

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE) 1:13CV658
CONFERENCE OF THE NAACP, et)
al.,)
Plaintiffs)
vs.)
PATRICK LLOYD MCCRORY, in his)
official capacity as Governor)
of North Carolina, et al.,)
Defendants)

LEAGUE OF WOMEN VOTERS OF) 1:13CV660
NORTH CAROLINA, et al.,)
Plaintiffs)
and)
LOUIS M. DUKE, et al.,)
Plaintiffs-Intervenors)
vs.)
THE STATE OF NORTH CAROLINA,)
et al.)
Defendants)

UNITED STATES OF AMERICA, et) 1:13CV861
al.,)
Plaintiff)
vs.)
THE STATE OF NORTH CAROLINA,)
et al.)
Defendants)

VIDEOTAPED DEPOSITION OF
STEPHAN THERNSTROM, Ph.D.

11:39 A.M.
JANUARY 7, 2016

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1 THE VIDEOGRAPHER: Good morning. Here
 2 we're on record, video record, ladies and
 3 gentlemen, at 11:39 a.m. My name is Merinda
 4 Evans. I am from Discovery Court Reporters in
 5 Raleigh, North Carolina. Phone number is
 6 800-293-3376.
 7 This is a matter pending before the
 8 United States District Court for the Middle
 9 District of North Carolina. The case is
 10 captioned United States of America vs. The
 11 State of North Carolina, the North Carolina
 12 State Board of Elections, et al., Case
 13 Number 1:13-CV-861.
 14 This is the beginning of DVD 1,
 15 Volume 1, in the deposition of Stephan
 16 Thernstrom. We're located at 655 15th Street
 17 Northwest, Washington, D.C., and this is taken
 18 on behalf of the plaintiff.
 19 Would counsel all identify yourselves,
 20 starting with the questioning attorney, and
 21 would the court reporter swear in the witness.
 22 MR. SHAPIRO: I'm Avner Shapiro. I'm
 23 taking this deposition on behalf of the United
 24 States, plaintiff in the matter.
 25 THE WITNESS: Uh-huh.

5

1 expert witness?
 2 A. Yes.
 3 Q. Many times?
 4 A. Yes.
 5 Q. Okay. Well, we'll go over the rules of the
 6 road quickly. Because we have a court
 7 reporter, if you can keep your voice up.
 8 A. Uh-huh.
 9 Q. Try not to talk over me. I'll try not to talk
 10 over you.
 11 A. Uh-huh.
 12 Q. And if you would be so kind as to answer my
 13 questions with actual words, that would be
 14 appreciated. Is that all clear?
 15 A. Yes. I probably will lapse into "uh-huh" or
 16 something, but --
 17 Q. No problem. I'll just remind you to --
 18 A. Yes.
 19 Q. -- give me a yes or a no.
 20 And if I ask you a question that's not
 21 clear, which happens more often than I would
 22 want, or if I don't -- if you don't understand
 23 my question for any reason, you don't hear it,
 24 just ask me to repeat it. I'll be happy to do
 25 that, or explain my question. If you answer

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1 MR. GLICK: Michael Glick from Kirkland
 2 & Ellis on behalf of the NAACP plaintiffs.
 3 MR. MANER: Chris Maner, Kirkland &
 4 Ellis, on behalf of the NAACP plaintiffs.
 5 MS. LIEBERMAN: Denise Lieberman with
 6 Advancement Project on behalf of the NAACP
 7 plaintiffs.
 8 MR. MELLETT: Tim Mellett on behalf of
 9 the United States.
 10 MR. MCCRARY: I'm not an attorney.
 11 MR. FARR: Oh, okay. Well, we're glad
 12 to have you anyway. Tom Farr, Ogletree Deakins
 13 in Raleigh. I'm here representing the
 14 defendants.
 15 THE REPORTER: Anyone on the telephone?
 16 MR. GLICK: I don't see it as on.
 17 STEPHAN THERNSTROM, Ph.D.,
 18 having been sworn by the Certified
 19 Reporter to tell the truth, the whole truth and
 20 nothing but the truth, testified as follows:
 21 EXAMINATION
 22 BY MR. SHAPIRO:
 23 Q. Good morning, Dr. Thernstrom.
 24 A. Good morning.
 25 Q. I take it you've been deposed before as an

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1 one of my questions I'm going to -- I'm going
 2 to assume that you understood it.
 3 A. Yes.
 4 Q. Is that clear? Okay.
 5 And if you want a break at any time,
 6 just let me know.
 7 A. Uh-huh.
 8 Q. And is there anything here today that would
 9 interfere with your ability to completely and
 10 truthfully answer my questions today, an
 11 illness, a medication, anything along those
 12 lines?
 13 A. No.
 14 Q. All right. Thank you.
 15 Well, then let's begin. And if you
 16 could, could you just tell me a little bit
 17 about what the focus of your academic work has
 18 been, particularly your writings?
 19 A. Uh-huh. I'd say it has been the study of race
 20 and ethnicity over the course of American
 21 history. I have dealt with other subjects in
 22 some writing. I wrote a textbook in US history
 23 that attempts to cover everything. But, you
 24 know, if you counted the pages, it would
 25 overwhelmingly fall within that category.

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1 Q. A textbook on US history. It went up to when,
 2 what period of time?
 3 A. Beginnings to present. The present in that
 4 case was 1984 for Volume 1 and 1988 for
 5 Volume 2. So it's quite a while back. And if
 6 I were rewriting such a book, writing such a
 7 book today, it would be different in various
 8 ways, I'm sure.
 9 Q. Okay. And was that a general history book?
 10 A. Yeah. It was for the college market.
 11 Q. And --
 12 A. And it earned, almost to the penny, enough to
 13 put my two children through college, which was
 14 the main reason I wrote it.
 15 Q. Okay. That's important.
 16 And how does your expertise relate to
 17 the opinions you're giving for us in this case?
 18 A. Well, I would say that part of my study of race
 19 and ethnicity has involved questions of
 20 politics, political participation, group
 21 mobilization.
 22 And I would say the most extensive such
 23 discussion is to be found in this thick volume,
 24 "America in Black and White," written jointly
 25 with my wife Abigail.

1 And it's not a book I've gone back to
 2 that much, so I did search it after this
 3 deposition was scheduled, and find there are --
 4 there's a long chapter on politics and a long
 5 chapter on voting rights.
 6 And I should say this is a highly
 7 academic study, though we wrote it in a way we
 8 hoped would be appealing to lay readers.
 9 But the first chapter on politics
 10 includes 160 supporting notes, with a good many
 11 articles from things like the "Journal of
 12 Politics," the "Social Science Quarterly," the
 13 "American Journal of Political Science," et
 14 cetera. And chapter -- the chapter on voting
 15 rights has another 128 notes spread over nine
 16 very closely packed pages.
 17 So I would say that would be the
 18 starting point to establish that I have some
 19 expertise in the study of political behavior,
 20 specifically African-American political
 21 behavior.
 22 Q. Uh-huh.
 23 A. I would make one other point here, maybe more
 24 than one. The first is, since you're
 25 interested and your demand for production of

1 documents included things I've edited, it's, I
 2 think, quite pertinent to my qualifications
 3 that I was the editor of the "Harvard
 4 Encyclopedia of American Ethnic Groups," which
 5 is a 1500 page tome. I didn't bring it in.
 6 The additional 10 pounds in my briefcase would
 7 be too much.
 8 But when -- when I and the two other
 9 editors who worked with me planned it, we made
 10 an outline. We wanted to identify all of the
 11 leading visible ethnic groups in the United
 12 States, and came up with a list something over
 13 a hundred, located experts who had written
 14 about each of them.
 15 And we prepared an outline, not as a
 16 rigid, every article must proceed from A to B
 17 to C, but we insisted, you know, that they
 18 consider and try their best to answer questions
 19 about -- which included a set of questions
 20 under the heading politics, when did group
 21 enter local and national political life, what
 22 political organizations are characteristic,
 23 what patterns of political participation and
 24 behavior have evolved, what motivates
 25 participation.

1 So within the many, many pages of that
 2 volume, there is a great deal of information
 3 about, you know, the political behavior of
 4 Estonians, of Albanians, of the Welsh, et
 5 cetera.
 6 And we also commissioned a very good
 7 essay that tried to synthesize all of the
 8 information about those groups. It was written
 9 near the end where we could give him drafts of
 10 all of the entries and all these things.
 11 A very good historian, Eugene
 12 Kantrowitz, wrote an essay pulling together and
 13 generalizing about the experience of groups.
 14 So -- and since I read every draft, in
 15 some cases it was many drafts of these things,
 16 I became -- learned a great deal about some of
 17 these minor groups. I knew a lot about the
 18 Irish and Germans and so on, but --
 19 And I would say one of the things I
 20 learned from that, though I was already
 21 conscious of it and had some bearing on my
 22 critique of Drs. Burden and Stewart, is that
 23 there was a tendency in immigration studies
 24 earlier on, to view immigrants as kind of
 25 hopeless, helpless victims driven across the

1 ocean by vast impersonal forces. My mentor at
 2 Harvard, the great historian Oscar Handlin,
 3 wrote a very famous best-selling book called
 4 "The Uprooted." And his emphasis then, and
 5 what many people took from it was that these
 6 people were just buffeted about by forces too
 7 vast for them to deal with.

8 And though that is a great book still,
 9 I think the ethnic encyclopedia, which Oscar
 10 Handlin also was a guiding spirit in, yields a
 11 very different message, which is that immigrant
 12 groups did not just get dropped on our shores
 13 by accident, nor did they wander off and settle
 14 down in lower Manhattan or whatever without any
 15 idea of what they were doing.

16 The vast majority of them came by chain
 17 migration, that is -- and my Swedish
 18 grandparents in the 1880s were among them.
 19 They didn't -- they came through New York but
 20 they had managed to save enough money to get a
 21 through ticket to Detroit. And there were a
 22 lot of Swedes in Detroit, some of whom they
 23 knew, who said come to Detroit, there's plenty
 24 of -- you're very good woodworkers, and there's
 25 an enormous demand for carpenters, et cetera.

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1 And the same principle applies with internal
 2 migrants, black migrants. Why are black
 3 migrants from Mississippi not to be found in
 4 New York, Philadelphia, they're to be found in
 5 Chicago, not even Detroit in large numbers.

6 Q. I'm going to have to cut you off there --
 7 A. Okay.

8 Q. -- because that was a rather long explanation
 9 of some of your experience. I appreciate it.

10 So with regard to this encyclopedia,
 11 were there any articles that you wrote in that
 12 encyclopedia related to voting specifically?

13 A. No, no.
 14 Q. Okay.
 15 A. That I wrote, no.
 16 Q. Okay. But you reviewed?
 17 A. Uh-huh.
 18 Q. Okay.
 19 A. Yeah.
 20 Q. And in the context of reviewing articles, were
 21 you -- did you edit any article about voting in
 22 that --
 23 A. Yes. I edited all the articles, and in some
 24 cases the discussion of group political
 25 mobilization, which is another way for saying

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1 getting them to the position where they vote.
 2 Sure, I edited all of that.

3 Q. And do you recall any article specifically that
 4 dealt with voting in North Carolina?
 5 A. No, no.
 6 Q. No?
 7 A. It's a national study.
 8 Q. Okay. Do you recall any article specifically
 9 that dealt with the voting rights of
 10 African-Americans in the United States?
 11 A. Sure.
 12 Q. Which --
 13 A. There is an entry on African-Americans by a
 14 historian at the University of Chicago. There
 15 are --
 16 Q. Do you happen to recall his name?
 17 A. Sure. Thomas Holt.
 18 Q. Okay. And what was that article about?
 19 A. Well, that -- I'm not sure -- I didn't have a
 20 chance to review it -- how much it discussed
 21 politics. It's mainly literary and cultural
 22 analysis, though Tom Holt actually wrote a very
 23 good book, the reason I chose him, on blacks
 24 during reconstruction in Alabama maybe,
 25 Georgia.

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1 Q. And how --
 2 A. Sort of the focus, but --
 3 Q. How about your -- the book that you wrote with
 4 your -- with your wife, did you say?
 5 A. Yes.
 6 Q. I understand that she also is an academic with
 7 an extensive career, and a lot of her work has
 8 focused on voting --
 9 A. Voting rights, yeah.
 10 Q. -- related issues?
 11 Was there a division of labor when you
 12 wrote this book in terms of who was writing
 13 what chapter?
 14 A. Yeah. There was a very clear division of
 15 labor. She focused on the legal,
 16 constitutional dimensions of voting rights, and
 17 in other chapters where she worked, too. I did
 18 all of the quantitative analysis and really
 19 pretty much all of the social science.
 20 She doesn't consider herself a social
 21 scientist. I do. So it was a marriage of
 22 those two different perspectives.
 23 Q. So on that chapter on voting rights that you
 24 mentioned --
 25 A. Yeah.

16

1 Q. -- that's in that book, is that a chapter that
 2 was principally authored by her and then --
 3 A. Well, I haven't counted the pages. What I was
 4 referring to when I first alluded to it was
 5 portions of that chapter and the accompanying
 6 footnotes that I wrote exclusively, and I
 7 really did all of the social science in that
 8 book. And there are -- I think, it's 78
 9 tables. I compiled them all. That's not
 10 her --
 11 Q. Got it.
 12 A. -- cup of tea.
 13 Q. Okay. We can return -- can return to that.
 14 That's very helpful for giving me an overview on
 15 some of your academic background.
 16 A. Uh-huh.
 17 Q. I would like to --
 18 A. I could say more about some of my --
 19 Q. We can go back to it. I think we'll have an
 20 opportunity to return to it a little bit later.
 21 A. Uh-huh.
 22 Q. I wanted to ask you. So in the context of what
 23 you've been asked to do in this case --
 24 A. Uh-huh.
 25 Q. -- what opinions have you been asked to provide

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1 in this case?
 2 A. What was I asked --
 3 Q. Yeah.
 4 A. -- to do in this case?
 5 Q. Yeah.
 6 A. To evaluate the series of expert reports
 7 dealing with the legal questions at issue in
 8 this case, reports particularly of Drs. Burden
 9 and Stewart. I also read a good deal of
 10 Dr. Lichtman's reports in that I wasn't totally
 11 clear at the outset -- I didn't know that he
 12 was not participating in this stage, so I
 13 considered him, too. But by the time I wrote
 14 the report, I --
 15 Q. So if I understand you, your principal job was
 16 to just read the reports of Drs. Burden and
 17 Stewart, and to give your, what, general
 18 opinions about what you thought their reports
 19 said or --
 20 A. To evaluating -- evaluate them as contributions
 21 to social science, as reflecting acceptable
 22 scholarship that answers the questions the
 23 experts thought they answered. I mean, they
 24 were attempting to make a case as part of your
 25 legal argument, that the changes, first the

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1 early ones, one-day voting and the like, and
 2 now voter ID, will have a strong negative
 3 effect on levels of black political
 4 participation and voter turnout.
 5 Q. Okay. So with regard to Dr. Stewart, I think I
 6 want to ask you some questions about some areas
 7 where it wasn't clear to me whether there was
 8 any -- any dispute based on --
 9 A. Uh-huh.
 10 Q. -- my review of your report, and so perhaps you
 11 can clarify.
 12 Now, in your review of Dr. Stewart's
 13 statements, did you -- did you see where he was
 14 discussing how, in recent past elections,
 15 African-Americans had disproportionately been
 16 relying on early voting?
 17 A. Uh-huh, yes, I saw that.
 18 Q. Did you see that section?
 19 A. Yes.
 20 Q. Now, do you dispute his sort of empirical
 21 findings in that regard?
 22 A. No, not at all. I understood him to be saying,
 23 and I think it is fundamental to his argument,
 24 not just blacks vote in somewhat different ways
 25 than whites, they use early voting more, they

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1 use one-stop voting more, et cetera, and he
 2 estimated the numbers that would be affected by
 3 the laws that went into effect that -- and
 4 whose outcome can be judged in the 2014
 5 election.
 6 And I did not see any recognition in
 7 his work that, well, gee, if you change -- if
 8 you keep the number of hours the polls for
 9 early voting are open the same, but
 10 concentrated in fewer days, that, of course,
 11 that will have a disparate impact on
 12 African-Americans. They won't be able to
 13 figure that out.
 14 Q. But Dr. Stewart, in terms of my question to
 15 you --
 16 A. Uh-huh.
 17 Q. -- and if you could respond to my question. If
 18 I understand correctly, with regard to just the
 19 empirical finding that African-Americans had
 20 been disproportionately relying on early
 21 voting --
 22 A. No, I don't challenge that. Sorry. No, I
 23 don't challenge his empirical findings. I
 24 challenge what I took to be his interpretation.
 25 Q. Okay. And did you do any independent analysis

20

1 of those early voting hours and -- to determine
 2 who was using earlier voting and what --
 3 A. No, I did not do --
 4 Q. Okay.
 5 A. -- any independent --
 6 Q. Okay. And did you see statements by
 7 Dr. Stewart where he was discussing how early
 8 voting sort of ensures that there are less
 9 errors in an election, that you're
 10 centralizing, you're ensuring a degree of
 11 professionalism in the way the election is
 12 being administered because more people are
 13 going to a central office to vote? Did you see
 14 that?
 15 MR. FARR: Objection to the form. And
 16 that just means that I have an objection to the
 17 way the question was asked, and you're free to
 18 answer the question.
 19 THE WITNESS: Okay. Well, if I
 20 understand you -- no, I think I'd like you to
 21 restate that question.
 22 BY MR. SHAPIRO:
 23 Q. Okay.
 24 A. Yeah.
 25 Q. Are you aware that Dr. Stewart has stated that

21

1 early voting --
 2 A. Uh-huh.
 3 Q. -- provides a method of election where more
 4 voters have an opportunity to get to vote with
 5 the assistance of better trained officials --
 6 A. Uh-huh.
 7 Q. -- it's a centralized system, and it's less
 8 error prone?
 9 A. Uh-huh.
 10 Q. Did you see that?
 11 MR. FARR: Objection to the form.
 12 You may answer.
 13 THE WITNESS: I have a dim memory of
 14 that. I didn't think it particularly
 15 significant in that the issue here was not
 16 abolishing early voting or not.
 17 BY MR. SHAPIRO:
 18 Q. Okay.
 19 A. It was changing the hours.
 20 Q. Okay. Do you dispute that analysis?
 21 A. I have no opinion on that analysis. It seems
 22 plausible, but I don't know -- I mean, it's not
 23 an empirical statement.
 24 Q. Right.
 25 A. It is something he thinks, but what's the

22

1 evidence for it? I don't recall that he
 2 documented this in any way and looked at
 3 studies in other states where early voting --
 4 Q. Okay.
 5 A. But it is a plausible --
 6 Q. Dr. Thernstrom, it's something that Dr. Stewart
 7 has studied. Is this an issue that you
 8 studied?
 9 A. Uh-huh. No, I have not studied it, no.
 10 Q. Okay. And are you aware that Dr. Stewart has
 11 stated that the use of early voting often
 12 allows jurisdictions to economize when they're
 13 running elections?
 14 A. Uh-huh.
 15 Q. That it could be a more efficient way to run an
 16 election?
 17 A. Uh-huh, uh-huh.
 18 MR. FARR: Objection --
 19 THE WITNESS: That's --
 20 MR. FARR: Objection to the form.
 21 Go ahead.
 22 THE WITNESS: I understand Dr. Stewart
 23 is of that opinion, yeah.
 24 BY MR. SHAPIRO:
 25 Q. And do you dispute that?

23

1 A. No. I -- well, I wouldn't dispute it. I
 2 wouldn't endorse it. I would say I have no
 3 expertise on that question.
 4 Q. Did you look at that issue at all in this case?
 5 A. I didn't attempt to search for scholarly
 6 articles addressed -- addressing that.
 7 Q. Okay. Are you familiar with Dr. Stewart's
 8 assertions that waiting lines for voting would
 9 likely increase as a result of the elimination
 10 of early voting days and that more lines would
 11 impose greater costs to voters?
 12 Did you see that?
 13 A. Yes, I did see that.
 14 Q. And did you study that issue?
 15 A. No, I did not study that issue. I do recall --
 16 I mean, after all, the test of that
 17 proposition, we do have an empirical test of it
 18 in the 2014 elections.
 19 And I recall seeing claims by either
 20 Dr. Stewart or Burden that there were longer
 21 lines than were necessary or than would have
 22 been the case otherwise. I've seen -- but I
 23 can't recall who did look into this. I believe
 24 there is a report for the defense that disputes
 25 that. So I --

24

1 Q. Did you review that report?
 2 A. -- would have to be agnostic on that question.
 3 I would say that if you're concerned
 4 about voting lines, the abolition of the
 5 out-of-precinct voting system that had been in
 6 place would -- I certainly would think would be
 7 highly likely to reduce voter lines because
 8 voters don't concentrate in a few precincts
 9 where they are dropped off by bus where they
 10 are not registered in that precinct.
 11 So that, I would think, would have
 12 produced longer lines. But I haven't --
 13 Q. Have you ever studied the issue of voter lines?
 14 A. No, no.
 15 Q. So with regard to out-of-precinct voting --
 16 A. Uh-huh.
 17 Q. -- are you aware that Dr. Stewart found that in
 18 recent elections African-Americans have
 19 disproportionately been voting out of precinct?
 20 A. Yes.
 21 Q. His empirical findings on that?
 22 A. Yes.
 23 Q. And do you have any basis for disputing his
 24 findings?
 25 A. Whether -- no, that African-Americans use

25

1 out-of-precinct voting more, no, I think that
 2 seems to be a fact, as I understand it, yeah.
 3 Q. Was that an issue that you studied, examined?
 4 A. No.
 5 Q. Okay.
 6 A. But in terms of -- as I said, in terms of voter
 7 lines, the out-of-precinct voting, as I
 8 understand it, is responsible for longer wait
 9 times because precincts which are equipped to
 10 handle 2,000 voters in one day may have 5,000,
 11 3,000 of them voting out of precinct.
 12 Q. Uh-huh.
 13 A. So they're going to be a lot more crowded.
 14 Q. So explain to me, what's the relationship
 15 between early voting and out-of-precinct voting
 16 in your mind?
 17 A. I'm talking about out-of-precinct voting here.
 18 Q. Okay.
 19 A. And I'm saying that out-of-precinct voter --
 20 voting, I believe, led to longer lines because
 21 voters -- the precincts are set up to
 22 accommodate a certain number of voters. They
 23 know how many voters are in their precinct, and
 24 so a precinct that is larger than another will
 25 have more staff, presumably.

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1 Q. Okay.
 2 A. But if lots of out-of-precinct voters come,
 3 then one voting station will be handling twice
 4 or three times as many voters as it can
 5 accommodate quickly.
 6 So that in terms of wait times,
 7 abolishing out-of-precinct voting would reduce
 8 waiting time for the average voter, for the
 9 average African-American voter, since they're
 10 using that mechanism more often than whites
 11 are.
 12 Q. Okay. So are you aware that during early
 13 voting you can go to a central location, you
 14 don't need to be in your --
 15 A. Yes.
 16 Q. -- actual precinct?
 17 A. Yes. But we're -- I thought we were talking
 18 about out-of-precinct voting.
 19 Q. Okay. I was trying to understand your thought
 20 process in terms of the relationship between
 21 early voting and out-of-precinct voting.
 22 A. Oh. Well, I don't see any particular --
 23 Q. Okay.
 24 A. -- relationship.
 25 Q. You don't see a relationship.

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1 Did you see language that Stewart --
 2 are you aware that if you take advantage of
 3 early voting there's less of an opportunity
 4 that you can get tripped up by going to the
 5 wrong precinct because you can go to an early
 6 voting site rather than --
 7 A. Yes.
 8 Q. You're aware of that?
 9 A. Yeah.
 10 Q. Okay. And does that sound right to you?
 11 A. Yes, yeah.
 12 Q. Okay. Is this an issue that you've looked at?
 13 Have you studied the relationship between early
 14 voting and out-of-precinct voting --
 15 A. No.
 16 Q. -- prior to this case?
 17 A. No.
 18 Q. Okay. Now, with regard to same-day
 19 registration, are you familiar with
 20 Dr. Stewart's findings that African-Americans
 21 were disproportionately relying on same-day
 22 registration in this case?
 23 A. Yes.
 24 Q. And do you dispute his findings on that?
 25 A. No, I don't.

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1 Q. Is that something you sort of independently
 2 looked at or studied?
 3 A. No, no.
 4 Q. Have you ever studied that issue?
 5 A. No.
 6 Q. Okay. Now, do you have a copy of your --
 7 actually, you mentioned something earlier, just
 8 in terms of making sure we have all the
 9 documents. You mentioned earlier that I'd
 10 asked you to bring certain documents today.
 11 How --
 12 A. Yes.
 13 Q. How did --
 14 A. Well, the only document I brought is "America
 15 in Black and White," which contains the most
 16 concentrated discussion, with the most
 17 citations to voting behavior.
 18 However, as we discussed in some length
 19 before, the Harvard ethnic encyclopedia
 20 contains discussions of when the Estonians
 21 politically mobilized and why, many other
 22 groups, but I did not bring that because I only
 23 have one copy left. It would cost me \$185 to
 24 replace it. But you guys could buy it if you
 25 wanted. And indeed --

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1 Q. I don't think we would have wanted the entire
 2 encyclopedia. I probably would have wanted you
 3 to pull the article that you had written or
 4 significantly edited --
 5 A. Well, all of the articles in there I've
 6 significantly edited, so it would be the whole
 7 encyclopedia.
 8 Q. Okay. That related to and was responsive to
 9 our document requests.
 10 A. Yes, right. And one could say that my first
 11 book, "Poverty in Progress" about Newburyport,
 12 Massachusetts, my third book about -- called
 13 "The Other Bostonians: Social Mobility in
 14 Boston," both have bearings on this because
 15 they discuss the political mobilization of the
 16 people I studied.
 17 In the case of Newburyport, I studied
 18 all of the unskilled -- sorry?
 19 Q. This is an article about the social mobility in
 20 Boston?
 21 A. Well, no. I've written a book.
 22 Q. A book?
 23 A. A whole book.
 24 Q. A whole book?
 25 A. Yeah.

30

1 Q. About the --
 2 A. With many dozens of tables --
 3 Q. Okay.
 4 A. -- on patterns of migration and social mobility
 5 within Boston between 1880 and 1970.
 6 My -- the Newburyport study, the first
 7 book dealt with that town from 1850 to 1880,
 8 and I studied the unskilled laborers of that
 9 town, almost all of whom were Irish. So it
 10 became a study of the Irish in Newburyport, and
 11 their quite early and highly successful efforts
 12 to politically mobilize, efforts that in the
 13 state as a whole and outside of Massachusetts
 14 are connected with the rise of the Know-Nothing
 15 Party.
 16 And I developed a hearty respect there
 17 for the ability of a desperately impoverished
 18 group, many of them arriving -- the children,
 19 you know, with stunted bodies because of the
 20 Irish famine --
 21 Q. Okay. Let me cut you off there.
 22 A. -- and they managed nonetheless to overcome the
 23 barriers and become a political force almost
 24 immediately.
 25 Q. All right. Let's turn to, if we can, to

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1 page 29 of your report.
 2 MR. FARR: Do you want to mark it as an
 3 exhibit, Avner?
 4 MR. SHAPIRO: Sure.
 5 MR. FARR: If you've got a copy.
 6 MR. SHAPIRO: I have extra copies.
 7 MR. GLICK: I'll give you mine. Here.
 8 MR. FARR: He's got one, too.
 9 MR. GLICK: I've got four copies.
 10 MR. SHAPIRO: Great. Thank you.
 11 Do you want to mark that as Exhibit 1,
 12 Exhibit -- Thernstrom Exhibit 1.
 13 (WHEREUPON, Thernstrom Exhibit 1 was
 14 marked for identification.)
 15 MR. FARR: Dr. Thernstrom, let's use
 16 the copy of your report that Mr. Shapiro just
 17 had the court reporter mark.
 18 THE WITNESS: Okay. Page 29, you said?
 19 BY MR. SHAPIRO:
 20 Q. Yes.
 21 A. Uh-huh.
 22 Q. So in the second paragraph --
 23 MR. GLICK: What exhibit did you number
 24 it?
 25 MR. SHAPIRO: Thernstrom 1.

