

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 VIII  
BEFORE THE HONORABLE MICHAEL H. WATSON  
TUESDAY, DECEMBER 1, 2015; 9:00 A.M.  
COLUMBUS, OHIO

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1 Tuesday Morning Session

2 December 1, 2015

3 - - -

4 THE COURT: We're reading the cases and we'll let you  
5 know.

6 Who's your witness?

7 MR. SPIVA: Next witness is Brad Cromes. I believe  
8 he's here and we're ready to go.

9 THE COURT: Sir, approach the stand, raise your right  
10 hand and be sworn, please.

11 (Witness sworn.)

12 THE COURT: Make yourself comfortable behind the  
13 books.

14 Mr. Martin, you may inquire, sir.

15 - - -

16 BRAD CROMES

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

19 DIRECT EXAMINATION

20 BY MR. MARTIN:

21 Q. Good morning. Would you please state your name for the  
22 record?

23 A. Yeah. Brad Cromes. Last name is spelled C-R-O-M-E-S.

24 Q. Thank you, Mr. Cromes. Where were you born?

25 A. I was born in Lima, Ohio, St. Rita's hospital.

1 Q. Where do you go to high school?

2 A. West Liberty-Salem, over in the western part of the  
3 state, Logan County.

4 Q. Where do you live now?

5 A. I live in Ravenna. We moved there after college. My  
6 wife is from that are. We met at Hiram College in northern  
7 Portage County and then moved back there after grad school.

8 Q. In Ravenna in Portage County?

9 A. Yeah.

10 Q. How long have you lived there?

11 A. I have off and on but I've lived there continuously  
12 since 2011.

13 Q. And did you go to graduate school after college?

14 A. Yeah. I went to Ohio State for law school and public  
15 policy school at the Glenn school.

16 Q. What did you do after you got out of law school?

17 A. Well, that was the worst legal market, I think, probably  
18 in history, right? So I spent some time looking for a very  
19 niche job in the education law field. Unsurprisingly, wasn't  
20 able to find one. And then I worked on a political campaign  
21 for a number of months at the end of that year and fortunately  
22 for me, at the end of that year the deputy director of our  
23 board of elections announced her intent to retire. So I  
24 applied for that job and was hired as deputy director of our  
25 board of elections in January of 2012.

1 Q. How many are you -- when you say ours board of  
2 elections, that's Portage County?

3 A. Portage County, right.

4 Q. How long were you deputy director?

5 A. I was deputy director there until January of this year.  
6 I was appointed county treasurer at that time.

7 Q. So 2012 to January 2015?

8 A. Uh-huh.

9 Q. What do you currently do for a living?

10 A. I'm the county treasurer.

11 Q. That's an elected position, correct?

12 A. It will be next year, yeah. For me, I hope. I'm an  
13 appointee at this juncture.

14 Q. I see. And what were your duties as deputy director of  
15 the Portage County Board of Elections?

16 A. We kind of demarcated the roles in the office. All of  
17 them, I think, are fairly unique in the way that we did it. My  
18 main roles were budgeting. I also did poll-worker training,  
19 poll-worker recruitment was a large part of my portfolio also,  
20 and then just kind of the general interpretation of directives  
21 and all of that sort of managerial stuff.

22 Q. And in that capacity did you have the opportunity to  
23 personally observe the conduct of elections in Portage County?

24 A. Oh, yeah. Intimately familiar.

25 Q. And were you -- did you observe the elections in

1 November of 2012?

2 A. Uh-huh.

3 Q. And the November of 2014 elections --

4 A. Yes.

5 Q. -- as well?

6 How many registered voters are there in Portage County?

7 A. We fluctuate around 100,000. I think we were about -- I  
8 think our high was somewhere near 106-, -7,000 in 2012. We've  
9 been down as low as, I think, 98-, 99-, something like that.

10 Q. So how would the number of registered voters in Portage  
11 County compare to that number in other counties?

12 A. I believe we are something like the 15th largest county  
13 in the state, something like that. We are considered a large  
14 county by the Secretary of State's Office and some of the other  
15 entities that list those things out. I think we're in that  
16 upper quarter.

17 Q. Are you familiar with the term golden week?

18 A. Yeah. Uh-huh.

19 Q. And what does golden week mean to you?

20 A. Golden week was formerly the period of time during which  
21 a voter could register and cast a ballot on the same day during  
22 the absentee period.

23 Q. And during the 2012 elections, did you make any  
24 observations about who was using golden week in Portage County?

25 A. Yeah. I mean, I think our experience in Portage County

1 we saw a large, basically a cross-section of the number of  
2 folks who use the absentee-voting process generally. So you  
3 had older folks, you had college students, you had -- some  
4 extent we saw some minorities coming in, although that  
5 population is not massive in our county. We did have some of  
6 those folks using that process. So, again, I think it was a  
7 pretty good cross-section of our electorate.

8 Q. And from an election-administration standpoint, was  
9 golden week useful to you?

10 A. I think so. I say that because I think, especially in a  
11 presidential election, anything that alleviates pressure on the  
12 polling place is a positive thing. So having that extra period  
13 of time to allow folks to vote, you know, was a tool in that  
14 tool box, I suppose. The worst case scenario is that you end  
15 up with long lines at the polling place. That's what gets all  
16 the bad press. And so I think anything that kind of alleviates  
17 that is a positive thing for us.

18 Q. Voters in Ohio, can you vote absentee by mail, correct?

19 A. Yes.

20 Q. And did you observe voters using that method of voting  
21 while you were the deputy director?

22 A. Yeah. In fact, we have clerks dedicated to various  
23 aspects of that in our office. And our absentee clerk's desk  
24 was right outside of mine. I saw that on a daily basis with  
25 her.

1 Q. Did you observe any problems with the vote-by-mail  
2 process?

3 A. You know, there were a couple of things. So one of  
4 those was our drop box. We have one in our county. It's not  
5 one that we suggested folks use because at some point in the  
6 past it's my understanding that we had some ballots that were  
7 stuck in there that we found after the election, which  
8 obviously is very problematic.

9 Q. And were those ballots counted?

10 A. At that point I believe that we were past the period of  
11 time during which they could have been counted so, no, they  
12 were not. It wasn't a large number of ballots but there were  
13 some that were stuck in there. So we didn't talk about that  
14 much.

15 The other thing that came up for us was, I know this has  
16 been -- it's top-of-mind because it's been in the press  
17 recently, it's the postmarking issue. I'm having trouble  
18 remembering now if it's 2012 or 2014 but one of those major  
19 elections we had a fairly significant crop of ballots come back  
20 without a postmark. I noticed that in the lead-up to election  
21 day, on election day and then that period after election day  
22 where that postmark really becomes critically important to  
23 whether or not we're counting or not counting a ballot.

24 I had our absentee clerk do a little study of the  
25 external envelopes that we had received, kind of a



1 cross-section, and we got the sense that about a third of our  
2 ballots were coming back without a postmark of any kind. About  
3 a third were correctly postmarked and about a third were sort  
4 of in a gray area. They weren't postmarked, it was illegible  
5 something was potentially amiss there. Those were kind of the  
6 two big ones. Especially, again, because it's top-of-mind,  
7 that postmarking thing lately.

8 Q. Why is that, the failure to include a postmark on the  
9 absentee ballots, a problem?

10 A. Under Ohio law that can -- it's not a problem for most  
11 absentee voters. It becomes critically important in that last  
12 period of days where, you know, we have to have it validly  
13 postmarked by the day before election day in order to count it.  
14 If it's not postmarked in that way, we can't count it. The  
15 only thing we can rely on to determine that date under Ohio law  
16 is the postmark itself. So if we don't have one, we receive it  
17 on election day or the day after through the mail, we're not  
18 able to count that ballot.

19 Q. I see. Let's go back to golden week for a little bit.  
20 Is it your understanding that golden week was eliminated by the  
21 time of the November 2014 elections?

22 A. Uh-huh.

23 Q. And did the elimination of golden week impact your  
24 election administration in any way?

25 A. I can't say that it did but I would also, you know, sort

1 of caution that those are two very different elections between  
2 the 2012 election which was a much higher volume voter election  
3 than the 2014 election which, you know, gubernatorial elections  
4 consistently have a lower-interest level than presidential  
5 elections. This one was, I think, even a lower interest level  
6 than is consistently the case because, you know, the various  
7 political elements that were involved there.

8 Q. And when golden week was available, did you observe any  
9 instances of fraud being committed during golden week?

10 A. No. So we had -- by directive we're required to keep  
11 those -- keep our golden-week voters separate and track them.  
12 We did have, I think in 2012, three folks who -- as part of  
13 that process what we do is we send a confirmation card to the  
14 voter saying, you know, congratulations. You're registered to  
15 vote and here's your polling place. It's kind of a pro forma  
16 process.

17 If that is returned to us as undeliverable, that's a  
18 flag and we're supposed to pull that vote out of the system.  
19 We had three of those folks that we had to go back in and fish  
20 out of our TSX voting machines. We were able to do that. And  
21 I believe that two of them eventually were counted because we  
22 were able to get in touch with the voter and verify that there  
23 was a mailing error or whatever it was.

24 Q. Could you describe in a little bit more detail the  
25 verification process for people who registered and voted during

1 golden week?

2 A. You know, again, so the registration process is  
3 followed -- once you submit a voter registration card, what we  
4 do is we check you into the system, verify -- we try to see if  
5 you're registered somewhere else. There's a number of  
6 processes that happen on the back end. But the important one  
7 for golden-week purposes is that confirmation process where we  
8 send the card out. If that's returned back to us as  
9 undeliverable, that's kind of the flag to say, hey, maybe  
10 there's something up with this one and then we're supposed to  
11 sequester that for additional work.

12 Q. And did that process impose any particular burdens on  
13 you and other members of the board of elections in Portage  
14 County?

15 A. I did not perceive that to be a problem. So what we did  
16 was we had a separate tally sheet where we kept track of the  
17 voters who were voting in golden week. Every voter is assigned  
18 an -- in a primary election, you get a ballot style code letter  
19 in addition to a precincts ID number and a four-digit  
20 randomly-generated ballot number. So those kind of things go  
21 together to identify that vote in the system.

22 We track those on a separate sheet and then again at the  
23 end of that process then we had to go back in and fish out, in  
24 2012 it was those three folks that we had some issue with.  
25 That process took us about an hour.

1 Q. I see.

2 A. So, you know, I did not believe that to be an onerous  
3 burden.

4 Q. How many early-voting locations does Portage County  
5 have?

6 A. Just one. The board of elections' office.

7 Q. When you were deputy director, did you observe any  
8 problems with long lines during the early-voting period in  
9 Portage County?

10 A. In 2012 in particular, and I can't remember where this  
11 study came from, I believe it was the EAC because we report our  
12 statistics to them on things like wait time, absentee ballots,  
13 et cetera. And I believe we ended up in the bottom five in the  
14 state in wait time at portions of the early-voting period. We  
15 had a two-and-a-half-hour line for, I'm thinking, I'm trying to  
16 remember if it was the last week or more. But at least the  
17 last week of the election cycle in 2012.

18 Part of that was due to the fact that we had some space  
19 limitations in our office. I think we had space for nine total  
20 TSX voting machines and very limited space within our office to  
21 contain the voters. In fact, you come in the door and the  
22 voting machines are basically right across the counter from  
23 where you would check in to vote. So we sort of had this  
24 serpentine situation going on. We then had a line of voters  
25 going out, down the hallway of our administration building to

1 my current office which is probably about 100 yards, something  
2 like that, and then back down and around again and out the  
3 front door. Out the front door, around the corner of the  
4 building is, I think, as far as it got on that last weekend.  
5 It was about two-and-a-half hours at various points.

6 Q. And would it have helped if you could have opened up  
7 additional early-voting locations?

8 A. I think so. I think particularly for presidential  
9 elections, having that flexibility would be very useful. I  
10 know that our board is looking at some alternatives within that  
11 building space-wise to open up some more voting machines and  
12 that sort of thing. But we still have the possible scenario  
13 where we're going to have a long line that snakes throughout  
14 the building and interrupts the office day for the rest of the  
15 folks who use that building. So being able to go outside or  
16 having that option would have been useful in addition to our  
17 office.

18 Q. Would it be feasible for Portage County to open up an  
19 additional early-voting location?

20 A. You know, logistically there's always going to be  
21 challenges. I have found that my former colleagues are pretty  
22 resourceful in that respect. So I don't believe from their  
23 perspective it would be problematic. I think that they would  
24 find a way to make that happen.

25 The other potential pitfall would be budgetary.

1     However, I think given the fact that boards of elections have  
2     the ability to make a strong case to county commissioners about  
3     why it's important that this process be handled properly and  
4     also ultimately to sue for their budget if they don't receive  
5     the funding that they need. I don't believe that the budget  
6     would be a problem either. I think that they would find a way  
7     to make that happen if it was an option and they felt it was  
8     necessary.

9         Q.     When you say sue for the money that they need, could you  
10     elaborate on that a little bit more?

11         A.     We would have the ability to take the commissioners to  
12     the Court of Common Pleas in the county to receive the funding  
13     we need to conduct elections. I think it's any expense that's  
14     necessary and proper or something along those lines, similar  
15     sort of language. So it's pretty high bar or pretty low bar  
16     for receiving the funding from the commissioners. Anything  
17     that's related to conduct is usually --

18                 Fortunately we've only gone there once, as far as I can  
19     tell, in the history of our board. Again, a very amicable  
20     relationship and they generally find a way to make those things  
21     happen.

22         Q.     Let's talk a little bit more about the makeup of Portage  
23     County. Am I correct that Kent State is in Portage County?

24         A.     Yep. Golden flashes. You got it.

25         Q.     And did you observe students registering to vote and

1 voting from Kent State while you were the deputy director?

2 A. Yeah. We did have some of that take place. Especially  
3 in 2012.

4 Q. And did you observe those students facing any particular  
5 challenges to registering or voting?

6 A. One thing that I am troubled that we were not able to  
7 solve while I was deputy director of our board of elections,  
8 there are some unique challenges to college students generally  
9 with respect to the fact that they're a transient population.  
10 At Kent, particularly, and I think this is unique to that  
11 institution because of the way that our precinct maps overlay  
12 the college map and the mailing system at the university, we  
13 had some issues where students, you know, they often put their  
14 dorm name and number on their registration form. If we can pin  
15 that to a precinct, we can go ahead and register that voter,  
16 and we have. If we can't pin it to a precinct, we can't  
17 register that voter.

18 What you end up with in that scenario at Kent State,  
19 because of the way their mail system works and the fact that  
20 multiple residence halls get routed through a single residence  
21 hall for mail and can fall into multiple precincts, you have  
22 the scenario where some kids, you know, can be registered and  
23 others cannot based solely on the fact of which building they  
24 happen to live in or which part of a building they happen to  
25 live in. I'm thinking of the Centennial complex at Kent in

1 particular that's a little bit of a problem. You know, that  
2 was an issue for us. And I think still is and needs to be  
3 addressed at some point.

4 Q. Let me clarify. So the problem you're describing is  
5 that some dorms are split into multiple precincts?

6 A. Right. Uh-huh.

7 Q. So you might not be able to tell from the information  
8 that's given by the student which precinct?

9 A. Yeah. The critical element is, can we pin this voter to  
10 a precinct? If we can, we're able to register them. If we  
11 can't, we can't register them. And for Kent students in  
12 particular, I think that's an issue. We have a small class of  
13 voters that applies to every time.

14 Q. And how many voting location serve Kent State?

15 A. You know, offhand, the main Kent State voting location  
16 is at the KSU Wellness Center. There are two large precincts  
17 there. And by large, I mean large population of student  
18 voters. There are a number then that kind of touch on the  
19 outlying areas. A couple of churches on the outskirts. So it  
20 kind of depends on how you define servicing Kent State. There  
21 are two in particular that are a shared precinct-voting  
22 location. That is the main touchpoint for most Kent State  
23 voters.

24 Q. You said shared precinct. Is that also -- could you  
25 also call that a multiprecinct?



1 A. Multiprecinct location, sure. There's two in that spot.

2 Q. Are you familiar with the problem of right church, wrong  
3 pew ballots?

4 A. Yeah.

5 Q. Could you describe what that problem is as far as you  
6 know?

7 A. Right church, wrong pew, which is a terrific analogy, is  
8 you show up at the right polling place but for whatever reason,  
9 you end up at the wrong location within that polling place. So  
10 I picked the wrong precinct, basically, and cast a vote there.  
11 That's -- that is what that issue is.

12 Q. And did you observe students having problems with the  
13 right church, wrong pew issue?

14 A. You know, I don't -- I can't remember any offhand. I'm  
15 sure it came up. One thing that we really hammered with our  
16 poll workers during training class was that issue and the  
17 proper use of I think it's a 12-B, the form that we have voters  
18 fill out or have the poll worker fill out, rather, that says  
19 this voter came here. I told them they were in the wrong  
20 place. They insisted on voting. Here's me saying I did my  
21 homework. We really hammered that really hard because we  
22 didn't want to have that issue come up for us. So I think  
23 because of that, our incidents of those issues was minimized  
24 greatly in our county.

25 Q. Are you familiar with the concept of consolidated poll

1 books at multiprecinct locations?

2 A. Yeah. I'm fairly certain Delaware uses that here in the  
3 area.

4 Q. What is your understanding of how the consolidated poll  
5 books work?

6 A. Generally speaking, the way I understand it is that it's  
7 alphabetical. So you have multilocations. The poll book is  
8 alphabetical so I just go to my last name, a letter and then  
9 check in, and that's how that works for that voter. What we do  
10 in some of our multiprecinct locations is kind of a hybrid  
11 system. So generally speaking, every precinct gets a set  
12 number of voting machines.

13 What we have done in Portage County is open up all of  
14 the voting machines to read all of the cards for the precinct.  
15 So I'm still having to check in at my precinct table but once I  
16 get that done, I can vote at any of the machines that are  
17 there. That's a line-alleviation process. And we found that  
18 to be fairly successful for us.

19 Q. And if Portage County were to consolidate its poll books  
20 at multiprecinct locations, such as the one at Kent State,  
21 would that be a benefit?

22 A. I think so. I think that was probably -- that would  
23 probably be a policy conversation we'd have to have. But from  
24 my perspective, everybody knows what their last -- hopefully  
25 everybody knows what their last name is. Very few people can

1 tell you what precinct they live in. So that is a much simpler  
2 kind of process for most folks to grasp and understand, I  
3 think.

4 Q. What type of voting machines does Portage County use?

5 A. We use the TSX touch-screen voting machines that were  
6 manufactured by Diebold and are currently serviced by Dominion  
7 Voting Systems.

8 Q. Touch screen. Is that also what is referred to by  
9 direct recording election?

10 A. DRE.

11 Q. DRE machines?

12 A. Uh-huh.

13 Q. Did you observe any problems with DRE machines in your  
14 time as deputy director?

15 A. We had some. The sorts of problems we had were a screen  
16 would fail on occasion. You'd have that kind of thing that  
17 would happen. Or the most common problem would be a printer  
18 jam of some variety where the voter verifiable paper audit  
19 trail that prints on the side would jam up and so the voter  
20 wouldn't be able to read what they had voted. That was a very  
21 common issue.

22 And then occasionally, again, I remember this because it  
23 came up often in 2012. I received several calls from members  
24 of the media on it, would be the misrecording thing. So I  
25 think I'm voting for Barack Obama and I'm voting for John

1 McCain or vice versa. Often we found that that was either a  
2 calibration issue or what happened was a lot of times, voters  
3 vote with a knuckle or something and so they'll touch the  
4 screen inadvertently with a different part of their hand and we  
5 would walk them through how to fix that and record what they  
6 wanted to.

7 Q. And did those types of problems that you're describing  
8 create delays?

9 A. You know, yeah. They do. Particularly in our  
10 early-voting location when folks would need us to come around  
11 the counter and our bipartisan team and sort of assist them  
12 with the, you touched it in the wrong place thing, or kind of  
13 thing. Or if a machine would go down, we'd need to change a  
14 paper roll. That takes some time. Switching out a screen  
15 takes some time because you then have to go through and ensure  
16 that everything is properly calibrated and all of that and go  
17 through the start-up procedures.

18 Yeah. I mean, I think it can cause delays. They,  
19 fortunately for us, have not been, to this point, kind of the  
20 Hamilton County long period of time sorts of delays at a  
21 particular polling location. But they do cause delays.

22 Q. In 2014 when you were still deputy director of the  
23 Portage County Board of Elections, is it your understanding  
24 that the requirements for casting absentee and provisional  
25 ballots changed?

1 A. Uh-huh. Yeah. There was a directive that changed the  
2 way we look at those.

3 Q. And were some of the changes also new categories of  
4 information that were required?

5 A. Yeah. And I think particularly with provisional --  
6 well, required, yes. Certainly. There were, I believe on the  
7 absentee ballots, places to put the information previously but  
8 they weren't required pieces.

9 On the provisional ballot, there were a couple of things  
10 that were added. We always needed a printed name and a  
11 signature and an ID piece. It then added an address and date  
12 of birth I think were the two new fields for us that we had on  
13 that ballot.

14 Q. And before those requirements went into place, and now  
15 I'm just talking specifically about absentee ballots, did you  
16 have trouble identifying voters in Portage County?

17 A. Very, very rarely. It would typically be a scenario  
18 where we had a father and a son, you know, so senior and junior  
19 and that was -- I can't think of a time when we were not able  
20 to identify which of them, in fact, was the one who had cast  
21 the ballot or was supposed to have cast the ballot. So, no,  
22 not really.

23 Q. And for the provisional ballots, is it your  
24 understanding that the provisional ballot affirmation form,  
25 assume it's correctly filled out with all the information, can

1 also be used as a registration form?

2 A. Uh-huh. Right. And the form provisional ballot,  
3 actually the back side of the form was a voter-registration  
4 card very similar to the one that folks fill out to register to  
5 vote for the first time.

6 Q. So you mentioned earlier that some of the categories of  
7 information were optional before the new changes?

8 A. Yes. The address piece in particular. I think that was  
9 part of the reason it was on the back. It was not required for  
10 a voter to vote most of the time. And part of the reason I  
11 think the change happened was that there were a class of voters  
12 for which, if you did not complete the change of address card,  
13 we couldn't determine which precinct you were supposed to have  
14 been from or supposed to be in and/or been from and/or were you  
15 previously registered. It was helpful from an administrative  
16 standpoint to have that information which I think is why. But,  
17 no, it was not required previously.

18 Q. Before it was required, that would mean that if a voter  
19 failed to include it, except for the category you just  
20 described, their ballot would not be rejected?

21 A. Right. Uh-huh.

22 Q. Are you familiar with --

23 A. Yeah. Actually the envelope had a statement at the top  
24 on the back that said failure to complete this information will  
25 not result in our ballot be counted or something to that

1 effect. This is out -- they made very clear on the ballot  
2 itself or the envelope itself that it was optional information.

3 Q. And are you familiar with the Ohio Association of  
4 Election Officials?

5 A. Yeah. I served in that organization while I was at the  
6 board of elections as co-chair of the education committee and I  
7 was also on the legislative committee at OAE0 for that period  
8 of time.

9 Q. Could you describe the composition of the OAE0?

10 A. Yeah. I mean, it's the, basically, trade association  
11 for election officials in the state of Ohio. In terms of the  
12 committee structure, I believe that there's a  
13 democrat/republican split representation. And I apologize, I  
14 don't remember offhand exactly what the shape of that was. So  
15 that was kind of how the organization arrived at its membership  
16 on those committees, D and R. Much in the same way the boards  
17 are split that way.

18 Q. And was the representation on those committees weighted  
19 by the population of the various counties?

20 A. No. No. Nothing in the OAE0 bylaws that I remember  
21 seeing takes into account the population differences. So  
22 Cuyahoga is the same as Vinton is the same as Montgomery. It  
23 doesn't matter.

24 Q. And were you a member of the OAE0 when what became  
25 Senate Bill 238, the proposal to eliminate golden week, was

1 being debated?

2 A. Uh-huh. I was -- that was early in my tenure, I  
3 believe, but I was on the legislative body at that point.

4 Q. And did you oppose or support the proposal to eliminate  
5 golden week?

6 A. The ultimate decision was made by the trustees of the  
7 association so I actually had no part in the that. The way the  
8 association kind of processes legislation is the executive  
9 director or membership brings it to the legislative committee  
10 and says, hey, we're looking at this. What do you think?  
11 Recommendations are made, discussion is had. And then the  
12 legislative committee will make a recommendation to the  
13 trustees. The trustees then, ultimately, are the ones who make  
14 the determination as to whether the association supports,  
15 doesn't support, takes no position --

16 THE COURT REPORTER: Sir.

17 THE COURT: You've got to slow down a little.

18 THE WITNESS: I'm sorry. I talk fast. I apologize.

19 THE COURT: You're talking fast if she says something.

20 THE WITNESS: Noted. I'll work on that.

21 (Court Reporter reads back the answer to the witness.)

22 THE WITNESS: As to whether the association supports,  
23 doesn't support, takes no position, what ultimately they  
24 decide.

25 So having said that, I was -- I sat, and I think this



1 was due to the fact -- I'm trying to remember the conversation  
2 where they ultimately made their endorsement of absentee  
3 task-force recommendations out of which some of those  
4 recommendations came. I was there as a nonvoting member and  
5 co-chair of the education committee. So I basically sat in on  
6 that conversation. But I did voice that I didn't think it was  
7 a good idea do that for the reason that I mentioned earlier  
8 that I think having more opportunity to vote is better for us  
9 generally because it alleviates pressure on the polling place  
10 on election day.

11 MR. MARTIN: Okay. That's all I have for right now.

12 THE COURT: Cross.

13 - - -

14 CROSS-EXAMINATION

15 BY MR. VOIGT:

16 Q. Good morning, Mr. Cromes. My name is Steven Voigt and I  
17 represent the defendants in this case. I have a few questions  
18 for you. And I apologize, they may be a little bit out of  
19 order but I was taking some notes. I'll do the best --

20 A. I apologize for the fast talking, for what it's worth.

21 Q. I'll do the best I can.

22 You mentioned that after law school you served on a  
23 political campaign?

24 A. Uh-huh.

25 Q. Which campaign was that?

1 A. I was the field director in Portage County for We Are  
2 Ohio which was the campaign to repeal Senate Bill 5.

3 Q. Was that a nonpartisan effort or was it affiliated with  
4 a political party?

5 A. I think it was nominally nonpartisan. I think that the  
6 parties very clearly lined up on sides of that issue. The  
7 democratic party being in favor of repealing Senate Bill 5.  
8 The republican party, I believe, largely being in favor of  
9 retaining it.

10 Q. Other than that political work, have you ever been  
11 involved in other political volunteer work or paid work?

12 A. Sure, yeah. So during law school I took a semester off  
13 to work a campaign in southeast Ohio. I was field director for  
14 Dan Dodd who was a state representative at that time. So I did  
15 some political field work for him.

16 I also did some work for the democratic party during law  
17 school on voting rights related issues. So I worked with  
18 various democratic lawyers to draft a student bill of rights  
19 basically saying here are the various things that apply to you  
20 as a student that you should be aware of. For instance, your  
21 driver's license can have an address that doesn't match your  
22 registered address as long as it's valid. It's still an ID.  
23 Those sorts of things.

24 So that's a lot of the work that I did. I believe that  
25 to be all before my current endeavor toward elected office.

1 Q. Dan Dodd, is he a democrat?

2 A. Yes.

3 Q. Is it fair to say you've never done any volunteer or  
4 paid political work on behalf of a republican?

5 A. No. Although I did, my very first election that I voted  
6 in in 2002, I think I registered as a republican which I have  
7 had to explain many times in my political work, but yeah.  
8 Other than that, that's about the only time.

9 Q. But you said you're registered as a democrat?

10 A. I am absolutely democrat, yeah.

11 Q. You talked a little bit about convenience of voting.  
12 Are you aware of the voting calendar for the 2016 presidential  
13 election?

14 A. I believe so. I believe that is the one that was  
15 established as a result of the absentee-task-force  
16 recommendations by the Secretary of State. So I'm fairly  
17 familiar with that because we had those conversations.

18 Q. Do you know that there will be two Saturdays and two  
19 Sundays and in fact those two Saturdays and two Sundays will be  
20 the two Saturdays and two Sundays immediately preceding  
21 election day in the 2016 presidential --

22 A. That sounds consistent with my understanding, yeah.

23 Q. Just so we get a clear record. Let me get my question  
24 out.

25 A. I'm sorry.

1 Q. Let me ask it again just to get a clear record.

2 I just wanted to know if you know that whether there  
3 will be two Saturdays and two Sundays in the 2016 presidential  
4 election calendar and will those two Saturdays and Sundays be  
5 the two Saturdays and Sundays immediately preceding election  
6 day?

7 A. I'll repeat my answer. That's consistent with my  
8 recollection, yeah.

9 Q. And in your view, would those four days be helpful with  
10 regard to voter convenience?

11 A. Yeah. Absolutely. I mean, I think, as I had said  
12 previously, anything that you're doing to alleviate pressure on  
13 election day proper is a positive thing.

14 Q. You testified a little bit about golden week. Is there  
15 any -- strike that.

16 Under the law today now that golden week, S.B. 238, has  
17 been in effect for two general elections and golden week no  
18 longer exists, is there anything preventing a person from  
19 registering to vote 31 days before election day?

20 A. Huh-uh. No. I'm sorry. No. Not that I'm aware of.

21 Q. And you briefly mentioned some issues related to voting  
22 by mail.

23 A. Uh-huh.

24 Q. Do you recall that?

25 A. Uh-huh.

1 Q. Are you suggesting that Ohio should eliminate vote by  
2 mail?

3 A. No. Not at all. Again, for the reason I had mentioned,  
4 that there are some issues there, certainly, but anything  
5 that's alleviating pressure is a positive thing. I think it's  
6 important to leave every tool in the tool box available to us  
7 that we can. So that, in my mind, should include golden week,  
8 as much early voting in person as possible, and robust adoption  
9 of the mail process. I think Colorado's reforms, for example,  
10 have proven, at least as far as I've been able to read, to be  
11 pretty useful in helping folks turn out and making it easy to  
12 vote out there. So that sort of thing I think is not terrible.

13 Q. Do you know how Ohio's early-voting schedule compares to  
14 other states?

15 A. I wouldn't speculate. I've lived here my whole life so  
16 I can't really. Other than what I read which is that it's  
17 better than most or better than some and worst than some.  
18 Better than most, worst than some. We do okay but I always  
19 think we can do better with that. And particularly, as I said,  
20 having more opportunity is better.

21 Q. Do you know there's some states where you can only vote  
22 on election day?

23 A. I do know that is true, yes. Although I couldn't tell  
24 you which ones.

25 Q. So in terms of convenience, a state like Ohio with an

1 early-voting schedule, in your opinion, would have more  
2 convenient options for voters than a state that has voting only  
3 on election day. Fair to say?

4 A. I would say that we used to be more convenient than we  
5 are now but, yeah, we are convenient compared to, certainly,  
6 that option.

7 Q. You mentioned that during the last week of the  
8 early-voting period there were some increased -- an increase in  
9 the number of individuals trying to vote during that time  
10 period?

11 A. Uh-huh.

12 Q. Am I remembering that correctly?

13 A. On the buildup to election day, that last week, week and  
14 a half, two weeks, absolutely.

15 Q. Fair to say, that was the heaviest period during the  
16 early-voting period?

17 A. Yeah. Human nature is you wait until the last minute to  
18 do anything you have to do, right? So I do believe that is the  
19 case.

20 Q. Do you know whether there were any --

21 THE COURT: You make a choice, a conscious choice when  
22 you do that, right?

23 THE WITNESS: That's absolutely right, Your Honor.  
24 That's right.

25

1 BY MR. VOIGT:

2 Q. Do you know whether there were any efforts by campaigns  
3 to bring people in to encourage people to vote during that time  
4 period? And I can give you an example. We've heard testimony  
5 from other individuals how there have been festivities and  
6 busing in of voters and so forth. Did you experience any of  
7 that in Portage?

8 A. I think it varies by election cycle. Certainly in 2012  
9 in a presidential election you saw more of that kind of thing.  
10 However, I do think the pattern you described, which is more  
11 adoption the closer we get to election day, is consistent from  
12 year to year in terms of folks really engaging at that last  
13 couple of days, week, week and a half, two week period.

14 Q. I'm sorry, more adoption. I didn't understand you.

15 A. So during presidential years, you're going to have a lot  
16 more of that kind of busing in of folks kind of thing, but you  
17 do see more people voting toward the end, I think, consistently  
18 across. And having said that, you know, though we had, for  
19 instance, from Kent State, the example I'll use is we had Jack  
20 Black come and bring students from Kent State on a bus. So  
21 that was a high-volume period for us for that half hour to an  
22 hour that those kids were there voting. But the interest in  
23 voting was consistent, I guess, across that period is what I'm  
24 saying.

25 So to the extent that that contributed to lines, I don't

1 think it was in any way a definitive factor. I think people  
2 were showing up to vote irrespective of the busing option or  
3 the Souls to the Polls. Those things, certainly, I think,  
4 increased volume but we still had high volume.

5 Q. Jack Black the movie star?

6 A. Of School of Rock fame.

7 Q. I'm a huge fan of his. I wish I'd known about that.

8 Which year was that?

9 A. 2012. I'm sorry.

10 THE COURT: Will he have a return engagement?

11 THE WITNESS: That remains to be seen. We'll all be  
12 waiting.

13 MR. VOIGT: I can get my signature.

14 THE COURT: Please do.

15 BY MR. VOIGT:

16 Q. You talked about some space limitations related to your  
17 early-voting center. Do you recall you testified to that?

18 A. Uh-huh.

19 Q. Is there anything preventing your board from moving the  
20 early-voting center to a place without space limitations?

21 A. I mean, legally strictly speaking, no. But I would say  
22 that logistically one of the reasons they wanted to keep folks  
23 around was so that -- keep that location at the board office  
24 was for ease of administration monitoring and that kind of  
25 thing. But that was kind of a collective decision. And,



1 again, I think if given the opportunity, they would look for a  
2 larger location. In fact, I'll point to next year as an  
3 example.

4 One thing I know they're working on and actually piloted  
5 this fall. I went and early voted at the room across the hall  
6 from our office which has a little bit more space. So I know  
7 that they're actively thinking about how can we accommodate  
8 folks more effectively and efficiently during that period.  
9 But, no, not that I know of.

10 Q. I apologize. I missed a little bit of what you said.  
11 So are you looking -- is Portage County looking for a new  
12 early-voting site in 2016?

13 A. I know that they are considering moving it out of our  
14 main office foyer area where we had voted to our training room  
15 which is just across the storage space in our office. It has a  
16 little bit more space. That's going to create some logistical  
17 problems for training obviously if they're voting folks where  
18 they had formerly been training. I know they were looking at  
19 those solutions.

20 The reason I hedge a little is our voting system had  
21 some issues in November where the server crashed. They're now,  
22 I believe, attempting to implement a new paper-based voting  
23 system for the March primary and so I think a lot of the  
24 aspects of how that's all going to work out in our county are  
25 up in the air and remain to be seen.

1 Q. Fair to say that if your county did decide to move to a  
2 larger location with more space, that could alleviate some of  
3 the lines that you talked about?

4 A. I believe that would help certainly, yeah.

5 Q. How many DREs does Portage County have at its  
6 early-voting center?

7 A. It varies by election based on our projected demand and  
8 also space limitations. So the most we did would have been  
9 that 2012 election where I believe we had nine. And I can't  
10 remember offhand in that included or did not include our card  
11 creation machine behind the counter which would make it  
12 effectively eight voting stations. I believe that was the  
13 highest we ever got but, again, it varies very much. For  
14 instance, in an off-year primary election you might only have  
15 three or four because you're not going to have a whole bunch of  
16 folks coming in at that particular election.

17 Q. Is there anything preventing Portage County from  
18 acquiring more DREs to put in its early-voting location?

19 A. It's not an issue of number of machines because we  
20 certainly have that. In fact, we've got 100 that we purchased  
21 on reserve to have to cycle in as we sort of had issues with  
22 the aging voting stock. The number of machines at our disposal  
23 is not the issue. It's the physical space limitation that's  
24 the issue for us.

25 Q. And you said that if you do move to a bigger space, you

1 would be able to put more DREs in that space?

