17 PowerPoint slides or other documents that were going
18 to be presented to those individuals at their
19 association.

20 Q And who are the -- the college directors?

21 MR. MOORE: Object to form.

22 A What do you mean "the college directors"?

23 BY MR. HANCOCK:

24 Q I apologize. Let's go back.

25 This association, who is it an association

1 **on behalf of?**

2 A MIS usually stands for Management
3 Information System, so this -- these would be the
4 individuals who -- who have some responsibility in a
5 college for data collection or data reporting, and
6 they, like many other individuals in the colleges
7 who have similar job or like roles, they meet
8 together and have policy discussions. And we
9 provide technical assistance to them, as we do other
10 individuals in the college.

11 Q And do you see the box labeled "OTC
12 approvals"?

13 A Yes.

14 Q And so the first one listed is A. Kelly?

15 A Yes.

16 Q Is that Alex Kelly?

17 A It would be, yes.

18 Q Is his name on there because at one time
19 he was chief of staff to the commissioner?

20 A Correct.

21 Q On a current purple slip, would Alex
22 Kelly's name be there?

23 A No.

24 Q And then a few rows down, do you see
25 E. Hall?

1 A Yes.

2 Q Who is that?

3 A Eric Hall. He was senior chancellor
4 before Henry Mack.

5 Q Is he still at the department in some
6 capacity?

7 A No.

8 Q And on a current purple slip, would there
9 be a row for Henry Mack?

10 A Yes.

11 Q And then there's a row for your approval
12 as well, right?

13 A Yes. Yes.

14 Q All right. You can set that exhibit
15 aside.

16 (Exhibit 8 was marked for identification.)

17 MR. HANCOCK: I'm going to present the
18 witness with what's being marked as Exhibit 8.

19 BY MR. HANCOCK:

20 Q So if you flip past the first page, is
21 this also a purple slip?

22 A Yes.

23 Q And turning back to the first page, what
24 is this page?

25 A It looks like a request to our general

1 counsel's office to review.

2 Q Is that to secure their approval before it
3 goes to the commissioner?

4 A Yes.

5 Q And this is a request for a memo that you
6 drafted; is that right?

7 A Let me see. Yes.

8 Q If you look back in Exhibit 5, which was
9 your declaration.

10 A Yes.

11 Q If you turn to page 20, it will say in the
12 top right.

13 A Yes.

14 Q Do you recognize this document?

15 A Yes.

16 Q Is this the -- well, there are initials
17 next to your name --

18 A Yes.

19 Q -- on this document. Does that indicate
20 that it's a final version?

21 A Yes.

22 Q And this is dated March 23, 2022; is that
23 right?

24 A Yes.

25 Q Is this the final version of what was

1 being asked for review on this task sheet?

2 A Yes, it looks that way.

3 Q All right. You can set Exhibit 5 aside
4 again.

5 Do you see in -- returning to Exhibit 8,
6 do you see in the comment column where it says Jim
7 Richmond worked on it as well?

8 A Yes.

9 Q Who is Jim Richmond?

10 A Jim Richmond is currently our acting
11 general counsel.

12 Q Let's turn to the pink slip itself. In --
13 the OTC approvals table now reflects that, at this
14 time, Bethany Swonson was chief of staff; is that
15 right?

16 A Yes.

17 Q Who is currently chief of staff to the
18 commissioner?

19 A Anastasios Kamoutsas.

20 THE STENOGRAPHER: I'm sorry?

21 THE WITNESS: He goes by Stasi.

22 Anastasios Kamoutsas.

23 BY MR. HANCOCK:

24 Q Is there a uniform process for who needs
25 to approve something before it is escalated to the

1 **commissioner?**

2 A It's fairly standard. It can be -- it can
3 vary depending on what type of document it is.

4 Q So would -- would any document being
5 escalated to the commissioner go through the general
6 counsel's office?

7 A Some don't. There are some -- some
8 things -- like social media proposals would not go
9 through general counsel. But anything that's going
10 to pertain to technical assistance or implementation
11 of a statute would go to general counsel.

12 Q And generally, how many -- is it
13 sufficient for one person to sign off within this
14 OTC approval's box?

15 A Generally, no. It would go through both
16 the senior chancellor and chief of staff and most
17 things run through the communications office, but an
18 exception to that would be a state board rule draft
19 that would not go to communications.

20 Q Understood.

21 A It's like social media doesn't go to
22 general counsel.

23 Q The Board of Education has rule-making
24 authority; is that right?

25 A Yes. When it's granted by the statute.

1 Q And are those rules considered Board of
2 Education rules or Department of Education rules?

3 A They're considered State Board of
4 Education rules.

5 Q Is there a department within the
6 Department of Education tasked with the
7 administrative rule-making process?

8 A We have an cler- -- agency clerk who
9 completes the process with the Department of State,
10 but it involves the -- rule making involves the
11 program office and general counsel and, as you can
12 see, a number of people.

13 Q Are -- are rule-making processes generally
14 run through whatever division is relevant to the
15 rule?

16 A Yes.

17 Q Does the Florida College System or any of
18 those institutions have rule-making authority?

19 A The boards of trustees have authority to
20 make regulations and rules on behalf of the college.

21 Q And what is your understanding of where
22 that authority comes from?

23 A The Florida statute.

24 Q And do you have an understanding as to
25 what areas that statute authorizes them to create

1 **rules in?**

2 A Yes. I'm -- it's a whole listing in the
3 statute under the powers and duties of the Board of
4 Trustees. It includes things like the employment
5 processes, staffing, running of the campus,
6 obtaining property, selling property, things that
7 pertain to academic processes.

8 Q And those are things that are expressly
9 authorized by statute, you said?

10 A Yes.

11 Q And you said the board has to vote to
12 initiate a rule-making process; is that right?

13 A You mean the State Board or the Board of
14 Trustees?

15 Q Apologies. Yeah.

16 Does the State Board have to sign-off
17 before initiating a rule-making process?

18 A Before a rule-making process?

19 Q Like to propose a new rule or an amended
20 rule.

21 MR. MOORE: Object to the extent it calls
22 for a legal conclusion.

23 A I am just thinking about the -- I don't --
24 I don't know if you consider the agency clerk filing
25 the proposed rule making with the Florida

1 Administrative Register the state board. So I -- so
2 I don't know the answer to your specific question.

3 BY MR. HANCOCK:

4 Q Understood.

5 In order for a rule to be adopted, does
6 the board -- the state board have to vote on it?

7 A Yes.

8 Q Can departments within the DOE request a
9 rule-making?

10 A Yes.

11 Q Can constituents or stakeholders request a
12 rule-making?

13 A Yes.

14 Q Who fields those requests?

15 A I can't remember a -- a specific request
16 that came from constituent or a citizen, but there
17 is no reason why a person couldn't write the agency
18 and -- and request that we consider rule making on a
19 certain topic.

20 Q What -- what is the Board of Education's
21 role in terms of the funding that is appropriated to
22 Florida colleges?

23 A We are required each year to prepare --
24 as -- as any other agency, we are required to
25 prepare a legislative budget request and submit that

1 to the -- through the proper procedure, electronic
2 procedure, to the Governor's Office.

3 Q And that's a budget request prepared by
4 the division of Florida colleges?

5 A We participate in the -- the budget
6 request, but the -- the division that has the -- the
7 biggest role in that is the division of finance and
8 operations.

9 Q Is there -- is there a separate request
10 for appropriations related to the Florida College
11 System, or is it part of a larger request on behalf
12 of everything the board works on?

13 A It's part of our entire State Board of
14 Education legislative budget request. Individual
15 colleges also have the ability to request.

16 Q And what form does that take?

17 A I don't know specifically. They --
18 sometimes they inform us of -- of a request they are
19 going to make, but generally I believe it -- it just
20 is a direct request from them to the legislature.

21 Q And where do those requests go at the
22 legislature?

23 A I don't know.

24 Q Is it your understanding that there is a
25 particular office that fields budget requests?

1 MR. MOORE: Object to form.

2 A In the legislature, I don't know.

3 BY MR. HANCOCK:

4 Q Do you know who the board transmits their
5 budget request to?

6 A I don't know specifically. I know there
7 is an electronic process, but it -- it's done where
8 all the agencies submit their -- their information,
9 but I don't know exactly who is over that office.

10 (Exhibit 9 was marked for identification.)

11 MR. HANCOCK: I present the witness with
12 what's being marked as Exhibit 9.

13 A Can I put this Number 8 away for a minute
14 or?

15 BY MR. HANCOCK:

16 Q Yeah.

17 A Okay.

18 Q Do you recognize this document?

19 A Yes.

20 Q And this is a copy of Florida Statute
21 1008.32?

22 A Yes.

23 Q Are you familiar with this statute?

24 A Yes.

25 Q Does this statute entrust the Board of

1 **Education with overseeing the Florida College**
2 **System?**

3 A Can you ask that question again?

4 Q **Sure.**

5 A Please.

6 Q The -- the first sentence of this statute
7 reads: "The State Board of Education shall oversee
8 the performance of," and it lists some
9 institutions --

10 A Yes.

11 Q -- including the Florida College System;
12 is that right?

13 A Yes.

14 Q What is included in that oversight?

15 A Oversight, it says that "The performance
16 of those entities, including the Florida College
17 System institution, Board of Trustees and
18 enforcement of all laws and rules."

19 Q And if you look at the Subsection (2)(a),
20 does this authorize the Commissioner of Education to
21 investigate allegations of noncompliance with the
22 law at a Florida College System institution?

23 A Yes.

24 Q And the commissioner reports those
25 findings to the state board; is that right?

1 A Yes.

2 Q And then if you turn down to
3 Subsection (4), does this section authorize the
4 Board of Education to take certain actions if they
5 determine a Florida College System institution is
6 unwilling or unable to comply with the law?

7 A Yes.

8 Q Is that a decision that would require a
9 vote from the Board of Education?

10 MR. MOORE: Object to the form to the
11 extent it calls for a legal conclusion.

12 A I don't -- I don't know.

13 BY MR. HANCOCK:

14 Q Among and below that it lists actions the
15 State Board of Education is authorized to take; is
16 that right?

17 A Yes.

18 Q And one of those actions is report to the
19 legislature that a Florida college institution is
20 unable or unwilling to comply with the law; is that
21 right?

22 MR. MOORE: Object to form.

23 A That's what it states.

24 BY MR. HANCOCK:

25 Q And is one of the options that the Board

1 of Education can withhold the transfer of state
2 funds, discretionary grant funds, discretionary
3 lot- -- lottery funds, or any other funds specified
4 as eligible for this purpose?

5 MR. MOORE: Object to the extent it calls
6 for a legal conclusion.

7 You can answer.

8 A That's what it states.

9 BY MR. HANCOCK:

10 Q Are you aware of any instances of the
11 Board of Education exercising authority under this
12 statute?

13 MR. MOORE: And to be clear, is your
14 question directed to the postsecondary system
15 as held by Judge Walker in his protective
16 order?

17 MR. HANCOCK: No, it's not.

18 MR. MOORE: Okay. You can answer as to
19 postsecondary.

20 MR. HANCOCK: Are you instructing the
21 witness not to answer with respect to schools
22 that are not postsecondary?

23 MR. MOORE: I believe it's outside the
24 scope of the notice of deposition, and I
25 believe Judge Walker's order limited it to

1 postsecondary.

2 MR. HANCOCK: I am sorry. To confirm, you
3 are instructing the witness not to answer with
4 respect to institutions that are not
5 postsecondary?

6 MR. MOORE: Is your question specifically
7 asking about K through 12?

8 MR. HANCOCK: It is asking about any
9 instance in which the Board of Education
10 exercises its authority.

11 MR. MOORE: Could you repeat the question,
12 please.

13 BY MR. HANCOCK:

14 Q Chancellor, are you aware of any instance
15 of the Board of Education exercising authority under
16 this statute?

17 MR. MOORE: You can answer if you know the
18 question -- if you know the answer.

19 A Yes.

20 BY MR. HANCOCK:

21 Q In what instances are you aware of them
22 exercising that authority?

23 A The only instance I'm aware of was in the
24 last -- I don't exactly know the date, but it was
25 regarding K-12.

1 Q Roughly when was that?

2 A It was within the last two years.

3 Q And what were the circumstances of the
4 Board of Education exercising that authority?

5 A To my recollection, it -- it had to do
6 with certain district boards of -- certain district
7 school boards not following the law.

8 Q Is your understanding that -- did the
9 Commissioner of Education conduct an investigation
10 under this statute?

11 A I don't know.

12 Q Do you know if the Commissioner of
13 Education reported a finding of probable cause to
14 the state board?

15 A I don't recall the exact proceeding.

16 Q But your understanding is there was some
17 form of proceeding under this statute?

18 A Yes.

19 Q Do you know if the State Board of
20 Education held a vote on whether or not a school
21 board was unwilling or unable to comply with the
22 law?

23 A I don't remember whether it was a vote or
24 not. I remember them discussing it at the state
25 board meeting, but I don't recall whether there was

1 a vote or not.

2 Q Do you recall whether the Board of
3 Education reported to the legislature whether any
4 institutions were unwilling or unable to comply with
5 the law?

6 A I don't know. I don't remember.

7 Q Do you know if the Board of Education
8 withheld the transfer of any funds under the
9 statute?

10 A Yes.

11 Q Is your recollection that funds were
12 withheld?

13 A It is.

14 Q Do you know what funds were withheld?

15 A My recollection is that it was the
16 salaries of the school board members.

17 Q Do you know which school board members or
18 which districts?

19 A I don't remember.

20 Q Do you know if that -- if a Florida state
21 court or federal court was involved in that in any
22 way?

23 A I don't know.

24 Q Is your understanding that this was -- you
25 mentioned you were aware of a proceeding, correct?

1 A Yes.

2 Q Is your understanding that that proceeding
3 was within the Board of Education?

4 A What do you mean by "within the Board of
5 Education"?

6 Q Is there -- do you think it was a legal
7 proceeding in a court, or do you think it was a
8 proceeding conducted within the Board of Education
9 or the Department of Education?

10 A There may also have been a court
11 proceeding. But I don't -- I don't know the
12 relationship between the court proceeding and the
13 State Board of Education proceeding. But it was --
14 the state board discussed whether or not to withhold
15 the school board member salaries.

16 Q Understood.

17 MR. HANCOCK: Why don't we take a quick
18 break?

19 THE VIDEOGRAPHER: We are now going off
20 record at 10:21 a.m.

21 (A recess took place from 10:21 a.m. to
22 10:37 a.m.)

23 THE VIDEOGRAPHER: We are now going back
24 on record at 10:37 a.m.

25

1 BY MR. HANCOCK:

2 Q Did you speak with your counsel while we
3 were on a break?

4 A Yes.

5 Q Did you discuss the deposition?

6 A Yes.

7 Q What did you discuss?

8 MR. MOORE: Object to form and instruct
9 her not to answer. It's a privileged
10 conversation.

11 BY MR. HANCOCK:

12 Q Okay. Does the Board of Education ever
13 draft its own legislation?

14 A We do have legislative proposals from time
15 to time that the State Board of Education supports.

16 Q And are those proposals that the board
17 itself drafts?

18 A What do you mean "the board itself
19 drafts"?

20 Q In -- in terms of the statutory language
21 that they would like to propose.

22 A Are you asking if an individual board
23 member drafts language, or do you mean the
24 department in working for the State Board of
25 Education?

1 Q Yeah. Whether anyone working for either
2 the board or the department drafts the language?

3 A Yes.

4 Q And under what kinds of circumstances
5 would the board sort of propose its own legislation?

6 A In addition to the legislative budget
7 requests, which is required, there have been
8 occasions where the State Board of Education has
9 adopted a policy agenda as well. It doesn't happen
10 every year because they're not required to do it.
11 But there are -- there are times when that happens.

12 Q And who makes the decision about whether
13 or not to adopt a policy agenda?

14 A If it's the state board's policy agenda,
15 then the state board would decide.

16 Q And when was the last time they would have
17 adopted a policy agenda?

18 A Gosh, I can't recall when. I don't know.

19 Q Do you -- do you recall it happening in
20 the last five years?

21 A I don't recall them drafting a policy
22 agenda like at the beginning of the legislative
23 session, but I do -- I think there could have been
24 an instance -- or one or more instances where at
25 some point during the process they had discussion

1 about a particular policy item that they felt
2 favorably about and wanted the commissioner to
3 support.

4 I cannot think of anything specific or
5 when it might have occurred, but at some point
6 during my tenure there, I recall that happening, in
7 addition to like a formal adoption of a full policy
8 agenda.

9 Q Does the board ever propose technical
10 corrections to statutes after they've been enacted?

11 A Members of the department do routinely --
12 we -- we issue bill analyses and prepare those and
13 file those as well; so yes, that does happen.

14 Q Can you give me an example of when the
15 board or the department would have proposed a
16 technical correction after a bill was enacted?

17 A Enacted or filed?

18 Q After it was enacted.

19 A Oh. No. I thought you meant filed. I
20 apologize.

21 Q Understood.

22 Are you aware of any instances of the
23 board or department proposing technical corrections
24 after a statute has been enacted?

25 A No, I'm not aware of any.

1 Q But you are aware of proposals to alter
2 legislation that has been filed but not passed?

3 A Yes.

4 Q And how often does that occur?

5 A I would say there's probably an
6 instance -- at least one instance every session.

7 Q The board tracks legislation related to
8 public education, right?

9 A Yes.

10 Q Would it be fair to say that they propose
11 corrections or amendments to a minority of the bills
12 that they track?

13 MR. MOORE: Object to form.

14 A Considering the number of bills that are
15 proposed that relate to education, I would say it's
16 a minority, yes.

17 BY MR. HANCOCK:

18 Q About how many bills per session would you
19 say that the board proposes amendments to?

20 A I don't have a good number. And it would
21 vary each session.

22 Q Who from the board makes the decision to
23 propose an amendment?

24 A The primary responsibility for that would
25 be the commissioner.

1 **Q Is the commissioner's sign-off required**
2 **before an amendment is proposed to the legislature?**

3 A I would say yes, although it doesn't
4 necessarily go through a -- like the formal memo
5 process that you saw earlier.

6 **Q Uh-huh.**

7 A But, yes, the commissioner would want to
8 approve that.

9 **Q Is there anyone aside from the**
10 **commissioner who you would think their approval is**
11 **necessary?**

12 A There's an approval process, certainly.
13 We typically have a director of governmental
14 relations who has primary responsibility tracking
15 and keep all those processes moving, chief of staff,
16 senior chancellors, I would imagine the individuals
17 in leadership.

18 **Q Who is the current director of government**
19 **relations?**

20 A Cory Dowd.

21 **Q And how long have they been in that**
22 **position?**

23 A Since last Wednesday.

24 **Q Who was in that position prior to Cory?**

25 A Jessica Fowler, I think, had -- had the

1 role before then.

2 Q And how long was Jessica Fowler in that
3 role?

4 A Maybe two years. I think she was with the
5 agency longer than that, but I think in that role
6 maybe two years.

7 Q And do legislators ever solicit the views
8 of the board on pending bills?

9 A Yes.

10 Q And is there a particular office that goes
11 through?

12 A The governmental relations office.

13 Q And then is it passed to the relevant
14 division from there?

15 A Typically.

16 Q And are responses to legislator inquiries
17 something that the commissioner would need to sign
18 off on?

19 A He would -- he would be informed, yes.

20 Q Does the legislature ever solicit the
21 views of the board before a bill is introduced?

22 A Yes, that has happened sometimes.

23 Q About what time of year does that occur
24 usually?

25 A It could -- it could be any time.

1 Q Does the Governor's Office ever solicit
2 views of the board on pending bills?

3 A Yes.

4 Q Who from the Governor's Office typically
5 does that?

6 A I don't know if there's a typical process,
7 but we -- we tend to work with the office of policy
8 and budget. Policy -- office of policy and budget,
9 or OPB, has divisions that focus on education and
10 all the other agency topics, so we primarily work
11 with the staff in education.

12 Q Do you know who's currently in charge of
13 the office of policy and budget?

14 A I think it's Shelby Cecil.

15 Q Does the Governor's Office ever draft its
16 own legislation?

17 A I don't know.

18 MR. MOORE: Object to form.

19 BY MR. HANCOCK:

20 Q Does the Governor's Office ever consult
21 with the board about draft legislation before it is
22 introduced?

23 A I suppose that could happen.

24 Q Are you aware of any instances of that
25 happening?

1 A Yes.

2 **Q And when are you aware of that happening?**

3 A Last year they asked us some questions
4 about the law enforcement bill, the one that -- I
5 think it's HB 3 is when it was originally
6 introduced. But the governor -- I think the
7 governor's office asked, when they were putting that
8 bill together, some questions about law enforcement
9 training and who does law enforcement training and
10 things like that, so ... Proposed bonuses and ways
11 to recruit law enforcement officers. And since our
12 colleges do a lot of that training, they asked us
13 some questions about it.

14 **Q And do you know if House Bill 3 was ever**
15 **introduced?**

16 A Yes.

17 **Q Do you know if House Bill 3 was ever**
18 **enacted?**

19 A Yes.

20 **Q And what is your understanding of what**
21 **House Bill 3 does?**

22 A It primarily supports the recruitment and
23 training of law enforcement officers.

24 **Q How so?**

25 A I'm not going to remember all the

1 provisions, but there are some scholarships, I
2 think, that are provided for individuals to come
3 into law enforcement training and complete that
4 training.

5 And then also a provision for individuals
6 who are in other areas that are similar to law
7 enforcement to -- for training to be developed for
8 them to sort of convert that training into what they
9 need to become a law enforcement officer.

10 Q Does the board ever attend hearings on
11 education legislation?

12 A Yes.

13 Q Who usually attends those hearings on
14 behalf of the board?

15 A The governmental relations director,
16 perhaps somebody else in the governmental relations
17 office, depending on who's assigned to the
18 particular policy sector. And then sometimes
19 division staff may go.

20 Q And who decides whether a representative
21 of the board should attend a particular hearing?

22 A Typically that's decided in the -- in the
23 commissioner's office. It could be the chief of
24 staff's decision, it could be something delegated to
25 the director of governmental relations, sort of a

1 team effort.

2 Q Do representatives of the board ever offer
3 their own testimony at the hearings?

4 A Yes.

5 Q Do they field questions from the
6 legislators at those hearings?

7 A Sometimes.

8 Q In terms of testimony that's affirmatively
9 offered, is that something that requires sign-off
10 from the commissioner?

11 A Yes.

12 Q Does the Board of Education have
13 lobbyists?

14 A Yes.

15 Q Does the Florida College System have its
16 own lobbyists separate from the Board of Education?

17 A The Council of Presidents, I think through
18 the Association of Florida Colleges, contracts with
19 a lobbyist.

20 Q In terms of the state board, do you know
21 how many lobbyists they have?

22 A I don't know the exact number. The
23 commissioner and the chief of staff, the senior
24 chancellors, the director of governmental relations
25 would all be registered lobbyists. I don't know if

1 there are other individualize that could be.

2 Q Are you among those who are registered?

3 A No.

4 Q Would Henry Mack be among those who is
5 registered?

6 A Yes.

7 Q And Jacob Oliva as well?

8 A Yes.

9 Q And they -- they file disclosures for any
10 bill that they work on; is that right?

11 A Yes.

12 Q Do those disclosures identify the board's
13 position on that bill?

14 A If there is one.

15 Q They would?

16 A (Nods head.)

17 Q And in terms of a position to disclose, is
18 that something that would require the commissioner's
19 approval?

20 A Can you ask the question again, please.

21 Q Yeah. When -- when a lobbyist from the
22 Board of Education is filing a disclosure and
23 indicating a position on the bill, do they need to
24 get the commissioner's sign-off to indicate that
25 position?

1 A Yes.

2 Q In terms of House Bill 233, are you aware
3 of a companion bill that was introduced to the
4 Florida Senate?

5 A There was one, I am sure, but I couldn't
6 tell you what it is now.

7 Q Yeah, if I represented to you it's SB 264,
8 does that sound right?

9 A (No response.)

10 Q What does -- what would you call those
11 bills where there is one in the House and one in the
12 Senate?

13 A Companion.

14 Q Companion bills. And does the board
15 generally treat companion bills as equivalent?

16 A I don't know what that means,
17 "equivalent."

18 Q So, for example, you mentioned earlier
19 that the board sometimes prepares bill analyses; is
20 that right?

21 A Yes.

22 Q Would the board generally create one or
23 two bill analyses for something that had a companion
24 bill?

25 A We would generally do two. We -- I think

1 our bill analysis form notes whether or not there is
2 a similar bill because sometimes they are identical,
3 sometimes they are similar and they are not
4 identical. So we -- we would do the analysis on one
5 bill and then have to do a separate analysis on the
6 other bill.

7 Q And are you aware that the House Bill 233
8 companion bill was introduced by Senator Rodrigues?

9 A I think that's right. That's my
10 recollection.

11 Q Does the board generally -- when there are
12 two companion bills proceeding through the
13 legislature, does the board have a general approach
14 for which one to work on?

15 A What do you mean "to work on"?

16 Q In terms of a proposed amendment, is that
17 something the board would propose for both bills?

18 MR. MOORE: Object to form.

19 A It would depend on the situation and lots
20 of things.

21 BY MR. HANCOCK:

22 Q Do you recall whether the board was
23 consulted by the legislature before House Bill 233
24 was introduced?

25 A What do you mean "consulted"?

1 **Q Were there any discussions between the**
2 **legislature and the board about House Bill 233**
3 **before it was introduced?**

4 A There wasn't a discussion that I am aware
5 of that -- about the specific bill. We did have
6 questions starting I think in 2020, '21, about
7 surveys that were already done by institutions in
8 other states that -- that ended up -- you know, once
9 the bill was filed, you could say, oh, this is --
10 this is why they were asking us that question.

11 **Q Understood.**

12 **Did you have any discussions about Senate**
13 **Bill 264 prior to it being introduced?**

14 A I'm sorry. No -- I apologize -- other
15 than what I just explained what -- what turned out
16 to be questions that were for information that were
17 related.

18 **Q Yeah.**

19 MR. HANCOCK: I am going to present to the
20 witness what's being marked as Exhibit 10.

21 (Exhibit 10 was marked for
22 identification.)

23 BY MR. HANCOCK:

24 **Q Do you recognize this e-mail chain?**

25 A Yes.

1 Q If you turn to the last page, this starts
2 as an e-mail on January 22, 2021; is that right?

3 A Looks like it, yes.

4 Q And this is an e-mail from Bethany
5 Swonson, right?

6 A Yes.

7 Q And do you recognize who that e-mail is
8 to?

9 A I don't recognize the e-mail address, but
10 when you read the -- the context of it, it appears
11 to be Senator Rodrigues. I am not familiar with
12 that e-mail address.

13 Q Understood.

14 A And Krissy Kulavic in the Florida Senate.

15 Q And if you turn back to the front page,
16 this is an e-mail from January 25, 2021; is that
17 right?

18 A Yes.

19 Q And did the board propose amendments to
20 House Bill 233?

21 A Yes. It looks like we provided
22 suggestions, and you can see the outline in this
23 e-mail of suggestions regarding FERPA. So I don't
24 see an actual amendment attached, but I see
25 suggestions for changes to line numbers and all of

1 that.

2 **Q And do you know whether the board's**
3 **proposed amendments were adopted?**

4 A Exactly which ones, I don't know. I do
5 know that -- that I think FERPA was added to the
6 bill after this point.

7 **Q And do you know if a statement clarifying**
8 **rule-making authority was added to the bill?**

9 A I don't remember exactly. But if I looked
10 at the bill, I could probably -- before and after, I
11 could tell you.

12 **Q Yeah. Let's quickly look at Exhibit 1.**
13 **If you'd turn to the second page, do you see a**
14 **Subsection (2)(b) or -- or the paragraph that begins**
15 **with B?**

16 MR. MOORE: Counselor, I believe there are
17 a couple beginning with B.

18 MR. HANCOCK: Apologies. The one at the
19 top of the page.

20 A Are you referring to "The State Board of
21 Education shall require each Florida College System
22 institution to conduct..."

23 BY MR. HANCOCK:

24 **Q Exactly.**

25 A Okay.

1 Q And if you look at the last sentence of
2 that section, it says: "The State Board of
3 Education may adopt rules to implement this
4 paragraph."

5 Is that right?

6 A Yes.

7 Q Does that refresh your recollection as to
8 whether the proposed rule-making amendment was
9 adopted?

10 A If -- there is clearly rule making in the
11 statute as a result of the legislation, what I don't
12 remember is what the bill looked like before this,
13 if that makes sense.

14 Q Understood.

15 A So I can see that, yes, clearly there is a
16 statement about rule making in the bill.

17 Q Turning back to Exhibit 10, do you see in
18 the first line of this first e-mail: "Thanks for
19 all your help, Krissy and team. Here are talking
20 points that Amanda Gay helped draft tonight for the
21 senator"?

22 A Yes.

23 Q Is it common for the Board of Education to
24 provide talking points as part of their proposed
25 amendments?

1 A I don't know if "common" is the right
2 word, but it -- it can happen, yes.

3 Q Do these talking points represent the
4 views of the board on the merits of these
5 amendments?

6 MR. MOORE: Object to form.

7 A This is an e-mail from somebody who was
8 chief of staff at the time.

9 BY MR. HANCOCK:

10 Q Do you think Bethany Swonson's views
11 generally represent the board's views in her
12 capacity as chief of staff?

13 A The process would have been for her to
14 consult with the commissioner before providing
15 information like this. So I would say yes.

16 Q So to confirm, it's your understanding the
17 commissioner likely would have signed off on these?

18 A Likely, yes. I wasn't present at the
19 moment, but likely that is -- that's our typical
20 process.

21 Q If you look at the discussion about FERPA,
22 do you see that bullet that begins "Clarifying that
23 one's ability..."?

