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## Transcript of **Allan J. Lichtman**

**Date:** April 20, 2016

**Case:** One Wisconsin Institute, Inc., et al. -v- Nichol, et al.

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1	1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE WESTERN DISTRICT OF WISCONSIN 3 ----- x 4 ONE WISCONSIN INSTITUTE, : 5 INC., et al., : 6 Plaintiffs, : 7 v. : Case No. 15-CV-324 8 GERALD C. NICHOL, et al., : 9 Defendants. : 10 ----- X 11 12 Deposition of ALLAN J. LICHTMAN 13 Washington, DC 14 Wednesday, April 20, 2016 15 9:15 a.m. 16 17 18 19 20 21 22 23 Job No.: 108795 24 Pages 1 - 193 25 Reported by: Debra A. Whitehead	3
2	1 Deposition of ALLAN J. LICHTMAN, held at the 2 offices of: 3 4 PERKINS COIE, LLP 5 700 13th Street, NW 6 Suite 600 7 Washington, DC 20005-3960 8 (202) 654-6200 9 10 11 Pursuant to notice, before Debra A. Whitehead, an 12 Approved Reporter of the United States District Court 13 and Notary Public of the District of Columbia. 14 15 16 17 18 19 20 21 22 23 24 25	4
1	1 A P P E A R A N C E S 2 ON BEHALF OF PLAINTIFFS: 3 BRUCE V. SPIVA, ESQUIRE 4 PERKINS COIE, LLP 5 700 13th Street, Northwest 6 Suite 600 7 Washington DC 20005-3960 8 (202) 654-6200 9 10 ON BEHALF OF DEFENDANTS: 11 CLAYTON P. KAWSKI, ESQUIRE 12 Assistant Attorney General 13 Wisconsin Department of Justice 14 Post Office Box 7857 15 Madison, Wisconsin 53707 16 (608) 266-7477 17 18 19 20 21 22 23 24 25	3
1	1 C O N T E N T S 2 EXAMINATION OF ALLAN J. LICHTMAN PAGE 3 By Mr. Kowski 5 4 5 E X H I B I T S 6 (Attached to the Transcript) 7 LICHTMAN DEPOSITION EXHIBIT PAGE 8 Exhibit 1 Expert Report: Intentional 49 9 Discrimination, Allan J. Lichtman, 10 12/10/15 11 Exhibit 2 Crawford v Marion County Election 121 12 Board, 563 U.S. 181 (2008) 13 Exhibit 3 Article, "Effects of 135 14 Identification Requirements on 15 Voting: Evidence from the 16 Experiences of Voters on Election 17 Day," by Ansolabehere 18 Exhibit 4 goMilwaukee Website Printout 168 19 Exhibit 5 Rebuttal Expert Report, Allan J. 171 20 Lichtman, 2/16/16 21 Exhibit 6 Marquette University Law School 179 22 Poll - October 23-26, 2014, 23 Results for Likely Voters 24 Exhibit 7 Pew Research Center, Broad Support 179 25 For Photo ID Voting Requirements	4

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1 PROCEEDINGS  
 2 ALLAN J. LICHTMAN,  
 3 having been duly sworn, testified as follows:  
 4 EXAMINATION BY COUNSEL FOR DEFENDANTS  
 5 BY MR. KAWSKI:  
 6 Q Good morning, Dr. Lichtman.  
 7 A **Good morning.**  
 8 Q My name is Clay Kawski. I am an Assistant  
 9 Attorney General at the Wisconsin Department of  
 10 Justice, and we're here today for your deposition.  
 11 This is in the case One Wisconsin  
 12 Institute, Inc., versus Gerald C. Nichol; Case  
 13 Number 15-CV-324; United States District Court for  
 14 the Western District of Wisconsin.  
 15 Before I get started, I always go through  
 16 the deposition basics. But I know you've been  
 17 deposed a number of times. Correct?  
 18 A **Correct.**  
 19 Q So you understand you have to give verbal  
 20 responses. Correct?  
 21 A **Correct.**  
 22 Q And that's for the court reporter to be  
 23 able to take down your testimony.  
 24 A **Correct.**  
 25 Q How many times have you been deposed?

