

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE OHIO ORGANIZING)
COLLABORATIVE, ET AL,)
)
PLAINTIFFS,) CASE NO. 2:15-CV-1802
)
vs.)
)
JON HUSTED, ET AL,)
)
DEFENDANTS.)
_____)

TRANSCRIPT OF THE BENCH TRIAL PROCEEDINGS - VOLUME II
BEFORE THE HONORABLE MICHAEL H. WATSON
TUESDAY, NOVEMBER 17, 2015; 9:00 A.M.
COLUMBUS, OHIO

FOR THE PLAINTIFFS:

Perkins Coie LLP
By: Bruce V. Spiva, Esq.
Amanda R. Callais, Esq.
Rhett P. Martin, Esq.
700 Thirteenth Street, N.W., Suite 600
Washington, District of Columbia 20005

Perkins Coie LLP
By: Joshua L. Kaul, Esq.
1 East Main Street, Suite 201
Madison, Wisconsin 53703

McTigue & McGinnis LLC
By: Donald J. McTigue, Esq.
545 East Town Street
Columbus, Ohio 43215

FOR THE DEFENDANTS:

Ohio Attorney General's Office
By: Steven T. Voigt, Esq.
Sarah E. Pierce, Esq.
Bridget C. Coontz, Esq.
Ryan L. Richardson, Esq.
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

- - -

Proceedings recorded by mechanical stenography, transcript
produced by computer.

LAHANA DUFOUR, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER
85 MARCONI BOULEVARD, ROOM 121
COLUMBUS, OHIO 43215
614-719-3286

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Tuesday Morning Session

November 17, 2015

- - -

THE COURT: Who's next?

MR. MARTIN: Good morning, Your Honor. We call Nick Martin to the stand.

THE COURT: Sir, if you'd approach and raise your right hand to be sworn.

(Witness sworn.)

THE COURT: Make yourself comfortable on the witness stand and state your name and spell it for the court reporter, please.

THE WITNESS: Nicholas Martin. N-I-C-H-O-L-A-S. Martin is M-A-R-T-I-N.

- - -

NICHOLAS MARTIN

Called as a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q. Good morning. Nick, where did you grow up?

A. I grew up in a suburb in the south of Cuyahoga County, Brecksville.

Q. And how big is Brecksville?

A. Smallish. It's a smallish suburb. About 15,000 people

1 or so.

2 Q. And where did you go to college?

3 A. Princeton University.

4 Q. And what did you study?

5 A. I studied public policy at the Woodrow Wilson School of
6 Public and International Affairs. It's the nerdier major
7 there.

8 Q. And when did you graduate?

9 A. 2003.

10 Q. Where do you live now?

11 A. Cleveland, Ohio.

12 Q. How long have you lived in Cleveland?

13 A. I moved back to Cleveland in about 2006.

14 Q. And when you moved back what were you doing?

15 A. When I moved back my first job was with the municipal
16 legislature, Cleveland City Council. I was a research aide to
17 the council president and one of my main duties there was I was
18 staffed to a vacant and abandoned property task force. In 2006
19 it was the front edge of the foreclosure crisis. Cleveland was
20 suffering it probably before many other parts of the nation.

21 So my duties included a lot of demographic analysis and
22 geospatial analysis of the blight and the abandoned properties
23 on the near east side of Cleveland.

24 Q. Okay. And how long were you with the Cleveland City
25 Council?

1 A. For just over two years.

2 Q. Okay. And then what did you do next after that?

3 A. In 2010 I was named the deputy targeting director for
4 the Ohio Democratic Party. In that position my role was a lot
5 of number crunching. I did both the demographic and geospatial
6 analysis. I built predictive models for turnout. I built
7 predictive models for early turnout. I supported basically
8 anything that the coordinated campaign did, needed, data
9 support. So I did a lot of that. Looking at the effectiveness
10 of GOTV efforts, registration efforts and different campaign
11 techniques. I led a data team that did daily acquisition of
12 early-vote data in the 88 counties and then other data projects
13 as were required.

14 Q. Okay. And what did you do after you were at ODP?

15 A. In 2011 I was -- I came on board the Cuyahoga County
16 Democratic Party as the executive director.

17 Q. And is that your current position?

18 A. Yep.

19 Q. And what are your duties as executive director of the
20 Cuyahoga Democratic Party?

21 A. Well, so the Cuyahoga County Democratic Party, and this
22 could be bad form to say in Franklin County, but we think we're
23 the most important county in American politics. We try to back
24 that up, I think, with in 2012 Mitt Romney was beating Barack
25 Obama by 90,000 votes in 87 of Ohio's 88 counties. Cuyahoga

1 County's quarter of a million vote margin flipped the most
2 important battleground state in probably one of the most
3 important presidential elections.

4 THE COURT: Right there you've identified the problem
5 with Cleveland, but in any event.

6 THE WITNESS: So we have a lot to do. The composition
7 of the party is we have a central committee that numbers over
8 1,000 members. We have an executive committee that's 750
9 members. We have a city award leader in each of the Cleveland
10 wards and surrounding suburbs numbering 57. We have geographic
11 caucuses, democratic clubs. We have over 50 of those, again in
12 the Cleveland wards and suburbs. We have, in addition to those
13 geographic caucuses, we have constituent caucuses. So we have
14 the Cuyahoga Women's Caucus, we have Cleveland Stonewall
15 Democrats, we have the Hispanic/Latino Caucus of Cuyahoga
16 County, we have the Democratic Lawyers Group. If anyone here
17 wants to sign up, I have membership cards in my bag. We've got
18 the Northeast Ohio Young Black Dems. And those constituent
19 caucuses work closely with us as well.

20 On top of that we have over 500 democratic elected
21 officials at the federal, state and local level just in the
22 four corners of Cuyahoga County and then we have over 400,000
23 voters who are either registered democrats or identify as
24 democrats in the county, who is our most important of the
25 constituency. That's who we are.

1 What we do is hopefully win elections. Every cycle we
2 do the things that we think necessary to turn these voters out.
3 Beginning with voter registration drives every cycle. We do
4 expansive voter-education campaigns. And those voter-education
5 campaigns are not just informing voters about issues and
6 candidates but also holding their hand and educating them on
7 the voting process itself. How to cast a ballot early, how to
8 vote by mail, where the polling location might be.

9 We do that and then we would be remiss if a large
10 democratic county in a battleground state did not focus on
11 turnout. Our GOTV efforts are one of a kind. We do so much
12 work. We understand that turnout in a large county like ours
13 is the difference between who might hold the White House and so
14 we -- our GOTV efforts encompass EGOTV or early GOTV efforts.
15 We do election day GOTV efforts, we do vote by mail GOTV
16 efforts. We do a lot of get out the vote efforts in Cuyahoga
17 County.

18 Q. How many registered voters are there in Cuyahoga County?

19 A. At the beginning of 2015 there were 880,000 registered
20 voters in Cuyahoga County.

21 Q. How many are there now?

22 A. About 830,000.

23 Q. And why is that number changed?

24 A. Over the summer there was a change -- well, there was a
25 scrubbing of the voter rolls. A class of inactive voters fell

1 off who hadn't participated in elections or interacted with an
2 elections official for some time.

3 Q. And what percentage of the population of Cuyahoga County
4 is African-American?

5 A. Just under 30 percent of the electorate in Cuyahoga
6 County is African-American.

7 Q. And what percentage is Hispanic or Latino?

8 A. About 4.85 percent nearly are Hispanic or Latino.

9 Q. And what percentage in Cuyahoga are women?

10 A. Fifty-two, 53 percent of the electorate are women in
11 Cuyahoga County.

12 Q. And were you in Ohio for the 2004 presidential election?

13 A. I was.

14 Q. What were you doing in 2004?

15 A. In 2004, I was helping with the democratic coordinated
16 campaign to elect John Kerry president. I worked on a canvass
17 team. We went door to door to get out the vote. And I worked
18 predominantly in the east side wards of Cleveland and the near
19 eastern suburb of Shaker Heights.

20 Q. And what are the demographics of those neighborhoods
21 that you observed when you were canvassing in 2004?

22 A. The eastern wards of Cleveland are predominantly upwards
23 of 90 percent African-American and the precincts in Shaker
24 Heights I concentrated on were more than 80 percent
25 African-American.

1 Q. And did you observe any problems with the election in
2 2004?

3 A. I did. Many.

4 Q. Could you describe those?

5 A. In 2004, on election day at the beginning of the day I
6 observed long lines as polls opened. I remember a polling
7 location in the Hough neighborhood. It was Addison Public
8 Library, predominantly African-American neighborhood that had a
9 long line. I remember two hours after polls opened there were
10 still voting booths, the tables still being set up. There was
11 agitation growing in the line of voters waiting to cast their
12 ballot. So at the start of the day there was confusion and
13 waiting.

14 At the end of the day, I remember being sent to a
15 polling location in Shaker Heights. It's about a half an hour
16 before polls closed, so about seven o'clock. There was a long
17 line not just within the building, the polling location, but
18 outside the building. It was cold, it was raining. We were
19 reminding voters of their right to vote if they were in line.
20 And I stayed there until, gosh, 8:15, 8:30 and there were still
21 voters waiting to cast their ballot.

22 Q. Okay. After the 2004 election did -- strike that.

23 During the 2004 election did Ohio have no-excuse
24 absentee ballots for voting?

25 A. No, they did not.

1 Q. And what does no-excuse absentee voting mean to you?

2 A. No-excuse absentee voting, to my understanding, is the
3 ability for any voter to cast a ballot absentee, in person or
4 by mail, without having to demonstrate that they would be
5 outside the county on election day or over 65.

6 Q. And along with no-excuse absentee voting, did the state
7 have early in-person voting in 2004?

8 A. In 2004, early in-person voting was not a mode of
9 voting.

10 Q. Does the state have that mode of voting now?

11 A. Yes.

12 Q. And do you know when it adopted no-excuse absentee
13 voting?

14 A. Ahead of the 2006 midterm election.

15 Q. And how many days of early voting --

16 THE COURT: Why are you talking about ten years ago?
17 Don't we have enough in the record already about ten years ago?

18 MR. MARTIN: That's fair.

19 THE COURT: Let's talk about problems as they exist
20 today.

21 MR. MARTIN: Can I ask one Cuyahoga specific question
22 about ten years ago?

23 THE COURT: Sure.

24 BY MR. MARTIN:

25 Q. In addition to these reforms that the state put in

1 place, did Cuyahoga County respond in any way to the problems
2 of the 2004 election?

3 MS. PIERCE: Objection, Your Honor.

4 THE COURT: You want to rephrase the question?

5 BY MR. MARTIN:

6 Q. After the 2004 election and after the state expanded
7 early-voting opportunities, including vote by mail, did the
8 Cuyahoga County Board of Elections begin mailing out
9 unsolicited absentee-ballot applications?

10 A. They did.

11 Q. And did the Cuyahoga County Board of Elections includes
12 prepaid postage?

13 A. They did.

14 MS. PIERCE: Objection, Your Honor.

15 THE COURT: Why?

16 MS. PIERCE: Leading the witness.

17 THE COURT: Yes. Okay. Thank you.

18 Overruled. Go ahead.

19 BY MR. MARTIN:

20 Q. Let me rephrase that. Do you know whether the Cuyahoga
21 County Board of Elections included prepaid postage?

22 A. I do. They did.

23 Q. Go ahead, sorry.

24 A. The Cuyahoga County Board of Elections mailed
25 unsolicited absentee applications to voters. They include

1 prepaid postage.

2 Q. And how long did that program of mailing unsolicited
3 absentee-ballot applications with prepaid postage continue?

4 A. From the Cuyahoga County Board of Elections, until 2011.

5 Q. Why did it stop in 2011?

6 A. In 2011 there was a disagreement between Secretary of
7 State Jon Husted and County Executive Ed Fitzgerald over the
8 mailing of absentee applications.

9 MS. PIERCE: Objection, Your Honor.

10 THE COURT: Basis.

11 MS. PIERCE: Outside the scope of this witness'
12 personal knowledge.

13 BY MR. MARTIN:

14 Q. Were you executive director of the Cuyahoga County
15 Democratic Party in 2011?

16 A. I was.

17 Q. And were you involved in any negotiations about the
18 mailing of unsolicited absentee-ballot applications?

19 A. I was.

20 Q. Can you describe those?

21 A. The Cuyahoga County Board of Elections had been sending
22 unsolicited absentee applications in a particular format that
23 included prepaid postage. At that time --

24 THE COURT: That started when?

25 THE WITNESS: Sometime after 2004.

1 THE COURT: Sometime after 2004.

2 THE WITNESS: I believe it was the general of 2006.

3 THE COURT: All right.

4 THE WITNESS: A directive in 2011 from the Secretary
5 of State's office, I think it was 2011-26, prohibited county
6 boards of elections from mailing unsolicited absentee
7 applications. County Executive Fitzgerald responded to send
8 them from the county government itself, not the board of
9 elections. There was some further disagreement back and forth
10 but the ultimate result was that no county entity in Cuyahoga
11 County was going to mail absentee applications in '11 and that
12 the Secretary of State would.

13 BY MR. MARTIN:

14 Q. And was 2011 when Senate Bill 5 was being debated?

15 A. It was.

16 Q. And what was Senate Bill 5?

17 A. Senate Bill 5 was an antilabor provision that would
18 eliminate the worker --

19 MS. PIERCE: Objection, Your Honor. Relevance.

20 THE COURT: The Court's aware of what Senate Bill 5
21 was. I think I'm the audience. Where are you going with this?

22 MR. MARTIN: I was going to ask about the election
23 laws that were also being proposed at the same time.

24 THE COURT: Now you're taking him from Cuyahoga County
25 to the legislature, right?

1 MR. MARTIN: That's correct.

2 THE COURT: So he has knowledge of what went on in the
3 legislature?

4 MR. MARTIN: Yes. I can establish that.

5 THE COURT: Please do.

6 BY MR. MARTIN:

7 Q. In around 2011, did the Cuyahoga County Democratic Party
8 organize with other democratic parties in that region, your
9 region of Ohio?

10 A. We did. We organized the Northeast Ohio Democratic
11 Chairs Association, the 13 counties in northeast Ohio who
12 represent nearly half of the democratic vote in the state. The
13 reason to organize was a piece of legislation, House Bill 194,
14 which did four things. It would eliminate early voting, which
15 up until then had been five weeks and would reduce it to two
16 weeks; vote by mail would go from five weeks to three weeks;
17 weekend voting would be eliminated but for before noon on
18 Saturdays; and, final weekend of early voting before the
19 election would be entirely eliminated.

20 THE COURT: And this was 2011?

21 THE WITNESS: Yes.

22 BY MR. MARTIN:

23 Q. And this was contemporaneous with the debate on Senate
24 Bill 5?

25 A. Yes.

1 Q. And why did Senate Bill 5 and H.B. 194 prompt you to
2 organize with the other counties in the region?

3 A. We had concerns that these legislative changes would
4 have a suppressive effect on turnout, particularly in Cuyahoga
5 County as well as those 12 other highly-democratic counties.

6 Q. Are you familiar with Senate Bill 205 that is at issue
7 in this suit?

8 A. I am.

9 Q. Can you describe your understanding of what that bill
10 does?

11 A. Senate Bill 205 prohibits anybody but the Secretary of
12 State from mailing unsolicited absentee applications; it
13 prohibits prepaid postage on those applications; and, thirdly,
14 requires additional information on the absentee identification
15 envelope, namely address and date of birth.

16 Q. Based on your observations, how has prohibiting counties
17 from mailing unsolicited absentee-ballot applications affected
18 voters in Cuyahoga County?

19 MS. PIERCE: Objection, Your Honor.

20 THE COURT: Basis.

21 MS. PIERCE: Basis of this witness' knowledge.

22 MR. MARTIN: Your Honor, he has been interacting with
23 voters for eight years in Cuyahoga County.

24 THE COURT: You're asking him to testify how all the
25 voters in Franklin County reacted to this particular thing?

1 MR. MARTIN: May I rephrase?

2 THE COURT: I want to know what his personal knowledge
3 is. I don't want to know what all the voters in Franklin
4 County or Cuyahoga County or all the democratic voters in
5 Cuyahoga County experienced. What did he experience?

6 BY MR. MARTIN:

7 Q. So how has prohibiting counties from mailing unsolicited
8 absentee-ballot applications with prepaid postage affected the
9 activities of the Cuyahoga Democratic Party?

10 A. Our experience has been, since the prohibition on the
11 county board sending applications, lots of questions, lots of
12 confusion. Our office in particular gets many calls from
13 democratic voters asking, where is my vote-by-mail application,
14 that they are waiting for it in order to cast their ballot. So
15 many more questions, a lot of confusion.

16 Q. And why do you think members of your party are not
17 receiving their applications?

18 A. I think members of our party, democrats, are more likely
19 to not have voted in every single election. I think members of
20 our party are also folks who may pay attention to elections
21 around elections but mail sent from an elections official
22 outside of that window may slip through the cracks. I think
23 our voters are ones that sometimes need that reengagement
24 around presidential elections to make sure they have this
25 opportunity to vote by mail.

1 THE COURT: Is that a function of their choosing to
2 vote only in those elections or are you indicating that somehow
3 there is as a result of what Senate Bill 205 and other related
4 statutes -- why do you say that they only vote in certain
5 elections or that democrats as a group are more likely to
6 vote -- not vote every election, I guess?

7 THE WITNESS: From what we hear from some of these
8 voters who say, I haven't received my application, it does seem
9 that some of the -- this outreach from elections officials
10 makes a difference in their likelihood to turn out. This also
11 seems to happen -- it only happens in even years and I think
12 with more earned media and attention around the election, maybe
13 that outreach is also more pronounced for them.

14 THE COURT: Thank you.

15 BY MR. MARTIN:

16 Q. How has the expanded early-voting opportunities, both
17 early in-person and vote by mail, affected the operations of
18 the Cuyahoga Democratic Party?

19 MS. PIERCE: Objection. Vague, Your Honor. When?

20 THE COURT: Let's put a time frame on it.

21 BY MR. MARTIN:

22 Q. Let's discuss the impact in 2008 on your party's
23 operations.

24 A. In 2008, early vote had a big impact on party
25 operations. In 2008, I volunteered for the coordinated

1 campaign and did a number of GOTV volunteer shifts. In 2008,
2 we pushed people. We instructed them and educated them on how
3 to vote early in person. We also did encourage them on how to
4 vote early by mail.

5 This gave us the ability to educate our voters over a
6 35-day period. Doing GOTV over 35 days is much better than
7 doing it over one day. So that made a difference in 2008.

8 Q. And can you describe at a sort of a general level what
9 the democratic party in Cuyahoga County's GOTV efforts with
10 respect to early in-person voting are?

11 MS. PIERCE: Same objection, Your Honor. When?

12 MR. MARTIN: Your Honor, if I could get a general
13 description we'll walk through specific years or we can just
14 start with 2008.

15 THE COURT: Start with 2008, if you would.

16 BY MR. MARTIN:

17 Q. Okay.

18 A. Well, for the Cuyahoga County Democratic Party I can
19 speak to 2011 and 2012 at the front edge of being at the helm.
20 2008 from a perspective of a campaign volunteer. In 2010 I
21 could speak from ODP. So what --

22 Q. Let's start with 2008 in your capacity as a volunteer
23 and describe those efforts, those GOTV efforts.

24 A. Around early vote in person?

25 Q. Yes.

1 THE COURT: Do you have anything to do with GOTV in
2 2008?

3 THE WITNESS: Yeah. I was a regular volunteer on the
4 Obama campaign in 2008.

5 THE COURT: But were you making decisions about how it
6 was done or you were just a campaign volunteer getting out the
7 vote?

8 THE WITNESS: Yeah. Canvass coordinator in a
9 volunteer capacity.

10 THE COURT: All right. Go ahead.

11 THE WITNESS: In 2008, the early vote in-person effort
12 from the democratic party in Cuyahoga County was done both in
13 person through canvasses doing voter education face-to-face,
14 instructing voters of their ability to cast the ballot, what
15 days and what hours they were. We also did that through phone
16 banks. We coordinated volunteer phone banks on weeknights and
17 on weekends where we would train volunteers to be capable of
18 educating voters on those early vote in-person options.

19 There was also large pushes to get voters to go vote
20 early in person, particularly up around golden week, that
21 five-day period before registration cutoff but early vote had
22 already begun. And we would staff at the early-vote site in
23 Cuyahoga County which is the board of elections in 2008 to
24 ensure people have made sure their vote counted.

25

1 BY MR. MARTIN:

2 Q. Can you describe what those activities were in the 2010
3 election?

4 A. Uh-huh. In addition to the things I described that we
5 did in '8, canvass, phone call, push to the early-vote site, at
6 the state party level in my role we did analysis of early
7 in-person voters. We identified senior buildings that were
8 somewhat close to the early-vote site but were not polling
9 locations themselves. So many of these voters wouldn't be able
10 to walk down the stairs to the lobby to cast their ballot. We
11 coordinated transportation be it through the senior building
12 itself or an outside stakeholder or if we had volunteers who
13 would be willing to do the driving to the polls. We did a lot
14 of that to bring out voters to vote early in person in the 2010
15 election.

16 Q. And did any of those activities overlap with your voter
17 registration efforts in 2010?

18 A. Yes, they did.

19 Q. Can you describe those?

20 A. Again, during golden week in 2010 we had the window
21 wherein folks could newly register or reregister as well as
22 cast their ballot. Several of these senior buildings that we
23 worked in, Lupica Tower, Phillis Wheatley Association building
24 there was specific outreach during that golden-week period and
25 transportation arrangements made during that golden-week

1 period.

2 Q. And can you describe the voter registration activities
3 of the Cuyahoga Democratic Party in 2012?

4 A. Uh-huh. Voter registration activities in 2012, one big
5 element of it is hot spot voter registration identifying events
6 and locations that are both high traffic and likely targeted --
7 likely targets for registration or reregistration. Grocery
8 stores, public libraries, events and festivals in Cleveland
9 neighborhoods. The Pride festival is another one that we went
10 to quite a bit.

11 Registration in 2012 also included door-to-door
12 canvassing. We would go to neighborhoods and reregister,
13 register voters out on the streets, at their door. And so in
14 2012 it was probably one of the most expansive voter
15 registrations we've had to date.

16 Q. And can you describe the GOTV activities of the
17 Democratic Party of Cuyahoga County in 2012?

18 A. Uh-huh. In 2012, our GOTV activities including the
19 normal field efforts I described previously, canvassing, phone
20 bank, we printed materials to turn out voters reminding them
21 how to cast their ballot. Some of those materials that we
22 distributed and shared with voters included what those early
23 vote hours and days were, how to cast their ballot.

24 We conducted vote-by-mail GOTV activities. We would
25 place phone calls. We would go door to door with vote-by-mail

1 applications to get voters signed up with that.

2 One of those materials in 2012 was actually an early
3 vote pledge card which included that calendar of days and hours
4 so that voters knew when to cast their ballot and would commit
5 to doing so within those windows. And that piece in particular
6 accentuated the golden-week period.

7 Q. And the Cuyahoga County Democratic Party is also engaged
8 in GOTV efforts around vote by mail; is that correct?

9 A. Yes, we are.

10 Q. Could you describe those efforts in 2008?

11 A. The outreach that I experienced in 2008 for vote by mail
12 was while we canvassed door to door we would carry vote-by-mail
13 applications with us. We would offer that as an option to
14 voters as we talked to them.

15 Q. And in 2010?

16 A. In 2010, vote-by-mail outreach through the democratic
17 party and my role at the ODP included supplementing those field
18 activities of canvasses and calls with that opportunity to
19 engage in vote by mail. There was also mail produced. A
20 direct mail campaign to get people to sign up to vote by mail.
21 I believe it included a vote-by-mail application in that
22 mailer. I was involved in developing that list to whom we
23 would mail that direct mail piece to.

24 Q. And in 2012?

25 A. In 2012, we did all of the above or below in this case.

1 We called voters, we canvassed voters, we had direct mail that
2 went out with a vote-by-mail application. Just pulled out all
3 the stops to get as many people as we could to vote.

4 THE COURT: Mr. Martin, why did you reregister -- why
5 did you have to reregister already registered voters? You were
6 talking about that prior to the GOTV.

7 THE WITNESS: Reregistration in Cuyahoga County is a
8 really important biller. We have such high mobility among our
9 voters. In 2012, 65,000 of the registrants were new
10 registrants, 75,000 were reregistrants.

11 THE COURT: Thank you.

12 BY MR. MARTIN:

13 Q. Based on your experience, which of the GOTV efforts,
14 early in-person, vote by mail or those focused on election day
15 have been the most effective for the party?

16 A. Well, I can certainly speak to some analysis that we
17 did. Early voting in person on the near east side of
18 Cleveland, these predominantly African-American neighborhoods,
19 quite frankly, worked like gangbusters, I think. Our analysis
20 showed that more than half of the ballots cast early in person
21 in 2008 were cast by black or Hispanic voters. We compared
22 that or contrasted that, rather, to vote by mail and election
23 day voters. Only 1 in 5 ballots in Cuyahoga County were cast
24 by black or Hispanic voters using those two modes of voting.

25 Q. And in 2012?

1 A. The numbers very, very similar.

2 Q. And based on your experience and observation, why did
3 African-Americans and Hispanics utilize early in-person voting
4 so much more frequently?

5 MS. PIERCE: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. MARTIN:

8 Q. What types of -- what groups of people are among those
9 that were the new registrants or the reregistrants that you
10 described earlier?

11 MS. PIERCE: Objection, Your Honor.

12 THE COURT: What are you getting at with that
13 question? Why don't you rephrase it.

14 BY MR. MARTIN:

15 Q. Based on your experience and observation, what are the
16 demographics of the people who were among the new registrants
17 or reregistrants?

18 MS. PIERCE: Objection, Your Honor.

19 THE COURT: Are you offering him as an expert?

20 MR. MARTIN: No, Your Honor.

21 THE COURT: Do you have somebody?

22 MR. MARTIN: I'm sorry?

23 THE COURT: Do you have somebody you can get this
24 through otherwise?

25 MR. MARTIN: We are offering Mr. Martin as a lay

1 expert based on --

2 THE COURT: What is a lay expert? Please tell me.

3 MR. MARTIN: It's someone who's acquired opinion, a
4 well-founded opinion based on years of experience in a
5 particular job.

6 THE COURT: Show me where that's called for in the
7 evidence rules.

8 MR. MARTIN: Rule 701, Your Honor.

9 THE COURT: It's called a lay expert?

10 MR. MARTIN: Opinion testimony by lay witnesses. I
11 apologize, Your Honor.

12 THE COURT: Go ahead.

13 MS. PIERCE: Your Honor, object to the introduction of
14 Mr. Martin here as a lay expert witness. It's not contemplated
15 by the Rules of Evidence. He's testified as to specialized and
16 technical knowledge that he has which would be the foundation
17 of an expert witness, which he has not been offered as in this
18 case.

19 THE COURT: Sounds more like it ought to be in the
20 nature of expert testimony.

21 MR. MARTIN: Okay. Your Honor, Mr. Martin is like a
22 DEA --

23 THE COURT: How was he disclosed? What was he
24 disclosed as, a lay witness?

25 MR. MARTIN: He was disclosed as a lay witness, Your

1 Honor.

2 THE COURT: Then ask him lay witness questions.

3 MR. MARTIN: May I ask him opinion testimony from a
4 lay witness in accordance with Rule 701?

5 THE COURT: It depends. Ask away.

6 MR. MARTIN: Ask away. Okay.

7 BY MR. MARTIN:

8 Q. Do you have an opinion about the demographics of the
9 registrants and reregistrants that you described earlier based
10 upon four years as executive director of the Cuyahoga
11 Democratic Party?

12 MS. PIERCE: Objection, Your Honor.

13 THE COURT: Let's take a walk for a moment.

14 - - -

15 Thereupon, the following proceeding was held in the Court's
16 conference room:

17 THE COURT: How many other witnesses like this do you
18 have that were disclosed as a lay witness that you're trying to
19 get semi-expert testimony in from?

20 MR. MARTIN: I think the representatives from our
21 three political parties will have opinions about the
22 demographics of the voters that they've reached out to, that
23 they've registered that make up their constituencies that
24 they've acquired in their years of experience organizing
25 campaigns and GOTV drives and voter registration drives.

1 MR. SPIVA: Your Honor, I know this is Mr. Martin's
2 witness and I wouldn't ordinarily speak, but if you wouldn't
3 mind since you asked a question that was a little bit broader
4 to our witnesses.

5 The type of testimony that Mr. Martin -- that Mr. Nick
6 Martin is offering, as well I think the ODP, Ohio Democratic
7 Party witness and the Montgomery County witness, really fall
8 squarely within Rule 701 of the Federal Rules of Evidence.
9 It's lay opinion testimony that's based on the experience of
10 the witness. It's not based on scientific and technical
11 knowledge but this is what they do day in and day out. It's
12 rationally based on the perception of the witness, helpful to a
13 clear understanding of the witness' testimony or the
14 determination of a fact issue. And as I said, it's not based
15 on scientific or technical knowledge within Rule 702 which
16 would have required a disclosure, Your Honor. But this is
17 truly lay opinion testimony which is firmly contemplated by
18 Rule 701.

19 THE COURT: Why is he wrong?

20 MS. PIERCE: Your Honor, they clear -- I don't know
21 about their other witnesses that they're calling, but they very
22 clearly set Mr. Martin's testimony up as based on the
23 scientific/technical expertise and he's offering opinions as to
24 the demographics of these voters that they're registering, that
25 they're voting. That's very clearly an expert opinion and

1 obviously he was not disclosed as such.

2 MR. VOIGT: Your Honor, I recognize, again, this is
3 Ms. Pierce's witness but he also appears to be offering
4 quantitative type -- a quantitative-type analysis and that
5 would be reserved for experts.

6 THE COURT: What's his degree in?

7 MR. MARTIN: His degree was in public policy from the
8 Woodrow Wilson School at Princeton.

9 MR. SPIVA: But if I might, Your Honor, this is what
10 he does. It's not quantitative analysis. What the Cuyahoga
11 County Democratic Party does day in and day out is figure out
12 how to get out their voters, who those voters are, how they
13 vote. That's his experience and that's the basis of his
14 knowledge. It's not from some kind of quantitative analysis.
15 We will have expert testimony that uses quantitative methods.

16 THE COURT: Why don't we get this in through your
17 expert.

18 MR. SPIVA: We will do that, Your Honor, but I think
19 he also has valuable fact testimony based on his experience to
20 offer. I don't know that this Mr. Martin has that much further
21 to go on this with this witness but we would just -- I guess we
22 would request that he be allowed to testify based on his
23 experience, observations and what he knows based on the job he
24 does.

25 THE COURT: What are your experts going to testify?

1 MR. SPIVA: Dr. Timberlake will testify based on --
2 you mean in terms of the quantitative analysis?

3 THE COURT: Yes.

4 MR. SPIVA: He'll talk about the demographics of who
5 uses golden week and the like and how many people, even beyond
6 demographics, used golden week. We also have Dr. Cannon who I
7 think will speak to some of those numbers.

8 MR. KAUL: Since we're talking about the witnesses
9 generally, the experts will talk to a lot of these same facts
10 but I'm certain that they will be subject to significant
11 cross-examination. Part of what this is doing is providing
12 additional factual support for those conclusions.

13 MS. PIERCE: Your Honor, if I may respond. That's
14 very clearly based on specialized knowledge of this lay witness
15 which is the basis of an expert opinion. If Mr. Martin wants
16 to testify about people he interacted with specifically and
17 personally, that would be fine. That would be a lay opinion
18 within -- rationally within his perception as a witness.

19 THE COURT: How does it differ from what Bill Anthony
20 testified to yesterday?

21 MS. PIERCE: Bill Anthony testified as to his
22 administration and election official. He has all the numbers
23 of people -- he testified as to his experience, Your Honor.

24 MR. MARTIN: Your Honor, if I may on that point.

25 MS. PIERCE: It was also their witness.

1 THE COURT: I know.

2 MR. MARTIN: Mr. Martin, the other Mr. Martin, just as
3 Mr. Anthony, has all of those numbers, access and familiarity
4 with those numbers as part of his job as executive director as
5 a major county political party they know, they tracked the
6 demographics of neighborhood, target the get out the vote
7 efforts, they track the demographics of people who aren't
8 registered yet to get out their voter registration efforts.
9 This is just the type of information that he naturally acquires
10 in his day-to-day duties.

11 MS. PIERCE: And there was no foundation laid as to
12 any of that, Your Honor.

13 MR. MARTIN: Your Honor, if I may. We discussed his
14 first job with the Cleveland City Council where he was
15 demographic researcher. We talked about his work with ODP
16 where he was a data analyst and then we talked about the past
17 four years that he spent as executive director of the Cuyahoga
18 Democratic Party.

19 MS. PIERCE: And the data, no foundation as to the
20 data he was relying on.

21 MR. MARTIN: We can question him about the foundation
22 of the data, Your Honor.

23 THE COURT: You've deposed him before?

24 MS. PIERCE: No, Your Honor.

25 THE COURT: You have not had the chance to depose him

1 or you did not seek to depose him?

2 MS. PIERCE: We did not seek to depose Mr. Martin.

3 THE COURT: How many years has he been the -- in the
4 current position?

5 MR. MARTIN: Four years, Your Honor. 2011 is when he
6 began as executive director.

7 THE COURT: I think that you are trying to get expert
8 testimony on the quantitative makeup of the Cuyahoga County
9 voters and I think that should come from your expert.

10 MR. MARTIN: Okay.

11 THE COURT: All right.

12 MR. MARTIN: Thank you.

13 - - -

14 Thereupon, the following proceedings were had in open
15 court:

16 BY MR. MARTIN:

17 Q. Can you describe the types of voters that you personally
18 interacted with in voter registration or GOTV efforts in
19 Cuyahoga County?

20 A. In my personal experience, the voters that we targeted
21 and interact with on registration and GOTV tend to be
22 African-American voters, Hispanic voters, younger voters,
23 generally voters under 30, and women voters.

24 Q. And do you know how those voters tend to vote?

25 MS. PIERCE: Objection, Your Honor.

1 BY MR. MARTIN:

2 Q. In Cuyahoga County?

3 THE COURT: First of all, it's a stretch that you're
4 purporting to represent all black people, all Hispanics, all
5 women, all young people. That's a stretch. But now you're
6 asking does he know how everyone in that category votes.

7 MR. MARTIN: I think I can rephrase the question.

8 THE COURT: That might be good.

9 MR. MARTIN: Okay.

10 BY MR. MARTIN:

11 Q. Do you know the breakdown for -- do you know why you
12 target those groups?

13 A. Polling data and electronic returns in the past have
14 shown them to be strongly supportive of the democratic party.

15 Q. And do you know any of the particular figures from that
16 polling data?

17 MS. PIERCE: Objection.

18 THE WITNESS: I do.

19 THE COURT: Sustained. Get it from an expert.

20 BY MR. MARTIN:

21 Q. Have these groups also been the focus of your GOTV and
22 registration efforts surrounding golden week?

23 A. They have. Much more so our early voting in person and
24 golden-week targets tend to be geographically concentrated
25 within neighborhoods on the near east side of the city which

1 are predominantly African-American and, in some cases,
2 Hispanic.

3 Q. And have those groups responded to that, to the party's
4 efforts?

5 MS. PIERCE: Objection. Vague.

6 THE COURT: What's that mean? What are you asking?

7 BY MR. MARTIN:

8 Q. Have you been able to successfully get out the vote and
9 register or reregister voters as a result of those efforts?

10 A. We have.

11 Q. In those particular neighborhoods?

12 A. Yes, we have.

13 Q. Why do you think you've been successful?

14 A. I think this --

15 MS. PIERCE: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: I think this mode of voting, voting
18 early in person, is especially helpful to voters that we've
19 interacted with. Again, busy work schedules, maybe working
20 several jobs, lack of --

21 MS. PIERCE: Objection, Your Honor.

22 THE COURT: That's all testimony that Mr. Butcher's
23 testified to. There's other testimony like that. I'm going to
24 overrule that objection.

25

1 BY MR. MARTIN:

2 Q. Continue.

3 A. Lack of reliable transportation, which might fail or not
4 be available on election day makes early in-person a great
5 option. And as I mentioned previously, golden week in
6 particular because of the higher mobility rate for many of
7 these voters coupled with those other challenges make golden
8 week a prime period of time and effective target for our
9 outreach.

10 Q. And have you also worked with churches in Cuyahoga
11 County?

12 A. We have.

13 Q. And can you describe those activities?

14 A. I've worked with churches, predominantly
15 African-American churches in Cuyahoga County around GOTV
16 efforts and registration efforts. We conduct Souls to the
17 Polls. That happens on Sundays but not just Sunday voting.
18 We've had Saturdays as well as weekdays during golden week in
19 which we have churches organize their congregants to provide
20 transportation, to make sure that they get down to the board of
21 elections to cast their ballot early.

22 Q. And have you worked with student organizations or on
23 campuses with similar efforts?

24 A. We have. Cleveland State University is a campus just a
25 stone's throw away from the board of elections, our early-vote

1 site. We have done campus organizing there around
2 registration, about turnout for golden week, as well as early
3 vote in-person turnout efforts. But even with Cleveland
4 State's proximity, there's other campuses that we've done
5 campus organizing on. Baldwin Wallace campus is in the
6 southwestern corner of the county. We worked with the campus
7 organizing lead out there to organize early in-person campaign
8 as well as John Carroll University on the east side of Cuyahoga
9 County.