24 A Yes.

25 Q The last -- the end of that bullet says:

1 **"For example, that colleges and professors cannot**
2 **use students' education records in violation of**
3 **FERPA."**

4 **Is that right?**

5 A Yes.

6 Q **Do you understand that FERPA limits what**
7 **colleges and professors can do with recordings?**

8 MR. MOORE: Object to form. Calls for a
9 legal conclusion.

10 You can answer if you know.

11 A I know that students' records are
12 protected by FERPA. So there is a limit on sharing
13 a student's record if you are not the student
14 yourself, unless the student has given you
15 permission.

16 BY MR. HANCOCK:

17 Q **Understood.**

18 **If you look to this -- the bullets below**
19 **FERPA background, do you see that first bullet that**
20 **says: "FERPA provides that a video of a student is**
21 **considered an education record when the video is**
22 **directly related to a student and maintained by an**
23 **educational agency, institution, or a party acting**
24 **for the agency or institution"?**

25 A Yes.

1 Q Is it your understanding that FERPA
2 provides protections for education records?

3 A Yes.

4 Q And those education records, is your
5 understanding, are records that are maintained by
6 the education agency or a party acting for that
7 agency?

8 A Yes.

9 MR. MOORE: Objection. Calls for a legal
10 conclusion.

11 You can answer.

12 A That's my understanding.

13 BY MR. HANCOCK:

14 Q Do you understand FERPA to limit the use
15 of recordings maintained by students?

16 MR. MOORE: Legal conclusion.

17 You can answer.

18 A I don't know. If I don't know all the
19 circumstances, it could -- I don't know the whole
20 FERPA law.

21 BY MR. HANCOCK:

22 Q Does the board think that a recording
23 taken by a student is a recording maintained by the
24 educational institution or a party acting for that
25 institution?

1 MR. MOORE: Objection to the extent it
2 calls for a legal conclusion.

3 You can answer.

4 A I don't know exactly the answer to the
5 question. Do you mind saying the question again?

6 BY MR. HANCOCK:

7 Q Yeah. I'll rephrase.

8 If a student submitted an inquiry asking
9 whether the recordings they've taken are an
10 education record under FERPA, does the board have a
11 position on that?

12 MR. MOORE: Same objection.

13 A I apologize. Can you repeat it one more
14 time?

15 BY MR. HANCOCK:

16 Q Sure.

17 A Now it's a different question and it's a
18 different word --

19 Q Sure.

20 A -- and I need to understand.

21 Q If a student submitted an inquiry asking
22 whether recordings they maintained are considered
23 subject to FERPA, does the board have a position on
24 that?

25 MR. MOORE: Same objection.

1 A I don't know that we have a position on
2 it. We may. But that would be something -- if an
3 inquiry came in like that -- for example, if a
4 student e-mailed our office and said, "I want to
5 know the answer to this question," I would consult
6 with our general counsel's office because we
7 wouldn't know necessarily all the ins and outs of
8 FERPA without consulting an attorney just to be
9 sure.

10 BY MR. HANCOCK:

11 **Q Do you currently have a view on whether a**
12 **recording maintained by a student is considered an**
13 **educational record under FERPA?**

14 MR. MOORE: Objection to the extent it
15 calls for a legal conclusion.

16 You can answer if you know.

17 A I don't -- I don't know the answer.

18 (Exhibit 11 was marked for
19 identification.)

20 MR. HANCOCK: I'm going to present the
21 witness with what's been marked as Exhibit 11.

22 BY MR. HANCOCK:

23 **Q Do you recognize this e-mail chain?**

24 A (Examining Document.)

25 Yes.

1 Q And this starts as an e-mail from you on
2 January 25, 2021; is that right?

3 A Yes.

4 Q And you are discussing a Senate hearing
5 that's being held the day after; is that right?

6 A Yes.

7 Q And you plan to give a presentation at
8 that hearing; is that right?

9 A Yes, it looks that way, that we had a
10 presentation to make, so we would be in attendance
11 at the hearing the next day.

12 Q And in the last line of your e-mail, it
13 sounds like you clarify that this presentation you
14 intend to give is not related to these three bills;
15 is that right?

16 A Correct.

17 Q Do you -- do you recall what the subject
18 of your presentation was?

19 A I don't.

20 Q And then you receive a reply from Bethany
21 Swonson, and she says: "No need for either of you
22 to comment on the bills. If you are asked, I'll be
23 there and can make any official comment that is
24 needed"; is that right?

25 A Correct.

1 **Q Does the chief of staff normally attend**
2 **hearings on behalf of the board?**

3 A It looks like at this point she was deputy
4 chief of staff, which I think at that time the --
5 part of the deputy of chief of staff's role was to
6 oversee, if you will, or be very closely involved in
7 governmental relations activities.

8 So it certainly -- and she a registered
9 lobbyist, so it would have certainly been typical
10 for her to attend.

11 **Q And when she references an official**
12 **comment, does that mean that she'd be speaking on**
13 **behalf of the board itself?**

14 A Yes.

15 **Q And would you expect that she has**
16 **authorization from the commissioner to do that?**

17 A Yes.

18 MR. MOORE: Object to form.

19 BY MR. HANCOCK:

20 **Q Do you recall attending a hearing on**
21 **January 26, 2021?**

22 A I must have been there, but I -- I
23 couldn't confirm other than this e-mail that, yes,
24 that's what happened, without looking at my
25 calendar.

1 **Q Do you recall whether you were asked --**
2 **whether anyone from the board was asked questions**
3 **related to Senate Bill 264 at that hearing?**

4 A I don't recall. I don't recall being
5 asked questions, but -- I don't think we were asked
6 questions. Whether or not Bethany answered any
7 questions, I can't remember.

8 (Exhibit 12 was marked for
9 identification.)

10 MR. HANCOCK: I'm going to present the
11 witness with what's being marked as Exhibit 12.

12 BY MR. HANCOCK:

13 **Q Do you recognize this e-mail?**

14 A Yes.

15 **Q And this is an e-mail you sent on**
16 **February 16, 2021; is that right?**

17 A Yes.

18 **Q And this is an e-mail to a Fred Piccolo?**

19 A Yes.

20 **Q Who is that?**

21 A Fred Piccolo was in the position of
22 executive vice-chancellor in the division at the
23 time in our division of Florida colleges.

24 **Q And who currently holds that position?**

25 A There's only -- at that time, there were

1 two executive vice chancellors, Fred and Carrie
2 Henderson. Now we have one, which is Carrie
3 Henderson.

4 Q And in the first line of the e-mail, you
5 reference, you say: "I just met with Eric." Would
6 that be Eric Hall?

7 A Yes.

8 Q And then later on in the e-mail, do you
9 see where it says: "See if you can get any info on
10 the cost and other couple of questions that
11 commissioner asked"?

12 A Yes.

13 Q Do you recall having a meeting with the
14 commissioner around this time?

15 A I don't. What -- what typically
16 happened -- I could have talked to him directly, but
17 what typically would happen is the senior
18 chancellor, such as Eric Hall, would see the
19 commissioner on a routine basis and pass along to us
20 inquiries that the commissioner might have.

21 So it could have been that I met with him,
22 or it could have been that I heard from Eric Hall
23 that those were the commissioner's questions.

24 Q Just speaking in general, who from the
25 division of Florida colleges tends to meet with the

1 **commissioner directly?**

2 A Typically me.

3 Q And is it fair to say that the
4 **commissioner more often meets with the executive**
5 **chancellors?**

6 MR. MOORE: Object to form.

7 A The senior chancellor, do you mean?

8 BY MR. HANCOCK:

9 Q Sorry. Remind me of Henry Mack's title.

10 A It's senior chancellor.

11 Q Yeah. Right.

12 Is it fair to say the commissioner more
13 **regularly meets with the senior chancellors?**

14 A I'd say that's true.

15 Q This e-mail has an attachment to it. Do
16 **you recognize this attachment?**

17 A Yes.

18 Q Do you know who prepared this?

19 A I believe Fred prepared it and then I may
20 have edited it before it was submitted.

21 Q And who would it have been submitted to?

22 A Eric Hall.

23 Q Was it submitted with the expectation that
24 **it would be reviewed by the commissioner?**

25 A Yes.

1 **Q You can set that exhibit aside.**

2 A Let me just clarify what I just said. It
3 would either be reviewed by the commissioner or that
4 Eric would have passed along to the commissioner
5 information from the document, so he might have
6 briefed the commissioner on the document.

7 **Q Understood.**

8 A Just wanted to be clear about that.

9 **Q No, I appreciate the clarification.**

10 MR. HANCOCK: I'm presenting the witness
11 with what's been marked as Exhibit 13.

12 (Exhibit 13 was marked for
13 identification.)

14 BY MR. HANCOCK:

15 **Q Do you recognize this e-mail chain?**

16 A (Examining Document.)

17 Yes.

18 **Q If you'd turn to the second page, this**
19 **chain starts as an e-mail from Jessica Fowler on**
20 **February 16, 2021; is that right?**

21 A It looks like just before that Jessica
22 received something from -- a bill action alert I
23 guess from LobbyTools, and then she wrote a number
24 of people after that.

25 **Q And Jessica Fowler is forwarding this**

1 **alert on February 16, 2021?**

2 A Correct.

3 Q And she starts that e-mail with: "Good
4 evening," and then there are a series of acronyms.
5 Can you tell me what those are?

6 A Yes. FCS is what sometimes the division
7 of Florida colleges is called. There was a time
8 when -- before -- years ago when the division, just
9 for communication purposes, was considered part of
10 the Florida College System, so sometimes people
11 still use FCS for DFC, which would be the division
12 of Florida colleges, so that would be my division.

13 And then GC is general counsel. F&O is
14 finance and operations. And IT is IT.

15 Q And then do you see in that first couple
16 sentences at the end where it says: "Please input
17 the impact of the amendments and whether it is
18 positive, negative, or neutral"?

19 A Yes.

20 Q Who decides whether to solicit input from
21 these divisions?

22 A It's a -- it's a part of our routine
23 process to -- once bills start being filed and we
24 have to do bills analyses and, as you mentioned
25 earlier, tracking bills, that the GR office would

1 alert the divisions they believe are -- have subject
2 matter knowledge with the items in the bill and ask
3 for their input.

4 Q So these divisions listed here are not all
5 of the divisions at the department?

6 A That's correct.

7 Q Jessica made a decision as to which
8 divisions were relevant to this amendment?

9 A Yes.

10 Q Is there a similar process when a bill is
11 first introduced?

12 A Yes, I think so. I would say similar. I
13 mean, it could vary slightly, but there's -- there's
14 routine contact from the GR office to the divisions
15 requesting input. Whether it happens with every
16 single bill that's filed right when it's filled, I
17 don't know the answer to that. But there's
18 generally communication.

19 Q And when they say "Please input," is there
20 a particular form for communicating that input?

21 A Yes. Usually the governmental relations
22 office will develop an electronic tracking sheet the
23 divisions that -- the governmental relations
24 contacts in each division have access to, and
25 they -- when she's asking for input, she's saying

1 please input that information in that bill tracker.

2 Q Understood.

3 And would you have done that on behalf of
4 the FCS?

5 A Not necessarily, no. It would have been
6 Caleb Hawkes or at the time -- do you see a Daniela
7 Bocanegra?

8 Q Uh-huh.

9 A She no longer works in the division, but
10 she -- she was an analyst in our division, and so
11 she -- Caleb is external in governmental affairs for
12 our division, so he is considered our primary person
13 who does all the bill tracking, and then Daniela
14 would have assisted him. So they are -- they are
15 likely the people that would have actually typed in
16 the sheet.

17 Q And Caleb is still around?

18 A Yes.

19 Q Would they have gotten your sign-off on
20 expressing the FCS's position?

21 A Yes. And when you say "sign-off," I'll --
22 I'll just clarify that that doesn't necessarily mean
23 I signed anything, physically signed a document, but
24 they would have consulted me.

25 Q Do -- do they have purple slips for your

1 **sign-off or just the commissioner?**

2 A No. It's a green slip.

3 Q Turning to the next e-mail, this is from
4 Aubrey Post on February 17, 2021; is that right?

5 A Yes.

6 Q And is Aubrey speaking on behalf of the --
7 was it finance and operations division?

8 A Yes.

9 Q And they expressed that they are neutral
10 on the bill language; is that right?

11 A Yes.

12 Q Then there is a subsequent e-mail from
13 Amanda Gay also on February 17, 2021; is that right?

14 A Yes.

15 Q I know you mentioned a tracking sheet
16 where some of this would likely be expressed. But
17 do these e-mails look like those views are being
18 expressed on this chain?

19 A It appears that some of them are. I don't
20 know if this encompasses everything, but there is
21 certainly information being shared on this e-mail
22 chain about the legislation.

23 Q Yeah. If -- if we look back at Jessica
24 Fowler's e-mail, do you see sort of in the second
25 paragraph where she says: "This will be due back

1 **ASAP"?**

2 A Yes.

3 Q If -- if these divisions are in a rush to
4 get their feedback to Jessica, are they likely to do
5 it by e-mail instead of the tracker?

6 MR. MOORE: Object to form.

7 A It could happen.

8 BY MR. HANCOCK:

9 Q Do you recall what view the FCS expressed
10 on these amendments?

11 A I don't.

12 Q Do you recall if FCS ever expressed a
13 positive, negative, or neutral view of HB 233?

14 A I don't.

15 Q Sorry. So you don't recall?

16 A I don't -- I don't recall.

17 Q Do you recall whether FCS expressed a
18 positive, negative, or neutral view of SB 264?

19 A I don't recall what our -- positive,
20 negative, or neutral. Typically, positive,
21 negative, or neutral was -- was a part of the
22 amendment process, so we would do a full bill
23 analysis at the beginning. And then as amendments
24 would come, they would just ask us, "How do you
25 think this amendment would affect the system?" And

1 that's where the positive, negative, or neutral
2 comes in.

3 **Q Let's --**

4 (Exhibit 14 was marked for
5 identification.)

6 MR. HANCOCK: I am presenting the witness
7 with what's been marked as Exhibit 14.

8 MR. MOORE: Counselor, I believe you gave
9 me two.

10 MR. HANCOCK: Thank you.

11 BY MR. HANCOCK:

12 **Q So attached to this e-mail is a document**
13 **labeled "2021 Agency Legislative Bill Analysis." Do**
14 **you see that?**

15 A Yes.

16 **Q And this is an analysis of Senate Bill**
17 **264?**

18 A Correct.

19 **Q And do you see where it identifies the**
20 **sponsor is Representative Rodrigues?**

21 A Yes. Yes.

22 **Q Is -- or I apologize. The bill sponsor is**
23 **Senator Rodrigues; is that right?**

24 A Oh, wait. Yes. Senator Rodrigues.

25 **Q And in -- in the previous legislation**

1 **section, it identifies a similar bill sponsored by**
2 **former Representative Rodrigues; is that right?**

3 A That's correct.

4 Q And are these -- is -- is this the sort of
5 **bill analysis you've mentioned previously?**

6 A It is.

7 Q And are these conducted automatically, or
8 **does someone choose which bills will be analyzed?**

9 A We are -- the divisions were given a
10 notice from the GR office when a bill analysis has
11 been requested.

12 Q And who -- who requests bill analysis?

13 A Typically, we receive a request from the
14 legislative staff, but we could receive them from
15 the Governor's Office, or the commissioner could
16 just request one.

17 Q So this is intended to be a resource for
18 **others on behalf of the board?**

19 A Yes.

20 Q Do you know who requested this analysis of
21 **Senate Bill 264?**

22 A I don't. But there is -- let's see what
23 the e-mail says.

24 (Examining Document.)

25 It doesn't say.

1 Q The e-mail from Bethany Swonson at the top
2 mentions -- it says "Done and sent to OPB," right?

3 A Yes.

4 Q The office of policy and budget?

5 A Yes.

6 Q And that -- is that part of the Governor's
7 Office?

8 A Yes.

9 Q Would that refresh your recollection as to
10 who requested this bill analysis?

11 A No. It still could have been requested by
12 somebody else. This looks like we had sent it to
13 OPB for review.

14 Q Understood.

15 And who signs off on a bill analysis when
16 it becomes final?

17 A I don't -- I don't know exactly if that
18 would be the chief of staff or -- I don't know the
19 exact day-to-day process of how they get the
20 commissioner's review and who then submits it to the
21 legislature. Maybe it's -- it could be the GR
22 director. There's -- there's a process to how the
23 agency approved version is submitted.

24 Q Are these bill analyses made public
25 anywhere when they are finalized?

1 A I think they are, but I know we publish a
2 final legislative review at the end of the year for
3 things that passed which look very similar to our
4 bill analyses. But they're, I think, on the GR
5 website, our agency's GR website. We might publish
6 them, but I'm not exactly sure when -- when that
7 happens.

8 Q And on the front you see the section
9 labeled "Bill Analysis Information"?

10 A Yes.

11 Q And so the -- and it says the lead agency
12 analyst is Caleb and the additional analyst is
13 Daniela. These are the folks you've mentioned
14 previously, right?

15 A Correct.

16 Q And this says date of analysis is
17 December 14, 2020?

18 A Yes.

19 Q Do you know how that date was established?

20 A Honestly, I don't remember if that's the
21 date we turn it into GR or that's the date -- it
22 might be the date we turned it into GR because it
23 still says "draft" on it. I'm not sure.

24 Q What's your understanding of when the
25 Florida legislative session begins?

1 A The actual session begins? Second Tuesday
2 after the first Monday or something like that in
3 whatever month it is. Sometimes it's January,
4 sometimes it's March. But there's a -- there's a
5 section that says when it's going to start.

6 Q Understood.

7 Would -- would that date indicate that
8 this analysis was started prior to the 2021
9 legislative session?

10 A Yes.

11 Q So would that indicate that this analysis
12 was started before Senate Bill 264 was introduced?

13 MR. MOORE: Object to form.

14 A My question is about the word
15 "introduced," because bills are filed but then
16 they're -- I think "introduced" has some kind of
17 specific meaning in the legislative process, and I
18 don't -- so I -- I don't know.

19 BY MR. HANCOCK:

20 Q Sure.

21 What's your understanding of the
22 bill-filing process?

23 A The process meaning -- what do you mean?
24 I'm sorry.

25 Q Yeah, yeah. Can you just describe for me

1 **what you know about how bills are filed and -- and**
2 **when?**

3 A My general understanding is that the --
4 whatever -- whoever the bill sponsor is submits a
5 bill to bill drafting. And whenever they are done
6 with it, it gets filed officially. But I don't
7 know -- I don't know all the inner workings of
8 the -- that process in the legislature.

9 Q **Is your understanding that the filing**
10 **process is when bills get their -- their number?**

11 A I imagine that's part of the process.

12 Q **If you turn to the last page of this**
13 **exhibit.**

14 A Yes.

15 Q **Do you see that bottom section called**
16 **"Approvals"?**

17 A Yes.

18 Q **Do you see your name listed?**

19 A I do.

20 Q **And there is a date of December 17, 2020;**
21 **is that right?**

22 A Yes.

23 Q **Does that mean you would have signed off**
24 **on this draft as of that date?**

25 A That's correct.

1 Q And then at the bottom there is a --
2 there's Bethany Swonson's approval; is that right?

3 A Yes.

4 Q And that's dated January 22, 2021?

5 A Yes.

6 Q Do you know if any further approval was
7 required for this to become final?

8 A I don't know what the -- as I said, the
9 specific process between this actual sign-off and
10 review by the commissioner, briefing with the
11 commissioner. But this -- this ends our process.

12 Q Understood.

13 Looking higher up on this page, do you see
14 the section labeled "Legal General Counsel's Office
15 Review"?

16 A Yes.

17 Q Do you see the bullet that starts "Lines
18 80 to 83"?

19 A Yes.

20 Q And do you see that last sentence that
21 says: "Additionally, depending on who is recording
22 and publishing the video, FERPA could be
23 implicated"?

24 A Yes.

25 Q Do you have an understanding as to why it

1 **would depend upon who was recording the video?**

2 MR. MOORE: Object to form.

3 A I don't have a full understanding, and I
4 don't have the language of the bill at the time in
5 front of me, but there seemed to be a concern about
6 it being unclear about who's doing the recording and
7 where the recording's going to be published and held
8 and everything else.

9 BY MR. HANCOCK:

10 Q Sure. Let's move up a page.

11 Do you see the section labeled "Fiscal
12 Impact to State Government"?

13 A Yes.

14 Q And in the "expenditures" row, do you see
15 where it says: "The SBOE would face a one-time cost
16 related to the development of the survey instrument
17 to ensure its validity"?

18 A Yes.

19 Q Does the board still understand that to be
20 a one-time cost?

21 A I believe so.

22 Q Does the board have any present plans to
23 reuse the survey that was used in 2022?

24 A We haven't discussed that.

25 Q Does the board have any present plans to

1 develop a new or alternative survey for 2023?

2 A We haven't discussed that.

3 Q Let's turn back a page.

4 A Back meaning towards the front?

5 Q Yes. Do you see the section labeled "What
6 is the position of affected citizens or stakeholder
7 groups"?

8 A Yes.

9 Q Do you see there is a row for proponents
10 and a summary of their position?

11 A Yes.

12 Q And do you see in that field the only
13 thing it says is "unknown"?

14 A Yes.

15 Q Was the board at this time unaware of any
16 proponents of House Bill 264 who would be affected
17 by the bill?

18 A Yes. It was unknown at the time.

19 Q And do you see the second row is for
20 opponents and a summary of their position?

21 A Yes.

22 Q And it says: "There are professors and
23 faculty members who are opposed"?

24 A Yes.

25 Q How did the board know that there were

1 **professors and faculty members who were opposed?**

2 A I believe at this time there had been news
3 articles or other postings regarding the bill, and
4 that's how we would have known.

5 Q And it's your understanding that those
6 news articles discussed or reflected the views of
7 professors and faculty members?

8 A Can you ask that question again, please?

9 Q Sure. Those news articles or media that
10 you referenced, it's your understanding that media
11 discussed the views of professors and faculty
12 members?

13 A Yes.

14 Q And is it your understanding that there
15 was no support for the bill expressed in that media?

16 A I don't know the answer to that.

17 Q Do you see where it says: "A few reasons
18 being that forced or coerced speech, e.g., survey on
19 political views, violates First Amendment rights"?

20 MR. MOORE: Object to form.

21 A I see what it -- what it states here, yes,
22 the bills analysis.

23 BY MR. HANCOCK:

24 Q Is it your understanding that it was the
25 views of professors and faculty members that the

1 **survey and political views violates free speech?**

2 A It's my understanding that that's what we
3 had observed based on what we had read.

4 Q And the board had also observed that there
5 was "uncertainty about how the results will be
6 used"?

7 MR. MOORE: Object to form.

8 A The document reflects what our
9 understanding was at the time.

10 BY MR. HANCOCK:

11 Q And the board's understanding at the time
12 was that professors and faculty members felt that
13 the bill "may conflict with the principle of
14 academic freedom clauses and faculty union and
15 collective bargaining agreements"; is that right?

16 A That's what the document states.

17 Q And that reflects the board's views of
18 what the stakeholders thought?

19 A It reflects their understanding at the
20 time.

21 Q So going up a page again, do you see the
22 section labeled "Substantive Bill Analysis"?

23 A Yes.

24 Q And it begins with the section called
25 "Present Situation"?

1 A Yes.

2 Q **What is that section there for?**

3 A It's to provide a summary of circumstances
4 related to the legislation -- the topic related in
5 legislation as those circumstances are at the
6 present time that the analysis is prepared.

7 Q **So the intent is to reflect the situation**
8 **before that bill becomes law?**

9 A Correct.

10 Q **And do you see that last sentence that**
11 **says: "FCS institutions may have local policies and**
12 **procedures related to expressive activities for**
13 **individuals, organizations, and guests. These**
14 **policies must be reasonable, tailored to the**
15 **institution's interest and content neutral in time,**
16 **place, and manner of expression"?**

17 A Yes.

18 Q **Is that an accurate assessment of the**
19 **situation prior to House Bill 233?**

20 MR. MOORE: Object to form.

21 A By "after" do you mean all encompassing
22 accurate or just the statement as part of the
23 broader paragraph?

24 BY MR. HANCOCK:

25 Q **Yeah. Exactly. Whether the statement is**

1 **true on its own.**

2 A I believe so.

3 (Exhibit 15 was marked for
4 identification.)

5 MR. HANCOCK: I am presenting the witness
6 with what's being marked as Exhibit 15.

7 BY MR. HANCOCK:

8 **Q The first part of this is an e-mail from**
9 **March 10, 2021. Do you recognize this e-mail?**

10 MR. MOORE: Counsel, if I could, I'm not
11 sure that I have a correct copy.

12 MR. HANCOCK: Oh. Sorry. It's out of
13 order. The e-mail's on the back instead of the
14 attachment.

15 MR. MOORE: The e-mail beginning on
16 Defendants' 8 -- 084317?

17 MR. HANCOCK: Exactly. Or it begins on
18 84316.

19 MR. MOORE: Okay.

20 A (Examining Document.)

21 Yes.

22 BY MR. HANCOCK:

23 **Q Who is this e-mail sent on behalf of?**

24 MR. MOORE: Object to form.

25 A I can't remember what the actual acronym

1 ACFS -- what the actual words are, but it's a -- it
2 looks like it was discussed among the Council for
3 Instruction Affairs, the CIA, voting members.

4 BY MR. HANCOCK:

5 Q And is it your understanding that the
6 Board of Education received this e-mail?

7 A Yes.

8 Q And if you'd turn to the attachment. Do
9 you see in that first paragraph where the acronym is
10 laid out as Advisory Council of Faculty Sentence?

11 A Oh, yes. Thank you.

12 Q What's your understanding of what that
13 entity is?

14 A I don't have a good understanding of that
15 entity other than what the title says. It sounds
16 like it's an association for all of the faculties in
17 it.

18 Q Do you know if that includes faculty from
19 the Florida College System?

20 A Let me see. I don't know. I don't know.
21 I can -- I can read what it says in their whereas
22 clause, the first one, but I don't have any direct
23 knowledge of who is on that council.

24 Q Understood.

25 And this document -- this is a resolution,

1 right?

2 A That's what it's titled.

3 Q And the resolution is that "ACFS supports
4 the free exchange of ideas on campus and therefore
5 opposes a legislative entitlement to record classes
6 and mandatory survey"; is that right?

7 A That's what it states.

8 MR. MOORE: Object to form.

9 BY MR. HANCOCK:

10 Q Did the board receive resolutions like
11 this from any other entities?

12 A I don't recall.

13 Q Did the board receive resolutions from
14 organizations in support of House Bill 233?

15 A I don't recall.

16 Q If you look on the left, the lines are
17 numbered. Do you see a paragraph starting with
18 line 23?

19 A May I go back to the previous question
20 about the board receiving this?

21 Q Sure.

22 A It looks like we are included on the list
23 of people receiving -- copied on this resolution
24 where the e-mail is sent; like the chancellor, FCS,
25 general e-mail inbox, and I think I see Carrie

1 Henderson and other people on there.

2 It says: "Good morning. Attached is the
3 resolution," and the author, Brittany, says she'll
4 be sending an e-mail attachment to CIA voting
5 members to determine their level of interest and
6 continuing the discussion. And the e-mail from
7 ACFS: "In addition, I will seek guidance from COP."

8 So it looks like Brittany Snyder in her
9 capacity as -- with CIA is sending this out to a lot
10 of people to say she's going to seek further
11 guidance.

12 So I guess by virtue of the fact that some
13 of us, and our general e-mail address, were included
14 in Brittany's e-mail to all of the recipients of
15 this list were being informed that the faculty
16 senate group, ACFS, has a resolution or did
17 something with this resolution, and she is going to
18 seek further guidance on it.

19 So when you're asking me about the board
20 receiving it, it looks like the department did
21 because we were included on the e-mail. It doesn't
22 look like it was from the ACFS directly. It looks
23 like it was through Brittany Snyder. But there
24 could be some other e-mail somewhere where the ACFS
25 sent it to the board. I don't know.

1 Q Understood.

2 Returning to the resolution --

3 A Yes.

4 Q -- do you see the paragraph starting at
5 line 23?

6 A Yes.

7 Q Do you see that it says: "A recording
8 entitlement will have the counterproductive effect
9 of limiting the range of viewpoints expressed in
10 class"?

11 A I see that it says that, yes.

12 Q Was BOE concerned that a recording
13 entitlement would have that effect?

14 A I don't know other than what was in our
15 bill analysis what the -- what other discussions or
16 thoughts the board members might have had.

17 Q Have you been part of any discussions
18 about a concern that the recording entitlement will
19 have this effect?

20 A It's possible. We talk about a lot of
21 things during -- during the session about bills, so
22 there -- there definitely is a possibility that that
23 could have happened. I don't recall a specific
24 incidence of it, but it's certainly possible.

25 Q Do you recall any -- any of the Florida

1 **College System institutions expressing a concern**
2 **that a recording entitlement will limit the range of**
3 **viewpoints expressed in class?**

4 A I recall receiving -- or having phone
5 calls with -- with -- or conversations, I should
6 say, with presidents who had concerns about
7 recording provisions. Whether or not they
8 specifically said this was their concern, I don't
9 recall.

10 Q **Do you recall any -- what concerns were**
11 **raised?**

12 A The one I remember the most was the --
13 just a concern about implementation, but I don't
14 recall whether it was at this point in time or later
15 when the bill was filed, or what version of the
16 bill.

