

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 VI
BEFORE THE HONORABLE MICHAEL H. WATSON
TUESDAY, NOVEMBER 24, 2015; 9:00 A.M.
COLUMBUS, OHIO

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Tuesday Morning Session

November 24, 2015

- - -

1 THE COURT: Ms. Richardson, I owe you an apology. You
2 were doing a very nice job yesterday. I'd just heard enough at
3 that point.

4 MS. RICHARDSON: No. Thank you, Your Honor. I
5 appreciate the feedback.

6 THE COURT: Mr. Spiva, who is next?

7 MR. SPIVA: Your Honor, Dr. David Canon. Mr. Kaul is
8 going to examine.

9 THE COURT: He'll do it?

10 MR. SPIVA: Yeah.

11 THE COURT: Okay. Very good.

12 You've all met Denise? Very good.

13 Doctor, if you would approach the witness stand there,
14 raise your right hand -- your other right --

15 THE WITNESS: Sorry.

16 THE COURT: -- and be sworn. Thank you.

17 Make yourself comfortable there, if you would.

18 And, Mr. Kaul, may proceed.
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DAVID CANON, Ph.D.

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

DIRECT EXAMINATION

BY MR. KAUL:

Q. Good morning, Dr. Canon.

A. Good morning.

Q. Would you please state your name and spell your last name for the record?

A. David Canon, C-a-n-o-n.

Q. And where are you currently employed?

A. I'm at the University of Wisconsin in Madison.

Q. And what's your current position there?

A. I'm a professor and chair of the department.

Q. Chair of the department?

A. Yes.

Q. And what department is that?

A. The department of political science.

Q. And where did you do your graduate school work?

A. I got my Ph.D. at the University of Minnesota.

Q. And, after obtaining your Ph.D., did you take a position somewhere?

A. I did. I taught at Duke University for five years before I went to Wisconsin.

1 Q. And when did you go to Madison?

2 A. The fall of '91 was my first semester there.

3 Q. Okay. And have you been there since?

4 A. I have.

5 Q. So that's 24 years?

6 A. That's right.

7 Q. And what subjects have you taught while you've been at
8 the University of Wisconsin?

9 A. So all in the area of American politics, from the big
10 introductory American Politics class, American Political
11 Institutions, Race and Politics. I used to teach a class on
12 electoral politics, presidency, Congress. Those are the main
13 areas of my teaching.

14 Q. And have you done any scholarly writing during your
15 career?

16 A. Yes, I have.

17 Q. Can you just sort of generally summarize what that's
18 involved?

19 A. Sure. So I have published three different scholarly
20 books. I have a major introductory textbook, 16 edited books,
21 about three dozen peer-reviewed journal articles and chapters,
22 all in the area of, again, the American institutions, electoral
23 politics, race in politics.

24 Q. And does your expert report in this case describe with
25 some specific detail those details?

1 A. It does. It has -- in that introductory section, it
2 describes all of the sort of basic areas of my publications.

3 Q. And what are the focuses of your research?

4 A. So the main topics that I have been looking at lately in
5 my research have to do with election administration and
6 election laws, racial representation, impact of racial
7 redistricting on racial representation, and then a range of
8 topics having to do with the U.S. Congress as well.

9 Q. And have you won awards for your work?

10 A. Yes. I've won a couple of different awards. One is the
11 Fenno Prize for the best book published in the United States on
12 the topic of the United States Congress. And that would have
13 been from my book on race, redistricting and representation.
14 And then, also, the more recent award for the AJPS article, the
15 American Journal of Political Science, the AJPS article that
16 won an award from the State Politics and Policy Section of the
17 American Political Science Association for the best journal
18 article published in the United States last year.

19 Q. And, Dr. Canon, that reminds me, just for the court
20 reporter's sake, I'll do my best to go slowly, which I'll get
21 in trouble.

22 A. I'll try to. I know -- my students always tell me I
23 talk too fast. I'll try to slow things down as well. Thanks.

24 Q. Have you previously testified as an expert witness or
25 worked as an expert consultant?

1 A. I have.

2 Q. And can you sort of provide an overview of the cases in
3 which you've done that work?

4 A. Sure. So I believe the first case I testified in was in
5 1996, a racial redistricting case in Virginia, Moon vs.
6 Meadows, in U.S. District Court. And I testified on behalf of
7 the state in that case. And then the other sort of major case
8 I was involved in was the 2002 redistricting in the State of
9 Wisconsin for the state legislative redistricting in that case.
10 In both of these cases, I was asked to address the question of
11 racial polarization and racial representation, you know, in
12 those districts.

13 I've also been involved in several other voting-rights
14 cases. I was an expert hired by the Bush Administration in
15 Georgia vs. Ashcroft, the remand in that case where the State
16 of Georgia was defending its state legislative districts. And
17 I wrote an expert report in that case. Now, that case was
18 ruled moot by a parallel one-person/one-vote case that made,
19 literally -- like right the day my report was due, that one
20 ended up not going to trial. So I didn't testify in that case.

21 Should I go ahead and mention the other ones as well, or
22 --

23 THE COURT: Is there a stipulation?

24 MS. RICHARDSON: Yes, Your Honor.

25 BY MR. KAUL:

1 Q. I'll just ask you, during your time as an expert, have
2 you worked on behalf of both Republicans and Democrats?

3 A. I have. So that Georgia vs. Ashcroft case, again, was
4 working for the Bush Administration.

5 There was another case in the State of Wisconsin where I
6 worked on behalf of some Republican state legislators, the Zien
7 case, having to do with an open-records case in the state
8 legislature.

9 COURT REPORTER: May I get the spelling, please?

10 THE WITNESS: Z-i-e-n.

11 THE COURT: This is the most important person in the
12 courtroom, right here. If she doesn't understand what you're
13 saying, we won't have a good record. So maybe if you could
14 address her more than Mr. Kaul. Okay?

15 THE WITNESS: Okay.

16 BY MR. KAUL:

17 Q. That certainly is a good direction.

18 A. So I should be pointing this way. All right.

19 Q. And, in the cases in which you testified, were you
20 qualified as an expert?

21 A. Yes, I was.

22 Q. All right.

23 MR. KAUL: And, Your Honor, I would move that Dr.
24 Canon be admitted as an expert in political science and, in
25 particular, the impact of election laws on turnout.

1 THE COURT: No objection?

2 MS. RICHARDSON: No objection, Your Honor.

3 THE COURT: Yes. The Court will recognize him as an
4 expert in those areas.

5 BY MR. KAUL:

6 Q. All right. And, Dr. Canon, just following up on that,
7 have you done work specifically on the impact of election laws
8 on turnout?

9 A. Yes, I have.

10 Q. And were you the coauthor of an article that addressed
11 the impacts of early voting, same-day registration, and
12 election-day registration on turnout?

13 A. Yes, I was.

14 Q. And you mentioned an award that you had recently won.
15 Was that in connection with that article?

16 A. That was for that AJPS article I referred to, yes.

17 Q. All right. And did you look at that article in
18 connection with your work on this case?

19 A. Yes, I did review that article.

20 Q. Did you notice anything, in reviewing that article, that
21 you would have phrased differently if you'd had more time?

22 A. Yes. There was one unfortunate word in the conclusion
23 where I was talking about the impact of early voting on
24 turnout. And, in that concluding sentence, I mentioned that in
25 some cases the election-day registration and same-day

1 registration could partially offset the impact of the decrease
2 in early voting. That word "partially" was definitely
3 misleading because in some cases it does, in fact, entirely
4 offset. And if you have election-day registration and same-day
5 registration, you actually can have a positive effect of those
6 laws on turnout.

7 And so that one word I definitely would have changed to
8 be, you know, "fully offset," rather than "partially offset."

9 Q. As an expert in political science, do you believe that
10 your meaning was clear within the entire context of the
11 article?

12 A. Yes. If you look back in the article itself, there are
13 at least three or four different places where, when you're
14 looking at the tables, you know, any expert in the area could
15 see that, yeah, there is a positive coefficient here. Clearly
16 that indicates that there is a positive relationship. So it
17 was just a case of sloppy editing where, you know, we were
18 getting a little sort of over -- overclaiming in the
19 conclusion. But if you look at the whole body of the article,
20 it's pretty clear that that was a poorly chosen word.

21 Q. Now, in your article, did you look at data in a variety
22 of ways?

23 A. Yes, we did. I think that's one of the real strengths
24 of this article, is that we came at it from a variety of
25 perspectives both in terms of the data we used and the methods

1 we used. And so, you know, one thing in doing research like
2 this is you want to try to make the strongest possible causal
3 claims you can so it's not just, you know, a correlation that
4 you're establishing, not just describing events, but actually
5 trying to explain causation.

6 So we looked at both individual-level data and
7 county-level data using a variety of methods from having sort
8 of matching approach to using logit ordinary least squares --

9 COURT REPORTER: Excuse me. Logit?

10 THE WITNESS: Yeah, l-o-g-i-t, logit.

11 -- and ordinary least squares and matching and
12 difference in difference. So four different approaches we used
13 to look at the same question.

14 And so, when you have both a variety of data you're
15 using and a variety of methods you're using, I think you have
16 much stronger faith in the conclusions.

17 BY MR. KAUL:

18 Q. And, in your article, what types of elections did you
19 look at?

20 A. So I looked at presidential elections in 2004 and 2008
21 in all 50 states.

22 Q. And why did you look at presidential elections?

23 A. The presidential elections, we believe, are the best
24 reflection of the American electorate because it's -- you know,
25 turnout is much higher in presidential elections than midterm

1 elections, typically about 20 points higher, kind of about
2 average. And so it's a fuller representation of the overall
3 electorate than midterm elections or even, say, spring or local
4 elections.

5 Q. And why did you look at all 50 states rather than, say,
6 comparing a single state from year to year?

7 A. So, again, I think this is one of the real contributions
8 of the article, is, looking at all 50 states, it gives you the
9 strongest foundation to be able to generalize. And so, if
10 you're really trying to explain the relationship between
11 election law and voter turnout looking at all 50 states, when
12 you can control for a variety of explanations, it's really
13 important.

14 Just to give one example to illustrate the point, if
15 you're just looking at one state, say the State of Ohio, and
16 you have, say, a very competitive election -- you're comparing
17 two elections in one state -- so you have a very competitive
18 election in one year and a not very competitive election in the
19 year that you're comparing it to, you can't really say whether
20 or not a change in voter turnout, then, is due to a change in
21 election law or maybe it's just because you have a less
22 competitive election.

23 So, like in Ohio, in 2010, John Kasich was elected with
24 a very, you know, slim majority. In 2014, he's reelected with
25 a huge majority. Well, if you have a change in turnout between

1 those two elections, you can't necessarily say it's because of
2 a change in election law because it could, in fact, just be
3 explained by the fact that there is a less competitive
4 election. And we know from previous research that voters are
5 more likely to turn out when there is a competitive election.

6 And so, if you just have a one-state analysis, you can't
7 control for the competitiveness of an election, whereas, by
8 looking at all 50 states, we have a variable that controls for
9 the competitiveness of the race. And so, if you have a very
10 competitive state, like Ohio, in a presidential race or you
11 have a very competitive swing state, that's something you
12 control for, compared to, say, Texas or California, where it's
13 not competitive, and you'd expect, you know, less of a -- less
14 likelihood the voters would turn out in those states, all else
15 equal.

16 Q. Now, can you summarize for the Court what the main
17 conclusions of your article are?

18 A. Yes. So I would say the main contribution of the
19 article was, it was really the first attempt by any scholar in
20 this area to sort out the different effects of different
21 election laws, of election-day registration, same-day
22 registration, and early voting, and then the intersection of
23 those election laws between the various states, because the 50
24 states have, you know, a broad variety of mixing of those
25 different election laws. And so, by having this analysis of

1 all 50 states over the two elections, we're able to sort out
2 the impact of -- the independent effect of those election laws
3 and their intersection.

4 And so the overall conclusion that we reach is that
5 early voting when it's by itself and not accompanied by
6 same-day registration or election-day registration actually has
7 a small negative impact on voting turnout, but when you have
8 election-day registration, especially, but also same-day
9 registration, that actually has a net positive effect in
10 turnout in many of the states in the elections we looked at.

11 Q. All right. Now, when you were studying early voting,
12 how did you define "early voting" for the purposes of your
13 article?

14 A. So early voting, in our article, is voting that happens
15 before election day. And it can either be in person or mailed.
16 But, basically, the critical thing is no-excuse voting where
17 you don't have to have a reason for voting absentee for voting
18 early, but a no-excuse rationale for voting before election
19 day.

20 Q. Okay. I'm sorry if you just said this, but did that
21 include by mail?

22 A. Correct.

23 Q. Now, were you looking at states that had adopted the
24 laws, repealed, or both?

25 A. So this is looking at states that adopted the laws in

1 the two elections we looked at. So we're looking at the effect
2 of introducing these laws, not repealing the laws.

3 Q. Okay. And you were talking about same-day registration
4 versus election-day registration.

5 A. Right.

6 Q. Can you explain what the distinction is?

7 A. Sure. So, in many ways, it's the same idea. It's a
8 convenience to the voter of being able to, you know, go to vote
9 and to be able to register to vote and vote on the same day.
10 It's often called one-stop shopping, is the phrase a lot of
11 people use to describe that. The difference is that, for
12 election-day registration, you actually go to the polls on
13 election day, produce the documents necessary to register to
14 vote, you register to vote, and then you actually cast your
15 ballot on election day.

16 For same-day registration, it's the same thing, but
17 happening before election day, not actually on election day, in
18 some specified window of time.

19 Q. And you mentioned your conclusions with respect to
20 same-day registration and election-day registration before, but
21 let me ask were you able to in any way control for when
22 same-day registration took place?

23 A. Yes. And so we have -- one of the models we looked
24 at -- we had two different ways of looking at this. One was to
25 provide a control for whether there was a 30-day registration

1 period, and also then actually looked at the impact of each day
2 of same-day registration on turnout and each day of early
3 voting on turnout. So that's the two different methods we
4 used.

5 Q. All right. Now, what were you asked to do in this case?

6 A. So I was asked to provide rebuttal testimony to a couple
7 of the expert reports that talked about the article that we've
8 been discussing, the AJPS article.

9 Q. And did you observe, in reviewing those reports, that
10 they had discussed the article that you coauthored?

11 A. Yes. There were several places in both reports, the
12 Trende report and the Hood report, that did discuss and
13 referred to the article we've been talking about.

14 Q. Okay. I'm going to ask Ms. Schultz to bring up
15 Defendant's Exhibit 14.

16 All right. This is page --

17 THE COURT: May I interpose a question --

18 MR. KAUL: Please, Your Honor.

19 THE COURT: -- simply because it's in the back of my
20 mind and it's liable to be gone.

21 Does any state currently allow online voting?

22 THE WITNESS: There are certainly some efforts to move
23 in that direction, and there are some localities, I believe,
24 that have, but not on any sort of statewide basis.

25 There are two states, Oregon and Washington, that have

1 statewide mail by -- absentee voting by mail, but not online
2 voting at a statewide level.

3 THE COURT: Go ahead.

4 BY MR. KAUL:

5 Q. All right. And this is page 91 of Mr. Trende's report.
6 And I'm going to ask Ms. Schultz to highlight the end portion
7 of Paragraph 196. All right.

8 Do you see this -- is this one of the references to your
9 article that you were referring to?

10 A. Yes.

11 Q. All right.

12 A. Yes, it is.

13 Q. By the way, do you see the reference to Barry Burden, et
14 al?

15 A. Yes, I do.

16 Q. All right. You're not Barry Burden, right?

17 A. No. Correct. That is my coauthor and colleague.

18 Q. You're part of "et al" on this?

19 A. Yes. I'm "et," I think.

20 Q. Okay. Now, do you see your article is quoted here?

21 A. Yes, it is.

22 Q. All right. Now, do you have any dispute with the quoted
23 language? Are you being quoted accurately?

24 A. Yes, that is an accurate quote.

25 Q. And is it your view that this appropriately reflects the

1 content of your article?

2 A. No. I would dispute that. And, again, this goes back
3 to, in your original question of is there anything I would have
4 liked to have changed in the article, it is -- that word
5 "partially" is what I was referring to because, clearly, if you
6 look at the whole article and the various statistical results
7 in the article and in, indeed, the text that discusses those
8 results, it's clear that there are cases in which the
9 depressant effect is fully offset, not partially offset.

10 Q. And I'm going to ask Ms. Schultz to pull up the next
11 paragraph.

12 Now, have you reviewed this paragraph as well?

13 A. Yes.

14 Q. Now, first of all, when you did your analysis of
15 same-day registration, was Ohio part of what you were looking
16 at?

17 A. Yes, it was.

18 Q. Now, do you see a reference here to its period being so
19 brief and so far removed from actual election day?

20 A. Yes, I see that.

21 Q. As you'd talked about before, is that something you were
22 able to control for?

23 A. Yes, it was. And so this is something I talked about in
24 my report as -- in the expert report that's on the screen here.
25 It's trying to make a controversy when really I don't think it

1 is necessarily a controversy.

2 This is part of normal social science, is, you know,
3 taking, you know, a certain variable -- in this case, same-day
4 registration -- and having improvement in how that's measured.

5 And so, in this article that's referred to here, the
6 Larocca and Klemanski articles referred to in this quote, they
7 have one way of sort of describing Ohio's same-day
8 registration, but -- they don't disagree on the facts here. I
9 mean, the golden week existed. I mean, that's a fact. And so
10 the only question is do you ignore it, which I would argue is
11 not good social science, or do you include it and figure out a
12 way to control for it, which is the approach that we took.

13 And so I would argue that our approach was a more
14 complete, more nuanced way to look at this question. But,
15 again, it's kind of the way that normal social science
16 progresses, is you start out with a, typically, a more limited
17 approach. And then you -- as work develops, you have a more
18 nuanced, more complete approach. And I would say this is a
19 great example of that.

20 Q. All right. And let's turn, then, to Dr. Hood's report,
21 which is DX15. And we'll go to page 14.

22 Thank you. Ms. Schultz is a step ahead of me.

23 All right. And did you review this paragraph in
24 Dr. Hood's report?

25 A. Yes, I did.

1 Q. All right. And do you see this refers to Footnote 37?

2 A. Yes, it does.

3 Q. All right. And that, again, is your article, right?

4 A. Correct, yeah. It's highlighted now.

5 Q. You get named here. All right.

6 Now, do you have any concerns with the paragraph from
7 the text?

8 A. Yes. Especially, that last sentence is just flat-out
9 wrong where it says that a group of political scientists failed
10 to find any statistical evidence that SDR states had higher
11 rates of turnout compared with states that did not offer voters
12 this option.

13 COURT REPORTER: Excuse me. I'm sorry.

14 THE WITNESS: I'll slow down and let you get that. So
15 do you want me to read it again or --

16 COURT REPORTER: I just caught up. Thank you.

17 THE WITNESS: Okay. Thank you.

18 BY MR. KAUL:

19 Q. Why don't you read it again.

20 A. Okay. I'll read it again, more slowly this time.

21 So, yeah. The part that I think is just wrong is: "In
22 a study comparing all 50 states, a group of political
23 scientists failed to find any statistical evidence that SDR
24 states had higher rates of turnout compared with states that
25 did not offer voters this option."

1 And, again, that's just incorrect. We do find evidence
2 that SDR states do, in fact, have a positive impact on turnout.

3 Q. I just want to make sure I'm clear for setting the stage
4 here. First of all, when you wrote that article, was that
5 for -- what was the context in which you wrote that article?

6 A. It was just, you know, part of our research agenda. My
7 colleagues and I -- Barry Burden, Ken Mayer, Donald Moynihan,
8 and then Barry Burden, my coauthors -- we've written, oh, four
9 or five articles on this topic now. And this is just part of
10 that research agenda.

11 Q. Okay. So this was -- the article, itself, was not in
12 connection with any expert work?

13 A. No. Correct. This is just part of our research agenda
14 on election laws and turnout.

15 Q. Okay. Did you write an initial expert report in this
16 case, or only a rebuttal report?

17 A. I just did this rebuttal report.

18 Q. Can you explain what your process was for preparing your
19 rebuttal report?

20 A. Sure. So, originally, I was contacted and asked to do
21 this report because counsel had approached my colleague, Barry
22 Burden; and Barry was, you know, too busy to do this. He had
23 just testified in a couple of other cases, and so he suggested
24 that counsel contact me.