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1 MR. GLICK: Thernstrom 1. Okay.
 2 BY MR. SHAPIRO:
 3 Q. Page 29 --
 4 A. Uh-huh.
 5 Q. -- of Exhibit Thernstrom 1, the paragraph --
 6 the second paragraph reads, "His real aim, I
 7 have concluded, was not to determine the
 8 motives of those who voted for the bill. It
 9 simply -- it is simply to insist that black
 10 voters who were registered in the state would
 11 find it more difficult to obtain the photo ID
 12 they would soon need because fewer of them
 13 possessed valid driver's licenses in 2013.
 14 "This is hardly news. It is another
 15 racial disparity of precisely the same
 16 character as those described in Dr. Stewart's
 17 earlier reports. Disparities in and of
 18 themselves are not of any particular interest."
 19 So did I read that correctly?
 20 A. Yes.
 21 Q. So is it fair to say that you're agreeing with
 22 Dr. Stewart that there are racial disparities
 23 in the number of African-Americans who possess
 24 photo ID as compared to white persons in North
 25 Carolina?

33

1 MR. FARR: Objection to the form.
 2 THE WITNESS: Well, no, I don't think I
 3 would agree with that formulation because this
 4 rests on his tracing studies, I believe, in
 5 which he drew all the names on certain of the
 6 Board of Elections' registration lists and then
 7 tried to locate -- identify how many had
 8 driver's licenses, how many could be traced to
 9 another source, how many were no matches.
 10 And I do have some serious doubts about
 11 the validity of his tracing efforts, and thus,
 12 the numbers generated by them.
 13 Partly, I've seen what seemed to me
 14 quite powerful expert reports by other people
 15 working for the defense, but also, I did have a
 16 very early experience with precisely this
 17 problem, and have a sense of its perils in that
 18 I began my doctoral dissertation going to the
 19 manuscript census schedules for Newburyport in
 20 1850, which is where the census takers all
 21 record the information they gathered on their
 22 door-to-door canvass. It's all in beautiful --
 23 whatever the method, handwriting was -- Palmer
 24 Method or something, and very clear.
 25 And my sample initially included all of

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1 the unskilled laborers and their families, and
 2 I had rich information about them in that you
 3 knew not only the name of their head of
 4 household, his age, country of birth, the same
 5 with the wife, all the children.
 6 And then I went through the 1860
 7 manuscript census schedules to find out what
 8 happened to them. Did they improve their life,
 9 did he get a better job, did he become a
 10 homeowner, et cetera.
 11 And at first I was shocked to find that
 12 a majority of them had disappeared. They had
 13 presumably moved out of Newburyport, and that
 14 indeed was a central finding of that and other
 15 work of mine, the high rates of geographical
 16 mobility in the United States.
 17 But on closer inspection, I also
 18 discovered that people are really weird about
 19 how they fill out public documents that, in my
 20 first run-through, I missed, you know, more
 21 than half of them, but then I studied it more
 22 patiently and found, well, that's Patrick
 23 O'Rooney in 1850, but now he's Patrick Rooney
 24 or he's -- you know, he changed from his middle
 25 name, et cetera.

35

1 So I discovered a good many more people
 2 than I expected --
 3 BY MR. SHAPIRO:
 4 Q. So if I may interrupt --
 5 A. -- so I matched them, you know.
 6 Q. Okay. How does that -- how does that -- that
 7 type of analysis that involves self-reporting,
 8 relate to, you know, a matching of State-issued
 9 driver's license with a registration list? I
 10 mean, there's no --
 11 A. Well, they -- well, they are identical in the
 12 sense of whether they're State-issued or not,
 13 the State is taking down the name given -- each
 14 respondent supplies their name and other
 15 identifying information, and people can give
 16 different names.
 17 I mean, obviously women who marry, in
 18 those days, always changed their name. But
 19 beyond that, people shift around. I have
 20 friends of mine who went from using their first
 21 name to using their middle name and dropping
 22 the first name.
 23 Anyway, I'm very impressed with this.
 24 However sophisticated your matching, however
 25 rich the information, there is a built-in bias

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1 towards finding no matches when, in fact, the
 2 tracing data we have is inadequate to identify
 3 them.
 4 And then the other part of my answer to
 5 this is I do have a good bit of expertise on
 6 the US Census, and in particular, how it
 7 classifies racial groups, and its bewildering
 8 and often inconsistent changes over time. And
 9 it is very interesting to note that the US
 10 Census, which is the most expensive and
 11 elaborate data-gathering operation in the
 12 world, has been unable to locate a significant
 13 fraction of the black population.
 14 I actually have a little --
 15 Q. Does that mean that we -- that we can't rely to
 16 any degree on the information that we get from
 17 the United States Census?
 18 A. Oh, no, of course not. It does mean that it's
 19 not going to be very precise, and it's going to
 20 be far from precise when you come to
 21 African-Americans on average, African-American
 22 males in particular, males in their 20s and 30s
 23 in particular.
 24 The census has long been concerned with
 25 the racial undercount problem and has made

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1 countless efforts, and as a result there's been
 2 some improvement. In 1940, its studies
 3 revealed that 8.4 percent of blacks living in
 4 the United States weren't counted by the census
 5 taker. Over time, it has dropped. It got down
 6 to 4.5 by 1980. But even today, in 2000, for
 7 example, it found that it missed 8.1 percent of
 8 black males aged 20 to 29, 10.2 of those in 30
 9 to 49.
 10 So if the census can't find them, it is
 11 certainly quite possible that they're still
 12 living in North Carolina when they are
 13 classified as a no match by Dr. Stewart. And I
 14 think that is a serious problem when we're
 15 dealing here -- you know, he's concerned with
 16 differentials between, you know, 8 percent and
 17 4 percent, in some cases much smaller than
 18 that.
 19 And I don't know -- I mean, you know,
 20 tests of statistical significance are not
 21 applicable here. It's not a sample from a
 22 known universe. But it --
 23 Q. So how far off do you think he may be?
 24 A. Well, I don't know. I would say the only good
 25 evidence we have, which in my view he never

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1 confronts adequately, is what happened in the
 2 2014 elections when, despite all of these
 3 factors he has calculated, suggests black
 4 turnout should have been materially reduced. I
 5 think reading his report, you would think --
 6 Q. So --
 7 A. -- it might drop 10 percent or something.
 8 Q. So if I may interrupt, your understanding is
 9 that the 2014 election tells us something about
 10 who had IDs and who didn't?
 11 A. Well, it tells us -- no, it doesn't tell us
 12 about the photo ID requirement.
 13 Q. Okay.
 14 A. That we won't know about until it is in effect,
 15 if you guys are unsuccessful in your efforts to
 16 stop it going into effect.
 17 Q. Okay. All right. So --
 18 A. But he estimated, you know, on the basis of the
 19 four -- the three changes that had been made
 20 that went into effect, the end of one-stop
 21 voting, changing in early voting,
 22 out-of-precinct voting, you know, I would say a
 23 fair reading of that document, indeed, some of
 24 his summary language clearly states --
 25 Q. But we're talking about the ID provision.

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1 MR. FARR: He was going to explain
 2 that.
 3 THE WITNESS: Well, yeah, we
 4 don't -- no, of course we don't know what the
 5 effect of that will be.
 6 BY MR. SHAPIRO:
 7 Q. Okay. So what's your -- strike that.
 8 Did you conduct any independent
 9 analysis of what the no-match list is or should
 10 be?
 11 A. No. My knowledge of it is derived, one, from
 12 my general knowledge about the difficulty of
 13 tracing people over time, whether it's the
 14 Irish in Newburyport, most immigrants in Boston
 15 in my subsequent study, and further writing
 16 I've done about the census and the census
 17 undercount.
 18 Q. In terms of getting the best estimate, what
 19 would you have done differently than
 20 Dr. Stewart?
 21 A. Well, I'm not -- I have not read the final
 22 report submitted by -- what's the name of
 23 the -- our expert who did the no match -- or is
 24 it -- I can't remember her name, and I was --
 25 didn't want to read her final report until

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1 after this deposition --
 2 Q. Okay.
 3 A. -- was over. Perhaps I should have.
 4 But there definitely are very different
 5 estimates presented by plaintiffs and defense
 6 witnesses on -- on how many people are
 7 unmatched. And I --
 8 Q. So it's your sense that defense experts have
 9 provided a different estimate as to the
 10 no-match list? Is that your understanding?
 11 A. Yes, yes. I think there are significant
 12 differences.
 13 Q. Okay. And what -- what's your understanding of
 14 what that list is?
 15 A. Well, the no match --
 16 Q. And what the differences are.
 17 A. Oh, I don't -- I haven't reviewed that in, you
 18 know, detail yet.
 19 Q. Okay. But as we sit here today, you can't
 20 think of a better way of doing this analysis
 21 than Dr. Stewart did it, correct?
 22 A. Well, I am not sure that experts for the
 23 defense have not done it better, but there
 24 is -- I would say that I don't think there --
 25 that the estimates from both sides differ by an

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1 order of magnitude or anything like that.
 2 Q. Okay.
 3 A. And my main view of that is tracing people over
 4 time is maddeningly difficult. I mean, all you
 5 need to do is remember the spectacle of the
 6 Florida recount and the agonizing -- you know,
 7 what people do to ballots is unbelievable --
 8 Q. Okay.
 9 A. -- you know, and same with official documents.
 10 Q. I think I understand your position on that.
 11 Just returning back to your paragraph
 12 here that we had originally started our
 13 discussion.
 14 A. Yeah.
 15 Q. I do want to focus in on what I -- your use
 16 of -- of -- and your discussion of disparities.
 17 A. Yeah.
 18 Q. Because it does seem as if there you're
 19 acknowledging, in the context of the ID
 20 provision, that there are disparities that
 21 exist. Did I get that --
 22 A. Yes.
 23 Q. -- wrong?
 24 A. Well, certainly there are disparities in the
 25 use of early voting, in the use of

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1 out-of-precinct voting.
 2 Q. But specifically with the ID provision, there's
 3 a paragraph here where you're saying, you know,
 4 "It is simply to insist that black voters who
 5 were registered in the state would find it more
 6 difficult to obtain the photo ID they would
 7 soon need because fewer of them possessed valid
 8 driver's licenses in 2013. This is hardly
 9 news."
 10 And then you talk about disparity. So
 11 that does seem to be in the context of the ID
 12 provision. Is that an acknowledgement that
 13 there are disparities that exist, even though
 14 you may have some questions about the
 15 estimates?
 16 A. Well, I would say I have -- if I were rewriting
 17 it, I might restate this a little differently,
 18 in saying -- you know, remember, that paragraph
 19 begins, "His aim" was not X, it was to insist
 20 that black voters. Then "This is hardly news."
 21 I would rewrite that.
 22 I think I would say there may be the
 23 disparity he estimates here, though my doubts
 24 about the problem -- you know, what I know
 25 about the problems with tracing people from

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1 different sources over time would make me, you
 2 know, question that.
 3 So I would -- I wouldn't come quite as
 4 close to endorsing his -- I would not endorse
 5 his claims that it's an established fact that
 6 black voters will, in significantly
 7 disproportionate numbers, find it hard to
 8 register successfully with the photo ID
 9 provision in place.
 10 Q. So if I understand you correctly, you're saying
 11 that despite the fact that the SBOE found
 12 significant disparities, despite the fact that
 13 plaintiffs' experts have found disparities,
 14 despite the fact that defense experts have --
 15 while raising some questions, are not denying
 16 that there are disparities, you're saying here
 17 that you don't believe that there are
 18 disparities between African-Americans and
 19 whites in terms of ID possession; is that
 20 correct?
 21 MR. FARR: Objection to the form.
 22 MR. SHAPIRO: On what grounds?
 23 MR. FARR: Because I don't know what
 24 you mean by "disparities." The disparities
 25 were whether they matched or not. No one knows

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1 whether they've got IDs or not.
 2 BY MR. SHAPIRO:
 3 Q. Disparities in rates of possession of IDs.
 4 MR. SHAPIRO: Thank you for the
 5 clarification.
 6 THE WITNESS: Well, I don't think we
 7 know with a high degree of confidence if there
 8 are such disparities. And second, I see no
 9 reason to think that if we assume for the sake
 10 of argument that Stewart is absolutely correct,
 11 that it will have an adverse effect on the
 12 level of black political participation.
 13 Because the other changes in North
 14 Carolina's voting law have been in effect, were
 15 in effect in 1914 [sic] and they did not show a
 16 wit of the negative impact by the three changes
 17 that both Drs. Stewart and Burden insisted
 18 would have dire consequences.
 19 So there's something wrong with their
 20 theory here or their way of estimating numbers,
 21 whatever, that doesn't, you know, compute.
 22 MR. FARR: Could I ask a question.
 23 When did we start? What time did we start?
 24 THE VIDEOGRAPHER: 11:39.
 25 MR. SHAPIRO: 11:39.

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1 MR. FARR: Let's go a few more minutes
 2 and then take a break.
 3 MR. SHAPIRO: Okay.
 4 BY MR. SHAPIRO:
 5 Q. I wanted to make sure I understand your answer.
 6 A. Uh-huh.
 7 Q. Because it seemed there that you were -- your
 8 comments there relate to questioning the
 9 magnitude of the effects of any disparity.
 10 A. Uh-huh.
 11 Q. Right? Which that's consistent with the
 12 paragraph you wrote.
 13 A. Uh-huh.
 14 Q. But I'm just asking, not in terms of the
 15 effects of the disparity --
 16 A. Uh-huh.
 17 Q. -- but are you disputing that there is a
 18 disparity in the rates of possession of ID
 19 between African-Americans and whites?
 20 A. Well, I don't recall for sure this part of
 21 expert -- the plaintiffs' expert reports. I
 22 would say, on the basis of what I read, that, I
 23 don't think it's -- I think it may be probable.
 24 I wouldn't want to bet a lot of money on it.
 25 So I have my doubts.

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1 Q. And what are those doubts based -- that there
 2 are no disparities, if you could elaborate. On
 3 what -- on what analysis is that based?
 4 A. Well, I would say part -- my experience of the
 5 difficulties of tracing people from one source
 6 to another over time, when people -- there
 7 definitely are people who the census misses,
 8 who live under the radar, who might appear on
 9 a -- might vote once and register, and
 10 disappear from, you know, public records
 11 otherwise.
 12 They may be here. They may have --
 13 they may find it perfectly easy to meet the
 14 requirements of the new photo ID law.
 15 Q. So your assessment is based principally on the
 16 experience you have with analyzing census data
 17 in your study in Boston?
 18 A. Well, in Boston and Newburyport.
 19 Q. Okay.
 20 A. Both. Both.
 21 Q. And you're familiar -- and it's based on --
 22 A. And -- uh-huh.
 23 MR. FARR: And?
 24 THE WITNESS: And I was going to say, I
 25 referred to it, the Florida electoral debacle

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1 certainly revealed that a lot of people -- you
 2 know, we don't come born with a name -- a
 3 unique identifier on our forehead, nor do we
 4 have a name that we stick to in exactly the
 5 same way in life. And people do -- do strange
 6 things.
 7 BY MR. SHAPIRO:
 8 Q. You mentioned Florida. Did you study Florida
 9 as an academic, the election --
 10 A. No, this is --
 11 MR. FARR: Dr. Thernstrom, let Avner
 12 finish his question.
 13 THE WITNESS: Yes, yes.
 14 BY MR. SHAPIRO:
 15 Q. Did you do any academic study of the Florida
 16 election that you're referring to, or is this
 17 just based on what you read in the newspaper?
 18 A. Well, the point I'm making here is, you know,
 19 simply based on what anyone who watched the
 20 evening news would think about why can't they
 21 run their elections, the greatest democracy in
 22 the world.
 23 Q. Right.
 24 Okay. Let's turn to, if we may,
 25 page 28, in the second paragraph. Towards the

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1 end of the second paragraph --
 2 A. Uh-huh.
 3 Q. -- you state, "When you impose a burden on a
 4 human being in order to deter them from going
 5 to church or going to the polls, it might
 6 instead just make them mad and reinforce their
 7 determination to worship or to vote. That
 8 fundamental flaw, I suggest, is why the
 9 predictions of Drs. Stewart and Burden were so
 10 mistaken."
 11 A. Yes.
 12 Q. Did I read that correctly?
 13 A. Yes.
 14 Q. Okay. So it's fair to say that there you're
 15 mentioning -- using the word "burden," correct?
 16 Burden?
 17 A. Yes. That's --
 18 Q. And so is it --
 19 A. -- plaintiffs' term. I didn't put quotes
 20 around it, but that's using their language.
 21 Q. Okay. And so when you use that term, "impose a
 22 burden," are you referring to the burdens of
 23 HB 589?
 24 A. I'm referring to the -- all of the burdens at
 25 issue in this whole case.

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1 Q. Okay.
 2 A. Yeah. Three of which we already know what
 3 their effect was in practice. The fourth, it's
 4 all speculation as to how people will respond
 5 to this new challenge or burden.
 6 Q. And I guess we can talk about the ultimate
 7 effect of these burdens, but I just want to
 8 make sure we're on -- on the same page.
 9 To some extent we've discussed this
 10 earlier this morning. But you are, if I
 11 understood you correctly, not disputing that
 12 HB 589 imposes a disproportionate burden, let's
 13 say, when it comes to early voting and who's
 14 engaging in early voting and what an
 15 elimination of early voting would mean for
 16 African-American voters?
 17 MR. FARR: Objection to the form.
 18 You may answer.
 19 THE WITNESS: Well --
 20 MR. SHAPIRO: One second. On what
 21 grounds, Mr. Farr?
 22 MR. FARR: If you want to repeat the
 23 question, there are probably about five or six,
 24 but mainly you were asking him to give a legal
 25 conclusion. And you assumed things that are

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1 not necessarily agreed upon in evidence.
 2 MR. SHAPIRO: All right.
 3 BY MR. SHAPIRO:
 4 Q. Let me -- when I'm using the word "burden," how
 5 do you understand that term?
 6 A. Well, that it imposes a significant, in their
 7 terms, new cost on voters. There's something
 8 they have to do that's new. They have to
 9 adjust to a new requirement.
 10 Now, burden, I think, is a rather
 11 loaded term, and I usually put it in quotation
 12 marks. I recently had to overcome a burden
 13 that's quite comparable to the early voting
 14 situation, where the local branch of the
 15 Fairfax County Library, I go -- I like to go
 16 when they open at 10, but one day in the week
 17 they don't open until 1, and they changed the
 18 day.
 19 So I had to know, no, don't go there
 20 before 1 o'clock on -- it's now Tuesday. It
 21 used to be Thursday.
 22 Q. Okay. What --
 23 A. Now, they -- what we're talking about is a
 24 little more than that, of course.
 25 Q. Right.

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1 A. But it also is not -- it's certainly -- the
 2 evidence -- the only empirical evidence we have
 3 from the 2014 election is that these burdens
 4 were not burdensome. At least they did not
 5 have the effect of depressing voting on the
 6 part of the population we're talking about.
 7 Q. Okay.
 8 A. They turned out more than in previous off-year
 9 elections.
 10 Q. Okay. I'm using the word burden because you
 11 used it here --
 12 A. Yeah.
 13 Q. -- so I want to make sure we're on the same
 14 page.
 15 A. Yeah.
 16 Q. And am I right in understanding that your use
 17 of the word burden here, it's similar to the
 18 concept of cost as well or --
 19 A. Yeah.
 20 Q. -- is there some relation --
 21 A. Well, as I understand Dr. Burden, that he uses
 22 those terms interchangeably, and I think
 23 Dr. Stewart -- I didn't study it with that in
 24 mind. I think Dr. Stewart also refers to
 25 burdens that he believes will depress black

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1 voting.
 2 Q. Okay. And these are terms you're familiar with
 3 in the social science?
 4 A. Not really. I mean, it's really a form of
 5 cost-benefit analysis, which I'm quite familiar
 6 with.
 7 Q. You're not familiar with the use of the term
 8 burden in social science literature?
 9 A. No, I don't -- I mean, it may be. It's --
 10 it's -- it's not a word I've ever focused on.
 11 Q. Okay.
 12 A. It's not -- it's a common sense term.
 13 Q. Okay.
 14 A. There are social science concepts that are not
 15 common sense terms.
 16 Q. Got it.
 17 A. And so they stick in your mind.
 18 Q. All right. So just to make sure we're on the
 19 same page, you're using that term here in the
 20 common sense way that you understand the term
 21 burden, not as a legal term?
 22 A. Yeah.
 23 Q. And in some extent, you're seeing it as
 24 interchangeable with the concept of cost?
 25 A. Yeah.

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1 Q. Yeah? And so if I understand you correctly,
 2 you're not talking about the ultimate impact of
 3 these costs and burdens, but you are
 4 acknowledging that there are disproportionate
 5 costs by the elimination of, let's say, some
 6 early voting days?
 7 A. Well, with the early voting, I'm not so sure
 8 about that. At least it's a trivial cost
 9 because the offices are open for the same total
 10 number of hours.
 11 Q. Okay.
 12 A. So why we could say, well, it disadvantages
 13 one -- one group can only do this over a
 14 three-week period, and if you have longer hours
 15 spread over two weeks, that's a difference that
 16 will have devastating effects. I mean, it
 17 doesn't seem --
 18 Q. Whether they're devastating or not, are
 19 there -- do you acknowledge that there may be
 20 some costs, given that you accept that
 21 African-Americans were disproportionately using
 22 early voting in previous elections?
 23 A. Well, I mean, lots of non-African-Americans use
 24 early voting, too. It's hardly their exclusive
 25 domain. And one could say, yeah, well, the

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1 population of people who -- who used early
 2 voting or thought about using early voting
 3 would -- would find there are different hours
 4 available than there used to be, longer hours,
 5 fewer -- spread out over fewer days. That does
 6 seem to me a cost comparable to the cost
 7 imposed on me when they changed the day of the
 8 week when they opened late from one day to
 9 another. I mean, okay, I mean, it's -- I don't
 10 see --
 11 Q. You don't see it --
 12 A. -- the cost --
 13 Q. You don't see it as a significant cost?
 14 A. No, yeah. But then, burden for that is pretty
 15 colorful, excessive language to describe that,
 16 I would say.
 17 Q. And how about the out-of-precinct voting, the
 18 elimination of out-of-precinct voting? You
 19 said earlier that you didn't dispute that there
 20 was disproportionality in African-Americans
 21 engaging in out-of-precinct voting.
 22 A. Uh-huh.
 23 Q. How about in that case? Do you recognize that
 24 there's a disproportionate cost?
 25 A. Well, I read something -- I can't recall where,

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1 on a little searching on this -- that there are
 2 a great many states who don't have early voting
 3 at all, including New York State, hardly a
 4 bastion of the deep south, and a good many
 5 others. And out-of-precinct voting likewise,
 6 as I understand it, there are a great many
 7 states who don't allow it at all.
 8 And I do find it a little hard to
 9 understand why people can't show up at their
 10 precinct, except in special circumstances, and
 11 that there are certainly costs to the voters
 12 who do -- who belong at the precinct they're
 13 going to because the lines are going to be
 14 longer. They didn't plan to have all these
 15 outsiders deciding to vote in the wrong
 16 precinct.
 17 So I would think in terms of costs, you
 18 know, it -- there are benefits to voters in the
 19 precincts that are invaded by voters who don't
 20 belong there.
 21 Q. So when you used the word burden here, without
 22 quotation marks, and you talk about costs,
 23 what -- what did you have in mind in this
 24 sentence?
 25 A. In which sentence?

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1 Q. In the sentence I read to you. "When you
 2 impose" --
 3 A. Well, some time has passed since you read the
 4 sentence.
 5 Q. I'll read it again. I can read it again. No
 6 problem. "When you impose a burden" --
 7 A. Wait. What page are we on?
 8 MR. FARR: 28.
 9 BY MR. SHAPIRO:
 10 Q. We're on page 28.
 11 MR. FARR: Second paragraph.
 12 THE WITNESS: All right. Yeah.
 13 MR. FARR: At the bottom of the
 14 paragraph.
 15 THE WITNESS: "Impose a burden," right,
 16 yeah.
 17 BY MR. SHAPIRO:
 18 Q. "When you impose a burden on a human being in
 19 order to deter them from going to church or
 20 going to the polls, it might instead just make
 21 them mad and reinforce their determination to
 22 worship or to vote."
 23 A. Uh-huh.
 24 Q. So what did you mean by the word "burden"
 25 there?

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1 A. Well, what I am saying -- perhaps I should
 2 have -- I thought it was clear in context. And
 3 it would be clearer if I said, when you impose
 4 what plaintiffs' experts would call a burden on
 5 a human being to deter them from going to
 6 church or going to the polls. People are not
 7 laboratory rats, as they seem to be treated in
 8 the models used by Drs. Burden and Stewart.
 9 The effect of such an imposition could
 10 inspire them to say, they're trying to take the
 11 vote away or they're trying to prevent me from
 12 worshipping, and I'm certainly going to make
 13 sure I go do it.
 14 Q. But I'm just trying to get an answer to my
 15 question here. You talked about certain
 16 burdens, and I just want you to, if you would,
 17 articulate what you had in mind when you wrote
 18 that.
 19 MR. FARR: I thought he just answered
 20 it, but go ahead.
 21 THE WITNESS: Yeah, I think I just
 22 answered that. Plaintiffs -- I didn't ever use
 23 the word "burden" in this report before I got
 24 to the plaintiffs, who prefer to put it in this
 25 framework. And all I'm saying is that it's

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1 really the broader point, and I think a very
 2 important point in my critique of Drs. Burden
 3 and Stewart, that they have a highly
 4 mechanistic model of human behavior in which
 5 the only thing that -- the only variable that
 6 is inserted in it is changes in the voter laws.
 7 And they failed woefully to predict
 8 what the impact of these changes would be on
 9 actual voters, as is shown in the 2014
 10 election. And my example of making them mad, I
 11 wouldn't confine it to that. If voters do
 12 think a change in the law is -- will
 13 disadvantage them, they may take extra trouble
 14 to overcome the supposed barriers, and indeed,
 15 there was a very sustained get-out-the-vote
 16 drive led by the NAACP that, as I understand
 17 it, paid -- you know, devoted a lot of
 18 attention, the law -- they're changing the
 19 laws --
 20 BY MR. SHAPIRO:
 21 Q. So --
 22 A. -- to keep you from the polls, so don't let
 23 them win.
 24 Q. Doctor, I feel as though you're focusing on the
 25 second part of the sentence but I've been

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1 asking you about the first.
 2 A. Uh-huh.
 3 Q. Because I was not asking about the reaction to
 4 a burden.
 5 A. Uh-huh.
 6 Q. I was just trying to get you to kind of explain
 7 to me what burden you're talking about.
 8 Now, if you are --
 9 A. Well, the paragraph --
 10 Q. If you're moving away from that word and you
 11 don't believe that there was a burden or cost,
 12 and you're saying that you wrote this in error,
 13 that's one answer.
 14 If you're saying that -- or are you
 15 saying that there was a burden? If there was a
 16 burden, could you tell me what you had in mind?
 17 A. Right. Well, the topic of this paragraph, as
 18 is clear from the topic sentence, is the
 19 simplistic model of voting behavior -- of human
 20 behavior that underlies the work of Drs. Burden
 21 and Stewart.
 22 And I am saying -- the thrust of this
 23 paragraph is that people don't behave like
 24 laboratory rats.
 25 Q. I understand.

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1 A. Well, that's what the paragraph is about.
 2 Q. I understand that's the trust of the paragraph.
 3 I completely understand -- the only part here
 4 that I don't understand is just the use of one
 5 phrase, and so --
 6 A. Well, one word, right, burden?
 7 Q. Well, no.
 8 A. Well, what's the phrase?
 9 Q. The phrase is "when you impose a burden" --
 10 A. Uh-huh.
 11 Q. -- "on a human being."
 12 So you were talking about -- you were
 13 thinking about some burdens, presumably in this
 14 case, that were imposed on human beings.
 15 A. Uh-huh, yeah.
 16 Q. And I want you, if you could, to tell me what
 17 burdens you had in mind there.
 18 A. Well, in this case, one is some actual alleged
 19 burdens that your expert reports talk about.
 20 The three burdens that were put to --
 21 Q. Were they alleged or were they actual burdens?
 22 A. Well, that's a semantic question, as far as I'm
 23 concerned, but I would say maybe a middle
 24 ground would be to say they were trivial
 25 burdens, and the proof of their triviality is

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1 what voters actually did --
 2 Q. I see.
 3 A. -- in November of 2014.
 4 Q. I see. So you're acknowledging that there may
 5 be burdens, but you're questioning how
 6 significant they are?
 7 A. Yeah, yeah.
 8 Q. Okay.
 9 MR. FARR: Can we take a break when you
 10 get a chance, whenever you want.
 11 MR. SHAPIRO: Sure. Let's take a break
 12 now.
 13 MR. FARR: Okay. Thanks.
 14 THE VIDEOGRAPHER: We're going off the
 15 record. The time is now 12:50 p.m. This is
 16 the end of videotape number 1.
 17 (Recess from 12:50 p.m. to 1:22 p.m.)
 18 THE VIDEOGRAPHER: We're now back on
 19 the record. This is the beginning of videotape
 20 number 2 in the deposition of Dr. Stephan
 21 Thernstrom. The time is now 1:22 p.m. You may
 22 proceed.
 23 BY MR. SHAPIRO:
 24 Q. Dr. Thernstrom.
 25 A. Uh-huh.