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1 A **I can't even count. Dozens, probably.**  
 2 Q Okay. When is the most recent?  
 3 A **Probably in the Virginia voter ID case,**  
 4 **maybe a month or two ago.**  
 5 Q Okay. And have you testified at trial in  
 6 that case yet?  
 7 A **Yes.**  
 8 Q When was that?  
 9 A **Just recently. You know, maybe a few**  
 10 **weeks ago.**  
 11 Q Okay. So as we go through the  
 12 deposition -- we're doing a good job -- we need to  
 13 avoid speaking over each other. So if I ask a  
 14 question, let me finish. And then when you give  
 15 your answer, I'll let you finish. And that will  
 16 allow Mr. Spiva to object.  
 17 Do you understand all that?  
 18 A **Yes.**  
 19 Q And is there any reason that you cannot  
 20 testify truthfully today, such as you're on alcohol  
 21 or some kind of medication that --  
 22 A **I'm not on anything.**  
 23 Q Okay.  
 24 A **Just my heart medicine.**  
 25 Q Okay. If you answer my question, is it

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1 fair to me to assume that you understood it?  
 2 A **Yes. If I don't understand it, I'll let**  
 3 **you know.**  
 4 Q Right. And if you need a break at any  
 5 time today, just ask for it, but please don't do so  
 6 until you've answered the question.  
 7 A **I do appreciate that.**  
 8 Q What did you do to prepare for today's  
 9 deposition?  
 10 A **I reviewed my reports, spoke with**  
 11 **attorneys. And I keep getting inundated with some**  
 12 **new information. Apparently the state has been**  
 13 **regularly submitting new information, some of which**  
 14 **I have seen, some of which I have not seen yet --**  
 15 Q Okay.  
 16 A **-- and -- or not had a chance to digest**  
 17 **yet.**  
 18 Q Okay. And you say "new information."  
 19 What type of new information?  
 20 A **The information, as I understand it -- and**  
 21 **I haven't seen all of it -- is information about the**  
 22 **petition process for getting IDs. That's most of**  
 23 **what I've seen. Plus depositions of some state**  
 24 **officials have been taken very recently. I have not**  
 25 **yet had a chance to review them, but I certainly**

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1 **intend to review them before trial.**  
 2 I also understand some depositions have  
 3 been taken of defendants' experts very recently,  
 4 which I also would intend to review but have not had  
 5 a chance to review as yet.  
 6 There -- I did see some information about  
 7 public outreach and education, some budget figures  
 8 that recently came in. I quickly glanced at the  
 9 district court opinion that came down about a week  
 10 or so ago.  
 11 And I also saw in press reports and in  
 12 television clips comments by Congressman Grothman,  
 13 former Senator Grothman, as well as one of the aides  
 14 to, I believe it was a senator who was involved in  
 15 the initial process of adopting voter photo ID.  
 16 And those -- that material, which also  
 17 just appeared in the press recently, was something I  
 18 have taken cognizance of, as well.  
 19 Q Have you read any recent press about the  
 20 April 5th, 2016, election in Wisconsin?  
 21 A **I have.**  
 22 Q What have you read?  
 23 A **Just articles. I can't tell you the**  
 24 **particular journals. But there were a bunch of them**  
 25 **from Wisconsin that I did read.**

9

1 Q Did you read about the turnout for that  
2 election?  
3 A Yes.  
4 Q And what did you learn about it?  
5 A **That it was a very high turnout for that**  
6 **election, even higher than the recent previous**  
7 **records in Wisconsin.**  
8 Q We'll talk more about that as we get into  
9 the specifics here.  
10 You said you read your reports in  
11 preparation for today. Do you mean reports other  
12 than those that were filed in this case?  
13 A No.  
14 Q Just the reports in this case?  
15 A Yes.  
16 Q Okay. And since you prepared your  
17 February 16th report, have you formed any new  
18 opinions that you're going to be offering in this  
19 case?  
20 A **Very possibly. Because so much new**  
21 **information has come down since that report. I'm**  
22 **not sure they're new opinions, but they're**  
23 **strengthened and reinforced opinions.**  
24 Q Okay. Have you begun to prepare any  
25 supplemental report?

10

1 A **I have not.**  
2 Q And no one has asked you to do that yet?  
3 A **Not yet. You never know what lawyers**  
4 **might ask you, but ...**  
5 Q And you said you spoke to some attorneys.  
6 Have you spoken to anyone else in preparation for  
7 today's deposition?  
8 A No.  
9 Q Spoken to your wife?  
10 A **I always speak to my wife, but not about**  
11 **the substance of this deposition.**  
12 Q Okay.  
13 A **I'm sure she would be singularly**  
14 **uninterested, but you never know.**  
15 Q Have you spoken to any colleagues about  
16 the case?  
17 A No.  
18 Q Spoken to any friends about the case?  
19 A **Only to the extent that I might have**  
20 **mentioned I'm involved in a Wisconsin case, but not**  
21 **beyond that, no.**  
22 Q Okay. Did you review any other documents,  
23 aside from what you've already mentioned?  
24 A **I took a quick glance at the deposition of**  
25 **Professors Burden and Mayor but really quick.**