25 And so my schedule is a little more open in this, you

1 know, time before Thanksgiving. And so I was able to work it
2 into my schedule. And so I was then asked to examine the
3 expert reports we've been talking about, the Trende and Hood
4 reports, and then provide rebuttal testimony.

5 And so the next step -- and this is one thing that is a
6 little unusual about the report, I think, and should be
7 explained, is that, when I looked at the reports and sort of
8 came up with a list of topics I'd want to mention, I
9 then -- And I should also back up and mention that Professor
10 Burden said that, if it would be useful, he could show me a
11 report that he had produced that also was rebuttal testimony on
12 this very article.

13 And so, before I saw his report, I came up with my list
14 of ideas of things I would like to address in a rebuttal
15 report. He then sent me his rebuttal report. And it turns out
16 that, you know, it was virtually all of the same points.

17 And so, at that point, I discussed this with counsel and
18 asked if it would be appropriate to simply cite some of
19 Professor Burden's report and say that I agree with the
20 conclusions. And that's the approach we decided to take. And
21 then I added a few other observations of my own, as well,
22 because it seemed like it would have been impossible for me to
23 produce a report that made the same points without using, you
24 know, a lot of the same language as Professor Burden's.

25 Q. Did you -- first of all, do you know where Professor

1 Burden wrote his report, in what context?

2 A. It was also in an Ohio case, a previous Ohio case.

3 Q. Okay. And do you know who he was responding to in that
4 report?

5 A. Yes. Trende was one of the same experts. And then it
6 was a different -- rather than Hood, it was -- Brunell was the
7 other report.

8 Q. That's the same Mr. Trende we're talking about?

9 A. Correct, it is.

10 Q. Let's take a look at your report. It's Plaintiff's
11 Exhibit 106. And you should have a book in front of you. Do
12 you see a tab for 106?

13 A. I do. I have it.

14 Q. All right. And does that appear to you to be a copy of
15 your rebuttal report?

16 A. Yes, it does.

17 Q. Now, you talked about concerns you had with Mr. Trende's
18 report and Dr. Hood's report, right?

19 A. Correct.

20 Q. And did you, in your report, go through and identify
21 those concerns?

22 A. Yes, I did.

23 Q. All right. Let's turn to page -- it's 5 of the report.
24 I think it's 6 of the exhibit.

25 THE COURT: It's what?

1 MR. KAUL: It's that one, exhibit page 5. They are
2 the same.

3 BY MR. KAUL:

4 Q. And, actually, before we zoom in on that -- sorry -- do
5 you see the top left here? There is quotation marks.

6 A. Yes.

7 Q. Okay. Is that the reference you were making to
8 Dr. Burden's?

9 A. Correct.

10 Q. Okay. And so you've got "Hood," for example, in that
11 first sentence, in brackets?

12 A. Right.

13 Q. And "Trende" is not in brackets?

14 A. Right. So that is -- so I replaced "Brunell." And I
15 believe there was another expert on that report, Brunell and a
16 coauthor, replaced with "Hood". And then "Trende" is not in
17 brackets because Trende was also an expert that Professor
18 Burden was responding to.

19 Q. Okay. And I'm going to go through some of the points
20 you made here. I'm going to do it a little bit out of the
21 order, although I will start with the first paragraph.

22 Now, does this address one of the issues you raised with
23 respect to the defense experts' reports?

24 A. Yes, it does. And it goes to the point about using a
25 study of 50 states to make specific claims about a given state.

1 And so, in our study, I mean, all of the results have to be
2 understood in the context of this is a 50-state study. And so
3 you can think about it in general terms of being sort of
4 average effects. So, of course, there's going to be variation
5 from state to state. So making inferences about any given
6 state and their particular circumstances is something that you
7 have to be very careful about.

8 Q. All right. Let me ask you specifically about the second
9 and third sentences. You say -- in your study, you define
10 early voting as any option allowing a person to vote without an
11 excuse before election day?

12 A. Correct.

13 Q. And then you say that that encompasses a wide variety of
14 absentee voting and in-person early-voting practices?

15 A. Right.

16 Q. What do you mean by that?

17 A. So some states, they, you know, have voting just in, you
18 know, one place, in the, you know, the county building. And
19 some have, you know, one place per municipality. Other states
20 have early-voting places even in shopping malls. Some states
21 rely heavily on voting by mail. Other states are more in
22 person. And so there is just a lot of variation.

23 Q. And that's with respect to early voting, right?

24 A. Correct.

25 Q. All right. Let's turn to page 6, the paragraph

1 beginning with "Fourth." All right. Does this discuss another
2 concern you had identified with the defense reports?

3 A. Yes, it does.

4 Q. And can you explain what point you're making here?

5 A. Yeah. Here, I think it's important to recognize
6 something you brought up earlier, which is that our study
7 examines the introduction of laws, not the repealing of laws.
8 And so, if you made inferences about our study to -- looking at
9 contexts where a law is repealed, you'd have to make
10 assumptions of symmetrical effects. And so that is the effect
11 of introducing law is the same as repealing the law.

12 And while, certainly, you can make some inferences, you
13 have to be very careful about that. And I think the experts'
14 reports, Trende and Hood's reports, did not exercise that
15 caution and have the caveats necessary to say that this is
16 something that needs to be done with more care.

17 Q. All right. And you talk about scholarly research that
18 conceives of voting as habit.

19 A. Right.

20 Q. What do you mean by that?

21 A. Yeah. So, by "habit," it means that, you know, once you
22 have sort of -- research has shown that, once you've started
23 voting, you tend to have the practice of voting and you know,
24 you know, where your voting place is; you're already registered
25 to vote. So the startup costs, if you will, of voting are big

1 the first time you vote, and then the marginal costs of voting
2 each successive time is not as big a burden.

3 And so you have -- that's what the research on this sort
4 of habit of voting has shown, is that you do have that tendency
5 to keep on voting once you've started voting.

6 Q. Does that relate at all to your statement a moment ago
7 about why you might not view the introduction of an option for
8 voting the same as you'd view the repeal?

9 A. Right, exactly. And so you have -- once you -- if you
10 have an introduction of a bill and people, you know, start
11 voting on the basis of that opportunity, if you take away an
12 election law, it's not necessarily going to have the same
13 symmetric effect.

14 Q. All right. Let's go back to the previous page and the
15 second point. Now, this relates to the point you were talking
16 about earlier; is that right?

17 A. Yes.

18 Q. Can you explain what you're saying in this paragraph?

19 A. Yes. And so this has to do with, I think, one of the
20 central issues with the expert reports, which is that, if you
21 have same-day registration, it actually does offset the
22 negative effects of early voting. And this is, in our article,
23 the part where we have the analysis of each day of same-day
24 registration and impact that has on voter turnout compared to
25 each day of early voting. And we find that each additional day

1 of same-day registration does have a positive effect that
2 actually does overcome the negative effect of early voting.

3 Q. Okay. And, just to be clear, the way you're describing
4 these things, Ohio, prior to the changes in law in 2014, what
5 category did it fall into?

6 A. It fell into that category of same-day registration
7 during that golden week where you had the week of same-day
8 registration where you could go register to vote and vote at
9 the same time. And that's what I'm referring to here in the
10 Ohio context.

11 Q. Okay. And what category does it fall into now?

12 A. Now it would be an early-voting-only state, without
13 same-day registration.

14 Q. All right. Let's, then, go to the next paragraph. And
15 was this another issue you raised with respect to the
16 defendant's expert reports?

17 A. Yes. And so, here, it's again something that just more
18 caution needs to be exercised in interpreting our study in that
19 we did not focus on African-American responses to early voting,
20 per se. We have it included -- African American voters are
21 included as a control variable, but it's not the focus of our
22 study.

23 In order to sort out the independent effect of these
24 election laws on African-American voting, it would have
25 required a very different approach to our analysis than the one

1 that we undertook.

2 I don't know how deep you want to get into the
3 methodological weeds; but, basically, it would require you to
4 interact African-American status with each of the election laws
5 in the models. And given that our focus was simply to
6 understand the effect of these laws, that was a subject for
7 future research we did not want to get into.

8 Q. Okay. About two-thirds of the way down in that
9 paragraph, you write that, given what we know from political
10 science research, it is likely that effects of offering early
11 voting would be different for non-whites, who bring different
12 demographic characteristics, skills, experiences to the
13 elections process. Do you see that?

14 A. Right, yes.

15 Q. What did you mean by that?

16 A. All right. So we do know, from previous research, that
17 African-Americans do have sort of different kinds of, you know,
18 demographic characteristics than white voters in terms of
19 income, education, for example, but also in terms of other
20 things like the historic role of black churches in getting out
21 the vote. So that would be one example of the, you know,
22 experiences that might be different than for white voters. And
23 so that's something that we, again, don't examine in our study,
24 is those kinds of things.

25 Q. Okay. And then two sentences later, you say: "In fact,

1 recent research on restrictions on early voting in Florida
2 finds that it deterred participation of black voters."

3 A. Correct, yeah. And that refers, then, to the three
4 studies cited in Footnote 8 on page 11. So the Glynn and
5 Kashin article, Gronke -- do you want me to spell those?

6 Q. I'm going to pull it up on the screen to make it easier.

7 A. Okay. There we go. Let's wait for that.

8 Yeah. Glynn and Kashin. It's G-l-y-n-n, and Kashin is
9 K-a-s-h-i-n. And then Gronke and Stewart, that's G-r-o-n-k-e
10 and Stewart; and then Herron -- H-e-r-r-o-n -- and Smith are
11 the three articles referred to in Footnote 8.

12 In each case they find that, in fact, the early voting
13 changes in the State of Florida, where they reduced the number
14 of early voting days, did have a disproportionate effect on
15 African-American turnout in Florida.

16 Q. Do you regard those studies as reliable?

17 A. Yes. Yes. Gronke and Stewart are two of the top
18 political scientists in the country examining these questions.
19 Glynn is actually a statistician. It is an article that I had
20 not read before seeing it cited in Professor Burden's report,
21 but I read it just the other day. It's a very sophisticated
22 piece of research. He is a statistician that is interested in
23 causal inference.

24 And this front-door difference-in-difference
25 estimator -- I'll be fully honest -- I didn't even understand

1 the math on this. This is really high-end, sophisticated
2 stuff. And so this is very high quality work showing, in fact,
3 the change in election law in Florida did have a negative
4 impact on African-American voting.

5 And Michael Herron, and Dan Smith as well, are respected
6 experts in this area.

7 Q. Do you know whether Dan Smith wrote an expert report in
8 the NAACP case?

9 A. I've not seen that report. I've -- I am aware of the
10 fact that he has, but I've not reviewed that report myself.

11 Q. Okay. And you said he is a respected expert in the
12 field?

13 A. Yes, indeed.

14 Q. All right. So those points we've just been discussing,
15 those are the ones that overlapped with Dr. Burden's rebuttal?

16 A. Correct.

17 Q. Now, did you make some additional points beyond those
18 ones?

19 A. I did.

20 Q. All right. And we talked before, I think, about one of
21 those points, which is -- you talked about social science
22 progressing.

23 A. Right.

24 Q. Can you summarize that point for the Court?

25 A. Right. So this was in the Trende report, the parts you

1 pulled up on the screen, that referred to this alleged
2 disagreement about how to categorize same-day registration in
3 Ohio. And, to me, that's really kind of making a point that
4 doesn't recognize the way social science research progresses,
5 because normally what happens is, again, you have a study that
6 starts with a more crude way of measuring something, and then a
7 subsequent study will come along and improve that. And I
8 believe our paper is an improvement over the way that they
9 characterized this.

10 Again, there is no factual dispute about the fact that
11 the golden week in Ohio exists -- that's really not up for
12 dispute --

13 Q. All right.

14 A. -- or existed, I should say. Sorry.

15 Q. All right. Let's take a look at page 8 of your report.
16 There is a paragraph beginning with "Finally."

17 A. Uh-huh.

18 Q. All right. Was this the other additional point that you
19 made?

20 A. Yes, it is.

21 Q. Okay. Now, before I get into the details of this, did
22 you make an arithmetic error in this?

23 A. I did. And we discovered this in the deposition and
24 went through the math in the deposition. So, basically, the
25 numbers in the parentheses are correct, the .28 times 5 minus

1 .125 times 5. But then, yeah, for some reason, I just -- I
2 was, you know, doing the report too quickly, and the math is
3 incorrect.

4 So, if you just multiply out those numbers, .28 times 5
5 is 1.4; .125 times 5 is .625. Subtract them, and it's .775,
6 not .4. And so --

7 Q. And I'll come back to that.

8 So -- I just wanted to preface what you were about to
9 say about that.

10 A. Okay.

11 Q. Can you sort of walk through what this paragraph is
12 explaining?

13 A. Right. This talks about the analysis in Table 4. At
14 some point, we'll get to that table, and you'll see these
15 coefficients. But, basically, this is the table that shows the
16 positive effect of same-day registration.

17 Q. Let me stop you. So Table 4, first of all, where is
18 that from?

19 A. That's from the AJPS article we've been talking about.

20 Q. Okay. And what -- first of all, what is Table 4 in that
21 article?

22 A. Table 4 is the analysis of the 2008 presidential
23 election with county-level election returns.

24 Q. All right. And how do you regard the significance of
25 the data from Table 4 to your overall report?

1 A. I think this is probably the single-most important
2 result and the single-most important table for the facts of
3 this case and for my rebuttal testimony.

4 Q. Okay. Why do you regard that table as the most
5 important in your report?

6 A. Well, for two different reasons. One is that it uses
7 what I believe is the highest quality data for looking at the
8 impact of election laws on turnout. It uses actual election
9 returns, county election returns, whereas the other analysis --
10 and this is, you know, standard in the literature, but I
11 believe it's not as high quality. And that's the census, the
12 CPS survey that's done, because the survey is plagued, as all
13 surveys are, with overreporting of the vote. And so people,
14 when they're asked by a survey, you know, did you vote in an
15 election, some people lie; they say, yeah, I did vote, when
16 they didn't because they feel like it's their democratic duty
17 to vote; they feel guilty for not having voted. So they say
18 they did vote when they hadn't. And it's a very significant
19 percentage. Depending on the survey, but between five to eight
20 percent of people say they voted when they actually didn't.

21 And so the county-level returns of actual election
22 returns aren't subject to that kind of bias. And so that's
23 probably the most important thing. But, also, then, the
24 county-level returns allow us to also look at the actual
25 controls in each state rather than the individual level, but at

1 the county level.

2 Q. Okay. And let me just walk through those two different
3 types of methodologies you used. First, let's talk about the
4 one you were describing as less reliable.

5 A. Uh-huh.

6 Q. Is that captured -- are the results captured in tables
7 in your article?

8 A. Yeah. So Table 1 uses the CPS data. And that's --
9 that's the other one I think is most relevant for the
10 discussion here. And that uses individual-level data.

11 Q. Okay. And does Table 1 make conclusions -- first of
12 all, this is based on the individual data?

13 A. Correct.

14 Q. The self-reported data you were describing?

15 A. Correct.

16 Q. Does that make conclusions about the effect of early
17 voting on turnout?

18 A. Yes, it does. And so that has -- it shows that early
19 voting, when it's by itself, has a negative impact on turnout.
20 But then it shows that same-day registration, when combined
21 with early voting, has no statistical impact.

22 Q. So same-day registration neutralizes that negative
23 impact?

24 A. It basically has -- so the same-day registration would
25 have, basically, zero effect. It's a non-significant effect on

1 turnout.

2 Q. And how does that compare to early voting by itself?

3 A. So, in the individual -- well, we probably should go to
4 the table, you know, so I can actually show -- walk through it.

5 Q. I suspect Ms. Richardson is going to introduce it in a
6 moment.

7 A. Okay. Got it.

8 Q. I'll let you do it then.

9 A. Okay.

10 Q. So which table has the data you were describing as more
11 reliable?

12 A. Table 4.

13 Q. Okay. And what did that table find with respect to
14 same-day registration?

15 A. So that's the table that shows that same-day
16 registration actually does have a positive impact on turnout
17 that is more than enough to overcome the negative effect of
18 early voting.

19 Q. Okay. And did you quantify those results?

20 A. Yes, I did.

21 Q. And did you actually quantify them in the article?

22 A. Yes.

23 Q. Okay. And how did you apply that quantification here?

24 A. So, basically, in the article, in the text of the
25 article, we talk about the impact of a ten-day -- same-day

1 registration period and ten days of early voting. So, in my
2 report, I basically -- because of golden week is five days, I
3 took that five-day period of the golden week. And then also,
4 just to make it symmetrical, the article compared it to five
5 days of early-voting reduction as well.

6 And when you do -- and that's the math I do right here,
7 then, that we were talking about before, the .28 times 5, that
8 would be five days, is what the five days is, minus 1.25 times
9 5.

10 Q. All right. So, when you run that math, the arithmetic
11 correctly, what is the increase percentage in turnout yield
12 from five days of --

13 A. It's a little over three quarters, .775.

14 Q. That's from five days of early voting --

15 A. Five days of early voting and five days of same-day
16 registration.

17 Q. So you said a .775-percent increase in turnout?

18 A. Correct.

19 Q. Now, do you know what that equates to in raw numbers?

20 A. Yeah. So, in raw numbers, with an electorate of a
21 little over five-and-a-half million, it would be somewhat over
22 40,000 voters.

23 Q. Okay. Now, do you know how that compares to the number
24 of people who actually used golden week to register and vote in
25 Ohio?

1 A. Yes. I mean, I do recall seeing those numbers in the
2 Trende report. I don't have the number at the top of my head,
3 but I know that 40,000 is substantially higher, certainly, than
4 the number that actually used it in Ohio.

5 THE COURT: What's the 22,000?

6 THE WITNESS: Excuse me, Your Honor.

7 The 22,000 was based on the incorrect .4. And so we've
8 been correcting that math because, in the report, I say .4
9 percent, and it's actually about double that. It's .775. So,
10 if you would double 22,000, that would be 44. So it's
11 something over 40,000, is the correct number. Thank you.

12 MR. KAUL: My apologies.

13 BY MR. KAUL:

14 Q. So you were just saying that that number is larger?

15 A. Is higher, yes. This number is bigger than the number
16 actually used.

17 Q. Do you think that is significant for any reason?

18 A. Well, yeah. So I think the best way to interpret the
19 figure that I came up with of something over 40,000 is, again,
20 based on this 50-state analysis, should be thought of as sort
21 of a national average and, also, I think, could be thought of
22 in terms of, you know, what the potential future effect would
23 be given this is sort of an average effect across the country.

24 Q. When you say that number should be thought of in terms
25 of what the potential future effect would be, are you talking

1 about Ohio specifically?

2 A. Sure, yeah. And so, if this -- if the golden week were
3 reinstated, you know, for the 2016 election, this would
4 probably be, you know, a good estimate of what that potential
5 effect could be.

6 Q. Okay. So, based on your 50-state survey, you expect to
7 see increasing usage of golden week?

8 A. Right. If Ohio ended up being more like the rest of the
9 country, that would be the -- again, you'd have to -- with all
10 the proper caveats and caution in applying a 50-state study to
11 any specific state, as I mentioned before; but, yes, that would
12 be, I think -- the conclusion you could draw is that, if Ohio
13 did follow more national trends, you would expect to see an
14 increased use.

15 Q. By the way, has there been scholarly study of
16 election-day registration, also?

17 A. Yes, there has.

18 Q. And what effect has that been found to have on turnout?

19 A. That's consistently been found to have a positive effect
20 on voter turnout.

21 Q. Why has that been found to increase turnout?

22 A. It's largely because of the convenience of the one-stop
23 shopping where, on election day, you can both register to vote
24 and vote on that same day.

25 Q. And does same-day registration have those same

1 properties. It does, with the obvious exception that it's not
2 on election day, but before election day.

