

EXHIBIT 33

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

STATE OF TEXAS , et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:14-cv-00254
)	
UNITED STATES OF AMERICA , et al.,)	
)	
Defendants)	

DECLARATION OF FINIS WELCH, Ph.D.

My name is Finis Welch, and I am over the age of 18 and fully competent in all respects to make this declaration. I have personal knowledge and expertise of the matters herein stated.

Qualifications

1. I am Distinguished Professor Emeritus of Economics at Texas A&M University and Professor Emeritus of Economics at University of California, Los Angeles. I am president of Welch Consulting, a firm that provides expert services in economics and statistics to the legal community, as well as general consulting in economics and statistics. I also serve as chair of StataCorp LP.

2. I received training in statistics and economics at the University of Chicago, where I earned a Ph.D. in Economics in 1966. I have taught at several universities including Texas A&M University, the University of California, Los Angeles, the City University of New York, Yale University, Southern Methodist

University, and the University of Chicago. I have served on the research staff of the National Bureau of Economic Research (NBER) and of the Rand Corporation. At NBER I directed the Program on the Distribution of Income, and at Rand I founded and directed the Labor and Population Studies Program. I have also served on the board of a number of peer-reviewed journals, including the *Journal of Labor Economics* and *The American Economic Review*. I have also served on numerous panels and committees, including chairing the United States Commission on Civil Rights' Advisory Committee on the Status of Women and Minorities and serving as a labor economist on the National Research Council's Committee on Demographic and Economic Impacts of Immigration.

3. Among elected honorary positions, I am a Fellow of the Econometric Society, a member of the American Academy for the Advancement of Science, a member of the National Academy of Education, a Fellow of the Society of Labor Economists and a member of the National Academy of Social Insurance. My research is published in a number of leading, peer-reviewed professional economics journals as well as conference volumes. I am past Vice President of the American Economics Association and past President of the Society of Labor Economists.

4. I have been qualified as an expert in statistics and in economics in both Federal and State courts and have testified on numerous occasions in Federal and State courts.

5. Attached to this declaration are true and correct copies of the following documents:

- Appendix 1 includes my curriculum vitae and lists my publications in the last ten years.
- Appendix 2 sets forth the cases in which I have testified in deposition or at trial during the last four years.

Scope of Inquiry

6. I have been retained in this case by the Office of the Attorney General of Texas to examine the potential economic impact on the labor market of the interaction between the Department of Homeland Security Memorandum dated November 20, 2014 (“DHS Memorandum”)¹ and the employer mandate provisions in the Affordable Care Act (“ACA”).

7. My billing rate for this matter is \$500 per hour.

Background on Affordable Care Act and the DHS Memorandum

8. It is my understanding that the DHS Memorandum will expand the number of undocumented immigrants who will be eligible to receive an Employment Authorization Document (“EAD”) by an estimated 4 million individuals nationwide, but these individuals newly authorized to work will not be eligible for the premium subsidies provided by the ACA.²

¹ The DHS Memorandum regards the exercise of “prosecutorial discretion” for certain undocumented immigrants. The subject of the DHS Memorandum, prepared by Jeh Charles Johnson, Secretary of the U.S. Department of Homeland Security, is “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who are the Parents of U.S. Citizens or Permanent Residents.”

² Memorandum Opinion for the Secretary of Homeland Security, from Karl R. Thompson, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present*

9. The Congressional Budget Office and the Joint Committee on Taxation in March 2012 estimated the impact of the ACA on nonelderly workers and their families who were projected to receive employment-based coverage in 2016 *in the absence of the ACA*. The resulting estimates are that 64 million of these individuals will be eligible for subsidies in the exchanges under the ACA.³

10. Beginning with the 2015 plan year, the ACA mandates that employers with 100 or more full-time employees offer health insurance that provides “minimum value” and is “affordable” to their full-time employees. Starting with the 2016 plan year, this mandate expands to employers with 50 or more full-time employees.⁴

11. To my knowledge, “minimum value” requires that health insurance pay at least 60% of the cost of covered services for employees and their children up to age 26. The ACA does not require the employer to pay the entire cost of this coverage, but the mandate to be “affordable” requires the cost to the employee for this coverage be no more than 9.5% of the employee’s income.⁵

12. An employer offering coverage that does not provide “minimum value” or is not “affordable” will owe a penalty under the ACA if any of its employees

in the United States and to Defer Removal of Others at 30 (Nov. 19, 2014); 45 C.F.R. § 152.2(8).