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1 **Because, again, that's very recent material that I**  
2 **just got. And as I said, there's a lot of new**  
3 **material I have not absorbed, digested or analyzed**  
4 **it yet.**  
5 Q Have you spoken to Professors Burden or  
6 Mayor?  
7 A **About this case, or about anything?**  
8 Q About this case.  
9 A **Not that I can recall.**  
10 Q But you have spoken to them?  
11 A **I don't know if I've ever spoken to**  
12 **Professor Mayor. I may have in passing spoken to**  
13 **Professor Burden because we've been involved in some**  
14 **similar cases.**  
15 **But if I spoke to him, it was truly in**  
16 **passing --**  
17 Q Okay.  
18 A **-- and nothing substantive.**  
19 Q Okay. What cases do you recall that  
20 you've been both involved in?  
21 A **I think North Carolina was one of the**  
22 **cases in which we were both involved.**  
23 Q Ohio?  
24 A **I was not involved in Ohio.**  
25 Q Okay. Did you take any notes in

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1 preparation for today's deposition?  
2 A No.  
3 Q Okay. Do you know when the trial date is  
4 in this case?  
5 A **I believe it's May 16.**  
6 Q And I think it's May 16, that week, and  
7 then the week of the 23rd. Correct?  
8 A **That's my understanding. I'm not the**  
9 **lawyer here.**  
10 Q Sure. Are you available to testify during  
11 those two weeks?  
12 A Yes.  
13 Q Okay. Are there any days that you're not  
14 available to testify that you can think of right  
15 now?  
16 A **Not that I know of at the moment. I told**  
17 **the attorneys I was broadly available.**  
18 Q Okay. There's a lot of material attached  
19 to your expert -- first expert report, you know,  
20 your CV and all the cases. So I don't want to get  
21 into that any great detail. But just tell me about  
22 your educational background.  
23 A **Sure. I received my -- I hate to say it,**  
24 **my B.A. from Brandeis way back in 1967. I was**  
25 **actually a science major until my senior year, when**