3 MR. KAUL: Thank you. No further questions.

4 THE WITNESS: Thank you.

5 THE COURT: Ms. Richardson, you may cross.

6 MS. RICHARDSON: Thank you, Your Honor.

7 THE COURT: Smells like they found the heat in the
8 building.

9 - - -

10 CROSS-EXAMINATION

11 BY MS. RICHARDSON:

12 Q. Good morning, Dr. Canon.

13 A. Good morning.

14 Q. We met during your deposition, over a video conference.
15 But again I'm Ryan Richardson, and I represent the defendants
16 in this case, Ohio Secretary of State Jon Husted and Ohio
17 Attorney General Mike DeWine. Nice to meet you in person.

18 A. Good to see you.

19 Q. So I want to spend just a couple of minutes going over
20 some of the things that you said during your direct about your
21 role in this case. And, again, I believe you testified that
22 your role as an expert here is a very narrow one. Is that a
23 fair characterization?

24 A. I would say that's fair, yes.

25 Q. And, essentially, you just offered a rebuttal report

1 because a couple of the defense experts included the article
2 that you were discussing among the literature that they cited
3 in their report, correct?

4 A. Yes, that's right.

5 Q. And so your objective was just to offer a very brief
6 report describing some of the conclusions from that report; is
7 that fair?

8 A. Conclusions from my report?

9 Oh, conclusions from my article, you mean?

10 Q. Conclusions from your article.

11 A. Yes, conclusions from my article, correct, and to then
12 respond to the way that they were characterized in those expert
13 reports.

14 Q. And so, given the limited purpose of your role, you only
15 very quickly read Dr. Hoods' report and Mr. Trende's report; is
16 that correct?

17 A. In preparation for my rebuttal brief, I would say that's
18 fair, yes. I mostly focused on the parts of the report that
19 addressed my research.

20 Q. And I think you described during the deposition that
21 essentially what you did was to just go through the reports and
22 do a search for the spots where your name came up or
23 Dr. Burden's name came up, right?

24 A. Well, that's what I did for the part that I read
25 carefully and responded to, but I did quickly read the entire

1 reports as well.

2 Q. And I believe you actually described, during your
3 deposition, that it was just very quickly you reviewed those
4 reports, right?

5 A. That's right.

6 Q. And at least as of the time of your deposition, you
7 weren't sure whether you did that quick review of the reports
8 before or after agreeing to be an expert in this case; is that
9 right?

10 A. Right. So -- yeah, in the deposition, I couldn't recall
11 the exact sequence of the days, what happened on what day.

12 Q. And you testified during direct today that the vast
13 majority of your analysis actually came directly from
14 Dr. Burden's expert report in the NAACP case; is that right?

15 A. Right. And so this was the part that appears in quotes
16 in my rebuttal report. And, again, as I explained in direct
17 testimony, this was, again, the points that I had come up with
18 in my own independent assessment of the reports. And then,
19 just in order to have a convenient way to present it, I ended
20 up relying on the language of Dr. Burden's previous report.
21 That's right.

22 Q. And, in essence, what you did was just change the names
23 of the reports, replaced the NAACP report -- replaced the NAACP
24 experts with the names of the experts in this case, right?

25 A. Right, with Trende, obviously, being the same in both.

1 Q. And then you just copied, verbatim, the analysis that
2 was in Dr. Burden's report?

3 A. Correct. And then have the paragraph stipulating that I
4 agree completely with these conclusions.

5 Q. I'd like to take a look at the article that you've been
6 discussing. And I understand you've authored many articles;
7 but, for purposes of our discussion today, we will just refer
8 to the early-voting article that you discussed on direct.

9 A. Okay.

10 Q. And I'd like to pull that article up if we can.

11 MS. RICHARDSON: Can we connect? I'm sorry.

12 COURTROOM DEPUTY CLERK: That's fine.

13 MR. KAUL: Could we give him a paper copy?

14 THE WITNESS: Is it in here or not?

15 MS. RICHARDSON: It is, actually. If you look in
16 defendant's exhibits -- is that binder in front of you?

17 Your Honor, may I approach?

18 THE COURT: You may.

19 THE WITNESS: Oh! It's over here. What's the number?

20 MS. RICHARDSON: If you turn to 14N, I believe that's
21 the number.

22 THE WITNESS: 14N. Yes, that's it.

23 MS. RICHARDSON: Your Honor, do you have a copy as
24 well?

25 THE COURT: I'm sure I do.

1 MS. RICHARDSON: Okay. Thank you.

2 THE COURT: I have not located it yet.

3 BY MS. RICHARDSON:

4 Q. And so, Dr. Canon, I would like to have you turn to the
5 last page of your article where you discuss the conclusions,
6 and this is page 108 of your article.

7 A. Yes.

8 Q. And that last paragraph, this is the conclusion that I
9 believe you were discussing during your direct?

10 A. Right. That's the one where I said I would have changed
11 that word "partially" to "fully" in some cases.

12 Q. And so, just to read the entire conclusion in for the
13 record, you state here: "Our unambiguous empirical claims are
14 based on multiple data sources and methods. Despite being a
15 popular election reform, early voting depresses net voter
16 turnout." Is that correct?

17 A. Yes, that's what it says.

18 Q. And it says: "The only consistent way to increase
19 turnout is to permit election-day registration. Early voting
20 reduces turnout by robbing election day of its stimulating
21 effects."

22 Is that all correct so far?

23 A. That's -- yes.

24 Q. "This depressant effect is only partially offset if SDR
25 is present or if EDR" -- and that's election-day registration,

1 right?

2 A. Yes.

3 Q. "-- if EDR offers a vehicle for the last-minute
4 mobilization of marginal voters."

5 And then your final sentence says: "This result up-ends
6 the conventional view that anything that makes voting easier
7 will raise turnout."

8 A. That's what it says, yes.

9 Q. And so you've testified today, for purposes of your work
10 as an expert for plaintiffs in this case, that you would change
11 the word "partially"; is that right?

12 A. That's right.

13 Q. But at least as of the time that you published this
14 report in January of 2014, you felt comfortable with that
15 conclusion, correct?

16 A. Well, again, as we talked about in the deposition, when
17 you're editing an article with four coauthors and it goes
18 through a variety of drafts and phases, it's -- it's something
19 that it just fell through the cracks, and that word should have
20 been changed.

21 Q. And I believe you actually -- you said in the deposition
22 that the article went through -- I think your words were "many
23 iterations of editing"?

24 A. Sure. Yeah. Any paper like this certainly has many
25 drafts, many different forms, that's correct.

1 Q. And this was also a peer-reviewed article; is that
2 right?

3 A. It was. Yes. The American Journal of Political Science
4 is probably considered to be the second-most prestigious
5 journal in the discipline.

6 Q. And I think you testified you actually won an award for
7 this article?

8 A. That's right.

9 Q. And this is your sort of primary conclusion at the end
10 of that article, right?

11 A. Yes.

12 Q. And that paragraph was directly quoted in Mr. Trende's
13 report; is that right?

14 A. Yes, it is.

15 Q. You didn't disagree with any of the quotes that Mr.
16 Trende used?

17 A. It was properly quoted. What I am disagreeing with is
18 the fact that he overlooks the other three or four places in
19 the article where it's clear that the positive effect is
20 present.

21 Q. And we'll come back to that, but there is no way that
22 Mr. Trende could have known, when he cited your article, that
23 you now question that word "partially," right?

24 A. Well, he couldn't have known, but I think an expert who
25 is, you know, being careful in how he's interpreting other

1 people's research would put it in the broader context of the
2 actual results he's discussing.

3 Q. And, in fact, as we saw earlier during your direct, he
4 simply just quoted, verbatim, your report, correct?

5 A. He did. That's right.

6 Q. And included that among other articles that were just
7 quoted there in that paragraph?

8 A. That's right.

9 Q. I'd like to turn to another conclusion that you reach in
10 your report. And I'd like you to turn to page 103. And in
11 that first column on 103 -- you can see the quote here on the
12 screen as well -- you state that the CPS results -- and you're
13 referring to the individual-voter results there, right?

14 A. Uh-huh.

15 Q. -- therefore suggest that early voters comprise a
16 population that, based on demographics, is more likely to vote
17 than the population of voters that cast their ballots on
18 election day. Most notable is this: In states with early
19 voting, even combined with other election laws, people are
20 simply less likely to vote. This result holds for both 2004
21 and 2008.

22 Correct?

23 A. That's what the quote says, yeah.

24 Q. And across the board, in all of your various analyses,
25 you found consistently that early voting depresses turnout,

1 correct, by itself?

2 A. That's right. But one thing on the Table 2 results
3 which are being described in that quote that's highlighted
4 right there, that is -- you have to look at the entire context,
5 again, of that analysis. And the main focus -- and it's made
6 clear in the text the main focus of that part of the study was
7 to look at what we described as high-propensity voters.

8 And, in the analysis, this is based on the answer to the
9 CPS question of not only did you vote but how did you vote.
10 And so respondents are asked did they vote in person, did they
11 cast a vote early in person, or did they vote early by mail,
12 and then it's broken down. This analysis then is broken down
13 by their responses to that question.

14 THE COURT: Is this called "exit polling"?

15 THE WITNESS: No, this is not exit polling. It's a
16 survey, Your Honor, that's done by the U.S. Bureau of Census.
17 And it's a survey of some 70,000 people that's done by the
18 Census Bureau.

19 And so the purpose of this part of the analysis was,
20 again, to identify those high-propensity voters. And this was
21 the convenience voting argument, basically. That's the focus
22 of this analysis.

23 And so the part that's being referred to in that
24 highlighted quote refers only to the first two columns of the
25 analysis. And as you can see, in fact, if you turn to Table 2,

1 as reported here in the highlighted quote, early voting
2 does -- More people are likely to respond that they didn't vote
3 in an early-voting state than in a not-early-voting state. The
4 baseline category here is voting in person on election day. So
5 all of these coefficients have to be interpreted with regard to
6 voting in person on election day.

7 So, if you go over to the next columns for the voting
8 early in person and voting early by mail, you can also see that
9 those coefficients are positive. And so what that shows is
10 that, also, in early-voting states, people are more likely to
11 vote early in person.

12 So, if you get a net effect of all three of the
13 categories of did not vote, vote early in person, vote early by
14 mail, you have to aggregate the analysis across all three of
15 those. And that's something that is not reported in the quote
16 here.

17 And so, again, if you would have the sort of complete
18 depiction of what happened, that would put a very different
19 light on the overall aggregate effect of the election laws.

20 BY MS. RICHARDSON:

21 Q. Okay. And so, in terms of the text that is described
22 here, you don't disagree that that was one of the conclusions
23 that you reached as a result of the analysis that's reported in
24 Table 2 of your article, correct?

25 A. Right. Now, that is definitely a part of the

1 interpretation; but, if you read the full text of the article,
2 again, it's clear that the focus of this table was on the
3 high-propensity voters; it was not on turnout. And if you,
4 again, look more completely at the full analysis in Table 2, it
5 would have a more subtle kind of argument you would have to
6 make.

7 Q. And we can actually -- I believe we have Table 2, as
8 well, if we want to put that up. That's what you were looking
9 at right there --

10 A. Right.

11 Q. -- on the hard copy?

12 A. Right.

13 Q. So I think, if I understand correctly, what you're
14 saying is that this article is not looking specifically at
15 turnout; it's simply looking at whether they are more likely to
16 vote and how they voted. Is that your --

17 A. Right. It does both. It does both.

18 Q. And that relates to another point that you make in your
19 article, I believe. And if we look at page 98, I believe, of
20 your article, you point out there that, by offering more days
21 on which to vote, early voting lowers the direct cost of voting
22 but mostly as a convenience for those who are already planning
23 to vote, correct?

24 A. Right.

25 Q. And I want to turn now, specifically, to something that

1 you described at length during your direct. And that is the
2 analysis that you did predicting the number of people who would
3 turn out to vote in 2012.

4 A. Yes.

5 Q. And that is described on pages 8 and 9 of your expert
6 report, as I believe we saw earlier.

7 A. Right.

8 Q. And if we could take a look at page 8 of the expert
9 report.

10 And so, as you described during your direct, you're
11 referring now to this paragraph that's at the bottom of page 8
12 where you walked through your process of estimating that there
13 would be a net increase in turnout where same-day registration
14 and early voting are combined; is that right?

15 A. That's right.

16 Q. And you testified that that comes directly from Table 4
17 of your article?

18 A. Right.

19 Q. And if we can take a look at Table 4.

20 A. It's page 106.

21 Q. Thank you, Dr. Canon.

22 And so essentially what you're doing here, you have
23 multiple columns. And it's a little bit difficult to see here
24 on the screen, but you showed that early voting has a negative
25 effect on turnout, correct?

1 A. When it's by itself, right. And that first column would
2 show that, yes.

3 Q. And then in this chart, at least, it shows that same-day
4 registration has a very slight increase on turnout?

5 A. Right. And so -- yes. So the three columns -- if you
6 want me just to walk through it, the first column shows the
7 impact of early voting when it's by itself. The second column
8 shows the impact of same-day registration when it's by itself.
9 And, as you've just summarized, the impact of early voting is
10 negative when it's by itself; impact of same-day registration
11 is positive. And I should note it's about triple the effect,
12 almost exactly triple the effect, in terms of the size. Point
13 23 is about exactly three times as big as .077.

14 And then the third column shows when you combine both of
15 those in the analysis. And there again the same effect holds
16 with early voting having a negative effect for each day it's in
17 effect and then same-day registration having a positive effect.

18 And, here, the size of the effect's about double for
19 same-day registration, a little more than double. The positive
20 effect is about twice as large as the negative effect.

21 Q. And, so, if I can just break that down, essentially --
22 first of all, this is a -- you're taking these exact numbers
23 and just reproducing them for purposes of your report, correct?

24 A. That's right.

25 Q. You didn't do any new analysis for this case --

1 A. No.

2 Q. -- or this report?

3 A. This comes straight out of Table 4.

4 Q. And so you were adding the negative effect of early
5 voting to the slight positive effect of same-day registration?

6 A. That's right, to determine what the net effect would be
7 of introducing those laws.

8 Q. And -- I apologize.

9 MS. RICHARDSON: Brittany, if we could turn back to
10 page 8 of the expert report.

11 BY MS. RICHARDSON:

12 Q. And that's where you get this -- what's written here is
13 .4, but what you've clarified today is .775, correct?

14 A. That's right.

15 Q. And then just simply multiplying that out by the
16 electorate, you estimate approximately 40,000?

17 A. And change, yeah.

18 Q. Now, the numbers that are reflected in Table 4 are not
19 offered as precise estimates of exactly what the increase or
20 decrease would be, right?

21 A. I'm not sure what you mean by that.

22 Q. Well, there is a margin of error, correct?

23 A. Well, certainly, with all -- any kind of statistical
24 analysis like this, the way that you would derive any point
25 estimate is with the coefficient, as I've described here. And

1 the only way you can legitimately do that is if it is a
2 statistically-significant coefficient.

3 In these cases, both of them are significant at greater
4 than the .01 level. So, you know, 99-percent confidence,
5 basically.

6 Q. So a fair way to characterize that would be that it
7 represents a range. Is that right?

8 A. Well, sure. So any point estimate has a standard error
9 around it, certainly.

10 Q. So it might be less than what's written here; it might
11 be more than what's written here?

12 A. Well, right. Just like any public opinion poll you see
13 with a plus or minus two percent, you know, any point estimate
14 based on a statistical analysis like this would have a range
15 around it as well.

16 Q. Sure. And, obviously, if either of those numbers
17 changed, that would change the estimate that you have reported
18 in your -- on page 8 of your expert report in this case?

19 A. Any -- which numbers would change?

20 Q. If either of the numbers. If the early-voting number
21 would go down --

22 A. Sure. Correct. I mean, if this analysis were done of a
23 different election and different coefficients were derived,
24 right. Yes, that's correct.

25 Q. And so building in the margin of error that you just

1 described that's inherent in any study like this, it would be a
2 range, not a definitive number?

3 A. Yes, that -- that would be correct.

4 Q. And, again, this is based, as you pointed out during
5 your direct, on a nationwide study, correct?

6 A. That's right, yes. This should be interpreted as a
7 national average, basically.

8 Q. So you're not offering this number as a prediction
9 specifically of what turnout would be in Ohio, correct?

10 A. Well, right. As I think I've made clear in my direct,
11 at least I hope I made clear, is that this should be viewed as,
12 you know, what our best estimate would be of what would happen
13 in Ohio if it did tend to follow national patterns.

14 Q. And, in fact, one of the primary opinions you offer in
15 this expert report is on page 5 of the report. And so, as you
16 pointed out during direct, your study -- and I'm going to quote
17 here -- does not address the specific and unique circumstances
18 of Ohio, right?

19 A. Right. And I made that clear in my direct as well:
20 That you need to use proper caution and caveats when
21 interpreting a 50-state study to apply to Ohio. So, yes,
22 that's right.

23 And even in answering the question with regard to Table
24 4, I think I made it clear that this should be viewed as a
25 national average and that it does not speak to the specifics of

1 Ohio. That's correct.

2 Q. And, in fact, as you point out a little bit further down
3 in this same paragraph, it would thus be unwarranted to jump
4 from the general pattern we observed to make strong claims
5 about the effects of offering early voting in any particular
6 jurisdiction.

7 A. That's why I made weak claims, rather than strong
8 claims.

9 Q. So you would consider, then, to the extent that you're
10 trying to make any characterization about Ohio on page 8 of
11 your report, that would be, at most, a weak claim?

12 A. Right. It has to be looked at in the context of, this
13 is a national average.

14 Q. Because just as you caution with respect to defense
15 experts, you similarly can't make any strong claims about Ohio
16 based on this article?

17 A. Yes, that's a fair point.

18 Q. And as I believe you also mentioned on direct, the data
19 that's described in Table 4 of your expert report was not the
20 only data that you looked at in drafting this article, correct?

21 A. Right.

22 Q. In fact, you looked at several different -- you
23 conducted several different analyses, right?

24 A. That's right.

25 Q. Looked at the data from multiple angles; is that fair?

1 A. That's fair.

2 Q. And one of those ways that you looked at it was to
3 review individual voter-level data, correct?

4 A. Right, the CPS survey that I mentioned. Yes.

5 Q. So, while the data in Table 4 is county-level aggregate
6 data, the data in Table 1 of your report is individual-voter
7 data, correct?

8 A. Right. So Table 4 would be the county-level actual
9 returns, whereas Table 1 and the CPS data is based on that
10 survey of individuals.

11 Q. And so, looking at the individual results, you found --
12 and I believe you described this during your direct -- that
13 there was no statistically-significant impact on turnout even
14 when you combine early voting and same-day registration, right?

15 A. Right. That would be the .008 for 2008 and the minus
16 .048 for 2004. And they're not statistically significant.
17 That's correct.

18 Q. And another way to look at that is reflected in Figure 3
19 of your article, right?

20 A. Right. So Figure 3 presents a visual depiction of those
21 basic results. And so you can see the way to interpret this --
22 it's called "whisker plots," is the term used to describe these
23 types of plots -- any line that crosses the zero lines -- you
24 see the vertical line that goes, from zero, up the middle of
25 the chart -- anything that has the line that goes through the

1 dot intersecting the zero line is not statistically
2 significant. Anything where the whisker -- that the length of
3 the line does not intersect with the zero line is significant.

4 And so you can just go down and see that, early voting,
5 the significant negative effect in 2008. And then, the
6 combination of early voting, election-day registration and
7 same-day registration, 2004, is highly significant. And then
8 election-day registration in 2008 by itself is also significant
9 in a positive direction.

10 Q. And so, with respect to early voting and same-day
11 registration in 2004, that's to the left of the zero line,
12 correct?

13 A. So -- yes, it is, but it's not statistically significant
14 because the line intersects with zero.

15 Q. Right. And, in 2008, it's right on the zero line for
16 early voting and same-day registration, correct?

17 A. Right, very small positive effect but, again, not
18 significant.

19 Q. And so, again, that's just another way of depicting
20 that, for the individual-voter data, you saw no statistically-
21 significant impact on turnout when early voting and same-day
22 registration were combined?

