

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 IV
BEFORE THE HONORABLE MICHAEL H. WATSON
FRIDAY, NOVEMBER 20, 2015; 9:00 A.M.
COLUMBUS, OHIO

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1 Friday Morning Session

2 November 20, 2015

3 - - -

4 THE COURT: Who's next?

5 MR. VOIGT: Your Honor, the defense calls Dr. Trey
6 Hood.

7 MR. SPIVA: Your Honor, I'm sure you realize this but
8 this is one of those witnesses we agree to take out of order.

9 THE COURT: Right.

10 Doctor, if you'd raise your right hand to be sworn.

11 (Witness sworn.)

12 THE COURT: Mr. Voigt, you may proceed.

13 - - -

14 M. V. HOOD. III

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

17 DIRECT EXAMINATION

18 BY MR. VOIGT:

19 Q. Thank you for being here today, Dr. Hood.

20 A. You're welcome.

21 Q. Could you please state your name for the record and
22 spell it?

23 A. Sure. M.V. Hood, III. I'm usually known as Trey.

24 Q. There are a number of binders in front of you and I'm
25 going to be, in particular, referring to your initial expert

1 report and your rebuttal report. First we'll be talking about
2 your initial report and it's Defendants' Exhibit 15. Do you
3 need me to help you find that?

4 A. I've got it.

5 Q. Could you please turn to the end of that report to a
6 page number i.

7 A. Okay.

8 Q. It starts at i and it goes on through I guess page 12,
9 xii. What is this document?

10 A. This is a copy of my Vitae.

11 Q. Is this a current version of your Curriculum Vitae?

12 A. It's dated September 2015. So it's fairly current.

13 Q. Is this CV true and correct to the best of your
14 knowledge?

15 A. There are a few additions probably. I've had another
16 publication added since then, but besides that, yes.

17 Everything in it's correct.

18 Q. What was the name of the additional publication that you
19 had added?

20 A. Sunshine State Dilemma, I believe. It's not out in
21 print yet.

22 Q. I'm going to ask you briefly a few questions about your
23 background and you are free to refer to your CV, as needed, to
24 refresh your recollection. Although the first one you probably
25 don't need to. What is your occupation?

1 A. I'm a professor of political science.

2 Q. Where do you teach?

3 A. The University of Georgia.

4 Q. What department do you teach?

5 A. The department of political science.

6 Q. And what is your present position?

7 A. I'm a professor and I'm Director of Graduate Studies for
8 our department.

9 Q. When did you join the faculty of the University of
10 Georgia?

11 A. In August of 1999.

12 Q. Do you hold a tenured position?

13 A. Yes.

14 Q. Could you please briefly describe to the Court the
15 subject matter of your professional work?

16 A. Most of my research is concentrated on a couple of areas
17 specifically. But in a more general sense, American politics
18 and policy, and then more specifically within that I do a lot
19 of work in the area of election administration. I also do a
20 lot of work in the area of southern politics which includes
21 sort of a grab bag of collective things like voting behavior
22 and racial politics. A third area I tend to focus on that has
23 a heavy overlap with that is racial or ethnic politics as well.
24 So those have been some of the general areas I've concentrated
25 in lately.

1 Q. Please describe your educational background.

2 A. Okay. I have three degrees in political science. I
3 have a B.S. from Texas A&M, an M.A. from Baylor and a Ph.D.
4 from Texas Tech.

5 Q. And what year did you obtain your Ph.D.?

6 A. 1997.

7 Q. Before the University of Georgia, what other teaching
8 positions did you hold?

9 A. I was a visiting assistant professor at Texas Tech for
10 two years from '97 to '99.

11 Q. What are some of the subject matter areas of the classes
12 that you teach?

13 A. There's a heavy overlap with what I teach and what I do
14 research on. Although a little wider breadth there. I teach
15 very large introductory sections of American government which
16 is one of the courses our department teaches for the
17 university. And I teach honors variants of American
18 government. I teach courses at both the undergraduate level
19 and graduate level in southern politics which involves a heavy
20 dosage of voting rights. I've taught and will teach next fall
21 a graduate-level class specifically in election administration
22 and I've taught in the past, at the undergraduate level I've
23 taught methods classes, methodology classes. So that's most of
24 what I've been involved with lately.

25 Q. And you just referred to methods classes. What does

1 that entail?

2 A. It's just basically teaching students applying politics
3 to study social-scientific problems. Apply statistics to study
4 social-scientific problems.

5 Q. Have you authored any published peer-reviewed books?

6 A. Yes. One.

7 Q. And what is the general subject matter of that book?

8 A. It's an effort on our part, I had a couple of
9 co-authors, but it's an effort on our part to explain the
10 partisan change in the south over the last half century.

11 Q. Have you authored any published peer-reviewed journal
12 articles?

13 A. Yes.

14 Q. Approximately how many published peer-reviewed journal
15 articles have you published?

16 A. I'm approaching 40. I don't think I'm quite there yet.

17 Q. I recognize 40 is a big number but could you please give
18 the Court a general description of some of the subject areas of
19 your publications?

20 A. Sure. Again, a lot of what I'm writing on in terms of
21 research-related material also goes along with my teaching
22 interests and so a lot of this involves the study of southern
23 politics. Again, that's a pretty big umbrella. We do a lot of
24 voting-behavior studies under that umbrella, racial-politic
25 studies. I also publish in the area of election administration

1 and so I've authored peer-reviewed work on early voting, voter
2 ID laws and voter fraud, among other things.

3 Q. Okay. And so you just mentioned this but I just want to
4 clarify. You have authored published peer-reviewed papers
5 related to early voting?

6 A. Yes.

7 Q. And you have authored published peer-reviewed papers
8 related to voter fraud?

9 A. Yes. One, yes.

10 Q. Have you authored any published peer-reviewed papers
11 related to demographics and voting?

12 A. Sure. A lot of what we do is voting behavior
13 essentially, and especially involves demographics. For
14 instance, we just authored a work on the Mississippi Senate
15 primary election in 2014. That obviously involved looking at
16 the racial breakdown of the vote, republican primary, for
17 instance.

18 Q. Have you authored published papers related to politics
19 and voting?

20 A. Could you be a little more specific on --

21 Q. Have you authored any published papers related to the
22 intersection of politics and voting?

23 A. Sure. I think most of what we're working on there's an
24 intersection, obviously, between politics and voting. I would
25 just describe them generally as a lot of work in the area of

1 voting behavior is what we would call it in political science.

2 Q. Have you been involved in any grant-funded research?

3 A. Yes.

4 Q. And is that research listed in your CV?

5 A. Yes. I received a grant from the National Science
6 Foundation and also a grant from the Pew Charitable Trust. And
7 that grant was specifically to study early voting in Georgia in
8 2008.

9 Q. Have you spoken at conferences and universities about
10 voting topics?

11 A. Yes. Frequently. I just attended an
12 election-administration conference at MIT last June, I believe,
13 this past June.

14 Q. And in connection with at least some of those speaking
15 engagements, did you author papers?

16 A. Most of the time, yes. For academic speaking
17 engagements involve talking about a paper that they've
18 authored, a conference paper. I've also spoken in Georgia to
19 election practitioners, county-level election officials.

20 Q. Are you invited to speak at some of these events?

21 A. I can't -- that was a while ago. I can't remember if I
22 was specifically invited but we were -- I guess at some point
23 we were invited because I showed up and gave a presentation to
24 these election officials.

25 Q. Do you know approximately how many times you have been a

1 speaker at a conference or university about voting topics?

2 A. No. Not off the top of my head. I would just have to
3 say many times because much of my work revolves around that.

4 Q. Are those speaking engagements listed in your CV?

5 A. Yeah. Well anytime we make a conference presentation it
6 should be listed in our CV, and it is.

7 Q. Let's talk about the editorial boards that are listed in
8 your CV.

9 A. Okay.

10 Q. Do you sit on any editorial boards?

11 A. Yes. Right now I'm on two editorial boards. One for
12 *Social Science Quarterly* and one for *Election Law Journal*.

13 Q. Which page of your CV is that?

14 A. Xii, so towards the end.

15 Q. Briefly, what are your responsibilities for each of
16 those boards?

17 A. Different boards there are different responsibilities.
18 But for these two boards it really involves a heavier reliance
19 on the editorial board to do reviewing for the journal. So to
20 review work that other scholars have sent in to determine
21 whether or not it meets muster, essentially, and should be
22 published in a peer-reviewed journal.

23 Q. So in other words, a lot of your responsibilities
24 involve reviewing papers that other professors submit to these
25 journals and you decide whether they pass muster?

1 A. Yes. I mean, I'm not usually -- usually there's more
2 than one decision-maker but I'm one of those in that role.

3 Q. Generally what are the subject matters of the papers
4 published by those two journals?

5 A. *Social Science Quarterly* has a pretty large breadth in
6 terms of they publish all kinds of social-scientific articles
7 related to a lot of different subject areas. As the name
8 implies, *Election Law Journal*, though, is specific to studying
9 election law issues. So it's a very specialized journal, if
10 you will.

11 Q. Have you ever been hired as an expert in litigation?

12 A. Yes.

13 Q. And how many times have you been hired as an expert?

14 A. Between 10 and 15.

15 Q. And I don't need you to go through every single one of
16 those for the sake of brevity but briefly, what are the topics
17 of some of those lawsuits in which you were hired as an expert?

18 A. Okay. Just generally, issues like redistricting or, for
19 instance, Section 2 vote dilution claims to a districting plan
20 or voter ID, early voting. Those are some of the topics, some
21 of those cases.

22 Q. Have you been accepted by a court as a qualified expert
23 witness?

24 A. Yes.

25 Q. Are you aware of a recent North Carolina case involving

1 early-voting issues?

2 A. Yes.

3 Q. And were you a qualified expert in that case?

4 A. Yes I. Was allowed to offer an opinion in that case.

5 Q. Have you ever testified as an expert in cases where you
6 provided an opinion about the public-policy implications of
7 election laws?

8 A. Yes. I think that's probably a pretty good description
9 and most of the time what I'm trying to do when I'm acting as
10 an expert.

11 Q. Have you written academic articles on voter behavior?

12 A. Yes.

13 MR. VOIGT: Your Honor, at this time I would like to
14 move Dr. Hood as an expert in the areas of political science,
15 public policy related to election laws, election
16 administration, voter fraud and voter behavior.

17 MR. SPIVA: Your Honor, we obviously don't dispute
18 that he's an expert in those areas. We had a previous motion
19 to try to exclude his application of his expertise. Your Honor
20 has ruled on that. So given that, no objection.

21 THE COURT: Very well. Thank you.

22 He will be admitted as an expert to testify about
23 political -- what are the three you issued? Political science,
24 public policy and election laws and election administration,
25 voter fraud and voter behavior.

1 MR. VOIGT: Thank you, Your Honor.

2 THE COURT: So three turned into how many, voter fraud
3 and voter behavior being subsets of election administration?

4 MR. VOIGT: He has specifically published papers
5 related to voter fraud.

6 THE COURT: Very good.

7 MR. SPIVA: Your Honor, what I said before was kind of
8 a long-winded way of saying we just want to preserve our
9 objection on that. That's all.

10 THE COURT: I understand.

11 BY MR. VOIGT:

12 Q. You have Defendants' Exhibit 15 in front of you; is that
13 right?

14 A. Yes.

15 Q. Is that one of the two expert reports that you prepared
16 in this case?

17 A. Yes.

18 Q. Can you briefly describe what you were asked to do in
19 that report?

20 A. Just in a very sort of general sense, I was asked to
21 provide my opinion on various changes which are under challenge
22 in the present case to Ohio's election law.

23 Q. And for the analyses in your report, what did you rely
24 upon?

25 A. I relied on a number of different types of data. I can

1 go through those.

2 Q. Well let me ask you a few questions and then you can let
3 me know if there's some others. Did you rely on state laws and
4 Secretary of State directives?

5 A. Yes.

6 Q. Did you rely on data regarding absentee voting?

7 A. Yes.

8 Q. Did you rely on data regarding provisional voting?

9 A. Yes.

10 Q. Did you rely on other voting data?

11 A. Yes.

12 Q. Did you receive voting data that had been geocoded?

13 A. Yes.

14 Q. And with regard to the geocoded data, can you please
15 describe what you received?

16 A. I received some very detailed data on early in-person
17 voting. Three counties in Ohio, Franklin, Cuyahoga and
18 Mahoning Counties, which gave a breakdown of early voting by
19 day and by hour even during the early-voting period in 2012.

20 Q. Do you know who geocoded that data?

21 A. I believe Mr. Clark Bensen did the geocoding on that.

22 Q. In your report, did you rely on U.S. Census Bureau data?

23 A. Yes.

24 Q. Did you rely on published journal articles?

25 A. Yes.

1 Q. Did you rely on your own knowledge and research
2 experience related to American politics?

3 A. Yes.

4 Q. Did you rely on your own knowledge and research
5 experience related to public policy as it pertains to
6 elections?

7 A. Yes.

8 Q. Did you rely on your own knowledge and research
9 experience related to statistical methods and techniques?

10 A. Yes.

11 Q. Can you describe how your experience with American
12 politics, public policy, voter behavior and statistics helped
13 form your expert opinion in this case?

14 A. Well certainly. I mean, for -- I haven't been a
15 professor for two decades but even as a graduate student, I
16 really devoted a couple decades of my life now to studying
17 social-scientific problems and learning statistical tools to
18 apply to study those problems. And so for quite some time now,
19 in my job as a professor, that's what I do on a daily basis is
20 to look into things like changes to election laws, develop
21 tests, carry out those tests to determine what the effects are.
22 And so my professional career essentially dovetails with what
23 we're doing here today in court and analyzes some of these
24 changes to some of Ohio's election law.

25 Q. To prepare your report, did you conduct any interviews?

1 A. Yes.

2 Q. Who did you interview?

3 A. I interviewed Mr. Damschroder.

4 Q. Is that Matt Damschroder?

5 A. Yes.

6 Q. Do you know who he is?

7 A. I believe he's the Chief of Staff for the Secretary of
8 State in Ohio. I think that's his official title.

9 Q. Do you know how long, approximately how long you
10 interviewed him?

11 A. It was a while. It was over an hour, maybe an hour and
12 a half on the phone.

13 Q. And do you recall generally what you discussed with him?

14 A. Yes. I discussed the implementation of these changes to
15 Ohio's election law and also had a lot of questions that he was
16 able to clarify just simply about how elections are carried out
17 or implemented in Ohio, generally.

18 MR. SPIVA: Objection, Your Honor.

19 THE COURT: Basis.

20 MR. SPIVA: Two bases. Hearsay. And the second
21 basis, I don't believe the interview notes were ever produced
22 to us from Mr. Damschroder.

23 MR. VOIGT: There were no interview notes.

24 MR. SPIVA: In that case, just hearsay.

25 THE COURT: Overruled.

1 BY MR. VOIGT:

2 Q. What was your impression of Mr. Damschroder's knowledge
3 of the voting laws in Ohio?

4 A. Fairly encyclopedic, I would have to say.

5 Q. Did you have any other direct contact with election
6 officials during the preparation of your report?

7 A. I had a short e-mail exchange with another election
8 official.

9 Q. And what did you discuss?

10 A. That was an e-mail exchange with, I believe, Mr. Pat
11 McDonald from Cuyahoga County. He's on the election board
12 there and I was asking about whether Cuyahoga County was going
13 to implement e-poll books for the 2016 election. So it was a
14 pretty short e-mail conversation we had.

15 Q. Did you also receive declarations from county officials?

16 A. Yes.

17 Q. Who gave you those declarations?

18 A. The Ohio Attorney General's Office.

19 Q. Why were those declarations provided to you?

20 A. Well, I had asked for access to see what election
21 officials were saying about the way that elections were
22 implemented in Ohio and about these changes that occurred.

23 Q. Why was it important to you to obtain information from
24 election officials?

25 A. Well, for one, these are the individuals who are

1 literally implementing the election law and a lot of times you
2 can learn things from talking to individuals who are
3 implementing a law that you're not going to get by simply
4 reading the election code, for instance. So I was able to
5 learn a number of things and getting an idea for the flavor, if
6 you will, of the way in which elections are being held in Ohio.

7 Q. Approximately how many declarations did you receive from
8 election officials?

9 A. I think there are about 20. And also let me say that
10 most of them are from county-level officials. There were a few
11 county commissioners in that mix. There were a lot of county
12 election officials and I think there was one declaration from a
13 state official. Again, Mr. Damschroder, I believe, had a
14 declaration.

15 Q. And for the sake of brevity I'm not going to go through
16 every single declaration. In fact, I'm not even going to go
17 through the substance of the declarations but I wanted to pull
18 up a few of the declarations just to show you those
19 declarations and ask you if those were declarations that were
20 among the declarations that you relied upon.

21 If we could pull up the first one, please.

22 MR. SPIVA: We object to these as well, Your Honor.
23 These are all hearsay.

24 MR. VOIGT: This is -- Your Honor, I'm not introducing
25 this for the truth of the matter asserted. This is

1 foundational material that Dr. Hood relied upon. I'm simply
2 asking him to identify whether these were declarations that he
3 relied upon in forming his report. The only thing I'm going to
4 ask him about is ask him to identify whether that declaration
5 was one that he relied upon simply to give a flavor for the
6 breadth or the diversity of the declarations.

7 MR. SPIVA: He couldn't rely upon them, Your Honor,
8 unless they're being relied upon for the truth of the matter
9 asserted therein. There are all kinds of claims about the
10 state of affairs in the various counties and essentially
11 Dr. Hood has adopted those and summarized them in his opinion.

12 MR. VOIGT: I disagree. Your Honor, I disagree with
13 the characterization. I'm actually not going to go through the
14 declarations. I'm simply going to show the first, maybe the
15 first paragraph of the declaration and ask him if this is one
16 that he relied upon.

17 THE COURT: I'll admit it for that purpose.

18 MR. VOIGT: Thank you, Your Honor.

19 BY MR. VOIGT:

20 Q. So on the screen there is a declaration from Alex M.
21 Triantafilou. In paragraph one he states, I am currently a
22 board member of the Hamilton County Board of Elections. I have
23 served in that role since the middle of 2008.

24 Is this -- I recognize that's just one excerpt from it
25 but is this one of the declarations that you relied upon?

1 A. Yes.

2 Q. Okay. Let's go to the next one.

3 This is an excerpt from a declaration of Barbara M.
4 Tuckerman and in the first paragraph of her declaration she
5 states, I am currently the director of the Sandusky County
6 Board of Elections. I have served at the board as either the
7 director or deputy director since 1987; every two years, the
8 deputy director and the director swap titles. Until recently,
9 I also served as the chairman of the Sandusky County Democratic
10 Party. Sandusky County has about 39,000 registered voters.

11 Did I read that basically correctly?

12 A. Yes.

13 Q. Is this another of the declarations you relied upon?

14 A. Yes.

15 Q. Can we go to the next one, please?

16 This is a declaration from Daniel Troy. I'm not going
17 to read the entire first paragraph but the first sentence
18 states, I have served on the board of Lake County Commission
19 since my first election in 1998.

20 Is this another of the declarations that you relied
21 upon?

22 A. Yes.

23 Q. Let's move on to the next one.

24 And this is a declaration of Ken Terry. He states --

25 MR. SPIVA: Your Honor, I guess I have to object

1 again. He's actually reading portions of the declarations.
2 He's not just showing them to him and verifying that he
3 received them.

4 THE COURT: Let's limit it to that at this point.

5 MR. VOIGT: Okay. Yes, Your Honor.

6 BY MR. VOIGT:

7 Q. Is this a copy of an additional declaration that you
8 relied upon?

9 A. Yes.

10 Q. And one more. A declaration of John Weber. Is this a
11 declaration that you relied upon?

12 A. Yes.

13 Q. You said there were other declarations that you relied
14 upon; is that correct?

15 A. That's correct, outside of these.

16 Q. So what we saw was just a sampling of the 20 or so
17 declarations that you relied upon in your report?

18 A. Right.

19 Q. Was it useful to your research to obtain declarations
20 from different counties?

21 A. Yes.

22 Q. And did you?

23 A. Yes. They were declarations across a number of
24 different counties.

25 Q. Why was it useful to obtain declarations from different

1 counties?

2 A. Just to get a sense of whether, again, how different
3 things may be across different types of counties. There was a
4 sample of larger urban counties and smaller rural counties, for
5 instance.

6 Q. Were any of the declarations from democrats?

7 A. Some of them were.

8 Q. Was it valuable to receive declarations from both boards
9 of elections -- strike that.

10 Was it valuable to receive declarations from both board
11 of election officials and county commissioners?

12 A. Yes.

13 Q. And why?

14 A. Well, I mean, obviously the election officials are,
15 again, the ones implementing the actual election, so that's
16 important. But county commissioners are involved in the
17 budgeting and planning process related to elections, among
18 other things. Obviously they're involved in budgeting for a
19 wide array of different activities.

20 Q. Do you consider the declarations you received to be
21 reliable sources of information?

22 A. I do, yes.

23 Q. And why is that?

24 A. Well, for one, again, these are either elected or
25 appointed officials involved in the work of government and they

1 were all sworn statements from what I could ascertain.

2 Q. Based on your experience of election work and election
3 administration and research, did you find the statements that
4 were in the declarations surprising?

5 A. No, I didn't find them surprising. After reading
6 through the declarations I certainly found that there's a large
7 degree of consistency really between what these officials were
8 saying across the state.

9 Q. And given the types of laws that are at issue in this
10 case, were you surprised by the content of the declarations?

11 A. No. The declarations discussed, to a large degree, what
12 goes into implementing an election within their county and how
13 these changes to Ohio's election law did or did not affect that
14 implementation.

15 Q. In your research related to public policy and voting
16 laws, have you from time to time relied on statements of
17 election officials?

18 A. Yes.

19 Q. Is that an accepted form of data in political-science
20 work?

21 A. Yes. That's one form of data. That's more of a
22 qualitative form of data as opposed to a quantitative form of
23 data.

24 Q. Let me ask you this. Have you ever authored a
25 peer-reviewed publication that relied, in part, on interviews

1 with election officials?

2 A. Yes. And some of my other broader academic work also
3 relies on what we would call elite interviews.

4 Q. Let's talk about the publication. What was the general
5 subject matter of that publication?

6 A. The one publication I'm thinking of specifically
7 involves or involved an analysis of early in-person voting in
8 Georgia in 2008. We interviewed an election official at the
9 county level in Forsyth County and part of that interview is
10 included in the article.

11 Q. Are there other forms of data besides qualitative data?

12 A. I guess broadly there's qualitative data and
13 quantitative data.

14 Q. It may be self-explanatory but what is quantitative
15 data?

16 A. Quantitative data is usually something we can usually
17 quantify or count. Qualitative data relies on things like the
18 elite interviews, for instance, to try to get an idea -- again,
19 they can inform each other. They can go hand in hand. We may
20 want to figure out how to specify statistical model of the
21 study in a particular problem and we might do that by talking
22 to officials, for instance, government officials that are
23 implementing a law we might want to study. And so qualitative
24 data can oftentimes inform what we're doing quantitatively and
25 then on the other side once we have a model, an explanatory

1 model drawn up and we have findings, it can also help to enrich
2 our findings on the other side of things as well.

3 Q. So in your opinion, is both qualitative and quantitative
4 data important?

5 A. Yes.

6 Q. Strike that.

7 In your opinion in political science is both qualitative
8 and quantitative data important?

9 A. Yes. Even in the book we wrote, which is heavily
10 quantitative, I would say a whole chapter is really devoted to
11 qualitative case studies which, in part, relied on interviews
12 with former office holders, for instance.

13 Q. Why is both quantitative and qualitative data important
14 in political science?

15 A. Well, again, for the reasons I just explained. I think
16 they can inform one another and you can provide sort of a
17 richer contextual background for statistical models that you're
18 using to explain certain phenomena with the use of qualitative
19 data.

20 Q. Does your report in this case contain both quantitative
21 and qualitative data?

22 A. Yes.

23 Q. Does it contain both quantitative and qualitative
24 analysis?

25 A. Yes.

1 Q. How often do you read peer-reviewed materials from other
2 specialists that use qualitative analysis?

3 A. Well, again, frequently. I think it's maybe more
4 slightly prevalent to see both researchers using both
5 quantitative analysis along with qualitative data sources.

6 Q. Is the use of qualitative data an accepted practice in
7 political science?

8 A. Yes.

9 Q. Let's turn to your expert report. If you could please
10 turn to page 3 through page 5. I'm going to be asking you some
11 questions about Roman numeral three which is titled Early
12 In-Person Voting in Ohio.