13	<p>1 <b>I switched to history. Science major explains my</b></p> <p>2 <b>interest in quantitative methodology and procedures.</b></p> <p>3 <b>I then received my Ph.D. from Harvard</b></p> <p>4 <b>University in 1973, with a specialty in American</b></p> <p>5 <b>political history and quantitative methodologies.</b></p> <p>6 Q What was the subject of your dissertation?</p> <p>7 A <b>Presidential election of 1928, which</b></p> <p>8 <b>became one of my first books published by University</b></p> <p>9 <b>of North Carolina Press back in the late 1970s.</b></p> <p>10 Q Okay. And so after you completed your</p> <p>11 Ph.D., what was your next endeavor?</p> <p>12 A <b>The next endeavor was to assume a position</b></p> <p>13 <b>at American University, and I've been a professor</b></p> <p>14 <b>there since 1973, moving up in the ranks from</b></p> <p>15 <b>assistant -- I went directly to full professor. I</b></p> <p>16 <b>got early tenure and full professor. And about five</b></p> <p>17 <b>years ago I was appointed a distinguished professor.</b></p> <p>18 Q Is that, like, emeritus status?</p> <p>19 A <b>No.</b></p> <p>20 Q No?</p> <p>21 A <b>Quite the opposite. A distinguished</b></p> <p>22 <b>professor is a very special rank reserved for</b></p> <p>23 <b>professors of special accomplishment.</b></p> <p>24 <b>There are only, as far as I know, three or</b></p> <p>25 <b>four of us out of 800-some-odd faculty full time at</b></p>	15
14	<p>1 <b>the American University. It's a university</b></p> <p>2 <b>designation. It is not a departmental designation.</b></p> <p>3 Q Okay. Why did you select American</p> <p>4 University, or did they select you? I just want to</p> <p>5 know how you --</p> <p>6 A <b>We're talking about 1973.</b></p> <p>7 <b>Washington, DC.</b></p> <p>8 Q Okay.</p> <p>9 A <b>You know, I'm a political historian. What</b></p> <p>10 <b>better place to be? And have you ever been to</b></p> <p>11 <b>American University?</b></p> <p>12 Q No.</p> <p>13 A <b>It's a -- it's a beautiful campus,</b></p> <p>14 <b>wonderful place. Great place to be.</b></p> <p>15 Q Okay. And have you done any -- visited</p> <p>16 other universities?</p> <p>17 A <b>I was a visiting distinguished professor</b></p> <p>18 <b>at the California Institute of Technology in, gosh,</b></p> <p>19 <b>1980, '81.</b></p> <p>20 Q Okay. But otherwise you've been at</p> <p>21 American?</p> <p>22 A <b>Correct.</b></p> <p>23 Q Okay.</p> <p>24 A <b>My only regular appointment for the last</b></p> <p>25 <b>43 years has been American University.</b></p>	16
13	<p>1 Q And you're still working there full time</p> <p>2 teaching, as well?</p> <p>3 A <b>Yes. Although as a distinguished</b></p> <p>4 <b>professor I have a -- we do a teaching load. But I</b></p> <p>5 <b>am a regular, full-time faculty member.</b></p> <p>6 Q Are you teaching this semester?</p> <p>7 A <b>I am.</b></p> <p>8 Q What are you teaching?</p> <p>9 A <b>I'm teaching a course in American</b></p> <p>10 <b>politics.</b></p> <p>11 Q Okay.</p> <p>12 A <b>History of American politics.</b></p> <p>13 Q For undergraduate or graduate students?</p> <p>14 A <b>It includes both undergraduate and</b></p> <p>15 <b>graduate students.</b></p> <p>16 Q Okay. Have you taught courses that</p> <p>17 include statistical analysis of political matters?</p> <p>18 A <b>Yes.</b></p> <p>19 Q What courses?</p> <p>20 A <b>Actually, while I was in graduate school</b></p> <p>21 <b>at Harvard, I taught a course in statistical</b></p> <p>22 <b>methodologies at Brandeis University. And I've</b></p> <p>23 <b>taught courses in statistical methodology at</b></p> <p>24 <b>American University, although not recently.</b></p> <p>25 Q Okay. What is the most recent statistical</p>	16
14	<p>1 course you've taught?</p> <p>2 A <b>Oh, it's a long time ago at American</b></p> <p>3 <b>University. I don't remember exactly.</b></p> <p>4 <b>And the reason I haven't taught it</b></p> <p>5 <b>recently, quite frankly, is there's not that much</b></p> <p>6 <b>interest among historians in quantitative</b></p> <p>7 <b>methodologies. Most of those who go into history</b></p> <p>8 <b>have more of a humanities than a social science</b></p> <p>9 <b>approach.</b></p> <p>10 Q So who are the giants of quantitative</p> <p>11 methodologies in history?</p> <p>12 A <b>Oh, I would say, you know, probably the</b></p> <p>13 <b>greatest giant is Robert Fogel, winner -- he's an</b></p> <p>14 <b>economic historian, the winner of Nobel Prize in</b></p> <p>15 <b>economics. You can't get more of an accolade than</b></p> <p>16 <b>that.</b></p> <p>17 <b>J. Morgan Kousser, at the California</b></p> <p>18 <b>Institute of Technology is another pioneer. Maris</b></p> <p>19 <b>Vinovskis, who was at Harvard when I was at Harvard,</b></p> <p>20 <b>would be another pioneer in that area. Richard</b></p> <p>21 <b>Jensen, Paul Kleppner are others who -- you know, of</b></p> <p>22 <b>my generation who have worked on that.</b></p> <p>23 Q Okay. I guess just tell me about your</p> <p>24 discipline. You say that you -- you know, you're an</p> <p>25 expert in history and quantitative analysis of</p>	16