17 Q **Yeah. In what sort of capacity did -- did**
18 **presidents raise these concerns?**

19 A What do you mean "capacity"?

20 Q **Was it in a meeting, or did you receive**
21 **e-mails, or how did they express these concerns?**

22 A I know I have -- I know I talked to
23 presidents on the phone, individual presidents
24 fairly regularly. It's typical for them to call me
25 on the phone and ask a question. And they meet

1 regularly as a council of presidents. And sometimes
2 I'm in attendance in those meetings, and sometimes
3 I'm not.

4 Q Do you recall any concerns about the
5 recording provision coming up in a council
6 presidents meeting that you attended?

7 A I don't recall. It's possible, but I
8 don't recall it.

9 Q Do you recall any concerns expressed in --
10 in phone calls with presidents?

11 A I do remember having a phone call and
12 perhaps more than one phone call about the recording
13 provisions.

14 Q Do you recall who those calls were with?

15 A I think one of them was actually not with
16 a president, it was with the general counsel for
17 Valencia, Bill Mallowney.

18 Q Sorry. Can you say that name one more
19 time?

20 A Sure. Bill Mallowney.

21 Q And can you spell that last name?

22 A I think it's M-U-L-L-O-W-N-E-Y. I think
23 that's right.

24 Q And do you recall phone conversations with
25 anyone from any other colleges?

1 A I don't recall exactly.

2 Q **And do you recall any -- what do you**
3 **recall about your conversation with Bill Mallowney?**

4 A I think that they were focused on --
5 because he is an attorney, so they were focused on
6 implementing -- implementing the legislation. And I
7 think his concern was, if I recall, it had to do
8 with making sure they implemented it properly in
9 accordance with -- and that -- that conversation was
10 more I think towards the end of session, not -- not
11 when it first introduced but later, later versions
12 of the bill.

13 Q **And what kind of questions did Bill have**
14 **about implementation?**

15 A I don't know if they were actually
16 questions so much as him telling me things they
17 were -- they were thinking about and -- and -- and
18 what they were discussing as to how they were --
19 as -- as legislation gets filed or -- and certainly
20 when it's passed, but even as things are being
21 introduced and discussed in the legislature, folks
22 in the field start to think about how will we
23 implement this and how will it work.

24 And so my recollection of my conversation
25 with him is about how will this work and how will we

1 do it in individual classrooms or across the
2 college.

3 Q Returning to the resolution, do you see
4 the paragraph starting with line 37?

5 A Yes.

6 Q It says, after the "whereas" quote: "The
7 ability to recruit and retain faculty in the SUS
8 will be substantially harmed by student entitlement
9 to record class."

10 Did the Board of Education have a concern
11 that the ability to recruit and retain faculty would
12 be harmed by entitlement to record class?

13 A I don't recall that concern.

14 Q Did you have any discussions with faculty
15 members in the Florida College System about this
16 issue?

17 A I do not -- with faculty, no.

18 Q Did you discuss this issue with anyone
19 else from the Florida College System?

20 A Do you mean the issue specifically in that
21 "whereas" clause?

22 Q Yeah. The issue of the ability to recruit
23 and retain faculty, given an entitlement to record?

24 A I don't recall any conversation about
25 that.

1 Q Bill Mallowney, is -- is he a faculty
2 member at Valencia?

3 A No. No.

4 Q Do you recall any discussions between the
5 Board of Education and the faculty members about the
6 effects of the recording provision?

7 A I don't recall any.

8 (Exhibit 16 was marked for
9 identification.)

10 MR. HANCOCK: I am going to present the
11 witness with what's being marked as Exhibit 16.

12 BY MR. HANCOCK:

13 Q Do you recognize this e-mail chain?

14 A (Examining Document.)

15 Yes.

16 Q And this chain starts as an e-mail from
17 Taylor Wolff on January 18, 2022; is that right?

18 A Yes.

19 Q And she says she is writing to, quote,
20 follow up on the implementation of the survey
21 requirement from HB 233; is that right?

22 A Yes. That's what it says.

23 Q And then in the next line it says, quote,
24 based on previous discussions between our office and
25 the BOG and the DOE.

1 Do you see that?

2 A Yes.

3 Q Was -- was there a follow-up from the
4 legislature prior to this January 18 e-mail?

5 A There could have been. I don't recall it
6 specifically, but there could have been conversation
7 with the governmental relations team.

8 Q Yeah. Would it be fair to say that in
9 general there has been follow-up from the
10 legislature on the implementation of this survey
11 requirement?

12 MR. MOORE: Object to form.

13 A This -- this is an example of follow-up.

14 BY MR. HANCOCK:

15 Q Yeah. Do you have a sense of when that
16 follow-up began?

17 A I don't.

18 Q And turning back to the first page, do you
19 see in the middle this e-mail from Alexis on
20 January 27, 2022?

21 A Yes.

22 Q And she says, quote, we'll have Kathy
23 Hebda and GR call Taylor tomorrow to update the
24 House.

25 Do you see that?

1 A Yes.

2 Q Who is GR?

3 A Governmental relations.

4 Q So just somebody from that department?

5 A That's right.

6 Q And then do you see in the last sentence
7 of that small paragraph: "We are following the
8 SUS/BOG lead and timeline"?

9 A Yes.

10 Q And that's in reference to the Board of
11 Governors and their efforts to develop a survey?

12 A That's right.

13 Q And so the intention in January was to
14 follow their lead and timeline; is that right?

15 A That's right.

16 Q Did you end up getting on -- on the phone
17 with folks from the Florida House?

18 A Probably.

19 Q Do you recall --

20 A I don't recall a specific conversation,
21 but very likely.

22 Q And then in the next line, Alexis suggests
23 at the end that it may be worthwhile to have a joint
24 call with FCS and SUS.

25 Do you see that?

1 A Yes.

2 Q Do you know if that joint call occurred?

3 A I don't know. I don't recall.

4 Q How common is it for the legislature to
5 follow up with the board about a statute being
6 implemented?

7 A Quite common.

8 Q Usually what kinds of information are they
9 interested in?

10 A Some of the things you see here in this
11 e-mail, how -- what's the timeline. Sometimes the
12 statute will give a timeline, like this one did,
13 sometimes it doesn't, but they are still interested
14 in where we are in the process.

15 Q Do you know if any members of the House
16 were provided with drafts of the survey?

17 A Which -- which version of the survey?

18 Q Either version.

19 MR. MOORE: Object to form.

20 You can answer.

21 A I don't -- I don't know about the initial
22 survey that the Board of Governors was working on.
23 We are at this stage where we said, you know, we
24 were waiting for them and their timeline, so I don't
25 know what might have been shared on their part.

1 I mean, I'm trying to recall if anybody in
2 governmental relations shared our final version of
3 the survey before it was submitted. I think it's
4 likely that happened before it was sent out.

5 BY MR. HANCOCK:

6 Q And who is Taylor Wolff?

7 A An attorney in the House of
8 Representatives. Probably the -- yeah,
9 education/employment committee.

10 Q And is it your understanding that Taylor
11 is employed by the committee itself or
12 representatives who serve on the committee?

13 MR. MOORE: Object to form.

14 A I don't know how they are -- I believe
15 it's the committee, but I don't know exactly the
16 structure.

17 BY MR. HANCOCK:

18 Q Do you know -- earlier we mentioned that
19 there are registered lobbyists on behalf of the BOE?

20 A Yes.

21 Q And that's largely the executive
22 leadership; is that right?

23 A Largely, yes.

24 Q Do you know if they disclose lobbying in
25 favor or against House Bill 233?

1 A I don't know.

2 Q Do you know if the -- did you attend any
3 hearings in the 2021 session beyond that January 26
4 hearing we talked about?

5 A I might have, yes. I think -- I know I
6 went to more than one hearing in that session, but I
7 don't recall exactly what it was on.

8 Q Do you have a rough sense of how many
9 hearings you would have attended?

10 A I want to say less than 10, but I would
11 have to check.

12 Q On January 26, you were giving a
13 presentation. Do you have a sense of what the
14 purpose was for your attendance at some of the other
15 hearings that session?

16 A I don't remember. But I can certainly
17 refresh my memory by checking my file and seeing
18 what was -- what we presented that day.

19 Q Did you attend any hearings during the
20 2022 legislative session?

21 A Yes. I say yes because I know I went to
22 at least one, but I don't know which one and what
23 day.

24 Q But it sounds like it was much fewer than
25 the 2021 session?

1 MR. MOORE: Object to form.

2 A Honestly, I don't recall. I'd have to
3 think back. I didn't review all of that before I
4 came today, so I'm not exactly sure.

5 BY MR. HANCOCK:

6 Q And you're aware that in the 2022 session,
7 the legislature enacted House Bill 7?

8 A Yes.

9 Q And what is your understanding of what
10 House Bill 7 does?

11 MR. MOORE: Object to form.

12 A The entire bill?

13 BY MR. HANCOCK:

14 Q Sure.

15 A I'm not going to remember the entire bill.
16 But there are provisions in the bill that deal
17 specifically with K-12, and there are provisions
18 that deal in -- with, I'm going to say, agencies in
19 general. And there are portions of the bill that
20 discuss the definitions of discrimination and modify
21 sections of statute with regard to that.

22 Q In terms of what applies to agencies in
23 general, what's your understanding of what the bill
24 does there?

25 A There are provisions that relate to, as I

1 said, the definition of discrimination.

2 MR. MOORE: And if we could, just for a
3 second, Counselor --

4 MR. HANCOCK: Sure.

5 MR. MOORE: -- which topic of the notice
6 is this?

7 MR. HANCOCK: 9 or 10, I think.

8 MR. MOORE: Okay. If it's 10, I will
9 instruct the witness not to answer. I think
10 Judge Walker's order is explicitly clear.

11 MR. HANCOCK: You're instructing the
12 witness not to answer with respect to Topic 10?

13 MR. MOORE: No. With respect to the
14 extent you're asking the chancellor about
15 policies, documents, communications concerning
16 the board's understanding, oversight,
17 implementation of objective nondiscriminatory
18 instructions in Florida public schools,
19 including identification of distorted or
20 discriminatory lessons subject to instruction
21 materials as it relates to K through 12, I am
22 instructing her not to answer. And I would
23 refer you to ECF 126.

24 MR. HANCOCK: You're invoking that
25 protective order?

1 MR. MOORE: I am.

2 MR. HANCOCK: And that is the basis for
3 the instruction?

4 MR. MOORE: I am instructing it, yes. I
5 think it's quite clear.

6 BY MR. HANCOCK:

7 Q Are you going to follow your counsel's
8 instruction?

9 A Yes.

10 Q What is your understanding of what House
11 Bill 7 does with respect to postsecondary
12 institutions?

13 A That refers to the portion on the
14 definitions of discrimination, and it -- I think
15 "prohibit" is the right word, but it prohibits
16 agencies or postsecondary institutions as an agency
17 from requiring certain kinds of training, and as a
18 condition of employment, that are considered
19 discriminatory.

20 Q And what's your understanding of the way
21 that bill altered definitions of discrimination?

22 MR. MOORE: And are you asking
23 specifically in the context of postsecondary
24 education?

25 MR. HANCOCK: No.

1 MR. MOORE: Okay. I instruct you not to
2 answer.

3 BY MR. HANCOCK:

4 Q Are you going to follow that instruction
5 with respect to K through 12?

6 A I'm going to follow my attorney's
7 instruction.

8 Q Understood.

9 What is your understanding of how House
10 Bill 7 changed definitions of discrimination as it
11 applies to postsecondary institutions?

12 A It prohibits the -- the requiring of
13 employees to participate in training or any kind of
14 mandatory instruction that would be discriminatory
15 in nature and then it added to the definition of
16 what's included in discrimination.

17 Q And what is your understanding of those
18 additions to the definition of discrimination as it
19 applies to postsecondary institutions?

20 A There are a list of topics, if you will,
21 that were included in the legislation. And the --
22 those topics are not prevented from being discussed,
23 but there is -- an institution is prevented from
24 requiring a person to attend training where they're
25 required to or coerced into believing certain topics

1 or beliefs that are listed in the law.

2 Q Do you have an understanding of how that
3 definition of discrimination applies outside the
4 training context for postsecondary institutions?

5 A What do you mean outside training?

6 Q Do you understand House Bill 7 to alter
7 the definition of discrimination for classroom
8 contact at postsecondary institutions?

9 A It doesn't alter at all the topics that
10 can be discussed in classrooms and in instruction.
11 What it prohibits is the coercion to believing
12 certain theories.

13 Q And you understand that to operate in the
14 classroom?

15 MR. MOORE: Objection to the extent it
16 calls for a legal conclusion.

17 You can answer.

18 A Yeah.

19 BY MR. HANCOCK:

20 Q Do you know whether it is prohibited under
21 House Bill 7 to coerce somebody into believing the
22 identified topics in a classroom?

23 MR. MOORE: Same objection.

24 A I don't think I know the full answer to
25 that. I think some of that might be circumstantial,

1 so I don't -- I don't -- I don't know.

2 BY MR. HANCOCK:

3 Q Do you have an understanding as to whether
4 the definition of discrimination in House Bill 7
5 would apply to classrooms at postsecondary
6 institutions?

7 MR. MOORE: Object to the extent it calls
8 for a legal conclusion.

9 You can answer.

10 A I don't know what you mean "applies to
11 classrooms."

12 BY MR. HANCOCK:

13 Q Do you have an understanding as to whether
14 any conduct in classrooms could be considered
15 discriminatory under House Bill 7?

16 MR. MOORE: Same objection.

17 You can answer.

18 A I don't know because I don't know that any
19 conduct -- I mean, that's -- that's a -- that's
20 broad, so I'm not sure.

21 BY MR. HANCOCK:

22 Q Was the Board of Education consulted by
23 legislators prior to the introduction of House
24 Bill 7?

25 A I don't know.

1 Q Did the Board of Education have any
2 discussions with the Governor's Office about House
3 Bill 7 before it was introduced?

4 A I don't know.

5 Q Do you know if the Board of Education
6 proposed any amendments to House Bill 7 while it was
7 pending?

8 A I don't recall. I would have to check and
9 see. I don't -- I don't recall.

10 Q Do you recall whether any were proposed at
11 all?

12 A I don't recall.

13 Q Do you recall whether a bill analysis was
14 requested from the board with regards to House
15 Bill 7?

16 MR. MOORE: Object to form.

17 A Likely it was.

18 BY MR. HANCOCK:

19 Q So you would expect it, but you don't
20 recall specifically?

21 A Right.

22 Q Has anyone from the legislature followed
23 up on implementation of House Bill 7?

24 A With regard to the postsecondary
25 provisions?

1 **Q In any sense.**

2 MR. MOORE: To the extent you're asking
3 about Topic 9 and not limiting it to the
4 postsecondary education scenario, I'm
5 objecting, referring back to the Court's prior
6 ruling, and instruct the witness not to answer.

7 BY MR. HANCOCK:

8 **Q And are you going to follow that**
9 **instruction?**

10 A Yes, I am.

11 **Q Has anyone from the legislature followed**
12 **up on implementation with regard to -- sorry. Let**
13 **me rephrase.**

14 Has anyone from the legislature followed
15 up on the implementation of House Bill 7 with regard
16 to postsecondary institutions?

17 A I'm not aware in my -- in my chancellor
18 capacity, but it's possible that there has been
19 follow-up.

20 **Q Are you aware of any of that follow-up?**

21 A I'm not aware of it.

22 **Q Are you aware that in the 2022 session,**
23 **the legislature passed House Bill 1557?**

24 A Yes.

25 **Q What is your understanding of what House**

1 **Bill 1557 does?**

2 MR. MOORE: I'm going to object to the
3 extent it calls for a legal conclusion.

4 You can answer if you know.

5 A I'd have to look at the bill to refresh my
6 memory.

7 BY MR. HANCOCK:

8 Q Do you remember anything about what that
9 bill does?

10 A I'm drawing a blank. I apologize.

11 Q Are you aware of media reports referring
12 to that bill as the "Don't say gay bill"?

13 A Yes.

14 Q Does that refresh your recollection as to
15 what the bill does?

16 A It does, yes.

17 Q What's your understanding of what that
18 bill does?

19 A I believe those provisions apply to
20 students in primary grades and concerning
21 discussions with teachers and students at that age.

22 Q And what is your understanding of what
23 House Bill 1557 does with respect to those
24 discussions?

25 A My recollection is that it focuses on the

1 parents' role in having discussions on certain
2 topics with their children at that age rather than
3 the teacher.

4 Q And what topics are those?

5 A I'm not going to recall exactly what the
6 words are, but I think it has to do with gender
7 identity. Again, I'd have to look at the bill
8 again. I apologize, I don't have it in front of me.

9 Q Sure. In your own words --

10 A I obviously focused on this other thing
11 more than I did on that.

12 Q No, of course.

13 In your own words, do you have any other
14 understanding as to what topics House Bill 1557
15 relates to?

16 A Not without looking at the bill again.

17 Q Do you know if the Board of Education was
18 consulted by the legislature before House Bill 1557
19 was introduced?

20 A I don't know.

21 Q Do you know if the Board of Education
22 offered or proposed any amendments to House
23 Bill 1557?

24 A I don't know.

25 Q Do you know if the Board of Education

1 **performed a bill analysis about House Bill 1557?**

2 A Likely we did.

3 Q **But you don't know specifically?**

4 A I don't have it in -- I mean, it's not top
5 of mind, but I'm sure we did.

6 Q **And are you aware of any follow-up from
7 the legislature on implementing House Bill 1557?**

8 A Is it -- in -- in my purview as
9 chancellor -- I know I am answering on behalf of the
10 agency, but in my purview of chancellor, I haven't
11 had any. But it's very likely they had followed up
12 with regard to K-12.

13 Q **Have you heard specifically about any
14 follow-up that's occurred?**

15 A I haven't heard specifically.

16 Q **Have you heard generally about the
17 legislature following up with regard to implementing
18 House Bill 1557?**

19 A I have heard discussion about implementing
20 1557, and it's -- it's -- as we've seen already,
21 it's typical for the legislature to ask questions of
22 where our agency is with implementing things they
23 passed. There is probably documents that I'm just
24 not recalling that could refresh my memory about
25 that follow-up.

1 (Exhibit 17 was marked for
2 identification.)

3 MR. HANCOCK: I am going to present the
4 witness what's being marked as Exhibit 17.

5 BY MR. HANCOCK:

6 Q Do you recognize this e-mail?

7 A (Examining Document.)

8 I don't recall seeing this e-mail. It may
9 be something that I was responsible for looking at.
10 So I don't know.

11 Q Do you know who Stephanie is?

12 A Yes.

13 Q Who is that?

14 A She -- I think she is the governor's point
15 person on legislative affairs.

16 Q And do you know who Tonya Shays is?

17 A No.

18 Q I apologize. It's a large document, so
19 it's been printed double-sided. But if you flip to
20 the backside, do you see towards the top left a
21 number 5-01233-22?

22 A Yes.

23 Q Do you know what that number means?

24 A No.

25 Q Have you previously seen documents that

1 are marked with numbers like that?

2 A Yes.

3 Q What -- what kinds of documents have been
4 marked with numbers like that?

5 A I don't -- other than it looks like this
6 was a bill draft, but I don't know what the number
7 means.

8 Q Do you know if draft bills are -- are
9 tracked with ID numbers?

10 A I don't know.

11 Q Do you recognize this bill draft?

12 A What do you mean recognize it?

13 Q Have you seen this draft bill before?

14 A This specific draft?

15 Q Yeah.

16 A (Examining Document.)

17 I don't recall seeing this particular
18 draft, but it looks like it's part of our -- our
19 documentation.

20 Q Yeah. What -- what kind of documentation
21 are you referring to?

22 A It could be part of our discovery. I
23 don't -- I don't know, honestly.

24 Q If you sort of look at the -- the backside
25 of this first page.

1 A Okay.

2 Q You know, it says: "A bill to be entitled
3 'An Act Relating to Higher Education' amending
4 Section 1001.03 of Florida Statutes." You see where
5 it says: "Providing that a Florida College System
6 institution that fails to comply with requirements
7 relating to intellectual freedom and viewpoint
8 diversity is not eligible to receive certain
9 performance-based funding"?

10 A Yes, I see that.

11 Q Have you reviewed any other draft bills
12 that would enact a similar law?

13 MR. MOORE: To the extent you are
14 inquiring about internal communications that
15 did not reach the legislature that is
16 pre-enactment, I am instructing the witness not
17 to answer on the grounds of legislative
18 privilege and deliberative process privilege.

19 MR. HANCOCK: Are you representing that
20 these discussions did not reach the
21 legislature?

22 MR. MOORE: I have no idea. I have made
23 my objection, and I have instructed the
24 witness. To the extent she knows, that's fine.
25 But to the extent these pertain to internal

1 communications, I have made my objection and my
2 instruction.

3 MR. HANCOCK: Okay.

4 BY MR. HANCOCK:

5 Q Have you been part of any discussions or
6 have you reviewed any drafts of a law that would
7 enact a requirement like this that you can speak
8 about?

9 A What do you mean that I can speak about?

10 Q Do you -- do you intend to follow your
11 counsel's instructions?

12 A I do.

13 Q Are there any -- have you reviewed any
14 drafts that you don't think would relate to your
15 counsel's instruction?

16 A Not that I recall.

17 Q Have you been part of any discussions with
18 the legislature about conditioning performance-based
19 funding on compliance with the intellectual freedom
20 and viewpoint diversity survey?

21 MR. MOORE: If you know the answer, you
22 can answer.

23 A I don't recall any discussions.

24 MR. HANCOCK: This might be a good time to
25 break for lunch. I don't know exactly what

1 time it is.

2 MR. MOORE: I have 12 -- 12:20, but I am
3 not the official keeper of the clock.

4 THE VIDEOGRAPHER: Yeah, you want to go
5 off the video record?

6 MR. HANCOCK: Yes, let's do. Thank you.

7 THE VIDEOGRAPHER: We are now going off
8 record at 12:20 p.m.

9 (A recess took place from 12:20 p.m. to
10 1:36 p.m.)

11 THE VIDEOGRAPHER: We are now going back
12 on record at 13:36.

13 BY MR. HANCOCK:

14 Q Good afternoon, Chancellor. Did you have
15 a good lunch?

16 A Yes. Thank you.

17 Q Did you speak with your counsel during the
18 break?

19 A I did.

20 Q Did you discuss the deposition?

21 MR. MOORE: I instruct the witness not to
22 answer to the extent it calls for
23 attorney/client communications.

24 BY MR. HANCOCK:

25 Q Did you discuss how to answer questions in

1 **the deposition?**

2 MR. MOORE: Same instruction.

3 BY MR. HANCOCK:

4 Q **Are you not going to answer that question?**

5 A I thought I was instructed not to.

6 Q **Did you discuss the substance of your**
7 **testimony with counsel during the break?**

8 MR. MOORE: Same instruction.

9 BY MR. HANCOCK:

10 Q **Are you going to not answer per the**
11 **instruction?**

12 A Per the instruction.

13 Q **Sure.**

14 **What do you understand the shielding**
15 **provisions to do from HB 233?**

16 A My understanding of the shielding
17 provisions is it prevents government agencies, which
18 would include Florida College System institutions,
19 from protecting students and faculty from speech
20 that's protected by the First Amendment that they
21 might find unwelcomed, uncomfortable, several other
22 words to that effect.

23 Q **And what's your understanding of the --**
24 **the purpose behind enacting the shielding**
25 **provisions?**

1 MR. MOORE: Object to form.

2 A What do you mean my understanding of the
3 purpose?

4 BY MR. HANCOCK:

5 Q Yeah, the purpose by the shielding
6 provisions.

7 A What do they do, or what the legislature
8 intended?

9 Q What's your understanding of why they were
10 put into place?

11 A My understanding is to -- so that students
12 and faculty wouldn't be shielded by agencies from
13 things that are speeches protected by the First
14 Amendment.

15 Q And -- and what does "shielding" mean?

16 A By shielding, it includes suppressing that
17 kind of speech, causing it not to happen.

18 Q And you think any action taken by a
19 government agency that would cause speech not to
20 happen qualifies as shielding under these
21 provisions?

22 MR. MOORE: Object to form.

23 A The speech that's discussed in the bill.

24 BY MR. HANCOCK:

25 Q Right.

1 A So -- so some speech that's not -- the
2 speech is not covered by the bill.

3 Q But if speech covered by the bill were
4 cause to be stopped or not happen, that would
5 constitute shielding?

6 A Yes.

7 Q And let's look back at Exhibit 1, just
8 the -- the text of the bill. If you look at the
9 second page, the Subsection (c) in the middle,
10 that -- that says that the Board of Education may
11 not shield, right?

12 A Yes.

13 Q What's your understanding of actions the
14 Board of Education could take that would constitute
15 shielding?

16 MR. MOORE: Object to form.

17 A Are you looking for an example of what
18 could be shielding if the board --

19 BY MR. HANCOCK:

20 Q Right.

21 A Is that what you are asking?

22 Q Correct.

23 A I don't -- I don't know if I have a
24 specific example.

25 Q Are you aware of any instances of the

1 **Board of Education engaging in shielding?**

2 A No.

3 Q And then if we turn to the next page, do
4 you see in the middle that section labeled "Right to
5 Free Speech Activities"?

6 A Yes.

7 Q And below that is a Subsection (f). Do
8 you see that?

9 A I do.

10 Q And this instructs that a Florida College
11 System institution or state university may not
12 shield; is that right?

13 A Yes. That's what it states.

14 Q Aside from Florida College System
15 institutions, state universities, the Board of
16 Education, and the Board of Governors, are there any
17 other entities that this statute prohibits from
18 shielding?

19 MR. MOORE: Object to form.

20 A Those are the ones that I recall. It's
21 primarily those four that the bill addresses.

22 BY MR. HANCOCK:

23 Q Would university administrators be
24 prohibited from shielding?

25 A I suppose that would be -- that would be

1 in their capacity as the university. If the
2 institution is prevented from shielding, then if
3 they are acting on behalf of the university.

4 Q Are faculty prohibited from shielding?

5 MR. MOORE: Object to form.

6 A It doesn't specifically include faculty as
7 being prevented from shielding.

8 BY MR. HANCOCK:

9 Q Does the board understand that faculty are
10 prohibited from shielding?

11 A That they are prohibited from shielding?

12 Q Yes.

13 A Our understanding of the bill is it
14 doesn't limit faculty or staff at the institution,
15 but it limits the institution from doing that.

16 Q Is faculty instruction considered on
17 behalf of the institution?

18 MR. MOORE: Object to form.

19 A It doesn't address instructions
20 specifically.

21 BY MR. HANCOCK:

22 Q If a student came to the board alleging
23 that a faculty member had engaged in shielding
24 during class, would they consider that a violation
25 of the statute?

1 MR. MOORE: Object to form.

2 A If the student came to whom? I'm sorry.

3 BY MR. HANCOCK:

4 Q If -- if a student came to the board
5 alleging that a faculty member had engaged in
6 shielding in class, would they consider that a
7 violation of the statute?

8 MR. MOORE: Same objection.

9 A If a student contacts us with a complaint
10 or a concern about something, we would have to look
11 into what the student -- the situation was with the
12 student.

13 So based on what you just said, I wouldn't
14 know if shielding had occurred just because a
15 student sent an e-mail about a faculty member.

16 BY MR. HANCOCK:

17 Q Sure. If the board determined that a
18 faculty member had engaged in shielding in the
19 classroom, would that violate the statute?

20 MR. MOORE: Object to form.

21 A Can you ask the question again, please?

22 BY MR. HANCOCK:

23 Q Sure. If the Board of Education
24 determined that a faculty member had engaged in
25 shielding in the classroom, would that violate the

1 **statute?**

2 MR. MOORE: Object to form.

3 A The statute doesn't address faculty
4 shielding, it addresses the institution shielding.
5 So I don't think -- I don't think that could occur
6 based on the way that the question was asked.

7 BY MR. HANCOCK:

8 Q **So is the board's position that a faculty**
9 **member engaging in shielding would not violate the**
10 **statute?**

11 MR. MOORE: Object to form.

12 A I don't know that faculty -- the way the
13 bill is lined -- or is written, the limits on
14 shielding are placed on the State Board of
15 Education, Board of Governors, and the institutions.
16 That's where the limits are placed.

17 BY MR. HANCOCK:

18 Q **I understand that.**

19 **And so I'm asking if the Board of**
20 **Education considers shielding by faculty members to**
21 **violate these provisions as written?**

22 MR. MOORE: Object to form.

23 A But I don't see where the bill addresses
24 shielding by faculty members. It addresses
25 shielding by the State Board of Education, the Board

1 of Governors, and the institutions themselves.

2 BY MR. HANCOCK:

3 Q So does the board not have a view on
4 whether faculty members are prohibited from
5 shielding?

6 A We just implement what's passed by the
7 legislature, so we have -- we have to implement the
8 law with fidelity. And since the law is specific to
9 those four entities -- or four types of entities, I
10 should say, since it's all institutions, FCS and
11 SUS, then that's what we would be implementing.

12 Q Sure.

13 So a moment ago you indicated that a
14 university administrator could violate the statute
15 because they would be acting on behalf of the
16 institution; is that right?

17 A Yes.

18 Q Does the Board of Education consider
19 faculty members teaching in a classroom to be acting
20 on behalf of their institution?

21 MR. MOORE: Object to form.

22 A Not in the same way because what --
23 because if the limit is on the institution
24 shielding, the administrator's role at the
25 institution is different than the faculty who's

1 required to provide instruction.

2 And so in this case, it seems that the
3 administrator would have a different role than the
4 faculty would on behalf of the institution.

5 BY MR. HANCOCK:

6 Q Does House Bill 233 distinguish between
7 the administrator roles and faculty roles?

8 MR. MOORE: Object to form.

9 A I believe that it does talk about -- one
10 moment, please.

11 (Short pause.)

12 A So one of the things the bill does under
13 Subsection (3), Paragraph A, was to amend expressive
14 activities protected under the First Amendment, and
15 so it includes faculty, research, lectures,
16 writings, and commentary, whether published or
17 unpublished.