13 A. Okay.

14 Q. What are the methods voters have to vote in Ohio?

15 A. Currently, and in the future, the future being 2016,
16 voters in Ohio can vote absentee by mail or early in person or
17 at their precinct in person on election day. So there's
18 basically three different methods.

19 Q. What changes to Ohio's election laws did you examine
20 related to early voting?

21 A. The principal one -- I guess there were a couple. But
22 the one in the first part of this section involved shortening
23 the early-voting period in Ohio from 35 to 28 days. And when
24 that happened, same-day registration was also eliminated in
25 Ohio. That's also called golden week. So I may use this

1 synonymously.

2 Q. And what did you do to analyze the specific changes to
3 Ohio's early-voting laws?

4 A. I collected some data because the law went into effect
5 for the 2014 midterm, the shortened early-voting period, that
6 is. So I collected some data to look at overall turnout
7 figures for early in-person voting in 2014 compared to 2010,
8 which was the preceding midterm election.

9 Q. If you could turn to page 4, the very last sentence of
10 page 4. There's a sentence that begins with as such. And in
11 that sentence there's a phrase, the most apt comparison point.
12 What are you referring to there?

13 A. I'm referring to, again, trying to get a gauge on the
14 potential effect of shortening the early-voting period by
15 making a comparison between 2014 turnout in 2014 where the law
16 was implemented or the shortened early-voting period was
17 implemented compared back to 2010 which had the longer early
18 in-person voting period. Again, I think the best comparison
19 point would be the midterm in 2014 to the preceding midterm in
20 2010.

21 Q. And you may have partially answered my next question but
22 why are the 2014 and 2010 general elections apt comparison
23 points in this case?

24 A. Well, in Ohio, like a lot of other states, midterm
25 turnout pattern is different from presidential election year

1 turnout patterns. So again, since the law was implemented in
2 2014, that's important because we can actually study the
3 effects of the law because it has been implemented. Again, I
4 think it's important to compare back to 2010, which is the
5 preceding midterm as opposed to 2012 which was the presidential
6 election year.

7 Q. Could you please turn to figure 1 in your report. It
8 appears on page 6.

9 A. Okay.

10 Q. And we put it up on the screen. It should be there on
11 your screen.

12 A. I can see it, yes. I have it in the report, too.

13 Q. What does figure 1 depict?

14 A. This is what I was just discussing. These were the data
15 that I collected from the Secretary of State's Office. I also
16 collected absentee voting-by-mail rates as well along with
17 early in-person voting rates. The data necessary to separate
18 early in-person voting from absentee-by-mail voting really
19 doesn't exist before 2010. The Secretary of State's Office
20 just didn't have that detail of information. That's as far
21 back as I can go.

22 Q. Could you please summarize your findings related to
23 early in-person turnout on these pages in your report?

24 A. Okay. I think the most important point looking at
25 figure 1 is that early in-person turnout in 2014 was

1 essentially unchanged from early in-person turnout in 2010.
2 They're both 4.6 percent. I think, if I have it memorized
3 correctly or if I can remember correctly, it's 4.60 in 2010 and
4 4.62 in 2014. But essentially the same.

5 The point being, comparing 2014 back to 2010, even in an
6 election cycle in which the early-voting period was shortened
7 from 35 to 28 days and SDR, same-day registration was
8 eliminated, early in-person turnout remains the same,
9 essentially it's unchanged.

10 Another finding from this table we might talk about is
11 the fact that early in-person voting is really the least
12 utilized form of voting in Ohio. Most voters in Ohio still
13 vote at their precinct on election day and absentee-by-mail
14 voting typically outstrips by two to four times the percentage
15 of voters voting early in person, as you can see from the
16 lighter gray bars in that figure.

17 Q. Do you know how generally competitive the races were in
18 Ohio in 2010 and 2014?

19 A. They were more competitive in 2010 as compared to 2014.
20 The overall turnout rate dropped in 2010 compared to 2014.

21 Q. When you say they were more competitive, why is that?

22 A. Just the nature of some of the elections. There was an
23 open seat for governor and I believe from memory that Kasich in
24 that election cycle didn't even get a majority of the votes so
25 it was pretty competitive. Some of the other statewide

1 constitutional offices were also a little more competitive in
2 2010.

3 Q. Taking a look at 2010 and 2014 in figure 1 in the
4 context of the competitiveness that we just discussed, are you
5 able to draw any conclusions?

6 A. Again, the key point here is we're comparing
7 pre-implementation in 2010 to post-implementation in 2014 to
8 the changes in early in-person voting. But, again, we can also
9 add that other piece of information that overall turnout in
10 2010 was actually higher than turnout in 2014 but yet early
11 in-person voting remains essentially unchanged.

12 Q. All right. Let's move on to the next section of your
13 report. It starts on page 6 and the title in italics is
14 Same-Day Voter Registration, Golden Week. I think that section
15 extends through page 9.

16 Dr. Hood, what is golden week?

17 A. Again, golden week was a time period in past elections
18 in Ohio during the early in-person voting period in which
19 someone could show up and both register and cast a ballot at
20 the same time. And previously that was the first week of the
21 early in-person period prior to 2014, that is.

22 Q. So in the 2014 gubernatorial election did Ohio have
23 golden week?

24 A. No.

25 Q. On pages 6 to 9 of your report in your discussion of

1 golden week, what analysis did you do in this part of your
2 report?

3 A. Again, I collected some more statistics from the
4 Secretary of State's Office from 2008 through 2012. Again,
5 there are no statistics for golden week in 2014 because it
6 didn't exist. We have some previous election periods we can
7 look at. There's some pretty specific data the Secretary of
8 State's Office maintained, especially for the 2012 election
9 cycle. For instance, if it we look at table 1 where we can
10 separate even new registrations from those voters who are
11 making use of golden week to change an existing registration,
12 for instance.

13 Q. We've put table 1 up on the screen. Let's focus on new
14 registrations for 2012. And that would be the second column
15 over, the bottom quadrant of that column. Do you see that?

16 A. Yes.

17 Q. What are the numbers in that block?

18 A. Well, the literal number is 5,844.

19 Q. Let me stop you there. What does that represent?

20 A. The 5,844 represents the number of people in Ohio in
21 2012 who both registered and cast a ballot early in person
22 during the golden-week period.

23 Q. And that's is statewide?

24 A. Yes. These are statewide figures in table 1.

25 Q. And what is the number above that?

1 A. It's a percentage. It's the percentage of the 5,844 in
2 terms of the total number of registrations from January 1st of
3 that year through that date. So the 5,844 registrations during
4 golden week represented about 1.08 percent, the total
5 registrations year-to-date in 2012. The total number is all
6 the way over there to the right, 541,421.

7 Q. So 541,421, that represents the total number of
8 registrations in Ohio in 2012?

9 A. Yes.

10 Q. What conclusions did you draw from this table?

11 A. Again, we were only able to separate out new
12 registrations from changes to existing registrations in 2012
13 because Secretary of State's Office did that. They didn't do
14 that for the previous election cycles. I guess one of the
15 conclusions I would draw from this table is not a very -- not a
16 very high percentage of registrations overall are actually
17 occurring during this golden-week period. Most of them, the
18 vast, vast majority of them are occurring outside of the
19 golden-week period.

20 Q. All right. Let's turn to table 2 which is on page 8.
21 Would you please explain what table 2 shows?

22 A. This is some additional data on golden week that I
23 collected for 2012, specifically at the county level. So I
24 have three different county examples here. Cuyahoga, Franklin
25 and Hamilton Counties. And, again, in 2012 we are able to

1 separate new registrants from those who made a change to their
2 existing registration.

3 And I have some different denominators I'm using here.
4 So I'm looking at new registrations or changes to existing
5 registrations during golden week as a percentage of either
6 total early in-person turnout or total turnout, period. And
7 you can see those below each county there.

8 Q. You said and the chart shows that there are three
9 counties on this chart, Cuyahoga County, Franklin County and
10 Hamilton County. Why did you pick those three counties?

11 A. Primarily because those are the three largest counties
12 in terms of population in Ohio. They also contain, those three
13 counties contain just under 60 percent of the minority
14 population in Ohio.

15 Q. I'm not going to go through every single aspect of this
16 chart but let's focus on the first column in table 2. Actually
17 the second column. The new registration column.

18 What does that column represent?

19 A. That represents, again, if you have to look across, so
20 let's just use Cuyahoga as an example. There were 676 new
21 registrations during the golden-week period in Cuyahoga County
22 in 2012. That's what that number represents.

23 Q. And what does the .1 percent represent?

24 A. That's the 676 new registrations during golden week out
25 of the total turnout for Cuyahoga County during the 2012

1 general election. So that represents, that figure represents
2 about a tenth of a percentage point of the total turnout or
3 about 1.5 percent of the total early in-person turnout which is
4 just above that.

5 Q. What conclusions from this table did you draw about new
6 registrations in 2012 in Cuyahoga, Franklin and Hamilton
7 Counties during this golden week?

8 A. Again, based on either looking at golden-week
9 registrations in terms of total early in-person turnout or
10 total turnout for the general election, a very small percentage
11 of these registrations represented very small percentage of
12 these turnout figures. Again, usually a fraction of a fraction
13 of a percentage point in terms of total turnout numbers.

14 Q. In 2016 -- strike that.

15 In the 2016 general election will the registration
16 cutoff still be the same as it was in the 2012 general
17 election?

18 A. Yes. And that cutoff is not going to change unless
19 there's an amendment to the Ohio Constitution.

20 Q. And do you know when that cutoff is?

21 A. It's 30 days prior to the date of the election.

22 Q. If a voter updates their registration after the 30-day
23 cutoff for new registrations, can that person still vote?

24 A. Yes. There's a process they would have to go through.
25 So if someone is a registered voter in Ohio and say they move,

1 they move to another precinct location within the county, they
2 would need to show up at the precinct location where they
3 currently reside and tell the poll workers and they would be
4 required to cast a provisional ballot.

5 Through the provisional ballot process, where these
6 ballots are analyzed typically after the election, if the board
7 can determine that that individual was registered somewhere in
8 Ohio 30 days prior to the date of the election and that they
9 showed up at the proper precinct to vote in terms of where they
10 currently reside and everything else is in order, then that
11 provisional ballot should be converted to a regular ballot and
12 counted.

13 Q. I apologize if I've already asked this but based on this
14 whole section of your report did you draw any conclusions about
15 the use of golden week in Ohio?

16 A. It was not very heavily utilized, I'd say, even when it
17 existed.

18 Q. Let's turn to page 9. This is still in the same
19 section. The last sentence on that page, I'm going to read it
20 into the record. It states, voters seeking to utilize early
21 in-person voting can easily adapt to a shortened early
22 in-person voting calendar, especially one that still spans a
23 five-week period.

24 Did I read that correctly?

25 A. Yes.

1 Q. Why, in your opinion, will voters be able to adapt to
2 the changes -- to the recent changes in Ohio's voting calendar?

3 A. For one, there are several things I can point out. For
4 one, again, going back to figure 1, there doesn't seem to be
5 any diminishment in early in-person voting turnout rates. So
6 that's one of the things we can point to. Second, if we look
7 at, say, figure 2 -- so figure 2 is week-by-week early voting,
8 again in Cuyahoga, Franklin and Hamilton Counties.

9 Typically what we see in early voting in states that
10 have longer early in-person voting periods is a J curve. So
11 turnout during the early-voting period typically increases as
12 the date of election approaches. And you can see this in weeks
13 one, two and three essentially turnout is fairly flat. It
14 peaked up in week 4 and completely peaked in week five.

15 Week six is sort of a special case in Ohio, I would say,
16 because that week literally only includes the Sunday and the
17 Monday before the date of the election. So it's not a full
18 week and there's also reduced hours on those days.

19 So, again, most of the turnout during these states,
20 again, with longer early in-person turnout periods is going to
21 increase as the date of the election approaches. Of course
22 golden week is in week one over here in this figure. So
23 there's not a lot going on at that point. About roughly 10 to
24 12 percent of turnout in these counties in the early in-person
25 periods occurring during week one or which was golden week.

1 Another piece of evidence I guess we can point to that
2 maybe we'll get to later is, again, looking at other states
3 that have shortened their early in-person voting periods under
4 similar circumstances we don't see necessarily a drop-off in
5 early in-person turnout after the early in-person period is
6 shortened. Again, that's some outside evidence looking at the
7 same question.

8 Q. Thank you. And in fact, I actually had a few questions
9 related to figure 2 but you did a very good job of answering
10 those questions in my last question so I will skip those.

11 Let's turn to page 10 to 11 of your report. This
12 section is titled Uniform Standards for Early In-Person Voting
13 Sites. Do you see that?

14 A. Yes.

15 Q. How many early-voting sites does each county in Ohio
16 currently have?

17 A. One.

18 Q. Is a county permitted to choose where to locate its
19 early-voting site?

20 A. Yes.

21 Q. Does the early-voting site need to be at the board of
22 elections?

23 A. No.

24 Q. Can a county adjust the resources that it has at its
25 early-voting location?

1 A. Yes.

2 Q. Can a county hire additional staff to work in the
3 early-voting location?

4 A. Certainly.

5 Q. Is a county permitted to purchase additional voting
6 machines to place in its early-voting center?

7 A. If they decide to do so, yes. Again, that would be sort
8 of a resource issue that we just talked about.

9 Q. From your -- and that actually is a good segue into my
10 next question.

11 From your experience in election research, do
12 large-population counties often have larger election budgets
13 than smaller counties?

14 A. Certainly.

15 Q. If a larger-population county in Ohio adds voting
16 machines and additional staff to its early-voting site, what
17 effect would you expect this to have on voting lines at the
18 early-voting center?

19 A. Well, again, it's very much going to be related to wait
20 times at the early-voting center. The number of resources that
21 are being deployed, if they're using DRE machines, but
22 certainly the number of personnel that are also deployed to
23 help check in voters, for instance, and help assist voters with
24 other parts of the process. That's going to have a big impact
25 on the number of people that can be led -- that can go through

1 the process of voting, say, in a single hour.

2 Q. Have you found, in the course of your research, that
3 counties in Ohio do, in fact, adjust their resources at their
4 early-voting center according to anticipated need?

5 A. That seems to be the case. Again, relying on, for
6 instance, the interview that we mentioned and these other
7 declarations. Certainly I've got in my report, for instance,
8 an example from Franklin County where Franklin County had
9 deployed 100 DRE machines in 2012 to the early-voting site and
10 they're going to increase that in 2016 to 125 DRE machines.
11 And they're also expanding the literal size of their
12 early-voting site as well.

13 MR. SPIVA: Your Honor, I'm going to object. This is
14 essentially kind of reading and summarizing these declarations
15 basically into the record. That's kind of what our issue has
16 been with these declarations all along.

17 THE COURT: I'm going to hear it and I'll sort it out.

18 MR. SPIVA: Okay. Thank you.

19 MR. VOIGT: And just as one brief point, Your Honor.
20 The specific information that Dr. Hood relied on actually came
21 in through other witnesses, through Mr. Anthony as well.

22 THE COURT: That's right. We had Mr. Anthony and we
23 had --

24 MR. VOIGT: Mr. Damschroder.

25 THE COURT: No. The gentleman from Cuyahoga County.

1 MR. KAUL: Mr. Perlatti.

2 THE COURT: Right. We have his experience as well.
3 Go ahead.

4 BY MR. VOIGT:

5 Q. When does early voting -- early in-person voting in Ohio
6 end?

7 A. Literally the day -- the Monday before the election day
8 on Tuesday.

9 Q. In counties that use DRE machines -- by the way, let me
10 take a step back.

11 Do all counties in Ohio use DRE machines?

12 A. No.

13 Q. In counties that do use DRE machines, can that county
14 use the same DRE machine for early in-person voting and also on
15 election day?

16 A. They could theoretically, but in reality the answer is
17 no because, again, the early in-person period is running
18 literally less than 24 hours up to the date of the election and
19 so I believe, I'd have to go back and confirm this, but I
20 believe in my interview with Mr. Damschroder we talked about
21 the fact that it's very, you know, essentially impossible to
22 take a DRE machine that's being used in the early in-person
23 period, reprogram it, retest it, recertify it and physically
24 move it to a precinct location.

25 So the point being, for instance, DRE machines used in

1 the early in-person period are used in the early in-person
2 period and it's very difficult to shift those resources or
3 essentially impossible to shift those resources to precincts on
4 election day. So counties that use DRE machines have to make
5 decisions ahead of time about how many DRE machines do we need
6 in that early in-person period and how many DRE machines do we
7 need to employ during the precinct voting period on election
8 day.

9 Q. Let's assume the counties have only a fixed set of
10 resources but as a result of this litigation they are required
11 to open more early-voting sites -- more early -- strike that.

12 Let's assume that counties have only a fixed set of
13 resources but as a result of this litigation they are permitted
14 or they are required to open additional early-voting sites.
15 What would that scenario look like in terms of additional
16 sites?

17 A. Well, if you open additional sites you might increase
18 geographic access. That's true. But if you're still -- if
19 you're dealing with the same fixed amount of election
20 resources, say, again, personnel or DRE machines, then taking
21 100 DRE machines and splitting them between two early-voting
22 sites 50 and 50, and having roughly the same number of election
23 workers at those sites doesn't mean necessarily that, for
24 instance, wait times are going to be decreased.

25 So one of the points that I make in my report is a lot

1 of this is about not only maybe the number of sites but
2 resource allocation to the sites that the county has.

3 Q. And you touched on that -- strike that.

4 Besides DRE machines that you just mentioned and
5 resource allocation, what other issues would counties face if
6 they were required to open or if they did open multiple
7 early-voting sites?

8 A. Well, the first one is simply finding another acceptable
9 site. Acceptable in terms of a lot of different criteria. Is
10 it ADA compliant? Is the site going to be available for the
11 entire early in-person voting period? What's parking like at
12 the site? Is there access to public transportation to the site
13 if we're talking about a larger urban county? What's security
14 like at the site? Because the site's got to be secured to keep
15 the ballots secured during that time period. What's the IT
16 infrastructure like at the site? Is it going to require an
17 additional infusion of funds to bring, say, the IT requirements
18 that are necessary up to snuff.

19 So there are just a lot of things that have to be
20 talked -- thought about. Again, if you're not using, say, a
21 county building that's available, if you have to rent a space,
22 that's a cost you have to build in at that point to rent the
23 space during that time period. There are a lot of things that
24 have to be thought about.

25 Q. And you partly brought this up in your answer but would

1 many of these issues that you talked about require additional
2 funds or additional spending?

3 A. Many of them would, yes.

4 Q. During the course of your research in this case did you
5 encounter any information suggesting that county officials --
6 county election officials support opening more early-voting
7 centers?

8 A. Based on the declarations I was able to analyze, at
9 least the ones that mention this topic specifically, none of
10 them supported opening additional early-voting centers in their
11 county. In fact, some of them said it would be, I don't want
12 to mischaracterize someone, but very difficult to even find a
13 location, a second location or a third location in their county
14 that would suffice given all the constraints that have to be
15 thought about.

16 Q. Outside of those declarations, did you come across any
17 other evidence that Ohio's county election officials by and
18 large support opening more early-voting centers?

19 A. No. I didn't run across any information that pointed in
20 that direction.

21 Q. So wrapping up on pages 10 and 11, what are your overall
22 conclusions related to this section of your report?

23 A. One of them is just simply depending on what's decided
24 in this case if counties were made to open additional
25 early-voting sites, those sites would need to come along with a

1 greater infusion of resources to really alleviate things like
2 wait times to a great degree. So that's one of the conclusions
3 I draw in this particular section of my report. And at least
4 reading, say, Professor Allen's expert report in this matter,
5 he also concludes that simply opening additional early-voting
6 sites may not decrease wait times in Ohio.

7 Q. I don't want to interrupt you. I was just wondering,
8 are you done?

9 A. I'm done.

10 Q. I'm sorry. I wasn't sure if you were.

11 Let's turn to page 12 of your report and let's look at
12 the next section. The header on the top of page 12 is Early
13 In-Person Voting in Ohio, Other Considerations. And that
14 extends to page 14. At the bottom of 14 there's a new section.

15 A. Okay.

16 Q. And there's a lot of information in this section and so
17 for the sake of brevity, again, I'm not going to go over every
18 single aspect of this section but I'd like to focus on a couple
19 of issues. Do you know how many Saturdays and Sundays Ohio
20 will have in its early-voting period in 2016?

21 A. If my memory serves, I think it's two Saturdays and two
22 Sundays. And those would be the weekends most approximate to
23 the date of the election.

24 Q. When you say the weekends most approximate, you mean the
25 two weekends before election day?

1 A. Closest to the election day, yes.

2 Q. Thank you. Could those four weekend days be beneficial
3 to voter mobilization efforts?

4 A. Certainly. If there was, say, a political party, an
5 interest group, some third-party group that wanted to try to
6 mobilize the voters, weekends are not necessarily bad times to
7 do that. Certainly sometimes we see religious organizations do
8 that after church on Sunday. As well it might be more
9 convenient for the voters themselves. Fewer people probably
10 work on the weekends than during the week.

11 Q. Does the proximity of those days to election day also
12 interact with voter turnout?

13 A. Again, we talked about the J curve or the increasing
14 levels of early in-person turnout as the election approaches,
15 so certainly those sort of overlap with that increasing period
16 of turnout during the early-voting period, yes. Those weekend
17 days is what I'm referring to.

18 Q. In your opinion, in your professional opinion, does
19 having four weekend early in-person voting days immediately
20 preceding election day reduce burdens on voters?

21 A. It certainly, I would say -- I guess I would put it in
22 the context, if it makes it more convenient for some voters.
23 Voters who may have a heavy work schedule during the week might
24 choose to utilize those days, for instance. They may be
25 passing near the early-voting site in the county where they

1 live on a Saturday, for instance.

2 Q. I think in the section you also talked about Ohio's
3 uniform early-voting schedule; is that right? Page 12 to 14.

4 A. I'm looking. I think that's really in the next sort of
5 subheading called Administrative Justifications, if I'm
6 remembering correctly.

7 Q. I'm sorry. I'll ask the questions anyway.

8 From an election administrative standpoint, are there
9 advantages to uniformity of early-voting hours in any state,
10 and in particular in Ohio?

11 A. Yes. A number of the local election officials mention
12 this. It diminishes confusion among voters to have uniform
13 days and times statewide. For instance, if Franklin County had
14 different hours and days of early voting compared to
15 surrounding counties but all these counties are in the same
16 media market, a voter in a contiguous county in the same media
17 market may be hearing a message for Franklin County and become
18 confused thinking that those hours also are the hours for their
19 respective county where they live which may or may not be the
20 case. So I think it certainly helps to diminish the
21 possibility of confusion.

22 It also allows the state, if they want, at a statewide
23 level to issue public service announcements and they don't have
24 to worry about covering different days and times. It's just
25 one day, one set of days and times for the entire early

1 in-person voting period all across Ohio.

2 Q. Let's talk about voter mobilization. From a
3 voter-mobilization standpoint, are there advantages to
4 uniformity of early-voting hours in Ohio?

5 A. Again, I think for some of the same reasons, if you're
6 trying to mobilize voters and get them to the polls, you don't
7 have to worry about communicating different days and times or
8 hours to different voters and different counties. It's just
9 all the same.

10 Q. And so there would be advantages?

11 A. Yeah. I consider uniformity an advantage in that
12 context.

13 Q. Okay. Let's move to the next section of your report
14 starting on page 14 and the header in italics is Administrative
15 Justifications, and I think this section extends to page 17.

16 A. Yes.

17 Q. You see that?

18 A. Yes.

19 Q. What resources did you use in this section of your
20 report?

21 A. There were a number of resources I used. The interview
22 I mentioned, the declarations we've been talking about,
23 Secretary of State directives. I think I even -- other written
24 sources, possibly I think I probably referenced some statutory
25 law in this section as well.

1 Q. Did you also cite to the Ohio Association of Election
2 Officials?

3 A. Yes.

4 Q. And you relied upon a report by the OAE0; is that right?

5 A. Yes. I did look at that. I think that's footnote 44, I
6 believe, the report that you're referring to.

7 Q. The resources that you just outlined, is reliance on
8 those resources acceptable for the conclusions that you reached
9 in this section?