23 A. Right. But again, as I indicated on direct, it's -- my
24 conclusion is that the county-level data are better than the
25 individual-level data when it comes to making these kinds of

1 inferences because it's based on actual election returns rather
2 than the self-reported vote, which, again, is overstated by
3 about six-and-a-half percent for these elections.

4 Q. And so basically what you're referring to is that some
5 of the people in the survey could have said that they voted
6 when they didn't?

7 A. Right. And it even goes deeper than that. You know,
8 the CPS survey actually is a household survey. And so not only
9 are individuals asked if they voted, but they also are asked
10 whether other people in their household voted. So about 40
11 percent of the voters in the survey are actually proxies, you
12 know, where the respondent tells the survey person that someone
13 in my household voted. And the error rate there is potentially
14 even larger, but it's hard to know exactly how big that error
15 rate is, but it's about 40 percent of the respondents are these
16 proxy respondents. So, there, we have even less confidence in
17 the results there.

18 Q. So the turnout might have been actually even lower than
19 what's reported there if people were overreporting?

20 A. See, the problem is, though, that you can't -- yes,
21 overall, that's correct, the turnout could be lower. But the
22 problem is, you can't assume that the bias in the survey is
23 uniformly distributed across the different categories of
24 voters. We simply don't have the data to know what the nature
25 of that bias would be. And that's why the county-level

1 results, I think, are the preferable thing to focus on, in this
2 context anyway.

3 Q. And that's your opinion today, but that's not included
4 anywhere in your report, right?

5 A. Right. That's -- yeah, this was not -- I mean, we --

6 Q. In the article. I'm sorry.

7 A. In the article, right. So we present all the different
8 approaches with the different methods and different data to try
9 to come at this from a variety of ways.

10 And, again, to go -- on that point, to go back to
11 something I mentioned in direct, I think that having this
12 50-state study does allow you to, you know, truly explain these
13 relationships, as opposed to looking just at one state, which
14 is merely kind of describing what happened in that state. If
15 you want to have confidence in being able to really explain
16 what happened, I think you do need the 50-state study to do
17 that.

18 Q. And each of the various methods of analyzing the data
19 that you used here are going to have their pros and cons,
20 correct?

21 A. Absolutely. And so that's why, coming at it from a
22 variety of perspectives, you know, it gives you the most
23 confidence in the results.

24 Q. And Table 1, the individual-voter level data that you
25 looked at, was the first table that you offered in your report,

1 right?

2 A. It is.

3 Q. And you described Table 4, looking at the county
4 turnout, as really just a way of validating your overall
5 conclusions, right?

6 A. Well, I guess -- I mean, I think the way that we
7 described this is that here are four different ways of coming
8 at this, basically. I wouldn't say -- in the article I don't
9 think we categorize one or the other as being preferred over
10 the other. And like, just to give one other example, on the
11 difference-in-difference model that we have in Table 5, that
12 one was actually added at the request of one of the referees.

13 And so, when you're submitting a peer-reviewed article,
14 you know, you get a referee's report back from three referees.
15 They'll ask for certain revisions to be made, other adjustments
16 to be made to the analysis. And one referee suggested we do
17 this difference-in-difference approach, something that we were
18 not comfortable doing, originally, because there's so few
19 states in the categories. So what you do with difference-in-
20 difference is, basically, you're comparing a change one year to
21 another, so 2004-2008 in this case. And you can see, for
22 example, in that table, we had a very bizarre result of having
23 a negative effect of early-voting election registration and
24 same-day registration, which is across the board, you know,
25 negative, which, like, never happens in these kinds of

1 analyses. But the reason that --

2 MR. KAUL: May I object? The thing being shown is
3 different from what he described.

4 THE WITNESS: Whoops!

5 Yeah. So go down a little bit further, if you take that
6 and go down just a little bit more.

7 MS. RICHARDSON: I'm not sure that we have the
8 technological capability to do that.

9 THE WITNESS: Okay. We had the correct table, but you
10 needed to go down one more line, basically.

11 MS. RICHARDSON: Early-voting plus?

12 THE WITNESS: Yea.

13 BY MS. RICHARDSON:

14 Q. We're just clarifying what he's referring to. And
15 that's early voting, plus election-day registration, plus
16 same-day registration.

17 A. Right. It would be the third line in Table 5,
18 basically, the third set of variables. And there -- I'm just
19 raising this as an example --

20 THE COURT: That's the third line in Table 5 in your
21 article?

22 THE WITNESS: Right. Correct. Correct.

23 And so I'm just referring to this as an example of, you
24 know, coming at things from a variety of methods. Again, this
25 is one example of something we did not include in the original

1 article but we were asked to include by a referee. And we were
2 reluctant to do so because there's not enough cases involved.
3 And that example of the intersection of early voting -- EDR --
4 and SDR was one state, New Jersey, with 21 counties.

5 And so you basically are trying to make an inference
6 from -- what? -- 3100 counties based on the results in 21
7 counties. And that wasn't a reasonable thing to do, but we did
8 it because the referee asked us to do that.

9 And so this addresses your point of there are pluses and
10 minuses with each different part of the analysis. And
11 difference-in-difference is great for some things for reaching
12 causal inference, but in this case it's not so great given the
13 data where, you know, New Jersey, basically, is driving that
14 one result, which just, you know, doesn't comport with previous
15 research on that topic.

16 BY MS. RICHARDSON:

17 Q. And Table 5, which we're looking at right now, the
18 number that -- the third line that you were just referring to
19 combining early voting, election-day registration, and same-day
20 registration had a negative effect on turnout for purposes of
21 this table, correct?

22 A. Right. And that's why I'm saying it's just -- you know,
23 that is so counter-intuitive, and it's an outlier because it's
24 based on that one state, basically.

25 Q. But your early-voting results were consistent with the

1 other analyses that you did, correct?

2 A. Yeah. And there is somewhat more confidence in that
3 because it's based on a little over 200 counties, instead of
4 just the 21.

5 Q. And, like Table 1, it showed that early voting had a
6 negative effect on turnout when by itself?

7 A. When by itself, that's right.

8 Q. And early voting and same-day registration, combined,
9 did not have a statistically significant impact?

10 A. Right.

11 Q. And so of all of the ways, different ways, that you
12 looked at the question in your article, only Table 4 showed a
13 minimal increase in turnout by combining same-day registration
14 and early voting, right?

15 A. Well, the other would be, in looking at Table 2 with the
16 voting early in person and voting early by mail, you see
17 positive coefficients there, as well, in Table 2.

18 Q. And you described that that table looked at the question
19 a little bit differently, right?

20 A. It -- it certainly had a different focus; but, again,
21 that does show the positive effect for those -- for those two
22 parts of the analysis.

23 Q. And Table 1, again, the individual data showed no
24 statistically significant impact --

25 A. That's correct.

1 Q. -- combining early voting and same-day registration?

2 A. That's right.

3 Q. And, as we just discussed, Table 5 showed the same
4 thing?

5 A. Right, but, again, based on a fairly small subset of
6 states that actually changed their laws between 2004 and 2008.
7 That's why I go back to Table 4 as actually being the best
8 overall bit of evidence for the purposes of this argument,
9 because it includes all 50 states, all counties, all 3100
10 counties, with the actual election returns, and it's not
11 dependent on just a few states being in the sample and not one
12 case or the voter overstating of their propensity to vote in
13 the CPS survey.

14 Q. And so, if we return back to your expert report, that
15 paragraph on page 8, if you had picked Table 1 or Table 5 to
16 include here in this report, you would have shown that there
17 would be zero impact when combining early voting and same-day
18 registration, right?

19 A. Well, zero impact in terms of the statistical effect,
20 that is correct. But the thing -- the other reason that Table
21 4 is the best thing for this analysis is, this is the only part
22 of the analysis that gives the dose-response kind of measure as
23 well, which is the actual effect of each day of early voting.
24 So it gives us the best estimate of what eliminating the golden
25 week would be.

1 None of the other part of the analysis -- none of the
2 other analyses get at that question of what's the actual effect
3 of the number of days. We didn't attempt to measure that
4 anywhere else. And that's why I believe that Table 4 is the
5 one that's most relevant, because it's the only part that
6 actually focuses on that dose-response model of looking at the
7 impact of each day.

8 So Table 1, Table 5, didn't attempt to do that. Indeed,
9 you couldn't do that with those part of the analysis.

10 Q. Sure. And, again, your article nowhere suggests that
11 Table 4 is the only relevant table, right?

12 A. No. Right. Clearly, in the broad context of the
13 overall study, correct. I was saying, for the purposes of our
14 discussion here today, I believe it's the most relevant.

15 Q. And for purposes of your role as an expert in this case
16 for plaintiffs, you have selected Table 4 to focus on, right?

17 A. Right, because of that dose-response focus on days and
18 the focus on the county-level actual returns.

19 Q. And you've already testified that it would not be fair
20 to assume that this national average would necessarily hold in
21 Ohio, right, because you haven't done that analysis?

22 A. Well, right, and just that you need to be careful in
23 drawing inferences about a national study to any particular
24 state. That's a fair statement.

25 THE COURT: That's exactly what I'm going to have to

1 do. So give me something I can use here.

2 BY MS. RICHARDSON:

3 Q. But if you were going to make an inference about Ohio,
4 you would predict that, in 2012, over 40,000 people would have
5 turned out in golden week, right?

6 A. That would have been the point prediction based on the
7 national averages, yes.

8 Q. And, in fact, it was nowhere near 40,000, right?

9 A. It was -- definitely less than that, yes.

10 Q. And it was around 14,000. Does that sound right?

11 A. Yeah, I think, ballpark. So that's -- yeah.

12 Q. You also mentioned in your expert report that your
13 article might not apply to Ohio because your article did not
14 look at the effect of taking away various types of election
15 laws, rather than adding them, right?

16 A. Right. So, again, you have to be careful in not
17 assuming a symmetric effect.

18 Q. But you testified during your deposition that your best
19 guess is that it would be exactly the same.

20 A. Well, right, because you don't have any -- without doing
21 any subsequent analysis, that would be the best point estimate
22 you could make.

23 Q. And your point is just that you have not done that
24 analysis?

25 A. Correct.

1 Q. And you, similarly, have not done any analysis based on
2 the impact on race, right?

3 A. That's right.

4 Q. I just have a couple of other points.

5 We have been referring to election-day registration
6 several times throughout our discussion. And you testified
7 earlier that that refers to the ability to register and vote on
8 election day, right?

9 A. Correct.

10 Q. And Ohio has never had election-day registration,
11 correct?

12 A. That's correct.

13 Q. And you describe in your article that election-day
14 registration is different because it capitalizes on last-minute
15 efforts to go and vote?

16 A. Yes, that's fair.

17 Q. And it's fair to say that, as you get closer to the
18 election, people tend to be more energized and mobilized about
19 the election, right?

20 A. Yeah. I mean, I think that's probably generally true.
21 It's going to vary a lot, from state to state, depending on the
22 nature of a campaign in a given state. But, yeah, that's --

23 Q. And, similarly, the states that you reviewed differ
24 quite a bit in terms of the same-day registration options that
25 they offer, right?

1 A. There is a lot of variation across the states, that's
2 correct.

3 Q. And whereas Ohio's same-day registration occurred during
4 30 to 35 days out, some states offer same-day registration
5 that's much closer in time to the election, right?

6 A. They do.

7 Q. And some states actually reopen their registration to
8 offer same-day registration, right?

9 A. They do.

10 Q. And that's not the case in Ohio?

11 A. Correct.

12 Q. And it wasn't the case in Ohio?

13 A. Correct. And we controlled for that in our analysis
14 with that 30-day registration window in the multi-day analysis.

15 Q. And again, as you point out in your article, or in your
16 report, in this case, those types of variances across states
17 are exactly why you can't try to draw specific conclusions
18 about Ohio based on your article, right?

19 A. That would be one of -- one of the reasons, certainly,
20 is that variation. But that is -- again, a strength of doing a
21 50-state study is that you can actually measure the effects of
22 those different election laws, whereas, otherwise, you wouldn't
23 be able to do that.

24 MS. RICHARDSON: Thank you, Mr. Canon.

25 THE COURT: Thank you, Ms. Richardson.

1 Mr. Kaul, your redirect.

2 - - -

3 REDIRECT EXAMINATION

4 BY MR. KAUL:

5 Q. Dr. Canon, let me first follow up on a few points that
6 you covered with Ms. Richardson. Then I'll go through a few
7 points in your article. First let me start where she left off.

8 You were talking about election-day registration and
9 excitement building as you get closer to the election?

10 A. Correct.

11 Q. Okay. And, now, in your statistical results for
12 same-day registration in that Table 4 you've been describing,
13 were you -- you said you were able to control for that?

14 A. Well, at least we have a control for the 30-day
15 registration window. And so that would take into account the
16 specific circumstances in the State of Ohio.

17 Q. Okay. So you have a control for that?

18 A. We do, yes.

19 Q. Okay. So that's factored into the numbers?

20 A. It is.

21 Q. Ms. Richardson was asking you about whether Mr. Trende
22 could have known about the critiques here. Do you recall that?

23 A. Yes. I believe I recall her asking about that.

24 Q. All right. And did Dr. Burden previously submit a
25 rebuttal to one of Mr. Trende's reports?

1 A. He did indeed. As we've talked about, much of the
2 analysis in my rebuttal report is drawn from that very rebuttal
3 report from Dr. Burden.

4 Q. Okay. So it made the --

5 A. Same points.

6 Q. -- most of the same points?

7 A. Correct.

8 Q. And were those points still applicable when you saw his
9 report here?

10 A. Yes, they were.

11 Q. You were asked about the strength of the claims you
12 could draw from the national survey. Now, you talked about
13 controlling for the window for registration close being one way
14 that you controlled for same-day registration variance; is that
15 right?

16 A. Right.

17 Q. And let's pull up, actually, page 5 of your expert
18 report. And I want to focus on the paragraph that begins with
19 "First."

20 Now, is this paragraph focused on same-day registration
21 or early voting specifically?

22 A. Early voting.

23 Q. Okay. And how -- can you explain how early voting can
24 vary from state to state?

25 A. Yes. Early voting, as I think we talked about in

1 direct, can either be in person or by mail, have different
2 lengths of windows in which early voting is allowed,
3 differences in terms of the number of locations where you can
4 do early voting from. Again I think of Texas with, you know,
5 voting in malls, versus some states where it's just like only
6 in the county seat. So that would be the examples of the
7 variation in early voting.

8 Q. And I understand you can't quantify this, but is it fair
9 to say that there is more variance in early voting across the
10 states than there is in same-day registration?

11 A. I would say that that's correct. The main way that
12 same-day registration varies is in the length of the window and
13 whether or not it's before or after that 30-day registration
14 period.

15 Q. Okay. And those latter two points with same-day
16 registration you controlled for; is that right?

17 A. That's correct.

18 Q. With early voting, are you able to control for all these
19 different types?

20 A. We're not. That's what I referred to in that paragraph,
21 is that we don't have, you know, measures for the location of
22 voting or the method through which you vote. On the other
23 hand, we do have the one control for the number of days of
24 voting for early voting in Table 4. But that's the only thing
25 we do control for the early voting.

1 Q. So is it fair to say that the strength of the claims you
2 can draw is greater for same-day registration than early
3 voting?

4 A. Yes, I would say that's a fair conclusion.

5 Q. You were asked some questions about whether you had
6 studied the racial impact of these laws?

7 A. Right.

8 Q. Now, you said you did not, right?

9 A. Right. So we included it as a control variable, but not
10 a focus of the study.

11 Q. Okay. But did you cite articles in your expert report
12 that studied the racial impacts of removing early voting
13 options?

14 A. Yes. And those are the three articles I cited in
15 Footnote 8 of my report.

16 Q. Those are the ones we discussed before?

17 A. Yes, the ones we discussed in direct.

18 Q. All right. Let's, then, turn to your article,
19 Defendant's 14N.

20 All right. And let's start with page 96. And I'm going
21 to ask Ms. Schultz to pull up some portions here as we go.
22 First, there is -- just under "Election-Day Registration" in
23 the left-hand column, you indicate that one of the reasons
24 election-day registration should increase turnout is that it
25 eliminates the need for two separate actions; is that right?

1 A. Right. That's the one-stop shopping idea.

2 Q. Okay. Is that what you were talking about before?

3 A. Yes, it is.

4 Q. Okay. And let's go to the column on the right side of
5 that page where you described some literature on this. All
6 right. And what are you explaining here?

7 A. So this refers to some of the large body of work that
8 confirms that election-day registration does have a positive
9 impact on voter turnout, ranging from three to seven percentage
10 points in presidential elections.

11 Q. Okay. Let's go to the next paragraph. And, here,
12 you're talking about the trend toward early voting?

13 A. Right. It's basically quadrupled from the early 1990s,
14 seven percent, to up to over thirty percent.

15 Q. Okay. And so much so that there is a reference to the
16 United States being in the midst of a revolution of voting,
17 according to this one author?

18 A. That's right.

19 Q. All right. Next, let's take a look at page 97.

20 Now, you were explaining that one of the conclusions of
21 this article is that early voting was found to decrease
22 turnout; is that right?

23 A. Yes, that's right.

24 Q. And do you see this sentence?

25 A. I do.

1 Q. Can you read the full sentence into the record?

2 A. As we will show, including SDR, same-day registration,
3 in turnout models alters the inferences drawn about the effects
4 of early voting.

5 Q. And what does that mean?

6 A. That means what we've been talking about: That when you
7 do have same-day registration, that that has a positive effect
8 that offsets the negative effect of early voting.

9 Q. All right. And then let's turn to 101. All right. In
10 the bottom left of that page, I'd like to focus on the second
11 sentence there.

12 So here, again, you're talking about early voting -- I'm
13 sorry -- election-day registration and same-day registration
14 offsetting the negative effects of early voting when they're
15 combined; is that right?

16 A. That's right.

17 Q. All right. And, then, let's turn to the next page. And
18 let's look at that chart you were going over with Ms.
19 Richardson before. So, just to be clear, the top two bullet
20 points are the point estimates with standard errors for early
21 voting by itself, right?

22 A. Right.

23 Q. And then the next two are early voting combined with
24 same-day registration?

25 A. Correct.

1 Q. And the two with same-day registration are statistically
2 the same as zero, right?

3 A. That's right, because they both cross the zero line.

4 Q. So that's what Ohio was prior to 2014; is that right?

5 A. That's right.

6 Q. And now where would Ohio fall here?

7 A. Ohio would be in the top category now with early voting
8 only.

9 Q. Now it's in a group that's statistically negative?

10 A. Right.

11 Q. All right. And this is from the first figure you were
12 talking about with Ms. Richardson, or first table?

13 A. Yes, Table 1.

14 Q. All right. I'm going to talk about that, versus Table
15 4, in a minute. But first I just want to make sure, so even
16 with Table 1, you're showing that's gone from the system at
17 -- that's neutral to one that's negative?

18 A. Right. Given that -- again with the caveats about, you
19 know, projecting to future elections; but, yes, I think that's
20 a fair -- a fair inference.

21 Q. Okay. And then let's turn to page 105. On the
22 left-hand side, there is a description of Table 4. Now, I'd
23 like to start with "In all specifications" in the middle.

24 A. Uh-huh.

25 Q. Can you just read that from there until -- read those

1 two sentences into the record?

2 A. Okay. In all specifications, the results show that a
3 longer window increases turnout in the case of SDR, same-day
4 registration, but decreases it in the case of early voting.
5 The estimates suggest that an additional ten days of early
6 voting decreases voter turnout by about a percentage point,
7 while an additional ten days of SDR increases turnout by about
8 two-and-a-half points.

9 Q. And, then, let's actually turn to that table which is on
10 page 106, the top, right there.

11 Now, you were talking before about Table 1 being
12 individual-level data and Table 4 being county-level data.

13 A. That's correct.

14 Q. Now, are there contexts in which individual-level data
15 would be preferable to county-level data?

16 A. Sure. You could imagine situations where, if you were
17 trying to do more, sort of, analysis, for example, of why a
18 voter voted the way that they did, and so there are a lot of
19 studies of voting behavior that try to sort out the effects of,
20 say, ideology, partisan effects, and issue positions, if you're
21 doing that kind of analysis, then, absolutely, the individual
22 survey is the best way to go.

