

**STATE'S
EXHIBIT NO. 80**

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

X	INDIANA DEMOCRATIC PARTY,	
:	et al.,	
:	Plaintiffs,	
:	v.	
:	TODD ROKITA, et al.,	
:	Defendants,	
X	No. 1:05-CV-00634	
:	WILLIAM CRAWFORD, et al.,	
:	Plaintiffs,	
:	v.	
:	MARION COUNTY ELECTION BOARD,	
:	Defendant,	
:	and	
:	STATE OF INDIANA,	
:	Intervenor.	
X		

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Washington, D.C. Friday, November 11, 2005

Deposition of KIMBALL W. BRACE, called

for examination by counsel for the

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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APPEARANCES:

On behalf of the Plaintiff:

GEOFFREY S. LOHMAN, ESQ.

Fillenwarth, Dennerline, Groth & Towe

1213 N. Arlington Avenue

Suite 204

Indianapolis, Indiana 46219

On behalf of the Defendants:

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Office of the Attorney General

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C-O-N-T-E-N-T-S

WITNESS EXAMINATION BY COUNSEL FOR

KIMBALL W. BRACE

INTERVENOR-DEFENDANT

By Mr. Webber

4, 121

EXAMINATION BY COUNSEL FOR

PLAINTIFF

By Mr. Lohman

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NO. IDENT.

Intevenor Defendant Exhibit No. 1, 6

Intevenor-Defendant Exhibit Nos. 2 through 4, 23

Intevenor-Defendant Exhibit No. 5, 27

P-R-O-C-E-E-D-I-N-G-S

Thereupon,

KIMBALL W. BRACE

was called as a witness and, after being duly sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE

INTERVENOR-DEFENDANT

BY MR. WEBBER:

Q Could you state your name, please, and spell

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A Yes. Kimball William Brace, B-r-a-c-e.

Q Mr. Brace, my name is Doug Webber. I

represent in this case the Defendant-Intervenor, State of Indiana. I am employed by the Attorney General

Steven Carter in the State of Indiana. And to the

extent that Indiana Election Division, Mr. King, and

Ms. Robertson remain as defendants and Mr. Rokita, as

Secretary of State, to the extent that they remain as

defendants in this case, although they have been

rendered in an inactive status by the judge to the

extent they remain in the case, I am representing them,

also.

If at any time you don't understand one of my

questions, please feel free to ask me to repeat it,

rephrase it. If at any time -- your lawyer here

1 providing the software to do the redistricting. We can
 2 assist in the drawing of districts, if that's asked by
 3 the clients. We can assist in the evaluation of
 4 districts, if that's desired. And then we get involved
 5 as an expert witness in court cases dealing with the
 6 results of redistricting. All of those kind of
 7 aspects.
 8 Q What percentage of your business does
 9 redistricting occupy?
 10 A It depends on what part of the decade you are
 11 talking about. In the beginnings and the tail ends of
 12 the decade, it is probably almost 100 percent. In the
 13 mid-part of the decades, it is next to 0 percent. And
 14 that's when we do a lot more on the election
 15 administration side of things.
 16 Q Do you use census data to do redistricting?
 17 A Yes.
 18 Q And do you do -- do you use voter
 19 registration data to do redistricting?
 20 A Usually in redistricting, you use counts of
 21 registered voters that you put into the database. We
 22 have beginning in 1990 used more voter file information
 23 if it is available in some component parts of
 24 redistricting. And so we have made use of voter files.
 25 Q I am not sure what you mean by voter files as

1 opposed to registration lists?

2 A There is no distinction between those two

3 terms that you are using. Registration counts are just
4 aggregate numbers of how many registered voters there

5 are in a precinct, not that Kim Brace is there or that

6 Geoff Lohman is there or yourself is there.

7 Registration lists and voter files are the individual

8 type of records dealing with the Kim Braces at this

9 address and in this precinct and may have this vote

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11 Q In your report, that is, for this case, in

12 state's Deposition Exhibit No. 1, you reviewed the

13 Marion County registration list; is that correct?

14 A That's correct.

15 Q Now, I guess my question is, I am trying to

16 determine is that the same type of registration list

17 that you have been familiar with in redistributing

18 cases?

19 A If we were using that component, yes. As I

20 said, we also do an awful lot with election

21 administration items. And one of the main things is

22 dealing with voter files and helping with statewide

23 voter registration systems.