10 A. I believe so, yes.

11 MR. SPIVA: Your Honor, can I just confirm, I don't
12 want to keep interrupting. Do I have a standing objection?

13 THE COURT: Yes.

14 MR. SPIVA: Thank you.

15 MR. VOIGT: Can I be clear as to what the standing
16 objection is about?

17 THE COURT: Yes. We're talking about that which you
18 moved in limine to preclude, I would assume.

19 MR. SPIVA: We moved to preclude his entire report and
20 testimony but right now it's kind of a particularized version
21 of that. It's hearsay. He's basically relying on a slew of
22 hearsay sources, the declarations, the interview with
23 Mr. Damschroder, and now this OAE0 report. And so I just
24 want -- I would appreciate a standing objection to any
25 reference to these out-of-court statements.

1 MR. VOIGT: Your Honor, the Federal Rules of Evidence
2 permit experts to rely upon information within their
3 perception. It goes beyond the regular Rules of Evidence and
4 they are permitted to rely on hearsay or other statements.
5 These are -- the declarations are things that Dr. Hood relied
6 upon as foundation for his conclusions.

7 THE COURT: I know what they are and I can read, and
8 I'm going to, and I can also hear. So let's do that.

9 MR. VOIGT: Thank you, Your Honor.

10 BY MR. VOIGT:

11 Q. So in this section you discussed the elimination of
12 same-day registration; is that correct?

13 A. Right. That's part of it. I also discuss that at other
14 points in the report as well.

15 Q. I understand. But I just wanted to set the context for
16 the next question. With regard to the elimination of same-day
17 registration, what findings did you make regarding
18 administrative justifications?

19 A. Again, a number of these election officials mention the
20 potential for a heightened probability of voter fraud occurring
21 during the golden-week period. That was one of the things.
22 From just purely an administrative standpoint, we've already
23 seen, even in some of these large urban counties, not a lot of
24 voters are making use of golden week specifically for
25 registration. And in some of the smaller counties it amounts

1 to literally a handful of people who are actually making use of
2 the golden-week period for registering and voting early in
3 person.

4 So, again, there's an administrative issue in terms of
5 literally there's a cost associated withholding an extra week
6 of early voting, for instance, in terms of personnel, location,
7 those kinds of things. So that's also mentioned in this
8 particular section.

9 THE COURT: Dr. Hood, I'm particularly interested in
10 hearing specific instances of voter fraud. Do any of the
11 declarations talk about specific instances of voter fraud?

12 THE WITNESS: There are a couple -- Your Honor, there
13 are a couple of examples given in the declarations, yes. And
14 they're cited in this section of my report.

15 THE COURT: Do you know whether anyone was charged in
16 those incidents?

17 THE WITNESS: I'm unsure of --

18 THE COURT: Any county prosecutor?

19 THE WITNESS: I'm unsure of that, Your Honor.

20 MR. VOIGT: By the way, Your Honor --

21 THE COURT: By the way.

22 MR. VOIGT: I'm sorry.

23 THE COURT: Go ahead.

24 MR. VOIGT: Dr. Hood also provided a rebuttal to
25 Dr. Minnite's report to voter fraud. We were planning to get

1 into that a little bit later.

2 THE COURT: Just wanted to let you know what I was
3 interested in hearing.

4 MR. VOIGT: Thank you, Your Honor.

5 BY MR. VOIGT:

6 Q. In this section you also discussed multiple early-voting
7 sites. What findings did you make regarding administrative
8 justifications in that regard?

9 A. Again, I think we touched on some of these aspects
10 earlier when we were talking about having multiple early
11 in-person voting sites. Again, this is more about
12 administrative-type justifications. All the issues that go
13 into finding an early-voting site and all the constraints that
14 have to be met on that early in-person voting site and the
15 planning and budgeting that go into that. Another thing that
16 was mentioned is that would it be problematic for some of these
17 counties because their planning and budgeting cycle related to
18 elections for 2016 has already occurred. So that's also
19 discussed in this particular section. As well as, for
20 instance, the need for hiring more staff obviously if there are
21 multiple early in-person voting sites.

22 Q. Let's move on to the next section of your report
23 starting on page 17, Early In-Person Voting in Other State
24 Contexts. That section extends through page 21.

25 In this section, did you compare Ohio's early voting

1 with the early-voting options in other states?

2 A. Yes.

3 Q. If you could turn to figure 3, please.

4 If we can put that up on the screen.

5 What does figure 3 show?

6 A. Well, it's a comparison between Ohio and other states.
7 Let me just backtrack for just a second and mention that Ohio
8 is among 34 other states and the District of Columbia which
9 offers some form of early in-person voting. It ranges widely
10 across the states exactly in terms of early in-person voting
11 and what that means. But they offer some form of early-in
12 person absentee voting.

13 So point being, some states, about 15 states offer no
14 early in-person option, period. So Ohio is in the larger group
15 there. Figure 3 compares the early in-person voting period in
16 2014 from Ohio compared to other states.

17 You can see the minimum offer in some states is zero.
18 They offer no early in-person voting. The maximum offered by
19 any state is 46 day early in-person period. Ohio is at 28
20 which is above the mean or median values there which are 15 and
21 12 respectively. That's how Ohio sort of stacks up in this
22 particular metric against other states.

23 Q. What conclusions do you draw from figure 3?

24 A. Well, for one, most states do offer some form of early
25 in-person absentee voting. But it can range widely in terms of

1 exactly what that means, especially in terms of the length of
2 the early in-person period. Ohio's early in-person period
3 tends to be above most other states though.

4 Q. On page 20 you have a section beginning Same-Day and
5 Election-Day Registration. Do you see that?

6 A. Right. Yes.

7 Q. We've already established that Ohio eliminated SDR.

8 A. Correct.

9 Q. After the elimination of SDR, where does Ohio stand in
10 comparison with other states?

11 A. If we can look at table 4 quickly. Very few states
12 offer only same-day registration alone. Those states --
13 Maryland is not offering yet but it will in the future.
14 Maryland, Illinois and Vermont it looks like. So only three
15 states offer only the same-day registration alone. Most states
16 offer -- if they offer a registration, sort of a one-stop
17 registration option, they either offer election-day
18 registration or both election-day registration and same-day
19 registration, which is the last column to the right there.
20 But, again, there's a large subset of states, period, that
21 don't offer either SDR or EDR.

22 Again, EDR, election-day registration, is not an option
23 in Ohio, again, unless the state constitution is modified. So
24 this is how things stack up, if you will, in terms of states
25 who offer same-day registration, election-day registration or a

1 combination of both of those things.

2 Q. Would it be fair to say that Ohio's elimination of SDR
3 puts Ohio in the company of 37 other states that also do not
4 have SDR based on this table?

5 A. Yes. I believe that's the correct figure.

6 Q. Does a comparison of Ohio's laws -- Ohio's election laws
7 with those of other states have value when a political
8 scientist is considering the burdens on a voter to vote?

9 A. I believe so. There's a whole subdiscipline in
10 political science known as comparative politics. So here I'm
11 just comparing state to state based on what kind of convenience
12 voting they're providing to voters. We make those kinds of
13 comparisons constantly in political science.

14 Q. Let's turn to page 21 of your report. Toward the bottom
15 of that page there's a section called North Carolina Case
16 Study.

17 A. Right.

18 Q. This section extends actually through page 31, the top
19 of 31, and it involves another state as well. So I'm going to
20 be asking questions about pages 21 through 31 now.

21 THE COURT: Let's take our morning break and come back
22 and do that.

23 MR. VOIGT: Yes, Your Honor.

24 (A recess was taken at 10:30 a.m. until 10:55 a.m.)

25

1 BY MR. VOIGT:

2 Q. Dr. Hood, we were looking at page 21 of your expert
3 report and in that section you are discussing a North Carolina
4 case study. And as I said, that section appears to extend
5 through page 21 to 31. What, generally, did you do in those
6 pages of your report?

7 A. It was not only North Carolina, it was also making a
8 comparison to Georgia specifically as well. At various points
9 in time, both North Carolina and Georgia simultaneously
10 shortened --

11 Q. If I could interrupt you. I'm sorry to interrupt you.
12 Let's just start with North Carolina so they don't get mixed
13 up.

14 A. Okay.

15 Q. What did you do in those pages regarding North Carolina?

16 A. Okay. I took a look at North Carolina because they
17 also, actually during the same election cycle in 2014,
18 shortened their early in-person voting period from 17 to 10
19 days and that also eliminated same-day registration in North
20 Carolina.

21 Q. You studied the effects of those changes?

22 A. Yes, I did.

23 Q. Was the change in North Carolina a more drastic change
24 than Ohio's recent early-voting changes?

25 A. In both states, same-day registration was lost. That's

1 true. But the early-voting period in North Carolina was
2 shortened by about 40 percent. Again, from 17 down to 10 days.

3 Q. Is there a difference between EIP, early in-person usage
4 in Ohio and North Carolina?

5 A. It tends to be higher in North Carolina. For instance,
6 if you look at table 5 you can see that in 2014, for instance,
7 about 37.4 percent of --

8 Q. Hold on just a second.

9 A. That gives you some idea right there what the turnout
10 rate for early in-person voting is.

11 Q. I'm sorry. Because we were having trouble with the AV
12 could you mind just repeating your answer?

13 A. Okay. Sure. So just giving an example of early
14 in-person usage in North Carolina. So if you look at table 5,
15 you look down to where it says early in-person turnout, about
16 37.4 percent of ballots in North Carolina in 2014 were cast
17 early in person. That's just an example of early in-person
18 usage in North Carolina.

19 Q. And what conclusions did you draw from table 5 in your
20 report?

21 A. Let me add one other piece of information that's
22 important to note in the case of North Carolina. And that is
23 that North Carolina keeps registration and turnout statistics
24 by race. So we're not estimating or guessing at this in any
25 way. So I also have things divided up by white and black in

1 North Carolina.

2 If you look at table 5, it's a comparison of the 2014
3 general in North Carolina which saw the shortened early
4 in-person voting period and the elimination of SDR compared
5 back, again, to the previous midterm election in 2010. So in
6 terms of, for instance, overall turnout, overall turnout across
7 the two election cycles went up just under a percentage point
8 in 2014 compared to 2010.

9 Overall black turnout went up about 1.8 percentage
10 points and overall white turnout about 1.3 percentage points.
11 And then if you look at early in-person turnout, that goes up
12 just under 4 percentage points, 3.8 percent from 2010 to 2014.
13 Early in-person turnout in terms of white utilization went up
14 2.4 percentage points.

15 Early in person black turnout, though, goes up just
16 slightly over 9 percentage points from 36 percent to 45 percent
17 across those two election cycles. So, again, studying the
18 potential effects of the change to the law in North Carolina,
19 even with the elimination of SDR and a shortened early-voting
20 period, we don't see a decrease in black turnout either overall
21 or during the early in-person period.

22 Q. And just to be clear, why did you consider the years
23 2010 and 2014?

24 A. Again, the law was being implemented for the first time
25 in 2014. That's a midterm election like other states as we've

1 discussed. There are different turnout patterns for
2 presidential elections in North Carolina compared to midterm
3 elections. I wanted to compare it back to the 2010 midterm
4 election. I think that's the best apples-to-apples comparison
5 point.

6 Q. So 2014 was when the law -- the changes were in effect
7 and 2010 was before the changes?

8 A. Correct.

9 Q. Could you turn to page 25 and table 6 in your report.

10 A. Okay.

11 Q. What are you showing in this chart?

12 A. Here I'm looking at the behavior of a specific group of
13 voters and these -- what I did is I created a panel by taking
14 everyone in North Carolina who voted early in 2010 and looked
15 at their behavior in 2014, the ones that were still in the
16 electorate. Obviously some of them may have moved out of state
17 or may have died, but those still left in the electorate. We
18 looked to see what kinds of behavior they exhibited in 2014.
19 Again, we're tracking the behavior of a known group of early
20 voters in 2010 and looking to see what they did in 2014.

21 A couple of interesting patterns arise from looking at
22 table 6. So of those voters that voted early in 2010,
23 56.4 percent voted early in 2014. So more than a majority.
24 And that included three-fifths or 60 percent of black voters
25 again voted early in person in 2014 and 55.7 percent of white

1 voters.

2 So a higher percentage of black early voters in 2010
3 again voted early in 2014. And again, this is over the time
4 period where these changes to North Carolina's election law
5 were occurring.

6 It's also interesting to note that voters choose a
7 variety of other methods. These were all early voters in 2010
8 but, for instance, 23 percent overall chose to vote at the
9 precinct on election day. So this does show that there's some
10 talk about whether early voting is habitual. I think there's
11 some disagreement in political science about that. I think
12 voting is habitual though and you can see that almost all of
13 these individuals who voted early in 2010 voted using some form
14 in 2014. Only less than 17 percent didn't vote again in 2014.
15 So that's pretty astounding turnout rate, really, about
16 85 percent return turnout rate.

17 So those are some of the other things that I noted.
18 And, again, there's a higher overall return rate for black
19 early voters and overall just slightly in 2010 compared to
20 2014.

21 Q. Does this table provide any information about the
22 adaptability of voters?

23 A. Again, most of these voters, both black and white, vote
24 again in 2014. A majority, more than a majority of them again
25 use early in-person voting but there are other methods that

1 they also rely on, some of them at least. So this is some
2 degree of evidence that voters can adapt to changes in early
3 in-person laws and it's also some evidence, I think, that
4 voters don't necessarily use the same voting method election to
5 election. It may change. They could vote early in person one
6 election and might vote at the precinct on the next election.
7 Perhaps that's more convenient in that election cycle for them.
8 I think there's a number of things we can sort of pick up on
9 from this table.

10 Q. And just to draw to a close the North Carolina study,
11 could you just summarize your overall findings regarding
12 African-American early voting in North Carolina related to the
13 two elections that you compared?

14 A. Just as a quick summation, it doesn't appear from the
15 data I've been able to collect in North Carolina and analyze
16 that the changes to North Carolina's early in-person voting
17 laws diminished black turnout in any way both in terms of total
18 turnout or turnout in the early in-person period.

19 Again, flipping back to table 5 just real quick. Across
20 those categories, early in-person turnout among black
21 registrants in North Carolina goes from 36 percent in 2010 to
22 45 percent in 2014. So that's a 9 percentage point increase.

23 Q. Let's turn to the Georgia case study. And that starts
24 on page 29. I guess I just gave you your answer. But what
25 other case did you study in your report or what other state did

1 you study in your report?

2 A. I also looked at Georgia.

3 Q. And what changes did Georgia make to its voting calendar
4 and when?

5 A. Prior to the 2012 election, I believe it was in 2011,
6 Georgia shortened its early in-person voting period from 45
7 days to 21 days. And that also effectively eliminated the
8 ability for same-day registration in the state as well.

9 Q. How do African-American demographics in Ohio and Georgia
10 compare?

11 A. Well, African-Americans comprise about a third of the
12 population or the voting population or even the registrant
13 population in Georgia compared to about, I think it's 10 or
14 11 percent voting-age population in Ohio.

15 Q. What did you find in your case study related to Georgia?

16 A. A couple of things. Again, I was able to sort of track
17 turnout by race across the election cycle in which it occurred
18 and then go back and look at the preceding election cycle for
19 comparison. I could not get data on the 2012 election. I was
20 able to get data on 2010 and 2014. So, again, 2014 would be
21 with the shortened early-voting period and 2010 would be before
22 implementation of that change to the law.

23 Again, in Georgia, like North Carolina, Georgia has
24 registration statistics by race. So we are not estimating
25 turnout by race here. These are the population figures. These

1 aren't estimates.

2 So for instance, in 2014, black early-voting utilization
3 in Georgia was about 33.9 percent. In 2010 it had been
4 29.0 percent. So that's an increase of about just under five
5 percentage points, 4.9 percentage points across those two
6 elections.

7 So, again, looking at a state that has better data,
8 better data in terms of being able to classify voters by race
9 and looking at similar instances where an early-voting period
10 is shortened and same-day registration is eliminated, and
11 looking to see if there's any impact on minority early-voting
12 turnout subsequent to that, I don't find any evidence of that
13 in Georgia either.

14 Q. In 2011, was Georgia a Section 5 state?

15 A. Yes.

16 Q. And what is a Section 5 state?

17 A. A Section 5 state is a covered jurisdiction under the
18 Voting Rights Act. It's become covered because it exceeded a
19 trigger mechanism that's found in Section 4. There are three
20 different sets of triggers. So Georgia had long been a covered
21 jurisdiction which means that if Georgia wants to change
22 anything related to its election law, it has to seek what's
23 called preclearance from the Department of Justice or the
24 federal courts to do that. And so in order to get this
25 election law change through, Georgia had to seek preclearance

1 in that year from the Department of Justice, and they did.

2 Q. The U.S. Department of Justice did not impose an
3 objection to Georgia's reduction in its early-voting period and
4 its elimination of SDR?

5 A. That's correct.

6 Q. As a political scientist, is it significant to your
7 analysis that Georgia was a Section 5 state?

8 A. I think it's a little more significant in that they had
9 to offer, at that point before the law was implemented,
10 affirmative evidence that the change in the law was not going
11 to lead to retrogression or to make minorities worse off than
12 they were under the present early-voting law. And the burden
13 of proof --

14 MR. SPIVA: Objection, Your Honor. He's opining on a
15 legal standard which is beyond his expertise.

16 MR. VOIGT: Your Honor, he's offering this from a
17 political science perspective.

18 THE COURT: I'm going to sustain the objection.

19 MR. SPIVA: Thank you, Your Honor.

20 BY MR. VOIGT:

21 Q. Dr. Hood, in your opinion, are the North Carolina and
22 Georgia case studies that you put in your report helpful in
23 this litigation in understanding the impact of Ohio changing
24 its laws?

25 A. Yes.

1 Q. And how so?

2 A. Well, again, we have very good data on race by turnout
3 and registration. We can track these factors. So in Ohio
4 those factors would have to be estimated. In other words,
5 early voting utilization by race has to be estimated. They
6 don't have to be in Georgia and North Carolina.

7 And, again, the cases are similar in terms of what we're
8 studying. A shortened early in-person voting period, an
9 elimination of SDR, and we're tracking what's happening across
10 the subsequent election cycle when that implementation occurs.
11 So I think they're germane from that standpoint and also
12 related to what Ohio -- the changes in Ohio's election law that
13 were implemented in 2014.

14 Q. Does the significance of the changes that you discussed
15 in Georgia's laws and North Carolina's laws compared with
16 Ohio's changes also have a significance in this case?

17 A. Can you ask that again?

18 Q. In other words, you talked about the scope of the
19 reduction of the voting period in North Carolina and the scope
20 of the reduction in the voting period in Georgia. Comparing
21 those with the changes here in Ohio, do you feel that that is
22 also something relevant or something that's useful, in your
23 analysis?

24 A. The scope of the reduction in terms of the number of
25 early-voting days, it was more drastic in North Carolina and

1 Georgia compared to what happened in Ohio. So, yes, I think
2 that's a relevant point.

3 Q. Based on your analysis of North Carolina and Georgia,
4 what conclusions do you draw about the elimination of golden
5 week in Ohio?

6 A. To the extent to which these case studies are picking
7 up, the use of SDR and also early in-person voting, it doesn't
8 seem to diminish turnout during the early in-person period or
9 overall turnout, either one.

10 Q. Let's turn to page 31 of your report, Roman numeral
11 four, where you discuss DREs.

12 A. Okay.

13 Q. What type of an analysis did you rely on for this
14 section?

15 A. I wasn't able to perform a quantitative analysis, per
16 se. This is a change in Ohio's election law but to my
17 knowledge it hasn't been effected yet. In other words, this
18 change is only going to take place when a county determines
19 that they're going to make a new purchase of DRE machines,
20 which, to my knowledge at least, has not occurred yet.

21 Q. And let's take a step back. How did the DRE formula in
22 Ohio change in 2014?

23 A. Well, very basically, the state mandates that for every
24 175 registrants in a county there should be a DRE machine, one
25 to 175. The changes to the law allow a county to subtract the

1 number of absentee voters either by mail or in person from that
2 ratio number. And, again, the intuition behind that is to the
3 extent to which a county's registrant population is voting
4 early in person or absentee before the day of the election,
5 those are DRE machines that are not going to be necessary to be
6 at precincts on election day because those voters have already
7 been served through the election process prior to the date of
8 the election. So that's the intuition behind this.

9 Q. And does the change in the DRE formula affect all of
10 Ohio's counties?

11 A. Well, for one, it only affects counties that are using
12 DRE machines and, two, it's only going to affect a county
13 that's determined that they're going to purchase new DRE
14 machines. It sets a floor, if you will, for the minimum number
15 of DRE machines that are necessary per registrant but it
16 doesn't stop counties from purchasing additional equipment, if
17 you will, above the ratio level.

18 Q. What is your overall conclusion regarding Ohio's change
19 to the formula for calculating the minimum number of DRE
20 machines?

21 A. To me, it makes intuitive and logical sense because, for
22 one, from other things I found out studying Ohio's election
23 system, again, for counties using DREs and using DREs during
24 the early in-person period it is next to impossible to, again,
25 get those machines back out to the precinct on election day.

1 And so because of that, you're making a decision to employ DRE
2 machines during the early in-person period. Those can't be
3 used on election day.

4 But it also makes sense that if a higher percentage or
5 whatever percentage of voters are voting absentee before
6 election day are not obviously going to show up to vote at the
7 precinct on election day. So you're able to reduce that number
8 to one that sort of comports with expectations.

9 Q. One more question on DREs. Do you know whether the
10 legislation was supported by the County Commissioners
11 Association of Ohio?

12 A. Yes. I believe it was. In fact, --

13 Q. If you could take --

14 A. In fact, I wrote it in the last sentence of that
15 section, so, yes. The legislation was supported by the County
16 Commissioners Association of Ohio.

17 Q. Let's turn to the next section of your report, Changes
18 to Provisional and Absentee Balloting. This is divided into,
19 first, provisional balloting and absentee balloting. Let's
20 start with provisional ballots. What changes in Ohio's law did
21 you consider with regard to provisional ballots?

22 A. The state has required that provisional voters add a
23 couple of pieces of information to the provisional ballot
24 affirmation statement, their residential address and date of
25 birth.

1 Q. Does adding the date of birth and address have
2 administrative benefits?

3 A. Yes. It allows election administrators to more easily
4 locate a voter in the state's voter registration system. Or in
5 the case in which someone may not be registered, may think
6 they're registered but they're not registered, would allow the
7 county, the county registrar to get them registered and get
8 them in the statewide registration system.

9 Q. Let's turn to table 7 in that section. What are you
10 showing in table 7? That appears on page 34.

11 A. Table 7 is looking at provisional ballot rejection
12 rates. So we've got total votes cast in the entire election,
13 and this goes from the 2008 general to the 2014 general, the
14 total number of provisional votes that were cast, the number of
15 provisional votes that were rejected in total and the number of
16 provisional votes that were specifically rejected because of
17 voter error. For instance, failing to put the proper date of
18 birth on the provisional voter affirmation statement. Those
19 are the different categories in this table.

20 Again, these changes went into effect for the 2014
21 general so we might compare the 2014 general, again, especially
22 to the 2010 general. I've also provided data from 2008 and
23 2012 as well.

24 MR. VOIGT: Your Honor, there's a little red line on
25 the screen. I'm not really sure how to get --

1 BY MR. VOIGT:

2 Q. Looking at this chart, what happened to the rejection
3 rates between 2014 and 2010?

4 A. Well, let's just first look at the overall rejection
5 rate. It fell from .30 percent of the total number of ballots
6 cast to .15 percent in 2014. So the overall number of
7 provisional ballots rejected for any reason fell across those
8 two election cycles.

9 Q. And if you could direct your attention to the top right
10 quadrant, far right column, top row. What does the number 599
11 reflect?

12 A. The Secretary of State's Office had some very detailed
13 data on provisional ballots and why they were rejected, so I
14 was able to categorize provisional ballots that were rejected
15 because of voter error, including failing to put residential
16 address or date of birth. So that number, 599, would be the
17 total number of provisional ballots that were rejected in 2014
18 because of voter error. That also could include other types of
19 voter error as well.

20 Q. And the number above that, .02 percent, what does that
21 reflect?

22 A. That's the percentage of the total votes cast that were
23 rejected of provisional ballots that were rejected because of
24 voter error, .02 percent.

25 Q. Dr. Hood, do you know why most provisional ballots in

1 Ohio are rejected?

2 A. In Ohio, most provisional ballots are rejected because
3 of registration issues.

4 Q. In other words, someone could show up on election day
5 and they're not actually registered?

6 A. It happens, yes. Someone may be registered in Michigan,
7 for instance.

8 Q. Based on table 7, can you draw any conclusions about the
9 number of provisional ballots rejected due to voter error
10 versus other reasons?