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1 Q. Could you please turn to page 31 of your
 2 report?
 3 A. Yes.
 4 Q. And I'd like to focus your attention to the
 5 paragraph in the middle there.
 6 A. Uh-huh.
 7 Q. I'm going to read the first sentence to you.
 8 "That may be why the level of electoral
 9 participation by black people in North Carolina
 10 has risen to parity with whites, despite the
 11 fact that they lag well behind on every measure
 12 of socioeconomic status."
 13 A. Yes.
 14 Q. Did I read that correctly?
 15 A. Yes.
 16 Q. Okay. So is it fair to say, then, based on
 17 that, that you agree that African-Americans in
 18 North Carolina have, on average, a much lower
 19 SES than whites?
 20 A. Sure.
 21 Q. Okay.
 22 A. I definitely agree.
 23 Q. Okay. And what do you base that view on?
 24 A. Well, I don't know of any state in the United
 25 States, with the possible exception of Hawaii,

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1 where -- which -- where most African-Americans
 2 in Hawaii are military personnel, but that
 3 would be a national pattern in the United
 4 States.
 5 Q. Is that also consistent with what you know is,
 6 from your studies, the pattern in the South?
 7 A. Sure.
 8 Q. Okay. And what role do you believe the history
 9 of official discrimination in the south may
 10 have played in those SES levels?
 11 A. Well, it most certainly played a significant
 12 role, an overwhelming role before World War II,
 13 say. There are quite significant advances made
 14 by blacks in the South in particular, in
 15 the '40s and '50s, in the realm of education
 16 where southern states, probably out of simple
 17 fear of a Brown v. Board coming down the road,
 18 invested very heavily in building new black
 19 schools, improving the quality of the teaching
 20 staff and so on.
 21 But, you know, certainly -- now, the
 22 question of to what extent today would you say
 23 disparities are the -- are caused by Jim Crow
 24 or slavery before it, is an enormously
 25 complicated question, and I couldn't begin to

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1 answer it in ten minutes or an hour.
 2 Certainly the two most glaring
 3 obstacles in the way of further black progress
 4 are, one, very poor performance in school at
 5 all levels; and second, family structure, which
 6 is closely related to school performance, in
 7 which a hugely higher percentage of black
 8 families are single parent, usually female
 9 headed --
 10 Q. I'm -- I'm not looking for the broad
 11 explanation, and certainly not the longer
 12 hour-long disposition on it --
 13 A. Yeah.
 14 Q. -- but just, essentially, do you agree that
 15 there's a role that the history of
 16 discrimination has played in these -- in
 17 contributing to these SES levels?
 18 A. Sure.
 19 Q. Okay. And that role is based on your --
 20 also on your -- and your views are based on
 21 your studies of this issue?
 22 A. Sure.
 23 Q. Okay. All right. Moving along. Earlier in
 24 your report, you -- when you're talking about
 25 the calculus of voting --

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1 A. Uh-huh.
 2 Q. -- you reference Anthony Downs' writing.
 3 A. Uh-huh.
 4 Q. You mention that it's a half a century old.
 5 A. Uh-huh.
 6 Q. What's the significance in your mind of half a
 7 century old? Why did you note that?
 8 A. Nothing. It's just a golden oldie. I mean, an
 9 awful lot of social science only refers to
 10 articles published last year.
 11 Q. Okay.
 12 A. But in their work, Dr. Burden, in particular,
 13 went back to this very, very prehistoric piece.
 14 Q. Okay.
 15 A. And I wasn't suggesting it's no good because
 16 it's old. I would say a lot of the oldest
 17 stuff is a lot better than what comes out
 18 today.
 19 Q. Right. And isn't one measure of reliability of
 20 a theory in science when it's been around for a
 21 long time and the scientific community still
 22 considers it an important contribution and the
 23 best explanation for something?
 24 A. Well, yeah.
 25 Q. Isn't that one mark of --

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1 A. I mean, I'm not --
 2 Q. -- reliability.
 3 A. -- interested in attacking Downs. I'm not
 4 attacking Downs or Burden's reliance on Downs.
 5 I'm sorry to have to say that I have not yet
 6 been able to get hold of Downs' essay, which
 7 did not appear in the scholarly journals, which
 8 I can get online.
 9 I have bought the book, but it's not in
 10 the stores. I naively thought I would just get
 11 it on my Kindle. But it's on order, and I will
 12 have read that chapter, at least, before trial.
 13 But he's a stimulating, important economist.
 14 Q. Had you read that chapter ever before?
 15 A. No, no.
 16 Q. Okay. And what are the major academic works
 17 that have discussed the calculus of voting?
 18 A. I don't really know. I know there's an essay
 19 I've looked at by two quite brilliant political
 20 scientists, one I knew was at Harvard for a
 21 while, Moe Fiorina, and Richard Ferejohn, who
 22 was at Stanford. I think he may have come to
 23 Harvard.
 24 In any case, to counter the paradox of
 25 voting, they wrote a little essay called "The

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1 Paradox of Non-Voting," which I read, but alas,
 2 it has maybe 20 paragraphs of text and twice
 3 that much space in equations, which would --
 4 Q. So did they discuss the calculus of voting in
 5 that --
 6 A. Yeah, yeah. It's a revision of the calculus of
 7 voting, but it's written in advanced calculus
 8 or other things, so I couldn't begin to grasp
 9 it.
 10 But what I can talk about, what my
 11 report is about is not what the real Anthony
 12 Downs had to say. He's not the witness I'm
 13 dealing with. The expert is -- this is
 14 Dr. Burden's translation of him, and I did find
 15 it sorely wanting.
 16 Q. Okay. And that jumps to your conclusions, but
 17 I'm trying to kind of understand what your --
 18 A. Uh-huh.
 19 Q. -- what academic work you're relying on before
 20 you reach those conclusions. And so as we sit
 21 here today, you know, what else can you think
 22 of -- you mentioned one article that you didn't
 23 fully understand.
 24 A. Uh-huh, yeah.
 25 Q. But what else can you think of that discusses

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1 the calculus of voting that you have reviewed
 2 and studied?
 3 A. I don't think I've seen any other reference to
 4 it, but I think that is irrelevant because a
 5 reader must take the model as described by the
 6 person applying it, the expert witness who's
 7 drawing the conclusion, and I submit anybody --
 8 any impartial observer reading Dr. Burden's
 9 text and my critique would think I raised very
 10 troubling questions about it because it's a
 11 one-variable theory.
 12 THE VIDEOGRAPHER: I'm getting
 13 interference. You're fine. I'm getting
 14 interference. I think it's from your phone.
 15 MR. FARR: Okay. I'm sorry. I'll turn
 16 it off.
 17 THE VIDEOGRAPHER: Thanks.
 18 MR. FARR: I'm trying to do other work.
 19 THE VIDEOGRAPHER: I understand. I'm
 20 sorry.
 21 MR. SHAPIRO: My questions are that
 22 interesting.
 23 MR. FARR: What?
 24 MR. SHAPIRO: My questions are that
 25 interesting.

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1 MR. FARR: No, I've just got --
 2 somebody else has hired us to do something and
 3 I'm getting --
 4 MR. SHAPIRO: That's quite all right,
 5 Mr. Farr.
 6 MR. FARR: -- some complaints about
 7 various issues. So sorry.
 8 MR. SHAPIRO: No problem.
 9 BY MR. SHAPIRO:
 10 Q. So let's go --
 11 MR. FARR: Your questions are very
 12 interesting.
 13 BY MR. SHAPIRO:
 14 Q. Let's go more broadly, if we can,
 15 Mr. Thernstrom. In the field of voting
 16 behavior --
 17 A. Uh-huh.
 18 Q. -- and voter participation --
 19 A. Uh-huh.
 20 Q. -- what are the seminal works that you've
 21 examined and read?
 22 A. Well, long ago I read lots of stuff by Seymour
 23 Martin Lipset, who is concerned, you know, with
 24 politics broadly, including voter
 25 participation.

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1 If one consults the footnotes in
 2 "America in Black and White," you find dozens
 3 of scholarly articles and books. If you'd like
 4 me to, you know, read some of them to you --
 5 Q. Well, I'm not interested in you necessarily
 6 reading from the back of a book. I'm -- in
 7 terms of, you know, the literature that you're
 8 familiar with and can --
 9 A. Yeah.
 10 Q. -- speak to, what are the seminal works in this
 11 very broad field as we sit here now that you're
 12 familiar with --
 13 A. Yeah.
 14 Q. -- that you have intimate familiarity with?
 15 A. Well, I wouldn't say there are any I have
 16 intimate familiarity with today. I did have
 17 close familiarity with them 20 years ago when I
 18 wrote this. But I did not go and search the
 19 general literature on political participation.
 20 I think I'm quite competent to look at the
 21 logics of the analysis here and the evidence.
 22 Q. Okay. Now, do you know of any -- strike that.
 23 THE VIDEOGRAPHER: One moment, please.
 24 We're getting a lot of interference.
 25 MR. MELLETT: I can turn off my phone.

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1 THE VIDEOGRAPHER: Because I know mine
 2 is not on. You can continue.
 3 THE WITNESS: Mine is on airplane mode,
 4 but if you'd like me to -- I don't know if --
 5 THE VIDEOGRAPHER: Is it close to your
 6 microphone?
 7 THE WITNESS: It's down in my pocket
 8 here.
 9 THE VIDEOGRAPHER: If you could just
 10 put it away, farther away. Thank you.
 11 THE WITNESS: I hope that helps.
 12 THE VIDEOGRAPHER: That helped a little
 13 bit.
 14 THE WITNESS: Okay.
 15 BY MR. SHAPIRO:
 16 Q. And, Dr. Thernstrom, when you're thinking about
 17 how to frame the issues and analyze voter
 18 behavior issues, what -- what texts do you
 19 principally rely on?
 20 A. Well, I don't quite understand what you're
 21 getting at. When I approach my task of
 22 evaluating your expert analyses of voting
 23 behavior, you're suggesting I might want to
 24 re-read some book or some articles in order to
 25 think about it? I -- I didn't feel it

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1 necessary to consult anything other than my
 2 eyes and my brain --
 3 Q. Okay.
 4 A. -- and to think about this, to think of the
 5 logic of the analysis, to think of how these
 6 variables, the one he talks about and all the
 7 others he doesn't consider, and how you might
 8 put -- estimate some numbers for those
 9 variables. And --
 10 Q. So you're relying on your sort of good
 11 judgment, your common sense?
 12 A. Yeah.
 13 Q. Okay. And so not necessarily any specific
 14 literature out there?
 15 A. Yeah.
 16 Q. Okay. And so -- and how do you -- what factors
 17 do you think influence voter participation?
 18 A. Well, when and where? Are we talking about the
 19 2014 election or --
 20 Q. In any election.
 21 A. Well, there would be a -- first of all, I
 22 suppose I would want to look at whether you
 23 grew up in a family that was politically
 24 active. If not, I would want to know if you
 25 have become politically active since. I would

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1 want some questionnaire that might probe
 2 reasons why you will vote at all costs or never
 3 vote. But, I mean, it's just too shapeless a
 4 question to really consider.
 5 I am struck that I think people who
 6 study voting behavior are themselves, by
 7 definition, middle class and assume that
 8 everyone should vote at every election, and
 9 they do. And they probably, since most
 10 professors come from middle class backgrounds,
 11 came from families who did.
 12 So they're not really focused or can't
 13 understand why, you know, the robust -- the
 14 turnout Dr. Stewart -- or maybe it's Burden --
 15 described as robust in 2014 was about
 16 40 percent, 40 percent of blacks, 40 percent of
 17 whites. That's robust?
 18 Q. Right.
 19 A. A vast majority didn't vote, and we don't know
 20 much about why they don't vote.
 21 MR. SHAPIRO: So could you please
 22 re-read the question I had asked earlier to the
 23 witness?
 24 (The court reporter read from the
 25 record as follows:)

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1 QUESTION: "What factors do you think
 2 influence voter participation?"
 3 BY MR. SHAPIRO:
 4 Q. Is that the question you're saying is too
 5 general? Is that --
 6 A. Well, all right. No. I'm sorry. Let me
 7 address that more properly. You know, I would
 8 say if we ask what are the characteristics of
 9 people who vote in contemporary America, levels
 10 of education are the most powerful predictor.
 11 That would be correlated with income. There
 12 certainly could be regional variations, ethnic
 13 variations.
 14 Some groups probably, controlled for
 15 occupation and income, are more politically
 16 engaged than others. That's -- that's a stab
 17 at it. You could think of other things.
 18 Married people are more likely to vote.
 19 Oh, and, of course, the older you are, the more
 20 likely you are to vote.
 21 Q. How did you come up with that list that you
 22 just offered up?
 23 A. Just from general -- you know, I've looked at a
 24 lot of polling data broken down by those
 25 variables. I keep track of polling --

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1 Q. You've looked at polling data?
 2 A. Sure.
 3 Q. In what context?
 4 A. My interest in the world, not as part of any
 5 particular research project, but I'm --
 6 Q. Are we talking about polls that are reported in
 7 The New York Times or is it polls -- what polls
 8 are you --
 9 A. No. No, I regularly look at the Gallup polling
 10 cite. I regularly look at the Pew Research
 11 Center polling data. And as election time
 12 approaches, I look at a lot of sites focusing
 13 on electoral behavior and who has support in
 14 Iowa, that kind of thing. I mean, I love
 15 polls.
 16 Q. It is the testimony of one of the defendant's
 17 experts, Dr. Hood, acknowledged that the cost
 18 of voting model is among the most well
 19 established principles in political science.
 20 Would you dispute that?
 21 A. Well, I -- I last studied political science my
 22 first year at Harvard. I was a graduate
 23 student of political science, and decided I
 24 really wanted to be a historian.
 25 Q. Okay.

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1 A. But -- so I would be in no position to answer
 2 that either way, but the question for me would
 3 be maybe it's widely used by political
 4 scientists today, but I hope they make a better
 5 use of it than is used here because this is
 6 ridiculous.

7 I mean, it has no content. Its only
 8 content is cost, and there's nothing whatever
 9 on the benefit side of the equation. It's
 10 ignored. And thus, if this is what Dr. Burden
 11 used in making his predictions about 2014, I
 12 suggest that's where he went wrong.

13 Q. Okay.

14 A. His understanding, I'm sure the original
 15 version of this was much more comprehensive and
 16 subtle.

17 Q. So is what we're doing here today history with
 18 this report or is it political science? What
 19 is this an exercise in?

20 A. Well, see, I do not believe the world is nicely
 21 divided up into the domain of political
 22 science, economics, sociology --

23 Q. Okay.

24 A. -- history. Anthony Downs was not a political
 25 scientist --

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1 Q. All right.

2 A. -- he was an economist. So...

3 Q. All right. So let me now shift your attention,
 4 if I may, to page 5 of your report. There's a
 5 sentence in the second -- in the second
 6 paragraph there.

7 A. Uh-huh.

8 Q. The last sentence, which reads as follows: "In
 9 my view, you don't need a Ph.D. to judge which
 10 political party best represents your interests,
 11 and you don't need many years in school to
 12 figure out where and how to vote."
 13 Did I read that correctly?

14 A. Uh-huh.

15 Q. Okay. So in that sentence, you're referring to
 16 two distinct concepts, correct? One about
 17 knowing which party will represent your
 18 interests --

19 A. Uh-huh.

20 Q. -- and the other relates to sort of figuring
 21 how to --

22 A. How to vote.

23 Q. -- go about voting. Is that fair?

24 A. Yes.

25 Q. Okay. And is the level of education you need

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1 to do both these two distinct things equivalent
 2 in your mind?

3 A. No. I would say roughly equivalent, yes. I
 4 don't think there are any residents of North
 5 Carolina, except maybe people who are in their
 6 90s or older, who are, one, utterly illiterate,
 7 two, lack any friends, relatives who can assist
 8 them in going through the voting process.

9 I'm sure there are public -- if you go
 10 into a registration place and say, I need
 11 special help, that I'm sure by law, North
 12 Carolina provides it.

13 So to -- I would not agree.

14 And let us remember, the concept here
 15 is being habituated. That's the concept I'm
 16 criticizing, the notion that some people, while
 17 they manage to do something --

18 Q. Let me stop you there because I think you're
 19 straying a little bit from my question.

20 A. Okay. Okay.

21 Q. I think you may have answered it. I asked you
 22 if the level of knowledge -- the education you
 23 need to have for knowing which party would best
 24 represent you is roughly -- is the same level
 25 of education that you would need for knowing

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1 how to go about voting, and I think you
 2 answered your view is it's roughly the same
 3 level of education --

4 A. Yeah. That it's hard for me to --

5 Q. Did I get that right?

6 A. Yes. Okay, I agree.

7 Q. So let me just move on there.

8 MR. FARR: Dr. Thernstrom, make sure
 9 that Avner is done because the court reporter
 10 is having a hard time keeping up.

11 THE WITNESS: Yes, yes.

12 MR. SHAPIRO: Thank you.

13 MR. FARR: We need to help the court
 14 reporter. She's the most important person
 15 here.

16 MR. SHAPIRO: She is indeed. Thank
 17 you.

18 BY MR. SHAPIRO:

19 Q. And do you know how the social science
 20 literature treats that concept? Do they see it
 21 as roughly equivalent as well in terms of the
 22 level of educational attainment or --

23 A. Well, no.

24 Q. -- what's your understanding?

25 A. I would say that plaintiff --

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1 Q. My fault.
 2 A. Maybe at the end of your question you should
 3 say "stop," and I'll observe a moment of
 4 silence.
 5 I would say, sure, that's a common
 6 generalization in the political science
 7 literature, though I don't know that there's
 8 anyone who has attempted empirically to
 9 determine whether or not people, say, with less
 10 than eight years of schooling -- that would be
 11 about the lowest educational category employed
 12 by the United States Census in decades now --
 13 would find it more difficult to register to
 14 vote or to find their way to the polls or to
 15 even know, oh, it's election day.
 16 Q. Okay. So --
 17 A. I'm not sure that's established.
 18 Q. So you don't know who has studied the level of
 19 attainment you would need in order to know how
 20 to go about voting?
 21 A. No. In fact, I -- I would doubt offhand that,
 22 in fact, somebody has laid out such the
 23 evidence to show, you know, if you had less
 24 than eight years of schooling, the odds are
 25 very high you won't be able to figure out how

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1 to vote. If there's empirical validation of
 2 that proposition, I would be interested. But
 3 I --
 4 Q. You don't know anyone who's tried?
 5 A. No.
 6 Q. Okay. And you don't know anyone who's tried to
 7 figure out the level of education you need to
 8 know what's in your political interests and
 9 which party you should join? You don't know --
 10 A. No.
 11 Q. -- anyone who studied that?
 12 A. No.
 13 Q. Okay. Dr. Thornstrom, in your report, you
 14 talked about a need to look at benefits --
 15 A. Uh-huh.
 16 Q. -- the benefits side of the equation.
 17 A. Yeah.
 18 Q. And when you talk about benefits, are you
 19 talking about benefits such as an election
 20 being important because it's a high stakes
 21 election? Is that a benefit?
 22 A. Sure, that could be one, uh-huh.
 23 Q. And participating in an election that's more
 24 likely to count because it's a close election,
 25 is that a benefit?

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1 A. That's -- could be.
 2 Q. Okay.
 3 A. I mean, there are many possible things that
 4 could go in that benefits --
 5 Q. Okay.
 6 A. -- box.
 7 Q. And you're saying those are factors that should
 8 be considered when you're analyzing any given
 9 election as to what voting behavior is?
 10 A. Yeah. And you would have to look at what
 11 social networks people belong to and to what
 12 extent those social networks become politicized
 13 on the eve of -- before certain elections and
 14 not others.
 15 Q. Okay. Did you analyze the comparative benefits
 16 in the 2014 election and the 2010 election --
 17 A. No.
 18 Q. -- in North Carolina?
 19 A. No.
 20 Q. Okay. I'd like to turn to page 35 of your
 21 report. Okay. Towards the end of your report,
 22 on that last paragraph -- last lengthy
 23 paragraph, there's a sentence that reads as
 24 follows:
 25 "One cannot read the long list of

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1 requirements they manage to satisfy in order to
 2 qualify for aid without seeing that poor people
 3 are not at all the helpless creatures of habit
 4 described by Plaintiffs' experts. Anyone who
 5 could jump through all the hoops set before
 6 them by the welfare bureaucracy could just as
 7 easily get the necessary ID needed to vote."
 8 What's that statement based on?
 9 A. Well, I would say it's based on my reading,
 10 first myself, of the -- let's just make sure --
 11 all right. I wasn't sure whether cigarettes
 12 was in there.
 13 I read Dr. Thornton's report with
 14 interest, and this is my endorsement of it. I
 15 believe her to be an honest reporter, and her
 16 description of the barriers to receiving
 17 various kinds of assistance from the State
 18 seemed to me to be, indeed, considerably more
 19 formidable than what is -- will be required of
 20 voters even with the photo ID requirement in
 21 operation.
 22 Q. Moving on, I'd like to talk to you about this
 23 concept of habit. In what context do you
 24 understand the issue of habit to come up -- to
 25 have come up in this case --

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1 A. Well --
 2 Q. -- with regard to what provisions of the HB 589
 3 statute?
 4 A. Well, I -- I mean, it came up to me in -- in
 5 the form of plaintiffs' reports. I'm not
 6 sure --
 7 Q. Let me rephrase that in a more efficient way,
 8 if I may.
 9 A. Okay.
 10 Q. To save you having to look for it.
 11 A. Uh-huh.
 12 Q. The ID provision --
 13 A. Uh-huh.
 14 Q. -- hasn't gone into effect yet.
 15 A. That's right. That's right.
 16 Q. I think you -- you indicated you're aware of
 17 that.
 18 A. Yes.
 19 Q. So this issue of habit --
 20 A. Uh-huh.
 21 Q. -- when you -- when you address that in your
 22 report --
 23 A. Yeah.
 24 Q. -- you're not referring to the ID provision,
 25 correct?

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1 A. No -- well, I am in the sense that I assume
 2 that the use plaintiffs have made of the
 3 concept of habit, you know, you're in the habit
 4 of early voting on the first, you know, day,
 5 and the date of the first day has been changed
 6 or whatever, that that argument would apply
 7 equally and has been applied, as I understood
 8 it, to the photo ID requirement as well.
 9 Q. That you're in the habit of going to vote
 10 without an ID?
 11 A. Yeah, yeah.
 12 Q. I see. Okay. Fair enough.
 13 So let's turn now to the -- to your
 14 discussion of the 2010 and 2014 elections.
 15 A. Uh-huh.
 16 Q. You use the word "predictions."
 17 A. Uh-huh.
 18 Q. And a number of times Dr. Stewart and I think
 19 Dr. -- but I want to focus on Dr. Stewart. I
 20 think you're indicating that Dr. Stewart
 21 predicted something that he got wrong and
 22 predicted --
 23 A. Yes.
 24 Q. -- something he got wrong about turnout in the
 25 2014 election; is that right?

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1 A. That's right, yeah.
 2 Q. Okay. Now, where in the materials that you
 3 reviewed did he make a prediction about turnout
 4 specifically in the 2014 election?
 5 A. Well, I would say it's already quoted here and
 6 documented, so it's, you know, kind of
 7 redundant, but both of them made statements
 8 about the impact of implementing these
 9 measures, you know, the three already
 10 considered, and I haven't --
 11 Q. What statements are you referring to?
 12 A. Pardon?
 13 Q. Because I see statements here that Dr. Burden
 14 indicated that he thought there would be a
 15 constriction of access, but I don't see
 16 anything in your report of Dr. Burden
 17 predicting --
 18 A. Well --
 19 Q. -- turnout levels.
 20 A. Well, here -- the first thing I come upon here
 21 is Dr. Stewart. The changes in the voting
 22 procedures, he was estimating the effect of,
 23 will -- if implemented, will result in nothing
 24 less than, quote, "the first major constriction
 25 of access to the polls in North Carolina since

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1 the passage of the Voting Rights Act."
 2 Q. And you chose to read that as a prediction as
 3 to turnout, correct?
 4 A. Well, absolutely.
 5 Q. Okay.
 6 A. I mean, the measure of whether voters' voting
 7 rights have been restricted or impeded seems to
 8 me to come down to a question, well, are --
 9 they're not going to be able to vote as easily
 10 anymore, and they will not because the costs of
 11 voting have become so high, and there are no
 12 benefits in this model.
 13 So I don't see any question that --
 14 now, he might --
 15 Q. So -- so if I may, Doctor, he talked about the
 16 first major constriction since passage of the
 17 Voting Rights Act, right?
 18 A. Yeah.
 19 Q. So if thousands, let's say, in theory, of
 20 African-American voters were not able to vote
 21 because of costs --
 22 A. Uh-huh.
 23 Q. -- imposed by this statute --
 24 A. Yeah.
 25 Q. -- but nonetheless, African-American turnout

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1 went up because other African-American voters
 2 succeeded in turning up and voting, would you
 3 not characterize that as a major constriction?
 4 A. Well, I think it's a hypothetical that I would
 5 reject because it is totally unknowable. What
 6 we know is how many blacks turned out and
 7 voted. The numbers are larger, not smaller.
 8 Q. But, Dr. Thernstrom, I --
 9 A. And you can --
 10 MR. FARR: Wait.
 11 THE WITNESS: -- speculate that, oh,
 12 well, many were prevented. It just happens
 13 others filled their place, but --
 14 BY MR. SHAPIRO:
 15 Q. Dr. Thernstrom --
 16 A. Yes.
 17 Q. -- I just gave you a hypothetical, and if you
 18 could answer my hypothetical.
 19 A. Well, I think I did answer it.
 20 MR. SHAPIRO: If you could re-read
 21 that.
 22 THE REPORTER: The question or the
 23 answer?
 24 MR. SHAPIRO: The question.
 25 (The court reporter read from the

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1 record as follows:)
 2 QUESTION: "So if thousands, let's say,
 3 in theory, of African-American voters were not
 4 able to vote because of costs imposed by this
 5 statute, but nonetheless, African-American
 6 turnout went up because other African-American
 7 voters succeeded in turning up and voting,
 8 would you not characterize that as a major
 9 constriction?"
 10 THE WITNESS: And I thought I answered
 11 that. I would say, no, because we have no idea
 12 and no basis for thinking that a thousand were
 13 deterred but were replaced by others.
 14 I mean, if you're going to speculate
 15 that way, why not say 400,000 were deterred by
 16 it but 450,000 turned out anew and overcame, so
 17 the net effect is as it was.
 18 So I cannot know for sure that these
 19 costs, if you'd like, didn't deter any voters,
 20 but I can't -- you can't be sure they did. All
 21 we know are the net numbers.
 22 BY MR. SHAPIRO:
 23 Q. So, for example, when we look at 2014
 24 election --
 25 A. Yeah.