23 Q. Okay. And is that what you were trying to find out
24 here?

25 A. No. So, here, we're focusing on turnout.

1 Q. Okay. And so, with the individual-level data, you're
2 saying you're relying on self-reported information?

3 A. Right. That's why the self-reported voting information
4 is, you know, somewhat problematic, because you're relying on
5 voter recall and their claim of whether or not they voted,
6 rather than if they actually voted or not.

7 Q. What is Table 4 relying on?

8 A. County 4 is the actual county-level election returns.

9 Q. That's the real data?

10 A. The real data.

11 Q. What did you find when you looked at the real data?

12 A. What we just highlighted in the text, which is that
13 same-day registration for -- each day of same-day registration
14 has a positive effect of about .28 percent, and then early
15 voting has a negative effect of a little over a tenth of a
16 percent, per day.

17 Q. Okay. And I believe Ms. Richardson referred to what she
18 called the negative effect of early voting and the slight
19 positive effect of same-day registration?

20 A. That's right. And so -- but you can see, again, as I
21 think I talked about both in direct and cross, that when you
22 look at them separately, same-day registration is about triple
23 the size of the effect of early voting; and, when they're
24 combined, it's a little over double the effect.

25 Q. Okay. So the effect of same-day registration overwhelms

1 the effect of early voting?

2 A. That's right.

3 Q. Is that statistically significant?

4 A. It is.

5 Q. What do all those asterisks mean?

6 A. So the stars refer to the level of significance,
7 basically, where one star would be significant at the .1 level,
8 two stars significant at the .05 level, and three stars
9 significant at the .01 level.

10 Q. Okay. So .01 is the strongest?

11 A. That's right.

12 Q. And what category does the same-day registration
13 increase in turnout fall under?

14 A. It's the strongest in both, when it's by itself in
15 Column 2 and when it's combined with early voting in Column 3.

16 MR. KAUL: Okay. Thank you.

17 No further questions.

18 THE WITNESS: Thank you.

19 THE COURT: Ms. Richardson.

20 - - -

21 RECROSS-EXAMINATION

22 BY MS. RICHARDSON:

23 Q. Just a couple more questions, Dr. Canon. In your
24 report, paragraph -- I'm sorry -- page 6, the paragraph that
25 begins with "Third" --

1 A. Yes.

2 Q. -- again, just to clarify, you are stating in this
3 paragraph that you did not do an analysis. And I'll just
4 quote: "Our study did not examine how election laws affected
5 racial groups differently." Correct?

6 A. Right. So, as I mentioned in cross and direct, we have
7 the racial status of voters as a control, but not as a focus of
8 the analysis.

9 Q. And you talked about some of the articles that are cited
10 here in this paragraph. And you mentioned that, you know,
11 they're your citations. But, just to be clear, these are the
12 parts that actually come from Dr. Burden's report, correct?

13 A. Right, but this is also work that I was familiar with.
14 The only one of those three I had not read and that
15 Dr. Burden's report was the first time I'd seen a reference to
16 it was that very first one I mentioned. The Glynn and Kashin
17 article I had not seen before. The other two I had read
18 previously before.

19 Q. That's the one you read, I think you said, just a few
20 days ago?

21 A. Exactly, right.

22 Q. And again with respect to Table 4, that is one of
23 multiple different tables that you -- multiple different
24 analyses that you did in your article, right?

25 A. Yes, it is.

1 Q. And so the fairest way to look at the article in
2 context, as you suggest, is to consider all of those articles
3 together, or all of those analyses together? I'm sorry.

4 A. Well, I've testified that I believe that Table 4 is the
5 one that's most relevant for our discussions here today.

6 Q. And Dr. Burden didn't offer that conclusion in his
7 report that you quote from extensively, right?

8 A. It was not one of the four points that he made, no.
9 That is correct.

10 Q. And looking at the article as a whole and the research
11 you did through the variety of different methods that you've
12 described, your article, as we discussed earlier, concluded
13 that early voting reduces turnout and that that depressant
14 effect is only partially offset if SDR is present or if EDR
15 offers a vehicle for the last-minute mobilization of marginal
16 voters, right?

17 A. Yes. And I described, you know, several times how I
18 would change that word "partially," because it does fully
19 offset it. And while the article's conclusion on early voting,
20 you know, definitely is true, again, the most relevant thing
21 for our discussion here today with my research is the same-day
22 registration, rather than early voting.

23 Q. And you testified that Mr. Trende and Dr. Hood would be
24 aware of the critique because of Dr. Burden's report, correct?

25 A. Well, certainly, Dr. Trende would because it was,

1 basically, the same point that was made in the previous case.

2 Q. And in the four opinions that Dr. Burden offered which
3 you have repeated in your expert report, Dr. Burden doesn't
4 step away from the conclusion that you reached in your
5 peer-reviewed published article, right?

6 A. I -- I can't speak to -- I mean, I've not read his
7 deposition. I didn't read his, you know, direct or cross. So
8 I can't really answer that question, I'm afraid.

9 Q. But it wasn't in the report that you quoted?

10 A. It wasn't in the report. That's right.

11 MS. RICHARDSON: Thank you, Dr. Canon.

12 MR. KAUL: No further questions.

13 THE COURT: Thank you, Dr. Canon. Have a nice
14 Thanksgiving.

15 THE WITNESS: Thank you very much. You, too.

16 THE COURT: Break until 11:00. Who is --

17 MR. SPIVA: Mr. Mark Owens, Your Honor.

18 THE COURT: Tell me what you have in store for the
19 day.

20 MR. SPIVA: We've got Mark Owens, who is with the
21 Montgomery County Democratic Party, and Greg Beswick, who is
22 the Executive Director of the Ohio Democratic Party.

23 MR. McTIGUE: And also Mr. Brill, that worked on the
24 report that Mr. Anthony talked about.

25 THE COURT: Oh! Very good.

1 MR. McTIGUE: That will be very short.

2 (A recess was taken from 10:45 a.m. until 11:10 a.m.)

3 MR. KAUL: Your Honor, before we call the witness, we
4 have a stipulation. It's with respect to Exhibit 19,
5 Plaintiffs' Exhibit 19, which is the 2008 early in-person
6 voting report that we discussed with --

7 THE COURT: Mr. Anthony?

8 MR. KAUL: Exactly.

9 THE COURT: Go ahead.

10 MR. KAUL: The agreement is that Daniel Brill, who is
11 identified as the author was in fact the author, that he was a
12 GIS analyst for the Franklin County Board of Elections at the
13 time of the report and that the method described on page 2 of
14 the report reflects the methodology that he used in preparing
15 the report.

16 THE COURT: So stipulated?

17 MR. VOIGT: So stipulated.

18 THE COURT: Very well.

19 MR. KAUL: Your Honor, I think what we would do, he
20 was going to testify --

21 THE COURT: I assume the entire board voted to
22 commission him to do this report? There's no indication
23 otherwise, right?

24 MR. VOIGT: We don't know, Your Honor.

25 THE COURT: Go ahead.

1 MR. KAUL: I think with that, Your Honor, we would
2 move this in so with the hope of not having to call him. But I
3 would say that I haven't discussed that with defense counsel
4 until just now.

5 MR. VOIGT: With that stipulation we don't have an
6 objection to that exhibit coming in.

7 THE COURT: Very well. Plaintiffs' 19 will be
8 admitted, along with the stipulation.

9 MR. KAUL: And with that, we can remove Mr. Brill from
10 the witness list.

11 THE COURT: Okay. So then who's next today?

12 MS. CALLAIS: Mark Owens, Your Honor.

13 THE COURT: Mr. Owens, if you'd approach the stand,
14 raise your right hand and be sworn.

15 (Witness sworn.)

16 THE COURT: Ms. Callais, you may inquire.

17 - - -

18 MARK OWENS

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

21 DIRECT EXAMINATION

22 BY MS. CALLAIS:

23 Q. Mr. Owens, could you please state your name for the
24 Court?

25 A. Mark Owens.

1 Q. Could you spell that?

2 A. M-A-R-K, O-W-E-N-S.

3 Q. Where do you currently live?

4 A. I live in Dayton, Ohio.

5 Q. What county is that in?

6 A. Montgomery.

7 Q. How long have you lived there?

8 A. Since 1979.

9 Q. What do you do for a living?

10 A. I'm the Clerk of Courts for the Dayton Municipal Court.

11 Q. And how long have you been the Clerk of Court?

12 A. Since January of 1991.

13 Q. And is that an elected position or an appointed
14 position?

15 A. It's an elected position. I was appointed in January
16 of '91 to fill out a term and then ran for a full term that
17 November and then been reelected four times since then.

18 Q. And I understand, Mr. Owens, that you're also Chair of
19 the Montgomery County Democratic Party?

20 A. Yes, I am.

21 Q. How long have you been chair?

22 A. Since April of 2007.

23 Q. And did you do any work with the Montgomery County
24 Democratic Party prior to becoming chair?

25 A. Yes, I did.

1 Q. Can you just describe that briefly?

2 A. Yes. I was a volunteer starting in early 1982, became a
3 member of their central committee sometime shortly thereafter.
4 I ran several campaigns, both mainly on a local and
5 state-representative-type level. And then in 1994 I became
6 vice chair for campaigns and elections.

7 Q. And can you tell the Court what you do in your role as
8 Chair of the Montgomery County Democratic Party?

9 A. Well, my primary functions are to raise funds, recruit
10 candidates and then to strategize with local, state and
11 national campaigns.

12 Q. And can you just tell us just generally the types of
13 things you strategize about?

14 A. Yes. Well, local campaigns it's basically the whole
15 gamut of their campaigns on how to get started and issues to
16 raise and how to raise money, et cetera. But we also, along
17 with them and with the state and local campaign, we also work
18 out on how to get voters to the polls for election day.

19 Q. And in the course of your get-out-the-vote work do you
20 ever look at polling data?

21 A. We look at some polling data and we also look at results
22 of the past elections.

23 Q. And when you look at the results of the past elections,
24 what sort of things are you looking at?

25 A. Well, we're looking at where democrats perform best,

1 where they perform worst, and also where we have the weakness
2 in the number of people that come out in turnout.

3 Q. In reviewing that data, has that given you a general
4 understanding of the constituency of the Montgomery County
5 Democratic Party?

6 A. Yes.

7 Q. Can you briefly describe what that constituency looks
8 like?

9 A. We tend to -- our strongest areas are in the
10 African-American communities and Hispanic communities. And I
11 know generally the population, for instance, in Montgomery
12 County, the African-American community is 20, 21 percent. And
13 probably we believe that the makeup of the democratic vote is
14 closer to 35 percent.

15 Q. And about how many registered democrats are there in
16 Montgomery County?

17 A. We currently have 25,000 registered democrats.

18 Q. And, Mr. Owens, does the Montgomery County Democratic
19 Party conduct get-out-the-vote activities regularly?

20 A. Yes, we do.

21 Q. Have you participated in those?

22 A. Yes, I have.

23 Q. Do you also conduct registration activities?

24 A. Yes, we do, in conjunction with the state democratic
25 party.

1 Q. And do you do any voter-education work?

2 A. Yes, we do.

3 Q. And then what about voter-protection work?

4 A. Yes. We are involved in voter-protection work with the
5 state democratic party as well.

6 Q. So I recognize that you've worked with the Montgomery
7 County Democratic Party for a very long time, since, I think
8 you said, 1994, can you tell the Court what change in Ohio
9 election laws, if any, has had the biggest effect on the
10 Montgomery County Democratic Party's activities since you
11 started working with them?

12 A. The biggest change has been the implementation of early
13 voting both in-person early voting and vote by mail. I guess
14 some people call it no-excuse vote by mail. Prior to that, any
15 early vote was through what we always called absentee voting.
16 You had to sign an affidavit that you were going to be
17 unavailable to vote in the county because either you were out
18 of the county or you were in the hospital or something along
19 those lines. And so there was very limited number of people
20 that could use that process.

21 I know during that period of time as we observed
22 people -- observed election results that came in, they tended
23 to skew with republicans and any time that we were within
24 20 percent of the lead, we were always very happy because we
25 thought we had a chance to win that election. Subsequent to

1 that, when we went to, I think, right around 2005 or 2006 when
2 the early voting was implemented, there was a larger number of
3 our voters that took advantage of voting early both in person
4 and vote by mail. And so the numbers have changed.

5 We put a much more emphasis on educating our voters to
6 be able to vote early, both in person and by mail. So much
7 more of our get-out-the-vote effort is really started in
8 September than, say, mid October.

9 Q. Mr. Owens, did the Montgomery County Democratic Party
10 conduct get-out-the-vote activities during the 2008
11 presidential election?

12 A. We did.

13 Q. And can you just briefly describe the types of
14 get-out-the-vote activities you conducted?

15 A. Yes. We had mailings that went out, say, in early
16 September letting people know that they could vote early. We
17 actually -- I think at that point we actually had an attachment
18 where they could fill it out and send it in requesting a vote
19 by mail. We had also on there hours of early voting and how
20 to -- where to go to vote if you want to vote in person. We
21 also did canvassing. We did telephone calls and we did radio
22 ads.

23 Q. And when you just talked about your mail program, were
24 there any particular areas that you sent those mailings to?

25 A. We tended to try to send them to areas where we had our

1 strongest voters and also the ones that we have had a history
2 of at least likely to vote as well, the sporadic voters, if you
3 will. They tended to be in West Dayton, they tended to be in
4 the city of Trotwood, Jefferson Township and Harrison Township.

5 Q. And can you describe, the communities you just
6 mentioned, can you describe them generally?

7 A. They were our predominantly majority African-American
8 communities. Anywhere from maybe 55 to 60 percent to, in parts
9 of West Dayton, they make up to 90 to 95 percent
10 African-American.

11 Q. Did the Montgomery County Democratic Party also engage
12 in registration activities during 2008?

13 A. Yes.

14 Q. And did you do any work, any get-out-the-vote work
15 related to golden week?

16 A. Yes, we did.

17 Q. And can you tell the Court a little bit about the work
18 you did?

19 A. Well, again, in our mailings we let people know that
20 they could vote on the very first week, which in the complaint
21 is called golden week. Through our canvassing we had our
22 canvassers were trained to let people know that they can vote.
23 If they want to register, they could register and vote at the
24 same time. Wanted to let people know they could do that. We
25 had free media events where we had some elected officials or

1 what have you go down on golden week and vote and publicize
2 that you could do that and encourage people to come down and
3 register and vote at the same time.

4 Q. And did you observe any ways in which that facilitated
5 your get-out-the-vote efforts with the Montgomery County
6 Democratic Party?

7 A. Yes. If they were able to vote in golden week and
8 particularly if they were new registerers, registrants, we
9 would kind of bank their votes I guess is what you called it.
10 A lot of times on new registers, sometimes they'll register but
11 they really have to be reminded that they can actually use
12 their vote -- use their right to vote so they are the ones that
13 maybe are the toughest ones to get to the polls. You have to
14 send mailings, phone calls, sometimes through our canvassing
15 but mainly through mail and phone calls to remind them to go
16 vote. By having them vote on golden week, register and vote at
17 the same time, you didn't have to follow up with them.

18 Q. And, Mr. Owens, did you actually go to the early-vote
19 location in Montgomery County during golden week?

20 A. I did go, yes.

21 Q. And did you observe individuals who were actually
22 utilizing golden week to register and vote?

23 A. Yes, I did.

24 Q. And what was the primary race of the individuals you
25 observed?

1 A. When I was there it was primarily African-American and
2 generally young.

3 Q. Were you at the early-vote location in Montgomery County
4 at any other point during the 2008 presidential election?

5 A. Yes, I was.

6 Q. And did you witness any lines when you were there?

7 A. I did.

8 Q. What days were you there?

9 A. I was there the Sunday before election and then I think
10 I was there the two weekends, it was either Saturday or Sunday
11 before the election.

12 Q. And can you just describe what that line looked like for
13 the Court?

14 A. Well, the one that was most noticeable was the Sunday
15 before the election and it was a fairly long line. In
16 Montgomery County, the board of elections is in the county
17 administration building and they have the two floors below the
18 main floor. And it was lined up, up to the main lobby and then
19 there's an attached garage that goes out and they were kind of
20 filtered through the main lobby and out towards the garage.

21 THE COURT: Ms. Callais, I'm sorry. I've lost track
22 of the year we're talking about.

23 MS. CALLAIS: 2008.

24 BY MS. CALLAIS:

25 Q. I'd like to move on right now to the 2012 presidential

1 election. Did the Montgomery County Democratic Party also
2 conduct get-out-the-vote activities during 2012?

3 A. Yes, we did.

4 Q. And were those activities the same or did they differ in
5 any way from 2008?

6 A. Well, we had much of the same but we were much more
7 focused, if you will, made sure that the material got out. One
8 of the things we observed in 2008, we had two African-Americans
9 that had run county wide and we had not had a good history in
10 Montgomery County in electing African-Americans county wide.
11 We had a recorder that ran and a Judge that ran county wide in
12 2008.

13 Up until that time there was only one African-American
14 that was elected county wide in either a commissioner or
15 administrative office in the history of Montgomery County. At
16 the early vote when those numbers come in, both those
17 individuals had about a 10,000 vote lead on their opponents.
18 And at the end of the election, they both won. But one was won
19 by 1500 votes, the other by about 2,000.

20 We recognize the importance of early vote and to get our
21 constituents to the vote before election day and record those
22 votes.

23 Q. Just to clarify, the two individuals you were talking
24 about, they ran in 2008?

25 A. 2008, correct.

1 Q. And you were explaining how that race influenced your --

2 A. Influenced our determination decisions to redouble our
3 efforts to make sure that people voted early in 2012, yes.

4 Q. Did you also continue to focus any efforts on golden
5 week in 2012?

6 A. We did.

7 Q. And can you describe those?

8 A. Again, we did it through our mail program, mail that
9 went out early. We did it through our canvassing, our
10 telephone calls. Again, we did have some radio, we had some
11 publicity again with the news media by having people go on
12 golden week and vote. We also worked with some of our College
13 Democrats both at Wright State, at the University of Dayton and
14 particularly with Sinclair Community College. They are in very
15 close proximity to the board of elections. In fact, they're
16 across the street. So working with those -- the Sinclair
17 Community College College Democrats, we encouraged Sinclair
18 students to vote on golden week, register and vote. Quite a
19 few did.

20 Q. And why did you encourage them to register and vote
21 during golden week?

22 A. Again, it was because young people, and particularly new
23 registrants, have a history of not voting as much as older
24 people, if you will, and if we could get them to register and
25 vote at the same time, it was done. They're students.

1 Sometimes they may have classes on election day, may forget
2 about election voting. Overall, the young people, they have
3 jobs. It was much more easier if they could register and vote
4 at the same time and have their vote recorded and they wouldn't
5 have to worry about taking time off from their jobs, finding
6 baby-sitters or skipping class in order to vote.

7 Q. Did you also go to the early-vote location during golden
8 week in 2012?

9 A. I was there once, yes.

10 Q. And did you observe people utilizing golden week
11 registering, voting?

12 A. Yes, I did.

13 Q. What was the primary race of the individuals who you
14 saw?

15 A. When I was there it was primarily African-American and
16 young.

17 THE COURT: Are you saying young African-Americans or
18 you're saying both groups?

19 THE WITNESS: Kind of both groups. There were
20 other -- there were other races as well but primarily all those
21 that showed up were young.

22 THE COURT: May I interpose a question?

23 MS. CALLAIS: Absolutely.

24 THE COURT: At the outset you said something about
25 voter protection. What is voter protection? Or did I mishear

1 that?

2 THE WITNESS: No. It's a program that we have
3 implemented all the way back into 2004 where we -- and the
4 republicans do as well -- where they can have observers on
5 election day in the polls to make sure that there's not things
6 that go wrong. If somebody sees a person who either they don't
7 think should be there or they think they're being wrongly
8 turned away, they can call -- in our instance we have a group
9 of lawyers that are available that they can either -- if
10 there's a consistent problem they can file a suit, but they may
11 call down to the board of elections and try to get a
12 troubleshooter in. A lot of times the observers will ask that
13 person, don't leave until this is resolved.