11 A. Again, only 599 provisional ballots in 2014 were
12 rejected because of voter error compared to about 4100,
13 approximately, that were rejected for some other reason. So
14 it's only a component of those that are rejected overall. And
15 again, the rejection rate actually goes down just slightly from
16 .03 percent in 2010 to .02 percent in 2014. That's, again,
17 rejections due to some type of voter error. So I would say
18 that it doesn't appear from these data that requiring
19 provisional voters to provide their address and their date of
20 birth has increased the rate of provisional ballots being
21 rejected due to voter error. That's, I guess, my overall
22 summation on that table.

23 Q. Thank you. If we could turn to figure 8, please. What
24 does this figure represent?

25 A. This is another way to conceptualize the provisional

1 ballot rejection rate. This is just the overall rate of
2 rejection for provisional ballots out of total provisional
3 ballots cast.

4 So, again, the lighter gray bar over to the left or the
5 9.6 percent of all provisional ballots cast in 2014 were
6 rejected. So just under 10 percent. Of course that means that
7 90 percent basically were counted -- converted and counted as
8 regular ballots. 2010, the rejection rate was slightly higher.
9 It was 11.2 percent. So it actually fell a couple percentage
10 points across those two elections.

11 So, again, it's just another way to sort of
12 conceptualize the rejection rate for provisional ballots in
13 Ohio.

14 Q. What overall conclusions do you draw from this chart?

15 A. Well, whether we look at provisional ballots being
16 rejected as a percentage of the total votes cast or because of
17 voter error or provisional ballots rejected as a percentage of
18 total provisional ballots, the rejection rates across those
19 three metrics are actually falling from 2010 to 2014. So
20 they're actually lowest in 2014.

21 Q. In this section where you discuss provisional ballots,
22 you also discuss that provisional ballot cure period. What was
23 the cure period prior to the change in the law and what is the
24 cure period related to provisional ballots now?

25 A. If memory serves, I believe the cure period went from 10

1 to 7 days for provisional ballots.

2 Q. Is there a cure period for errors after election day for
3 absentee ballots?

4 A. Yes. I believe it's also seven days after the date of
5 the election.

6 Q. In your professional opinion, are there administrative
7 justifications associated with the reduction in the provisional
8 cure period from ten to seven days?

9 A. Well, it's consistent. Provisional ballots and absentee
10 ballots secure the days that are available for cure are the
11 same now. So that's consistent. And as well, again,
12 especially for provisional ballots, the board has to examine
13 these provisional ballots. They need time to do that. The
14 official canvass is going to begin shortly after that seven-day
15 period. As well, absentee ballots have to be processed.

16 So there are real reasons why some deadline has to be
17 set for the cure period. The counties have to begin the
18 business of their official canvass at some point.

19 Q. Let's turn to the absentee-ballot section which starts
20 on page 35. Dr. Hood, is an absentee ballot different than a
21 provisional ballot?

22 A. Yes.

23 Q. How so?

24 A. Well, someone votes an absentee ballot, they're a
25 qualified elector. That vote is going to be counted. A

1 provisional ballot is a fail-safe measure, if you will.

2 There's some issue and it doesn't mean that it's not going to
3 be -- the board's not going to be able to figure out what's
4 going on. For instance, if someone's moved and needed to have
5 changed their registration, for instance, address.

6 Again, as we see, say, in figure 8, we don't have to go
7 back to figure 8, but 90 percent of provisional ballots in the
8 end in 2014 weren't counted but they're not exactly the same.
9 If someone could cast a regular ballot, they wouldn't have to
10 cast a provisional ballot, obviously.

11 Q. There are a couple of different things you discuss in
12 this section but let's start with the mailing of
13 absentee-ballot applications. Does Ohio mail statewide
14 absentee-ballot applications?

15 A. Yes. They have the last several election cycles,
16 general election cycles, and it's my understanding that that's
17 going to happen again in 2016.

18 Q. Do any other states do this?

19 A. Well, there are a few states that are exclusively
20 absentee-by-mail states essentially, like Oregon. That's the
21 only voting that Oregon has. Outside of that exclusive
22 category, the only other state I'm aware of, there could be
23 others, the only other state I was able to find that actually
24 mails unsolicited absentee-ballot applications out is North
25 Carolina.

1 Q. Does Ohio's mailing of absentee-ballot applications cost
2 the state money?

3 A. Yes.

4 Q. In your professional opinion, is the fact that Ohio is
5 one of only two states that mails absentee-ballot applications
6 significant?

7 A. Well, again, just with the caveat, one of two states I'm
8 aware of outside of the exclusive by-mail category, yes, I
9 think it's significant. It's an added measure of convenience
10 for voters in Ohio.

11 Q. In Ohio, how does a voter generally reach inactive
12 status?

13 A. There are about four different ways I'm aware of where a
14 voter can be shifted from active to inactive status. Most of
15 the time it involves a case where a voter's moved and they
16 haven't responded, say, to a confirmation card that's been sent
17 out by the Secretary of State. Now, if they respond then the
18 state will update their registration. But if they don't
19 respond to the confirmation card, they will be moved from
20 active to inactive status. It's highly likely in a lot of
21 those cases that the voter is not living at the residential
22 address that the state has for them in the voter registration
23 database, that they've moved somewhere else.

24 Q. So in your professional opinion, would sending
25 absentee-ballot applications to inactive registrants make

1 sense?

2 A. Again, the state, in fairness, the state does send these
3 out, I believe, to inactive registrants who voted in a previous
4 federal election cycle. But outside of that it makes sense.
5 There's a real cost associated with this. You want
6 absentee-ballot applications to get to people -- to get to the
7 right people and, therefore, you have to have the right
8 addresses. And so a lot of inactive registrants, especially
9 those that have been not participating in elections recently,
10 these absentee-ballot applications are not going to go to the
11 right place. They're not going to reach the intended voter or
12 the intended recipient.

13 The state also sends out absentee-ballot applications or
14 has sent them out to people that update their registration or
15 to new registrants at another point in time. Those groups are
16 also covered as well.

17 Q. Let's turn to the information needed on absentee-ballot
18 envelopes and how that changed in 2014. How did the law change
19 in 2014 with regard to the information required on an
20 absentee-ballot envelope?

21 A. It's my understanding that there are, again, a couple
22 pieces of information required by the state now for
23 absentee-ballot voters and that being residential address and
24 date of birth were added to the required information necessary.
25 Let me also say that if the state is sending out an

1 absentee-ballot application and then later a ballot, if someone
2 sends in their application to get a ballot, their name and
3 address are actually preprinted or populated on the form
4 already. So address is necessary, but really the change in the
5 law boils down primarily to the voter needing to put their date
6 of birth. Adding that information is not going to be there.

7 Q. Based on your professional opinion, does the additional
8 information on absentee-ballot envelopes assist boards when
9 trying to identify voters?

10 A. For instance, having their, certainly, their address and
11 date of birth might help in looking at that voter in the voter
12 registration file, yes. The more data fields, the more pieces
13 of information you have about a registrant, the easier it's
14 going to be to locate that record and make sure that you're
15 looking at the right record in the voter-registration database.

16 Q. How did you make that determination?

17 A. Part of it's just based on my own experience with using
18 databases and conducting searches in databases for academic
19 work, for instance.

20 Q. Was it also based, in part, on some of the declarations
21 that you reviewed?

22 A. Yes. A number of election officials also mention this
23 fact that this information, the additional information helps
24 locate voters at times in the registration system.

25 Q. Could the additional information on the absentee-ballot

1 envelopes also help deter fraud?

2 A. Potentially. Not necessarily the case that someone who
3 might wish to commit fraud using absentee ballots might have
4 all that information. For instance, might know someone's exact
5 date of birth, for instance.

6 Q. In your professional opinion, do these two additional
7 pieces of information increase the risk of rejecting ballots
8 for so-called trivial errors?

9 A. Again, real people are essentially processing these
10 absentee ballots just like a board's looking at these
11 provisional ballots that we talked about previously. I don't
12 know of any evidence that absentee-ballot applications or votes
13 are being rejected because of trivial errors.

14 Unlike the provisional ballot data I was able to collect
15 from the state which was very detailed, I was unable to collect
16 any data as detailed on absentee ballot rejection rates. So I
17 couldn't categorize it down to that point.

18 Q. And of course would there be even the possibility of a
19 trivial error related to the address considering that it's
20 preprinted?

21 A. There shouldn't be. There shouldn't be.

22 Q. And do you know whether when Ohioans fill out
23 absentee-ballot envelopes and put in their birthdate if the
24 year is incorrect, does that matter in the counting?

25 A. Again, this is from my memory so if I'm wrong I'll be

1 more than glad to be corrected. I believe if they have the
2 right day and month that that would suffice in that case.

3 Q. Let's move on to the next section in your report titled
4 Multiprecinct Voting Locations. Do you have an understanding
5 of what the plaintiffs are alleging with regard to
6 multiprecinct voting locations?

7 A. I think I have a pretty good idea, yes.

8 Q. Could you briefly describe your understanding?

9 A. Well, you know, maybe an analogy, usually this has been
10 referred to a lot of times as the right church, wrong pew
11 problem. So it's not uncommon in Ohio for a voting site to
12 actually house multiple precincts within the same physical site
13 and so maybe -- I think I give a really simple example of Maple
14 Elementary School as hypothetical could have precincts Maple A,
15 B and C at the Maple Elementary School voting precinct and so
16 the issue at case here is what happens to someone who shows up
17 basically at the right precinct, the right church but in the
18 wrong pew or the wrong precinct within that physical location?
19 So maybe they're a Maple A voter and they show up to the Maple
20 B table, for instance.

21 Q. Are there safeguards currently in place to make sure
22 that a voter votes at the correct precinct in one of these
23 multiprecinct voting locations?

24 A. Yes. One of them is that the election officials should
25 tell the voter, you're at the wrong precinct. You need to go

1 to this other table. Actually instruct the voter that they're
2 at the wrong precinct. If the voter insists on casting a
3 ballot then at that wrong precinct, the wrong precinct table,
4 if will you, they'd have to vote a provisional ballot. But
5 they have every ability to go to the right precinct table at
6 that point.

7 Q. You said an official should tell them. Do you know
8 whether the officials are required to tell voters?

9 A. I believe they are. In fact, there's a form that has to
10 be filled out, a document on page -- upper part of page 39,
11 form 12-D, if a voter insists on essentially voting at the
12 wrong precinct table in a multiprecinct election.

13 Q. And the poll worker would need to fill this out?

14 A. Yes. Yes.

15 Q. How prevalent is the issue of a voter refusing to go to
16 the correct table to vote in a multiple precinct location?

17 A. Given that they have to fill out -- the election
18 official has to fill out this form, we have some numbers,
19 again, at the first paragraph on page 39. In the 2014 midterm,
20 37 provisional votes were rejected as documented under form
21 12-D. That would be voting at the wrong precinct in a
22 multiprecinct location.

23 Again, another thing that essentially completely
24 mitigates this issue is if a county is using consolidated poll
25 books. So in that case, again with Maple Elementary School, if

1 there are three precinct tables, if there are consolidated poll
2 books then it doesn't matter whether they actually show up at
3 the right table or not. They probably should get in the right
4 line just for administrative reasons. But if the poll books
5 are consolidated, they'll be able to get checked in anyway.

6 Q. Let's follow up on that a little bit. Are you aware
7 that the Secretary of State has a directive out right now
8 pending public comment related to multiprecinct locations and
9 the consolidation of poll books?

10 A. Yes. I looked at that directive or that I guess it's a
11 pending directive.

12 Q. In your opinion, what effect would that have on this
13 right church, wrong pew issue?

14 A. Well, it should effectively eliminate it. Another sort
15 of technological advantage, I guess, that's being put in place
16 in a lot of counties are, again, e-poll books, electronic poll
17 books which would have the same effect. And it doesn't look
18 like all counties in Ohio will have that in place by 2016 but
19 many are moving in that direction. Some already have them. So
20 that would also really help to mitigate any issues with the
21 right church, wrong pew problem.

22 Q. Two wrap-up questions on your first report and then
23 we'll turn to your rebuttal.

24 A. Okay.

25 Q. Based on your professional analysis, are you able to

1 make any conclusions about Ohio's voting system overall?

2 A. Certainly. I think it's a fairly generous voting
3 system. Again, voters have multiple ways they can cast a
4 ballot: At the precinct on election day, early in person or
5 absentee by mail. The state helps to increase convenience by,
6 for instance, allowing a fairly long early in-person period
7 allowing night and weekend hours, for instance. In fact, in
8 allowing that possibility right up to the eve of election day
9 in Ohio.

10 In addition, again, the state sends out absentee-ballot
11 applications to most -- all active registrants and even some
12 sets of inactive registrants. So someone who doesn't want to
13 leave their house doesn't have to to cast a ballot in Ohio.

14 Again, in most of the other election provisions that
15 we've talked about, DRE allocations and things like that, there
16 seems to be a common-sense justification or logical reason why
17 these things are being put in place. So overall, again, I
18 think Ohio has a fairly generous voting system that provides a
19 lot of convenience for voters.

20 Q. Based on your professional analysis, do you have an
21 opinion about whether the laws that the plaintiffs are
22 challenging are reasonable?

23 A. In my professional opinion, I would certainly deem these
24 changes as reasonable.

25 Q. Let's turn to your rebuttal report. It is Defendants'

1 Exhibit 18. Do you have that in front of you?

2 A. Yes.

3 Q. And what is Defendants' Exhibit 18?

4 A. It's a rebuttal report I issued in this case and
5 provided some rebuttal evidence against Professor Timberlake
6 and Professor Minnite's original reports in this case.

7 Q. Please turn to page 2. Are you familiar with what is
8 known as the senate factors?

9 A. Yes, I am.

10 Q. What is the question asked by senate factor five?

11 A. Senate factor five primarily looks at the existence of
12 socioeconomic disparities between racial and ethnic groups. In
13 this case, we'd be interested in socioeconomic disparities
14 between, say, blacks and whites in Ohio.

15 Q. In the first part of your report on this page you write
16 about a causal connection and it's actually in the third
17 paragraph and causal is underlined and boldfaced?

18 A. Yes.

19 Q. Could you please explain to the Court what that means
20 with regard to senate factor five?

21 MR. SPIVA: Objection, Your Honor. He's calling for a
22 legal conclusion. The third paragraph has a disputed legal
23 conclusion, at that. He's not qualified to give that opinion.

24 THE COURT: Does Professor Timberlake purport to offer
25 a similar opinion?

1 MR. SPIVA: I'm not objecting to him talking about
2 senate factor five, it's the specific sentence that says before
3 one can widen the scope to examine other factors such as
4 socioeconomic disparities, a causal connection needs to be
5 established showing that the election practice in question is
6 denying race. That's the specific sentence that I am objecting
7 to.

8 MR. VOIGT: In response, Your Honor, the full
9 statement of senate factor five lists various disparities and
10 then it says, to the extent they hinder participation in the
11 political process. So I'm not asking Professor -- I'm not
12 asking Professor Hood for a legal conclusion but that's really
13 the portion that I'm focusing on here.

14 MR. SPIVA: We have two lawyers that have a
15 disagreement about what he just said means and there are court
16 cases about it. We probably have argued about it in briefs at
17 some point but I don't think this witness should be providing
18 that opinion.

19 MR. VOIGT: And also, Your Honor, if this was
20 something that they wanted to object to, it should have been --
21 they should have raised it before in their Daubert motion.

22 THE COURT: I've already indicated that as to the
23 motions in limine and any need to examine them based upon
24 Daubert that I was going to hear what they had to say and I'll
25 sort it out. So I would say raise it in a brief.

1 MR. SPIVA: Okay. Will do, Your Honor.

2 THE COURT: If you still wish to raise it.

3 BY MR. VOIGT:

4 Q. Let me repeat my question. You refer to a causal
5 connection on page 2. Could you explain to the Court what you
6 mean by that?

7 A. It's my opinion that a causal connection has not been
8 established between the election practices under challenge and
9 their effect of impeding minority political participation in
10 the state of Ohio. So I would very much argue that that hasn't
11 been established and isn't established by the data that I was
12 able to gather on that particular topic.

13 Q. Are you trying to make a legal conclusion there?

14 A. Well, no. Part of that's what's based on my own expert
15 report, what I just said.

16 Q. So your opinion related to the causal connection or
17 whether socioeconomic factors hinder participation relates to
18 the actual text of senate factor five; is that right?

19 A. Yes.

20 Q. Let's please turn to figure 1. What does figure 1 show?

21 A. These are some data I collected on registration rates in
22 Ohio from the Census Bureau's report every two years of voting
23 registration. And we're able to also produce from that some
24 racial estimates related to registration. So I have
25 registration rates for blacks and whites in Ohio from 2006 to

1 2014.

2 Q. And what conclusions do you draw from figure 1?

3 A. Let me say since these are surveys, these are really
4 estimates and so these estimate should come with and I do
5 report sort of a confidence band and so that's the vertical bar
6 inside of the -- the vertical lines inside of the bars there.
7 And so, again, this is what the Census Bureau has reported.
8 That's the 90 percent confidence interval. So we can be
9 90 percent confident that the true estimate for registration
10 lies within that bar.

11 So to the extent to which -- I say all that because to
12 the extent to which these bars overlap, it means that
13 essentially the estimates of white and black registration rates
14 are statistically indistinguishable. They're the same, in
15 other words, statistically. As you can see, in all these years
16 the bars, the standard error bars are overlapping.

17 So what this says is that black and white registration
18 rates, at least from this Census survey, are statistically
19 indistinguishable. They're the same in Ohio.

20 Q. Let's turn to figure 2. What does figure 2 show?

21 A. Okay. This is the same data source from the Census
22 Bureau's voting and registration data. And I'm looking at
23 turnout rates here in Ohio from 2006 to 2014. And again I have
24 it divided up by black and white turnout rates. So in 2006 you
25 can see standard error bars are not overlapping. So in that

1 election, white turnout is actually statistically higher than
2 black turnout.

3 Across these other election cycles, the standard error
4 bars are overlapping here so these turnout rates are
5 statistically indistinguishable. Interestingly though, in
6 2012, black turnout is statistically higher than white turnout
7 as we can see here.

8 So in one year in Ohio, one of the more recent years,
9 black turnout is higher than white turnout and for all other
10 years, sans 2006, black and white turnout rates are
11 statistically the same.

12 Q. What conclusions do you draw from figure 2?

13 A. Well, I don't really take issue with Professor
14 Timberlake's report in terms of the existence of socioeconomic
15 disparities in Ohio, say between blacks and whites, but it's
16 clear, even in the face of these disparities, that it looks
17 like black and white participation rates, at least measured in
18 this way, registration rates and turnout rates are essentially
19 the same.

20 Q. So what is your conclusion regarding whether any
21 socioeconomic disparities in Ohio hinder the participation in
22 the political process of African-Americans?

23 A. In an overall sense it doesn't seem to, even though
24 these disparities exist, true, it doesn't seem to be having the
25 effect of in any way diminishing the ability of minorities in

1 Ohio to participate in the political process.

2 THE COURT: Mr. Voigt, I hate to interrupt. I have a
3 meeting at noon. You're going to need to come back and
4 conclude with your current witness.

5 MR. VOIGT: Yes, Your Honor.

6 THE COURT: Counsel for Mr. Preisse has called and
7 apparently you're trying to subpoena him for Monday; is that
8 correct?

9 MR. KAUL: It is, Your Honor. Now that we are likely
10 going into the following week, we would also be fine to have
11 him that following week. I'll set a little bit of context
12 here.

13 It's our view, and I'm sure he would dispute it, I'm not
14 trying to get into a dispute here, but it's our view that he
15 was initially ducking in service.

16 THE COURT: I'm sorry, he was ducking service?

17 MR. KAUL: Yes. Our process server told us that they
18 had spoken on the phone, he said he would accept service and
19 then the process server showed up at his office, he's gone and
20 now his lawyer informed us that he's out of state traveling. I
21 don't really care. I'm not concerned with the specifics of
22 that but now that we're going to go into the next week, I'm
23 certainly happy to try to work with his lawyer to bring him in
24 the following week.

25 THE COURT: Why don't you contact his lawyer.

1 MR. KAUL: We've been in touch. So far he said he's
2 out of town and couldn't possibly come.

3 THE COURT: Monday.

4 MR. KAUL: Yes. This week and next.

5 THE COURT: Who is his lawyer?

6 MR. KAUL: Dan Jabe.

7 THE COURT: Okay.

8 MR. KAUL: Given the extended length of the trial,
9 I'll see if that --

10 THE COURT: Why don't you see if you can take care of
11 it over the noon hour.

12 MR. KAUL: I will.

13 THE COURT: Okay. We'll adjourn --

14 MR. MCTIGUE: Apparently he's filed a motion with the
15 Court. I don't know if you're aware but I came across it,
16 Mr. Jabe has.

17 THE COURT: Thank you. Let me take a look at the
18 motion. We will adjourn for lunch. We'll return at 1:30.

19 (A recess was taken at 11:55 a.m.)
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1 Friday Afternoon Session,
2 November 20, 2015.
3 1:30 p.m.

4 - - -

5 BY MR. VOIGT:

6 Q. Dr. Hood, we took a break for lunch. During the break
7 did we speak substantively about your testimony or the
8 testimony you will be providing this afternoon?

9 A. No.

10 Q. Let's continue on. I think we were on your second
11 report on page 4, your discussion of senate factors one and
12 three. With regard to senate factors one and three, what was
13 the first observation that you made in your report?

14 A. This related to the fact that, again, this is a rebuttal
15 at this point to Professor Timberlake's original report in this
16 matter and I was making some observations about some of the
17 examples that he used to highlight discriminatory voting
18 practices in Ohio and their age.

19 Q. And how old were some of those examples that he used?

20 A. More than 200 years old, some of them.

21 Q. In your opinion, is it problematic to consider old
22 examples when looking at a recent law?

23 A. I would think so. A lot's changed in 200 years.

24 Q. Considering these old examples that Professor Timberlake
25 discussed in his report, how would they compare to other

1 states?

2 A. Even the older examples?

3 Q. Yes. For example, he's talking about, on page 5,
4 examples from 200 years old. The question is, in your opinion,
5 if you know, how would states differ during that time period?

6 A. Even 200 years ago?

7 Q. Yes.

8 A. Well, obviously at that point in time Ohio was a free
9 state but there were certain slave-holding states in existence
10 at that time as well.

11 Q. I think you previously testified that Ohio has never
12 been a Section 5 state; is that right?

13 A. I remember discussing part of Section 5. I don't know
14 if I made that statement but it is true that Ohio has never
15 been covered by or has never been a Section 5 state, nor any
16 component within Ohio.

17 Q. Does that fact have significance with respect to senate
18 factors one and three?

19 A. That would be a more recent indication, possibly the
20 Voting Rights Act, that is, and the three triggers in section 4
21 that state more recently at least it engages in the
22 discriminatory voting practices and because of that would be
23 covered jurisdiction. That would be some more recent evidence.
24 Of course Ohio hasn't fallen under that provision of the Voting
25 Rights Act.

1 Q. On page 6 of this section, in the last paragraph of this
2 section the sentence begins, finally, Professor Timberlake
3 points to a change in Ohio's voter identification law. You see
4 that?

5 A. Right.

6 Q. And in that paragraph you talk about voter
7 identification. Could you summarize the conclusion that you're
8 making in that paragraph?

9 A. Well, he's pointing to this as evidence of potential
10 discriminatory voting practice but, again, many states have
11 some form of voter identification law nowadays. Ohio's is
12 really a combination of photo ID and nonphoto ID. So it's not
13 even as strict as photo ID laws in other states that are, for
14 instance, a government-issued photo-ID-only state. And a lot
15 of these forms of ID that one has to present to vote in Ohio
16 are the same types of ID that you find under the Help America
17 Vote Act or HAVA.

18 Q. Let's move on to your discussion of factor two which is
19 on page 6. What does senate factor two consider?

20 A. That looks at racially polarized voting.

21 Q. And what is your opinion regarding senate factor two in
22 Ohio?

23 A. Well, in a lot of places in the U.S. currently there
24 could be evidence of racially polarized voting. And part of
25 the reason for that is the fact that race, to a certain extent,

1 underlies the existing political party structure in America.
2 It's not uncommon to find more than a majority, for instance,
3 even sometimes upwards of 90 percent of black voters voting for
4 one candidate and more than a majority of white voters voting
5 for another candidate, for instance.