17	<p>1 history.</p> <p>2 What does that mean?</p> <p>3 <b>A Before I answer your question, let me say</b></p> <p>4 <b>my expertise is not limited to that.</b></p> <p>5 Q Okay.</p> <p>6 <b>A Those are two of my areas of expertise.</b></p> <p>7 Q Sure. I'll try and get into what areas of</p> <p>8 expertise are relevant to this case and which are</p> <p>9 not later.</p> <p>10 <b>A Sure.</b></p> <p>11 Q But tell me about generally that field.</p> <p>12 <b>A Yeah. As I approach it, my work in</b></p> <p>13 <b>quantitative history combines traditional historical</b></p> <p>14 <b>methods and mathematical analysis. That is, I</b></p> <p>15 <b>research manuscript sources. I go to primary</b></p> <p>16 <b>sources. Letters, diaries, legislative histories,</b></p> <p>17 <b>things of that nature. As well as doing</b></p> <p>18 <b>quantitative analysis.</b></p> <p>19 <b>So for my dissertation and my first</b></p> <p>20 <b>book -- the book was Prejudice and the Old Politics:</b></p> <p>21 <b>The Presidential Election of 1928 -- I looked at</b></p> <p>22 <b>paper collections. I did a lot of primary source</b></p> <p>23 <b>research. And I also did an extensive quantitative</b></p> <p>24 <b>analysis of voting patterns in the election of 1928</b></p> <p>25 <b>and also compared those voting patterns with other</b></p>	19	<p>1 <b>movement and my study of F.D.R. and the Jews, both</b></p> <p>2 <b>of which have won major national awards.</b></p> <p>3 Q You mentioned the 13 keys, the book and</p> <p>4 the concept.</p> <p>5 <b>A Right.</b></p> <p>6 Q Where does -- does election procedure or</p> <p>7 mechanics play any part in the 13 keys?</p> <p>8 <b>A Not directly. Of course indirectly,</b></p> <p>9 <b>absolutely.</b></p> <p>10 Q Okay. How indirectly?</p> <p>11 <b>A Indirectly it sets up the system that</b></p> <p>12 <b>is -- you know, we have a regular system of</b></p> <p>13 <b>presidential elections. We have known procedures</b></p> <p>14 <b>for presidential elections, many of which go back to</b></p> <p>15 <b>the original constitution and the 12th amendment to</b></p> <p>16 <b>the constitution of course.</b></p> <p>17 <b>We have a relatively stable two-party</b></p> <p>18 <b>system in the United States. We have a</b></p> <p>19 <b>presidential, not a parliamentary system. We have a</b></p> <p>20 <b>winner-take-all system.</b></p> <p>21 <b>So all of those systematic elements of</b></p> <p>22 <b>American presidential elections inform and provide</b></p> <p>23 <b>the context for the keys to the White House.</b></p> <p>24 <b>However, the keys themselves do not directly refer</b></p> <p>25 <b>to election procedure or administration. Rather,</b></p>
18	<p>1 early 20th century voting patterns.</p> <p>2 That was also expressed in an article I</p> <p>3 published back in the 1970s, as well, in the</p> <p>4 American Historical Review, the leading journal in</p> <p>5 the field.</p> <p>6 And I have also published a methodological</p> <p>7 works on quantitative analysis in history, in such</p> <p>8 journals as Evaluation Review, Journal of</p> <p>9 Inter-Disciplinary History, Social Science History.</p> <p>10 I also incorporated mathematical and</p> <p>11 traditional historical methodologies in my series of</p> <p>12 books on the keys to the White House, which is a</p> <p>13 system for explaining and predicting American</p> <p>14 presidential elections.</p> <p>15 I have also published highly technical</p> <p>16 articles on that topic in journals such as the</p> <p>17 Journal of the National Academy of Sciences, one of</p> <p>18 the three leading scientific journals in the world;</p> <p>19 as well as the International Journal of Forecasting</p> <p>20 and other scholarly articles -- other scholarly</p> <p>21 journals.</p> <p>22 Similarly, a combination of quantitative</p> <p>23 and traditional historical methodologies have</p> <p>24 informed some of my more recent works, such as my</p> <p>25 study of the rise of the American conservative</p>	20	<p>1 the keys themselves are primarily referential to</p> <p>2 presidential performance by the party holding the</p> <p>3 White House and the strength and unity of the party</p> <p>4 holding the White House.</p> <p>5 The basic conceptual, as opposed to the</p> <p>6 mathematical theory behind them is that elections</p> <p>7 for president are primarily viewed as referenda on</p> <p>8 the performance of the party holding the White</p> <p>9 House. And the 13 keys are a way of modeling the</p> <p>10 voter's view of presidential performance and coming</p> <p>11 up with a decision rule that enables you to make</p> <p>12 predictions.</p> <p>13 Q For example, a voter photo identification</p> <p>14 requirement, which of the 13 keys would that fit</p> <p>15 into, if any?</p> <p>16 <b>A Probably none of them directly.</b></p> <p>17 <b>One of the nice things about the keys is,</b></p> <p>18 <b>they've held over a very long period of American</b></p> <p>19 <b>electoral history. Retrospectively back to Lincoln</b></p> <p>20 <b>and Douglas in 1960, and prospectively, for actual</b></p> <p>21 <b>realtime forecasts prior to the presidential</b></p> <p>22 <b>election from 1984 to 2012. So they've held</b></p> <p>23 <b>robustly through an enormous variety of changes in</b></p> <p>24 <b>our society, our economy, our demography, our</b></p> <p>25 <b>technologies, as well as our election procedures.</b></p>

21

1 Q Is it fair to say that election procedures  
2 would not impact the outcome under the 13 keys?  
3 A It depends what they are. Obviously the  
4 keys are based upon precedent. And any sharp break  
5 in precedent could have an effect on anything  
6 involved in presidential elections.  
7 Q What about a voter photo identification  
8 requirement?  
9 A As I said, the keys are robust through  
10 huge changes in election procedures. And there was  
11 nothing directly referential to voter identification  
12 of any kind.  
13 Q Okay. Have you been involved in politics?  
14 A Yes.  
15 Q What has been your involvement?  
16 A I've kind of been -- not for a very long  
17 time, not for decades, I've consulted with  
18 politicians and political staffers and consultants.  
19 I've consulted with -- gosh, it's a shame to say,  
20 some of those I've consulted with have passed away.  
21 But George McGovern, Ted Kennedy. And not  
22 directly with Ronald Reagan. But quite directly,  
23 probably my most extensive consultant with a  
24 staffer, who has also passed away, was Lee Atwater,  
25 the political director of the Ronald Reagan White