14 Both parties have those. Both have the ability to have
15 them observed -- observing in precincts.

16 THE COURT: I guess I never heard it described as
17 voter protection before. It's not something where people were
18 physically at risk, correct?

19 THE WITNESS: Correct.

20 THE COURT: All right. Go ahead.

21 BY MS. CALLAIS:

22 Q. Mr. Owens, we've talked about the two presidential
23 years, but does the Montgomery County Democratic Party also
24 conduct get-out-the-vote work in elections that are not
25 presidential elections?

1 A. Yes, we do.

2 Q. And what elections have you done that work in?

3 A. Well, certainly most recent ones we've done -- we
4 actually do some sort of get out the vote in every election,
5 whether it be a mayoral election, what we call an off-off year,
6 odd-number years. Certainly we work with the state party in
7 2010, 2014 in our get-out-the-vote efforts in those years. And
8 those were much more extensive than what we can afford to do in
9 the off years. But we do it every year we do them.

10 Q. Mr. Owens, is it your understanding that golden week was
11 not in place in 2014?

12 A. Yes, that's correct.

13 Q. And also not in 2015?

14 A. That's correct.

15 Q. And did that have any effect on the get-out-the-vote
16 work you did in those elections?

17 A. Yes. In that we had to, again, any new registered voter
18 we had to identify and try to get to the polls, either in a
19 separate way rather than when they registered and voted at one
20 time with golden week. We had to make the effort to ensure
21 that they either came in early to vote or vote by mail or come
22 in on election day.

23 Q. And did that require any additional volunteers?

24 A. Well, it required, certainly, more hours than volunteers
25 in order to do that. We do have a phone bank that is available

1 to us at our headquarters. It certainly required more effort
2 on the phone and again with mailing to remind them to go vote.
3 Those are the two primary ways we would chase the registered --
4 newly-registered voters to make sure that they did vote on
5 election day.

6 Q. You also mentioned that the Montgomery County Democratic
7 Party engages in voter-education activities. Can you just
8 briefly describe the types of voter-education activities that
9 your group performs?

10 A. Well, part of it is through our mail, part of it through
11 when people canvass and knock on doors, again, through the
12 telephone. We do some with radio ads, as I mentioned earlier,
13 that also includes education. Plus with our staff and
14 volunteers that are at our headquarters.

15 We're essentially a volunteer organization. We only
16 have one paid person that's a part-time director but the rest
17 of everyone else that shows up is all volunteers. And we do
18 train them on questions that come up when people either come on
19 the phone or come to the headquarters and say, I have a
20 question. How do I get my -- how do I vote? Where do I vote?
21 How can I vote early? How can I get a vote by mail? Sometimes
22 they'll call and say, I have it, I don't understand the form
23 I'm supposed to fill out and we'll train people on how to help
24 them fill out the forms.

25 Q. I think you started to touch on this but just what types

1 of subjects do you educate voters about?

2 A. Well, we educate them on how to vote in person and the
3 hours that are available. We educate them on how to go about
4 getting a -- if they would choose to vote by mail, how to go
5 about requesting that vote by mail. We educate them on,
6 obviously, when the hours on election day polling are. Again,
7 we have people at the office that are able to, if they call and
8 say where do I go vote, we have that information.

9 I know in 2008 and 2012, again, in conjunction with the
10 democratic party, Ohio Democratic Party, we're able to provide,
11 on our canvassing, their location to vote as well. So that's
12 through education as well.

13 Q. Do you also provide any education on what to actually
14 fill out on absentee ballots in terms of the information
15 required of voters?

16 A. In our mailings we generally say, you have to bring an
17 ID and on the absentee ballot you have to provide your name,
18 address, date of birth and I think it's the last four --
19 driver's license or some identification like the last four
20 digits of your driver's license or your Social Security card.
21 And we also train our volunteers when people call in to ask
22 about what it is they need to provide on there.

23 Q. Is it your understanding that there was a change
24 recently in which additional information, particularly the date
25 of birth and address --

1 MS. COONTZ: Objection.

2 THE COURT: Basis.

3 MS. COONTZ: Leading.

4 MS. CALLAIS: Just a foundational --

5 THE COURT: I'm sorry?

6 MS. COONTZ: Leading.

7 THE COURT: Rephrase.

8 BY MS. CALLAIS:

9 Q. Is it your understand that there's recently been a
10 change in the requirements for absentee-ballot identification
11 envelopes?

12 A. I believe there was one sometime in 2014, I believe.

13 Q. And that additional information was required?

14 A. Yes. I think -- I believe it was -- you had to put on
15 your date of birth as well as, again, either your driver's
16 license and your state ID number or the last four digits of
17 your Social Security number.

18 Q. Did you have to do any additional training with your
19 staff about the new requirements?

20 A. Yes. We let them know -- we let them know because,
21 again, we do get phone calls about questioning how to fill
22 those out. Again, sometimes people show up at our headquarters
23 and say, am I doing this right? We don't show them how to
24 vote. We do show them where they have to fill out and sign on
25 the outside of the packet, and we try to give a description on

1 the phone if they call in. So, yeah, we had to make sure
2 people knew that they had to put that information on there.

3 Q. And, Mr. Owens, you talked briefly with Judge Watson
4 about the voter-protection work that the Montgomery County
5 Democratic Party does. Can you just describe briefly sort of
6 what your efforts are for voter protection or what your role is
7 in that process?

8 A. Well, we have generally worked with the Ohio Democratic
9 Party on that. What we do is we try to recruit people that --
10 volunteers that will actually serve as poll observers on
11 election day. We try to recruit attorneys that will help on
12 election day and they call it working out of their -- they call
13 it a war room. We recruit those attorneys and we work with the
14 Ohio Democratic Party's voter-protection team to get those
15 individuals trained. Most of the training, though, comes from
16 the state party.

17 Q. And the individuals that you train and recruit, have
18 they ever had to assist voters or have they ever assisted
19 voters who have voted at multiprecinct locations?

20 A. Yes.

21 Q. And specifically have they ever assisted voters who have
22 voted, I think the term is right church, wrong pew?

23 A. Yes. In the past they've had to do that. Again, as I
24 described to the Judge, they can't interfere with the voters
25 but they certainly, if they see something that they think is

1 improper, they'll raise the issue and either go through the
2 team of lawyers and they may call in somebody from the board of
3 elections where they have several what they call
4 troubleshooters in Montgomery County. They do it in other
5 counties. But they have troubleshooters that will then travel
6 to that precinct and area to try to get that issue resolved.

7 MS. CALLAIS: No further questions, Your Honor.

8 THE COURT: Thank you.

9 Ms. Coontz, you may cross.

10 MS. COONTZ: Thank you, Your Honor.

11 - - -

12 CROSS-EXAMINATION

13 BY MS. COONTZ:

14 Q. Good morning, Mr. Owens.

15 A. Good morning.

16 Q. My name is Bridget Coontz and I'm here on behalf of the
17 Attorney General and Secretary of State Husted. I just have a
18 couple questions for you this morning.

19 THE COURT: Before you start. There have been two
20 primaries and two generals since the law changed, the new DOB,
21 the new address, so forth. I'd be particularly interested in
22 hearing about any experience that you've encountered in the
23 last, I guess, two election years.

24 THE WITNESS: Well, we've had people, again, call up
25 and say, what kind of information is needed on there and we've,

1 again, just assisted them in --

2 THE COURT: You mean in terms of --

3 THE WITNESS: Where do I sign, what do I -- do I need
4 both? Because I think you only need date of birth and the last
5 four digits of your Social Security number. You don't need
6 both the driver's license and last four digits of your Social
7 Security number. Those sort of things are things that they
8 question. It's mainly questions that they have about what is
9 exactly that I need to fill out.

10 THE COURT: A number of calls, a few calls?

11 THE WITNESS: I would say a few. In any election it's
12 probably anywhere from 50 to 100.

13 THE COURT: All right. I'm sorry.

14 BY MS. COONTZ:

15 Q. Mr. Owens, you don't work for the Montgomery County
16 Board of Elections, correct?

17 A. I do not.

18 Q. And you've never administered an election as an election
19 official, correct?

20 A. I have not, correct.

21 Q. You're here today on behalf of the Montgomery County
22 Democratic Party, correct?

23 A. Yes, I am.

24 Q. Not the board of elections?

25 A. Correct.

1 Q. To dovetail off the Court's questions, have you ever
2 been involved in reviewing absentee ballots to determine their
3 sufficiency?

4 A. No, I have not.

5 Q. Have you ever been involved in reviewing provisional
6 ballots to determine their sufficiency?

7 A. No, I have not.

8 Q. Okay. Now, it's fair to say that based on your
9 testimony, the Montgomery County Democratic Party used golden
10 week as a campaign strategy, correct?

11 A. Correct.

12 Q. And it was a strategy to get voters to the polls on
13 behalf of democratic candidates, correct?

14 A. Correct.

15 Q. And I believe you said that the goal was to use golden
16 week to bank the votes of those who were toughest to get to the
17 polls?

18 A. Correct.

19 Q. And to bank those votes on behalf of democratic
20 candidates?

21 A. Well, we assume they are. I don't know how they end up
22 voting.

23 Q. But that was the goal, correct?

24 A. That's the goal.

25 Q. Okay. Now, if the laws were changed -- were to change

1 as a result of this lawsuit, would your voter-education efforts
2 have to change in reaction to the law change?

3 Do you need me to rephrase? That was not very
4 articulate.

5 If Ohio's election laws changed, do you adapt your
6 voter-education efforts accordingly?

7 A. Yes.

8 Q. Okay. So if Ohio's election laws were to change in
9 reaction to this case, the Montgomery County Democratic Party
10 would have to change its voter-education efforts accordingly?

11 A. Yes.

12 Q. And it would have to change its efforts from the manner
13 in which you educated voters in 2015, correct?

14 A. Correct.

15 Q. And it would have to change the manner in which you
16 educated voters in 2014, correct?

17 A. Correct.

18 MS. COONTZ: Just one moment, Your Honor.

19 I have nothing further at this time, Your Honor. Thank
20 you.

21 THE COURT: Thank you.

22 MS. COONTZ: Thank you, Mr. Owens.

23 THE COURT: Ms. Callais?

24 MS. CALLAIS: No further questions.

25 THE COURT: Thank you, Mr. Owens, for coming in. You

1 may step down. Have a pleasant Thanksgiving.

2 THE WITNESS: You too, Your Honor.

3 MR. SPIVA: Did you want us to call the next witness,
4 Your Honor, or did you want to have the lunch break now?

5 THE COURT: Who is it?

6 MR. SPIVA: It's Greg Beswick, the Executive Director
7 of the Ohio Democratic Party.

8 THE COURT: Let's do that after lunch. We'll come
9 back at 1:30.

10 Are you guys flying today?

11 MR. SPIVA: No. We're not flying today. I think,
12 though, he is our last witness given the stipulation for today.
13 We've got Dr. Minnite coming back on Monday and Mr. Cromes and
14 then we were going to try to, I think, do some working out of
15 exhibits and that type of thing.

16 THE COURT: Very good. Have a pleasant lunch. I'll
17 see you at 1:30.

18 (A recess was taken at 11:55 a.m.)

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1 Tuesday Afternoon Session,
2 November 24, 2015.
3 1:30 p.m.

4 - - -

5 THE COURT: Next.

6 MR. SPIVA: Your Honor, the next witness is Greg
7 Beswick.

8 THE COURT: Sir, if you would approach the stand,
9 please, raise your right hand and be sworn.

10 (Witness sworn.)

11 THE COURT: Good afternoon. Thank you for coming.

12 THE WITNESS: Thank you, sir.

13 - - -

14 GREGORY BESWICK

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

17 DIRECT EXAMINATION

18 BY MR. MARTIN:

19 Q. Would you please state your name for the record?

20 A. Sure. It's Gregory James Beswick.

21 Q. Could you spell that as well, please?

22 A. Sure. Beswick is B-E-S-W-I-C-K.

23 Q. Good afternoon, Mr. Beswick. Where do you live?

24 A. I live at 6023 Glenfinnan Court, Dublin, Ohio.

25 Q. Which county is that in?

1 A. Franklin County.

2 Q. Where did you go to college?

3 A. I went to Ohio State University.

4 Q. What did you study?

5 A. Political science.

6 Q. And where do you currently work?

7 A. The Ohio Democratic Party.

8 Q. And what is your position there?

9 A. Executive director.

10 Q. How long have you been working with the Ohio Democratic
11 Party?

12 A. I've been working for them in full-time employment since
13 the beginning of the year. I've been working with them in
14 multiple capacities on and off, payroll at times, since 2006.

15 Q. Okay. What were you doing in 2006?

16 A. 2006, I was the campaign manager in the attorney
17 general's race that year.

18 Q. Okay. Just for future reference, I'm going to refer to
19 the Ohio Democratic Party as ODP.

20 A. Okay.

21 Q. Can you describe what you were doing on the attorney
22 general's race?

23 A. Sure. I kind of managed the day-to-day operations of
24 that campaign. So setting its budgets and working to help it
25 raise money and to how it would do its voter contact. In a

1 broader scheme of things, I would also work with the Ohio
2 Democratic Party with the campaign with that voter contact, its
3 get-out-the-vote efforts, to mobilize voters, to ensure that
4 the campaign was well-represented within the Ohio Democratic
5 Party's plans.

6 Q. And by voter contact, do you mean voter education or
7 outreach?

8 A. Yeah. Voter education. So both on -- there's different
9 fronts of voter education. Obviously persuade about the
10 positives of your candidate. But also how to go vote, what
11 that entails, what you need to do to make sure that your vote
12 counts on election day or when you vote.

13 Q. What did you do after the 2006 attorney general's
14 campaign?

15 A. After the 2006 attorney general campaign, I went into
16 the Attorney General's Office for about a year and a half as
17 the legislative director.

18 Q. Okay. And after that, what were you doing?

19 A. In 2008, I left to start a kind of public affairs and
20 campaign consulting firm called Buckeye Strategy Group where I
21 had multiple different clients, five or six clients at a time.
22 One being the Ohio Democratic Party with efforts that they had
23 around Supreme Court races in 2008.

24 Q. And are those Supreme Court races statewide or?

25 A. Statewide Supreme Court races.

1 Q. And can you describe the work you were doing for ODP in
2 2008?

3 A. Sure. I was so working to help both these candidates
4 organize their campaigns and getting on a plan with that, with
5 their plans and with their voter-education efforts and
6 fundraising goals. We also went into the broader scheme of
7 what's called the coordinated campaign that you work with the
8 Ohio Democratic Party, which I was a part of, with kind of
9 senior staff meetings and with all GOTV efforts and with all
10 voter-education efforts.

11 Q. And did those include voter-registration efforts as
12 well?

13 A. Yes, they did.

14 Q. And what were you doing -- did you work with the
15 presidential primary in Ohio?

16 A. Yeah. In 2008, I took a leave of absence from the
17 Attorney General's Office to be the political adviser to the
18 state of Ohio for Barack Obama's campaign for presidency and
19 would advise them kind of about the different dynamics of the
20 state, different stakeholders that they were trying to
21 communicate with and then ultimately voter-mobilization
22 efforts, so their supporters around the state, with the
23 get-out-the-vote efforts.

24 Q. And then what did you do after the 2008 elections?

25 A. So after 2008, I stayed with Buckeye Strategy Group

1 through 2009 working, again, with multiple clients. The ODP
2 hired me, once again, to work with constituency groups that we
3 were working with on different issues. Mostly around Governor
4 Strickland's reelection bid and having -- start early promoting
5 of issues that we thought we could persuade voters to support
6 him on.

7 Q. Okay. And then going into 2010, what were you doing?

8 A. 2010, I ran, with the ODP, the state auditor's race in
9 the state of Ohio for David Pepper.

10 Q. And can you describe the activities you were doing on
11 the 2010 race?

12 A. Sure. Much about the same as 2006, how we run the
13 day-to-day operations and setting budgets, and how we were
14 going to persuade, educate and turn out voters. Worked with
15 the Ohio Democratic Party mostly on the voter-education efforts
16 and the GOTV efforts so that we could maximize the amount of
17 votes in the auditor's race.

18 Q. You worked on a 2012 congressional campaign as well,
19 correct?

20 A. I did. I worked for Congresswoman Joyce Beatty's
21 primary campaign. Started in the primary, ran her election as
22 the campaign manager managing the overall facets of the
23 campaign and finance of the campaign. From there, in the
24 primary we also had strong get-out-the-vote effort that was
25 pushed forward by her campaign, predominantly targeting

1 minority -- the minority community and African-American
2 community and Somali community in Franklin County.

3 Q. And then it's after that that you became Executive
4 Director of ODP?

5 A. Yeah. I actually spent two years in her congressional
6 office as the district director and then I became Executive
7 Director for the Ohio Democratic Party.

8 Q. So let's talk a little bit more about your duties as
9 Executive Director of the Ohio Democratic Party. Can you
10 describe those?

11 A. Sure. So I helped manage the staff and set budgets and
12 spending for the Ohio Democratic Party. I worked with the
13 communications of our issues and our candidates. I helped set
14 what we were going to do around voter registration, voter
15 education and voter mobilization known as our GOTV efforts.

16 Q. And by GOTV, you're including within all of that voter
17 registration, voter education, voter outreach?

18 A. Definitely including all that.

19 Q. And have your duties as executive director required you
20 to become familiar with all of ODP's current and past and
21 recent operations?

22 A. Sure. I would say since 2006, I've had to be very
23 familiar with all of the facets of the get-out-the-vote efforts
24 that ODP has had to do my job the best for candidates and with
25 the work I've done for the Ohio Democratic Party. Since taking

1 on the executive director role, definitely. We just ran a
2 get-out-the-vote effort in 2015. We have to look back at how
3 we set budgets and spending. And then moving forward, we're
4 already planning for get-out-the-vote efforts in the future.

5 Q. Okay. And have your duties required you to review data
6 collected and recent campaigns about turnout and demographics
7 and those sort of -- that sort of information in Ohio?

8 A. Definitely. You have to take a look at past elections
9 to be able to set your goals and where you plan to turn out
10 voters and the work you need to do. And you have to go back
11 and look at past elections to determine how you can best turn
12 out regular voters, future voters, new voters and so you
13 definitely look backwards to plan for the future.

14 Q. And based on your review of this data, can you describe
15 who ODP's key constituencies are?

16 A. ODP's key constituencies, especially in the past, I'd
17 say, ten years and more, has been minority voters,
18 predominantly African-American voters. But we're seeing
19 growing pockets within the Hispanic community and growing
20 population of the Somali community, especially in Franklin
21 County. In the Hispanic community it would be in the Cleveland
22 area, the Lorain area, and some of the Toledo area of the
23 state.

24 Younger voters, student voters, college students have
25 been supporting democratic candidates a lot. And then I would

1 also say if you look at a couple other demographic groups,
2 lower socioeconomic means have a tendency to vote democrat
3 across the board, and then female voters have been trending
4 toward the democratic party.

5 Q. Okay. And let's take a step back and talk about some
6 recent elections in Ohio. Were you in Ohio during the 2004
7 election?

8 A. I was in Ohio during 2004.

9 Q. What were you doing then?

10 A. I was a regional field director for the group America
11 Coming Together.

12 THE COURT: What is it?

13 THE WITNESS: America Coming Together.

14 THE COURT: Thank you.

15 BY MR. MARTIN:

16 Q. Can you describe what America Coming Together was?

17 A. Yeah. It was a 527 nonprofit that was organized. It
18 did field work in the presidential campaign. It registered
19 voters, had a strong effort throughout the whole state, and
20 then it persuaded on issues and educated voters on the stances
21 of peoples' issues, and then it took on a large
22 voter-mobilization effort around early vote and around election
23 day in the 2004 presidential election.

24 Q. Were you traveling around to different precincts in the
25 2004 election?

1 A. I definitely was, both in and outside of Franklin
2 County, but the surrounding counties of Franklin County.

3 Q. And did you observe any problems with that election?

4 A. Yeah. In 2004, there was large problems with that
5 election, especially when it came to the amount of lines that
6 were at polling locations. I witnessed, personally, four-hour
7 waits at polling locations that happened to be in large student
8 areas of the Columbus area around the Ohio State University.
9 We also saw them in the African-American community in Driving
10 Park is one polling location that we saw them. People having
11 to wait three or four hours in line, including people walking
12 away from the polls because they had to wait so long.