24 Q I didn't mean to interrupt. But in the

25 redistributing, sometimes you use a voter registration

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A The hourly rates, yes, that's correct.

Q And what was the total billing to

Mr. Lohman's firm for your expert report in this case?

A Right now we have -- we haven't presented him

with a bill. As of yet, we have received one \$10,000

retainer to date. And we are about ready to send him a

bill of what time has been involved in this case.

Q Without holding you to getting involved in

your own billing discussions with Mr. Lohman's firm, is

that roughly going to the retainer or is your report

going to cost double that or do you anticipate that's

roughly the cost of the work that you did?

A Right now the bill that we have pulled

together just goes through October 31. So it does not

include the time, for example, from today and if there

is any additional court case testimony or that sort of

thing that might come down the road.

Q Then, again, throughout October 31. Would

roughly the \$10,000 be in the ballpark of what is going

to be owed?

A No.

Q Give me an idea what the ballpark figure

would be.

A Right now it looks to be about \$40,000. Can

I catch my client here?

Q And we will get to that. But your report,

taking it the way that you want to see it, not as a

sample, but only as a report matching those two lists

and impacting them with the geo-coding is for Marion

County only. And it is not, then, a survey to show the

impact of the law in the other 91 counties; is that

fair?

A Yes, that's correct.

Q When you found 141,000, under the stringent

requirement there were 76 percent of the matches. Is

that correct?

A Right.

Q And under your least stringent criteria,

there were 51,392 non-matches. And maybe you have the

percentage there. 8.42 percent; is that correct?

A 8.42, yes.

Q And that is kind of the loosest or I think we

have been saying loose or least stringent criteria.

What would be --- for this record, when you say least

stringent criteria, what does that mean?

A That means that it is very clear that it is

not a match, that nothing matches, that there is a kim

Bruce on one record and there is a Bruce Kimball on a

different record.

Q Can you read for me on line -- it looks like

1 X. Well, actually, the line we are referring to is

2 below X. So the line before that, you used a last name

3 then first name?

4 A And first name.

5 Q And no other characters to identify. So if

6 there is two Kimball Braces that, in fact, are two

7 different people -- one may have an ID and one may

8 not -- it wouldn't account for that?

9 A What it is saying here is that if we are only

10 looking at first name and last name we find that there

11 is about 10 percent of the file that would match on

12 just first name and last name even though they might be

13 in two different counties with two different valid

14 addresses with two different date of births or

15 whatever. But about 10 percent of the file would match

16 if you are only looking at first name, last name.

17 Q And the date of birth is not even involved at

18 that point?

19 A At that point, that's correct.

20 Q So that is -- the least stringent criteria

21 gives us the 51,392 non-matches; is that correct?

22 A That's correct.

23 Q And in your report you refer to 141,000?

24 A Right.

25 Q And where does that come from?

1 A That comes from the adding together of those
2 last three lines -- the 51,000, plus the 62,000, plus
3 the 26,000.
4 Q And you added those together because there
5 was -- why?
6 A Those are the ones where once you drop date
7 of birth, then you start having potentials that you
8 could be wrong in your matching.
9 Q I can't see the difference when I am looking
10 at the criteria what am I missing between lines 0 X
11 and S?
12 A Look on the further right. The summary of
13 criteria shows that 0 X includes a non-conflicting
14 middle name, while X is just last name, first name.
15 Q They don't care about the middle name. They
16 dropped the middle name?
17 A Right, they dropped them.
18 Q Can you tell the court today in this
19 deposition that to a reasonable degree of scientific
20 certainty that 141,000 registered voters in Marion
21 County do not have licenses or ID's?
22 A Based on our matching using this criteria,
23 that's what it would appear to be, yes.
24 Q You also, same chart, say that using the
25 least stringent criteria that would bring it down

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1 From -- what did I say -- 141,000 to 51,392?

2 A Right.

3 Q And I think we are talking about this earlier

4 on margin of error. But it seems to me that the

5 difference between the two is, what, 90,000 voters --

6 approximately 90,000 voters. Isn't that a significant

7 statistical difference?