22

1 House.  
2 So you can see my experience is pretty  
3 ancient. I haven't consulted politically really in  
4 recent years. But I did run for office. I ran as a  
5 maverick against the grain of the Democratic party  
6 in the 2006 Democratic primary for U.S. Senate,  
7 where I was spectacularly unsuccessful. I think I'm  
8 a much better professor than I am a political  
9 candidate.  
10 And I have not been involved in politics  
11 over the last ten years, except as a commentator and  
12 as an analyst. But I've not done consulting, I've  
13 not run for anything.  
14 Q What spurred you to run in 2006?  
15 A I felt that we were getting too much of  
16 the same kind of politician. Kind of your  
17 professional politician who looked at office serving  
18 as a career and was not really responding to what I  
19 thought were some of the urgent needs of the  
20 country.  
21 So I was making the argument, as I said as  
22 a maverick, running against the grain of the party.  
23 And I since have been very critical of the  
24 Democratic party. And this is all in Maryland. I'm  
25 making the argument to the voters, You hate the

23

1 Congress. You know, they have approval ratings  
2 lower than Atilla the Hun, yet you continue to be  
3 electing the same kind of people.  
4 And I made the argument, While, you know,  
5 I've never held office, never been a politician, my  
6 experience as an educator, my experience in voting  
7 rights, more than qualified me for United States  
8 Senate. And I would be a different kind of senator.  
9 I was kind of modeling myself on the late  
10 Paul Wellstone, kind of the last -- as far as I  
11 know, the last educator, full-time educator to be  
12 elected to the United States.  
13 You know, I really got nowhere in the  
14 campaign. I didn't have enough money. I was shut  
15 out by the party because I was running against the  
16 grain of the party. I was even shut out of the one  
17 televised senatorial debate.  
18 Q Do you have any intention to run for  
19 office again?  
20 A Absolutely not. Not been involved in  
21 politics for ten years. I'm 69 years old. I have  
22 utterly no intention of becoming involved in  
23 politics again.  
24 Q The message that you were putting forth in  
25 2006, is it not similar to the message that some of

24

1 the major political candidates in the presidential  
2 race today are putting forth?  
3 A It is similar to what you hear from some  
4 of the presidential candidates. Maybe I was ten  
5 years too early, you never know.  
6 Q And you said that you did some political  
7 consulting. Was that paid work?  
8 A I did some paid work and some unpaid work.  
9 My main paid work was not directly political  
10 consulting, but I was -- the consulting historian  
11 for George McGovern's production of his memoirs. I  
12 was not paid by Mr. Atwater.  
13 And, by the way, I am mentioned in Lee  
14 Atwater's biography. Bad Boy talks about his work  
15 with me on the keys to the White House.  
16 Q Okay. Have you ever worked as a poll  
17 worker as an election precinct?  
18 A I was a precinct official I think a long  
19 time ago, you know, more than maybe 20 -- maybe some  
20 20 years ago. But I have not worked as a precinct  
21 official per se.  
22 Q So when I say that, I mean someone who was  
23 helping people get their ballot. Have you ever done  
24 that?  
25 A That is how I understood your question.

25

1 **And I don't recall having done that.**  
 2 Q Okay. Have you ever been to Wisconsin?  
 3 A Yes.  
 4 Q How many times?  
 5 A **Oh, maybe once or twice, and not recently.**  
 6 Q Have you ever voted in Wisconsin?  
 7 A No.  
 8 Q Never lived there?  
 9 A No.  
 10 Q How does one vote at a polling place in  
 11 Wisconsin?  
 12 A **I'm not sure I understand your question.**  
 13 Q What are the steps a voter needs to take  
 14 to get a ballot in a polling place in Wisconsin?  
 15 A **Well, my understanding is to get a ballot**  
 16 **in a polling place in Wisconsin you have to present**  
 17 **yourself to the election officials, you have to**  
 18 **present an -- one of a list of acceptable photo**  
 19 **identification that has to be verified by the**  
 20 **election official.**  
 21 **If you don't have photo identification or**  
 22 **your photo identification is not deemed to be**  
 23 **acceptable, for example as I understand it a student**  
 24 **ID that doesn't have an expiration date, then you**  
 25 **are supposed to be offered a provisional ballot.**