³ Congressional Budget Office, *CBO and JCT’s Estimates of the Effects of the Affordable Care Act on the Number of People Obtaining Employment-Based Health Insurance* at 12-14 (Mar. 2012), available at http://www.cbo.gov/sites/default/files/03-15-ACA_and_Insurance_2.pdf.

⁴ Cigna, Employer Mandate Fact Sheet at 1 (Dec. 2014), available at <http://www.cigna.com/assets/docs/about-cigna/informed-on-reform/employer-mandate-fact-sheet.pdf>.

⁵ Cigna, Employer Mandate Fact Sheet, *supra*, at 1-2.

purchases coverage on the insurance exchange *and receives a premium subsidy*. It is my understanding that this penalty is the lesser of a) \$2,000 per year per employee after the first 30 employees, or b) \$3,000 per year per employee receiving a premium subsidy.⁶

13. Because this penalty is not a deductible expense for the employer from federal (and possibly state) income taxes,⁷ the before-tax penalty amount, which would be compared to the wage, is even larger.⁸

Interaction of DHS Memorandum and ACA on Labor Market

14. The interaction of the DHS Memorandum and the ACA will impact employment and wages in the labor market.⁹

15. Consider an employer facing this penalty that is considering hiring one of two prospective employees. These two employees are equally productive and are the same in all relevant aspects to this employer, except that applicant A is a U.S. citizen and applicant B has a new EAD issued pursuant to the DHS Memorandum.

16. Assume applicants A and B are relatively low skilled, so that the cost to the employee of the coverage offered by this employer exceeds 9.5% of the wage

⁶ Edward A. Morse, *Lifting the Fog: Navigating Penalties in the Affordable Care Act*, 46 CREIGHTON L. REV. 207, 221-22 (2013); Cigna, Employer Mandate Fact Sheet, *supra*, at 1. For the \$3,000 penalty to apply, the employer must have less than a minimum of 26.6% of its employees receiving a premium subsidy. This cutoff % rises with the number of employees—to 46.6% for an employer with 100 total employees and to a maximum of 66.6% (the cutoff % equals $2/3 - 20/\#$ employees).

⁷ Morse, *supra*, at 223.

⁸ For an employer facing a 35% federal corporate income tax rate and the \$3,000 penalty, the equivalent annual before-tax amount is at least \$4,615.38.

⁹ As an example, for the employer in footnote 8, the penalty would increase the relative annual cost of employing a worker 30 hours per week at the federal minimum wage who receives a premium subsidy by more than 40%.

that would be offered to them. Also assume that this employer expects less than 25% of its employees to obtain a premium subsidy.

17. In this scenario, the employer would expect applicant A to be more expensive to employ than applicant B because of the interaction of the ACA penalties described above and the DHS Memorandum. There is an extra cost of \$3,000 per year (plus the tax impact noted above) from hiring applicant A, if applicant A will receive a premium subsidy. In contrast, hiring applicant B entails no extra cost because applicant B is not eligible for a premium subsidy.

18. An employer subject to the ACA penalties described above that is operating to minimize its expected cost of operations will hire applicant B instead of applicant A. Applicant A, therefore, will take longer to find employment and the resulting employment is more likely to occur at a lower wage.

19. Depending on the employee cost of insurance, the incentive to hire applicant B can occur at a range of wage levels, as illustrated in the following two examples.