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1 Q. -- and you look at out-of-precinct votes --
 2 A. Uh-huh.
 3 Q. -- there's a certain number of votes that were
 4 not counted because they voted out of precinct,
 5 correct?
 6 A. Well, I thought by 2014 you could not vote out
 7 of precinct.
 8 Q. Correct.
 9 A. Yeah.
 10 Q. So Dr. Stewart has added up the number of
 11 individuals who went and voted out of precinct.
 12 A. All right.
 13 Q. Right? Did you see those numbers?
 14 A. Well, I don't recall that just now, but I will
 15 take a look at that.
 16 Q. Did you see --
 17 A. But --
 18 Q. Did you see that he saw there were a certain
 19 number of people who voted out-of-precinct in
 20 the 2014 election?
 21 A. No, I don't recall that.
 22 Q. And did you see --
 23 A. But I would say, you know, do we then know they
 24 did not go to the proper precinct and vote?
 25 Q. And did you see that he saw that there was a

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1 disproportionality in who voted out of
 2 precinct?
 3 MR. FARR: Objection to the form of the
 4 question.
 5 MR. SHAPIRO: On what basis, Mr. Farr?
 6 MR. FARR: I don't agree with your
 7 characterization that there was a great
 8 disproportionality.
 9 BY MR. SHAPIRO:
 10 Q. Did you observe that Dr. Stewart reported
 11 disproportionality in who voted out of precinct
 12 in the 2014 election?
 13 A. I, frankly, don't recall his discussion of this
 14 point and will have to review the evidence and
 15 think about whether I think it's convincing.
 16 Q. But to the extent he did, he's talking about
 17 actual numbers, would you not agree?
 18 A. Oh, I'm sure he's talking -- well, I -- from
 19 your reporting of it, it would appear to be so,
 20 yes.
 21 Q. Do you know of any other constrictions of the
 22 right to vote in North Carolina since the
 23 Voting Rights Act was passed?
 24 MR. FARR: Objection to the form.
 25 THE WITNESS: No, I don't know the

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1 history of North Carolina voting rights issues.
 2 There was the -- was it Shaw v. Reno?
 3 BY MR. SHAPIRO:
 4 Q. Let me restate that. What changes are you
 5 familiar with since the passage of the Voting
 6 Rights Act that have -- that could have
 7 resulted in constrictions of the right to vote?
 8 A. Could have when?
 9 Q. Since 1965.
 10 A. In -- in -- I'm still unclear what you're
 11 asking about. In the 1965 --
 12 Q. We just were talking about a passage there
 13 where you had concern about -- you identified
 14 one sentence there.
 15 A. Yes.
 16 Q. Do you want to read that sentence again?
 17 A. Yes, right. Which refers to since the first
 18 major constriction of access to the polls since
 19 1965.
 20 Q. Do you know of any other constrictions of
 21 access to the polls since 1965 in North
 22 Carolina?
 23 A. No. I'm not -- I wouldn't say I have an expert
 24 knowledge of the history of voting in North
 25 Carolina in the past, but I am not aware of

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1 any.
 2 Q. And for purposes of whether -- strike that.
 3 Is it fair to say that Dr. Stewart may
 4 have been referring to predictions concerning
 5 constrictions involving individuals who are not
 6 able to vote because of this law in his
 7 estimation as opposed -- as opposed to
 8 estimations concerning turnout?
 9 MR. FARR: Objection to the form.
 10 THE WITNESS: Well, I -- I suppose
 11 that's -- yeah, that's theoretically possible.
 12 And you can conjure up a scenario in which the
 13 law has terrible effects on turnout, which is
 14 the bottom line question, but is counteracted
 15 by other changes. But if you have no way of
 16 verifying that, then --
 17 BY MR. SHAPIRO:
 18 Q. I guess what I'm trying to get to, is it
 19 possible that the language that you're talking
 20 about there was not a prediction as to turnout
 21 at all but a different type of statement
 22 concerning how this law would affect the
 23 ability of African-Americans to vote?
 24 MR. FARR: Objection.
 25 THE WITNESS: Yeah, I -- I find that a

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1 little --
 2 BY MR. SHAPIRO:
 3 Q. Let me restate -- let me restate that, since
 4 Mr. Farr had problems with my question.
 5 You would agree that this phrase
 6 concerning constrictions of the right to
 7 vote --
 8 A. Uh-huh.
 9 Q. -- does not necessarily relate to turnout as
 10 Dr. Stewart used that term?
 11 A. Well, it's a mighty fine distinction, and it
 12 doesn't seem to me very relevant. I mean, when
 13 we're talking about elections and voting, we do
 14 it because voting has consequences and certain
 15 people get elected, certain people don't.
 16 Certain ballot propositions --
 17 Q. Well, the reason why I think it's relevant here
 18 is because you're saying that Dr. Stewart made
 19 predictions that didn't come out --
 20 A. Uh-huh.
 21 Q. -- and I think you are suggesting that he was
 22 predicting things about turnout.
 23 A. Uh-huh.
 24 Q. And you pointed to one piece of language
 25 there --

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1 A. Uh-huh.
 2 Q. -- that I think doesn't necessarily deal with
 3 turnout --
 4 A. Yeah.
 5 Q. -- correct?
 6 A. Well, I see your point. However, the last
 7 thing I would say on this is, if -- if he
 8 thought in these more sophisticated terms,
 9 surely he should have said, when he made his
 10 initial statements before we knew what happened
 11 in 2014, that there will be a major
 12 constriction in access to the polls, even
 13 though black turnout may actually increase, and
 14 that's a turnout as a percentage of the black
 15 population. I mean, he could have qualified
 16 this but did not.
 17 Q. And --
 18 A. It's a blunt prediction --
 19 Q. But --
 20 A. -- of what I would say the ultimate test is how
 21 many blacks voted.
 22 Q. And to your knowledge prior to 2014 -- strike
 23 that.
 24 To your knowledge, prior 2000 -- prior
 25 to 2014, Dr. Stewart did not address the

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1 turnout issue?
 2 A. Prior to 2014? I don't understand.
 3 Q. Prior to the 2014 election, did you see
 4 anywhere where Dr. Stewart addressed the
 5 turnout issue specifically, beyond this
 6 comment?
 7 A. I still don't get it. Are you talking about
 8 what was in Stewart's first report versus other
 9 things?
 10 Q. Well, Dr. Stewart has also testified in this
 11 matter --
 12 A. Yes.
 13 Q. -- also at a PI hearing. Are you familiar with
 14 that testimony at all?
 15 A. No, no, I'm not.
 16 Q. Okay. All right. By the way, Dr. Thernstrom,
 17 did -- so let me be clear. You did not review
 18 any of the testimony at the PI hearing?
 19 A. Did I receive -- I mean, I -- no, I definitely
 20 didn't read a transcript of any hearings. I
 21 read the expert reports and surrebuttal and so
 22 on, but --
 23 Q. Did you review any of the testimony from the
 24 trial?
 25 A. No.

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1 Q. The testimony by, let's say, voters who said
 2 they were impacted by this law, did you review
 3 any of that testimony?
 4 MR. FARR: Objection to the form.
 5 BY MR. SHAPIRO:
 6 Q. Let me rephrase that.
 7 A. No, I was --
 8 Q. Let me rephrase it.
 9 Did you -- did you review transcripts
 10 or have you in any way reviewed the testimony
 11 concerning voters who are affected by this
 12 statute?
 13 MR. FARR: Objection to the form.
 14 MR. SHAPIRO: Could you clarify?
 15 MR. FARR: If you want to ask him did
 16 he review any testimony by voters, then I have
 17 no objection. If you want to characterize what
 18 their testimony was, I'm going to object.
 19 MR. SHAPIRO: Okay.
 20 BY MR. SHAPIRO:
 21 Q. Did you review --
 22 MR. SHAPIRO: Thank you, Mr. Farr, for
 23 the clarification.
 24 BY MR. SHAPIRO:
 25 Q. Did you review any testimony by voters who

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1 testified in this case?
 2 A. No, none of that material was provided to me,
 3 and I assume that's because Mr. Farr and his
 4 colleagues did not feel it was of great
 5 importance, and they were inflicting an
 6 intolerable pile of reading material on me in a
 7 very short time anyway, so -- but I don't know.
 8 Q. Did you -- did you ask for that information?
 9 A. No. I was busy trying to get through what I
 10 already had, and I wasn't -- you know, I don't
 11 know blow by blow how this case has unfolded,
 12 except I gather it's very complicated, and I
 13 wouldn't --
 14 Q. When were you retained in this matter?
 15 A. Middle of November.
 16 Q. At any time had you asked to review
 17 transcripts?
 18 A. No. As I said, I was very busy reviewing what
 19 counsel thought was most important for me to
 20 review.
 21 Q. Okay. So what kind of variables -- strike
 22 that.
 23 We were talking about benefits earlier
 24 in voting that affect voting behavior.
 25 A. Uh-huh.

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1 Q. So is it plausible here that in the 2014
 2 election turnout was elevated because of the
 3 special competitiveness of that election as
 4 compared to 2010?
 5 A. It is possible. However, after the election is
 6 over, it's always easy to find special
 7 circumstances to rescue a claim that has proved
 8 unfounded. But, of course. And I would say
 9 undoubtedly there was a mobilization drive
 10 within the black community that was very
 11 successful, though you might say it isn't
 12 really the mobilization drive.
 13 It's that -- as kind of an independent
 14 variable, it's that a lot of people were
 15 determined to vote this time around in
 16 response, perhaps, to these changes, perhaps
 17 other things.
 18 Q. How do you know people were motivated to vote
 19 in response to these changes? How do you know
 20 that?
 21 A. Well, I don't know that. I'm -- that's only
 22 speculation. All we know is how many voted.
 23 We don't know if there were lots of people who
 24 couldn't vote but they were balanced by others.
 25 Q. So you didn't study what happened in 2014 with

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1 any --
 2 A. Well --
 3 Q. -- academic rigor?
 4 A. No. It certainly is not -- I've studied with
 5 as much rigor as your defense experts have. I
 6 haven't seen any rigorous analysis that
 7 explained why the predictions -- I consider
 8 them predictions -- proved false.
 9 There are ad hoc things -- oh,
 10 everybody is interested in, oh, Tillis versus
 11 what's her name, the incumbent, Kay Hagan. You
 12 can always explain things -- every election is
 13 different enough so you can say, well, the
 14 general rule I propose just didn't apply here.
 15 Q. Okay. Can we turn to page 22 of your report.
 16 So there in the bottom paragraph you're sharing
 17 an anecdote about being asked for an ID when
 18 you're going to the hospital for minor surgery.
 19 A. Uh-huh.
 20 Q. Do you see that?
 21 A. Yeah. Could have included this office
 22 building.
 23 Q. Okay. Did you inquire at the time whether you
 24 would be able to go forward with the surgery if
 25 you didn't have an ID?

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1 A. No. No, I had it, so I produced it.
 2 Q. Have you ever studied the extent to which
 3 people without IDs can get access to, let's
 4 say, emergency medical treatment?
 5 A. No, no. Or whether they can get access to the
 6 polls in some places.
 7 Q. That's something you haven't studied?
 8 A. No.
 9 Q. Okay. What expertise do you have concerning --
 10 besides this anecdotal story, what expertise do
 11 you have on that issue of being able to get --
 12 A. Well --
 13 Q. -- medical care without an ID?
 14 A. Well, I have -- I was speaking there on the
 15 basis of my personal authority by my own
 16 experiences, but cite that, not because anyone
 17 is interested in me, but because this is a
 18 trend in our society which I would think nobody
 19 could possibly deny --
 20 Q. Okay.
 21 A. -- that we are moving in this direction, and it
 22 seems to me thus not surprising that we want to
 23 be able to identify people who vote.
 24 Q. Okay. And so with regard to boarding an
 25 airplane --

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1 A. Uh-huh.
 2 Q. -- apart from the anecdotal experience of being
 3 asked for an ID --
 4 A. Uh-huh.
 5 Q. -- or seeing others being asked for an ID when
 6 they are in the airport, do you know whether
 7 people have to have an ID in order to board a
 8 plane in this country? Do you know what the
 9 procedures are if you don't have an ID?
 10 A. Well, I guess I -- 20 years ago I know my
 11 daughter -- well, actually, that's slightly
 12 different, but the same general point -- tried
 13 to board a plane for Dublin from Boston and was
 14 turned away because she had forgotten her
 15 passport.
 16 Q. Uh-huh. International travel.
 17 A. Yeah.
 18 Q. And how about domestic travel? What -- what
 19 expertise do you have in that area?
 20 A. Only personal experience.
 21 Q. Okay.
 22 A. But --
 23 Q. You never studied it?
 24 A. No. I don't know if anyone --
 25 Q. And you're not familiar --

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1 A. -- studies it.
 2 Q. And you're not familiar with airport
 3 procedures?
 4 A. Well, I --
 5 Q. On that score --
 6 A. -- I am familiar with my own experience --
 7 Q. -- beyond --
 8 MR. FARR: We're kind of both doing
 9 this.
 10 MR. SHAPIRO: It's not just you. It's
 11 not just you.
 12 BY MR. SHAPIRO:
 13 Q. Apart from your own anecdotal experience?
 14 A. Well, I mean, and the experience of everyone I
 15 know, I've never heard of anybody who did not
 16 have a picture ID and got on a plane. But
 17 perhaps there are exceptions. I don't see what
 18 it would prove. I mean...
 19 Q. You mentioned that you can't enter a federal
 20 courthouse without an ID --
 21 A. Uh-huh.
 22 Q. -- right? And what are you basing that
 23 statement on?
 24 A. My experience in entering federal courthouses.
 25 Q. You've not --

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1 A. I was in New York --
 2 Q. You've not studied the issue?
 3 A. No.
 4 Q. And do you --
 5 A. These are all --
 6 Q. Okay.
 7 A. -- illustrations of a general issue. Who would
 8 study them?
 9 Q. And do you know --
 10 A. And why would I study them?
 11 Q. Do you know how individuals without ID are able
 12 to testify in federal trials, including this
 13 very federal trial we're talking about here,
 14 this very case?
 15 A. Uh-huh. Well --
 16 Q. Do you know how they were able to do that?
 17 A. I'm sure there are special exemptions and
 18 procedures, which is fine with me. I -- you
 19 know. I mean, you do not need -- under the
 20 photo identification law, there are plenty of
 21 exemptions.
 22 The latest -- what is this term? I've
 23 forgotten. You know, something about, you
 24 know -- it's addressed in the last section. I
 25 don't -- I'm not even finding it. This

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1 provision added a -- reasonable impediment
 2 option.
 3 There are certainly provisions made for
 4 people who don't have already a valid photo
 5 ID --
 6 Q. How about --
 7 A. -- to establish their identity. How is that
 8 different from -- maybe people can get on an
 9 airplane in special circumstances.
 10 Q. How about the original law as passed in 2013?
 11 Did it have a reasonable impediment exception,
 12 to your knowledge?
 13 A. Well, it didn't have that reasonable impediment
 14 thing, but it certainly had procedures to allow
 15 people to prevent --
 16 Q. To vote --
 17 A. -- to present many different kinds of ID to
 18 qualify for a proper photo ID.
 19 Q. And if they didn't have one of the photo IDs
 20 that was required, what's your understanding of
 21 the procedures that would allow them to vote?
 22 A. I don't recall now whether they could cast a
 23 provisional vote or not. But it doesn't really
 24 matter because that is no longer the issue.
 25 The State decided to make it still easier for

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1 people to comply by adding the special
 2 impediment provision. So --
 3 Q. Well, it is an issue for the United States, the
 4 effect of the original law.
 5 A. Uh-huh.
 6 Q. And what's your understanding about what would
 7 happen to voters if they didn't have an ID, one
 8 of the required forms of ID under the original
 9 law?
 10 A. Well, you couldn't vote if you could not
 11 provide, you know, several of the many
 12 different ways of establishing your identity.
 13 Q. How --
 14 A. So --
 15 Q. What ways could you establish your identity
 16 under the original law?
 17 MR. FARR: Avner, isn't this a matter
 18 of record? Do we really have to spend time
 19 asking about the statutes?
 20 MR. SHAPIRO: Well, I want to know if
 21 this expert has familiarity with the law that
 22 he's testifying about.
 23 THE WITNESS: Well, birth certificates,
 24 marriage licenses, I believe school attendance
 25 forms. There were quite a wide variety -- and,

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1 of course, if you ever wanted to purchase
 2 alcohol or cigarettes in the state, you would
 3 already have them. There was an enormous range
 4 of possible documents with -- you know, you
 5 need at least three together or two of this and
 6 one of that. Social Security number.
 7 BY MR. SHAPIRO:
 8 Q. So your argument is fair because -- your
 9 argument is that this law is fair because if
 10 you were able to show up with a birth
 11 certificate, let's say, that would allow you to
 12 vote, and you think that that's fair.
 13 MR. FARR: Objection.
 14 BY MR. SHAPIRO:
 15 Q. Is that what you're saying?
 16 A. No, I didn't say a birth certificate was -- I
 17 mean, they want -- they want to know people are
 18 residents of North Carolina. So if you have a
 19 birth certificate from South Carolina, that
 20 doesn't establish you're a resident. You had
 21 to show you received mail at a certain address.
 22 Social Security number is a common identifier.
 23 Quite a range of things that, in my opinion,
 24 did not seem extraordinarily onerous.
 25 Q. And your understanding is you would have to

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1 have these items and be able to present them at
 2 the polling site?
 3 A. No. I mean, you would present them when you go
 4 register and receive and get photographed to
 5 get a secure photo ID.
 6 Q. Uh-huh. And when you're going to vote, what's
 7 your understanding of what a voter would need
 8 to do?
 9 A. Well, all you would need would be to show your
 10 voter [sic] ID card.
 11 Q. But what if you don't have a photo ID card?
 12 A. Well, are you registered to vote? I mean, when
 13 you're registered to vote, if you don't have --
 14 you know, if you don't have a secure photo ID,
 15 you have to go through the process of obtaining
 16 one. And, you know, I don't see the question
 17 here.
 18 Q. All right. Have you ever studied the issue of
 19 how common it is for low income residents of
 20 North Carolina not to have an ID?
 21 A. Well, I've read some estimates on the part of
 22 your experts. I think --
 23 Q. Beyond this case.
 24 A. Beyond this case, no, no.
 25 Q. Have you studied any part of the country,

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1 estimates --
 2 A. Studied --
 3 Q. -- estimates concerning the numbers of
 4 individuals who do not have photo IDs?
 5 A. No.
 6 Q. On the subject of anecdotes, do you know any
 7 homeless individuals in North Carolina, whether
 8 they do or don't have IDs?
 9 A. No, I know nothing about the homeless of North
 10 Carolina.
 11 Q. And low income African-Americans in North
 12 Carolina, do you know -- anecdotally, do you
 13 know low income African-Americans living in
 14 North Carolina --
 15 A. No.
 16 Q. -- well enough to know whether they have IDs or
 17 not?
 18 A. No, I don't.
 19 Q. Okay. Let's turn to pages 27 and 28 of your
 20 report. We were talking earlier about
 21 estimates concerning the no-match list.
 22 A. Uh-huh.
 23 Q. Do you know of -- strike that.
 24 And I think you stated that you,
 25 yourself, have not tried to make an estimate of

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1 individuals without IDs --
 2 A. That's right.
 3 Q. -- in North Carolina.
 4 A. That's right.
 5 Q. Do you know of any person who has studied this
 6 issue who has not found disproportionality in
 7 the possession rates between African-Americans
 8 and whites when it comes to --
 9 A. Well --
 10 Q. -- IDs in North Carolina?
 11 MR. FARR: Let him finish. Objection
 12 to the form.
 13 BY MR. SHAPIRO:
 14 Q. So let me re-ask --
 15 MR. SHAPIRO: Could you re-read the
 16 sentence I just read and see if Mr. Farr still
 17 has an objection?
 18 (The court reporter read from the
 19 record as follows:)
 20 QUESTION: "Do you know of any person
 21 who has studied this issue who has not found
 22 disproportionality in the possession rates
 23 between African-Americans and whites when it
 24 comes to IDs in North Carolina?"
 25 MR. FARR: My objection is the studies

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1 have shown that they relate to matching. It
 2 doesn't -- the studies don't relate to
 3 possession.
 4 BY MR. SHAPIRO:
 5 Q. Okay. So let's keep it on Mr. Farr's rewrite
 6 of that question as it relates to matching. Do
 7 you know anyone who has not found
 8 disproportionality in the matching?
 9 A. Well, but as I understand it, the matching is
 10 very incomplete, and when you match, you do not
 11 know whether or not that person, for example,
 12 possesses a driver's license today, that it is
 13 a very inadequate -- I mean, the data
 14 themselves are disparate and such -- you know,
 15 such a mess for this particular tracing
 16 project.
 17 Q. So you're objecting to my question.
 18 But going back to my question, do you
 19 know anyone who hasn't found that
 20 disproportionality in the matching exercise?
 21 A. Well, there certainly are differences in
 22 estimates of the magnitude of the
 23 disproportionality, as I understand it from --
 24 between Dr. Stewart's and -- Dr. Stewart's
 25 [sic].

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1 Q. So there are differences about --
 2 A. Mag --
 3 Q. Is the answer to my question, no, you don't
 4 know of anyone?
 5 A. Well, I qualified it in the way that I said,
 6 but yes, there -- there is dispute about how
 7 large they are and how meaningful the figures
 8 are because they don't really answer the
 9 question posed, which is does this person
 10 possess today valid voter ID that would admit
 11 them to the polls tomorrow.
 12 Q. And have you ever worked with -- strike that.
 13 What can you tell me about sensitivity
 14 analysis?
 15 A. Well, I assume you're talking here about this
 16 kind of estimate of Dr. Stewart's that --
 17 Q. Not necessarily Dr. Stewart's.
 18 A. Yeah, right.
 19 Q. What is sensitivity analysis, if you could
 20 design it for us?
 21 A. Well, I -- as I understand it -- and it's not
 22 something I recall reading anything about --
 23 it's a standard form of analysis that involves
 24 slightly changing the assumptions, the numbers
 25 in the assumptions, and coming up with

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1 formulations like at least 6.1 percent of
 2 registered North Carolina voters and perhaps as
 3 many as 12.7 lack identification.
 4 That's what I understood to be
 5 sensitivity analysis. But it's not something I
 6 had encountered before this case, so --
 7 Q. You've never done it before?
 8 A. No, no.
 9 Q. Okay. And before this case, had you ever
 10 studied this type of matching analysis?
 11 A. Well, as I said before, I engaged in a matching
 12 analysis myself.
 13 Q. Strike -- let me clarify. The type of analysis
 14 we're talking about here, the sensitivity
 15 analysis and the type of analysis --
 16 A. Oh, no.
 17 Q. -- that we're talking about in this case,
 18 involving the sensitivity analysis?
 19 A. Right. No.
 20 Q. Okay. Let's turn to page 26, the paragraph in
 21 the middle of that page.
 22 A. Uh-huh.
 23 Q. "His" -- okay. So the second sentence reads,
 24 "His aim was to determine whether there was --
 25 were racial disparities in the number of

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1 previous registrants who had disappeared from
 2 the voter rolls." Do you see that sentence?
 3 A. Yes.
 4 Q. What do you mean by that statement?
 5 A. Well, I can see that's badly formulated. He
 6 was attempting to identify the percentage of
 7 previous registrants who could be matched to a
 8 file that could be used to establish whether
 9 they currently have photo ID.
 10 Q. Okay. I must confess, I'm having difficulty
 11 locating it. There was a -- you reference at
 12 one point in this report -- bear with me one
 13 second.
 14 The -- do you -- do you recall using
 15 the phrase "disagreements about countless
 16 arcane technical issues between the experts" in
 17 this report? Somewhere in here -- does that
 18 ring a bell?
 19 A. Well, it does sound familiar.
 20 Q. And I was trying to think about what it was
 21 that you were referring to when you talked
 22 about the countless arcane technical issues --
 23 A. Uh-huh.
 24 Q. -- that had generated disagreements between
 25 different experts in this case.

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1 A. Yeah.
 2 Q. What disagreements are you --
 3 A. Well, I --
 4 Q. What disagreements are you referring to
 5 specifically?
 6 A. Specifically, disagreements between Dr. Stewart
 7 and Dr. Thornton involving what information to
 8 use and what information to estimate in
 9 identifying and determining who are the no
 10 matches. And you can -- you could take as an
 11 extreme decision rule you must have an
 12 identical full name, middle initial, and last
 13 name spelled precisely the same way, or you
 14 might allow for some variation.
 15 You can use the Soundex code even, so
 16 that a name which appears as something that is
 17 spelled quite differently but sounds close
 18 enough so you need to inspect it to see if it's
 19 a match. There are a whole variety of these --
 20 Q. So, Dr. Thernstrom, did you delve in there and
 21 try to review these different positions of
 22 these experts on these issues?
 23 A. No, I didn't. That's why I said these are
 24 arcane --
 25 Q. Arcane --

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1 A. -- technical issues I'm not going to address.
 2 Q. Are they too arcane for you?
 3 A. Well, one, I didn't have the time, but I don't
 4 know if I would have the patience really to be
 5 deeply interested in these coding rules.
 6 Q. And do you have the expertise that would allow
 7 you to decide who has the better of the
 8 argument on these issues?
 9 A. No, I don't think I do.
 10 Q. Okay.
 11 THE VIDEOGRAPHER: Five minutes. Five
 12 minutes for the tape.
 13 MR. SHAPIRO: Okay.
 14 BY MR. SHAPIRO:
 15 Q. Okay. On -- I found where you said that, but
 16 even in the same -- the paragraph that begins,
 17 "Experts for the state" --
 18 A. What page?
 19 Q. This is on page -- it was on page 26, and now I
 20 actually want to focus further down in that
 21 paragraph. You say, in the next -- the first
 22 sentence is the one we were just discussing.
 23 "Experts for the state have countered with
 24 other sets of estimates. The task was
 25 extraordinarily complex, and there are disputes

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1 over the countless arcane technical issues."
 2 It's the next sentence I want to focus
 3 on now. "It was impossible for experts from
 4 either side to reach definitive conclusions,
 5 because we do not have a single database that
 6 follows all of our citizens when they move a
 7 few blocks away, or 1,000 miles away. We don't
 8 have a single file of every person who dies in
 9 the United States each year."
 10 Did I read that correctly?
 11 A. Yeah.
 12 Q. So if we're trying to match registered voters
 13 to their ID cards, why would you need to have a
 14 single database?
 15 A. Well, it would be ideal and necessary to be
 16 accurate. If you do not have reliable data on
 17 people who have moved out of the state, a lot
 18 of these people who are classified as no
 19 matches cannot be counted as people who live in
 20 North Carolina and will lack the -- allegedly
 21 lack the qualifications to vote.
 22 You know, if they're not in the state
 23 anymore, they don't count. So it doesn't mean,
 24 you know, that there are all these -- actually,
 25 in a typical year, 300,000 people move out of

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1 North Carolina.
 2 And likewise, the rate of people who
 3 move within the state is something like
 4 15 percent a year change residence. If you
 5 can't reliably track people from address to
 6 address, then they count as a no match, and
 7 hence, disadvantaged in voting when, in fact,
 8 they're perfectly matched. The records just
 9 didn't do it.
 10 Q. So your perception is the only way you can
 11 address that problem is with one national ID --
 12 A. Well --
 13 Q. -- databank?
 14 A. No. I mean, I'm conjuring that up as an ideal,
 15 something like they do have in Sweden where you
 16 can indeed track every individual from place to
 17 place and job to job.
 18 And I'm not calling for it. I'm simply
 19 citing that as what we would need to make
 20 reliable estimates about people who are no
 21 matches --
 22 Q. But strike that.
 23 A. -- who might be disadvantaged.
 24 Q. Sorry. Not strike it. Let me interrupt.
 25 It's one thing to say an ideal. It's

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1 another thing to say necessary, right? It's
 2 not necessary to have one database for the
 3 entire country, is it, for you to be able to
 4 have reliable information about whether someone
 5 has an ID or not in the state?
 6 A. Well, I would think you would need something
 7 like that. I mean, what -- what happens --
 8 what if all your no matches are sitting in
 9 South Carolina or Virginia and they have
 10 driver's licenses and are voting away there?
 11 They show up --
 12 Q. Do you know what happens?
 13 A. Well, in this analysis --
 14 Q. Well, what do states currently do to address --
 15 A. I'm talking about how Stewart classifies them.
 16 They're no matches.
 17 Q. But what --
 18 A. He doesn't know where they are.
 19 Q. What do states currently do to under -- to deal
 20 with this issue of people moving out of state,
 21 to your knowledge, to update their records?
 22 How do they deal with that problem?
 23 A. Well, I'm not -- oh, well, I assume -- I don't
 24 recall reading anything about this for North
 25 Carolina specifically, but there are periodic

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1 reviews of voter registration files and efforts
 2 to verify addresses. These have been a source
 3 of much legal controversy for alleged racial
 4 disparities.
 5 But I don't think the -- any of the
 6 files Dr. Stewart was with indicated, oh, this
 7 is a no match but that's because they're now
 8 living in Utah.
 9 Q. Have you studied the ways in which states try
 10 to update their records?
 11 A. No, I haven't studied it, but I don't know -- I
 12 would doubt that North Carolina has accurate
 13 members -- figures to show, you know, these
 14 former residents are in Florida, these are --
 15 former residents are in Minnesota. Post office
 16 in many cases, but many people do not leave
 17 forwarding addresses.
 18 Q. Are you aware that businesses also routinely
 19 engage in database matching of this sort?
 20 A. No.
 21 MR. FARR: Objection to the form.
 22 THE WITNESS: No, I don't know anything
 23 about businesses. I mean, they -- they must be
 24 matching their consumers, their customers.
 25 THE VIDEOGRAPHER: We're out of time.