13 Personally, in the Grandview area or in Columbus, I
14 waited three hours to vote that evening when I got in line
15 around 6:45.

16 Q. As you said earlier, you were around in 2005 and 2006
17 working on campaigns in Ohio. Is it your understanding that
18 around then is when the state adopted no-excuse absentee
19 voting?

20 A. Yes.

21 Q. And what do you understand no-excuse absentee voting to
22 mean?

23 A. No excuse is no excuse, no fault. You can -- anyone who
24 wants to, can vote absentee.

25 Q. And do you recall how many days were available?

1 A. Yeah. Thirty-five days.

2 Q. Thirty-five days. And are you familiar with the term
3 golden week?

4 A. Yes.

5 Q. And what does the term golden week mean?

6 A. Golden week is the days that you have where you can
7 register to vote and vote early at the same time and you don't
8 have to, you know, do multiple trips.

9 Q. All right. Now I'm going to ask you some questions
10 about ODP's activities in recent elections. Can you describe
11 what ODP's voter-registration efforts were in the 2008
12 elections?

13 A. Sure. In 2008, ODP took on a large voter-registration
14 effort. It was targeted at minority voters in the
15 African-American community, student voters, and then in areas
16 where there is low voter-registration amounts compared to the
17 amount of people who could be registered to vote. And so that
18 was like the target groups.

19 We did this through a variety of ways. Attended
20 community events, working with community groups such as
21 churches or community centers to get people registered. We did
22 what is known as hot spotting, going to places like bus
23 stations and places where people will congregate to take on
24 another activity. And then finally, through door-to-door
25 efforts to knocking on doors within some of these communities.

1 Q. And do you know, roughly, how many people you were able
2 to register as a result of these efforts in 2008?

3 A. Yeah. I think we registered somewhere around 100,000
4 individuals.

5 Q. And who in your --

6 THE COURT: Statewide, correct?

7 THE WITNESS: Statewide, yes, sir.

8 BY MR. MARTIN:

9 Q. And who, in your observation, were those individuals?

10 A. Predominantly I would say minorities with
11 African-Americans and then young college students across the
12 board.

13 Q. Can you describe ODP's GOTV and voter-education efforts
14 in 2008?

15 A. Sure. In 2008, they would have started a few weeks
16 before golden week started, educating people on the fact that
17 they have the right to go vote early in person. I believe it
18 was one of the first elections that many people knew about
19 early in-person voting because of the fact it was a
20 presidential year and obviously the increase in the amount of
21 people who vote. So we had to educate a lot of people on that
22 effort.

23 So within golden week, we would talk to students. Many
24 students were an interesting population of voters because of
25 the fact that they'd either recently moved, right, or it's

1 their first election where they're allowed that they can then
2 go take care of their registration and vote that day.
3 Obviously with a presidential election, and a lot of people's
4 first chance to vote, they were very excited to go vote and
5 they took advantage of golden week.

6 We also did golden week efforts in the African-American
7 communities. Help, assisted people to go vote. Due to some of
8 our minority communities being of lower socioeconomic
9 standards, they have an increased burden when it goes to vote,
10 when it comes to bus fares and maybe time away from work.
11 Golden week gave them the convenience to make sure that their
12 registration was in order and then vote and have it done. And
13 so we tried to assist in those efforts in the minority
14 community.

15 Q. Can you describe the types of assistance that you gave?

16 A. Sure. We were doing rides to the polls. On student
17 campuses, many times that meant helping provide buses or vans
18 and take people to the early-vote centers since it wasn't on
19 their campus. In the minority communities, it was educating
20 community leaders to help us with this and having ODP actually
21 provide also transportation for people to the early-vote
22 centers.

23 Q. Can you recall which campuses, if any, that you focused
24 on in these efforts?

25 A. In 2008, I know one of them, of course, was Ohio State

1 with the size of it. In a lot of our large residential
2 universities this took place. So the University of Cincinnati,
3 University of Toledo, Kent State, Bowling Green which is even
4 more where people don't have vehicles at their schools. So
5 their county seat is not where their university is.

6 Q. I see. Okay. And did your GOTV efforts and
7 voter-education efforts in 2008 focus on the remainder of the
8 early in-person voting period?

9 A. Can you repeat that?

10 Q. Did you focus your GOTV and voter-education efforts
11 beyond golden week and through the rest of the early-voting
12 period?

13 A. Definitely because of the early in-person voting. So
14 that was obviously called golden week for a reason. We moved
15 on to have people just try and vote in person early. The pool
16 shrinks a little bit of who you're talking to after golden
17 week. And now that that's been eliminated, what you're doing
18 now is talking to registered voters and trying to get them to
19 vote at their convenience or have a vote plan on how they're
20 going to vote. So voting early in person allows them to make
21 sure that their vote is planned. So that was one aspect.

22 The other aspect is we start talking to people about
23 voting by mail. And voting by mail is obviously they're voting
24 absentee with no excuse and that process. That process, you
25 know, although some people characterize it as convenient, isn't

1 always that convenient. We always have to talk a lot about how
2 it takes four flights of mail. You have to request -- the
3 ballot request has to go out to them or they receive one or
4 they go get one. It has to be sent back in and a ballot has to
5 be sent and then the ballot has to be sent back.

6 That all is very time-consuming for someone who's busy,
7 someone who may work multiple jobs. So we've really tried to
8 use the in-person voting early as much or more than by mail.
9 We still want to make sure that people can register their vote
10 or log their vote, make sure their vote counts through vote by
11 mail.

12 Q. Okay. Did you observe anything about who was using
13 early in-person voting?

14 A. Yeah, I did. Early in-person voting is largely
15 minority, especially when it comes to the total vote and what
16 comes into that vote for the candidates. I think there's a few
17 reasons for that. One is there's been a historic distrust with
18 minority -- more minority voters and African-American voters
19 about doing vote by mail and so voting in person, right,
20 especially early on election day or early, is their preferred
21 way to vote a lot of times.

22 The other item I would just say is the fact that we
23 talked a little bit about socioeconomic conditions and when
24 people are working multiple jobs or working a job and child
25 care, having a chance to go vote in person when it's convenient

1 to you is more conducive and less costly to the actual voter in
2 a lot of ways than to wait until election day.

3 Q. Right.

4 THE COURT: Mr. Martin, may I interpose one?

5 MR. MARTIN: Yes.

6 THE COURT: Can you elaborate on the historic distrust
7 of mail voting?

8 THE WITNESS: Yeah. So, you know, there's been some
9 issues with mail voting in Ohio from one, most recently, one
10 was even applications would go out or if they would go out. So
11 there's not -- voters have become very habitual, they know
12 where their polling location is. We have to educate them if
13 the polling location change for election day.

14 It's the same thing when it comes to mail. When that
15 changes, it changes what the voter is used to and they see it
16 more difficult. We see an increase in questions come into our
17 offices. But that's just one facet.

18 Then when you go back over time with mail voting you see
19 the fact that the distrust is the fact that they don't know if
20 it's counted, right. There's a -- they're not sure if it's
21 logged. We saw just in the recent election that in Summit
22 County, the Post Office, the U.S. Postal Service did not
23 postmark the bottom --

24 MS. RICHARDSON: Your Honor, I'm going to object. I
25 don't mean to interrupt. But at this point in time there's no

1 foundation that has been laid for personal knowledge related to
2 these things and it seems far outside of the scope based on
3 what we've heard of his own knowledge and experience.

4 THE COURT: Except for the fact that the Court read in
5 the paper that Summit County is getting ready to reject 900
6 ballots from the last election. Does anybody know anything
7 about that?

8 MS. RICHARDSON: I'm not aware that the witness knows
9 anything about that and so I'm not sure --

10 THE WITNESS: I do. There's just an election for --

11 THE COURT: Hold on. There's an objection pending.

12 THE WITNESS: Okay.

13 MS. RICHARDSON: Based on the questions that have been
14 asked so far, there has been no foundation laid that this
15 witness is the person to testify as to any of the details
16 concerning that.

17 MR. MARTIN: Your Honor, I'm happy to lay that
18 foundation.

19 MS. RICHARDSON: And to the extent that it's solely
20 based on media reports that may have been seen, I would make an
21 objection based on hearsay grounds as well.

22 THE COURT: And I'm more concerned about whether or
23 not you folks have heard through official channels of this
24 pending. You folks, the representatives of the Secretary of
25 State and the Attorney General.

1 MS. RICHARDSON: Speaking only personally, I am not
2 aware through any official channel.

3 THE COURT: Find out, if you would.

4 MS. RICHARDSON: Thank you, Your Honor.

5 THE COURT: And I'll sustain the objection for now.

6 MS. RICHARDSON: Thank you.

7 BY MR. MARTIN:

8 Q. Could you describe ODP's vote-by-mail absentee
9 activities?

10 A. Sure. Could I still address one other item with the
11 vote by mail?

12 THE COURT: Yes.

13 THE WITNESS: One of the other items that comes with
14 the vote by mail that I didn't have the chance to put in is the
15 fact that at different times and at different counties it costs
16 different amounts to send back your ballot.

17 THE COURT: Because of the size of the ballot?

18 THE WITNESS: Yes. And so it's been as high as \$1.78,
19 sometimes around 60 or 70 cents. Most voters think they just
20 need to put a first-class stamp. So now when they made a
21 mistake or it gets sent back, there's added days that their
22 vote may not get in in time to be counted in an election.

23 THE COURT: Thank you. They need to strike the same
24 bargain that Mr. Burke has struck in Hamilton County with the
25 postal service it seems to me.

1 THE WITNESS: I'll take him up on that.

2 BY MR. MARTIN:

3 Q. Can you describe a little bit more the types of
4 activities that ODP engages in around vote by mail? And we can
5 go back then to the 2008 elections after that.

6 A. Sure. You want more generally?

7 Q. Yeah.

8 A. Sure. So the Ohio Democratic Party will actually send
9 out absentee-ballot requests or applications to individuals so
10 they have the chance to exercise their right to vote by mail
11 and then follow up with them to see if they're interested and
12 returning those. By phone, sometimes by door, and help assist
13 people to vote by mail.

14 Q. And do you also monitor those who have returned their
15 ballots?

16 A. Yes. So once somebody requests a ballot and it gets
17 sent out, we do monitor who has sent them back in to try and
18 make sure that everyone has a chance to vote in a given
19 election. We do that through public-records requests with the
20 boards of elections and then we follow up with individuals who
21 haven't returned their ballots either sometimes on doors, many,
22 many phone calls and then just in broader communications
23 through news outlets.

24 Q. And do you also monitor those who have been notified of
25 problems with their absentee ballots?

1 A. We do. When someone has not had a chance -- they won't
2 have a completed ballot is what we'll find out. It's that a
3 lot of them have flaws. When they've had a flaw, we will try
4 and contact them, let them know with the board of elections
5 that they have a problem with their ballot and see if they can
6 push them to correct that problem and return their ballot to
7 the board of elections.

8 Q. Okay. We can leave that for a moment and go back to
9 2008. Earlier we were talking about ODP's activities in 2008
10 around early in-person voting as well as vote by mail. Can you
11 describe who you observed using early in-person voting in 2008
12 and how they voted?

13 A. Sure. So early in-person voting was, once again I
14 believe, heavily minority. If you look at some numbers, they
15 took out the total amount of voters at 100 percent and six
16 percent of voters that voted in person early came from white
17 voters. African-American voters registered almost 20 percent
18 of their vote came in during early in-person voting.

19 Q. And do you have any observations, did you make any
20 observations about how those voters voted in 2008?

21 A. Minority voters, African-American voters are voting
22 almost about 95, 97 percent for President Barack Obama, so the
23 democratic nominee for president.

24 Q. Do you have any observations about how those white
25 voters were voting in 2008?

1 THE COURT: Slow down, please, for my court reporter.

2 MS. RICHARDSON: Objection, Your Honor. I believe the
3 question called for questions about how people voted, which
4 would, again, be outside the scope of personal knowledge.

5 MR. MARTIN: Your Honor, I think this is the type of
6 knowledge that he would acquire on a routine day-to-day basis
7 as executive director of a statewide political party.

8 MS. RICHARDSON: And I guess I would maybe ask for
9 clarification as to whether he's asking for observations
10 related to methods of voting. The previous question seemed to
11 elicit testimony about who the particular voters were voting
12 for.

13 THE COURT: Well, it did ask that question and the
14 President's been elected and reelected, and we know, I think at
15 least at this point, that there's sufficient evidence that
16 African-American voters use early in-person voting more at a
17 much higher rate than whites.

18 MR. MARTIN: Okay.

19 THE COURT: So sustained.

20 MS. RICHARDSON: Thank you, Your Honor.

21 THE COURT: Since we're about to be in 2016, let's
22 talk about something a little bit more current.

23 MR. MARTIN: Okay.

24 BY MR. MARTIN:

25 Q. Could we talk briefly about ODP's activities in 2012 and

1 then 2014.

2 A. Sure. So 2012 looked a lot like 2008. Golden week was
3 still available to us so we were able to go talk to voters,
4 minority voters, African-American voters. There's a new set of
5 voters we were talking to within -- with the hopes that they'll
6 support democratic voters or that they were trending toward
7 supporting democratic voters which was the Hispanic community
8 more and more. And then also the growing Somali community in
9 the Franklin County area predominantly which gave us even a
10 greater amount of, I guess, efforts we had to put towards it
11 because there was a language barrier there in a lot of ways.
12 And obviously we had to bridge that to allow people to go vote
13 and understand and educate them on how to vote either in person
14 early or by mail.

15 It also added to a cost. We actually had to get
16 translators and a lot ways we actually used taxi drivers who
17 were of Somali descent to actually help us with our
18 mobilization efforts to get people to the early in-person
19 voting locations because they could also serve as our
20 translators.

21 Q. Could you describe what, if any, of your activities were
22 around golden week in 2012?

23 A. Sure. Golden week in 2012 we had large efforts, again,
24 on college campuses with student voters. At Ohio State in
25 particular, I believe -- I know there was a concert on the oval

1 where they then bussed students to the early in-person voting
2 location. And so that happened throughout the state.

3 Within the minority community, you know, we worked with
4 community leaders with ministers about educating voters about
5 their right to vote early in person. And once again, provided
6 transportation because of the cost factor that comes by either
7 voting early, by mail and/or the cost factor of just the
8 mobilization of getting yourself to either your polling
9 location on election day or the early in-person voting. So we
10 provided rides both with -- that were with volunteers, their
11 vehicles, and reimbursing them to some extent or by providing
12 vans to the early in-person vote location.

13 THE COURT: There seems to be a pattern here. Why
14 don't you assume that the Court has understood that pattern and
15 move to a different topic.

16 MR. MARTIN: Okay.

17 BY MR. MARTIN:

18 Q. Mr. Beswick, what's your understanding with respect to
19 the laws the plaintiffs are challenging in this suit
20 specifically with respect to golden week and absentee and
21 provisional ballots?

22 A. Sure. So when it comes to golden week, you know, we've
23 now taken away something that voters had. And with that --

24 Q. Before we talk about assessing the impacts, just sort of
25 explain to me the changes and your understanding of them and

1 then we can talk about how they've --

2 A. The changes, I'm sorry?

3 Q. With respect to, first of all, the early-voting period
4 and golden week.

5 A. So not the impact but just like what we're --

6 Q. Golden week.

7 A. I think we need golden week reinstated in the sense that
8 it will reduce costs, right, of organizations like myself but
9 others across the board.

10 Q. But golden week has been eliminated now?

11 A. Oh, yes.

12 THE COURT: And it's been eliminated in the last two
13 primaries and last two generals. So what specific costs are
14 you talking about?

15 THE WITNESS: Well, the costs that I'm talking about
16 is the fact that when we were able to discuss with voters one
17 time what they were able to do, we were able to have one cost
18 factor then. When there are multiple communications with a
19 voter, there's multiple costs that are attributed to that.
20 Staff that make the communication, multiple phone calls that
21 there is a cost, multiple pieces of multiple letters, multiple
22 door knocks all have a cost because all that is either done by
23 paid staff or even if it's done some by volunteer staff,
24 there's still someone directing it. So every time we have to
25 talk to a voter there is a cost and a price tag to that

1 communication.

2 BY MR. MARTIN:

3 Q. Was golden week in place for the March primaries in
4 2014?

5 A. Yes.

6 Q. Was it in place in the general election in 2014?

7 A. No, it wasn't. It changed in between.

8 Q. Can you describe how the change with the elimination of
9 golden week between the 2014 primary and general affected ODP's
10 operations?

11 A. It affected ODP's operations in the sense that you had
12 to then go out to a large group of individuals, the voters,
13 right, so we have millions of people who vote, and educate them
14 on the change. Something they had just a few months earlier is
15 no longer available to you and you can't just look at it as the
16 fact that you're only communicating with a small amount of the
17 voters. You have to go communicate with a large pocket of the
18 voting population that you are trying to turn out to vote.

19 And so with that, we had to go communicate with hundreds
20 of thousands of voters the fact that you could no longer show
21 up at the early vote-in-person location, update your
22 registration or register for the first time and then vote. You
23 had to take a multiple-step process which then impacted our
24 cost.

25 Additionally, you had to -- you took away the fact that,

1 as we talked about with minority families that had gotten into
2 a routine of doing early in-person voting, to doing that, we've
3 seen an increase of early in-person voting throughout the
4 elections and they were passing that down to maybe their son or
5 their daughter who were going to vote and that then had to
6 cease during golden week.

7 Q. Is it your understanding that the requirements for
8 casting absentee ballots also changed in 2014?

9 A. Yes.

10 Q. And what is your understanding of those changes?

11 A. Well, they had to provide more information. So an
12 address and birthdate.

13 Q. And have you observed any impact resulting from those
14 changes on ODP's operations?

15 A. Yeah. Anytime there's a change, but specifically this
16 change, we see an increase in the amount of calls that come in.
17 Voters are confused. I mentioned voters are habitual. They
18 are used to it being the same as they move forward. So with
19 that, we saw an increase in cost -- calls for the fact that why
20 do I have to do this? Why do I have to provide this
21 information now? It just provided some confusion for voters.

22 THE COURT: What is so difficult about providing your
23 date of birth or providing your current address?

24 THE WITNESS: Well, I think the difficulty is the
25 fact --

1 THE COURT: I recognize that there are some people
2 that move frequently. I get that. But for the lion's share of
3 the electorate, what is so difficult about providing an
4 address?

5 THE WITNESS: I think the fact is I think there's
6 voter error. So they don't maybe notice the fact they had to
7 do an address so there's a lot of people we have to correct.
8 Then they're unsure why they're being asked that question. I
9 think it begs to some of the tactics that we use to suppress
10 people's votes also. And there's just a distrust with the
11 voting process.

12 THE COURT: Including an address is a suppression
13 tactic?

14 THE WITNESS: No, I wouldn't say that. I think
15 there's a worry of some of the items that are posed in certain
16 areas. For example, at one point we saw billboards that said
17 voter fraud is a felony put up in minority districts.

18 THE COURT: That one's kind of out of left field.
19 I've seen it once. I've seen it in this case. I've seen it
20 twice. We've had plenty of testimony about it. But was that
21 one billboard in the state of Ohio or were there many, many of
22 them?

23 THE WITNESS: I know they were in multiple counties.
24 I know that for a fact. I know they were also here in Franklin
25 County that I actually saw on our east side. And so with that,

1 you know, there's a systemic reason to try to push that out.
2 If there's an idea of misinformation to a voter and now you're
3 asking for their home address, there's a real chance that
4 someone feels a distrust to provide that information if they
5 think it's going to do something to get them in trouble.

6 THE COURT: And your name and address that you sign is
7 in the poll book, right?

8 THE WITNESS: Correct.

9 THE COURT: So why would it be difficult to provide
10 the same address that's in the poll book?

11 THE WITNESS: I think it's not a difficulty in
12 providing the address. I think a lot of it also comes to voter
13 error. They look at the envelope. It's continuously changing.
14 And with that, then they have a problem with providing all the
15 information that they need.