10 Q. And have you worked with recently-released felons at all
11 to get them reregistered?

12 A. We have. We have volunteers that are trained
13 particularly on reentry and part of that reentry for former
14 felons is reregistration and voting again in the process. That
15 includes hotspot coverage at the Justice Center in downtown
16 Cleveland as well as some individual mail follow-up with the
17 recently released population.

18 Q. We talked a lot about your recent voter registration,
19 GOTV efforts, efforts around golden week. Could you summarize
20 how the availability of golden week affected the party's
21 ability to mobilize its voters?

22 A. Golden week has been the absolute essential lifeline for
23 these targeted populations, these voters that we reached out
24 to. Like I said, for the reasons of impediments to voting,
25 unreliable transportation, busy work schedules, child care,

1 high mobility or in the reentry population, the lack of being
2 registered, having the ability to get somebody physically at an
3 early-vote site to register, reregister and vote is
4 fundamental.

5 But even beyond that, there's some symbolic importance
6 to it. I think voting in person, I've heard from
7 African-American families where their 18-year-old kid is going
8 to be registering and voting for the first time and as a family
9 they go down and vote as a family, register and vote as a
10 family and golden week provides that opportunity for that right
11 of passage for these voters.

12 Q. Are you aware that golden week has now been eliminated?

13 A. I am.

14 Q. Did the Cuyahoga Democratic Party engage in GOTV and
15 voter registration efforts in 2014?

16 A. We did.

17 Q. Was golden week in place in 2014?

18 A. It was not.

19 Q. How did the elimination of golden week impact those
20 activities?

21 A. The elimination of golden week was a costly burden on
22 our voter registration, outreach and GOTV. In past elections,
23 we were able to touch targeted voter once and they were able to
24 both register, reregister and vote. What we've now had to do
25 was double that effort because we've had to touch them before

1 the close of registration to get them registered or
2 reregistered and go back during GOTV to turn them out and vote.

3 Some of the costs incurred, in 2014 we had a full-time
4 field director, we had four part-time field organizers, we had
5 phone banks set up to do the GOTV. We sent people out with
6 clipboards and registration forms during registration period
7 and what was collapsed into one activity is now two.

8 Q. And does the party intend to engage in voter
9 registration --

10 THE COURT: Did that prevent anyone from voting
11 though?

12 THE WITNESS: What I can speak to is we didn't
13 register every last voter we intended to or reregister them and
14 so I would assume -- and no, in some cases, the folks we didn't
15 get to didn't vote if they didn't have current registration.

16 THE COURT: But you're talking about the difficulties
17 that the party incurred, not what any specific voter incurred,
18 correct?

19 THE WITNESS: Yeah. I think I was.

20 THE COURT: Go ahead.

21 BY MR. MARTIN:

22 Q. What impact will the elimination of golden week have
23 among -- on the types of voters that you have targeted in past
24 elections?

25 MS. PIERCE: Objection.

1 THE COURT: It's been eliminated for the last two
2 generals, so why don't you rephrase the question.

3 BY MR. MARTIN:

4 Q. What impact did the elimination of golden week have on
5 the voters that you targeted in the 2014 election?

6 MS. PIERCE: Objection.

7 THE COURT: I think he can speak generally to what
8 differences he noticed.

9 THE WITNESS: The difference we've noticed is we've
10 had to front-load registration and when we make that touch, we
11 haven't had the ability to turn that newly registered or
12 reregistered voter into a voter who's voted. That means our
13 GOTV universe is larger, as a result. We haven't crossed them
14 off the list to say we can move on to the next target. So it's
15 been much heavier lift during our GOTV phase. And then we pay
16 close attention to encouraging a person to vote and checking if
17 they did so. And we know there are many voters who we reached
18 out to, gave them information and education about voting and
19 ultimately weren't able to pull the trigger and cast their
20 ballot in 2014.

21 Q. And does the party intend to engage in voter
22 registration and GOTV activities --

23 THE COURT: Wait a minute. I want to follow up on
24 that. We know there are many voters who we reached out to,
25 gave them information and then they didn't vote. Right? You

1 say they weren't able to pull the trigger. Why weren't they
2 able to pull the trigger?

3 THE WITNESS: In some cases they may have not returned
4 an absentee-ballot application. That was data we tracked
5 regularly. Also, after the fact we looked at the voter file
6 and found who voted and who didn't. We matched that up against
7 our targets to find out -- we called this voter on this day and
8 after the fact, we find out they didn't actually validly vote
9 or didn't show up to vote.

10 THE COURT: Thank you. Go ahead.

11 BY MR. MARTIN:

12 Q. Does the party intend to engage in voter registration
13 and GOTV efforts in 2016?

14 A. We do.

15 Q. How will the elimination of golden week affect those
16 activities?

17 A. I think similar to 2014. It would be a much more costly
18 registration phase. It would be a much more burdensome and
19 costly GOTV phase and ultimately many of the voters in which we
20 would encourage to go vote may not cast their ballot.

21 Q. Are you familiar with voting by provisional ballot in
22 Ohio?

23 A. I am.

24 Q. What are the reasons someone might be forced to cast a
25 provisional ballot?

1 A. Provisional ballot could be cast if there's a mismatch
2 between the registration address and the address that they
3 presented. Other errors are incompleteness within the
4 identifying documents from the elections administration could
5 be reason to cast provisional ballots.

6 Q. Is the failure to provide proper identification one of
7 those reasons?

8 A. My understanding, yes.

9 Q. And does the Democratic Party of Cuyahoga County monitor
10 those who are being forced to cast provisional ballots?

11 A. We do. The Cuyahoga County Board of Elections provides
12 information around early voters and those who have had to cast
13 a provisional ballot. The Cuyahoga County Democratic Party
14 pays attention to who those voters are and we do voter
15 education and outreach to help cure those in the period in
16 which they're able to.

17 Q. And in your experience and observation, what types of
18 voters are being forced to cast provisional ballots?

19 A. In our experience, oftentimes it's African-American
20 voters and older African-American voters who we find on these
21 lists who we're doing the outreach to who are less familiar
22 with the process, I think it would be fair to say. May not
23 have voted every election cycle and may not have immediate
24 recent knowledge of the process itself.

25 Q. You said that you reach out to those voters to help them

1 cure the deficiency. Can you describe that activity?

2 A. We call these voters where we have phone numbers
3 available to walk them through the process and how to fix it.
4 We have gone door to door to these voters or driven from door
5 to door to educate them on how to fix this. And in some cases,
6 we provided transportation so that they can go down physically
7 to the board of elections with our assistance and make sure
8 their ballot counts.

9 Q. Do you know what the period, the cure period that you're
10 describing was in the 2012 election?

11 A. It was ten days after the election.

12 Q. Do you know what it is now?

13 A. It's seven days.

14 Q. So how does the shortening of the cure period or how has
15 the shortening of the cure period affected your party's
16 activities?

17 A. It's given us less time to do this voter education. I
18 remember in 2012 that we made contact with a provisional voter
19 who had a ballot that could be cured every day of that ten-day
20 period. We aren't able to reach many voters and have them fix
21 their ballots in the shorter window.

22 Q. Based on your observations and personal experience, how
23 has the shortened cure period impacted voters in Cuyahoga
24 County?

25 MS. PIERCE: Objection, Your Honor.

1 THE COURT: I guess I'm back on the previous question
2 first. Mr. Martin, when you said that in 2012 you had contact
3 with a provisional voter who had a ballot that could be cured,
4 are you talking about one individual or are you talking about a
5 series of individuals?

6 THE WITNESS: A series of individuals.

7 THE COURT: And so the bottom line, I guess, is how
8 does eliminating three days of that, how much of an impact is
9 that having?

10 THE WITNESS: For us, we're limited in resources and
11 the amount of outreach we can do. A certain amount of phone
12 bankers or canvassers or cars to drive.

13 THE COURT: You expend resources, correct?

14 THE WITNESS: Yes. And those resources get lopped off
15 with fewer days, so we're not able to do as much.

16 THE COURT: Okay. And then there was the follow-up
17 question. Ms. Pierce, what were you objecting to again?

18 MS. PIERCE: The impact on voters in Cuyahoga County,
19 Your Honor.

20 THE COURT: It's a pretty broad question.

21 BY MR. MARTIN:

22 Q. Based on your personal observation and experience, what
23 was the impact on members of your party?

24 THE COURT: For what?
25

1 BY MR. MARTIN:

2 Q. Of the shortening of the cure period for provisional
3 ballots?

4 A. So the members of our party who had a provisional ballot
5 to be cured in 2014, we again tried to reach all of them. We
6 did not reach all of them at the end of seven days. So I would
7 say those folks we didn't reach didn't have the benefit of
8 additional assistance in getting their ballot to count.

9 Q. You mentioned earlier that 2014 was a midterm, correct?

10 A. Correct.

11 Q. Can you describe the turnout rates that you have
12 personally observed in midterms versus presidential election
13 years?

14 A. In Cuyahoga County --

15 MS. PIERCE: Objection.

16 THE COURT: Basis.

17 MS. PIERCE: Improper lay witness opinion, Your Honor.

18 We can get this in the next witness as well.

19 MR. MARTIN: Your Honor, it's part of his day-to-day
20 job to monitor turnout rates.

21 THE COURT: Overruled.

22 THE WITNESS: Turnout midterm elections in Cuyahoga
23 County can be half that of presidential turnout. Cuyahoga
24 County turnout was 39 percent in the 2014 midterm general
25 election. High 70 percent turnout in many counties, in

1 Cuyahoga in 2012 presidential. So dramatically different.

2 BY MR. MARTIN:

3 Q. When you're planning for your activities in 2016, do you
4 look at the past presidentials or the past midterms in
5 assessing the amount of resources you'll need?

6 A. We look to the most analogous election. So for a
7 presidential election like 2016 we'd look to the last
8 presidential like 2012.

9 THE COURT: What was the turnout rate in the 2015
10 election?

11 THE WITNESS: It was in the mid 30s. I think it was
12 36 percent or so in Cuyahoga County.

13 THE COURT: Thank you.

14 BY MR. MARTIN:

15 Q. Based on your experience and observation, do problems
16 such as long lines at the polls have an effect on turnout rate?

17 MS. PIERCE: Objection, Your Honor.

18 THE COURT: Sustained.

19 BY MR. MARTIN:

20 Q. Have you personally encountered voters who have been
21 discouraged from voting because of problems such as long lines
22 at the polls?

23 A. I have. In 2008, '10, '12 and '14, I've witnessed long
24 lines in early voting, at the early-voting location in Cuyahoga
25 County, in particular polling locations that were of interest

1 to the party. Those lines have -- I've observed
2 discouragement. I've observed frustration from voters
3 disinclined to vote, more disinclined to vote having to wait.

4 Q. Can you recall the details of the lines you witnessed in
5 2008?

6 A. In 2008, the line I observed was at the early-vote site
7 at the board of elections. That line came out of the front of
8 the building. It went down the street and then it hit East
9 30th and it went up the block. I remember how long it was in
10 particular because the entrance to the parking lot would be
11 about 500 feet away from the intersection and the line had to
12 be broken at that entrance to the parking lot as cars were
13 pulling in and out. It was an exceedingly long line in 2008.

14 Q. Do you recall which day that was?

15 THE COURT: Early in-person in Cuyahoga County was at
16 the board of elections?

17 THE WITNESS: Yes. It was one of the golden week
18 days. I don't remember which.

19 BY MR. MARTIN:

20 Q. Can you describe the lines you witnessed in 2010?

21 A. In 2010, I was also actually it was the early-vote site
22 at the board of elections and it was not golden week but it's
23 an early-vote day. There again it went outside the building
24 and down the street a bit.

25 Q. And can you describe the lines you saw in 2012?

1 A. The line in 2012 was similar to 2008 at the early-vote
2 site. Out the building, down the block, around the corner with
3 a long wait. In 2012, I remember going on the first day of
4 early vote, so the first day of golden week. And I remember
5 this long line. I think I arrived -- I was there at least an
6 hour and there were folks who I saw in line when I arrived who
7 had not yet entered the building or had maybe just entered the
8 building when I left.

9 Q. I'm sorry, did you say an hour?

10 A. About an hour.

11 Q. And in your conversations or observations or
12 interactions with voters in Cuyahoga County or your members,
13 have you learned anything else about the types of activities
14 that discourage voters from voting?

15 MS. PIERCE: Objection, Your Honor.

16 THE COURT: I'm going to sustain that. That's a
17 pretty broad question.

18 BY MR. MARTIN:

19 Q. Have you ever had conversations or interactions with
20 voters about other impediments to voting that -- or members of
21 your party?

22 MS. PIERCE: Same objection, Your Honor.

23 THE COURT: Are you trying to recall one incident or
24 is he going to purport to testify for the parade of horrors
25 that every voter has suffered?

1 MR. MARTIN: We might be here all day if he were to
2 testify to the parade of horrors. But there are a couple of
3 few specific incidents, I think.

4 THE COURT: So you're trying to elicit specific
5 incidents?

6 MR. MARTIN: Yes, Your Honor.

7 THE COURT: Then it would be hearsay testimony, would
8 it not?

9 MR. MARTIN: Well, to the extent that he personally
10 observed them it would not, Your Honor.

11 THE COURT: You're trying to get what they told him
12 though, right? So an out-of-court statement offered to
13 prove --

14 MR. MARTIN: Correct, Your Honor. But I could
15 rephrase it, ask him what he's personally observed.

16 THE COURT: Why don't you do that.

17 BY MR. MARTIN:

18 Q. Have you ever witnessed or personally observed other
19 impediments that have prevented members of your party from
20 voting?

21 A. I have. They've been small and large. Some small cases
22 I was at a polling location that ran out of pens. The ability
23 to complete ballots were impeded by that. There was a very
24 large one that I personally witnessed in 2012. There was a
25 public housing project on the near east side in the central

1 neighborhood of Cleveland that's called Arbor Park Village. I
2 know this public housing complex pretty well having launched a
3 canvass there during the GOTV period in 2012. It's
4 predominantly African-American.

5 A billboard was erected during the early-vote period on
6 the northwest corner of the public project that read voter
7 fraud is a felony.

8 MS. PIERCE: Objection, Your Honor.

9 THE COURT: We have seen that billboard. Do you know
10 who put it up?

11 THE WITNESS: I just -- the disclaimer read concerned
12 citizens or something.

13 THE COURT: Do you know who concerned citizens were?

14 THE WITNESS: I don't.

15 THE COURT: I believe yesterday that billboard,
16 through Senator Turner, was going to come in with the
17 description of the story redacted. You saw the billboard?

18 THE WITNESS: I did. The billboard read voter fraud
19 is a felony. It listed a jail time penalty and a \$10,000 fine
20 of some sort. In my experience and in conversations with
21 voters, that led to a discouraging impact upon their --

22 MS. PIERCE: Objection, Your Honor. Hearsay.

23 THE COURT: Did they tell you they didn't vote?

24 THE WITNESS: This was before they had cast their
25 ballot.

1 THE COURT: So we don't know what they did?

2 THE WITNESS: Without looking up, no.

3 THE COURT: Sustained.

4 MR. MARTIN: I have no further questions at this time.

5 THE COURT: Cross, Ms. Pierce.

6 - - -

7 CROSS-EXAMINATION

8 BY MS. PIERCE:

9 Q. Good morning, Mr. Martin.

10 A. Good morning.

11 Q. My name is Sarah Pierce. I represent the defendants in
12 this case. So it's Secretary Husted and Attorney General
13 DeWine. I just have a couple of questions for you.

14 You are currently the executive director of the Cuyahoga
15 County Democratic Party, correct?

16 A. Correct.

17 Q. And the Cuyahoga County Democratic Party is a party in
18 this case; is that right?

19 A. Correct.

20 Q. But -- I'm sorry. I'm going butcher that name every
21 single time.

22 The Cuyahoga County Democratic Party did not start as a
23 party in this lawsuit; is that correct?

24 A. I don't know when our organization came on board.

25 Q. You don't know when your organization came on board?

1 A. I only know when my organization came on board.

2 Q. Are you aware that your party filed an amended complaint
3 in this case?

4 A. I am.

5 Q. Did you review that complaint?

6 A. I did.

7 Q. Are you aware that your organization filed responses to
8 requests for admission in this case?

9 A. I do.

10 Q. Did you review those?

11 A. I did.

12 Q. And are you aware that your party filed answers to
13 interrogatories in this case?

14 A. I am aware.

15 Q. And you reviewed those as well?

16 A. Yes.

17 Q. Okay. As a part -- as a claim in this case, your party
18 is challenging the requirement that boards of elections only
19 have a single early-voting location; is that right?

20 A. Yes.

21 Q. And you're challenging that law because you believe in
22 combination with the standard early-voting hours that that
23 works to disadvantage voters; is that right?

24 A. Could you restate that?

25 Q. I believe in your complaint your party states that the

1 requirement that there is a single early-voting location works
2 in concert with the standard early-voting hours across the
3 state to disadvantage voters; is that right?

4 A. Yes.

5 MR. MARTIN: I object for vagueness, Your Honor.

6 THE COURT: It's a claim stated in -- I assume it's a
7 claim stated in your complaint.

8 MR. MARTIN: We do call it standard voting hours, Your
9 Honor.

10 THE COURT: Read the complaint.

11 BY MS. PIERCE:

12 Q. If you would take a look in those binders on the desk
13 there for Defendants' trial exhibits. You're looking for tab
14 1. If you could look at paragraph 98.

15 A. Yes.

16 Q. If you want to read that silently for a second. I'm
17 going to read aloud while you read silently.

18 The standardized one-size-fits-all schedule imposed by
19 the settlement agreement like the EIP voting directives that
20 preceded it, makes EIP voting less uniform than it was prior to
21 the issuance of the EIP voting directives, not more.

22 That's in reference to your claim regarding the single
23 EIP voting location. Do you see that in paragraph 98?

24 A. Uh-huh.

25 Q. As I think we just read aloud, the standard uniform

1 early in-person voting hours were set by a settlement agreement
2 that was signed earlier this year, correct?

3 A. Yes.

4 Q. And that settlement agreement was signed with the NAACP
5 and League of Women Voters among other African-American pastors
6 in the state of Ohio; is that right?

7 A. I believe so.

8 Q. Have you worked for a board of elections, Mr. Martin?

9 A. I have not.

10 Q. You have not actually administered an election in the
11 state of Ohio; is that correct?

12 A. No.

13 Q. Your experience is limited to campaign activities with
14 the Ohio Democratic Party; is that right, and the Cuyahoga
15 Democratic Party; is that right?

16 A. Yes. And nonprofit groups that I volunteer for.

17 Q. I think you mention on your direct examination that you
18 worked at several senior centers to get senior citizens out to
19 vote early in person; is that right?

20 A. Correct.

21 Q. Are you aware that there was a provision in Ohio law
22 that allows senior citizens to receive assistance from the
23 board of elections in voting?

24 A. I am.

25 Q. And that means that a bipartisan team from the board of

1 elections would actually come to the senior to help them vote;
2 is that right?

3 A. I am. We track early-voting categories in Cuyahoga
4 County and know of the nursing home category identification.
5 Generally in our targeting we identify those locations that
6 won't be -- receive that assistance. Additionally, those
7 locations that don't have the polling location in their first
8 floor, for example.

9 Q. You are aware that a confined voter in Ohio will receive
10 assistance directly in their home from the board of elections?

11 A. Sure.

12 Q. You mentioned a number of get out the vote efforts from
13 2008 onward, I believe, that focused mainly on voting early by
14 mail; is that right?

15 A. We do GOTV on all modes of voting.

16 Q. And that includes voting by mail?

17 A. (Nodding head.)

18 Q. There's nothing in Ohio law that stops the Cuyahoga
19 Democratic Party from providing voters with an application to
20 receive an absentee ballot by mail; is that right?

21 A. Not providing the application but we are prohibited from
22 providing prepaid postage.

23 Q. So it's your understanding that the party is prohibited
24 from providing postage --

25 A. Correct.

1 Q. -- for mailed absentee ballots. But you're not
2 prohibited from providing absentee-ballot applications; is that
3 right?

4 A. Correct. We are not prohibited from providing those.

5 Q. In fact, you do provide them to many voters in Cuyahoga
6 County; is that right?

7 A. We do print on our own cost and distribute on our own
8 time, yes.

9 Q. You mentioned your registration efforts focus quite a
10 bit in the days leading up to the early-voting period; is that
11 right?

12 A. In elections before 2014, it would include a
13 concentrated effort around golden week. In 2014, it would
14 stop, obviously before early voting started.

15 Q. Is there anything that prevents you from doing those
16 same registration efforts even further in advance of early
17 voting?

18 A. At some point we find with some of our targets the
19 mobility prevents us. If we were to register somebody in
20 January of election year, a move very well may happen between
21 our registration and election day. So proximity to election
22 day is preferable.

23 Q. But again, there's nothing to prevent you from doing
24 that; is that right?

25 A. No.

1 Q. I think you mentioned quite a bit in your direct
2 examination this concept of reregistration. What do you mean
3 by that?

4 A. If you move and need to update your voter registration
5 from outside the county, outside the state, whatever it might
6 be, having to update your registration to be current is
7 something that is conducted on the same form that new
8 registrations are.

9 Q. So it's not a reregistration, it's an update to an
10 existing registration; is that right?

11 A. Yeah. I apologize if I misnamed it.

12 Q. That's okay. I just wanted to be clear what you were
13 referring to.

14 Is there anything that prevents a voter who has not
15 updated their registration by the close of the registration
16 period from casting a ballot on election day?

17 A. State it one more time. I'm sorry.

18 Q. That's okay. I'm talking a little fast. I apologize.

19 If a voter who has not updated their registration by the
20 end of the registration period, is there anything that prevents
21 that voter from casting a ballot on election day?

22 A. The voter has updated their registration?

23 Q. Has not.

24 A. Has not updated their registration. If I'm a
25 registered -- currently registered voter in New York state but

1 I was formerly registered in Ohio then I could not register in
2 Ohio, correct.

3 Q. What about a voter who was already registered in the
4 state of Ohio?

5 A. If I'm already registered in the state of Ohio and I
6 haven't updated my registration, I guess that depends, right?

7 Q. Will I be able to cast a ballot on election day?

8 A. I don't know all the cases. I believe there's some
9 cases. Depending on what voter you are, I don't know.

10 Q. I would be able to cast a provisional ballot, wouldn't
11 I?

12 A. Okay. You would be able to cast a provisional ballot.

13 Q. You mentioned your work with African-American churches
14 to get out the vote. Have you ever worked with any other
15 churches to support your get out the vote efforts?

16 A. Some. I'd say the majority of the churches we work with
17 are predominantly African-American.

18 Q. Do you specifically target those churches to support
19 your get out the vote efforts?

20 A. We have long-standing relationships with many of these
21 churches and the pastors are stakeholders in the party.

22 Q. You talked a little bit about long lines at the
23 early-voting center in 2008 that you personally observed.

24 A. Yes.

25 Q. When did you observe those lines?

1 A. In 2008 during golden week.

2 Q. During golden week?

3 A. Correct.

4 Q. Do you know how long a voter in that line waited to
5 actually vote that day?

6 A. I do not.

7 Q. Are you aware that the entire Cuyahoga County Board of
8 Elections was removed after the 2008 election?

9 A. I don't know the full composition before or after so I
10 can't verify.

11 Q. You also mentioned long lines at the early-voting site
12 in 2012; is that right?

13 A. Correct.

14 Q. When did you observe that long line?

15 A. On the first day of golden week.

16 Q. Do you know how long a voter waiting in that line waited
17 to cast a ballot on that day?

18 A. In the experience when I was there I saw a voter outside
19 the board of elections who was just entering the building when
20 I left which would have been about an hour. So however much
21 additional time it took from getting in the doors to voting, I
22 don't know. That's all I could speak to.

23 Q. I think you said you waited an hour to cast a ballot
24 that day; is that correct?

25 A. I didn't vote that day. That was just me there.

1 Q. Okay. Sorry. I misheard.

2 You mention that you monitor provisional ballots after
3 an election to provide additional assistance to voters in
4 curing deficiencies in the ballot envelope, right?

5 A. We do.

6 Q. Those are democratic voters, democrats?

7 A. And unaffiliated.

8 Q. Do you monitor republican provisional ballots?

9 A. Well, we actually get a public records request of all
10 ballots. We're aware of all ballots, yes.

11 Q. Do you provide assistance to republican voters?

12 A. We provide assistance to our members, to our voters.

13 Q. How can a voter register to vote in the state of Ohio, a
14 new registrant?

15 A. On a paper form.

16 Q. Do they have to go to the board of elections in person
17 in order to register to vote?

18 A. They do not.

19 Q. In fact, you provide voters with registration forms in
20 order to do that, right?

21 A. Again, yes, at our cost and time.

22 Q. In 2012, do you know how many people you brought to the
23 early-vote center during golden week to both register and vote?

24 A. I do know that several thousand did and we were
25 responsible for several hundred, I'm sure.

1 Q. Several thousand voters both registered and voted at the
2 Cuyahoga County Board of Elections during golden week in 2012?

3 A. It was 2,212.

4 Q. I believe you discussed your costs as an organization in
5 2014 due to the elimination of golden week.

6 A. Yes.

7 Q. Golden week will not be in place in the 2016 election,
8 correct?

9 A. My understanding.

10 Q. How will those costs differ between 2014 and 2016?

11 A. With the anticipated probably double turnout or more,
12 they will increase greatly.

13 Q. How exactly would it do that?

14 A. Having to contact more voters twice. If 39 percent of
15 voters turned out in Cuyahoga County in 2014 and 75, 80 percent
16 turn out in 2016, that will be much more expensive for us to
17 hit them twice as well.

18 Q. When you contact a voter you can hand them a
19 registration form right then, right?

20 A. We can.

21 Q. You can also hand them an absentee-ballot request form,
22 right?

23 A. We could.

24 Q. How is that going to entail two separate contacts?

25 A. Many voter that we talked to, and I experienced

1 personally, I've had a vote-by-mail application alongside the
2 registration and they said, I wouldn't prefer that. I don't
3 trust the vote by mail. I'd like to cast my ballot in person.
4 So not every voter -- vote by mail is not for every voter.

5 Q. You mentioned preference. That is their choice to
6 pursue early voting in person as opposed to voting by mail,
7 right?

8 A. I can only speak to what I experienced.

9 Q. How is that any different from your registration and get
10 out the vote efforts in 2012? You -- at that point you would
11 still hand them a voter-registration card and an
12 absentee-ballot request form?

13 A. No. We would actually organize them and in some cases,
14 help with transportation to physically take them to the
15 early-vote site, the board of elections. So we wouldn't be
16 handing -- we wouldn't be printing paperwork and handing it to
17 them and then tracking it and turning it in. We would simply
18 schedule and coordinate them to visit the early-vote site in
19 which they would do those two things at the board of elections.

20 Q. And that was your strategy in voter contact with every
21 single voter in 2012?

22 A. I don't believe I said every single voter.

23 Q. So you had separate voter get out the vote efforts for
24 early in-person voting and voting by mail in 2012; is that
25 right?

1 A. Yes.

2 Q. So for the vote-by-mail efforts, would that involve the
3 same process, that is handing them a registration card and
4 happening them and absentee-ballot request form?

5 A. By vote by mail targets, is what you're asking? We
6 would do that and a few other methods, yes.

7 Q. Was that the same efforts in 2014?

8 A. In 2014, they weren't exactly the same. We did some
9 other things as well. But we would employ that technique for
10 some of those voters.

11 Q. Do you know what the early in-person voting hours will
12 actually be for 2016, barring any change?

13 A. I'm aware of the days that they'd be available and I can
14 speak for what they were in 2014. If they stay the same I
15 could speak to 2016.

16 Q. You aware they would involve two weekends of early
17 in-person voting?

18 A. I'm aware of that.

19 MS. PIERCE: Just give me one second, Mr. Martin.

20 BY MS. PIERCE:

21 Q. I believe another claim that your party is raising in
22 this case involves removing the discretion for county boards of
23 elections to consolidate poll books; is that right?

24 A. I believe that's a claim.

25 Q. So you want discretion -- you want standardization

1 across the counties for consolidated poll books; is that right?

2 A. I can speak to the amended complaint but not beyond that
3 on that point.

4 Q. So in your complaint, you want every county in Ohio to
5 consolidate poll books in multiprecinct locations; is that
6 right?

7 A. Again, I can speak to the amended complaint language and
8 that's it.

9 Q. Why don't we do that. If you would turn to -- you're
10 going to be turning to the end of that complaint to what's
11 called the request for relief.

12 A. Okay.

13 Q. You're going to be looking at paragraph A and you're
14 going to be looking at number point 4. I'll read it out loud
15 while you read silently.

16 That S.B. 216 violates the equal protection clause of
17 the 14th Amendment by creating different standards for
18 accepting and rejecting ballots cast by voters and the right to
19 polling location but wrong precinct.

20 Did I read that correctly?

21 A. Yes.

22 Q. So your party is claiming that the differing standards
23 for casting provisional ballots across counties creates an
24 equal protection problem; is that right?

25 A. Right.

1 Q. That's what that sentence says?

2 MR. MARTIN: Objection, Your Honor. This calls for a
3 legal conclusion.

4 THE COURT: I'm still trying to catch up here.
5 Paragraph A. What were you reading from?

6 MS. PIERCE: Number sentence 4, it's the last one in
7 the paragraph.

8 THE COURT: So you were asking him if he understands
9 what that claim is?

10 MS. PIERCE: I'm just asking if that's what the
11 sentence reads.

12 THE COURT: He can certainly answer that.

13 BY MS. PIERCE:

14 Q. Is that how that sentence reads?

15 A. Yes. You read it perfectly.

16 Q. Thank you.

17 And as we discussed before --

18 THE COURT: Overruled on that basis.

19 BY MS. PIERCE:

20 Q. As we discussed before, your party is also asking for
21 discretion for counties to have more than one early-voting
22 location?

23 A. Yeah. What I can speak to, Cuyahoga County is a very
24 large county and any problem, be it provisional ballot, be it
25 the curing period, we have more voters that we need to work

1 with. And more resources dedicated to that, I think, would
2 only be fair.

3 Q. We want standardization for consolidated poll books,
4 right?

5 A. On that point I'd have to refer to the language.

6 Q. And as we just read out loud, we want standardization
7 when it comes to counting provisional ballots, right?

8 A. Different standards -- again, I would just reference the
9 language in the complaint.

10 Q. But you're asking for discretion when it comes to early
11 in-person voting locations?

12 A. Yes.

13 MR. MARTIN: Your Honor, the complaint is there to put
14 opposing counsel on notice to the nature of our claims. I
15 don't know what it serves to have Mr. Martin read from the
16 complaint and ask him his legal interpretation or legal aspects
17 of our claim.

18 THE COURT: The claim says what the claim says.

19 MS. PIERCE: And I would note that they're also his
20 claims or the party's claims.

21 THE COURT: Right.

22 MS. PIERCE: No further questions, Your Honor. Thank
23 you, Mr. Martin.

24 THE WITNESS: Thank you.

25 THE COURT: This is in the nature of redirect,

1 correct?

2 - - -

3 REDIRECT EXAMINATION

4 BY MR. MARTIN:

5 Q. Just a couple of questions, Mr. Martin.

6 Ms. Pierce asked you about whether or not the party can
7 mail and solicit absentee-ballot applications. Have you
8 noticed any impact on the number of mailings that you send out
9 since the Cuyahoga County Board of Elections or Cuyahoga County
10 was prohibited from mailing those absentee-ballot applications?

11 MS. PIERCE: Objection.

12 THE COURT: Why?

13 MS. PIERCE: Impact. Vague, Your Honor.

14 THE COURT: Let's see. If it's increased, as I expect
15 the answer will be, he can answer that. Overruled.

16 THE WITNESS: Yes. The Cuyahoga County Democratic
17 Party will mail or distribute vote-by-mail applications after a
18 number of people have already requested to vote by mail. In
19 2012, for instance, it was five figures worth of people already
20 requested. When we did it in 2014 it was scant thousands. So
21 we, as a result, mailed to many more people who had yet to
22 request in 2014 than 2012.

23 THE COURT: So you had requests from five figures
24 worth of people and you were mailing to individual voters or
25 you sent to everybody on your list?

1 THE WITNESS: We sent request forms to anybody who had
2 yet to request and in 2012 it was five figures who had already
3 requested, therefore, we did not send to them. They had
4 already been sent a form.

5 THE COURT: They requested from the board of
6 elections.

7 THE WITNESS: Right.

8 THE COURT: Very good. Go ahead.

9 BY MR. MARTIN:

10 Q. Ms. Pierce also asked you about the number of voters who
11 registered and voted in 2012 during golden week in Cuyahoga
12 County.

13 A. Uh-huh.

14 Q. Can you tell me about those numbers in 2008?

15 A. In 2008, I don't know the golden week numbers. I know
16 that early voting in person during that first week approached
17 14,000 voters. In the five days in Cuyahoga County 14,000
18 voters.

19 Q. Do you know those figures for 2010?

20 A. I don't know 2010 off the top of my head.

21 MR. MARTIN: That's it, Your Honor. Thank you.

22 THE COURT: Ms. Pierce, anything else?

23 MS. PIERCE: Just one, Your Honor.

24 - - -

25

RE-CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MS. PIERCE:

Q. Mr. Martin, you are aware that the Secretary of State is mailing absentee-ballot applications in 2016 in Cuyahoga County and across the state?

A. That's my understanding, yes.

MS. PIERCE: Thank you. No further questions.

THE COURT: Thank you, Mr. Martin. You may step down, sir.

THE WITNESS: Thank you, Your Honor.

THE COURT: Why don't we take a ten-minute recess.

(A recess was taken at 10:35 a.m. until 10:45 a.m.)

THE COURT: Who's next?

MR. MARTIN: We'd like to call Joey Longley.

THE COURT: Sir, if you would approach the courtroom deputy and be sworn.

(Witness sworn.)

THE COURT: If you'd have a seat, state your name and spell your name for the court reporter, if you would.

THE WITNESS: My name is Joseph Longley. J-O-S-E-P-H, L-O-N-G-L-E-Y.

THE COURT: Thank you. You may inquire.

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JOSEPH LONGLEY

Called as a witness on behalf of the Plaintiffs, being first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q. Hello.

A. Hello.

Q. How old are you?

A. I'm 24.

Q. Where were you born?

A. St. Marys, Ohio.

Q. Which county is that in?

A. Auglaize.

Q. How big of a town is that?

A. The town included New Knoxville, Ohio was about 900
people.

Q. And where do you live now?

A. I live in New York City.

Q. And how long have you lived there?

A. Since September of 2014.

Q. And what do you do for a living?

A. I work in the administration at Union Theological
Seminary.

Q. What is the Union Theological Seminary?

1 A. It's the divinity school attached to Columbia
2 University.

3 Q. Where did you go to undergrad?

4 A. I went to Ohio State University.

5 Q. What years were you there?

6 A. 2009 to 2013.

7 Q. And what did you major in?

8 A. I studied political science and economics.

9 Q. Were you involved in politics on campus?

10 A. I was.

11 Q. Can you describe what those activities were when you
12 started in 2009 at OSU?

13 A. Yeah. When I began in 2009, I got immediately involved
14 with college democrats and was involved in sort of efforts
15 around student engagement of the Affordable Care Act.

16 Q. And what types of activities did that involve?

17 A. So it was organizing students for signing petitions or
18 advocating, calling the members of congress, doing watch
19 political speeches, what the president was doing, activities
20 like that.

21 Q. And how long did that continue?

22 A. That was until March 2010.

23 Q. And what did you start doing after March 2010?

24 A. From January to March 2010 I was an intern with the
25 Organizing for America so it was doing specific work around

1 that. And then after March 2010, was working on the
2 coordinated campaign at Ohio State's campus.

3 Q. And so what was the coordinated campaign that was going
4 on after 2000 -- March 2010?

5 A. So it was an effort on Ohio State's campus to elect the
6 democratic slate, including Governor Strickland, the whole
7 slate in 2010.

8 Q. Were you involved in voter registration efforts --

9 A. I was.

10 Q. -- at that time?

11 A. Yes.

12 Q. And could you describe those activities?

13 A. So in 2010, a lot of those activities were registering
14 the students to vote on the oval area of Ohio State's campus
15 which is the kind of quad space that people gather at Ohio
16 state and so we registered several hundred people to vote.

17 Q. How many?

18 A. Several hundred.

19 Q. Several hundred. Were you involved in GOTV or
20 get-out-the-vote activities --

21 A. Yes.

22 Q. -- in 2010?

23 A. Yes.

24 Q. Can you describe those?

25 A. So it was a lot of door knocking in off-campus regions

1 and sort of campaign throughout campus to get people out to the
2 polls to vote, both early and on election day.

3 Q. And are you familiar with the term called golden week?

4 A. I am.

5 Q. And what does that mean to you?

6 A. So it's the five days that you can still register to
7 vote but you can also vote early in Ohio.

8 Q. And did any of the GOTV and voter-registration
9 activities that you engaged in in 2010, were any of those
10 focused on golden week?