18 So in that manner, it seems to
19 distinguish -- or at least cull out, I would say,
20 faculty and faculty activities as being expressive
21 activities included under the First Amendment.

22 BY MR. HANCOCK:

23 Q Right. So, for example, the portion you
24 identified, one thing included in that would be,
25 say, published faculty research is an expressive

1 **activity, right?**

2 A That's an example that's listed there in
3 (3)(a).

4 Q **And that's protected by the statute?**

5 A It's protected by the First Amendment, so
6 under the statute, yes, too.

7 Q **And so the shielding provision operates in
8 a way that it prohibits shielding people from, say,
9 published faculty research?**

10 MR. MOORE: Object to form.

11 A It prohibits the State Board of Education,
12 the Board of Governors, and Florida College System
13 institutions and the state university institutions
14 from shielding students from speech that's protected
15 by the First Amendment, so I don't know that it
16 prevents anyone from shielding.

17 But to get back to more specifically
18 answer your question, those are the four entities
19 that are prohibited from shielding.

20 BY MR. HANCOCK:

21 Q **Sure.**

22 **And among the speech that cannot be
23 shielded, this provision identifies published
24 faculty research as an example?**

25 A It does.

1 Q And so if a professor in the course of
2 teaching a class decided to limit their students'
3 exposure to a piece of published faculty research,
4 would that violate this provision?

5 MR. MOORE: Object to form.

6 A I don't know. It sounds like a
7 hypothetical situation. I don't know all the
8 circumstances and what it -- I -- I don't know.

9 BY MR. HANCOCK:

10 Q If the board determined that a faculty
11 member had shielded their students from a piece of
12 published faculty research, would they consider that
13 a violation of this provision?

14 MR. MOORE: Object to form.

15 A I don't know, because I'm not sure how
16 that would happen. I just don't know.

17 BY MR. HANCOCK:

18 Q Does the Board of Education have a
19 position on the scope of what is considered a
20 Florida college institution for the purposes of the
21 shielding provisions?

22 A What do you mean "a scope"?

23 Q Does the Board of Education have a
24 position on which Florida College System institution
25 employees are considered as acting on behalf of the

1 **institution for purposes of the shielding provision?**

2 A The board hasn't taken a position
3 specifically on the question you just asked me. The
4 distinction -- the only distinction that I'm aware
5 of was the one that I pointed out where it
6 specifically talks about what faculty do in this
7 regard in (3)(a).

8 And it doesn't list administrators there,
9 although there are some administrators that do also
10 teach courses. So to the extent that would apply to
11 them, then they would be included in the faculty
12 provisions.

13 Q **Are you aware of any faculty members who**
14 **have inquired with the board whether or not they're**
15 **prohibited from shielding?**

16 A I'm not aware they've inquired -- inquired
17 directly with the board. I'm not aware of that.

18 Q **If the board determined that a teacher had**
19 **limited their students access to First Amendment**
20 **protected speech and the Florida College System**
21 **didn't do anything about it, would that constitute**
22 **shielding?**

23 MR. MOORE: Object to form.

24 A I don't know, because I don't know all the
25 circumstances around the situation. We would have

1 to look into it further.

2 BY MR. HANCOCK:

3 Q Do you understand this provision to
4 obligate Florida College System institutions to
5 provide access to protected speech?

6 A I don't think that it affirmatively
7 requires them to provide access to anything
8 specific. It just prevents them from shielding
9 students from protected speech.

10 Q If a Florida College System institution
11 was permitting professors or faculty to limit their
12 students access to protected speech, would that
13 constitute shielding?

14 MR. MOORE: Object to form.

15 A Can you ask that again, please?

16 BY MR. HANCOCK:

17 Q Sure.

18 A I'm trying to keep who said what to who
19 and when did they say it, is what I'm trying to keep
20 straight in my head.

21 Q Yeah. If a Florida College System
22 institution permitted their faculty to limit their
23 students access to protected First Amendment speech,
24 would that constitute shielding?

25 MR. MOORE: Same objection.

1 A Again, I don't know. I would have to
2 understand the situation better.

3 BY MR. HANCOCK:

4 Q So, for example, if a Florida College
5 System institution adopted a policy permitting
6 professors to limit access to unwelcome ideas, would
7 that violate the shielding provision?

8 MR. MOORE: Object to form.

9 A I would have to see the policy. If --
10 if -- it's possible.

11 BY MR. HANCOCK:

12 Q But you don't know whether a policy as
13 described would violate the shielding provision?

14 MR. MOORE: Same objection.

15 A I don't know without reading a specific
16 policy.

17 BY MR. HANCOCK:

18 Q What kinds of ideas or opinions cannot be
19 shielded under this provision?

20 MR. MOORE: Object to form.

21 A The statute says those that a student or
22 faculty member may find uncomfortable, unwelcomed,
23 disagreeable, or offensive.

24 BY MR. HANCOCK:

25 Q And what is the board's understanding of

1 **what uncomfortable means?**

2 A The board hasn't provided a definition of
3 uncomfortable.

4 Q **Does the board have an operating**
5 **definition of that term?**

6 A We don't have rule making in conjunction
7 with this, so we haven't provided -- we don't --
8 there is no state board rule that has definitions or
9 anything else related to this statute.

10 Q **Has the board issued any guidance as to**
11 **what would be an uncomfortable idea or opinion?**

12 A No. Our guidance was to institutions when
13 the bill passed, they should review their policies
14 to determine whether they were in compliance with
15 the statute.

16 Q **Does the board have an understanding of**
17 **what an unwelcomed idea or opinion would be?**

18 A We have not issued a definition of
19 unwelcomed.

20 Q **Does the board have an understanding of**
21 **what a disagreeable idea or opinion would be?**

22 A We have not issued a definition of
23 disagreeable.

24 Q **Could you give me an example of an idea**
25 **that -- or opinion that would be considered**

1 uncomfortable under the statute?

2 MR. MOORE: Object to form.

3 A I don't know what another individual might
4 think of as uncomfortable.

5 BY MR. HANCOCK:

6 Q Is it your understanding that when the
7 statute reaches uncomfortable ideas, it's based on
8 another person's assessment of that idea?

9 MR. MOORE: Object to form.

10 A It is -- it is based on a person's
11 assessment, own assessment of that idea.

12 BY MR. HANCOCK:

13 Q So it is based on somebody's -- another
14 person's subjective assessment of whether that idea
15 is uncomfortable?

16 MR. MOORE: Object to form.

17 A The statute just says "that they may find
18 uncomfortable, unwelcome, disagreeable, or
19 offensive."

20 BY MR. HANCOCK:

21 Q And -- and the board understands that to
22 be a -- making this other person the determining
23 factor whether it's uncomfortable?

24 A It says "they."

25 Q And that -- and that's how the board

1 understands it?

2 A Yes. "That they may find uncomfortable,
3 unwelcomed, disagreeable, or offensive."

4 Q So you don't know what kinds of ideas or
5 opinions would constitute uncomfortable ones because
6 you don't know what other people might find
7 uncomfortable?

8 A That's right.

9 Q Do Florida College -- and so do Florida
10 College System institutions understand what other
11 people may find uncomfortable?

12 MR. MOORE: Object to form.

13 A I don't know what they understand.

14 BY MR. HANCOCK:

15 Q Can you give me an example of an idea or
16 opinion that would be considered unwelcomed?

17 MR. MOORE: Object to form.

18 A It's going to depend on what the person
19 who is hearing the idea would think is unwelcomed.

20 BY MR. HANCOCK:

21 Q But since you don't know who may hear it,
22 you don't know whether it would be unwelcomed?

23 A I don't know.

24 Q Can you give me an example of an idea or
25 opinion that would be disagreeable?

1 MR. MOORE: Object to form.

2 A The same answer.

3 BY MR. HANCOCK:

4 Q The answer being that it's -- it's
5 subjective, so you don't know?

6 A It's the other person's determination of
7 what they believe or what they feel is -- or that
8 they have found is uncomfortable, unwelcomed,
9 disagreeable, or offensive.

10 Q Has the Board of Education considered
11 promulgating a rule regarding the shielding
12 provisions?

13 A The statute doesn't give us rule-making
14 authority, so we wouldn't -- we wouldn't be doing a
15 rule on the shielding provisions.

16 Q Is -- is the Board of Education authorized
17 to issue guidance in the absence of rule-making
18 authority?

19 MR. MOORE: Object to form.

20 A What do you mean "authorized"?

21 BY MR. HANCOCK:

22 Q Is there anything prohibiting the board
23 from issuing guidance as to the meaning of this
24 statute?

25 MR. MOORE: Object to form.

1 A Doesn't explicitly -- the statute doesn't
2 and the law doesn't and the bill didn't prohibit the
3 department from -- there is nothing expressed in the
4 bill that prevents us from issuing guidance. At the
5 same time, our role in implementation is -- is
6 dictated by the statute which will tell us whether
7 we write rules or -- whether we are required to
8 write rules or we may write rules or whether the
9 state board has to adopt something perhaps outside
10 of a rule like the accreditation list we talked
11 about earlier today.

12 And so our -- our guidance was a
13 recommendation to the institutions that they review
14 their own policies for compliance with the law.

15 BY MR. HANCOCK:

16 Q Are you aware of, generally speaking,
17 situations where the board offers guidance to the
18 Florida College System on how to comply with
19 statutory requirements?

20 A For sure. If there is a state board rule,
21 we offer guidance when the rule is passed on -- we
22 typically call it "technical assistance." Sometimes
23 there's a "frequently asked questions" document that
24 goes with that rule.

25 So we do regularly offer guidance when

1 there is a state board rule associated with it or a
2 specific rule for either the department or the board
3 that's provided in the statute.

4 **Q Can you describe that "frequently asked**
5 **questions" document? What do those look like?**

6 A They are -- would be a series of questions
7 that we have received from the field, either through
8 a webinar or through e-mail, and then responses to
9 those questions.

10 **Q Are -- and you said those are used**
11 **sometimes to -- in conjunction with a rule?**

12 A Yes.

13 **Q Has the board ever issued similar**
14 **"frequently asked questions" documents about**
15 **statutes?**

16 A It could have happened, because sometimes
17 we do for colleges; depending on who is required to
18 implement something, we implement direct from the
19 statute. Sometimes the state boards are required to
20 do certain things and -- but without rule-making
21 authority.

22 **Q And did the board consider releasing a**
23 **"frequently asked questions" document about**
24 **complying with the shielding provisions?**

25 A Did we consider it?

1 Q **Yeah.**

2 A I don't think so.

3 Q **Do you recall receiving any questions from**
4 **Florida College System institutions about complying**
5 **with the shielding provision?**

6 A I am sure we did.

7 Q **And what form would those questions have**
8 **taken?**

9 A The two likely forms. The most typical,
10 are an e-mail just directed to one of our staff
11 members.

12 And the other would be if we were
13 conducting a legislative review webinar where we are
14 going through all the bills that passed and -- and
15 summarizing a technical assistance document,
16 we'll -- we'll receive questions in the chat or
17 somebody will raise their hand during a webinar and
18 ask a question verbally.

19 Q **Do you recall any -- who -- sorry. Who**
20 **gives those presentations?**

21 A A number of folks in the division could,
22 depending on the topic. Most of the things that are
23 passed come under the section of our division under
24 the executive vice-chancellor because that includes
25 academic affairs and student affairs.

1 But sometimes it will come under the
2 associate vice-chancellor for fiscal policy, and
3 that -- that would be a different set of people.

4 **Q Would you have given any of these**
5 **presentations in the summer of 2021?**

6 A I might have participated, but
7 typically -- typically, I'll -- I'll present to the
8 presidents, and then the -- the staff in our
9 division are -- are sort of set up like to have
10 counterparts out in the colleges. And so if it were
11 something that focused on academic affairs, then --
12 then likely our director of academic affairs would
13 lead the presentation.

14 **Q Do you recall any questions asked about**
15 **complying with the shielding provisions?**

16 A I don't recall specific questions, but I
17 think it's very likely that questions were asked.

18 **Q If -- before the enactment of House**
19 **Bill 233, were you aware of any incidents of**
20 **shielding by institutions in the Florida College**
21 **System?**

22 A Before House Bill 233, I don't think
23 shielding was in the statute, so we wouldn't --
24 it -- we wouldn't -- we wouldn't have -- have a
25 reason for a definition or -- or even thinking about

1 that.

2 Q Sure. Was the board aware of any
3 instances of Florida college institutions limiting
4 access to speech protected by the First Amendment?

5 A I can't think of any specific instances in
6 the Florida College System. There could have been,
7 but I can't recall any right now.

8 Q Are you aware of any instances of
9 shielding since the enactment of House Bill 233?

10 A There is not a requirement for them to
11 report it to us, so we don't collect information,
12 like, on a regular basis from them. And so I am not
13 aware of any -- that anybody has reported just
14 voluntarily.

15 Q If we look at the statute again, sort of
16 at the bottom of page 3, do you see the section
17 labeled "Cause of Action"?

18 A Yes.

19 Q It says: "A person injured by a violation
20 of this section may bring an action."

21 A Yes.

22 Q Is it your understanding that a person
23 injured by a Florida College System institution's
24 shielding could bring an action?

25 A It does say a person injured by a

1 violation of -- of an action prohibited under this
2 section may bring an action.

3 Q And -- and in that first subsection below
4 it says that that would be brought against the
5 public institution of higher education?

6 A Yes, against a public institution of
7 higher education.

8 Q Are you aware of any instances of someone
9 bringing an action against a Florida College System
10 institution because of shielding?

11 A I am not aware of any.

12 Q Do you think you would be made aware of
13 any?

14 A I might be.

15 Q Do people generally let you know if a
16 Florida college institution has been sued?

17 A People? You said do people let me know?

18 Q Yeah.

19 A You mean like does the institution let me
20 know or ...

21 Q Is there anybody who would let you know
22 when a Florida College institution has been sued?

23 A There could be.

24 Q Is that a --

25 A They are not required. I apologize.

1 Q No, no. Go ahead.

2 A I was just saying they are not required to
3 let me know.

4 Q When we were discussing House Bill 233,
5 one of the amendments the board proposed was
6 expressed rule-making authority for the survey
7 provision.

8 Do you recall that?

9 A Was that in one of the e-mails we looked
10 at earlier?

11 Q Yes.

12 A If it's -- if it's in the e-mail, and we
13 sent it in, then the answer is yes.

14 Q Would it be helpful to revisit?

15 A It would be helpful to look at it again.

16 Q Sure. So this should be Exhibit 10. In
17 that top e-mail, do you see this discussion about
18 line 6 and 7?

19 A Yes.

20 Q And this is -- the board proposed a
21 clarifying edit making clear that the State Board of
22 Education has rule-making authority to implement the
23 requirement that FCS institutions conduct an annual
24 assessment?

25 A Yes.

1 Q And the next bullet, it says: "The
2 original bill implied rule-making authority without
3 the amendment."

4 Do you see that?

5 A Yes.

6 Q Can the board institute rules based on
7 implied rule-making authority?

8 MR. MOORE: Object to form.

9 A I don't know.

10 BY MR. HANCOCK:

11 Q Are you aware of circumstances where the
12 board has relied on implied rule-making authority?

13 A I'm not.

14 Q So the board did request a clear
15 authorization of rule making for the survey
16 provision, right?

17 MR. MOORE: Object to form.

18 A That's what this e-mail states.

19 BY MR. HANCOCK:

20 Q Did the board consider requesting
21 rule-making authorization for the shielding
22 provision?

23 A I don't see any evidence of that here, so
24 I'm not aware that we did.

25 Q Were you part of any discussions about

1 possibly requesting rule-making authority for the
2 shielding provisions?

3 A I was not.

4 Q Have any stakeholders asked the board to
5 adopt a rule implementing the shielding provision?

6 A I'm not aware of any.

7 Q What do you understand the recording
8 provision to do?

9 A It allows a student to record class
10 lectures for purposes of their education, like to
11 study and review later, or also in a circumstance
12 regarding a complaint, I think is what it calls it.

13 Q And who determines whether the course is
14 being recorded for one of those purposes?

15 MR. MOORE: Counsel, may I ask Madam Court
16 Reporter to read the question back?

17 (The requested portion was read.)

18 A (Examining Document.)

19 It doesn't -- the legislature -- I'm
20 looking at Subsection (3)(g), I don't see where it
21 says who determines that.

22 BY MR. HANCOCK:

23 Q Can the student determine whether they're
24 recording for their own personal use or in
25 connection with a complaint?

1 MR. MOORE: Object to form.

2 A It doesn't address who determines, it just
3 says that a student may.

4 BY MR. HANCOCK:

5 Q Does the board have a position on who gets
6 to determine what the purpose of a recording is?

7 A No.

8 Q Let's actually go back to the shielding
9 provision for a moment.

10 If a Florida College System enacted a
11 policy prohibiting professors from assigning a
12 particular book, would that constitute shielding?

13 MR. MOORE: Object to form.

14 A I don't know without seeing all the
15 circumstances.

16 BY MR. HANCOCK:

17 Q What would you need to know to determine
18 if that policy constituted shielding?

19 MR. MOORE: Object to form.

20 A I'm not even sure of that.

21 BY MR. HANCOCK:

22 Q So if you knew that the book was protected
23 by the First Amendment and a Florida College System
24 institution prohibited professors from assigning
25 that book, would that constitute shielding?

1 MR. MOORE: Same objection.

2 A I don't know.

3 BY MR. HANCOCK:

4 Q What would you need to know to determine
5 if that policy violates the statute?

6 MR. MOORE: Same objection.

7 A I don't -- I don't know because -- I'm not
8 sure because we haven't had instances of this yet.
9 But because the law addresses the addition of like
10 faculty research and other kinds of things into
11 protected speech, I guess -- I don't know.

12 Because I'm not a lawyer, I don't know
13 exactly with a situation like that whether it falls
14 under this or some other statute or something else.
15 I'm just not positive until I actually saw all of
16 the circumstances around it, how -- and we haven't
17 had one yet, so I'm not exactly sure what we would
18 need.

19 BY MR. HANCOCK:

20 Q Do you think that Florida College System
21 institutions understand whether they're allowed to
22 ban certain books?

23 MR. MOORE: Object to form.

24 A I don't know what they understand with
25 regard to that.

1 (Exhibit 18 was marked for
2 identification.)

3 MR. HANCOCK: I'm going to present the
4 witness with an exhibit marked as Number 18.
5 BY MR. HANCOCK:

6 Q Do you see at the top it says: "Committee
7 substitute for House Bill Number 7"?

8 A Yes.

9 Q And do you understand this document to be
10 a copy of House Bill 7?

11 A It appears to be.

12 Q If you turn to the second page, do you see
13 the section labeled "Unlawful employment practices"?

14 A Yes.

15 Q Do you understand this to prohibit
16 trainings that relate to these ideas listed below?

17 MR. MOORE: Object to form.

18 A It states that "Subjecting an individual
19 as a condition of employment," et cetera, "to
20 training," et cetera, under this section, and then
21 it lists eight items underneath that.

22 BY MR. HANCOCK:

23 Q And do you understand this section would
24 apply to some training programs that Florida College
25 System institutions use for their employees?

1 MR. MOORE: Object to form.

2 A It would apply to Florida College System
3 institutions.

4 BY MR. HANCOCK:

5 Q And then if you turn to the next page. Do
6 you see the portion starting 1000.05?

7 A Yes.

8 Q And do you understand this statute
9 prohibits discrimination on the basis of race,
10 color, national origin, sex, disability, religion,
11 or marital status in K through 20 education?

12 MR. MOORE: Object to form.

13 A That is what it states.

14 BY MR. HANCOCK:

15 Q And so you would understand that that
16 prohibition on discrimination applies to Florida
17 College System institutions?

18 MR. MOORE: Object to form.

19 A It does.

20 BY MR. HANCOCK:

21 Q So if you turn to page 5, do you see the
22 section that begins (4)(a)?

23 A Yes.

24 Q And it reads: "It shall constitute
25 discrimination on the basis of race, color, national

1 origin, or sex under this section to subject any
2 student or employee to training or instruction that
3 espouses, promotes, advances, inculcates, or compels
4 such student or employee to believe any of the
5 following concepts."

6 MR. MOORE: Object to form.

7 BY MR. HANCOCK:

8 Q Do you see that?

9 A I do see that it says that.

10 Q And then there's a list of eight concepts
11 after that?

12 A Yes, there's a list of eight.

13 Q Do you understand this prohibition on
14 discrimination -- or do you understand
15 Section (4)(a) to apply to classroom instruction?

16 MR. MOORE: Object to form.

17 A It says "instruction."

18 BY MR. HANCOCK:

19 Q And so does the board understand that to
20 include classroom instruction?

21 MR. MOORE: Object to form.

22 A I believe that on our technical assistance
23 document, we -- and presentations, we indicated just
24 what you've indicated, which is what that paragraph
25 says: "Subject any student or employee to training

1 or instruction," so it includes training or
2 instruction.

3 BY MR. HANCOCK:

4 Q And so in the board's view, would that
5 include classroom instruction?

6 MR. MOORE: Object to form.

7 A Instruction is happening in the classroom,
8 yes.

9 BY MR. HANCOCK:

10 Q And would that include homework assigned
11 to students?

12 MR. MOORE: Object to form.

13 A I don't know.

14 BY MR. HANCOCK:

15 Q You don't know if homework assigned to
16 students would be considered instruction under this
17 provision?

18 MR. MOORE: Same objection.

19 A I don't know.

20 BY MR. HANCOCK:

21 Q In terms of these eight concepts, is it
22 the board's understanding that it would constitute
23 discrimination to espouse any of the following
24 concepts?

25 MR. MOORE: Object to form.

1 A The legislation says that it will
2 constitute discrimination, as described in this
3 section, to subject student or employee to training
4 or instruction that espouses those concepts.

5 BY MR. HANCOCK:

6 Q **What is the board's understanding of the**
7 **term "espouses"?**

8 MR. MOORE: Object to form.

9 A We haven't provided a definition.

10 BY MR. HANCOCK:

11 Q **What is the board's understanding of the**
12 **term "promotes"?**

13 MR. MOORE: Object to form.

14 A We haven't provided a definition.

15 BY MR. HANCOCK:

16 Q **What is the board's understanding of the**
17 **term "advances"?**

18 MR. MOORE: Object to form.

19 A We haven't provided a definition of
20 advances.

21 BY MR. HANCOCK:

22 Q **What is the board's understanding of the**
23 **term "inculpates"?**

24 MR. MOORE: Same objection.

25 A We haven't provided a definition of

1 inculcates.

2 BY MR. HANCOCK:

3 Q Did any of the technical assistance
4 documents that the board has provided describe what
5 kinds of instruction would violate the statute?

6 A For postsecondary?

7 Q For any instruction.

8 A I'm not sure what was provided for K-12,
9 but for postsecondary, we have not provided any
10 examples.

11 Q So you're aware that some form of
12 technical assistance document was provided to K-12?

13 MR. MOORE: Object to form.

14 A Some kind, yes.

15 BY MR. HANCOCK:

16 Q But you don't know what that was?

17 A Not without looking. I'd have to see it
18 to refresh my memory.

19 Q And you're not prepared to testify today
20 about the contents of that technical assistance
21 document?

22 A Not without having it in front of me.

23 Q Do you know if you've ever seen that
24 document before?

25 A I may have seen part of it, but I don't

1 recall reading an entire K-12 technical assistance
2 document.

3 Q Do you know when you would have seen it?

4 A Perhaps at a meeting.

5 Q What kind of meeting?

6 A Internal meeting.

7 Q Sort of a general departmental meeting?

8 A Uh-huh, yes. Sorry.

9 Q The third topic reads: "A person's moral
10 character or status as either privileged or
11 oppressed is necessarily determined by his or her
12 race, color, national origin, or sex."

13 Do you see that?

14 A I do.

15 Q What is the board's understanding of
16 "privileged"?

17 MR. MOORE: Object to form.

18 A We haven't issued a definition of
19 "privileged."

20 BY MR. HANCOCK:

21 Q What is the board's understanding of the
22 term "oppressed"?

23 MR. MOORE: Same objection.

24 A We haven't issued a definition of
25 "oppressed."

1 BY MR. HANCOCK:

2 Q Are you -- are you aware of folks who are
3 oppressed on the basis of their race?

4 MR. MOORE: Object to form.

5 A Ask the question again, please.

6 BY MR. HANCOCK:

7 Q Yeah. Are you aware --

8 A Am I personally aware?

9 Q Sorry.

10 A Am I personally aware is what you are
11 asking?

12 Q Yeah. Are you personally aware of people
13 who are oppressed on the basis of their race?

14 MR. MOORE: Same objection.

15 Counsel, which topic does this relate to
16 again?

17 MR. HANCOCK: Nine.

18 MR. MOORE: Okay. To the extent you are
19 asking about K through 12, I instruct the
20 witness not to answer and I refer you back to
21 the same ECF 126.

22 MR. HANCOCK: ECF 126 being the protective
23 order granted with respect to the Board of
24 Governors?

25 MR. MOORE: Correct.

1 MR. HANCOCK: And this is the deposition
2 of the Board of Education?

3 MR. MOORE: Correct.

4 MR. HANCOCK: Did you seek a protective
5 order regarding the Board of Education?

6 MR. MOORE: I refer you back to ECF 126,
7 and I instruct the witness not to answer.

8 MR. HANCOCK: Did you seek a protective
9 order with regard to the Board of Education?

10 MR. MOORE: Counselor, I'm not being
11 deposed. I've stated my objection and I've
12 stated the privilege and I've instructed the
13 witness not to answer.

14 MR. HANCOCK: Understood.

15 BY MR. HANCOCK:

16 Q With respect to postsecondary
17 institutions, are you aware of people who are
18 oppressed on the basis of their race?

19 MR. MOORE: Object to form.

20 A I don't -- I don't know.

21 BY MR. HANCOCK:

22 Q You are not aware of anyone oppressed on
23 the basis of their race?

24 MR. MOORE: Object to form.

25 A I don't recall anybody telling me

1 personally that they were oppressed.

2 BY MR. HANCOCK:

3 Q Are you aware of that phenomenon in
4 general?

5 MR. MOORE: Object to form.

6 A I'm aware to the extent that I have heard
7 things about it.

8 BY MR. HANCOCK:

9 Q Are you aware of people who are oppressed
10 on the basis of their sex?

11 MR. MOORE: Object to form.

12 A I have heard that as a general
13 conversation.

14 BY MR. HANCOCK:

15 Q What is your understanding of what it
16 means to be oppressed on the basis of sex?

17 A Are you asking --

18 MR. MOORE: Object to form.

19 A Are you asking my personal understanding?

20 BY MR. HANCOCK:

21 Q Yes.

22 A May I just ask again, are you asking my
23 personal opinion as just Kathy Hebda and what I mean
24 to be oppressed based on the basis of sex?

25 Q Yeah.

1 MR. MOORE: Same objection.

2 A I suppose it could mean different things
3 to different people. But it seems related to -- I
4 guess if you think of oppression as being held down,
5 kept back, but I don't -- I don't have Webster's in
6 front of me, but whatever that feeling is in
7 relation to your sex.

8 BY MR. HANCOCK:

9 Q Sure. When someone is oppressed on the
10 basis of their sex, do you understand that to be
11 necessarily determined by their sex?

12 MR. MOORE: Object to form.

13 A I don't -- I don't know. I don't know
14 what that means. I'm sorry.

15 BY MR. HANCOCK:

16 Q Yeah. Do you have an understanding as to
17 what it would mean to be oppressed, to have your
18 status as being oppressed necessarily determined by
19 sex?

20 MR. MOORE: Same objection.

21 A Did you ask me about -- did you ask -- I'm
22 sorry. Can you ask it again?

23 BY MR. HANCOCK:

24 Q Sure.

25 Do you have an understanding of what it

1 **means for someone's oppressed status to be**
2 **necessarily determined by their sex?**

3 MR. MOORE: Object to form.

4 A I understand that that's what this is
5 related to, that (4)(a)3 is related to that.

6 BY MR. HANCOCK:

7 Q But do -- do you understand what that --
8 what (4)(a)3 means?

9 MR. MOORE: Object to form.

10 A I just want to make sure I'm answering the
11 question. Are you asking whether the board has made
12 a determination as to what this means? Are you
13 asking me my own personal opinion of what I think it
14 might mean as Kathy Hebda, private citizen?

15 BY MR. HANCOCK:

16 Q Personally, what understanding do you have
17 of what it would mean for somebody's oppressed
18 status to be necessarily determined by their sex?

19 MR. MOORE: Object to form.

20 A It might mean that someone believes or
21 feels or believes they have experienced being
22 treated differently, less well in some way, if the
23 word is oppression, by virtue of their sex.

24 BY MR. HANCOCK:

25 Q Is it your understanding that there are

1 **people whose oppressed status is necessarily**
2 **determine by their sex?**

3 MR. MOORE: Object to form.

4 A Is it my understanding that there are
5 people whose oppressed status is determined by their
6 sex? Is that your question?

7 BY MR. HANCOCK:

8 Q **Uh-huh.**

9 A I don't know because in some ways it seems
10 that that presumes that there are people who are
11 oppressed because of their sex. And maybe that's
12 happened. Depends on what they believe oppressed to
13 be.

14 Q **Are you aware of --**

15 A -- that person. Pardon me.

16 Q **Sorry?**

17 A I said, "Pardon me."

18 Q **Are you aware of the general phenomenon of**
19 **people being oppressed on the basis of their sex?**

20 A I'm aware of the -- of the conversation
21 about that, a discussion or a theory of that.

22 Q **Is the board -- does the board understand**
23 **whether some people are oppressed on the basis of**
24 **race?**

25 MR. MOORE: Object to form.

1 A I don't think the board has issued a
2 position on whether people are or are not oppressed
3 based on race. You said race?