Example 1

20. In addition to the above facts, suppose that applicants A and B would be paid the federal minimum wage of \$7.25 per hour. Assuming 30 hours per week (the definition of full time in the ACA), a monthly employee cost of \$89.54 or greater ($\$7.25 \times 130 \text{ hours} \times 9.5\%$) would make the employer-provided coverage not “affordable” and would make applicant A eligible for the premium subsidy and

potentially trigger the extra \$3,000 per year cost (plus the tax impact) from hiring applicant A.¹⁰ There is no extra cost from hiring applicant B.

21. As a result, the employer will hire applicant B instead of applicant A if the employer is operating to minimize its expected cost of operations.

Example 2

22. As an alternative, suppose that applicants A and B would be paid \$30,000 per year (about twice the federal minimum wage for 40 hours per week).¹¹ A monthly employee cost for employee and dependent coverage in excess of \$237.50 ($9.5\% \times \$30,000/12$) would not be “affordable” and would make applicant A eligible for the premium subsidy and potentially trigger the extra \$3,000 per year cost (plus the tax impact) from hiring applicant A. Again, there is no extra cost from hiring applicant B.

23. Similar to the previous example, the employer in this example would be expected to hire applicant B instead of applicant A in an effort to minimize costs.

Conclusion

24. The interaction of the DHS Memorandum and the mandate provisions of the ACA gives employers a financial incentive to hire an undocumented

¹⁰ At 40 hours per week, the monthly employee cost would have to be no more than \$119.38 to be “affordable.”

¹¹ Using 35 hours per week instead of the ACA limit of 30 to define full-time, the U.S. Census Bureau reports that more than 26.4 million persons were employed full-time and full-year in 2013 with annual earnings below \$30,000. U.S. Census Bureau, *Current Population Survey, 2014 Annual Social and Economic Supplement* at Table PINC-10, available at http://www.census.gov/hhes/www/cpstables/032014/perinc/pinc10_000.htm.

immigrant who is newly authorized to work instead of an identically skilled citizen in certain instances.

25. Based on my knowledge and expertise in labor economics, it is my expert opinion that as a result of the interaction between the DHS Memorandum and the ACA, there will be relatively less hiring of U.S. citizens and relatively lower wages on average for those who are hired. The interplay between the DHS Memorandum and the ACA makes some U.S. citizens more expensive to hire than equally productive undocumented workers.

26. This result will have adverse consequences for certain U.S. citizens because some employers will find it financially advantageous to hire an undocumented immigrant who is authorized to work in the U.S. instead of an equally productive U.S. citizen.

27. All of the facts and information contained within this declaration are within my personal knowledge and are true and correct to the best of my knowledge.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of January, 2015.


FINIS WELCH

Appendix 1



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EDUCATION

Ph.D., Economics
University of Chicago
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1966

B.S., Mathematics and
Agricultural Economics
University of Houston
Houston, Texas
1961

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Dr. Welch founded Welch Consulting and continues as its president. He received his Ph.D. in Economics from the University of Chicago and has taught economics for an academic career that spanned 40 years. During that time he taught, in chronological order, at the University of Chicago, Southern Methodist University, Yale University, the City University of New York -- where he served as Executive Officer of the Ph.D. Program in Economics -- the University of California, Los Angeles (UCLA) and Texas A&M University.

Currently Dr. Welch is Professor Emeritus of Economics, UCLA, and Emeritus Distinguished Professor of Economics, Texas A&M. He has published over 100 articles in professional journals, monographs and books. He has served on the editorial boards of several professional journals including the *American Economic Review* and the *Journal of Labor Economics*.

Dr. Welch is a member of the National Academy of Social Insurance, a fellow of the American Academy for the Advancement of Science, a fellow of the Econometric Society and a fellow of the Society of Labor Economists. He is past vice president of the American Economic Association and past vice president and president of the Society of Labor Economists. Dr. Welch received the Jacob Mincer Career Achievement Award from the international Society of Labor Economics.

Dr. Welch began working in litigation in the early 1970s and has testified many times in Federal and State Courts as well as before Congressional Committees and regulatory bodies.

AWARDS AND HONORARY POSITIONS

Society of Labor Economists Jacob Mincer Award for Lifetime Contributions to the Field of Labor Economics, 2007.