11 A. Yes.

12 Q. Can you describe those activities specifically?

13 A. Yes. While we were doing campaign efforts on Ohio
14 State's campus, we encouraged people who were registering to
15 vote to either fill out an absentee-ballot request form or go
16 to the polls where there was a polling location and cast their
17 votes on golden week.

18 Q. You worked on the coordinated campaign throughout the
19 November 2010 election; is that correct?

20 A. Yes.

21 Q. What did you do after that?

22 A. So after the 2010 elections I was appointed the director
23 of OSU Votes which is the student government's official
24 voter-registration drive. So that was me and the president of
25 College Republicans were the co-directors of that program.

1 Q. And so it was just solely focused on registration?

2 A. It was solely focused on registration.

3 Q. And what activities did you guys engage in?

4 A. So the main activity was placing voter-registration
5 forms on every desk in every residence hall at Ohio State's
6 campus. That's approximately 7,000 voter-registration forms we
7 would put out and we collected over 700 registrations out of
8 that. There was a box in every residence hall dorm that you
9 could put your voter registration in. So just from that effort
10 over ten percent of the people moving into Ohio State's campus
11 registered to vote.

12 Q. How long were you with OSU Votes?

13 A. So that continued until election day of 2011.

14 Q. Okay. And you said that you were working with -- you
15 had a republican counterpart?

16 A. Yes.

17 Q. So does that mean it was a nonpartisan or bipartisan?

18 A. Exactly. Exactly.

19 Q. What were your activities in the 2012 election?

20 A. So in 2012, from December of 2011 to April of 2012, I
21 was a fellow with Obama for America and I was also working with
22 the College Democrats on campus organizing. So we did
23 statewide training for the college students and people in
24 different campuses throughout Ohio on voter registration and
25 engagement with different communities. On campuses, whether

1 that's, you know, Greek organizations or any kind of student
2 organizations in which students organize themselves.

3 Q. And did any of those trainings that you mentioned focus
4 on golden week specifically?

5 A. Yes.

6 Q. And why did you focus on golden week?

7 A. Because it's just such an crucial opportunity for the
8 students to be able to have their voices heard. I think
9 students oftentimes they're interested in major-life
10 transition. They just -- many of them just turned 18, this is
11 their first time voting and anytime, any chance there is to
12 kind of grab their attention and be able to have their voices
13 heard is a crucial opportunity.

14 Q. And how long were you a fellow at OFA and working on the
15 campus organizing activities?

16 A. That was December 2011 to April 2012.

17 Q. What did you start doing after April 2012?

18 A. I managed the campaign of Michael Stinziano in the 18th
19 House District.

20 Q. And where is that district located?

21 A. So that's in Columbus. Includes seven colleges and
22 universities including Ohio State and Capital, and it goes up
23 north to the south part of Clintonville, down south to German
24 Village, western part is Grandview, eastern part is Bexley.

25 Q. What was your role in that campaign?

1 A. As the campaign manager, so mostly field and finance
2 work. So we knocked on over 20,000 doors and sent out 100,000
3 pieces of mail.

4 Q. And what types of voters did you interact with and
5 observe during that time?

6 MS. RICHARDSON: Objection, Your Honor. The question
7 was what types of voters did you interact with. It's vague.

8 THE COURT: They were live, right? They were alive?

9 THE WITNESS: They were alive, yes.

10 THE COURT: Maybe you can narrow it down a bit.

11 BY MR. MARTIN:

12 Q. Can you describe the neighborhoods where you knocked on
13 doors?

14 A. Yeah. Well, one of the major neighborhoods was Ohio
15 State's campus. There's over 60,000 students at Ohio State and
16 so there was a lot of younger people. There was also a lot of
17 young professionals both in Grandview and up in Clintonville.

18 Q. And as campaign manager, were you involved in planning
19 for GOTV and voter-registration efforts?

20 A. Yes.

21 Q. Can you describe those efforts?

22 A. Yes. So we were linked into the coordinated campaign
23 through the Ohio Democratic Party and the Obama campaign.

24 THE COURT: Where are we now, 2012?

25 THE WITNESS: 2012. And did major efforts towards

1 voter registration, specifically at Ohio State's campus.

2 BY MR. MARTIN:

3 Q. And did any those activities focus specifically on
4 golden week?

5 A. Yes.

6 Q. And, again, why did you focus so much on golden week?

7 A. It's just, I think for a lot of college students, they
8 need a deadline in order to get something done and, you know,
9 between those five days, that just gives like a really good
10 opportunity for the students to vote. I know specific students
11 who have told me that and that's --

12 Q. In your experience and observation, did you --

13 THE COURT: I think we have an objection.

14 MS. RICHARDSON: I do object, Your Honor. First of
15 all, I object that this is highly cumulative of what we heard
16 yesterday now from multiple witnesses, but in addition, to the
17 extent that he's testifying about generally the views of the
18 college students. There's lack of foundation and personal
19 knowledge.

20 THE COURT: He just said several students told him
21 that.

22 MS. RICHARDSON: And if he's going to testify about
23 what they told him then I would make a hearsay objection.

24 MR. MARTIN: Your Honor, I can rephrase.

25 THE COURT: Please.

1 BY MR. MARTIN:

2 Q. Did you encounter students who faced obstacles in
3 voting?

4 A. Absolutely.

5 Q. And can you describe what those obstacles were?

6 A. Yeah. Time and time again, students would come to me
7 and not know where the polling location was, not know when the
8 deadline was for voter registration. The laws were confusing
9 to people and they were not clear for the people who, at the
10 most, have voted as undergraduate students, oftentimes have
11 voted eight times at the most and a lot of them have not voted
12 at all. So this is not something they had experience with but
13 it is something that they want to engage with.

14 Q. And in your experience, was focusing those students on
15 the golden week, specifically, helpful to mobilizing the voters
16 for your campaign?

17 A. Absolutely. Absolutely. And I think, yeah, time and
18 time again people -- golden week was the time when students
19 were the most engaged on campus.

20 Q. And can you describe the number of students that were
21 not yet registered that you interacted with or your campaign
22 interacted with?

23 A. Hundreds. Every day there were people coming up to
24 tents that we had on the oval or in different locations
25 throughout Ohio State's campus who had not registered to vote,

1 who registered to vote in another state, who were -- had never
2 registered to vote before.

3 Q. Did you also encourage students to vote early when they
4 approached you about registration?

5 A. Yes. In addition to having a voter-registration form,
6 everyone who filled out a voter-registration form was asked if
7 they would like to fill out an absentee-ballot request form,
8 and I would say about 40 percent of the people I interacted
9 with did that.

10 Q. And did you encourage any of those to vote in person
11 early?

12 A. Yes. There were transportation options set up through
13 the campaign itself where people could go to the polls and cast
14 their ballot.

15 Q. And where was the early-voting location in Franklin
16 County in 2012?

17 A. I believe it was on 1700 Morse Road.

18 Q. How far away is that from campus?

19 A. It took maybe 15 minutes to drive there.

20 Q. What if you had to walk?

21 A. You couldn't.

22 Q. Do many students at OSU have a car, in your experience?

23 A. Some of them do. Many of them don't. It depends on
24 their socioeconomic background.

25 Q. What's the public transportation options between campus

1 and the early-voting location?

2 MS. RICHARDSON: Objection. Again, this is
3 cumulative. We have gone through all of this with at least two
4 witnesses yesterday and I'm not sure really what the relevance
5 of this is at this point in time.

6 MR. MARTIN: Your Honor, it's relevant.

7 THE COURT: Seems to me it's important that you elicit
8 testimony about problems that voters encounter. We did hear
9 quite a bit of this from Mr. Anthony.

10 MS. RICHARDSON: Thank you, Your Honor.

11 BY MR. MARTIN:

12 Q. Did you visit the early-voting location during the 2012
13 election?

14 A. Yes.

15 Q. What did you observe?

16 A. I -- it was located in an area of Columbus that I had
17 never been to before at that point so it wasn't a location that
18 I, as an Ohio State student, had been. So I thought it was
19 difficult to get to. I thought the location itself, I didn't
20 encounter a line myself but I know that other people told me
21 that they did.

22 THE COURT: Did you vote there during 2012?

23 THE WITNESS: I did, yes.

24 BY MR. MARTIN:

25 Q. And did you also drive to the early-voting location?

1 A. I did.

2 Q. And did you transport fellow students to the
3 early-voting location?

4 A. I did transport people that were volunteering on the
5 campaign to the early-voting location.

6 Q. And were you working on the campaign on election day --

7 A. I was.

8 Q. -- 2012? Where were you on election day in 2012?

9 A. In the morning I was at several different precincts
10 throughout Columbus in the district, and from noon to 7:00 p.m.
11 I was at the Ohio Union.

12 Q. Can you describe what you observed while you were at the
13 Union?

14 A. Yes. The line at the Ohio Union was set up in such a
15 way that it allowed the least possible people to stand inside
16 in the line. So say approximately 70 percent of the line most
17 of the time that I was there was outside and it was a very cold
18 and windy day. It was unpleasant outside. So that made it
19 difficult to kind of stay in line to vote. The line took over
20 an hour for people to get through most of the time that I was
21 there, peaking about three o'clock. And it was set up in such
22 a way that was much different than the way that I've seen the
23 Ohio Union set up before for other kind of ticketing events.
24 They know how to snake a line but this was a straight line
25 directly outside the door which didn't make much sense to me.

1 Q. And did you --

2 MS. RICHARDSON: Objection.

3 THE COURT: What's the peaking about, what do you mean
4 by that?

5 THE WITNESS: What do you mean?

6 THE COURT: You said peaking.

7 THE WITNESS: Snaking. So the line when they do a
8 ticket release at the Ohio Union for students to buy tickets,
9 they often set up a line that snakes around so that the most
10 people can stand inside as possible.

11 THE COURT: So it was a long line and it was outside.

12 THE WITNESS: It's a long line that was set up in such
13 a way that as many people as possible would stand outside.

14 MS. RICHARDSON: Your Honor, again, I would object to
15 the cumulative nature of this testimony. Mr. Caffrey testified
16 at length yesterday about the voting at the Union center and
17 lines and all of the information that's now being elicited
18 again.

19 THE COURT: They have a pretty high burden to prove.
20 I have heard some of this before, but to the extent that his
21 experience was different, perhaps, than Mr. Caffrey's, that
22 might be helpful.

23 MS. RICHARDSON: Thank you, Your Honor.

24 BY MR. MARTIN:

25 Q. In your experience organizing students on OSU's campus

1 and working on campaigns, did you observe students that you
2 interacted with who were unfamiliar with the voting process in
3 Ohio?

4 A. Yes. Just a week ago, a couple weeks ago during
5 election day 2015 I had a close friend call me and ask me
6 whether or not he could vote because he was still registered at
7 the house that we lived in when we lived on campus, and he and
8 his wife now live in a different neighborhood in Columbus. And
9 I said I didn't know but I thought probably not.

10 Q. And do you know whether he tried to vote?

11 A. He did not.

12 Q. And do you know why he did not try to vote?

13 A. Well, when we talked about it on the phone we both --

14 THE COURT: Does he have a name?

15 THE WITNESS: His name is Matt Varnese (phonetic).

16 THE COURT: And now you're trying to elicit hearsay
17 testimony.

18 MR. MARTIN: I can rephrase, Your Honor.

19 THE COURT: That would be good.

20 BY MR. MARTIN:

21 Q. Have you observed students, in your time organizing on
22 campus and working on campaigns, who have not voted because of
23 confusion about Ohio's election laws?

24 A. Yes. There were many students at the Ohio Union in 2012
25 on election day who had class, had other responsibilities on

1 that Tuesday and were -- and found out that they were at the
2 wrong precinct and didn't have time to move to another precinct
3 to cast a ballot and did not vote at all on election day.

4 Q. Earlier we were talking about the long line at OSU on
5 election day in 2012. What time of day did you see the longest
6 lines?

7 A. Probably around 3:00 p.m.

8 Q. And you were there from?

9 A. From noon to 7:00 p.m.

10 MR. MARTIN: That's it at this time, Your Honor.

11 THE COURT: You may cross.

12 - - -

13 CROSS-EXAMINATION

14 BY MS. RICHARDSON:

15 Q. Good morning, Mr. Longley.

16 A. Good morning.

17 Q. My name is Ryan Richardson and I am here representing
18 the defendants in this case, Ohio Secretary of State Jon Husted
19 and Ohio Attorney General Mike DeWine. I have just a few
20 questions for you.

21 You mentioned that you now live in New York City; is
22 that right?

23 A. Yes.

24 Q. And you've been there for a little over a year; is that
25 correct?

1 A. Yes.

2 Q. Were you there for the most recent election?

3 A. The November 2015 election?

4 Q. That's right.

5 A. Yes.

6 Q. So you weren't in Ohio for the 2015 election, correct?

7 A. I was not.

8 Q. You weren't in Ohio for the 2014 election, correct?

9 A. That's correct.

10 Q. So the last election that you were in Ohio for was the
11 2012 election; is that correct?

12 A. That's correct.

13 Q. And your role in that election was on behalf of the
14 Stinziano campaign, correct?

15 A. Yes.

16 Q. Were you paid in that position?

17 A. Yes.

18 Q. So you were a paid campaigner for Stinziano in 2012?

19 A. Yes.

20 Q. And in 2010 you similarly worked for a campaign at that
21 point in time, correct?

22 A. Yes.

23 Q. And that was a paid position as well?

24 A. I had a paid internship the summer of 2010 and was
25 unpaid in the fall of 2010, unpaid volunteer in the fall of

1 2010.

2 Q. That was for a democratic candidate, correct?

3 A. Yes.

4 Q. You testified about some lines at Ohio State in 2012,
5 correct?

6 A. Yes.

7 Q. You don't know why there were lines at Ohio State in
8 2012, do you?

9 A. The lines were made because there were lots of people
10 that were trying to vote and so they lined up behind each
11 other.

12 Q. And was this on election day?

13 A. This was on election day 2012, yes.

14 Q. And you don't know specifically what was causing the
15 lines on election day in 2012, right?

16 A. People were not moving through the voting process in a
17 way that would have prevented lines from being formed.

18 Q. You don't know whether those delays were happening at
19 the time that the election workers were processing people upon
20 entry, do you?

21 A. I don't understand the question.

22 Q. Sure. In other words, you know that there was a delay.
23 That delay could have been caused because there were issues
24 with the people who were processing voters as they were coming
25 into the building, right?

1 A. Yes.

2 Q. And that delay could have been caused by issues relating
3 to the poll books, right?

4 A. I have never been an observer at the polls so I don't
5 know what causes these delays.

6 Q. You weren't involved with working with the Franklin
7 County Board of Elections to set up the location for voting on
8 election day in 2012, were you?

9 A. I was not.

10 Q. So you don't know whether Ohio State offered a room that
11 was different than what the board had been planning for, right?

12 A. I do not.

13 Q. And if it was a much smaller room than what had been
14 planned for, that might cause delays, correct?

15 A. It may.

16 Q. You've never served as a member of a board of elections,
17 have you?

18 A. No.

19 Q. You've never been involved in an election as an
20 administrator, right?

21 A. No.

22 Q. So you don't have any opinions regarding the costs or
23 burdens associated with running an election, right?

24 A. No.

25 Q. As a student at Ohio State, you had access to the

1 computer and the internet, right?

2 A. Yes.

3 Q. And in your experience, students at Ohio State were very
4 familiar with the internet and computers, right?

5 MR. MARTIN: Objection, Your Honor.

6 MS. RICHARDSON: He's been testifying throughout his
7 direct about his observations regarding the Ohio State students
8 and their voting behaviors.

9 MR. MARTIN: We should be able to redirect on his
10 views about all students.

11 MS. RICHARDSON: I'll rephrase, Your Honor.

12 THE COURT: Thank you.

13 BY MS. RICHARDSON:

14 Q. Are there many computer labs and computers available for
15 the students at Ohio State?

16 A. Yes.

17 Q. Are you aware that information regarding polling
18 locations is available online?

19 A. Yes. I'm aware that it's available online. I do not
20 think that it's available in a way that most students have been
21 able to -- that many of the students that have talked to me
22 have been able to access easily.

23 Q. Are you aware of what the process is in Franklin County
24 for going online and accessing your polling location?

25 A. Yes.

1 Q. And basically just requires putting in your last name
2 and date of birth and the number of your address, right?

3 A. Yes.

4 Q. And it's your testimony that that was intimidating for
5 the Ohio State students?

6 A. It was difficult to find on the internet. I think that
7 people are perfectly capable of using the things that they're
8 used to using but there's a learning curve with anything, even
9 new social media outlets people don't know how to use
10 immediately. So when somebody has only done this zero times or
11 one time or two times, it takes a little bit to get to that
12 place.

13 Q. As part of your efforts to educate the students about
14 how to vote, did you direct them to the website of the Franklin
15 County Board of Elections?

16 A. Yes.

17 Q. And have you personally gone onto the Franklin County
18 Board of Elections to access information about polling
19 location?

20 A. Yes.

21 Q. And you were able to do that then without any direction
22 or assistance?

23 A. Not the first time. The first time somebody had to show
24 me how to do it.

25 Q. Who did you reach out to to show you how do that?

1 A. I don't recall.

2 Q. If they needed help accessing, putting in their last
3 name and address online, could they contact the Franklin County
4 Board of Elections for assistance?

5 A. I don't see anything that would stop them from doing
6 that, no.

7 Q. You mentioned that some of your voter-registration
8 efforts included putting voter-registration cards on, I think
9 you said, desks and in the dorms as well?

10 A. Dorms themselves, yes.

11 Q. The voter-registration requirements have not changed
12 that you're aware of, have they?

13 A. No.

14 Q. There's certainly nothing that would prevent volunteers
15 at Ohio State from continuing to put voter-registration cards
16 on desks and in dorms and in all of the other locations you
17 mentioned, right?

18 A. No. There's nothing that would stop them from doing
19 that. I just don't think -- I think there's more that needs to
20 be done and anything that restricts people from being able to
21 access the ballot is counterproductive.

22 Q. Thank you. But, again, there's nothing that would
23 prevent volunteers or workers or people on campaigns from
24 continuing to distribute registration materials on desks and in
25 dorms, on the quad, the other places that you mentioned?

1 A. I don't know the status of what the University's
2 relationship is with OSU Votes is at this time. So I don't
3 know.

4 Q. So sitting here today then, no, you're not aware of
5 anything that would prevent them from doing exactly what you
6 did when you were on campus in terms of passing out
7 registration cards on desks and in dorms and on the quad?

8 A. I'm not aware of anything specific that would prevent
9 that but that's something -- that was a response to a problem
10 and so I don't think that, you know, I think there's still
11 steps that need to be taken in order to make sure students have
12 the capacity to vote.

13 Q. And in fact, many of the students that you assisted in
14 registering to vote were outside of golden week, right?

15 A. Yes.

16 Q. And you mention that you also encouraged students to
17 vote through absentee by mail; is that right?

18 A. Yes.

19 Q. And I think you said that you often handed out the
20 requests for absentee ballots to students?

21 A. Yes.

22 Q. And in your experience, approximately 40 percent of
23 people actually did complete that request and vote by mail?

24 A. Yeah. When I individually talked to them. Not if we
25 laid it on the desk.

1 Q. And, again, there is nothing now that would prevent
2 anyone from passing out requests for absentee ballots by mail
3 just as you did, right?

4 A. It would be the same process.

5 Q. Did you vote in New York for the most recent election?

6 A. In 2015, November 2015, no.

7 Q. Are you aware of what the election laws are in New York?

8 A. I don't -- I certainly don't know all of the election
9 laws. I certainly don't have them -- yeah, I don't.

10 Q. Sure. You know that New York does not offer any days of
11 early voting, right?

12 A. I'm not aware of that.

13 Q. Do you know that New York does not offer absentee by
14 mail unless there are specific reasons?

15 A. I am aware of that, yes.

16 MS. RICHARDSON: No further questions. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you, Ms. Richardson.

19 Redirect?

20 MR. MARTIN: I have no redirect, Your Honor.

21 THE COURT: Thank you very much, sir. You may step
22 down.

23 THE WITNESS: Thank you.

24 MR. SPIVA: Your Honor, we are getting ready to call
25 one of our expert witnesses and so I guess a couple of things.

1 We did discuss -- we've been trying to work out the exhibit
2 issue and I think Mr. Voigt will correct me if I'm wrong but I
3 think this is what we agreed to. The defendants have no
4 objection to Mr. -- Dr. Timberlake's rebuttal expert report
5 coming into evidence. They would like to request that Your
6 Honor reserve decision on the full initial report because
7 Mr. Voigt may want to make a motion to strike a portion of it
8 after his cross-examination. And we have no objection to that,
9 to asking for a reservation until afterwards. We obviously
10 would object to a portion of it being stricken.

11 And the defense counsel does not object to the erratum
12 that Dr. Timberlake submitted. The exhibit numbers, just for
13 the record, Your Honor, Dr. Timberlake's initial report is at
14 Plaintiffs' Exhibit 109. His rebuttal report is at Plaintiffs'
15 Exhibit 110 and there are two errata, Your Honor, but since
16 there's no objection from the defendants we probably will only
17 need -- it's on the same table so we'll probably only need to
18 submit one of those, which would be Plaintiffs' Exhibit 112.

19 THE COURT: That's the second errata?

20 MR. SPIVA: Yes. The second errata, Your Honor.

21 MR. VOIGT: Your Honor, that was a fair
22 characterization.

23 THE COURT: Very good. We'll go until about noon and
24 break for an hour.

25 MR. SPIVA: Great. Thank you.

1 So with that, Your Honor, the plaintiffs call Dr. Jeff
2 Timberlake.

3 THE COURT: Good morning. Please raise your right
4 hand and be sworn.

5 (Witness sworn.)

6 THE COURT: Doctor, if you'd have a seat. State your
7 name and spell it for the record.

8 THE WITNESS: My name is Jeffrey Martin Timberlake.
9 First name J-E-F-F-R-E-Y, M-A-R-T-I-N, last name
10 T-I-M-B-E-R-L-A-K-E.

11 THE COURT: Good morning, sir.

12 Mr. Spiva, you may inquire.

13 MR. SPIVA: Would the Court mind if I actually have a
14 portion of his report on the screen given --

15 THE COURT: That's fine.

16 - - -

17 JEFFREY TIMBERLAKE, PH.D.

18 Called as a witness on behalf of the Plaintiffs, being first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SPIVA:

22 Q. Morning, Dr. Timberlake.

23 A. Good morning.

24 Q. Can you tell the Court a little bit about your
25 background and training? First of all, where are you employed?

1 A. I'm employed as an associate professor of sociology at
2 the University of Cincinnati in Cincinnati, Ohio.

3 Q. Are you tenured there?

4 A. I am.

5 Q. You may have said this. What field?

6 A. In the department of sociology. So I'm a sociologist.

7 Q. How long have you been a professor at the University of
8 Cincinnati?

9 A. Since the fall 2003.

10 Q. Can you give us a history of your or not history but
11 your academic background where you went to college and obtained
12 your Ph.D.?

13 A. Yes. I received my bachelors degree in social sciences
14 at the University of Michigan in Ann Arbor, Michigan.

15 Q. What year did you receive that?

16 A. In 1991. In 1998, I received my master of science
17 degree from the department of sociology at the University of
18 Wisconsin-Madison in Madison, Wisconsin. Then in 2003, I
19 received my Ph.D. in sociology from the University of Chicago
20 in Chicago, Illinois.

21 Q. In obtaining your Ph.D. what was your focus in terms of
22 sociology?

23 A. Within the field of sociology, my focus was in urban
24 sociology. So this is a broad field that encompasses a lot of
25 different kinds of research topics, but they focus on urban

1 social processes, urban populations, urban problems, urban
2 inequality. So a lot of topics related to cities. And then I
3 had a secondary specialization at the University of Chicago in
4 demography and then a third specialization in quantitative
5 research methods.

6 Q. Let me just start with the first of those. You
7 mentioned urban -- I think various types of urban studies. Can
8 you provide a little more specificity in terms of what that
9 type of research and analysis entails, maybe an example of the
10 types of issues that you examined?

11 A. Sure. So within the field, a number of us are more
12 quantitatively oriented and so we tend to study the
13 distribution of urban populations. So specifically my
14 research, a good deal of my research has to do with measuring
15 and understanding the causes of residential segregation in
16 American cities in metropolitan areas.

17 I've also done quite a bit of work measuring the
18 exposure of children to neighborhood poverty in American
19 cities. So my particular area within urban sociology is very
20 much a quantitative demographic perspective on urban issues.
21 Particularly racial and ethnic inequality in American cities.

22 Q. You mentioned that you had kind of a subspecialty, I
23 guess when you were in school, in demography?

24 A. Uh-huh.

25 Q. And have you continued that, to do research and studies

1 in that field of demography?

2 A. Yes.

3 Q. What is that?

4 A. Demography is a multidisciplinary field. There are
5 economists, sociologists, political scientists, public policy
6 analysts. A whole variety of disciplinary scholars work as
7 demographers. And most basically, demography is the
8 statistical study of human population. So any researcher who's
9 interested in distribution of population or population
10 characteristics such as fertility rates, mortality rates,
11 morbidity rates, migration from one place to another,
12 frequently, but not exclusively, those people are demographers.

13 Q. And you also mentioned, I believe it was quantitative
14 methods, is that the right terminology that you studied in
15 obtaining your Ph.D.?

16 A. Yes. I did a specialty area at the University of
17 Chicago. All graduate students in sociology had to specialize
18 in two areas. My initial first area was in urban sociology and
19 the second one was in quantitative research methods.

20 Q. And is that something that you have continued to use in
21 your research and writing since you've been a professor?

22 A. Yes. Virtually all of the research that I've engaged in
23 in the past twelve years or so, and even before that in
24 graduate school, employed one or more of many types of
25 quantitative research methods. In addition, I teach something

1 like three or four classes at the University of Cincinnati in
2 the Department of Sociology on the use of statistical and other
3 kinds of research -- quantitative research methods.

4 Q. Can you give us some examples of what that means or how
5 it's applied, the quantitative analysis, quantitative methods?

6 A. Sure. So all sociologists are interested, for the most
7 part I should say, almost all sociologists are interested in
8 understanding the empirical world, how things work in the
9 social world. Some sociologists use a set of methods which are
10 typically called qualitative research methods. Those usually
11 involve asking real-live human beings questions and recording
12 their answers and proceeding that way.

13 Quantitative research methods are used by sociologists
14 who use statistical data, usually in databases of some sort,
15 large-scale databases frequently, and then they typically
16 employ some kind of method like a statistical method such as
17 regression or a demographic technique such as a life table.
18 And so my research has typically used some version of
19 regression methods which is a category of statistical methods
20 that attempts to understand the relationship between usually an
21 outcome or a variable that is to be predicted as a function of
22 a variety of variables that are thought to predict or cause the
23 outcome variable.

24 Q. You mentioned that in doing this analysis that you work
25 with large-scale databases. Can you give an example of what

1 you mean by that?

2 A. Yes. I can give several examples. A lot of my work
3 uses the census data, both the decennial census and then
4 various offshoots, products of the census bureau. Most notably
5 the American Community Survey which is a yearly survey of
6 Americans that replaced the so-called long form on the
7 decennial census. So it occurs every year instead of only
8 every ten years, the way the decennial census used to.

9 I've used a data set known as the Panel Study of Income
10 Dynamics which is a longitudinal database of American families
11 that began in 1968 and extends to the present. I've used
12 another database known as the General Social Survey which is,
13 again, a long-term database that inquires about Americans'
14 attitudes typically towards political and social issues.

15 Q. Have you done any work analyzing what's known as or
16 called rational choice theory and if so, if you can explain
17 what that is?

18 A. I have not personally carried out research projects that
19 employ or test the proposals or the tenets of rational choice
20 theory, but rational choice theory is a foundational, social
21 theory that has been developed initially in the field of
22 economics and then has been imported into a variety of other
23 fields including sociology and political science and probably a
24 few others.

25 So any social scientist, any political scientist, any

1 sociologist, certainly any economist would be broadly or quite
2 deeply familiar with the principles and propositions of
3 rational choice theory.

4 Q. And what is that, if you can, in a nutshell, what is
5 rational choice theory?

6 A. Rational choice theory is generally a theoretical model
7 that attempts to account for individual behavior, individual
8 choice. And so the kind of garden variety or bread and butter
9 version of rational choice theory proposes that individuals
10 have a set of preferences, a set of background
11 characteristics -- in the language of economics these are known
12 as exogenous factors, things they bring with them to some
13 market or some situation. And then they observe the choices
14 that are available to them in, again, could be in a market.
15 Might literally be a supermarket. And then they calculate the
16 expected costs of engaging in a variety of choices and the
17 expected benefits to them. Those benefits are broadly known in
18 economic theory as utility. So that doesn't have to be a
19 financial reward. It could be wellbeing or psychological
20 wellbeing.

21 In rational choice economic theory, individuals are
22 assumed to be so-called utility maximizers. That is, they scan
23 around a variety of choices that are available to them and they
24 pick the one that they think will give them the most utility,
25 make them the best off after they make the choice.

1 In doing that, they always have to consider the costs of
2 any sort of action. So a simple example would be, if you're
3 thinking about buying organic produce versus regular produce,
4 you might think that your outcomes would be better, your
5 utility will be maximized by eating organic produce but it
6 costs more so you may not choose to make that choice. So it's
7 a weighing of the costs and benefits of any action.

8 Q. You've mentioned the political science field and
9 economics field a couple of times. What is the relationship of
10 your fields of study to political science and economics?

11 A. Well, there is a sometimes tendentious relationship
12 between and among the fields but I think that, in general,
13 they're all grouped together under the general category of
14 social signs or sometimes social and behavioral sciences. So
15 they're really sister or brother disciplines.

16 My chauvinistic view is that sociology is more broad and
17 encompassing than political science and economics but I know
18 that my political science and economics colleagues would
19 disagree with that characterization. But generally speaking,
20 they are fairly closely related. They tend to focus on
21 slightly different kinds of things. But they are sort of
22 unified, generally, by an examination of social human behavior.
23 And typically, at least in the quantitative side of things,
24 they're unified by a fairly common set of methods, research
25 methods. So most political scientists and sociologists and

1 economists would be familiar with, for example, regression
2 analysis, if they do quantitative research, that is.

3 So there are some disciplinary tweaks and differences.
4 But for the most part they're unified, I would say, by a common
5 set of research methods.

6 Q. Approximately how many articles, Professor Timberlake,
7 have you published in peer-reviewed journals?

8 A. I believe it's about 25 to date.

9 Q. And have you published additional articles not in
10 peer-reviewed journals?

11 A. Yes. Occasionally I'll get asked to write book reviews
12 or submit chapters for edited volumes and those occasionally
13 don't go through a full peer-review process. They might be
14 reviewed by an editor of a journal or an editor of a book but
15 they wouldn't be submitted to peers, other sociologists or even
16 economists or political scientists, frankly, to evaluate the
17 research.

18 Q. What types of issues have you written about?

19 A. I've written about a variety of topics. I would say
20 that my research tends to focus on two basic areas. One is,
21 very broadly, the issue of urban inequality, and particularly
22 racial and ethnic inequality in urban areas. And so, for
23 example, I published a number of papers on the measurement and
24 causes of residential segregation in urban areas. And by that
25 I mean, the extent to which members of different racial and

1 ethnic groups live in different kinds of neighborhoods in
2 cities and in suburbs.

3 I've published a couple of papers that try to estimate
4 the racial and ethnic differences in the exposure of children
5 to neighborhood poverty. Neighborhood poverty is thought to be
6 sort of a pernicious precondition for a variety of outcomes.
7 Health outcomes for children, educational outcomes, teen
8 pregnancy outcomes. So neighborhood poverty is thought to be,
9 or a lack thereof, is thought to be a sort of important
10 baseline characteristic that individuals experience.

11 I would say that this is one way you can see the
12 difference between sociology and economics. Sociologists tend
13 to focus a little bit more on collective processes like
14 neighborhoods and schools and churches. Economists not
15 exclusively but tend to think about human behavior as being
16 governed by individual processes.

17 Q. Let me ask you what were you asked to do in this case?
18 What were you asked to analyze?

19 A. Broadly speaking, I was asked to contribute a report
20 that provided data analysis on two sets of issues. One is the
21 use and potential impact of various kinds of voting methods
22 that Ohioans might use. By methods I mean not so much pull
23 levers or something like that but the timing of voting. So I
24 analyzed use of voting during golden week. I analyzed early
25 in-person voting more generally. I analyzed the use of and

1 rejection of provisional ballots and of absentee ballots. And
2 I provided some estimates of the demographic implications of
3 Senate Bill 200 and of the restriction statutory, as I
4 understand it, the statutory restriction of early in-person
5 voting centers to one location with a fixed set of hours. So
6 that was one set of analyses that I performed.

7 A second set was to provide some quantitative measures
8 of what were introduced to me and I came to know as the senate
9 factors. So I spent a good deal of time analyzing data that
10 were relevant to senate factor five in particular which looked
11 at racial and ethnic -- in this case simply black/white
12 inequalities and a variety of socioeconomic characteristics.

13 Q. You mentioned that the senate factors were something
14 that were introduced to you. Were the subject matters of the
15 senate factors, for instance, you just mentioned black and
16 white inequalities, was that something that you had experience
17 analyzing in your professional career?

18 A. Yes. So the term senate factors I had heard prior to
19 working on this case but my understanding on the senate factors
20 entirely came about through work on this case. But what I came
21 to understand, and at least interpret, is that the senate
22 factors are really a set of social and political conditions
23 that courts may use to evaluate whether or not a particular law
24 or policy violates Section 2 of the 1965 Voting Rights Act.

25 So the social and political conditions, although they

1 have names and have sentences associated with them from the
2 senate factor -- from the senate report in 1982, those are
3 not -- sociologists, in terms of what I'm aware of, I had not
4 run across a variety of books and articles by sociologists on
5 the senate factors themselves. But the topics of the senate
6 factors are something that sociologists spend an awful lot of
7 time examining, in addition to other social scientists that I
8 interact with, such as political scientists or economists.

9 Q. Were the topics of the senate factors something that you
10 had actually spent significant time analyzing in your
11 professional career?

12 A. Some of them I had spent a good -- great deal of time
13 analyzing. Particularly senate factor five. As I'm recalling
14 the different ones, that's the one that's most relevant to my
15 particular area of expertise. Many of the --

16 Q. I just want to make sure it's clear for the record.
17 What are examples that are included within senate factor five
18 in terms of the racial inequalities that you looked at?

19 A. My understanding is that many of the components under
20 senate factor five includes characteristics such as educational
21 disparities, income disparities, poverty disparities and a
22 variety of other kinds of characteristics like that. And those
23 are very much the bailiwick of sociologists. So I felt quite
24 comfortable using census data to provides estimates of racial
25 disparities in the state of Ohio on characteristics like that.

1 Q. Let me ask you to take a look at what has been marked as
2 Plaintiffs' Exhibit 109. We'll put it up on the screen. But
3 it may be easier because I first just want you to confirm that
4 this is the report, the initial report you did in this case. I
5 think it's in the black notebooks there beside the white
6 notebooks. So if you find Exhibit 109 it may be easier to look
7 at it in paper, at least initially.

8 A. Your Honor, may I move these books around a little bit?

9 THE COURT: Yes.

10 BY MR. SPIVA:

11 Q. Dr. Timberlake, when you get to Plaintiffs' Exhibit 109
12 I'd first like to ask you to turn to the end of or towards the
13 end of Plaintiffs' Exhibit 109 which begins on page 62 of the
14 document using the internal numbering of the document?

15 THE COURT: 62?

16 MR. SPIVA: Yes, Your Honor. That would be the
17 exhibit page number is 66. So if you're looking at the bottom
18 right corner it's Plaintiffs' Exhibit 109-66. But internal to
19 the document -- I think the table of contents was off. It was
20 page 63 which is Plaintiffs' Exhibit 109-67.

21 BY MR. SPIVA:

22 Q. Dr. Timberlake, if you could take a look at that and the
23 pages that follow it, and if you can just confirm whether that
24 is a current Curriculum Vitae for you?

25 A. That would have been my Curriculum Vitae as of the date

1 of the filing of this report which was, as far as I can see
2 from the front page, September 18th of 2015.

3 Q. And if you can just take a quick look at this. Can you
4 confirm that this is the initial report that you submitted in
5 this case?

6 A. I have no reason to doubt that this is the initial
7 report that I submitted.

8 Q. And then let me similarly just ask you to -- actually
9 we'll turn to the other ones as we get to it. Why don't we --
10 why don't I ask you some questions about this.

11 Let me ask you to start with the first issue that you
12 mentioned, the quantitative analysis of effects that these
13 various provisions that you were asked to analyze. What type
14 of methodology did you use, employ to try to analyze that
15 issue?

16 A. If I may, let me start by saying that there are two
17 issues that I confronted in attempting to do my analysis.
18 First is that the initial plan that I developed with counsel
19 was to subpoena about 17 counties -- I wasn't going to subpoena
20 them but the plan was to subpoena them. And I would have
21 gotten -- the idea was that I would get individual voter-level
22 data with which I could then perform a series of analyses that,
23 some of which I'll talk about, I presume, later.