4 BY MR. HANCOCK:

5 Q Uh-huh. In terms of Section (4)(a), would
6 it constitute discrimination to espouse the view
7 that some people are oppressed on the basis of their
8 race?

9 MR. MOORE: Object to form.

10 A According to the bill, it constitutes
11 discrimination under the section, to subject any
12 student or employee to training or instruction that
13 espouses the concepts listed below.

14 BY MR. HANCOCK:

15 Q And I'm asking if a teacher in the
16 classroom espoused a view that some people are
17 oppressed on the basis of race, would that
18 constitute discrimination under Section (4)(a)?

19 MR. MOORE: Object to form.

20 A I don't know if -- if it applies because
21 this is specific to training or instruction.

22 BY MR. HANCOCK:

23 Q We discussed earlier that instruction
24 includes classroom instruction, right?

25 MR. MOORE: Object to form.

1 A We did discuss that, yes.

2 BY MR. HANCOCK:

3 Q So if a teacher in the classroom espoused
4 the view that some people are oppressed on the basis
5 of their race, would that constitute discrimination
6 under Section (4)(a)?

7 MR. MOORE: Object to form.

8 A I don't know that a teacher espousing
9 their own view is part of an instruction or not in
10 this circumstance. I understand your question to be
11 the teacher just espousing the view which is not
12 addressed here. What's addressed here is training
13 or instruction.

14 BY MR. HANCOCK:

15 Q If a teacher, as part of classroom
16 instruction, espoused the concept that some people
17 are oppressed on the basis of their race, would that
18 constitute discrimination under this section?

19 MR. MOORE: Object to form.

20 A It's possible, but I don't know all the
21 circumstances.

22 BY MR. HANCOCK:

23 Q What would you need to know to determine
24 whether it was discrimination?

25 MR. MOORE: Object to form.

1 A I don't know at this time because we
2 haven't been presented with any situations yet that
3 we've had to review.

4 BY MR. HANCOCK:

5 Q Do you think teachers know what
6 constitutes discrimination under Section (4)(a)?

7 MR. MOORE: Object to form.

8 A I don't know what teachers know.

9 BY MR. HANCOCK:

10 Q Under this section -- well, has -- do you
11 understand the Board of Education to have
12 rule-making authority with respect to this section?

13 A We have -- we have rule making. It's not
14 here in this bill because only parts of the statute
15 are repeated here, but I do think we have a rule
16 that pertains to 100 -- 1000.05.

17 Q So is it your understanding that the board
18 has general rule-making power with respect to this
19 discrimination provision?

20 MR. MOORE: Object to form.

21 A I know that we have a rule that does
22 implement 1000.05.

23 BY MR. HANCOCK:

24 Q Do you know if the board has considered
25 promulgating a rule regarding Section (4)(a)?

1 A We -- we may have considered it because we
2 have an existing rule. So it could be because this
3 modifies the section of law where we have an
4 existing rule, then it's likely that we're
5 considering modifying that rule, or at least
6 reviewing the rule to see if it needs to be modified
7 to comply with this section.

8 Q And would the board need to vote to change
9 that rule?

10 A Yes.

11 Q Do you know if that vote has occurred?

12 A It has not.

13 Q And would the board need to vote to
14 propose that change?

15 A The board's action is the final agency
16 action. So the proposal of the rule -- if we were
17 going to go into rule development, the commissioner
18 would have to sign off on going into rule
19 development, but the final rule would be acted upon
20 by the State Board of Education.

21 Q Understood.

22 Would you turn to page 6 of this exhibit?
23 Do you see the eighth concept from Section (4)(a) is
24 listed at the top?

25 A Yes.

1 Q Does the board have an understanding as to
2 meaning of the term "racial color blindness"?

3 MR. MOORE: Object to form.

4 A We've not issued a definition of that.

5 BY MR. HANCOCK:

6 Q Does the board have an understanding of
7 the meaning of the term "racist"?

8 MR. MOORE: Object to form.

9 A We've not issued a definition.

10 BY MR. HANCOCK:

11 Q Does the board have an understanding for
12 the term "sexist"?

13 MR. MOORE: Object to form.

14 A We've not issued a definition of that.

15 BY MR. HANCOCK:

16 Q So -- and then below that is subsection
17 what would be (4)(b), right?

18 A Yes.

19 Q And it says: "Paragraph A may not be
20 construed to prohibit discussion of the concepts
21 listed therein as part of a larger course of
22 training or instruction, provided such training or
23 instruction is given in an objective manner without
24 endorsement of the concepts."

25 Do you see that?

1 A I do.

2 Q **Does the board have an understanding as to**
3 **the meaning of "objective manner"?**

4 MR. MOORE: Object to form.

5 A I don't know if they have a specific
6 definition of objective, but in -- taking all
7 together, we understand that to mean you are not
8 prohibited from talking about the topics that are
9 listed here.

10 But what you are prohibited from doing is
11 the things in the -- listed in (4)(a): "Espouses,
12 promotes, advances, inculpates, or compels each
13 student or employee to believe."

14 BY MR. HANCOCK:

15 Q **It's the board's understanding that B**
16 **doesn't modify A, it just clarifies the meaning of**
17 **espouses, promotes, advances, inculpates, or**
18 **compels?**

19 A I would say --

20 MR. MOORE: Object to form.

21 A I would say that's fair. It clarifies
22 that you -- you are permitted to present the topics
23 and discuss the topics.

24 BY MR. HANCOCK:

25 Q **So is it possible to promote one of these**

1 **concepts in an objective manner without endorsement?**

2 MR. MOORE: Object to form.

3 A Promote doesn't sound like objective, so
4 I'm not sure.

5 BY MR. HANCOCK:

6 Q So you think promote is not compatible
7 with an objective manner without endorsement?

8 MR. MOORE: Object to form.

9 A Well, B says what is not prohibited, which
10 is objective without endorsement. It lists what is
11 prohibited, which includes promotes.

12 BY MR. HANCOCK:

13 Q Understood.

14 Let's return to the recording provision.

15 Before House Bill 233 was enacted, what
16 were students allowed to record on campus?

17 A I don't know the answer to that.

18 Q After House Bill 233, what new areas do
19 you understand students can record?

20 MR. MOORE: Object to form.

21 A Let me find it again. It took me a while
22 to find it last time.

23 BY MR. HANCOCK:

24 Q It's page 3, I believe.

25 A Yes. Thank you. (3)(g).

1 (3)(g) says that "A student may record
2 video or audio of class lectures for their own
3 personal educational use." So it looks like it's
4 record video or audio of class lectures.

5 **Q And what does "class lectures" mean?**

6 MR. MOORE: Object to form.

7 A We haven't issued a definition because
8 this is not an area of rule-making authority, so the
9 college would -- would need to help through a
10 policy.

11 BY MR. HANCOCK:

12 **Q Has the board considered -- has the board**
13 **defined class lectures as part of any technical**
14 **assistance documents?**

15 A I don't know that we have.

16 **Q Has the board considered providing any**
17 **guidance documents regarding what is class lecture?**

18 A I don't believe so because we have -- we
19 don't have rule making with this, so it's up to the
20 institutions. We advise the institutions to look at
21 their policies and to make sure they've implemented
22 this with fidelity.

23 **Q And in terms of this Subsection (g), it**
24 **says that "These recordings are subject to the**
25 **protections provided in the Family Educational**

1 **Rights and Privacy Act and these Florida statutes";**
2 **is that right?**

3 A Yes.

4 Q **And what do you understand those**
5 **protections to be?**

6 A FERPA is related to student records. I
7 don't know exactly what that means, a student or --
8 can or can't do with the record. I'm not positive.
9 We'll have to consult an attorney for all the
10 details.

11 Q **Are you aware of any instance where FERPA**
12 **would prohibit a student from recording a class that**
13 **would otherwise be permissible under House Bill 233?**

14 MR. MOORE: Object to form.

15 A I'm not aware, but I don't know either.

16 (Exhibit 19 was marked for
17 identification.)

18 MR. HANCOCK: I'm going to present the
19 witness with what's being marked as Exhibit 19.

20 BY MR. HANCOCK:

21 Q **Have you seen this document before?**

22 A It looks like the Board of Governors' bill
23 analysis. It's in the title. I don't think I've
24 read this.

25 Q **Do the Board of Governors and Board of**

1 **Education ever share their bill analysis with each**
2 **other?**

3 A Not as a matter of routine. It could
4 happen.

5 Q **And do you know who Vikki Shirley is?**

6 A I do.

7 Q **Who is that?**

8 A She's general counsel for the Office of
9 the Board of Governors.

10 Q **And do you know who Patty Thurman is?**

11 A I've heard her name, but I don't know
12 exactly.

13 Q **And in the top right of this document, it**
14 **has a date of January 25, 2021; is that right?**

15 A Yes.

16 Q **So if you turn to the second page, do you**
17 **see the section labeled "Estimated Student Impact"?**

18 A Yes.

19 Q **And about midway through, do you see the**
20 **sentence that starts: "This is likely to have a**
21 **chilling effect on speech"?**

22 A (Examining Document.)

23 I see that section of the paragraph, yes.

24 Q **Actually, yeah, let's start at the**
25 **sentence before. Do you see where it says:**

1 "Students would be able to record classroom
2 activities and other students inside a classroom
3 without the participant's consent and publish those
4 recordings without violating that section."

5 Do you see that?

6 A I do.

7 Q And then it goes on to say: "This is
8 likely to have a chilling effect on speech inside of
9 a classroom and result in the suppression of speech
10 and the robust exchange of ideas and perspectives."

11 Do you see that?

12 A I do.

13 Q Is it your understanding that the final
14 version of House Bill 233 did prohibit publishing of
15 these recordings under some circumstances?

16 MR. MOORE: Object to form.

17 A Let me see what the circumstances were,
18 but I know publishing is mentioned.

19 Yes, "May not be published without the
20 consent of the lecturer" is what the bill says.

21 BY MR. HANCOCK:

22 Q And on the next page, that little
23 Subsection (b), it provides as cause of action for
24 improper publishing of classroom recordings; is that
25 right?

1 A It says against a -- there's a stem --

2 THE STENOGRAPHER: I'm sorry.

3 A A stem under Paren 4 -- Subsection (4)

4 says: "A person injured by violation may bring an

5 action." And then paren (b) says: "Against a

6 person who has published video or audio recorded in

7 a classroom in violation of paragraph (3)(g)."

8 BY MR. HANCOCK:

9 Q So you understand it does create a cause
10 of action for an improperly published recording?

11 A Yes.

12 Q So turning back to the bill analysis from
13 the Board of Governors, do you understand this to be
14 suggesting that without those protections, there
15 would be a chilling effect on speech inside of a
16 classroom?

17 MR. MOORE: Object to form.

18 A Their bill analysis published on this
19 states -- said this is likely to have a chilling
20 effect on speech inside of a classroom.

21 BY MR. HANCOCK:

22 Q Does the board share that view?

23 A I don't know that our bill analysis said
24 that.

25 Q If there weren't protections against

1 publishing classroom recordings, do you think that
2 would have a chilling effect on speech inside of a
3 classroom?

4 MR. MOORE: Object to form.

5 A I don't know.

6 BY MR. HANCOCK:

7 Q Are you aware of any instances of students
8 improperly recording classes before House Bill 233?

9 A I'm not aware. It could have happened,
10 but I'm not aware of it.

11 Q Are you aware of any instances of students
12 improperly recording courses after House Bill 233?

13 A No.

14 Q Are you aware of any students improperly
15 publishing recordings after House Bill 233?

16 A I'm not aware of any, though it could have
17 happened.

18 (Exhibit 20 was marked for
19 identification.)

20 MR. HANCOCK: I am going to present the
21 witness with what's being marked as Exhibit 20.

22 MR. MOORE: Thank you.

23 BY MR. HANCOCK:

24 Q Do you recognize this e-mail?

25 A Yes.

1 Q And this is a conversation between Bill
2 Mullowney and Caleb Hawkes that was forwarded to
3 you; is that right?

4 A That's correct.

5 Q And the initial conversation between Bill
6 and Caleb took place in July of 2021; is that right?

7 A That's the date on the e-mail, yes.

8 Q And then it was forwarded to you in
9 August?

10 A August 13 it says.

11 Q In that initial e-mail on the bottom,
12 Caleb is asking whether Bill has had an opportunity
13 to, quote, send the House Bill 233 document you and
14 the other FCS attorneys who are working on, as you
15 think about common practices you all can adopt.

16 A Yes, I see that.

17 Q Was the Florida College System
18 coordinating an effort -- sorry. Let me rephrase.

19 Was the Board of Education coordinating an
20 effort among the Florida College System institutions
21 to develop an HB 233 document?

22 A No.

23 Q Was this -- are you familiar with --
24 actually, let's look at the document. Do you see
25 the attachment that's behind the e-mail?

1 A I do.

2 Q Do you recognize this document?

3 A I do.

4 Q Is this a document drafted by the Board of
5 Education?

6 A No.

7 Q Who do you understand drafted this
8 document?

9 MR. MOORE: Object to form.

10 A My understanding is that Bill Mallowney
11 was working with the other attorneys in the Florida
12 College System.

13 BY MR. HANCOCK:

14 Q And so your understanding is this is like
15 a collective effort among the FCS attorneys?

16 A Yes.

17 Q Did the BOE sign off on this document in
18 any way?

19 A No.

20 Q Did the BOE distribute this document to
21 anyone?

22 A I don't think we did. That would have
23 been up to Bill to do that.

24 Q Did the board provide feedback to Bill on
25 this document?

1 A I don't recall that we provided feedback.
2 My recollection is that we -- he had -- Bill had
3 mentioned that they were working on it, and so I
4 think we were just interested in seeing what they
5 finalized.

6 Q And is it your understanding that this is
7 guidance that Bill and others will provide to their
8 institutions on how to implement the recording
9 provision?

10 MR. MOORE: Object to form.

11 A They might have. What the final form of
12 that guidance and where they took it from there, I'm
13 not -- I don't know exactly.

14 BY MR. HANCOCK:

15 Q If there were any issues with this
16 guidance that the board thought were inconsistent
17 with the statute, would you have let Bill know?

18 A I might have.

19 Q Do you recall having any discussions about
20 whether this document was consistent with the
21 statute?

22 A I don't recall having that discussion with
23 Bill. Mostly -- and that's -- it's because we don't
24 have rule-making authority, but -- but we do
25 maintain relationships with institutions. And so if

1 we had seen anything that we thought Bill might want
2 to go look at or check out or any of that thing, we
3 certainly could have let him know.

4 Q In the first line of this document, you
5 see where it says: "A state college student may,
6 without prior notice, audio or video record a class
7 lecture"?

8 A I see that.

9 Q Is it the board's view that the recording
10 authorized by HB 233 does not require prior notice?

11 MR. MOORE: Object to form.

12 A We don't have a view on that.

13 BY MR. HANCOCK:

14 Q And then in the first paragraph, do you
15 see the second sentence that goes: "Students must
16 adhere to classroom behavioral expectations while
17 recording. Recording that disrupts the learning
18 environment may need adjustment or could be
19 prohibited"?

20 A I do.

21 Q Is that consistent with the board's view
22 of the recording provision?

23 MR. MOORE: Object to form.

24 A The board doesn't have a position on that.

25

1 BY MR. HANCOCK:

2 Q Does the -- does the statute create an
3 exception for recordings that are disruptive?

4 MR. MOORE: Object to form.

5 A I think the statute -- this statute
6 doesn't address recordings that are disruptive.
7 There could -- there could be other statutes that
8 address student behavior which is under the -- the
9 purview of the Board of Trustees though.

10 BY MR. HANCOCK:

11 Q Then in the next paragraph, do you see
12 where it says: "A class lecture is defined as a
13 formal or methodological oral presentation as part
14 of a college course"?

15 A I do.

16 Q The Florida college institutions don't
17 have rule-making authority for the recording
18 provision; is that right?

19 MR. MOORE: Object to form.

20 A There isn't anything expressly in that
21 statute that talks about Board of Trustees
22 regulations, but under the Board of Trustees powers
23 and duties statute, they do have -- they do have
24 authority for student conduct and other things that
25 entail academic instruction and all of that learning

1 environment.

2 BY MR. HANCOCK:

3 Q Understood.

4 Does that authority include the free
5 speech and expression on campus statute that HB 233
6 modified?

7 MR. MOORE: Object to form.

8 A I don't know what you mean does it include
9 it.

10 BY MR. HANCOCK:

11 Q Do -- do the Florida college institutions
12 have rule-making authority with respect to this
13 statute?

14 MR. MOORE: Object to form.

15 A I think it's the -- the same answer.
16 There isn't anything in House Bill 233 that modified
17 or that specifically discussed Florida trustees
18 rules, I don't think. I have to go back and look.
19 In 10 -- 1000.05 --

20 Can you ask the question again? I forgot
21 which thing we are actually talking about.

22 BY MR. HANCOCK:

23 Q I'll try asking it a different way.

24 If there weren't an expressed grant of
25 authority in HB 233, would the Florida colleges be

1 **able to adopt rules defining the statute?**

2 MR. MOORE: Object to form.

3 A The individual colleges?

4 BY MR. HANCOCK:

5 Q **Yeah.**

6 A For their own students and campuses?

7 Q **Right.**

8 A The Board of Trustees is -- is charged
9 with so many different, I guess, components of their
10 authority where they do provide policies --
11 sometimes they are called regulations, sometimes
12 they are called rules of the Board of Trustees --
13 that govern all kinds of things on campus, and so I
14 would -- I would imagine that they do.

15 And I don't -- without -- not necessarily
16 that section of law that has their powers and duties
17 in it, listing every single statute that they should
18 or could make rules on, I think it's more generally
19 described in their statute what they have authority
20 over.

21 Q **Understood.**

22 **The -- the last section of -- of this**
23 **paragraph about class lectures --**

24 A On these documents?

25 Q **Yes.**

1 A Okay.

2 Q At the bottom of the -- the class lecture
3 paragraph --

4 A Yes.

5 Q -- do you see it reads: "A recording that
6 personally identifies a student who has not
7 consented to being recorded will not be recognized
8 as a class lecture for these purposes."

9 Do you see that?

10 MR. MOORE: Counselor, is -- is this the
11 second to the last paragraph?

12 MR. HANCOCK: Yes.

13 MR. MOORE: Or the last paragraph?

14 MR. HANCOCK: This is the second to last
15 paragraph.

16 MR. MOORE: Okay. Thank you.

17 A Yes, I do see it.

18 BY MR. HANCOCK:

19 Q Does House Bill 233 create an exception
20 for recordings that contain per- -- that personally
21 identify a student?

22 MR. MOORE: Object to form.

23 A The legislation doesn't specifically
24 having a sentence that -- that uses the words
25 "personally identifies a student." However, this

1 may be something that has to do with FERPA, but I am
2 not positive.

3 BY MR. HANCOCK:

4 Q Understood.

5 So let's put a pin in FERPA. Assuming
6 FERPA did not apply, is there any other basis in
7 this statute to cordon off recordings that
8 personally identify a student and define them as not
9 a class lecture?

10 MR. MOORE: Object to form.

11 A I don't know. I don't see those words in
12 the statute, but I haven't looked at the law with
13 respect to that.

14 BY MR. HANCOCK:

15 Q Understood.

16 MR. HANCOCK: This is probably a good time
17 to take another short break.

18 THE WITNESS: I was going to say.

19 MR. HANCOCK: You -- you can ask if --

20 THE WITNESS: I was getting ready to.

21 MR. MOORE: Off the record.

22 THE VIDEOGRAPHER: We are now going off
23 record at 14:57.

24 (A recess took place from 2:57 p.m. to
25 3:13 p.m.)

1 THE VIDEOGRAPHER: We are now going back
2 on record at 15:13 p.m.

3 BY MR. HANCOCK:

4 Q Good afternoon.

5 A Good afternoon.

6 Q Did you speak with your counsel on the
7 break?

8 MR. MOORE: I instruct her not to answer
9 to the extent it involves communications with
10 counsel.

11 BY MR. HANCOCK:

12 Q Do you feel you are able to answer that
13 question without revealing the content of your
14 conversation with counsel?

15 MR. MOORE: Same objection.

16 THE WITNESS: I am instructed not to
17 answer?

18 MR. MOORE: Correct.

19 BY MR. HANCOCK:

20 Q Can you tell me yes or no whether you
21 spoke with your counsel during the break?

22 MR. MOORE: Same instruction.

23 MR. HANCOCK: You're instructing the
24 witness not to answer the yes-or-no question
25 about whether she spoke to you during the

1 break?

2 MR. MOORE: She can answer that one.

3 A Yes.

4 BY MR. HANCOCK:

5 Q Did you speak about the deposition?

6 MR. MOORE: I instruct you not to answer.

7 BY MR. HANCOCK:

8 Q Yes or no --

9 MR. MOORE: Attorney-client.

10 BY MR. HANCOCK:

11 Q Can you tell me yes or no whether you
12 spoke to your counsel about the deposition?

13 MR. MOORE: Same objection, same
14 instruction.

15 MR. HANCOCK: You're instructing the
16 witness not to answer a yes-or-no question?

17 MR. MOORE: Correct, regarding the
18 contents of discussion with counsel. That's
19 very clear.

20 MR. HANCOCK: Understood.

21 MR. MOORE: That's my objection. We can
22 move on.

23 MR. HANCOCK: You clarified the prior one,
24 I wanted to see if you wanted to clarify this
25 one as well.

1 BY MR. HANCOCK:

2 Q Let's talk about this survey provision.
3 That tasks the board with selecting or creating a
4 survey; isn't that right?

5 A Selecting or creating, yes.

6 Q And what do you understand that to mean?

7 A Either using one that currently exists,
8 selecting one from one that already exists, or
9 creating one that doesn't exist yet.

10 Q So when you say "one that already exists,"
11 had the Board of Education previously created any
12 surveys regarding intellectual freedom and viewpoint
13 diversity?

14 A No.

15 Q Do you have a sense of from where the BOE
16 could select a survey?

17 A Other states have done surveys on climate
18 surveys and other kinds of things regarding
19 students.

20 Q So your understanding is that if the board
21 used the same survey another, you know, state had
22 used, that will comply with this mandate?

23 A Yes.

24 Q And for 2022, did the board select a
25 survey or create a survey?

1 A Create.

2 Q And the survey provision establishes three
3 criteria for the survey that is either created or
4 selected; is that right?

5 A It says: "The State Board of Education
6 shall select or create an objective, nonpartisan and
7 statistically valid survey."

8 Q And this is from the statute we're looking
9 at in Exhibit 1?

10 A That's correct.

11 Q And is it your understanding that the
12 survey that is selected or created must meet all
13 three criteria of objective, nonpartisan, and
14 statistically valid?

15 A Yes.

16 Q What is the board's understanding of what
17 it means for a survey to be objective?

18 A An objective survey would not promote one
19 viewpoint or another.

20 Q Can you give me an example of a survey
21 that would be -- that would not be objective?

22 MR. MOORE: Object to form.

23 A I suppose a company that was promoting a
24 product like a new soft drink might issue a survey
25 that -- that might try to promote that -- that

1 product.

2 BY MR. HANCOCK:

3 Q And that would not be objective because of
4 the conflict of interest between the company
5 creating that survey and their interest in the
6 product?

7 MR. MOORE: Object to form.

8 A I don't know if it relates to conflict of
9 interest; just that either it's promoting or not
10 promoting.

11 BY MR. HANCOCK:

12 Q So what about the survey could promote a
13 product?

14 MR. MOORE: Object to form.

15 A I don't know. I don't know if I have a
16 good example.

17 BY MR. HANCOCK:

18 Q Do you think a survey with leading
19 questions would be the kind of survey that is not
20 objective?

21 MR. MOORE: Object to form.

22 A I suppose that could be true.

23 BY MR. HANCOCK:

24 Q Do you think a survey with biased
25 questions would fail to satisfy the requirement of

1 **objectivity?**

2 MR. MOORE: Object to form.

3 A I think that could be true.

4 BY MR. HANCOCK:

5 Q The board, as you said, created a survey
6 for 2022, right?

7 A Yes.

8 Q And that survey was distributed by the
9 Florida College System institutions?

10 A Yes.

11 Q And from here on, does it make sense to
12 refer to that as the final survey?

13 A That's fine with me.

14 Q And there's a final student survey and a
15 final employee survey; is that right?

16 A Yes.

17 Q For those surveys -- do you think those
18 surveys satisfied the requirement of being objective
19 under the statute?

20 A I do.

21 Q And what steps did the board take to
22 ensure that those surveys were objective?

23 A We worked closely with the Board of
24 Governors, and though the statute doesn't require us
25 to deliver the same survey, we worked -- we made the

1 decision to work together on the survey.

2 And there were a number of iterations of
3 the survey where questions were refined to work
4 towards being an objective survey that implemented
5 the statute, specifically with regard to it being an
6 annual assessment of intellectual freedom and
7 viewpoint diversity at the institution.

8 Q So in order to ensure that the survey was
9 objective, it sounds like you coordinated with the
10 Board of Governors and that you refined the
11 questions; is that right?

12 A Yes.

13 Q Were any other steps taken to ensure that
14 it was an objective survey?

15 A I can't think of any right now, but that's
16 also a high-level description of what we did.

17 Q And who participated in that process of
18 refining the questions?

19 A I did, Dr. Carrie Henderson, Dr. Henry
20 Mack, from our agency.

21 Q And then who from outside the Department
22 of Education participated in refining the questions?

23 A There were staff of the Board of Governors
24 that also participated. And then my understanding
25 is that it also was reviewed by the Governor's

1 Office.

2 **Q And who from the Board of Governors**
3 **participated in that process?**

4 A I know -- I don't know what they did
5 internally, but attendees at meetings would include
6 Chancellor Criser, Jon Rogers, Gene Kovacs, Vikki
7 Shirley I think attended, and I think Jason Jones
8 did, too, would be at one of the meetings.

9 So what they might have done internally
10 with regard to questions before it came back to us,
11 I'm not sure exactly.

12 **Q Sure. And who is Jason Jones?**

13 A He is a staff member of the Board of
14 Governors. I think he's in their -- he does
15 something along the lines of data with the Board of
16 Governors.

17 **Q And then who from the Governor's Office**
18 **participated in refining the questions?**

19 A I don't know exactly. I know Alex Kelly
20 received copies and provided feedback. Who else he
21 might have given it to in the Board of Governors,
22 I'm not sure.

23 Well, there is an e-mail that has other
24 members or employees of the Board of Governors --
25 Board of Governors -- I'm sorry, the Governor's

1 Office -- on the e-mail, but I don't know if that's
2 the extent to whom he shared it with.

3 Q And so aside from the Department of
4 Education, the Board of Governors, and the
5 Governor's Office, did anyone else participate in
6 refining the questions?

7 A Initially the Board of Governors was
8 working with Florida State University on the survey,
9 so they participated initially.

10 Q And did anyone from Florida State
11 participate in drafting the final survey?

12 A Not to my knowledge.

13 Q So then outside of the Department of
14 Education, the Board of Governors, the Governor's
15 Office, and the folks at Florida State, did anyone
16 else participate in refining the questions?

17 A Not to my knowledge.

18 Q What is the board's understanding of the
19 requirement that the survey be nonpartisan?

20 A Nonpartisan usually means that it's not
21 from one or another political point of view.

22 Q So what would be a survey that is from a
23 particular political view?

24 MR. MOORE: Object to form.

25 A I would think an example of that might be

1 one that was sent out by a political campaign.

2 BY MR. HANCOCK:

3 Q And why would that be considered partisan?

4 MR. MOORE: Object to form.

5 A I suspect that it would be because it was
6 sent from a political campaign, which is a
7 partisan -- if it were for a candidate of a
8 political party, then it would -- I would imagine
9 that will be partisan.

10 BY MR. HANCOCK:

11 Q Would it violate this requirement to be
12 nonpartisan if a political party drafted the survey?

13 MR. MOORE: Object to form.

14 A I don't know. I think the survey itself,
15 which in this case would be what we're calling for
16 our purposes today the final survey, is supposed to
17 be nonpartisan.

18 BY MR. HANCOCK:

19 Q So a survey distributed by, I don't know,
20 Hebda for President, running under a political
21 party, do you think that would be a partisan survey?

22 MR. MOORE: Object to form.

23 A I suppose it could be if I -- if I were
24 running as a candidate of one party or another -- my
25 brother-in-law, that Hebda, whichever Hebda you're

1 talking about.

2 BY MR. HANCOCK:

3 Q Yeah. So you think it would violate the
4 statute if a political party campaign distributed
5 the intellectual freedom and viewpoint diversity
6 viewpoint statute?

7 MR. MOORE: Object to form.

8 A I don't know. This really seems to
9 pertain to the survey itself, so I don't know
10 whether its distribution is considered by objective
11 nonpartisan and statistically valid.

12 BY MR. HANCOCK:

13 Q Understood.

14 If a political campaign drafted the
15 questions that were distributed by the Florida
16 colleges, would that violate the nonpartisan
17 requirement?

18 MR. MOORE: Object to form.

19 A I think it pertains to the final survey.

20 BY MR. HANCOCK:

21 Q If -- if a political campaign drafted or
22 contributed to the final survey, do you think that
23 would violate the nonpartisan requirement?

24 MR. MOORE: Object to form.

25 A I'm not sure. I think it might depend on

1 what the survey said.

2 BY MR. HANCOCK:

3 **Q Is there a situation where a political**
4 **party could draft a survey such that it was**
5 **nonpartisan?**

6 MR. MOORE: Object to form.

7 A I suppose that's true.

8 BY MR. HANCOCK:

9 **Q And to assess that, you would look at the**
10 **content of the questions?**

11 MR. MOORE: Object to form.

12 A It says the survey itself is supposed to
13 be objective, nonpartisan, and statistically valid,
14 so I think it's talking about the survey itself.

