

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, )  
et al., )

Plaintiffs, )

v. )

TODD ROKITA, et al., )

Defendants, )

No. 1:05-CV-00634 SEB-VSS

\_\_\_\_\_) )  
WILLIAM CRAWFORD, et al., )

Plaintiffs, )

v. )

MARION COUNTY ELECTION BOARD, )

Defendant, )

and )

STATE OF INDIANA, )

Intervenor. )

**DESIGNATION OF ADDITIONAL EVIDENCE  
IN SUPPORT OF STATE DEFENDANTS' REPLY MEMORANDUM  
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Defendant Todd Rokita, in his official capacity as Indiana Secretary of State,  
Defendants J. Bradley King and Kristi Robertson, in their official capacities as Co-  
Directors of the Indiana Election Division, and Intervenor-Defendant the State of Indiana

(“State Defendants”) respectfully designate the following additional evidence in support of their Reply Memorandum in Support of their Motion for Summary Judgment:

1. Pages 34, 35, and 95 from the Deposition of Kimball Brace, attached.

(The deposition of Kimball Brace was designated as Exhibit No. 80 in the State Defendants’ Appendix to their Memorandum in Support of their Motion for Summary Judgment, pages 1-4, 8, 9, 31, 69-73, 84-88, 96-98 were previously provided to the court. The additional evidence is cited in the State Defendants’ Reply Memorandum as Exhibit No. 80 and its corresponding page number.)

Respectfully submitted,

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Attorney General of the State of Indiana

/s/ Doug Webber

DOUG WEBBER  
Deputy Attorney General

THOMAS M. FISHER  
Solicitor General

JULIE A. HOFFMAN  
Deputy Attorney General

*Attorneys for State Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2006, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system:

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1                   IN THE UNITED STATES DISTRICT COURT  
2                               SOUTHERN DISTRICT OF INDIANA  
3                                       INDIANAPOLIS DIVISION  
4                   - - - - - X  
5                   INDIANA DEMOCRATIC PARTY,               :  
6                   et al.,                                       :  
7                                       Plaintiffs,                       :  
8                                       v.                                       :  
9                   TODD ROKITA, et al.,                       :  
10                                       Defendants,                       :  
11                   - - - - - X   No. 1:05-CV-00634  
12                   WILLIAM CRAWFORD, et al.,               :  
13                                       Plaintiffs,                       :  
14                                       v.                                       :  
15                   MARION COUNTY ELECTION BOARD,               :  
16                                       Defendant,                       :  
17                                       and                                       :  
18                   STATE OF INDIANA,                       :  
19                                       Intervenor.                       :  
20                   - - - - - X  
21                                       Washington, D.C.  
22                                       Friday, November 11, 2005

23                                       Deposition of KIMBALL W. BRACE, called  
24                   for examination by counsel for the  
25                   Intervenor-Defendant, State of Indiana, in the  
above-entitled matter, pursuant to notice, the witness  
being duly sworn by CARLA L. ANDREWS, a Notary Public  
in and for the District of Columbia, taken at the  
offices of Jones, Kay, 51 Louisiana Avenue, N.W.,  
Washington, D.C. 20001, at 9:47 a.m., Friday,  
November 11, 2005, and the proceedings being taken down  
by Stenotype by CARLA L. ANDREWS and transcribed under  
her direction.

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1   APPEARANCES:  
2   On behalf of the Plaintiff:  
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16  
17  
18  
19  
20

13 Q And then the second -- there is a second  
14 part, though, to your analysis or your report and that  
15 has to do -- then it takes those non-matches and  
16 applies the 2000 census data to determine the median  
17 household income about educational level of the  
18 non-matches; is that correct?

19 A It actually looks at both the matches and the  
20 non-matches.

21 Q All right. I guess, though, in your  
22 conclusions where you go to is that you are trying to  
23 get to the number of non-matches in that are -- the  
24 ratio of non-matches in the different household median  
25 income levels and the ratio -- versus the ratio, no. I

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1 garbled that up.

2 Madam Reporter, I will start again. The  
3 reason I said non-matches is because the comparison  
4 ultimately that you make, both in education and in  
5 median household income, is the lower-income bracket to  
6 the higher-income bracket and the lower educational  
7 bracket to the higher educational bracket; isn't that  
8 correct?

9 A That's correct.

10 Q Did you attempt to establish if there was any  
11 racial impact to the passage of the new voter ID law in  
12 Indiana?

13 A As part of the calculation and part of the  
14 programming, we did look at the racial data, also.

15 Q There was no specific racial category,  
16 though, in your report. Why wasn't there?

17 A Basically, we could not conclude one way or  
18 the other in terms of the distinction in terms of  
19 racial categories.

20 Q When you say you cannot conclude one way or  
21 the other whether or not -- let me make sure that I can  
22 phrase this correctly. You couldn't conclude whether  
23 or not race played a role in whether -- in the amount  
24 of unmatched names?

25 A I don't know that we were necessarily looking

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1 at whether or not race placed a role. What we were  
2 interested in is whether or not -- if you look at the  
3 various racial categorizations that are in the census,  
4 whether the unmatched are more predominantly one race  
5 or another race.