24 Q. Dr. Timberlake, if you can just give an overview, we're
25 going to go into the details as we go along. But I just want

1 you to give a brief overview of the types of methodologies you
2 employed to analyze the effects of these challenged laws.

3 A. Sure.

4 Q. I didn't mean to cut you off but I just want to get an
5 overview out there and then we can go into each one.

6 A. So in the initial report I categorized counties on the
7 basis of their percent minority and also on the basis of their
8 percent in poverty. And then I evaluated the rates of use of a
9 variety of different kinds of voting methods across those
10 different kinds of counties.

11 The attempt here was to provide one way of thinking
12 about or understanding the potential disparities between racial
13 groups themselves. Ohio does not keep information on the
14 racial identity of its voters and so anybody, all of the
15 experts in this case, have had to grapple with that issue
16 because everyone would like to know what the race of voters in
17 particular is in analyzing potential racial disparities in the
18 use of various kinds of voting methods.

19 So I was given data -- provided data over a month or
20 maybe six-week period, sort of trickled in from time to time
21 that contained county-level counts of various kinds of voting
22 methods. Voting during golden week, voting during the early
23 in-person period, et cetera, a variety of different kinds of
24 data at county level. And then I created what are really
25 weighted averages, county-level population weighted averages of

1 these measures to get a sense. And in addition, adjusted the
2 counts by the population size of the county to get a sense of
3 kind of the rate of usage of these different kinds of methods
4 and how those might be different in high minority versus the
5 other kinds of counties. So that's generally the approach that
6 I took.

7 Q. Okay. And did you come to employ any other methods in
8 trying to analyze the issues that you just discussed in terms
9 of usage of golden week by minorities and the other things?

10 A. In the initial report I did not. In the rebuttal report
11 that I provided, I was able to use different kinds of methods
12 to essentially try to answer similar kinds of questions. So
13 the data analysis that I provided in the initial report is only
14 one way of trying to get at the question that I was trying to
15 understand or the results that I was trying to explore. And so
16 because of the nature of the data that I was provided, there
17 was a sort of limited number of things I could do to really
18 answer the question about racial disparities in the initial
19 report.

20 Subsequent to that, I was able to do a variety of other
21 things. But in the initial report, that was more or less
22 limited to that.

23 Q. Okay. Why don't we start with your initial report and
24 maybe I can ask you to turn to table 4 of Plaintiffs'
25 Exhibit 109 which appears on, I believe it's page 50. I just

1 want to verify. It's actually page 51 of your report.

2 If you could explain what table 4 -- what you're
3 presenting in table 4?

4 A. Yes. So this is, again, kind of an initial cut at
5 trying to understand potential racial disparities in the use,
6 in this particular case, of golden week to both to vote and
7 then also to vote and register. Or maybe put better,
8 simultaneously register and vote.

9 Q. What does it tell you in terms of -- before you explain
10 what it might tell you about disparities, what does it tell you
11 in terms of how many people used golden week in the 2008 and
12 2012 elections in Ohio?

13 A. So there are a number of columns. But in the column
14 near the upper left of the table, the figure 67,408 appears and
15 right next to that to the right appears the number 12,842.
16 What that means is that in 2008, across all counties of Ohio,
17 about 67,000 Ohioans used golden week to vote in 2008 and about
18 12,800 of them, 12,842 to be specific, used golden week to both
19 vote and -- again both register and then vote on the same day.

20 And then the similar figures in 2012 are close to 90,000
21 Ohioans used golden week to vote and about 14,000 used golden
22 week to register and vote. And by the way, the registering is
23 both, in this case, both first-time registrations and updated
24 registrations combined.

25 So in terms of -- plainly speaking, in terms of the

1 elimination of golden week, what does that say about what
2 impact might that have on Ohioans, it remains to be seen for
3 2016. And I don't have data from this table on 2014 or 2010.
4 Although I do have it in other places. At least as we examine
5 2008 and 2012, it means that 67,000 voters in 2008 and 89,000
6 voters in 2012. Assuming that they chose golden week to vote
7 because it was the most convenient for them, we don't know that
8 for sure but that's -- the fact is that they voted during
9 golden week. The elimination of golden week means that they
10 must choose some other method of voting. So that's what that
11 says.

12 Q. What does it say, this table, about, if anything, about
13 racial disparities in the use of golden week in Ohio?

14 A. Well, here's where it gets complicated and difficult
15 because, again, the only data that are available on the use of
16 golden week and a variety of other methods that I had access to
17 at this time were county-level counts. And so these do not
18 break apart voters -- golden week voters by race, let's say.
19 And so what we're really interested in and, again, my belief is
20 that all of the expert witnesses in this case are interested in
21 this question, which is, how big, if any, are the racial
22 disparities in a variety of different kinds of voting
23 techniques or methods?

24 Because we only have aggregate level, that is
25 county-level data, we can't assess the individual relationship

1 between voter race and likelihood of using a particular kind of
2 voting method.

3 Q. At this point that was the level data?

4 A. At this point in this table all we can do from this
5 table is assess whether the rate of use of golden week, and by
6 rate I mean the number of votes cast or the number of updated
7 or new registrations plus voting per hundred thousand, in this
8 case, registered voters in 2012, whether that rate tended to be
9 higher in counties that had lots of minority residents in them
10 versus counties that didn't have so many minority residents in
11 them.

12 So on the basis of that way of thinking about the data,
13 what this table suggests is that in 2008, high-minority
14 counties, that is counties that were at least 18 percent poor,
15 I'm sorry, minority in this table, were slightly less likely to
16 use golden week to vote and relative to counties that had fewer
17 minorities and more poverty. So the number you can see kind of
18 on the right-hand side of the table there is the number .96.
19 That is a ratio of high-minority counties to
20 low-minority/high-poverty counties. The figure below that,
21 1.34, means that voters in high-minority counties relative to
22 low minority but low-poverty counties are more likely to use
23 golden week. So that was in 2008.

24 In 2012 you see a similar kind of finding in that the
25 ratios of high-minority use of golden week to vote are slightly

1 lower than in the other kinds of counties but the use of golden
2 week to both vote and update registrations is higher.

3 I should stress that this does not itself, this one
4 piece of evidence in any direction does not prove anything.
5 And I would not use it in the absence of any other kinds of
6 data analysis to make any kind of broad claim. But this is one
7 way of getting at this question of the extent to which
8 minorities use golden week for a variety of purposes at higher
9 rates than other groups.

10 Q. Okay. And just before we talk about the other types of
11 evidence that you looked at, let me just show you a table and
12 have you define what you mean or how you were using the terms
13 high minority/low minority, high poverty/low poverty. Let me
14 have you turn to what has been marked as Plaintiffs'
15 Exhibit 112.

16 If we could put that up on the screen. If you could
17 turn to the table.

18 Dr. Timberlake, this table 1, is this an erratum that
19 you submitted to your original report?

20 A. It is.

21 Q. And this table, with slightly different numbers,
22 appeared in your initial report, correct?

23 A. Correct.

24 Q. If you could briefly describe your methodology and what
25 this table shows in terms of what you mean by high-minority and

1 low-minority counties?

2 A. Well, with this particular table what this table does is
3 it divides the 88 counties of Ohio into three categories, three
4 groups. In this version of the table there are nine counties
5 in the high-minority group and these are counties that have a
6 minority population -- sorry, a minority voting-age population
7 percentage of at least 15 percent.

8 The second group or category I'm referring to as
9 low-minority and high-poverty counties. These are counties
10 with less than 15 percent minority voting-age population and at
11 least 15 percent poverty voting-age population.

12 And then the low-minority/low-poverty group, the third
13 group there, is the group that has fewer than 15 percent of its
14 voting-age population that are minority and less than
15 15 percent of its voting-age population that is in poverty.

16 Q. How did you create this table, from what data and what
17 method?

18 A. These data come from the 2008 to 2012 American Community
19 Survey which I referred to earlier.

20 Q. That's a census data source?

21 A. That is a product of the U.S. Census Bureau, that's
22 correct.

23 Q. And how did you create the table?

24 A. Well, this version of the table what I did was to
25 measure the -- to sort of isolate the voting-age population,

1 that is to say the population age 18 and over, and then measure
2 the percent minority of that voting-age population and the
3 percent non-Hispanic white. And then also measure the poverty
4 rates of the county overall and then of minorities and whites
5 in those counties.

6 As it turned out, I didn't use -- frequently I don't
7 think that I used the poverty population in my analyses but
8 initially I wanted to develop this different -- these three
9 groups to scientifically sample counties from which we would
10 then, in theory, get data from the boards of elections to do
11 more sophisticated kinds of analysis. But for this initial
12 report, those data were not available so I proceeded with the
13 method that I discussed earlier.

14 Q. Okay. This is an erratum. It's a second erratum. Can
15 you explain briefly what the mistake was that produced --
16 caused you to produce a first and then a second erratum for
17 this table?

18 A. It's always the simplest things. So there were two
19 sets, two types of errors in the initial table, on the initial
20 report. One of which was identified by one of the defense's
21 expert witnesses and now I can't remember exactly which one it
22 was.

23 Q. Mr. Trende?

24 A. I believe that's right that it was Mr. Trende. He
25 correctly pointed out that the figures basically on the

1 right-hand side of the table did not match the figures on the
2 left-hand side of the table. That is to say, the numbers that
3 appeared on the left-hand side of the table, if you use them to
4 develop percentages, you would get numbers that sort of didn't
5 match.

6 That particular error was purely a presentational or
7 sorting error in the data. So all of the analyses I conducted
8 were in a statistical software package known as Stata. Stata
9 does not do a very good job of creating pretty-looking tables
10 so I used the package Excel to create the table. In the
11 process of doing all the organizing of the data, things got
12 misaligned.

13 In addition, Mr. Trende, I believe Mr. Trende's rebuttal
14 report to my initial report, he presented a couple of arguments
15 that suggested that perhaps Allen County and Lorain County
16 ought to be included in the high-minority group. And so for
17 this version of it I said, that seems sensible, I'll do that
18 and see what the analyses look like.

19 Q. Did either of those -- either the kind of alignment
20 error -- first of all, let's ask about that. Did the alignment
21 error, once you corrected it, did that affect any of your
22 conclusions or analyses in your report?

23 A. No. And it couldn't have because it was purely a
24 presentational problem. It was nothing about the underlying
25 data from that particular issue that created a problem or a

1 different kind of conclusion in the analysis.

2 Q. Let me just make sure I understand. So the data that
3 you had presented in the table in your report was incorrect
4 because of this misalignment but the data that you used through
5 Stata was actually accurate and so you used accurate data in
6 that respect to do the rest of your analysis?

7 A. That is correct. So insofar as, yes, the initial
8 problem with table 1 that was identified was this misalignment,
9 basically the left-hand side of the table with the right-hand
10 side of the table. But that was purely a presentational issue.
11 That had nothing to do with the analyses that I actually
12 carried out. So that was unrelated to my analyses or my
13 findings or my conclusions on the basis of those findings.

14 Q. And how about the movement of, I believe you said it was
15 Allen County, did that have any effect to any of your
16 conclusions or analyses?

17 A. So here I might point out that in my deposition it was
18 revealed that there was another basic problem with the table
19 and that had do with the calculation of county poverty rates.
20 What I believe I did in the initial table was calculate the
21 poverty rates of the overall population of the county, not the
22 voting-age population. So when you do that correctly, and
23 Mr. Voigt led me through a number of different sort of
24 recalculations-during the deposition, when you do that, it
25 turns out that a couple of counties switch groups.

1 In particular, Clark County, which had been listed as a
2 low-minority/high-poverty county drops down into the
3 low-minority/low-poverty group. And Marion and Ross Counties
4 do the reverse. They switch from the sort of the bottom
5 category into that middle category.

6 So in the initial report, those changes are not
7 reflected in the data analysis. However, I've subsequently
8 reanalyzed all of the data and all of the tables that I
9 presented in the initial report and have found that they don't
10 make -- nothing that I did to change the positioning of the
11 counties has any impact on the findings. There are small
12 numerical differences in the different ways of using the
13 different kinds of county groupings, but in terms of the
14 overall impact, the overall thrust of the findings, there's no
15 difference.

16 This is largely because, with the exception of Lorain
17 County, the counties that switched groups are all fairly small
18 counties. In other words, they're small in terms of population
19 size. And so, for example, I believe on page 3 of this erratum
20 we can see that -- well let me go back to actually page 2. I
21 apologize.

22 If you look at, for example, Ross County, which is now
23 in the second group and you look into the -- under the column
24 that says county percent of Ohio, that is the percentage of the
25 Ohio population that is in Ross County, and that number there

1 is .68 which means that less than one percent of the population
2 of Ohio lives in Ross County.

3 So switching groups, you're talking about very small
4 percentages of change. So, again, in reanalyzing the data that
5 I did in the initial report, you do get slightly different
6 numerical values but they don't change any of the substantive
7 conclusions that I drew in the report.

8 THE COURT: This would be a good time probably to
9 break for lunch. We'll come back at one o'clock.

10 MR. SPIVA: Thank you, Your Honor.

11 MR. VOIGT: Your Honor, I'd make a motion that the
12 witness and his counsel do not speak substantively during the
13 break.

14 MR. SPIVA: I don't know what the basis for that would
15 be, Your Honor. He's on direct. He's our expert witness.
16 What's the difference of me talking to him before he starts
17 testifying before cross and now?

18 MR. VOIGT: You're right in the middle of your direct.
19 That's totally different.

20 MR. SPIVA: I don't think it's different at all. He's
21 our witness. He's on the stand. I'm questioning him. It's
22 not like he's in the middle of cross-examination.

23 THE COURT: Do you plan to talk to him over the lunch
24 hour?

25 MR. SPIVA: Yes, I was going to talk to him. I don't

1 know whether we were going to talk substantively or not but,
2 yes, we were going to have lunch together.

3 THE COURT: Have a nice lunch.

4 MR. SPIVA: Thank you, Your Honor.

5 THE COURT: And try not to talk substantively.

6 (A recess was taken at 12:05 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Tuesday Afternoon Session,
2 November 17, 2015.
3 1:00 p.m.

4 - - -

5 THE COURT: Mr. Spiva, you may continue.

6 MR. SPIVA: Thank you, Your Honor.

7 BY MR. SPIVA:

8 Q. Good afternoon, Dr. Timberlake.

9 A. Good afternoon.

10 Q. Dr. Timberlake, before we recessed for lunch you were
11 explaining the errata that you submitted in this case, which is
12 up on the screen, Plaintiffs' Exhibit 112. Did the changes
13 that you made affect any of your analyses or opinions in this
14 matter?

15 A. I think I tried to explain that in rerunning all of the
16 analyses that I did for the initial report using these new
17 groupings, the groupings that appear in this erratum table
18 that's on the screen, there were small numerical changes in the
19 numbers that I present, the estimates. But the overall
20 conclusions are not different, again, because the switching of
21 counties into different groups, the ones that switched were, by
22 and large, very small counties.

23 Q. Let me just ask you. So what was the purpose of
24 grouping the counties into high minority, low minority/high
25 poverty and low minority/low poverty?

1 A. Initially it was to develop a way of efficiently
2 sampling counties in which subpoenas would go out to a set of
3 counties rather than all 88 and by using scientific sampling
4 methods from these three groups you could get an estimate of
5 the overall population.

6 Q. Okay. But I guess ultimately did you come to any
7 conclusions based on this grouping? What significance does it
8 have for your report in terms of table 4 that we were looking
9 at before we turned to this?

10 A. Again, in some ways this is a way of estimating the
11 potential impact of some of these changes in voting law by
12 examining the rates of use of voters in these different kinds
13 of counties. And so by separating out or by comparing voters
14 in high minority versus the other kinds of counties, you can
15 develop sort of initial -- an initial sense of whether there
16 might be disparities by race in these different kinds of voting
17 methods. So it's only one way of getting at this question.
18 There are others, and I did perform some of these other kinds
19 of different analyses, too.

20 Q. What, if anything, did you find using this methodology,
21 we'll talk about the others in a minute, with respect to
22 disparities between counties that were high minority versus low
23 minority?

24 A. Specifically with respect to golden-week voting and also
25 voting/registration and then also with the overall use of early

1 in-person voting, there's mix of findings, but in table 4 it
2 shows that there's a higher rate of the registering and voting
3 in high minority counties than there are in the other counties
4 on average. This is only an indication that minorities in most
5 counties might be using these methods at a higher rate.

6 Q. And when you say higher rate of registering and voting,
7 you're referring to during the golden-week period?

8 A. Correct.

9 Q. In your initial report, and why don't we turn back to
10 Plaintiffs' Exhibit 109, did you have access to any other data
11 sources or reports from which you drew any conclusions
12 concerning the use of golden week by minorities as opposed to
13 non-minorities?

14 A. So I reviewed the report of Dr. Daniel Smith which was
15 submitted in previous litigation and he had access to
16 individual voter records and he used a series of methods to try
17 to estimate racial differences in the use of golden week. And
18 so I read that report. I didn't have access to his data at
19 that time so I couldn't replicate it directly. So as a
20 supporting piece of evidence, I relied on that report.

21 In addition, in his report --

22 Q. Let me stop you for a second. Were you familiar with
23 the types of methodology that Dr. Smith had utilized in his
24 report to analyze that issue?

25 A. Familiar in the sense that I had seen articles that had

1 used this but I had not directly used the methodology myself.
2 It's a relatively -- it's a relatively data-intensive method
3 but the actual analysis isn't particularly complicated so I
4 could replicate it and did in later analyses.

5 Q. And what did you conclude based on your review of
6 Dr. Smith's report?

7 A. Based on what I could tell from his report I think all I
8 did is report his findings. And so specifically with respect
9 to golden week he finds that in 2012 the golden week usage
10 rate, as he refers to it, was higher in what he calls
11 homogeneous and nearly homogeneous black census blocks compared
12 to homogeneous or nearly homogeneous white blocks. This is,
13 again, another statistical method to get at the overall
14 question of whether black citizens are using the -- black
15 voters are using golden week at a higher rate.

16 So his report indicates that on the basis of his
17 analysis that's what he found. In addition -- that's where
18 I'll stop at that.

19 Q. Are you referring to a specific part of your report
20 where you are setting that forth?

21 A. Yes. On page 52 of my initial report there are a series
22 of bullet points.

23 Q. On page 52 of Plaintiffs' Exhibit 109, is that where
24 you're referring?

25 A. Correct.

1 Q. Go ahead, please.

2 A. So, again, specifically related to golden week, the
3 second and third bullet points there on that page refer to
4 relationships between the county -- I'm sorry, the census block
5 percent minority, actually black in this case, and the overall
6 rate of use of golden week. That is what's sometimes called a
7 linear relationship. That means as the percent black in a
8 block gets bigger, the rate of use of golden week also gets
9 bigger, suggesting a higher rate of use among blacks.

10 There are some similar problems with that technique that
11 if you only relied on that, you might not have the answer you
12 want, so in addition he identifies purely homogeneous, that is
13 to say purely African-American census blocks and compares them
14 to purely white blocks.

15 Q. When you say purely, you mean 100 percent. The
16 population is 100 percent African-American compared to block --
17 census blocks where the population is 100 percent white; is
18 that right?

19 A. That's correct. The idea there being that because,
20 again, because Ohio doesn't keep track of voter race, one way
21 to assess or estimate whether a voter him or herself is
22 actually African-American or white is to see whether they live
23 in a census block that is 100 percent black or 100 percent
24 white. The idea being if they live in a block that's
25 100 percent black, they must be black. If they live in a block

1 that's 100 percent white, that voter must be white. And so
2 comparing usage rates of golden week in those two sets of
3 blocks, homogeneous black and homogeneous white, you can get a
4 sense, at least another way of getting at this question of
5 whether African-Americans use golden week to vote at a higher
6 rate than whites do.

7 Q. Did you have occasion to utilize a similar methodology
8 in your rebuttal report in analyzing that issue?

9 A. I did. So subsequent to my submission of the initial
10 report I received voter-level data from Cuyahoga, Mahoning and
11 Hamilton Counties.

12 Q. Let me just put up Plaintiffs' Exhibit 110 and just ask
13 you. I don't want to interrupt you but I just want to get you
14 to verify to take a look at that. You can see it in your book.
15 Just you can verify for the record whether that is the rebuttal
16 report that you submitted in this case, Plaintiffs'
17 Exhibit 110?

18 A. I have no reason to doubt that this is my report.

19 Q. And then, Dr. Timberlake, you were explaining that you,
20 based on some data you had received from three counties, did a
21 similar analysis to Dr. Smith's. Can you explain that?

22 A. Correct. Well, the findings that I generated appear in
23 table 1 of that rebuttal report and so this table is on page 6
24 of that exhibit. Hopefully briefly, the technique here is from
25 the records I received from those three counties, we have

1 information on the address of the voter and also information on
2 the date they voted and information on the type of vote it was.
3 Whether it was in the office or whether it was by mail. So
4 what you know then is the number of votes that were -- if you
5 isolate the period of golden week you can get a sense of
6 whether a voter voted during golden week and then, in addition,
7 whether it was in person or by mail.

8 The next step is to match the voter address to a census
9 block and that's done using a statistical or actually a mapping
10 software known as ArcGIS. There's a tool in that program
11 called the address locator tool and, briefly, when you plug in
12 the address, it will usually spit out a location on a map and
13 that location can be matched to a street grid and therefore you
14 can -- that street grid can be matched to a map of the census
15 block geography that the Census Bureau uses. And in that way
16 you can get -- you can code the voter's census block and then
17 merging that with census data, you can get a sense of the
18 racial composition of the block.

19 So this is, overall, a method by which we can try to use
20 the available data that we have to answer the question that we
21 really want to answer in this case which is, do
22 African-American use, in this case, golden week at a higher
23 rate than whites do.

24 Q. In the analysis that you just described with respect to
25 these three counties, that's analysis that you performed in

1 this case, correct?

2 A. That's correct.

3 Q. And so can you then describe your findings as set forth
4 in table 1 of your rebuttal report?

5 A. Sure. There's a lot of numbers there but the numbers to
6 pay attention to are the ones in boxes. And so in the first
7 row, take the first box in the first row, first column there's
8 the number 1.015 and what that --

9 Q. Does that -- go ahead.

10 A. What that means is that the numbers in boxes are known
11 as incident rate ratios and they're basically the ratio of two
12 rates. And so in this case it's the rate -- the ratio of the
13 golden week voting rate in a census block that's 1 percent more
14 black compared to a census block that's 1 percent less black.
15 So what this means then, in fairly simple terms, is that as the
16 percentage of African-Americans gets bigger, in census blocks
17 as it gets higher, closer to 100 percent, the rate of voting in
18 person during golden week also increases. So this is, again,
19 not definitive but another piece of evidence that
20 African-Americans use golden week at a higher rate than do
21 whites.

22 Q. The box you started with that has 1.015 in it, that is
23 for -- that represents 2008, data about 2008?

24 A. Correct.

25 Q. And so what does that say about the usage of golden week

1 by African-Americans in 2008?

2 A. It says that in 2008, the greater the percentage of
3 African-Americans in a census block, the higher the rate of
4 golden-week voting, in-person voting. So this suggests or
5 indicates, it doesn't prove but it suggests that there is a
6 higher rate of use in golden week among African-Americans.

7 MR. VOIGT: Objection, Your Honor. To the extent that
8 the witness is trying to draw conclusions about all of Ohio.
9 This chart is limited to three counties.

10 THE COURT: I think he said that, didn't he? He said
11 he was drawing it from Mahoning, Hamilton, Cuyahoga Counties,
12 right, that's where the numbers come from?

13 MR. VOIGT: Yes, Your Honor. I felt that the
14 questions were expanding beyond that.

15 MR. SPIVA: I actually prefaced it by saying talking
16 about the three counties.

17 BY MR. SPIVA:

18 Q. Dr. Timberlake, there is a -- below the section that's
19 labeled A. linear relationship, there's a section labeled B.
20 homogeneous blocks and then a C. nearly homogeneous blocks.
21 Can you explain what type of analysis you're doing there and
22 what that shows?

23 A. So generally the problem with using any kind of
24 aggregate data to assess individual-level relationship is the
25 problem that social scientists call the ecological inference

1 problem. This refers to the difficulty with understanding or
2 assessing individual-level relationships. In this case, the
3 relationship between voter race and the propensity to use
4 golden week to vote. And so even at the block level, which is
5 a very small unit of geography that the Census Bureau uses --

6 Q. Is it the smallest grouping of geography that the census
7 uses?

8 A. It is the smallest. So what that means then is that
9 it's the most -- census blocks have the smallest population,
10 the most -- and they tend to be the most homogeneous. That is
11 to say in terms of racial and ethnic composition.

12 So because of this ecological inference problem that
13 plagues a whole bunch of analyses, one thing you can do is
14 compare blocks that are completely black with blocks that are
15 completely white. And, again, the inference there is if a
16 voter lives in a block that is 100 percent black, that voter,
17 therefore, must be black. If the voter lives in a block that's
18 100 percent white, that voter must be white.

19 So then when you compare those two groups of blocks,
20 that is to say the rates of voting early in person, you can
21 get, again, an incident rate ratio or the ratio of two rates.
22 And so that number 3.514 there just below the number we were
23 referring to before would be interpreted to say that on the
24 basis of the data in these three counties, the rate of voting
25 early in person during golden week is three and a half times

1 greater in homogeneous black blocks than homogeneous white
2 blocks. So among that subset of blocks, the rate of voting
3 early in person is three and a half times greater for
4 African-Americans than it is for whites.

5 Q. And as a sociologist, would that allow you to draw any
6 conclusions from these three counties about the use of golden
7 week in 2008, since that was the part of the chart you were
8 referring to, by blacks in those three counties as opposed to
9 whites?

10 A. What I would be able to say is that this is another
11 piece of evidence and we like to have as many pieces of
12 evidence as we can get to see whether they all kind of point in
13 the same direction or not. And in this case it suggests that,
14 at least for voters in these homogeneous blocks, there's a much
15 higher rate of use of golden week among African-Americans than
16 among whites.

17 Q. And what did you find in terms of the homogeneous blocks
18 in the 2010 and 2012 elections?

19 A. Again, in that panel labeled B. homogeneous blocks, what
20 we see in 2010, there was actually a slightly lower rate of use
21 of golden week to vote early in person in homogeneous black
22 blocks compared to homogeneous white blocks. That finding has
23 a p-value of .132. Briefly, that suggests that there's no way
24 statistically to distinguish that coefficient, that incident
25 rate ratio from 1.0, which would be if it's equal across the

1 two sets of blocks.

2 So what I would conclude from that particular number is
3 that in 2010 it's not possible to determine whether there's a
4 racial difference in the use of golden week to vote early in
5 person in those blocks.

6 Q. Can I ask just following up on that and flipping back to
7 2008 for just a minute in homogeneous blocks. What does that
8 p-value tell you, if anything?

9 A. The p-value in the first set of columns, the one that
10 shows up as .000, the usual interpretation of a p-value in this
11 sense would be that there's a very, very small likelihood that
12 the results that we observed were due purely to chance
13 randomness. So it means that there's a very small likelihood
14 that the figure that we observed, 3.14, arrived purely by
15 random chance.

16 Q. Thank you. And then if you could also talk about 2012
17 with respect to the homogeneous blocks.

18 A. Sure. In 2012 it suggests -- the figure that we see in
19 the box is 5.186. This indicates that in, again, comparing
20 homogeneous black blocks to homogeneous white blocks, the rate
21 of voting early in person during golden week was over five
22 times higher in the homogeneous black blocks than in the
23 homogeneous white blocks. Again, the p-value associated with
24 that is quite small, less than .001, which is why it shows up
25 at .000 in the table.

1 Q. And can you tell us what you found or can you explain to
2 the Court what your findings mean with respect to nearly
3 homogeneous blocks?

4 A. So this is a way, one possible way or one way of doing
5 what's called sensitivity analysis where you see whether if you
6 relax the assumption that you're only going to look at
7 homogeneous, that is to say 100 percent black or white blocks,
8 it's a way of testing whether the figures might be wildly
9 different once you sort of allow for some heterogeneity with
10 respect to race in the census blocks. So that's the reason.
11 That's a reason to do that technique.

12 Q. What does it show you here?

13 A. The findings are relatively similar. These are
14 differences of very small magnitudes between panel B and panel
15 C. But again, the overall pattern of finding suggests that in
16 2008 and 2012 there was this higher rate of use of golden week
17 among residents of census blocks that were at least 90 percent
18 black versus census blocks that were at least 90 percent white.
19 And then in 2010 there's a similar finding to the figure above
20 it in that there was a slightly lower rate of use of golden
21 week to vote early in person among residents of nearly
22 homogeneous black versus nearly homogeneous white blocks.

23 Again that p-value is .085 which is sort of a
24 marginally -- many social scientists use the cutoff of .05 to
25 determine whether or not something is statistically

1 significant. I wouldn't be very confident in any direction
2 with that particular finding.

3 Q. Do you know or do you recall, Dr. Timberlake, what
4 percentage of the African-American population in Ohio lives in
5 the three counties that you're looking at here, Cuyahoga,
6 Hamilton and Mahoning?

7 A. I put it in the report so I'm going to have to
8 double-check.

9 Q. We can come back to it.

10 A. I don't recall specifically.

11 Q. Okay. So this was another method that you used to
12 analyze the issue of usage of golden week by African-Americans
13 as compared to white Americans?

14 A. Correct.

15 Q. African-Americans in Ohio and white Americans in Ohio.

16 A. Correct.

17 Q. Did you employ the other methods in your rebuttal
18 report?

19 A. In the rebuttal report, no. So there are two tables in
20 the rebuttal report and they both relate to early in-person
21 voting. Table 1 has to do with early in-person voting during
22 golden week. Table 2 has to do with early in-person voting
23 overall.

24 Q. Why don't we take a look at table 2 for a minute. And
25 if you can -- do you know what page that's on, Dr. Timberlake?

1 A. I believe it's on page 9 of the rebuttal report.

2 Q. Can you just briefly describe your findings in table 2
3 of your rebuttal report?

4 A. So this is based on the same technique I was referring
5 to before. Because I had data from 2014 when golden week no
6 longer existed I could just look at the overall rate of use of
7 early in-person voting in those three counties. So if you look
8 at the numbers in the boxes, what you see is that overall
9 they're positive. And I should say more than positive.
10 They're greater than 1.0.

11 That's really the key here because, again, these are
12 ratios of two rates. And so as a general matter because all of
13 the coefficients exceed 1.0 and they're all -- they all have
14 associated p-values of very small numbers, .000 something, all
15 of the findings collectively suggest that there's higher rates
16 of early in-person voting among African-Americans in these
17 three counties of Ohio compared to white Ohioans from those
18 three counties.

19 Q. And that is -- is that true consistently in each of the
20 elections represented here between 2008 and 2014?

21 A. Yes. All of the figures in the boxes, again, they
22 exceed 1.0. In the top row they don't exceed them by very much
23 but that's, again, because what we're talking about is the
24 ratio of census block that's 1 percent more black versus a
25 census block that's 1 percent less black. So the rate doesn't

1 increase that rapidly with just a 1 percent increase in the
2 percent of blacks in the block. Overall they all exceed 1.0.
3 They're all statistically significant at .000 something.

4 So at least with the caveat that this is three counties
5 in Ohio, this is evidence that at least in those places there's
6 a higher rate of use of golden -- of early in-person voting
7 among blacks than among whites.

8 Q. As a demographer, you've studied racial segregation in
9 the state of Ohio?

10 A. I don't believe I've done any specific -- I haven't
11 published a paper on the state of Ohio, for example, in
12 particular, but all of my research on residential segregation
13 examines the entire country and so as a matter of course,
14 Ohio's metropolitan areas would be included in those analyses.

15 Q. The reason I ask that is -- what I'm trying to ask is,
16 is the panel B that talks about 100 percent homogeneous blocks,
17 is that something that really exists very much in the real
18 world or are these a few outliers in terms of census blocks?

19 A. The answer is that there are quite a few homogeneous
20 black or white census blocks and that's largely because, again,
21 the census block is a very small unit of geography as compared
22 to something like a census tract which is much bigger relative
23 to a census block. In a census tract you might observe that
24 the tract is, let's say, 70 percent white, 30 percent black or
25 something like that. That might conceal the fact that all of

1 the African-Americans in that tract live in a small segment of
2 the tract. And so using census blocks, it's a way of getting
3 at a more precise estimate of the voter race than it would be
4 if you used, let's say, census tracts.

5 Q. You reviewed, I take it, the report of Dr. McCarty, the
6 rebuttal report that he submitted at the same time that you
7 submitted your rebuttal report?

8 A. I did read that, yes.

9 Q. Dr. McCarty -- does Dr. McCarty look at this issue, does
10 he analyze it in a different way?

11 A. He examines a couple of different issues related to
12 early in-person voting. I guess the relevant point here is
13 that the main thing he was interested in in that report is a
14 comparison of early in-person voting between 2010 and 2014
15 among African-Americans. And so his -- my reading of his
16 report was that he was interested in assessing whether or not
17 there was a drop-off, let's say, in turnout during early
18 in-person voting between 2010 when golden week was in -- it
19 existed and 2014 when it did not.

20 He does this using a similar technique to what I'm
21 talking about in my rebuttal report except what he does is
22 combines information on the racial distribution of last names
23 along with the racial composition of the census tract in which
24 the voter lives. So he, again, matches -- actually I don't
25 know that he did it personally but he refers to a data set that

1 he received -- I believe the gentleman's last name was Bensen
2 who produced the data. That's my understanding anyway -- in
3 which voters were matched on the basis of their address to a
4 census tract and then he used racial composition of the tract
5 along with the last name to get an estimate of the voter race.
6 That's my understanding of his technique.

7 Q. Okay. And then with that data, with the racial
8 estimation, can you explain what analysis he did?

9 A. So my memory, without having it in front of me, my
10 memory of his report is that he argued -- he was attempting to
11 test the hypothesis that if golden week was really, really
12 important for African-Americans then you might expect that the
13 rate of overall early in-person voting in 2010 when golden week
14 existed would be much higher than the turnout during the
15 early-voting period would be among African-Americans in 2014.

16 Q. So he's comparing turnout in -- African-American turnout
17 in -- early in-person voting turnout in 2010 to
18 African-American early in-person turnout in 2014?

19 A. That's my memory of what he did, yes.

20 Q. In your view, is that the correct way in determining the
21 effect of the elimination of golden week?

22 A. Well, I think that my comment on that would be that I
23 think he does a decent job of being restrained in his
24 conclusion but I would be extremely reluctant and cautious --
25 briefly, he observes that there's really no difference in the

1 turnout during that period in 2010 and 2014. One
2 interpretation of that would be that because the turnout was so
3 similar, therefore, golden week doesn't really matter. I would
4 be extremely reluctant to draw that conclusion purely on the
5 basis of those two numbers.

6 Q. Why is that?

7 A. Because what that assumes, that kind of comparison
8 assumes that the only thing that's different between 2010 and
9 2014 is the absence of golden week. So in quantitative
10 research methods this would be a way of exploiting what's
11 sometimes called a natural experiment in which you observe,
12 let's say, in this case, a voting rate prior to the elimination
13 of golden week and then you observe a voting rate after the
14 elimination of golden week.

15 So the problem, and this is not a problem in -- I don't
16 dispute the numbers that he provides. I dispute the idea to
17 the extent that anyone is drawing this conclusion that this
18 demonstrates that there was no impact of golden week on voter
19 turnout. And that's because a whole bunch of things are
20 different between 2010 and 2014 in addition to the removal of
21 golden week, things that he doesn't measure.

22 So four years pass, people get older, elections are
23 different, world conditions are different. There are a vast
24 number of things that change in any given four-year period.
25 Ideally it would be great if we could hold constant all of

1 those things. Don't allow people to age, don't allow the world
2 to change, don't allow the elections to be any different.

3 If that were the case, then the only thing that would be
4 different about 2010 and 2014 would be the absence of golden
5 week in 2014. However, that's not the case because the world
6 moves along and people change and so it's not -- I personally
7 would be extremely reluctant to conclude that just because the
8 turnout rates were similar in the two periods that somehow this
9 proves that there's no effect in golden week's removal.

10 Q. In your analysis of Cuyahoga, Hamilton and Mahoning, you
11 compare the ratios of usage of golden week between black
12 residents in those counties and white residents of those
13 counties, is that accurate?

14 A. Yes. So table 1 and table 2 of my rebuttal report does
15 that. One, just looking at the golden week early in-person
16 voting week. Table 2 is the overall early in-person voting
17 rate in those three counties.

18 Q. Does Dr. McCarty compare the ratios of usage of golden
19 week between blacks and whites in his report?

20 A. Not to my knowledge. I think he's interested in
21 comparing voter turnout just among African-Americans.

22 Q. Once you received Dr. McCarty's data, did you do that
23 analysis with respect to 2010?

24 A. I did. Actually both 2010 and 2014. So Dr. McCarty's
25 data were provided to me along with his Stata code, his

1 programs that he wrote in the statistical software package
2 Stata. He measures, he estimates voter race, which is why he's
3 able to estimate the voter turnout among African-Americans. In
4 his program he also does the same thing for whites. So you can
5 actually use the exact same data, the exact same technique that
6 he used to compare whites and blacks within a given year.