Presenter, Richard T. Ely Lecture, Plenary Session of the Meetings of the American Economic Association, 1999.

Fellow of the American Academy of Arts and Sciences, 1990.

Fellow of the Econometric Society, 1980.

Vice-President, American Economic Association, 2002.

President, Society of Labor Economists, 2003-04.

Fellow of the Society of Labor Economists, 2003.

Member of the National Academy of Social Insurance, 1990.

Member of the National Academy of Education, 1983.



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PROFESSIONAL EXPERIENCE

Professor of Economics
Texas A&M University,
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1991-2003

Professor of Economics
University of California
Los Angeles, California
1973-1991

Director, Labor & Population
Studies Program, RAND Corporation
Santa Monica, California
1973-1978

Senior Economist, RAND
Santa Monica, California
1973-1978

Professor and Executive Officer
Ph.D. Program in Economics
City University of New York
1971-1973

Research Associate
National Bureau of Economic Research
New York, New York
1970-1976

Faculty Fellow
National Bureau of Economic Research
New York, New York
1969-1970

Assistant and Associate
Professor of Economics
Southern Methodist University
Dallas, Texas
1966-1970

Assistant Professor of Economics
University of Chicago
Chicago, Illinois
1964-66

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COMMITTEES, ETC.

Honors and Awards Committee, American Economic Association, Member 1996-97;
Chair, 1997-99.

Committee on Demographic and Economic Impacts of Immigration,
National Research Council, 1995-96.

Panel on the Future of Income Security and Health Care Financing for the
Advisory Council on Social Security, 1991.

Technical Panel of Experts for the Advisory Council on Social Security, 1989-90.

Chairman, U.S. Commission on Civil Rights Advisory Committee
on the status of women and minorities, 1984-86.

Grants Review Panel for Economics, National Science Foundation, 1980-81.

Various Grant Review Panels, National Institute of Health, 1992-Present.

Board of Directors of the Social Science Research Council, 1979-82.

Chairman, American Enterprise Institute Advisory Committee on Minimum Wage Studies,
1978-81.

Program Chairman, North American Meetings of the Econometric Society, 1978.

Commission on Human Resources, National Research Council, National Academy of
Sciences, 1974-77.

CURRENT POSITIONS

Distinguished Professor Emeritus of Economics, TAMU.

Professor Emeritus of Economics, UCLA.

President, Welch Consulting.

Chairman, Unicon Research Corporation.

Chairman, StataCorp LP.

PUBLICATIONS

Handbook of the Economics of Education, edited by E. Hanushek and F. Welch. North Holland
(2006).

"Using Wages to Infer School Quality," with Robert Speakman. In Handbook of the Economics of
Education, edited by E. Hanushek and F. Welch. North Holland (2006):813-864.

"Has School Desegregation Improved Academic and Economic Outcomes for Blacks?" with
Steven Rivkin. In Handbook of the Economics of Education, edited by E. Hanushek and F. Welch.
North Holland (2006):1019-1049.



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"Employment Quotas for Minorities." *Journal of Political Economy* 84, no. 4 (August 1976):S105-S139. Reprinted in *The Economics of Affirmative Action*, Vol. 176, *The International Library of Critical Writing in Economics*, edited by H. Holzer and D. Neumark. London. Edward Elgar Publishing Ltd. (2004):3-38.

"Affirmative Action and Labor Markets," with James P. Smith. *Journal of Labor Economics* 2, no. 2 (April 1984):269-301. Reprinted in *The Economics of Affirmative Action*, Vol. 176, *The International Library of Critical Writing in Economics*, edited by H. Holzer and D. Neumark. London. Edward Elgar Publishing Ltd. (2004):188-220.

"Black Economic Progress After Myrdal," with James P. Smith. *Journal of Economic Literature* 27, no.2 (June 1989):519-564. Reprinted in *Labor Economics*, edited by O. Ashenfelter and K. Hallock. Edward Elgar Publishing Ltd (1994):139-184. Reprinted in *The Economics of Schooling and School Quality*, Vol. 1: *Labor Markets, Distribution, and Growth*, edited by E. A. Hanushek. London: Edward Elgar Publishing Ltd. (2003).