6 Q Okay. That's said much better. I should  
7 have just asked you the question what you meant by  
8 that. Did you look at any other criteria during the  
9 course of the research or in the preparation for your  
10 report?

11 A No. Well, we did look at -- and I think it  
12 is in the report. We looked at active versus  
13 inactive. I am sorry. So we did look at that.

14 Q But active versus inactive is just -- as I  
15 understand it, it is a categorization or notation of  
16 the Marion County registration list required by NVRA;  
17 is that right?

18 A Yes, that's correct.

19 Q I guess what I meant by criteria -- and I  
20 don't know if that's the right word. You are looking  
21 at median household income. You did look at race and  
22 you did look at education?

23 A That's correct.

24 Q That's what I meant by criteria. Did you  
25 look at any other of those -- maybe characteristics is  
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1 a better word?

2 A No, we did not.

3 Q Why did you limit your report to Marion  
4 County, Indiana? I mean, your registration list. I  
5 didn't mean to say your report.

6 A It was the ease of getting that file. We  
7 initially inquired of whether or not we could get out  
8 92 county files. And it was going to be very difficult  
9 to gather that. It was also -- would also be much more  
10 expensive because at this point in time you are dealing  
11 with probably 92 different file formats. And having to  
12 try to merge all of that data together into a common  
13 database is a monumental task that. That task is  
14 currently being performed by Quest in the State of  
15 Indiana on behalf of the State Election Board as part  
16 of their contract to put together the statewide voter  
17 registration filed called for under HAVA.

18 Q Are you aware that Marion County contains the  
19 City of Indianapolis, which is the larger urban area in  
20 Indiana?

21 A Yes.

22 Q Isn't it true that a large urban area with a  
23 Metro bus system is more likely to have a greater  
24 number of non-matches than other counties of Indiana  
25 that are more rural?

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1 A I believe I said that in my report that that  
2 is likely the case. And I acknowledge that.

3 Q So you would agree, then, that a sampling of  
4 other Indiana counties would have given you a more  
5 accurate depiction of the statewide percentage of  
6 non-matches?

7 A No, I wouldn't necessarily say more  
8 accurate. I think what it did give me is a clue at  
9 least as it relates to Marion County what is happening  
10 there. And after all, that is a significant portion of  
11 the state. And it gives us a good clue of what's  
12 taking place.

13 Q I know this isn't a trial cross-examination,  
14 Mr. Brace, and so I always try to be very civil at  
15 depositions. But let me see if I -- with that answer,  
16 though, it provides a good clue. But the reality is  
17 that a sampling of any other county would give a more  
18 accurate depiction of the percentage of non-matches in  
19 Indiana; isn't that correct?

20 A It would give additional pieces of  
21 information. Certainly, if we had all the files, I  
22 would have run -- as I had said already, I initially

23 quote, Lower-income individuals are more than twice as  
24 likely to be without a drivers' license or ID as  
25 compared to upper income voters, what is that

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1 conclusion, then, based on?

2 A It is based on the tables that we were  
3 looking at before.

4 Q All right. When you look at those tables,  
5 though, they are block evaluations; isn't that  
6 correct? I mean, they are based on census information,  
7 which is blocked?

8 A That's correct.

9 Q When you sit here and say -- referring to  
10 Table D, and you say, Median income of less than  
11 15,000. Now, I know that you know your census  
12 information a lot better than I do. But doesn't that  
13 mean a guy could be making 5,000 in that census block  
14 or he could be making 2499 in that census block?

15 A Well, the median income numbers that the  
16 Census Bureau reports are simply that. It is the  
17 median. Yes, there is some range to that.

18 Q As a matter of fact, in that median block --  
19 let's go farther with that. A guy could be making  
20 \$72,000, couldn't he?

21 A It is conceivable.

22 Q And he might be one of the 13.1?

23 A That could be possible, too. All we are  
24 saying is that the individuals that don't have drivers'  
25 license or ID's live in these areas that have the

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1 following characteristics. That's all we are saying.

2 MR. WEBBER: All right. Can we take another  
3 break. It is almost one o'clock. Go off the record.

4 (A recess was held.)

5 BY MR. WEBBER:

6 Q Let's go back on the record, please.

7 Mr. Brace, it is my understanding that the 2000 census  
8 data provided the basis for your analysis of the new  
9 Indiana voter identification on lower income and less  
10 educated voters; is that correct?

11 A Yes, that's correct.

12 Q Break down for me the size of the block group  
13 or census block. And I know those are different  
14 things. So do you want to define what those are?  
15 Isn't there a difference between those two?

16 A Yes, there is.

17 Q And I don't remember what it is, so if you  
18 would say it.

19 A Okay. Starting from the lowest, the  
20 smallest, that is a census block. That is generally at  
21 least three sides to a geographic area. And it may or  
22 may not have population. So, for example, where we are  
23 in this piece of property in this building this is a  
24 separate census block. I don't know if they recorded  
25 the guard that was here that day in the census or there

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1 is nobody listed in the census for this piece of