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1 MR. SHAPIRO: Okay.
 2 THE VIDEOGRAPHER: Ready to go off
 3 record? We're going off the record. This is
 4 the end of videotape number 2. The time is now
 5 2:39 p.m.
 6 (Recess from 2:39 p.m. to 2:50 p.m.)
 7 THE VIDEOGRAPHER: We're now back on
 8 the record. This is the beginning of videotape
 9 number 3 in the deposition of Stephan
 10 Thernstrom. The time is now 2:50 p.m. You may
 11 proceed.
 12 BY MR. SHAPIRO:
 13 Q. Okay. Dr. Thernstrom, we're back on the
 14 record. And I'd like to direct your attention
 15 to footnote 10 on page 11 of your report. And
 16 it's a footnote to a sentence on page 11 in the
 17 middle of the page that says: "The reader will
 18 see that in the 2006 election, black turnout
 19 lagged 10.7 points behind that of whites."
 20 Footnote 10 says: "Dr. Stewart's
 21 rationale for distinguishing off-year from
 22 presidential election years seems sound to me."
 23 A. Uh-huh.
 24 Q. And then you cited pages 66 to 67 in his
 25 report.

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1 A. Uh-huh.
 2 Q. And so I'm -- I want to highlight those
 3 paragraphs that you appear to think are sound
 4 which are contained in this report. It's
 5 marked as Exhibit Thernstrom 2.
 6 (WHEREUPON, Thernstrom Exhibit 2 was
 7 marked for identification.)
 8 BY MR. SHAPIRO:
 9 Q. And if you would turn to page 66 and review the
 10 relevant paragraphs, to save time here. I'll
 11 spare you my reading all of that. If you could
 12 read through what -- what you're referring to
 13 there, which I believe will be found in
 14 paragraphs 158 and also 159. If you could
 15 review those paragraphs, I'd appreciate it.
 16 Actually, it's really 158 that's the
 17 one that I would like you to review.
 18 A. 158?
 19 Q. On page -- on page 66.
 20 A. I have paragraph 158.
 21 Q. Yeah. I think that that's what you were
 22 referring to. Or whatever -- perhaps you can
 23 tell us what paragraphs -- if you recall, what
 24 paragraphs you were referring to when you wrote
 25 that sentence.

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1 A. Well, the sentence in question is --
 2 Q. Footnote 10.
 3 A. -- my footnote that I agree we have to
 4 distinguish off-year from presidential election
 5 years.
 6 Q. Yeah. And the reason --
 7 A. Yeah.
 8 Q. -- the rationale that Dr. Stewart provided.
 9 I'm seeing that in paragraph 158.
 10 A. Yeah. Okay.
 11 (Reviewing.)
 12 Well, I don't see any problem here. I
 13 agree with the rationale --
 14 Q. Okay.
 15 A. -- that there are different levels of political
 16 interest, but I --
 17 Q. Is there anything --
 18 THE REPORTER: I'm sorry. Different
 19 levels of what?
 20 THE WITNESS: Well, let me backtrack,
 21 in case there's some little trap intended here.
 22 BY MR. SHAPIRO:
 23 Q. Yes.
 24 A. I meant by my footnote the innocuous --
 25 Q. I'm not trying to trap you.

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1 A. -- truism that anyone would know. Yeah, gee,
 2 people turn out more for presidential elections
 3 than they do in off-year elections, and that's
 4 what I cited Dr. Stewart as providing -- you
 5 know, discussing that. But if you think the
 6 Stewart paragraphs had more to say than that,
 7 then I'd better --
 8 Q. Yeah.
 9 A. -- read them slowly.
 10 Q. There's one -- all right. Let me help you out
 11 here, Doctor. I'm certainly not trying to trap
 12 you, but I am trying to direct your attention
 13 to what I think you were writing about there
 14 when you were talking about the rationale --
 15 the rationale for distinguishing a mid-term and
 16 regular elections. There's a description of
 17 that in paragraph 158.
 18 A. Uh-huh, uh-huh.
 19 Q. If you could read that paragraph, it's just one
 20 paragraph in length. Read it to yourself.
 21 A. Uh-huh.
 22 Q. First of all, tell me if there's anything there
 23 that seems problematic to you, that you
 24 disagree with.
 25 A. Well, less political interest and excitement,

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1 yes. More experience --
 2 Well, I, frankly, don't know whether
 3 the rest of this is true. It all seems
 4 plausible to me, but he does not cite any
 5 evidence for these propositions. This is him
 6 opining.
 7 So I -- my statement -- I would qualify
 8 the footnote by saying I agree with him,
 9 off-year elections are different from
 10 presidential ones because the turnout is almost
 11 invariably lower.
 12 Q. Okay. So --
 13 A. Without speculating --
 14 Q. Okay.
 15 A. -- about --
 16 Q. I hear you. Do you have any basis to dispute
 17 his assertion that mid-term voters are less
 18 likely to be new registrants and are more
 19 likely to be repeat voters?
 20 A. No, no. I have not -- I -- I don't know the
 21 authority -- you know, what authority he has
 22 provided for this paragraph. I do not see, you
 23 know -- see my table so-and-so where Jones and
 24 Smith have shown -- I mean, there's no citation
 25 to any scholarship on this point. There is no

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1 citation, see my Table 28 below. It's an
 2 assertion as to why he thinks the electorates
 3 are different. But I haven't seen any numbers
 4 that show the elector -- the voters in 2014
 5 were different in these ways than those in
 6 2012.
 7 Q. So you have no reason to dispute him but you're
 8 distrustful just because you don't see the
 9 data?
 10 A. Well, I mean, here are quite a number -- you
 11 know, there is no doubt whatever that, in
 12 general, turnout is lower in these mid-term
 13 elections.
 14 Q. I'm talking about the issue of new registrants.
 15 There are going to be less new -- does that
 16 sound right to you --
 17 A. Well --
 18 Q. -- based on your knowledge of elections?
 19 A. It -- I don't know from that from my general
 20 knowledge of elections. He may know that from
 21 a study of data in North Carolina, but if so,
 22 he hasn't explained that to us.
 23 Q. Okay. Well, let's assume that's true. Since
 24 you don't -- can't dispute it one way or the
 25 other. Can we do that?

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1 A. All right.
 2 Q. If we assume that there are going to be less
 3 new registrants in the mid-term election and
 4 that we're dealing principally with the
 5 registrants from the previous general election,
 6 2012 --
 7 A. Uh-huh.
 8 Q. -- doesn't that mean that most of the
 9 registered voters in 2014 are actually going to
 10 be holdovers from 2012?
 11 MR. FARR: Objection.
 12 THE WITNESS: Well, if the first
 13 proposition is true -- and I do not have the
 14 evidence to dispute it, but I've questioned it
 15 and don't accept it -- I mean, that would
 16 probably follow from that premise, but, you
 17 know, we don't really know that that's true.
 18 BY MR. SHAPIRO:
 19 Q. Okay. I'm going to move on. Let's stay with
 20 this report.
 21 MR. FARR: Has this been marked as an
 22 exhibit?
 23 MR. SHAPIRO: It has.
 24 MR. FARR: What was it? Number 2?
 25 MR. SHAPIRO: 2.

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1 THE WITNESS: Oh. Do you want me to
 2 give you this back or do you have other --
 3 BY MR. SHAPIRO:
 4 Q. No, you can hold onto it. You can hold onto
 5 it.
 6 A. Okay.
 7 Q. Let's turn to page 68, please.
 8 A. Of Stewart?
 9 Q. Yes.
 10 Now, do you see the footnote --
 11 footnote 83?
 12 A. Yes, uh-huh.
 13 Q. Footnote 83 reads: "VEP turnout" -- and this
 14 is reporting for a series of elections in North
 15 Carolina.
 16 A. Uh-huh. Presidential year.
 17 Q. Yes. "Was 65.4% in 2012" --
 18 A. Uh-huh.
 19 Q. -- "66.1% in 2008, 58.7% in 2004, and 52.5% in
 20 2000."
 21 A. Uh-huh.
 22 Q. Do you see how there's sort of a gradual
 23 increase there in turnout overall?
 24 A. Yes.
 25 Q. What in your view explains that gradual

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1 increase in turnout?
 2 A. Well, I would say, first of all, a difference
 3 between 2000 and 2004 is not very striking.
 4 What stands out is an Obama effect, or at least
 5 a phenomenon connected with the two years in
 6 which he was on the ballot. And that
 7 undoubtedly excited African-Americans in the
 8 state, as in every other state. But that
 9 wouldn't be enough to knock the overall average
 10 up by about 8 points.
 11 So I would say a lot of whites were
 12 more engaged in the 2008 election than in 2004.
 13 That would be my -- or 2000.
 14 Q. What would cause that? What -- there's a
 15 trajectory going up --
 16 A. Higher -- well, it isn't much of a trajectory.
 17 You've got, you know, a certain -- kind of
 18 close to plateau. What are these numbers
 19 again? 52.5, 58.7, 2004. Then a big jump.
 20 Slight decline. And this is North Carolina.
 21 I -- probably to have any opinion of this, I
 22 would need to study North Carolina and those
 23 elections. I don't know offhand --
 24 Q. You were very focused on --
 25 MR. FARR: Wait.

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1 THE WITNESS: -- what have -- what
 2 would have caused it. I would be curious,
 3 since I have examined the figures on levels of
 4 black turnout, that that obviously would --
 5 these are total turnout. These -- that would
 6 affect the total turnout upward. But blacks
 7 are only a little over a fifth of the
 8 population.
 9 BY MR. SHAPIRO:
 10 Q. Right.
 11 A. So it's not going to be primarily driven by
 12 African-American --
 13 Q. Right.
 14 A. -- participation.
 15 Q. I'm asking these questions precisely because
 16 you did focus on turnout.
 17 A. Yeah.
 18 Q. But while you focused on turnout, if I
 19 understand you correctly, you didn't look at
 20 turnout over a period of time. Is that -- if I
 21 understood you correctly.
 22 A. Well, because I understood both Drs. Burden and
 23 Stewart to say pretty bluntly, if these
 24 measures, end of same-day voting, et cetera, et
 25 cetera, are in effect, it will -- I've

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1 forgotten the language now. You know, the
 2 worst restriction or constriction of
 3 African-American opportunity since the passage
 4 of the Voting Rights Act. Strong language, and
 5 so I think the test of that is turnout.
 6 Q. Well --
 7 A. That's what makes black votes count --
 8 Q. Okay. You think --
 9 A. -- is turnout.
 10 Q. And do you think registration is also relevant
 11 or is it just turnout?
 12 A. Well, to the extent to which it's a requisite
 13 for turnout --
 14 Q. Okay.
 15 A. -- that's significant.
 16 Q. Okay. So you think turnout and registration
 17 and participation rates are very relevant here.
 18 A. Yeah.
 19 Q. That's your view.
 20 But yet, as I understand it, you didn't
 21 look at turnout as it developed from 2000
 22 onwards, even though these reforms that they're
 23 now eliminating are largely ones that were
 24 adopted between 2001 and 2009, correct?
 25 A. Even though these reforms that they're now

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1 eliminating.

2 Q. I'm referring to same-day registration, numbers

3 of early voting days --

4 A. Oh, okay.

5 Q. -- out-of-precinct voting.

6 A. Uh-huh. Yeah. So?

7 Q. Did you look at how the adoption of those

8 reforms during the 2001 to 2009 period affected

9 turnout?

10 A. No. I saw some claims about it. I think it

11 was in a report by Lichtman, but it was -- he

12 made no attempt to make a systematic analysis

13 of it. He threw these measures all together,

14 though they weren't passed the same year. You

15 know, it was really just his preconceived

16 opinion, I thought.

17 But no, I did not -- I mean, I have,

18 you know, looked over the -- and discussed the

19 whole period since 2006, which is what -- that

20 was Stewart's beginning point here, and looked

21 at -- particularly at the black turnout rate.

22 You are saying if I had -- they would

23 correlate so closely with prior liberalization

24 of the voting law that, therefore, when the law

25 is changed back in the direction it was before

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1 2005, then turnout would drop. Well, I can see

2 a logical argument there, if the correlation is

3 that --

4 Q. But this is -- the short answer to my question,

5 this is something you just didn't look at?

6 A. Well, it isn't that I didn't look at it at all.

7 I remember clearly reading Lichtman's very

8 speculative claims on this point.

9 Q. Okay.

10 A. I didn't analyze it, you know, because

11 Stewart -- neither Stewart nor Burden did.

12 Q. And so your focus on turnout, you said

13 registration is relevant to turnout and

14 participation?

15 A. Uh-huh.

16 Q. And you said you looked at African-American

17 turnout and --

18 A. Uh-huh.

19 Q. Did you look at African-American registration

20 as well --

21 A. Well --

22 Q. -- in 2014? I think you said you did.

23 A. Yeah, well, I've got figures on them, from

24 Dr. Stewart, for example.

25 Q. Okay.

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1 A. These are --

2 Q. And how about -- how about white registration

3 rates between 2001 -- between 2001 and 2014,

4 for example? Did you look at that?

5 A. Yeah, I wasn't struck by -- let me see what I

6 can recall. I mean, the white share of the

7 total registered population and of the voting

8 age population has been declining. The black

9 share has been pretty constant.

10 Q. And how about overall registration rates for

11 whites? How has that changed or remained the

12 same, to your knowledge?

13 A. Well, I do have that knowledge, I believe,

14 before me, but I don't remember it. Those are

15 the turnout numbers. I had the -- no, I guess

16 I didn't put the registration figures in. I

17 don't recall.

18 Q. You don't recall?

19 A. At the moment, no. I mean, I did look at that

20 at one point, but it --

21 Q. Okay. And would it be relevant to know how

22 white -- strike that.

23 You have said that African-American

24 registration increased because of the Obama

25 effect, right? Is that right?

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1 A. Yeah. I mean, that would be my first stab --

2 Q. Okay.

3 A. -- at an answer.

4 Q. Okay. And what would explain increases in

5 white registration rates, if there are some?

6 A. Yeah. Well, what I -- yeah, what I've --

7 Q. Would the Obama effect --

8 A. -- I've looked at white registration --

9 MR. FARR: Wait.

10 THE WITNESS: I've looked at white

11 registration rates compared to black

12 registration rates and looked at the racial gap

13 and how it narrowed. I didn't pay much

14 attention to the white registration, per se.

15 But certainly white registration rates

16 might well have gone up in response to

17 dissatisfaction with -- I believe Obama carried

18 North Carolina in 2008 and he did not in 2012,

19 and that that would reflect -- would have to

20 reflect considerable white dissatisfaction.

21 BY MR. SHAPIRO:

22 Q. Okay. So let's turn to page 70 of

23 Dr. Stewart's report --

24 A. Sure.

25 Q. -- and focus on white registration rates.

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1 Now, if we --
 2 A. Page 7-0?
 3 Q. Yeah.
 4 A. Yeah.
 5 Q. So I think you are in agreement that we should,
 6 you know, be comparing like apples.
 7 A. Yes.
 8 Q. So general elections to general elections,
 9 mid-terms to mid-terms, correct?
 10 A. Uh-huh, right.
 11 Q. So if you look at 2000 and then the next
 12 general election, if you go from general
 13 election to general election --
 14 A. Uh-huh.
 15 Q. -- do you see that there's a steady increase in
 16 white registration during those years?
 17 A. Well, I'm first wondering what happened to
 18 2004. We've missed a presidential year. And
 19 then they are at two-year intervals thereafter.
 20 So I'm sorry. What is your question?
 21 Q. For the years that are reported, do you see a
 22 steady increase in white registration?
 23 A. No, not at all. If anything, a slight decline.
 24 Q. No, no. If you go from general election to
 25 general election to general election --

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1 A. Oh, okay. Yes, I'm sorry. I was forgetting
 2 that caveat. 90 -- 87 -- modest drop on the
 3 presidential measure, and basically no change
 4 in the off-year elections.
 5 Q. Okay. So from 2000, it says 4,527 [sic], and
 6 then it jumps in 2008 to 5 million, right, and
 7 67 --
 8 A. Well, wait a minute. You're now counting the
 9 white voting age population. I thought we were
 10 talking about registration rates.
 11 Q. I'm sorry. Yes. You're right. I got the
 12 wrong column. But do you see that there's an
 13 increase there?
 14 A. In the white -- well, comparing presidential
 15 years, 92 -- 90.2, 90.7, 87.8. No, I don't see
 16 any trend at all. There's an insignificant
 17 jump of 500 -- five-tenths of a point between
 18 '4 and '8, and then a drop of 3 percent between
 19 2008 and 2012. So --
 20 Q. I guess --
 21 A. -- whites are getting --
 22 MR. FARR: Wait.
 23 BY MR. SHAPIRO:
 24 Q. Strike that. I'm sorry. You're talking about
 25 percentages. I'm talking about raw numbers.

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1 You're talking about percentages between blacks
 2 and whites.
 3 A. I'm looking at white registration.
 4 Q. Yeah.
 5 A. Which was the question. And I thought we were
 6 talking about the rate.
 7 Q. No. I'm talking about the number of -- you're
 8 looking at a rate as compared to blacks.
 9 A. No, I'm not. I'm looking at the rate for
 10 two -- you know, 2000 is 90.2 percent
 11 registered, right?
 12 Q. Uh-huh.
 13 A. That's a -- that's a rate. So I think I've
 14 been quite consistent, but evidently, I'm not
 15 addressing what you -- you want me to look at
 16 the total --
 17 Q. Let --
 18 A. -- numbers registered?
 19 Q. Let's move on. It may not be --
 20 Okay. All right. Let me jump to --
 21 Dr. Thornton, [sic] do you think that black
 22 turnout needs to decrease in 2014 compared to
 23 2010 in order to show discriminatory impact?
 24 MR. FARR: Objection. It's a legal
 25 conclusion.

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1 You can answer it if you want to or if
 2 you can.
 3 THE WITNESS: Well, if we take the
 4 terms "discriminatory impact" in a layperson's
 5 sense -- all right. After all, this
 6 terminology -- restate the question, please.
 7 BY MR. SHAPIRO:
 8 Q. Okay. Do you think that black turnout needs to
 9 decrease in 2014 compared to 2010 in order to
 10 show a discriminatory impact?
 11 MR. FARR: Objection.
 12 You can answer if you know how to
 13 answer it.
 14 THE WITNESS: Yeah. Well, to the
 15 extent to which it's a legal question, I can't
 16 say. But I would say, just in my layman's
 17 terms, that if you have strong predictions from
 18 two expert witnesses -- and I believe their
 19 analyses produced predictions -- and black
 20 turnout doesn't go down, it goes up, that
 21 certainly raises very serious questions about
 22 how to validate their model.
 23 And if black turnout didn't decline, is
 24 there some other empirical manifestation of
 25 this alleged burden? Because I think you need

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1 to show it has consequences on blacks'
 2 political power. And you don't exercise
 3 political power without electing people, and
 4 the turnout measures whether your clout is
 5 going up or going down.
 6 And, if anything, it went up in the
 7 2000 -- as a result of the 2014 election.
 8 BY MR. SHAPIRO:
 9 Q. I mean, I guess this goes to a question I asked
 10 earlier, and, you know, essentially, if I
 11 understand you correctly, you're saying that
 12 you can have numbers of people,
 13 African-Americans, being burdened in some way
 14 by a law, maybe even not being able to vote,
 15 but if turnout has not gone down, then in your
 16 view there's no discriminatory effect. Is that
 17 fair?
 18 MR. FARR: Objection to the form.
 19 You can answer.
 20 THE WITNESS: Well, I mean, there's
 21 certainly whites who -- you know, I'm sure
 22 there's many whites in North Carolina with less
 23 than eight years of schooling, as there are
 24 blacks. There's many -- in absolute numbers,
 25 there's many whites who are desperately poor

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1 and so on.
 2 So whether these burdens, you know, cut
 3 the voting capacities or ability to turnout of
 4 blacks more than whites, I don't know. And
 5 more important, how could you possibly know? I
 6 mean, there are no -- you know --
 7 BY MR. SHAPIRO:
 8 Q. So absent decrease in turnout, you can never
 9 possibly know whether African-Americans are
 10 harmed by this type of election law. Is that
 11 your view?
 12 A. Yeah. Well, it is my view that the election
 13 laws so far enacted have not proven
 14 restrictive, reductive of black political power
 15 as measured by turnout, which is by far the
 16 best and I think the only measure. And I would
 17 guess that if the photo ID law goes into
 18 effect, the results will be very similar,
 19 because after all, your first three predictions
 20 by these witnesses haven't worked out very
 21 well.
 22 But if not, then how would you -- I
 23 mean, it may be a legal question. How do you
 24 prove discrimination if it cannot be
 25 demonstrated from evidence at the polling

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1 place? Maybe -- I don't know.
 2 Q. Okay. Now, if we -- I want to give you a
 3 hypothetical.
 4 A. Uh-huh.
 5 Q. If we assume that the photo ID law only applied
 6 to African-Americans, if African-American
 7 turnout did not decrease in 2014 as compared to
 8 2010, would you say there's no discriminatory
 9 effect in that instance?
 10 A. Well, frankly, I think the question is too
 11 ridiculous to answer. I'm not going to begin
 12 with a premise we have a law that requires
 13 photo ID for African-Americans but nobody else.
 14 I mean, you know, end of question. That -- I
 15 can't entertain that as a serious basis for the
 16 question, you know. Of course, such laws would
 17 be immediately unconstitutional.
 18 Q. I guess my question wasn't going to
 19 constitutionality. My question was going to
 20 does it have a discriminatory effect.
 21 A. I really can't think about it, because you
 22 started off on such an imaginative way.
 23 Q. Well, you know, laws like that have existed in
 24 our country, so it's not that --
 25 A. Well, of course. They wouldn't exist any

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1 longer. They wouldn't exist any longer.
 2 Q. That's because of the constitution.
 3 But I'm asking you to entertain that
 4 there was such a law and would, in your view,
 5 that type of law have a discriminatory effect?
 6 A. Well, I would hope there would be no possible
 7 test of it because it would never get
 8 implemented. They would be in court, you know,
 9 two hours after the bill was signed into law,
 10 and you'd get an injunction. I mean, it would
 11 not -- you know, you'd probably get summary
 12 judgment in 20 minutes.
 13 Q. I guess I'm not -- I'm not asking --
 14 A. No, I know.
 15 Q. I'm asking you to entertain my hypothetical.
 16 A. Yeah. That's the best I could do with that.
 17 Q. Okay. Can we turn to page 27 of your report.
 18 A. Back to my report.
 19 Q. Yeah.
 20 A. Okay.
 21 Q. You make a statement here in the middle of that
 22 page that reads, "Whenever the highest estimate
 23 of a figure is more than double the lowest one,
 24 we have to look askance at the numbers."
 25 A. Uh-huh. Yes.

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1 Q. What's your basis for making that kind of
 2 statement?
 3 A. Well, we have somebody here attempting to
 4 estimate an unknown, and the data are very
 5 imperfect, and the author recognizes that, and
 6 decides to make the estimates on the basis of
 7 slightly varying assumptions about the
 8 relationship between, you know, X and Y. And
 9 so comes up with an estimate with an upper
 10 bound of this, a lower bound of this, and so
 11 on. I'm quite familiar with that kind of
 12 thing.
 13 And I'm simply, you know, making the
 14 obvious point that when the estimates, you
 15 know, vary in the case of blacks by -- you
 16 know, the low number is only a third the high
 17 number, we don't have to wonder a little, well,
 18 what's the right number. And if they're that
 19 far off, it's -- it's hard to believe they --
 20 in their reality.
 21 Q. Do you know what caused the different numbers
 22 here and what assumptions Dr. Stewart was
 23 considering?
 24 A. No. I looked at that early on, and
 25 unfortunately, I don't remember what the

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1 variables, you know, he was playing with were.
 2 Q. Do you have an understanding as to whether a
 3 voter would be able to use a revoked or
 4 suspended ID to vote under HB 589 before the ID
 5 requirement was recently revised?
 6 A. I probably have read it, but I don't remember
 7 it by now.
 8 Q. And you would agree that that's one of these
 9 assumptions that would affect data -- data
 10 here?
 11 A. Yeah.
 12 Q. And would it make sense for an expert to look
 13 at that problem with both assumptions?
 14 A. Sure, sure.
 15 Q. Now, in that paragraph, you also use the phrase
 16 "The numbers here were generated by massaging
 17 the data using various assumptions." The
 18 phrase "massaging," it sounds a little bit
 19 like -- are you accusing him of cooking the
 20 books there?
 21 A. Yeah, no, not at all. Poor choice of words. I
 22 mean, social scientists do talk about massaging
 23 the data. I've heard that term used on many
 24 occasions. It just means, you know, handling
 25 it for purposes of analysis. I didn't mean

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1 anything invidious by it.
 2 Q. You're in no way suggesting he's
 3 misrepresenting any numbers?
 4 A. No, not at all, no.
 5 Q. Okay. It's fair to say you just got a little
 6 carried away with the language there?
 7 A. Well, I have a certain penchant for a clear
 8 bold statement, uh-huh.
 9 Q. Okay. Let me see how I'm doing with time. All
 10 right. Let me jump a bit.
 11 So what qualifications, expertise,
 12 experience can you rely on to express your
 13 opinions that we haven't already discussed
 14 that's not in your report? Is there anything
 15 that comes to mind?
 16 A. I probably could think of more things, but I
 17 would say I've been talking long enough. I
 18 mean, I've written an awful lot that I am proud
 19 of that covers these issues in various ways.
 20 Indeed, almost all the writing I've ever done
 21 has something to do with these issues, broadly
 22 construed. And, you know, people can read it
 23 and -- I mean, I have won a lot of prizes and
 24 stuff for my writing, but the best test of what
 25 you think of it is to read it.

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1 Q. Okay. I just wanted to make sure that we had
 2 fully mined your memory as to the articles or
 3 books that you have written that relate to this
 4 topic.
 5 A. Yeah.
 6 Q. Okay. And in what voting rights cases have you
 7 been retained as an expert?
 8 A. Well, I couldn't begin to recite them, though
 9 actually I guess we do have --
 10 Q. I asked you to detail them for me, I believe,
 11 in my request.
 12 A. Well, I missed that request, then. That
 13 sounds -- it was, like, only yesterday or
 14 something.
 15 Q. Four days ago, I think, three days ago, yeah.
 16 A. All right. Well, I could detail them for you,
 17 and we'll --
 18 MR. SHAPIRO: Would you be able to --
 19 that was in the request that I provided you,
 20 requests for --
 21 MR. FARR: Honestly, I didn't even look
 22 at it.
 23 MR. SHAPIRO: You just passed it on
 24 to --
 25 MR. FARR: Yeah.