2 A. Yeah. I think that's true.

3 Q. Those additional 100 machines, how do you decide how to  
4 use them?

5 A. You know, it's a process we work through with the  
6 vendor, generally, because we have to activate them when we  
7 need them. So oftentimes what will happen is in the  
8 postelection process when we're checking machines back in,  
9 we'll sort of see -- flag which machines were problematic for  
10 us. So if they had a screen issue or the leg broke on it or  
11 something of that those nature -- of that nature, we try to fix  
12 it first. If we're unable to fix it, we ship it out to Texas  
13 where their service center is and then cycle one of the backup  
14 machines in to take its place. Once it comes back from Texas  
15 it goes into the reserve stock.

16 Q. Do you ever apportion any of those in precincts where  
17 you anticipate there might be a little higher turnout?

18 A. Yeah. It's part of our process. The director managed a  
19 great deal of that during my time at the board of elections and  
20 then the board obviously voted to approve voting-machine  
21 allocations. But there is a formula that we apply to sort of  
22 say more for this location, less for that location based on  
23 anticipated turnout, historical turnout, precinct size, those  
24 sorts of things.

25 Q. And then that decision is made at a public hearing?

1 A. Yeah. The process, it's like sausage. So we arrive at  
2 sort of our recommendations in a nonpublic way but the  
3 ultimately decision is made at a public meeting of the board.

4 Q. But the flexibility to put the DRE machines where you  
5 think they may be needed most is a positive thing in terms of  
6 local election administration?

7 A. Yeah. I think that's true. Having flexibility based on  
8 your county's specific needs is generally a good thing.

9 Q. You may have mentioned this and I apologize if I missed  
10 it. Does Portage County have consolidated poll books?

11 A. We do not. So we have kind of a hybrid system. Rather  
12 than going to the consolidated poll books, in a number of our  
13 multiprecinct locations what we have done is made all of the  
14 machines capable of voting all of the ballot styles for the  
15 various precincts that use that location. So in terms of the  
16 voter's experience going to check in, you're still finding your  
17 precinct, checking in in your precinct's book but then once the  
18 voter card is created, you can use any machine in that precinct  
19 to vote.

20 Q. Is there anything preventing the board from using  
21 consolidated poll books?

22 A. No. Not at this point. I think that would be a policy  
23 decision they need to make, but I believe that's allowable  
24 everywhere.

25 Q. And that decision about consolidating, that would be

1 made by the board?

2 A. Uh-huh.

3 Q. I think you said you're aware that there's a directive  
4 pending, it's for public review right now, related to  
5 consolidation of poll books?

6 A. Can't speak to that. No, I didn't.

7 Q. Maybe I missed that. I'm sorry.

8 A. I believe that's come out subsequent to my time serving  
9 as an election official.

10 Q. But you don't know about that?

11 A. I mean, I know that it was a discussion that we were  
12 having, but in terms of a specific directive, no, I don't.

13 Q. You don't know?

14 A. No. I don't know where that is.

15 Q. Today, the views that you presented today, these are  
16 your own views?

17 A. Uh-huh.

18 Q. Is that right?

19 A. Absolutely.

20 Q. And so you're not testifying on behalf of the board --  
21 on behalf of the board or on behalf of other election officials  
22 in Portage County?

23 A. No. I wouldn't presume to do that.

24 Q. Last couple of questions. How did you learn about this  
25 case?

1 A. That's a great question. I am, what I will kindly call  
2 myself, an election nerd, I suppose. So I read, the Ohio State  
3 University's Moritz College of Law has an election law  
4 specialty area. They have a website where they kind of post  
5 updates on pending election law related matters throughout the  
6 country. So I read that with some regularity. I've seen it  
7 there. And I also read election law blog. I don't want to go  
8 too far into the weeds about the dorky election-law stuff that  
9 I do in my free time.

10 But I follow these issues. How I specifically came to  
11 know about it, I couldn't really tell you, but I do know that  
12 I've known about it for a while.

13 Q. Did Plaintiffs counsel reach out to you to testify?

14 A. Yeah. They did ask me to testify, uh-huh.

15 Q. Do you know how they found your name?

16 A. No. I couldn't speak to that. I mean, I've been very  
17 active in the election world in my time as an election official  
18 so I assume it's from there.

19 Q. Prior to your testimony today, did you have  
20 conversations with Plaintiffs' counsel about what you'd be  
21 testifying about?

22 A. They kind of gave me a little bit of an idea as to what  
23 the issues in the case were going to be and some of the things  
24 that we would be talking about generally, the broad strokes,  
25 but that's about it.

1 Q. Let me just quickly skim through my notes here.

2 MR. VOIGT: That's all I have, Your Honor.

3 THE COURT: Mr. Martin?

4 - - -

5 REDIRECT EXAMINATION

6 BY MR. MARTIN:

7 Q. Just a quick follow-up question. On cross-examination  
8 you were asked about whether you knew how Ohio's early-voting  
9 period compared to the early-voting period in other states.

10 A. Uh-huh.

11 Q. Do you know whether states without early voting have had  
12 historic problems with long lines that Ohio has had?

13 A. You know, I can't speak to that. I know that we,  
14 particularly in the 2004 election, had a number of issues with  
15 those that kind of precipitated the development of the no-fault  
16 absentee rules and some of those sorts of thing. But in terms  
17 of other states' experiences, I can't speak to that.

18 Q. You were also asked about whether someone could still,  
19 to this day, register on the 31st day, for example, before  
20 election day. Do you know if a person who does register on the  
21 31st day may then go vote on the first day of early voting?

22 A. You know, offhand, no. My thought on that is they  
23 probably could not because we'd have to go through the  
24 verification process but I don't -- that's just a knee-jerk  
25 reaction. I don't know offhand how that would be managed at

1 this point. That was also still pretty new at the time I kind  
2 of cycled off.

3 MR. MARTIN: That's it, Your Honor.

4 THE COURT: Thank you, Mr. Martin.

5 Thank you, Mr. Cromes. You may step down. Appreciate  
6 you coming in.

7 MR. SPIVA: Your Honor, we don't have any further  
8 witnesses and so I think we would just turn it to the  
9 defendants. There are some issues in terms of declarations and  
10 the like. I'm assuming Your Honor would probably rather deal  
11 with that later.

12 THE COURT: Later. Let's do some witnesses.

13 Who's next?

14 MR. VOIGT: Your Honor, expert Sean Trende is next.  
15 We're just grabbing him in the adjacent room. He was  
16 separated.

17 THE COURT: Sir, if you'd approach the stand, raise  
18 your right hand and be sworn.

19 (Witness sworn.)

20 THE COURT: Ms. Richardson, you may inquire.

21 MS. RICHARDSON: Thank you, Your Honor.

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SEAN TRENDE

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

DIRECT EXAMINATION

BY MS. RICHARDSON:

Q. Good morning, Mr. Trende.

A. Good morning.

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

A. Sean Trende. S-E-A-N, T-R-E-N-D-E.

Q. What is your occupation, Mr. Trende?

A. I'm the senior elections analyst for RealClearPolitics.

Q. I'm going to come back in a moment and ask you to describe RealClearPolitics but, first, could you just briefly describe your educational background?

A. I graduated from Yale University with a double major in history and political science. I attended Duke University where I got a J.D. and I also got a master's degree in political science.

Q. So now returning to RealClearPolitics, can you tell us what RealClearPolitics is?

A. RealClearPolitics is a website that aims to be sort of a one-stop shop for political information. We aggregate polling. In other words, back in the '90s you would often hear a media

1 outlet give its poll and it might be an outlier and you'd have  
2 no way of knowing it. So by showing what all the polls are  
3 showing and averaging them, it gives a reader a better idea of  
4 what's going on.

5 We aggregate news information. We try to pair points of  
6 view on controversies. So we would have an article that says,  
7 yes, you should have gun control and then an article that says,  
8 no, you shouldn't. And then most relevant to my work, we  
9 produce original content, original analyses of elections and  
10 campaigns and politics.

11 Q. Is RealClearPolitics widely used?

12 A. Yeah. It's one of the most widely-used election  
13 resources on the net.

14 Q. Is it recognized as a pioneer in the field of poll  
15 aggregation?

16 A. Absolutely. We are the first online or first resource  
17 I'm aware of that comprehensively got polls together and  
18 aggregated them and presented them to an audience.

19 Q. Is it widely cited in various news outlets and media?

20 A. Yes. We have contracts with newspapers to publish the  
21 averages across the country. It's routinely cited to by people  
22 from across the political spectrum.

23 Q. Does it have an office?

24 A. Yes. We have offices on K Street in downtown  
25 Washington, D.C.

1 Q. What about employees?

2 A. It varies. But right now if you look at the other  
3 verticals like markets and so forth, the overall company has  
4 about 60 employees.

5 THE COURT: 60?

6 THE WITNESS: 60, yes.

7 BY MS. RICHARDSON:

8 Q. What are your responsibilities specifically with  
9 RealClearPolitics?

10 A. So I'm sort of the right-hand man for the CEO of the  
11 company. My job is basically to try to know everything there  
12 is to know about the elections that if he asks me, Sean, what's  
13 going on in the third district of Ohio, I can tell him. I  
14 generate original analyses. I try to write about once a week.  
15 In an odd-numbered year it sometimes falls off. But  
16 even-numbered years, there's no shortage of things to write  
17 about.

18 Q. And as part of your responsibility at RealClearPolitics,  
19 do you study and write extensively about demographic trends in  
20 the country?

21 A. Absolutely. That's an important focus of my writing.

22 Q. And do you examine and report on voter turnout and  
23 behavior?

24 A. Again, that's, especially after an election when people  
25 are trying to figure out what's happened, that's an absolutely

1 crucial portion of the online debate about how elections are  
2 going and in the peer-reviewed literature.

3 Q. So are you required then to analyze election trends  
4 across the country?

5 A. Absolutely.

6 Q. How long have you been with RealClearPolitics?

7 A. I started with them on a part-time basis in 2009 and  
8 came on board full time in 2010.

9 Q. And you mentioned already that you write extensively in  
10 your role with RealClearPolitics. Do you also write for  
11 another employer?

12 A. I wouldn't consider them an employer but I'm a 1099  
13 employee or contractor with the Center for Politics. They have  
14 a website that's called Larry Sabato's Crystal Ball. He's a  
15 prominent elections forecaster. That website tends to be a  
16 little bit more academic in tone. You have people like  
17 Dr. Alan Abramowitz, Ted Arrington, kind of this host of  
18 political scientists. As well as other writers who give  
19 analyses of elections.

20 Q. And do the writings -- do the articles that you write  
21 for RealClearPolitics and Crystal Ball share any type of  
22 overarching purpose or pattern that you could scribe?

23 A. So, generally speaking, what I try to do, I got my  
24 master's degree in political science. I had two semesters of  
25 graduate stats where I was in there with the Ph.D. students.

1 And I found that the sort of analysis that you get from your  
2 average journalist isn't as rigorous as you would like. On the  
3 other hand, you have political scientists who write online who  
4 write as if they're talking to political scientists.

5 So what I wanted to try to do was take these complex  
6 statistical ideas and write about them in a way that the  
7 average person could understand. So you would get a more  
8 rigorous take on these elections and what you should believe  
9 and what you shouldn't believe than you would -- so for  
10 example, I would never say this is the poll plus or minus  
11 4 percent without either giving a link to a piece that I've  
12 written explaining exactly what error margins are or giving a  
13 short explanation so the reader -- I wouldn't assume that the  
14 reader understood that.

15 Q. In addition to the articles and contributions you make  
16 to RealClearPolitics and Crystal Ball, have you authored other  
17 books and journals?

18 A. Yes. I authored a chapter in Dr. Sabato's book on the  
19 2012 elections focusing on demographic changes and I also  
20 authored a chapter in the book about the 2014 elections that  
21 also talks about demographic changes and, more specifically,  
22 the impact, if any, on the electoral college.

23 I wrote my own book published called *The Lost Majority:*  
24 *Why The Future of Government Is Up For Grabs And Who Will Take*  
25 *It?* And I also authored or co-authored the 2014 -- *The Almanac*

1 of *American Politics 2014*. It's a little bit confusing with  
2 the almanacs. 2014 refers back to the 2012 elections. It's  
3 just a quirk in how they were originally numbered.

4 Q. And *The Almanac of American Politics*, is that considered  
5 a foundational text for understanding congressional districts?

6 A. Absolutely. It was actually started by Michael Barone  
7 and a few of his colleagues. In 1970 he wanted to have a  
8 guidebook for people to protest the Vietnam war and so they  
9 wrote up descriptions of the various congressional districts,  
10 who the members were, they produced statistics on what their  
11 voting records were so that activists could go and decide which  
12 booths to target. He says he never expected there would be  
13 another one but it's been an ongoing series since 1970 that's  
14 really become the resource for understanding congressional  
15 districts and who represents them.

16 Q. Is that almanac widely cited and praised?

17 A. Absolutely. Like I said, it is the foundational text if  
18 you want to know what's happening in congressional districts  
19 and with their representatives.

20 Q. Has it been called the oxygen of the political world?

21 A. Absolutely. I think Chuck Todd, who now hosts *Meet the*  
22 *Press*, said, I always buy one for my office and one for my  
23 house. It's a really widely-used book.

24 Q. So in addition to your written work, have you also  
25 spoken about your views and analyses on elections and

1 campaigns?

2 A. Absolutely. I routinely do paid speeches before  
3 different groups, academic, think tanks, trade groups and  
4 associations about elections. I've appeared on more television  
5 and radio shows than I can count. Unless I have a conflict, I  
6 don't say no. I've done some academic panels. A panel at the  
7 American Political Science Association in 2013. So I do a lot  
8 travel for that.

9 Q. Have your analyses about campaigns and elections been  
10 cited in a variety of different major news publications?

11 A. Yeah. Pretty much every major newspaper has cited to  
12 me. I've been cited favorably in abroad -- in magazines across  
13 abroad. I do Ideological Spectrum from National Review to The  
14 New Republic. So widely cited.

15 Q. Have you also been invited to participate on various  
16 advisory panels?

17 A. Yes. So I sit on the advisory panel for the States of  
18 Change group which is a group that's dedicated to try to  
19 recreate the demographic projections that the Census Bureau  
20 used to do but no longer does. It is a joint effort between  
21 the American Enterprise Institute, the Brookings Institution  
22 and the Center for American Progress.

23 Q. And were you also invited to speak in Brussels regarding  
24 American elections to the European External Action Service?

25 A. Yeah. That was a really great opportunity. That's

1 basically the European union's version of the state department.  
2 So I got to speak there and there were people in the audience  
3 with their headphones on and interpreters giving -- it was a  
4 really great experience.

5 Q. And apart from your professional experience, do you also  
6 have previous experience serving as an expert?

7 A. I've testified in -- I guess I've actually testified in  
8 one other case that was an early-voting/same-day registration  
9 case and a few other issues. I submitted reports that have  
10 been accepted in a couple of other cases as well.

11 Q. And can you describe just generally the nature of your  
12 work in those other cases?

13 A. Yeah. The very first case I did was a redistricting  
14 case in North Carolina, *Dixon v. Rucho*. I was actually  
15 disclosed yesterday. They filed the identical complaint, this  
16 time in Federal Court, so we reutilized my expert report there.  
17 I testified in the *NAACP v. McCrory* litigation. Filed an  
18 expert at the preliminary injunction phase and then at the  
19 trial phase. I also filed an expert report in what I will call  
20 the previous iteration of this litigation. The issues don't  
21 completely overlap but there were certainly identical issues  
22 dealing with the reduction in the number of early-voting days,  
23 the availability of same-day registration.

24 Q. I believe you mentioned this already but is it your  
25 understanding that you were accepted as an expert in those



1 cases?

2 A. Yes.

3 Q. In all, is it fair to say that you have nearly two  
4 decades of experience studying, following and analyzing  
5 elections in the United States?

6 A. That's correct.

7 MS. RICHARDSON: Your Honor, at this time I would move  
8 to admit Mr. Trende as an expert in the fields of campaigns and  
9 elections, voter behavior, voter turnout, demographic trends  
10 and political history.

11 MR. KAUL: We object for the reasons set forth in our  
12 filing, Your Honor.

13 THE COURT: I'm going to admit him.

14 MS. RICHARDSON: Thank you, Your Honor.

15 BY MS. RICHARDSON:

16 Q. Mr. Trende, at this point I'd like to talk to you about  
17 the work that you did in this case. Can you describe briefly  
18 what you were asked to do here?

19 A. So when this complaint was filed, I was asked to update  
20 some of my analyses from the previous iteration of this  
21 litigation. Some states have changed their early-voting laws  
22 in the interim. I was asked to then look at some of the new  
23 claims and do some of the similar work, place things in the  
24 national context and see if there was enough evidence to  
25 support a causal linkage between the changes in laws and any

1 anticipated changes in African-American participation,  
2 vis-a-vis, white participation.

3 Q. So is it your understanding that various election laws  
4 in the state of Ohio are being challenged by Plaintiffs in this  
5 case?

6 A. Yes.

7 Q. And before we go into your analyses, do you have any  
8 personal views about the wisdom of any of the laws that are  
9 being challenged in this case?

10 A. No. No. I'm explicit in my report that I think a lot  
11 of these things involve judgment calls that I honestly do not  
12 have strong priors on.

13 Q. And what was the purpose of your opinions and  
14 conclusions in this case?

15 A. It was simply to place Ohio's laws in a national context  
16 to see what was going on in other states and then to look at  
17 the causal mechanisms being asserted. To look and see, can you  
18 really support the claim based on the evidence we have that  
19 there's a linkage between African-American socioeconomic  
20 standing and participation with these laws kind of standing in  
21 the middle.

22 Q. Okay. I'd like to walk through some of those  
23 conclusions. If you would turn to Exhibit 14 in one of the  
24 binders there. It should be marked Defendants' exhibit.

25 MS. RICHARDSON: Your Honor, may I approach?

1 THE COURT: You may.

2 THE WITNESS: Can I temporarily place these on the  
3 floor, Your Honor? I don't want them to fall off.

4 THE COURT: That would be fine.

5 THE WITNESS: Thank you, Your Honor.

6 Yes, this is my report.

7 BY MS. RICHARDSON:

8 Q. Do you recognize this document?

9 A. It is the first declaration that I filed in this case.

10 Q. And you mentioned that one of the things that you did in  
11 preparing this report was to put some of the challenged laws in  
12 a national context; is that right?

13 A. That's right.

14 Q. And was one of the areas that you reviewed Ohio's laws  
15 in a national context the area of early voting, generally?

16 A. Yes.

17 Q. Was one of the things you looked at the length of early  
18 voting in Ohio as compared to other states?

19 A. Yes.

20 Q. And I would ask you to turn to page 9, figure 1.

21 Mr. Trende, is this figure 1 that's reflected on the screen  
22 here?

23 A. It is.

24 Does this flip up of is this where it's positioned?

25 THE COURT: It may have some play in it. I don't

1 know.

2 THE WITNESS: I'm fine with it where it is.

3 THE COURT: It's kind of awkward, isn't it?

4 THE WITNESS: Yes, Your Honor.

5 BY MS. RICHARDSON:

6 Q. What does this chart represent?

7 A. So this is the length of early-voting periods by state.  
8 In other words, it's how many days are included from the first  
9 day that early voting occurs to the last day that early voting  
10 occurs regardless of whether states take weekends off or  
11 holidays or so forth.

12 Q. Is Ohio reflected on this chart?

13 A. It is.

14 Q. And where is Ohio?

15 A. So Ohio is actually reflected twice. You'll see Ohio  
16 old which is the old early-voting period of 35 days. And so  
17 what that means is that if we were to employ the old standard  
18 today, Ohio would have the eighth longest early-voting center  
19 in the country -- the period in the country. It's important to  
20 note that doesn't mean that's where it was as of early 2014  
21 because other states have moved their laws in the interim.

22 There's the Ohio new category which is where the law  
23 stands today as with respect to the other voting periods in the  
24 country. And so today, because you don't count the Ohio old,  
25 it's the tenth longest period.

1 Q. And how many days does it reflect for Ohio under the  
2 current law?

3 A. Today a 29-day period.

4 Q. Down at the bottom of the chart there are numerous  
5 states listed with a zero next to it. What do those states  
6 represent?

7 A. So these are the states, the 16 states, that don't have  
8 any early voting at all. And when I say early voting, I mean  
9 in-person early voting where no excuse is required.

10 Q. Thank you for that clarification. And we'll continue to  
11 use that definition as we describe early voting for purposes of  
12 your testimony today.

13 Does this chart also reflect the median length of  
14 early-voting period?

15 A. That's right. A median shows where the median of the  
16 country is. What the median is, the median is a statistic that  
17 tells you, basically it's a fancy word for you line up all the  
18 numbers from least -- lowest to highest and you pick the number  
19 in the middle. That's the point where half the states have  
20 shorter periods and half the states have longer periods.

21 Q. Why did you focus on the media rather than an average?

22 A. So one of the problems with means, an objection I would  
23 anticipate to mean or average, is they're susceptible to  
24 outliers. So you have this cluster of 16 zeros at the bottom  
25 which, if you use an average, it's going to tend to pull the

1 average downward.

2 Q. And so, again, the median that's reflected here shows 14  
3 days for the nation as a whole; is that right?

4 A. That's correct, yes.

5 Q. And if you turn to figure 2 on page 11, this chart is  
6 titled Number of Days of Early Voting by State. How does this  
7 compare to the chart we just looked at?

8 A. So it's a similar chart but it's not identical. What  
9 this tries to take account of is, okay, we have this  
10 early-voting period but there are states that don't allow early  
11 voting on Saturdays on Sundays. Some states take Sundays off,  
12 especially when you get into the lengthier early-voting periods  
13 will take Columbus Day off. So this tries to account for this  
14 and say, okay, within that period, how many actual days do  
15 voters have to get to the polls?

16 Q. And is Ohio reflected on this chart?

17 A. Yes. So for this I utilized, because -- this I utilized  
18 Ohio 2012 is what would happen if we reverted to a 2012  
19 standard today. And Ohio 2016 is the standard that will be in  
20 place for 2016.

21 Q. And how many days will Ohio offer in 2016?

22 A. In 2016 it is slated to offer 23 days of early voting.

23 Q. How does that place Ohio in relation to the rest of the  
24 country?

25 A. It is the tenth largest number of days.

1 Q. What's the median reflected for number of days of actual  
2 early voting?

3 A. The median state offers 11 days of early voting.

4 Q. So is it fair to say under current law, Ohio doubles the  
5 median?

6 A. More than doubles, yes.

7 Q. And did you also take a look at how Ohio compares to  
8 other states that have a similar or greater share of  
9 African-American population in terms of early-voting days?

10 A. I did.

11 Q. And what did you find in conducting that comparison?

12 A. The only state that had a higher African-American  
13 population and offered more days of early voting was Illinois.  
14 And when Ohio's law went into effect, it was the only state.  
15 Illinois has since moved.

16 Q. Did you also conduct a comparison that focuses  
17 specifically on the number of hours that Ohio offers relative  
18 to other states for early voting?

19 A. I did.

20 Q. Is that reflected in table 5 of your report on page 29,  
21 I believe?

22 A. Yes. Yes. This is the total number of hours of early  
23 voting the different states offer.

24 Q. How many hours does Ohio offer?

25 A. Under my calculation for 2016, Ohio will offer a total

1 of 207 hours of early voting.

2 Q. How does that place Ohio in the national context?

3 A. It places it ninth. I think it's important to note with  
4 respect to this table, and really most of the tables in the  
5 early-voting center, because some states the number of hours  
6 will vary from county to county, I tried to give states the  
7 benefit of the doubt and it was the lengthiest period I could  
8 find.

9 So, for example, I know for a fact that some counties in  
10 California you don't get 216 hours of early voting because they  
11 don't have complete weekend voting. Same thing with Georgia.  
12 But, again, I tried to make this as generous as I could for  
13 states.

14 Q. And you raise a good point. Can you just generally  
15 describe the methodology that you used in compiling the various  
16 reports that we've been looking at?

17 A. So the gold standard, the first thing I would want to  
18 look at is the actual statutes. Some states have very plain  
19 statutes that say, these are the number of days of early  
20 voting, this is whether you're going to use weekends, this is  
21 the number of hours that these voting centers will be open.  
22 With those states, it's very easy to calculate. If you can't  
23 use statute, I would turn to the Secretary of State or state  
24 board of elections website. Again, some states boards of  
25 election are very good. They will tell you -- some states have



1 a complete list. Arkansas has a complete list of early-voting  
2 centers and the hours that they're available. Other states are  
3 not so good here.

4 So what you have to do or what I had to do in those  
5 situations was call the state boards of elections or the  
6 Secretary of State's Offices and try to get an answer; tried  
7 not to get it from the person who is answering the phone but it  
8 was usually attorneys or they would have someone in charge of  
9 the early-voting center that would call me back and say, this  
10 is when we allow it.

11 Q. And did you in at least one case actually speak to the  
12 Secretary of State?

13 A. Yes. I was going to pick my son up from day care and I  
14 got a phone call returning my call, it was the actual elected  
15 Secretary of State of South Dakota. That was a little bit  
16 disconcerting. But he gave me my answer.

17 Q. And is this type -- is this source of information  
18 something that you would rely on in your professional work when  
19 you're examining campaigns and elections?

20 A. Absolutely. If you have a question about what the  
21 practices are in election, and that often comes into play in  
22 recounts or there's disputed elections or even just wanting to  
23 know where early voting is occurring in the runup, this is how  
24 I would go about it.

25 I should also add, sometimes the actual Secretary of

1 State's Offices didn't know when things were available. So in  
2 that instance I would look at the largest counties in the state  
3 and talk to the county board of supervisors, if I could contact  
4 them, to find out when days would be offered and when the hours  
5 would occur.

6 Q. So you alluded to this already but in states where there  
7 is not uniformity across the state in terms of what the  
8 individual counties offer, you had to make some judgment calls  
9 about how to characterize those states; is that right?

10 A. Absolutely. And what I try to do, because it's just not  
11 feasible to contact all 255 counties in Texas, is to contact  
12 the largest counties and find out what the practices were  
13 there. Try to cover, if possible, half the population of the  
14 state and then see what the most generous, if you would use  
15 that word, what the broadest I guess is a better word, the  
16 broadest early-voting availability is.

17 Q. So on the charts that we've just looked at and a few  
18 more that we're about to look at, do the numbers reflected  
19 there for other states represent, then, the most generous  
20 interpretation of the voting opportunities offered for early  
21 voting?

22 A. Yes.

23 Q. So then is it fair to say that many voters in those  
24 states do not actually have access to the full range of voting  
25 days or hours depicted on the chart?

1 A. Yes. So, for example, again, I know that in California  
2 not everyone gets 216 hours and I know that in Georgia not  
3 everyone gets 208 hours. But in the larger counties in  
4 Georgia, that's the case. In California, I think San  
5 Bernardino County was the eighth largest county and it offered  
6 full weekend early voting and so that's what I used.

7 Q. Did you also take a look at the number of evening and  
8 weekend hours specifically that Ohio offers compared to the  
9 rest of the country?

10 A. Yes, I did.

11 Q. Why did you include that analysis?

12 A. As I read Plaintiffs' complaint, and I did look at their  
13 complaint, I read it that you have the fixed one-center  
14 requirement for Ohio and you have the decrease in the number of  
15 early-voting days. But as I understood the claim, it's that  
16 this interacts with the number of hours that are available and  
17 how this has changed. Even though they don't specifically  
18 challenge the hours, it's part of the calculation. So I  
19 thought it was important if you're trying to place things in a  
20 national context to know how the number of hours have changed  
21 or where they stack up.

22 Q. And does table 6 on page 30 of your report depict that  
23 comparison?

24 A. Yes, it does.

25 Q. How did you define evening for purposes of this chart?

1 A. I took what I thought was the most generous  
2 interpretation, which is hours after 5:00 p.m.

3 Q. And how many hours of evening and -- how many evening  
4 and weekend hours does Ohio offer?

5 A. Today it offers -- in 2016 it will offer 39 hours, which  
6 ties it for tenth.

7 Q. And how many did it offer in 2012?

8 A. Twenty-nine.

9 Q. So in 2016, it will offer ten more evening and weekend  
10 hours than it did in 2012?

11 A. That's correct.

12 Q. Did you also take a look at Ohio's same-day registration  
13 law?

14 A. I did.

15 Q. And is there -- what is your understanding of what  
16 Ohio's same-day registration was referred to when it was in  
17 place?

18 A. The colloquial term for it was golden week.

19 Q. Is it your understanding that golden week has been  
20 eliminated?

21 A. Yes. Well, you can still register to vote during the  
22 time that was golden week but you can't register -- you can't  
23 vote during that time period.

24 Q. And that's a helpful point. Can you just generally  
25 describe what same-day registration means?

1 A. So there's a distinction that's increasingly made in the  
2 political science literature between election-day registration  
3 which is EDR and same-day registration which is abbreviated  
4 SDR.

5 Election-day registration is the actual election day,  
6 the second Tuesday in November I believe is the definition or I  
7 guess it's the first Tuesday in November unless the Monday is  
8 the first. Whenever the actual voting takes place across the  
9 country. That's called election-day registration.

10 There's a variant called same-day registration which is  
11 registration that occurs during the early-voting period.

12 Q. And has Ohio, to your knowledge, ever offered what you  
13 refer to as election-day registration?

14 A. No. It's never offered election-day registration.

15 Q. Why is it important in many contexts to distinguish  
16 between election-day registration and same-day registration?

17 A. A lot of the literature finds different effects for  
18 election-day registration versus same-day registration and a  
19 lot of the earlier literature focuses specifically on  
20 election-day registration. So it doesn't necessarily give a  
21 lot of insight into what happens with same-day registration.

22 The other thing is that, historically, election-day  
23 registration or election days had much greater turnout and so  
24 if you're looking at the opportunities that are afforded to  
25 register, election-day registration would have a greater impact

1 than same-day registration in most states.

2 Q. And in general, is it your experience based on your  
3 understanding of national trends and turnout that voters become  
4 much more energized and mobilized the closer you get in time to  
5 the actual election?

6 A. Absolutely. That's when campaigns tend to ramp up the  
7 most. In Virginia where I live where you didn't have any early  
8 voting, you would go into the office and everyone would have  
9 their I voted stickers on and that would let you know, hey,  
10 that is going on and it's a big deal. There's more emphasis on  
11 elections, more buzz about it as you approach the actual  
12 election day.

13 Q. When Ohio did offer same-day registration, was Ohio's  
14 golden week or same-day registration different than the  
15 same-day registration many states offer?

16 A. Yes. Absolutely. I'm not aware of any other state that  
17 had a cutoff 30 days out. Most states offered it throughout  
18 the early-voting period. I think the only other state that  
19 offered it up to the registration cutoff was Vermont and it had  
20 a much -- had a cutoff much closer to election day. So that  
21 made Ohio really unique.

22 Q. So of the states that did offer some type of same-day  
23 registration, did some of them actually reopen the registration  
24 period?

25 A. Yes. So in a state like North Carolina, for example,

1 you would hit the registration cutoff and in most states if you  
2 hit the registration cutoff and you haven't registered to vote,  
3 you're not going to be able to vote. Well, North Carolina  
4 effectively gave a make-up call. It reopened registration  
5 during the same-day -- during the early-voting period.

6 That's different from what happened in Ohio which is  
7 that you still have this 30-day close of registration.  
8 Everyone who registered to vote in golden week is still able to  
9 register to vote. It's a question of simultaneous registering  
10 to vote and voting that changed.

11 Q. And you mentioned this already, I believe, but of the  
12 states that offered some sort of same-day registration, did  
13 many of them offer that same-day registration closer to the  
14 election in time than Ohio did previously during golden week?

15 A. Yes. Many of these states that had same-day  
16 registration but not election-day registration had it in the  
17 whole window so it would run up to like three days before the  
18 election or in the case of Vermont I think their registration  
19 close was maybe five days before the election. So for all  
20 intents and purposes it was the full period.

21 Q. So if we take a look at table 9 which is on page 34, I  
22 believe, of your report?

23 A. Yes.

24 Q. What does this chart represent to you?

25 A. So this looks -- this just tries to give a sense of how

1 popular election-day registration or same-day registration was  
2 by state. And so it's the number of people who registered to  
3 vote during the early-voting period or same-day registration  
4 window, the total usage, and then percentage of people who did  
5 so.

6 Q. And how does Ohio compare to the rest of the country in  
7 terms of the popularity of the same-day registration it offered  
8 previously?

9 A. You can see Ohio is an order of magnitude less than the  
10 next closest state which is Colorado and it's two orders of  
11 magnitude less than a state like New Hampshire or Maine or  
12 Idaho. An order of magnitude is just multiplying by ten. So  
13 Ohio, 400ths of people registered during the golden week.  
14 Four-tenths in Colorado and then six percent in New Hampshire.

15 Q. And at the top of this chart it shows EDR and SDR by  
16 state. Does that refer to election-day registration and  
17 same-day registration?

18 A. That's correct.

19 Q. Why was it appropriate to combine election-day  
20 registration and same-day registration for purposes of this  
21 chart?

22 A. First, I'm not sure that the data were broken out that  
23 way from the data source so it wasn't possible, if I recall.  
24 The other is that we're not conducting a regression analysis  
25 trying to tease out differential impacts. We're trying to look



1 at how many people took advantage of being able to vote at the  
2 same time and register at the same time. In Ohio in 2010 was a  
3 very small number.

4 Q. And in fact, it was the lowest in terms of popularity as  
5 compared to the other states; is that right?

6 A. Yes.

7 Q. And if we take a look at table 10 on page 35, this also  
8 refers to election-day registration and same-day registration  
9 laws. What does this chart reflect?

10 A. So this is a look at the laws that's there on the book.  
11 It's important to note that this is actual laws. California  
12 has had a law for same-day registration for years. It is  
13 triggered when the Secretary of State testifies that their  
14 voter database is in order and that hasn't occurred. So it's  
15 never actually had same-day registration. We're trying to  
16 place it in a national context. Look at the laws as they  
17 stand.

18 So the first column in the chart is states that just  
19 have election-day registration. The second column is states  
20 that have both election-day registration and same-day  
21 registration. There would have been a column for states that  
22 just have same-day registration, no election-day registration,  
23 but there are no such states anymore. And then neither, which  
24 is states that didn't have any sort of same-day registration.

25 Q. Are there a couple of typos reflected in this chart?

1 A. There are. And I kind of kick myself for that. But  
2 Maryland appears twice. It's just a matter of updating the  
3 chart. Maryland changed its registration law and I forgot to  
4 delete it from the neither chart. Stupid.

5 Q. And so basically there were a couple of states here that  
6 moved categories and you move the category but forgot to  
7 eliminate them from the neither category, is that --

8 A. Yes. If something appears in both and neither, it's the  
9 both that I think controls in every instance.

10 Q. Did that impact your overall analysis or the purpose of  
11 this chart here?

12 A. No. No. Regardless, the majority of states don't have  
13 any type of simultaneous registration.

14 Q. I want to switch topics a little bit. Well, before I do  
15 that, we have talked about a lot of early-voting laws. Based  
16 on your study and evaluation of early voting and the election  
17 laws and states across the country, do you have a sense of some  
18 of the interests that a state might consider in determining  
19 whether and how many days to offer early voting?

20 A. Yes.

21 Q. And what are some of those interests?

22 A. One thing I encountered in my research is that, in some  
23 states, I mean, even county board officials don't necessarily  
24 know what the practices are in their jurisdiction and if you're  
25 charged with regulating the elections, this kind of unfettered

1 discretion can lead to lack of knowledge about what's going on.  
2 It's part of the reason that I have to make -- give benefits of  
3 the doubt and make assumptions about how many days of early  
4 voting are allowed.

5 The second thing is that there's kind of a trade-off and  
6 this is ultimately why I'm agnostic. I'm not sure there's a  
7 right answer to how you have to resolve this trade-off. As you  
8 get further and further away from election day, you increase  
9 the chances that some sort game-changing piece of news will  
10 occur.

11 The most common one is the death of a candidate. In  
12 2014 during Iowa's early-voting period the libertarian  
13 candidate died in a plane crash and those people who voted for  
14 the libertarian were stuck with that vote. And in paragraph 60  
15 I list a number of other kind of major news sources that have  
16 broken during that time period.

17 So there comes a point where a state can say, we want  
18 people to go to the polls with the same amount of information  
19 and the longer the early-voting period, the different -- the  
20 greater the difference will be in the information that the  
21 people who vote on election day have versus early voters. Like  
22 I said, I don't think there's necessarily a quote/unquote right  
23 answer to that. A state can say, well, these are grown people  
24 and they can decide when they have enough information but,  
25 again, you're balancing interests and I think the answer will

1 come out differently, depending on different peoples' opinions.