8 A It has nothing to do with statistical

9 difference. It is simply a fact that if you -- if

10 you if you attempt to match two different files at

11 least 8.4 percent are not going to match. And because

12 most people use date of births in order to help

13 determine that a match takes place, it could be as much

14 as the 141,000 that don't match.

15 Q Do you know or did you find out the number of

16 names on the Marion County registration list that

17 belonged to deceased people?

18 A We did not do any kind of matching to a dead

19 person's file for a simplistic term. So, no, I don't

20 know how many might be dead.

21 Q Do you know the number of names on the Marion

22 County list that are no longer residents of Marion

23 County?

24 A I don't think Marion County knows that

25 necessarily. I do know that in the Marion County list

1 that approximately 17.9 percent of the file is coded as
 2 inactive. Now, whether or not those are people that
 3 have moved out of Marion County or are simply not
 4 responding to their mailing or it is getting -- it had
 5 been keypunched incorrectly and being sent to a wrong
 6 address, I don't know.

7 Q Do you have any scientific basis for not
 8 making a determination of the list inflation or -- and
 9 when I say list inflation, to try to take into account
 10 the number of people that are on the list who are
 11 either deceased or no longer residents of Marion
 12 County?

13 A I was not asked to undertake such an
 14 examination. We could -- the only things that we were
 15 looking at was what was on the Marion County file.
 16 And, as I said, there is a flag there on whether or not
 17 a voter is active or inactive. I note that while
 18 that's there on the county's file and I can calculate
 19 how many there are, I don't know what it is statewide.
 20 In our work with the Federal Elections
 21 Assistance Commission, the information that we receive
 22 from the state of Indiana, they did not give the EAC
 23 any data on how many inactive voters there are in the
 24 State of Indiana.

25 Q So, in short, there is no adjustment for

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1 population in 2004 -- I can get it.

2 A This is Marion?

3 Q Yes. It was 93.1 percent.

4 A Uh-huh.

5 Q Do you believe as an expert in elections, not

6 just election statistics, that the Marion County voting

7 age population has 93 percent of them are registered to

8 vote?

9 A No. I believe that there is some extra

10 there but I also know -- well, I don't know how he has

11 calculated the voting age population.

12 Q What is the nationwide average for voting

13 registration? You probably know that.

14 A Actually, we do. It is part of our study for

15 the FAC. But I don't remember that off the top of my

16 head. But it is available on the FAC's website as part

17 of the release of our study that was done on September

18 27 so it is there. And it is even broken down by

19 state. So you can take a look at Indiana.

20 Q And I am sure that you can make a guesstimate

21 for me. Is it in the 80's?

22 A I don't even remember. I don't know. I

23 didn't look at that as part of my review in preparation

24 for today. But it is there. We could look at it on

25 the web right now if you wanted to.

1 Q In your report, did you take into account the

2 potential that non-matched voters on the Marion County
3 list may have a federal ID?
4 A I don't have any information in terms of the

5 extent to which people have federal ID's.

6 Q You are aware that there are, other than

7 drivers' license and the BMV or state identification,
8 that the statute in Indiana will provide for other
9 types of ID's like military ID comes to mind, a

10 passport comes to mind, potentially some colleges if
11 they have an expiration date and a face and they are a
12 state university. But --

13 MR. LOHMAN: Off the record for a minute.

14 (Discussion was held off the record.)

15 BY MR. WEBBER:

16 Q Did you take any of those things into -- any
17 of those potential alternate identifications into
18 consideration in your report?

19 A No. I just noted that they are possible.

20 Q Isn't your report, State's Deposition Exhibit
21 1, really a snapshot in time of what you believe to be
22 the number of people on the list on the registration
23 list in Marion County that are not on the list of the
24 BMV as having ID or a driver's license?

25 A It is a snapshot in time.

1 Q The report you turned in that you submitted

2 in this case, it has nothing about voter turnout in it,

3 does it?

4 A That's correct.

5 Q So until there is an actual election and this

6 law is given a chance to be implemented, your report or

7 anyone, for that matter, can't predict, for example,

8 that whether people -- this percentage is 13.1

9 percent of people in the lesser income amount less than

10 15.000. Nobody knows it that 13.1 percent will -- how

11 they necessarily individually will react, do they?

12 A You mean whether or not they will vote?

13 Q No, whether they will go get an ID, for

14 starters. I mean, I take it that the state of Indiana

15 and most states will have education programs.