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1 MR. SHAPIRO: Well, if you would be so
 2 kind --
 3 MR. FARR: If we can supplement --
 4 MR. SHAPIRO: Yeah, absolutely.
 5 MR. FARR: We'll look at that and do
 6 that.
 7 MR. SHAPIRO: That is my request.
 8 MR. FARR: We did send an appendix out,
 9 I think, with an update, but --
 10 MR. SHAPIRO: Okay. I would --
 11 THE WITNESS: But what I can provide
 12 you, I will warn you in advance, will be very
 13 sketchy, because a lot of my work in these
 14 cases pre-dates the personal computer.
 15 BY MR. SHAPIRO:
 16 Q. I hear you.
 17 A. At least for me. And I don't have the files,
 18 and then I've got stuff that was on floppy
 19 disks that was transferred that is on -- so --
 20 but I can tell you, you know, the issue was at
 21 large voting or redistricting or whatever.
 22 Q. Okay. And --
 23 MR. SHAPIRO: Well, if Tom would be so
 24 kind as to supplement, you know, the list as
 25 best he -- you --

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1 THE WITNESS: Yeah.
 2 MR. SHAPIRO: As can be done.
 3 BY MR. SHAPIRO:
 4 Q. And in how many -- do you recall whether there
 5 were any voting rights cases where you've been
 6 rejected as an expert? Any cases where you've
 7 been rejected as an expert?
 8 A. No.
 9 Q. Can you think of any -- even a single instance
 10 where you've been rejected as an expert?
 11 A. Well, I would say there were two voting rights
 12 cases where, in one case the judge recommended
 13 my testimony be disregarded or some such -- he
 14 did not disqualify --
 15 Q. Do you recall the name of the case?
 16 A. I -- well, it is -- well, actually, where's my
 17 CV? Is that part of this? Yeah, I can tell
 18 you. That is Large vs. Fremont County in
 19 Wyoming. But, no, that's not the case. The
 20 other -- I had another case involving American
 21 Indians in Colorado.
 22 Q. So Fremont County is not the one?
 23 A. The one where the judge -- well, let me put
 24 it -- there are two cases. One is Cuthair vs.
 25 Montezuma, Colorado. That's the first. Maybe

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1 1995. The second is Large v. Fremont County.
 2 That's more like 1998 or something. And in
 3 one, I can't quite recall, the judge said he
 4 was more convinced by the testimony of the
 5 historian on the plaintiffs' side than by mine
 6 because I lacked specialized local knowledge of
 7 the tribal groups involved.
 8 Q. Which one was that?
 9 A. That was the Colorado case, Cuthair vs.
 10 Montezuma-Cortez.
 11 Q. How about Fremont County? You mentioned that
 12 earlier. What happened in that?
 13 A. Then the Large case, that is the second, and
 14 there -- I think in the first case the judge
 15 said he thought, you know, the plaintiffs'
 16 expert had the best of it.
 17 The second case, the judge was a little
 18 more snippy. It involved a duel with a
 19 historian who had no historical training
 20 whatever who had done graduate work in the
 21 school of social work. She was -- lived
 22 locally, and her idea of a historical report
 23 was to simply report every myth she could pick
 24 up from the folklore of the Indian people.
 25 Q. I'm going to interrupt you because we're short

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1 on time.
 2 A. Yeah.
 3 Q. Do you consider yourself an expert in election
 4 administration?
 5 A. In what?
 6 Q. Election administration.
 7 A. No.
 8 Q. Have you ever worked as an election
 9 administrator at any time?
 10 A. No.
 11 Q. Have you ever worked as, say, a poll worker --
 12 A. Yes.
 13 Q. -- or anything like that? You have?
 14 A. Yes.
 15 Q. When was that?
 16 A. Well, sometime earlier. Most recent was 2012.
 17 Q. Okay. And where was that?
 18 A. That was in McLean, Virginia --
 19 Q. Have you --
 20 A. -- where I live.
 21 Q. Okay. Never in North Carolina, presumably?
 22 A. No.
 23 Q. Okay. And have you ever conducted any type of
 24 study yourself as to how easy or difficult it
 25 is for individuals with low income to obtain

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1 IDs?
 2 A. No.
 3 Q. Have you ever reviewed such academic literature
 4 on this subject?
 5 A. I've seen references to that. Of course,
 6 there's some discussion of that in these
 7 reports, but I can't pretend to expert
 8 knowledge of this.
 9 Q. Apart from the experts in this case --
 10 A. Right.
 11 Q. -- and what you've read of their reports, can
 12 you identify a single name, a single document,
 13 peer-reviewed article on the topic?
 14 A. Well, it depends on how broadly you want to
 15 construe that. I mean --
 16 Q. On the issue of how easy or difficult it is to
 17 obtain IDs if you have low income.
 18 A. Right. Okay.
 19 Q. That's how I'm construing it.
 20 A. No.
 21 Q. Okay. In your capacity as an academic, have
 22 you ever examined data, spoken to election
 23 officials, interviewed individuals with --
 24 without IDs, or conducted any other type of
 25 study that would give you insight into how easy

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1 or difficult it is for such individuals to
 2 obtain IDs?
 3 A. No.
 4 Q. Have you ever studied or analyzed the effects
 5 of the elimination for early voting days and
 6 the effects it has on voter participation in a
 7 context other than this case?
 8 A. No.
 9 Q. Same with regard to outer precinct voting?
 10 A. Right.
 11 Q. You do not have --
 12 A. I do not, yes.
 13 Q. -- have any experience with that.
 14 How about same-day registration, do you
 15 have any experience with that?
 16 A. Same answer.
 17 Q. Okay. And what studies have you done
 18 specifically on North Carolina and elections
 19 issues and voting issues in North Carolina
 20 prior to this case?
 21 A. Well, I have done no studies of voting in North
 22 Carolina.
 23 Q. Okay. How are you being compensated for your
 24 work in this case?
 25 A. I'm being paid \$400 an hour.

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1 Q. And do you have any sense of what your
 2 compensation has been thus far?
 3 A. I spent about -- it's something over 180 hours.
 4 Q. Okay. And have you any guesstimates or any
 5 representations have been made to you as to how
 6 many hours you're likely to be spending on this
 7 matter?
 8 A. Well, no. I would assume after the deposition,
 9 not much time, until the trial. And then I
 10 will be there an unknown number of days, and
 11 come back home, and that will be it.
 12 Q. Okay. So you mentioned that you looked at some
 13 reports a couple times, by Dr. Stewart and
 14 Dr. Burden?
 15 A. Uh-huh.
 16 Q. But could you be as specific as possible as
 17 what -- the entirety of what information,
 18 facts, data you've been basing your opinions on
 19 in this case and that you've reviewed for
 20 purposes of this case?
 21 A. Well --
 22 MR. FARR: Can I respond to that?
 23 MR. SHAPIRO: Sure.
 24 MR. FARR: I thought this had been
 25 served on plaintiffs' counsel, but it

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1 apparently wasn't. It just was sent to
 2 Michael. We have an appendix that maybe
 3 Michael can ask him about to list all the
 4 reports that he looked at.
 5 MR. GLICK: I just got it five minutes
 6 ago. I printed it. I will bring it in and may
 7 use it my examination.
 8 MR. SHAPIRO: That's all right. I'm
 9 going to go through this quickly. I mean, he
 10 may not have any others other than the ones
 11 he's -- I would also like to know what his
 12 familiarity --
 13 MR. FARR: Oh, sure. I don't mind if
 14 you ask -- I'm just, like, apologizing because
 15 I thought that had been sent to you-all, but
 16 apparently it wasn't.
 17 MR. SHAPIRO: I appreciate that.
 18 MR. MELLETT: (Inaudible.)
 19 THE REPORTER: I'm sorry. I didn't
 20 hear that. Do you want it on the record?
 21 MR. SHAPIRO: Maybe we can just get an
 22 answer to that question since it's been asked.
 23 THE WITNESS: So what's the question?
 24 BY MR. SHAPIRO:
 25 Q. Could you just give us a description to the

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1 best you recall of all that you reviewed in
 2 this case?
 3 A. Well, I would say you have the answer, though
 4 apparently it wasn't delivered to you. I have
 5 an appendix listing the reports I consulted,
 6 and anything else I drew upon would be cited in
 7 a footnote. And there's very little of that.
 8 I mainly -- but I -- you know, there's a Census
 9 Bureau publication, "The Diversifying
 10 Electorate," Census Bureau, "Who Votes?" I use
 11 some --
 12 Q. Let me interrupt him because I think my
 13 colleague is going to go into that area, and I
 14 think it might be more time efficient.
 15 MR. SHAPIRO: Can I -- I think -- can
 16 we have a very short break?
 17 MR. FARR: Sure.
 18 MR. SHAPIRO: Thank you.
 19 THE VIDEOGRAPHER: We're going off the
 20 record. The time is now 3:38 p.m.
 21 (Recess from 3:38 p.m. to 3:44 p.m.)
 22 THE VIDEOGRAPHER: We're now back on
 23 record. The time is now 3:44 p.m. You may
 24 proceed. I'm sorry. This is videotape number
 25 4.

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1 MR. SHAPIRO: Mr. Farr, since I'm
 2 trying to get you on an airplane today and
 3 because I've also used up quite a bit of time
 4 here, I'm going to pass to my colleague, but I
 5 would ask if there is a little bit of time
 6 remaining at the end, if my colleague gets
 7 through what he -- the questions he has, I may
 8 just have a few more, just a few additional
 9 questions, if we can get that done within the
 10 time constraints that we have, if that's okay.
 11 MR. FARR: Okay. Sure.
 12 MR. SHAPIRO: Thank you, Mr. Farr.
 13 Pass the witness.
 14 EXAMINATION
 15 BY MR. GLICK:
 16 Q. Good afternoon, Dr. Thernstrom.
 17 A. Good afternoon.
 18 Q. My name is Michael Glick, with the law firm of
 19 Kirkland & Ellis. I represent the NAACP
 20 plaintiffs in this matter.
 21 A. Right.
 22 Q. Just to -- first, thank you for being here
 23 today. I will try not to duplicate any of the
 24 questioning of Mr. Shapiro and be efficient
 25 this afternoon.

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1 To confirm, you were retained in this
 2 case in the middle of November of 2015?
 3 A. Yes.
 4 Q. Okay. Fair to say your work on this case did
 5 not begin until after the July 2015 trial?
 6 A. No, it didn't begin until November 16th.
 7 Q. Okay. And you didn't file any reports in this
 8 case prior to the July 2015 trial, correct?
 9 A. No. I've -- I had no -- I had a dim knowledge
 10 there was an important North Carolina voting
 11 trial going on, but had no --
 12 Q. But other than your -- what you described as a
 13 dim knowledge, you had no knowledge -- you had
 14 no involvement --
 15 A. No, I had no contact with any --
 16 Q. You had no involvement in the July 2015 trial,
 17 correct?
 18 A. Right. No contact with anyone, any of the
 19 players.
 20 MR. FARR: Dr. Thernstrom, again, try
 21 to wait until Mr. Glick is done.
 22 THE WITNESS: Yes.
 23 MR. FARR: He's pretty good about
 24 finishing his questions.
 25 BY MR. GLICK:

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1 Q. Now, I will mark this as Thernstrom Exhibit 3,
 2 and this is the appendix and errata that we
 3 received about 20 minutes ago during the
 4 deposition listing some of the reports that you
 5 consulted in this case.
 6 (WHEREUPON, Thernstrom Exhibit 3 was
 7 marked for identification.)
 8 BY MR. GLICK:
 9 Q. Dr. Thernstrom, is this a full list of the
 10 reports that you consulted in your work in this
 11 matter?
 12 A. I believe so. I -- my study got horrendously
 13 disorganized by the time -- you know, working
 14 as many hours as I was on this stuff, so I
 15 might have looked at one or two other reports
 16 produced in the case that missed this list,
 17 but, you know --
 18 Q. Were there other non-report documents that you
 19 reviewed as part of your work in this case?
 20 A. Well, I've certainly done a certain amount of
 21 searches, searching on the Web, downloading
 22 articles relevant to this. I mean, that's --
 23 for example, I got on to -- well, I won't --
 24 Q. Documents --
 25 A. It's cited.

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1 Q. Documents produced by the defendants or
 2 plaintiffs in this matter?
 3 A. Oh. I've forgotten now the question.
 4 Q. Did you review documents produced by the
 5 defendants and plaintiffs in this litigation as
 6 part of your work --
 7 A. Yes.
 8 Q. -- other than the expert reports identified
 9 here?
 10 A. Oh. Not that I can think of.
 11 Q. You test -- if you look at Thernstrom 1, which
 12 is your report, you include at the back a list
 13 of the cases in which you've testified --
 14 A. Uh-huh.
 15 Q. -- correct?
 16 A. Yes.
 17 Q. And you list -- I believe it is 17 voting
 18 rights cases --
 19 A. Yes.
 20 Q. -- what you classify as voting rights cases?
 21 A. Yeah.
 22 Q. Without going through -- strike that.
 23 And I believe you wrote in your report
 24 16 of these cases were under the federal Voting
 25 Rights Act?

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1 A. Yes.
 2 Q. In your experience in these cases,
 3 Dr. Thernstrom, do you ever recall a case where
 4 you reached the conclusion that a violation of
 5 the Voting Rights Act had occurred or would
 6 occur in a particular circumstance?
 7 A. No. I was never presented with the case where
 8 the facts as I read them persuaded me there was
 9 a violation, or I would have told them, and
 10 they, I presume, would have found someone else.
 11 Q. You identify one case from North Carolina that
 12 you worked on. That's Shaw v. Hunt. It's on
 13 the -- page 9.
 14 A. Yes. That is a funny thing in that I -- you
 15 have to understand. You know, I'm not in the
 16 business of a voting rights expert. I've done
 17 this stuff off and on over, you know -- it goes
 18 back 30 years. And the records I keep are in a
 19 shambles. And my list -- and it applies
 20 specifically to this one North Carolina case.
 21 My principle was, if somebody paid
 22 me -- this is not a list of things where I've
 23 testified or necessarily been hired by
 24 plaintiffs, but when somebody paid me to think
 25 about this issue and usually write some little

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1 comment, I don't think this is a good case,
 2 whatever. and I was looking, you know,
 3 belatedly at -- what is it -- yeah, Shaw
 4 v. Hunt, and I thought I don't remember doing
 5 anything on a case in North Carolina.
 6 And I searched my old files, and I did
 7 come upon a cryptic note, Shaw v. Hunt, Judge
 8 Robinson Everest or Everett, who apparently was
 9 a key figure in North Carolina, you know, legal
 10 circles. And -- and I had -- jotting on a
 11 couple of topics, and I had written 12 hours at
 12 the bottom. I don't know if I ever charged him
 13 12 hours or not.
 14 But I read something related to what
 15 became Shaw v. Reno, and I understand there
 16 were conflicting views within Republican
 17 circles as to how to react to that particular
 18 issue. But I'm not aware that I did anything
 19 for Judge Everett.
 20 Q. Other than the 12 hours that you can't remember
 21 on the Shaw v. Hunt or Shaw v. Reno case, can
 22 you recall any other case that you've worked on
 23 in North Carolina?
 24 A. No.
 25 Q. Did you work with Mr. Farr on the Shaw v. Hunt

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1 or Shaw v. Reno case?
 2 A. No.
 3 Q. If we look back at Thernstrom Exhibit 3, your
 4 appendix and errata --
 5 A. Uh-huh.
 6 Q. -- and a list of reports you consulted, you'd
 7 agree that some of the reports that you looked
 8 at for your work on this case were issued in
 9 December of 2014, the Burden report, the -- one
 10 of the Burden reports --
 11 A. Yes.
 12 Q. -- one of the Minnite reports and one of the
 13 Stewart reports?
 14 A. Yes.
 15 Q. But you also reviewed reports from 2014 and
 16 early 2015, correct?
 17 A. Yes.
 18 Q. If we turn back -- and I'm sorry to keep going
 19 back and forth. If we turn back to your
 20 report, which, I believe, is Thernstrom 1, and
 21 turn to page 3 under the subheading where it
 22 says "My assignment in this case."
 23 A. Uh-huh. Yeah.
 24 Q. Here you write, "I was asked to assess the
 25 expert witness testimony offered by experts for

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1 the plaintiffs in the most recent round of
 2 expert submissions at the beginning of
 3 December." Do you see that?
 4 A. Yes.
 5 Q. And as we discussed here, you also reviewed
 6 older expert submissions, correct?
 7 A. Yes.
 8 Q. Okay. Now, Dr. Thernstrom, you did not perform
 9 any original work -- any original -- strike
 10 that.
 11 Dr. Thernstrom, you did not perform any
 12 original research for your work in this case,
 13 correct?
 14 A. Well, I would need a definition of original
 15 research. Research has a very broad meaning.
 16 I did spend a certain amount of time searching
 17 the literature on the topics related to this
 18 case. I've downloaded probably a hundred
 19 articles, most of which are worthless, but I
 20 made use, for example, in this report of what I
 21 found an extremely interesting and impressive
 22 piece of work.
 23 This article in note 30, Mycoff, Wagner
 24 and Wilson, and there are plenty of other
 25 articles I looked at. So in one sense that is

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1 research, but it is not going to sources,
 2 collecting raw data, so...
 3 Q. You didn't perform any of your own statistical
 4 analysis as part of this case, correct?
 5 A. No, I evaluated -- I took your experts'
 6 statistics and analyzed them and criticized
 7 them. Though, actually, there are a few
 8 statistics I put in there, I recall, from the
 9 Census Bureau publication. They're in the
 10 footnotes.
 11 I referred to national figures on the
 12 impact of SES on voting turnout rates and
 13 things like that, so some of that research is
 14 in the report.
 15 Q. Let's talk a little bit about the calculus of
 16 voting that you discussed a little bit earlier
 17 with --
 18 A. Yeah.
 19 Q. -- Mr. Shapiro. Would you agree that the --
 20 the concept of the calculus of voting is that
 21 the more costs an electoral system imposes the
 22 less likely a voter is to turn out?
 23 A. Yeah, I would say that's the essence of the
 24 concept, though, of course, the concept as
 25 originally developed does invite you, require

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1 you to consider the benefit side of the
 2 equation, and that was one thing totally
 3 ignored here, and so it was the simplest
 4 mechanistic, you know, if you have to walk an
 5 extra block to the polling booth, you know,
 6 2 percent of people won't bother. That kind of
 7 thing. And it left rather mysterious why
 8 patterns of actual voter turnout did not seem
 9 to follow inexorably from an increase in the
 10 costs.
 11 Q. Okay. But you'd agree that the basic concept
 12 of the calculus of voting is a measure of the
 13 costs and benefits of voting, fair?
 14 A. Yeah, uh-huh.
 15 Q. And would you agree that that concept that more
 16 costs make it less likely it is that a voter
 17 will turn out is a -- it's been a long time
 18 theoretical framework in political science --
 19 A. Sure.
 20 Q. -- correct?
 21 A. Yeah. Although they always add ceteris paribus
 22 in there, I mean --
 23 Q. Okay. So in your report is it fair to say you
 24 criticize -- and you just did so -- the
 25 plaintiffs' experts for not paying attention to

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1 what you say the benefits side of the equation,
 2 correct?
 3 A. Well, that was one of my complaints, yeah.
 4 Q. Of course. In fact, you say it is left as a
 5 black box. Do you recall that?
 6 A. Uh-huh.
 7 Q. Now, if we -- you would agree that the side of
 8 the equation that the State is controlling with
 9 its electoral legal framework is the cost side,
 10 correct?
 11 A. Well, that's correct. The State, of course,
 12 could control and maybe does control, if I
 13 think about it, or have an effect on the demand
 14 side. I think I cite it as an example. You
 15 know, you could offset the painful costs by
 16 paying every voter a hundred bucks or 500 bucks
 17 to vote. So the state could do that.
 18 Q. But that's not what they did in House Bill 589,
 19 correct?
 20 A. No, no, sure.
 21 Q. Can you identify anything in House Bill 589
 22 that you would say affected the benefit side of
 23 the equation?
 24 A. Well, yes. I think there are definite
 25 benefits, though intangible perhaps, of a more

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1 smoothly running electoral system in which
 2 voters have the confidence that everyone
 3 entitled to cast a ballot, you know, is
 4 encouraged to do so, and people who are not
 5 entitled are kept from doing so. It's
 6 precisely what I wrote about in a brief
 7 discussion of the Carter Commission and why it
 8 is that 100 democracies in the world, not that
 9 I think there could be 100 real democracies,
 10 but 100 democracies in the world, you know,
 11 require photo ID. Mexico has long required it,
 12 so --
 13 Q. I'm just -- okay. I'm going to cut you off
 14 there.
 15 A. Yeah. Okay. I'm glad you did.
 16 Q. And I will want to return to some of the stuff
 17 you said about a -- I believe you said a more
 18 smoothly running electoral system in a little
 19 while.
 20 A. Uh-huh.
 21 Q. You would agree, Dr. Thernstrom, that the costs
 22 that a voter bears in a particular election can
 23 be underwritten by outside groups or third
 24 parties, correct?
 25 A. I'm not quite sure what you mean by

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1 underwritten. Sheltered from having to pay
 2 them you mean?
 3 Q. For instance, political parties can assist
 4 voters in defraying the cost of voting,
 5 correct?
 6 A. Yeah, okay. Yeah.
 7 Q. Churches perhaps?
 8 A. Uh-huh, yes.
 9 Q. Unions?
 10 A. Uh-huh.
 11 Q. Campaigns?
 12 A. Yes.
 13 Q. The media?
 14 A. Sure, yeah. I guess I'm pausing a little,
 15 stuck over whether does that go on the cost
 16 side but as a minus cost or is that on the
 17 benefit side, but --
 18 Q. Well, you would agree that one of the potential
 19 costs or burdens that one needs to face in
 20 voting is to be made aware of the election and
 21 its rules?
 22 A. Uh-huh.
 23 Q. Correct? Fair?
 24 A. Yeah.
 25 Q. So to the extent that the media can play a role

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1 in educating voters, that would be a way to
 2 defray costs of participating in an election --
 3 A. Yeah.
 4 Q. -- correct?
 5 A. Uh-huh.
 6 Q. Are you familiar with the US Government
 7 Accountability Office?
 8 A. Yes.
 9 Q. You agree it's a respected body?
 10 A. Yes.
 11 Q. Have you had occasion to review the GAO's
 12 September 2014 report regarding issues related
 13 to state voter identification laws?
 14 A. Yes, I have. I was first clued into the
 15 existence of that study by -- I've forgotten
 16 whether it was -- I think it was Dr. Stewart
 17 who cited it in support of his testimony, and
 18 I've looked quickly at the section he discussed
 19 in particular.
 20 And I thought it was, you know, a
 21 highly sophisticated, careful, enormously
 22 cautiously qualified summary of the evidence,
 23 and certainly not, as I read it, a ringing
 24 endorsement to the proposition that it is a
 25 well established canon of social science that

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1 photo ID requirement reduces turnout and
 2 reduces minority turnout disproportionately.
 3 And indeed, I cite here and quote at
 4 length from a major study, the Mycoff, et al.,
 5 study, which is based on national data and
 6 which found basically zero effect for photo ID.
 7 So I don't think it's a settled
 8 question. I don't think one can say there's no
 9 doubt about it. Photo ID, this happens to
 10 minority turnout. Or, you know, no doubt about
 11 it, it never can be correlated with and
 12 possibly a cause of it.
 13 Q. Well, you'd agree the study did demonstrate
 14 that voter turnout decreased from 2008 to 2012
 15 to a greater extent in two states that employed
 16 voter ID laws as opposed to control states that
 17 did not. Fair?
 18 A. Yes. Not very much, and those are not the only
 19 two states we're concerned about, and there are
 20 many studies, including this Mycoff one, which
 21 I quote from at length, because I thought it
 22 was very sensible of what it said about the
 23 determinants of voting behavior.
 24 So, you know, I don't think it would be
 25 at all fair to say there is a clear consensus

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1 among people who study elections that photo ID
 2 laws, you know, significantly reduce turnout,
 3 and especially minority turnout.
 4 Q. Now, you don't cite the GAO study anywhere in
 5 your report, correct?
 6 A. No.
 7 Q. And you're aware that the GAO study is cited in
 8 other expert reports in this case?
 9 A. That's how I got on to it, I said earlier. So
 10 I didn't see a need to --
 11 Q. Now, you don't attempt to distinguish -- I'm
 12 sorry.
 13 A. I didn't see the need to refer to it.
 14 Q. You don't attempt to distinguish or disparage
 15 that study in any way in your report, correct?
 16 A. By the GAO? Yeah, I was -- yeah, I wouldn't
 17 call it a study. It's a -- well, whatever.
 18 It's a digest, an analysis of a whole body of
 19 literature on this subject. But whatever.
 20 That's a quibble.
 21 Q. You don't address that study anywhere in your
 22 report, correct?
 23 A. No, I guess I didn't, yeah.
 24 Q. And you don't intend to offer any opinions at
 25 trial regarding the validity or invalidity of

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1 that study, correct?
 2 MR. FARR: Well, objection. He just
 3 offered his opinion on it.
 4 MR. GLICK: Well, he didn't offer it in
 5 his report, which is why I'm asking if he's
 6 going to offer it at trial. So that was my
 7 question.
 8 THE WITNESS: I don't know --
 9 MR. FARR: He'd have to consult with
 10 counsel.
 11 THE WITNESS: I have no idea what I'll
 12 be testifying on at trial, but it could include
 13 a discussion of this literature, including the
 14 GAO report, if that seemed important.
 15 BY MR. GLICK:
 16 Q. Okay. So this is a study that was identified
 17 by experts in this case, correct? Other
 18 experts in this case discussed and referred to
 19 the GAO study, correct?
 20 A. GAO, right, yes.
 21 Q. Okay. But you've nowhere indicated until just
 22 now sitting here in the deposition that you
 23 reviewed the study before today's deposition,
 24 correct?
 25 A. No. No, I didn't. I mean, it's something I

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1 never got to in this report, and so I didn't
 2 cite it. I've looked at a lot of articles I
 3 haven't cited or discussed here. I mean,
 4 it's --
 5 Q. One of the other things that you address in
 6 your report are the results and the turnout
 7 results in the 2014 election, correct?
 8 A. Uh-huh, correct.
 9 Q. And you criticized, say, Dr. Burden and
 10 Dr. Stewart regarding the 2014 election --
 11 A. Uh-huh.
 12 Q. -- correct?
 13 You'd agree that in their December 2015
 14 reports, neither Dr. Stewart nor Dr. Burden
 15 referred to the 2014 election results or
 16 predictions, correct?
 17 A. Well, my memory, even though I've written this
 18 up in some detail, is -- I'll assume you --
 19 you're right. I mean, I was very struck that
 20 in the -- the first reports they wrote after
 21 having this knowledge, they managed not to
 22 recognize it and to hide it away in Appendix U
 23 and so on.
 24 I don't recall -- and I don't think
 25 they've ever addressed it to my satisfaction,

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1 but the latest reports I don't think go into
 2 that at all, do they?
 3 Q. Let me ask you this: You'd agree that the
 4 photo ID requirement that's being challenged
 5 now was not in place for the 2014 --
 6 A. Oh, of course.
 7 Q. -- elections, correct?
 8 A. Correct, yes.
 9 Q. And so the 2014 elections don't tell us how the
 10 photo ID requirement will impact voters in 2016
 11 or beyond, correct?
 12 A. No, definitely not. Though they do tell us to
 13 be a little wary of predictions made by the
 14 people who did not forecast correctly the
 15 impact of the first three measures that are now
 16 governing elections.
 17 Q. The 2014 election is just one election,
 18 correct?
 19 A. Of course, yeah.
 20 Q. You'd agree it would be preferable to assess
 21 the effect of election laws over more than one
 22 election?
 23 A. Absolutely, yes.
 24 Q. For instance, a trend that exists over two or
 25 three elections would be more meaningful --

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1 more meaningful to you than the results of just
 2 a single election, correct?
 3 A. Of course.
 4 Q. When you --
 5 A. But --
 6 Q. When you --
 7 A. -- I would say with each successful election,
 8 people who have made -- whose analysis said
 9 this is going to cut black turnout have to
 10 think ever harder, is it possible that it's not
 11 just, you know, the reaction is delayed but I
 12 was just wrong, my theory doesn't seem to
 13 correspond to what happens in the real world?
 14 Q. You agreed when you were talking to Mr. Shapiro
 15 that there were a number of factors that could
 16 influence voter turnout, correct?
 17 A. Sure.
 18 Q. Candidates can affect voter turnout?
 19 A. Uh-huh.
 20 Q. You referenced President Obama, I believe, in
 21 your testimony and report?
 22 A. Yeah.
 23 Q. The amount of money spent on an election can
 24 affect turnout, correct?
 25 A. Uh-huh.