2 Q. And taking all of the different ways that you analyze  
3 the data and all of the charts that we just looked at, did you  
4 reach an overall conclusion about how Ohio's early voting laws  
5 compare to the rest of the country?

6 A. Yes. When you look at -- without even getting into  
7 absentee balloting and these other opportunities, when you look  
8 at these different things that are challenged in this case,  
9 Ohio consistently appears at the top of the list compared to  
10 other states. And so, overall, it has one of the most  
11 expansive early-voting opportunities in the country.

12 MR. KAUL: Objection, Your Honor. I would move to  
13 strike that. I don't think that that's in the opinion. I  
14 think it's beyond the scope.

15 THE COURT: You'll have the opportunity to cross.

16 MS. RICHARDSON: Thank you, Your Honor.

17 BY MS. RICHARDSON:

18 Q. Mr. Trende, did you also take -- are you aware that one  
19 of Plaintiffs' challenges in this case pertains to the number  
20 of early-voting centers in Ohio?

21 A. Yes.

22 Q. What is your understanding of the requirements under  
23 existing Ohio law?

24 A. My understanding is that under existing Ohio law each  
25 state or each county has one early-voting center.

1 Q. And at the time that you prepared your report, what did  
2 you understand Plaintiffs' claim to be in this case?

3 A. From the complaint, you have a series of complaints  
4 about the smallest county has one early-voting center per  
5 10,000 people. Cuyahoga County has one early-voting center for  
6 a million people and that's a disparity that apparently gives  
7 rise to the equal protection Voting Rights Act violation. And  
8 what's asked for, as I understand it, as a remedy, is to  
9 implement a reasonably equitable population-per-county basis.

10 Given the overall context, I think the only  
11 interpretation that I came up with was that you take the  
12 smallest county and you resolve it, you look at how many voting  
13 centers it has per population and then you apply that to other  
14 counties to determine how many voting centers they would be  
15 required to have. So the smallest county had one early-voting  
16 center per 10,000. To make it a population-per-county basis,  
17 you would look at a county with a million, you would do the  
18 math and determine that it had to have 100 early-voting  
19 centers.

20 Q. And I want to walk through your analysis on that point  
21 in a little more detail in just a moment. But, first, during  
22 your deposition, were you shown Plaintiffs' response to  
23 interrogatories?

24 A. I was.

25 Q. And did that change your view as to what Plaintiffs are

1 seeking in this case?

2 A. It didn't. The word discretion did appear in the  
3 interrogatory responses but I didn't, even looking at the  
4 interrogatory response, I didn't take it to be unfettered  
5 discretion. It was discretion to implement this on a  
6 population-per-county basis. Again, a population-per-county  
7 basis, I think, is you look at the population of the counties  
8 and you allocate things that way. Maybe discretion means a  
9 little wiggle room. We don't care whether Cuyahoga has 97 or  
10 93, but I don't think the difference between Cuyahoga having 97  
11 and nine is just -- I don't think you're on a  
12 population-per-county basis anymore.

13 MR. KAUL: Your Honor, I'll object to this as a legal  
14 interpretation of the plaintiffs' complaint.

15 THE COURT: I'll be making those.

16 MS. RICHARDSON: Just to clarify, I'm not seeking his  
17 legal interpretation but just the understanding that he was  
18 operating under when he conducted his analysis.

19 THE COURT: Overruled.

20 MS. RICHARDSON: Thank you, Your Honor.

21 BY MS. RICHARDSON:

22 Q. I'd like to take a look at table 2 which is reflected on  
23 page 22, I believe, of your report. What does this chart  
24 reflect?

25 A. So this shows -- there's a predecessor chart that shows

1 the smallest population to voting ratios. What I did for this  
2 is I looked at every county in the country, downloaded the  
3 voting-age population from the census' FTP website and used the  
4 EAC data to look at the number of centers that they have in the  
5 county. From that, you can kind of calculate a ratio of  
6 population to centers per county. And so what this shows are  
7 the five -- I showed the five smallest on the previous page.  
8 This is the five largest.

9 You can see, for example, California, which has a  
10 voting-age population or VAP of 7.4 million has one  
11 early-voting center. So the ratio in Los Angeles County is  
12 7.4 million to 1.

13 Q. So did you take a look then at other states and counties  
14 in other states and do a similar comparison?

15 A. I was exhaustive. I looked at all the states that  
16 didn't have early voting as well as -- to see what it would be  
17 in those states. I looked at the states that did have early  
18 voting and calculated the ratio.

19 Q. And did you reach a conclusion about the extent to which  
20 other states apportion early-voting centers based on an  
21 equitable population-per-county standard?

22 A. Based on what I think how I interpreted Plaintiffs'  
23 complaint, there's no state that offers -- that meets this  
24 standard.

25 Q. Did you also conduct a calculation and estimate of the

1 number of additional early-voting centers Ohio specifically  
2 would need to add if it were going to distribute early-voting  
3 centers on a population-per-county basis?

4 A. Yeah. That's in table 4 on page 26. So it looks at the  
5 various states and how they would have to change their laws to  
6 meet the standard. Ohio would have to add a total of 784  
7 early-voting centers.

8 Q. And you started to describe this, I believe, a little  
9 bit earlier. Could you just walk us through the analysis that  
10 you conducted to reach this number?

11 A. Yes. It's set out in detail in paragraph 78 on page 23.  
12 But basically you look at the county in Ohio with the fewest  
13 number of residents over the age of 18. So that's Vinton  
14 County with 10,000 residents. And you look at counties -- so  
15 that establishes your baseline ratio. One early-voting center  
16 per every 10,100 residents.

17 So then you just look at the population of every county  
18 in Ohio and you divide by 10,100 and round, and that's how you  
19 come the closest to maintaining that ratio as possible. You  
20 can't have 2.4 centers. So you have to round it off. But  
21 that's the way you maintain the population-per-county ratio.

22 Q. And why do you have to start with the smallest county in  
23 Ohio to conduct this analysis?

24 A. Because, again, in my understanding of the context of  
25 the complaint, if you did, say, the middle or 100,000, you



1 would still have this disparity. Instead of Vinton County  
2 having one center per 10,000 residents and Cuyahoga County  
3 having one center for a million residents. If you did it per  
4 100,000 you would have Vinton County with one center per 10,000  
5 residents and Cuyahoga with one county -- with ten centers --  
6 you'd have it with one center for 100,000 residents. You'd  
7 still have that disparity.

8 Q. Are there other formulas that one could come up with for  
9 allocating additional early-voting centers?

10 A. You could, but I don't think it would be the population  
11 per county. You might say, again, if you want to have  
12 discretion, we wouldn't care if Cuyahoga has 97 or 95, maybe a  
13 plus or minus ten percent is what discretion means. But,  
14 again, if you're making it place or minus 90 centers, you're  
15 really getting off this ratio that's complained about.

16 Q. Based on your calculations, then, if Ohio wanted to  
17 implement a system where it had an equitable distribution of  
18 voting centers based on population by county, it would need to  
19 add close to 800 additional early-voting sites across the  
20 state?

21 A. That's correct.

22 Q. Did you also examine the placement of the existing  
23 early-voting centers in counties across Ohio?

24 A. Yes, I did.

25 Q. And why did you conduct that analysis?

1       A.     Because there's kind of an assertion made in the  
2     complaint and then subsequently in the expert reports that this  
3     one center per county disproportionately burdens  
4     African-American, Hispanic voters and a suggestion that this is  
5     done to benefit the republican party. I just got to thinking  
6     about what I know about Ohio geography and wanted to test that  
7     assumption to see if these early-voting centers are placed in  
8     such a way that it does advantage non-Hispanic white voters or  
9     perhaps the proximity of it actually is more convenient for  
10    nonwhite voters or democratic voters.

11       Q.     And on pages 37 through 77 of your report you have a  
12    number of maps. Are those maps depicting the study that you  
13    just described?

14       A.     Yes. I thought the most intuitive way to display this  
15    information is visually with maps that would show you the  
16    breakdown of the county and where the early-voting center was  
17    placed.

18       Q.     Which states did you choose -- which states did you  
19    select to create these maps?

20       A.     So I chose counties with an African-American population  
21    in excess of five percent and I chose that for just a very  
22    pragmatic reason. That when you fall below five percent, not  
23    much shows up on the map and so there's not -- the utility of  
24    the maps are disagreed. Some of the counties have .2 percent.  
25    You just get a sheet of white.

1           If you look on page 56 you can see what I'm talking  
2 about. Jefferson County you can see where downtown  
3 Steubenville is but that's the only place where there's any  
4 variation in the map coloring.

5       Q.   How did you generate these maps?

6       A.   There's an online tool that's commonly used called --  
7 it's a serious tool with a flippant name, it's Dave's  
8 Redistricting App. And basically what this programmer has done  
9 is downloaded the data from the census FTP site and generated  
10 the precincts in maps. You can use it to draw your own  
11 congressional districts or statehouse districts to see how the  
12 partisanship would change. But it also provides a visual  
13 depiction of what the counties look like racially and  
14 politically.

15       Q.   And is Dave's Redistricting App. something you would  
16 rely on in your ordinary professional duties in examining  
17 various geographic trends as you do here?

18       A.   Everything I've seen in it is consistent with other  
19 sources. I believe the maps depicted here are similar to the  
20 ones that Doctors Roscigno and Timberlake employed in their  
21 expert reports. They might have used a different software but  
22 the result is the same. They're consistent with my  
23 understanding, living in Ohio, of how the racial breakdown of  
24 the cities are and they're consistent with the Census stuff  
25 that I've spot-checked on. So I have every reason to believe

1 they're reliable.

2 THE COURT: Ms. Richardson, let's break for 15  
3 minutes.

4 MS. RICHARDSON: Thank you, Your Honor.

5 (A recess was taken at 10:42 a.m. until 11:05 a.m.)

6 BY MS. RICHARDSON:

7 Q. Mr. Trende, before the break, we were discussing your  
8 analysis of the location of the existing early-voting centers  
9 across the state and you had just described your process for  
10 generating the maps that are depicted on pages 37 through 77 of  
11 your expert report.

12 I am not going to ask you to walk through all of those  
13 maps today but I'd like to take a look at just the first couple  
14 that are there.

15 THE COURT: Thank you.

16 BY MS. RICHARDSON:

17 Q. Is the first map contained in your report a map of  
18 Cuyahoga County?

19 A. Yes.

20 Q. And what does that map show you?

21 A. So as the nonwhite share of a precinct increases, the  
22 precinct becomes color-progressively darker. And so it shows  
23 the location of the nonwhite population of Cuyahoga County.  
24 And then you can see it's mostly kind of a C from around Euclid  
25 down through the northern half of Garfield Heights to around

1 Bedford. And there's an arm that sticks off to the southwest  
2 of Cleveland towards the airport that's not as heavily nonwhite  
3 but still has a substantial population.

4 Q. And based on this map, does this tell you that the  
5 location of the current voting center in Cuyahoga County is  
6 closer to where minority voters live in Cuyahoga County than  
7 white voters?

8 A. You can see the, again, the nonwhite population is in a  
9 C shape and the voting center, which is represented by the red  
10 dot, is in kind of the arch of the C which would make it about  
11 as well-placed as you could possibly make it.

12 Q. And the next map depicted is for Hamilton County?

13 A. Correct.

14 Q. What do you find based on this map?

15 A. Again, the nonwhite population in Hamilton County is a  
16 little bit more dispersed and I should add that I used the  
17 nonwhite population for the first three counties but after  
18 that, it didn't make much of a difference in the maps so I used  
19 African-American population. The nonwhite population in  
20 Hamilton County tends to be, if you've ever been to Cincinnati,  
21 it tends to be concentrated to the north of downtown and to  
22 either side of the northwest or northeast. And that's more or  
23 less, again, where the early-voting center is placed.

24 Q. And looking at all of the maps that you prepared, did  
25 you find certain patterns that emerged across the comparison?

1 A. Generally speaking, and I emphasize generally speaking,  
2 the majority, even the overwhelming majority of early-voting  
3 centers are placed pretty close to the African-American  
4 populations and the nonwhite populations of those counties.

5 Q. Was that true in every case that you looked at?

6 A. No. No, it is not. You can look, for example, on page  
7 132 or I'm sorry, page 54, paragraph 132 which is Fairfield  
8 County. The early-voting center is close to Lancaster in the  
9 center of the county which has a very low minority population.  
10 The minority population tends to be clustered more towards  
11 Pickerington and close to Franklin County where there's some  
12 spillover. But even so, that center is located close to 33  
13 which is a limited-access, four-lane highway. So it has some  
14 advantages there.

15 Q. And based on your review, again, of all of the maps that  
16 you prepared, was this the exception?

17 A. Yes.

18 Q. On pages 57 through --

19 THE COURT: Is it the only exception?

20 THE WITNESS: No, Your Honor. And those numbers are  
21 all laid out in the chart that we'll talk about.

22 BY MS. RICHARDSON:

23 Q. And on pages 57 through 77, you present some maps that  
24 look a little different than the ones that we've been looking  
25 at. What do those show?

1 A. So these show the share of the precinct's vote for John  
2 McCain or Barack Obama. As the precinct becomes bluer it votes  
3 more heavily for then-Senator Obama. As it becomes more redder  
4 it votes more heavily for Senator McCain.

5 Q. What was the purpose of those maps?

6 A. Again, I took the complaint to have a suggestion that  
7 this rule is in place to benefit republicans and so it just  
8 shows that these early-voting centers are typically placed in  
9 the middle of democratic strongholds.

10 Q. In addition to preparing these maps which provide a  
11 visual illustration of the location of the early-voting  
12 centers, did you also actually calculate distances?

13 A. Yes. So that is contained in a lengthy chart, which has  
14 some corrections to it, but initially presented on page 79,  
15 table 11.

16 Q. And you mention that you made some corrections to that.  
17 Did you actually provide an updated chart?

18 A. Yes. I got some of the latitude and longitude numbers  
19 mixed up and so there's an update in my rebuttal report.

20 Q. And I believe if you take a look at Exhibit 17 in the  
21 binder that you're in right now, that should be your rebuttal  
22 report?

23 A. Yes.

24 Q. And so that is the second report that you submitted in  
25 this case?

1 A. Correct. Yes.

2 Q. If you turn to pages 30 and 31, does that provide the  
3 updated charts that you just referenced?

4 A. It does.

5 Q. And can you just walk us generally through what these  
6 distances represent?

7 A. So what I did was, for every precinct, I found the  
8 latitude and longitude of the early-voting center and then you  
9 can find, in the shape files that are provided by the Census  
10 Bureau, the latitude and longitude of the precinct. With a  
11 computer program, it measured all the distances between each  
12 precinct and the early-voting center. And as you go through,  
13 you weight by the racial breakdown of the precinct, which is  
14 also provided by the Census Bureau, and that provides you with  
15 the distance that the average non-Hispanic white voter,  
16 African-American voter and Hispanic voter have to travel to the  
17 site.

18 If we look at the top of table 9, and this gets directly  
19 to His Honor's question, Adams County, the average non-Hispanic  
20 white voter has to travel 8.7 miles and the average  
21 African-American voter has to travel 8.5 miles. So the  
22 difference is .2 miles. Non-Hispanic whites have to travel  
23 .2 miles further.

24 With that said, in Adams County, which is a smaller  
25 county, the average Hispanic voter has to travel 8.8 miles. So



1 this is an instance where the distance presented is negative.

2 In this instance, Hispanic voters have to travel a little  
3 further than non-Hispanic white voter.

4 Q. Does this chart continue on to page 31?

5 A. Yes, it does.

6 Q. And so collectively this represents the distances for  
7 each of the counties that you examined?

8 A. Yes, it does.

9 Q. Did you also calculate the average distance for  
10 African-American voters as compared to white voters?

11 A. Yes. So there's four lines at the bottom of the chart  
12 on page 10. The first report is just the simple average which  
13 is the sixth-grade math of add everything up, divide by the  
14 number of observations. It's a simple average of the distance  
15 for non-Hispanic whites, African-American voters or  
16 African-Americans and so forth.

17 That said, you want to -- probably want to take account  
18 of the fact that Franklin County has a larger population than  
19 Defiance County. And so I also weighted the averages by  
20 population and it makes something -- somewhat of a difference  
21 but it's the same basic take that non-Hispanic whites have to  
22 travel a couple miles further than African-Americans, on  
23 average, and about a mile and a half further than Hispanic  
24 voters. Republicans generally have to travel further than  
25 democrats.

1 I broke it down even further. Some of the rural  
2 counties where, again, you have an African-American population  
3 of .2 percent, random choices of people to live in different  
4 areas can have an outsized impact. So I just looked at the  
5 cutoff that I used for the maps, the weighted average for the  
6 African-American population is greater than five percent or the  
7 Hispanic population of a county is greater than five percent  
8 and you see the same basic effect.

9 Q. And so, overall, looking at the maps that you created  
10 and the distances that are depicted in this chart, what did you  
11 conclude?

12 A. That the current placement of the one voting center is  
13 actually more convenient for African-American voters and  
14 non-Hispanic white voters and democratic voters -- I'm sorry.  
15 African-American voters, Hispanic voters, then for non-Hispanic  
16 white voters and republican voters.

17 Q. Did you also conduct an analysis to estimate what the  
18 likely effect would be if additional early-voting centers were  
19 added?

20 A. I did. I actually looked at it three different ways.

21 Q. And are those analyses depicted in tables 11 through 13?

22 A. They are.

23 Q. And can you describe just generally what you did in  
24 these analyses?

25 A. So the first table, table 11 -- and I looked at six

1 counties because I couldn't get good data for every county in  
2 Ohio. These are the ones that were accessible and could easily  
3 be transferred to a spreadsheet. I said, okay, in these  
4 counties, what would happen to the distances if I turned on, if  
5 we utilized every voting center, election-day voting center as  
6 an early-voting center? And so that was a little bit more of a  
7 complex calculation.

8 You had to look at, you know, it actually is just a  
9 grid, an I by J matrix if you want to be technical. But for  
10 Erie County, you select precinct 1 and you calculate the  
11 distance from precinct 1 to every precinct and then you select  
12 the lowest one. And voting center 2, calculate the distance to  
13 every precinct, select the lowest one.

14 So the distance to early-voting center is what is  
15 reported in table 10. So for Erie County, non-Hispanic whites  
16 travel 6.9 miles away, African-Americans 1.8, Hispanics 5.4.

17 If we turned on every voting center in Erie County, if  
18 we utilized it as an early-voting center, non-Hispanic whites  
19 only have to travel a mile, African-Americans a half mile,  
20 Hispanics .8 miles. The final set of columns then shows how  
21 much that distance is reduced. It's basically just column two  
22 subtracted from column one.

23 So if we utilized every early-voting center,  
24 election-day voting center as an early-voting center, it would  
25 reduce the distance for non-Hispanic whites by 5.9-mile, for

1 African-Americans by 1.3 miles and Hispanics by 4.5 miles. So  
2 the greatest benefit goes to non-Hispanic white voters, at  
3 least in terms of distance.

4 Q. Why did you select these particular states?

5 A. I selected these precincts for a very simple reason.

6 Q. Thank you.

7 A. Actually it's counties. I selected these counties for  
8 the very simple reason that it's where the data was readily  
9 accessible. It wasn't practical to hand input all the data for  
10 Cuyahoga, which is what would have been required.

11 Q. And if you look at tables 12 and 13, what do these  
12 represent? How do these compare to the table you just  
13 described?

14 A. So this is -- the first table, table 11, gives a general  
15 idea of where all the -- how much more convenient all the  
16 precincts are to different groups than the one early-voting  
17 center. Table 12 gets more to what is at issue in this  
18 litigation, which is the effect of turning on a set number of  
19 early-voting centers.

20 So what I'm doing in table 12 is, okay, Franklin County  
21 has to have -- has 299 election-day sites but we only want to  
22 utilize 88 of them. And we don't know, there's no way of  
23 predicting which ones the Franklin County board supervisors or  
24 election board would use.

25 So the way I tried to predict it is I made the

1 computer -- it's called a Monte Carlo simulation. But  
2 basically the computer selected, randomly, 88 centers out of  
3 the 299 possibilities, calculated all the distances and then  
4 reported that. And then it did that 1,000 times. It freezes  
5 the computer for a long time but at the end of it you get a  
6 sense -- it would discard the outliers where everything is  
7 turned on or it wouldn't discard them but you wouldn't get  
8 outliers as often where all the suburban centers got turned on  
9 or all the interior centers got turned on. The average that's  
10 left gives you a pretty good estimate of what is likely to  
11 happen with 88 centers being turned on.

12 Q. So, overall, looking at tables 11 through 13 together,  
13 what did you conclude?

14 A. Briefly, and I won't get into the details of k-means for  
15 table 13, but that's a way of, instead of randomly turning the  
16 centers on, if we turned the centers on in such a way that they  
17 are the most efficiently distributed possible, in other words,  
18 minimizing the distances traveled for each center. It's even  
19 spacing with respect to the precincts.

20 And, regardless, however I did it, the most benefit  
21 tended to go to non-Hispanic whites. African-Americans tended  
22 to see little improved access. Hispanics saw more but not as  
23 much as non-Hispanic whites.

24 Q. And did you also replicate this analysis limiting your  
25 focus to just individuals over the age of 18?

1 A. Yes. In my rebuttal report I tried to think of ways  
2 that I might get criticized and that was one that came up was,  
3 what if you only used the voting-age population? So that's  
4 reproduced on page 19 to 21 which is tables 3 to 7 of the  
5 rebuttal report. And the answers are virtually identical.

6 Q. And so doing this replication, did you similarly  
7 conclude that the existing early-voting centers are located  
8 closer to where minority voters live, on average, than where  
9 white voters live?

10 A. Yes.

11 Q. And did you also conclude that the addition of new  
12 centers is more likely to decrease the distance to a greater  
13 extent for white voters as compared to minority voters?

14 A. Yes.

15 Q. I'm going to change topics a little bit. Are you aware  
16 that plaintiffs also challenge a change to the formula in Ohio  
17 law for determining the number of DRE machines in a county?

18 A. Yes.

19 Q. And do you know what ratio Ohio law currently requires?

20 A. I believe it's 1 to 175. One DRE machine for every 175  
21 persons.

22 Q. Do you know whether all Ohio counties use DRE machines?

23 A. They don't.

24 Q. And for those counties that do use DRE machines, did you  
25 examine the number of machines currently in inventory relative

1 to the population in those counties?

2 A. Yes.

3 Q. Are the results of that analysis depicted in table 16 on  
4 page 84 of your -- we're moving back to the original report  
5 now.

6 A. So this table looks at counties and states where DRE  
7 machines constitute a majority of the machines in use and  
8 calculates the -- of those counties, the total 18-plus  
9 population and the number of DRE machines in use, does the  
10 division and gives the ratio that these states use.

11 Q. And so what does this show about Ohio in this chart?

12 A. It has Ohio as the second-best ratio in the country.  
13 I'm sceptical about Mississippi. The data set said that  
14 Webster County has 45,000 machines for 7,000, 8,000 residents.  
15 I'm guessing that's a typo but the data are what they are.  
16 Based on the data, Ohio has the second-best ratio in the  
17 country.

18 Q. And if Ohio were to eliminate some of its DRE machines,  
19 that could obviously change this analysis?

20 A. That's right.

21 Q. But do you have an opinion as to how many machines Ohio  
22 would have to eliminate to drop below the median in looking at  
23 all of these states together?

24 A. I don't know the precise number. I do know if it were  
25 to eliminate 60 percent of its DRE machines it would still have

1 a ratio better than the median in the country.

2 Q. Did you also attempt to examine Ohio's absentee and  
3 provisional voting laws in the context of the nation as a  
4 whole?

5 A. Yes, I did.

6 Q. And were you able to conduct that national comparison?

7 A. Ultimately I wasn't able to do the sort of quantitative  
8 analysis that I was able to do for the number of days of early  
9 voting. Part of that is that can't get a lot of this  
10 information online or through the statute and state boards  
11 don't know what's going on in their state. But part of it,  
12 too, is that these laws are sort of all over the place. You  
13 have some states that have what you might call a very liberal  
14 standard for absentee but more restrictive for provisional.  
15 Some are vice versa. It just makes it very difficult. Because  
16 states exercise their discretion in so many different ways, it  
17 makes it difficult to do a quantitative version of the  
18 analysis.

19 Q. Were you able, however, to look at some components of  
20 Ohio's absentee program and compare that nationally?

21 A. Yes. So you look at the fact that Ohio is, to my  
22 knowledge, the only state that will send out unsolicited  
23 absentee-ballot applications; a possible exception of North  
24 Carolina, depending how you define its recently-enacted policy.  
25 You have states where you have to get your absentee ballot



1     notarized or you have to have a witness and if the witness  
2     messes up their information, your ballot can get struck, like  
3     in Minnesota. You have a lot of states that require an excuse  
4     to vote absentee, which is not the case in Ohio.

5             Compared to those, it's a liberal standard. But there  
6     are states that you have to do very little for absentee  
7     ballots. It's just hard to quantify and compare them.

8     Q.     And you mentioned the statewide mailing. What are you  
9     referring to?

10     A.     As I understand it, the Secretary of State, with the  
11     approval now of the legislature, is allowed to send out  
12     unsolicited absentee ballots to registered voters. Not  
13     ballots, requests.

14     Q.     Thank you. And is it your understanding that the  
15     Secretary of State did, in fact, conduct such a mailing in 2012  
16     and 2014?

17     A.     That is my understanding.

18     Q.     And is it your understanding that a similar mailing will  
19     be sent out in 2016?

20     A.     Yes.

21     Q.     And do you have an impression as to how that statewide  
22     mailing compares to other states?

23     A.     Again, I don't know of any state that does the actual  
24     mailing. I know that North Carolina inserted applications in  
25     a, I believe it was a voter identification or voter information

1 pamphlet that it sent out but I don't know that it sent the  
2 actual mailings out to every registered voter.

3 Q. On page 88 of your report you begin a discussion of the  
4 relationship between early voting and voting habits; is that  
5 correct?

6 A. That's right.

7 Q. Was that something that you evaluated for purposes of  
8 this report?

9 A. Yes.

10 Q. Did you offer a conclusion about the extent to which it  
11 would be appropriate to draw a causal link between any history  
12 of racial discrimination in Ohio and a preference by  
13 African-Americans for early voting?

14 A. So I don't offer a direct yes/no opinion. The question  
15 is evaluating the information that's presented in the complaint  
16 and then eventually the competing expert reports and the  
17 different suggestions we've heard in the literature in other  
18 cases. And the conclusion that I draw is that we just don't  
19 have the data to draw a firm conclusion that, yes, the early  
20 voting is responsible for increases in nonwhite turnout and  
21 that that increase, to the extent it exists, is tied to  
22 African-American socioeconomic standing and history of  
23 discrimination.

24 Q. And in paragraph 187 of your report you elaborate on  
25 that idea. And you state there that an assumption about the

1 linkage between African-American usage of early voting and  
2 African-American's history of suffering discrimination  
3 overlooks an obvious alternate cause for this, the increased  
4 emphasis on early voting.

5 What did you mean by that?

6 A. So even the first -- I guess the first half of this  
7 section of my report talks about whether there's really even a  
8 correlation between African-American turnout and the length of  
9 early voting. What this paragraph refers to is it's a summary  
10 of the second half of this portion of the report which goes to  
11 causation. And so if you're going to draw a causal -- drawing  
12 causal conclusions from correlations is difficult.

13 One of the things you have to do when you're doing that  
14 is examine alternate possibilities and one obvious alternate  
15 possibility is that beginning, in particular, in 2008,  
16 democratic campaigns began to heavily emphasize early voting as  
17 part of their election strategy. And so we would expect that  
18 heavily-democratic voters would begin to switch to early voting  
19 as a result of these campaign stimuli. So that calls into  
20 question what the actual causal linkage is. Is it these  
21 campaign stimuli or is it the socioeconomic standing of  
22 African-American voters and the history of discrimination?

23 The problem is there's an old saying, you can't explain  
24 change with a constant. Over the last eight years, the  
25 socioeconomic standing is mostly constant but we see wide

1 changes in the African-American usage of early voting that  
2 correlate with the democratic campaign apparatus descending on  
3 Ohio.

4 Q. And I should point out for the record that I misread  
5 here. It referred to the increased democratic emphasis on  
6 early voting, which I think you clarified.

7 A. Yes.

8 Q. And did you continue that conclusion in paragraph 188 on  
9 page 89?

10 A. Yes.

11 Q. And since I have proven that I cannot read, would you  
12 mind reading that conclusion into the record?

13 A. All told, to draw firm conclusions about  
14 African-American voting patterns in Ohio, one must at least  
15 attempt to take into account the vast sums of money poured into  
16 the state, the historic nature of the Obama candidacy, and the  
17 changing strategies of the parties. In my opinion, it is  
18 impossible to do a proper analysis without at least attempting  
19 to take these factors into account. Any failure to take  
20 account of these factors hopelessly complicates any attempt to  
21 conclude that the increase in minority turnout is a function of  
22 Ohio's early-voting laws, or that the increased usage of early  
23 voting among African-Americans represents a revealed preference  
24 that will continue to manifest in future elections.

25 Q. Thank you.

1           And is that, then, a continuation of the point that you  
2 were just making about the various issues related to drawing  
3 causal conclusions?

4           A.    Yes.

5           Q.    And some of the potential alternate causation factors --

6           A.    Yes.  Absolutely.

7           Q.    -- you describe?

8                   Are you aware of some other states that have made  
9 changes to their early-voting laws or same-day registration  
10 laws?

11           A.    Yes.  I believe that in the last few years Florida,  
12 Georgia, Ohio, North Carolina and Wisconsin have decreased the  
13 number of days of early voting available.  And North Carolina  
14 eliminated same-day registration.

15           Q.    Did you review the impact on turnout of those laws in  
16 your report?

17           A.    Yes, I did.

18           Q.    And we're not going to walk through those in detail.  
19 They're set forth extensively in your report.  But why did you  
20 conduct that analysis?

21           A.    Well, because the suggestion is that -- the theory, if  
22 you will, is that because of the calculus of voting framework,  
23 you would have this increased burden that would fall  
24 disproportionately on African-American voters that would cause  
25 the African-American voters to be less likely to vote.  Well,

1 that's now a testable hypothesis. You can look at states where  
2 the early-voting laws changed and see what happened with  
3 African-American turnout. And as it turns out, in these  
4 states, African-American turnout, contrary to what the theory  
5 would suggest, has remained robust.

6 Q. And were you also able to look specifically at Ohio to  
7 test the theory?

8 A. Absolutely. Ohio is an interesting case because,  
9 between 2010 and 2014, the state became much less competitive.  
10 And so it kind of removes a possibility which is that the  
11 increased campaign effects might account for that robustness of  
12 African-American turnout. And nevertheless, Ohio, it appears  
13 that African-American turnout actually increased slightly as a  
14 share of the electorate when compared to non-Hispanic whites.

15 Q. And for purposes of clarification, when you describe  
16 turnout, are you looking at raw data in terms of voters or are  
17 you looking at percentages?

18 A. Percentages.

19 Q. Why would you look at percentages rather than raw data,  
20 raw numbers?

21 A. Well, in this context in particular, you're interested  
22 in a disparate impact between non-Hispanic white voters and  
23 African-American voters. Hispanic voters too but those data  
24 aren't just readily available. So to control for what might be  
25 a general decrease in turnout, in other words, everyone's

1 numbers fall, the best way to control for that is to use  
2 percentages rather than raw numbers.

3 Q. And you alluded to this already but were there reasons  
4 that overall turnout in terms of raw numbers might have been  
5 lower in Ohio in 2014?

6 A. Again, in 2014 you had much less -- you had much lower  
7 interest in the gubernatorial campaign which is very close in  
8 2010, very not so close in 2014. You had, I think, six  
9 competitive House races in 2010 versus arguably one in 2014.  
10 You had a Senate race in 2010 which wasn't particularly  
11 competitive but still elicited some interest. You did not have  
12 a Senate race in 2014.

13 Q. What is the calculus of voting?

14 A. So the calculus of voting is a political-science  
15 concept. It grows out of rational choice theory. The idea  
16 that you treat people -- you assume that they're rational  
17 actors with ordered preferences. And the calculus of voting  
18 says that you can conceive of a voter's decision whether or not  
19 to vote in that manner.

20 In other words, the voter will -- in the calculus of  
21 voting and rational choice theory, you make it express but the  
22 idea is that in the real world it mimics this, that the voter  
23 will kind of think of the good reasons to vote: Civic  
24 participation, a sense of duty, an interest in electoral  
25 outcomes and so forth, and they will weigh that against the

1 reasons not to vote: It's raining outside, I don't believe my  
2 vote makes a difference, I don't like the candidates.

3 That's the general calculus of voting framework and it  
4 says, basically, when the bad outweighs the good, the voter  
5 won't vote. And when the good outweighs the bad, the voter  
6 will vote. So as you change -- and they validated this in  
7 different contexts. Dr. Timberlake and Dr. Burden before him  
8 demonstrate, show the article that says that rain does, in  
9 fact, have a statistically relevant impact on whether voters  
10 decide to vote or not, which is an exact example of the  
11 calculus of voting framework at work.

12 So in this context, the theory is that if you decrease  
13 the number of early-voting days, you're going to decrease  
14 opportunities to vote, is the theory, and that this should  
15 raise the negative for some voters, and that for some voters on  
16 the margin it will raise it enough that they'll ultimately  
17 decide not to vote.

18 Q. Is that what you were looking at when you reviewed the  
19 states, including Ohio, that have made changes to their  
20 early-voting or same-day registration laws?

21 A. So that's, again, that's the idea. We're trying to test  
22 whether this hypothesis really works in terms of early voting.  
23 And that's why, contrary to what a lot of people expect, and  
24 this is similar to conclusions that have been drawn in the  
25 political science literature. You don't find this effect with



1 early voting.

2 In this particular context, we don't find the expected  
3 effect with African-American voters. In the states where  
4 early-voting days have been reduced, African-American turnout  
5 compared to white turnout has remained robust.

6 And so just one additional explanation on that. The  
7 calculus of voting is basically an if-then statement. If you  
8 increase the burden on voting, then people become less likely  
9 to vote and will not vote. But the fancy logic term is the  
10 contrapositive of it. It basically flows from that that if  
11 people don't decide not to vote, if there's no decrease in  
12 turnout, then there wasn't a burden. And so that's kind of  
13 what this tests.

14 In these states where we don't see the decrease in  
15 African-American turnout, vis-a-vis white turnout, it follows  
16 from the statement of the calculus of voting that the burden  
17 either doesn't exist or is so small that it's smaller than the  
18 effect of rain where you do find a statistically-significant  
19 effect.

20 Q. And beginning on page 97 of your report, you have a  
21 section entitled, Is the Increase in African-American  
22 Participation Due to Early Voting? What is the purpose of this  
23 section of your report?

24 A. So, again, even if we do find that there's a correlation  
25 between African-American turnout, vis-a-vis white turnout, and

1 the length of the early-voting period, can we then step from  
2 that correlation to a causal window? This is something that I  
3 found was asserted in the complaint that early voting goes into  
4 effect in 2004 in Ohio. African-American -- or I guess for the  
5 2006 elections. African-American participation in 2008 is  
6 higher than 2004 and then higher in 2012. So the question --  
7 the assertion is, well, you can see this is related to the  
8 expansion of early voting in 2014.

9         Again, that's a jump from correlation to causation.  
10        It's something that's testable. So some things you'd want to  
11        know are is this just an extension of an ongoing trend? And it  
12        turns out that when you take your window back from 2004, the  
13        answer is yes. In Ohio, African-American participation has  
14        been steadily rising over time. In fact, there's a  
15        deceleration around 2004 compared to some of the earlier years.  
16        African-American participation in Ohio and nationally has been  
17        converging upon non-Hispanic white participation for a very  
18        long time.

19        And then you would want to say, well, what happens in  
20        states where there is no early voting? Do we see a similar  
21        increase in African-American participation? And the answer  
22        again is yes. As a matter of fact, in a lot of these states  
23        there are larger increases in African-American turnout than we  
24        saw in Ohio.

25        The final thing you would want to know is, well, are

1 there other alternate things that might -- that occurred that  
2 might explain this increased participation or might even  
3 explain it better? And, again, the answer, I think, here is,  
4 yes. You had the democratic party increasingly focusing on  
5 early voting as a means of getting out the vote and locking in  
6 preferences of voters. And so unsurprisingly, given that, we  
7 see peaks in 2008 and peaks in 2012 in African-American  
8 utilization that then disappear in 2010 and 2014 when that  
9 democratic turnout mechanism is removed from the state.