16 THE COURT: Thank you. Go ahead.

17 BY MR. MARTIN:

18 Q. Following up on that, Mr. Beswick, have you observed
19 voters whose registration information is out of date?

20 A. Yes.

21 Q. Have you observed voters who are confused about whether
22 or not the registration information is up to date?

23 A. Yes.

24 Q. Have you observed anything about how those voters behave
25 when they're confused about their registration status?

1 A. Well, you know, it depends on the timing of the
2 election. During golden week, if they would show up early in
3 person, they were able to update their information. So let's
4 say there was a problem at the desk or they say, I live
5 somewhere else now, they could just fill out a voter
6 registration and vote after reregistering.

7 After that fact, they would be confused on what they
8 needed to do next. Do they vote on election day? Do they vote
9 provisionally? They'd have questions about that prior to. Can
10 they update their information during that period? Am I even
11 allowed to go vote? These are all questions that would come in
12 to our, what we call, voter hotline, right, or voter-protection
13 lines to help voters navigate that system.

14 So during golden week, you wouldn't ever have that
15 issue. They could update their information. After that, they
16 would have to, you know, go through a different process and
17 figure out what they need to do depending on their specific
18 issue.

19 Q. And are some of your constituents of lower-educational
20 attainment like, for instance, do you interact with members of
21 your party or constituents --

22 A. Definitely.

23 Q. -- that haven't graduated from high school?

24 A. Yes. Definitely.

25 Q. Have you observed anything about the hurdles they face

1 in completing the informational requirements?

2 A. Well, yeah. The interesting thing about early in-person
3 voting when they take advantage of that, golden week or in
4 person, there's somebody there to assist you to vote just like
5 on election day, right. And where a hurdle comes in with vote
6 by mail is you're left very much on your own to read through a
7 document. As we mentioned, the size of the ballot can be quite
8 long, so there's a lot of reading that goes into that. And
9 trying -- just working to comprehend everything you're voting
10 from, from candidates to issues then to the process of your
11 ballot can make obstacles that makes it somewhat more difficult
12 for certain people, depending on education levels, to overcome
13 as they try and vote.

14 Q. Okay. Is it your understanding that similar
15 requirements have been put in place for casting provisional
16 ballots?

17 A. Yes.

18 Q. And can you describe any observations you've made about
19 the impact of those requirements on voters, ODP's constituent
20 voters?

21 A. We've seen a large increase in provisional voting that
22 has to take place in minority -- majority minority precincts
23 throughout the state of Ohio.

24 Q. And can you describe the specific elections? Did that
25 occur in 2014?

1 A. Yeah. It happened in '14, it happened in '12. Any of
2 our even-year general elections you'll see it. Obviously the
3 presidential years have a heightened amount because of turnout
4 of provisional ballots. You would see across the board that
5 minority precincts have a tendency to have more provisional
6 ballots cast than other precincts.

7 Q. Right. Is it your understanding that the changes to the
8 laws that we're discussing went into place in 2014?

9 A. Yes.

10 Q. Can you describe ODP's voter-education efforts with
11 respect to these changes in 2014?

12 A. Sure. So, I mean, there's an effort to educate voters
13 between the difference between the primary and the general.
14 Anytime you see where certain items are -- when it shrinks,
15 there's a shorter amount of time, I call it shrinking, but a
16 shorter amount of time. It takes more people and more cost to
17 try and communicate and educate voters of what needs to happen
18 when then it's more out there and it's more open in the sense
19 of the amount of time because you can actually have less people
20 making those communications.

21 Q. Right. And do you intend to engage in those
22 communications again in the 2016 elections?

23 A. Yes.

24 Q. And will you be making those communications to the same
25 people you were making them in 2014 or 2015?

1 A. Well, there will be more people that we need to discuss.
2 In answer, yes, to the people in '14 but then there's more
3 people that will be on the rolls. New voters, right, on
4 colleges campus throughout the state. College term has a
5 tendency to run the same amount almost as a presidential term
6 who we need to talk to. And then within people just turning
7 18, 19, 20. But also with the changing in the sense that you
8 now need to update your voter registration or your -- in a
9 different way. You actually have to do it with a form. It has
10 to go in before. You can't just show up and do it and vote on
11 the same day.

12 Q. Can you describe the relative turnout rates in
13 presidential elections compared to midterms?

14 A. I mean, they're increased, especially in a state like
15 Ohio. I would say a couple more million people, on average,
16 come out. And then in Ohio, since it's a state that's
17 obviously helps determine a lot when it comes to our national
18 elections, with all the spending that goes on here it just
19 increases the amount of people that come out to vote.

20 Q. And with that increased turnout, does that have an
21 impact on the amount of voter-education efforts that you
22 undertake?

23 A. Sure. There's a huge cost difference between a midterm
24 election and a presidential election for us.

25 THE COURT: Ballpark it.

1 THE WITNESS: In regard to total communication or
2 for --

3 THE COURT: Total throughout the state.

4 THE WITNESS: I would say our get-out-the-vote
5 efforts, probably 5 to \$7 million when it's all combined.

6 THE COURT: In a presidential year?

7 THE WITNESS: In a presidential year.

8 THE COURT: And in a nonpresidential?

9 THE WITNESS: That's not counting outside spending,
10 obviously, groups that are not for the democratic party.

11 THE COURT: But the nonpresidential year?

12 THE WITNESS: Nonpresidential year, in a good year you
13 look 2 or 3 million. Most years right around a million.

14 THE COURT: Thank you.

15 BY MR. MARTIN:

16 Q. Earlier we were discussing ODP's activities around
17 mail-in absentee ballots. Did you conduct those activities in
18 the 2015 November election that we just had?

19 A. Yes, we did.

20 Q. Can you describe what those activities were?

21 A. Well, a lot of the races we would send out absentee
22 ballot requests, right, to individuals so they could actually
23 vote absentee in the '15 election and get those back in is one
24 way we did it. We also helped just collect these at different
25 places where our voters or voters that would vote democrat

1 would be and help them through that process. There's also the
2 follow-up process that we discussed earlier about tracking of
3 absentee ballots going out and getting back in. But there's
4 also just the whole, obviously, education of communicating with
5 the voter after the fact that they requested an absentee
6 ballot. So you also communicate them on two fronts. How to
7 get it back in but also with your candidates.

8 Q. And did any of those activities focus on Summit County?

9 A. Yes, they did.

10 Q. And can you describe what you were doing in Summit
11 County?

12 A. Summit County, the largest city in Summit County, Akron,
13 had a mayoral election this year. With that, there was an
14 absentee-ballot program that was run to ensure that the ballots
15 got in, and then we also did other mail.

16 Q. And what did you observe about the absentee ballots in
17 Summit County this past election?

18 A. The absentee ballots in Summit County, there was a
19 disproportionate amount that were thrown out due to being late.

20 Q. And were those ballots postmarked?

21 A. No, they weren't.

22 Q. Why was that?

23 A. Looks like it was postal service error.

24 Q. Okay. And do you know how many were thrown out?

25 A. Roughly 9 percent, which is almost 900. I think around

1 891 which is the reports that I saw that came out of also the
2 board of elections.

3 MS. RICHARDSON: I'm going to object, Your Honor,
4 again, on the basis that he has not testified as to what his
5 personal knowledge about these incidents are. And particularly
6 to the extent that he's speculating about the cause of issues
7 that may have occurred.

8 THE COURT: Were you personally involved in any of
9 that?

10 THE WITNESS: I was personally involved in watching
11 what happened with absentee ballots in Summit County.

12 THE COURT: Describe that.

13 THE WITNESS: So we were monitoring all the elections
14 of importance this year and that happened to be the mayor's
15 race in Akron where we have a new democratic mayor-elect in
16 Akron. And we will ask at times, you know, how many
17 outstanding absentee ballots there are. We asked that before
18 and after, looking at if there's anything that could affect the
19 election one way or the other with what still has to be
20 counted. We did then saw -- we were told that a large number,
21 right, and this is from the board of elections, were thrown out
22 and they were told it's through postal error. They were not
23 received in time and they were not postmarked.

24 THE COURT: This is something you learned from the
25 board of elections in Summit County?

1 THE WITNESS: Yes.

2 MS. RICHARDSON: I object to the hearsay, Your Honor.

3 THE COURT: Overruled.

4 BY MR. MARTIN:

5 Q. Would someone who had cast their ballot early and in
6 person in Summit County had faced this problem that you just
7 described?

8 A. No.

9 Q. Let's talk a little bit more about ODP's activities with
10 respect to provisional ballots. Do you engage in activities to
11 monitor those who were forced to cast provisional ballots?

12 A. Sure. We have what is called elections protection and
13 we try and put -- place people who are poll observers at as
14 many polling locations as possible around the state of Ohio.

15 Q. Okay. Can you describe their process for monitoring
16 provisional-ballot voters?

17 A. Sure. So what we do is when anyone has to poll a
18 provisional vote or vote provisionally, we will then make note
19 of who that person is. And since those votes do not get
20 counted until later in the canvass, we will contact those
21 voters many times in elections and inform them that they did
22 have to vote provisionally, which they usually know, and then
23 ask them to make sure they talk to the board of elections, that
24 their vote has been counted within the provisional process at
25 the board of elections.

1 Q. Is it your understanding that the period for curing
2 provisional ballots has changed recently?

3 A. Yeah. From ten days to seven.

4 Q. Can you describe the impact of that change on ODP's
5 provisional ballots, you called it voter-protection efforts?

6 A. What is done is it's now less time and added to our cost
7 because of the amount of people you have to communicate with
8 about actually trying to make sure they can cure their ballot.
9 So we contact these people by phone, by, sometimes, in person
10 letting them know that there's been an error with the -- an
11 error with their provisional ballot and that they need to
12 contact the board of elections to make sure that their vote
13 counts.

14 Q. I want to change gears a little bit and talk about
15 voting equipment. Are you familiar with so-called direct
16 recording electronic --

17 A. Yes.

18 Q. -- equipment? DRE, I think it's called. And in your
19 years working in campaigns in Ohio, what have you personally
20 observed about DRE machines?

21 A. Sure. So there's been some issues with DRE machines.
22 One is -- that comes up is the fact that you will push the
23 button or pull the lever in that sense, touch the screen of one
24 candidate and the vote will flip to another candidate, which it
25 looks at as a malfunction. We have seen that they break down

1 in polling locations. We had that problem in Warren, Ohio in
2 Trumbull County this year where polling locations had a problem
3 where only one DRE machine was in use resulting in
4 two-hour-long waits for individuals to vote. And they had a
5 mayoral election this year so it increased turnout. And then
6 we've also seen where there's not been enough of them in
7 polling locations leading to long lines.

8 Q. Let's go back and talk about lines in some of the
9 elections you've worked on. You were around for the 2008
10 election, correct?

11 A. Yes.

12 Q. Can you describe the types of lines that you saw during
13 that election?

14 A. So in 2008 we saw long lines and I saw them very much in
15 young -- the younger demographic, in the Victorian Village area
16 here in Columbus. We saw them on the Ohio State University's
17 campus and student areas. And then again saw them in minority
18 communities kind of throughout the state.

19 The other place we saw lines were just even at the
20 early-vote locations. Sometimes even two-hour waits,
21 three-hour waits the week prior to the election with only one
22 location available.

23 Q. Can you describe where some of those locations were?

24 A. Yeah. Some of the locations where I mentioned Victorian
25 village. We saw them around Ohio State's campus. Driving Park

1 in Columbus traditionally has long lines that we saw.

2 Q. Which park was that?

3 A. Driving Park it's called. It's over on the east side of
4 Columbus. And then we also -- that's the ones we saw in 2008
5 where I was working in Franklin County.

6 Q. Okay. And can you describe the lines you saw personally
7 in 2012?

8 A. Sure. In 2012 there was once again lines and there may
9 have been reports of even more lines in 2012. We saw them at
10 Ohio State, once again. We saw them at King Arts Complex which
11 is in the near east side of Columbus and predominantly
12 African-American ward that would be voting. Driving Park. But
13 then there was reports that they were at Bowling Green State
14 University, another state university up in Wood County and we
15 heard of like seven-hour lines and was reports that came out at
16 Kenyon College in Gambier.

17 THE COURT: Seven hours in Kenyon?

18 THE WITNESS: Seven hours. There's reports that
19 people didn't get to log their vote until midnight.

20 THE COURT: And this is just when?

21 THE WITNESS: 2012.

22 THE COURT: Was it remedied in '14?

23 THE WITNESS: Again, you're not -- you're comparing
24 apples to oranges because of a presidential to a midterm.

25 THE COURT: Perhaps. Are you aware of any lines there

1 in 2014?

2 THE WITNESS: I was not aware of any lines in 2014. I
3 also say it's just the dynamics of an election also contributed
4 to that.

5 THE COURT: I understand that. Go ahead.

6 BY MR. MARTIN:

7 Q. Can you describe ODP's response to when it hears about
8 problems with long lines or when it sees problems with long
9 lines?

10 A. Sure. So when we see problems with long lines, we --
11 first call we usually make is to the voter-protection person at
12 that precinct to start talking to people, letting them know
13 what their options are, giving them information is one. Two,
14 is if there's long lines, two and three hours, some people were
15 coming after work, have not had a chance to eat. We'll stay
16 within the guidelines given to us of that but provide food.
17 Previously, too, the last few years with elderly, sometimes we
18 would provide a place to sit down, a chair. We've also
19 provided cover from the elements when it's been raining out.

20 Q. Okay. You say you provide cover from the elements. How
21 do you do that?

22 A. Rain ponchos for when it's raining.

23 Q. And that requires you to send staff?

24 A. Send staff. Oh, yes. We have to actually have teams
25 now because of the lines that have persisted in Ohio and so

1 after people have worked to turn out voters by knocking on
2 doors or making phone calls, they're now grouped into teams.
3 We have to hire, sometimes, additional people to be part of
4 these teams who then go out in places where we've seen or get
5 reports of long lines or, quite frankly now because it seems to
6 be somewhat systemic, we've been able to just get ready to
7 dispatch people to those locations.

8 Q. What would you use those resources on if you didn't have
9 to send people to keep people in the lines?

10 A. I think we could use it to actually persuade people to
11 support our candidates more is one way to do it. We could also
12 spend money maybe on the front end with voter registration.
13 There's all kinds of items that we can actually spend the money
14 on if we weren't reserving funds to combat long lines.

15 Q. Okay. We're going into the 2016 election now very soon
16 and you've described ODP's activities in the past elections.
17 For instance, you described ODP's past voter registration/GOTV
18 efforts. Can you summarize what the effect of having golden
19 week was for those past elections?

20 A. Sure. We're looking at going into an election where
21 it's going to be the first time, for some voters, golden week
22 has been taken away because of the fact that it was taken away
23 in '14. '12 is the comparable election to '16. We're going to
24 have to do a lot of voter education to an increased amount of
25 people coming out the fact that the voting laws have now, once

1 again, changed on them and they're going to have to decide how
2 they're going to vote in a different manner than they did in
3 the past.

4 Q. And if our claims were successful in this suit and
5 golden week were reinstated --

6 THE COURT: We'd be changing the law of Ohio again if
7 you were successful. So how would that affect your election?

8 THE WITNESS: Well, for a lot of people -- since there
9 is people -- there are people who only vote in presidential
10 elections and so with that, what would end up happening is many
11 of those people would not know that the law had changed and
12 would go about, you know, continuing the way they've normally
13 voted. And for others, we have -- it's a lot harder for us to
14 communicate when the vote is being limited because it gives
15 people a sense that it's difficult to vote and we have to spend
16 more money to make sure that they know it's not difficult.

17 When it's easier to go vote, right, when there's early
18 in-person voting, when you can update your registration and
19 vote at the same time then it's easier to communicate and we
20 can communicate less because they're not trying to figure out
21 how they overcome the obstacles of voting but we're able just
22 to kind of communicate and keep that out there in that fashion.

23 Q. For the money that you spend communicating about
24 overcoming the obstacles, as you say, could you use that on
25 other activities?

1 A. Sure. Once again, we'd use it to support our candidates
2 and persuade voters to support our candidates. And that's the
3 easiest example.

4 MR. MARTIN: Hold on just one second, Your Honor.

5 That is all for right now, Your Honor.

6 MS. RICHARDSON: Your Honor, I have just one very
7 brief housekeeping issue that I hope will significantly shorten
8 the cross. I raised this with Plaintiffs' counsel but I'm not
9 sure we reached a final conclusion about whether we can
10 stipulate to the admissibility of interrogatory responses and
11 responses to request for admission from the Ohio Democratic
12 Party.

13 MR. KAUL: And I don't know what our position is on
14 the admissibility as a whole but we're not raising authenticity
15 objections so you don't need to do it with this witness.

16 MS. RICHARDSON: That question is whether or not I
17 need to get the substance of the testimony in through this
18 witness or whether we can just submit the interrogatories and
19 responses themselves, in which case I don't need to go into any
20 of that with this witness today.

21 MR. KAUL: I don't believe we objected to those.
22 That's fine.

23 MS. RICHARDSON: Great. Thank you.

24 Then I have just a very few questions.

25 THE COURT: So we have a stipulation that the answers

1 to the defendants' interrogatories to the democratic party are
2 admitted then, correct?

3 MS. RICHARDSON: It would also be the responses to
4 request for admissions, Your Honor.

5 MR. KAUL: With the objections we made in the
6 responses, of course.

7 MS. RICHARDSON: Of course.

8 THE COURT: Very well.

9 MS. RICHARDSON: Thank you.

10 THE COURT: Thank you.

11 - - -

12 CROSS-EXAMINATION

13 BY MS. RICHARDSON:

14 Q. Good afternoon, Mr. Beswick.

15 A. Good afternoon.

16 Q. My name is Ryan Richardson and I represent the
17 defendants in this case, the Ohio Secretary of State Jon Husted
18 and Ohio Attorney General Mike DeWine. I have just a couple of
19 questions for you this afternoon.

20 You are the Executive Director of the Ohio Democratic
21 Party, right?

22 A. Correct.

23 Q. A Plaintiff in this case?

24 A. Correct.

25 Q. And you're here offering your testimony in that

1 capacity, correct?

2 A. Correct.

3 Q. You described a long history with the democratic party,
4 right?

5 A. Yes.

6 Q. And so you've only been in your current position for a
7 little while but prior to that, you did a variety of different
8 work for the democratic party?

9 A. Yes.

10 Q. And you also worked on several different campaigns for
11 democratic candidates, correct?

12 A. Yes.

13 Q. And the goal in that work is to get your democratic
14 candidates elected, right?

15 A. Yes.

16 Q. Have you ever been a member of a board of elections?

17 A. No.

18 Q. So you have no experience administering an election,
19 correct?

20 A. No.

21 MS. RICHARDSON: I have no further questions.

22 THE COURT: Any redirect?

23 MR. MARTIN: That is it, Your Honor.

24 THE COURT: Thank you, Mr. Beswick, for coming in.

25 Have a nice Thanksgiving.

1 THE WITNESS: Thank you.

2 THE COURT: So we are done for the day?

3 MR. VOIGT: Your Honor, we actually may have a
4 housekeeping matter that maybe we could address. If I could be
5 excused, my co-counsel -- Plaintiffs' counsel suggested
6 offering some exhibits into evidence and I have two co-counsel
7 out there reviewing their requests right now. If I could be
8 excused to check on that process.

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

10 MR. VOIGT: Thank you, Your Honor.

11 THE COURT: Come back and tell me.

12 (A recess was taken at 2:32 p.m.)

13 (The proceedings were adjourned at 2:52 p.m.)

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WITNESS INDEX

- - -

WITNESSES DIRECT CROSS REDIRECT RECROSS

PLAINTIFFS' :

David Canon	4	40	70	79
Mark Owens	84	102		
Gregory Beswick	107	149		

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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We, Lahana DuFour and Denise Errett, 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 us in shorthand and transcribed by us or under our supervision.

s/Lahana DuFour
Lahana DuFour, RMR, CRR
Official Federal Court Reporter

s/Denise Errett
Denise Errett, FCRR
Official Federal Court Reporter