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1 A. Well, I would say I couldn't give a lecture on,
 2 you know, how the campaign looked in March and
 3 whether there was a fight for the Republican
 4 nomination or -- you know, I certainly -- none
 5 of the reports have touched on that, and I've
 6 not done an independent study.
 7 But I know the race between Tillis and
 8 Kay Hagan was -- attracted a lot of national
 9 attention. It was regarded as important to
 10 both parties and that the Republican --
 11 Republicans won was important in retaking the
 12 Senate.
 13 And I know that the NAACP had a huge
 14 program, I've forgotten -- Project Dream or
 15 some such title, and made a large effort to
 16 mount a drive to promote registration and
 17 turnout.
 18 And I do recall one of your experts
 19 saying that -- I'm blanking the name of
 20 Reverend -- the head of the NAACP. I'm quite
 21 familiar with his name, but my senior status or
 22 the lateness of the afternoon --
 23 Anyway -- oh, William Barber. That
 24 Mr. Barber was quoted as saying, well, the
 25 turnout was only high because we really devoted

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1 Q. Media attention to a particular election can
 2 affect turnout?
 3 A. Sure.
 4 Q. Competitiveness?
 5 A. Uh-huh.
 6 Q. The historical importance of an election?
 7 A. Uh-huh.
 8 Q. The offices that are contested in a particular
 9 state or ballot, correct?
 10 A. Uh-huh.
 11 Q. Efforts by third-party groups can affect
 12 turnout in an election, correct?
 13 A. Uh-huh.
 14 Q. And voting laws, you would agree, can affect
 15 voter turnout, correct?
 16 A. Yes, uh-huh.
 17 Q. I want to talk about 2014. Have you studied
 18 the 2014 election in North Carolina?
 19 A. Well, I have some passing acquaintance with it.
 20 I haven't studied it carefully. I downloaded a
 21 few newspaper articles that -- so I would
 22 have -- I'd say I have a very sketchy sense of
 23 the campaign.
 24 Q. You describe your familiarity with the 2014
 25 election in North Carolina as very sketchy?

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1 a lot of resources to voter mobilization, and
 2 we couldn't do that again. And that did seem
 3 to me questionable. I mean, how does he know
 4 that if 2016 looks as important to the
 5 African-American community as 2014 did, with a
 6 presidential choice to be made, I wouldn't be
 7 at all surprised if the funds were easily found
 8 to support another drive, which, of course, can
 9 be done by the Democratic Party of North
 10 Carolina.
 11 Q. Did you study the comparative efforts between
 12 the 2010 election and the 2014 election with
 13 regard to the NAACP's mobilization?
 14 A. No, I didn't -- didn't look at that.
 15 Q. Did you study the amount of money spent in the
 16 2010 election by the candidates for the United
 17 States Senate race in North Carolina versus the
 18 2014 election?
 19 A. No. I know the 2014 ones were notably higher,
 20 and it has been said the most expensive
 21 campaign in the history of the state, though I
 22 also believe there's some controversy over
 23 whether that's an exaggeration. But clearly,
 24 it was a hotly contested, expensive contest.
 25 Q. In your report you discuss the fact that

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1 African-American turnout in North Carolina rose
 2 in 2014 as compared to 2010 --
 3 A. Uh-huh.
 4 Q. -- correct?
 5 A. Yes.
 6 Q. You agree it's possible that African-American
 7 turnout might have been even greater absent the
 8 provisions of HB 589?
 9 A. Well, anything's possible. The question is
 10 what is probable. And I think you would need
 11 some independent evidence to make one favor
 12 that explanation over the one I offered, which
 13 was that plaintiffs grossly overestimate the
 14 impact of specific electoral arrangements on
 15 the political behavior of human beings.
 16 Q. You haven't assessed that impact yourself,
 17 correct?
 18 A. No. I -- I don't know quite how one would --
 19 Q. You haven't --
 20 A. The test I can think -- the impact upon voter
 21 behavior of changes in election law is to look
 22 at how many voted and who they were. And I
 23 can't think of a -- now, you can supplement
 24 that, if you had a careful day-to-day study of
 25 how many phone calls were received by the NAACP

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1 and how many people -- I mean, you could do a
 2 lot of -- a traditional historical account, a
 3 campaign in North Carolina. There are lots of
 4 books like that for national campaigns. So
 5 that could help you maybe decide, you know, if
 6 the turnout would -- the laws themselves would
 7 reduce turnout but other special circumstances
 8 more than compensated for that drop by
 9 increasing interest.
 10 Q. And you haven't done any analysis like that in
 11 this case, correct?
 12 A. No. No one else has either.
 13 Q. Right. You say Burden and Stewart, they were
 14 wrong, turnout wouldn't have been higher. But
 15 you haven't done anything to confirm it
 16 otherwise?
 17 A. Well, no, I think that slightly distorts my
 18 position. What I've said, and I think it is
 19 indisputably correct, is they have a model that
 20 led them to predict certain things would happen
 21 when these new laws went into effect. They did
 22 go into effect. We can see the numbers. And
 23 so far, for whatever reason, their predictions
 24 are wrong.
 25 They -- there's no demonstrable effect

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1 in North Carolina at this time of the negative
 2 effects of one day -- you know, eliminating
 3 one-day voting or one-stop voting and so on.
 4 Now, I'm not saying therefore it is not
 5 possible that such measures somewhere else or
 6 over time in North Carolina will have a
 7 depressing effect, but so far, you know, if the
 8 burden of proof is on the plaintiffs to show
 9 the harms in the real world, I don't think
 10 there's much evidence for your position.
 11 Q. You agree that just because turnout went up
 12 doesn't mean that African voters --
 13 African-American voters weren't burdened by the
 14 election changes, correct?
 15 A. That's right. But likewise, if turnout went
 16 down, that would not be proof that it was a
 17 result of these new measures. There are a lot
 18 of other influences.
 19 Q. So just because an individual is able to vote
 20 in an election doesn't mean that the voter
 21 didn't face a burden in voting, correct?
 22 A. Well, face a burden in voting. I mean, I know
 23 what you're getting at. I mean, many people
 24 face burdens before elections. Oh, my leg is
 25 so sore, can I really walk to the polling

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1 place. I mean, it's not, you know, these giant
 2 mountains people have to climb to -- you know,
 3 to figure out early voting is still available
 4 but now it's compressed into fewer days. That
 5 is a burden? I -- I know --
 6 Q. Understood.
 7 A. -- legally it may be, but --
 8 Q. Understood. But if I put a hurdle in front of
 9 you, and you jump over the hurdle and you get
 10 to the finish line, that doesn't mean there
 11 wasn't a hurdle there in the first place,
 12 correct?
 13 A. Well, all right. That's true. The question
 14 is, is it a real hurdle or a little step,
 15 but -- and the other question is the
 16 adaptability of human beings to -- I mean,
 17 we've been adapting to changes in the
 18 environment for a few million years, and --
 19 Q. Fair enough. And you discussed and
 20 acknowledged in 2014 the testimony of Reverend
 21 Barber discussing the efforts of the NAACP?
 22 A. Uh-huh.
 23 Q. You talked about that, correct?
 24 A. Yeah.
 25 Q. And I believe you testified that they could do

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1 so again in 2016 if they wanted to, correct?
 2 A. Uh-huh, yeah. But I should also supplement
 3 that by saying it's not clear to me that really
 4 it necessarily was that campaign at all. I
 5 mean, how do you measure the success of a
 6 political campaign that, you know, is,
 7 victorious?
 8 Is it the wondrous organization and
 9 money of the campaign or is it just they happen
 10 to be in accord with deep currents of public
 11 sentiment that would have elected their guy
 12 without half that much money being spent? It's
 13 hard to prove causation in history and social
 14 science.
 15 Q. Let's move on. I want to look at page 22 of
 16 your report. I want to focus on the paragraph
 17 at the top of the page, the first full
 18 paragraph, where you talk about officeholders
 19 in the state of North Carolina, correct?
 20 A. Yeah.
 21 Q. Okay. Dr. Burden didn't discuss North Carolina
 22 officeholders in his December 2015 report,
 23 correct? The cite that you give at the bottom
 24 of the page is to the February 2015 report,
 25 correct?

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1 A. Yes.
 2 Q. Okay. In your work in this case, did you
 3 analyze the number of times an African-American
 4 has been elected governor of North Carolina?
 5 A. No, I didn't analyze it.
 6 Q. Do you know how many times?
 7 A. I -- of course. Zero.
 8 Q. How many -- did you analyze the number of
 9 times --
 10 A. But -- excuse me a minute. But let's go back
 11 here. Your point about Dr. Burden's report of
 12 February 2015, was there some question there
 13 about -- I thought you were suggesting I
 14 misstated it or --
 15 Q. No, no, no.
 16 A. -- something.
 17 Q. Not at all. I do not mean to imply that at
 18 all.
 19 A. Okay.
 20 Q. Did you analyze the number of times that an
 21 African-American was elected lieutenant
 22 governor of North Carolina?
 23 A. No. I wouldn't be surprised if it were zero.
 24 I mean, it's not that they're 60 or 70 percent
 25 of the electorate of the state, so I wouldn't

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1 take the governorship, per se, as the test. If
 2 you would, you know, you're not going to find
 3 voting rights violations in Virginia, which has
 4 had a black governor.
 5 Q. Well, here in your analysis you cite a few
 6 different offices, United States House, United
 7 States Senate, State Senate --
 8 A. Yeah.
 9 Q. -- the General Assembly. And my question was,
 10 I just want to know if you had analyzed other
 11 offices that you chose not to include in this
 12 paragraph.
 13 A. Well --
 14 Q. And so far the answer seems to be no.
 15 A. And --
 16 Q. We talked about governor. We talked about
 17 governor, correct?
 18 A. Let us note that Dr. Burden didn't, in that
 19 part of his discussion, refer to the absence of
 20 black governors or black lieutenant governors.
 21 I'm simply taking the Senate factors here that
 22 he discussed in this order in the report and
 23 summarizing his testimony.
 24 So I don't cover other offices. I
 25 don't know -- and he doesn't cite the

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1 composition of the North Carolina Supreme Court
 2 or whatever.
 3 Q. Did you analyze the number of times an
 4 African-American was elected to any statewide
 5 office that's not included in this paragraph?
 6 A. No.
 7 Q. Any municipal office -- any analysis of
 8 municipal offices in North Carolina and the
 9 number or percentage of African-Americans that
 10 have been elected to those offices?
 11 A. Well, I've seen -- it's a long time now, but I
 12 might look it up before trial -- a lot of -- I
 13 followed a lot of the literature on black
 14 office holding in the south, Mississippi,
 15 Alabama. I don't recall North Carolina
 16 figures. But I would not be at all surprised
 17 if there was very significant black office
 18 holding at the state -- at the local and county
 19 level. But --
 20 Q. But it's not something --
 21 A. I don't have the numbers.
 22 Q. It's not something you've analyzed --
 23 A. No.
 24 Q. -- as part of your work on this case?
 25 A. No.

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1 Q. Dr. Thernstrom, you'd agree that the right to
 2 vote is a fundamental constitutional right?
 3 A. Yes. Though it's actually not in the
 4 constitution.
 5 Q. So -- but you agree it's a fundamental --
 6 A. Yeah, it's a fundamental right.
 7 Q. You seem to argue in your report that because
 8 you need photo ID to do a lot of things in
 9 life, it's okay to require one to vote. Is
 10 that a fair summary of your -- of your
 11 argument?
 12 A. Well, I'm saying that your opportunities to get
 13 around and do various elementary things are
 14 becoming ever more -- in life are becoming ever
 15 more constricted by the rise -- our
 16 transformation into an electronic society. I
 17 can imagine -- they're already talking about it
 18 in Sweden, of 20 years from now none of us may
 19 carry around cash in our wallet. It will all
 20 be a credit card arrangement.
 21 So -- but anyhow, what --
 22 Q. You're not disputing that there are people in
 23 North Carolina that don't have a form of photo
 24 ID that would qualify to cast a ballot under HB
 25 589?

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1 A. No, no, I'm not disputing that. And I'm not
 2 sure why they don't. Many of them may really
 3 not want to be identified, the Census Bureau
 4 versus its enormously expensive canvass misses
 5 9 percent of black males in the 20 to 29 age
 6 bracket. They just can't find them but they
 7 know they're there.
 8 Q. But, again, you're not disputing that despite
 9 the fact that requiring a photo ID is becoming,
 10 in your words, an everyday part of life, there
 11 are people in North Carolina who don't have
 12 photo ID?
 13 A. Yes.
 14 Q. Okay.
 15 A. No, I'm not disputing that.
 16 Q. And you also don't dispute that the -- that the
 17 proportion of people who lack photo ID in North
 18 Carolina is disproportionately African-American
 19 and Hispanic, correct?
 20 MR. FARR: Objection to the form.
 21 You may answer.
 22 THE WITNESS: I'm -- I'm not sure
 23 whether that is correct or at least needs to be
 24 qualified. I don't know that Dr. Stewart has
 25 established the amount of disparity solidly and

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1 believe that one of the defense reports I
 2 haven't read suggests the numbers are very
 3 misleading, and actually, I know that Dr. Hood,
 4 in a recent report, shows that now the North
 5 Carolina voter ID law is in effect, that
 6 whatever racial disparity there may have been
 7 before has not shown up in disparities in
 8 turnout at elections.
 9 BY MR. GLICK:
 10 Q. You haven't --
 11 A. So --
 12 Q. -- performed any analysis of the proportion
 13 of -- the proportional race of citizens in
 14 North Carolina --
 15 A. No.
 16 Q. -- or anywhere else that don't have ID,
 17 correct?
 18 A. Correct.
 19 Q. Have you testified in voter photo ID cases
 20 before?
 21 A. No.
 22 Q. Ever performed an analysis of photo ID laws in
 23 various states of the union?
 24 A. No.
 25 Q. Ever performed an analysis comparing the

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1 relative strictness of laws in states that have
 2 photo ID?
 3 A. No.
 4 Q. Any opinion as to the relative strictness of
 5 North Carolina's law as passed in 2013 versus
 6 other states' laws?
 7 A. Well, I think it's on the strict end of the
 8 continuum.
 9 Q. In fact, it was among the strictest in the
 10 country at the time, correct?
 11 A. Uh-huh.
 12 Q. You're aware that other states allow -- that
 13 require voters to show photo ID allow voters to
 14 show a government -- a government employee ID?
 15 A. Well, I've heard that -- I've read that
 16 somewhere.
 17 Q. And other states that require photo ID at the
 18 polls allow voters to show student IDs from
 19 state universities, correct?
 20 A. Correct. However, I'm also aware that many
 21 states have more stringent regulations on
 22 voting requirements in various ways, including
 23 no early voting at all in New York State and
 24 probably 20 more. So --
 25 Q. Not my question. I was focused on photo ID.

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1 A. Yeah.
 2 Q. Okay. I want to take a look at page 23 here.
 3 And, again, the first full paragraph. And here
 4 you write, "The issue that is before us has
 5 emerged because a substantial and growing
 6 number of state governments have decided to
 7 come to believe it is important to promote
 8 public confidence that their elections are
 9 fair, and that requiring their residents to
 10 present clear proof of their identity before
 11 they enter the polling booth on election day is
 12 essential to achieve that aim."
 13 Have I read that correctly?
 14 A. Yes. And I see it has -- it needs to be
 15 edited. But anyhow, you've read it correctly,
 16 yes.
 17 Q. I want to focus on the experience in North
 18 Carolina. In your work on this case,
 19 Dr. Thernstrom, have you come across any -- any
 20 evidence that voters in North Carolina lacked
 21 public confidence in their elections prior to
 22 the enactment of HB 589?
 23 A. Not that I can recall.
 24 Q. You certainly don't cite any evidence in your
 25 report, correct?

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1 A. Correct.
 2 Q. You cite the Carter Commission --
 3 A. Uh-huh.
 4 Q. -- but not anything specific to North Carolina,
 5 correct?
 6 A. That's right. But they did use national data,
 7 and it would be a little strange if it -- if
 8 North Carolina was a total outlier that -- in
 9 which the national patterns didn't show up in
 10 perhaps attenuated or exaggerated form.
 11 So I don't -- I think there is some
 12 evidence, at least at the national level, that
 13 there's a big lack of confidence on the part of
 14 the public.
 15 Q. But you haven't found any North Carolina
 16 specific evidence --
 17 A. No.
 18 Q. -- on that point, correct?
 19 A. Correct.
 20 Q. And you haven't found any evidence that that
 21 was a motivating factor behind passing HB 589
 22 in North Carolina in 2013, correct?
 23 A. No.
 24 Q. You agree it's important to evaluate the
 25 circumstances in individual -- in an individual

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1 state or jurisdiction whose laws you are
 2 evaluating?
 3 A. Yes.
 4 Q. And you agree in evaluating a challenge under
 5 the Voting Rights Act it should be a local
 6 analysis, correct?
 7 A. Uh-huh.
 8 MR. FARR: Objection to form. Calls
 9 for a legal conclusion.
 10 BY MR. GLICK:
 11 Q. You can answer.
 12 A. Well, the last was maybe a little legalistic
 13 for me. Are you simply -- under the voting --
 14 voting -- a complaint under the Voting Rights
 15 Act has to be examined in its local dimension?
 16 I mean --
 17 Q. I'll withdraw the question.
 18 A. Okay.
 19 Q. Let's turn to page 29 of your report. Just so
 20 I'm not -- just to put it in context, at the
 21 bottom of page 28, you talk about Dr. Stewart's
 22 thesis regarding the North Carolina General
 23 Assembly, correct?
 24 A. Uh-huh.
 25 Q. Okay. And then at the top of page 29, you say,

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1 "To make that case, he would have had to delve
 2 far more deeply into the legislative history of
 3 HB 589."
 4 Do you see that?
 5 A. Yes.
 6 Q. I want to ask about your own experience with
 7 the legislative history of 589, correct --
 8 sorry. Okay?
 9 A. Yeah, uh-huh.
 10 Q. You would agree that you didn't delve deeply
 11 into the legislative history of HB 589,
 12 correct?
 13 A. That's right.
 14 Q. Did you read the transcripts of the debate in
 15 the General Assembly?
 16 A. No.
 17 Q. Fair to say that you don't cite a single piece
 18 of the transcript from legislative debate in
 19 either house of the General Assembly?
 20 A. That's fair to say, yes.
 21 Q. Or any committee, correct?
 22 A. Yes.
 23 Q. You don't cite any public quotes in your report
 24 from any --
 25 A. That's correct.

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1 Q. -- member of the General Assembly, correct?
 2 You don't cite any public quotes in your report
 3 from any member of the general assembly,
 4 correct?
 5 A. That's right, uh-huh.
 6 Q. You don't cite any evidence of fraud in North
 7 Carolina elections as being discussed either in
 8 the assembly or otherwise in North Carolina
 9 prior to the passage of HB 589, correct?
 10 A. Not in this report, yes.
 11 Q. And you don't cite anywhere in the legislative
 12 debate referencing a lack of public confidence
 13 in North Carolina elections, correct?
 14 A. Correct.
 15 Q. Did you review depositions of legislators in
 16 this case?
 17 A. I would like first, though, to further answer
 18 the question asked. I did not go into such
 19 matters, but it seemed to me to support his
 20 initial complaint -- Dr. Stewart's complaint
 21 about why the North Carolina assembly passed
 22 HB 589.
 23 He would have needed to do that, and
 24 the burden, I believe, is on the plaintiffs to
 25 look at that legislative history, not me. I'm

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1 simply saying this is unsubstantiated, but I go
 2 on to say, in any event, it's irrelevant
 3 because he's not really interested in impugning
 4 the legislature as I read it. He's interested
 5 in getting back to just the impact on black
 6 voters. But...
 7 Q. Now who's being legalistic?
 8 Let's go back to your review of the
 9 legislative debate.
 10 A. Uh-huh.
 11 Q. Okay? Did you review depositions of
 12 legislators in this case?
 13 A. No.
 14 Q. Any trial or preliminary injunction hearing
 15 from legislators in this case?
 16 A. No.
 17 Q. Did you review any trial or preliminary
 18 injunction testimony from any witness in this
 19 case?
 20 A. From any witness in this case? I don't believe
 21 so.
 22 Q. Not Dr. Stewart?
 23 A. Oh, a deposition you're talking about now or --
 24 Q. No, no. What I'm talking about, his testimony
 25 in the preliminary injunction hearing in 2014

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1 or the trial in July of 2015. Did you review
 2 any testimony from Dr. Stewart there?
 3 A. No, I did not.
 4 Q. Any testimony from Dr. Burden there?
 5 A. No.
 6 Q. Did you review any trial testimony from this
 7 past summer's trial at all?
 8 A. No.
 9 Q. Have you reviewed any reports or statistics
 10 regarding the use of same-day registration by
 11 African election -- strike that.
 12 Have you reviewed any reports or
 13 statistics regarding the use of same-day
 14 registration by African-Americans as compared
 15 to whites in the North Carolina elections
 16 preceding HB 589?
 17 A. No.
 18 Q. Did you review any reports regarding the use of
 19 early voting by African-Americans as compared
 20 to whites in the North Carolina elections
 21 preceding HB 589?
 22 A. Well, there is material provided by Dr. Burden
 23 or Stewart or both, I believe, that falls into
 24 that category, and so that's the only
 25 information I have.

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1 Q. But you haven't evaluated those statistics on
 2 your own, correct?
 3 A. Well, I'm a little unclear. The statistics
 4 about what? I mean --
 5 Q. You agree that in the elections preceding
 6 HB 589, African-Americans disproportionately
 7 utilized same-day registration in North
 8 Carolina --
 9 A. Yes.
 10 Q. -- as compared to whites?
 11 A. Yes, yes. I'm familiar with that.
 12 Q. And the same thing with early voting, correct?
 13 A. Yes.
 14 Q. But other than seeing that fact cited in
 15 Dr. Stewart's report, you don't recall
 16 reviewing data related to usage of same-day
 17 registration or early voting prior to HB 589?
 18 A. No. Well, the data I did think was of decisive
 19 importance was the data showing that despite
 20 these changes, blacks were not deterred from
 21 the polls; they turned out in larger numbers.
 22 So they adjusted to the shift in hours, et
 23 cetera.
 24 Q. Understood. So you looked at 2014 data where
 25 same-day registration and early voting

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1 weren't -- weren't in -- weren't deployed,
 2 correct?
 3 A. Yeah, correct.
 4 Q. In the same paragraph here at the top of
 5 page 29, you discuss studies that the North
 6 Carolina State Board of Elections did a voter
 7 registration list compared against State DMV
 8 driver's license database.
 9 Do you see that?
 10 A. Yes.
 11 Q. Other than -- other than seeing those reports
 12 referred to in Dr. Stewart's report, did you
 13 ever review those analyses?
 14 A. Uh-uh.
 15 Q. I'm sorry?
 16 A. No.
 17 Q. You agree that African-Americans were --
 18 disproportionately appeared on the no-match
 19 list in those North Carolina State Board of
 20 Elections reports?
 21 A. I'm trying to remember what I have seen of
 22 those reports. I'm -- I'm not sure of the
 23 answer to that.
 24 Q. Okay.
 25 A. I would say probably.

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1 Q. Do you intend to offer any opinion regarding
 2 the legislative intent behind the photo ID
 3 requirement at the upcoming trial?
 4 A. Well, it would not be my plan, but I certainly
 5 would be responsive to my attorney's direction
 6 as to what he would like to cover. And I have
 7 no idea what he will wish to use me for.
 8 Q. Mr. Shapiro discussed a little bit your
 9 experience in election administration. I just
 10 want to follow up on a few things. Have you
 11 ever been a member of a county board of
 12 elections?
 13 A. No.
 14 Q. Any board of elections of any municipality or
 15 government entity?
 16 A. No.
 17 Q. Have you ever had responsibility for training
 18 election workers?
 19 A. No.
 20 Q. Ever had responsibility for publicizing
 21 election laws or changes --
 22 A. No.
 23 Q. -- in election laws?
 24 Have you ever filled out a provisional
 25 ballot?

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1 A. No.
 2 Q. Never voted by provisional ballot?
 3 A. No.
 4 Q. Ever had responsibility for reviewing a voter's
 5 provisional ballot?
 6 A. No.
 7 Q. Have you ever seen a provisional ballot?
 8 A. No.
 9 Q. Have you ever filled out a reasonable
 10 impediment declaration to vote?
 11 A. No.
 12 Q. Ever seen a reasonable impediment declaration
 13 form?
 14 A. No.
 15 Q. Have you studied the experience of reasonable
 16 impediment declarations used in South Carolina?
 17 A. No.
 18 Q. Have you studied the implementation of photo ID
 19 provisions in any state in the union?
 20 A. No.
 21 Q. Let's turn to page 33.
 22 MR. GLICK: Dan, I'm -- Tom, I'm happy
 23 to -- I've been going for about an hour. I'll
 24 do what you want. I probably have, you know,
 25 some more time. But up to you.

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1 MR. FARR: Do you want to take a break?
 2 THE WITNESS: Yeah, I wouldn't mind a
 3 quick break, yeah.
 4 MR. GLICK: Off the record.
 5 THE VIDEOGRAPHER: We're going off the
 6 record. The time is now 4:40 p.m. This is the
 7 end of videotape number 4.
 8 (Recess from 4:40 p.m. to 4:48 p.m.)
 9 THE VIDEOGRAPHER: We are now back on
 10 record. This is the beginning of videotape
 11 number 5 in the deposition of Stephan
 12 Thernstrom. The time is now 4:48 p.m. You may
 13 proceed.
 14 BY MR. GLICK:
 15 Q. I want to turn, Dr. Thernstrom, to page 33 of
 16 your report.
 17 A. Yes.
 18 Q. I want to look at the third paragraph.
 19 A. Uh-huh.
 20 Q. In the third paragraph, the second sentence,
 21 you say, "The intent of HB 836 was to give
 22 people who are unable to comply with the new
 23 photo ID requirements before the 2016 elections
 24 because of a disability, family
 25 responsibilities, lost or stolen

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1 identification, and the like a chance to vote
 2 nonetheless."
 3 Do you see that?
 4 A. Yes.
 5 Q. You don't have a citation in your report for
 6 that statement, correct?
 7 A. No. I thought it was a simple factual
 8 statement, though. Let me see. I know intent
 9 has specific legal meaning. It was -- what I
 10 was saying was it was my understanding that
 11 this reasonable impediment option was added to
 12 the legislation and modifying it to give a
 13 break to people who met these requirements,
 14 disability, et cetera. It seemed to me a
 15 totally factual matter.
 16 Q. Well, let's break that down. First, you
 17 understand HB 836, that's the June 2015 law
 18 that modified the photo ID requirement --
 19 A. Yes.
 20 Q. -- correct?
 21 A. Yes.
 22 Q. Okay. And if you remove the word "intent" and
 23 you say "understanding," you say your
 24 understanding of HB 36 -- HB 836 was that it
 25 was going to give people who were unable to

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1 comply the chance to vote --
 2 A. Yes.
 3 Q. -- correct?
 4 What is the basis of your statement and
 5 understanding?
 6 A. Well, I mean, as I understand it, this new --
 7 the core of this legislation is the creation of
 8 a reasonable impediment option.
 9 Q. And where does that understanding come from?
 10 A. Well, that's what this particular bill is
 11 referred to, as providing a reasonable
 12 option -- reasonable impediment option, is
 13 that -- I mean, I didn't get a clue from
 14 reading your expert witness reports that this
 15 was not intended to give people alternative
 16 ways of meeting the photo identification
 17 requirement. It had nothing to do -- I mean,
 18 is that what you're saying, that I'm wrong
 19 about --
 20 Q. Well, you say you have an understanding so I
 21 want to see where you got that understanding
 22 from.
 23 A. Yeah.
 24 Q. So first let's break it down. Have you seen
 25 the text of the new law, HB 836?

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1 A. No. I've seen an excerpt of, I don't know, six
 2 lines maybe, you know, of the language of the
 3 bill, but I have no idea how long it is, and I
 4 just scanned it, you know.
 5 Q. Where did you see that?
 6 A. If it was not in one of your reports, I'm not
 7 sure. I know I had a paragraph. Maybe it was
 8 sent to me.
 9 Q. Did you review the legislative debate regarding
 10 HB 836?
 11 A. No, I did not.
 12 Q. Have you reviewed any articles in the press
 13 regarding HB 836?
 14 A. No.
 15 Q. Have you reviewed any legislator statements
 16 regarding HB 836?
 17 A. No.
 18 Q. Have you reviewed any of the educational
 19 materials published by the State regarding HB
 20 836?
 21 A. No.
 22 Q. Have you reviewed any training materials given
 23 to poll workers or election officials regarding
 24 HB 836?
 25 A. No.