10 Q. Mr. Trende, did you also -- in fact, we've already  
11 alluded to it previously, but you submitted a rebuttal report  
12 in this case as well as your original report; is that right?

13 A. That's correct.

14 Q. And we talked about that a little bit earlier. Is that  
15 Exhibit 17?

16 A. Yes, it is.

17 Q. And why did you submit a second rebuttal report in this  
18 case?

19 A. Because I read the expert report of Dr. Minnite and  
20 Dr. Timberlake and wanted to see if there were things that I  
21 thought were not quite right or wrong and write a response to  
22 that.

23 Q. And did you, in fact, determine that there were problems  
24 that you identified with respect to Dr. Timberlake's report  
25 specifically?

1 A. Yes.

2 Q. Are those problems set forth in detail in your rebuttal  
3 report?

4 A. They are.

5 Q. And I will represent to you that we have already had an  
6 opportunity to hear about some of the problems that you  
7 identified. So without going into great detail about what's in  
8 your report, could you just generally describe the problems  
9 that you found?

10 A. So the main error, the actual errors, there are places  
11 where I disagreed with Dr. Timberlake but the things that were  
12 outright errors were the calculations of the racial data. If  
13 you looked at the table, he provided the number of  
14 African-American residents of a county and the overall  
15 residents, and the math didn't quite work out to determine the  
16 African-American share. And then also he determined, given  
17 that, what's the share of the overall state African-American  
18 population contained within a county, and those numbers were  
19 wrong. So those were the outright disagreements.

20 Q. Did you also identify some problems, in your opinion,  
21 with respect to Dr. Timberlake's binning methodology?

22 A. Absolutely. The first problem is that he describes his  
23 decision to make binning cutoffs, if you will. And when I'm  
24 talking about binning, he basically separates the counties into  
25 three categories. What he calls high minority, what he calls

1 low minority/high poverty and what he calls low minority/low  
2 poverty. And the question is, why does he select the cutoffs  
3 that he selects?

4 And, in particular, for the high minority versus the two  
5 low-minority subcategories he says he looks at the  
6 inspection -- he conducts an inspection of the racial/ethnic  
7 distribution of all 88 Ohio counties. But as he discusses it,  
8 he makes clear that the distribution he's looking at is the  
9 erroneous distribution. So his system of binning is based on  
10 bad data and I don't think that's fixable.

11 Q. And in fact, are you aware of whether Dr. Timberlake  
12 attempted to correct some of the errors that you had identified  
13 in your rebuttal report?

14 A. Well, as I understand it, he did correct the actual  
15 data. But as I said, the problem is that, at least from his  
16 telling it, especially in footnote 8, it's apparent that he's  
17 looking at the erroneous calculations of race to determine  
18 where the bins are located and --

19 MR. KAUL: I'm going to object, Your Honor. Move to  
20 strike. This is the similar issue that came up previously  
21 about responding to rebuttal reports. As you recall, we were  
22 fine with that but Defendants objected pretty strenuously. And  
23 so we think it's sort of a goose/gander situation.

24 MS. RICHARDSON: This is not any new analysis. This  
25 largely comes directly from his rebuttal report. Outside of

1 the particular additional analyses that were newly presented in  
2 testimony, there were some additional errata that he had an  
3 opportunity to review. So that is a completely separate issue  
4 than the new analysis that we have objected to and continue to  
5 object to.

6 MR. KAUL: He's talking about whether Dr. Timberlake's  
7 errata addressed the problem that he identified in his rebuttal  
8 report. So it has to be, by definition, analysis that's new  
9 since his rebuttal.

10 MS. RICHARDSON: I would be happy to rephrase if that  
11 would take away the objection.

12 THE COURT: I don't know if it will take away the  
13 objection.

14 MS. RICHARDSON: Fair enough. Fair point.

15 THE COURT: You may rephrase.

16 MS. RICHARDSON: Thank you, Your Honor.

17 BY MS. RICHARDSON:

18 Q. Mr. Trende, let me just ask you hypothetically, if  
19 Dr. Timberlake were to correct the particular mathematical  
20 errors that you identified for him, would that cure the overall  
21 problems that you have expressed in your rebuttal report with  
22 respect to Dr. Timberlake's analysis?

23 MR. KAUL: I'll object. I don't see this as being any  
24 different.

25 MS. RICHARDSON: I'm asking him hypothetically whether

1 or not the correcting the math that he has identified as being  
2 erroneous would overall cure the reliability problems that he  
3 did, in fact, describe in his rebuttal report.

4 MR. KAUL: The hypothetical is not discussed in the  
5 rebuttal report.

6 THE COURT: I'm going to allow it. Go ahead.

7 MS. RICHARDSON: Thank you, Your Honor.

8 THE COURT: You'll have an opportunity to cross.

9 THE WITNESS: The answer is it would not cure all of  
10 the problems. Because, again, you have a system of binning --  
11 only one of my objections, first, to the system of binning is  
12 that it's derived from these incorrect racial data. He also  
13 says, for example, that a reason for the 16.8 percent cutoff is  
14 the counties he chooses feature Ohio's seven largest cities.  
15 And they don't. The seventh largest city in Ohio is not  
16 Youngstown, it's Parma. The eighth is Canton. Youngstown is  
17 the ninth. Recalculating the racial data wouldn't help that.

18 Overall, as I suggest, I think the system of binning, in  
19 general, is arbitrary and useless, to be quite blunt. I think  
20 the best way to do it and the only way to do it is to put  
21 everything in one bin and conduct a regression analysis which  
22 actually tests that relationship directly.

23 BY MS. RICHARDSON:

24 Q. In addition to the errors that you just described, did  
25 you also set forth in your rebuttal report what you believe are

1 problems with respect to Dr. Timberlake's causal conclusions?

2 A. Yes, I did.

3 Q. And can you just describe those for us, please?

4 A. Beginning on page 11, paragraph 42. So even accepting  
5 this binning approach, the question is, do these bins actually  
6 show -- and, again, there's another miscalculation. He divides  
7 everything by 2008. He divides 2012 turnout numbers by 2008  
8 registration numbers instead of using differing denominators.  
9 And that's in paragraphs 43 and 44.

10 But ultimately, if you do do a regression analysis, you  
11 don't find a statistically significant result. In other words,  
12 the correlation that Dr. Timberlake identifies is entirely a  
13 result of his opting to divide things up into three bins, for  
14 reasons that are not completely apparent from the report.

15 The second, Dr. Timberlake doesn't take into account  
16 campaign effects. He doesn't take into account any of the  
17 alternate causes that I suggest and that I believe are  
18 necessary to take account of to draw causal relationships.

19 And then the final problem is that all that this binning  
20 system reveals, and I know there's a separate debate over  
21 ecological regression that I'm not involved in, but all the  
22 binning analysis would reveal is whether high minority, high  
23 poverty counties -- and/or high poverty counties have higher  
24 utilizations of golden week or absentee-ballot rejections. It  
25 doesn't tell you within those counties who is actually



1 utilizing golden week and whether or not -- and who is having  
2 their absentee ballots rejected. It's called the ecological  
3 fallacy. It's the reason that we have ecological regression,  
4 to try to cure that problem. But the binning system in and of  
5 itself is highly problematic.

6 Q. Did you also express a view about Dr. Timberlake's  
7 opinions with respect to the use of early-voting centers to  
8 combat lines in voting?

9 A. Yes. And I thought one of the problems with  
10 Dr. Timberlake using -- his opinion there where he kind of  
11 asserts that it's a mathematical certainty, I believe was his  
12 term, that the single center will result in longer lines and  
13 waits in the high population counties but he doesn't account  
14 for the fact that a voting center, an early-voting center  
15 doesn't necessarily mean one machine. And in fact, we have  
16 evidence that or I reviewed evidence that suggested that in  
17 Franklin County, for instance, there were more -- there were 50  
18 to 100 early -- machines in place in the early-voting centers  
19 as well as multiple clerks to check people in. And so he  
20 doesn't take account of the possibility that rather than having  
21 to open up these new early-voting sites, the one center could  
22 add additional voting machines and additional clerks to combat  
23 any lines that were arising.

24 Q. Did you also express in a view -- did you also express a  
25 view in your rebuttal report about the extent to which

1 Dr. Timberlake's conclusions about absentee and provisional  
2 balloting are actually supported by data?

3 A. Yes. So when we're talking about the utilization of  
4 golden week in Dr. Timberlake's report, he takes a two-pronged  
5 approach, in fairness to him. He has the binning system which  
6 looks at which counties have the higher utilization of golden  
7 week. But to get around this problem that you don't know who  
8 is actually voting within those counties, it could be  
9 upper-middle-class voters in Strongsville or in Dublin here in  
10 Franklin. It could be people in the African-American  
11 community.

12 To get around that, he conducts what's called an  
13 ecological regression analysis which is a way to try to  
14 identify, within the county, where these voters at the  
15 voting-block level are coming from. Like I said, there's a  
16 fight over that. I'm not involved in it.

17 The problem is that for the absentee and provisional  
18 portion of his report, he doesn't take that second step. All  
19 he looks at is which counties are having higher levels of  
20 absentee-and-provisional-ballot rejections. We don't have any  
21 idea who, within those counties, are having their absentee  
22 ballots and provisional ballots rejected. Moreover, we don't  
23 know why. The overwhelming reason that absentee ballots are  
24 rejected in Ohio is they are being mailed in too late. That's  
25 not something that I see as being affected by the laws at issue

1 in the state.

2 So to really do this right you would have to figure  
3 out -- have something to prove that African-American voters  
4 within the county were more likely to have their ballots  
5 rejected than non-Hispanic whites and then tie that to the  
6 sorts of regulations and laws at issue in this case. The  
7 reason that African-Americans were more likely to have their  
8 ballots rejected, because they filled the ballot out  
9 incorrectly. We don't have anything to suggest that.

10 Q. Did you take a look at Ohio's rejection rates for  
11 absentee and provisional ballots as compared to the national  
12 rates?

13 A. I did.

14 Q. And what did you find in conducting that comparison?

15 A. I found that Ohio had one of the lowest rates of  
16 absentee rejection and provisional rejection in the country.  
17 And, again, I found that the reason that ballots were rejected  
18 tended to be that they were turned in too late. The sorts of  
19 things that aren't at issue in this litigation. I believe  
20 that's contained in paragraph 70 and 71.

21 Q. Thank you, Mr. Trende.

22 Stepping back and looking at the analyses that you have  
23 put forward in your two expert reports and in your testimony  
24 today, what is your conclusion about how Ohio's voting laws,  
25 that you have looked at, compare on a national context?

1       A.     Generally speaking, they're expansive. As you see from  
2 the charts when you break down the things that are complained  
3 of in this litigation, Ohio is consistently at the top of the  
4 lists and will be at the top of the lists even with the changes  
5 implemented.

6               MS. RICHARDSON: No further questions. Thank you,  
7 Mr. Trende.

8               THE COURT: We'll start cross after lunch. Come back  
9 at 1:30.

10              (A recess was taken at 11:53 a.m.)

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1 Tuesday Afternoon Session

2 December 1, 2015

3 1:30 p.m.

4 - - -

5 THE COURT: Mr. Kaul, you may cross.

6 MR. KAUL: Thank you, Your Honor.

7 - - -

8 CROSS-EXAMINATION

9 BY MR. KAUL:

10 Q. Mr. Trende, good afternoon.

11 A. Good afternoon.

12 Q. You are testifying today as an expert in campaigns,  
13 elections, and some other topics, right?

14 A. Yes.

15 Q. Now, you don't have a Ph.D. in political science, right?

16 A. I don't have a Ph.D.

17 Q. And you've never published any peer-reviewed work in  
18 political science, right?

19 A. No. It's not relevant to my career.

20 Q. Okay. And you've never published anything in a  
21 peer-reviewed journal in any context, right?

22 A. No, I haven't.

23 Q. Now, you have a master's degree, right?

24 A. I do.

25 Q. And your master's thesis dealt with the United States

1 Supreme Court; is that right?

2 A. Yeah. It was an application of DW-NOMINATE, which is a  
3 metric for measuring ideology through voting patterns that's  
4 been used for Congress and incorporating it for Supreme Court  
5 voting patterns on the first half of the 20th Century.

6 Q. Okay. So it wasn't on elections or voting patterns in  
7 elections, right?

8 A. It was not.

9 Q. And you were a history major in college; is that right?

10 A. I had a double in history and political science.

11 Q. And, since graduating from college, have you had any  
12 formal training in history?

13 A. No.

14 Q. And no training in historical methods?

15 A. No. Not since undergraduate, no.

16 Q. Okay. And you've testified, or at least written an  
17 expert report, in four cases now, including this one; is that  
18 right?

19 A. With the disclosure yesterday, it might be five now.

20 Q. That would be your fifth?

21 A. Yeah. Some of them are reiterations of earlier cases.  
22 The one that I submitted yesterday is identical to the first  
23 one I did in the state court. It's just been refiled in  
24 federal court, but separate cases, that's right.

25 Q. Okay. So the new one and then the Dixon case you

1 mentioned before are redistricting cases, right?

2 A. That's correct.

3 Q. All right. And you did not -- obviously, the case where  
4 you just disclosed you haven't testified, right?

5 A. That's right.

6 Q. And you didn't testify in the prior version of that  
7 case, right?

8 A. No. My understanding is that the expert report was  
9 accepted without objection, but I didn't give live testimony.

10 Q. Okay. And you were also an expert in the North Carolina  
11 voting-rights case, right?

12 A. Correct.

13 Q. And there is a pending Daubert motion challenging your  
14 testimony in that case, right?

15 A. That's my understanding.

16 Q. And the other case you were involved in was the NAACP  
17 litigation in Ohio?

18 A. That's correct.

19 Q. Now, in that case, did you provide live testimony?

20 A. There was no live testimony, but my understanding is  
21 that the report was accepted.

22 Q. Okay. And the Sixth Circuit, in that case, found that  
23 the district court had not clearly erred in crediting  
24 Dr. Smith's findings over yours, right?

25 MS. RICHARDSON: Objection, Your Honor. The Sixth

1 Circuit case that he's referencing has been invalidated. It's  
2 basically non-existent. And so to the extent that he's  
3 referencing that, I would also object on the grounds that the  
4 decision speaks for itself, and I believe it's been  
5 mischaracterized.

6 THE COURT: I've read it.

7 MS. RICHARDSON: Thank you, Your Honor.

8 BY MR. KAUL:

9 Q. All right. So, in all those cases, you were a paid  
10 expert witness, right?

11 A. Correct.

12 Q. So, putting to the side your work as a paid expert  
13 witness, have you ever written anything regarding voting  
14 machine technology?

15 A. No.

16 Q. And you don't know actually what type of voting machine  
17 you use at your own polling place, right?

18 A. No. I voted a provisional ballot, so I didn't have the  
19 opportunity to go to the poll.

20 Q. But you don't know what kind of machines they use there?

21 A. I've never seen it.

22 Q. And all these questions will be with a caveat "putting  
23 aside your work as an expert." So I'm going to go through a  
24 list here.

25 Have you ever written anything regarding voting machine



1 allocation?

2 A. No.

3 Q. And have you ever written anything about DRE machines?

4 A. I don't believe so.

5 Q. Okay. And do you know how many types of DRE machines  
6 there are?

7 A. I couldn't list all the different types, no. There's  
8 different manufacturers, and some create a paper trail, and  
9 some do not, but I don't know that I could give a comprehensive  
10 list.

11 Q. And you've never written anything on the impact of long  
12 lines on turnout, right?

13 A. Oh, no.

14 Q. Or on the number of early-voting locations that  
15 different jurisdictions have?

16 A. No.

17 Q. You've never written anything on resources for election  
18 administration, right?

19 A. With the caveat that I think we agreed to in the  
20 deposition that I have 200, 300, articles online. My  
21 recollection is no.

22 Q. And nothing on the requirements for the information  
23 included on provisional ballots, right?

24 A. Oh, no.

25 Q. And nothing on the informational requirements for

1 absentee ballots, right?

2 A. No.

3 Q. Nothing on the mailing of unsolicited absentee ballot  
4 applications, right?

5 A. No.

6 Q. Nothing on the inclusion of pre-paid postage on absentee  
7 ballots?

8 A. To be honest, I don't know that anything has been  
9 written on that, but, no.

10 Q. You've never written anything on same-day registration,  
11 right?

12 A. No, not directly. No.

13 Q. And nothing on the effect of changes to same-day  
14 registration on voter behavior?

15 A. No.

16 Q. Nothing on the impact of voting laws on voter turnout,  
17 right?

18 A. Phrased that broadly. I honestly don't know.

19 Q. I'm sure we're going to be using this at some point, so  
20 why don't I pass out your deposition transcript now.

21 MR. KAUL: For you.

22 MS. RICHARDSON: Thank you.

23 COURTROOM DEPUTY CLERK: Thank you.

24 BY MR. KAUL:

25 Q. All right. Let's take a look at page 30, Line 12, of

1 the deposition transcript. Okay. So, this indicates that, as  
2 of February 2014, at least, you had not analyzed the impact  
3 that different voting laws or regulations have on turnout; is  
4 that right?

5 A. Again, with the caveat -- I think later on, on page 31,  
6 Line 12, I offer the caveat of there is a lot of articles out  
7 there, which gets to what I'm saying. When you phrase it as  
8 broadly as you phrased it, I'm not entirely certain. I don't  
9 know that that's really what this says either, but I stand by  
10 my answer here.

11 MS. RICHARDSON: Your Honor, I would just object that  
12 I think the deposition testimony that's presented here is  
13 completely consistent with what he's stated. It says right in  
14 there that he didn't think that was a fair assessment anymore.  
15 There's no basis for impeachment with this excerpt.

16 MR. KAUL: And, Your Honor, I can -- I think, to the  
17 extent there is an issue, I think I can cure it by asking if  
18 he's written anything since.

19 THE COURT: Do that.

20 BY MR. KAUL:

21 Q. Since February of 2014, have you written anything on the  
22 impact the different voting laws or regulations have on  
23 turnout?

24 A. Understanding that "different voting laws and  
25 regulations," as I read this, probably referred to the types of

1 laws at issue in this case, I'll say I haven't. Again, as  
2 broadly as any sort of laws or regulations, I don't -- I don't  
3 know about that.

4 Q. What, if any, laws have you written about with respect  
5 to their impact on turnout?

6 A. Sure. So that gets to the caveat on page 31. There is  
7 a lot of articles out there, and I'm not going to foreclose  
8 myself that there is something in there.

9 Q. Okay. But nothing that you currently remember?

10 A. Not that I can remember off the top of my head.

11 Q. All right. And have you written anything on the burdens  
12 that voting laws impose on voters?

13 A. No.

14 Q. All right. Now, we've been caveating your work as an  
15 expert. Your work as an expert began in 2014, right?

16 A. 2012.

17 Q. Okay. I'm sorry. Let's put aside the redistricting  
18 cases.

19 A. Okay.

20 Q. Aside from the redistricting cases, your work as an  
21 expert began in 2014, right?

22 A. Correct.

23 Q. So that's last year?

24 A. Yes.

25 Q. And I think you already got to this point; but,

1 generally, aside from the work you've done as a retained legal  
2 expert, you haven't written anything related to the provisions  
3 at issue in this case; is that right?

4 A. That's right.

5 Q. All right. Let's talk about your background in  
6 statistics. You said you had a total of two statistics classes  
7 in grad school; is that right?

8 A. Yes. You needed three for the Ph.D.

9 Q. Okay. That's not all you needed for the Ph.D., right?

10 A. That's the number of statistics classes you needed for  
11 the Ph.D., was three.

12 Q. There are other requirements for a Ph.D.?

13 A. Sure.

14 Q. So, aside from your work as an expert witness, have you  
15 ever done a regression analysis that measured the impact of a  
16 law on voter turnout?

17 A. Not that I can recall.

18 Q. Okay. And you did attempt to conduct that type of  
19 regression in the North Carolina voting-rights case, right?

20 A. And in the earlier iteration of this litigation.

21 Q. Okay. And let's talk about the North Carolina case  
22 first.

23 In the regression analysis you conducted for your first  
24 report in that case, you incorrectly coded California with  
25 respect to same-day registration, right?

1 A. Oh, yeah. I had a bad cut-and-paste. It gets back to  
2 the caveat that I put on the charts that there is states that  
3 had laws on the books but they hadn't gone into effect. And I  
4 had the wrong column put into my regression analysis the first  
5 time around.

6 Q. Okay. So that sort of cut-and-paste error can result in  
7 several errors in the table, right?

8 A. It can, yes.

9 Q. In your case, it did?

10 A. It did. We caught them before the deposition, and it  
11 had an errata. So that's what the deposition was conducted on,  
12 but yes.

13 Q. All right. Now, you did not attempt to do a regression  
14 in this case measuring the impact of the challenged provisions  
15 on voter turnout, right?

16 A. Correct.

17 Q. But you had, you said, in the prior version of this  
18 case?

19 A. Correct.

20 Q. And in the North Carolina case?

21 A. Yes.

22 Q. Not here?

23 A. Well, for one thing -- no, because, for one thing, as I  
24 noted, some of these things you can't quantify well, like the  
25 absentee ballot stuff. So that made it impossible to do that

1 sort of regression analysis.

2 Q. When you testified in the North Carolina case, you  
3 explained that you had made a mistake in your deposition about  
4 a statistical concept known as the fallacy of the inverse; is  
5 that right?

6 A. The proportional inverse fallacy, yes.

7 Q. Can you explain what that is?

8 A. Yeah. So, I talked about the contra-positive in my  
9 direct. It's the idea that you have a statement: If A, then  
10 B. The contra-positive logically follows from that, which is:  
11 If not B, then not A. But then there is two fallacies that  
12 people make commonly: It's not A, then not B. You can't do  
13 that. And B, then A, you can't do that either. There is a  
14 probability corollary to those analyses. And it's relevant to  
15 litigation with respect to p-values on a litigation. In other  
16 words --

17 Q. I don't mean to cut you off. And, if I did, you can  
18 elaborate. But just to make sure it's clear what we're talking  
19 about here, because I think we don't have the background  
20 context, can you first of all explain, I guess, what a P value  
21 is and sort of what the background is to this?

22 A. So the p-value is a statistic that's used to determine  
23 whether or not a concept is statistically significant; that is,  
24 how certain are we -- are we sufficiently certain that the  
25 coefficient value is not zero, is the definition of it. And if

1 the p-value is below .05, that means that we're sufficiently  
2 certain that the actual value is not zero.

3 Q. All right. And what was the mistake that you made?

4 A. Well, I think it was the third or fourth time you asked  
5 me. So, you know -- all the p-value tells you is how certain  
6 we are that it's not zero. You can't make the flip assertion  
7 of that that -- in other words, we're 95 percent certain the  
8 number is not zero -- we're sufficiently certain the value is  
9 not zero. You can't make the flip of it, which is how certain  
10 we are that it is.

11 Q. Okay. So, in that case, if something like the p-value  
12 is .16, so -- your understanding was that that meant there was  
13 an 84 percent likelihood that something was correct?

14 A. That's what I pushed back on you, and then eventually  
15 said yes, yeah.

16 Q. All right. And you were surprised to learn about this  
17 proportional inverse fallacy, right?

18 A. Well, the first few -- I didn't know it was called the  
19 proportional inverse fallacy. But, like I said, the first few  
20 times you asked the question, I gave the correct answer, which  
21 was that it doesn't tell you anything about what's inside the  
22 bounds, only how certain we are about whether it's outside.  
23 But, no, I had not heard it called the proportional inverse  
24 fallacy.

25 Q. But you were surprised to learn about the concept,



1 right?

2 A. No. I answered it correctly the first couple of times,  
3 and then didn't.

4 Q. Let's do another transcript. This is from the second  
5 day of your testimony in North Carolina. And I've got the  
6 first day, also. If you think it's necessary for context, just  
7 let me know. Okay?

8 A. Okay.

9 THE COURT: Trial Day 12! Is that what this says?

10 MR. KAUL: We told you it was three weeks, Your Honor.

11 THE COURT: Wow!

12 Okay. Go ahead.

13 MR. KAUL: If we make it to Day 12, I think you may  
14 have an empty courtroom here, but --

15 BY MR. KAUL:

16 Q. All right. Let me direct your attention to page 80.

17 THE COURT: 8-0?

18 MR. KAUL: Yes.

19 BY MR. KAUL:

20 Q. All right. And let me direct your attention to Lines 14  
21 through 18, which is one of your answers, correct?

22 A. Yeah.

23 Q. All right. And, here, you talk about the inverse  
24 proportional, or, the proportional inverse fallacy, right?

25 A. Yes.

1 Q. And you conclude by saying you were surprised to learn  
2 that, right?

3 A. Yes.

4 Q. Okay. And so how is that different from what you were  
5 just saying?

6 A. I was surprised to learn that there was something called  
7 the inverse proportional fallacy. I knew the concept, but I  
8 had never -- I knew the basic idea, but I'd never known the  
9 formal definition of it or that it derives from the fallacy of  
10 the inverse.

11 Q. Okay. What your answer here says is, because that  
12 commits the inverse proportional, or, the proportional inverse  
13 fallacy going from the P of .05, which is our measurement of  
14 whether we reject the null hypothesis, to a positive statement  
15 about what the relationship is, you can't do it. I was  
16 surprised to learn that.

17 A. Yeah.

18 Q. Okay. So that is the answer you gave?

19 A. That is the -- it's one of those things that, when  
20 you're talking off the top of your head and giving a  
21 transcript, things don't always show up the way you're thinking  
22 of it or how you were writing it. I was surprised to learn  
23 that there was something called the inverse proportional  
24 fallacy, that it derived from the fallacy of the inverse. As I  
25 said, the first few times you asked me in the deposition, I

1 phrased it the correct way, because I knew the concept, but --

2 Q. Okay. Now, you also note in your testimony in North  
3 Carolina that you were not tendered as an expert in anything  
4 along the lines of statistical methods, right?

5 A. That's correct.

6 Q. That was after discussing this error, right?

7 A. Correct.

8 Q. And you've acknowledged, I think you said on direct,  
9 that you're not -- I think in your deposition -- you're not  
10 qualified to offer an opinion on the ecological inference issue  
11 that's come up in some of the expert reports, correct?

12 A. That's right.

13 Q. All right. Now, you've previously described yourself as  
14 a psephologist and an expert in psephology; is that right?

15 A. That's right.

16 Q. And, for the court reporter's benefit, would you spell  
17 that, please?

18 A. P-s-e-p-h-o-l-o-g-y.

19 Q. All right. And you've described psephology as a branch  
20 of political science; is that right?

21 A. Yeah. It's the study of campaigns and elections.

22 Q. Okay. And there is no journal of psephology, right?

23 A. No.

24 Q. And there is no university that has a department of  
25 psephology?

1 A. No. There is no journal of early voting. I mean,  
2 psephology is a branch of political science. It's another term  
3 for campaigns and elections, which is a subdiscipline in the  
4 field.

5 Q. Okay. And you've testified that psephology is a real  
6 word and that it has a Wikipedia entry?

7 A. It has a dictionary entry, too.

8 Q. And, in psephology, there tends to be a focus on  
9 election prediction, right?

10 A. That's a big part of it, yes.

11 Q. All right. And I think you'd mentioned on direct you  
12 work for, or you write for, a website called *The Crystal Ball*?

13 A. That's right.

14 Q. And that's an elections prognostication website?

15 A. It's broader than that, but that tends to be the focus.

16 Q. All right. And that is published electronically, right?

17 A. Correct.

18 Q. It's not in print?

19 A. No.

20 Q. Okay.

21 A. No, it is not in print.

22 Q. And *Real Clear Politics* is also a website, right?

23 A. Correct.

24 Q. Again, not published in print?

25 A. We do not publish in print.

1 Q. All right. And your work for those two websites is not  
2 peer reviewed, right?

3 A. No, it is not peer reviewed.

4 Q. All right. And *Real Clear Politics* was founded by John  
5 McIntyre and Tom Bevan; is that right?

6 A. That's right.

7 Q. And the website used to say, among other things, that,  
8 quote: *Real Clear Politics* attempts to counterbalance the  
9 common liberal bias of the mainstream press by providing a more  
10 realistic look at the issues; is that right?

11 A. If it did, that was probably before I was brought  
12 onboard.

13 Q. Okay. And Mr. McIntyre is your boss, right?

14 A. Yes.

15 Q. Okay. He is the person you described as -- you said you  
16 were his right-hand man?

17 A. Yes. He is the CEO of the company.

18 Q. And have you seen any articles referring to that quote I  
19 just mentioned?

20 A. Not that particular quote, that I can remember.

21 Q. Were there similar quotes that you remember?

22 A. I've never heard anything about counterbalancing the --  
23 so forth.

24 Q. All right. And you have written that, in the wake of  
25 the 2012 election, that Democrats like to mock the GOP as the,

1 quote, party of white people after the 2012 elections; but,  
2 from a purely electoral perspective, that's not a terrible  
3 thing to be; is that right?

4 A. The "purely electoral perspective" is a very important  
5 caveat there, but that's correct, yeah. Winning an outside  
6 share of 70 percent of the electorate will win a lot of  
7 elections.

8 Q. All right. And you said in your deposition that you're  
9 kind of, quote, kind of nihilistic on actual politics?

10 A. Yes.

11 Q. All right. Now, you've actually spent the majority of  
12 your professional career working as a lawyer, right?

13 A. Yes.

14 Q. And, so, in your report, you talk about which party has  
15 the burden in this case?

16 A. I'm sure that slips in.

17 Q. And, during your deposition, you referred to plaintiffs'  
18 theory of the case; is that right?

19 A. You can take the boy out of lawyering, but you can't  
20 take the lawyering out of the boy. I'm sure some of that  
21 language came in.

22 Q. All right. And, similarly, when discussing your  
23 methodology for concluding that it's reasonable for states to  
24 decrease their early voting windows, you said, among other  
25 things, that, quote, you don't have a regression analysis on

1 the Battle of Gettysburg, but that doesn't preclude the  
2 evidence?

3 A. I'm sorry?

4 Q. You don't have -- I'm sorry. You don't -- I think there  
5 is a typo.

6 You don't do a regression analysis on the Battle of  
7 Gettysburg, but that doesn't preclude the evidence?

8 A. Yeah. I think there are some things that people testify  
9 to all the time that are not quantitative in nature. Even a  
10 lot of political science is not necessarily quantitative. And  
11 so that's probably the analogy that I used.

12 Q. All right. And, during your deposition in this case,  
13 you personally objected to one of my questions; is that right?

14 A. Yes. I wasn't represented by counsel. So --

15 Q. There was an attorney for the State present, right?

16 A. I'm unrepresented.

17 Q. All right. Is it fair to say that you regard at least  
18 part of your role as an expert witness as being an advocate for  
19 the party for which you're working?

20 A. I think all of being an expert witness -- the most  
21 important thing, being an expert witness, is being honest,  
22 because you know you're going to get cross-examined by the  
23 other side, and you know that the other side's experts will  
24 look at your work. So I don't know that you want to be an  
25 outright advocate, but you're asked to answer certain

1 questions, and those are the questions you answer to the best  
2 of your ability.

3 Q. And, in all the cases in which you've been an expert,  
4 you've worked for a state defending against constitutional or  
5 Voting Rights Act challenges to laws, right?

6 A. That's right, yeah.

7 Q. And in the analysis that you've done in your work as an  
8 expert, you've never found that any of the provisions you've  
9 analyzed, to your satisfaction, had a disproportionate impact  
10 on minority voters?

11 A. Well, they tend to be the same -- the cases I've done  
12 tend to be the same question raised over and over again. So  
13 I've been consistent in that regard, yeah.

14 Q. Well, they've been in at least, I guess, two different  
15 states, right?

16 A. It's always been early voting, same-day registration,  
17 with the exception of the redistricting case, which we've  
18 partitioned off. So my answers have been consistent in that  
19 regard, yes.

20 Q. It's been a total of about -- what? -- ten different  
21 provisions? Types of provisions, I mean.

22 A. Oh, I don't know about the total number. There's  
23 definitely some novel ones in this one, not complete overlap.  
24 But the core of the complaint has always been early voting and  
25 same-day registration as I've understood them.



1 Q. But it's not just those things you haven't found any  
2 impact for; it's any of the provisions, right?

3 A. That's right.

4 Q. All right. And you indicate in your deposition that,  
5 while you haven't been disclosed, you were working as an expert  
6 in other matters. Now, I know you just mentioned one. And I  
7 certainly don't want to ask about the details of anything, but  
8 are you an expert, undisclosed, on additional matters as well?

9 A. Yes.

10 Q. And you said that you specifically don't write about the  
11 impact that different voting laws have on turnout because it  
12 might impact litigation in which you're involved, right?

13 A. Right.

14 Q. All right. Let's turn to your expert report. I'm going  
15 to start at page 5, Paragraph 24.

16 THE COURT: And this is 14?

17 MR. KAUL: Yes. Thank you, Your Honor.

18 BY MR. KAUL:

19 Q. All right. Now, the language in this quote is,  
20 verbatim, the same language from your North Carolina expert  
21 report, right?

22 A. Correct.

23 Q. And it's also, verbatim, the same language in your NAACP  
24 case expert report?

25 A. The previous -- yes, in Ohio. They're both NAACP cases,

1 but yes.

2 Q. Okay. So, in all three of those cases you found that  
3 the likelihood that these laws, whatever laws they were, will  
4 have a significant impact on actual voting, and specifically on  
5 minority voting, was certainly overstated by plaintiffs?

6 A. Yes.

7 Q. All right. Let's look at page 9, Figure 1.

8 All right. Now, this is your chart comparing the length  
9 of early voting periods in different states; is that right?

10 A. Correct.

11 Q. Did you do any analysis of what the longest wait times  
12 were in these states in recent elections?

13 A. No.

14 Q. That's a factor a state might want to consider in  
15 setting the length of its early voting period, right?

16 A. It could.

17 Q. And do you have any knowledge of what the wait times for  
18 early voting were in Ohio in 2012?

19 A. No.

20 Q. And what about 2008?

21 A. No.

22 Q. And, now, we don't need to turn to it; but, in Figure 2,  
23 you do sort of the same analysis, but focusing on actual days,  
24 rather than the period, right?

25 A. Correct.

1 Q. And, for these two exhibits, or the figures, can you  
2 explain -- aside from your experience as a lawyer which relates  
3 to reading statutes, obviously, can you explain what expertise  
4 you used in preparing these analyses?

5 A. I'm not really sure how to answer that question. If you  
6 want to know what's going on in a state and you can't figure it  
7 out from reading the statute as a lawyer, going to the website,  
8 going to the actual election officials strikes me -- especially  
9 for something like the number of days of early voting that are  
10 available, strikes me as the obvious way to do it.

11 Q. Okay. Is that something you consider yourself an expert  
12 in?

13 A. What --

14 Q. Determining what the number of early voting days is.

15 A. I mean, I know how to contact campaign officials, or  
16 election officials, and talk to them and find out, in a variety  
17 of contexts, what's going on, how many days there are left to  
18 count provisional ballots. I don't know that contacting  
19 election officials is a specific area of expertise.

20 Q. Now, you argue in your report that early voting  
21 increases the risk that voters won't all proceed to the ballot  
22 box with the same body of knowledge; is that right?

23 A. That's correct.

24 Q. And that remains true in Ohio after the elimination of  
25 golden week, right?

1 A. Absolutely.

2 Q. And you don't know whether any legislators relied on  
3 that rationale in voting to eliminate golden week in Ohio, do  
4 you?

5 A. No.

6 Q. Let's take a look at Figure 3, which is on page 19. And  
7 this is the chart where you compare days of early voting to the  
8 African-American share of the population?

9 A. Correct.

10 Q. Why did you include this chart in your report?

11 A. I thought it showed the intersection between the days of  
12 early voting and how large the African-American population was.  
13 I thought it was an interesting chart.

14 Q. Okay. So you thought it was interesting, is why it was  
15 included?

16 A. I believe so, yeah.

17 Q. And now -- this chart shows African-American share of  
18 the population, but it does not show nonwhite share, right?

19 A. Correct.

20 Q. And if it were to show nonwhite share, the chart would  
21 actually look somewhat different, right?

22 A. Some of the data points would move, yes.

23 Q. Just as one example, California, which is at 30 days --

24 A. Yes.

25 Q. -- would be significantly higher in terms of its

1 nonwhite share?