15 MR. HANCOCK: Can you please read the
16 question back.

17 (The requested portion was read.)

18 BY MR. HANCOCK:

19 **Q So to assess whether a survey was**
20 **nonpartisan, would you look at the content of the**
21 **final survey?**

22 MR. MOORE: Object to form.

23 A I think you would look at the content.

24 BY MR. HANCOCK:

25 **Q And if that content was created by a**

1 **political party, would that be consistent with the**
2 **requirement that it be nonpartisan?**

3 MR. MOORE: Object to form.

4 A I think it would depend on what the
5 content was.

6 BY MR. HANCOCK:

7 Q Do you think that the survey that was used
8 in 2022 satisfies the requirement that it be
9 nonpartisan?

10 A I do.

11 Q What steps did the board take to ensure
12 that the final survey would be nonpartisan?

13 A We looked carefully at the questions, the
14 same process we used for -- to meet the rest of the
15 statute. I think the type of the questions that we
16 asked, the content of the questions we asked; we
17 looked at the instructions.

18 Q And what kind of things were you looking
19 for to confirm it was nonpartisan?

20 A Anything that might be -- might appear to
21 someone to be from a political point of view which
22 could vary by person.

23 Q And what did the board try to do with
24 content that could seem like it was a particular
25 political view?

1 MR. MOORE: Object to form.

2 A I think it's fair to say that our -- our
3 creation and review process tried to keep out
4 content that would seem like it was from one
5 political point of view or another.

6 BY MR. HANCOCK:

7 Q During the process, do you remember any
8 content that was removed or changed to achieve the
9 nonpartisan obligation?

10 A I'm going to say there was one -- one or
11 more questions that were on the -- maybe it was
12 the -- the initial draft that we saw, because we
13 didn't see all the drafts that FSU had created for
14 the Board of Governors, but one draft that -- that
15 we saw had -- I think had a question or two about --
16 on the student survey -- about political parties or
17 something like that that was not in the final
18 version.

19 Q Was there anything else that was changed
20 to achieve a nonpartisan survey?

21 A I don't recall specifically. That's the
22 only one that comes to mind right now.

23 Q And what does the board understand is
24 required for a statistically valid survey?

25 A In this instance, statistically valid I

1 think in our view would -- would consider the -- how
2 the survey was put together but also how the
3 information is reported.

4 **Q What requirements do you think are imposed**
5 **on how the survey is constructed?**

6 MR. MOORE: Object to form.

7 A In both keeping with the objective and
8 nonpartisan, we attempted to ask questions that
9 wouldn't lead a student or an employee in one
10 direction or another, and would fulfill the
11 requirement of being an assessment of intellectual
12 freedom and viewpoint diversity at the institution.

13 BY MR. HANCOCK:

14 **Q What requirements do you think the**
15 **statistically valid term imposes on reporting of the**
16 **results?**

17 MR. MOORE: Object to form.

18 A In our case, because of what the statute
19 requires, which is that we report the assessments,
20 as they're called, which we call "the survey," that
21 we -- our plan is to report them as they are,
22 meaning not necessarily trying to provide an
23 analysis of what we think it might mean or what the
24 results might mean, just what were the answers to
25 the questions that students or employees provided.

1 BY MR. HANCOCK:

2 Q And that is the board's intended approach
3 for the report due on September 1?

4 A That's our intended approach.

5 Q Does -- and -- and this survey under House
6 Bill 233 is to be conducted every year; is that
7 right?

8 A It's annual, yes. That's what it
9 requires.

10 Q Does the board currently have a timeline
11 for when the next survey will be distributed?

12 A We haven't discussed the timeline for next
13 year yet.

14 Q Does House Bill 233 require that the
15 survey be anonymous?

16 MR. MOORE: Object to form.

17 A The legislation itself doesn't use the
18 word "anonymous."

19 BY MR. HANCOCK:

20 Q Does it use another word that would
21 require that the survey be anonymous?

22 MR. MOORE: Object to form.

23 A I don't see one.

24 BY MR. HANCOCK:

25 Q Does House Bill 233 require that the

1 **survey be voluntary?**

2 MR. MOORE: Object to form.

3 A I don't see that it does.

4 BY MR. HANCOCK:

5 Q **Does House Bill 233 protect the results of**
6 **the survey from public records requests?**

7 MR. MOORE: Object to form.

8 A I don't believe that it does.

9 BY MR. HANCOCK:

10 Q **As we discussed earlier, the Board of**
11 **Education proposed an amendment to House Bill 233 to**
12 **add expressed rule-making authority for this survey**
13 **provision; is that right?**

14 A That was in the e-mail from Bethany
15 Swonson.

16 Q **And that expressed authorization did make**
17 **it into the final House Bill 233, right?**

18 A You said it did?

19 Q **Yeah, it did.**

20 A The -- the rule-making authority that was
21 added to the bill is permission to adopt rules, so
22 it says the State Board of Education may adopt
23 rules.

24 Q **Right. So they are expressly granted the**
25 **authority to adopt a rule; is that right?**

1 A They are granted permission to adopt
2 rules, but they're not required to adopt rules.
3 Sometimes we have rule-making authority that says
4 the State Board of Education shall adopt rules, and
5 sometimes we are granted authority where we're
6 granted permission to adopt rules.

7 This is permission. So we are not
8 required to adopt a rule, but we may.

9 **Q Did the board considering adopting a rule**
10 **to implement the survey provision?**

11 A There probably was an internal discussion
12 about that at some point.

13 **Q Do you recall who that discussion would**
14 **have been between?**

15 A I don't, I don't know exactly. As I said,
16 probably. I don't recall a specific discussion, but
17 it seems likely that at some point someone in
18 leadership would have discussed whether we would do
19 a rule.

20 **Q And it was decided not to promulgate a**
21 **rule; is that right?**

22 MR. MOORE: Object to form.

23 A There -- there was a decision along the
24 way not to do a rule. Exactly when the decision was
25 made, I don't remember.

1 BY MR. HANCOCK:

2 Q Do you know who would have made that
3 decision?

4 A The final decision would be the
5 commissioners, but ...

6 Q Have any stakeholders asked the Board of
7 Education to craft a rule governing the annual
8 survey?

9 A I don't recall any.

10 Q For the 2022 survey, do you think it was
11 implemented in a way that was voluntary?

12 A Yes.

13 Q But there is nothing that requires the
14 board to continue doing that in the future, right?

15 MR. MOORE: Object to form.

16 A There's nothing in the law that requires
17 the survey to be voluntary.

18 BY MR. HANCOCK:

19 Q And does the board -- is it your view that
20 the 2022 survey was conducted in a manner that was
21 anonymous?

22 A Yes.

23 Q But there is nothing requiring the board
24 to continue implementing it that way going forward;
25 is that right?

1 MR. MOORE: Object to form.

2 A The law doesn't require the survey to be
3 anonymous.

4 (Exhibit 21 was marked for
5 identification.)

6 MR. HANCOCK: I am going to present the
7 witness with what's been marked as Exhibit 21.

8 BY MR. HANCOCK:

9 Q Do you recognize this e-mail chain?

10 A (Examining Document.)

11 Yes.

12 Q This starts with an e-mail from Taylor
13 Wolff on September 9, 2021; is that right?

14 A Yes.

15 Q And she is inquiring as to the
16 implementation of the survey provision; is that
17 right?

18 A Yes.

19 Q And then in the next e-mail Alexis
20 provides that update to Taylor Wolff; is that right?

21 A Do you mean the Friday, September 10?

22 Q Yes.

23 A "Hi, Taylor." Yes.

24 Q And at the bottom, there is a table. Do
25 you see that?

1 A Yes.

2 Q Do you recognize this table?

3 A It looks like it's an excerpt from a
4 tracking table.

5 Q And is that tracking table a document
6 maintained by the department?

7 A It looks like it.

8 Q Do you see the third column of that table
9 is labeled "Implementation Type"?

10 MR. MOORE: Object to form.

11 A I see that here in the -- in the document,
12 yes.

13 BY MR. HANCOCK:

14 Q And then if you turn to the next page, you
15 see the last row in the third column, it says "Rule
16 Making"?

17 A Yes.

18 Q As of September 10, did the board intend
19 to implement the survey provision through rule
20 making?

21 A I don't know.

22 Q Under what circumstances would someone put
23 rule making in the tracker to make an
24 implementation-type call?

25 MR. MOORE: Object to form.

1 A It could be because that was being
2 considered.

3 It could also be that someone was writing
4 very quickly and didn't realize it said "may" and
5 they said "must" in the tracker.

6 I'm not sure because it looks like this
7 was a table that Alexis was either copying from or
8 editing, so I'm not -- I'm not positive exactly who
9 typed that.

10 BY MR. HANCOCK:

11 Q Do you think the legislature would have
12 understood from this e-mail that the board intended
13 to implement the survey provision through rule
14 making?

15 MR. MOORE: Object to form.

16 A I don't know what they would have
17 understood.

18 BY MR. HANCOCK:

19 Q Let's turn to a prior page, the second
20 page of the document. Do you see towards the bottom
21 an e-mail from Kerrington?

22 A Yes.

23 Q And do you see in the second line of the
24 e-mail where it says: "I understand the FCS
25 institutions may use the survey developed by FSU"?

1 A Yes.

2 Q **As of September 14, did the board intend**
3 **to use the survey developed by FSU?**

4 A That was still the plan at the time. I
5 don't think we'd actually seen the survey yet, but
6 we were still working with the Board of Governors,
7 and that's where I think we were at that point.

8 Q **When was that plan made?**

9 A I don't know the exact date. I know there
10 was conversation between Chancellor Criser and me
11 with regard to implementation, because we were both
12 required to do the survey, and how we might go about
13 doing it together, and if that was -- you know, the
14 pros and cons of doing that.

15 Q **Did -- do you know whether the folks at**
16 **Florida State understood that their survey would be**
17 **used by both the State University System and the**
18 **Florida College System?**

19 MR. MOORE: Object to form.

20 A I know that by February, at the meeting
21 that some of my team members participated in on the
22 delivery of the survey, that they understood it at
23 that point because they were in the same meeting
24 with my team. When they understood it and how soon
25 they understood it, I don't know.

1 BY MR. HANCOCK:

2 Q And you're referring to a meeting in
3 February of 2022?

4 A Yes.

5 Q And prior to that meeting, did you have
6 any direct communication with anyone from Florida
7 State about this?

8 A No.

9 Q Did anyone on your team have communication
10 with anyone from Florida State about this?

11 A No.

12 Q At the top of this page, do you see the
13 e-mail from Bethany Swonson?

14 A Yes.

15 Q And do you see where she says at the end:
16 "Let's get an update on this specifically from Kathy
17 and team"?

18 A Yes.

19 Q I assume that's a reference to you, right?

20 A Probably, yes.

21 Q Do you know what Bethany means by "team"?

22 MR. MOORE: Object to form.

23 A It could mean my division. It could mean
24 any person in my division.

25

1 BY MR. HANCOCK:

2 Q Then if we go back to the first page, do
3 you see the e-mail you wrote on September 15?

4 A Yes.

5 Q And you recount having spoken to Criser in
6 the last week?

7 A Yes.

8 Q And your understanding was that Criser was
9 going to communicate that the FSU survey would
10 likely be used by both the State University System
11 and the Florida College System?

12 A That was my understanding.

13 (Exhibit 22 was marked for
14 identification.)

15 MR. HANCOCK: I'm going to present the
16 witness with what's been marked as Exhibit 22.

17 BY MR. HANCOCK:

18 Q Do you recognize this e-mail?

19 A (Examining Document.)

20 Yes.

21 Q And who is Hayley Spencer?

22 A Hayley Spencer was an employee in my
23 division at the time, and she was director of data
24 and analytics.

25 Q But Hayley is no longer in your division?

1 A That's correct.

2 Q **When did she leave?**

3 A Not too long ago. It was sometime during
4 the implementation of the survey, though.

5 Q **So roughly spring 2022?**

6 A Spring, yes, or summer.

7 Q **Do you recognize this document that she's**
8 **attached to the e-mail?**

9 A Only vaguely. I was trying to piece
10 together why this was an attachment to Hayley's
11 e-mail, but ...

12 Q **Do you see these bullets at the bottom**
13 **that are numbered?**

14 A The bottom of the first page of the
15 attached document?

16 Q **Yeah.**

17 A Under "next steps"?

18 Q **Yeah.**

19 A Yes.

20 Q **Do you see the 1(b) about who to work**
21 **with?**

22 A Yes.

23 Q **And the first sub-point says: "The BOG to**
24 **determine if we use the same survey," right?**

25 A Yes.

1 Q And the second part says "ARM particularly
2 for creating." Do you see that?

3 A Yes.

4 Q Do you know what ARM is referring to?

5 A I do. There's a division in the
6 department called accountability, research,
7 measurement.

8 Q And who is the head of that?

9 A Juan Copa.

10 THE STENOGRAPHER: I'm sorry?

11 THE WITNESS: Juan Copa. He's deputy
12 commissioner.

13 BY MR. HANCOCK:

14 Q And did you end up involving Juan in the
15 survey creation process?

16 A I don't know that we involved Juan
17 specifically. I think our outreach to ARM at the
18 time -- at this point in time was still trying to
19 figure out how would we administer the survey; and
20 so when it says creating, it could have involved
21 their knowledge of other surveys, it could have
22 involved their -- because they are in reports data;
23 and so it would have been probably consulting with
24 them on the types of data they had; did they have
25 e-mail addresses for college students or anything

1 else in the information that's collected from
2 institutions to think about how would we -- how we
3 would put it together.

4 Q This correspondence is from 2021, right?

5 A Yes.

6 Q Did you consult with ARM at all in 2022
7 about the survey?

8 A I don't recall in 2022 doing that. There
9 could be an e-mail to that effect somewhere, but
10 this was -- this was early on, all the kinds of
11 questions and decisions that needed to be made.

12 Q If you'd turn to the next page, do you see
13 at the top the section labeled "Questions"?

14 A Yes.

15 Q And the first question is, "If DOE
16 distributing in this manner, how do we account for
17 duplication?"

18 A Yes.

19 Q Do you understand that to be using
20 SurveyMonkey?

21 MR. MOORE: Object to form.

22 A I don't know if we had decided or
23 considered SurveyMonkey yet. Oh, yeah, it says
24 "SMM," so this would have been at the point where we
25 were looking at SurveyMonkey as an option.

1 BY MR. HANCOCK:

2 Q Was there a concern that using
3 SurveyMonkey would create duplication problems?

4 MR. MOORE: Object to form.

5 A I don't recall that we thought
6 SurveyMonkey would create duplication. It just
7 looks like duplication was a question that we needed
8 to deal with, depending on all the other decisions
9 we had to make on anonymity and all of that.

10 BY MR. HANCOCK:

11 Q And do you see the Sub-point 2, "SM can
12 allow for single responses by device," and then in
13 parenthesis "ways to get around this"?

14 A I do.

15 Q You understand that SurveyMonkey can
16 create a survey that only allows a single response
17 per device?

18 A It would appear that's the case. I can't
19 promise you that I am an expert on everything
20 SurveyMonkey can do or can't do.

21 Q Are you -- do you know whether that --
22 whether the final survey as it was distributed only
23 allowed a single response by a device?

24 A I don't believe that it did.

25 Q So --

1 A But I don't know.

2 Q -- your understanding -- okay.

3 Is it your understanding --

4 A Ask the question again, because I'm not
5 sure if I should have said "did" or "didn't," how
6 many negatives there were.

7 Q In terms of the final survey, do you know
8 whether it was distributed by SurveyMonkey such that
9 only a single response was allowed per device?

10 A I don't know whether that's true or not.

11 Q If that setting was turned on, do you know
12 if there are ways to get around that restriction?

13 A I don't know. Are you asking me what ways
14 to get around, in parenthesis, means?

15 Q I'm asking generally if you're aware of
16 whether there are ways to get around restriction for
17 single response per device?

18 A I'm not aware technically.

19 Q If people were submitting multiple
20 responses to the survey, would that raise concerns
21 about the statistical validity of the survey?

22 MR. MOORE: Object to form.

23 A I don't know what would raise questions.

24 BY MR. HANCOCK:

25 Q Do you think the board was obligated to

1 **try to limit one response per survey respondent?**

2 MR. MOORE: Object to form.

3 A There isn't anything in the law that
4 requires us to limit the responses to one per
5 individual.

6 BY MR. HANCOCK:

7 **Q Do you think a survey would be**
8 **statistically valid if respondents could submit**
9 **multiple survey responses?**

10 MR. MOORE: Object to form.

11 A I think it depends on to the degree.

12 BY MR. HANCOCK:

13 **Q In what sense?**

14 A Meaning if you, for example, received
15 several hundred thousand responses to a survey but
16 two of the responses were submitted by the same
17 person from the same device, that's like an
18 egregious example of something that would not affect
19 the statistical validity of the responses.

20 So I think to the degree that you might
21 have duplication, it might affect the statistical
22 validity or it might not.

23 **Q Would it be fair to say it would depend on**
24 **the quantity of responses that were duplicates?**

25 MR. MOORE: Object to form.

1 A It might.

2 (Exhibit 23 was marked for
3 identification.)

4 MR. HANCOCK: I present the witness with
5 what's being marked as Exhibit 23.

6 BY MR. HANCOCK:

7 Q On the second page at the bottom, do you
8 see an e-mail from you on June 24, 2021?

9 A Yes.

10 Q And that's addressed to Alex Kelly,
11 Bethany Swonson, and Eric Hall?

12 A Yes.

13 Q And in -- in the first line, you say:
14 "Alex, thanks for your call." Is that right?

15 A Yes.

16 Q Do you remember having a call with Alex
17 Kelly?

18 A Yes.

19 Q And what did you discuss on that call?

20 A Other than the survey, I don't recall.

21 Q But you did discuss the survey?

22 A Yes.

23 Q And this was a call around or before
24 June 24?

25 A Let me clarify. When I say "this survey,"

1 I mean the one in the e-mail, the North Carolina
2 survey.

3 Q Your memory is that your conversation with
4 Alex Kelly was about the North Carolina survey?

5 A Yes. It did include that. What else we
6 talked about, I don't remember.

7 Q What was the context for your conversation
8 about the North Carolina survey?

9 A I recall him asking whether we had
10 information about it.

11 Q And do you know why he was interested in
12 information about the North Carolina survey?

13 MR. MOORE: Object to form.

14 A I don't know if I know or if I know why,
15 meaning I know he was interested in -- in this
16 survey, but I am not sure of all the scope of
17 reasons he might have been interested in the survey
18 for.

19 BY MR. HANCOCK:

20 Q Sure.

21 Did you also discuss the survey that would
22 be implemented pursuant to House Bill 233?

23 A I don't know.

24 Q Do you know when House Bill 233 was signed
25 by the governor?

1 A I don't recall the exact date. I could be
2 reminded if I saw.

3 Q Yeah. If I represented to you it was
4 June 22, 2021, does that sound right?

5 A It could be.

6 Q Did you have -- did you discuss
7 implementing the survey requirement with Alex Kelly
8 after House Bill 233 was enacted?

9 A Yes. At some point, yes.

10 Q Do you think that could have been this
11 call?

12 A It certainly could have been.

13 Q In -- in your discussions with Alex Kelly
14 regarding implementation of the survey, what did you
15 discuss with him?

16 A You mean at any time, not just this phone
17 call? Or just this phone call?

18 Q Let's start with do you remember any
19 discussions the -- the summer of 2021?

20 A I don't recall specific discussions. It
21 seems likely they occurred, though, because the bill
22 had passed.

23 Q Sure. What -- what discussions generally
24 at any time do you remember having with Alex Kelly
25 about implementing the survey?

1 A I didn't talk to Alex a lot directly
2 myself at this point. So some of the information
3 might have gone through Eric or through Bethany. So
4 my discussions directly with Alex would have been
5 limited in number.

6 Q Was there a point where you spoke to Alex
7 more frequently?

8 A When he was chief of staff in the agency.

9 Q But before he left the Department of
10 Education?

11 A Yes. That would have been different.

12 Q And then do you see on the first page an
13 e-mail forwarding survey information from Carrie
14 Henderson to Hayley Spencer?

15 A Yes.

16 Q And that attaches a document about the
17 University of Colorado social climate survey. Do
18 you see that?

19 A I do.

20 Q Is this something you reviewed around that
21 time?

22 A Likely, since it's in the attached e-mail.
23 Since the statute said we could select a survey, we
24 were looking to see what surveys were out there
25 already that might be applicable or portions of

1 which might be applicable.

2 **Q Was the board considering selecting some**
3 **or all the questions from the University of Colorado**
4 **survey?**

5 A I don't know if we were considering that
6 survey specifically. It -- it looks like we were
7 still looking for like the -- sort of the scope of
8 what was available.

9 **Q Were there any discussions about possibly**
10 **adopting the Colorado survey?**

11 A I don't recall discussions specifically
12 about adopting that survey.

13 **Q Were there any discussions about possibly**
14 **adopting the North Carolina survey?**

15 A There was -- there was more discussion
16 about the North Carolina survey because they had
17 been doing it for a while, but I think ultimately it
18 was decided that it was too broad because our
19 statute was really specific.

20 **Q And did the board look to the surveys in**
21 **Colorado and North Carolina and elsewhere in -- to**
22 **guide them in creating their own survey?**

23 A What do you mean we looked at them to
24 guide?

25 **Q Did the board seek to emulate or model**

1 **anything that was done by the Colorado or**
2 **North Carolina surveys?**

3 A I don't know if there was a specific
4 decision to implement or emulate any other specific
5 survey. I think we gathered ideas from the
6 different surveys.

7 Q **Yeah. Do you know whether the University**
8 **of Colorado survey hired an outside entity to**
9 **distribute the survey?**

10 A I don't remember, but I can certainly find
11 out; or if there is something here that says -- if I
12 read it and it says it was done by a third party,
13 then I suppose that would be true.

14 Q **Do you know whether --**

15 A Refresh my memory.

16 Q **Do you know whether the University of**
17 **Colorado released their survey before it was**
18 **distributed to solicit feedback?**

19 A I don't. But I've just seen on I think
20 the third page of the Colorado document that it said
21 they selected -- there is a section on selection of
22 McLaughlin & Associates/Frederick Polls, so it looks
23 like they published in here who they worked with.

24 Q **Did the board consider bringing in an**
25 **outside entity to draft or distribute the survey?**

1 A That was part of the discussion, yes.

2 Q **And was a decision made to not do that?**

3 A The decision initially was made to --
4 because the Board of Governors was also considering
5 the same thing, and then determined that they were
6 going to work with FSU. And so then we asked of
7 them whether we could partner with them since they
8 made the selection with FSU.

9 Q **And they considered FSU to function like**
10 **an -- an outside party being brought in to do the**
11 **poll?**

12 A It was the -- it was the -- I am not going
13 to get the name right -- but it's the center for --
14 center for politics or something like that at FSU.
15 They have -- FSU has a center attached to it that
16 had done surveys before.

17 Q **Uh-huh.**

18 A So it wasn't FSU proper; it was the center
19 that's attached to them.

20 Q **Did the Board of Education ever enter into**
21 **a contract with the -- I believe it's called the FSU**
22 **Institute of Politics?**

23 A No.

24 Q **Did the Board of Education ever enter into**
25 **a formal agreement to share the survey that the**

1 **Board of Governors was creating?**

2 A No.

3 Q And what kinds of updates did the board
4 receive from the Board of Governors on the survey
5 drafting process?

6 A I received several updates from
7 Chancellor Criser as to the status of the progress
8 that FSU was making on the survey draft. But it --
9 it wasn't until later in 2022 when we actually saw a
10 survey, a draft. Whenever that -- the e-mail that
11 has that survey attached to it.

12 Q So when was the first time you saw a draft
13 of what the FSU folks were working on?

14 A Around January of '22, may have been
15 December '21.

16 Q And the FSU folks drafted a student
17 survey, a faculty survey, and the staff survey; is
18 that right?

19 A If I recall correctly, they had three
20 surveys they were drafting.

21 Q And in the final survey, there are only
22 two, right?

23 A Yes. The student survey and employee
24 survey.

25 Q Why was the decision made to only have a

1 unified employee survey?

2 A We -- we found a way -- there is so
3 many -- there are a number of individuals in
4 institutions who are -- have an administrative
5 function but also may teach a class. And -- and so
6 it -- it just seemed more efficient, and it seemed
7 to us at the time a better direction to have one
8 employee survey that would then allow a person to
9 identify as primarily an instructor or an
10 administrator, and then allow them to answer some --
11 most of the same questions and then some unique sets
12 of questions if they were instructors.

13 (Exhibit 24 was marked for
14 identification.)

15 MR. HANCOCK: I will present the witness a
16 document marked Exhibit 24.

17 MR. MOORE: I must have had a typo. I had
18 the other one as 24.

19 BY MR. HANCOCK:

20 Q Do you recognize this document?

21 A Yes.

22 Q And this is an e-mail Marshall Criser sent
23 to you on February 28, 2022; is that right?

24 A Yes.

25 Q And this is not the survey that was

1 **drafted by the Florida State folks; is that right?**

2 A Correct. This is not the one drafted by
3 Florida State. It's not the one that I saw drafted
4 by Florida State.

5 Q Understood.

6 Do you know who drafted this document?

7 A It's from Marshall, but I don't know
8 everybody who might have had a hand in drafting it.

9 Q And -- and this e-mail is just the text of
10 the draft in the body of the e-mail; is that right?

11 A Yes.

12 Q There is no other discussion or context,
13 right?

14 MR. MOORE: Object to form.

15 A It -- it looks like it's the draft of
16 the -- of the survey with an opening message that
17 would go -- draft of an opening message that would
18 go with the survey, and I don't see anything else in
19 here besides that.

20 BY MR. HANCOCK:

21 Q Did you and Criser have a meeting or a
22 call around this time to discuss the survey draft?

23 A I'm certain we did. Exactly what day, I
24 don't know. But we had been meeting about this.
25 And I say "we," not only Marshall and I had been

1 meeting, but I think our teams were already talking
2 about it at this time and working together on the
3 survey.

4 Q Let's also look at Exhibit 5. So if you
5 turn to what's page 3 in the top right, this is a
6 portion of your declaration?

7 A Yes.

8 Q And do you see in 4 where it says: "I am
9 personally familiar with the surveys developed
10 pursuant to HB 233"?

11 A Yes.

12 Q Is that accurate?

13 A Yes.

14 Q And then in paragraph 5, do you see the
15 last sentence that says: "The institute's initial
16 draft surveys were not well suited for the state
17 college system"?

18 A I do.

19 Q Why were the initial draft surveys not
20 well suited for the state college system?

21 A In some instances, what I recall is they
22 focused more on university and -- and sometimes the
23 language wasn't -- wouldn't exactly represent the
24 Florida College System institutions, and so that --
25 that was the first thing that I can think of that --

1 as to why they weren't well suited.

2 Q Can you give me an example of what kinds
3 of language would be too university focused?

4 A I think they had something in there --
5 without looking at the actual copy right now, but
6 they had something in there about being a freshman
7 or a sophomore or junior or senior or something like
8 that, and a lot of our students aren't classified
9 that way necessarily because they might be enrolled
10 in a certificate program, which is not a degree
11 program.

12 So that's an example of something that
13 didn't seem to encompass our students and how they
14 might be represented.

15 Q Are there any other issues with the prior
16 draft that were not well suited for the state
17 college system?

18 A I can't remember any specifically or
19 specific questions without maybe looking at it
20 again, but that's -- that's the thing I remember, is
21 it just seemed focused more on university students
22 and their experience and, as I said, like the way
23 they would talk about themselves or think about
24 themselves.

25 Q And then in paragraph 6, you say, then,

1 **"February 22, Marshall Criser shared alternative**
2 **draft surveys."**

3 Do you see that?

4 A Yes.

5 Q Why did Marshall Criser share an
6 **alternative draft?**

7 MR. MOORE: Object to form.

8 A I'm not sure what you mean by why.

9 BY MR. HANCOCK:

10 Q Well, there was an initial draft, right?

11 A You mean the FSU draft?

12 Q Yes.

13 A Yes.

14 Q So why was there created an alternative
15 **draft?**

16 MR. MOORE: Object to form.

17 A Because we continued to work on the
18 survey. As I -- as I noted, our review of the
19 institute's additional survey -- initial survey --
20 if I can just get the word out -- wasn't well suited
21 to the college system, and so we provided feedback.

22 And Chancellor Criser provided us with an
23 alternative survey and asked us for feedback on
24 that, which I think is the one in the e-mail. It
25 might -- yes, that corresponds to February.

1 BY MR. HANCOCK:

2 Q What was the feedback that you provided to
3 Marshall Criser?

4 A At which time?

5 Q I guess the feedback that was provided
6 prior to this alternative draft.

7 A We provided some feedback to
8 Chancellor Mack with regard to the survey, the
9 initial FSU survey that we saw, and expressed the
10 things that we discussed, like it doesn't suit the
11 colleges the way some of the questions are worded
12 and things like that.

13 Q Did you propose edits to the initial draft
14 surveys?

15 A I think we didn't edit it question by
16 question. We provided feedback, I think, in
17 general.

18 Q And, for example, would one item be that
19 not all Florida college institution students fit
20 into categories like freshman, sophomore, junior?

21 A That would definitely be an example, yes.

22 Q And what is your understanding of who
23 drafted this alternative draft?

24 A I don't -- I don't know who all was
25 involved completely in the -- in this draft, but I

1 do know that feedback from our agency was
2 incorporated.