"Education in Production." *Journal of Political Economy* 78, no. 1 (January 1970):35-59. Reprinted in *Economic Demography*, edited by T. P. Schultz. Edward Elgar Publishing Ltd (1998):21-45. Reprinted in *The Economics of Schooling and School Quality*, Vol. 1: *Labor Markets, Distribution*, edited by E. A. Hanushek. London: Edward Elgar Publishing Ltd. (2003).

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"Catching Up: Wages of Black Men." *The American Economic Review* 93, no. 2 (May 2003):320-325.

"The Obsolescence of Skill," with Manuelita Ureta. In *The Economics of Skills Obsolescence: Theoretical Innovations and Empirical Applications*, edited by A. De Grip, J. Van Loo and K. Mayhew. Elsevier Science Ltd. (2002):51-81.

"Inequality, Incentives, and Opportunity," with Donald Deere. In *Should Differences in Income and Wealth Matter?* edited by E. F. Paul, F. D. Miller, Jr. and J. Paul. Cambridge University Press (2002):84-109. *Social Philosophy & Policy* 19, no. 1 (Winter 2002):84-109.

"Half Full or Half Empty? The Changing Economic Status of African Americans," in *Beyond the Color Line: New Perspectives on Race and Ethnicity in America*, edited by A. Thernstrom and S. Thernstrom. Hoover Institution Press and Manhattan Institute (2002):181-200.

"Industrial Change and the Demand for Skill," with Kevin Murphy. In *The Causes and Consequences of Increasing Inequality*, edited by F. Welch. University of Chicago Press (2001):263-284.



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"Wage Differentials in the 1990s: Is the Glass Half-full or Half-empty," with Kevin Murphy. In The Causes and Consequences of Increasing Inequality, edited by F. Welch. University of Chicago Press (2001):341-364.

"Linear Synthesis of Skill Distributions." Journal of Human Resources (Summer 1969):311-329. Reprinted in The International Library of Critical Writing in Economics 124, Vol. II, Income Distribution, edited by M. Sattinger. Edward Elgar Publishing Ltd (2001):3-19.

"In Honor of Kevin M. Murphy: Winner of the John Bates Clark Medal." Journal of Economic Perspectives 14, no. 3 (Summer 2000):193-204.

"Growth in Women's Relative Wages and in Inequality Among Men: One Phenomenon or Two?" The American Economic Review 90, no. 2 (May 2000):444-449.

"In Defense of Inequality." The American Economic Review 89, no. 2 (May 1999):1-17.

"Perspectives on the Social Security Crisis and Proposed Solutions," with Kevin Murphy. The American Economic Review 88, no. 2 (May 1998):142-150.

"Measuring Educational Attainment: The Old and The New Census and BLS Taxonomies," with Manuelita Ureta. Economics of Education Review 17, no. 1 (1998):15-30.

"Effects of Cohort Size on Earnings: The Baby Boom Babies' Financial Bust." Journal of Political Economy, 87, no. 5, pt. 2 (October 1979):S65-S97. Reprinted in The Economics of Ageing, edited by J. Creedy. Edward Elgar Publishing Ltd (1995):228-60. Reprinted in Economic Demography, edited by T. P. Schultz. Edward Elgar Publishing Ltd (1998):303-35.

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"Wages and Participation." Journal of Labor Economics 15, no. 1 (January 1997):S77-S103.

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"Changes in the Structure of Wages," with Brooks Pierce. In *Improving America's Schools: The Role of Incentives*, edited by E. Hanushek and D. Jorgenson. National Academy Press. Washington, D.C. (1996):53-74.

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"Labor Force Behavior of Older Men in the U.S.A. - An Analysis of Recent Trends," with Franco Peracchi. *Statistica* 53, no. 3, (1995):407-427.

"Myth and Measurement: The New Economics of the Minimum Wage, A Review." *Industrial & Labor Relations Review* 48, no. 4 (July 1995):842-849.