6 So he cites a few examples in his report. Again, if we
7 were looking at, say, a redistricting case that was being
8 challenged under a vote dilution claim, the racial polarization
9 is part of that but it also has to result in the inability of
10 the minority in the state not to be able to elect their
11 candidate of choice. And at least half the examples that
12 Professor Timberlake gave, the African-American candidate of
13 choice actually won those elections.

14 Q. Senate factor six, same page. What does senate factor
15 six consider?

16 A. Racial appeals or messages related to campaigns or
17 candidates.

18 Q. Do you recall that Dr. Timberlake Tim provided five
19 examples in his report related to this senate factor?

20 A. Right. Yes.

21 Q. His report is Plaintiffs' Exhibit PX0109. You're free
22 to refer to that if you'd like to or you could just refer to
23 your rebuttal. I'm wondering if you could just walk through,
24 briefly, your assessment of Dr. Timberlake's five examples?

25 A. Well, for one thing, he only cites five examples. I

1 guess it depends on how far back in history you want to go.
2 But hundreds of elections are being held in Ohio at various
3 office-holding levels for the last decade. So he cites five
4 different examples. I guess we could go through them one by
5 one.

6 Most of these, though, I'll just say, in general, I
7 don't really find the very direct connection between the
8 examples that he gives and a specific candidate or campaign.
9 Two of them involve essentially someone showing up at a
10 campaign rally and displaying certain speech. Distasteful
11 speech but, again, I didn't find that there was a direct
12 connection between those individuals necessarily in a campaign
13 or a candidate.

14 Another involved a billboard from an undisclosed private
15 group that I was not able to find out a lot of information on.
16 Another involved a television ad from an entity called The Tea
17 Party Victory Fund which my investigation with the FEC turned
18 up to be an independent or nonconnected political-action
19 committee. So it didn't seem as though they were connected
20 directly to a candidate or a political party, for instance.

21 I think that's all the examples that he gives that I can
22 remember, at least.

23 Q. Why is it important for the examples to be tied to a
24 campaign or a candidate?

25 A. Well, I believe that's what the senate factor is geared

1 towards, not just the reports of certain speech, for instance.
2 But speech tied specifically to a campaign or candidate
3 themselves even. These are fairly -- I would label these as
4 pretty tenuous in their connection to, again, a specific
5 candidate or a campaign.

6 Q. Could you provide to the Court your opinion regarding
7 Dr. Timberlake's use of these five examples?

8 A. I don't think they're very probative, in my opinion, of
9 senate factor six. They don't provide a lot of underlying
10 evidence for factor six.

11 Q. All right. Let's move on to factor seven which is on
12 page 7 of your rebuttal report. Generally, what is senate
13 factor seven?

14 A. Senate factor seven deals with descriptive
15 representation on the part of minorities.

16 Q. And it's actually in the first paragraph of your report
17 but what is the percentage of African-American -- what is the
18 percentage of the African-American voting-age population in
19 Ohio?

20 A. According to the census most recently, 11.4 percent.

21 Q. With this population size, what is the possibility for
22 an African-American candidate -- strike that.

23 With this population size, what is the possibility for
24 the African-American electorate alone to elect a candidate in a
25 statewide race?

1 A. It's just not possible.

2 Q. In Ohio, have any African-American candidates won
3 statewide office?

4 A. Yes.

5 Q. Which offices?

6 A. I found information that in statewide offices black
7 candidates had been elected to the office of Lieutenant
8 Governor, Treasurer, Secretary of State twice and one candidate
9 to the Ohio Supreme Court.

10 Q. And what does this tell us about senate factor seven?

11 A. Well, I think there's some other evidence we need to
12 also talk about related to senate factor seven that we'll get
13 to in a minute. But it is possible. It has occurred, even in
14 the situation where blacks only comprise about a tenth of the
15 voting-age population in Ohio that black candidates have been
16 elected statewide. It's certainly possible.

17 Q. Please take a look at table 1 on page 7. What does this
18 table depict?

19 A. This is the current membership right now of the Ohio
20 General Assembly by chambers. So we've got house and senate,
21 total members, the number of black members in each one of those
22 chambers, and percentage of black members in each one of those
23 chambers. You can see in the house, 11.1 percent of statehouse
24 members are black, 12.1 percent of state senators are black.
25 And that comports very closely with the voting-age population

1 which over on the far right, again, is 11.4 percent.

2 Q. What does this information tell us with regard to senate
3 factor seven?

4 A. Well, at least in terms of the Ohio General Assembly,
5 black citizens are represented in roughly equal proportion to
6 their population size.

7 Q. If you could turn the page in your surrebuttal or, I'm
8 sorry, your rebuttal to page 8 and take a look at table 2,
9 please.

10 A. Okay.

11 Q. What does this table depict?

12 A. This is the same kind of analysis but I collected some
13 additional statistics on membership levels for city councils
14 and in Columbus, Cleveland and Cincinnati. Again we've got the
15 total city council members, the number of black city council
16 members, the percentage of city council members that are black
17 and the black voting-age population for those cities. So for
18 instance, in Columbus, half of the city council members are
19 black. Only a quarter of the black voting-age population --
20 only a quarter of the voting-age population is black so there's
21 a slight overrepresentation there.

22 In Cleveland and Cincinnati, black citizens are
23 represented on those city councils in rough parity with their
24 voting-age population numbers.

25 Q. Why did you choose Columbus, Cleveland and Cincinnati

1 for this analysis?

2 A. Those are some of the larger cities in the state of
3 Ohio. And another reason is I was easily able to get data on
4 city council members as well as you can see from the far right
5 column in that particular table, there's a sizable proportion
6 of black citizens this those cities as well.

7 Q. What does this table tell us about factor seven?

8 A. Again, at least for the cities that I've gathered some
9 data on, blacks are represented in roughly equal numbers with
10 their voting-age population numbers.

11 Q. Would you please summarize your overall conclusion
12 regarding African-American representation in Ohio?

13 A. In terms of descriptive representation levels, those
14 levels are comparable for black citizens in Ohio in roughly
15 equal share to their voting-age population. Again, looking at
16 various office-holding levels, city council, general assembly,
17 et cetera.

18 Q. Okay. Let's turn to factor eight which is on page 8.
19 What does senate factor eight consider?

20 A. Senate factor eight relates to the responsiveness of
21 elected office holders to the minority community in the state.

22 Q. What is your opinion regarding factor eight?

23 A. Well, Professor Timberlake questions whether the State's
24 responsive to the minority community but, again, if you look
25 at -- if you look at some of the voting provisions that are in

1 place and that will be in place in 2016, it's fairly generous
2 in terms of days and times available both before the election
3 all the way up through election day and the manner in which
4 citizens of all races and ethnicities are able to cast a
5 ballot, for instance. So I would argue there's voting
6 opportunities are fairly expansive. Then, again, we can talk
7 about mailing out unsolicited absentee-ballot applications, for
8 instance, to citizens. Those kinds of things.

9 Q. Dr. Timberlake did not include this information in his
10 report; is that right?

11 A. That's correct.

12 Q. Do you think he should have?

13 A. Yes. I think it's pertinent.

14 Q. Let's turn to factor nine on the next page. What does
15 senate factor nine consider?

16 A. The justification behind a statute or a policy change,
17 specifically.

18 Q. What is your opinion regarding this factor?

19 A. Well, in relation, specifically, to the election
20 provisions that are challenged, I was typically able to find a
21 justification or a reason why the change was put into place.
22 Again, sometimes it was -- I would just term it common sense or
23 a common-sense justification. Again, elections are fairly
24 complicated affairs. When you delve down underneath the
25 surface there are hundreds of moving parts to these things.

1 Adjustments are going to have to be made in state law from time
2 to time as it relates to the implementation of elections.

3 Q. In the second sentence of that paragraph you write, in
4 reaching this conclusion, however, he failed to rely on any
5 testimony from election officials in the state either through
6 written declarations or interviews. Do you see that?

7 A. Yes.

8 Q. Do you consider that to be a significant failure of his
9 report?

10 A. Well, certainly. I think you've got to take a look, if
11 you're talking about elections and the way they're implemented,
12 you've really got to take a look under the surface again and
13 get an idea of how things are being rolled out and what
14 literally I guess you could say the nuts and bolts of the
15 process are. And again, those are the people who know the nuts
16 and bolts in the process because they're the ones implementing
17 elections in Ohio.

18 Q. Moving on. Aside from the factors that we discussed,
19 can other factors be considered besides the nine senate
20 factors?

21 A. Yes.

22 Q. Did Dr. Timberlake consider any other factors besides
23 the -- I guess he only included eight in his report. But eight
24 of the nine senate factors in his report?

25 A. I think he stuck fairly closely to these enumerated

1 factors.

2 Q. Are there additional considerations that Dr. Timberlake
3 should have included in his report?

4 A. Well, again, we just covered some of them. What can we
5 glean or learn from election officials who are implementing the
6 laws, for instance.

7 Q. In your opinion, what conclusions have you drawn
8 regarding the senate factors as applied to the laws that are
9 being challenged?

10 A. Again, I don't think that they have a lot of relevance
11 necessarily. Again, I don't think that the election laws under
12 challenge have been proven to disproportionately impact
13 minority voters in Ohio. And again, I provided some additional
14 evidence of things in terms of, like, voting registration
15 levels, descriptive representation seem to be on par between
16 blacks and whites in Ohio, for instance.

17 Q. The next section of your rebuttal report is titled
18 Changes to Ohio's Election Code and underneath it says issues
19 of methodology. Do you see that?

20 A. Yes.

21 Q. Does this section discuss your assessment of
22 Dr. Timberlake's methodology?

23 A. Yes.

24 Q. Can you explain the methodology used by Dr. Timberlake?

25 A. The primary methodology he used in his initial report

1 was to try to study the changes in some of these election laws
2 and provisions by grouping counties together and looking at
3 things in that manner. So he has three different sort of
4 county groupings he creates. He creates one he labels high
5 minority county grouping, another one low minority/high poverty
6 and then low minority/low poverty. So he looks at things in
7 terms of these what's going on within these county groupings.

8 Q. And can you -- are there any problems with this
9 methodology?

10 A. Even, for instance, this is just not sufficient for
11 trying to make individual-level estimates from aggregate-level
12 data, counties being aggregate-level data. It's just way too
13 crude. For instance, even in Professor Timberlake's
14 categorization of high-minority counties, seven out of ten
15 individuals in those counties are not minorities. So there's a
16 huge number, more than a majority of the people even in the
17 high-minority counties are not minorities.

18 So to try to draw any kind of individual little
19 inference from these county groupings is just not really
20 possible. It is possible to draw individual-level inferences
21 from aggregate-level data but that requires, usually, much
22 smaller geographic units like precincts and the application of
23 more advanced statistical tools like ecological regression or
24 ecological inference. And number of that occurs in Professor
25 Timberlake's report.

1 Q. How did Dr. Timberlake use the report of Dr. Daniel
2 Smith?

3 A. It's my understanding that Dr. Smith had presented or
4 produced an expert report in which he had to try -- he had
5 tried to make some individual level racial estimates from
6 aggregate data for another case. And at least in his report,
7 Professor Timberlake just quotes from Professor Smith's report
8 on that matter.

9 Q. Do you believe that Dr. Timberlake's use of Dr. Daniel
10 Smith's report consisted of a reliable methodology?

11 A. Well, Dr. Smith's methodology may have been reliable but
12 I don't think any of it was -- I don't think it was replicated
13 by Dr. Timberlake. I don't think Dr. Timberlake, in this
14 report, took Dr. Smith's data and replicated anything that he'd
15 done.

16 Q. And because of did not replicate the data, would that
17 call into question the methodology and his reliance upon
18 Dr. Smith's conclusions?

19 A. To some extent, yes. Using someone else's data is
20 another matter but just not rerunning all the statistical
21 models, for instance, could cause some things to come into
22 question.

23 Q. On page 11 of your rebuttal, you discuss golden week.
24 What are your opinions regarding Professor Timberlake's
25 analysis of golden week?

1 A. Again, I guess through this part of my rebuttal report
2 I'm responding to specific inquiries that Professor Timberlake
3 looked into. But for these inquiries he's still using this
4 sort of crude county-level grouping system that he came up
5 with. So that I would just say that general methodological
6 criticism I have would apply to any of these issues that we're
7 going to discuss.

8 So he tries to make some inferences about golden week
9 and the use of golden week, again, using these county
10 groupings. Again, that doesn't tell us a whole lot. I was
11 able to collect, and I'm sure he had access to collect the same
12 type of more detailed data on golden week that I included in my
13 initial report, for instance.

14 Q. Do you know whether Dr. Smith compared the years 2010
15 and 2014 with respect to golden week in his report?

16 A. I don't believe so. I think he used 2008 and 2012
17 primarily.

18 Q. In your professional opinion, should he have compared
19 2010 and 2014?

20 A. Well, for the reasons we discussed earlier, yes. Again,
21 the law was implemented in a midterm election in 2014 so my
22 argument would be that we need to compare back to the previous
23 midterm election cycle. And, again, if you're not using at
24 least one -- at least using the 2014 midterm, it's hard to tell
25 what the effects of these laws may be because that was the

1 election cycle and the only election cycle in which we've seen
2 these changes occur.

3 Q. Please take a look at table 3 on page 11.

4 A. Okay.

5 Q. What does table 3 show?

6 A. Dr. Timberlake makes use, again, of these census surveys
7 and we talked about those a little bit earlier. That is the
8 same data set or data source that I derived the statistics on
9 voting and registration from. But again, he doesn't make use
10 of the survey as it relates to 2014 and 2010. So these are the
11 estimates from the Census Bureau survey of black early
12 in-person turnout from 2014 and 2010.

13 So there is a very slight, according to these estimates,
14 half a percentage point increase, .4 percent technically,
15 because black early in-person turnout went from 3.3 percent to
16 3.7 percent across those elections.

17 Q. Toward the bottom of page 11 --

18 MR. VOIGT: Can we pull up Dr. Timberlake's table
19 number 4.

20 BY MR. VOIGT:

21 Q. Do you have that in front of you, Professor?

22 A. It's on the screen here.

23 Q. Toward the bottom of page 11 you refer to
24 Dr. Timberlake's table number 4. Could you explain the issue
25 you point out with respect to this table?

1 A. Could we blow that up a little bit? I can't see it very
2 well. I don't have a paper copy.

3 Q. It's also in PX -- thank you.

4 A. Okay. Again, so this is an analysis Professor
5 Timberlake did of golden-week use. Again, you can see these
6 county groupings over there to the far left that I've referred
7 to earlier. But he basically compares ratios of the high
8 minority county grouping to his low/high county grouping and to
9 his low/low county grouping.

10 One of the interesting things that you can note is that
11 the ratio of ballots cast in high minority county grouping
12 during golden week is actually less in three out of four cases.
13 So if you look at 2008 all ballots cast, .96.

14 Q. Could you also circle that?

15 A. Sure. I'm down here at this point. So that's less than
16 one. That's greater than one. So that means that in that
17 particular case in that comparison between those two sets of
18 county groupings that golden week usage was higher actually in
19 high-minority counties compared to low/low -- the low/low
20 county grouping.

21 Again, if you look over here there's .9 and .96 there.
22 So, again, even in this high minority county grouping in three
23 out of the four elections looked at here, the comparisons made
24 for these two elections, the ratios are less than one,
25 indicating that golden week use was actually higher in these

1 other types of county groupings in three out of four cases.

2 Q. In your professional opinion, has Dr. Timberlake
3 established that the elimination of golden week will negatively
4 affect turnout in Ohio?

5 A. No. And, again, for the reasons we discussed already, I
6 don't believe that you can make proper individual-level
7 inferences to race using statistics like these.

8 Q. If you could turn to page 12 in your rebuttal report,
9 please.

10 A. Okay.

11 Q. This section discusses Dr. Timberlake's criticism of one
12 early-voting site per county. What did Dr. Timberlake fail to
13 consider in his analysis?

14 A. In my opinion, the biggest thing he failed to consider
15 was the resource allocation to the early-voting sites
16 themselves. In other words, how many DREs are deployed, how
17 many workers are deployed, et cetera.

18 Q. And is this a significant problem with his report?

19 A. Well, I believe so because to some extent it's treating
20 all early-voting sites as equal on that measure.

21 Q. In his analysis did he rely on -- strike that.

22 Did his calculations in this section rely on voting-age
23 population?

24 A. Yes.

25 Q. And his reliance on voting-age population in the context

1 of this analysis a problem?

2 A. If you're trying to somehow get a gauge on the potential
3 capacity that may be necessary at early-voting sites at the
4 county level, using the voting-age population as a gauge is not
5 the best metric, in my opinion. Certainly you could use
6 registrants, you could use voters, you could use some measure
7 of early in-person voting from previous elections. But the
8 actual early in-person turnout in a given county is only a
9 fraction of the voting-age population.

10 For instance, just as an example, in Franklin County,
11 early in-person turnout in 2014 was only 1.3 percent of the
12 total voting-age population in Franklin County. So those
13 metrics I discussed are much closer to a better measure of the
14 potential capacity that might be necessary at these sites as
15 opposed to the voting-age population.

16 Q. Did Dr. Timberlake account for the number of people who
17 voted early?

18 A. No. I don't -- no. From what I remember, he used the
19 voting-age population as the base number.

20 Q. Right. In your professional opinion, does
21 Dr. Timberlake provide a reliable criticism of one early-voting
22 location per county in Ohio?

23 A. Not in my opinion. Not in my opinion. Again, I was
24 also able to point out because I had figures for a few of the
25 counties by hour, by day, and I could look at the maximum

1 number of people, for instance, that Franklin County was able
2 to accommodate within a single hour. And that happened to be
3 838 voters in a single hour was the maximum in 2012. And that
4 gives you some idea that there's some slack capacity at these
5 early-voting sites. If that's the maximum figure and every
6 other hour was below that, things could be increased slightly.
7 There is some slack capacity.

8 Q. Let's move on. Page 13. You discuss Dr. Timberlake's
9 analysis of absentee balloting. Generally, what did
10 Dr. Timberlake do with regard to absentee balloting?

11 A. Again, he used his county-grouping analysis to try to
12 evaluate this. Although I've got to say in this particular
13 part of his report I was a little confused because it seems to
14 be conflating or utilizing both early in-person absentee voting
15 and absentee voting by mail together as a category. I think
16 those two things should be separated.

17 Q. Why is that problematic?

18 A. Because most of what we're talking about in terms of the
19 changes to the absentee-balloting procedure affect by-mail
20 voting.

21 Q. So in other words, you're saying that in
22 Dr. Timberlake's analysis he did not separate -- in
23 Dr. Timberlake's analysis of absentee balloting, he did not
24 separate early in-person voters from mail-in voters?

25 A. Not from what I was able to ascertain in looking at his

1 report. That seems to be what was going on.

2 Q. And, again, you believe that this is a significant issue
3 with his analysis?

4 A. Certainly. I don't think those two categories should be
5 conflated when we can separate them.

6 Q. Why are most absentee ballots rejected in Ohio?

7 A. Most absentee ballots are rejected simply because
8 they're not returned on time.

9 Q. Did Dr. Timberlake's analysis include an analysis of the
10 absentee ballots that are rejected because they were untimely?

11 A. Yes. I think his absentee ballot rejection rate
12 includes rejection for any reason. So it also would include
13 that as well.

14 Q. In his analysis of -- strike that.

15 Is there anything in Dr. Timberlake's report where he
16 quantifies the number of African-American voters and white
17 voters whose absentee ballots are rejected?

18 A. Not outside of this county grouping system that we
19 talked about, no.

20 Q. Is that problematic?

21 A. Again, I'll just reiterate that I don't believe using
22 that you can make reliable estimates back to racial categories,
23 so, no.

24 Q. Based on your professional opinion, is Dr. Timberlake's
25 analysis of absentee ballots reliable?

1 A. No.

2 Q. Let's move on to provisional balloting, page 14. What
3 did Dr. Timberlake do with regard to provisional balloting? Is
4 it important to consider the reason why provisional ballots are
5 rejected?

6 A. I believe so. Because, again, those data are available
7 from the Ohio Secretary of State and the challenged provision
8 that altered the provisional ballot process deals specifically
9 with the possibility that more provisional ballots will be
10 rejected because of voter error because of these additional
11 data fields that have to be provided by voters. And so if we
12 can look at that category specifically, then we should.

13 Again, as I've stated previously earlier today with my
14 original report, though, whether you're looking at the
15 provisional ballot rejection rate due to voter error or you're
16 looking at the overall provisional ballot rejection rate, it
17 doesn't really matter. The rate falls in 2014 compared to 2010
18 or even 2008 and 2012. In my mind, there's very little
19 evidence that the state requiring this addition of these two
20 data fields hasn't in any way increased the number of
21 provisional ballots that are being rejected because of voter
22 error.

23 Q. What is the reason why most provisional ballots are
24 rejected?

25 A. It's my understanding that the number one reason is a

1 registration issue.

2 Q. In your first report, I don't want to go back over this,
3 but in your first report you did consider the rejection rates
4 based on the reason of why the ballot was rejected?

5 A. Yes. The data were that detailed, yes.

6 Q. Did Dr. Timberlake consider the rejection reason in his
7 analysis?

8 A. From what I remember, he seems to only consider the
9 overall rejection rate.

10 Q. Did Dr. Timberlake compute the provisional ballot
11 rejection rate by race?

12 A. No.

13 Q. Based on your professional opinion, is Dr. Timberlake's
14 analysis of provisional ballots reliable?

15 A. No. Well, I did conceptualize one of my measures in the
16 same way he does. It's not reliable in terms of trying to
17 estimate a racial impact. Again, we can also get much more
18 refined in terms of why provisional ballots are being rejected,
19 and that didn't occur either.

20 Q. Let's move on to DRE voting machines. Starts at the
21 bottom of 14 and extends on to 15. Could you briefly summarize
22 the issues you found with Dr. Timberlake's analysis related to
23 the change in the DRE formula?

24 A. Again, this is -- he performs an analysis but, again,
25 none of this has been put into place so it's more difficult to

1 study the potential effects of this particular change in Ohio's
2 election law because, again, no county has, to my knowledge, is
3 preparing to purchase new DRE machines. And as well, this
4 really only obviously affects counties that are using DRE
5 machines or that may use DRE machines in the future. But
6 again, he uses his county level groupings to try to make some
7 inferences here.

8 Q. Based on your professional opinion, is Dr. Timberlake's
9 analysis of the DRE formula -- strike that.

10 Based on your professional opinion, is Dr. Timberlake's
11 analysis of the changed DRE formula reliable?

12 A. No. For the same reasons that we've been discussing.
13 For one, there's no way to credibly make any kind of estimates
14 or inferences back to race using his analysis, for one.

15 Q. Are there any other reasons?

16 A. Well, he stipulates or states that counties in the high
17 minority category are going to essentially be affected more
18 under this formula. But again, the formula, the new formula
19 stipulates that you can essentially subtract absentee voters
20 from the number of registrants in the ratio. So one of the
21 things it just might mean in his high minority county grouping
22 is that more voters in those county groupings are voting
23 absentee by mail or early in person. It doesn't mean that
24 voters at the precinct on the election day necessarily, again,
25 are going to be affected in any kind of negative sense.

1 Q. We're getting close. The last couple of pages of your
2 rebuttal relate to the expert report of Dr. Minnite. Let's
3 briefly go over that.

4 Did you review the report of Dr. Minnite?

5 A. I did.

6 Q. How did she define fraud in her report?

7 A. I'm just going to quote what I quoted from her report in
8 terms of her definition of fraud as the intentional corruption
9 of the voting process by voters. So that's her definition
10 verbatim.

11 Q. What is your opinion of her definition?

12 A. Well, in terms of looking for voter fraud it's a more
13 narrow definition than is necessary, really. Voter fraud can
14 occur in context outside of simply individual voters committing
15 fraud. There could be collusion, there could be collusion
16 between voters, between voters and poll workers, between voters
17 and campaigns. So I guess I'm arguing for a more expansive
18 definition as opposed to this narrow definition.

19 Q. Why is it important to consider a broader definition?

20 A. Well, you're looking for something that's not hard --
21 that's not easy to find, excuse me. And voter fraud's an
22 illegal activity. I'm assuming that most people who engage in
23 this type of activity don't want to get caught. So again, it's
24 not easy to figure this out necessarily. But certainly we need
25 to have a broader net or a wider net rather than a narrower

1 one.