7 So assuming that he has coded that his technique codes
8 race accurately, what you find when you compare blacks and
9 whites --

10 MR. VOIGT: Your Honor, I object to this line of
11 questioning. The plaintiffs had requested surrebuttal reports
12 and that request was denied. It appears that what this is, is
13 Mr. Spiva's embarking on a questioning that is essentially a
14 surrebuttal of Dr. McCarty's report. It's essentially a new
15 analysis.

16 MR. SPIVA: Dr. McCarty, Your Honor, criticized the
17 methods that Dr. Timberlake employed. This is just his
18 response to that criticism. He received the data on the same
19 date -- well, he actually received it later. He received
20 Dr. McCarty's report on the same date that he submitted his
21 rebuttal report. There hasn't been an opportunity to respond.
22 It seems like fair game for him to be able to respond to the
23 analysis and criticism that he saw for the first time in
24 Dr. McCarty's report.

25 MR. VOIGT: Your Honor, the plaintiffs requested an

1 opportunity to respond and that request was denied by
2 Magistrate King.

3 MR. SPIVA: Your Honor, it just seems that this is --
4 the issue in front of Magistrate King was really an issue of
5 whether he could do another report based on data that we
6 received long after Dr. McCarty submitted his report. This is
7 just him responding to criticisms that Dr. McCarty made of him
8 in his report. This seems like kind of the standard thing.
9 They will have their opportunity, of course, to respond to
10 Dr. Timberlake in their testimony.

11 It's supposed to be a search for truth and if he's
12 truncated in his ability to respond, it seems like it's leaving
13 a big -- it's leaving something out of the record that is
14 significant.

15 MR. VOIGT: Your Honor, this is the equivalent of
16 giving a new expert report except orally. I haven't seen this
17 report. We haven't had a chance to depose Dr. Timberlake on
18 whatever it is he's going to be testifying about. Again, the
19 Court has already ruled on it.

20 THE COURT: I think I will reaffirm Judge King's
21 order.

22 MR. SPIVA: May I just briefly move for
23 reconsideration and say one thing, Your Honor? I respect your
24 order. Just the defendants were the ones that objected to him
25 actually submitting a surrebuttal report. We certainly offered

1 to make him available for a deposition and so now they're using
2 that kind of as a shield and a sword. They refused to -- they
3 resisted --

4 - - -

5 Thereupon, the following proceeding was held in chambers:

6 THE COURT: What happened in front of Judge King?

7 MR. VOIGT: The plaintiffs requested the opportunity
8 to file surrebuttal and that was after the rebuttal reports had
9 been filed.

10 MR. SPIVA: I have a slightly -- I'm sorry. I don't
11 want to interrupt.

12 MR. VOIGT: It was after the close of discovery as
13 well.

14 MR. SPIVA: Once you're done I have a different --

15 MR. VOIGT: Judge King said, at some point this has to
16 end. She said, if I'm going to give you guys an opportunity to
17 do a surrebuttal then we would have the opportunity to do a
18 sur-surrebuttal and, you know, at some point this has to end.
19 She said, you know, Dr. McCarty's report was a rebuttal report
20 responsive to the affirmative reports that were put in. Doing
21 a surrebuttal report to his report then opens the door to a
22 sur-surrebuttal and we go on infinitum.

23 MR. SPIVA: I have a different point of view, Your
24 Honor, on a couple levels. One is we weren't really -- what
25 was at issue in front of Judge King was a supplemental report.

1 There was a lot of data that the state had collected but had
2 not turned over to us that we wanted Dr. Timberlake to do a
3 supplemental report on which really goes beyond the issues that
4 I'm trying to elicit right now. So that's one response. This
5 is not the same thing as what he's doing now which truly is
6 more in the nature of a surrebuttal or rebuttal to Dr. McCarty.

7 The way that the order happened here is that, and this
8 is a little out of the usual in that the plaintiffs and the
9 defendants filed their initial reports at the same time. So
10 unlike oftentimes where you have the plaintiffs filing initial
11 reports, Defendants filing rebuttal reports and then Plaintiffs
12 filing a reply report, what you had was initial reports on both
13 sides and then rebuttals to those initial reports. But we
14 never had an opportunity to respond to the rebuttal reports.
15 We responded to the initial reports.

16 I'm not trying to bring out some kind of new thing that
17 he could have responded to in his rebuttal. It's that they
18 brought in new material in their rebuttal report, partly new
19 data as well, by the way, and we didn't receive the data until
20 a couple weeks after the rebuttal reports were in, which was
21 pretty close to the close of discovery, I might add. And
22 McCarty never filed -- Dr. McCarty never filed an initial
23 report. So this was a brand new report raising new issues to
24 which he's never had the opportunity to respond.

25 As Your Honor knows, we've been on a very tight

1 schedule. All of what I just discussed happened between
2 September 18th and October 16th. And it's November 17th right
3 now and we've taken 27 depositions in the last couple of weeks.
4 I'm not saying that to whine, Your Honor, but more the notion
5 that there's been kind of fair opportunity to respond and that
6 certain things happened after the close of discovery.

7 It seems to me the state can't have it both ways. They
8 can't insist on this kind of a schedule but then prevent us
9 from getting a fair opportunity to respond to something that
10 they put in at the last minute.

11 THE COURT: To be clear as to the schedule, the
12 schedule is mine and not the state's. And I've been the one
13 that wanted to get this case tried because you need to get to
14 the Court of Appeals and you need to get review, however we
15 come out.

16 MR. VOIGT: Your Honor, if I may.

17 THE COURT: Go ahead.

18 MR. VOIGT: Mr. Spiva said that we did not turn over
19 data. That's absolutely incorrect. We turned over all of the
20 data that Dr. McCarty used for his report.

21 THE COURT: What did he use for his report?

22 MR. VOIGT: Basically county-level data. Similar data
23 to what the plaintiffs obtained.

24 THE COURT: All 88 counties?

25 MR. VOIGT: From most, yes. I think 83 counties. But

1 the Judge ordered that we turn over some data that he did not
2 use. So that's what they're referring to. There was some data
3 that he never received that --

4 THE COURT: He who never received, McCarty?

5 MR. VOIGT: McCarty, right. We had a separate expert
6 who collected the data from the counties, did the geocoding of
7 the data and passed it along to Dr. McCarty. Clark Bensen was
8 that expert. Clark Bensen did not pass along 2008 and 2012
9 because we didn't feel it was relative to the analysis. But
10 the Judge did order us to turn over 2008 and 2012 and so we did
11 do that.

12 THE COURT: How recently did you do that?

13 MR. VOIGT: During -- it was within days after, maybe
14 the next day or so.

15 THE COURT: Today is the 17th of November. When did
16 you turn it over?

17 MS. COONTZ: Before the close of discovery, I believe.
18 So it would have been maybe the end of October, first week in
19 November. And it was data on which nobody relied.

20 THE COURT: All right. What is Dr. Timberlake saying
21 about he wanted more data and the data wasn't available? What
22 happened there? What's going on there?

23 MR. SPIVA: I can -- can I just respond to that, Your
24 Honor, because, I mean, it's actually directly relevant here.
25 The supplemental report we requested and which was denied was

1 relating to that 2012 and 2008 data that Dr. McCarty, you know,
2 deliberately did not take into account. We haven't filed that.
3 That's not the testimony I'm trying to elicit right now. But
4 Dr. -- Judge King ordered the production of that data and, you
5 know, it came a couple weeks after Dr. McCarty's report.

6 I'm sorry, Your Honor's question.

7 THE COURT: I don't even remember.

8 MR. KAUL: Your Honor, I was working on some of the
9 discovery so if I may supplement a bit. As Dr. Timberlake was
10 explaining, we issued numerous subpoenas and fought very
11 difficult battles with a lot of the counties to get data. We
12 were able to get it for a few counties, including a few large
13 African-American counties and that's what his report relies on.
14 After the rebuttal reports were submitted, it turned out the
15 state had much greater success of obtaining the data that we
16 had which we found out not to be surprising.

17 None of that data was turned over until after the
18 rebuttal reports were issued. Dr. Timberlake has never had the
19 2014, 2010, with the exception of what he described, data. Not
20 the mention to 2008 or 2012 data that he could use other than
21 what he's talked about so far to submit any sort of response to
22 Dr. McCarty.

23 MR. SPIVA: What's really unfair, Your Honor, is a lot
24 of the criticisms of Dr. Timberlake's initial analysis is that
25 he didn't do a certain type of analysis that would have been

1 facilitated by this data.

2 THE COURT: If he had it?

3 MR. SPIVA: If he had it. And the state had an
4 obligation to turn this over before the rebuttal report of
5 Dr. McCarty.

6 THE COURT: So you dealt with the counties?

7 MR. SPIVA: We dealt with both, Your Honor. We had a
8 document request -- subpoenas out to the counties and document
9 requests to the state which called for the same data. Our
10 understanding, and what we had been told, was that the state
11 did not have this data in a declaration by Mr. Bensen who was
12 the other expert that has been referred to that Dr. McCarty
13 relied upon. He said that essentially the state had
14 facilitated the collection of this data from almost all of the
15 88 counties.

16 So the state had this for some time before Dr. McCarty's
17 rebuttal report. There was a document request out asking for
18 that data. It was within their possession, custody and control
19 and it wasn't turned over to us. And that's why Judge King
20 ordered them to produce beyond just the data that they say that
21 Dr. McCarty relied upon this other 2012 and 2008 data.

22 MR. KAUL: And all we're asking, just to finish this
23 train of thought, is for him to be able to respond to the
24 criticisms based on his review of that data that he never had
25 when he submitted his rebuttal report. We're not asking for

1 anything beyond that.

2 MS. COONTZ: Your Honor, if I may. None of this data
3 was gathered in conjunction from this case. This is data from
4 the NAACP that Clark Bensen gathered during that case. He held
5 that data. We didn't have it because we didn't use it because
6 nobody relied on it. Judge King said get it from Clark Bensen
7 and turn it over, turn over the raw data, which is what we did.
8 All of this data was available to the plaintiffs before they
9 filed the complaint. That they couldn't get it butting up
10 against a discovery deadline is not the state's issue.

11 There's a difference between attacking methodology and
12 offering new opinion based on evidence or, excuse me, based on
13 data that was available to the plaintiffs before the complaint
14 was even filed. We paid a lot of money in the NAACP case to
15 have somebody gather this data. We didn't use it and we didn't
16 hold it. So to say it was in our care, custody and control is
17 factually incorrect. It was turned over once it was given to
18 us and then we sent it to the plaintiffs.

19 THE COURT: Who gave it to you?

20 MS. COONTZ: Clark Bensen, the expert.

21 MR. SPIVA: Who they hired, Your Honor, and who, in
22 his initial declaration which was attached to Dr. McCarty's
23 declaration, said that essentially that he gathered the data
24 with the facilitation with the Attorney General's Office. So
25 it was within their custody and control even if it was held,

1 technically.

2 That's kind of a formality of the highest order, if you
3 will, to say that it wasn't in the state's custody or control.
4 Sounds like they've had it since the NAACP suit so they really
5 should have turned it over months ago in response to our
6 request for production.

7 We would have been willing, by the way, to have
8 Dr. Timberlake deposed again. I don't even know if his
9 deposition had happened yet when we asked for the supplemental
10 report.

11 MS. COONTZ: It had.

12 MR. KAUL: Mr. McTigue reminds me, we had a request
13 for all records from the NAACP case.

14 MS. COONTZ: All records from the NAACP case were
15 turned over. We didn't have these records.

16 THE COURT: Because Bensen didn't --

17 MS. COONTZ: Bensen did the work.

18 MR. KAUL: Who was their consultant in that case and
19 this case.

20 MS. COONTZ: But it wasn't -- these documents were not
21 produced in that case and we didn't hold them.

22 MR. SPIVA: He submitted a declaration in this case
23 saying --

24 THE COURT: What is the harm to the state about this
25 if he's permitted to testify about this?

1 MS. COONTZ: It's an additional opinion. He's going
2 to stand up, he's going to sit on the witness stand and offer
3 new opinions and say -- I believe he started saying, I
4 reanalyzed the data. Well, if he reanalyzed data, that's the
5 surrebuttal report that Judge King talked about. When does
6 this end?

7 MR. SPIVA: It's not a new opinion, Your Honor. It's
8 a response.

9 MS. COONTZ: Attacking methodology is fundamentally
10 different than offering a new opinion based on the analysis of
11 data that Plaintiffs could have gotten a long time ago.

12 MR. KAUL: I have no idea how we were supposed to have
13 gotten this. We certainly subpoenaed the state or across the
14 state and subpoenas. To the extent that the state paid a lot
15 of money for it in the first place that's further evidence that
16 they were in control of these materials.

17 MR. VOIGT: No. Actually we paid the invoice for
18 Clark that Clark submitted to us.

19 THE COURT: Presumably nobody charged you for the
20 public records, correct?

21 MS. COONTZ: For the public records, no. I don't
22 believe so. These are all -- it's all public records raw data.

23 MR. SPIVA: We, by the way, at the state's insistence,
24 we actually provided the documents that we did receive from the
25 counties that we sometimes did pay for the -- at least the

1 copying cost. And we didn't -- you know, if there were an
2 issue of cost shifting, that should have been raised. But it
3 makes clear that it was within their custody and control. The
4 state boards of elections --

5 THE COURT: How far are you going to go into this?

6 MR. SPIVA: I just want him to be able to respond and
7 say, you know, what he found differently with respect to 2010
8 which is really just that there was a significant difference in
9 the ratios of use of golden week between blacks and whites in
10 2010 and with respect to 2014 since golden week was no longer
11 in effect that there remained a significant difference between
12 the use of early in-person voting as between blacks and whites.

13 THE COURT: That could simply be issues on the ballot
14 or people on the ballot.

15 MR. SPIVA: Actually, Your Honor, what he was
16 testifying to a minute ago is that's an issue with
17 Dr. McCarty's analysis because he basically looks at turnout.
18 Doesn't compare blacks to whites. He looks at turnout among
19 blacks in 2010 and turnout among blacks in 2014 in the early
20 in-person voting period and he says oh, golden week was
21 removed, turnout was the same. Therefore, the elimination of
22 golden week had no effect. And what he has just testified to
23 is that's the improper way to analyze it because you have to
24 compare the ratios of use. And because of what Your Honor just
25 said, they're different factors. Different race in 2014 than

1 in 2010. People have gotten older, et cetera. Your Honor
2 heard the testimony. So I won't beat it.

3 MR. VOIGT: Your Honor, if Dr. Timberlake is offering
4 new analyses about golden week, that's a new opinion. It would
5 be an entirely different matter to say Dr. McCarty, his
6 methodology was wrong because. But from what Mr. Spiva just
7 said, he's offering a new substantive opinion that is akin to a
8 new report.

9 MR. SPIVA: Not at all, Your Honor. It's perfectly
10 consistent with the opinion that he's offered all along. What
11 he said is you look at different data points and they all point
12 in the same direction. And so basically he's saying now that I
13 have the data, I'm going to do what Dr. McCarty failed to do
14 which is to look at the ratio, the difference in the ratios of
15 usage and it actually points in the same direction as the other
16 analyses that I did and that I looked at. So it's not a new
17 opinion at all. It's perfectly consistent with the opinion
18 that he's had all along.

19 MR. VOIGT: And Mr. Spiva will have an opportunity to
20 cross-examine Dr. McCarty about his methodology and I think
21 that would be the appropriate time to raise whatever objections
22 he has.

23 THE COURT: And why is it that you couldn't simply
24 cross-examine Timberlake if he offers a new opinion?

25 MS. COONTZ: Just the fact that the new opinion

1 doesn't appear anywhere in a report. We've never seen this
2 opinion before. He's an expert witness. That's the purpose of
3 disclosing these things in advance and deposing expert
4 witnesses.

5 MR. SPIVA: Although they resisted the giving of a new
6 report, Your Honor. It's not a new opinion. It's consistent
7 with the opinion he's given all along.

8 MS. COONTZ: The availability of a surrebuttal report
9 the week before trial starts and the offer to depose another
10 expert is not -- it's not realistic because, again, when does
11 it stop?

12 THE COURT: What were the turn-arounds between the
13 first errata and the second?

14 MR. SPIVA: The first errata I think was served on
15 October 29th and I think the second one was November 2nd,
16 although I'm not as certain on the date of that one.

17 THE COURT: So over a weekend basically.

18 MR. SPIVA: I'm a little shaky on those.

19 MR. MARTIN: That sounds right.

20 MR. SPIVA: I'm confident of the first one.

21 MR. VOIGT: I think it was the 4th.

22 MR. SPIVA: It might have been the 4th.

23 MR. VOIGT: It was after the discovery period.

24 MR. SPIVA: The second would have been after the
25 discovery period.

1 MR. VOIGT: Both were after the expert report period
2 as well.

3 MR. SPIVA: But that is --

4 THE COURT: Let me think about it. I'll be out in a
5 minute.

6 - - -

7 Thereupon, the following proceedings were had in open
8 court:

9 THE COURT: Here's what we're going to do. Proffer
10 this. We'll see what it is and then we will -- I'll decide
11 later on whether I reject it or accept it.

12 MR. SPIVA: Thank you, Your Honor. And I think I may
13 only have one more question on this actually. I've kind of
14 reviewed my notes. I'm not sure if there's something more
15 later on but I think that may just be one more question on it.

16 THE COURT: Proceed.

17 BY MR. SPIVA:

18 Q. Dr. Timberlake, before we broke, we were talking about
19 the analysis that you did with the data that you received that
20 Dr. McCarty had had available that was given to you. Can you
21 tell me what your finding was with respect to the relative
22 usage of golden week in 2010 in Ohio using the data that you
23 received from the McCarty report?

24 A. Yes. So again --

25 THE COURT: So this would be the beginning of proffer

1 here?

2 MR. SPIVA: This is the beginning of the proffer, yes,
3 Your Honor.

4 THE COURT: Go ahead.

5 THE WITNESS: So again, using the techniques that
6 Dr. McCarty used and the data that Dr. McCarty used --

7 BY MR. SPIVA:

8 Q. By the way, what is that data?

9 A. My understanding is that it's data from most or all of
10 the registered voters in the state of Ohio. So in the analysis
11 that I presented in my rebuttal report, I had data from three
12 counties as again, Cuyahoga, Mahoning and Hamilton. My
13 understanding is that he had data on most, if not all, of the
14 registered -- the voting behavior of registered voters in Ohio.

15 THE COURT: Did I hear 83 back there, 83 counties?

16 MR. VOIGT: Yes, Your Honor.

17 THE COURT: Thank you. Go ahead.

18 BY MR. SPIVA:

19 Q. So with respect to this data for 83 counties, what did
20 you do to analyze the relative use of golden week in 2002, I'm
21 sorry, in 2010?

22 A. So essentially all I did is adopt the same strategy that
23 Dr. McCarty did for his rebuttal report except, again, I think
24 we talked about before he was interested in comparing voting
25 behavior just among African-Americans. I took the same

1 techniques and compared voting in early in person during golden
2 week in 2010 and compared the rate of that use for whites
3 versus blacks. Actually blacks versus whites. Blacks divided
4 by whites.

5 So what I found is that using his data in 2010, the
6 early in-person rate of voting during golden week was about
7 33 percent higher for African-Americans than it was for whites.
8 And, again, this is not all 88 counties but it's a
9 substantially larger number than the data that I earlier had
10 access to.

11 Again, I don't have any particular comment on how he
12 coded the race data, but assuming he did it in a way that's
13 reasonable, then that's what you would find using his same
14 techniques.

15 Q. And you're not opining today that the race coding that
16 either Dr. McCarty or Mr. Bensen did was accurate or correct?

17 A. I am not. The technique that, as described, makes some
18 intuitive sense but I have not -- I didn't compare what you
19 would get using their technique with some other technique. It
20 was simply using the data that I had at my disposal.

21 Q. And the methodology you used to make the finding that
22 African-Americans used golden week at a rate of -- at
23 33 percent higher rate than whites in 2010, was that the same
24 methodology that you used for the three counties, the
25 homogeneous and nearly homogeneous blocks method?

1 A. No. It was similar in the sense that it, again,
2 involves matching a voter to a census geography area, but what
3 Dr. McCarty, as I understand it, what he does is combines
4 information on the voter's last name and with information on
5 the racial composition of the tract in which they live and the
6 argument is this is a way of gaining an extra piece of
7 information in terms of estimating the voter race. Because,
8 again, all of us have the same trouble which is that we have
9 to -- everyone has to estimate voter race in some way.

10 His technique uses the racial distribution of last
11 names. So comparing what Smith and Worthington might be, those
12 might be really different racial distributions of that name
13 along with the racial composition of the tract. So that a
14 person named Smith in a 99 percent black tract is much more
15 likely to be black than white. A person who is named Smith in
16 a 99 percent white tract is much more likely to be white than
17 black. That's the idea.

18 MR. SPIVA: Can I consult for just ten seconds?

19 Your Honor, I believe that is the end of the proffer and
20 I'm going back into my regular outline.

21 MR. VOIGT: Your Honor, if I may. Dr. Timberlake did
22 not discuss in his direct the methodology that he used to
23 arrive at this 33 percent number. If this is ultimately
24 admitted, we would request the opportunity for Dr. McCarty to
25 file a -- we would request, number one, that there be some type

1 of a written submission so we could see the methodology that
2 was used and then we would request an opportunity for
3 Dr. McCarty to provide a response.

4 THE COURT: Perhaps.

5 Ask him about the methodology used.

6 BY MR. SPIVA:

7 Q. Can you describe the methodology that you used to arrive
8 at the conclusion that blacks used golden week in 2010 at a
9 rate of 33 percent -- 33 percent greater rate than whites?

10 A. There was no new methodology. It was the methodology
11 included in Dr. McCarty's own computer program. So, again, I
12 had access to all of his data, I had access to his computer
13 programs so I just ran his program. What it spits out is a
14 coding of whether a person is presumed to be black or white and
15 whether a person voted early in person and whether a person
16 voted -- given that they voted early in person in 2010, whether
17 they voted during golden week. These are all variables that
18 exist on his data.

19 And so then I just compared the percentages for blacks
20 and the percentages for whites. And the percentage is about
21 33 percent higher for blacks than whites, again, using his
22 technique.

23 I should add that he has -- because everyone's
24 estimating race, he has variables that estimate race with a
25 70 percent probability, an 80 percent probability, a 90 percent

1 probability at least. There may be more. But those I
2 remember. And so however, again, I'm just using the variables
3 he created, you get about the same 33 percent gap no matter
4 which whether you use the 70 percent, the 80 percent or the
5 90 percent probability.

6 Q. Again, I think you discussed this earlier. Dr. McCarty
7 did not present, to your knowledge, anywhere in his report, a
8 comparison of the rate of usage of golden week by blacks to the
9 use of golden week by whites?

10 MR. VOIGT: Objection. Leading.

11 MR. SPIVA: I can rephrase, Your Honor.

12 THE COURT: Please do.

13 BY MR. SPIVA:

14 Q. Did Dr. McCarty present a comparison of the rate of
15 usage between blacks and whites in his report?

16 A. Not to my knowledge. Again, I believe that the purpose
17 of his report was to compare rates of early in-person voting
18 just among blacks in the 2010 election and the 2014 election.

19 Q. When you say that was the purpose, you mean that's
20 what's reflected in his report?

21 A. That is what he describes as the purpose of that part of
22 his report and that is also what is reflected in the report,
23 yes.

24 MR. SPIVA: That is the end of the proffer, Your
25 Honor. The portion in which he is discussing the fact that

1 Dr. McCarty didn't compare rates of usage, that, I don't
2 think -- I'm not even sure that was within their objection.
3 That's just not really -- it's really just a criticism of
4 Dr. McCarty's report. I guess what I'm saying is that was
5 something we had discussed, I think, previously before we got
6 into the proffer section. It was really his analysis of what
7 the differential rates of usage is. That's the part that I
8 think is within the proffer.

9 THE COURT: Okay.

10 BY MR. SPIVA:

11 Q. Let me turn to a slightly different topic and actually
12 if you could turn back to your initial report, Plaintiffs'
13 Exhibit 109, and specifically to table 5 which appears on page
14 54. Can you describe for the Court or explain to the Court,
15 Dr. Timberlake, what your -- explain your analysis in table 5?

16 A. Yes. So it seems to me that there's a relatively
17 intuitive appeal or understanding of the idea that if you have
18 a single early-voting center with a fixed set of hours then in
19 a large-population county there will be more people who will
20 have to utilize that one center with those fixed set of hours
21 than in the small county with one center and the fixed set of
22 hours. And so what I tried to do in this table is provide an
23 estimate of the differential number of people who would have to
24 make use of that single early-voting center.

25 Both -- what I compared was across county types. Again,

1 these high minority and then the two types of low minority
2 counties. And then I generated an estimate of the inequality
3 between minority -- well, minority voting-age population and
4 the white voting-age population. So the idea being what we
5 know from census data is that minorities in the state of Ohio
6 tend to be concentrated in fairly large population counties,
7 counties that have lots of people in them.

8 And so if it's the case that when you have a single
9 early-voting center with a fixed set of hours, if that means
10 that voters in high-population counties have to, in a sense,
11 all use that same center then it also stands to reason that
12 minority voters might be disproportionately -- might have
13 disproportionate difficulty in terms of the number of people
14 that would be using an early-voting center.

15 So the technique, the methodology of this table simply
16 tries to generate estimates of the number of voters per early
17 in-person voting hour available to Ohioans, assuming that there
18 is one early-voting center and that it's open for -- for the
19 purposes of this table I had calculated the number of early
20 in-person voting hours to be 225. I remember that Mr. Voigt
21 and I talked about this in my deposition.

22 So let me first talk about what the table concludes and
23 then I'll talk about if I got the number of early in-person
24 voting hours incorrect, what that would do.

25 So the main finding here, there are two main findings.

1 One is that overall, if you look at the row that says all
2 counties, the total population per -- the total number of
3 voting-age persons as estimated using the 2008 to 2012 American
4 Community Survey, the total number of persons per early
5 in-person voting hour in the state of Ohio is 1600. So that's
6 overall.

7 In high-minority counties that number is 3,000 persons
8 per early in-person voting hour which reflects the fact that
9 high-minority counties are also the ones that have lots of
10 people in them. That's why there's more people per voting hour
11 in those counties. And so the numbers are smaller for the two
12 different types of counties.

13 The other thing to pay attention to are the two numbers
14 in the upper right-hand corner of that table. What I'm
15 estimating there is that there are 2362 minority persons of
16 voting age per hour of early in-person voting and there are
17 1458, roughly, white persons of voting age per hour of early
18 in-person voting. Again, under the assumption that there's one
19 early in-person voting center with a fixed set of hours.

20 If you divide 2362 by 1457 you get the number 1.62.
21 What that indicates is that there's 62 percent more people per
22 early in-person voting hour among minority voters or I should
23 say minority voting-age population than the white voting-age
24 population. So that's the conclusion of that table, in other
25 words.

1 Q. I realized I think I neglected to ask you -- let me just
2 verify. We were talking a minute ago about the relative rates
3 of usage of golden week. Did you have additional findings
4 concerning early in-person voting with respect to 2010 in terms
5 of early in-person voting regardless of whether it was golden
6 week or not?

7 A. Right.

8 Q. Don't answer yet.

9 MR. SPIVA: I may have to put this back in the proffer
10 box, Your Honor.

11 BY MR. SPIVA:

12 Q. Did you have additional findings? Just yes or no.

13 A. Yes. I have additional findings from my rebuttal report
14 as well as from my analysis of Dr. McCarty's data.

15 Q. Okay. So let's turn to, is it table 2 of your rebuttal
16 report where you have additional findings concerning early
17 in-person voting?

18 A. That would be where that is.

19 Q. So that's Plaintiffs' Exhibit 110, table 2 which
20 appears, I believe, on page 9 of the rebuttal report. What are
21 the additional findings --

22 MR. SPIVA: This is not for the proffer, Your Honor.
23 It's within his rebuttal report.

24

25

1 BY MR. SPIVA:

2 Q. What are your findings, just briefly, with respect to
3 table 2 of your rebuttal report?

4 A. I apologize. Did we look at this already? I thought we
5 did.

6 Q. Yes. I thought so, too.

7 A. So these are the findings from the rebuttal report. So
8 we talked about that. What this shows is that using the
9 technique used by Dr. Smith in his report for Cuyahoga,
10 Hamilton, Mahoning Counties, you observe higher rates of early
11 in-person voting overall for African-Americans, at least --
12 well, for people who live in 100 percent black blocks versus
13 people who live in 100 percent white blocks in those three
14 counties.

15 So we covered that. That was before the break, I think.

16 Q. Good.

17 MR. SPIVA: Your Honor, this is within the proffer and
18 I believe I only have one question here.

19 BY MR. SPIVA:

20 Q. With respect to early in-person voting in 2010, using
21 Dr. McCarty's data, what did you find in terms of the relative
22 usage of early in-person voting as between whites and blacks?

23 A. So both in 2010 and 2014 I compared blacks and whites
24 using his technique. And whether you use a 70 percent
25 probability, an 80 percent probability or 90 percent

1 probability, the data that he provided, if you divide the black
2 percentage by the white percentage, you get something like 1.5.
3 So it's about 50 percent higher use of early in-person voting
4 overall in 2010 and 2014 using his techniques.

5 Q. Okay. Thank you.

6 MR. SPIVA: End of proffer. I think that would be the
7 end of that for the day.

8 BY MR. SPIVA:

9 Q. Let's take a look at in your initial report, Plaintiffs'
10 Exhibit 109, at table 6 on page 56 of your report. I want to
11 turn to the topic of absentee ballots. Can you explain to the
12 Court what your findings were here with respect to absentee
13 ballots?

14 A. Yes. So this is back to the earlier technique that we
15 talked about before. This is a count of absentee ballots cast
16 and absentee ballots rejected per county. This is where the
17 data come from. And I believe the documents that I got these
18 data from are listed in the footnote of that table.

19 So I took a population -- so the overall findings here
20 are that in 2008, 2010, 2012 and 2014, the rate of casting of
21 absentee ballots is higher in high-minority counties than it is
22 in the other two types of counties. And the rate of -- the
23 percentage of those absentee ballots that are rejected was
24 higher in those four years as well.

25 This particular table uses the county groups that were

1 in my initial table 1. Again, the initial error identified in
2 that table is not relevant here. In other words, the
3 misalignment of the two sets of columns. So this table relies
4 on the initial set of county groupings that I used that appear
5 in the initial table 1 that is not in neither of the errata.

6 I have since reanalyzed this exact table using the
7 newest county groupings from the newest erratum and the basic
8 findings are all the same. Again, there are little changes in
9 specific numbers but the overall thrust of it are that there
10 are the higher use of absentee ballots and higher percentages
11 rejected in the high-minority counties relative to the
12 low-minority counties.

13 Again, this is only one way of looking at this. I wish
14 I had had individual-level data but I didn't, so this was the
15 only available technique.

16 Q. Let me ask you to turn to table 7 which is on page 58 of
17 your initial report, Plaintiffs' Exhibit 109. I take it this
18 table is an analysis of provisional ballots in the various
19 groupings of counties?

20 A. Yeah. Let me amend something I said just a second ago.
21 I said it was the only available technique. That is not true.
22 It is an available technique. It's one that I used for this
23 analysis. I didn't mean to suggest that the only possible
24 statistical analysis one could do was this.

25 So in terms of table 7, this is a similar kind of

1 analysis as what we had in table 6. And overall it looks at
2 the number of provisional ballots cast and rejected. In terms
3 of ballots cast it uses a population-adjusted figure so it
4 accounts for the different sizes of the counties. And so in
5 general what we can see is that there are higher rates of
6 provisional ballots cast in high-minority counties relative to
7 the other two types of counties.

8 Q. Can you actually point to the particular row or rows
9 that show that?

10 A. Sure. The best place to look is in the part of the
11 table that is labeled ratios. So, for example, if you look at
12 in the first of those two rows, the third number over you see
13 the number 1.32, that indicates that in 2008 there were
14 32 percent more -- 32 percent higher rate of provisional
15 ballots cast in high-minority counties relative to high
16 minority -- sorry, low-minority/high-poverty counties. That's
17 just an example.

18 Again, this table relies on the initial set of county
19 groupings that I presented in my original table 1. I again
20 reanalyzed all of this table using the county groupings that
21 are presented in the second erratum, most recent erratum and
22 the basic overall pattern of findings is the same. And, again,
23 that is because the counties that changed tend to be fairly
24 small counties so it doesn't affect the overall state picture
25 very much.

1 Q. You mentioned what it reflects in terms of provisionals
2 cast. What does it say about provisional ballots --
3 provisional-ballot rejection rate?

4 A. It says that -- so, for example, in 2008 there were
5 about 21 provisional ballots rejected per 100,000 registered
6 voters.

7 Q. Where are you looking?

8 A. So it would be under the -- it's in the right half of
9 the table.

10 Q. We have to go further this way?

11 A. No. It's in there. It's on the screen. It's on my
12 screen at least.

13 Q. I see it.

14 A. Let me start over. So on the right half of the table,
15 which is headed by the phrase ballots rejected, we see that
16 about 21 percent of provisional ballots were rejected in the
17 high-minority counties. That's that 20.6 number in 2008. That
18 number was between 15 and 19 percent higher than the equivalent
19 numbers in the two other types of counties. To see that, you
20 go straight down to the ratios area right there.

21 Q. So where it says 1.15 at the bottom there, what is that
22 rate -- what does that number convey?

23 A. That means that the percentage of provisional ballots
24 that were rejected is 15 percent higher in high-minority
25 counties than in low-minority/low-poverty counties, again using

1 the original table groupings.

2 Q. Let me ask you to turn to table 8 of this report. This
3 is regarding the DRE machines. If you could explain what
4 this -- what this conveys?

5 A. So this is a comparison of two scenarios. One where
6 under the regime of S.B. 200 in which the floor of the number
7 of DRE machines that DRE primary counties, that is counties
8 that use DRE machines as their primary voting mechanism, it's a
9 comparison of the number of DRE machines under that -- under
10 the assumptions or the regulations of that bill. And those
11 data -- for those data I used advisory 2014-03 from Secretary
12 Husted. So I just used the formula and the numbers from that
13 advisory for the left-hand part of this table. And then for
14 the right-hand part of the table I calculated what the floor
15 for DRE machines would be if S.B. 200 didn't exist.

16 So then in the very far right-hand column I estimated
17 different numbers of DRE machine -- of the different numbers by
18 which the DRE floor would be reduced under S.B. 200 relative to
19 a counterfactual situation which S.B. 200 didn't exist. So
20 what I'm showing in that far right-hand column is that in the
21 DRE counties that were also high minority, the DRE floor would
22 be reduced by 140 DRE machines per 100,000 population.

23 Q. Where is that number?

24 A. That number is in the very far right-hand column and
25 it's two numbers down. So that says that relative to a

1 counterfactual situation which S.B. 200 didn't exist, S.B. 200
2 would result in the DRE floor minimum number of DRE machines
3 being reduced by 140 DRE machines per 100,000 voters.

4 And then I did the same thing for the other types of
5 counties. And the reduction is -- there's a reduction in all
6 counties because the way -- the reduction in the floor, that
7 is, and that's because under the S.B. 200, all counties
8 subtract their absentee-ballot users from the previous
9 election, in this case from 2012. But because absentee-ballot
10 users are more likely to be in high-minority counties, the
11 reduction is greater in those counties.

12 So the impact then of S.B. 200 relative to a
13 counterfactual world in which S.B. 200 didn't exist, the floor
14 of DRE machines for the high DRE -- for the DRE counties is --
15 the reduction in the floor is greater in high-minority counties
16 than it is in other types of counties.

17 Importantly, that means that not only do all voters in
18 high minority DRE counties experience a reduction in the floor,
19 because those high-minority counties are also where the
20 minority population lives, a big chunk of the minority
21 population lives, minorities will disproportionately experience
22 a reduction in the floor more than whites will. That's the
23 conclusion of that table.

24 Q. You've used the term floor. What do you mean when you
25 say floor?

1 A. Well, initially in this report I misread the way in
2 which the law would work and I think I talked about it as
3 though it was an actual reduction in the number of machines. I
4 was informed, I believe by Mr. Voigt, that that's not true.
5 It's a reduction in the minimum number of machines per number
6 of voters that are needed. So it's a reduction in the minimum
7 number of DRE machines counties have to have.

8 Q. I'm going to turn to I think now your senate factors
9 analysis.

10 MR. SPIVA: But I realize, Your Honor, I think at the
11 beginning I didn't ever formally move to admit him as an
12 expert. I don't know if it's necessary given that there hasn't
13 been a motion to exclude him -- exclude his testimony. But I
14 can do that after each part. There were kind of two major
15 parts to his report. I could do it if Your Honor views that as
16 necessary. I can go ahead and move him right now as an expert
17 in quantitative methods and analysis as applied to these
18 various voting provisions.

19 MR. VOIGT: I have no objection to the proffer as
20 stated.

21 THE COURT: You mean the proffer of him as an expert?

22 MR. VOIGT: Yes, Your Honor. In other words, yes.

23 THE COURT: You're not giving up on the other proffer?

24 MR. VOIGT: No. No. I'm sorry. I apologize, Your
25 Honor. I had a few -- I wasn't sure how Mr. Spiva was going to

1 articulate it. And as articulated, I have no objection to
2 admissibility of Mr. Timberlake as an expert.