16 A We don't know that to be the case.

17 Q But what I am saying is just like we don't

18 know how good their education program is; we don't know

19 how many of those 13.1 are actually going to go get an

20 ID, do we?

21 A No. But we are saying that there are 13.1

22 percent in that low income or low education -- I forget

23 which one you are looking at.

24 Q That was income.

25 A Low-income level. There were 13 percent that

1 would have to go get an ID in order to be able to vote under Indiana's law.

2 Q If one of those voters -- I will stay with that 13.1 percent -- I am using that Table D just to make sure you know where it is at. And the last word says, BMW unmatched voters.

7 A Uh-huh.

8 Q Where the top less than 15,000 if you track that across all the way to the second to last column. There are 15,000 unmatched voters.

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11 A Uh-huh.

12 Q Who are unmatched --

13 A Right.

14 Q -- in that income bracket? So one of these voters may, in fact, choose to, if he chooses to get his ID even though he is unmatched right now, goes down to BMW and says, who he is? That changes the percentages and changes the numbers in the next -- our next election is May. So that would change the numbers before May, wouldn't it?

21 A It is possible. I would imagine before May you will also have new people that would be registering.

24 Q What if somebody --

25 A That do not have an ID, either.

1 Q Well, what if somebody has -- one of these

2 people on this 13.1 list chose to vote absentee. What

3 if they are not only poor but old. They are over 65,

4 so they are going to vote absentee. So they make

5 proper application. They get their absentee, and they

6 vote. You don't -- I think that that's -- somebody

7 talked about Marion County having 8 point --

8 MR. LOHMAN: Off the record for a minute.

9 BY MS. WEBBER:

10 Q Right? He says 8 percent in Marion County. So 10 percent is for the State of Indiana for

11 absentee. What accounting, if any, did you make for

12 absentee votes in your report?

13 A I didn't look at absentees. I was simply

14 looking at registration and whether or not they had a

15 driver's license or an ID.

16 Q Do you agree with me that if one of the 13.1

17 percent does vote absentee just like if he goes out and

18 gets his ID, that affects the bottom line of that

19 number?

20 A No. There is a whole bunch of different

21 scenarios that could change that number.

22 Q I am sorry. I didn't mean to argue with you.

23 But that's why I said this is more of a snapshot in

24 time that says what it says.

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

1 is nobody listed in the census for this piece of

2 geography. That's possible.

3 But census blocks are not determined by

4 population. They are determined by geography. So

5 census blocks could have zero population. It could

6 have 100 people. There is a census block in South

7 Carolina that has 10,000. It's a military base, but it

8 is one census block.

9 Q But it has three sides?

10 A At least three sides. [Case 1:05-cv-00634-SEB-VSS Document 87-16 Filed 12/01/2005 Page 20 of 21](#)

11 Q And the sides are geographic boundaries,

12 streets?

13 A Streets, railroads, streams, telephone lines,

14 those kind of things.

15 Q Natural breaks?

16 A Right. That's a census block.

17 Q And the difference being in a group?

18 A A block group is an area that generally the

19 Census Bureau looks at as a neighborhood. A census

20 block group tends to have roughly on average about a

21 thousand people. And it is generally looked at as a

22 neighborhood. They are defined by local geographers in

23 advance of census. Above a block group, there is what

24 is called a census tract, t-r-a-c-t. That was first

25 defined back in 1950, the 1950 census, and generally

1 averages about 4,000 in population.

2 Census tracts have were developed to be

3 consistent over each decennial census so that

4 demographers could have common territory over multiple

5 censuses to see what's happening with the population.

6 So tracts tend to stay the same. If they get too big,

7 then they could be broken into pieces. And that's why

8 a tract is a four-character number with a two-character

9 suffix. So you could track number 42 dot 01 and dot

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11 Q When you do like median household income, do

12 you do it by block group or census block or census

13 tract?

14 A Income and education data is provided to us

15 by the Census Bureau at a block group level. And then

16 the characteristics of all of the blocks within that

17 block group get the same characteristic.

18 Q So that's the concept of -- more like a

19 neighborhood concept with approximately 1,000 people?

20 A That's correct.

21 Q And that's where both median income and

22 educational level that you use, that's where they come

23 from that size of a --

24 A Geography, because they are part of what is

25 called the sample form done by the census. That's the