26

1 **And a provisional ballot is a ballot, as I**  
 2 **understand it in Wisconsin, that may or may not be**  
 3 **counted. That you've got to come back, as I**  
 4 **understand it, by 8 o'clock that evening to the**  
 5 **polling place or to a state office by the Friday**  
 6 **after the election.**  
 7 **And if you don't do that, my understanding**  
 8 **is that your provisional ballot will not be counted.**  
 9 **If, however, you have an ID that is deemed**  
 10 **acceptable by the election official, you can then go**  
 11 **on to cast a regular ballot that doesn't require any**  
 12 **additional action on your part as a voter.**  
 13 Q In addition to showing the ID, are there  
 14 any other steps a voter must take before obtaining a  
 15 ballot on election day?  
 16 A **I'm not certain of other steps.**  
 17 Q So you have not looked at what Wisconsin  
 18 law requires to obtain a ballot as a voter?  
 19 A **I've looked at the voter ID requirements,**  
 20 **but I'm not aware of other requirements that you**  
 21 **would have to go through to get a ballot in**  
 22 **Wisconsin.**  
 23 **My understanding is, if you present**  
 24 **yourself at the polling place, you're on the poll**  
 25 **book as a registered voter, you're at the right**

27

1 **precinct -- because, you know, there are laws -- if**  
 2 **this is what you're asking me, I am familiar. There**  
 3 **are laws about what precinct you have to vote in.**  
 4 **So, you know, there are a number of other**  
 5 **things that you have to satisfy in order to get a**  
 6 **regular ballot.**  
 7 Q Do you have to state your name?  
 8 A **I'm not sure if you state your name or**  
 9 **present your name on a photo ID. I'm not sure**  
 10 **whether you have to verbally do it or do it with**  
 11 **documentation. I would imagine whether you state it**  
 12 **or not, you have to do it with documentation.**  
 13 Q Do you have to state your current address?  
 14 A **I'm not certain whether you have to state**  
 15 **your current address or not.**  
 16 Q Does the address on your ID card have to  
 17 be current?  
 18 A **I believe the address on your ID card, if**  
 19 **the ID card is unexpired, and I think you've got a**  
 20 **year's waiting time, does not have to be the current**  
 21 **address.**  
 22 Q Are there any other requirements that you  
 23 must do before obtaining a ballot as a voter on  
 24 election day in Wisconsin?  
 25 A **Beyond the four or five I've already**

28

1 **mentioned, I'm not aware of others.**  
 2 Q Do you have to sign anything as a voter to  
 3 get a ballot?  
 4 A **I'm not aware that you have to sign**  
 5 **anything.**  
 6 Q Do you have to show any other document?  
 7 A **I'm not sure what you mean by other**  
 8 **documents.**  
 9 Q Other than a qualifying photo ID?  
 10 A **I don't believe you have to show other**  
 11 **documents.**  
 12 Q Are you familiar with the requirements of  
 13 how to register to vote in Wisconsin?  
 14 A **Generally. But, you know, I know you can**  
 15 **register in person. You can register at DMV and**  
 16 **welfare offices. You can register online. You can**  
 17 **register by mail. So --**  
 18 Q You can register online?  
 19 A **I believe you can.**  
 20 Q Okay. Are you -- let me ask you this:  
 21 How does one obtain an absentee ballot in Wisconsin?  
 22 A **I'm not sure of the exact mechanisms. But**  
 23 **normally to obtain an absentee ballot you would send**  
 24 **in a mail request for the absentee ballot. And in**  
 25 **Wisconsin my understanding is you also have to**



29

1 **submit a qualifying photo ID to get an absentee**  
 2 **ballot.**  
 3 Q Have you voted recently in Maryland?  
 4 A **Yes.**  
 5 Q Did you vote in person?  
 6 A **Yes.**  
 7 Q On election day?  
 8 A **I voted both on election day and early**  
 9 **voting.**  
 10 Q When is the last time you voted?  
 11 A **The last election.**  
 12 Q When was that?  
 13 A **2014, I believe.**  
 14 Q There hasn't been a presidential primary  
 15 recently?  
 16 A **No. It's next week.**  
 17 Q Okay. You haven't voted early for that  
 18 presidential primary?  
 19 A **No.**  
 20 Q Do you intend to vote on election day?  
 21 A **No.**  
 22 Q You intend to vote early?  
 23 A **I intent to vote absentee.**  
 24 Q And how would you do absentee in Maryland?  
 25 A **I did it online.**