2 Q. What did Professor Minnite rely on to form her
3 conclusions?

4 A. Most of it was previous work she had undertaken, a lot
5 of a academic work. I know she's written a book on voter
6 fraud. So most of her book, excuse me, most of her report was
7 referring to a lot of her previous academic work.

8 Q. How much of her report is focused on Ohio?

9 A. I can't remember exactly how long her report was but
10 from my memory, not much. Several paragraphs specifically on
11 Ohio.

12 Q. In your professional opinion, is relying on reports of
13 fraud a reliable way of looking at this issue?

14 A. Not alone. It's one way. It's one thing that you can
15 look at. But, again, someone has to have been essentially --
16 there has to be an allegation made or someone has to be caught
17 for a report to be made. So again, in some of the techniques
18 that I've outlined in some of my written academic work,
19 specifically in one article, we talk about going out and
20 actively searching for suspicious cases. It may or may not be
21 voter fraud in the end. But using database and mining
22 techniques we can go out and look for cases that don't look
23 right. They're anomalies, they're out of place. It requires
24 more research once you find these anomalies to determine
25 whether they look suspicious or not.

1 Again, instead of having someone just report cases of
2 fraud -- and, again, it's a very narrow way to look at it.
3 Another way to look at it is what I suggested and that's going
4 out and looking for voter fraud.

5 Q. How do you actively search for voter fraud?

6 A. Well, I've had different ideas. The example that we
7 carried out in the academic article that we wrote we took the
8 voter-registration database in Georgia and we looked at that,
9 matched that against a death index from the state department of
10 vital statistics. So we were looking for votes being cast on
11 behalf of the deceased. That's an example of actively looking
12 for strange cases or anomalies.

13 Q. Does Dr. Minnite search for cases of potential fraud?

14 A. Again, from what I remember reading of her report she's
15 just relying on secondary reports of voter fraud.

16 Q. In your opinion, did Professor Minnite undertake a
17 comprehensive analysis of fraud or potential fraud in Ohio?

18 A. Certainly not potential. She may have undertaken an
19 analysis of reported cases of fraud but I don't believe that
20 she went out and actively did any kind of searching on her own.

21 Q. Is this failure in her report problematic?

22 A. It points to the fact that, again, when she mentions the
23 prevalence of voter fraud, we're only talking about reported
24 cases of voter fraud.

25 Q. So in your opinion, the reported cases of voter fraud

1 could understate the actual number of cases of actual fraud?

2 A. It's certainly possible, yes.

3 Q. In your professional opinion, can the prevention of
4 voter fraud be a legitimate reason for a state to enact an
5 election law?

6 A. Yes.

7 Q. In your professional opinion, can improving voter
8 confidence be a legitimate reason for a state to enact an
9 election law?

10 A. Yes. To the extent to which states have really, I
11 think, an affirmative duty to promote free and fair elections,
12 yes. And by doing so, that increases voter confidence in the
13 process.

14 Q. In your professional opinion, are there other reasons
15 that can serve for legitimate reasons for a state to enact an
16 election law?

17 A. Outside of the voter fraud context we're talking about?

18 Q. Outside of the other two issues that --

19 A. Sure. It just may relate to, again, conducting the nuts
20 and bolts of an election as we talked about as well.

21 Q. And there could be other reasons as well?

22 A. Sure. Outside of that, yes.

23 Q. In your professional opinion, are any of the laws that
24 the plaintiffs are challenging -- strike that.

25 In your professional opinion, are the laws that the

1 plaintiffs are challenging in this case supported by legitimate
2 state interests?

3 A. Yes.

4 Q. In your professional opinion, has Dr. Timberlake
5 established that the challenged laws will cause minorities to
6 be denied an equal opportunity to participate in the political
7 process?

8 A. No. And I would also extend that to say not only
9 minorities, but no one in Ohio, essentially. I haven't
10 uncovered any evidence that these changes to Ohio's election
11 law are going to disproportionately impact any voters,
12 essentially.

13 Q. Your initial report, which is Defendants' Exhibit 15, is
14 that a true and correct copy of your first report in this case?

15 A. Yes.

16 Q. And the rebuttal report that you wrote, that is
17 Defendants' Exhibit 18, is that a true and correct copy of your
18 rebuttal report?

19 A. Yes.

20 Q. Are the conclusions in both of those reports provided to
21 a reasonable degree of professional certainty?

22 A. Yes.

23 MR. VOIGT: Your Honor, at this time I move for
24 exhibits -- Defendants' Exhibits 15 and 18 to be admitted into
25 evidence.

1 MR. SPIVA: The only thing I object to, Your Honor, is
2 there are a couple of declarations attached to, I think it's
3 the rebuttal report of Dr. Hood. Most of the declarations were
4 with Mr. Trende's report but they did add a couple. So we have
5 a continuing objection to those.

6 THE COURT: I'll read them.

7 MR. VOIGT: Thank you.

8 THE COURT: Thank you.

9 Mr. Spiva, you may cross.

10 - - -

11 CROSS-EXAMINATION

12 BY MR. SPIVA:

13 Q. Good afternoon, Dr. Hood.

14 A. Good afternoon, Mr. Spiva.

15 Q. We have to stop meeting like this.

16 A. I agree.

17 Q. In your report, Dr. Hood, you cite and quote
18 declarations from various elections officials, correct?

19 A. That's correct.

20 Q. And you did not determine who those declarations would
21 come from; is that right?

22 A. I did not stipulate ahead of time, is that fair?

23 Q. You didn't determine who they would come from, who would
24 submit declarations?

25 A. That's correct.

1 Q. You didn't have any control over it at all, right?

2 A. Not that part of it, no.

3 Q. And you did not determine the counties from which the
4 declarations would be sought, isn't that right?

5 A. That's correct.

6 Q. You didn't decide whether the declarations from a given
7 county would come from the director of elections or from the
8 deputy director of elections; is that right?

9 A. That's correct.

10 Q. You didn't decide whether it would come from a board
11 member or which board member; is that correct?

12 A. That's correct.

13 Q. And you didn't decide what questions would be asked
14 prior to the declarations being written, isn't that right?

15 A. Not the specific questions, no. I did ask for general
16 information or feedback about -- especially about these
17 challenged provisions. That's true.

18 Q. Fair enough. But you didn't decide what specific
19 questions would be asked, isn't that right?

20 A. That's correct.

21 Q. Or how they would be asked, isn't that right?

22 A. Right. I wasn't conducting this myself.

23 Q. Right. And you did not do any independent verification
24 that what the declarant said was true and correct, isn't that
25 right?

1 A. That would be correct, yes.

2 Q. You took them at face value. I think those were your
3 words, isn't that right?

4 A. I probably said that, yes.

5 Q. And you did not do anything to satisfy yourself that the
6 sample of counties from which you saw declarations was a
7 representative sample of counties, isn't that right?

8 A. It's true I didn't conduct any kind of analysis to
9 determine how representative or not these declarations were. I
10 could tell they were coming from different counties of
11 different sizes, for instance.

12 Q. But you didn't do anything to satisfy yourself that the
13 sample that you saw was a representative sample of Ohio
14 counties, isn't that right?

15 A. I didn't conduct an analysis on that, no. So that's
16 correct.

17 Q. And you didn't read any of the depositions of any of the
18 officials from Cleveland who submitted declarations; is that
19 right?

20 A. I don't believe so. I don't recall that.

21 Q. You didn't conduct a scientific inquiry of the counties,
22 I take it?

23 A. I think that's what I was referring to earlier.

24 Q. Fair enough. The defense attorneys actually selected
25 the declarations and provided them to you?

1 A. They produced the declarations to me, yes.

2 Q. I think that the defense -- that Mr. Voigt mentioned
3 that you didn't take any notes of your interview of
4 Mr. Damschroder; is that right?

5 A. I'm sure I jotted some things down.

6 Q. Did you produce those notes?

7 A. I don't think so.

8 Q. That was like an hour and a half interview, you said?

9 A. It was long.

10 Q. You have a tape recording of it?

11 A. No.

12 Q. You e-mailed with the Cuyahoga County Board of Elections
13 Director Pat McDonald; is that right?

14 A. Yes.

15 Q. Did you produce that e-mail or the e-mails you had with
16 him?

17 A. I think so. I may be incorrect, but I think so.

18 Q. You didn't talk to or receive a declaration from the
19 Democratic Cuyahoga County Deputy Director of the Board of
20 Elections, Mr. Perlatti, did you?

21 A. That name doesn't sound familiar so I don't think so.

22 Q. You didn't talk to or receive a declaration from Bill
23 Anthony, the Director of Franklin County Board of Elections,
24 isn't that right?

25 A. I don't think so. Don't recall that. There was a

1 declaration from Franklin County or from maybe a former
2 Franklin County election official.

3 Q. Do you recall whether the former Franklin County
4 official was a republican or a democrat?

5 A. Not sitting here today, no.

6 Q. Do you know that Bill Anthony, the Director of the
7 Franklin County Board of Elections, is a democrat?

8 A. I'll take your word for it. I don't know that I could
9 recall that sitting here today.

10 Q. And you didn't talk to or receive a declaration from any
11 democrats for any of the five largest counties in Ohio, did
12 you?

13 A. I think that's accurate, yes.

14 Q. Did anyone, to your knowledge, decline to give defense
15 counsel a declaration?

16 A. Not that I'm aware of.

17 Q. If they did, you don't know?

18 A. That's correct. That would be a correct way to say
19 that.

20 Q. Did you ask defense counsel whether anyone had declined
21 to give them a declaration?

22 A. No.

23 Q. Were any of the declarations you received drafted by
24 African-Americans, to your knowledge?

25 A. I'm unsure about that.

1 Q. Did you ask defense counsel whether any of the
2 declarations were drafted by African-Americans?

3 A. No.

4 Q. Do you know if any of them were drafted by Latinos?

5 A. I don't remember any Hispanic surnames so I don't think
6 so.

7 Q. Do you know if any of them were drafted by
8 Asian-Americans?

9 A. Not to my knowledge. It's possible. In all those that
10 the respondent usually wasn't listing their race or ethnicity.

11 Q. You don't know how many of the county officials in Ohio,
12 either county government officials or county board of elections
13 officials disagree with the statements in the declarations you
14 reviewed, do you?

15 A. That's true.

16 Q. You mentioned a minute ago that this was not a
17 scientific survey but you have done a more scientific survey of
18 election officials in a peer-reviewed journal in the past,
19 haven't you?

20 A. Yes.

21 Q. Is that the Time Shifting the Vote article that you and
22 Mr. Bullock did in the *Election Law Journal* in 2011?

23 A. I don't think that's the title of it but I think that's
24 the article, yes.

25 Q. Maybe part of the title. Maybe we can put it up on the

1 screen, the Time Shifting the Vote. Maybe just a portion of
2 the article. Just want to make sure that we're talking about
3 the same thing. I know you are a prolific writer.

4 The full title, Dr. Hood, is Time Shifting the Vote, the
5 Quiet Revolution in American Election. Is that the article
6 that you were thinking of?

7 A. That's not -- the title of our article is down below
8 that. I'm not trying to be argumentative.

9 Q. Sure. Is it An Examination of Efforts to Encourage the
10 Incidents of Early In-Person Voting in Georgia, 2008?

11 A. Yes. That's the title.

12 Q. And I will represent to you that I'm the one maybe needs
13 a little help who put the highlighting on there. I thought it
14 might facilitate us talking about it. But that looks, other
15 than the highlighting, does that look like your article?

16 A. Looks like the first page of it, yes.

17 Q. Was one of the -- on page three of the article, maybe we
18 can turn to page 3 and, Dr. Hood, if you would like a hard copy
19 I do have hard copies. I thought it would be easier to not
20 have to shuffle back and forth. I'll be happy to give you a
21 hard copy in case you want to look at other parts.

22 A. Okay. I'll try to follow along on the screen but if you
23 have a hard copy, that would be appreciated.

24 THE COURT: You mean you don't commit to memory
25 everything you wrote over a lifetime?

1 THE WITNESS: I'm sorry, Your Honor, I'm not that
2 good.

3 MR. SPIVA: May I approach?

4 THE COURT: Sure.

5 BY MR. SPIVA:

6 Q. Dr. Hood, on page 3 of the article, you describe your
7 methodology for conducting this survey of election officials,
8 isn't that right?

9 A. That's correct, yes.

10 Q. And you say, that our research relies on a survey of
11 election officials responsible for administering early
12 in-person voting in Georgia's 159 counties?

13 A. That's correct.

14 Q. By the way, was I right, was this the peer-reviewed
15 article or is this not?

16 A. This is peer reviewed, yes.

17 Q. Is this the only peer-reviewed early-voting article
18 you've published?

19 A. Yes. That would be correct.

20 Q. And you say, valid responses were secured from
21 administrators in 117 of Georgia's 159 counties for a
22 73.6 percent response rate; is that right?

23 A. Yes.

24 Q. Here in Ohio you got about, what, 27 declarations out of
25 88 counties?

1 A. Something like that. Don't exactly hold me to that
2 exact number but somewhere in that range.

3 Q. About 30 percent of the counties. And then you say, our
4 sample of counties responding to the survey closely mirrors the
5 characteristics of all 159 counties in the state. Did I read
6 that correctly?

7 A. Yes.

8 Q. But you didn't do that in Ohio, did you?

9 A. No. Again, this is what we discussed a few minutes ago.
10 I didn't conduct any kind of analysis of the responses.

11 Q. And then here you also have a table A and you describe
12 table A which is towards the back. But the description is on
13 page 3 here. It says, examination of table A reveals a
14 remarkable degree congruence between sample and statewide means
15 for these two groups. I think the two groups you're talking
16 about are the responding and nonresponding counties; is that
17 right?

18 A. Yes. That would be correct in that context.

19 Q. Yet you said the nonresponding counties had slightly
20 lower median household incomes and higher percentage of black
21 registrants and high school graduates. The two sets of
22 counties had equivalent number of early-voting sites and older
23 voters; is that right?

24 A. Yes.

25 Q. Would you agree with me that the contrast between the

1 methodology used in this study and the reliance on the
2 declarations that were picked by the defense counsel in this
3 case is pretty stark? Would you agree with that?

4 A. I'll say I did not, again, I did not conduct an analysis
5 as I did in, say, appendix A in this report for my report in
6 Ohio, that's true.

7 Q. I may want to talk to you more about this in a minute
8 but I think we can take this off the screen for now. Let me
9 ask you about early in-person voting sites. If a county board
10 of election determined that opening another early in person
11 voting site were in the best interests of the voters of their
12 county, they would not have the discretion to do that under
13 current Ohio law, isn't that right?

14 A. They could move their site but they could only have one
15 open at a time.

16 Q. Right. If they wanted to open a second site or maybe
17 more than a second -- more than two sites, they only have the
18 discretion to have one, correct?

19 A. That is true, yes.

20 Q. And you've opined that the prohibition of counties
21 operating additional early in-person sites is reasonable, isn't
22 that right?

23 A. I think that's fair, yes. I talk more about allocation
24 of resources, for instance, to the sites that are open.

25 Q. You've called it uniform, I think; is that right?

1 A. It's a uniform system. There's one site per county.

2 Q. If you were determining how many early in-person sites
3 to open in a state that permitted discretion, what are the
4 factors you would deem relevant?

5 A. So this is a hypothetical?

6 Q. It is.

7 A. We'd have to take into account the size of the county in
8 terms of population.

9 Q. Do you have to take into account the type of staff and
10 resources that are available. Is that a factor you take into
11 account?

12 A. Well, and what kind of -- what kind of -- if you're
13 talking about additional sites, what kind of additional
14 resources could be deployed, so yes.

15 Q. Maybe the number of -- say if it were a county that used
16 DRE machines, you'd need to know if you could get more DRE
17 machines that could be deployed to sites if it were a DRE
18 county. Is that fair?

19 A. DRE machines, optical scan readers, the amount of staff
20 that would be available or could be available. Even things
21 like ADA compliance, the parking situation. There are a lot of
22 factors. Security at the site.

23 Q. You probably have to also take into account the
24 geographic location of the population within the county if we
25 were talking about a county level of government. Is that fair?

1 A. I think it's fair that you'd need to take that into
2 account or think about that, yes.

3 Q. But the unit of government that supervises the elections
4 is not really a relevant factor in determining how many early
5 in-person sites there should be placed within a given
6 geographic area, is it?

7 A. Well, given the fact that counties are chiefly charged
8 with the actual nuts and bolts implementation of elections in
9 Ohio, I'm going to have to disagree with you on that. If I
10 understood your question correctly.

11 Q. Sure. Let me ask it this way. Isn't it arbitrary to
12 set the number of early in-person sites based on per county as
13 opposed to those other factors you were talking about?

14 A. Well, those are still factors that could be considered
15 within a county, even for a single site. On the one hand, it's
16 uniform. Some people would say maybe the system's not uniform.

17 Q. Maybe it's uniform but is it equitable?

18 A. Again, that depends on a lot of factors that we've
19 talked about today in court.

20 Q. It would be uniform to have one polling -- election-day
21 polling station per county, wouldn't it?

22 A. It's possible. Again, that would have to be a giant
23 undertaking if that were the case.

24 Q. You'd agree with me that that wouldn't be equitable even
25 though it would be uniform, correct?

1 A. I think that --

2 MR. VOIGT: Objection to the extent it calls for a
3 legal conclusion.

4 THE COURT: Overruled.

5 THE WITNESS: I think that would be -- in some size
6 counties they do use things like vote centers. It would be
7 difficult to implement something like that, say, in Ohio in
8 larger counties, especially where 70 plus percent of the
9 turnout is coming in person on election day.

10 BY MR. SPIVA:

11 Q. You don't think it would be okay to allocate one
12 representative to the legislature per county, do you, even
13 though that would be uniform?

14 A. The courts have said no to that. I know I can't draw
15 legal conclusions but the courts have said no to that.

16 Q. I've told you before, Dr. Hood, you would be a fine
17 attorney, but my question is really more factual in nature.
18 Even though it's uniform, you would agree with me that it
19 wouldn't be equitable?

20 A. I guess it depends on your point of view. Is U.S.
21 senate representation equitable? The senate's malapportioned
22 by design. In terms of other types of legislative office
23 holding levels, the courts have mandated that we have an equal
24 distribution of voters across districts, for instance.

25 Q. Let's kind of maybe turn the page a little bit here.

1 You've, I think, stated in your report that what you believe
2 the plaintiffs are asking for here would result in 700 some --
3 I think it was 784 early-voting centers all over the state of
4 Ohio. Is that accurate?

5 A. No. Okay. In fairness, I mean, if you go from a
6 uniform one early-voting center or site per county to something
7 else, that could take many different forms. That's one
8 possibility based on a county population standard. So that's a
9 possibility.

10 Q. Right. And assume for a minute that the plaintiffs are
11 just asking for discretion for the county boards of elections
12 to open additional sites if they choose. Would any of the
13 harms that you articulate in your report still arise?

14 A. Well, in that case you would have -- I don't know.
15 There may be complaints amongst counties that only have one
16 site versus counties that may have more than one site.

17 Q. You've also written about this topic in the article we
18 were just looking at, isn't that right? You've talked about
19 early-voting sites and the relationship to early-voting
20 turnout?

21 A. Yes.

22 Q. Why don't we take a look at page 1 of that article.
23 You've got it in front of you there. You see the first
24 highlighted section, Dr. Hood, says, in addition, early
25 in-person turnout was positively linked to voter convenience.

1 Did I read that correctly?

2 A. Yes.

3 Q. And that was one of the results of your -- of the survey
4 that you conducted, isn't that right?

5 A. That wasn't part of the survey part of this but that's
6 in this article. That's fair.

7 Q. That's in the abstract, isn't it?

8 A. Yes. I'm just saying that was from some different data
9 we collected.

10 Q. I see.

11 A. Not from the survey data.

12 Q. But it was one of the --

13 A. It was part of the article, yes.

14 Q. You wrote also that if election officials want to
15 promote early voting, our findings indicate they should utilize
16 a wide range of formats to familiarize their voting population
17 with this option. In addition, careful thought should also be
18 given to the number of early-voting sites, their locations, and
19 hours of operation if the goal is to get a sizable segment of
20 the electorate to vote prior to the date of the election.

21 That was also one of your findings, wasn't it?

22 A. Yes.

23 Q. You say on, I think further down on the page that
24 finally -- actually, forgive me, I think it's on a subsequent
25 page. Let me get the right page. On page 2 of the article you

1 say, finally, research on early in-person voting has focused on
2 other potential benefits such as improved accuracy in
3 tabulating votes and potential cost savings. In regard to the
4 former, a number of researchers have found that the
5 implementation of various forms of nonprecinct voting,
6 including early in-person voting, does result in increased
7 accuracy as it relates to counting votes.

8 That was also one of your findings, right?

9 A. I think right there, in fairness, we're making citations
10 to that other scholarly work that come in the parenthesis after
11 that.

12 Q. I see. But you're not adopting that as your own?

13 A. Well, we're mentioning that as one potential benefit to
14 early in-person voting as cited by these other scholars.

15 Q. Let's take a look on page 7 of your report, of your
16 article where at the top you say, our two measures of
17 polling-place convenience for early voting were also
18 significant predictors of turnout. Both the ratio of square
19 miles per voting site and the number of registrants per hour of
20 early voting were negatively related to turnout. Not
21 surprisingly, as either of those ratios increases, the
22 convenience to voters, in terms of geographic proximity and/or
23 access times, diminishes.

24 That was a finding of your report, right?

25 A. True.

1 Q. And you'd agree with me that this means that turnout for
2 early in-person voting was higher if you had more sites per
3 square mile, correct?

4 A. That was one of our findings, yes.

5 Q. Similarly, the fewer number of registrants per hour of
6 early voting, the better the turnout, correct? That was one of
7 your findings?

8 A. It was more hours per registrant if you want to flip
9 that around, yes.

10 Q. Among the controls included in this model which is
11 presented in table 2, I'm still quoting from the article,
12 median household income is significantly and positively related
13 to voting early, as is the percentage of black registrants in
14 the county. That was also one of your findings?

15 A. Yes. For that year, for that election cycle, 2008 in
16 Georgia, yes, that would be accurate.

17 Q. And you have to be cautious, though, about making
18 cross-state comparisons, correct?

19 A. I'm just pointing out that that's what these findings
20 are based on.

21 Q. Fair enough.

22 A. I'm not saying cross-state comparisons -- we can't do
23 cross-state comparisons.

24 Q. That may be useful in certain circumstances?

25 A. Yes. I think so.

1 Q. Okay. And one other thing that you found was that our
2 measure of presidential campaign advertising was also a
3 significant determinate of increased early in-person turnout at
4 the county level, correct?

5 A. True.

6 MR. SPIVA: I think we can take that article down.

7 BY MR. SPIVA:

8 Q. I want to switch to another topic, Dr. Hood. The cost
9 of voting. You're familiar with the political science
10 literature on the calculus of voting, correct?

11 A. Correct.

12 Q. And you would agree with me, wouldn't you, that
13 registration in and of itself is one of the costs of voting; is
14 that right?

15 A. That's true.

16 Q. New registrants often have poor follow-through and do
17 not show up to vote often much of the time, isn't that right?

18 A. Well, I guess it would be possible.

19 Q. Sorry. This was not a trick question. I forgot that
20 this was a quote from your article. Let me just -- can we
21 bring that back up, page 3. Seriously, I thought these were my
22 words but you say here, while new registrants often have poor
23 follow-through and do not show up to vote, the presence of the
24 charismatic Obama atop the democratic ticket prompted
25 expectations of a record turnout.

1 A. Yeah. What we're referring to in that particular year
2 in Georgia, there was a big uptick earlier in the year prior to
3 the presidential primary in registration. And sometimes you
4 might see a falloff from these new registrants, but not in this
5 particular case. I think that's what we're talking about.

6 Q. Okay. Because ordinarily when you didn't have kind of
7 the extraordinary event of the first potential black president
8 on the top of the presidential ticket you would expect new
9 registrants have poor follow-through and maybe not to show up
10 much of the time to actually vote, isn't that fair? Isn't that
11 true?

12 A. Well, I think just in all honesty here that it depends
13 on who these new registrants are. If someone makes an effort
14 to go out and register to vote, they're probably going to
15 follow through and vote. If someone sometimes registers at the
16 DMV because they can answer a couple of questions and they
17 weren't really inclined to vote before that time period, they
18 may not follow through and vote. So it sort of depends on the
19 subset of new registrants we're talking about, if you will.

20 Q. So there could be other factors at work is what you're
21 saying?

22 A. Sure. Registering and voting, or any type of political
23 participation, there's a myriad of factors involved related to
24 those things.