3 MR. SPIVA: That's just with respect to this part of
4 the analysis. I'll move again when we get done with the senate
5 factors.

6 THE COURT: Very good.

7 BY MR. SPIVA:

8 Q. So turning to the senate factors' analysis,
9 Dr. Timberlake, let me ask you, first, a couple of general
10 questions. Are you familiar with the phrase the calculus of
11 voting and, if so, what is that?

12 A. I'm familiar with the phrase. I think that the basic
13 idea behind the calculus of voting framework was something I
14 had been familiar with for quite a long time. That specific
15 phrase I've learned about in conjunction with working on this
16 case. But a little while ago we talked about the rational
17 choice framework for understanding how people make choices, and
18 the calculus of voting framework is very much -- it's an
19 offshoot or a subset of a much more general theoretical
20 framework in economics known as rational choice theory.

21 So the calculus of voting framework predicts that
22 what -- the way that people choose to vote, in other words,
23 whether or not to vote and also for whom to vote is based on a
24 similar kind of cost-benefit calculation that is true of all
25 rational choice theory in which people weigh the expected costs

1 of voting which include both time costs of registering to vote,
2 of getting to the polls, all that sort of thing, and the
3 sometimes financial costs of voting. And they weigh that
4 against the expected return on voting which has to do with the
5 likelihood that their candidate will be elected. It's very
6 much an individual level way of thinking about the determinants
7 of voting, of voting behavior.

8 Q. Is there a relationship between some or all of the
9 senate factors that you analyzed in this concept of the
10 calculus of voting?

11 A. Well, first of all, I'm not equipped to assess whether
12 constitutional scholars or even political scientists would make
13 this claim.

14 Q. No. That's certainly not what I'm asking you. I'm
15 asking you about the various sociological factors that you
16 evaluated in your report in terms of health and education and
17 employment and disparities for those factors, whether it has
18 any relationship to this concept of the calculus of voting.

19 A. Yes. So generally I would say that I have come to think
20 of the senate factors -- as I think about them in sociological
21 terms, I think about them as social and political conditions
22 that exist in particular jurisdictions. And so the way that
23 they would relate to the -- so the conditions would be sort of
24 societal or county level or some aggregate-level situation
25 that's going on.

1 The calculus of voting is very much an individual-level
2 theory about why people vote. So at that level, the way that
3 they relate is that when you observe, for example, high rates
4 of poverty among one group than another, you might expect that
5 that would be translated into lower rates of voting among the
6 poorer group because there's more poor people in that group.
7 And in terms of the calculus and the cost of voting, the costs
8 of voting might be higher or the perceived benefits might be
9 lower among poor people.

10 So they're related in the sense that even though the, as
11 I understand it, the senate factors is very much kind of an
12 aggregate or a jurisdictional-level set of conditions, calculus
13 of voting is really about individual-level versions of those
14 things. As you mentioned, for example, how much income you
15 have, how much education you might have, health, and a variety
16 of other things like that.

17 Q. Let me ask you to turn to page 10 of your initial
18 report. At the top of that it says senate factor five,
19 persistent racial inequalities in employment, housing, income,
20 education and health in Ohio. What did you analyze in this
21 section of your report?

22 A. So in this section, again, I understood the kind of
23 purview of senate factor five to be aggregate-level disparities
24 in the state of Ohio, in this case, in a variety of
25 socioeconomic characteristics including the ones listed there

1 in the title. So I used American Community Survey data, again,
2 from the Census Bureau, to calculate racial disparities in a
3 variety of these characteristics in the state of Ohio both
4 overall and then in the three different types of counties that
5 we've been talking about.

6 Q. What did you find?

7 A. Well, speaking broadly and generally and
8 comprehensively, there is extensive inequality in the state of
9 Ohio on all of the measures that I analyzed between
10 African-Americans and whites. If we turn to, for example,
11 figure 1 on page 12 of my initial report, this shows the
12 percentage of members of the labor force, that is to say people
13 who are -- sorry. This is a percentage of people of prime
14 working age, between age 16 and 64, who are employed at any
15 given time. And so what we see there is that 70 percent of
16 whites of working age are employed across all of the state of
17 Ohio compared to just over 50 percent of African-Americans.

18 So that's an employment gap. Whites are much more
19 likely to be employed. Of course employment then relates to a
20 whole bunch of other things like your capacity to have health
21 insurance, residence, certainly their income. It's hard to
22 have much income if you don't have a job. And so employment is
23 one place where you see these persistent disparities in the
24 state of Ohio between whites and blacks.

25 Q. And can you turn to figure 2 and page 13. What

1 significance does that have in terms of racial disparities that
2 you analyzed?

3 A. So this figure is a depiction of racial inequality and
4 the kind of job that employed people have. So the first figure
5 we talked about is whether or not they have a job. This one is
6 about the kind of job they have. So this figure shows that
7 whites overall are more likely than blacks to have professional
8 jobs. Blacks are more likely than whites to have
9 service-oriented jobs. And there's some disparity, but not a
10 huge amount, in the propensity for each group to have manual
11 labor kinds of jobs. So that's what that figure shows.

12 Q. And then if you could turn to figure 4 on page 17 of
13 your report. I take it -- well let me ask you. What are you
14 analyzing in this section of your report? Not just about
15 figure 4 but this section of your report.

16 A. In this section this generally relates to issues of
17 housing inequality. So figure 3 looks at three images of
18 racial segregation in three major cities in Ohio.

19 Q. Can we put up figure 3, please?

20 A. These are depictions of the black population and the
21 density of the black population in Cleveland, Cincinnati and
22 Columbus.

23 Q. What are the darker areas in each of those pictures?

24 A. The darker areas indicate a higher percentage of the
25 population is African-American. I would note here that we

1 heard a lot of testimony over the past couple days about the
2 east side of Cleveland being where a lot of the black
3 population lives, and this figure sort of confirms that that's
4 the way the population is distributed in Cleveland in that top
5 figure. So that's what that figure shows.

6 There are quantitative measurements of these images that
7 I talk about in the report in which each metropolitan area has
8 what's called an index of dissimilarity score and that is a
9 measure of the overall level of segregation in a metropolitan
10 area. And each of these three cities has relatively high index
11 of dissimilarity scores. So it's not just a picture, it's also
12 a quantitative measure that I use a lot in my research and that
13 is well agreed upon by social scientists. There's a good
14 measure of segregation.

15 Q. Turning back to table figure 4 on page 17. I believe
16 you were beginning to explain what that represents.

17 A. In some ways, figure 4 and figure 5 are kind of two
18 sides of the same coin in the sense that in figure 4 I'm
19 showing very large racial disparities in homeownership rates.
20 So across all counties in the state of Ohio, over 70 percent of
21 whites own their own homes compared to under 40 percent of
22 African-Americans.

23 People who don't own their own homes, almost by
24 definition, are renters, and renters tend to be much more
25 residentially mobile than homeowners. Homeowners have a stake

1 in staying put and they often -- it's a little bit more
2 difficult to sell your house and move than it is to end your
3 lease and move. So renters tend to be more residentially
4 mobile and so you can see the disparity in homeownership
5 reflected. Then the other side of the coin is the racial
6 disparities in a residential mobility.

7 Q. That's in figure 5?

8 A. That's in figure 5, correct. So, again, across all
9 counties in Ohio, again using American Community Survey data,
10 you see that something like 13 percent of whites have moved in
11 the past year compared to over 20 percent of African-Americans.
12 There's racial disparities in residential mobility rates as
13 well.

14 Q. Turning to figure 6, what does that show about
15 segregation -- I'm sorry, about poverty rates?

16 A. One of the most well-known findings in the segregation
17 literature is that segregation interacts with group poverty
18 rates to produce poverty concentration in neighborhoods. So
19 it's not only that African-Americans tend to be more poor than
20 whites do, or the higher percentage of them are poorer than
21 whites are, but also that the fact that blacks tend to be
22 residentially segregated in cities, and most cities in Ohio are
23 no different, that interacts with the higher poverty rates to
24 produce higher levels of poverty concentration.

25 What you're seeing in this figure, for example, the very

1 dark section of the bar labeled all on the right-hand side,
2 that is the percentage of the black population that lives in a
3 neighborhood that is at least 40 percent poor. And so about
4 22ish percent of African-Americans live in a neighborhood that
5 is at least 40 percent poor.

6 If you look at the equivalent bar way on the left-hand
7 side of the table, you see that only maybe two or three or four
8 percent of whites live in the poorest type of neighborhood.
9 This is a kind of finding that I've worked on quite a bit in my
10 career and the reason it's so important is that it's hard
11 enough to be poor yourself or hard enough for your family to be
12 poor in terms of arranging a variety of kinds of things that
13 you need to do to live your life. It's very difficult to be
14 poor when most or many of your neighbors are also poor.

15 Q. Why is that?

16 A. For a variety of reasons. It means there are fewer
17 resources around you to draw upon. I think I'll show later
18 that there's very low rates of automobile ownership among
19 blacks in general. And then when you overlay low rates of
20 homeownership among blacks with residents in a neighborhood
21 where very few of your neighbors are likely to own an
22 automobile, it means that there's very few social resources at
23 your disposal that you can rely on.

24 So there's been a big trend in sociological and economic
25 research on the impact, particularly on children, growing up in

1 these very, very poor neighborhoods. Neighborhoods that have
2 40 percent poor residents or more are very rare for white
3 families to be experiencing. It's much more common for
4 African-Americans to experience these kinds of neighborhood
5 contexts.

6 Q. In Ohio?

7 A. In Ohio. And throughout the U.S. But of course this
8 figure is related only to the state of Ohio. So this is sort
9 of one of my major areas of research and that's why I'm
10 stressing it that it's not simply that a family might be more
11 likely to be poor. It's that lots of people around you are
12 poor and that sort of reduces the capacity of families to rely
13 on neighbors and friends in the neighborhood for resources.
14 And it puts people at sort of an additional level of
15 disadvantage in those neighborhoods.

16 Q. Let's turn to figure 8 which I believe appears on page
17 22 of your report. Can you tell us what your findings were
18 that you're displaying in figure 8?

19 A. Yeah. Again, I would say that figures 8 and 9 are
20 really kind of two parts of the story. Figure 8 shows that
21 across all counties in Ohio, African-Americans have much lower
22 incomes, family incomes. Sorry, these are household incomes on
23 average than white families do. And then another version of
24 understanding economic inequality would be to look at figure 9
25 to show that black families are much more likely to be in

1 poverty than whites are.

2 Obviously low income and poverty are somewhat
3 correlated. When you have very low income, that means you're
4 poor. And so these are just ways of seeing that kind of
5 disparity in the state of Ohio in terms of economic inequality.

6 Q. It says at the bottom but for the record, what was the
7 source of your data for this?

8 A. The source of all of these figures, with the exception
9 of figure 7 and figure 3, are American Community Survey data
10 from 2008 to 2012. So for the state of Ohio.

11 Q. And what was the source of figure 7 and figure 3?

12 A. Figure 3 -- figure 7 was -- figure 7 was an image of a
13 so-called residential security map. In this part of the report
14 I'm talking about sort of the roots of housing disparities in
15 Ohio and it's just an image of the city of Cleveland and the
16 way in which the Federal Housing Administration essentially
17 limited mortgage -- FHA-backed mortgages, was not willing to
18 back FHA mortgages in predominantly black neighborhoods and was
19 willing to use FHA money to back mortgages in the suburbs of
20 most cities. In this case, it's Cleveland.

21 Figure 3, I used from -- the data originally it says in
22 the upper left-hand corner from Social Explorer which is a
23 website that sort of compiles census data. I got the images
24 from the report by Vincent Roscigno in which the pictures look
25 exactly like images I've seen in the past. So I used these

1 images from that report.

2 Q. And then with respect to if we could turn to figure 10.
3 You talk about racial disparities in education in Ohio. Can
4 you tell the Court what you found with respect to educational
5 disparities in Ohio using figure 10?

6 A. I believe figure 10 has to do with transportation kinds
7 of issues, if I'm not mistaken.

8 Q. Yes. I'm sorry. My notes got mixed up there.

9 Why don't you talk about what your finding was with
10 respect to transportation disparities in figure 10.

11 A. Well, one of the concerns, and we've heard a lot of
12 testimony about this, is that it's much more difficult to vote
13 when you can't drive yourself there and you rely on public
14 transportation. In this figure it just shows racial
15 disparities in the presence of an automobile in a household.
16 That's the left-hand part of that figure. The right-hand part
17 of the figure is a question about whether or not residents,
18 black and white residents, rely on public transportation or
19 they walk to work.

20 That right-hand side doesn't necessarily -- that's
21 really about commuting behavior going to work but it's another
22 way of seeing the dependence on public transportation among
23 African-Americans in the state of Ohio and on the flip side on
24 the left-hand side, the much greater likelihood that
25 African-American families or households don't have a car

1 available to them to do whatever they want to do, voting
2 included.

3 Q. You mentioned a moment ago that you had, I think, gotten
4 one of the figures from the report of Dr. Roscigno. What was
5 that report?

6 A. That was a report that he submitted in the NAACP, the
7 Husted litigation. And I made extensive use of that report in
8 my own report.

9 Q. And when you say you made extensive use, in what way?
10 How did you use it?

11 A. I would say primarily as a template for the first part
12 of this report. This is the senate factors part. So relying
13 on his organization and some of his citations and things like
14 that. And then in some cases, relying on his language for
15 describing outcomes of findings.

16 I will note that I performed or re-performed all of the
17 data analysis in the report. So in some ways I'm using his
18 organization but redoing the analysis to confirm the findings.
19 In some cases, reanalyze them and some cases come up with
20 different conclusion. In some cases -- in many cases,
21 particularly with respect to racial disparities, there are
22 really no other conclusions that can be drawn other than that
23 there are severe and persistent racial disparities.

24 Q. Why did you use Dr. Roscigno's language in some
25 instances?

1 A. Well, I would say largely due to lack of familiarity
2 with the conventions of this kind of report. So I was asked to
3 work on this report. I initially was asked to work on this
4 report in late April of 2015. I was officially retained on
5 July 9th, I believe, of this year. The first data I received
6 was in late July and then the first data I received that end up
7 appearing in the report I received in mid August.

8 So I had a very, very abbreviated time window and I used
9 a lot of what Dr. Roscigno did to expedite the process. And I
10 should add that I had a phone discussion with him fairly early
11 on. I had come to understand that he had recommended me for
12 this case. He had been an expert witness in the *NAACP v.*
13 *Husted* case. And he told me that he had written a report and
14 he -- essentially he offered and also recommended that I use
15 the report.

16 MR. VOIGT: Objection. Hearsay.

17 MR. SPIVA: It goes to Dr. Timberlake's motivation for
18 using the report, not for the truth of the matter, Your Honor.

19 THE COURT: Sustained.

20 BY MR. SPIVA:

21 Q. Did you have an understanding that you had the
22 permission of Dr. Roscigno to use his report as a template or a
23 model?

24 A. That was my understanding. I also discussed this with
25 counsel and, particularly with respect to intellectual property

1 issues, and was told that there was no concern there.

2 Q. Let me ask you. Was there any part of the report, of
3 Dr. Roscigno's report, that you utilized in drafting your
4 report that you disagreed with?

5 A. There is nothing in the report that is not my conclusion
6 from my own data analysis. It is true that there are -- that
7 the organization of the report, at least the first part of it,
8 is very similar to Dr. Roscigno's organization. It is also
9 true that some of the language in the report has not been
10 rewritten in a way that I probably would like to do if I had
11 the chance to do it over again. But there's nothing in the
12 report that I don't agree with and that I don't stand by.

13 Q. Is there any analysis in the report or citations in the
14 report that you have not reviewed yourself and come to your own
15 conclusions about?

16 A. No. So my process was to, in many cases, reanalyze the
17 kinds of indicators that Dr. Roscigno used and create my own
18 figures and that sort of thing. In places where I didn't
19 reanalyze, so for example, there's a number of examples of
20 racial appeals in politics that I'm assuming we'll get to at
21 some point, and so those have links to them or they have
22 citations and so I verified that those existed and I looked at
23 them and drew my own conclusion. However, I didn't always
24 rewrite the conclusion the way that I probably should have.

25 Q. Are there portions of your report, now I'm not just

1 focusing on the senate factors, that do not overlap at all with
2 Dr. Roscigno's?

3 A. My impression is that most of the report doesn't
4 overlap.

5 THE COURT: Does or does not?

6 THE WITNESS: Sorry. Most of the report does not
7 overlap in the sense --

8 BY MR. SPIVA:

9 Q. Did Dr. Roscigno do the quantitative analysis that we
10 talked about before we got to the senate factors?

11 A. No. I did all that. So the whole part of the report
12 that's an analysis of the different kinds of voting mechanisms
13 that we talked about for the first part of this testimony, that
14 was all my -- that was my original research. The part of the
15 analysis that's in the senate factors part of the report, the
16 essential idea of doing that analysis, much of that but not all
17 of it, comes from the Roscigno report. However, I actually
18 redid all of the figures to verify that they're going to create
19 the -- I redid all of the data analysis to create the figures
20 to then come to the conclusions that I talk about in the
21 report.

22 So it depends on whether you're talking about the
23 structure of the report or the language in the report. I don't
24 actually know how much overlap there is but I would be
25 surprised if it was -- I would say that the majority of the

1 report is brand new in terms of the language.

2 Q. Let me continue on with the senate factors. You talked
3 about -- I think we left off when you were talking about
4 transportation disparities. Let me ask you to turn to
5 figures -- let's start with figure 11 which appears on page 27
6 of your initial report and ask you to discuss what you found
7 with respect to educational disparities in Ohio.

8 A. Yes. So I tried to look at educational disparities in a
9 couple of ways. This figure, figure 11, shows rates of white
10 and black students taking the Ohio Graduation Test, the OGT,
11 and their rates of being scored proficient or higher on those
12 measures. And what we can see is that somewhere in all of the
13 different -- both overall and in the different county types,
14 white 18 year olds essentially in Ohio, white seniors in high
15 school, let's say, on both reading and math score over
16 94 percent proficient on both kinds of measures.
17 African-Americans, the percent of scoring proficient is lower
18 and particularly so for math.

19 So what I was interested in is whether the overall
20 racial disparities in education are well known and I also
21 analyzed other type of educational disparities but I wanted to
22 see whether there were disparities at the outset of essentially
23 the voting career. So these are seniors in high school,
24 roughly 18 years old. What kinds of disparities are there in
25 educational attainment at the very beginning of a person's

1 voting life, essentially.

2 Q. Let's turn to figure 12. Can you explain to the Court
3 what your finding is here?

4 A. So this is a figure that looks at sort of two ends of
5 the educational distribution. On the left-hand side we see
6 that whites are less likely overall than African-Americans to
7 have less than a high school degree. And I should note that
8 these are all people who are age 25 and over. So a person with
9 less than a high school degree who is age 25 and over. That's
10 the left-hand side of the table of the figure.

11 On the right-hand side, this is an examination of the
12 percentage of whites over the age of 25 and blacks over the age
13 of 25 who have a college degree or more. So it could be a
14 graduate degree, a legal degree, a Ph.D. or something like
15 that. And so if we just look at the black bars, we see that --
16 that is to say the bar is colored black, the darkest color, we
17 see that about 17, 18 percent of blacks are essentially
18 high-school dropouts compared to just over 10 percent for
19 whites. And then about 25 percent of whites over the age of 25
20 in Ohio have college degrees or better compared to only about
21 15 percent.

22 So overall, whether you look at the end of high school
23 or whether you think about whether people have very little
24 education or a lot of education, there are these fairly
25 pronounced racial disparities in the state of Ohio.

1 Q. Turning to health disparities, which I think you started
2 talking about on page 29 of your report. What conclusions did
3 you reach with respect to that?

4 A. This is a basically a litany of different kinds of
5 measures of population health ranging from diabetes and stroke
6 and disability and life expectancy. All of these, they all
7 show pretty much the same thing which there are these fairly
8 large and pronounced disparities in health in the state of Ohio
9 between blacks and whites on pretty much any measure you think
10 about. So overall this is sort of a long story of lots and
11 lots of overlapping kinds of disparities on virtually any
12 measure you can think of.

13 THE COURT: Does this look at a particular age group
14 or is this across all age groups?

15 THE WITNESS: This would be across age groups except
16 when it's talking about children. Some of the data in the
17 first part is from the Ohio Family Health Survey which I've
18 used to actually have a paper published using that data set and
19 then this is just different kinds of measures of health from
20 that data set.

21 BY MR. SPIVA:

22 Q. What impact, if any, do these various forms of
23 inequalities that you discuss in your report have on the
24 ability of minorities to participate in the political process?

25 MR. VOIGT: Objection, Your Honor. At the beginning,

1 Mr. Spiva questioned Dr. Timberlake about his experience with
2 the rational choice theory and he said -- he testified that he
3 does not have -- he has not done any work related to that. So
4 it's the defense's position that he could testify related to
5 sociological factors but not how those factors relate to making
6 choices.

7 MR. SPIVA: He actually testified that he's familiar
8 with rational choice theory and that it's related to a lot of
9 what he's done.

10 THE COURT: I'm going to overrule the objection.

11 BY MR. SPIVA:

12 Q. Dr. Timberlake, what impact, if any, did these various
13 forms of inequalities have on the ability of African-Americans
14 to participate in the political process?

15 A. Let me preface this by saying that rational choice
16 theory and the calculus of voting is not the only theory of why
17 people vote. In other words, it's not the sum total that
18 explains voter turnout. It's a way of trying to understand how
19 people make choices. And so it's not the only way of thinking
20 about voting behavior.

21 We've heard lots of testimony that indicates that a big
22 part of how voting happens is by a collected processes of
23 registering and people canvassing and that sort of thing. So
24 it's not the case that it is the only way of thinking about
25 voting. I didn't mean to suggest -- I apologize if I left that

1 impression from earlier today that I was saying that that's the
2 only way in which people can vote.

3 MR. VOIGT: Objection, Your Honor. To the extent that
4 the witness is relying upon testimony that he's heard in this
5 case to present new opinions.

6 MR. SPIVA: He's not presenting new opinions, Your
7 Honor, but it's perfectly acceptable for an expert to rely on
8 factual testimony that he's heard in the court.

9 THE COURT: Why don't we take a 15-minute break and
10 we'll return at 3:30.

11 MR. KAUL: Your Honor, may I quickly raise two
12 housekeeping issues before we do? Two of our witnesses are
13 here from Cleveland and I am not entirely optimistic that
14 they're getting on the stand today. But I don't want to
15 release them if either we might go late or if there's some
16 possibility we'll finish with Dr. Timberlake today.

17 THE COURT: I don't know that we're going to finish
18 with Dr. Timberlake today and so I think you can probably
19 release them.

20 MR. KAUL: Thank you, Your Honor. And the second
21 quick question is we had raised the Ohio Channel -- the Ohio
22 Channel issue had come up before with respect to bringing in a
23 witness to authenticate those materials. We've been in contact
24 with a custodian. Our understanding is that the custodian
25 would rather submit an affidavit, if possible, rather than come

1 in. We're happy to bring the witness in if the Court would
2 like that but to the extent that everybody is satisfied with an
3 affidavit, we're also happy to go that route. So I wanted to
4 raise that issue.

5 THE COURT: Who's the affiant?

6 MR. KAUL: I believe it's the custodian of records.

7 MR. MCTIGUE: Yes. It's the Executive Director of the
8 Ohio Telecommunications Service.

9 THE COURT: He doesn't want to come to Federal Court?

10 MR. MCTIGUE: He doesn't.

11 THE COURT: He or she doesn't want to come to Federal
12 Court?

13 MR. MCTIGUE: He doesn't seem very eager to come down
14 here. What we've asked is for him to authenticate, as
15 custodian of the record, the links to the sessions that the
16 video links on their website and that those links are authentic
17 videotapes of what they purport to be which, would be either
18 the House or Senate session for those days. So that's
19 essentially what we would be asking and putting into his
20 affidavit.

21 THE COURT: You mean he wouldn't write it out himself?

22 MR. MCTIGUE: We've been talking now to his attorney
23 at one of the biggest firms in town here. So we're working on
24 it. But the question I think being asked is regardless if
25 that's -- is that going to satisfy the Court or would the Court

1 rather have him come down?

2 THE COURT: As far as I'm concerned, that is
3 sufficient given the fact that you go to the senate's website
4 and click on the sessions and that's what pops up on the screen
5 is all the stuff that's coming from the Ohio Channel. Looks
6 pretty much like the official record of the senate absent some
7 journal.

8 MS. COONTZ: Your Honor, if I may. We object to this.
9 This is not -- unless the witness says he watches every single
10 video and can authenticate the transcript that's being offered
11 with the video. I would also note --

12 THE COURT: What discrepancies do you have with the
13 transcript? I noticed that there were a couple inaudibles with
14 respect to votes that can clearly be matched up to the role of
15 the clerk on a given bill.

16 MS. COONTZ: There's an added layer of Ohio Revised
17 Code 3353.07 which is the statute that sets forth OGTV which is
18 a 501(c)(3). I have copies of the statute which specifically
19 provides that services provided by OGTV shall not be used for
20 political purposes included in campaign materials or otherwise
21 used to influence an election, legislation, issue, judicial
22 decision or other policy of state government.

23 I realize this is Federal Court and the issues are
24 different, but the State of Ohio has specifically set forth
25 that these videos are not to be used in judicial proceedings.

1 That is the policy of the State of Ohio.

2 THE COURT: Why?

3 MS. COONTZ: We can get to the legislative intent.

4 What's the legislative intent? It's what's set forth in the
5 statute. It's the same thing that the plaintiffs are wanting
6 to do with the statute itself. I can't answer why. All we

7 have is what is in the statute. And the intent of the State of
8 Ohio is that these videos not be used in judicial proceedings.

9 MR. KAUL: If anything, Your Honor, that's evidence of
10 discriminatory intent. They don't want their own videos to be
11 viewed in assessing what their decision-making rationale was.
12 That's extraordinary. In Federal Court.

13 MS. COONTZ: These are issues that should have been
14 briefed months ago. These videos were disclosed at 11:05 the
15 night before discovery cut-off. Whether we're dealing with
16 privilege issues or whether we're dealing with the policy of
17 the state of Ohio, that can counsel a court's decision when
18 we're talking about a federal case. This has nothing to do
19 with discriminatory intent.

20 THE COURT: I'll get back to you.

21 (A recess was taken at 3:17 p.m. until 3:40 p.m.)

22 THE COURT: Have you looked at these videos?

23 MS. COONTZ: I have not had a chance to look at all of
24 them, Your Honor. The state is relying -- the record of the
25 General Assembly is the journal and the General Assembly

1 journal can be introduced as opposed to the videos is the
2 state's position.

3 THE COURT: Get the affidavit. I'll let you know in
4 the morning or I'll let you know Thursday morning.

5 MR. SPIVA: Your Honor, I think we have an area of
6 agreement for a change that maybe this is a good time. We have
7 been talking over the recess because it doesn't appear that --
8 I'm almost done with my direct but it doesn't appear we would
9 be able to finish the cross-examination of Dr. Timberlake
10 today.

11 What we'd like to request, and both sides agree, is to
12 move Dr. Timberlake's cross-examination and potential redirect
13 to Thursday afternoon. We have a couple of fact witnesses that
14 actually need to go on today because they're from out of town
15 and I think we can get them on and off. And then we have been
16 talking about redoing some witnesses later in the week to kind
17 of accommodate each other. I think what we've tentatively got
18 so far is Dr. McCarty on Thursday, which is one of the
19 defendants' experts, Dr. Yang is ours and of course
20 Dr. Timberlake coming back for cross-examination.

21 We have a couple of fact witnesses scheduled for that
22 day which we're going to work on trying to move if need be
23 because obviously recognizing the three experts on -- even if
24 one is only for cross-examination might be difficult. And then
25 Friday Dr. Hood and Dr. Minnite. Dr. Hood is one of their

1 experts, Dr. Minnite is one of ours. There's some other
2 potential fact witnesses a well.

3 There are contingencies and people we have to call and
4 maybe people they have to call to make sure that they can move
5 around a little bit. But in terms of the experts, that is what
6 we agreed to.

7 THE COURT: Very good.

8 MR. SPIVA: Thank you, Your Honor.

9 THE COURT: Press on.

10 BY MR. SPIVA:

11 Q. Dr. Timberlake, I just have one last question about this
12 section of your report. What were your findings with respect
13 to the impacts of racial disparities in employment, housing,
14 income, education and health inequalities?

15 A. They're not so much findings as a kind of a conclusion
16 drawn from both the data on the variety of different kinds of
17 disparities that I'm showing here. And then connecting that
18 back to the calculus of voting theory in the sense that what
19 we -- so what we have then is a population, the
20 African-American population in the state of Ohio with multiple
21 kinds of disadvantages relative to the white population in
22 terms of socioeconomic status, education, income, poverty, all
23 the things that we've been talking about.

24 One of the arguments of the calculus of voting theory
25 and one of the -- what I didn't mention is there's also a

1 number of empirical findings that attempts to test this theory
2 and so one of the things that is observed is that things like
3 education, income and age and a variety of other
4 characteristics predict whether or not people vote, and also
5 predict the capacity for people to vote on a particular day.
6 And so the conclusion that I would draw, again, kind of in
7 summary, is that populations that are very disadvantaged on a
8 variety of characteristics, including really important ones
9 like education, income and poverty, the costs of voting for
10 those groups on a particular day tend to be higher because it's
11 harder to get access to all of the things that are needed to
12 vote at one time.

13 What this means then is that blacks in the state of
14 Ohio, in theory, ought to rely on other kinds of voting
15 mechanisms other than voting in person on election day. That
16 would be what the theory would predict.

17 I think I've shown evidence that blacks actually use
18 things like early in-person voting at a higher rate than whites
19 do and so what I would be concluding is that because of the
20 high levels of disadvantage of the black population and high
21 rate of use of early in-person voting than any kinds of --
22 logically any kinds of voting changes, changes in the voting
23 law that are related to that kind of voting method, early
24 in-person voting, either golden week or overall, would have the
25 effect of burdening the black population.

1 This is different, I want to stress, from affecting
2 turnout because there are lots of ways in which the population
3 could be burdened and it might not be observable in terms of
4 turnout. And the reason for this is that people, and also
5 organizations, react a lot to new conditions and do things to
6 be flexible to new conditions. And so I don't -- my opinion is
7 that it's not -- it is not a necessary -- there's not a
8 necessary link between increasing burdens on a population to
9 vote in the way that they tend to vote or want to vote or like
10 to vote and that that necessarily would be reflected in
11 differences in turnout, let's say, over time or between groups
12 like between blacks and whites, let's say, overall.

13 So I think that the data that I'm presenting, I think,
14 shows that there are lots of ways in which the black
15 population's disadvantaged and when those interact with changes
16 in the voting law, you get disproportionate burdens on the
17 black population. That's what I think my findings show.

18 MR. SPIVA: Your Honor, at this point I'd like to move
19 for the qualification of Dr. Timberlake in sociology.

20 THE COURT: Any objection?

21 MR. VOIGT: No objection, Your Honor.

22 MR. SPIVA: Your Honor, I think in the interest of
23 time I'd like to submit the rest of the report for the record.
24 I know that Mr. Voigt has reserved an objection in terms of the
25 admissibility of portions of the report but to the extent the

1 report does get admitted, I think rather than having him
2 summarize the rest of it I'd rather just submit it as the
3 report.

4 THE COURT: Very well.

5 MR. SPIVA: Thank you, Your Honor.

6 Thank you, Dr. Timberlake. I have no further questions.

7 THE COURT: Thank you, Dr. Timberlake. We'll see you
8 Wednesday afternoon then; is that right, or Thursday afternoon?

9 THE WITNESS: Thank you, Your Honor.

10 MR. KAUL: Your Honor, we call Terri Taylor.

11 THE COURT: Thank you for being willing to come back.

12 THE WITNESS: You're welcome.

13 (Witness sworn.)

14 THE COURT: Good afternoon, ma'am. If you'd take the
15 stand. Please state your name and spell your last name for the
16 record, if you would.

17 THE WITNESS: My name is Terri Taylor. Last name is
18 T-A-Y-L-O-R.

19 THE COURT: Thank you.

20 - - -

21 TERRI TAYLOR

22 Called as a witness on behalf of the Plaintiffs, being first
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. KAUL:

2 Q. Just for the record, Terri is spelled T-E-R-R-I?

3 A. Right.

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. You're in town from Cleveland; is that right?

7 A. Right.

8 Q. Are you currently employed?

9 A. No. I won't be employed. I am a disabled veteran. I
10 just am recovering now from two major surgeries.

11 Q. And you said you were a veteran?

12 A. Yes.

13 Q. Were you in the armed services?

14 A. Yes. I was in the Army.

15 Q. For how long?

16 A. Four years.

17 Q. And when -- during what period of time were you in the
18 Army?

19 A. I was in the military from 1979 to 1982.

20 Q. Now, did there come a point in time when you began
21 volunteering on campaigns?

22 A. Yes. I started volunteering probably 2007, 2008.

23 Q. And what type of volunteer work did you do?

24 A. I would just stop by the office and make phone calls,
25 talk to people informally. At that point I was still working

1 in my job. I would pass out bumper stickers and just remind
2 people to get out and register and vote.

3 Q. And who were you volunteering on behalf of?

4 A. At that time it was for the democratic party.

5 Q. Do you recall whether that was the state democratic
6 party or the local county party?

7 A. At that time it was probably local.

8 Q. Meaning the Cuyahoga County party?

9 A. Correct.

10 Q. And where were you doing that volunteer work?

11 A. There was an office on East 9th Street. I'm not sure if
12 you're familiar with Cleveland. But East 9th Street was
13 downtown. There was an office there. And then there was an
14 office in Shaker Square.

15 Q. And where is Shaker Square located?

16 A. Shaker Square is in Shaker Heights, Ohio. It's probably
17 about 20 minutes from downtown Cleveland.

18 Q. And that's on the east side of Ohio?

19 A. That's on the east side of Ohio.

20 Q. And when you started volunteering did you work -- did
21 you interact with voters?

22 A. I interacted with voters, mainly elderly voters.

23 Q. And in what communities were you doing that?

24 A. It was mainly in the Buckeye area. And the Buckeye area
25 is, I'm not sure if you're familiar with Shaker Heights but a

1 few blocks from Shaker Heights is an area called Buckeye, maybe
2 four or five blocks, and there's a difference between --
3 Buckeye is Cleveland and Shaker Heights is a suburb.

4 Q. Based on your experience, what were the demographics of
5 Buckeye?

6 A. The demographics is mainly elderly, people who were
7 retired, on fixed income, a few younger people who were in
8 their 20s with young families. But the majority of them are on
9 fixed income, low income.

10 Q. What about the racial demographics?

11 A. For Buckeye, that was probably 99 percent
12 African-American and just a few blocks over just the whole
13 world changed.

14 Q. And when you say a few blocks over, you're referring to
15 Shaker Heights?

16 A. To Shaker. Literally you could go up and around the
17 corner and you'd be in Shaker.

18 Q. And just for the record, what is your race?

19 A. African-American. And my grandmother is Irish but she's
20 dead.

21 Q. Quarter Irish; is that right?

22 A. Right.

23 Q. After your involvement in 2007, were you subsequently
24 involved in campaign work?

25 A. Yeah. I actually went back and I started to volunteer

1 in 2011 for a few months, from 2011. I think it was probably
2 February or March. A few months into spring and then a little
3 bit more in the fall. And then I went back full time and
4 worked for 2012.

5 Q. And where were you working in 2011, first of all, or
6 volunteering, I should say?

7 A. In 2011 that was -- it was still in -- it was in Maple
8 Heights. It was still in pockets of Cleveland that were mainly
9 elderly, Garfield Heights, Maple Heights, the Buckeye area,
10 Kinsman.

11 Q. Are all those neighborhoods in the same general area of
12 Cleveland?

13 A. General area, right.

14 Q. And how --

15 A. East side of town.

16 Q. I'm sorry?

17 A. East side of town.

18 Q. And how did the demographics of those areas compare to
19 Buckeye?

20 A. Well, Garfield Heights is kind of -- is similar because
21 people are mainly elderly. You do have a few people who were
22 of different races but they're elderly and people were on fixed
23 incomes. There were some parts of Maple Heights where there
24 were less African-Americans. So most of my time was spent in
25 the Kinsman, Buckeye area.

1 Q. And you said in 2012 you began working?

2 A. I began working for the party in, I believe it was maybe
3 March of 2012.

4 Q. And you said you were working for the party. Do you
5 recall who specifically you were working for?

6 A. It was for Senator Sherrod Brown's office.

7 Q. And that was for his campaign?

8 A. For his campaign.

9 Q. And what was your position?

10 A. For the senator it was -- for me was for the field
11 organizer.

12 Q. What does a field organizer do?

13 A. The field organizer goes out and meets people in the
14 community, encourages them to get out and vote. You education
15 the constituents on who's up for election, why you should get
16 out and vote, what everything -- what everything was going --
17 everything that was going to be on the ballot, remind them of
18 the dates when you need to go out and vote. A lot of -- you'd
19 hand out the bumper stickers and the calendars and reminders
20 and then get people to sign up if they wanted to come volunteer
21 or if they needed transportation, that sort of thing.