2 A. I think that's right.

3 Q. Now, you would agree that there is only one data point  
4 in the top right quadrant, right?

5 A. That's right.

6 Q. And there are several in the bottom right quadrant?

7 A. Correct.

8 Q. All right. And then, on the left side, roughly half and  
9 half on top and bottom; is that right?

10 A. I won't say half and half, but I'll say some substantial  
11 similarity.

12 Q. Okay. And so what that indicates is that the number of  
13 early voting days that states are offering is negatively  
14 correlated with the share of the population that's  
15 African-American in states of the United States?

16 A. No. You can't eyeball that sort of data from the graph,  
17 like we discussed in the deposition. There are an awful lot of  
18 data points in that bottom left corner and none in the top  
19 right. So that's going to pull the best-fit line down.

20 Quite frankly, you just have to run the regression  
21 analysis. You can't just eyeball it. This is exactly why  
22 regression analysis was invented.

23 Q. Okay. So, looking at this, you have no opinion on what  
24 a best-fit line would show?

25 A. Just looking at the data, no, you can't tell what a

1 best-fit line would show. That's why we have regression  
2 analysis.

3 Q. You can't even tell what the slope would be?

4 A. You certainly can't. What do you think the slope is?

5 Q. Negative.

6 A. But is it three? Is it five? You can't tell.

7 Q. But the direction of the slope is what I mean.

8 A. No, because you don't know how much -- you can think of  
9 it as gravity. There is a regression line that runs through  
10 it, and each of these dots exerts some force of gravity on the  
11 line and will pull it upward and downward.

12 So, yeah, D.C. is going to exert a gravitational force  
13 upward, but there is an awful lot of things in this bottom left  
14 that exert gravity downward, and none in the upper right to  
15 pull it upward. So, just eye-balling it, I can't tell if there  
16 is a statistically significant relationship or not, no.

17 Q. I'm not asking about statistically significant. I'm  
18 asking about the best-fit line.

19 A. I don't know how the best-fit line would run.

20 Q. All right. And none in the top right would mean that  
21 that the bottom right -- it would be pulled down to the bottom  
22 right?

23 A. There would be some pull with the bottom right, but the  
24 bottom left is going to exert an awful lot of gravitational  
25 force.

1 Q. Okay. All right. Let's talk about the number of voting  
2 centers per county.

3 Ohio is the only state that you're aware of that  
4 prevents counties from opening more than one early-voting  
5 location, correct?

6 A. I think that's right.

7 Q. So you were doing multi-state comparisons before. So,  
8 in that metric, it has the least access, right?

9 A. Like I said, I think that's right. I'm not sure about,  
10 like, Oklahoma or Wyoming or Nebraska, which have the one  
11 center -- I believe have one center per county, but I don't  
12 know if it's by statute or by practice.

13 Q. All right. And much of your analysis regarding the  
14 number of early vote centers stems from your understanding of  
15 what the plaintiffs are requesting in this case, right?

16 A. Well, that's certainly how I proceeded with my report,  
17 yes.

18 Q. All right. And, prior to submitting that report, you  
19 had not read any interrogatory responses from the plaintiffs,  
20 right?

21 A. That's correct.

22 Q. And, during your deposition, I showed you Bruce  
23 Butcher's interrogatory responses, right --

24 A. That's right.

25 Q. -- which were dated about a month before you submitted

1 your expert report?

2 A. Correct.

3 Q. All right. And you mentioned before that those indicate  
4 that the plaintiffs maintain that each county should be given  
5 the discretion to set the number of early voting locations to  
6 reflect the relative population, right?

7 A. I don't know if those are the exact words, but that's  
8 the gist of it, yes.

9 Q. All right. And you understand that counties don't have  
10 the discretion to set the number of early voting locations  
11 under current law?

12 A. Correct.

13 Q. All right. Now, you also said that having seen that  
14 wouldn't have changed how you would have done your analysis,  
15 right?

16 A. No, because I -- I think it's pretty clear that you're  
17 still looking for a population per county metric from that --

18 Q. And let's take a look at Paragraph --

19 A. -- interrogatory response.

20 Q. I'm sorry.

21 Let's take a look at Paragraph 64 on page 20. This is  
22 from your report.

23 Now, on the last sentence here, the first half of the  
24 sentence, you write that it's not at all clear what exactly is  
25 meant by a reasonably equitable population per county basis.



1 Is that right?

2 A. I would read it with the emphasize on "exactly" --  
3 emphasis on "exactly," but, yes.

4 Q. All right. Let's look at Table 2, which is on page 22  
5 at Paragraph 72. All right. Now, here, you're talking about  
6 the five counties that have the largest population-to- early  
7 voting location-location-center ratio, right?

8 A. Correct.

9 Q. And all of these are in California, right?

10 A. Right.

11 Q. And do you know what the percentage of Californians who  
12 vote early in person is?

13 A. I do not.

14 Q. We'll come back to that, but let's first turn to page 24  
15 and look at Table 3.

16 All right. Now, here, you're charting what you describe  
17 as the strength of the relationship between the number of early  
18 voting locations in a county and the population in a county?

19 A. That's right.

20 Q. You did not include Ohio on this chart; is that right?

21 A. Under existing law, no.

22 Q. Okay. If you had, it would be one of the N/A states,  
23 right?

24 A. Yes.

25 Q. At the very bottom?

1 A. Correct.

2 Q. And another way to put that would be that Ohio  
3 has -- the R-squared for voting locations and population would  
4 be zero; in other words, there is no relationship between those  
5 two things?

6 A. Yeah. I honestly, at this point, can't remember what  
7 the output is when you have absolutely no variance in the  
8 dependent variable. I chose N/A because you can't do a  
9 complete regression analysis with no variance.

10 Q. Okay. And this is -- the analysis that you did for  
11 this, you've never done that type of analysis before with  
12 respect to early voting centers, right?

13 A. I've run regression analyses. I haven't applied it  
14 directly to a number of early voting centers. I don't know  
15 that anyone has.

16 Q. All right. And later in the report -- and I don't think  
17 we need to pull it up -- you said, if you just added an early  
18 voting location to each of Ohio's two largest counties,  
19 Cuyahoga and Franklin, that the R-squared would go up to .61  
20 for Ohio?

21 A. Correct, yeah. That's meant to give some sort of  
22 context for -- because you look at these statistics, and  
23 it's -- it can be meaningless. So it just shows that adding  
24 two early voting centers, all these other states are even worse  
25 than what you would get if you just did that in Ohio.

1 Q. Okay. And what that would mean is that Ohio would go --  
2 if it did that, it would go somewhere -- it would go from the  
3 bottom to sort of somewhere in the middle, right?

4 A. You'd still have -- you'd still have massive disparities  
5 of the sort that are described in the complaint. And that's  
6 really the point, is that all these states with lower than .61  
7 have larger disparities than if you had one county in Ohio with  
8 one center for 10,000 and one center for -- another county with  
9 one center for 500,000.

10 Q. All right. But adding those early voting centers would  
11 reduce the disparity from county to county, right?

12 A. Sure. That's just as a way of giving context to what  
13 these R-squared stats mean in this. Even an R-squared that  
14 looks pretty high in the context of this case doesn't do much  
15 in terms of the types of allegations raised in the complaint.

16 Q. All right. Let's go to Paragraph 83, which is on the  
17 next page.

18 A. Yes.

19 Q. All right. Now, there, you write that plaintiffs'  
20 reasoning here likely cannot be cabined into Ohio?

21 A. That's right.

22 Q. Is that a legal conclusion?

23 A. It's my conclusion. I don't know if you'd want to  
24 characterize it as legal or not; but, you know, the point here  
25 is that, in the past when I've testified in these cases, the

1 emphasis has been on the change in the law; in other words,  
2 states that have gone from a large number of early voting days  
3 to a small number. There aren't a lot of states that have done  
4 that. This is something that Ohio has always had: One day of  
5 early voting.

6 So that approach to -- the placing things in a national  
7 context doesn't work here. That's kind of what I was getting  
8 at.

9 Q. Okay. Are you aware of case law indicating that  
10 challenges to voting laws require intensely local appraisals of  
11 the jurisdiction whose practices are at issue?

12 A. I know that there is case law to that effect.

13 Q. All right. And then, going down to Paragraph 85, you  
14 write that adding 800 sites, early voting location sites, in  
15 Ohio, would cost about \$60 million?

16 A. Correct.

17 Q. If Ohio were to add 800 sites, it would still have fewer  
18 sites than Texas, for instance, right?

19 A. Correct.

20 Q. And far fewer than Georgia, right?

21 A. Yes.

22 Q. And do you know if those states spend anywhere near \$60  
23 million on their early voting?

24 A. I would be surprised if Texas did, because it only has  
25 12 days of early voting. So you're talking about much shorter

1 leases and paying people less and so forth.

2 In Georgia, the early voting period is still shorter  
3 than Ohio's. Again, that's just doing the math from what I  
4 have as a cost per site.

5 Q. Do you know if those states spend \$20 million on early  
6 voting?

7 A. I don't.

8 Q. Would you be surprised if they did?

9 A. I would not be surprised one way or another.

10 Q. Okay.

11 A. If Texas were to have a budget of 20 million, that would  
12 be a third of the cost -- a third of the length of Ohio. So --

13 Q. All right. Now, you're basing this figure on a couple  
14 declarations that you cite here, right?

15 A. Correct.

16 Q. And you cite declarations in other parts of your report;  
17 is that right?

18 A. That's right.

19 Q. Do you know who prepared the first draft of any of the  
20 declarations that you reviewed?

21 A. I don't.

22 Q. And do you know how the declarants were selected?

23 A. I don't.

24 Q. Who selected them?

25 A. I don't know.

1 Q. Okay. Did your counsel select the declarants?

2 A. I wasn't present for any of the selection issues.

3 Q. Let's take a look of your deposition at 51, Line 23.

4 Okay. And this goes on to the first line of the next  
5 page.

6 Were you asked: How did you select those declarations  
7 --

8 A. I'm sorry. I'm not there yet. Here we go. Page -- I'm  
9 sorry. I have my cross, not the deposition. I apologize.

10 Q. If it's easier, it's on the screen, although I know it's  
11 in an awkward location.

12 A. 51, 23. Okay.

13 Q. All right. And I asked you: How did you select those  
14 declarations to review?

15 And you answered: These were provided by counsel.

16 Is that right?

17 A. Oh, yeah. They were provided to me by counsel. I just  
18 don't know how the declarants were selected.

19 Q. Okay. You don't know how counsel selected them, is what  
20 you mean?

21 A. If counsel selected the actual declarants -- I mean, I  
22 am assuming that he -- I am assuming there was some involvement  
23 there, but your question here is how they were given to me.  
24 And they were provided by counsel.

25 Q. All right. And did you examine whether those

1 declarations reflected a representative sample of declarants?

2 A. No.

3 Q. And do you know if any of the declarants are Democrats  
4 from large counties?

5 A. From large counties? I don't know.

6 Q. Do you know if any of them are African-American?

7 A. I don't know the race of any of the people. But for  
8 something like the cost of an early voting location, I would  
9 hope that the answer wouldn't change based on something like  
10 that.

11 Q. There are other things in the declarations besides the  
12 cost of the early voting location, right?

13 A. Oh, sure; but, as far as a specific citation that I  
14 would put in the report, I tried to keep those pretty factual,  
15 or things I could independently verify, like people saying  
16 where the early voting centers were located.

17 Q. But you said that you relied on the entirety of the  
18 declarations in preparing your report.

19 A. Oh, sure. Sure. These were things that I referenced,  
20 that I read, in preparing my report. And, of course, they  
21 influence how you look at things. But, as far as specific  
22 citations that I would direct the Court to in my report, I  
23 tried to keep those to things that were, you know, verifiable  
24 and numerical.

25 Q. Did you review the depositions of any of the declarants?

1 A. No.

2 Q. You know that they were deposed, right?

3 A. I would assume.

4 Q. Well, you actually know that, right?

5 A. Sitting here, I assume that you got all of them. I know  
6 there was a legal fight over it.

7 Q. Did you attempt to contact any of the declarants?

8 A. No.

9 Q. All right. Let's switch to Paragraph 90 on page 27.

10 All right. In this section, you discussed weekend and  
11 evening hours for early voting in Ohio; is that right?

12 A. That's right.

13 Q. And in Paragraph 90, here, in the last sentence, you  
14 say, It is important to place this regulation in a national  
15 context?

16 A. Yes.

17 Q. Why is that?

18 A. I'm placing all of these regulations in a national  
19 context. And so it seemed, to be complete to the extent I  
20 could do it, I should do it for here as well.

21 Q. Why did you believe that was an important thing to do  
22 for your report?

23 A. Well, there is a couple of things. I mean, first off,  
24 if you're looking at the -- again, I'm not saying what the  
25 specific relevance debate is going to be, if there is going to



1 be a debate over that, but to me it seems important because,  
2 first, if you want -- if you want to look at the impact that  
3 any burden might have, you want to look at the total pool of  
4 other voting opportunities that are available. I think the  
5 analogy I used was, putting a cup of bleach in a cup of water  
6 has a different impact than if you pour it into a lake. So it  
7 would better -- If there are expansive opportunities available,  
8 the calculus of voting would look differently because you have  
9 other opportunities to vote.

10 I think the other thing is just that you would want to  
11 know, or at least you might want to know, if a state is doing  
12 anything radical or outside of the ordinary. I think in a  
13 previous deposition you used the idea of if a state removed the  
14 right to vote altogether. I mean, that would be something  
15 extreme, and you would probably want to know that, not only  
16 does that not exist in any state in America, it's not allowed.  
17 So, to me, that seemed like an important thing for the Court to  
18 know.

19 Q. And you didn't consider, though, the totality of the  
20 electoral system in Ohio, right?

21 A. There is an endless number of things that I could have  
22 looked at under that definition. I looked at the things that  
23 were at issue in this case.

24 Q. You didn't look at the length of lines in different  
25 states, for instance, right?

1 A. No.

2 Q. And your chart didn't show how many early-voting -- how  
3 Ohio's early voting locations stacked up to other states,  
4 right?

5 A. Which chart?

6 Q. The one we looked at, before, where Ohio was left off.

7 A. It would be, as we discussed in the deposition, an N/A.  
8 And if it were under the strict county per population, it would  
9 be at the top.

10 Q. Now, in Paragraph 90, here, you cite several  
11 declarations, right?

12 A. Correct.

13 Q. All right. Now, here, you're not citing them for  
14 numerical facts, are you?

15 A. No.

16 Q. You're citing them for sort of qualitative  
17 determinations; is that right?

18 A. Sort of. I mean, I think the idea that the early voting  
19 hours thing is a compromise of sorts is something that, you  
20 know, it's something that you would be unlikely to perjure  
21 yourself on since it would be something that could easily be  
22 detectable.

23 You know, if there is a debate over whether it was a  
24 compromise between large and small counties, that's not my  
25 understanding, but it would be interesting to know that.

1 Q. All right. Now, one of the sentences here indicates  
2 that officials may be forced to wait for ballots that never  
3 came during evening hours or weekends in the earliest weeks of  
4 early voting?

5 A. I'm sorry. Where is this?

6 Oh, in the middle. I'm sorry. Yes.

7 Q. And I think you said in your deposition, when you said  
8 "ballots," you meant to write "voters"; is that right?

9 A. Yeah, voters casting ballots, yeah.

10 Q. Okay. So your understanding is that one issue with  
11 expansive hours for early voting is that nobody might show up,  
12 right?

13 A. Yeah. That was my understanding, that that was one of  
14 the objections.

15 Q. All right. Now, in the parenthetical after the Poland  
16 declaration, you're saying that she is citing the varying  
17 number of hours as confusing, right?

18 A. Yes.

19 Q. All right. And confusing would mean that voters would  
20 be showing up when there were not hours, right?

21 A. I think what Poland is talking about, if I remember  
22 correctly, is, for places that have jurisdictions that straddle  
23 county lines, you could hear that in a given city it's open  
24 until 6:00; but it turns out that in your portion of the city  
25 it's only open until 5:00. I think that's the context in which

1 that rises.

2 Q. Okay. And that concern is at odds with the one you  
3 mentioned at the end of the previous sentence, right?

4 A. I don't think it's at odds at all.

5 Q. Well, if nobody is coming, that would indicate -- during  
6 the actual hours -- that would suggest they're not going to be  
7 coming during hours that don't exist, right?

8 A. I don't think they're exclusive of each other at all.  
9 You could have counties or jurisdictions where people just  
10 aren't interested in voting on the weekends or after work. And  
11 you could also have a situation where a city straddles the  
12 county line, and a large portion of the population is getting  
13 conflicting information on when they are allowed to vote. And  
14 that's a different scenario.

15 Q. Okay. So there may be different circumstances in play  
16 for large counties, versus small counties?

17 A. There might be different -- I don't know if it's a large  
18 county or a small county where the cities tend to cross the  
19 county lines.

20 Q. Do you know which cities in Ohio cross county lines?

21 A. Not off the top of my head.

22 Q. Do you know if any do?

23 A. Yeah. Yes.

24 Q. All right. Let's look at page 31, Table 7.

25 A. 31.

1 Q. And I just want to focus on one specific thing here. If  
2 you go down to Nevada -- and I know you're still pulling it up,  
3 so take your time. If you go down to Nevada, you would put  
4 that as a "1" under "Population: Ctrs"; is that right?

5 A. Right.

6 Q. And what does that mean?

7 A. That was just a state that had a pop- -- when I did the  
8 regression analyses in the table on page 79, those were -- I  
9 said that Nevada was the only one that had an R-squared that  
10 really began to even approach Ohio. So I counted them.

11 Q. Okay. Now, how does Nevada determine how many early  
12 voting locations there are per county?

13 A. I don't know what the specific statute is in Nevada on  
14 that. I know that Clark County has an awful lot, and Carson  
15 City -- Washoe County, which is actually -- Washoe County is  
16 Reno -- has fewer; and then you have a bunch of tiny counties  
17 where the numbers vary.

18 Q. All right. Would you agree that Nevada is not doing  
19 what you're saying that plaintiffs are asking for here, which  
20 is taking the smallest county and multiplying by it to get the  
21 largest -- to get the number for the other counties?

22 A. So there is the question of the R-squared, which is the  
23 strength of the correlation. And then there's also the  
24 question of the coefficient, which is the slope of the line.

25 Technically, what you really need to meet my

1 interpretation of plaintiffs' standard and what I think it  
2 pretty clearly is, is an R-squared that's close to 1 and a  
3 slope of the line that's close to 1.

4 I just looked at the R-squared, and Nevada was the only  
5 one that was close. So I counted that.

6 Q. Okay. So, just to be clear, Nevada was not using that  
7 same metric that you were using before?

8 A. No. Nevada ends up with the high R-squared. But, if  
9 you want to take it to the next step, it doesn't have the  
10 slope. So, technically, I don't think any state really meets  
11 the standard that plaintiffs are suggesting.

12 Q. Okay. And, again, you said you think it's clear what  
13 plaintiffs are asking for, right?

14 A. Yeah.

15 Q. And your report, again, says it's not exactly clear what  
16 they're asking for?

17 A. I don't think it's exactly clear, because you have that  
18 reasonably equitable. What does that mean? Well, I -- as I've  
19 said, I think maybe it's plus or minus ten percent, but I don't  
20 think, reasonably equitable, anyone would take that to mean,  
21 you know, Cuyahoga County has two and everyone else has one.

22 Q. You're putting a lot of weight on that word "exactly" in  
23 that sense; is that right?

24 A. Yeah.

25 Q. And you didn't explain what you're explaining now in the

1 report, right?

2 A. No. I just said "exactly."

3 Q. Okay. Let's go back a page, to Table 30 -- I'm sorry --  
4 Table 6 on page 30.

5 A. Okay.

6 Q. Now, here, you've combined evening and weekends hours by  
7 state, right?

8 A. Correct.

9 Q. If you just look at evening hours, Ohio will actually  
10 decrease from 2012 to 2016, right?

11 A. I'd have to look at the charts and do the math, but I  
12 don't know off the top of my head.

13 Q. Okay. And do you know how many of those hours are the  
14 result of the settlement of the NAACP litigation?

15 A. No.

16 Q. Okay. And, in that case, you were an expert in  
17 opposition to those additional hours, right?

18 A. I don't think I was in that. I think the last NAACP  
19 case was just the number of days. There is also a third piece  
20 of litigation going on about Ohio's early-voting process. And  
21 I think that's where the hours are. I think the NAACP versus  
22 Husted was just about the -- I don't think I did an hours  
23 analysis in that case. Maybe hours were part of it, but I  
24 didn't analyze hours in it, I don't think.

25 Q. All right. Now, during your deposition, you and I went

1 through a number of states to look at early voting turnout in  
2 those states and the number of early voting centers that the  
3 states had; is that right?

4 A. I'm sorry. I was still thinking about your last  
5 question. Can you repeat that?

6 Q. Did you think about anything more?

7 A. I didn't think about anything more. I was just  
8 pondering how it went.

9 Q. Okay. So, during your deposition, you and I looked at  
10 the EAC reports regarding early voting, right?

11 A. Correct.

12 Q. And we looked, specifically, at the number of early  
13 voting locations that different states had; is that right?

14 A. Correct.

15 Q. And we also looked at early voting turnout in those  
16 states; is that right?

17 A. Correct.

18 Q. And I assume you don't remember the specifics of that at  
19 this point, right?

20 A. That's correct.

21 Q. Would it refresh your recollection to look at the  
22 deposition transcript?

23 A. It would probably refresh --

24 Q. I think that would be faster than going through the EAC  
25 report again.



1 A. I concur.

2 Q. All right. Let's go to the transcript at 270, starting  
3 at Line 11.

4 All right. And my plan, just to make this a little  
5 quicker, is not to go line by line, but to hit the highlights  
6 here. So, if you want me to direct you to lines or have  
7 questions, let me know.

8 A. Can I just briefly interject? I do believe that the  
9 hours were resolved in the NAACP case, but I didn't do an  
10 analysis of hours in that case.

11 Q. Okay. We won't hold you to what the NAACP settlement  
12 was.

13 A. Yeah. Thank you.

14 Q. All right. Now, starting at 270, Line -- let's  
15 see -- Let's start at Line 16. And we can keep the whole page  
16 up for these, because there is going to be a lot.

17 Looking at -- The EAC reports indicated that  
18 California's early-voting turnout was just .2 percent, right?

19 A. Will you stipulate to me that it's .2 percent and not a  
20 .2 that translates to 20 percent?

21 Q. That's my understanding.

22 A. Okay. With that stipulation in place, I'll say .2  
23 percent.

24 Q. Okay. And California, we talked about before, had the  
25 fewest -- in five of their counties, had the fewest early

1 voting locations per jurisdiction, right?

2 A. Correct.

3 Q. All right. And then on the next page we started talking  
4 about Arkansas.

5 A. That's right.

6 Q. And Arkansas has approximately 40 percent early voting  
7 turnout, right?

8 A. Correct.

9 Q. And that means that 40 percent of registered voters are  
10 turning out during early voting?

11 A. That's right.

12 Q. All right. And it has 120-some early voting locations  
13 for 75 counties, right?

14 A. That's right.

15 Q. So over one and a half per county?

16 A. It would actually be -- I think it would be less,  
17 because 120 divided by 75 is, like, 1.4.

18 Q. I think you're wrong about that, actually. I do have a  
19 calculator, if that would help.

20 MR. KAUL: May I approach?

21 THE WITNESS: No. You're right because half of 75 is  
22 35. So it would be over one and a half. You're right. You  
23 are correct.

24 BY MR. KAUL:

25 Q. We may be using that later, so I'm going to leave it

1 there.

2 A. All right.

3 Q. But I appreciate your effort to get out of the  
4 calculator.

5 All right. Florida has 21.6 percent early voting  
6 turnout, right?

7 A. That's right.

8 Q. And these, by the way, are 2014 numbers?

9 A. Yeah. I think we were looking -- if you represent that  
10 we were looking at the 2014 EAC, I'll accept your  
11 representation.

12 Q. I will. It's the one that you cited in your expert  
13 report.

14 A. Okay.

15 Q. All right. And Florida has 300-some early voting  
16 locations in 67 counties, right?

17 MS. RICHARDSON: Your Honor, I'm going to object to  
18 this entire line of questioning on relevance grounds and, in  
19 addition, the fact that we're referring to the deposition,  
20 which was referring to the underlying documents, that we're not  
21 actually looking at the numbers here, but the discussion that  
22 took place in the deposition. There is no impeachment here.  
23 There is no reason not to look at the documents, aside from the  
24 fact that the entire line is irrelevant.

25 MR. KAUL: First, I'm trying to refresh his

1 recollection. And, second, in the interest of efficiency, it's  
2 going to take a lot longer to go through the document.

3 And I will say that the EAC report we're discussing is  
4 one of the defendants' exhibits. And so we -- I certainly  
5 could do it that way if the defendants's --

6 THE COURT: Oh, please, drag this out further.

7 MR. KAUL: That's why I was trying to do it this way.

8 THE WITNESS: Josh, what might help me -- is it  
9 attached to my report?

10 MR. KAUL: I don't believe it is.

11 THE WITNESS: Okay.

12 MR. KAUL: But we do have the defendants' exhibit  
13 number.

14 MS. RICHARDSON: I still have the objection to  
15 relevance. I'm not sure -- I mean --

16 THE COURT: What are you impeaching on here?

17 MR. KAUL: I'm not impeaching, Your Honor. I'm  
18 refreshing.

19 I think the relevance is clear. He's made a statement  
20 that Ohio has expansive voting opportunities, relative to other  
21 states. And I'm showing that states that have more early  
22 voting locations have much higher turnout during early voting  
23 than Ohio does.

24 MS. RICHARDSON: And none of the excerpts that have  
25 been discussed here are inconsistent with anything that he's

1 offered in his report or that he's testified to at all today,  
2 but certainly in cross.

3 MR. KAUL: I missed part of that. I'm sorry. Did you  
4 say "inconsistent"?

5 MS. RICHARDSON: I don't believe any of this is  
6 inconsistent with anything that he has testified to or offered  
7 in his report.

8 MR. KAUL: And, again, I'm not impeaching. I'm using  
9 it to refresh.

10 THE COURT: Overruled.

11 MS. RICHARDSON: Thank you, Your Honor.

12 BY MR. KAUL:

13 Q. Okay. So let's -- we're talking about Florida, which  
14 has 21.6 percent turnout and 300-some early voting locations in  
15 67 counties, right?

16 A. Correct.

17 Q. And Georgia has 32.7 percent turnout and thousands of  
18 early voting locations, right?

19 A. I think that's right.

20 Q. More than ten per county?

21 A. I think that's correct.

22 Q. All right. And then -- let's see. We'll go to the next  
23 page.

24 Nevada, which is the state we were talking about before,  
25 has 48.3 percent of its population turning out during early

1 voting and 130 centers in 17 counties, right?

2 A. Correct.

3 Q. All right. New Mexico, 41.4 percent turnout in 138  
4 centers for 33 counties?

5 A. Yeah. Stipulating that it's the percentage that use  
6 early voting, not overall turnout in the state, that's correct.

7 Q. This is the percentage of the turnout that uses --

8 A. Right. Well, that's an important distinction, when  
9 we're talking about overall turnout, how things are related to  
10 the number of centers, versus just the people who opt to vote  
11 during -- vote early.

12 Q. Right. And North Carolina, 36.8 percent early voting  
13 with 340 early voting locations for a hundred counties?

14 A. That's right.

15 Q. All right. And we can keep going, obviously, but a  
16 similar picture for Tennessee and Texas. Is that right?

17 A. I don't know if there is -- I won't say it's a similar  
18 picture, but --

19 Q. I'll do them one by one.

20 A. All right. Sorry. "Similar picture" assumes that there  
21 is going to be a correlation that follows, and I don't  
22 necessarily -- I'm not going to stipulate to that.

23 Q. All right. Tennessee, 43.1 percent early voting turnout  
24 for 197 centers in 95 counties?

25 A. Correct.

1 Q. Texas, 44.9 percent early voting turnout with just shy  
2 of a thousand early voting locations?

3 A. That's right.

4 Q. And, again, that's approximately four per county?

5 A. Right.

6 Q. Now, West Virginia, on the next page, has about 21  
7 percent turnout; is that right?

8 A. Correct.

9 Q. And that's 74 locations for 55 counties?

10 A. That's right.

11 Q. That's about one -- well, over one, but a little less  
12 than one and a half?

13 A. I'll say a little over one.

14 Q. All right. And West Virginia, it's fair to say, has  
15 counties that are much smaller than Ohio's, just doing the  
16 math?

17 A. The smaller counties are probably similar. It doesn't  
18 have as many large counties.

19 Q. All right. But you have not compared the number of  
20 early voting locations per county to turnout aside from what we  
21 did here, right?

22 A. To the percentage of people that opt to use early  
23 voting, no. But you have a state like West Virginia where you  
24 have 20 percent turnout and a ratio around 1.5. Arkansas is 40  
25 percent usage -- I'm going to say "usage," instead of "turnout"

1 -- with a ratio of around 1.5.

2 Florida is 21 percent usage, with a ratio of, like, six  
3 or seven. So -- again, you have to run the regression analysis  
4 to know. You also have states like Vermont, that we discuss  
5 later in the deposition, that don't follow at all what you're  
6 suggesting. So I don't know that I would assume that there is  
7 a relationship either way.

8 Q. All right. Now, Ohio's early voting percentage is much  
9 lower than these states we just talked about, right?

10 A. That's right.

11 Q. And California, which we talked about, is extremely low?

12 A. California is extremely low. But, again, this is why  
13 regression analysis was invented; so you don't just do -- I'm  
14 not being flippant there. This really is why regression  
15 analysis was invented: So you don't do the sort of eye-balling  
16 of the data. You actually put it to the test to see if there  
17 is a correlation.

18 Q. You didn't do that as part of your survey of how Ohio  
19 compares to other states, right?

20 A. No, because I'm not interested in the overall usage of  
21 early voting. I'm interested in whether people vote, period.

22 Q. All right. And do you think early voting usage is a  
23 reasonable metric to use for assessing accessibility of early  
24 voting in different states?

25 A. You would have to run this regression analysis to see if



1 there is a correlation.

2 Q. Sorry. I'm not asking about whether it's a correlation.  
3 I'm just asking whether you think turnout during early voting  
4 is a good metric to use for accessibility of early voting.

5 A. Well, again, that would depend on whether there was any  
6 sort of correlation. I mean, if there is no correlation  
7 between utilization of early voting and the number of sites per  
8 county, then I would say it's not a good metric. If there is a  
9 correlation, perhaps, depending on other factors.

10 Q. Okay. Your charts don't consider turnout, though; they  
11 just focus on the number of days?

12 A. There are charts that refer to the number of days, yes.

13 Q. All right. Let's shift gears and talk about same-day  
14 registration.

15 A. Yes.

16 Q. Before I do that, you agree that there is widespread  
17 scholarly consensus that election-day registration increases  
18 turnout, right?

19 A. Yeah. I think most of the literature draws that  
20 conclusion.

21 Q. All right. And one of the features that's unique about  
22 election-day registration -- "unique" is the wrong word --  
23 that's notable is that voters have the convenience of  
24 registering and voting at the same time, right?

25 A. Yes.

1 Q. And that's been found to be one of the factors that's  
2 related to election-day registrations increase in turnout?

3 A. I don't know if anyone's actually found that. That's  
4 hypothesized to be part of it. Part of it, also, would be that  
5 you kind of get a make-up call that's closer to the election  
6 day, when people are more interested in voting in most states,  
7 certain election-day registration.

8 Q. Okay. And focusing just on the one-stop-shop idea,  
9 same-day registration has that same aspect to it, right?

10 A. Well, yes.

11 Q. Now, in a previous deposition, you said that there is  
12 widespread scholarly consensus that same-day registration  
13 increases turnout, right?

14 A. I might have said that. If I did, I was probably  
15 confused about election-day registration. With that said, I  
16 think I would only caveat -- I would only modify that with the  
17 "widespread," because there isn't as much literature on  
18 same-day registration as there is on election-day registration.

19 Q. Okay. So subject to that caveat, you agree with that  
20 statement?

21 A. Yeah.

22 Q. All right. Let's discuss Table 9 on page 34 of your  
23 report.

24 Now, earlier, you said that it's important to  
25 distinguish between election-day registration and same-day

1 registration, right?

2 A. That's correct.

3 Q. But, in this table, you combine them; is that right?

4 A. That's right.

5 Q. Now, what you're comparing here are registrations in all  
6 the states listed above Ohio in 2014 with Ohio's registrations  
7 in 2010; is that right?

8 A. That's right.

9 Q. Why did you do that?

10 A. Well, because I wanted to use the most -- there's a  
11 judgment call in how to proceed. I wanted to use the most  
12 recent data that were available, which is 2014 for most states.  
13 For Ohio, comparing 2012 to these states would be apples to  
14 oranges. So I did the most recent midterm for Ohio, which was  
15 2010.

16 Q. And you could have compared 2012 for all the states,  
17 right?

18 A. It wouldn't be the most recent data, but that would be a  
19 different way to do it.

20 Q. Well, for Ohio, it would be the most recent data, right?

21 A. For Ohio, yes.

22 Q. And that's the state we're interested in here, right?

23 A. Not when you're drawing comparisons. You're interested  
24 in all the states and how they measure up.

25 Q. Okay. And if you had used 2012, the registration number

1 in Ohio would have been significantly higher, right?

2 A. I suspect in all these states it would have been higher.

3 Q. Ohio would have been something like nine times higher,  
4 right?

5 A. Yes.

6 Q. That would not be true for all of the other states,  
7 right?

8 A. I have no idea.

9 Q. Well, it certainly wouldn't be true in Wisconsin, right,  
10 which would have been at 99 percent of registration that way  
11 otherwise?

12 A. It would most likely not be true in Wisconsin.

13 Q. Right. And if you do multiply Ohio by nine times, or  
14 whatever it is, to say approximately 14,000, that number is  
15 actually higher than the registration in some of these other  
16 states, right?

17 A. In terms of raw numbers, yes. In terms of the  
18 percentages, I'm not sure it would be.

19 Q. And "raw numbers" means number of voters who use that  
20 method, right?

21 A. I did that backwards.

22 Yeah. Yeah.

23 Q. I'm happy to let you do the math you're doing, or move  
24 on, whatever you prefer.

25 A. Well, the percentages would've worked out to .5 percent.

1 So it still would have been lower than everyone else, except  
2 Colorado. And I assume the number would be higher in Colorado  
3 since they hadn't done vote-by-mail yet.

4 Q. Okay. Let's go to Table 10, which is on 35. All right.  
5 And this is the chart you were describing earlier which shows  
6 the different types of laws by state?

7 A. Correct.

8 Q. And I think you said in your direct that you  
9 have -- let's see -- You said Maryland is in two of these  
10 columns?

11 A. Yes.

12 Q. And that was just a cut-and-paste error?

13 A. It was -- It was a cut error.

14 Q. Okay.

15 A. It's correct in the "Both" thing. I just forgot to take  
16 it out of the "Either" column.

17 Q. So, pasted correctly, but incorrectly didn't cut?

18 A. Yes.

19 Q. And Hawaii is also on here twice, right?

20 A. Yes.

21 Q. And Montana is not on the list, is it?

22 A. Right. That's a judgment call.

23 Q. Okay. But it's not anywhere, right?

24 A. It should be on the "Neither," but I also explain where  
25 it belongs, I believe, in the text. Oh, yeah. Paragraph 101.

1 Q. All right. Now, you have North Carolina listed as  
2 "Neither"; is that right?

3 A. That's right.

4 Q. And you know that same-day registration is currently in  
5 effect in North Carolina, right?

6 A. That wasn't my understanding.

7 Q. Well, you know that a preliminary injunction was issued  
8 by the Fourth Circuit in North Carolina?

9 A. I thought it was vacated by the Supreme Court.

10 Q. It was stayed. Did you know that?

11 A. I didn't know that.

12 Q. Okay. So, if North Carolina does have same-day  
13 registration in effect right now, it should be in the "Both"  
14 column, right?

15 A. If it was in effect at the time that this declaration  
16 was written, yes. And if it's changed since then, it should  
17 go -- it should be moved over.

18 Q. All right. Let's talk about maps. And I'm going to do  
19 my best to avoid going through all of the maps, but let me ask  
20 you just about the substance of your conclusions.

21 First, in doing the partisan breakdowns on the maps, you  
22 said you used the 2008 election?

23 A. Correct.

24 Q. And why did you choose that election to use?

25 A. I didn't choose it. It's the one for which I had the

1 data available.