25 Q. You would agree with me as a general matter, though,

1 that among new registrants, they often do have poor
2 follow-through and do not show up to vote?

3 A. Again, if they're -- again, using some convenience
4 measure for registration, like I'm getting a driver's license
5 and while I'm there I answered a couple of questions and I
6 got -- I was registered to vote, that's possible. But again,
7 if there's a younger individual or first-time registrant and
8 they're making the effort to go out and register, they're
9 probably going to follow through and vote. So it depends on
10 personal motivation to some extent.

11 Q. Sure. You recognize, though, that registering does not
12 equate to voting, correct?

13 A. Certainly.

14 Q. And the political science literature recognizes that,
15 right?

16 A. They're two different activities.

17 Q. That's one of the key benefits, if you will, to same-day
18 registration that the day that the person registers, they can
19 also vote, correct?

20 A. For those people who are unregistered, yes.

21 Q. Let me just shift again a little bit. In any of your
22 reports -- strike that. Let me rephrase it.

23 In your initial report and your rebuttal report there's
24 nowhere where you examine the relative demographic makeup of
25 the voters who vote during the early in-person voting period in

1 Ohio, isn't that right?

2 A. I don't produce those estimates, no. I do pull some
3 numbers from, again, the Census Bureau's survey that we talked
4 about.

5 Q. I'm sorry. I just didn't hear what you said at first.
6 You said you didn't do --

7 A. I didn't perform any estimates on my own, no.

8 Q. You didn't do any estimates of the racial makeup, for
9 instance, of the voters who vote during the early in-person
10 voting period in Ohio?

11 A. That is correct.

12 Q. And the same is true, I take it, of golden week, which I
13 recognize was a subset of that period, that you don't provide a
14 breakdown of the demographics of the voters who voted or
15 registered during golden week, correct?

16 A. That's correct.

17 Q. In your initial report you say that few Ohioans were
18 making use of the ability to carry out same-day registration
19 during golden week. I'm quoting from page 7 if you want to
20 review it. It's mainly the word few that I wanted to ask you
21 about.

22 A. Okay.

23 Q. You also report in table 1 of your initial report on
24 page 7 that nearly 13,000 individuals either registered or
25 updated their registration and voted on the same day in 2008,

1 correct?

2 A. That's correct.

3 Q. And there were, even in the midterm 2010, 1651

4 registered and voted on the same day, correct?

5 A. That's correct.

6 Q. And over 14,000 registered and voted on the same --

7 during golden week in 2012, correct?

8 A. Correct.

9 Q. And you characterized those numbers as few, correct?

10 A. Well, again, I'm looking at it in the context of overall
11 registrations that were occurring year-to-date up until that
12 point in time. So yes, that is how I characterized it.

13 Q. So you're characterizing it relative to all the people
14 who registered throughout the year?

15 A. Throughout the calendar year, yes.

16 Q. And that doesn't count, the 14,000 and the 13,000 and
17 the 1600, that doesn't count all the thousands more who just
18 voted during golden week, correct?

19 A. Right. I don't think I give that particular breakdown
20 but the number of people who just showed up to vote and not
21 registered during golden week, yes, would exceed that number.

22 Q. You opined, I think, both on direct examination and then
23 also in your report, that golden week was costly, is that fair?

24 A. Well, I think I said that there are costs associated
25 with golden week. That's fair.

1 Q. And you mention Cuyahoga County that I guess the
2 director there said that the cost was, I think, 41 -- maybe
3 almost \$42,000 in 2012; is that correct?

4 A. Is there a particular footnote?

5 Q. I don't have the page cite. I can give you your
6 deposition if you want me to refresh your recollection but I
7 don't have the page of your initial report. I know it's in
8 there.

9 A. I know I quote some cost figure. I just don't know if I
10 can remember the exact dollar amount.

11 THE COURT: It's 41 and some change.

12 BY MR. SPIVA:

13 Q. Yes. It's 41 and some change.

14 A. Okay. There it is. Footnote 42 it looks like.

15 Q. Thank you. And you viewed that as costly; is that
16 right?

17 A. I don't know that I used the adjective costly. I very
18 much said that there's a cost associated with voting, period,
19 with the administration aspect of voting including golden week.

20 Q. Did you view it as significant?

21 A. I don't know that I made that statement. I'm just
22 pointing out there is an actual dollar amount attached to these
23 activities.

24 Q. When you were assessing the costs you didn't know how
25 big Cuyahoga County's budget was, their county board of

1 elections budget was in 2012, correct?

2 A. I don't think I looked that up, no.

3 Q. So you didn't know that it was \$16 million in 2012,
4 correct?

5 A. No. I wouldn't have known that.

6 Q. Not so significant in relationship to the entire budget,
7 fair?

8 A. Well, we could calculate the percentage of 41,000 out of
9 16 million.

10 Q. You could do that faster than me.

11 A. I've never been very good at doing math on the stand.

12 Q. We could leave that for another day. I don't want to
13 take up your time with that. But you did have a conversation,
14 though, with the director, Mr. McDonald. Did he tell you that
15 the budget was \$16 million in 2012?

16 A. No. We didn't talk about the budget. We talked about
17 e-poll books.

18 Q. I assume he didn't mention that Cuyahoga County's Board
19 of Elections had a \$2 million surplus this year?

20 A. He did not mention that to me. This was a very short
21 exchange.

22 Q. And I think this may have been implicit in something you
23 said earlier. You don't know whether his deputy director
24 opposed the elimination of golden week?

25 A. I'm unsure about that.

1 Q. And you don't know whether any of the -- any of the four
2 members of the county -- Cuyahoga County Board of Elections
3 also opposed the elimination of golden week?

4 A. I don't know who on the board opposed it or favored it.
5 That's true.

6 THE COURT: Do we have any evidence of that?

7 MR. SPIVA: We will, Your Honor. I think we have --
8 the deputy director has testified.

9 THE COURT: Right. I don't recall the county board
10 anyone.

11 MR. SPIVA: Mr. McNair is going to be testifying.

12 BY MR. SPIVA:

13 Q. You don't know Hamilton County's budget, do you?

14 A. No.

15 Q. Or if they had a surplus in 2012?

16 A. I don't know the answer to that, no.

17 Q. Let me ask you about you wrote another article with, I
18 believe it was also with Mr. Bullock, in 2009 that was done for
19 the Pew Charitable Trust; is that right?

20 A. We wrote a report. If it's what I'm thinking about.
21 I'm sure we'll see it in a minute.

22 Q. Okay. Let me verify because it's a survey of Georgia
23 voters in the 2008 general election?

24 A. That is a report that we wrote for the Pew foundation,
25 yes.

1 Q. And in that report -- let me know if you want me to put
2 it up on the screen. I want to ask you a few questions. I
3 don't know that we'll need -- if you remember what's in it.

4 A. I'll see what I can do.

5 Q. It's not a memory test so if you need it, we'll get it
6 out. It says, this examined the use of early voting in Georgia
7 during the 2008 elections, correct?

8 A. Yes.

9 Q. And at the time, the survey looked at the voting
10 practices in three counties, Clark, Lee and Forsyth?

11 A. We surveyed voters from those three counties. That's
12 fair. They all had the same type of voting practices.

13 Q. And one of the findings that you and Mr -- or
14 conclusions or findings I guess from the survey that you and
15 Mr. Bullock found was that over 80 percent of those surveyed
16 said they were very likely to vote early again; is that
17 correct?

18 A. I'd have to refresh my memory.

19 Q. Okay. Why don't we bring it up. If we could turn,
20 first show the cover and then go to page 8. Would you like a
21 hard copy, Dr. Hood?

22 A. I'll try to just follow along.

23 Q. I only have a few questions on this. Dr. Hood, on page
24 8, I believe it is, of the report, one of your findings is
25 simply stated, early voters in our sample enjoyed the process.

1 All but 2.3 percent of the early voters said they would likely
2 avail themselves of this option in the future with 82.7 percent
3 saying they were very likely to vote early again. You see
4 that?

5 A. Yes. That's an accurate reading of that sentence.

6 Q. Was that one of your findings from the survey?

7 A. Yes.

8 Q. And on page 10 you found that almost 90 percent of
9 survey respondents found that early voting was more convenient
10 than election-day voting?

11 A. I think that's probably not 90 percent of all the survey
12 respondents but 90 percent of our early-voting subset.

13 Q. I see. That was one of your findings that 90 percent of
14 your early-voting subset found that it was more convenient than
15 election-day voting?

16 A. Yes. That's fair.

17 Q. On page 14 you wrote that the large number of voters who
18 did vote early during the early-voting period may have allowed
19 precinct voting on election day to be far less congested. Was
20 that one of the things that you found?

21 A. Refreshing my memory, yes. One of the counties that we
22 looked at, Forsyth County in Georgia, the election director
23 there made a concerted effort to try to encourage voters to
24 vote early and then he specifically shifted resources prior to
25 the day of the election to precincts that had seen fewer

1 numbers of people turnout during of early voting. So they had
2 higher turnout on election day at the precinct. So that's what
3 this was referring to, from my memory.

4 Q. Is it fair to say he was trying to shift those resources
5 in order to avoid long lines?

6 A. Yes. Yes.

7 Q. And then on page 11 of this you found that avoiding long
8 wait times seemed to be more of a democratic than a republican
9 characteristic, just over 40 percent of the democrats compared
10 to 34.7 percent of the republicans reported voting early
11 primarily to avoid long waits on election day. Is that one of
12 your findings on page 1?

13 A. At least for, again, the subset of early voters, that's
14 what they told us, yes.

15 Q. But the survey, I assume, was a scientific sample that
16 you did of the counties you were studying?

17 A. Of course. Of course. But we had it segmented into the
18 three different voting types, early in-person voters,
19 absentee-by-mail voters, and precinct election-day voters. But
20 yes, it was a scientific survey. But at various points in this
21 report it may be referring to one of the subgroups specifically
22 I guess is what I'm saying.

23 Q. Fair enough. Let me know if I'm misrepresenting it in
24 any way. It's certainly unintentional.

25 Page 15, and this is my last question on this one. You

1 also found from the survey that election-day voters who
2 considered the placement of early-voting sites inconvenient
3 hints at one change that might spur increased early voting.
4 Establishment of additional early-voting locations allowing
5 early voting to occur at nongovernmental sites or making
6 existing sites more accessible might encourage more voters to
7 take advantage of this option.

8 Another one of your findings from this survey?

9 A. Yes.

10 MR. SPIVA: I think we can take that one off the
11 screen.

12 BY MR. SPIVA:

13 Q. Dr. Hood, you stated that in Ohio that the overall
14 turnout between the midterm in 2010 and 2014, the overall
15 turnout was down about 9 percent; is that right?

16 A. I believe that's right. I've got it in my report.

17 Q. I think it's at page 5 of your initial report if you
18 want to double-check?

19 A. Yeah. About 9 points approximately.

20 Q. And that was a significant fact you thought to note in
21 your report, that the turnout between those two elections was
22 down significantly?

23 A. Yes. I noted it.

24 Q. And that there were differences between those two
25 elections?

1 A. There were differences in total turnout, yes.

2 Q. And competitiveness between those two elections,
3 correct?

4 A. For some of the offices, yes.

5 Q. But the early voting turnout rate you found stayed about
6 the same. That's your figure 1 that was up earlier?

7 A. Right. Virtually unchanged.

8 Q. About 4.6 percent in 2010, 4.6 percent in 2014?

9 A. Right. 4.62 technically but, yeah.

10 Q. And I think the claim that you're making here or the
11 argument that you're making is that this means that the
12 elimination of golden week had no effect?

13 A. Well, that's part of the argument or part of what I'm
14 looking at or trying to analyze, yes. Comparing 2014 where the
15 law went into effect and changed or shortened the early-voting
16 period and eliminated SDR, comparing that back to 2014 where
17 golden week was in place and the early-voting period was
18 longer, what happened to turnout across those two elections.
19 I'm trying to draw that inference, certainly.

20 Q. And wasn't there a trend toward higher usage of early
21 voting nationally? Hasn't there been a trend toward higher
22 usage of early voting nationally obviously where early voting
23 is offered?

24 A. I would be speculating. I don't know the answer to that
25 question.

1 Q. How about in Ohio, wasn't it -- sorry. It hasn't been
2 completely eliminated. Has there been a trend towards greater
3 early-voting usage since it's been a place?

4 A. It hasn't been in place all that long. I was only
5 really able to collect detailed statistics on early in-person
6 turnout specifically for those three election cycles, '10, '12
7 and '14. I don't exactly know what was going on before that.

8 Q. How about between 2008 and 2012, was there a higher rate
9 of usage of early voting in 2012 --

10 A. Yes.

11 Q. -- than in 2008?

12 A. I don't know about 2008. I don't have the data on that.
13 The Secretary of State's Office didn't make those distinctions
14 at that point.

15 Q. I see. And lots of factors affect turnout. You would
16 agree with that, wouldn't you?

17 A. I would agree with that.

18 Q. Turnout rates differ in different states, for instance,
19 correct?

20 A. True.

21 Q. Different groups vote differently in different types of
22 elections; is that fair?

23 A. True, yes.

24 Q. And that different groups vote differently depending on
25 what state you're talking about, correct?

1 A. That's possible, too.

2 Q. So let's just take one example of one of the states.

3 You had also done a comparative study with North Carolina in
4 your report, correct?

5 A. That's correct.

6 Q. And now in North Carolina, turnout -- strike that.

7 In North Carolina, there was also significant difference
8 between the election in 2014 -- the elections in 2014 and the
9 elections in 2010, correct?

10 A. There was one specific difference I can think of, yes.
11 In addition to North Carolina changing its election law.

12 Q. They eliminated same-day registration and they shortened
13 their early-voting period?

14 A. That's correct.

15 Q. Among other changes?

16 A. Right. Right.

17 Q. And in addition, though, the 2014 race featured a very
18 competitive senate race, did it not?

19 A. That is true. U.S. senate race, yes.

20 Q. And that was the most expensive senate race in U.S.
21 history, wasn't it?

22 A. I've heard rumors to that effect.

23 Q. Over \$100 million spent on that race?

24 A. There was a lot of money. I couldn't sit here and quote
25 you the exact dollar figure.

1 Q. There was little difference in turnout rates between
2 2014 and 2010 nonetheless, correct?

3 A. Yeah. Interestingly overall, yes. Overall turnout only
4 went up less than a percentage point from what I remember
5 comparing 2014 to 2010. So it went up just slightly.

6 Q. Whereas in Ohio you had a 9 percent difference between
7 two separate elections?

8 A. That's true.

9 Q. Does that suggest there might be other factors at work
10 other than the change in the voting laws?

11 A. Well, there's always that possibility and, again, we've
12 talked about I think any social scientist would admit there are
13 many factors related to turnout. But, again, trying to do the
14 best we can to isolate the change in Ohio's election law and
15 study that, we don't get to pick the other parameters that are
16 going on around that. In other words, I can't control how
17 competitive the elections are related to when Ohio decided to
18 change its election law, for instance.

19 Q. We've talked about the factors that are particular to
20 the electoral context. Isn't it true, Dr. Hood, individual
21 characteristics can also affect the propensity of individual
22 voters to turn out in a given election?

23 A. Yes. There are individual-level factors or this is the
24 way I would describe it in class. There are individual-level
25 factors related to turnout and there are institutional factors

1 or contextual factors related to turnout.

2 Q. We talked about some of the institutional factors,
3 correct?

4 A. Sure. Early voting, for instance, is an institutional
5 factor.

6 Q. In terms of the individual factors, things like
7 socioeconomic factors have sometimes correlated with an
8 individual's propensity to turn out in a given election, right,
9 Dr. Hood?

10 A. An individual's socioeconomic status?

11 Q. Yes.

12 A. Yes. That's true.

13 Q. There's also a correlation between the education levels
14 and an individual's propensity to turn out, correct?

15 A. That's correct. In fact, that's probably the best
16 single predictor at the individual level.

17 Q. And age can be correlated with an individual's
18 propensity to turn out, correct?

19 A. That's certainly correct.

20 Q. And there's certain -- strike that.

21 There can be gender differences, too, in terms of
22 propensity to turn out, correct?

23 A. We've certainly noted those in the past, yes.

24 Q. Racial differences as well?

25 A. Yes. Although I think more recent evidence shows some

1 shifts there, in fairness.

2 Q. In your analysis of North Carolina, that opinion is
3 based entirely on an analysis of the turnout in 2014 as opposed
4 to the -- as compared to the turnout in 2010, isn't that right?

5 A. I don't really understand the question.

6 Q. That your conclusion that the elimination of SDR and the
7 shortening of the early-voting period had no effect or no
8 negative effect on turnout is based entirely on a comparison of
9 the turnout in 2010 and 2014.

10 A. Okay. I didn't hear the word comparison earlier. Yes.
11 It is based on those two comparison points.

12 Q. Your opinion about turnout in North Carolina is not
13 based on any direct assessment of burdens that voters faced in
14 2014 like time waiting in line or lost time off of work.
15 That's separate and apart from the turnout analysis you did in
16 North Carolina, isn't that right?

17 A. I think the way I would describe it is I wasn't able to
18 control for those factors.

19 Q. But those are factors that impact turnout, correct?

20 A. They can impact some people's turnout at the individual
21 level, yes.

22 Q. And your opinion as to whether African-American voters
23 in North Carolina were burdened in 2014 is similarly based
24 solely upon your analysis of turnout data, correct?

25 A. Yes. I am looking at turnout. That's the dependent

1 variable, so to speak.

2 Q. You didn't control for any of the what I think you've
3 called the institutional factors like the competitiveness of
4 the race in North Carolina in 2014?

5 A. Well, the design does control for the institutional
6 factor related to the change in the law. So certainly
7 controlling for that by making those two comparison points.

8 Q. But did you control for the competitiveness of the race
9 in 2014 as compared to the noncompetitiveness of the race in
10 2010?

11 A. Well, just given the two data points that's very hard to
12 do, statistically speaking.

13 Q. It's hard to control for that factor?

14 A. Yes. With just those two data points, yes. I do
15 describe what's going on with that.

16 Q. In fact, there was also a more competitive congressional
17 race in North Carolina in 2014 because of the retirement of Mel
18 Watt, correct?

19 A. At least the primary was, yes.

20 Q. And that increased the registration in turnout rates in
21 the African-American community in North Carolina because that
22 was one of two majority minority districts in North Carolina
23 and it was the first time -- this is too long. This question
24 is too long. Let me start again.

25 THE COURT: Aren't we dealing with Ohio?

1 MR. SPIVA: Yeah. We will. But he's got a huge
2 section, Your Honor, in his report on how North Carolina proves
3 the elimination of SDR doesn't matter.

4 BY MR. SPIVA:

5 Q. There was also a very competitive race that raised the
6 rates of registration and turnout among African-Americans in
7 Congressman Watt's former district, correct?

8 A. I can just tell you what I know from memory. There was
9 an open seat, yes. The democratic primary was very
10 competitive. The general election was less competitive. How
11 many additional black North Carolinians because of that
12 election, I don't have the answer to that.

13 Q. That wasn't something you controlled for, correct?

14 A. That's correct.

15 Q. In comparing turnout and aggregate turnout numbers from
16 2010 to 2014 in North Carolina, did you in any way attempt to
17 account for the fact that there were tens of thousands more
18 commercials aired in 2014 as compared to 2010?

19 A. Again, the design I had specifically employed it's very
20 difficult to control for those types of factors over just two
21 data points, essentially.

22 Q. Did you do anything to control for the fact that the
23 early-voting hours were the same in North Carolina in 2014 as
24 they were in 2010?

25 A. Well, the design just simply looks at turnout so it sort

1 of implicitly takes that factor into account.

2 Q. Did you take into account any additional locations that
3 were added in North Carolina in 2014 as compared to 2010?

4 A. No. I didn't look at that factor.

5 THE COURT: Does your question assume that there were
6 additional early in-person voting locations in North Carolina?

7 MR. SPIVA: Yes, Your Honor.

8 THE COURT: So there was more than one per county?

9 MR. SPIVA: I don't think they were set by county. I
10 don't actually know the formula for how they were set.

11 BY MR. SPIVA:

12 Q. While you noted the difference in the two elections,
13 2010 and 2014, in Ohio in your report, you did not do that in
14 the section on North Carolina in your report in this case,
15 correct?

16 A. I don't know. I don't guess I put that in there.

17 Q. But 2014, the 2014 elections in North Carolina were a
18 much different set of elections from the 2010 elections, would
19 you agree with me?

20 A. Well, yes and no. Again, we talked about the
21 competitive U.S. senate race. That's true. If you look at
22 overall turnout, though, it goes up less than a percentage
23 point. So in some ways, even though there's that race which is
24 much more competitive than it was in 2010, true, it didn't seem
25 to have a huge impact on overall voter turnout.

1 Q. Let me turn to a different topic which is, I think in
2 your report you discussed some possibility of fraud associated
3 with golden week. Is that fair?

4 A. I do cite some examples, yes.

5 Q. First I want to ask you, before golden week was
6 eliminated someone could go to the early-voting site, register
7 for the first time on, say, day 31 before the election day and
8 cast an absentee in-person ballot that same day, correct?

9 A. That's true, yes.

10 Q. And now that S.B. 238 has eliminated golden week,
11 someone can still go and register on day 31 before election
12 day, isn't that right?

13 A. That's true. Yes. The cutoff is 30 days out.

14 Q. And they can go and they can vote an absentee in-person
15 ballot on day 28 under current law, 28 days before the
16 election; is that right as well?

17 A. That would be correct, yes.

18 Q. So there's really no difference in terms of the time to
19 verify and validate a voter's registration prior to the time
20 that that ballot that they cast would be counted than there was
21 before golden week's elimination, true?

22 A. It hasn't changed much, no. I guess what golden week
23 changed was the ability for someone to do that in one stop, so
24 to speak. To register and vote at one time.

25 Q. But you understand that golden-week voters, when golden

1 week still existed, their ballot was not counted on the day
2 that it was cast?

3 A. Right.

4 Q. And so their ballots were treated with all -- the same
5 as all other absentee in-person ballots, correct?

6 A. That's correct.

7 Q. And likewise, now someone who goes and votes on day 28
8 before the election, their ballot, their absentee in-person
9 ballot will be treated just like a person who might have voted
10 on day 31 before golden week was eliminated, correct?

11 A. Right. I mean, that ballot's not going to be tabulated
12 until the election occurs.

13 Q. Right.

14 A. That's what we're getting at, yeah.

15 Q. There's no material difference in the possibility of
16 fraud between the current regime and the one that existed with
17 golden week, correct?

18 A. There's still a very short verification window, yes, in
19 that example. Again, I guess the only thing that I would say
20 is under golden week, again, if we think someone wanted to
21 commit voter fraud, they could do it in one fell swoop, so to
22 speak, versus having to go register and then vote. Again, if
23 they're trying to commit fraud under the current system. It
24 would take two steps instead of one is all I'm saying.

25 Q. So basically it stops the lazy fraudster, basically?

1 A. I'm just saying it's a true statement that it takes two
2 steps now.

3 Q. Somebody who wants to commit in-person voting fraud
4 would likely be committed enough to do that, isn't that right?

5 A. I guess so. I'm just saying it would require two steps
6 versus one.

7 Q. You don't know of any prosecutions for voter fraud
8 related to golden week, isn't that right?

9 A. All I know about are the examples I put in my report.
10 Those are the examples that I'm aware of where questionable
11 votes were brought up during golden week.

12 Q. And those are examples that come straight out of the
13 declaration or two of some county officials who said that there
14 was an instance of fraud?

15 A. That would be accurate, yes.

16 Q. But you haven't done anything to verify whether any of
17 those, first of all, resulted in any kind of a prosecution for
18 actual fraud, correct?

19 A. I'm not aware that they did, no.

20 Q. And you haven't really done any verification to
21 determine whether those instances were, in fact, real instances
22 of fraud or something else?

23 A. I didn't investigate beyond the declarations, no.

24 Q. And do you recall sitting here today any of those
25 specific instances of fraud that were suggested in the

1 declarations?

2 A. Well, yes. It's hard to recall all the details but I do
3 give some examples in my report. On page 15, the second full
4 paragraph I give some examples.