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1 Q. Do you plan to offer any opinion at trial
 2 regarding the legislative intent behind HB 836?
 3 A. Well, I have no idea, but I very much doubt it.
 4 Q. But you agree that your use of the word
 5 "intent" here on page 33 in the third paragraph
 6 was probably a little --
 7 A. Ill chosen.
 8 Q. Ill chosen.
 9 A. Right. Ill chosen.
 10 Q. Later in this paragraph, you say that
 11 Dr. Minnite is incensed that the provisional
 12 ballots these voters would receive would not be
 13 classified as regular ballots.
 14 A. Uh-huh.
 15 Q. Do you see that?
 16 A. Yes.
 17 Q. And to start the next paragraph,
 18 Dr. Thernstrom, you describe Dr. Minnite as
 19 distressed?
 20 A. Well, no, I wouldn't say I described her as
 21 distressed. I would say --
 22 Q. Well, you say that distresses her.
 23 A. -- this distresses her, yes. This makes her
 24 unhappy, that she objects to...
 25 Q. Just to be clear, Dr. Thernstrom, you've never

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1 met Dr. Minnite, correct?
 2 A. No.
 3 Q. You've never seen her testify?
 4 A. No.
 5 Q. But you described her as incensed and
 6 distressed based on her writing in her
 7 five-page expert report?
 8 A. Well, I'm not characterizing her as a person.
 9 I mean, I'm -- I'm simply characterizing her
 10 prose, what I understood what it conveyed to
 11 me. But probably if anyone turns up an eye at
 12 that, I probably should not have put it that
 13 way.
 14 It would be more neutral to say --
 15 would it be all right to say Dr. Minnite is
 16 unhappy or what? She was -- she complained.
 17 How about that? She complained that the
 18 provisional ballots these voters would receive
 19 would not be classified as regular ballots.
 20 Would "complain" be an adequately
 21 neutral term? And then one could start --
 22 instead of "that distresses her," she strongly
 23 opposes this way of proceeding.
 24 Q. I'm going to --
 25 A. I'm not...

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1 four elections, 2008, 2010, 2012, and 2014,
 2 correct?
 3 A. Yes.
 4 Q. And she has a source for that analysis, which
 5 is the US Election Commission, Election
 6 Administration and Voting Survey Comprehensive
 7 Reports, correct?
 8 A. Uh-huh. Okay.
 9 Q. Are you aware that the US Election Assistance
 10 Commission found that North Carolina election
 11 officials rejected provisional ballots at much
 12 higher rates than other states and higher than
 13 the national average?
 14 A. No, I did not see that in her report.
 15 Q. Have you analyzed at all the US Election
 16 Assistance Commission materials that
 17 Dr. Minnite cites?
 18 A. No.
 19 Q. You agree that provisional ballots are not
 20 counted in the same manner as regular ballots,
 21 correct?
 22 A. So I understand, yes. They're provisional,
 23 upon something else.
 24 Q. One last thing on Dr. Minnite. If we turn back
 25 to your report, page 34, if we look at the

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1 Q. I'm going to hand Dr. Minnite's December 4th,
 2 2015, report. We'll mark it as Thernstrom 4.
 3 I'm reminded I'm supposed to hand it to the
 4 court reporter first.
 5 (WHEREUPON, Thernstrom Exhibit 4 was
 6 marked for identification.)
 7 THE WITNESS: (Reviewing.)
 8 Yes.
 9 BY MR. GLICK:
 10 Q. I want to look at the Table 1 on -- I guess
 11 it's page 2. The pages aren't --
 12 A. Yes, I see it.
 13 Q. -- numbered but there is only one Table 1.
 14 A. Uh-huh.
 15 Q. In fact, there's only one table.
 16 A. Uh-huh.
 17 Q. Part of the analysis in your report is -- with
 18 regard to Ms. Minnite is with regard to her
 19 analysis of provisional ballots that were
 20 counted or rejected in North Carolina; is that
 21 correct?
 22 A. Yes, yes.
 23 Q. And in Table 1, Dr. Minnite compares the number
 24 of provisional ballots that were either counted
 25 in full, partially counted, or rejected across

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1 first full paragraph, you say, "Dr. Minnite
 2 clearly believes that the state should abandon
 3 all efforts to achieve the goal of the Federal
 4 Commission on Electoral Reform to 'make sure
 5 that the person arriving at a polling place is
 6 the same one who is not on the [registration]
 7 list,'" end quote.
 8 Do you see that?
 9 A. Uh-huh, yes.
 10 Q. I have to ask you, Dr. Thernstrom. I've read
 11 Dr. Minnite's report multiple times, and I'm a
 12 little baffled as to where that criticism comes
 13 from.
 14 So can you tell -- what in
 15 Dr. Minnite's report makes you believe she's
 16 advocating for the abandonment of efforts to
 17 prevent voters from impersonating others at the
 18 polls?
 19 A. Right. Well, I first should say that that is
 20 an overstatement, and I regret having
 21 formulated it so strongly.
 22 But I was, you know, somewhat
 23 disturbed. Maybe she is writing for an
 24 audience that understand -- has -- sees this
 25 stuff in a different context. And perhaps if I

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1 had had greater knowledge of the activities of
 2 the Election Assistance Commission, I would
 3 approach this differently.
 4 But on the face of it, and from her
 5 brief discussion, I do not understand why she
 6 thinks that rejecting 50 to 40 percent of the
 7 provisional ballots is a bad thing.
 8 I mean, if these provisional ballots
 9 are provisional until a voter comes and
 10 provides the necessary information to be
 11 identified as entitled to vote in that
 12 election, you know, how could the ballots be
 13 counted?
 14 And if all -- let's take an extreme
 15 case here. If in 2008 the 50.9 percent of the
 16 people whose ballots were rejected, maybe none
 17 of them came back to provide the information
 18 that they didn't have and, hence, were given
 19 provisional rather than regular ballots.
 20 So I -- I just couldn't be at all sure
 21 that she has established a -- you know, some
 22 kind of -- another -- one more discriminatory
 23 impact from the North Carolina voting system.
 24 Q. A few follow-ups on this. First, are there any
 25 other overstatements in your report that you

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1 wish to identify and clarify today?
 2 A. Well, not that I noticed, but it's possible
 3 there are.
 4 Q. And going back to this issue of voters arriving
 5 at polling places who are not the same one as
 6 on the registration list, you haven't come
 7 across any evidence in North Carolina where a
 8 person arriving at a polling place to vote was
 9 not the same one as on the registration list,
 10 correct?
 11 A. Well, no, but I have not done any intensive
 12 study of the voter files and newspapers and so
 13 on of North Carolina. But, you know, there are
 14 plenty of laws in place that are -- in which
 15 there are very, very few violations, but are
 16 generally regarded as useful. I mean, how much
 17 incest does there go on in North Carolina? I
 18 wouldn't think a lot, but -- anyway.
 19 Q. But you haven't seen any evidence in the
 20 legislative -- strike that.
 21 You haven't seen any evidence in the
 22 record in this case of a person arriving at the
 23 polls who wasn't who they said they were?
 24 A. No. But remember, that's a quotation from the
 25 Carter Commission, which did not describe

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1 the -- recommend so strongly a national photo
 2 ID. They were not moved primarily by the
 3 consideration that the ballot fraud is
 4 persuasive in every city in the land.
 5 Q. Just focusing on the evidence that you've seen
 6 based on your nearly two months of work on this
 7 case, have you seen any evidence of voter fraud
 8 or voter impersonation in your work in this
 9 case in North Carolina?
 10 A. I've seen a reference somewhere to a situation
 11 in which half a dozen college students who did
 12 not -- I think there was a prosecution for some
 13 kind of fraudulent effort to vote, but I can't
 14 give you any more details than that.
 15 Q. And you don't know the ultimate results of
 16 that, what you referred to as a prosecution --
 17 A. No.
 18 Q. -- correct?
 19 A. No.
 20 Q. You would agree that your report does not
 21 address the State Board of Elections's
 22 implementation of HB 589 or HB 836?
 23 A. No, I have not reviewed any evidence on that.
 24 Q. And you haven't reviewed the SBOE's efforts to
 25 train poll workers on those laws, correct?

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1 A. Correct.
 2 Q. Haven't reviewed the SBOE's efforts to educate
 3 voters on those laws?
 4 A. No. I think I may have some material supplied
 5 to me by Mr. Farr that I haven't gotten to yet,
 6 so I may be better informed about that --
 7 Q. But you haven't reviewed them -- didn't review
 8 them in advance --
 9 A. No.
 10 Q. -- of filing your report?
 11 A. No.
 12 Q. And you would agree your report does not
 13 address the interpretation of HB 836, correct?
 14 A. The interpretation meaning what?
 15 Q. How the law should be interpreted for voters.
 16 A. No. Well, that sounds like a legal question I
 17 would not address.
 18 Q. Which leads me to my next question, is, you're
 19 not a lawyer, correct?
 20 A. That's correct.
 21 Q. You agree your report -- your report does not
 22 address or identify justifications for imposing
 23 a photo ID requirement in North Carolina,
 24 correct?
 25 A. That's right. It discuss -- I would say that

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1 it in effect discusses them in general terms in
 2 the Carter Commission discussion, but that's
 3 all.
 4 MR. GLICK: Tom, I'm just going to take
 5 a quick break and duck out myself. Could we
 6 just go off the record?
 7 MR. FARR: Sure.
 8 THE VIDEOGRAPHER: We're going off the
 9 record. The time is now 5:05 p.m.
 10 (Recess from 5:05 p.m. to 5:08 p.m.)
 11 THE VIDEOGRAPHER: We're now back on
 12 record. The time is now 5:08 p.m. You may
 13 proceed.
 14 BY MR. GLICK:
 15 Q. Dr. Thornstrom, I just want to talk -- ask you
 16 a few questions briefly about your experience
 17 in prior voting rights cases, and specifically
 18 the -- the clients you've worked for. Okay?
 19 A. Uh-huh.
 20 Q. Have you ever been retained by a government
 21 before North Carolina?
 22 A. By a government?
 23 Q. By a government entity, City, State, County.
 24 A. Yes. I mean, I would say in all of my cases,
 25 unless -- I mean, technically in some of them

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1 you're working for the law firm. I'm not
 2 clear -- but, you know, in every case I was
 3 representing, I believe, a City or a State.
 4 Q. Okay. Have you ever worked for a plaintiff
 5 challenging a change in voting laws?
 6 A. No.
 7 Q. Have you ever worked for minority groups
 8 challenging changes in voting laws?
 9 A. Well, there was an interesting San Diego case,
 10 San Diego Board of Supervisors. What would
 11 that be? Where -- oh, yeah, DeBaca vs. County
 12 of San Diego, where the issue was whether the
 13 lines of districts for the San Diego County
 14 Board of Supervisors should be redrawn in such
 15 a way as to enhance the probability an Hispanic
 16 would be elected, and thereby knocking out of
 17 office a black who had occupied that seat. So
 18 which side is the minority side?
 19 I was working for, you know, San Diego,
 20 which did not want to make this change. So I
 21 was working for the black side but against the
 22 Latino side. And Morgan Kousser, I believe,
 23 was on the other side of that case. So he was
 24 a different --
 25 Q. I'm handing you an article that I'll mark as

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1 Thornstrom 5.
 2 A. Uh-huh.
 3 (WHEREUPON, Thornstrom Exhibit 5 was
 4 marked for identification.)
 5 THE WITNESS: I don't have it.
 6 THE REPORTER: One second.
 7 THE WITNESS: Oh.
 8 BY MR. GLICK:
 9 Q. Dr. Thornstrom, what I've handed you and marked
 10 as Thornstrom 5 is an article from
 11 January 10th, 1998, from The New York Times
 12 entitled "Affirmative Action's Unlikely Foes."
 13 Do you see that?
 14 A. Yes.
 15 Q. And it -- the first sentence of the article
 16 says, "At first glance, Stephan and Abigail
 17 Thornstrom would seem an unlikely pair to lead
 18 the conservative charge against racial
 19 preference in America."
 20 Do you see that?
 21 A. Uh-huh.
 22 Q. And that refers to you and your wife?
 23 A. Yes.
 24 Q. And you were the subject of this article in
 25 January of 1998?

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1 A. Yes.
 2 Q. About midway down the page here, it's the -- it
 3 says, "The couple are much in demand on the
 4 conservative talk-show circuit, where they
 5 forcefully argue that racial preference --
 6 preferences are wrong, divisive and, as a tool
 7 to help minorities, overrated."
 8 Do you see that?
 9 A. Yeah.
 10 Q. And then it continues, "They serve on the
 11 boards of conservative and libertarian
 12 public-policy institutes."
 13 Do you see that?
 14 A. Where? I got bored with this. Let me see.
 15 Serve on the board of what?
 16 Q. The middle of that same paragraph, the second
 17 sentence says, "They serve on the boards of
 18 conservative and libertarian public-policy
 19 institutes."
 20 A. Public policy institutes. Yes.
 21 Q. Do you see that?
 22 And is that an accurate statement, that
 23 you have served on the boards of conservative
 24 and libertarian public policy institutes?
 25 A. Well, Abby has. I'm not sure -- I may be on

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1 the board of one or two things that I can't
 2 even remember, but I find it an amusing
 3 paragraph that kind of the climax of it is, for
 4 heaven's sake, starting in 1992, Abigail in
 5 1996 voted for a Republican. Astonishing that,
 6 you know, there still are Republicans outside
 7 the sphere of influence of the New York Times.
 8 I mean, it's really kind of hilarious.
 9 I mean, it's not the vegetarian party or
 10 anything. I mean, it's one of our two parties.
 11 It controls most of the State houses in this
 12 country today. It controls, you know, both
 13 houses of the Congress. But you understand.
 14 Anyhow, what's your question?
 15 Q. My only question -- I did not read the last
 16 part of the sentence. My only question to you,
 17 is it true that you have served on the boards
 18 of conservative and libertarian public policy
 19 institutes?
 20 A. Let me just see if the CV went into anything
 21 about that. I think I, but it may be Abby, who
 22 is on the board of some -- actually, North
 23 Carolina Libertarian, Center for Studies of
 24 Higher Education. Does that ring a bell?
 25 MR. FARR: Not to me. I'm not a board

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1 member.
 2 THE WITNESS: Yeah. Board of
 3 directors -- well, I was on the board of
 4 directors of the National Association of
 5 Scholars, which you could say is a conservative
 6 leaning traditionalist organization. I
 7 don't -- if I am currently serving on the board
 8 of any of these things, I'm an extremely
 9 inactive member.
 10 MR. GLICK: I have nothing further.
 11 EXAMINATION
 12 BY MR. SHAPIRO:
 13 Q. Just a few minutes. We're going to get Tom out
 14 of here.
 15 Okay. Dr. Thernstrom, so if I
 16 understand you correctly, you're not taking
 17 issue with the idea that a rule can impose
 18 different costs on individuals, depending on
 19 their socioeconomic circumstances, correct?
 20 A. It can, yes.
 21 Q. Okay.
 22 A. Uh-huh.
 23 Q. So earlier, Dr. Thernstrom, you were talking
 24 about, you know, costs imposed upon you that
 25 are very minor when you have to go to the

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1 library at a different time of day --
 2 A. Uh-huh.
 3 Q. -- because it's been closed; isn't that right?
 4 A. Yeah.
 5 Q. So in the context of IDs, at what point would
 6 you consider obtaining an ID a significant cost
 7 or burden for an individual?
 8 A. Well, I'm not sure what you mean by at what
 9 point.
 10 Q. What kind of difficulties would it have to
 11 impose on an individual before you said that
 12 it's imposing a significant burden or cost?
 13 A. Well, I can't quite wrap my mind over this.
 14 Are you saying -- would you say, okay, it's all
 15 right to demand a photo ID with a Social
 16 Security number as your only ID or -- but
 17 beyond that, it costs too much? Is that --
 18 you're trying to specify degrees of --
 19 Q. So, for example, for an individual who's in a
 20 different socioeconomic circumstance for you --
 21 than you --
 22 A. Yes.
 23 Q. -- say someone who's illiterate, and for him to
 24 get an ID, let's say that person doesn't have
 25 transport and is illiterate and doesn't have

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1 any documents, and for him to get -- and
 2 doesn't have any underlying documents. And for
 3 him to get an ID, he would maybe have to spend
 4 money on -- gas money that he doesn't have to
 5 get to certain places, he may have to read
 6 documents that he finds difficult to get
 7 through. Is that --
 8 A. Well --
 9 MR. FARR: Whoa. Let him finish.
 10 BY MR. SHAPIRO:
 11 Q. Are those significant costs?
 12 MR. FARR: Objection to form.
 13 You may answer.
 14 THE WITNESS: Doesn't sound very likely
 15 to me this guy is going to get to the polls in
 16 the best of circumstances, but I would assume
 17 North Carolina polling places have assistants
 18 available to people who can't read well enough
 19 to read a ballot, for example, and I know in
 20 states I know anything about you can bring a
 21 friend who can be a democratic party worker,
 22 not just a personal friend, to assist you in
 23 filling out your ballot.
 24 BY MR. SHAPIRO:
 25 Q. Let's backtrack.

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1 A. So --
 2 Q. Let me interrupt. Let me backtrack. Let's put
 3 aside the "for voting" part of the question.
 4 Just the getting an ID part of this.
 5 A. Uh-huh.
 6 Q. At what point do you think it would be a burden
 7 for someone to get an ID, or is there a point?
 8 A. Well, of course, there's a point. You know, it
 9 could begin with, oh, you need to sign this new
 10 form and stick it in the mail to a process that
 11 required, you know, serving an apprenticeship
 12 for a year.
 13 So, I mean, it -- they're all burdens.
 14 They're all varying degrees of severity. And I
 15 don't think there's a, you know, one answer
 16 fits all solution. It does seem to me that a
 17 photo identification that can distinguish you
 18 from other people is pretty essential to living
 19 in the modern world.
 20 Now, there are kind of derelicts who
 21 sleep on the beach or whatever. They might
 22 have a lot of difficulty getting that, but then
 23 they would have difficulty getting a job when
 24 they have no Social Security number. They
 25 would have difficulty --

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1 Q. So --
 2 A. They're not going to get food stamps without
 3 some pretty well, solid identification. I
 4 mean -- I mean, how -- these people are
 5 surviving without any public assistance.
 6 Q. Okay. Let me give you a hypothetical. You
 7 have an election, and if you have a group of
 8 impoverished African-American voters who do not
 9 possess photo ID, spending what is for them
 10 considerable sums of money to get an ID, that
 11 is to say buying underlying documents, paying
 12 for gas, losing wages from hourly jobs while
 13 they're trying to get an ID, would you say
 14 those black voters were burdened in their
 15 efforts to get an ID?
 16 MR. FARR: Objection to the form.
 17 THE WITNESS: Well, I can see it --
 18 it -- you know, it is a cost to them, which
 19 they have to weigh against the benefits. And
 20 it is a cost of a magnitude no greater than,
 21 you know, wanting to go to the movies in the
 22 next town but you don't have a car and the bus
 23 service is terrible or -- I mean, people make
 24 all kinds of choices with their leisure time.
 25 We're not talking about taking a whole

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1 course. We're going through a bureaucratic
 2 process, very much like getting on welfare. Is
 3 that a burden that people find impossible to
 4 carry?
 5 BY MR. SHAPIRO:
 6 Q. And to what extent have you examined the costs
 7 that low income individuals face when they try
 8 to get an ID?
 9 A. Well, I haven't seen any evidence about it
 10 presented. I mean, since the claim that the
 11 costs exceed the benefits is part of an
 12 affirmative claim by plaintiffs, I would expect
 13 you to document what the burden -- how heavy
 14 the cost really is for people with various
 15 social characteristics; unemployed, illiterate,
 16 whatever. I mean --
 17 Q. But then again, you haven't reviewed the trial
 18 transcripts, have you?
 19 A. No, that's true.
 20 Q. So you don't know --
 21 A. And --
 22 Q. So you don't know if there was evidence along
 23 those lines that was presented?
 24 A. No, no, no. I don't. Yeah.
 25 Q. All right. Let's go to your report quickly.

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1 In paragraph four on page 27, you say at the
 2 bottom, "In fact, it only means that
 3 individuals on the no-match list would not be
 4 able to breeze into a polling place, flash a
 5 card, and proceed to the voting booth. They
 6 would instead have to go through the process of
 7 proving their identity."
 8 A. Yeah.
 9 Q. What did you mean by that, it wouldn't be a
 10 breeze?
 11 A. Well, let me get the context here, a Stewart
 12 quotation. All right. At the top of the
 13 paragraph, Stewart says 6 to 12 percent lack
 14 the identification needed for voting. Then
 15 other figures. Then lack the identification
 16 needed for voting I quibbled about in that it
 17 doesn't mean they lack identification needed to
 18 get a photo ID. All they need to do is go to
 19 the trouble of displaying that evidence. It
 20 does not mean under the photo ID law they will
 21 not be able to get a photo ID.
 22 Q. Where would they have to display the evidence?
 23 A. When they register, when they -- when they sign
 24 up with the voting authorities to get a photo
 25 ID.

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1 Q. Okay. But, Dr. Thornton [sic], if they show up
 2 at the polling cite without an ID --
 3 A. Yeah.
 4 Q. -- and they can no longer register -- they --
 5 at that point --
 6 A. That's right.
 7 Q. -- what can they do? What's your understanding
 8 of what they can do?
 9 A. Well, my understanding is some of them may be
 10 able to cast a provisional ballot, if they can
 11 show whatever that legal jargon is, you know,
 12 reasonable -- reasonable impediment.
 13 Q. Okay. And --
 14 A. Short of that --
 15 Q. Prior to the change in the law, what could they
 16 do?
 17 A. Then they could cast a provisional ballot
 18 and -- but would have to properly identify
 19 themselves before that ballot would be counted.
 20 That's the rejection rate of 50 percent that
 21 Minnite was talking about.
 22 Q. What's your understanding of how much time they
 23 would have to address their identity issues?
 24 A. I -- I'm not sure the number of days, but it's
 25 a matter of days, not weeks or something. I

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1 mean, they do want to get the election over and
 2 the votes counted.
 3 So -- so -- so what do I mean?
 4 Individuals on the no-match list, if they lack
 5 driver's licenses -- and that is not at all
 6 clear, as I understand it from your data, but
 7 assuming that, if they don't have the photo --
 8 if you have the photo ID, you breeze through,
 9 you know. That's what I meant by breeze
 10 through.
 11 If you come to the poll without that
 12 photo ID, you need to bring documents to prove
 13 your identity and take advantage of the
 14 reasonable impediment --
 15 Q. Bring the documents where?
 16 A. To the Department -- Bureau -- Board of
 17 Elections.
 18 Q. And then after you get your ID, you have to
 19 travel back to the polling site? Is that --
 20 A. Well, I don't --
 21 Q. Do you know what --
 22 A. It may be at the same place.
 23 Q. What's your understanding -- I'm trying to get
 24 from you your understanding what these
 25 procedures are.

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1 A. Yeah. All right. And what I'm saying is that
 2 the Board of Elections has many little local
 3 headquarters, but there are probably five, ten
 4 times as many polling places. And that for
 5 part of this process, you would have to go to a
 6 Board of Elections Or Board of Registration
 7 thing. I'm not quite clear where you go. But
 8 it's -- should be perfectly clear to the voters
 9 affected. I mean --
 10 Q. Just to be clear, you're not clear on how many
 11 days you would have, correct?
 12 A. Pardon?
 13 Q. You're not clear on how many days the voter
 14 would have?
 15 A. After having cast a provisional ballot?
 16 Q. Right.
 17 A. No. Something like ten days --
 18 Q. Okay.
 19 A. -- or a week.
 20 Q. And you're not clear on where the voter would
 21 have to go to get this sorted out?
 22 A. No, but it's perfectly obvious, you know. I
 23 mean, they are not going to their doctor's
 24 office or something. They're -- they're going
 25 to an office of the Board of Elections.

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1 Q. And so you're just making assumptions that it
 2 will be fairly straightforward?
 3 A. That's a question or --
 4 Q. Yes. If you disagree with that --
 5 A. Oh, oh, yes. I -- I -- I am saying it's fairly
 6 straightforward, yeah.
 7 Q. Okay. The last sentence there says, "Once they
 8 have accomplished this, though, they won't
 9 have -- won't ever have to do it again."
 10 What do you mean by that?
 11 A. Well, I mean, once you are registered to vote
 12 and have a photo ID from the State, you
 13 don't -- surely you can keep it renewed by
 14 either voting or filling out a form through the
 15 registrar. They must have a canvass, are you
 16 still with us? You know, a system of updating
 17 their registration rolls. You would not ever
 18 have to rummage around for a birth certificate
 19 again.
 20 Q. Okay. So your understanding is that for, let's
 21 say, low income individuals in North Carolina,
 22 once they get an ID, this issue is resolved?
 23 That's your understanding of this?
 24 A. Well, it depends upon certain conditions. If
 25 they disappear, live in another state for a few

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1 years and then come back, for example, I assume
 2 the photo ID cards have some kind of expiration
 3 date. And if you haven't taken action to say,
 4 hey, I still live here --
 5 Q. Do you have any --
 6 A. -- it might lapse, you know.
 7 Q. Do you have any perception as to the relative
 8 likelihood of individuals not being able to
 9 retain their ID based on their socioeconomic
 10 circumstances?
 11 A. Well, I have no information on that. You know,
 12 you don't automatically lose eligibility if you
 13 are in a low income group or something. Now,
 14 you may have to do something like return a
 15 postcard that maybe people of low income groups
 16 are less likely to do. But I'm not quite sure
 17 what you're driving at there.
 18 MR. SHAPIRO: Okay. We can close now.
 19 THE VIDEOGRAPHER: We're done?
 20 MR. FARR: I have no questions.
 21 THE VIDEOGRAPHER: You have some
 22 questions?
 23 MR. FARR: No, no, I don't.
 24 THE VIDEOGRAPHER: Okay.
 25 THE WITNESS: But I'd like to give a

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1 little speech.
 2 THE VIDEOGRAPHER: Okay. One moment,
 3 please.
 4 MR. SHAPIRO: Haven't you been doing
 5 that all day?
 6 THE VIDEOGRAPHER: One moment, please.
 7 Excuse me. We're going off the record. This
 8 is the end of the deposition for today. The
 9 time is now 5:32 p.m. Thank you.
 10 [SIGNATURE RESERVED]
 11 [DEPOSITION CONCLUDED AT 5:32 P.M.]
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1 A C K N O W L E D G E M E N T O F D E P O N E
 2 N T
 3
 4 I, STEPHAN THERNSTROM, Ph.D., declare
 5 under the penalties of perjury under the State
 6 of North Carolina that I have read the
 7 foregoing 234 pages, which contain a correct
 8 transcription of answers made by me to the
 9 questions therein recorded, with the
 10 exception(s) and/or addition(s) reflected on
 11 the correction sheet attached hereto, if any.
 12 Signed this the day of ,
 13 2016.
 14
 15
 16
 17 WITNESS
 18
 19 State of:
 20 County of:
 21 Subscribed and sworn to before me
 22 this day of , 2016.
 23
 24
 25

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1 Notary Public
 2 My commission expires:
 3
 4 E R R A T A S H E E T
 5 Case Name: NAACP vs. State or North Carolina, et
 6 al. and Margaret Dickson et al. vs. Robert
 7 Rucho, et al.
 8 Witness Name: STEPHAN THERNSTROM, Ph.D.
 9 Deposition Date: January 7, 2016
 10
 11 Page/Line Reads Should Read
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 20 Signature Date
 21 CERTIFICATE
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 23
 24 I, DEBBIE LEONARD, Registered
 25 Diplomat Reporter and Notary Public, the

1 officer before whom the foregoing proceeding
 2 was conducted, do hereby certify that the
 3 witness(es) whose testimony appears in the
 4 foregoing proceeding were duly sworn by me;
 5 that the testimony of said witness(es) were
 6 taken by me to the best of my ability and
 7 thereafter transcribed under my supervision;
 8 and that the foregoing pages, inclusive,
 9 constitute a true and accurate transcription of
 10 the testimony of the witness(es).
 11 I do further certify that
 12 I am neither counsel for, related to, nor
 13 employed by any of the parties to this action,
 14 and further, that I am not a relative or
 15 employee of any attorney or counsel employed by
 16 the parties thereof, nor financially or
 17 otherwise interested in the outcome of said
 18 action.
 19 This the 10th day of January, 2016.
 20
 21
 22
 23 Debbie Leonard
 My Commission
 24 expires 7/31/2016
 25

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