22 Q. And what areas were you working in when you did that
23 work?

24 A. I worked at 120th and Buckeye.

25 Q. So that's Buckeye neighborhood again?

1 A. That's Buckeye, correct.

2 Q. In the course of the work you were just describing, did
3 you help people get to the early-voting location in Cuyahoga
4 County?

5 A. Yes. I actually used my own car and picked up quite a
6 few people because over the course of that, 2011 to 2012, I got
7 to kind of know some of the elderly people in the area and they
8 kind of would get attached to you and I'd have people come in
9 and volunteer. So by the time we got into spring and summer
10 and fall, I kind of knew who didn't have a ride, who didn't
11 have cars, who used public transportation. And so I would -- I
12 did take a few people back and forth to the polls and to their
13 home.

14 Q. And how long did it take you to drive from the Buckeye
15 neighborhood to the early-voting location?

16 A. Let's see. I believe I took everybody downtown to the
17 board of elections. So from Buckeye to downtown Cleveland it's
18 about 20 minutes.

19 Q. And that's each way?

20 A. One way. One way is 20 minutes.

21 Q. And why did you drive those voters to the early-voting
22 location?

23 A. I believe the main thing I kept hearing and I felt
24 myself is that they felt more comfortable going to the board of
25 elections because the board of elections was right downtown,

1 it's across the street from a news station and it's more out in
2 the open and they just felt more comfortable going to a place
3 that was more out in the open versus trying to figure out where
4 they could go in the community, if they were going to be
5 hassled. A lot of them felt a little nervous about where the
6 polling places were.

7 I had one person that said she showed up to vote and her
8 place had been moved and she didn't know it.

9 MS. COONTZ: Objection.

10 THE COURT: I can distinguish hearsay. I'm going to
11 be the one that's going to be considering all this and I assure
12 you I will apply the rules appropriately when I write my
13 opinion.

14 BY MR. KAUL:

15 Q. And why did you drive rather than using a different mode
16 of transportation to get people to the polls?

17 A. Well, I have a car and these other people didn't have
18 cars.

19 Q. Was public transportation an option?

20 A. Public transportation in Cleveland is very iffy. It's
21 not a walkable city and the public transportation, you can't
22 depend on it. And then you have these elderly people who it
23 just wasn't feasible.

24 Q. When you say you can't depend on it, what do you mean by
25 that?

1 A. I've taken transportation from time to time, just maybe
2 I just felt like taking the bus once or twice maybe if I had a
3 car being worked on or something like that, and it's just
4 impossible to take transportation if you are wanting to really
5 keep to a schedule and be -- go someplace where you can depend
6 on the transportation. And I know the difference because I
7 lived for many years on the east coast and the west coast and
8 it's just -- it just doesn't compare. And so if there's
9 something you really need to get done, if you have a car, you
10 take your car or you ask for a ride.

11 Q. And do you have any concerns about the safety of public
12 transportation in Cleveland?

13 A. Yes. We've had a few. It's been on the news. We've
14 had a few attacks on the buses and I think once or twice when I
15 took the bus and left my car I was nervous. It's not like it
16 wasn't the '70s and the '60s. I'm an old person but it's just
17 not the same.

18 Q. Sorry. Just to be clear for the record, I know what you
19 mean. You say it's not like it was in the '60s and '70s. How
20 does it compare to that time?

21 A. One time I got on the bus, the driver himself was
22 screaming at me because I asked how much it cost to take the
23 bus. There was a lady behind me with something in a large
24 container that was covered and it was squeaking and squawking.
25 It's just nerve-racking and it's just not safe. We've had

1 people attacked. That's been on the national news. But it's
2 just something that you try to avoid, if you can.

3 Q. Would having had early-voting locations closer to that
4 community where you were working have made it easier to get
5 people to the polls?

6 A. I'm sure it would have I'm. Absolutely sure it would
7 have.

8 Q. Would you have been able to bring more people to the
9 polls?

10 A. I would have. I would have taken them or walked with
11 them or just accompanied them in any kind of way they wanted,
12 sure, instead of going all the way downtown.

13 Q. So you said you did take people to the early-voting
14 location, correct?

15 A. Yes.

16 Q. And what year was that?

17 A. Let's see. 2012.

18 Q. Just when you went down there, did you observe lines?

19 A. I actually didn't observe lines. I stood in the line.

20 THE COURT: How about let's get a time when she went
21 down there.

22 BY MR. KAUL:

23 Q. So you said it was 2012, right?

24 A. Yes.

25 THE COURT: It was when?

1 THE WITNESS: In 2012.

2 BY MR. KAUL:

3 Q. And when during the 2012 early-voting period was this,
4 if you recall?

5 A. I don't recall the day but I stood in line with -- three
6 times with two gentlemen and one lady. Different days.

7 Q. And why were you standing in line?

8 A. Well, I drove them there. I wanted to let them, what's
9 the word, feel comfortable standing there. And because the
10 line was just so incredibly long, I just wanted to accompany
11 them and just be there with them.

12 Q. And you said the line was incredibly long. Can you
13 describe physically what it looked like?

14 A. Well, if you -- the board of elections is on Euclid
15 Avenue and across from the board of elections is Channel 5. So
16 in between there I believe that's East 30th Street. So if you
17 take the door of the board of elections and you go down East
18 30th Street and back towards Superior, which is a couple of
19 blocks back that way, and then if you make a left and go over
20 the overpass of 90 West, that's where we had to stand. So we
21 were a couple of blocks down and then over the overpass.

22 Q. And when you got in line were you inside or outside?

23 A. No. This is outside.

24 Q. And how was the weather on the occasions when you were
25 there?

1 A. All three days was cold. Cold and windy.

2 THE COURT: Doesn't that describe Cleveland?

3 THE WITNESS: Right.

4 BY MR. KAUL:

5 Q. How long did it take you from the time you got into the
6 lines to when you -- the person you were with completed voting?

7 A. Two hours each time.

8 Q. And you went on multiple days, you said?

9 A. I went three times.

10 Q. Did you observe any impact of those lines on the people
11 that you were with?

12 A. First, standing for two hours. People were complaining
13 about the cold. Some of them weren't properly dressed. They
14 didn't think it would take that long. They were a little bit
15 uncomfortable but what made it a little bit better is that we
16 all kind of cheered each other on and tried to get them to just
17 hang in there and distract them. People passed out coffee and
18 just tried to keep ourselves distracted because it was a long
19 wait for all of us. So we'd say, you know, you're waiting two
20 hours, we're here, too. We're going to be here with you.

21 Q. And the people who you took to the polls, approximately
22 how old were they?

23 A. The two gentlemen, this is 2012, so they were
24 probably -- so the two gentlemen were in their mid to late 40s
25 and then the one lady was -- the one lady was, I don't know how

1 old she was, probably in her 50s. The fourth lady they let me
2 drive her up to the door because she was in her 80s.

3 Q. Was she able to immediately go vote?

4 A. She got to the door. I dropped her off at the door but
5 she still had to wait because inside the door there were
6 elderly people crammed inside the doorway. So there were other
7 people in her condition so she still had to wait a bit.

8 Q. And did you observe whether the lines created any
9 problems for elderly voters?

10 A. Because with the canes and whatnot. That was -- that's
11 why we tried to make sure we got them towards the door. I did.
12 So on the days that I was there you saw people trying to make
13 sure that the elderly just didn't stand in line unless -- there
14 were a couple who wanted to stand in line, but those who were
15 almost infirmed, I guess that's the word when you use a cane,
16 they tried to make them get at least up to the door so they
17 could get them inside the building.

18 Q. And did you make any observations about the racial
19 composition of the people who were in line to vote?

20 A. Everybody in the line was African-American. There were
21 a couple of people who spoke Spanish but everybody pretty much
22 was African-American. I remember there was one white lady that
23 was in line. And I don't know why -- I believe she was talking
24 to me about something. That's why she stood out. But
25 everybody in line was African-American pretty much.

1 Q. And do you have an uncle Dave who used early voting?

2 A. Oh, yeah. My early Dave.

3 Q. Can you explain how uncle Dave used early voting?

4 A. My uncle, in 2012, my uncle is a small business owner.
5 He's been a business owner for about 25, 30 years. He prunes
6 trees and does lawn, that kind of stuff. The last Saturday in
7 June it was really, really -- it was really hot in Cleveland
8 and he was trimming a tree and one of the branches snapped back
9 and knocked him 40 feet from the top of the tree into the next
10 yard. It broke his ribs, broke his pelvis, his arm and he was
11 LifeFlighted and he was in a coma for almost four months.
12 During my time with the election, with the campaign, I would
13 check on him at least every other day. But he was in a coma so
14 he didn't know I was there.

15 And then the day that he was being released he had been
16 out of a coma for a bit and he was getting better but he still
17 had a cracked pelvis. They couldn't fix that. They gave him a
18 cane and he was getting released. He asked me to come pick him
19 up. And the first place he wanted to go was to go vote. And
20 so we went from Metro Hospital to the board of elections.

21 Q. And do you recall when during the early-voting period or
22 was that during the early-voting period?

23 A. It was. I don't remember the day. I just remember it
24 was a good day because it was kind of quiet and I was -- it was
25 a quiet enough time for me to get him to the door and get him

1 in there to vote. And I just remember it was a weekday. I
2 don't know why.

3 Q. When you were doing the voter-registration work you were
4 talking about before and interacting with people in the Buckeye
5 community, did you encounter people -- did you observe people
6 having difficulties due to the absentee ballots not having
7 prepaid postage?

8 A. I did have some complaints from some of the elderly
9 women who really, really have a difficult time because they
10 depended on having postage. In my mind I was thinking, you're
11 complaining about postage? Just go vote. I thought, wait a
12 minute, I'm not on the kind of income that they're on and it's
13 a big deal to them. It might not be a big deal to me but to
14 have these women bring that up a few times, it stuck in my head
15 that they weren't bringing it up just to bring it up. They
16 literally depended on the postage for the ballots.

17 Q. And do you know whether a first-class stamp was enough
18 to mail in an absentee ballot?

19 A. I'm not sure. I'm not sure.

20 Q. When you were working in the Buckeye area did you
21 observe any billboards regarding voter fraud?

22 A. I did. I saw them actually as you come out of the
23 Buckeye area. You come out of the Buckeye area and you go
24 toward 55th towards downtown. It was somewhere in that area
25 there was a billboard that I can't remember the exact words but

1 it alluded to a felony. And the people in that area, and I
2 don't want to talk down about them, but they tend to not be
3 highly, highly educated. And so it brought about a lot of
4 concern because they were thinking that they could not vote
5 because of this billboard.

6 MS. COONTZ: Just a standing objection with respect to
7 the billboard, Your Honor.

8 THE COURT: Ma'am, we need you to confine your answers
9 to what you know. You can't really talk about what somebody
10 else was saying. Okay?

11 THE WITNESS: Okay.

12 THE COURT: Or thinking.

13 THE WITNESS: Okay. I'll tell you one specific
14 instance. My brother asked me why that billboard was up there.
15 He was very concerned.

16 BY MR. KAUL:

17 Q. And what I'll do is I'll ask you what you observed.

18 A. Okay.

19 Q. Was that billboard, was that anywhere near public
20 housing projects?

21 A. It was near, yes, it was near there's public housing
22 towards I believe it's 55th, somewhere in that area.

23 Q. And in the course of your get out the vote and
24 voter-registration work, did you observe that people were
25 confused by the billboard?

1 A. Yes.

2 MS. COONTZ: Objection.

3 THE COURT: Sustained.

4 BY MR. KAUL:

5 Q. Did you find that the billboard made it more difficult
6 for you to convince people to go to the polls?

7 A. I had a difficult time with one young lady who lived
8 right near the billboard, a 20 year old. And as we gave her
9 information about voting and encouraged her to go and vote, she
10 was really concerned about the billboard and concerned because
11 she thought that her boyfriend would not be able to vote.

12 MS. COONTZ: Objection.

13 MR. KAUL: The first part of that I think was clearly
14 admissible but the second part I have no --

15 THE COURT: Right.

16 MR. KAUL: Those are all the questions I have for you.
17 Thank you very much.

18 THE COURT: Ms. Coontz.

19 MS. COONTZ: Thank you, Your Honor.

20 - - -

21 CROSS-EXAMINATION

22 BY MS. COONTZ:

23 Q. Good afternoon, Ms. Taylor.

24 A. Good afternoon.

25 Q. I just have a couple questions for you. Based on your

1 testimony, you've never worked for a board of elections; is
2 that correct?

3 A. Correct.

4 Q. And you've never administered an election, correct?

5 A. Correct.

6 Q. The scenario with your uncle Dave, are you aware that
7 the board of elections has a procedure for coming and providing
8 ballots and allowing homebound individuals to vote?

9 A. That sounds familiar but I'm not clear on it.

10 Q. And with respect to the individual that you spoke of who
11 was concerned about postage, were you aware that the Cuyahoga
12 County Board of Elections had a 24-hour drop box for absentee
13 ballots such that she could have just gone to the board of
14 elections and dropped off her absentee ballot without postage?

15 A. She wasn't able to leave her home.

16 Q. Okay.

17 A. This lady was more than 90 years old.

18 Q. Okay. But so you're not -- you weren't aware that the
19 Cuyahoga County Board of Elections had a procedure for a
20 24-hour drop box for absentee ballots?

21 A. I'm not sure what I was aware of then but her concern
22 was her concern.

23 Q. Okay. But leaving aside this woman, did you know that
24 the Cuyahoga County Board of Elections had a 24-hour drop box
25 for absentee ballots such that people would not have to wait in

1 line?

2 A. You know, I remember -- I know that there was a box out
3 front but I don't know what that box was for. It was like a
4 mailbox but I can't tell you what that was for.

5 MS. COONTZ: Thank you. I have no further questions,
6 Your Honor.

7 THE COURT: Mr. Kaul.

8 - - -

9 REDIRECT EXAMINATION

10 BY MR. KAUL:

11 Q. You said you live in the Cleveland area; is that right?

12 A. Yes. I live on the border of Cleveland and Lakewood.

13 Q. Did you observe any advising about the 24-hour drop box?

14 A. Never seen any advertisement about 24-hour drop box.

15 Q. In trying to get people out to vote, did you ever have
16 difficulty getting people to go to the polls because they were
17 planning to use the 24-hour drop box instead?

18 A. No.

19 MR. KAUL: No further questions.

20 THE COURT: Thank you, ma'am.

21 THE WITNESS: Thank you.

22 MR. KAUL: Your Honor, we call Anthony Perlatti.

23 THE COURT: Raise your right hand, sir.

24 (Witness sworn.)

25 THE COURT: If you'd have a seat there. State your

1 name and spell your last name for the record, if you would.

2 THE WITNESS: Anthony Perlatti. Last name

3 P-E-R-L-A-T-T-I.

4 - - -

5 ANTHONY PERLATTI

6 Called as a witness on behalf of the Plaintiffs, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. KAUL:

10 Q. Good afternoon, Mr. Perlatti. My name is Josh Kaul.
11 I'm an attorney for the plaintiffs. Let me ask you, how are
12 you currently employed?

13 A. I'm employed with the Cuyahoga County Board of Elections
14 in the capacity as deputy director.

15 Q. And would you just briefly describe your educational
16 background?

17 A. My highest level of education, I have a bachelor's
18 degree from Cleveland State University in business
19 administration.

20 Q. And did you work at Cleveland State University for a
21 period of time?

22 A. I did.

23 Q. In what department?

24 A. The human resources department.

25 Q. And how were you employed there? What was your job?

1 A. I was a human resources generalist.

2 Q. And how long were you working there?

3 A. A short period of time. It was May 2007 until November
4 of '7.

5 Q. Why did you leave that job?

6 A. To take my position -- well, to take a position at the
7 board of elections, at that point in time as the human
8 resources manager.

9 Q. And just for the record, that's at the Cuyahoga County
10 Board of Elections?

11 A. Yes.

12 Q. And how long did you work as human resources manager?

13 A. November of 2007 until February of 2013. I don't
14 remember the exact date in February.

15 Q. And you've been deputy director since then?

16 A. Yes, I have.

17 Q. And over the course of your work for the county board of
18 elections have you become familiar with the election
19 administration process in Cuyahoga County?

20 A. Yes.

21 Q. And have you become familiar with the rules that apply
22 to elections officials?

23 A. Yes.

24 Q. And elections generally?

25 A. Yes.

1 Q. So you started in 2007; is that right?

2 A. Yes.

3 Q. Has there been a change in the composition of the county
4 board of elections since 2007?

5 A. Composition how?

6 Q. Has the membership changed?

7 A. The four board members?

8 Q. Yes.

9 A. Yes. When I started in 2007, the four board members at
10 that point in time are currently the same four board members.
11 However, in the middle of that time one of the board members
12 did step down from his seat. That was Rob Frost. A
13 replacement had come in and then -- which was Debbie
14 Sutherland. And she then had resigned because she was running
15 for an elected position and Rob Frost came back on the board.

16 Q. Was the entire board removed, to your knowledge, after
17 the 2008 election?

18 A. They were not.

19 Q. Are you familiar with the phrase golden week?

20 A. Yes, I am.

21 Q. What do you understand that to mean?

22 A. Golden week was a period in time in which individuals
23 could vote by mail or vote early in person in Cuyahoga County
24 at our board of elections building. It was 35 days prior to
25 election day and it continued through the close of

1 registration.

2 Q. And were voters able to change their registration
3 address during golden week?

4 A. Yes.

5 Q. In 2012 do you know approximately how much golden week
6 cost Cuyahoga County?

7 A. In 2012 there was approximately 40,000, \$41,000 in
8 additional personnel costs to administer golden week.

9 Q. And do you recall what your overall budget was in 2012?

10 A. I do not.

11 Q. Do you know what your budget is this year?

12 A. Budget this year is a little over 13 million.

13 Q. 13 million, you said?

14 A. Yes.

15 Q. Is it fair to say it was slightly smaller in 2012?

16 A. It would have been larger. So budgets for boards of
17 elections basically go on a four-year cycle. It depends on
18 what elections are in that year. So a presidential year the
19 board of -- in Cuyahoga County we have a higher budget
20 allocation than we do in a nonpresidential year.

21 THE COURT: It's an annual basis though, right?

22 THE WITNESS: Yes. Annual. So in Cuyahoga County we
23 have an biannual budget but for the, yes, broken down by year
24 and, again, it's depending on if it's a presidential year,
25 gubernatorial or municipal year.

1 BY MR. KAUL:

2 Q. So in 2012 the budget was somewhere above the current
3 13 million?

4 A. Yes.

5 Q. You said golden week was 40,000?

6 A. In additional personnel costs.

7 Q. And do you know what the budget request will be for
8 2016, approximately?

9 A. We are asking for between 16- and 17 million.

10 Q. And does the Cuyahoga County Board of Elections
11 typically run a surplus?

12 A. We have, in this biannual budget that we're coming out
13 of, we do have a surplus in this budget.

14 Q. And do you know approximately how much surplus you
15 expect?

16 A. At this point in time it is approximately \$2 million.

17 Q. Let me go back to golden week for a minute.

18 THE COURT: That's in your current budget?

19 THE WITNESS: That is for, yes, for 2015.

20 THE COURT: Thank you.

21 BY MR. KAUL:

22 Q. First of all, did you observe voters voting and
23 registering during golden week?

24 A. In which year?

25 Q. Good question. How about 2012?

1 A. In 2012 I did view parts of that. Not the entire
2 window.

3 Q. What about 2008?

4 A. 2008 I was employed there at that point in time but
5 not -- I don't recall observing golden week registrations at
6 that at that time.

7 Q. So I'll focus on the 2012 election. Did you make any
8 observations about the race of most golden-week voters in
9 Cuyahoga County in 2012?

10 A. In 2012 I would say that the majority of golden-week
11 voters were minority voters.

12 Q. And when you say minority?

13 A. Primarily African-American.

14 Q. Did you have in your role as -- I guess you weren't
15 deputy director yet in 2012; is that right?

16 A. That is correct.

17 Q. Were you aware, in 2012, of election administration
18 issues and concerns?

19 A. Some.

20 Q. Did you have any concerns about fraud during golden
21 week?

22 A. No.

23 Q. And why not?

24 A. Well, the process that's in place that we had for
25 administering registrations during golden week and so I think

1 we had a good process in place. A person who came in and
2 either newly registered or updated their address during golden
3 week we would, at the end of the night, segregate those ballots
4 from the rest of the ballots from election day. We would then
5 immediately, next day's mail, send out a voter notification
6 card to the individual and --

7 Q. Let me interrupt you for a second. These are
8 individuals who newly registered or changed their registration
9 during golden week?

10 A. Yes.

11 Q. I'm sorry. And you're talking about sending out a
12 confirmation mailing?

13 A. First it can be a two-part mailing. First is a
14 nonforwardable acknowledgment card that is sent out to the
15 individual. That card does not come back and we get ten days
16 prior to the election and we will go ahead and we will count
17 the ballot thinking that the acknowledgment card did go through
18 to the address that the person provided to us.

19 Q. And how does that differ from the regular registration
20 process?

21 A. That is not different than the regular registration
22 process.

23 Q. I'm sorry I interrupted you.

24 A. And then if the acknowledgment card does come back
25 undeliverable, we will then send out a forwardable confirmation

1 card to the individual and if that card gets sent back, if the
2 voter receives that card, fills it out with the address that
3 they're residing at and it comes back as the address that they
4 originally registered at, we'll go ahead and count that ballot.
5 If the acknowledgment card comes back undeliverable and we send
6 out the confirmation card then subsequently and that does not
7 come back or it comes back undeliverable or it comes back with
8 a different address than what they originally had put on the
9 registration card, then we don't count those ballots.

10 Q. So I asked you a moment ago how the process differs from
11 the regular registration process and then you described more
12 parts of the confirmation mailing. Does that process differ at
13 all from the regular registration process?

14 A. It does not. The only thing we do differently in
15 Cuyahoga County is during golden week, those cards, we would
16 use a different color envelope just to bring it to our
17 attention so if something came back in the mail we could
18 clearly identify that that was someone who registered newly or
19 updated their registration during golden week.

20 Q. So the voters who registered and voted during golden
21 week, was the registration process they went through before
22 their votes were counted any different from the registration
23 process that other voters went through?

24 A. Can you repeat that again?

25 Q. Was the registration confirmation process for golden

1 week registrants, was it any different from the registration
2 confirmation process for registered voters?

3 A. The registration process was the same. Golden week did
4 not impact the voter registration date. So the registration
5 process was the same for all.

6 Q. Are you aware of any instances of voter fraud in
7 Cuyahoga County?

8 A. Due to golden week?

9 Q. Let me ask you in general.

10 A. In general, no.

11 Q. So it's fair to say that you're not aware of any due to
12 golden week then?

13 A. That's correct.

14 Q. Did golden week have any benefits from an
15 election-administration perspective?

16 A. I believe it did.

17 Q. Can you explain?

18 A. So one benefit of golden week is that, again, golden
19 week is the time when early in-person voting starts as well as
20 vote-by-mail absentee-voting starts. So when golden week or
21 when early voting started 35 days out, boards of elections then
22 were able to mail out absentee ballots 35 days before the
23 election which is beneficial in a large county like Cuyahoga
24 County because we have a great volume of absentee ballots that
25 we deal with.

1 So the sooner we're able to mail them out, the sooner
2 then individuals are able to vote them and return them back to
3 us because ten days prior to the election is when we are
4 allowed to begin to open absentee ballots that are valid for
5 opening. So you want to get back as many ballots as you can on
6 the front end of that ten-day window so you have more time to
7 process. So the later you mail, the closer that comes to
8 election day and just the more you jam up internal processes
9 trying to get those ballots counted.

10 Also, the benefit of early voting 35 days out is just it
11 gives more -- it gives voters more opportunity to vote prior to
12 election day which in Cuyahoga County we strive to have as many
13 individuals as we can vote before election day because what
14 that does is it relieves pressures on the polls on election
15 day. So there's less individuals needing to go on election day
16 to vote because they've already cast their vote either early in
17 person or by mail.

18 Q. And when you say relieves pressures on the polls on
19 election day, what do you mean by that?

20 A. Just physically less people going to the voting location
21 and the less people that you have going to the polls on
22 election day, you reduce the risk of having long lines at the
23 polls on election day because there's just less people there.

24 Q. And has Cuyahoga County over the last few presidential
25 elections had long lines at the polls on election day?

1 A. I would say in 2012 -- depends on how you define long.
2 There are lines at the polls on election day. You cannot avoid
3 that but I think in Cuyahoga County they were -- on election
4 day on polling locations they were reasonable.

5 Q. And sorry, I should have clarified.

6 THE COURT: Define reasonable.

7 THE WITNESS: I would say 20 minutes or less.

8 THE COURT: Thank you.

9 BY MR. KAUL:

10 Q. Is that an average or is that a worst case? Let me ask
11 it a different way actually. Did the lines vary from precinct
12 to precinct?

13 A. They do.

14 Q. And so the 20 minutes, where does that fall within the
15 spectrum?

16 A. I would say 20 minutes is probably closer to an average
17 wait time.

18 Q. If golden week were reinstated for 2016, would Cuyahoga
19 County need to purchase any additional voting equipment?

20 MS. PIERCE: Objection, Your Honor. Calls for
21 speculation.

22 MR. KAUL: I think it's clearly within the scope of
23 his knowledge.

24 THE COURT: I would think it would be. Overruled.

25 THE WITNESS: We would not have to purchase additional

1 equipment. We would have just additional personnel costs.

2 BY MR. KAUL:

3 Q. And that's what we talked about before?

4 A. Yes.

5 Q. Let me ask you about the early-voting location in
6 Cuyahoga County. First, where is it located?

7 A. It is at the board of elections administration building
8 at 2925 Euclid Avenue.

9 Q. And do you anticipate that it will be there again in
10 2016?

11 A. Yes.

12 Q. And was it there in 2012?

13 A. Yes.

14 Q. Let me first ask you about parking at that location.
15 How is parking availability at that location?

16 A. Parking is challenging. We have a parking lot attached
17 to our building. I think it holds -- approximately 45 parking
18 spaces are in that building. And what we do in presidential
19 general elections is we reach out to some of our business
20 neighbors in the community in that area to try to lease their
21 parking lots for the window. We have been successful in doing
22 that. We were successful in doing that in 2012.

23 Q. And have you attempted to do that for 2016?

24 A. We are actually trying to purchase a parking lot that
25 has become available. So we're in that negotiation trying to

1 purchase that lot so it would be ours. We are starting to look
2 to see what other parking lots we would be able to secure.

3 Q. And absent the securing of those additional parking
4 spaces, I think you said before parking was difficult?

5 A. It just depends what part of the early voting -- early
6 in-person voting cycle you're at because there's peaks and
7 valleys. The closer you get to election day, the volume of
8 individuals coming to our early-vote center increases so it is
9 definitely more individuals than we have parking spaces for.

10 Q. Did you observe wait times to vote for early voting in
11 2008?

12 A. There was wait times and, again, it varied depending on
13 where you were in that 35-day cycle.

14 Q. And what about during the Friday through Monday before
15 the election?

16 A. That is the busiest time and, yes, there definitely were
17 lines at that time.

18 Q. Do you know approximately how long they were?

19 A. I recall those lines in 2008 being around two and a half
20 hours for that Friday through Monday.

21 Q. And what caused those lines?

22 A. The volume of people converging on the building during
23 the hours for early voting.

24 Q. And physically speaking, where were those lines?

25 A. So in those -- like the Friday through Monday before the

1 election a line would be -- part of the line was in the
2 building, our board of elections building, and part of the line
3 was outside of the building.

4 Q. And have you made -- I asked you about golden week
5 before but let me ask you about early in-person voting
6 generally. Have you made observations about the racial
7 demographics of the voters you've observed at early in-person
8 voting?

9 A. Yes.

10 Q. What have you observed?

11 A. I don't have counts or exact percentages but I would say
12 that the majority of individuals utilizing early in-person
13 voting in Cuyahoga County are African-Americans.

14 Q. And are you familiar with efforts known as
15 Souls-to-the-Polls efforts?

16 A. Yes, I have heard of Souls to the Polls.

17 Q. Have you observed Souls to the Polls in action?

18 A. I have, yes. I have seen the vans and transporting
19 individuals on the Sunday before election bringing people after
20 mass down to the board of elections to vote early in person.

21 Q. Again, what was the race of those people?

22 A. The majority of them were African-American.

23 Q. Are you anticipating long lines during early voting in
24 2016?

25 A. In the general election?

1 Q. Yes.

2 A. Yes, we are.

3 Q. Is that for the same reason you had long lines in the
4 past?

5 A. Yes. Based on the history of 2008 and '12, we
6 anticipate we will have similar turnout for early in-person
7 voting for that. The cycles are -- typically they're kind of
8 similar so that's what you look back to. We don't have any
9 reason to believe it would be different in 2016.

10 Q. And in your experience as an elections administrator
11 have you made any observations about whether the needs of large
12 counties in Ohio and small counties in Ohio differ?

13 A. I believe that there are definitely things in Cuyahoga
14 County being a large county that benefit us. I don't know if
15 they benefit small counties to the same level such as vote by
16 mail is crucial in Cuyahoga County for us to be successful. I
17 know just from like an Ohio Association of Election Officials
18 seminar it seems like some of the smaller counties aren't --
19 they benefit from it but not to the same extent that we do in
20 Cuyahoga County.

21 Q. And when you say it, you're talking about the
22 absentee-ballot mailings?

23 A. Yes. The early in-person voting, the expansiveness of
24 having more hours and being able to have a robust vote by mail
25 program.

1 Q. You mention the Ohio Association of Elected Officials?

2 A. Yes.

3 Q. I'll call that the OAEO, is that okay?

4 A. Yes.

5 Q. Do you have a view as to whether the OAEO appropriately
6 accounts for the differing needs of counties of different
7 sizes?

8 A. I do not think that they always do that. I think the
9 way the structure -- I think some of the things that come out
10 of the OAEO are good for election administration and I think
11 some of the things that come out trying -- they try to come up
12 with a one-size-fits-all for all 88 counties and I personally
13 disagree with some of that. I don't think that the counties
14 are equally represented in the association and so, for example,
15 if each county were to get a vote, it doesn't take into
16 consideration the number of registered voters that reside
17 within that county.

18 So large counties or extremely large counties, there's
19 only a few in Ohio. Cuyahoga, Franklin, Hamilton, you could
20 say Montgomery, and then everybody really the size of the
21 counties go down quite a bit. And so it seems like that
22 there's equal -- they have equal weight in some of these
23 decisions and I don't think that's the best.

24 Q. Was there a period of time when Cuyahoga County mailed
25 out unsolicited absentee-ballot applications?

1 A. Yes.

2 Q. That's the board of elections that did that, right?

3 A. Yes. The board of elections did that.

4 Q. Why did you do that?

5 A. We did that because, again, in an effort to get more
6 individuals to vote early before election day, we sent out the
7 unsolicited vote-by-mail applications. We did that in 2008 and
8 up through and I believe the last time was May of 2011. And
9 we -- what we saw was voters, they get in a pattern. They get
10 used to or just repetitive things. When they would get a
11 vote-by-mail application election after election, they became
12 more comfortable with the process and more individuals would
13 utilize that. And so that was a good way for Cuyahoga County,
14 again, to relieve pressure at the polls on election day by
15 sending out those unsolicited vote-by-mail applications.

16 THE COURT: And you paid postage too?

17 THE WITNESS: We did. We paid -- yes. We paid the
18 postage.

19 BY MR. KAUL:

20 Q. Why did you prepay the postage on those?

21 A. It was just another way to encourage the registered
22 voters of Cuyahoga County to utilize the program.

23 Q. And do you know how much the postage is on those return
24 absentee ballots? I can ask a different way if you're
25 uncertain of the precise number.

1 A. The return vote-by-mail applications? You said ballots.

2 Q. Fair point. Let's start with the applications.

3 A. The return mail on the applications, that I am not
4 positive. I think we get a nonprofit bulk rate but I don't
5 know what that is. I'd have to defer to our fiscal manager.

6 Q. If an ordinary voter is submitting one of those ballots,
7 does a single first-class stamp cover it?

8 A. Yes.

9 Q. And what about the actual absentee ballot?

10 A. The absentee ballot, it depends. It depends on how many
11 sheets of paper the ballot is. So depending on what the
12 election, what election it is, you could have the smallest
13 ballot you can get in Cuyahoga County is a one-page 14-inch
14 ballot and as issues grow or in length you can get to -- we can
15 have a 17-inch ballot and you can get three, four pages. So it
16 all depends on what that weight is.

17 Q. And the bigger the ballot, the more the postage?

18 A. That is correct.

19 Q. And did you pay postage for the actual absentee-ballot
20 envelopes that were submitted?

21 A. At one point Cuyahoga County did do that.

22 Q. Do you remember when that was?

23 A. They did do it in 2008. I don't remember -- I do not
24 remember which election. I believe it was the Secretary of
25 State's Office instructed us that we no longer could pay the

1 return postage on the ballots.

2 Q. And do you know when that was?

3 A. That I don't remember.

4 Q. And since you received that instruction have you been
5 permitted to include prepaid postage?

6 A. No. We don't prepay any return postage either for
7 applications or ballots.

8 Q. And are you permitted to send out absentee ballot --
9 unsolicited absentee-ballot applications?

10 A. We did not.

11 Q. Did you pay particular attention to the timing they were
12 sent out?

13 A. Yes. Yes, we did.

14 Q. Or how did you determine when they were sent out?

15 A. We would try to -- we would try to send out the
16 vote-by-mail application so they would arrive in the electors'
17 mailboxes one to two weeks prior to early voting starting.

18 Q. Do you know when they're sent out now?

19 A. Now they can only be sent out by Secretary of State's
20 Office. They can do that in even years when the General
21 Assembly funds that.

22 THE COURT: What was the last year that the board sent
23 either registration or applications or ballots out to people?

24 THE WITNESS: We sent unsolicited vote-by-mail
25 applications, May of 2011 was the last time that we were

1 allowed to do that.

2 THE COURT: Thank you.

3 THE WITNESS: Then after that, nobody in the state was
4 allowed to do that. So the -- I'm sorry, I forgot what the
5 question was.

6 BY MR. KAUL:

7 Q. I was asking about the timing.

8 A. The timing. So the Secretary of State, when he did
9 that, Secretary Husted did that in '12 and in '14, he did do
10 that in two waves. The first mailing, both years, I believe,
11 went out in September and the second mailing vote-by-mail
12 applications and that was for individuals who were not included
13 in the first wave but had registered since that point when
14 registration closed. Those went out in October.

15 Q. And did the efficacy of that program differ from your
16 mailings?

17 MS. PIERCE: Objection.

18 BY MR. KAUL:

19 Q. Did the number of absentee ballots you receive change,
20 if you know?

21 A. I don't. The number of absentee ballots we received
22 compared to elections when no unsolicited application is sent
23 out, it definitely increases. I do not believe it got to the
24 same level as to the peak that Cuyahoga County was doing it.
25 It did definitely increase in benefit.

1 Q. Meaning it was better than when you weren't doing any
2 unsolicited absentee?

3 A. That is correct.

4 Q. Not as good as when you were sending them out?

5 A. No. In Cuyahoga County we had got a pretty good thing
6 going.

7 Q. How many active -- before I ask you that, let me ask you
8 one other question. In your experience as an elections
9 administrator, have you encountered voters who are apprehensive
10 about casting absentee ballots?

11 A. In conversation there are some individuals who they have
12 expressed they will not vote by mail.

13 Q. Now I'm going to ask you, how many active voters are
14 there in Cuyahoga County?

15 A. Active voters, I want to say before we closed the
16 registration rolls for this past November's election, it was
17 between 840- and 850,000.

18 Q. Is that active or is that registered?

19 A. That's all. That's registered.

20 Q. Do you know how many of those are active?

21 A. Approximately 600,000.

22 THE COURT: What does active mean?

23 MR. KAUL: I'm sorry?

24 THE COURT: What does active mean?

25 THE WITNESS: An active registration is someone who

1 within a two-year period has engaged in voter activity. Voter
2 activity consists of voting or it could be signing a petition,
3 requesting a vote-by-mail ballot. You don't have to return it
4 but you requested it. You have updated your address. So those
5 are things, that's activity that would put you in active
6 status. And you need to do one of those things within a
7 two-year period. If you don't then you will be flipped to an
8 inactive status.

9 THE COURT: Thank you.

10 BY MR. KAUL:

11 Q. And that leads to my next question. First of all, I've
12 heard the phrase inactive and active confirmation. Are you
13 familiar with those terms?

14 A. Yes.

15 Q. What's the difference?

16 A. They're not different. So Secretary of State has their
17 statewide voter database and their official terms for
18 registrations are active-active which most election officials
19 consider active, and then you have active confirmation which is
20 what election officials call inactive, and then you will have
21 canceled registration of both. So active confirmation and
22 inactive are similar terms.