2 Q. What does that mean?

3 A. Dave's Redistricting App is keyed off of the 2008  
4 results, because it was published before 2012.

5 Q. Okay. So that data is seven years old?

6 A. Yes. I don't believe it's changed significantly,  
7 because we didn't see a massive partisan realignment in 2012.  
8 But, yes, it's older.

9 Q. Well, the one thing I want to ask you about is, in 2008,  
10 President Obama won by about seven percent nationally, right?

11 A. Correct.

12 Q. And where was Ohio on the partisan voting index? I know  
13 he won, but by less than the seven percent. And if you don't  
14 know, it's not that important.

15 A. In 2008 -- so he would have been at 52.7 nationally, I  
16 think, in 2008. And Ohio's PVI was plus 1.3. So you would  
17 subtract that, except I'm using two-party vote.

18 He won by seven points. Ohio would have been, then,  
19 like five-and-a-half to six, somewhere in there.

20 Q. Okay. Here is the point I'm getting at: So, that year,  
21 the Democratic candidate won by about seven percent,  
22 nationally, as compared to, say, 2000, which was about even,  
23 right?

24 A. Yes.

25 Q. So, if you're looking at the 2000 data, the partisan

1 breakdowns will actually look seven points different on this  
2 map, right?

3 A. Well, Ohio -- it depends where Ohio was, generally  
4 speaking. But, yeah, the partisan breakdowns would look  
5 different.

6 Q. But, because 2008 was a favorable year for Democrats,  
7 you're going to see more Democratic areas on this map than you  
8 would in an average year, right?

9 A. Well, depends on what an average year is in Ohio  
10 anymore. I don't think it would look that different in 2012,  
11 for example, where I think there was, like, a one-and-a-half  
12 point difference in Ohio. And I certainly don't think downtown  
13 Cleveland would be red in a presidential election.

14 Q. Sure, but a lot of precincts will look different if  
15 there is a seven-percent shift from, say, a seven percent  
16 Democratic victory to --

17 A. So, if there is a massive shift in Ohio voting, then,  
18 yeah, some of the purpler areas on the outskirts of, say,  
19 Cuyahoga County are going to become redder. But downtown  
20 Cleveland is going to shift from being, like, 89 percent  
21 Democratic to 82 percent. And that's not going to change the  
22 map. It's still going to be in the middle of a heavily  
23 Democratic area.

24 Q. I'll give you downtown Cleveland; but Franklin County,  
25 for example, could look very different, right?



1 A. No. I think Linden is still going to be a pretty  
2 Democratic area.

3 Q. Well, let me just talk about it more broadly. A  
4 seven-point shift would make the maps, overall, look somewhat  
5 different, right?

6 A. Yeah. The reddening is going to occur at the outside of  
7 the -- it's going to tend to occur at the edges of the  
8 Democratic areas on the map now. But, yeah, it would make it  
9 redder.

10 Q. All right. Now, one of the conclusions from the maps  
11 and the analysis you did of the maps is that early voting sites  
12 are relatively convenient for nonwhite voters and for  
13 Democratic voters, right?

14 A. Correct.

15 Q. Let me first talk about convenience. In measuring that,  
16 you're looking purely at distance as the crow flies, right?

17 A. Correct.

18 Q. Okay. So you didn't take into account vehicle ownership  
19 rights?

20 A. No.

21 Q. And you didn't look at access to transportation by  
22 vehicle?

23 A. No.

24 Q. And you didn't look at, say, road congestion in large  
25 cities?

1 A. No. I would think that would make it worse for people  
2 living in the suburbs. But, no, I didn't take that into  
3 account.

4 Q. Okay. All of those things can affect convenience to  
5 voting locations, though, right?

6 A. Sure. There are certainly a lot of things that, at  
7 least in theory, you can do. I don't know if the data are  
8 available to actually do them. Some of these are examples.

9 Q. All right. Now, you also did not include any counties  
10 that have less than five percent black population, right?

11 A. On the maps, that's correct.

12 Q. Is it included in your table?

13 A. Yes.

14 Q. Okay. So the maps don't include it, but the table does?

15 A. Correct.

16 Q. All right. And the maps don't show population density,  
17 do they?

18 A. They do, implicitly, by the size of the precincts; but  
19 it's not -- it's not direct.

20 Q. Okay. And precincts can vary from one to another by  
21 about five times in size, right?

22 A. Oh, sure. Oh, sure. But the precincts tend to cluster  
23 in urban areas. I mean, that's -- that's, again, if you -- if  
24 you know your Franklin County geography, that's obvious from  
25 looking at the maps. So there is a sense of -- there is a

1 sense of it. But, again, this gets to why you want to do the  
2 quantitative analysis after you do the maps, because the  
3 quantitative analysis does take account of that.

4 Q. All right. And you agree that one of the things that  
5 the maps show is that there is a -- there are distinctive  
6 African-American pockets in many of these counties, right?

7 A. There are certainly places that you can look at and say  
8 the African-American population is clustered there.

9 Q. And do you have any opinion on whether that's linked to  
10 the history of discrimination against African-Americans?

11 A. I don't.

12 Q. And those clusters tend to be in densely populated  
13 areas, right?

14 A. They tend to be. There's actually some counties in  
15 southeastern Ohio that still have, like, large Underground  
16 Railroad populations, descendants from that, something that I  
17 learned in the course of this. But, generally speaking, yeah,  
18 the African-American population in Ohio tends to be an urban  
19 population.

20 Q. All right. And you said that, generally speaking, your  
21 view is that the early voting locations are placed closer to  
22 nonwhite voters; is that right?

23 A. Yes.

24 Q. And you agree that there are a number of counties in  
25 which that's not the case, though, right?

1 A. There are counties where it's not the case, yes.

2 Q. All right. And, also, very few of the early voting  
3 locations are actually in heavily African-American precincts,  
4 right?

5 A. Without looking at the actual numbers, I wouldn't say  
6 very few, heavily -- I wouldn't use that exact terminology, but  
7 that's also not the issue. The issue is, overall, how close  
8 are different sorts of precincts to the early voting center.

9 Q. All right. Now, I just want to be clear about  
10 something. So Tables -- Well, Table 11 in your report is the  
11 one that you replaced with -- There were new reports in the  
12 rebuttal; is that right?

13 A. Right.

14 Q. All right. So Table 11 equates to Tables 9 and 10 in  
15 the rebuttal, is that right, which are on pages 30 and 31 of  
16 the rebuttal?

17 A. Yes, that's right.

18 Q. All right. And that's actually one table, right? It's  
19 just --

20 A. Yeah. It's a quirk in -- LaTeX is the program that  
21 uses -- that makes these tables. And that's just a quirk in  
22 how it numbers.

23 Q. Now, to determine how far people of different races were  
24 from early voting locations, you used precincts and the racial  
25 demographics of different precincts, right?

1 A. Right. The numbers of African-American -- the actual  
2 raw numbers of African-American, non-Hispanic white, and so  
3 forth, voters that lived in each precinct.

4 Q. Did you consider using census tracks, rather than  
5 precincts?

6 A. No.

7 Q. Why is that?

8 A. Because I'm not familiar with those data, if they have  
9 shapefiles of that that have the latitude and longitude, the  
10 precincts, and if you have the voting data necessary to do the  
11 breakdown by Republicans and Democrats.

12 Q. Okay. And do you know how the size of census tracks  
13 compares, too?

14 A. Census tracks are smaller.

15 Q. Are you thinking of census blocks?

16 A. I think census tracks are generally smaller than  
17 precincts, but --

18 Q. Census blocks are smaller than census tracks, right?

19 A. I think that's right. I think census blocks are the  
20 smallest breakdown.

21 Q. All right. Now, staying with your rebuttal, on page 32,  
22 you've got three tables. I want to bring those up. Tables 13,  
23 14 and 15.

24 A. Yes.

25 Q. All right. And do these show -- Well, you're comparing

1 distances to polling locations under the current system with  
2 distances under different methods of early voting location  
3 placement, right?

4 A. Correct.

5 Q. And -- I'm sorry. They're called -- I gave you the  
6 wrong number. They're Tables 11 through 13.

7 A. In the rebuttal report?

8 Q. Yes.

9 A. Yes.

10 Q. All right. Well, let's focus on the bottom one, the  
11 evenly-spaced centers.

12 A. Yes.

13 Q. Now, the left-hand column, or I should say "the  
14 left-hand group." Is that what you call it? There are the  
15 counties, and then there's distance to EV center.

16 A. Yeah, we can call that the group.

17 Q. The distance to EV center, in Franklin County, the  
18 average for African-Americans, right now, is 7.2 miles. And  
19 the average for whites is 8.1, right?

20 A. Yes.

21 Q. And you would agree that those are, generally, not  
22 walkable distances, right?

23 A. I -- I think most people would not walk those distances.

24 Q. All right. But if you evenly space centers, moving over  
25 to the next column on the right, those distances drop to about

1 a mile and .7 miles?

2 A. That's right. If you have 97 -- or 88 evenly-spaced  
3 centers, right.

4 Q. And that, you would agree, is much more walkable, right?

5 A. It certainly -- I -- I don't know. A mile, I don't know  
6 if I would walk that long to vote, but it's easier than seven  
7 miles.

8 Q. All right. Now, assuming for the sake of this  
9 discussion that African-Americans are less likely to have  
10 access to convenient transportation than whites, that would  
11 indicate that that shift, even though the mileage difference is  
12 less, will actually make the voting sites more convenient for  
13 African-Americans, rights?

14 A. It might make some difference on the margins, but  
15 seven-tenths of a mile is still an awful long way to walk.

16 Q. Okay. A lot shorter distance than 7.2 miles?

17 A. Certainly easier than 7.2, but there sort of an -- I  
18 mean, 7.2 is shorter than, say, a hundred miles. But I'm not  
19 sure it would make any difference in whether people walk it or  
20 not.

21 Q. All right. And, in calculating your distances, did you  
22 weight the precincts by population?

23 A. Yes, indirectly. When I'm doing the population weighted  
24 averages, you're taking -- you break down the share of the  
25 African-American population that's contained in each precinct,

1 and you add it to the column as you're going through doing your  
2 iterative process. So, in that sense, yes.

3 Q. Let's assume you have two precincts in a county, and one  
4 is all white, and then you've got one that's all  
5 African-American, and the one that's all African-American is  
6 five times bigger.

7 A. Right.

8 Q. Would that one have been weighted five times more  
9 heavily in this averaging?

10 A. No, because you're looking at the share of the  
11 African-American -- total African-American population. And so  
12 that larger -- the larger precinct with 5,000 African-American  
13 voters might have two percent of the overall African-American  
14 population, whereas the 1,000 non-Hispanic white precinct might  
15 have .2 of the non-Hispanic white.

16 So, when you're trying to weight the overall  
17 African-American and non-Hispanic white population, you would  
18 want that African-American precinct to have more leverage on  
19 the African-American totals.

20 Q. But does it have more leverage than another all-  
21 African-American precinct that's a fifth as big?

22 A. Yes.

23 Q. Okay. So that is weighted for population in that sense?

24 A. These are all weighted population averages, yeah.

25 Q. All right. Let's talk about the DRE machine formula.



1 And we're going to skip through all the maps to page 84, Table  
2 16.

3 THE COURT: We're going back to 14 here?

4 MR. KAUL: Yes, Your Honor. I'm sorry about that.

5 THE COURT: And page 84.

6 BY MR. KAUL:

7 Q. All right. This is where you're comparing the ratio of  
8 the population to DRE machines?

9 A. Yes.

10 Q. All right. And I want to talk to you about some of  
11 these figures.

12 Do you know how long, in Ohio, it takes an average voter  
13 to cast a ballot on a DRE machine?

14 A. I don't.

15 Q. All right. For purposes of this discussion, let's  
16 assume that it's 7.5 minutes. Okay?

17 A. Okay.

18 Q. And I'll represent to you that that's the number that  
19 Dr. Allen used in his report.

20 A. Okay. I'll use 7.5.

21 Q. And that would mean that eight people can vote on a  
22 given DRE machine in an hour in Ohio, right?

23 A. Yes.

24 Q. Okay. So let's look at Hawaii, which is near the bottom  
25 here, right?

1 A. Yes.

2 Q. And I'm going to skip Colorado because that's, largely,  
3 a vote-by-mail state.

4 So, in Hawaii, if everyone were to show up on election  
5 day, to figure out how long it would take people to vote on DRE  
6 machines, you'd take that 3,501 figure and divide by 8, right,  
7 to find out the number of hours it would take to complete the  
8 election?

9 A. Honestly, if you'd asked me this at the beginning. I  
10 probably could have answered. I honestly don't know now.

11 Q. Can you divide 3,501 by 8?

12 MS. RICHARDSON: I'm going to object to this line of  
13 questioning. He has not offered an opinion regarding any of  
14 the things that we're talking about now, and certainly with  
15 respect to wait times in Hawaii and the other states. So, if  
16 we're going to go through state by state with assumptions that  
17 aren't in the record, I would object to that. It's outside of  
18 his testimony and assuming facts that aren't in evidence.

19 MR. KAUL: First of all, the assumption is in the  
20 record. It's Dr. Allen's testimony.

21 And, secondly, what this is going to show is that these  
22 numbers are not credible. And so I'm going to walk him through  
23 the hour calculations to establish that.

24 MS. RICHARDSON: First, I object to the fact that he's  
25 apparently trying to use this witness to cross numbers that

1 came in through Dr. Allen; but, to the extent we're talking  
2 about Dr. Allen's testimony, he testified that the wait times  
3 were different in other states. And, again, he also testified  
4 that the amount of time it took varied considerably even within  
5 the State based on a number of factors.

6 So, again, this entire line of questioning assumes facts  
7 not in evidence and, in fact, contradicts facts that are in  
8 evidence.

9 THE COURT: Sustained.

10 MR. KAUL: Your Honor, may I just briefly respond?

11 First of all, I'm not trying to ask about Dr. Allen's  
12 testimony. I'm asking about the chart in his report, this  
13 Table 16.

14 Secondly, to the extent that they're stipulating that  
15 these are, obviously, apples-to-oranges comparisons, I'm happy  
16 to agree with that. That's the point I'm trying to make with  
17 this line of questioning.

18 They've represented that Ohio is a leader in DRE per  
19 capita. And I think we ought to be able to establish that  
20 that's an artifice to the fact that they have very different  
21 DRE machines -- they must have different DRE machines than  
22 these other counties -- these other states.

23 THE COURT: I guess I'm less worried about other  
24 states at this point.

25 MS. RICHARDSON: Thank you, Your Honor.

1 BY MR. KAUL:

2 Q. All right. Let's go to page 85, Paragraph 174. I just  
3 want to be clear about something for the record.

4 You say that Ohio is the only state of which you are  
5 aware that undertakes such a generous program, with the  
6 possible exception of North Carolina. And this is a reference  
7 to the mailing of unsolicited absentee ballots, right?

8 A. Yes.

9 Q. And --

10 A. Ballot applications.

11 Q. Thank you.

12 We clarified in your deposition that what you meant by  
13 that was that Ohio is the only state of which you are aware  
14 that undertakes -- I'm sorry. Let me rephrase that.

15 THE COURT: Let's back up.

16 What numbers are you trying to say, in this Table 16,  
17 are not accurate?

18 MR. KAUL: Your Honor, I think one of two things has  
19 to be true: Either the different states have wildly different  
20 types of DREs, or the numbers are just inaccurate, because it  
21 would take, like, you know, 200 hours for Hawaii to complete  
22 its elections if those numbers were accurate. That's the basic  
23 point. And that's true all the way up the list.

24 THE COURT: All right.

25 MS. RICHARDSON: Your Honor, may I respond?

1 THE COURT: Sure.

2 MS. RICHARDSON: Just, again, on that point, Dr. Allen  
3 was very emphatic that Ohio is unique in terms of the amount of  
4 time that it takes, and that we have unusually long ballots and  
5 other factors, and that in other states it is a much shorter  
6 time. This chart --

7 THE COURT: Compared to North Carolina, as I recall.

8 MS. RICHARDSON: Correct.

9 And we don't have testimony on many of these other  
10 states. So there is no reason to assume that the wait times  
11 would be the same for these other states as they are in Ohio.

12 And this chart is simply a representation of inventory  
13 of DREs as a percentage of the population. It does not make  
14 any representations regarding wait times in those particular  
15 states.

16 MR. KAUL: And, Your Honor, I agree with that. But  
17 the whole thrust of this expert's reports is this idea that you  
18 can make these comparisons across states. And so part of what  
19 I -- we need to -- either we can agree that those are invalid  
20 comparisons, as the defendants are suggesting, or we should be  
21 able to demonstrate that those comparisons are invalid.

22 MS. RICHARDSON: To clarify, we are not suggesting  
23 that the comparison that is offered here is invalid, which is a  
24 comparison of inventories of DRE machines based on population.  
25 We are objecting to the representation that counsel is making

1 that this is a comparison of wait times or the amount of time  
2 it takes to actually use the machine. That's not what this  
3 chart is being offered for.

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

5 MS. RICHARDSON: Thank you, Your Honor.

6 BY MR. KAUL:

7 Q. All right. So, going back to this briefly, the only  
8 point I wanted to clarify is, what you mean in that sentence  
9 about how Ohio is the only state that undertakes such a  
10 generous program, with the possible exception of North  
11 Carolina, is not that North Carolina's and Ohio's programs are  
12 the most generous, but, rather, that they're the only states  
13 that you know of that have this type of program and that you  
14 find that program to be generous; is that right?

15 A. Correct.

16 Q. All right. To your knowledge, the only other states  
17 that prohibit counties from mailing unsolicited absentee  
18 ballots are Alabama, Delaware and North Dakota, in most cases,  
19 right?

20 A. I don't know that those are the only states. They're  
21 the only states that I have off the top of my head. I would  
22 actually be surprised -- I'm fairly certain there are others;  
23 but, again, it was, ultimately, impossible to do a numeric  
24 analysis. So I'm not going to say that those are the only  
25 states. I know that's not true.

1 Q. Those are the only ones that you know of, right?

2 A. No. I'm not going to say that's not -- I'm not going to  
3 say that's true. I'm certain there are other states. Those  
4 are the only specific states I can come up with off the top of  
5 my head, but I know there are more.

6 Q. You analyzed all of the states' laws with respect to  
7 this issue, right?

8 A. As best I could. This was an example where you couldn't  
9 always find things in the statutes, or sometimes Secretary of  
10 States wouldn't get back to you. But I made the attempt.

11 Q. All right. And you don't know if a majority of states  
12 prohibit the sending out of unsolicited absentee ballots?

13 A. That's correct.

14 Q. Other than Alabama and Delaware, do you know of any  
15 other state that prohibits counties from pre-paying return  
16 postage for absentee ballots?

17 A. I know there are more, but I don't know any specific  
18 names.

19 Q. How do you know that there are more if you don't know  
20 the names?

21 A. Because I conducted the analysis, and I know there are  
22 more. I just don't know the exact states.

23 Q. You didn't mention any of these other states during your  
24 deposition, did you?

25 A. No. No.

1 Q. And you were asked about that, right?

2 A. I'm sure I was asked to name them. I don't know the  
3 laws in all of the states in which I was able to get results.  
4 I know there are more; but, ultimately, this wasn't -- this  
5 portion of the report wasn't broke down as an attempt at a  
6 quantitative analysis. And I don't try to offer anything along  
7 those lines.

8 Q. All right. Since your deposition, you haven't  
9 determined the identity of any of those other states, right?

10 A. No.

11 Q. And do you know if that's a majority rule?

12 A. I don't know.

13 Q. All right. Let's look at Paragraph 187. All right.  
14 Now, here, you talk about the increased Democratic emphasis on  
15 early voting as an alternate cause for the linkage between  
16 African-American usage of early voting -- well, the linkage  
17 between those two things?

18 A. Yes.

19 Q. African-Americans and the usage of early voting. Why do  
20 you say that's an alternate cause?

21 A. Well, the question is, again, we get back to the  
22 plaintiffs' complaint, which is what I'd read, that looks at  
23 the fact that early voting was implemented in Ohio in 2004 and  
24 African-American participation increased. And so the question  
25 is, what is the reason for this increased utilization of early



1 voting.

2 So it might be some sort of revealed preference for  
3 using early voting, or it might be what I think is an obvious  
4 alternate theory you'd want to explain before you made such a  
5 claim, which is that the Democratic campaign started  
6 emphasizing early voting in 2008.

7 Q. All right. Now, you're assuming that there is no  
8 linkage between African-Americans' affiliation with the  
9 Democratic party and the history of discrimination, right?

10 A. I think that gets a little house that Jack built in  
11 terms of the causation.

12 Q. Gets a little what?

13 A. House that Jack built.

14 Q. What does that mean?

15 A. This is the house that Jack built. This is the wife of  
16 the house.

17 Too many -- a lot of steps in the chain. Ultimately, I  
18 think that you're looking at the -- as to why African-American  
19 voters in Ohio were using early voting. They're Democratic in  
20 2008, and they're Democratic in 2010. The change is the  
21 presidential campaign's utilization of early voting as a way  
22 of -- as a way of trying to get out the vote in a way to try to  
23 lock in preferences.

24 Q. Going back to the house that Jack built, you've written  
25 that African-Americans are the group that's ideology is least

1 likely to affect whether they're Democrats, right?

2 A. That's right.

3 Q. And I think you caveated that that didn't apply to  
4 Bangladeshy Americans; is that right?

5 A. That's right. Bangladeshy Americans have a higher rate  
6 of voting for President Obama than African-Americans.

7 Q. Okay. And you've said that, in discussing the  
8 difficulty that the Republican Party has with African-American  
9 voters, that, quote: The problem is that the GOP just has such  
10 an atrocious record on civil rights issues and everyone knows  
11 it; Republicans try to talk their way around it, but the record  
12 kind of speaks for itself.

13 Is that right?

14 A. I didn't write that. That was in a conversation with a  
15 journalist. That's not what my written work -- My written work  
16 is more nuanced than that, but I did make that comment.

17 Q. And if your theory about campaign effects being the  
18 driver of disparate early voting usage were correct, wouldn't  
19 you expect to see African-Americans disproportionately using  
20 absentee-by-mail voting as well as early in-person voting?

21 A. If the Democratic Party were pressing absentee-by-mail  
22 as hard as early voting, that might be something that you would  
23 expect.

24 Q. All right. And you don't know of any reason why a  
25 campaign would focus on early in-person voting but not voting

1 by mail, right?

2 A. I haven't really thought about it.

3 Q. Do you know of any reason?

4 A. Not as I sit here.

5 Q. All right. I asked you that at your deposition, right?

6 A. I -- I will assume, if you're representing it, that you  
7 did. I don't remember you asking that question, but I'll  
8 believe you.

9 Q. Okay. You haven't thought of any reason since then,  
10 right?

11 A. I haven't given it thought since then, no.

12 Q. I'm sure it's all you've been thinking about since then.  
13 And Democratic get-out-the-vote efforts will continue in  
14 the future, right?

15 A. Yes.

16 Q. And, presumably, they will continue to focus on  
17 African-American early voting usage and all voters' early  
18 voting usage, right?

19 A. Where early voting is available. In states where it's  
20 not available, like Pennsylvania, it will be a more traditional  
21 get-out-the-vote effort. A state like Mississippi, where you  
22 saw a massive increase in African-American turnout with no  
23 early voting, yes.

24 Q. And so that means these disparities will likely  
25 continue, right, assuming there are disparities?

1 A. Well, assuming the Republican Party doesn't begin to get  
2 a more -- get its act together on early voting and increase  
3 non-Hispanic white turnout and get out the vote. I mean,  
4 there's a lot that would go into making such a prediction.

5 Q. And that's actually my next question for you. The  
6 Republican Party also has turn-out efforts, right?

7 A. Oh, sure.

8 Q. And, particularly in 2012, those efforts also targeted  
9 early voting, right?

10 A. They tried.

11 Q. What do you mean, they tried?

12 A. They did do some early voting stuff. I don't know if  
13 the amount spent was equivalent to what the Democrats invested  
14 in early voting efforts. I know that the Republicans have more  
15 of a focus than they did in 2008, when they had almost none.

16 Q. So, if there was such an effort in 2012, that would sort  
17 of offset this Democratic effect, right?

18 A. It could to an extent. Again, it would just depend on  
19 the extent of the efforts, how many field offices they had set  
20 up, how much money they invested in the early voting effort,  
21 compared to Democrats, a lot of stuff for which, quite frankly,  
22 I don't have the data.

23 Q. Now, you wrote in your report that Democrats were  
24 targeting what I think you called weak voting Democrats. And  
25 I'll turn you to the relevant paragraph to make it easier.

1 Let's go to Paragraphs 231 to -33.

2 A. I think that's the Obama campaign's words that I'm  
3 quoting, but, yes.

4 Q. You're quoting these in support for your conclusions,  
5 right?

6 A. Uh-huh. Yes.

7 Q. And so the 233, for example, refers to sporadic-voting  
8 kids and grandkids?

9 A. Yeah. That was definitely a hope of the Obama campaign.  
10 Now, whether it was successful is a different story. You can  
11 deduce that from the data.

12 Q. Right. Now, a couple questions about this. First, one  
13 of the things that 231 talks about is Southeast Ohio, right?

14 A. Correct.

15 Q. And Southeast Ohio's population is largely white, right?

16 A. That's right.

17 Q. So these efforts that you're talking about targeted  
18 white voters and African-American voters?

19 A. That's right.

20 Q. And this specific example is actually in a largely white  
21 area?

22 A. This specific example is, yes.

23 Q. And that's an area that's had low turnout; is that  
24 right?

25 A. Turnout -- yes. Yes.

1 Q. So those would be what you would call weak voting areas,  
2 right?

3 A. No. I don't think that's what Carson is referring to  
4 here. When he's talking about weak voting Democrats -- well, I  
5 don't know. That's a good question.

6 THE COURT: Let's take a break.

7 (A recess was taken from 3:15 p.m. until 3:30 p.m.)

8 - - -

9 THE COURT: Are you in the middle of your cross? Are  
10 you bringing it in for a landing? What are you doing here?

11 MR. KAUL: Slightly between those two, but I think  
12 probably half an hour at the most. And I was just telling  
13 defense counsel I think we'll likely be able to get on our lay  
14 witness, subject to any other scheduling issues.

15 THE COURT: I missed that. Say it again.

16 MR. KAUL: I was going to say I think, as long as we  
17 have the rest of the day available, there should be sufficient  
18 time for you guys to put on your lay witness today if that  
19 makes sense for the Court.

20 THE COURT: How long will that witness be?

21 MS. COONTZ: He will probably be half an hour, 45  
22 minutes.

23 THE COURT: Okay. Press on.

24 BY MR. KAUL:

25 Q. Mr. Trende, one of the topics we were talking about

1 before, or you were talking about before in your direct, was  
2 the link between early voting and turnout.

3 A. Correct.

4 Q. And you cite some articles in your report, right?

5 A. Yes.

6 Q. All right. Now, the articles you're citing, they're not  
7 meant to be a representative literature review; is that right?

8 A. No. No. They're just support for statements that are  
9 made.

10 Q. And you would agree that Dr. Paul Gronke is one of the  
11 leading experts on early voting, right?

12 A. Yes.

13 Q. And, unlike some of the articles cited in your report,  
14 he's found that early voting, particularly in light of 2008 and  
15 2012 elections, has a positive impact on turnout; is that  
16 right?

17 A. I don't know if he's found that. He said that. But his  
18 published work says there's no -- that I am aware of, says  
19 there's no linkage.

20 Q. All right. But you know that -- you do agree he's a  
21 leading expert and that he's said that there is a positive  
22 impact on turnout?

23 A. He stated that he's changed his mind. Yes.

24 Q. Now, you were talking about the book about Democrats  
25 targeting early voting. That was a Jamieson book, I believe?

1 A. Yes.

2 Q. All right. And was it fairly widely known in political  
3 circles that Democrats had targeted early voting in 2008?

4 A. I believe so.

5 Q. All right. And you've mentioned before that, partly in  
6 response to that, Republicans began targeting early voting in  
7 2012, right?

8 A. Correct.

9 Q. And you said, I think, you weren't sure how successful  
10 they were?

11 A. Yes.

12 Q. Now, you give some examples in your report of different  
13 states that have reduced early voting in recent years?

14 A. Correct.

15 Q. And I think you specifically talk about Ohio, of course,  
16 and North Carolina and Florida?

17 A. Yes.

18 Q. And I think you referred to Wisconsin at some point  
19 earlier, as well?

20 A. I don't know if that's in the report. But, yeah,  
21 Wisconsin had a reduction in early voting, as did, I believe,  
22 Georgia.

23 Q. Okay. And the first four states, putting aside Georgia  
24 for a moment, those were all swing states, correct?

25 A. Yes.



1 Q. And those were all states that President Obama won in  
2 2008?

3 A. Yes. In Wisconsin, he won by 14 points. So I don't  
4 know if you'd call it a swing state in 2008, but it's generally  
5 considered that way today.

6 Q. So they're all -- with the caveat with Wisconsin,  
7 they're all considered swing states, right?

8 A. North Carolina, Florida and Ohio, yes.

9 Q. And all of those states had increases in  
10 African-American turnout in 2008, relative to previous  
11 elections, right?

12 A. I think almost every state did. So those states did as  
13 well, yes.

14 Q. All right. And, in all of those states, early voting  
15 was subsequently reduced, right?

16 A. In those three states that we're talking about now, yes.

17 Q. Well --

18 A. If we want to throw Wisconsin in, four.

19 THE COURT: Subsequently when? In '12?

20 BY MR. KAUL:

21 Q. Do you know what year they were reduced? Let me ask it  
22 a different way. They were all subsequent to the 2008  
23 election, right?

24 A. They were all subsequent to 2008.

25 Q. And some, like Ohio, were subsequent to 2012, right?

1 A. Ohio was subsequent to 2012.

2 Q. Let me ask you about something you've written. Shortly  
3 after the 2012 election, you wrote an article called "The Case  
4 of the Missing White Voters"; is that right?

5 A. Yes.

6 Q. And, in that article, you wrote that this surge in the  
7 nonwhite vote is troubling to Republicans, who are increasingly  
8 almost as reliant upon the white vote to win as Democrats are  
9 on the nonwhite vote; is that right?

10 A. I'll take your stipulation.

11 Q. And then you wrote: With the white vote decreasing as a  
12 share of the electorate over time, it becomes harder and harder  
13 for Republicans to prevail. Is that right?

14 A. Those sentences, I do believe, appear in that article,  
15 yeah.

16 Q. All right. And let's talk about some of those state  
17 examples you cited. I'm going to go through them fairly  
18 briefly, but you talked about the example of North Carolina,  
19 right?

20 A. Correct.

21 Q. And North Carolina, although it reduced early voting  
22 days, that included a stipulation that the early voting hours  
23 had to remain the same, right?

24 A. That's right.

25 Q. Now, how is it possible to reduce early voting days but

1 to keep the hours the same?

2 A. Longer days.

3 Q. Okay. Well, they went from 17 days to 10 days, right?

4 A. Yes.

5 Q. Okay. Is it your understanding that they stayed open 24  
6 hours or that they opened additional locations?

7 A. We didn't look at -- I didn't look into the hours issue  
8 in North Carolina.

9 Q. Okay. North Carolina, though, is a state that has  
10 multiple locations per county, right?

11 A. It does, yes.

12 Q. And we were talking about averages before. I think you  
13 said that the average in North Carolina was something like four  
14 per county?

15 A. I -- In the interest of efficiency, yes.

16 Q. Whatever it was, it's correct that the large counties  
17 have much more than that, right?

18 A. Large counties have more than -- a lot more than one.

19 Q. All right. So Wake County, where Raleigh is located,  
20 has approximately 20 early voting locations, right?

21 A. I don't know.

22 Q. And, in the 2014 election in North Carolina, there was a  
23 historic get-out-the-vote effort by various groups, including  
24 the NAACP, correct?

25 A. That's right.

1 Q. And there was the most expensive Senate race in United  
2 States history?

3 A. I think that's probably right.

4 Q. And you would agree that simply comparing  
5 African-American early voting usage in 2010 to 2014 is not the  
6 best way to test whether changes to early voting had an impact  
7 on turnout?

8 A. I think the best way to do it, to isolate it, if  
9 plaintiffs wanted to make this sort of assertion, would be to  
10 do a regression analysis.

11 Q. And can you do that with just two data points?

12 A. Well, you would look at the states where early -- you  
13 would do it with however many states you could get the data  
14 for. And you would have, you know, the number of early voting  
15 days available, the change in the number of early voting days,  
16 and see if there was a correlation with turnout. That's the  
17 way that you prove, or suggest, the sort of assertion that  
18 you're making.

19 Now, remember, everything in this entire second opinion  
20 is an opinion on things that plaintiffs would have to do but  
21 did not do in order to prove an assertion that they made. It's  
22 not, necessarily, to prove the opposite.

23 Q. You discussed these examples in your first report,  
24 right? You discussed the examples of Florida and North  
25 Carolina in your first report?

1 A. North Carolina, yes -- yes.

2 Q. So you're still --

3 A. -- responding to your complaint.

4 Q. Okay. So you're not making an affirmative case with  
5 these; you're sort of making a defensive case?

6 A. I'm making a defensive case and showing examples of what  
7 we know. But, I mean, ultimately, the kind of gold standard  
8 would have been a regression analysis.

9 Q. Okay. And you also talk about Florida by comparing raw  
10 turnout numbers in '08 to 2012, right?

11 A. That's right.

12 Q. And you are aware of estimates that over 200,000 people  
13 didn't vote in Florida in 2012 due to long lines, right?

14 A. Those estimates might exist. I don't know how certain  
15 we could be about the causal relationship, because turnout was  
16 down everywhere. Not everywhere, but it was down nationally in  
17 2008. So --

18 Q. Are you aware of evidence that precincts in Florida that  
19 had the longest lines had the lowest turnout?

20 A. No.

21 THE COURT: Historically, or when there are lines?

22 MR. KAUL: I was referring to Professor Allen's  
23 testimony, Your Honor. I think it was 2012, specifically.

24 BY MR. KAUL:

25 Q. I'm asking about 2012, specifically.

1 A. I've never read Professor Allen's reports, in either  
2 case.

3 Q. All right. Now, you also used CPS data in this report;  
4 is that right?

5 A. That's right.

6 Q. And you are aware that CPS data has what's called an  
7 overreporting bias?

8 A. Yes.

9 Q. And what does that mean?

10 A. It's a phenomenon where we know people lie about two  
11 things. We know people lie about lots of things, but the two  
12 things are whether or not they attend church regularly and  
13 whether they voted. And, so, with the CPS data, people say  
14 that they voted at higher rates than they actually did.

15 Q. And there have been studies indicating that that  
16 overreporting bias varies by race, right?

17 A. Yes.

18 Q. And, in particular, that the bias is more apparent with  
19 African-Americans, correct?

20 A. Yes. Nevertheless, political scientists use this data  
21 regularly. I'm not sure of any peer-reviewed literature that  
22 uses this data doing any sort of, quote, unquote, fix on it.

23 The Leighley & Nagler book, from 2014, dismisses those  
24 concerns and says that they can still proceed with the raw CPS  
25 data. So I think it's good enough to use.

1 Q. Just briefly on Florida, are you aware of articles that  
2 indicate that the reductions in early voting had a  
3 disproportionate negative impact on turnout for  
4 African-Americans?

5 A. I think there is working papers. I don't know that I've  
6 read any actual produced peer-reviewed literature on the  
7 subject. And I have no idea what the strength of -- if there  
8 is such literature, I don't know what the strength of the  
9 conclusions is.

10 Again, from what I saw in North Carolina -- this is  
11 going off my recollection -- it's kind of after-the-fact  
12 analysis and doesn't take into account the fact that  
13 African-American turnout was more robust than non-Hispanic  
14 white turnout, relatively speaking, nor does it consider that  
15 there was turnout declines across the country.

16 Q. All right. Let me shift gears briefly. In your report,  
17 you cite exit poll data from 2008 and 2012; is that right?

18 A. That's right.

19 Q. And you and I discussed those exit polls in your  
20 deposition, right?

21 A. Right.

22 Q. And, among other things, those exit polls indicate that  
23 President Obama, in Ohio, defeated Senator McCain by a 61-to-36  
24 percent margin; is that right?