3 Q Do you have an understanding as to who
4 wrote this draft?

5 A Like a single person who wrote the draft
6 or who might be involved?

7 Q Do you know if a single person wrote this
8 draft?

9 A I don't know that a single person wrote
10 this draft. My understanding is that our feedback
11 was -- was taken -- Henry Mack had feedback, and
12 then there was some feedback from Alex, I think, in
13 an e-mail about the survey. And then there was this
14 draft from Chancellor Criser.

15 Q Did Chancellor Criser tell you how this
16 draft was created?

17 A I think what he told me about it was that
18 he had -- I think he had reviewed it with his board
19 chair, might have been what he said.

20 Q Who's his board chair?

21 A Brian Lamb.

22 Q When -- did you provide the feedback
23 directly to Criser or did that go through Henry
24 Mack?

25 A Through Henry Mack.

1 **Q And how did you provide that feedback to**
2 **Henry Mack?**

3 A I think we -- I know we discussed it with
4 him for sure. So there was a face-to-face
5 discussion, you know, with a hard copy. We might
6 have also provided some written feedback.

7 **Q But you do remember a meeting to discuss**
8 **it?**

9 A I don't know if it was a meeting, just a
10 discussion with him in his office, not like a --
11 schedule a meeting at 4 o'clock to talk about the
12 survey, but just a discussion with him about it.

13 **Q And then how was the communica- -- how was**
14 **the feedback from Henry Mack communicated to**
15 **Marshall Criser?**

16 A I think our feedback went to the
17 Governor's Office, if I recall.

18 **Q So Henry Mack took the feedback and his**
19 **views and brought those to the Governor's Office?**

20 A I think so. I don't think he provided it
21 directly to Marshall Criser.

22 **Q Do you know who in the Governor's Office**
23 **he would have communicated that to?**

24 A Probably in response to Alex's e-mail
25 request.

1 Q And then who provided the feedback
2 ultimately to Marshall Criser?

3 A I don't know.

4 Q But nobody from the Board of Education did
5 that?

6 A Not for this first one, no.

7 Q In paragraph 8 of your declaration --

8 A Yes.

9 Q -- this is Exhibit 6 -- sorry. This is
10 Exhibit 5.

11 A Okay.

12 Q Do you see the last line at the bottom of
13 paragraph 8 that says: "The survey settings were
14 selected so that the survey responses are voluntary
15 and anonymous"?

16 A Yes.

17 Q What settings are those?

18 A So in SurveyMonkey you can choose to
19 require that someone responding to a survey use
20 their e-mail address to -- to document who they are,
21 and we didn't require that.

22 Q Are there any other settings that this
23 refers to?

24 A That's the main setting. The voluntary
25 part also includes the way the survey was designed

1 so that you didn't have to answer every question;
2 you could choose to answer only the questions you
3 wanted to answer; or even if you started the survey,
4 you could choose to not answer any questions
5 ultimately.

6 Q And so with that function, if a respondent
7 wanted to answer some questions and then not answer
8 one question, how would they go about doing that?

9 A They would just skip that question.

10 Q They would just click "next" without
11 putting in a response?

12 A That's right.

13 Q Does the survey advertise that function?

14 A The instructions did, yes.

15 Q And those are available on the first page?

16 A That's right.

17 Q After you started the survey, is there a
18 way to return to the first page?

19 A I don't know. Perhaps there is, but I
20 just am not aware of that right this very second.

21 Q But that -- those instructions are not
22 included on each page of the survey; is that right?

23 A I don't believe that they were.

24 Q And it was a multiple choice response on
25 the final survey?

1 A Yes.

2 Q Did the board consider including a "prefer
3 not to respond" option as one of the choices?

4 A Some questions did have that option.

5 Q Is there a reason why every question did
6 not have that option?

7 A Perhaps some questions didn't need that
8 option. I'm not sure why.

9 Q Do you recall which questions did have
10 that option?

11 A Some of them were the demographic
12 questions. There could have been others, too.

13 Q And in taking the survey, a respondent can
14 just click past the demographic responses, right?

15 A They could, yes.

16 Q Then why was a "prefer not to respond"
17 option included if they had the option to skip
18 already?

19 A I think our discussion maybe revolved
20 around the -- I'm not sure, actually, now that you
21 asked the question, other than we wanted them to
22 have -- feel like they could. But the instructions
23 did already say that, so I suppose we could have
24 done it differently.

25 Q Did the board ever consider a qualitative

1 or short answer question?

2 A I think we did discuss that early on. I
3 don't remember the complete discussion, but I know
4 it came up at some point.

5 Q But it was decided not to include one,
6 right?

7 A Yes.

8 Q Turn to what is page 6 in the top-right
9 corner of your declaration.

10 So do you see paragraph 14 reads: "In
11 addition to the importance of the timeline for
12 compliance, the information gleaned from the surveys
13 furthers other critically important state
14 interests."

15 Do you see that?

16 A Yes.

17 Q And the state interest identified is,
18 "Namely ensuring that the values of viewpoint
19 diversity and academic freedom are preserved rather
20 than eroded"?

21 A Yes.

22 Q Do you think that the values of academic
23 freedom are currently strong in the Florida College
24 System?

25 A I think they are.

1 **Q Is there a --**

2 A But at the same time, I don't know. I'd
3 like to believe that they are, and so the survey is
4 conducted to get a baseline of where institutions
5 are.

6 **Q Do you have a concern that those values**
7 **are going to erode in the future?**

8 A I think the board's concern is that we
9 want to make sure they don't.

10 **Q And what is the board doing to make sure**
11 **that they don't?**

12 A Well, one thing is to implement the survey
13 to find out and provide institutions with
14 information about how students are feeling about
15 free speech, employees are feeling about free speech
16 and intellectual diversity on the campuses.

17 **Q How would that information further that**
18 **interest?**

19 A It could be useful to institutions to --
20 to see if there is something they want to look into
21 further to ensure that -- that those values are --
22 are being implemented.

23 **Q And what steps could they take to ensure**
24 **that those values are being implemented?**

25 A For one, they could conduct an additional

1 survey. They could review their policies to ensure
2 that those things are being promoted and -- and
3 implemented on their campuses.

4 Q Could they promote viewpoint diversity and
5 academic freedom without the survey data?

6 A That's possible.

7 Q Are you familiar with the civil discourse
8 initiative?

9 A Can you give me more information?

10 Q It -- it's a -- it's a program that the
11 Board of Governors is administering.

12 A Oh.

13 Q It's a project of theirs.

14 A I've heard of it.

15 Q Do you know if the Florida College System
16 or the Board of Education is doing a similar project
17 for the colleges?

18 A I can't tell you that we have a similar
19 project because I don't know everything about
20 theirs. Certainly, there is an initiative through
21 the Florida Education Foundation for civic literacy
22 in debate, so that is going on in K-12.

23 Q But is there any sort of viewpoint
24 diversity or academic freedom initiatives at the
25 Florida college institutions at the moment?

1 A There is nothing like the civil discourse
2 specific project like the Board of Governors is
3 doing.

4 Q Understood.

5 Can you turn to page -- actually, let's do
6 page 15 in the top right of your declaration. Do
7 you see in the bottom right this has the Bates stamp
8 Defendants_007727?

9 A Yes.

10 Q And is this the final version of the
11 student survey?

12 A It appears to be, yes.

13 Q If you could put this next to -- what are
14 we -- Exhibit 24. Is it fair to say that this
15 e-mail from Marshall Criser is an initial draft of
16 what became the final survey?

17 A It does look very similar. There are
18 clearly differences, but it might be.

19 Q Yeah. If we start with the instructions
20 in Marshall Criser's e-mail, the opening message, do
21 you see the last sentence of the first paragraph
22 reads: "This survey intends to discover the extent
23 to which all viewpoints, both conservative and
24 liberal, are both welcomed and provided equal
25 attention on your campus and in your classroom."

1 **Do you see that?**

2 A Up in the first paragraph?

3 Q **Yeah, that last line.**

4 A Yes.

5 Q And then in the final version, do you see
6 it says: "This survey attempts to discover the
7 extent to which all viewpoints, conservative,
8 liberal, and otherwise, are welcomed and provided
9 appropriate attention on your campus and in the
10 classroom."

11 **Do you see that?**

12 A Yes.

13 Q Why was -- at the point where it refers to
14 conservative and liberal views, why was "and
15 otherwise" added to this introduction?

16 A Because there are views that individuals
17 might not consider conservative or liberal; they
18 could consider it something else.

19 Q And is the survey attempting to discover
20 whether those viewpoints are shared on campus?

21 A It is attempting to see that all
22 individuals' viewpoints are -- how they feel -- how
23 welcome they feel in providing their viewpoints on
24 campus, whether they are something someone would
25 define as conservative, something someone would

1 define as liberal or -- or some other name.

2 Q But the board determined there were
3 viewpoints that would not fit into the categories of
4 conservative and liberal, right?

5 A Correct.

6 Q And then later on in the last line in
7 Marshall's draft, he refers to equal attention on
8 your campus, and in the final draft it refers to
9 appropriate attention on your campus.

10 Do you see that?

11 A Yes.

12 Q What is the difference between equal
13 attention and appropriate attention?

14 A I think equal attention sounds like you
15 are going to measure exactly how much attention in
16 some way. And we weren't trying to measure an
17 amount, and so we thought "appropriate" seemed to be
18 a better -- better way to phrase it.

19 Q So what kind of attention were you trying
20 to measure?

21 MR. MOORE: Object to form.

22 A I think the most important part was that
23 "welcomed."

24 BY MR. HANCOCK:

25 Q Did the board determine that differing

1 **viewpoints were not necessarily entitled to equal**
2 **attention?**

3 A I don't think that was the case. I think
4 it was the use of the word "equal" that seemed to be
5 something more specific than what we were trying to
6 get at in the survey because we weren't attempting
7 to measure the amount of time or anything else.
8 What we could determine would be one thing equal to
9 another.

10 Q **Did the survey ask students to assess how**
11 **much time is spent on different viewpoints?**

12 A Not specific time. But there are
13 questions about whether those viewpoints are -- they
14 hear them, I think. And there are a variety of
15 questions about the settings of those viewpoints.

16 Q **At the end of Question 1 in Criser's**
17 **draft, do you see where it says "without fear of**
18 **reprisal"?**

19 A Yes.

20 Q **And in the final draft, do you see at the**
21 **end of Question 1 where it says "without fear of**
22 **negative consequences"?**

23 A Yes.

24 Q **Why was "reprisal" swapped out for "fear**
25 **of negative consequences"?**

1 A That was mostly because negative
2 consequences seem to be clearer, like we felt that
3 most students would understand the negative
4 consequence and may not necessarily understand
5 reprisal.

6 **Q What do you think reprisal suggests to**
7 **students?**

8 A I don't know.

9 MR. MOORE: Object to form.

10 BY MR. HANCOCK:

11 **Q What do you think negative consequences**
12 **suggests to students?**

13 MR. MOORE: Object to form.

14 A I don't know what any specific student
15 might think of as a negative consequence, but the
16 language seemed more user-friendly, if you will,
17 than reprisal.

18 BY MR. HANCOCK:

19 **Q Do you think students might consider**
20 **disagreement from their classmates to be a negative**
21 **consequence?**

22 MR. MOORE: Object to form.

23 A I don't know what any individual student
24 thinks, but it's certainly a possibility.

25

1 BY MR. HANCOCK:

2 Q Do you think students might think
3 criticism from their classmates might be considered
4 a negative consequence?

5 MR. MOORE: Object to form.

6 A I don't know what any individual student
7 thinks, but that's certainly a possibility.

8 BY MR. HANCOCK:

9 Q Do you think a professor correcting an
10 inaccuracy in a student's statement might be seen by
11 a student as a negative consequence?

12 MR. MOORE: Object to form.

13 A I don't know what any individual student
14 thinks or feels, but it's a possibility.

15 BY MR. HANCOCK:

16 Q Did the board consider providing further
17 definition for the kinds of negative consequences
18 they were interested in?

19 A No.

20 Q Let's look at --

21 MR. MOORE: Counsel, whenever you get to
22 an appropriate break, hopefully the next five
23 minutes, we can swap out personnel. And we can
24 all can keep our seats, but Ms. -- Ms. Gay has
25 some childcare responsibilities to -- to get

1 to.

2 MR. HANCOCK: Yeah. I'm -- I'm content to
3 do that now.

4 MR. MOORE: Okay.

5 MR. HANCOCK: Of course.

6 THE VIDEOGRAPHER: We are now going off
7 record at 16:38 p.m.

8 (A recess took place from 4:38 p.m. to
9 5:01 p.m. and Counsel Gay was replaced by
10 Counsel Braun.)

11 THE VIDEOGRAPHER: We are now going back
12 on record at 17:01 p.m.

13 BY MR. HANCOCK:

14 Q Good afternoon again.

15 A Good afternoon.

16 Q Did you speak with your counsel during the
17 break?

18 A No.

19 Q All right.

20 A Waiting all day for that question.

21 Q Before we took the break, we were looking
22 at Exhibits 5 and 24, I believe.

23 Do you have them ready?

24 A Yes.

25 Q And in particular, I am looking at the

1 page 16 of Exhibit 5 and the second page of
2 Exhibit 24. In -- in the draft from Criser,
3 Question 5, do you see where it says: "My
4 professors or course instructors use class time to
5 express their own social or political beliefs"?

6 A Yes.

7 Q And in Exhibit 5, Question 5, reads: "My
8 professors or course instructors use class time to
9 express their own social or political beliefs
10 without objectively discussing opposing social or
11 political beliefs."

12 Do you see that?

13 A Yes.

14 Q Why was that last clause about objectively
15 discussing opposing beliefs inserted?

16 A Part of our discussion was around just the
17 sort of trying to think about the situation where
18 students would be in a class where a professor would
19 share a social or political belief, again, thinking
20 about the intellectual diversity and -- and
21 viewpoints being welcomed.

22 But just asking that question without any
23 other context around it seemed like you would get a
24 better answer or more precise answer, one that was
25 more attuned to whether there was -- were opposing

1 viewpoints shared or presented if we added the
2 phrase that you just spoke about in Number 5.

3 So whether or not someone shared their own
4 social or political belief didn't seem to be as
5 important unless it were done without objectively
6 talking about an opposing one.

7 **Q And so what's meant by objectively**
8 **discussing an opposing belief?**

9 A In this case, we would think about it as
10 without trying to promote one or the other, so I
11 think a generally objective and generally accepted
12 definition, if you will, of objective would be
13 without trying to promote one view or another but
14 providing both -- or if it's factual that they exist
15 and here they are and the student could decide for
16 themselves.

17 **Q Do you think a professor can espouse their**
18 **own personal view while also objectively discussing**
19 **opposing views?**

20 MR. MOORE: Object to form.

21 A Sounds like it's possible.

22 BY MR. HANCOCK:

23 **Q If a professor inserts their own personal**
24 **view of an issue, do you think that discussion can**
25 **remain objective?**

1 MR. MOORE: Object to form.

2 A I think it would depend on the
3 circumstances.

4 BY MR. HANCOCK:

5 Q And how are student respondents to
6 determine what their professors' or course
7 instructors' personal beliefs are?

8 A It would only be to their knowledge if the
9 student knew one way or another.

10 Q This -- let's turn to the next page of
11 each of these. In Exhibit 5, do you see prior to
12 Question 13 the statement: "For the following
13 survey items, select the option that best describes
14 your perception of your professors, course
15 instructors, college, or university with respect to
16 political beliefs"?

17 A Yes.

18 Q What basis are respondents supposed to use
19 for their perception?

20 A I'm not sure I understand the question;
21 the basis of their perception?

22 Q So for Question 5, we talked about
23 students' knowledge about their professors'
24 political beliefs, and you mentioned that they could
25 base it off their personal knowledge.

1 **Is that also supposed to be the basis for**
2 **these responses here?**

3 A On the draft survey or -- that's the draft
4 survey, right?

5 Q **On the final survey.**

6 A On the final survey. Sorry. Okay.

7 I imagine there are a number of ways a
8 student could gain a perception of something, and
9 that's what it asks for, is the student's
10 perception.

11 Q **So in terms of getting to this final**
12 **draft, we talked earlier about the work on refining**
13 **the questions.**

14 A Yes.

15 Q **Is it this draft in Exhibit 24 that you**
16 **all worked on refining?**

17 A Once Chancellor Criser presented this
18 draft, this became the working draft, as I recall
19 it, and then we worked on -- on refinements to this
20 draft.

21 Q **And this May 20 -- or sorry. This**
22 **February 28 e-mail, this is a draft of the student**
23 **survey, right?**

24 A I believe so, yes. I don't think it
25 included the employee. No, this is just the student

1 survey draft.

2 Q So if we turn back to -- in Exhibit 5,
3 let's turn back to page 9.

4 MR. MOORE: Counsel, for the record, you
5 mean page 9 of 25?

6 MR. HANCOCK: Yes.

7 A Okay.

8 BY MR. HANCOCK:

9 Q Is this the final draft of the employee
10 survey?

11 A I believe so. That's what's attached
12 here.

13 Q And how did this survey come about?

14 A If I remember the basis was the students,
15 and we used the student survey to then craft the
16 employee survey.

17 Q And do you know --

18 A That's what I remember.

19 Q Do you know, would that have occurred
20 after this February 28 e-mail from Marshall Criser?

21 A It might have. I don't remember the exact
22 date we started working on this version of the
23 employee survey. It could have been at that time.

24 Q Is your recollection that the work started
25 on the student survey and then turned to the

1 **employee survey?**

2 A For us, yes. I don't know what FSU might
3 have done, but that's where we started.

4 Q **And is it correct that the student survey**
5 **was the starting point for drafting the employee**
6 **survey?**

7 A I believe that's correct, but I can't tell
8 you exactly what date we started on the employee
9 survey.

10 Q **And what -- who took the pen on taking**
11 **things from the student survey to the employee**
12 **survey?**

13 A I don't remember. I don't recall exactly.

14 Q **Do you recall reviewing drafts of the**
15 **employee survey?**

16 A Yes.

17 Q **Do you recall where those drafts came**
18 **from?**

19 A I don't remember. I don't remember
20 exactly if they were generated by the -- our board
21 or Board of Governors' staff. I'd have to look at
22 something to refresh my memory.

23 Q **If it was within the Board of Education,**
24 **who would it have been?**

25 A Likely, if it were within us, it would

1 have been -- the three of us that worked on it were
2 Carrie Henderson, myself, and Henry Mack.

3 Q Do you recall reviewing an employee survey
4 yourself?

5 A Reviewing like a draft survey before the
6 final?

7 Q Yeah.

8 A Yes.

9 Q But you don't recall who that came from?

10 A I don't. It seems likely it was from
11 Henry, but I don't know exactly.

12 Q Can we turn back to Exhibit 2? Could you
13 turn to page 7?

14 A Page 7? Yes.

15 Q And then do you see Topic 3 there?

16 A Yes.

17 Q And do you see it reads: "Your policies,
18 documents, and communications related to the survey
19 provision in the survey, including the
20 implementation, anticipated effects, or actual
21 effects of the survey provision, the creation,
22 drafting, and implementation of the survey,"
23 et cetera?

24 A Yes.

25 Q Have you previously reviewed this topic?

1 A Yes.

2 Q What did you do to prepare for testimony
3 regarding this topic?

4 A I reviewed the e-mail correspondence from
5 the agency around it. I looked at previous draft
6 surveys that we might have retained. I had
7 discussion, as I mentioned earlier, with Carrie
8 Henderson, Henry Mack, certain -- certainly with our
9 attorneys, and the one discussion I had with Jeremy
10 Katz.

11 Q And when did -- do you recall when you
12 reviewed the agency e-mails regarding this survey
13 drafting process?

14 A Some of them as recently as yesterday, but
15 some of them may be earlier than that. Well, some
16 of them definitely earlier than that.

17 Q And do you recall when you would have
18 reviewed prior drafts of the surveys?

19 A I know that I looked at -- prior drafts?
20 What is today? Thursday. So earlier this week, I
21 looked at prior drafts.

22 Q About how much time did you spend speaking
23 with Carrie Henderson, Henry Mack, and -- is it
24 Jeremy Katz?

25 A Jeremy.

1 My correspondence -- my discussion with
2 Jeremy was pretty short. It was pertaining to
3 specifically where he is -- the part he participated
4 in, which was looking at the public information on
5 the IP addresses and the data.

6 My discussions with Carrie have been
7 several over time, so throughout the process, I've
8 discussed things off and on with Carrie Henderson,
9 including, I think -- I don't think I spoke with her
10 about it yesterday because we had state board. I
11 might have spoken to her yesterday or the day
12 before. So I've spoken to her as recently as this
13 week for sure.

14 And I talked to Henry Mack on several
15 occasions throughout the process as well. And most
16 recently would have been -- for any length of time
17 would have been last Friday, I think.

18 **Q Gotcha.**

19 **So sitting here today, what can you tell**
20 **me about the transition from the student survey into**
21 **the final employee survey?**

22 A The draft student survey?

23 **Q Yeah. And how it became the final**
24 **employee survey.**

25 A I don't have a day-by-day recollection of

1 exactly which came -- what things happened in what
2 order on what specific day. But as surveys -- as
3 the surveys were worked on, I do know that we began
4 with the student survey. That was the first survey.
5 And then from that drafted an employee survey.

6 Whether Henry Mack was the first person to
7 take a crack at it or whether Carrie and I were, I
8 don't honestly remember the order of events, but I
9 know all three of us looked at drafts and provided
10 feedback on drafts of an employee survey that was
11 based on the student survey.

12 **Q Do you know whether the Board of Governors**
13 **weighed in on the conversion of the student survey**
14 **to the employee survey?**

15 A Yes, because we met with them several
16 different times throughout the process, and we would
17 have discussed -- discussed that.

18 And also, there were some edits to the
19 employee survey and the student survey that were
20 made right towards the end, once -- so there's a
21 drafting of the actual words in a Word document, but
22 then that information has to be loaded into
23 SurveyMonkey.

24 And so once it gets into SurveyMonkey,
25 then there could be some things that you notice.

1 Like I remember one of the things that we -- you
2 know, you draft a survey thinking that the questions
3 will go in a certain order and then when you get in
4 SurveyMonkey, you realize you've got to make a --
5 for example, on the employee, you know, once you
6 identify as primarily -- or the person identifies
7 themselves primarily as faculty, then how do you do
8 the skip logic to get them to go to the faculty or
9 instructor questions.

10 And so some edits were made just to make
11 that possible, because I think one of the original
12 drafts had some instructions that wouldn't -- it
13 would make sense if you were filling out something
14 hard copy in a Word document but didn't quite make
15 sense when you put it in the electronic
16 SurveyMonkey. So some of those kinds of edits were
17 made once it got into SurveyMonkey.

18 And I think we also noticed something like
19 the State University System wasn't -- we didn't use
20 the terminology correctly and had to make that kind
21 of fix right in SurveyMonkey.

22 So -- so there were some edits that were
23 made even after it was loaded into SurveyMonkey.

24 **Q Would it be fair to say that the edits**
25 **made after it was loaded into SurveyMonkey were**

1 **either instrumental or technical corrections?**

2 A Primarily, yes.

3 Q Do you know when the employee survey was
4 **loaded into SurveyMonkey for the first time?**

5 A It would have been on or about the same
6 date as the student survey.

7 Q And do you know if anyone from the
8 Governor's Office weighed in on -- when were you
9 drafting the student survey into the employee
10 survey?

11 A What do you mean weighed in on whether --
12 you say weigh in on whether to draft?

13 Q Or -- all right; provide any feedback or
14 **edits or drafting?**

15 A Probably.

16 Q Are you specifically aware of any
17 involvement from the Governor's Office on that
18 process?

19 A I believe our drafts, both surveys,
20 student and employee, were shared with the
21 Governor's Office.

22 Q And did they provided feedback or thoughts
23 **or edits?**

24 A I'd have to look at the e-mail again
25 whether the feedback we got from Alex with his

1 other -- the other folks that he e-mailed was
2 specifically on the student or on both surveys. But
3 I think it's likely we got feedback on both.

4 Q And I know you mentioned there were a lot
5 of meetings in this February to March time period.

6 Would anyone from the Governor's Office
7 attend those meetings?

8 MR. MOORE: Object to form. Object to
9 form.

10 A If they were with the Governor's Office, I
11 don't know. But as far as we were concerned, there
12 were some times when even Carrie Henderson and --
13 and maybe Gene Kovacs, because they were ones
14 inputting the data into the SurveyMonkey, they would
15 sometimes just get together to make sure they
16 matched because they were -- Gene was responsible
17 for making sure that the SurveyMonkey survey
18 instrument was the one that was going to be sent to
19 the SUS. Carrie was the one inputting for FCS, and
20 so sometimes they would also just talk between the
21 two of them for technical reasons.

22 BY MR. HANCOCK:

23 Q Did you personally attend any meetings
24 regarding survey drafting in February or March of
25 2022?

1 A I -- I know as I presented or participated
2 in meetings with the Board of Governors team.

3 Q Do you recall whether anyone from the
4 Governor's Office was present for those meetings?

5 A Not for those meetings.

6 MR. HANCOCK: I will present the --
7 actually, I am going to premark this and hold
8 off for a moment.

9 BY MR. HANCOCK:

10 Q Let's look back at Exhibit 5. We are on
11 page 9 of 25 in the top right.

12 A Okay.

13 Q And this is the -- the final employee
14 survey, right?

15 A Yes.

16 Q And Question 1 asks: "My institution
17 provides an environment for free expression of
18 ideas, opinions, and beliefs."

19 Do you see that?

20 A Yes.

21 Q What is an environment for free expression
22 of ideas, opinions, and beliefs?

23 A Environment in this sentence is
24 considering the -- the entire environment of the
25 institution or the -- in our case, the college. So

1 it's meant as a general -- a general term.

2 Q If we look back at Exhibit 24, which is
3 the draft of the student survey --

4 A Sorry. Yes.

5 Q The first question for students asks
6 whether they feel it is important to be able to
7 express political viewpoints without fear of
8 reprisal, right?

9 A Yes.

10 Q Why weren't professors also asked whether
11 they are able to express political viewpoints
12 without fear of reprisal?

13 A I don't know specifically.

14 Q Looking at the employee survey, do you see
15 how Question 3 is: "Students at my institution are
16 encouraged to consider a wide variety of
17 viewpoints"?

18 A On the employee survey?

19 Q Yes.

20 A Yes.

21 Q And then the fourth question, the next one
22 reads: "Students at my institution are not shielded
23 from ideas and opinions they find unwelcomed or
24 disagreeable or even deeply offensive."

25 Do you see that?

1 A Yes.

2 Q Was there any concern about transitioning
3 from the affirmative "students at my institution are
4 encouraged" to the negative "students at my
5 institution are not shielded" in immediate
6 succession?

7 A Do you mean because Number 4 includes the
8 word "not"?

9 Q Yeah. Was there a concern that the
10 transition to that "not" would confuse employees?

11 A No. And I -- I think in Number 4, not
12 shielded would be considered a positive, even though
13 the word not is there. But I don't think we
14 expected employees to be confused by that.

15 Q The -- the choice to use a negative to
16 express a positive you did not think would confuse
17 employees?

18 A We didn't believe so.

19 Q Turning to the next page, do you see
20 Question 8?

21 A On the employee survey?

22 Q Yes.

23 A Yes.

24 Q And that reads: "My institution is
25 equally tolerant and welcoming of both liberal and

1 **conservative ideas and beliefs."**

2 **Is that right?**

3 A Yes.

4 Q **Why was the board interested in whether**
5 **liberal or conservative beliefs were equally**
6 **tolerated?**

7 A The legislation I think originally talks
8 about intellectual diversity and includes it for
9 purposes of the statute, the definition. And if I
10 can go back to the law -- in Subsection -- in page 1
11 of Exhibit 1 where the law is printed -- the bill is
12 printed, I should say, it says: "For purposes of
13 this subsection, the term" --

14 THE STENOGRAPHER: Can you speak up?

15 THE WITNESS: I'm sorry.

16 A "For purposes of this section, the term
17 'intellectual freedom and viewpoint diversity' means
18 the exposure of students, faculty, and staff to, and
19 the encouragement of their exploration of, a variety
20 of ideological and political perspectives."

21 So I think it -- I think that question is
22 one of the questions that tries to get at their
23 perceptions of -- of how -- what they perceive to be
24 the environment on their campus.

25

1 BY MR. HANCOCK:

2 Q Understood.

3 Can we turn to page 14 of that Exhibit 5.

4 Are these the demographic questions for the employee
5 survey?

6 A Yes.

7 Q And Question 21 reads: "Please identify
8 your race." Right?

9 A Yes.

10 Q And the last option is "Prefer not to
11 respond." Right?

12 A Yes.

13 Q And Question 23 just reads: "Gender:"
14 Right?

15 A Yes.

16 Q And the last option is "Prefer not to
17 respond." Right?

18 A Yes.

19 Q And then Question 24 is: "Where would you
20 place yourself on the following scale:" And the
21 options are conservative, liberal, moderate, or none
22 of the above, right?

23 A Yes.

24 Q There's not a "prefer not to respond"
25 option for Question 24, right?

1 A No, there is not an option that you can
2 select that says "prefer not to respond," but the --
3 the person taking the survey could still choose not
4 to respond.

5 Q Did the board consider adding a "prefer
6 not to respond" choice to Question 24?

7 A I don't remember if we discussed that or
8 not specifically for Question 24.

9 Q Do you think Question 24 inquires into the
10 political views of employees in the Florida College
11 System?

12 MR. MOORE: Object to form.

13 A What do you mean "inquires into the
14 political views"?

15 BY MR. HANCOCK:

16 Q Does it ask them to disclose their
17 political views?

18 MR. MOORE: Object to form.

19 A It asks them to place themselves on the
20 following scale, if they -- they chose to.

21 BY MR. HANCOCK:

22 Q Do you think that scale is a disclosure of
23 political views?

24 MR. MOORE: Object to form.

25 A It could be.

1 BY MR. HANCOCK:

2 Q What do you mean "could be"?

3 MR. MOORE: Object to form.

4 A A person taking the survey could think of
5 it that way except that the survey was anonymous.
6 So -- so I guess it -- it could -- it would pertain
7 to the person taking the survey, but we don't know
8 who that person is.