23 Q. And do you know -- so you said there were 600,000 active
24 voters?

25 A. Yes.

1 Q. Does that mean the other 240,000 are inactive?

2 A. That's correct.

3 Q. And do you know how that's broken down between voters
4 who, say, moved, voters who have been inactive for two years?

5 A. So I looked at the voter registration database at these
6 numbers prior to the close of registration at some point, I
7 believe it was in October, and so we had about 180,000
8 individuals who were inactive because they had participated or
9 they were subjected to the supplemental confirmation mailing
10 that boards of elections are required to do. There are
11 approximately 40,000 individuals at a point in time who were
12 inactive because they received the confirmation mailing under
13 the national change of address requirement that boards of
14 elections are required to do.

15 And then the remaining individuals, a portion of those
16 are voters who must vote provisional because when they did
17 register, and I would say this number is probably around 10,000
18 or a little bit above that, these are individuals who have
19 either registered new or have updated their address, we've sent
20 them the acknowledgment card, it's come back undeliverable. At
21 that point in time they're inactive and then we send them the
22 confirmation and if they do not send back the confirmation card
23 or if the confirmation comes back undeliverable, they'll remain
24 in that inactive status.

25 There's another little category and those are people

1 with their driver's license numbers, the Secretary of State
2 will match driver's license in the statewide voter registration
3 database versus the Ohio BMV. If there's mismatch there then
4 we do a confirmation mailing. And when we do, basically
5 anytime we do a confirmation mailing, we flip a registered
6 voters status from active to inactive.

7 Q. So you said there were approximately 240,000 inactive
8 voters?

9 A. Yes.

10 Q. And so that's out of 840,000 total?

11 A. Uh-huh.

12 Q. And are those 240,000 voters who are inactive, are they
13 eligible to show up and vote?

14 A. Early in person or on election day?

15 Q. Either.

16 A. So, yes. Yes, they can vote. So on election day -- it
17 depends on the reason why you're inactive. If you're inactive
18 because we're not able to confirm your address, those are an
19 individual when they go to the polls on election day, they
20 would have to go on provisional ballot. An individual who is
21 inactive because they were part of a supplemental mailing for
22 lack of activity, they will be -- their name -- in Cuyahoga
23 County we have paper poll books, their name could be preprinted
24 in that poll books and they could vote in an effort confirming
25 that the address in which they reside matches the precinct in

1 which they appear to vote at.

2 As far as voting by mail or early in-person voting,
3 which really early in-person voting and absentee in Cuyahoga
4 County is the same process. You're voting an absentee ballot.
5 Some individuals who we cannot confirm their address, those who
6 vote provisionally on election day, if they come early in
7 person they can vote provisionally at the board of elections
8 but those individuals can't vote by mail. It wouldn't be
9 allowed.

10 But the other individuals, if they're inactive because
11 of being in the supplemental status, if the address that they
12 provide on their vote-by-mail application and that application
13 they're filling it out, whether they're voting by mail or
14 voting in person at the board of election, that address matches
15 the address that we have in our voter registration database, we
16 will go ahead and make that individual active and allow them to
17 vote.

18 Q. And let me ask, so that's the category that's 180,000?

19 A. Yes.

20 Q. And just to be clear, those are people who have not had
21 any activity in two years?

22 A. Correct.

23 Q. And they're sent a confirmation card?

24 A. Yes.

25 Q. And they haven't returned it; is that right?

1 A. That's correct.

2 Q. But other than that, they're fully eligible to vote?

3 A. Yes.

4 THE COURT: Do you have electronic poll books?

5 THE WITNESS: We have not purchased electronic poll
6 books. So we are currently --

7 THE COURT: You're still all paper?

8 THE WITNESS: We're still all paper. We just
9 conducted a small pilot program this past November with
10 electronic poll books and we're gathering information to
11 hopefully make a purchase at some point next year.

12 BY MR. KAUL:

13 Q. Just briefly, what's your understanding as to what
14 information a voter has to provide on an absentee-ballot
15 envelope to have that absentee ballot count?

16 A. The absentee-ballot identification envelope, an
17 individual has to provide their printed name, their address,
18 their date of birth, a form of identification being their
19 driver's license number, last four of their Social Security
20 number or they can provide a utility bill, bank statement that
21 has their current address on it, and they have to sign the
22 envelope.

23 Q. And do you know whether any of those required categories
24 of information are the result of a recent change in the law?

25 A. Yes.

1 Q. What's that?

2 A. Previously to the change in the law, and I'm not exact
3 on the senate bill because there was a few of them that came
4 out right in a row so I get them interchanged. Previously
5 prior to that, an individual on a vote-by-mail identification
6 envelope had to provide the printed name, form of
7 identification and a signature. That were the three items that
8 were previously required. Now what has been added post-passage
9 of the bill is their address and their date of birth have to
10 appear on the ballot-identification envelope.

11 Q. And before the new requirements were added, if voters
12 complied with all the other requirements did you have any
13 difficulty identifying those voters?

14 A. We were able to identify the absentee voters.

15 Q. And are your absentee ballots barcoded?

16 A. The ballot, no. The envelope, yes.

17 Q. And does that barcode on the envelope permit you to
18 identify voters? Let me ask it a different way. Does it
19 permit you to determine who it was sent to?

20 A. That barcode, yes, that will let us know who it was sent
21 to. So the barcode is unique to the voter. What that does is
22 administratively it helps us return the ballots quicker instead
23 of having to do manual data entry of returned absentee ballots,
24 we can scan that barcode and get them returned to our voter
25 registration database.

1 Q. Under current law, if a voter returns an absentee-ballot
2 envelope without a date of birth filled in, what happens to
3 that ballot?

4 A. So that absentee ballot is challenged and then the board
5 of elections, we mail out an 11-S form to the voter and that
6 11-S form, if they provide their date of birth on that form,
7 they can send it back and that will cure the ballot and then we
8 would be able to count it. The 11-S we would have to -- it
9 would have to be postmarked by the seventh day following the
10 election and the board of elections, we would have to receive
11 it by the tenth day following that election.

12 Q. What if you don't receive that 11-S form back?

13 A. Then the ballot is not counted.

14 Q. Do you preprint some of the information on the
15 absentee-ballot envelope?

16 A. We put -- we have the name and the address on the ballot
17 identification envelope and we have gotten guidance from
18 Secretary of State's Office that if a ballot identification
19 envelope comes back and the person does not print their name or
20 provide their address, our preprinted name and address are
21 sufficient for those two fields to be utilized.

22 Q. Do you preprint the other categories?

23 A. We do not.

24 Q. Why not?

25 A. My understanding is we are, pursuant to the Secretary of

1 State, we are not allowed to print that information.

2 Q. That's pursuant to a directive, if you know?

3 A. I don't know if it was actually in a directive. I think
4 that we've gotten verbal guidance.

5 Q. And let me ask you similar questions about provisional
6 ballots. There was a change recently in the law as to what's
7 required on a provisional-ballot envelope; is that right?

8 A. That's correct.

9 Q. And was that change the mirror image of the
10 absentee-ballot change?

11 A. Yes. The three same fields were required prechange,
12 printed name, ID and signature. And postchange those three
13 plus address and date of birth are required.

14 Q. Prior to the change were you able to identify some
15 provisional voters without the additional information?

16 A. Yes, we were.

17 Q. And under the current law if those voters don't provide
18 the additional information, what happens to their ballots?

19 A. They're rejected or considered invalid.

20 THE COURT: Do they have an opportunity to cure?

21 THE WITNESS: No. Not a provisional.

22 BY MR. KAUL:

23 Q. And when you send out those 11-S forms you mentioned,
24 how do you send those out?

25 A. U.S. mail.

1 Q. Have you considered contacting voters other ways?

2 A. To cure the ballot?

3 Q. Yes.

4 A. No. We are required to send out that 11-S form so
5 that's what we send out. Because we need a physical form back.

6 Q. Are you permitted to call the voters to inform them of
7 the deficiency?

8 A. In the past we have called voters but for the most part
9 we don't contact voters anymore because of those. And part of
10 the reason for that is the volume and so it would just be
11 difficult to, one, we don't have contact information, e-mails
12 or phone numbers for all registered voters because it's not
13 required so we don't have that. And time permitting, you may
14 not be able to contact them all.

15 Q. And do you know whether you're permitted to contact them
16 by phone under statute?

17 A. That I am not positive.

18 Q. Do you know how Ohio compares to other states in terms
19 of the number of provisional ballots cast?

20 A. I do not.

21 Q. And just briefly, you have bilingual ballots; is that
22 right?

23 A. Yes.

24 Q. And that's English and Spanish?

25 A. Yes.

1 Q. And why did Cuyahoga County start using bilingual
2 ballots?

3 A. Cuyahoga County entered into a consent decree with the
4 Department of Justice and I'm not clear on the year. I don't
5 know if it was 2009. But as part of that consent decree we
6 were required to provide our ballots both in English and
7 Spanish as well as any other voter information. So our
8 provisional envelopes are bilingual, our vote-by-mail
9 applications are bilingual. We have an English and Spanish
10 site to our website and just other information that would
11 pertain to voter information is bilingual. So that was
12 underneath the consent decree that we entered into. Cuyahoga
13 County is no longer under the consent decree but we continue to
14 provide those documents bilingually.

15 THE COURT: How about for in-person voting, are the
16 ballots set up on the voting machines bilingual?

17 THE WITNESS: So our early voting in Cuyahoga County
18 they're voting by paper.

19 THE COURT: Not early. I'm talking about if they show
20 up on the day of election, is that bilingual as well?

21 THE WITNESS: Yes. Because it's a paper ballot. So
22 we have an electronic tabulator but the actual ballot is the
23 same paper ballot that you would use for early voting is used
24 the same on election day.

25 THE COURT: Do you have DRES?

1 THE WITNESS: We do not have DREs.

2 BY MR. KAUL:

3 Q. And let me just ask you briefly about assistance for
4 illiterate or low literacy or voters without English or Spanish
5 proficiency. Are you able to provide assistance to those
6 voters in filling out absentee-ballot applications?

7 A. If someone comes to the board of election to vote early
8 in person, which is an absentee ballot application, we do have
9 bilingual -- we have some bilingual staff, English and Spanish
10 speaking, who assist with early-voting process. So if it was
11 someone who was limited English proficient and they were a
12 Spanish speaker, we could have an employee help them with the
13 voting process. As far as the identification envelope or the
14 vote-by-mail application, if it was someone who was illiterate,
15 we could have a bipartisan team of employees assist them in
16 completing that.

17 Q. Do you know how often people take advantage of that
18 option?

19 A. The bipartisan team, that I don't know. The Spanish
20 speaking, we don't track it but we definitely do get requests
21 for individuals to meet with our bilingual employees.

22 Q. That's in the board of elections office?

23 A. That's in the board of elections office. We also
24 provide bilingual poll workers at certain polling locations on
25 election day. As part of our consent decree we do a surname

1 analysis and depending on how many Hispanic surnames are
2 returned in the precinct, if it was over 100 in the precinct
3 then the board of elections, we were required to provide a
4 bilingual poll worker in that precinct. And even though,
5 again, we're not underneath the consent decree, we continue to
6 do that practice. The Department of Justice will still -- we
7 provide them with our registration data and then they still do
8 that analysis for us.

9 MR. KAUL: Thank you. No further questions.

10 THE COURT: Ms. Pierce, you may cross.

11 - - -

12 CROSS-EXAMINATION

13 BY MS. PIERCE:

14 Q. Good afternoon, Mr. Perlatti. I don't know if you
15 remember me but I was at your deposition.

16 A. Yes, you were.

17 Q. I represent the defendants in this case. That's
18 Secretary Husted and Attorney General DeWine. I just have some
19 questions for you.

20 The Judge asked you a question about e-poll books and
21 you mentioned that Cuyahoga County has a pilot program. Are
22 you planning to move to electronic poll books in 2016?

23 A. In 2016 we hope to identify a vendor and purchase the
24 electronic poll books in 2016. As far as county-wide
25 implementation, right now that doesn't look like that would

1 happen until 2017 but I think if we can find a vendor and
2 secure the books, we may have a portion, I don't know what that
3 percentage would be, electronic poll books that we would be
4 able to use hopefully in the primary and in the general.

5 Q. And electronic poll books present several benefits from
6 the election administration standpoint, don't they?

7 A. Yes.

8 Q. They speed up check-in times for voters?

9 A. Yes.

10 Q. And some of the models you are previewing will actually
11 print out directions for voters to their correct polling
12 location, right?

13 A. That is correct.

14 Q. So the hope being that that would reduce the amount of
15 voters who vote a provisional ballot, correct?

16 A. Right. The goal is to reduce the number of wrong
17 precinct, wrong location provisional ballots.

18 Q. You were asked a number of questions about golden week
19 during your direct examination. And you mentioned that as part
20 of the registration process once a voter registers, the board
21 of elections sends out a nonforwardable acknowledgment card to
22 the voter; is that right?

23 A. That is correct.

24 Q. And so that the nonforwardable part means that if it
25 doesn't come back to the board of elections, you assume that it

1 got to the voter; is that right?

2 A. That's correct. That's the assumption.

3 Q. And that's the same process that you follow for folks
4 who register during the golden-week period or what was the
5 golden-week period, right?

6 A. Same process anytime someone would register, yes.

7 Q. And you mention that if the acknowledgment card didn't
8 come back before election day or before the absentee ballots
9 were counted, you would count that ballot, right?

10 A. That's correct.

11 Q. What would happen if that acknowledgment card came back
12 after election day?

13 A. You can't get the ballot back because it's a paper
14 ballot. So once it's out of the envelope, you can't identify
15 it. So that ballot would be counted. If the acknowledgment
16 card then came back, we would then go ahead and send out a
17 confirmation card. We would continue on with that registration
18 process. Depending on what they did, if the confirmation came
19 back and it had the address that was listed on the original
20 registration then that would be -- they would be an active
21 voter at that address. If it didn't come back with
22 confirmation or if it came back undeliverable then that
23 individual would be marked inactive and in future elections
24 they'd have to vote provisional.

25 Q. You also spoke a little bit about the early in-person

1 voting in Cuyahoga County. I believe you mentioned that the
2 early in-person voting location is at the board of elections
3 office; is that right?

4 A. That's correct.

5 Q. And that is located in downtown Cleveland?

6 A. Yes.

7 Q. The early-voting center is accessible by public
8 transport; is that right?

9 A. Yes. We're on the bus line.

10 Q. And it also has good freeway access; is that correct?

11 A. That is correct.

12 Q. You mentioned that the longest early in-person voting
13 lines that you saw in the 2008 election occurred during that
14 last weekend of early voting; is that right?

15 MR. KAUL: Objection. Mischaracterizes. I don't
16 think he said anything about the 2008 lines.

17 MS. PIERCE: I had in my notes 2008.

18 THE COURT: Did you say anything about 2008?

19 THE WITNESS: I thought 2008. I think we did.

20 MR. KAUL: Withdrawn.

21 MS. PIERCE: I'll reask it so we're clear.

22 BY MS. PIERCE:

23 Q. In 2008, the early-voting period, the longest lines you
24 saw to vote early in person were during that last weekend of
25 early voting; is that right?

1 A. The Friday through Monday.

2 Q. And I believe you also mentioned that in your experience
3 those lines were caused by the volume of people arriving at the
4 location versus the number of resources you had to accommodate
5 them, right?

6 A. Well, it is the volume of people. We have quite a few
7 resources but that volume you just can't avoid a line at that
8 point.

9 Q. You have 48 computer terminals in your board of
10 elections office for checking in voters who vote early in
11 person?

12 A. In a presidential general we do.

13 Q. I believe you mentioned that during that last weekend
14 you had folks actually being bussed in to vote early in person
15 that last weekend, correct?

16 A. Right. We were talking about Souls to the Polls. We
17 actually did one time have a bus. But most of the times it's
18 vans.

19 Q. And jumping ahead to the 2012 election, you saw that
20 same pattern, that is you saw the longest lines during the last
21 weekend of early in-person voting; is that right?

22 A. That's correct.

23 Q. And once again, the lines were caused by the number of
24 people arriving at the same time, right?

25 A. Yes.

1 Q. Now, all of those voters that voted during that last
2 weekend of early voting in 2008 and 2012 had several weeks
3 before that to vote early in person as well, right?

4 A. They were eligible the whole early in-person voting
5 period.

6 Q. And in 2012 there were actually festivities near the
7 board of elections during the final days of early voting, isn't
8 that right?

9 A. Not board of elections festivities but, yes.

10 Q. It's always a party at the board of elections, right?

11 A. Yeah. No. Outside the board of elections building, not
12 on board property but across the street there was. There was a
13 DJ and there was food that was passed out that people could go
14 and get food. So it was -- there was those festivities going
15 on.

16 Q. Minor celebrities making appearances?

17 A. Yes. Some, yes.

18 Q. All in all it was a party atmosphere right outside the
19 board of elections; is that right?

20 A. Yes.

21 Q. I believe you mentioned that in this budget cycle for
22 the Cuyahoga County Board of Elections you are going to have a
23 \$2 million surplus. Did I hear that right?

24 A. For 2015.

25 Q. \$2 million?

1 A. Yes. Unless we can get the parking lot then it will go
2 down.

3 Q. Early in-person voters at the board of elections tend to
4 be residents of Cleveland; is that right?

5 A. Yes. More Cleveland residents use early in-person
6 voting than the suburbans.

7 Q. And once again, that early-voting center is in downtown
8 Cleveland?

9 A. Yes.

10 Q. You mentioned on your direct that you were anticipating
11 lines in 2016 again for early voting, right?

12 A. Yes, for that same Friday through Monday window.

13 Q. And to get ahead of that you actually tried, this year,
14 to get another early-voting location, right?

15 A. Yes, we did.

16 Q. You were unsuccessful in that attempt?

17 A. That is correct.

18 THE COURT: Elaborate on that.

19 THE WITNESS: So this year there actually was two
20 locations we tried to reach out to to see if we could host --
21 the law allows boards of elections to identify one other
22 location or a location other than your board of elections to
23 conduct early voting. So we tried to see if there would be a
24 location in downtown Cleveland in which there would maybe be
25 more parking available and possibly be able to have more

1 individuals in line wait inside the structure versus outside.

2 The two locations that we looked at --

3 THE COURT: You've got a baseball stadium that isn't
4 used in November, right?

5 THE WITNESS: Use the football stadium. Not a lot of
6 people go there.

7 THE COURT: I wasn't going to say that.

8 THE WITNESS: So we looked at Cuyahoga Community
9 College, their Metropolitan Campus, and we looked at Cleveland
10 State University at their convocation center which is their
11 arena. So those were two locations that we looked at and
12 neither of them we'll be able to use for early voting.

13 BY MS. PIERCE:

14 Q. And I think you said that the Cleveland -- the Tri-C
15 campus, the parking -- the walk between the parking options and
16 the actual voting location would present too much of a hurdle
17 to have that be the early-voting center?

18 A. The location within the campus that they were going to
19 try to make available to us would kind of be somewhere in the
20 middle of the campus so you'd have to walk through and wouldn't
21 easily be identifiable for a voter from the main street that
22 surround the campus. It would be somewhere in the middle of
23 campus. So that -- we didn't think that would be conducive for
24 early voting.

25 The convocation center, they were not able to host us

1 for the full 28 days of the voting period. They have the
2 Friday through Sunday prior to the election day they have an
3 event that they can't move.

4 Q. In any event, to move your early in-person voting
5 operations you would need to lease or purchase a space,
6 right --

7 A. Yes.

8 Q. -- to house it?

9 A. Yes.

10 Q. You also need to staff that location as well, right?

11 A. That is correct.

12 Q. You would need a way to secure the ballots at that
13 location, correct?

14 A. That is correct.

15 Q. Either that or find a way to securely transport them
16 back to the board of elections office?

17 A. That would be an option.

18 Q. You also have to find a way to link electronically to
19 your voter registration database, right?

20 A. Yes. You'd have to have a direct line. You cannot use
21 the internet from the computer terminals to our voter
22 registration database. That's how we track who we issued
23 ballots to. So you have to be able to do that. You can't
24 issue more than one ballot to an individual.

25 Q. Current law prohibits that internet connection?

1 A. That is correct.

2 Q. Out of security concerns, right?

3 A. That I don't know.

4 Q. So even if you had more financial resources, you don't
5 know how Cuyahoga would even open a second early-voting
6 location, right?

7 A. Right now the law doesn't allow for two early-voting
8 locations.

9 Q. And if the law were changed, even if you had more money,
10 you don't know how, logistically, Cuyahoga County would open a
11 second early-voting location, isn't that right?

12 A. It would be very difficult. We could do it but it would
13 be a lot of planning. And some of those things are board
14 policy as far as how many locations you would have and where
15 they would be located.

16 Q. You don't know how you would open a second early-voting
17 location in Cuyahoga County if you were allowed to do that, do
18 you?

19 A. How? I know what's entailed to do it.

20 Q. You don't know how you would overcome the logistical
21 hurdles we just discussed to open a second early-voting
22 location, do you?

23 A. At those two locations it would not work.

24 MS. PIERCE: Give me just one second.

25

1 BY MS. PIERCE:

2 Q. I think you mentioned on your direct examination that
3 smaller counties in Ohio have different needs than larger
4 counties in Ohio. Did I hear that correctly?

5 A. Yes.

6 Q. Cuyahoga County is the largest county in Ohio, isn't it?

7 A. As far as registered voters, yes. And I think
8 population also.

9 Q. Have you ever worked for any other county boards of
10 elections in Ohio?

11 A. I have not.

12 Q. Do you know anything about their budgetary constraints,
13 for example?

14 A. I do not know about their budgetary constraints.

15 Q. Mr. Perlatti, do you remember giving -- being deposed in
16 this case?

17 A. Yes.

18 Q. I was there, right?

19 A. Yes, you were.

20 Q. I believe counsel from Perkins Coie was there. I don't
21 think any of them are present here.

22 A. No.

23 Q. You also had counsel available at that deposition,
24 right?

25 A. Yes.

1 MS. PIERCE: Your Honor, may I approach the witness?

2 BY MS. PIERCE:

3 Q. I am handing you a copy your deposition transcript in
4 that case.

5 MS. PIERCE: Would Your Honor like a copy?

6 THE COURT: Do you want to show it on the screen? You
7 want to direct his attention?

8 MR. KAUL: Could I just get a page number? To the
9 extent it's not inconsistent I'm going to object.

10 MS. PIERCE: Page 50, line 2.

11 BY MS. PIERCE:

12 Q. Mr. Perlatti, I want to confirm one more time. I
13 believe your testimony was that you do think that Cuyahoga
14 County could open a second early-voting location?

15 MR. KAUL: And I'm going to object. I'm skimming but
16 I don't believe it's inconsistent.

17 BY MS. PIERCE:

18 Q. Mr. Perlatti, could you turn to page 49 of your
19 deposition transcript?

20 THE COURT: Is that what you have up is 49?

21 MR. KAUL: I was looking at 50.

22 MS. PIERCE: I'm looking at --

23 BY MS. PIERCE:

24 Q. Mr. Perlatti, I'm going to read page 49 of your
25 transcript starting at line 21.

1 Based on your experience would there be -- what would
2 the effect be on Cuyahoga County if they were given discretion
3 to open more than one early-voting location?

4 Ms. Coontz, objection.

5 Continuing to page 50. Calls for speculation.

6 Answer: I don't know how we would open a second one.

7 MR. KAUL: Objection, Your Honor. That's not the full
8 context. The full context I think is almost identical to what
9 he's been saying.

10 THE COURT: Yes. So I've seen the whole thing.

11 MS. PIERCE: Thank you.

12 BY MS. PIERCE:

13 Q. Mr. Perlatti, you talked a little bit on your direct
14 examination about Cuyahoga County's vote-by-mail operation. I
15 believe you stated that in prior years when you had the option,
16 you mailed out unsolicited ballot applications to voters in
17 Cuyahoga County, correct?

18 A. Yes.

19 Q. What categories of voters did you mail those ballots to,
20 were they to active voters?

21 A. They would be mailed to active voters, and depending on
22 the election, it would also include individuals who may have
23 voted by mail in a previous election but it would -- again,
24 everything going in a cycle, you kind of look to see which
25 cycle you want to compare it to to determine if they would vote

1 by mail in that cycle.

2 Q. So you would mail applications to voters listed in
3 active status in your database, correct?

4 A. Active, plus if someone had voted in a previous, not the
5 previous election but a previous comparable election or
6 whatever the election that would be identified by the director
7 and deputy director at that point in time, they would also
8 receive the application regardless of what the
9 voter-registration status was.

10 Q. So you had I'll call it a look-back election. So if
11 they voted in a certain previous election you would also mail a
12 ballot -- an application to them as well, correct?

13 A. Correct.

14 Q. You're aware that the Secretary of State is mailing
15 unsolicited absentee-ballot applications in 2016 to active
16 voters?

17 A. Yes.

18 Q. And in previous even-numbered elections he has also
19 mailed applications to voters who had voted in a previous
20 election as well?

21 A. He did do that in '14 and in '12.

22 Q. I believe you stated in your experience you have
23 observed apprehension among some voters about using the
24 vote-by-mail option, right?

25 A. Uh-huh.

1 Q. But you have not observed a apprehension among
2 African-American voters specifically; is that right?

3 A. I just in conversations with employees at the board or
4 out in an event, individuals will come up, and individuals of
5 all ethnic backgrounds.

6 Q. But based on your experience you have not observed
7 apprehension with regards to absentee-by-mail voting among the
8 African-American community; is that right?

9 A. Apprehension? When they come for early voting they're
10 not apprehensive of the absentee process there.

11 Q. Absentee by mail specifically?

12 A. By mail, again, I just heard general comments from
13 various individuals of all racial makeups who have some
14 distrust in the vote-by-mail process.

15 Q. Could you turn to page 68 of your deposition,
16 Mr. Perlatti. I'm going to direct your attention to lines 17
17 through 20. I'm going to attempt to display them. If you
18 would read silently while I read this aloud.

19 Based on your experience, have you observed apprehension
20 with regard to absentee-by-mail voting among the
21 African-American community?

22 Answer: No.

23 I'll ask you again, have you, in your experience,
24 observed apprehension about the vote-by-mail process among the
25 African-American community?

1 A. The community as a whole I would say no. Individuals,
2 they've expressed concern.

3 Q. I think we discussed a little bit about what an inactive
4 status means in the voter registration database. A voter is
5 moved to an inactive status because there's some reason to
6 doubt that the voter's registration is current. Isn't that
7 right?

8 A. No. Not always.

9 Q. Some of those voters that are inactive status may have
10 moved out of state, for example?

11 A. They may have.

12 Q. Or died?

13 A. One of the reasons a person can become inactive is
14 because they only choose to vote in presidential elections,
15 which happen every four years. So there's no reason to
16 necessarily think that he moved. So no, not every inactive
17 voter is automatically thought that they've relocated or moved.

18 Q. I think that my question was that their registration is
19 not up to date or is not current?

20 MR. KAUL: Objection.

21 THE WITNESS: No. I don't think that it doesn't --
22 that is means that.

23 MR. KAUL: I think that was not the question. That's
24 why I was objecting.

25 THE COURT: Come again?

1 MR. KAUL: She was saying that that wasn't her
2 question. I think that was actually not the first question. I
3 don't know that it matters.

4 MS. PIERCE: That was my last question about it.

5 MR. KAUL: I'll withdraw it.

6 THE COURT: Are you withdrawing?

7 MR. KAUL: Thank you, yes.

8 THE COURT: Go ahead.

9 BY MS. PIERCE:

10 Q. There was some mention about your barcode protocol on
11 Cuyahoga County's absentee-ballot identification envelopes.

12 A. Uh-huh.

13 Q. If, for example, an absentee-ballot identification
14 envelope had no other information on it other than that
15 barcode, would we know the voter who actually voted in that
16 ballot inside?

17 A. Repeat that again.

18 Q. That was a terrible question. I will break it down.

19 The reason we have ballot identification -- ballot ID
20 envelopes is to ensure that the correct voter voted that
21 ballot, right?

22 A. Yes.

23 Q. That is to make sure that someone else doesn't vote
24 another voter's ballot and send it in, right?

25 A. That's why they complete the envelope, yes.

1 Q. And that's why they sign it, for example?

2 A. Yes.

3 Q. And provide identifying information, correct?

4 A. Yes.

5 Q. I believe you mentioned that the date of birth is a new
6 category of required identifying information on the
7 identification ballot envelope, correct?

8 A. Yes.

9 Q. But if a voter gets that information wrong, the board of
10 elections can still count that ballot, can't they?

11 A. If the birthdate, if the month and day of the birthdate
12 are correct and the year was wrong, the board can count the
13 vote-by-mail ballot. If the month or the day is incorrect and
14 all other pieces of the ballot-identification envelope are
15 completed and verified to be accurate, the board members with a
16 vote of at least three votes can vote to accept the ballot.

17 Q. So the board, again, can vote to accept that ballot even
18 if that date of birth information is incorrect?

19 A. That is correct.

20 Q. The same five fields of identifying information are
21 required on a provisional ballot envelope as well, right?

22 A. That is correct.

23 Q. Those are the same five fields of information that are
24 required on a registration in the state of Ohio, correct?

25 A. That is correct.

1 Q. So under this law, the provisional ballot envelope
2 operates as a registration for that voter, correct?

3 A. Yes. The envelope is a registration card.

4 Q. So now that provisional voter is registered in the state
5 of Ohio, right?

6 A. Well, some provisional voters, the provisional envelope
7 is the first time that they're voting so that acts as their new
8 registration. And that ballot doesn't count but it does get
9 them registered. If they're a current registered voter, that
10 ballot or provisional envelope, if the individuals are already
11 registered and --

12 Q. I think we were talking about new registrants.

13 A. A new registrant, the envelope serves as a new
14 registration card, the ballot does not count. But it does
15 serve as a registration card and they would be registered for
16 the next election. If it's a currently registered voter and
17 they're updating their address, then as long as they vote in
18 the correct precinct to where the provisional envelope shows
19 that they moved to, it would, one, act as to update the
20 registration as registration card and then their ballot would
21 count since they were previously registered.

22 Q. So if that voter, that provisional voter, that new
23 registrant comes back in the next election and votes again and
24 say they have to vote a provisional ballot again, that vote
25 would be counted, right, because they've now been registered in

1 the state of Ohio?

2 A. They are registered, yes. So they are registered and
3 then you would have to, as long as they fill out all the fields
4 on the provisional envelope, if they correctly executed the
5 envelope then the ballot would count as long as it was cast in
6 the correct precinct.

7 Q. Voters in Cuyahoga County don't have to come to the
8 board of elections to register to vote, correct?

9 A. They do not.

10 Q. What other ways are there to register to vote in
11 Cuyahoga County besides coming to the board of elections in
12 person?

13 A. Registration cards at the local libraries, at many of
14 the municipal city halls, high schools have registration cards.
15 So there's various locations in the county where they will have
16 those cards. And county treasurer's office have them. Cards
17 at health and human services agencies run by Cuyahoga County.
18 So there would be registration cards at those locations. They
19 can pick them up there. Ultimately all the cards have to make
20 it down to our office in order to be processed but they can
21 pick up the forms elsewhere. As well as they can print out a
22 form off of our Cuyahoga County website, provide a writable PDF
23 that someone can complete and print. They need to sign it. We
24 need a wet signature.

25 Q. Voters can update their registration online as well?

1 A. Yes. A currently registered voter can do that through
2 the Secretary of State's website.

3 Q. I'm sorry to throw you back into voting by mail but I
4 have one more question. You said that voters can't vote by
5 mail if they're in an inactive status; is that right?

6 A. It depends. If they are inactive and when their
7 vote-by-mail application comes, if the application contains all
8 the required information and the address on the application
9 matches what is in our voter registration database, we will go
10 ahead and in Cuyahoga County we will make that, we will flip
11 the status to active and process the application. If they are
12 a must vote provisional voter because we were not able to
13 confirm their address, then we wouldn't be able to process the
14 vote-by-mail application.

15 Q. Cuyahoga County did not mail absentee-ballot
16 applications to inactive voters, right?

17 A. No. When we talked about the look-back elections, no.
18 That could include some inactive voters.

19 Q. But not as a category of voters. You did not mail
20 applications to inactive voters as a category of voters?

21 A. No. We did not blanket all active, all inactive.

22 Q. Do you have elections in your county that overlap with
23 other counties?

24 A. Yes. Some do.

25 Q. Does Cuyahoga County advertise election information to

1 your voters?

2 A. Yes.

3 Q. Do you put those advertisements in TV media?

4 A. We do not purchase TV media.

5 Q. Print media?

6 A. As far as what type of information? We mail a voter
7 information card to all the registered voters in Cuyahoga
8 County. But were you asking about early voting?

9 Q. Any type of election administration matters,
10 early-voting hours, election-day hours, anything like that?

11 A. The local print media or TV media will broadcast, on
12 their own, hours but not for us paying. Our paid
13 advertisements are the information cards that we mail to
14 vendors. Things that we purchase in print media are those
15 things that are required for all counties to do like notice of
16 election. We will do that. But I'm trying to think. I think
17 that's the extent.

18 Q. But the media, it sounds like, does pick up and
19 advertise your early-voting hours?

20 MR. KAUL: Objection.

21 THE COURT: Basis.

22 MR. KAUL: Hearsay.

23 THE COURT: Rephrase.

24 BY MS. PIERCE:

25 Q. In your experience -- I think you just testified to

1 this. The media does advertise your early voting hours?

2 A. Yes. We provide media releases to media outlets.
3 Whether they want to use those or not, we're at their mercy.

4 MS. PIERCE: Just give me one second.

5 THE COURT: Does your board have an advertising
6 budget?

7 THE WITNESS: We have a community-outreach department.
8 So there's a budget for that department. That's the department
9 that's largely tasked with voter information. So we do budget
10 for our voter-information cards that we send out every
11 election. What that budget is, I don't know off the top of my
12 head. But so we do budget for that, that piece specifically.
13 And then as far as other things that would happen, it would
14 fall underneath the community-outreach department.

15 THE COURT: How many people are in that?

16 THE WITNESS: Community outreach we have four
17 full-time employees who that's their responsibility. They take
18 media calls. We do go to the different city fairs. So those
19 staff will go out to those locations, we'll have booths at
20 different cities throughout the county or different events like
21 an air show or something like that that's going on in the
22 county where those individuals will go and provide voter
23 education.

24 THE COURT: Thank you.

25 MS. PIERCE: Nothing further, Your Honor.

1 MR. KAUL: I'll be very brief, Your Honor.

2 - - -

3 REDIRECT EXAMINATION

4 BY MR. KAUL:

5 Q. Two topics I want to cover just quickly. You were asked
6 some questions about the use of provisional-ballot forms or
7 envelopes to register voters. Was that done prior to the new
8 requirements for provisional-ballot information?

9 A. So the former form or the envelope had a different
10 layout than the current and the former form, and actually the
11 provisional envelope, I forget what the official title is, but
12 it's actually a Secretary of State form. Even though it's an
13 envelope, that's an official form.

14 So the previous version had one section that identified
15 where you would put down the required information, be it
16 printed name, form of ID and your signature. Then also on the
17 envelope but not in the required section, required information
18 section, would be a registration card printed on the envelope.
19 So that portion was optional.

20 So you only had to complete the top portion with the
21 three pieces of information that you needed, printed name,
22 signature and form of ID. But if you wanted to update your
23 address, you could do that on the bottom portion. And if you
24 were voting provisional because you did move, you really needed
25 to do that in order to get your registration updated in the

1 system so your ballot -- you would get the correct ballot for
2 your precinct.

3 Q. So provisionals could be used to register voters before
4 these new requirements?

5 A. Yes.

6 Q. But before if those additional categories of information
7 weren't included, the ballot could still be counted, right?

8 A. Yes.

9 Q. The other topic I want to ask you about were some
10 questions about an acknowledgment card potentially coming back
11 after election day. Did the elimination of golden week change
12 the registration deadline?

13 A. It did not.

14 Q. So with the elimination of golden week, can
15 acknowledgment cards still come back after election day?

16 A. Yes.

17 Q. Is there any change in that with the elimination of
18 golden week?

19 A. Registration date, 30 days prior to the election.
20 That's regardless of golden week or not. That's the same.

21 Q. So a voter can still register 30 days or more before the
22 election?

23 A. Yes.

24 Q. And then cast a ballot during early voting?

25 A. Yes.

1 Q. And the acknowledgment card can come back after the
2 election?

3 A. Yes, it could.

4 MR. KAUL: No further questions.

5 THE COURT: Ms. Pierce?

6 MS. PIERCE: Nothing, Your Honor.

7 THE COURT: Thank you, Mr. Perlatti. You may step
8 down, sir.

9 I have another matter first thing Thursday morning.
10 We'll begin at 10:00 a.m. Thank you.

11 (The proceedings were adjourned at 5:37 p.m.)

12 - - -

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -

WITNESS INDEX

- - -

WITNESSES

DIRECT CROSS REDIRECT RECROSS

PLAINTIFFS'

Nicholas Martin	3	49	65	67
Joseph Longley	68	82		
Jeffrey Timberlake	92			
Terri Taylor	198	214	216	
Anthony Perlatti	217	249	272	

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Lahana DuFour, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Michael H. Watson, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Lahana DuFour
Lahana DuFour, RMR, CRR
Official Federal Court Reporter