25 A. I'm sorry?

1 Q. In Ohio, President Obama defeated Senator McCain among  
2 18-to-29-year-olds?

3 A. Oh, among 18 --

4 Q. I may have omitted that. If I did, I apologize.

5 A. Okay. I think -- without seeing the data, I think  
6 that's believable.

7 Q. Would it refresh your memory to look at the deposition  
8 transcript?

9 A. I will say I think those numbers are believable in the  
10 interest of efficiency.

11 Q. Let's try to be accurate, though.

12 MS. RICHARDSON: Objection, Your Honor.

13 THE COURT: Wait a minute. Let's move on.

14 MR. KAUL: Okay.

15 MS. RICHARDSON: Thank you, Your Honor.

16 BY MR. KAUL:

17 Q. And President Obama won African-Americans in Ohio 97 to  
18 2 in the 2008 election, right?

19 A. Yeah, that's right.

20 Q. And he won voters with no high school by a margin of 69  
21 to 31 in Ohio?

22 A. I think that's right.

23 Q. All right. And one of the questions in 2008 was, was  
24 the race of candidates a factor to you; is that right?

25 A. That's right.



1 Q. And 27 percent said yes; is that right?

2 A. Here, I actually am going to have to see the --

3 Q. That makes sense. It's deposition page 292, and right  
4 at the beginning.

5 A. Okay.

6 Q. All right. And let's focus on the full page, actually.  
7 Now, going down, we had a discussion of how that vote  
8 broke down; is that right?

9 A. Yeah. I remember the exit poll showed it, like, three  
10 different ways.

11 Q. And on the question of whether race was an important  
12 factor, it was fifty-fifty in terms of who those people voted  
13 for; is that right? And this is Lines 18 and 19.

14 A. Yeah. They broke the answers down three different ways,  
15 if I recall correctly. So one of the ways they broke it down  
16 would have been fifty-fifty.

17 Q. All right. And, now, President Obama, in 2008, was the  
18 first major party African-American candidate for president,  
19 right?

20 A. That's right.

21 Q. And is it your understanding that some voters were  
22 excited about the opportunity to vote for the first  
23 African-American president?

24 A. I would imagine, yes.

25 Q. Are you aware of any reasons that voters would have been

1 excited to vote for John McCain based on his race?

2 A. No. The problem is that, when you get to these  
3 questions at the bottom of the exit polls, they're not things  
4 that political scientists would rely upon, because it's  
5 generally understood that, the "Why did you vote this way"  
6 question, people reverse engineer their answers.

7 Q. Okay.

8 A. It's different than the "What race are you" and "Who did  
9 you vote for" breakdowns.

10 Q. And why did they reverse engineer their answer to say  
11 that they voted on account of race?

12 A. On these sorts of questions, they always reverse  
13 engineer it. If you suggest to someone, did you vote for  
14 President Obama because of how he handled Hurricane Sandy, the  
15 people who voted for Obama will say, yeah, it was because of  
16 Sandy. I mean, that's an ongoing tendency. I don't think  
17 you'll ever see these things at the end of the exit polls -- I  
18 won't say "never," but generally won't see them relied upon by  
19 political scientists. You'll see them disparaged.

20 Q. Okay. And 2012 exit polls had roughly similar results  
21 for most of these, putting aside the last question, actually?

22 A. As far as how members of different races voted and  
23 education, yeah, it was roughly the same.

24 Q. And that wasn't limited to the presidential election,  
25 right? It applied, for example, to Sherrod Brown's Senate

1 campaign?

2 A. Yeah. Generally speaking, the African-American vote is  
3 reasonably stable from election to election. There are  
4 exceptions, but --

5 Q. Let's talk about your discussion of calculus of voting  
6 in your rebuttal report. In Paragraph 3 on page 2 -- and this  
7 is Exhibit --

8 A. Yes, 17.

9 Q. -- 17, Defendants' 17, you say, if there is not a  
10 decline in turnout, then there have not been increased costs of  
11 voting?

12 A. Correct.

13 Q. Are you aware of any political science literature that  
14 draws that specific conclusion?

15 A. It's just a logical deduction. I mean, it's like  
16 a -- it actually is a law of logic.

17 Q. Well, there are two -- there are two parts of the  
18 equation for cost of voting, right: Benefits and costs?

19 A. Correct.

20 Q. So there can be increased cost, but also increased  
21 benefits, right?

22 A. Right, a net increased cost to vote.

23 Q. So you could see an increased cost, but -- okay. You're  
24 talking about net now?

25 A. Well, yeah.

1 Q. Okay.

2 A. It's increased cost of voting.

3 Q. Okay. And there are a variety of factors that go into  
4 whether net costs increase or decrease, right?

5 A. Yes. The problem is that, in Ohio, a lot of the  
6 commonly-asserted factors weren't present because the  
7 mobilization efforts were down, the competitiveness of the  
8 races were down. It's the opposite of what we saw in North  
9 Carolina, which we were talking about recently.

10 Q. Okay. And can you explain what you mean by that?

11 A. Right. So, in North Carolina, like we were just  
12 discussing, you had the most expensive race in history. You  
13 had, you know, a huge get-out-the-vote effort, as we discussed.  
14 And so that's -- you can pose that as an argument for why  
15 African-American turnout, overall, increased from 2010 to 2014,  
16 although I'm not sure it works because there are also efforts  
17 to get non-Hispanic white turnout up. But that's not present  
18 in Ohio because, as I talked in my direct, at every level of  
19 government, the races were less competitive, less competitive  
20 than they were in 2010, and less expensive.

21 Q. So what you're saying is, if the cost of voting had  
22 increased, you would expect to see a decline from 2010 to 2014  
23 in African-American turnout relative to white turnout?

24 A. If the cost of voting on African-American voters,  
25 vis-a-vis white voters, had increased, you would expect to see

1 that.

2 Q. Okay. And do you know what Dr. McCarty found about  
3 African-American turnout in 2014, vis-a-vis white turnout,  
4 relative to 2010 in Ohio?

5 A. No.

6 Q. If he did find that it decreased in 2014 relative to  
7 2010, that would be evidence of a disproportion of the impact  
8 from the challenged laws based on the reasoning you were just  
9 explaining, right?

10 A. I would have to see what Dr. McCarty did; but I know,  
11 looking at the exit polls and the CPS data, that  
12 African-American turnout was up as a share of the electorate.

13 Q. Okay. So you're using exit polling and CPS data?

14 A. Yes.

15 Q. And not the actual voter data?

16 A. Right.

17 Q. And actual voter data would be more accurate, right?

18 A. I don't know. I don't know about the issues involved  
19 with matching an ecological regression and so forth.

20 Q. Do you know what the margin of error is for  
21 African-American turnout in Ohio using CPS data?

22 A. No.

23 Q. Is it over five percent?

24 A. I don't know.

25 Q. It probably is, right?

1 A. I have no idea.

2 Q. All right. What is it in -- in some states, it's so  
3 large that you can't even use them in your calculations, right?

4 A. Oh, yeah. I mean, I think it's Montana that there were  
5 no African-American respondents to the CPS. So you literally  
6 can't do the estimate in Montana.

7 Q. Zero?

8 A. Zero.

9 Q. So the margin of error could be a hundred?

10 A. Yeah.

11 Q. Okay. But is it fair to say that there are relatively  
12 large margins of error?

13 A. It just depends on the state and the number of  
14 respondents.

15 Q. And you don't know what it is for Ohio?

16 A. No.

17 Q. Not even ballpark?

18 A. Not even ballpark.

19 Q. All right. Now, separately, the benefits from voting  
20 can change, as well as the costs, right?

21 A. Correct.

22 Q. So one way costs could change, for example, is, if car  
23 ownership rate went up, overall costs would go down, right?

24 A. It would -- it would depend.

25 Q. Well, if car ownership was correlated with

1 convenience --

2 A. You'd have to do a lot more work to make that assertion.

3 Q. It's a complicated phenomenon; is that fair?

4 A. It can be complicated.

5 Q. All right. Let's talk about your discussion of binning.

6 A. Yes.

7 Q. "Binning" is a term of art; is that right?

8 A. Yes.

9 Q. It's not one that you or Dr. Timberlake made up for this  
10 case?

11 A. Well, it's -- For example, when you're doing a histogram  
12 and you're breaking things up into groups, you put them in  
13 different bins. So I just kind of adopted it here. It seemed  
14 a way to -- a shorthand way of referring to what he was doing.

15 Q. And binning is done in the literature, right?

16 A. I don't know if it's done in the literature of testing  
17 turnout. But, like I said, if you're making a histogram, you  
18 might put -- You would create different bins. But one of the  
19 shortcomings -- An acknowledged shortcoming of histograms in  
20 general is that they can be sensitive to how you select your  
21 bins.

22 Q. And you used a binning approach in your North Carolina  
23 report, right?

24 A. You'll have to refresh me on that.

25 Q. You had histograms about the number of laws changed,

1 right?

2 A. Oh, right. But that, it was zero, one, two, three,  
3 four. There was no other way to do the bins.

4 Q. Okay. Now, you spend several paragraphs in your report  
5 discussing errors that you found in Dr. Timberlake's  
6 calculations, right?

7 A. Correct.

8 Q. And many of those were the result of a cut-and-paste  
9 error like the one we were discussing before with your North  
10 Carolina report, right?

11 A. My understanding is they were a bad sort, which is  
12 slightly different. But, yeah.

13 Q. Okay. Same type of error?

14 A. Yeah.

15 Q. And he addressed those errors in his errata, right?

16 A. Some of them. But, like I said, his -- to the extent he  
17 has an explanation of why he chose his distribution, they're  
18 based on the old -- the erroneous racial breakdowns. And  
19 that's never addressed. And so that's a problem.

20 Q. All right. So you got rid of the bins and looked at all  
21 counties together; is that right?

22 A. I suggested that's how it should be done and this is  
23 what you would find.

24 Q. All right. Now -- and you ran a regression, right?

25 A. Yeah, I did.



1 Q. In running that regression, did you weight the counties  
2 by size?

3 A. No.

4 Q. Okay. So you treated Vinton County the same as Cuyahoga  
5 County?

6 A. Right. Again, this is in response to Dr. Timberlake,  
7 showing what he should have done. In my opinion, he shouldn't  
8 have used bins at all. He should have put everything in one  
9 bin, where the divisions wouldn't be completely arbitrary, and  
10 sought to see if there was a relationship.

11 Q. Okay. But so, in your regression, if African-American  
12 golden week usage was relatively low in Vinton County but  
13 relatively high in Cuyahoga as a percentage, those would be  
14 treated the same?

15 A. Right, just as when Dr. Timberlake does his bins, he  
16 treats the high -- he treats the county with Lima in it the  
17 same as he does Vinton County.

18 Q. Well, he just has three bins, right?

19 A. Right. And he doesn't pay any attention to the overall  
20 population. Again, I'm trying to show what would be a  
21 non-arbitrary way to do the sort of analysis that Dr.  
22 Timberlake engaged in.

23 Q. Okay. So you're treating counties with very low  
24 African-American percentages the same as counties with higher  
25 African-American percentages, also, right?

1 A. Well, when you run the regression analysis to see -- no,  
2 because the point of the regression analysis is you're trying  
3 to see if that race correlates with the usage of golden week.

4 Q. I'm sorry. Let me put it differently.

5 THE COURT: You're killing my court reporter. Slow  
6 down, please.

7 THE WITNESS: I'm sorry.

8 BY MR. KAUL:

9 Q. We're not the first people to do it, either.

10 So, the point is, if Vinton County had high golden week  
11 usage and Cuyahoga County had high golden week usage, assuming  
12 they were approximately the same in relation to the mean for  
13 racial distribution, they'd have the same impact on the  
14 regression, right?

15 A. Just like in Dr. Timberlake's, they have the same impact  
16 on the bin even though they would be of different population  
17 values.

18 Q. And you are aware that Dr. Timberlake, in fact, does  
19 weight the counties by population, right?

20 A. I don't believe -- oh! When he ultimately calculates  
21 his averages, I think he does, yeah.

22 Q. Now, notwithstanding all that, you do find a positive  
23 correlation, at least in your 2008 results and some of your  
24 2012 results, between race and -- county race and golden week  
25 usage, right?

1 A. I can't say it's positive because it doesn't have the  
2 requisite degree of statistical significance to make that  
3 claim. It could be zero. We're not sufficiently sure that it  
4 is not.

5 Q. Okay. At the 95-percent level, right?

6 A. Well, that's the -- I'm not aware of anything in the  
7 field that considers confidence -- a p-stat of greater -- or  
8 t-stat of less than 1.96 as being reliable, that anyone would  
9 want to rely upon when giving expert opinions.

10 Q. And so what would one standard deviation from the mean  
11 be?

12 A. It would be a T of 1.

13 Q. Okay. And here the T's exceed that, right?

14 A. They do.

15 Q. And what would your confidence level be with a T of 1?

16 A. Well, we would --

17 Q. Would it be 66 percent?

18 A. Well, no. You're trying to drag me down the same trail  
19 you did in North Carolina. You can't -- you can't go that way.  
20 You look the other way, and you say, We're not sufficiently  
21 certain that the result is zero.

22 Q. It would be -- let me put it differently. It would be  
23 statistically significant at the 66-percent level, right,  
24 confidence level?

25 A. If you accepted 66 percent as reliable, that would be

1 what you do. But, again, no one would accept anything below 95  
2 percent as reliable.

3 Q. You're talking about in a peer-reviewed paper?

4 A. I'm talking, in general, that's the standard for  
5 reliability.

6 Q. Let me ask you about your regressions. You controlled  
7 for race and poverty at the same time, right?

8 A. Yes.

9 Q. Okay. So, if race is correlated with poverty, you're  
10 going to get less significance for race than you would if you  
11 were just isolating race, right?

12 A. No. It depends how high the correlation is. Multi-  
13 collinearity is only an issue when the correlation between the  
14 two variables is above 80 percent. And since you have a lot of  
15 counties in Ohio, in Southeastern Ohio, that have low -- that  
16 have high poverty rates but low minority populations, you're  
17 not going to have that degree.

18 So it's a way of saying, after we control -- if we kind  
19 of put our fingers in and hold steady poverty, how does the  
20 racial correlation look. And then you put your fingers, and  
21 you hold still the racial numbers, and you look at how the  
22 poverty numbers move with the turnout rates. Because they're  
23 independent of each other, it shouldn't affect your  
24 calculations.

25 Q. Okay. And because you're getting -- because you're

1 treating each county the same, it's going to be almost  
2 impossible to have that almost 80-percent difference you're  
3 talking about?

4 A. No. You could -- it would be theoretically possible, in  
5 Ohio counties, to have two variables that correlate with each  
6 other above 80 percent. I don't see why you couldn't do that.  
7 I mean, education and income, you would probably get that  
8 degree of correlation. And so you wouldn't want to use them  
9 both as independent variables in your regression analysis.

10 Q. Theoretically possible, but it's much less likely than  
11 if you were weighting counties by their population, right?

12 A. I don't see why that's the case.

13 Q. Are you aware of any literature that doesn't weight  
14 counties by population in comparing turnout across counties?

15 A. If I were doing this as part of my affirmative report, I  
16 would probably do a weighted least squares regression, instead  
17 of OLS. But, again, this is to show the type of analysis that  
18 Dr. Timberlake should have done and how that can affect the  
19 result and how the results that he finds are ultimately a  
20 result of his binning.

21 He could do a WLS regression. You could do a regression  
22 -- I mean, there is an infinite number of regression  
23 possibilities, almost, which is why I ultimately decided not to  
24 do it in my report. But, again, this is just to give an  
25 example.

1 I mean, ultimately, I wouldn't use counties as an  
2 indicator for how golden week is being used at the racial level  
3 because of the ecological inference problems. I mean, that's  
4 ultimately -- that's another big problem with the binning  
5 approach.

6 Q. All right. And what you'd need to do, then, is look  
7 within counties to see how usage of, say, same-day registration  
8 compares between racial groups within counties; is that right?

9 A. To the extent that there is a fight over the ecological  
10 regression analysis, I actually don't even know how it's being  
11 fought. I haven't paid too much attention to it, but that's  
12 probably -- that's the right fight to have, not the fight over  
13 the county-level data.

14 Q. All right.

15 MR. KAUL: I don't have any further questions.

16 THE COURT: Redirect?

17 MS. RICHARDSON: Thank you, Your Honor.

18 - - -

19 REDIRECT EXAMINATION

20 BY MS. RICHARDSON:

21 Q. Mr. Trende, I have just a very few questions for you.

22 You were asked during cross about being shown an  
23 interrogatory during your deposition that discussed what  
24 plaintiffs are actually asking for with respect to the number  
25 of early voting centers. Do you recall that?

1 A. I do.

2 Q. And, in fact, did we talk about that interrogatory  
3 during your direct?

4 A. Yes, we did.

5 Q. And so, at this point, I'll ask you to turn to Exhibit 3  
6 in your binder.

7 MS. RICHARDSON: And would it be possible to switch  
8 back over?

9 COURTROOM DEPUTY CLERK: Sure.

10 MS. RICHARDSON: Thank you very much.

11 BY MS. RICHARDSON:

12 Q. Have you seen Exhibit 3 before?

13 A. I've seen -- yes, I've seen Exhibit 3.

14 Q. What is this document?

15 A. This is the interrogatory responses, from one of the  
16 plaintiffs, that I was shown in my deposition.

17 Q. And if you turn to page 15, Interrogatory #19, --

18 A. Yes.

19 Q. -- is this the interrogatory, specifically, that you  
20 were shown in your deposition?

21 A. I believe so, yes.

22 Q. And could you just read here what Interrogatory 19 asks?

23 A. Identify specifically the number of early voting  
24 locations that you believe should be in each county to avoid  
25 the purported, quote, inequitable distribution of EIP voting

1 locations, end quote.

2 Q. And what is the answer presented there?

3 A. Plaintiff maintains that each county should be given the  
4 discretion to set the number of early voting locations to  
5 reflect the relative population of the particular county as  
6 compared to other counties such that any given voter in any  
7 Ohio county will enjoy the same level of access to limited  
8 voting resources.

9 Q. And is that answer consistent with your understanding  
10 that plaintiffs were seeking a distribution based on county  
11 population?

12 A. Absolutely.

13 Q. And if, instead, plaintiffs are seeking pure discretion,  
14 without any guidance, would it be permissible, then, for a  
15 county to choose to maintain one single early voting center as  
16 it does under current law?

17 MR. KAUL: Objection. Now we're into legal  
18 conclusions.

19 MS. RICHARDSON: I'm not asking for a legal  
20 conclusion, but just an understanding as to what complete  
21 discretion would mean.

22 THE COURT: I think I have a pretty good idea what  
23 complete discretion means.

24 MS. RICHARDSON: Thank you, Your Honor.

25 THE COURT: I'm kind of partial to it.



1 BY MS. RICHARDSON:

2 Q. You were also asked about a conversation that took place  
3 during your deposition with respect to CPS data and information  
4 about the number of early voting machines in particular states  
5 and turnout in some of those states. Do you recall that  
6 conversation?

7 A. It blurs together, but that sounds familiar.

8 Q. Did plaintiffs' counsel show you the turnout results and  
9 number of early voting centers for all states?

10 A. No.

11 Q. Did he, instead, just show you a select number of  
12 states?

13 A. Yes.

14 Q. And are you aware of whether there are examples of  
15 states that have a number of early voting centers and low  
16 turnout?

17 A. Low usage of early voting?

18 Q. (Nodding affirmatively.)

19 A. I believe the example I came up with in the deposition  
20 was Vermont. There are probably others.

21 Q. And you also, I believe, mentioned during cross that it  
22 wouldn't be possible to rely on just the raw numbers that you  
23 were presented with regarding number of early voting centers  
24 and early voting usage to draw any kind of causal conclusion.  
25 Was that your testimony?

1 A. I believe so.

2 Q. And why is that?

3 A. Because you would want to add additional -- if you want  
4 to draw that sort of causal connection, you would want to  
5 control for other factors. You'd ultimately, to do that sort  
6 of analysis, have to do a regression analysis, multi-vary it,  
7 probably, the controls for various demographic factors and  
8 whatnot, to see if it turns out there is a relationship between  
9 early voting utilization and the number of centers.

10 Q. Without doing that type of regression analysis, is there  
11 any way to know what might be causing those factors?

12 A. No. I do not believe you can eyeball the data and give  
13 an answer.

14 Q. So would it be entirely possible that, in a county that  
15 has very high usage of early voting, that the county or state  
16 might have responded to that usage by increasing early voting?

17 MR. KAUL: Objection to the form, Your Honor.

18 THE COURT: Rephrase.

19 MS. RICHARDSON: I can rephrase.

20 BY MS. RICHARDSON:

21 Q. You mentioned that it's impossible to know exactly what  
22 might be causing various factors; is that right?

23 A. Correct.

24 Q. Is it possible that a state could respond to high usage  
25 by increasing the number of early voting centers?

1 MR. KAUL: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: It's the whole problem of going from  
4 correlation to causation. I mean, one of the most common  
5 errors in making those leaps without putting controls in place  
6 is that you don't know whether A causes B, or perhaps B  
7 caused A. So, assuming there is some sort of relationship  
8 between usage of early voting and the number of early voting  
9 centers, you don't know what the cause -- what direction the  
10 causal arrow -- excuse me -- in which direction the causal  
11 arrow points there.

12 BY MS. RICHARDSON:

13 Q. And with respect to the number of early voting centers,  
14 I believe at one point you mentioned that Ohio has always had  
15 one day of early voting. And I think you may have meant to say  
16 that Ohio has always had one early in-person center per county.  
17 Is that accurate?

18 A. Yes. If I said "one day," I apologize.

19 Q. Similar to my "many, many states within the State of  
20 Ohio"?

21 A. Similar to that, yes.

22 Q. And you were also asked about wait times. Are you aware  
23 of whether or not there is a GAO report that examined Ohio wait  
24 times?

25 A. Yes. I believe that's referenced at the end of my

1 report.

2 Q. And if you take a look at Paragraph 249 of your expert  
3 report, Exhibit 14, --

4 A. Yes.

5 Q. -- is that the GAO report?

6 A. That's the reference to it, yes. And there is  
7 a -- yeah, Exhibit 30.

8 Q. And can you just generally describe what you're  
9 referencing in Paragraph 249 of your report?

10 A. It was a survey of wait times that found that Ohio's  
11 lines were only about ten minutes long on average. Sixteen  
12 states had longer wait times, including some of the states with  
13 expansive voting opportunities, like Georgia and Tennessee and  
14 Indiana. Twenty-three of the twenty-five most populous states  
15 were included. So you have a pretty good cross-sample, but  
16 only eight had shorter wait times than Ohio. And I go through  
17 in further detail, but it's a different take on that.

18 Again, this is in the kind of things-plaintiff-  
19 should-have-done section of the report. So it's not meant to  
20 be completely dispositive, but it's an important piece of data  
21 that you would want to interact with if you were trying to  
22 prove a causal connection.

23 MS. RICHARDSON: No further questions.

24 Thank you, Mr. Trende.

25 Thank you, Your Honor.

1 THE COURT: Yes.

2 Mr. Kaul.

3 - - -

4 RE-CROSS-EXAMINATION

5 BY MR. KAUL:

6 Q. Very briefly, Mr. Trende. These are my notes.

7 You talked about the states that we went through in  
8 discussing early voting locations and turnout.

9 A. Yes.

10 Q. We did go through every state that had 20 percent or  
11 higher early voting turnout relative to the overall turnout,  
12 right?

13 A. That's the problem. You also have to look at what's  
14 going on in the states that don't have high utilization of  
15 early voting and see how many centers they have. I mean, you  
16 can't just look at one half of the equation if you're trying to  
17 draw a correlation, to say nothing of causation.

18 Q. All right. And you talked about Vermont?

19 A. Off the top of my head, that's the state I remember.

20 Q. Do you know of any other states that have very high  
21 center-to-county ratios but have low early voting usage?

22 A. I didn't look into it. We were in the middle of the  
23 deposition. And, in scanning over the document, that's the one  
24 I found.

25 Q. Do you know what the population is in Vermont?

1 A. Four-hundred-and-fifty thousand.

2 Q. Do you know what the population is in Cuyahoga County?

3 A. About a million.

4 Q. You were just talking about the GAO report. You are not  
5 an expert in wait times to vote, right?

6 A. That's correct.

7 Q. And that report discusses averages, right?

8 A. Yes.

9 Q. It doesn't discuss longest wait times?

10 A. I'm sorry?

11 Q. It doesn't discuss longest wait times?

12 A. That's right.

13 THE COURT: You had all that written on that little  
14 note?

15 MR. KAUL: That was it, Your Honor. Thank you.

16 THE COURT: Thank you, Mr. Trende. You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 MR. KAUL: Small handwriting.

19 THE COURT: Both sides, right?

20 Will you approach the stand over here, sir. Raise your  
21 right hand to be sworn.

22 (Witness sworn.)

23 THE COURT: Ms. Coontz, you may introduce your  
24 witness.

25 MS. COONTZ: Thank you, Your Honor.

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TIMOTHY WARD

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

DIRECT EXAMINATION

BY MS. COONTZ:

Q. Mr. Ward, could you please state your full name, spelling your last name for the record?

A. Timothy Arville Ward, W-a-r-d.

Q. And where are you currently employed?

A. Madison County Board of Elections.

Q. And what is your job with the Madison County --

A. I am the Director of the Madison County Board of Elections.

Q. And what are your duties as the Director of the Board?

A. Conduct all elections, basically everything that is dealt with at the Board of Elections, everything from petitions to registrations to ballots. You name it. Whatever goes into an election, I deal with it.

Q. How long have you been on the Madison County Board -- excuse me -- the Director of the Madison County Board of Elections?

A. Since February 5, 2007.

Q. And are you also a member of the Ohio Association of Election Officials?

1 A. Yes. I am currently the Second Vice-President and the  
2 Co-Chair of the Legislative Committee.

3 Q. And that's also known as the OAEO?

4 A. Ohio Association of Election Officials, correct.

5 Q. Okay. And as the Vice-President of the -- I'm sorry,  
6 Which?

7 A. Second Vice-President.

8 Q. Second Vice-President. What are your responsibilities  
9 with the OAEO?

10 A. Obviously, as one of the three top officers, we oversee  
11 the Board of Trustees. So, really, there are 20 trustees, and  
12 then there is also a Legislative Committee. The 20 trustees  
13 are equally divided: Ten Republicans, ten Democrats. The  
14 Legislative Committee typically has approximately 30, again,  
15 equally divided, R and D's. And then, on the officers, the  
16 President, currently, is a Republican; the First Vice-President  
17 is currently a Democrat; and then myself, as the Second  
18 Vice-President, is a Republican. Next year, there will be two  
19 Democrats and only myself, the Republican. So that alternates  
20 every year.

21 Q. And what, exactly, is the OAEO?

22 A. It's the association for all election officials. That  
23 includes the four board members that make up the 88 counties,  
24 the Director and Deputy Director, and then all staff and clerks  
25 for every board of election, all 88 counties.



1 Q. So all 88 counties are members of the OAE0?

2 A. Not all 88. The one that I know that is not currently  
3 is Van Wert County. And that's simply their choice. If they  
4 don't wish to belong, we cannot force somebody. And there  
5 could also be financial reasons why somebody may not be a part.

6 Q. And what, exactly, does the OAE0 do?

7 A. We basically try -- well, we try and bring about the  
8 professionalism of election officials. That's the charge that  
9 we all have. We're a bipartisan group. We represent both  
10 parties, and we try to be fair about election laws. We  
11 advocate for changes in election. We have an executive  
12 director that frequently goes down to the legislature. We've  
13 actually built rapport with the legislature at this point that  
14 we now see bills coming out of LSC before they're even  
15 introduced to be able to advocate what makes election sense  
16 from an administrative aspect, not from a partisan position.

17 Q. And other than being a Second Vice-President, do you  
18 hold any other positions within the OAE0?

19 A. Yes. I'm currently the Co-Chair of the Legislative  
20 Committee. So, therefore, the 30 members, or approximately 30  
21 members, that represent the legislative chair, we discuss all  
22 legislation that is brought before us from the General Assembly  
23 to discuss and either recommend, oppose, or remain neutral on  
24 those issues.

25 Q. Were you the Madison County representative for the OAE0

1 in 2010?

2 A. In 2010, I was a member of the OAE0 as the Director.  
3 It's not so much that there are -- that everybody from a  
4 county, all of us, are members of the OAE0.

5 Q. And were you a member of the Legislative Committee  
6 during that time?

7 A. At that time, yes, I was.

8 Q. And are you familiar with the task force that was formed  
9 within the OAE0 in 2010?

10 A. In 2010, I was one of the six people that was selected  
11 to be on that.

12 Q. What was this task force?

13 A. This task force looked at, after 2008, with the issues  
14 of in-office voting, golden week, mailing out of absentee  
15 ballots, all of the issues that came out of 2008, the OAE0  
16 decided perhaps we should have a voice in election  
17 administration. Since we are the professionals that are  
18 actually conducting it, how about we get together as a  
19 bipartisan group and come to solutions, because what we saw is  
20 gridlock in the legislature, and we decided we could do better  
21 than the gridlock.

22 THE COURT: What is in-office voting?

23 THE WITNESS: In-office voting is actually -- people  
24 call it early voting. There is no such thing as early voting  
25 in the State of Ohio. So, in-office voting is absentee voting

1 by coming into the office.

2 There are three ways we can do it. We can mail you an  
3 absentee ballot. You can come in and ask for an absentee  
4 ballot. You'll hand carry it out. The third is we give you an  
5 absentee ballot, and you vote it at that time and then turn it  
6 in.

7 THE COURT: Thank you.

8 BY MS. COONTZ:

9 Q. Now, in 2010, as a Madison County election  
10 administrator, how many days, if you know, of early voting were  
11 there?

12 A. Well, again, there is no early voting. There is  
13 absentee voting.

14 Q. Sorry. Absentee voting.

15 A. So there were 35 days of absentee voting in 2010.

16 Q. And, as a member of the Madison County Board of  
17 Elections -- excuse me -- the Director, did you have any  
18 concerns with that?

19 A. There were many concerns. Obviously, with elections,  
20 there is a lot of things going on. There is everything from  
21 ballot preparation, because, again, with the State, ballots can  
22 be changed all the way up until 40 days. So we're working on  
23 trying to get all the names on the ballot, all the offices on  
24 the ballot, making sure all of the people that have a say in  
25 making sure everything is accurate checks it.

1           We have logic and accuracy in what we call L and A  
2 testing. That's the ability to run all of those ballots  
3 through the machines to make sure that every single potential  
4 sequence of votes -- so that, if you're in the first spot, the  
5 machine registers a vote for you; if you're in the third spot,  
6 it still registers you. So, the accuracy of the machines, we  
7 check all of that.

8           Q. Let me stop you right there. When you say "logic and  
9 accuracy," you're talking about the accuracy of the machine as  
10 it reads the ballot?

11          A. That is correct.

12          Q. Okay. And does this type of logic and accuracy testing  
13 occur 35 days before the election?

14          A. Yes. Well, right at that time, roughly.

15          Q. Okay.

16          A. So what we have to do is get our ballots in from the  
17 printer. So we get a test deck first to make sure does it seem  
18 to work. Then we actually test absentee ballots, the  
19 provisional ballots, the election-day ballots, to make sure  
20 that they will work in the specific M100 that is going into  
21 that particular location.

22          Q. During this time period, are you also processing, the 35  
23 days before the election, processing voter registrations?

24          A. Yes. That is probably the heaviest time when we receive  
25 voter registrations, is within that two weeks before the

1 cutoff, because people are starting to see -- and the  
2 newspapers and the press are very good about telling the  
3 public, okay, the voter registration -- all boards of elections  
4 have to actually advertise that cutoff time in the newspaper.  
5 So that's why the heightened amount of activity from the voters  
6 is probably the most prevalent at that time.

7 So we end up getting, literally, hundreds of  
8 registrations in in that immediate period before the 30-day  
9 cutoff.

10 Q. And what do you have to do with each of those  
11 registrations?

12 A. We have to verify all of the information. So we make  
13 sure that all of the necessary fields that are required by  
14 directive and law are filled in. We then have to enter those  
15 into our voter registration database. We put them in  
16 envelopes. We scan them. You know. It's very labor  
17 intensive, what we have to do for a registration.

18 If there is an error, we then also have to send  
19 correspondence to that voter, or that registrant, that they  
20 made an error and that, here is what -- you made a mistake. We  
21 send them in this time another voter registration to be able to  
22 fill that out and send it in and hopefully be able to get it to  
23 us in time.

24 Q. During this time period, are you also processing  
25 absentee ballot applications, this 35 days?

1 A. Yes. To put it in perspective, both in 2008 and 2010,  
2 we had approximately between 3000 and 3500 absentee  
3 applications in hand that we were trying to process  
4 simultaneously.

5 Q. When you say "we," how many employees does the Madison  
6 County Board of Elections have?

7 A. We have four full-time employees; and, once absentee  
8 voting starts, I bring in one part-time person to help,  
9 because, at the same time we're doing all of this, we're also  
10 preparing for election day. And that's kind of -- you can't  
11 miss election day. When it's election day, you'd better be  
12 ready with everything you needed to have done.

13 Q. Now, these absentee ballot applications that we've been  
14 talking about, does that include the UOCAVA ballots?

15 A. Yes. And, so, at the same time we're doing all of  
16 that -- the UOCAVA is a unique situation because UOCAVA voters  
17 are allowed to ask for an absentee to be e-mailed to them.

18 Q. What is a UOCAVA voter?

19 A. It's a military or overseas voter.

20 Q. Okay.

21 A. And so it can be both military stationed in the United  
22 States; it can be military stationed overseas; and it can be  
23 any voter, whether it's in Canada or England, that's requesting  
24 ballots to be sent to them. They are all entitled to have that  
25 e-mailed to them. And, typically, that's the prevalent way

1 people want to have it done today.

2 THE COURT: How do they cast that ballot?

3 THE WITNESS: They have to cast that ballot by mail.

4 So we have to return it. They cannot e-mail --

5 THE COURT: They have to print it out?

6 THE WITNESS: Well, they print it out at their end,  
7 color in the ovals. So we actually create a PDF. And so -- we  
8 have ballot-on-demand printing. What we do is we print a PDF  
9 of that ballot so that we have an electronic version. Then we  
10 reset the counter back to the original number and then print on  
11 our ballot-on-demand printing so that we actually have a  
12 physical ballot so that when we receive their ballot back from  
13 them on an eight-and-a-half-by-11 sheet of paper, we then have  
14 the Board vote to remake that ballot onto the original ballot  
15 that then can be scanned into our electronic scanners.

16 THE COURT: Thank you.

17 BY MS. COONTZ:

18 Q. So is it fair to say that, during this time period,  
19 there is a lot of going on at a board of elections  
20 administratively?

21 A. Administratively, it's -- we're there -- and that's  
22 where we used to wait for four o'clock so we could shut the  
23 door to stay 'til nine or ten o'clock getting the other stuff  
24 done.

25 Q. Okay. When you say you used to wait until four o'clock,

1 what do you mean by that?

2 A. Now we have extended hours. So now we're open either  
3 until seven o'clock or six o'clock or whatever happens to be  
4 that election time at that point.

5 Q. So let's go back to this 2010 task force. Did you bring  
6 these concerns to the 2010 task force that you've testified  
7 about?

8 A. Yes, I did.

9 Q. Okay. And did you discuss these concerns in the context  
10 of golden week?

11 A. Yes, we did.

12 Q. And what, if any, recommendation came out of that task  
13 force with respect to golden week?

14 A. The 2010 task force recommended the elimination of  
15 golden week.

16 Q. And how many days of early voting did the 2010 task  
17 force recommend?

18 A. If memory serves me correct, I think we ended up saying  
19 21 days.

20 Q. And how did this bipartisan group, from multiple -- from  
21 different-sized counties, come to that 21 days?

22 A. Because there is so much stuff going on that we have  
23 that, when you sit there and you think, if we have hundreds of  
24 registrations that have to be entered in, we need time to be  
25 able to put those into the system, because, whether it's 17 or



1 14 days, we have to have voter lists prepared so that voters  
2 can be challenged. And we have to produce that list. So all  
3 registrations and duplicates and everything else have to be  
4 resolved by that time period.

5 So that's why we started back -- not 35 days, not 28  
6 days; we were recommending 21 days so that we had sufficient  
7 time to be able to process all of the absentee requests we'd  
8 already received, because you can start to ask for an absentee  
9 request for the coming year either on January 1st or, since  
10 this is a March election, 90 days before. So we're already  
11 starting to receive absentee applications for the March 6th.

12 Now, they're not valid at this point. So now we have to  
13 send them a letter telling them it's 90 days before the  
14 election, which I think is probably maybe December 16th.