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"Occupational Change and the Demand for Skill, 1940-1990," with Kevin Murphy. *The American Economic Review* (May 1993):122-126.

"Problems in Assessing Employment Discrimination," with Robert S. Follett and Michael P. Ward. *The American Economic Review* (May 1993):73-78.



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"Affirmative Action and Discrimination." In *The Question of Discrimination*, edited by S. Shulman and W. Darity, Jr. Middletown, CT: Wesleyan University Press (1989):153-189.

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PUBLICATIONS (continued)

New Evidence on School Desegregation, with Audrey Light. Prepared for the U.S. Commission on Civil Rights, Clearinghouse Publication 92. Washington, D.C.: U.S. Commission on Civil Rights, (December 1987).

"A Reconsideration of the Impact of School Desegregation Programs on Public School Enrollment of White Students, 1968-1976." *Sociology of Education* 60 (October 1987):215-221.

"Race and Poverty: A Forty-Year Record," with James P. Smith. *The American Economic Review* 77, no. 2 (May 1987):152-158.

"The Postservice Earnings of Military Retirees: Evidence from the U.S. Air Force," with George J. Borjas. *Research in Labor Economics* 8, no. A (1986):57-83.

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"Efficient Labor Contracts with Employment Risk," with Robert H. Topel. *RAND Journal of Economics* 17, no. 4 (Winter 1986):490-507.

"What Do We Really Know About Wages: The Importance of Non-reporting and Census Imputation," with James P. Smith and Lee Lillard. *Journal of Political Economy* 94, no. 3, pt. 1 (June 1986):489-506.

"Pay Equity and Comparable Worth," with John Raisian and Michael P. Ward. *Contemporary Policy Issues* 4, no. 2 (April 1986):5-20.

"Closing the Gap: Forty Years of Economic Progress for Blacks," with James P. Smith. Prepared for the U.S. Department of Labor, RAND Corporation, Santa Monica, CA, #R-3330-DOL (February 1986).

"The Labor Market Experiences of Young Men," with George J. Borjas and Richard Sousa. Unicon Research Corporation, Santa Monica, CA (May 1985).

"Affirmative Action in Employment: An Overview and Assessment of Effects." In *Selected Affirmative Action Topics in Employment and Business Set-Asides*. U.S. Commission on Civil Rights, 1 (1985).

"Comparable Worth: Issues, Evidence and Impact," with John Raisian and Michael P. Ward. Welch Associates, Santa Monica, CA (March 1985).

"Measuring the Impact of Education on Productivity," with Mark Plant. In *Education and Economic Productivity*, edited by E. Dean. Cambridge, MA: Ballinger Publishing Company, 1984:163-193.



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PUBLICATIONS (continued)

"Testing for Discrimination in Employment Practices," with Robert Follett. In *Law and Contemporary Problems* 46, no. 4 edited by D. W. Peterson. Durham: Duke University Press (Autumn 1983): 171-184.

"Earnings of Hispanic Men: The Role of English Language Proficiency," with Walter McManus and William Gould. *Journal of Labor Economics* 1, no. 2 (April 1983):101-130.

"Some Determinants of the Level and Racial Composition of Teenage Employment," with Nabeel A. Alsalam and Alene Quester. In *The Economics of Legal Minimum Wages*, edited by S. Rottenberg. Washington, D.C.: American Enterprise Institute (1981):124-154.

"Affirmative Action and Its Enforcement." *The American Economic Review* 71, no. 2 (May 1981): 127-133.

"No Time to Be Young: Economic Prospects for Large Cohorts in the United States," with James P. Smith. *Population and Development Review* 7, no. 1 (March 1981):71-83.

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Appendix 2

List of Finis Welch's Depositions and Testimonies in the Past Four Years

Ewell E. Parker, Jr. v. Outdoor Channel Holdings, Inc., et al.

Deposition: 11/13/12

Case No. 2-11CV-159-J

In the United States District Court for the Northern District of Texas, Amarillo Division