9 So to the extent that person's own views
10 are actually disclosed to us, we -- we don't know
11 who they are. We would just know that someone who
12 took the survey identified in one of those ways.

13 MR. HANCOCK: I'm going to -- I apologize.
14 I'm going to skip Exhibit 25 and present
15 Exhibit 26 to the witness.

16 (Exhibit 26 was marked for
17 identification.)

18 A Do I need to keep all these other ones
19 open?

20 BY MR. HANCOCK:

21 Q No. I think they can be set aside.

22 Do you recognize this e-mail chain?

23 A Yes.

24 Q And at the bottom is an e-mail from Henry
25 Mack dated January 28, right?

1 A Yes.

2 Q And that e-mail reads: "Attached, draft
3 of the intellectual freedom and viewpoint diversity
4 survey to share with Senator Rodrigues." Right?

5 A Yes.

6 Q And do you understand that to be a
7 reference to Senator Ray Rodrigues?

8 A I do .

9 Q And then the next line says: "We will
10 compile his feedback together with feedback from the
11 Division of Florida Colleges."

12 Do you see that?

13 A Yes.

14 Q Do you know whether this -- a draft of the
15 survey was ever actually shared with Senator
16 Rodrigues?

17 A I don't know.

18 Q If Henry Mack sent an e-mail like this, do
19 you expect it would have been shared with Senator
20 Rodrigues?

21 MR. MOORE: Object to form.

22 A It could have been.

23 BY MR. HANCOCK:

24 Q Did the board have an intention to share
25 drafts with legislators?

1 A It's not unusual for the board to work
2 with a sponsor of a bill as to implementation of the
3 bill.

4 Q Are you aware of any other legislators
5 besides Senator Rodrigues who saw a draft copy of
6 the survey?

7 A I am not aware of any others.

8 Q And earlier you mentioned that Henry Mack
9 was compiling feedback from a variety of sources.
10 Right?

11 A Uh-huh.

12 Q If he did receive feedback from Senator
13 Rodrigues, would you expect him to incorporate that
14 in his feedback communicated to Marshall Criser?

15 A I would.

16 Q Are you aware of Henry Mack soliciting
17 feedback from any other legislators?

18 A I am not.

19 Q Do you know whether Senator Rodrigues is a
20 Democrat or Republican?

21 A I do.

22 Q And do you know in which party would he
23 be?

24 A Republican.

25 Q Did the board consult any democratic

1 **legislators for feedback on draft surveys?**

2 A Not that I'm aware.

3 Q **Do you think consulting legislators from**
4 **only one political party is consistent with the**
5 **requirement that the survey be nonpartisan?**

6 MR. MOORE: Object to form.

7 A I don't think it's related.

8 BY MR. HANCOCK:

9 Q **It's not related, how?**

10 MR. MOORE: Same objection.

11 A In this case, it was shared with the bill
12 sponsor.

13 BY MR. HANCOCK:

14 Q **And your understanding is that the**
15 **requirement to be nonpartisan wouldn't apply to a**
16 **bill sponsor?**

17 MR. MOORE: Object to form.

18 A I don't think it's related. I think I --
19 I think one of the things we discussed earlier was
20 that a survey that might have been created or
21 generated from a political party didn't mean that it
22 was partisan but that it could be.

23 So I think you asked me questions about
24 that already. So in this case, it looks like it was
25 shared with the person who sponsored the bill for

1 his input.

2 BY MR. HANCOCK:

3 Q So would determining if Senator Rodrigues'
4 feedback was partisan depend on the content of his
5 feedback?

6 MR. MOORE: Object to form.

7 A I think we took all of the -- all the
8 questions and certainly the feedback -- I'm not sure
9 exactly what process the Board of Governors went
10 through internally. But on our end, for the board,
11 we -- we would look -- we looked at all the
12 questions; so before the survey was finally
13 completed, we would have looked at the survey in
14 total with an eye towards it being nonpartisan and
15 objective and statistically valid. But in this
16 case, the question was about partisan, I think, that
17 you asked me.

18 BY MR. HANCOCK:

19 Q And so the board's understanding is that
20 they can consult partisan actors in developing a
21 survey as long as the content of the final survey is
22 nonpartisan?

23 MR. MOORE: Object to form.

24 A Can you ask me that question again? I'm
25 sorry.

1 BY MR. HANCOCK:

2 Q Sure. Is it the board's view that the
3 board can consult partisan actors so long as the
4 final content of the survey is nonpartisan?

5 MR. MOORE: Same objection.

6 A And what is a partisan actor in this case?

7 BY MR. HANCOCK:

8 Q For example, Senator Rodrigues.

9 A Is that because he's an elected official?

10 Q Yes.

11 A It's the board's view that sharing it with
12 the bill sponsor for feedback on how the legislation
13 he sponsored was being implemented did not
14 ultimately affect whether the survey was or was not
15 partisan, we -- we still strove for a nonpartisan
16 survey.

17 Q Would it be appropriate for the board to
18 solicit feedback from the Florida Republican party?

19 MR. MOORE: Object to form.

20 A The Republican party wasn't the sponsor of
21 the legislation, so I don't see any reason why we
22 would solicit feedback from the Republican party.

23 BY MR. HANCOCK:

24 Q But if the board did, would you understand
25 that to violate the requirement that the survey be

1 **nonpartisan?**

2 MR. MOORE: Object to form.

3 A It's a hypothetical question.

4 BY MR. HANCOCK:

5 Q **But based on that hypothetical, you don't**
6 **know if it would violate the statute?**

7 MR. MOORE: Same objection.

8 A The statute doesn't specifically talk
9 about who -- who can have input on the survey.

10 MR. HANCOCK: I'd like to present the
11 witness with what's been marked as Exhibit 27.

12 (Exhibit 27 was marked for
13 identification.)

14 BY MR. HANCOCK:

15 Q **If you'd turn to the last page, do you see**
16 **this e-mail from Jon Rogers to Timothy Chapin on**
17 **February 28?**

18 MR. MOORE: Object to form.

19 A The last page, you said?

20 BY MR. HANCOCK:

21 Q **Yeah.**

22 A Yes.

23 Q **And then if you turn to the prior page, do**
24 **you see Timothy Chapin forwarded this conversation**
25 **to T. Howard Stone and Lonna Atkeson?**

1 A That's what the document states.

2 Q And then after that, T. Howard Stone
3 provides a response. Do you see that?

4 MR. MOORE: Object to form.

5 A That's what the document shows.

6 BY MR. HANCOCK:

7 Q And on the second page of the document, as
8 part of T. Howard Stone's response, do you see in
9 the second paragraph where he says: "If plan has
10 been revised and will now include students under the
11 age of 18, then study may not be considered exempt
12 from IRB review as we had earlier planned."

13 Do you see that?

14 MR. MOORE: Object to form.

15 A I see that paragraph.

16 BY MR. HANCOCK:

17 Q Did the Florida -- did the Board of
18 Education intend to design the survey so it would be
19 exempt from IRB review?

20 MR. MOORE: Object to form.

21 A No. IR- -- IRB review wasn't -- wasn't
22 part of what the statute requires or doesn't
23 require.

24 BY MR. HANCOCK:

25 Q Were there discussions within the board

1 **about whether or not the survey should achieve IRB**
2 **review?**

3 A I remember discussing -- Marshall bringing
4 this question up as something they were talking
5 about, about the students under 18; not specifically
6 whether that would mean IRB review or not, which it
7 looks like that was part of their discussion.

8 But the fact that there are students in
9 the Florida College System and in the State
10 University System that are under 18, and since
11 the -- the end result of the discussion was that
12 since the survey is voluntary and a person could
13 choose not to answer and it's only their perception,
14 the student's opinion, that it -- there wouldn't be
15 any concern about students under 18 taking the
16 survey.

17 Q **When did Marshall Criser communicate this**
18 **issue about students under 18?**

19 A Sometime during the development. I don't
20 remember exactly.

21 Q **Do you remember --**

22 A We talked about it on the phone. I
23 haven't seen this e-mail before, so ...

24 Q **Do you remember if it was 2021 or 2022?**

25 A I want to say it was 2021, but I am not

1 sure. If I recall correctly, it was earlier on in
2 the process.

3 (Exhibit 28 was marked for
4 identification.)

5 MR. HANCOCK: I'm going to present the
6 witness with Exhibit 28.

7 BY MR. HANCOCK:

8 Q This exhibit is an e-mail chain that
9 starts on the second-to-the-last page. And there's
10 an e-mail from Crystal Moyer to Christina Pushaw on
11 June 23, 2021; is that right?

12 A That's what it says.

13 Q Do you know who Christina Pushaw is?

14 A I think she was in the governor's
15 communications office.

16 Q And do you know who Crystal Moyer is?

17 A I mean, I can read down here what her
18 signature says, but I don't know her.

19 Q Sure. And then in the next e-mail, do you
20 see Christina Pushaw forwards this conversation to
21 Alex Kelly, Taryn Fenske, and Cheryl Etters?

22 A Yes.

23 Q Who is Cheryl Etters?

24 A Cheryl Etters used to be an employee with
25 the department of education in our communications

1 office.

2 Q And who holds Cheryl's position now?

3 A It might be Will Patrick. And I say it
4 might be only because I think they might have
5 changed some of the titles recently.

6 Q And then if you turn to the prior page, at
7 the bottom, you see that Cheryl forwards this
8 conversation to you and some other DOE folks?

9 A Yes, I see that.

10 Q And then if we go back to the first page,
11 do you see an e-mail on June 24 from Alexis?

12 A On the previous page, you said, or the
13 front page?

14 Q On the front page.

15 A And what was the question? I'm sorry.

16 Q Do you understand this e-mail to be a
17 draft response to the media inquiry?

18 A Yes.

19 Q Do you know if this response was ever sent
20 out?

21 A I don't know.

22 Q And actually, this response was initially
23 drafted by Bethany Swonson in the prior e-mail.

24 Do you see that?

25 A Yes. Bethany sent it to our

1 communications team plus me and Caleb.

2 Q If you look at the last sentence of the
3 second paragraph, do you see where it says: "In
4 fact, it would be a violation of a student's First
5 Amendment rights to force or compel them to complete
6 the survey"?

7 A I do.

8 Q Is it the board's view that if the
9 intellectual freedom and viewpoint diversity survey
10 were nonvoluntary, it would violate a student's
11 First Amendment rights?

12 MR. MOORE: Object to form.

13 A I don't know if that's the board's view
14 now. I see that as a draft in this e-mail.

15 BY MR. HANCOCK:

16 Q And Bethany Swonson in June of 2021 would
17 have been chief of staff for the commissioner,
18 right?

19 A I think she was chief of staff then.

20 Q Would her views generally represent the
21 board's views?

22 A If they were official statements, yes, but
23 this is a draft, so I don't know that this was the
24 final statement.

25 Q Are you aware of the board forming a view

1 **on whether it would violate the First Amendment to**
2 **compel students to complete the survey?**

3 A I'm not aware of that statement or an
4 opinion or position. I think you said position?

5 Q **Yeah.**

6 A Okay.

7 Q **Is it the board's view that they have the**
8 **authority to create a nonvoluntary survey?**

9 MR. MOORE: Object to form.

10 A The statute doesn't talk about the survey
11 being voluntary or nonvoluntary, at least the
12 legislation didn't. At the same time, there is
13 no -- there is nothing in the statute that says we
14 can -- that we can compel a student to complete the
15 survey. So we don't -- we' don't have any authority
16 to compel a student to complete the survey.

17 BY MR. HANCOCK:

18 Q **The Board of Education did distribute this**
19 **survey through the Florida colleges, right?**

20 A Yes. We sent it to the colleges, gave
21 them individual links, one for the student, one for
22 the employee survey, and then the colleges
23 distributed it to their employees and students.

24 Q **And that was open for student responses**
25 **and employee responses for one week, right?**

1 A Yes.

2 Q **And the board did receive responses from**
3 **that?**

4 A Yes.

5 Q **Where are those responses stored?**

6 A They were first stored -- they come back
7 through SurveyMonkey. And then from that, from
8 SurveyMonkey you can take the data you receive from
9 the survey and put it in Excel or probably
10 another -- other variety of formats to review it and
11 decide what you are going to do with it next.

12 Q **Does that -- are those responses going to**
13 **stay on SurveyMonkey long term?**

14 A No.

15 Q **Does the board have a plan to pull them**
16 **down and store them elsewhere?**

17 A We already have.

18 Q **And where are they stored now?**

19 A They currently reside for us with our
20 division.

21 Q **Is there a particular database they are**
22 **stored in, or is it just Excel files within the**
23 **division's files?**

24 A I don't know about a particular database.
25 I do know the data are stored in Excel, but I don't

1 have a name of a database that they're in.

2 Q And so is the data no longer on
3 SurveyMonkey?

4 A I don't believe it is.

5 Q Who would know how the data is currently
6 stored within the division?

7 A Carrie Henderson would know. I could
8 easily find out.

9 Q And who has access to the responses that
10 are stored by the division?

11 A Meaning to view them right now?

12 Q Yeah.

13 A Depending on the answer to your question
14 on which database they are on, then certainly
15 Dr. Henderson would, I would, but it -- it would --
16 but when you think about access to data stored in
17 the Department of Education, if data is stored in a
18 certain database and it's -- and it doesn't include
19 any publicly identifiable information -- and these
20 don't -- then even if it's not on a database where
21 someone like a Henry Mack has ready access to that
22 database, he could -- he could easily ask for the
23 information.

24 So if that's -- if that's included in
25 access, then there is a process to see information,

1 even if it's not stored on his personal computer, if
2 that makes any sense.

3 Q What is that process like?

4 A In this case, he would -- he would just
5 request it.

6 Q Like an e-mail?

7 A He could do verbally; he could do it in an
8 e-mail.

9 Q Can Florida colleges request the response
10 data?

11 A They could.

12 Q Are you aware that some or all of the data
13 has been provided to plaintiffs as part of
14 discovery?

15 A I think it has. I think we provided what
16 we had already.

17 Q And has that response data been provided
18 to anybody else outside the Board of Education?

19 A Do you mean just the raw data?

20 Q Yeah.

21 A I don't think we provided the raw data to
22 anybody else.

23 Q Has the raw data been provided to the
24 Governor's Office?

25 A I don't - I don't think we have given the

1 raw data to the Governor's Office. I think we gave
2 them summary information.

3 Q And how was that given to them?

4 A A draft report.

5 Q Is that the only way that results have
6 been communicated to the Governor's Office so far?

7 A That's the method that I'm aware of.

8 Q Have -- have any of the response data been
9 provided to legislators?

10 A Yes. We shared a draft report with
11 Senator Rodrigues.

12 Q And when was that shared?

13 A Earlier this summer. I don't have an
14 exact date, though I could probably check my
15 calendar.

16 Q And has the board received any public
17 records requests asking for the response data?

18 A I believe we have. I don't know if those
19 public records requests actually asked for the data
20 set. I think what we were -- what I recall being
21 asked is how many responses were there.

22 Q If somebody filed a public records request
23 seeking the response data, would the board provide
24 it?

25 A We would respond to the public records

1 request.

2 **Q Are you aware of any reason the board**
3 **could withhold the response data if it were**
4 **requested?**

5 MR. MOORE: Object to form.

6 A The only reason I could think of would be
7 if there was something as part of this legal
8 proceeding. But the data aren't specifically
9 protected by the statute with any public records
10 request exemption.

11 BY MR. HANCOCK:

12 **Q Has the board formed any kind of policy**
13 **about how this data can be shared?**

14 A What do you mean by a "policy"?

15 **Q Do they have any kind of plan for sharing**
16 **the data with the public or other institutions?**

17 A We are working on the draft report that's
18 required by the -- the statute.

19 (Exhibit 29 was marked for
20 identification.)

21 MR. HANCOCK: Let's -- I am going to
22 present the witness with Exhibit 29.

23 BY MR. HANCOCK:

24 **Q And this is an e-mail from Carrie**
25 **Henderson to you and Henry Mack on April 29, 2022;**

1 **is that right?**

2 A Yes.

3 Q **And does this accurately reflect the**
4 **response rates that the board received?**

5 A Yes.

6 Q **And so for the total student population**
7 **the response rate was 0.5 percent; is that right?**

8 A The surveys that were received through the
9 student survey link would be 0.5 percent, but you
10 will note that there were computer-generated
11 responses as part of that 1.36 million.

12 Oh, I'm sorry. I apologize. Completely
13 read that wrong.

14 Yes, the student population, the number of
15 students who received the survey, based on what the
16 institutions told us, because we asked them to
17 report how many they sent the students survey to and
18 how many e-mails they sent the employee survey to.

19 And then the responses that were
20 generated, less the computer-generated responses,
21 were 0.5 percent. Yes, that's right. I apologize.
22 I misread.

23 Q **And that response rate is calculated**
24 **without the computer-generated responses?**

25 A That's correct.

1 Q And why is there a column for the student
2 response rate less SF and Broward?

3 A Santa Fe -- that's what SF means in this
4 case -- Santa Fe College and Broward College ended
5 up sending their student -- the student survey link
6 to students who may no longer be associated with the
7 institution; in other words, not currently enrolled.

8 Q In terms of these responses, do you know
9 which ones come from students who are full-time and
10 students who are part-time?

11 A Only if the student identifies as such.

12 Q And they would do that through the survey
13 questions?

14 A Yes. I believe there is a survey question
15 that asks about full-time or part-time status. I
16 think there is one about primarily online. I have
17 to go back and double-check to make sure that's the
18 case in the final survey.

19 Yes, Question 15 on the student survey --

20 THE STENOGRAPHER: I'm sorry?

21 A Question 15 on the student survey says:
22 "Please identify the enrollment status," and the
23 options are full-time or part-time.

24 MR. HANCOCK: And then I would like to
25 present the witness with Exhibit 30.

1 (Exhibit 30 was marked for
2 identification.)

3 BY MR. HANCOCK:

4 Q Is this a -- a draft of the report that
5 the DOE prepared?

6 A Yes.

7 Q And if you turn to the fourth page, it
8 should end with Bates 671.

9 A Yes.

10 Q This is a table that breaks out the
11 response rate by each Florida college institution,
12 right?

13 A Yes.

14 Q And does the board intend to include a
15 table like this in the final -- or the final report?

16 A I believe we are.

17 Q And if you turn to the next page -- well,
18 does -- how does this report treat survey responses
19 that answered some but not all questions?

20 A The -- the answers to -- this is -- this
21 report is broken out by question, so it shows all
22 the answers that we received to that question in the
23 table below.

24 Q Understood.

25 And so in this Figure 1 paragraph, that N

1 equals 7,187, is that the number of responses to
2 that question?

3 A To that question.

4 Q And then Figure 2 where N equals 7,162,
5 it's a different -- it's a lower number because
6 fewer people answered that question?

7 A 7,162 responses were received to that
8 question.

9 Q And in this draft, these tables don't
10 report a margin of error, right?

11 A No.

12 Q Does the board intend to report a margin
13 of error as part of the results?

14 A This report is only going to provide the
15 responses to each question, so I don't know -- I
16 don't understand the question about a margin of
17 error.

18 Q Do you understand what a margin of error
19 would mean for, say, the question in Figure 1?

20 A Do you mind asking me again?

21 Q Sure. Do you understand what a margin of
22 error would mean for like Figure 1?

23 A My understanding of the margin of error is
24 that you would use it if you were trying to
25 extrapolate the information to a larger population.

1 And we are -- we are not analyzing the data; we are
2 just reporting the responses that we were -- that
3 were received.

4 Q Understood.

5 So this report is not intended to
6 extrapolate these responses to the larger population
7 of these colleges?

8 A No.

9 Q It just means that of the roughly 7,000
10 who answered this, say, 55 percent strongly agreed
11 with that proposition?

12 A Correct.

13 Q Understood.

14 Let's turn back to Exhibit 6.

15 Actually -- sorry -- one final question
16 about the draft report. Does the board intend to
17 provide -- to break out responses to individual
18 questions based on the demographics that were
19 provided?

20 A I don't think that we are. I have to look
21 at a more recent -- more recent draft. I think we
22 do intend to report the demographics as a whole --

23 Q Uh-huh.

24 A -- but I don't know whether we've broken
25 them -- each question out by demographics. And we

1 don't have our final report yet.

2 Q Understood.

3 A So ...

4 Q But turning back to Exhibit 6 -- actually,
5 we can do that in a moment.

6 MR. HANCOCK: Do we want to just take a
7 short break?

8 MR. MOORE: Sure. And that's fine with
9 me. And just by my count, we have -- we have
10 9 minutes left on the record.

11 MS. FROST: I have 10 minutes and
12 10 seconds.

13 MR. MOORE: Call it 10. Never say I don't
14 compromise.

15 THE VIDEOGRAPHER: All right. We are now
16 going off record at 18:07 p.m.

17 (A recess took place from 6:07 p.m. to
18 6:14 p.m.)

19 THE VIDEOGRAPHER: We are now going back
20 on record at 18:14 p.m.

21 BY MR. HANCOCK:

22 Q Good evening.

23 A Good evening.

24 Q Did you speak with your counsel during the
25 break?

1 A No.

2 Q Let's turn to Exhibit 6. These are
3 amended answers to interrogatories, right?

4 A Yes. Seconded amended answer.

5 Q If you turn to page 6, do you see this
6 paragraph that starts "Anomalies occurred..."?

7 A Yes.

8 Q It describes that the Board of Governors
9 found anomalies in their responses, right?

10 A Yes.

11 Q And the Board of Governors identified
12 certain IP addresses that they thought were
13 problematic?

14 A Yes.

15 Q Did the Board of Education receive any
16 responses from those IP addresses?

17 A Two of them, yes.

18 Q Do you know which two?

19 A I think we say specifically. Yes. On the
20 bottom of page 7, that last paragraph lists the two
21 IP addresses --

22 Q I see.

23 A -- that were similar to the Board of
24 Governors or same as the Board of Governors.

25 Q And then the Board of Education identified

1 **one more IP address that they considered**
2 **problematic?**

3 A Yes.

4 Q **And what was the sort of problem that**
5 **these IP addresses were generating?**

6 A They were -- the Board of Governors first
7 identified, and then we -- we looked at our data as
8 well. There were a large number of responses from
9 the same IP address. That in and of itself is not
10 an issue because you can have a situation where
11 students in a dormitory, for example, all their
12 systems could come from one IP address; that's
13 possible.

14 But there were a large number, as you can
15 see the numbers reported here, of student responses
16 from similar IP --

17 (Brief interruption)

18 A -- addresses that had other
19 characteristics that made us -- gave us -- made us
20 be concerned that they might be generated by a
21 computer, a bot, if you will.

22 Q **And did -- so it sounds like Dr. Spencer**
23 **and Henderson conducted this analysis on behalf of**
24 **the board?**

25 A Yes, that's correct.

1 Q Did they also analyze the IP addresses
2 identified by the Board of Governors?

3 A They did, but only two were the same where
4 we identified issues. And then we had, as you can
5 see, one other one that wasn't identified by the
6 Board of Governors that -- that we -- we decided had
7 enough evidence that it was likely computer
8 generated and not an actual student responding to
9 the survey.

10 Q And it says at the top that Doctors
11 Spencer and Henderson reviewed the date/time stamp
12 associated with each survey response.

13 A Yes.

14 Q Was the -- the date and time that somebody
15 responded to the survey part of the data that was
16 collected?

17 A Yes. That's part of the data you can look
18 at in SurveyMonkey.

19 Q And the IP address of the survey
20 respondent is another piece of data that's collected
21 on survey respondents, right?

22 A Yes.

23 Q Does it collect the provider of the IP
24 address?

25 A SurveyMonkey does not. SurveyMonkey does

1 provide you the IP address, but there are places on,
2 as you can see, on public -- publicly accessible
3 information on -- on the internet that you can --
4 you can put in an IP address and it will tell you
5 where it's from. It doesn't tell you a person or a
6 phone number or any of those kinds of things, but it
7 will tell you where it's from.

8 Q And then turning to the next page, you see
9 the paragraph that starts with "Second, certain
10 institutions..."?

11 A Yes.

12 Q And this is what we discussed earlier
13 about Broward and Santa Fe College sending the links
14 to folks who may still not have been at those
15 colleges?

16 A Yes.

17 Q Did the board consider rerunning the
18 survey at those colleges?

19 A We did not.

20 Q Did the board reopen the survey at any of
21 its colleges?

22 A No.

23 MR. HANCOCK: Those are all the questions
24 I want to ask at this time.

25 MR. MOORE: All right. I have no

1 questions. Thank you for your time.

2 MR. HANCOCK: So I will put on the record
3 that there were improper instructions and
4 preparation issues, so we are going to leave
5 the deposition open.

6 MR. MOORE: Do what you want. I do not
7 agree to leaving it open.

8 MR. HANCOCK: Understood.

9 THE VIDEOGRAPHER: Before we go off
10 record, I do need to refer to counsel.

11 Would either one of you be ordering a
12 video today?

13 MS. FROST: We will be, yes.

14 THE VIDEOGRAPHER: Okay. Do you want that
15 synced?

16 MS. FROST: So remind me what "synced"
17 means.

18 THE VIDEOGRAPHER: So it just means it's
19 synced to the transcript, kind of like
20 subtitles.

21 MS. FROST: Yes.

22 THE VIDEOGRAPHER: And for you?

23 MR. MOORE: We will not need a video.

24 THE VIDEOGRAPHER: Okay. And then
25 transcript orders?

1 MS. FROST: Yes. We'll need a rough as
2 fast as possible, and then I think we are going
3 to expedite it. Okay?

4 THE VIDEOGRAPHER: The video as well or
5 just the transcript?

6 MS. FROST: Just the transcript.

7 THE VIDEOGRAPHER: Perfect. If we all
8 agree, I can go ahead and conclude. All right.

9 This concludes today's deposition of
10 Kathryn Hebda, a corporate representative of
11 the Florida Board of Education. We are now
12 going off record at 18:20 p.m.

13 (Proceedings concluded at 6:21 p.m.)

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CERTIFICATE OF OATH

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STATE OF FLORIDA)
COUNTY OF LEON)

I, the undersigned authority, certify that
KATHRYN SCHNEIDER HEBDA personally appeared before
me on August 18, 2022, and was duly sworn.

SIGNED AND SEALED on August 20th, 2022.



SANDRA L. NARGIZ
RPR, RMR, CRR, CRC, CCR-GA
snargiz@comcast.net
Commission #HH239213
EXPIRES: APRIL 18TH, 2026

CERTIFICATE OF REPORTER

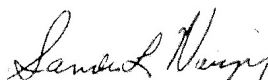
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STATE OF FLORIDA)
COUNTY OF LEON)

I, SANDRA L. NARGIZ, Registered
Professional Reporter, certify that I was authorized
to and did stenographically report the deposition of
KATHRYN SCHNEIDER HEBDA, as representative person
designated by the Florida Board of Education; that a
review of the transcript was requested, and that the
foregoing transcript, pages 1 through 312, is a true
record of my stenographic notes.

I further certify that I am not a
relative, employee, attorney or counsel of any of
the parties, nor am I a relative or employee of any
of the parties' attorney or counsel connected with
the action, nor am I financially interested in the
action.

DATED on August 20th, 2022.



SANDRA L. NARGIZ
RPR, RMR, CRR, CRC, CCR-GA
Notary Public in Florida
snargiz@comcast.net

1 August 20th, 2022

2 KATHRYN SCHNEIDER HEBDA, as representative person
3 designated by the Florida Board of Education
4 c/o J. TIM MOORE, ESQUIRE
tim.moore@gray-robinson.com

5 RE: Link vs. Diaz, et al.
6 Case No. 4:21cv271-MW/MAF

7 Dear Ms. Hebda:

8 Please take notice that on August 18, 2022, you gave
9 your deposition in the above cause. At that time
you did not waive your signature.

10 The above-addressed attorney has ordered a copy of
11 the transcript and will make arrangements with you
to read their copy. Please execute the Errata
12 Sheet, which can be found at the back of the
transcript, and have it returned to us at
13 production@phippsreporting.com for distribution to
all parties.

14 If you do not read and sign the transcript within
thirty (30) days, the original, which has already
15 been forwarded to the ordering attorney, may be
filed with the Clerk of the Court.

16 If you wish to waive your signature now, please sign
17 your name to the blank at the bottom of this letter
and return to the address listed below.

18 Very truly yours,

19
20 Sandra L. Nargiz, RPR, RMR, CRR, CRC, CCR-GA
Phipps Reporting, Inc.
21 1551 Forum Place, Suite 200-E
West Palm Beach, Florida 33401

22 I do hereby waive my signature.

23
24 _____
KATHRYN SCHNEIDER HEBDA
Job No. 263783

25

1 ERRATA SHEET

2 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

3 In Re: Link vs. Diaz, et al.
4 Case No.: 4:21cv271-MW/MAF
5 KATHRYN SCHNEIDER HEBDA, as
6 representative person designated by the Florida
7 Board of Education

8 August 18, 2022

7	PAGE	LINE	CHANGE	REASON
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20 Under penalties of perjury, I declare that I have
21 read the foregoing transcript of the above
22 proceeding and I hereby swear that my testimony
23 therein was true at the time it was given and is now
24 true and correct, including any corrections and/or
25 amendments listed above.

23 Signature of Witness: _____
24 Dated this ____ day of _____, 2022.
25 email to: production@phippsreporting.com
Job No. 263783

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