15 Q. But the ballot is not ready 90 days before the election?

16 A. Not even close. The ballots aren't ready until, at  
17 earliest, typically, 45 days. We have the ability, since it's  
18 all coded, to be able to ballot on demand. But we don't have  
19 ballots to send out 45 days before the election, no.

20 Q. So let's talk about the 21 days versus the 35 days that  
21 existed in 2010. So it was 35 days. The recommendation was 21  
22 days. What if any impact would that shortening have on your  
23 ability to process voter registrations?

24 A. Several. You know, obviously, it frees up the staff  
25 from voting people in-office, registering them in-office, so

1 that we could process that. It also allowed us the ability to  
2 receive -- whenever we put a registration into the system, we  
3 generate what's called an acknowledgment. It's a little  
4 three-by-five postcard we mail out to a voter saying you're now  
5 registered in the system, here is where you vote, and here is  
6 the ID you need to have in order to vote on election day if you  
7 choose to vote that way. That is sent by forwardable, or, by  
8 return delivery requested so that, if somehow the post office  
9 is not able to deliver that to you, it raises a question of why  
10 wasn't it able to be delivered: Do you not live there? Does  
11 that address not exist? What's the issue?

12 So, as soon as we get that back, we then put you into a  
13 provisional-status mode, which means you have to vote  
14 provisionally. We also send, then, a confirmation card, by  
15 forwardable mail, to you to verify that, yes, in fact, we have  
16 tried twice to reach you.

17 Q. So let me ask you this: If you send an acknowledgment  
18 card and you don't get it back, can that voter vote?

19 A. Yes.

20 Q. Okay. What if the acknowledgment card comes back after  
21 the election?

22 A. After the election, that happens because -- you know,  
23 I've seen where it comes back four, five, six months after we  
24 mail it out. Why the post office does it that way, we don't  
25 know. But the reality is an election is well over before we

1 could get an acknowledgment back.

2 Q. So we've talked, in this case, a lot about voter fraud  
3 and fraudulent votes. Do you have any examples of somebody  
4 voting who was not eligible to register to vote?

5 A. Yes. In Madison County, we've actually had three  
6 instances. Two were discovered by the Secretary of State, and  
7 those have been sent on. We also had a voter in Plain City  
8 that self-identified. She was here under a green card. When  
9 she went to renew that so that she could stay in the United  
10 States, she saw on there that it said have you ever voted. She  
11 had voted. She realized, whoops, maybe there is an issue here.  
12 She talked to an attorney. The attorney recommended that she  
13 contact the Board of Elections and let us know that she was not  
14 a U.S. citizen.

15 MR. KAUL: Objection, Your Honor. This is hearsay.

16 THE COURT: Overruled.

17 BY MS. COONTZ:

18 Q. You can continue.

19 A. Okay. So, in this instance, we actually, then, because  
20 whenever we have voter fraud, or the suspicion of voter fraud,  
21 by directive, our Board has to follow up. So we actually  
22 conducted a public hearing with our county prosecutor. And she  
23 came in with legal counsel. And we determined that, yes,  
24 indeed, she was not a U.S. citizen, and she had in fact voted  
25 in the November 2008 presidential election.

1 Q. Now, let's back up to our discussion on the  
2 acknowledgment cards. Take, for example, the 2015 election.  
3 How many acknowledgment cards did you get back at the Board of  
4 Elections after the election?

5 A. They come back constantly. You know, as long as we're  
6 entering them, we're getting them back every day, virtually.

7 Q. Do you have any way of knowing whether the individuals  
8 on that acknowledgment card actually voted?

9 A. That is not something that we have the time, nor a  
10 directive or advisory requires us to do. Would it be a good  
11 idea? Yes, I certainly think it would be a great idea.  
12 Unfortunately, that is not one of the things that falls under  
13 our purview at this time.

14 Q. So, for every acknowledgment card that you get back, is  
15 it possible that those voters were not eligible to vote?

16 A. Yes.

17 Q. And is it possible that those voters voted?

18 A. Yes.

19 Q. In your experience, how many voter registration  
20 acknowledgment cards have you received back at the Madison  
21 County Board of Elections?

22 A. In a year, we usually end up with a Tupperware  
23 container, about like that, full of them.

24 Q. Can you give me a number?

25 A. Maybe 500 to 750.

1 Q. Now, did that fact factor into the 2010 recommendation  
2 regarding the elimination of golden week?

3 A. Yes. As I saw that -- that's why we wanted more time.  
4 One day isn't sufficient time. We figured, if the cutoff of  
5 voter registration is 30 days and we go to 21 days, that at  
6 least gives us nine days to start receiving those back. And,  
7 typically, the post office is good about it, and we get them  
8 back quickly. It's just those instances where somehow it's  
9 taken them months to return them.

10 Q. Now, let's talk about the information on absentee ballot  
11 envelopes. Did the 2010 task force make any recommendations  
12 with respect to the information that should be required on an  
13 absentee ballot envelope?

14 A. Yes.

15 Q. And what recommendation was made?

16 A. Was that -- we wanted the name, the address, some form  
17 of ID, whether it is a Social Security number, a driver's  
18 license number, a utility bill, something like that. We wanted  
19 the birth date, and we also wanted a signature.

20 Q. Now, based on your experience as an elections  
21 administrator, why was this information important?

22 A. Well, obviously, the name is important because are they  
23 registered somewhere in the State of Ohio or, in our instance,  
24 have they changed their name.

25 Address is important. Did they vote the ballot where

1 they currently live? We still see people asking for an  
2 absentee ballot either where they used to live and had it  
3 mailed somewhere -- to their new address, and so they really  
4 aren't living there, but they've asked for their ballot to be  
5 sent there.

6 Birthday, obviously, for the comparison to be able to  
7 determine is it -- because a lot of times there may be two  
8 people -- and we just had this happen this election, where  
9 there are two people with the exact same name. They didn't  
10 call the older one senior and the younger one junior. They  
11 both had the exact same name.

12 Q. So how does this additional information help you?

13 A. That allows me to determine which voter voted and which  
14 voter deserves to receive the voter history.

15 Q. Okay. And why is the voter history important?

16 A. Because that -- if you don't vote in two federal  
17 elections, you can lose the right to vote.

18 Q. So you credit a voter and allow them to continue to be  
19 able to vote with this information?

20 A. That is correct.

21 Q. Okay. Now --

22 THE COURT: You mean you have to re-register.

23 THE WITNESS: If you -- it's called an NCOA, National  
24 Change of Address. And we process that -- used to be every two  
25 years. The legislature changed it. We now do it every year.

1 And what that does is, if the post office has received a  
2 change-of-address from you, we send you a confirmation card  
3 asking are you still registered at your previous address or do  
4 you wish to now be registered. So we're proactive in trying to  
5 register you at your new address so that you're not voting and  
6 having to vote provisionally.

7 THE COURT: All right. But when you don't vote in two  
8 subsequent --

9 THE WITNESS: Then we send you that confirmation  
10 because are you no longer living there and you have, in fact,  
11 moved out of state and have registered in another state so that  
12 we can clean up our records. That's really what we're trying  
13 to do.

14 THE COURT: All right.

15 BY MS. COONTZ:

16 Q. So let's move ahead to the 2013 task force. Were you a  
17 member of the 2013 OAE0 task force?

18 A. Yes. I was one of two that had served on the previous  
19 one, as well.

20 Q. How many people were on the 2013 task force?

21 A. There were eight of us the second time.

22 Q. What was the political breakdown?

23 A. Equal number: Four R's, four D's.

24 Q. What was the goal of the 2013 task force?

25 A. Again, to look at how we vote people, whether it's

1 hours, whether it's how many days, whether it's golden week,  
2 whether it's provisional, envelope -- we had so many issues  
3 with the provisional envelope -- absentee. And, so, you know,  
4 it was a bipartisan group where we basically took off our R hat  
5 and our D hat, put on our election official vote, and decided  
6 what's best for the voters.

7 Q. Was uniformity the goal?

8 A. Uniformity across the entire thing. And that's where,  
9 when we sat there, you know, we had big counties. Madison  
10 County happened to be the only small county that sent out  
11 absentee ballot applications. We saw that because -- most  
12 people don't realize this, but there are overlaps with  
13 virtually every county, whether it's a congressional district,  
14 an Ohio House district, Ohio Senate district. There are  
15 overlapped school districts. All of those overlaps, we wanted  
16 uniformity so that a voter in Franklin County under a  
17 Congressional District 15 had the same hours and opportunity to  
18 vote as a person in the 15th Congressional District in Madison  
19 County.

20 Q. And was that overlap unique to Franklin and Madison  
21 County?

22 A. It is -- every county has overlaps.

23 Q. And so why is uniformity in absentee balloting and hours  
24 and days important?

25 A. Because it wouldn't be fair, with those overlaps, for a



1 congressional district voter in Franklin County to have  
2 extended hours, versus Madison County, or receive an absentee  
3 application, versus Madison County not receiving one.  
4 Everybody needs to be treated the same. That's what equal  
5 protection is about.

6 Q. So, with that goal in mind, did the 2013 task force make  
7 any recommendations with respect to absentee ballots?

8 A. Yes.

9 Q. What were the recommendations?

10 A. We recommended that, every single election, everybody  
11 receive an absentee application. In even years, the State  
12 Legislature would pay for those absentee ballots. So we would  
13 charge back the State.

14 In odd years -- since counties are allowed to charge  
15 back one-hundred percent of the costs of an election, in odd  
16 years, we would charge the subdivisions that were on that  
17 ballot.

18 Q. Okay. And what about golden week? What, if any,  
19 recommendations did the 2013 task force make with respect to  
20 golden week?

21 A. It continued the same recommendation as the previous,  
22 the 2010, which was to eliminate golden week.

23 Q. How many days of early voting, if you recall, did the  
24 2013 task force recommend?

25 A. I think that one actually started 28 days before. It

1 was the day after voter registration ended.

2 Q. So the current --

3 A. The current system.

4 Q. Okay. Now, was everybody happy walking out of the two  
5 thousand -- with the recommendations of the 2013?

6 A. Actually, that was the beauty of it. Nobody was happy.  
7 And I think, when you have nobody happy, you've hit what is  
8 right.

9 Q. When you say nobody was happy, what do you mean by that?

10 A. The R's weren't happy, the D's weren't happy, but we all  
11 walked out being able to shake hands and say we did the right  
12 thing.

13 Q. Okay. Now, I meant to ask you -- I skipped over this --  
14 with respect to provisional balloting, did the 2013 task force  
15 make any recommendations with respect to provisional ballots?

16 A. Yes. Provisional -- what we saw was, there was a lot  
17 of -- well, we saw a lot of lawsuits happening, or challenges  
18 of elections, because of provisional balloting. We were  
19 getting a black eye for our provisional ballots.

20 What we saw with that was, we needed to be able to  
21 register people so that, yes, you didn't update your  
22 registration because you moved into Madison County this time,  
23 but, the next election, we want to make sure you can vote a  
24 regular ballot.

25 The problem with the envelope at that time was that on

1 one side was the requirements for your vote to count. On the  
2 other side was a voter registration form. If you made a  
3 mistake on the voter registration form, you didn't get  
4 registered. And so we wanted to make it a much quicker, easier  
5 process so that one side would have all of the voter  
6 registration information.

7 It also -- we found, as election officials, to verify  
8 those provisionals is a difficult, time-consuming process. So,  
9 if you're not registered in Madison County, I now need to check  
10 to determine whether you're registered somewhere in the State  
11 of Ohio.

12 What we found was, first name is not a good thing to  
13 search a database by, because it delivers a whole lot of Johns  
14 if I'm searching for John.

15 Q. And let me stop you. When you're validating, or  
16 verifying, provisional ballots, what database are you  
17 searching?

18 A. We search, first, our local registration database to  
19 determine are you a Madison County voter.

20 Q. Okay.

21 A. If I can't find you in Madison County, then I go onto  
22 the Secretary of State's portal and go into the voter query,  
23 which is the statewide voter registration database. That has  
24 certain fields that I can search by. So I can search by first  
25 name, I can search by last name, I can search by last four

1 digits of your Social Security number, I can search by your  
2 driver's license number, or I can search by your birthday.

3 I found that the birthday is the fastest way because, if  
4 you look at the last four digits of a Social Security number,  
5 there are a lot of people that have the same last four digits;  
6 they don't have all of the digits, but the last four are the  
7 same.

8 There can also be a lot of John Smiths. So just  
9 searching by name doesn't work. But searching by "John" and a  
10 birthday, usually we'll find who I'm looking for.

11 So that's why OAE0 recommended the birthday being added,  
12 because it certainly made our ability to search and verify that  
13 you are a voter much quicker for us.

14 Q. And when you can verify voters, you can count their --

15 A. Then I can go to that county, ask is that voter  
16 registered in your county, did they vote, does the signature  
17 compare; please send me a copy of their registration. And now  
18 my board votes to accept that ballot.

19 Q. Can you use the date of birth on a provisional ballot to  
20 compare registrations from other counties as well?

21 A. Yes, because that's -- every -- in the statewide voter  
22 registration database, it has all of the history. So, if you  
23 lived in Athens County and merged to Franklin County and then  
24 went to Union County, it has all of that history in there. So  
25 I can actually track where you've been.

1 Q. So, from an election administration perspective, what  
2 does adding the date of birth and the address on a provisional  
3 ballot accomplish?

4 A. Date of birth does two things. If there is two people  
5 with the exact same name and the exact same four digits of the  
6 Social Security number, I can use that to verify I have the  
7 right voter.

8 Q. For these 2013 task, or -- excuse me.

9 For the 2013 and the 2010 task forces, what's happened  
10 with the recommendations after the task force made them?

11 A. The task force made the recommendation. It then went  
12 before the Board of Trustees. And the Board of Trustees is  
13 comprised of 20 election officials, both directors, deputy  
14 directors, and board members. And we may even have -- and we  
15 do, in fact, have some staff members that are board of  
16 trustees. There are ten D's and ten R's that make that up.  
17 They then voted on the recommendation.

18 Q. And let me start with the task force. The 2013 task  
19 force, was that represented by both -- excuse me -- Were the  
20 members from large and small counties?

21 A. Large, medium-size, and small counties.

22 Q. And same question with the 20 trustees. Does that  
23 represent large and small counties in Ohio?

24 A. And medium-sized. It's pretty much -- actually, the  
25 large counties, if you looked at it, have more than the small

1 counties.

2 Q. Let's talk about, just very briefly, the voter rolls in  
3 Madison County. Based on your experience as an election  
4 official, why is it important to clean up voter rolls?

5 A. Well, obviously, there is a number of reasons. One  
6 thing is, we have to order a ballot for every single registered  
7 voter. So, if you're no longer a registered voter -- every  
8 time I have to order a ballot, it's 28 cents. So it becomes an  
9 economic issue on the one hand.

10 The other thing is that we assign up to 1400 registered  
11 active voters to a precinct. If I have 500 people that aren't  
12 active or aren't supposed to be in there, I now have too many  
13 people, or not enough, that I could actually have more voters  
14 being assigned there. So cleaning it up certainly helps us  
15 immensely.

16 Q. And with the mailing of absentee ballots, from an  
17 election administrative perspective, what does this do?

18 A. Well, if you're mailing absentee applications to every  
19 single voter -- since Madison County was the only county in the  
20 State of Ohio that chose every single election to mail out  
21 absentees. We didn't differentiate between a general election  
22 or a special election. We had special elections in Madison  
23 Plains. We mailed absentee applications to every registered  
24 voter in Madison-Plains. So we, every single election, did  
25 that.

1           What we found was, if we included the inactive voters,  
2           versus the active, we were inundated with all of these  
3           applications coming back, because they no longer lived there.  
4           That meant we had a huge administrative problem, because you  
5           have to scan all of those, you have to index all of those, you  
6           have to then have records retention of all those; and so, you  
7           know, when you're receiving, you know -- after a massive mail  
8           dump and you're receiving 500 absentee applications back that  
9           you now have to process into the system, it's a lot of extra  
10          work.

11          Q.    And you've touched on my final question.  Your  
12          involvement with the OAE0, you were involved as a local  
13          election administrator, correct?

14          A.    Correct.

15          Q.    And what impact, if any, does your experience as a local  
16          election administrator have on your involvement with OAE0?

17          A.    Well, obviously, my colleagues have enough faith in me,  
18          because they appointed me to be the Second Vice-President.  So,  
19          having been appointed to both absentees -- there are only two  
20          of us that they held high enough in the esteem to be able to be  
21          on both.  That's myself and Pat McDonald from Cuyahoga.  That's  
22          the only two that served on both.

23                Obviously, being appointed as the Chair, you know -- the  
24          Co-Chair of the Legislative Committee, being appointed to the  
25          Legislative Committee, to serve on the CCAO Funding

1 Committee -- that's the County Commissioners Association of  
2 Ohio -- I've served on that, I think, since 2008 -- and now to  
3 be appointed to be the Second Vice-President, to be the leader  
4 and the president of the organization in two years, I think  
5 that speaks highly of what I bring to the table for OAE0 from a  
6 small county. I received an award last year from the Secretary  
7 of State for the election calendar I put together to be able to  
8 help election officials realize everything we have to do in an  
9 election and the time frame we have to accomplish each of those  
10 items.

11 Q. And how do the recommendations of the OAE0 affect local  
12 elections once you get back to Madison County?

13 A. What has happened is, we now have credibility with the  
14 General Assembly. That credibility allows us to now have a  
15 say, such as Senator Seitz. I was able to go down and meet  
16 with Senator Seitz to be able to put together Senate Bill 216,  
17 to be able to make why we need certain information from an  
18 administrative standpoint, not from a partisan standpoint, but  
19 what's going to make the most sense from an administrative  
20 standpoint. He originally wanted to eliminate the cutoff for  
21 correcting errors on provisionals to three days. We then had  
22 that extended to seven days, down from the ten. That's the  
23 input that OAE0 was able to have.

24 The birthday. I was the one that recommended to Senator  
25 Seitz let's eliminate the birth year; let's just have the month



1 and the day.

2 Why? Because you would not believe how many voters  
3 think they were born this year, in 2015, and how many  
4 provisionals or absentee ID envelopes we receive back. When it  
5 says what's your birthday or birth date, they put 2015. So,  
6 again, we were able to incorporate that into the legislation.

7 Likewise, the ability for a board to have three members,  
8 if they agree we have enough critical data points, to be able  
9 to open this absentee ballot or a provisional ballot; let's be  
10 able to have three members all agree on that in a bipartisan  
11 fashion so that the voter's vote counts, that's the kind of  
12 stuff that, from a small county, I'm able to have that kind of  
13 impact in our profession. That's important to me.

14 MS. COONTZ: Thank you very much.

15 No further questions at this time.

16 THE COURT: Mr. Martin, you may cross.

17 - - -

18 CROSS-EXAMINATION

19 BY MR. MARTIN:

20 Q. Good afternoon, Mr. Ward.

21 A. Good afternoon.

22 Q. I want to start by discussing some of the questions you  
23 were asked about golden week.

24 How many people in Madison County have you observed  
25 using golden week to register and to vote?

1 A. I think maybe three to five if -- I'd have to look at  
2 the deposition for the NAACP, but I actually had pulled that  
3 information for that deposition at one time.

4 Q. That would be three to five since you've been on the  
5 Board?

6 A. No, three to five in the one time. Less than 50,  
7 probably.

8 Q. Since February of 2007, since you've been --

9 A. Yes.

10 Q. -- with the Madison County Board of Elections?

11 Do you know how much time it took you or your colleagues  
12 to verify the registrations and the eligibility of those  
13 approximately three-to-five voters per week?

14 A. Not off the top of my head, no. However long it takes  
15 to plug the information in and process them.

16 Q. Okay. And do you recall -- you submitted a declaration  
17 in this case, correct?

18 A. Yes, I did.

19 Q. And, as part of that declaration, you provided a cost  
20 estimate of how much it would cost to operate golden week for  
21 the 2015 election that we just had, correct?

22 A. Correct.

23 Q. Do you recall how much --

24 A. I think it was in the ballpark of a thousand dollars or  
25 so.

1 Q. Right. Do you know what the budget was for this past  
2 election, for Madison County, for the election?

3 A. No. Actually, I just had to submit our budget for this  
4 year, and it was \$410,000, plus change.

5 Q. For this past year?

6 A. For -- no. For 2016, it was probably about 400,000.  
7 When I looked at the numbers, I had to increase it because of  
8 the hours and stuff, but roughly 400,000.

9 Q. Okay. And you were asked about incidents of voter fraud  
10 in Madison County on direct examination, correct?

11 A. Correct.

12 Q. Did any of those occur during golden week?

13 A. Not during golden week, no.

14 Q. Are you aware of any instances of golden week being used  
15 to commit voter fraud in Madison County?

16 A. Again, I wouldn't have any specific knowledge because,  
17 again, we don't check all of those acknowledgments to see --  
18 you know, there is no requirement to check any of that. We  
19 don't have the time to check that. So I don't have any  
20 firsthand knowledge, but that doesn't mean it doesn't exist.

21 Q. You are authorized, under state law, to conduct those  
22 investigations, however, correct?

23 A. Yes, under -- if there is any evidence or a complaint,  
24 you know. We're typically complaint driven.

25 Q. And are you aware that other counties do conduct

1 investigations when the acknowledgment cards come back and  
2 they're unable to confirm the address and eligibility of a  
3 voter who registered?

4 A. That's never been brought up at any of the association  
5 meetings. So, no, I wouldn't have that knowledge.

6 Q. So you are not aware of investigations conducted by  
7 Cuyahoga County or Hamilton County?

8 A. The only one that we ever saw -- now, we don't have  
9 access to the newspapers. We did see that Hamilton County was  
10 conducting some -- I guess it was against a nun or something  
11 like that. That's the only information I have.

12 Q. Okay. So, just to summarize, you're unaware of any  
13 specific instance of golden week being used by a voter to  
14 commit fraud, either Madison County or throughout the State?

15 A. Yeah. I have no, nor would I have reason to know that.

16 Q. You also discussed this problem of acknowledgment cards  
17 coming back after the election, correct?

18 A. That's correct.

19 Q. Now that golden week has been eliminated, has that  
20 changed the cutoff date for registrations?

21 A. No. The cutoff is still the 30th day, which is  
22 actually, in all reality -- since the 30th day always falls on  
23 a Sunday, actually, the 29th day is the cutoff.

24 Q. Okay. And so has the elimination of golden week  
25 expanded the period in which you have to verify new registrants

1 in Madison County or anywhere else in the State?

2 A. No. In all reality, we still have the same amount of  
3 time. It depends on when we get the acknowledgment card back,  
4 if we do get it back.

5 Q. So has the elimination of golden week enabled you in any  
6 way to weed out ineligible voters from eligible voters who are  
7 registering?

8 A. Well, again, I guess that if we go back to the  
9 deposition -- and I guess the best way that we look at it is,  
10 as I said in my declaration, historically, that would be the  
11 best time to commit the voter fraud if you're going to commit  
12 voter fraud.

13 So, if you get a weather forecast that says there's a  
14 chance of rain, do you run around and open all your windows so  
15 you have a wider open window, or do you close all your windows  
16 when there is a chance of rain?

17 So I look at it, when there is a chance of voter fraud,  
18 I don't increase the amount of chance for voter fraud. I try  
19 to eliminate it. And that's why OAEO voted to eliminate golden  
20 week, because we saw, as an organization professionally running  
21 elections, that's the greatest time for voter fraud to occur.

22 Q. But you're unaware of any specific instance where that  
23 actually happened?

24 A. Right. But, again, we don't check that. That's what  
25 I'm saying.

1 Q. Let's talk about the OAE0 for a moment. Do you recall  
2 the names of the Democrats who were members in 2013?

3 A. A handful. Probably the person that stands out the most  
4 to me was a gentleman named Steve Harshman. He's either the  
5 director or the deputy director, depending on which year and  
6 cycle we're in, of Montgomery County.

7 Q. Do you remember any of the others?

8 A. Not off the top of my head. I could refresh. I  
9 actually brought the list. And -- you know.

10 Q. Do you remember any of the other counties that were  
11 represented?

12 A. Yeah. We had the three largest. Hamilton County was  
13 represented, Cuyahoga County was represented, and Montgomery  
14 County was represented.

15 Q. Do you recall who represented Cuyahoga County?

16 A. Yes. It was Pat McDonald.

17 Q. Do you recall who represented Hamilton County?

18 A. Not off the top of my head. I want to say he wasn't the  
19 director or the deputy. It's the -- they call him the election  
20 administrator --

21 Q. Okay.

22 A. -- in Hamilton County. If I saw the name or you told me  
23 the name, I'd say, Yep, that's him.

24 Q. I don't know the name of the election administrator.

25 A. Okay.

1 Q. Same question for 2010: Do you remember the names of  
2 the --

3 A. Yeah. That, I have a little bit better memory of.

4 Ken Terry from Allen County. Peggy Byers, who is the  
5 Secretary of the Legislative Committee, and I think she is from  
6 Washington County. There was a Tippi Slaughter. She was from  
7 Butler County. Myself. Jim Milliken, who was the Director at  
8 Jackson County at the time. And then I forget who the other R  
9 was. There was one more.

10 Q. Was Cuyahoga represented in 2010?

11 A. Yeah. Pat McDonald.

12 Q. And Hamilton County, as well?

13 A. No.

14 Q. Montgomery?

15 A. No.

16 Q. Okay. Franklin?

17 A. No.

18 Q. Lucas County?

19 A. No.

20 Q. Summit County?

21 A. No --

22 Q. And just to confirm, Pat McDonald --

23 A. Bill Mallory. That's the name. I knew I'd think of it.

24 Q. From Hamilton County?

25 A. From Hamilton County.

1 Q. All right. And, just to confirm, Pat McDonald is a  
2 Republican?

3 A. That is correct.

4 Q. Okay. Let's talk a little bit more about the changes to  
5 the provisional ballots that you recommended and helped  
6 implement.

7 You were asked on direct to describe how the provisional  
8 ballot affirmation form could be used to update a registration  
9 or to register to vote; is that correct?

10 A. That is correct.

11 Q. Now, before the date of birth and address were made as  
12 requirements for casting a provisional ballot, a voter still  
13 had the option to include that information, correct?

14 A. That's correct. That was on the old form as well.

15 Q. And if they did include that, would the old form then be  
16 able to be used to --

17 A. No. It was the back side of the form.

18 Q. The back side of the form. Would that, then, be able to  
19 be used to register or update a registration?

20 A. Yeah. See, the front side was to be able to ascertain  
21 whether this voter was the correct voter for the ballot to be  
22 opened. On the back side was that actual voter registration  
23 form for them to be able to update their name or their address  
24 or, you know, any of that information.

25 Q. And, in formulating the recommendation to make the date



1 of birth and address an actual requirement, did you consider  
2 the need to have -- to condition a voter's ability to cast that  
3 ballot and have it counted on including that information?

4 A. Yes, because, in the left-hand column of that form, it  
5 tells you whether it is a required field or not. So, in every  
6 single instance, if it's required, in the left-hand margin of  
7 that provisional envelope, it says "Required." So, if you can  
8 understand the word "Required," you would then know it's a  
9 required field.

10 Q. And what was your reason for requiring that information,  
11 versus allowing a voter the option to give it so that, if they  
12 failed to do so on the previous form, that their ballot would  
13 not be rejected?

14 A. There was two reasons, actually. The one is, we wanted  
15 to go to -- what ended up happening is, the voters would sit  
16 there and start to fill out the front, never turn the envelope  
17 over. Then we got into, well, it's poll worker error, and we  
18 didn't want to continue those arguments and those lawsuits. So  
19 we decided, let's have one form do everything for us.

20 So, by the law, birthday is one of the required fields  
21 to register to vote. So, therefore, that had to be included in  
22 that provisional envelope if we were going to also use it to  
23 register voters.

24 So it sped up the process. It actually improved our  
25 ability to check that voter, because now we had birthdays, and

1 we could determine which actual voter this was in the statewide  
2 voter registration database. And so there are so many reasons  
3 why the birthday made sense for us to be able to add that, you  
4 know. It's for proper election administration.

5 Q. Okay. And you were also asked about the similar  
6 requirements for absentee ballots, correct?

7 A. Correct.

8 Q. And you gave the example of a father and son?

9 A. The birthday was always in the absentee, that I  
10 remember, all the way back to -- I don't ever remember that not  
11 being a required field in my time.

12 Q. Okay. And was the signature always a requirement, as  
13 well?

14 A. It was always a requirement. The only thing that's  
15 fluctuated back and forth was, was the date necessary. And  
16 there was always debate about, you know, is the date required  
17 with the signature. And, finally, you know --

18 Q. When you say "the date," do you mean the --

19 A. The date it was signed.

20 Q. The date it was signed?

21 A. So, really, it's name, address; and -- anymore, the name  
22 and the address, since we have to pre-print the label that goes  
23 on that ID, that's not even required -- and then it's birthday,  
24 some form of ID, signature. That's to protect the voter from  
25 somebody voting in their stead.

1 Q. And are you aware of any instances where you were unable  
2 to identify a voter based on the signature and the other  
3 information required?

4 A. Oh, yeah. Signatures are -- you know. We have to have  
5 a lot of flexibility in signatures. Obviously, the birthday  
6 differentiates if -- you know, in Madison County -- in most  
7 counties there are more than the father and the son, and they  
8 may not be senior and junior. They have the exact, same name.  
9 It causes problems for our poll workers: Which one is here?

10 So, you know, that's why, now, with the electronic poll  
11 books, we're actually able to give the year of the birth so  
12 that we can determine -- I can tell a 20-year-old versus a  
13 40-year-old, so that it does help in that aspect.

14 Birthday is, you know -- from an election-administration  
15 standpoint, it's probably the best piece of information we can  
16 garner.

17 Q. So you mentioned earlier that, in the context of the  
18 provisional ballots, you advocated not making the year a hard  
19 and fast requirement to be included with the birth date.

20 A. Correct. That was in Senate Bill 216.

21 Q. And, so, if that information is incorrect on a  
22 provisional ballot affirmation form, what happens to that  
23 provisional ballot?

24 A. If it's incorrect?

25 Q. Right, the year that you advocated so that it would not

1 be necessary on a provisional ballot.

2 A. If the year is incorrect, we do not disenfranchise that  
3 voter. As long as they have the month and the date, that is a  
4 valid provisional ballot.

5 Q. And if the month and the date are incorrect, --

6 A. -- and there is sufficient other information that we can  
7 determine, the Board, by a vote of three members, can allow  
8 that vote to be opened.

9 Q. And can the vote -- can the Board, by a vote of three  
10 members, do the same determination if, for instance, there is a  
11 discrepancy with the address provided, so that it can determine  
12 whether or not --

13 A. I don't know. I would have to look at the directive.  
14 I've not had that instance come up that I had to look at the  
15 directive to determine that, to be quite honest with you.

16 Q. Okay. Assuming for the sake of conversation that the  
17 Board does not have that discretion, would it be a good thing,  
18 based on your experience as an election administrator, to give  
19 the boards the discretion to count that ballot?

20 A. That's where we -- we really, you know -- I had to do a  
21 good sell on Senator Seitz because what we saw is, what happens  
22 if it's a two-to-two vote and then it goes to the Secretary of  
23 State and partisan politics comes into play.

24 So that's where, you know, as an election official, I  
25 tend to try and stay away from allowing tie votes to be

1 referred on.

2 So, in that instance, I would say probably not. You  
3 know. It was one thing to give flexibility in that aspect on  
4 the provisional, because we are trying to count every vote. I  
5 would not want to make that a blanket that, every time there is  
6 ever an issue, that it goes to the Board and they're able to  
7 determine that.

8 Q. But, at least for the subset of the date of birth, the  
9 boards do have this discretion to make a determination about  
10 whether or not the voter's identity is actually in question?

11 A. Correct.

12 Q. And, as far as you understand, it's for the other  
13 categories of the Board --

14 A. And really what it was was to accommodate the year. It  
15 wasn't to accommodate I've got the month and the day wrong.  
16 That wasn't the purpose. The purpose was to be able to  
17 accommodate those voters that wrote "2015" as their birth year,  
18 when, in fact, we know they wouldn't be eligible to vote,  
19 because they aren't 18 years of age.

20 Q. And, in your experience, do voters make similar sorts of  
21 errors with the address, transposing numbers or --

22 A. Yeah. But, again, with the address, transposing  
23 numbers, the difference can be monumental. This side of the  
24 street may be in this precinct. This side of the street may be  
25 in a different precinct. So I have to have the exact address,

1 because that's how we determine what ballot you receive. You  
2 should not be eligible to vote for a Third Ward councilmember  
3 when you live in the Second Ward.

4 Q. And what if the discrepancy does not, you know, appear  
5 to place the voter in different precincts?

6 A. That's where the whole Hamilton County fight and, you  
7 know, Secretary Brunner saying: Well, we'll count half of  
8 them.

9 You know, as an election official, I don't get into what  
10 is the proper legislation in those instances.

11 Q. Well, I'm not asking so much about the proper  
12 legislation. Under the current law, how do you  
13 administer -- how do you, in Madison County, treat a ballot in  
14 those circumstances?

15 A. If it's not the right address and it doesn't exist, then  
16 how do you accept that? You have to have an address.

17 Now, we also accommodate the homeless people, what is a  
18 geographic area. That's good enough for us, and the directives  
19 all spell all that stuff out for us. So we refer to the  
20 directives whenever we get into those anomalies that we don't  
21 see day to day.

22 Q. Back to the date of birth on provisional ballots for a  
23 moment --

24 THE COURT: What do you mean, for the homeless  
25 geographic area? What are you saying there?

1 THE WITNESS: Well, at least what we understand is, if  
2 you live under a bridge, you can register under that bridge.

3 THE COURT: Tell us which bridge.

4 THE WITNESS: Just tell us which bridge, and we'll  
5 determine which precinct that bridge is in.

6 THE COURT: All right.

7 THE WITNESS: So we allow you to vote.

8 THE COURT: Okay.

9 BY MR. MARTIN:

10 Q. Let's go back to the date-of-birth requirement for a  
11 moment.

12 If the date of birth is left blank, does the Board still  
13 have the authority to look at all of the other information and  
14 then cast the ballot?

15 A. In that instance, I wouldn't make a determination. We  
16 would refer that to the Secretary of State's legal counsel to  
17 let us know which way they recommend.

18 Those kinds of questions, those aren't commonplace.  
19 Those don't happen for us. And, when they do come up, we do  
20 ask for guidance from the Secretary of State's Office.

21 Q. Okay.

22 THE COURT: You don't go to your county prosecutor for  
23 that type of thing?

24 THE WITNESS: That's the -- we always get the  
25 trade-off.

1 For the election law, typically, yes, our county  
2 prosecutor is our legal counsel. But a lot of times our county  
3 prosecutor will ask us to check what's the Secretary of State  
4 say.

5 So our first course is, what's the Secretary of State  
6 say. Then we run that by our legal counsel and say: Okay,  
7 here is what the Secretary of State says.

8 Most of the time he'll defer to them because that's  
9 their area of expertise.

10 THE COURT: Thank you.

11 BY MR. MARTIN:

12 Q. Since Senate Bill 216 went into place, have you observed  
13 this particular problem with the date of birth being --

14 A. No. It's actually solved the problem with 216, because  
15 now when they write down "2015," I'm still able to count the  
16 ballot.

17 Q. I'm sorry. I was asking, specifically, when there is no  
18 information included in the date of birth.

19 A. I've never seen somebody not give us that information.

20 MR. MARTIN: Okay. Just one second.

21 (Whereupon, there was a brief interruption.)

22 MR. MARTIN: Nothing further, Your Honor.

23 THE COURT: Thank you.

24 MS. COONTZ: Nothing further, Your Honor.

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



1 THE WITNESS: Thank you, Judge. I appreciate it.

2 THE COURT: You may step down.

3 Let's start at 9:30 in the morning. All right?

4 MR. SPIVA: Your Honor, could we ask one question  
5 before we break for the day?

6 THE COURT: Do I have to answer it?

7 MR. SPIVA: Your Honor always has the discretion not  
8 to answer it.

9 I was wondering what Your Honor was thinking about in  
10 terms of closing statements, whether you wanted them, whether  
11 there is a set length, whether you wanted us to address, more,  
12 legal issues, as opposed to facts, or whether you want us to  
13 just, you know, use our discretion. I just wanted to see if we  
14 could get some guidance on that.

15 THE COURT: I'll let you know in the morning. Take  
16 the night off.

17 MR. SPIVA: All right.

18 (Proceedings were concluded at 5:12 p.m.)

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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