5 THE COURT: The initial report, right?

6 THE WITNESS: Yes, Your Honor. Yes, Your Honor.

7 BY MR. SPIVA:

8 Q. You haven't done anything to verify those instances?

9 A. No. No. As I said, I didn't do anything additional.

10 Q. And you haven't read the depositions of the people who
11 made these claims of potential fraud, have you?

12 A. The depositions of these election officials?

13 Q. Correct.

14 A. No.

15 Q. Dr. Hood, you have also studied the issue of voter
16 fraud; is that correct?

17 A. That's correct.

18 Q. And you've published a peer-reviewed academic journal on
19 voter fraud?

20 A. That's correct, yes.

21 Q. Is the article called They Just Do Not Vote Like They
22 Used To, A Methodology to Empirically Assess Election Fraud?

23 A. That's correct.

24 Q. I apologize to everyone. For some reason we didn't get
25 a staple in this one.

1 Dr. Hood, this is your article about fraud, election
2 fraud or assessing election fraud?

3 A. Right. How to study election fraud. That's correct.

4 Q. Did you write the objectives section that's up on the
5 first page of the article?

6 A. We wrote the abstract if that's what you're asking, yes.

7 Q. Is that the same as objectives?

8 A. This particular journal has a particular form for their
9 abstract so that's why it says that.

10 Q. And your co-author is William Gillespie?

11 A. That's correct.

12 Q. And what I have highlighted here is it says results.
13 After examining approximately 2.1 million votes cast during the
14 2006 general election in Georgia, we find no evidence that
15 election fraud was committed under the auspices of deceased
16 registrants. Was that the conclusion that you reached?

17 A. Right. So the first part of the article lays out a
18 methodology for trying to study voter fraud and then we apply
19 that methodology to a particular case. And that is looking for
20 deceased voters in Georgia in the 2006 election. So that's
21 true.

22 Q. And in your other academic research, this article
23 contains a literature review of the existing scholarship on the
24 topic that you are addressing here, isn't that correct?

25 A. Right that's pretty standard, yes.

1 Q. And does that start on page 77 of this article? I
2 assume this is a consecutively paginated journal because 77 is
3 just the second page of the article. Is this the literature
4 review --

5 A. Right. It's not exactly labeled that but that's about
6 where the literature review starts, yes.

7 Q. Dr. Hood, in this paragraph you cite to the findings of
8 Dr. Lorraine Minnite; is that correct, she's one of the people
9 you cite?

10 A. I know we cite her. You're on page 77. There we are.

11 Q. You can also see it on the screen.

12 A. Okay.

13 Q. I think you're reporting on her findings that the author
14 concludes from this evidence that criminal voter fraud is
15 episodic and rare relative to the total number of votes cast in
16 a given year or election cycle; is that correct?

17 A. That's referring to her work, yes.

18 Q. Referring to Dr. Minnite?

19 A. Dr. Minnite, yes.

20 Q. And then you also talk about other scholars that have
21 charted a similar path and you say at the conclusion of this
22 paragraph, the bulk of findings from these studies mirror
23 Minnite's conclusion that evidence of voter fraud is an
24 extremely atypical phenomenon. Is that what you concluded from
25 your review of the existing literature?

1 A. Right. As it stood at that time, and those are the
2 articles that we cited up above there.

3 THE COURT: Mr. Spiva, why don't we take a break, come
4 back, we'll finish your cross, redirect and then we'll be done
5 for the week.

6 MR. SPIVA: Okay. Thank you, Your Honor. Actually
7 could we start Dr. Minnite today? She's here from out of town.
8 I shouldn't be much longer.

9 THE COURT: Press on.

10 MR. SPIVA: Sorry.

11 BY MR. SPIVA:

12 Q. You applied a different methodology which I think you've
13 just described. But in the end you basically came to the same
14 conclusion and that, I think, appears on pages 89 and 90 of the
15 article. I think after applying your methodology you came to a
16 subset of four potential cases of in-person voter fraud; is
17 that correct?

18 A. No. Not exactly. So our work uncovered 66 what we call
19 questionable votes where it looked like some kind of anomaly
20 was going on. And again, we're just looking for deceased
21 voters in 2006 general election in Georgia. Sixty-two of these
22 votes were absentee-by-mail votes and four were in-person
23 votes. So that's in table 2.

24 As I said before, though, you can't just write an
25 algorithm, mine data from a database and leave it at that. So

1 we had to investigate these 66 cases further. The results of
2 that investigation then are in table 3.

3 We were able to find a reason for these anomalies that
4 made sense. In other words, they didn't look questionable
5 anymore. In most of these cases we're left with five votes
6 that were really indeterminate because we never received any
7 additional information we requested from the counties.

8 Q. Those five votes were with absentee write-in ballots,
9 correct?

10 A. Right. We cleared, eventually, the four in-person
11 votes.

12 Q. So you found zero cases of in-person fraud?

13 A. Well, in this instance, yes. Based on someone
14 committing in-person voter fraud on behalf of the deceased,
15 yes. They were all -- all those cases were due to mistakes,
16 basically, mistakes in the database.

17 Q. So just to be clear, that means that you found zero
18 instances of in-person voter fraud in this study?

19 A. Well, in this particular type of voter fraud, yes.
20 Again, this is specific case we're looking at here. Voting on
21 behalf of the deceased.

22 Q. And you'd agree with me, though, that, as you reviewed
23 upfront, that the bulk of the literature on this issue of voter
24 fraud is an agreement that it's rare and episodic, in-person
25 voting fraud?

1 A. True. But that time that was our consensus on our
2 evaluation of the existing literature. But let me also say
3 that those studies that we had cited that did come to that
4 conclusion were based on, again, reports of fraud. Again, our
5 methodology differed because we were able to actively search
6 for cases of voter fraud.

7 Q. Are you aware of any peer-reviewed -- any other
8 peer-reviewed literature that has actually found any instances
9 of actual voter fraud, in-person voter fraud?

10 A. I mean, I think -- I'd have to look at her book again
11 but I think even Professor Minnite has some reported cases of
12 that. There's not a lot written academically on this
13 particular subject. And I may have missed something more
14 recently. I'm not saying that there hasn't been something
15 that's come out.

16 Q. Let me turn -- we can take this article down and let me
17 turn to the issue of the DRE machines.

18 A. Okay.

19 Q. You discussed this, I think, on direct that under the
20 new S.B. 200 and directive 2014-26, the combination of those
21 two that the counties can subtract the number of absentee
22 voters from the last presidential election from their required
23 count of DRE machines; is that correct?

24 A. Right. They can reduce the ratio by that number, yes.

25 Q. And I believe the directive says that if they don't

1 respond to a confirmation notice or request an absentee ballot
2 that the county that uses DRE machines can similarly subtract
3 that number of individuals from the count towards their
4 required ratio of 1 to 175 DRE machines; is that correct?

5 A. Well, I've got that noted in footnote 81. So, yes,
6 it's -- from my knowledge it's correct.

7 Q. And let me ask you, the formula hasn't changed, right,
8 the 1 to 175 ratio, correct?

9 A. That's true. That hasn't changed.

10 Q. And you don't know how the 1 to 175 formula was
11 determined, do you?

12 A. I don't have information on how it was originally
13 determined, no.

14 Q. You know there were extremely long lines in Ohio in the
15 2004 presidential election, correct?

16 A. At least in some urban areas I can remember. If you're
17 just asking me if I can remember that, yes. I can remember
18 news reports of that.

19 Q. But that's the extent of your knowledge of that is what
20 you read in the newspaper?

21 A. Right.

22 Q. And you don't know, I take it, whether the 1 to 175
23 ratio was in place in 2004, do you?

24 A. I don't know. That's certainly an academic question.
25 We can figure that out, I guess is what I'm saying.

1 Q. You don't though whether there have been long lines in
2 urban counties since 2004 in Ohio, do you?

3 A. Again, not to the extent that occurred in 2004 from,
4 again, just from my memory and reading journalistic reports of
5 what's going on.

6 Q. And would you consider it important information
7 whether -- in evaluating the new rules in terms of how the
8 ratio was calculated whether there were long lines even before
9 those rules went into place?

10 A. Well, I'm assuming that the ratio had worked for the
11 last several election cycles.

12 Q. What's that assumption based on?

13 A. Again, just from my memory and the fact that I don't
14 remember reading the same accounts in, say, '08 and '12, that I
15 did in '04.

16 Q. So this is from newspaper accounts?

17 A. Yeah. Just my memory of journalistic reporting on this.

18 Q. In your direct testimony you said that weekend early
19 voting, particularly I think that last weekend of early voting,
20 makes voting more convenient. Am I remembering the testimony
21 correctly?

22 A. I think I said it could for some. Again, early voting
23 may or may not be more convenient than voting at the precinct
24 for people. It's very specific for the person.

25 Q. Doesn't same-day registration also make voting more

1 convenient?

2 A. It could for someone who may not be registered prior to
3 that.

4 Q. Let me ask you about provisional and absentee ballots.
5 You have done no analysis of the impact the new informational
6 requirements for provisional ballots will have on -- on people
7 who have lower literacy rates, have you?

8 A. I know no way to hone in on that particular subset of
9 people. I did look at provisional ballot rejection rates based
10 on voter errors but that's as far as I could take it.

11 Q. I understand that. My question is a little different
12 which is you didn't do any kind of an analysis of the impact of
13 the new informational requirements for provisional ballots on
14 people who had lower literacy rates?

15 A. That's fair, yes.

16 Q. And I assume the same is true for absentee ballots?

17 A. Related to people with low literacy rates?

18 Q. Yes.

19 A. No. I didn't conduct that analysis.

20 Q. And you haven't done an analysis to know to what extent,
21 if at all, it was a problem prior to the new informational
22 requirements being adopted not to have -- not to require an
23 address and date of birth on either provisional ballots or
24 absentee envelopes?

25 A. I guess I can't render an opinion on that.

1 Q. Let me ask you about the so-called right church, wrong
2 pew. I think you had testified earlier that you are familiar
3 with that concept?

4 A. Right.

5 Q. And you say that if a person went to the wrong precinct
6 they'd be told to go to the right precinct by a poll worker; is
7 that right?

8 A. Right. If you're in a multiprecinct location. So
9 you're essentially in one physical location and there may be
10 multiple tables that represent different precinct within that
11 location, the poll worker should tell the person they're in the
12 wrong line and they need to go to this other precinct line.

13 Q. Did you make any inquiry into the extent of poll-worker
14 error in terms of telling people to go to the wrong precinct?

15 A. I can't offer an opinion on that, no.

16 Q. In your rebuttal report you show the numbers of state
17 senators and state house members who are African-American. I
18 think it's on page 7 of your rebuttal report.

19 A. Yes.

20 Q. Do you know if any of them voted for any of the
21 challenged -- the bills being challenged in this lawsuit?

22 A. I don't know the answer to that, no.

23 Q. In your rebuttal report you criticize Dr. Timberlake for
24 using county-wide data, correct?

25 A. No. Not particularly for using county-wide data but for

1 trying to make inferences about race from county-level data.

2 Q. You'd agree though that you could make inferences doing
3 analysis looking at census blocks, wouldn't you?

4 A. I talked about that earlier. I didn't quite go into
5 that level of detail but, yes, there are methods that have long
6 been in use, social sciences where you could use
7 aggregate-level data to make individual-level inferences.

8 Usually the geographic units are much, much smaller than
9 counties, like a census block, a voting precinct for instance.

10 Q. But using a census block would be a valid way of using,
11 say, homogeneous census blocks or near homogeneous census
12 blocks, that would be a valid way to make such inferences,
13 correct?

14 A. Yes. I don't disagree with that.

15 MR. SPIVA: Just give me one second.

16 BY MR. SPIVA:

17 Q. To do that type of analysis do you see any benefits to
18 using blocks as opposed to census tracts?

19 A. Well, you're only going to have a certain level of
20 information at the block level, age and race and ethnicity.
21 There will be more -- again, it depends on what you're trying
22 to estimate. There will be more data available at the block
23 versus tract level.

24 Q. Will you get more what you call aggregation bias at the
25 tract level?

1 A. It's possible but those kinds of things can be tested
2 for. It just depends.

3 Q. If you were analyzing an issue involving race, which
4 would be better, blocks or tracts?

5 A. Again, it's specific. Again, the answer may vary. For
6 instance, we have full block data with decennial census. So
7 every ten years. If you're using something like the American
8 Community Survey from the Census then you can only go down to
9 the block group level. So, again, there are pluses and
10 minuses, advantages and disadvantages, and it depends on what
11 you're trying to estimate.

12 Q. And I just have one final set of questions and I'll be
13 done. Dr. Hood, you have -- I think at the beginning you said
14 you had testified or been consulted in 10 or 15 cases
15 previously?

16 A. Yes.

17 Q. And all of those have been on behalf of Defendants?

18 A. No.

19 Q. All but the Common Cause/Georgia case?

20 A. There was another case in Maryland where I didn't
21 testify but I issued an expert report and it was on behalf of
22 Plaintiffs. It was a redistricting case.

23 Q. Was this the republican challenge to the redistricting
24 in Maryland?

25 A. Yes. And there's also a Section 2 vote that was

1 challenged.

2 Q. And you do not list a *Common Cause/Georgia v. Billups*
3 decision in your resumé. You were an expert in that case as
4 well, right?

5 A. That's true, yes. It's my understanding that I'm
6 supposed to list cases I participated in back four years. So
7 that's --

8 Q. That was earlier than four years?

9 A. Yes. That's true.

10 Q. And in that case the Court did not accept your analysis
11 or report on Daubert grounds because it considered it not
12 reliable, isn't that right?

13 A. That's true.

14 Q. And in *Veasey v. Perry* which you do have listed on your
15 resumé, the District Court in that case give your opinion,
16 quote, little weight; is that correct?

17 A. I think that's true, yes.

18 Q. And in *Florida v. United States* you opined that a
19 reduction in the number of early-voting days would not have a
20 disproportionate affect on African-Americans; is that correct?

21 A. Yes.

22 Q. And a court in that case rejected your opinion on that;
23 is that correct?

24 A. I was allowed to testify. I guess you could say they
25 didn't accept my point of view in the case.

1 Q. And wasn't the reason the Court rejected your opinion in
2 that case is that it criticized you for using absolute
3 early-voting numbers to assess impact rather than a breakdown
4 of demographics that would assess the impact of different -- on
5 different groups?

6 MR. VOIGT: Objection, Your Honor. This is getting
7 into an opinion that's not here before --

8 THE COURT: Let's focus on this. I get the point.

9 MR. SPIVA: All right. Thank you very much, Dr. Hood.

10 THE WITNESS: Thank you.

11 THE COURT: Ten minutes, then we'll redirect. I'd
12 like to see counsel back here for a minute.

13 (A recess was taken at 3:50 p.m. until 4:20 p.m.)

14 THE COURT: I'd like to know what he's considered with
15 respect to in the course of doing his work in this case.

16 MR. VOIGT: Yes, Your Honor.

17 - - -

18 REDIRECT EXAMINATION

19 BY MR. VOIGT:

20 Q. A few brief redirect questions. In every study that you
21 have conducted are the qualitative and quantitative
22 methodologies identical?

23 A. No.

24 Q. Can studies be valid even if they use different
25 qualitative and quantitative methodologies?

1 A. Yes.

2 Q. Recall that Mr. Spiva asked you a couple questions about
3 Cuyahoga's budget. Would it be fair to say that a smaller
4 county would likely have a much smaller budget than Cuyahoga
5 County?

6 A. Most likely, yes.

7 Q. Recall Mr. Spiva mentioned costs related to golden week.
8 In addition to other state justifications, could improving
9 voter confidence be a legitimate interest supporting the
10 elimination of golden week?

11 A. Yes.

12 Q. Is the use of sworn declarations in a study sound
13 methodology?

14 MR. SPIVA: Objection. Leading, Your Honor. I've
15 been trying to ignore it.

16 THE COURT: Restate.

17 BY MR. VOIGT:

18 Q. Do you consider the way that you conducted your reports
19 in this case, which included the use of sworn declarations, to
20 be sound methodology?

21 A. Yes. I would consider using things like sworn
22 declarations to be similar to interviewing someone, say, that
23 was a former office holder.

24 Q. And did you have any concerns about relying upon the
25 declarations?

1 A. I found them very useful. I didn't have any overt
2 concerns about them.

3 Q. Do you recall Mr. Spiva showed you an *Election Law*
4 *Journal* article. You still have that in front of you?

5 A. Yes.

6 Q. It's 10 *Election Law Journal* 103, 2011 journal?

7 A. Right.

8 Q. You are one of the authors?

9 A. That's correct.

10 Q. Does your study focus on early voting from the vantage
11 of election administration, not voters?

12 A. This particular article does focus on early voting from
13 the standpoint of election administration, yes. I think that's
14 fair.

15 Q. So does this study analyze ways a county administrator
16 could encourage early in-person turnout if the county
17 administrator wanted to do so?

18 A. Yes. That was one of the things we were analyzing in
19 this article.

20 Q. Are you advocating in this article that a county
21 administrator should encourage early in-person turnout?

22 A. I don't -- I hope we weren't advocating anything. This
23 was a scientific article. What we did show is that the more
24 advertising a county-level administrator did in terms of trying
25 to induce early in-person turnout, the higher early in-person

1 turnout was in that county.

2 Q. In this article you do not opine that early in-person
3 voting increases overall turnout -- let me rephrase that.
4 That's leading, I guess.

5 Do you, in this article, opine that early -- do you in
6 this article opine that early in-person voting increases
7 overall turnout?

8 A. No. And the bulk in the academic literature doesn't
9 point in that direction either.

10 Q. And in fact, on the second page, if I could direct your
11 attention to the second page of the report, if you could read
12 the sentence in the first paragraph beginning subsequent
13 research, however.

14 A. Subsequent research, however, has discounted the
15 positive relationship between early in-person voting and
16 turnout.

17 Q. Let's talk about the survey of Georgia voters in the
18 2008 general election that Mr. Spiva showed you.

19 A. Okay.

20 Q. And, again, you were one of the authors of this?

21 A. Yes.

22 Q. And this is dated December 2009.

23 A. Right.

24 Q. Did this study discuss early voting in Georgia?

25 A. Well, this was a survey we did of voters in three

1 Georgia counties and we did survey early voters in Georgia,
2 yes.

3 Q. In 2011 after this survey was published did the United
4 States Department of Justice approve Georgia's elimination of
5 24 days of early in-person voting and same-day registration?

6 A. Yes. The early in-person voting period was reduced from
7 45 to 21 days, yes.

8 Q. And did the U.S. Department of Justice interpose an
9 objection to that reduction?

10 A. No.

11 Q. Did you discuss the impact of the demographic -- the
12 demographic implications of the reductions in your first
13 report?

14 A. Could you be a little more specific?

15 Q. I guess your first report included a Georgia case study
16 that discussed the reductions.

17 A. Okay. Now we're on the expert report.

18 Q. Strike the question. Strike the question.

19 Mr. Spiva asked you numerous questions about factors
20 that he said might affect turnout. Do any of those factors
21 cause you to question any of the methodology in your report?

22 A. No.

23 Q. Did any of Mr. Spiva's questions cause you to change
24 your opinion about the reliability of both of your reports?

25 A. No. I think it's a fairly straightforward way to try to

1 get at the potential effect or what the potential effect was of
2 the change to Ohio's early in-person voting law.

3 Q. And lastly, Mr. Spiva asked you whether any declarations
4 were from declarations and rather than --

5 MR. VOIGT: Your Honor, rather than ask the witness,
6 just to save time, I'd just like to point out the declarations
7 that were made from -- that came from democrats if that would
8 be fine.

9 THE COURT: Yes.

10 MR. VOIGT: But Defendants' Exhibit 14Q is from Daniel
11 Troy.

12 MR. SPIVA: Your Honor, objection. Are we just --
13 they haven't been admitted yet, Your Honor. I don't know what
14 the basis of this would be.

15 MR. VOIGT: The basis is that you asked him whether he
16 relied upon declarations that were -- whether he knew whether
17 there were democrats that had signed the declarations and I'm
18 simply pointing out --

19 MR. SPIVA: The question was much more precise than
20 that. It was from the five largest counties in Ohio. I knew
21 there were democrats had signed the declarations.

22 THE COURT: Daniel Troy was one of them, was he not?

23 MR. VOIGT: He is, Your Honor.

24 THE COURT: He was identified in that testimony, I
25 believe in your questioning, Mr. Spiva.

1 MR. SPIVA: It sounds like he's going into the
2 substance of the declarations and they haven't been admitted.
3 Maybe this falls under my continuing objection. I had objected
4 earlier to any of the declarations and the substance of the
5 declarations coming in. Just hearsay. I think I have a
6 standing objection to that.

7 MR. VOIGT: I can do this much easier.

8 THE COURT: Okay. Let's do it easier.

9 BY MR. VOIGT:

10 Q. Could you please turn to Defendants' Exhibit 14Q?

11 A. 14.

12 Q. 14Q. Is that a declaration from Daniel Troy?

13 A. Yes.

14 Q. Do you see does he identify himself in his declaration
15 as a democrat?

16 A. Yes.

17 Q. Could you please turn to Defendants' Exhibit 14U.

18 A. Okay.

19 Q. Is that a declaration from Barbara Tuckerman?

20 A. Yes.

21 Q. Does she identify herself as a democrat?

22 A. Yes.

23 Q. Please turn to Defendants' Exhibit 18A.

24 A. Okay.

25 Q. Is that a declaration from Shane Breckel?

1 A. Yes.

2 Q. In that declaration does Shane Breckel identify himself
3 as a democrat? It may be in the last paragraph.

4 A. Okay. Doesn't seem to be in the first. Yes, he is a
5 democrat.

6 Q. And lastly, could you please turn to Defendants'
7 Exhibit 18D.

8 A. Okay.

9 Q. Is that a declaration from Ken Terry?

10 A. Yes.

11 Q. In that declaration does Ken Terry identify himself as a
12 democrat?

13 A. Yes.

14 Q. Were those four declarations that we just looked at
15 declarations that you used when you considered and prepared
16 your reports?

17 A. Yes.

18 MR. VOIGT: Your Honor, just one moment, please.

19 BY MR. VOIGT:

20 Q. Dr. Hood, based on your experience, what state interests
21 impact voting laws?

22 A. Again, states are charged with ensuring that elections
23 are fair and free from fraud, for one. And that elections at
24 another level get held, period. Again, this is a complicated
25 undertaking. I don't think a lot of times a lot of people

1 really know what goes on underneath the surface in terms of all
2 the steps required to actually conduct an election. So
3 literally the state's charged and may use counties to implement
4 it but the state's charged with carrying out, having elections,
5 period, successfully.

6 Q. And I don't need you to provide an exhaustive list but
7 how did the challenged laws relate to those interests?

8 A. Well, again, I guess we could group them into various
9 things. Some of them are related, simply, to issues I would
10 call, again, election administration. Again, there's a
11 balancing act, there always is, between the literal cost of
12 elections and administering elections and allowing for voter
13 convenience. In Ohio, again, like in any other state to try to
14 keep that in balance.

15 So, for instance, a state interest related to that topic
16 we were just talking about, eliminating golden week or cutting
17 off the initial week of the early voting -- early in-person
18 voting period at a time when turnout's not very high. So, for
19 instance, resources can be saved during that time period.

20 Some of the other things, again, literally just get to
21 administering elections. For instance, asking a voter to put
22 their address and date of birth on a provisional ballot or an
23 absentee ballot. Again, those are just part of the nuts and
24 bolts of running an election. Apparently from what I've been
25 able to ascertain, for instance, that helps election

1 administrators identify voters in some cases. So that's my
2 understanding that, for instance, those particular pieces of
3 information were asked for or added to the absentee ballot and
4 the provisional ballot.

5 We can see in other cases, for instance, the
6 multiprecinct voting locations that the state has moved, the
7 Secretary of State specifically has moved to try to solve any
8 issues with someone showing up at the wrong precinct and
9 accidentally or not voting at the wrong precinct in a
10 multiprecinct location. Again, the Secretary of State's
11 mandating that multiprecinct locations have consolidated poll
12 books. That alone with e-poll books and other measures should
13 deal with that problem.

14 So a lot of these changes that we've been talking about
15 all day long, again, really go back to simply administering
16 elections and trying to maintain some balance between voter
17 access and convenience versus the cost administrative and
18 actual of holding an election.

19 MR. VOIGT: Thank you very much. No further
20 questions.

21 THE COURT: Any follow-up, Mr. Spiva?

22 MR. SPIVA: No, Your Honor. Thank you.

23 THE COURT: Thank you, Dr. Hood. You may step down.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Monday at 9:00. Have a good weekend.

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(The proceedings were adjourned at 4:40 p.m.)

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WITNESSES

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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