30

1 Q Okay. So --  
 2 A **You could do it by mail as well.**  
 3 Q Okay. So in Wisconsin can you vote  
 4 absentee by mail?  
 5 A **Yes.**  
 6 Q And how would one obtain an absentee  
 7 ballot by mail in Wisconsin?  
 8 A **I believe you would have to apply for an**  
 9 **absentee ballot. You can send in a mail request.**  
 10 **I'm not -- I have to tell you, I'm not an**  
 11 **expert on every jot and tittle of every regulation**  
 12 **on this in Wisconsin.**  
 13 Q Okay. Wouldn't it seem important to be an  
 14 expert on every jot and tittle to give an expert  
 15 opinion in this case?  
 16 A **No.**  
 17 Q No? Why not?  
 18 A **Because my expert opinion is based upon**  
 19 **not knowing every single detail of election**  
 20 **administration in Wisconsin, but more than**  
 21 **sufficient detail to give opinions about the effects**  
 22 **of such things as a voter identification laws,**  
 23 **restriction of early voting and the other matters on**  
 24 **which I opine. And I provided extensive**  
 25 **documentation of my opinions.**

31

1 Q Why did you vote absentee -- or why do you  
 2 intend to vote absentee from home?  
 3 A **I'm going to be out of the state.**  
 4 Q So that's more convenient for you?  
 5 A **Well, I'm not going to be here for**  
 6 **election day.**  
 7 Q It's more convenient for you?  
 8 A **No. It's necessary.**  
 9 Q Okay.  
 10 A **Since I'm not here in the state, I either**  
 11 **have to vote early or I have to vote absentee ipso**  
 12 **facto.**  
 13 Q Have you ever voted absentee by mail?  
 14 A **No.**  
 15 Q Why not?  
 16 A **Because I have previously been in the**  
 17 **state on election day.**  
 18 Q Do you think that voting absentee via mail  
 19 is a convenient method for voters?  
 20 A **It certainly can be, absolutely.**  
 21 Q Why would it be convenient?  
 22 A **Because if you're not in the state, that's**  
 23 **a way of making your vote count.**  
 24 Q What if you don't have time to vote on  
 25 election day; would that also make it convenient?

32

1 A **Sure.**  
 2 Q What if you're working on election day,  
 3 would that also make it convenient?  
 4 A **Clearly.**  
 5 Q In Wisconsin, under what circumstances can  
 6 a voter obtain an absentee ballot by mail?  
 7 A **I'm not sure I understand your question.**  
 8 Q Do they have to have any excuse to --  
 9 A **I don't believe so, no.**  
 10 Q Is Wisconsin a no excuse absentee voting  
 11 state?  
 12 A **I believe that's right.**  
 13 Q Okay. So in Wisconsin a voter can avoid  
 14 the lines that might exist for absentee voting in  
 15 person by requesting an absentee ballot by mail.  
 16 Correct?  
 17 A **That's correct.**  
 18 Q So they can vote from home and avoid the  
 19 lines at the polling place. Correct?  
 20 A **If they go -- but they also have to go**  
 21 **through a process to get the absentee ballot. It's**  
 22 **not as if, Oh, I'm not going to spend any time on**  
 23 **this. I have to figure out the absentee ballot**  
 24 **process. I've got to get an absentee ballot. I've**  
 25 **got to fill out the absentee ballot. I've got to**

33	<p>1 send in the absentee ballot by mail. And I've got</p> <p>2 to make sure I have the right kind of photo ID,</p> <p>3 because Wisconsin is one of the very few states that</p> <p>4 requires a photo ID with an absentee ballot.</p> <p>5 So kind of the premise of your question is</p> <p>6 not exactly correct. It's not as if you're</p> <p>7 necessarily avoiding time and energy. You may be</p> <p>8 spending more time and energy going through the</p> <p>9 absentee ballot process than simply showing up at</p> <p>10 the polling place and voting, even when there are</p> <p>11 long hours. And that would be particularly true for</p> <p>12 those of less education, those who might have</p> <p>13 difficulty with the English language, those of lower</p> <p>14 socio-economic status generally.</p> <p>15 Q So if I -- in Wisconsin if I make a</p> <p>16 request for an absentee ballot by mail, I can have</p> <p>17 absentee ballots sent to me for every election in</p> <p>18 that calendar year. Correct?</p> <p>19 A I'm not exactly certain, but I would</p> <p>20 accept your representation on that. That seems like</p> <p>21 a normal process.</p> <p>22 Q So for every election in that calendar</p> <p>23 year, I would not have to show up at a polling place</p> <p>24 to vote. Correct?</p> <p>25 A If that's correct. I'm not sure you can</p>	35	<p>1 someone who does not have the ID?</p> <p>2 A Both.</p> <p>3 Q Okay. And explain why.</p> <p>4 A First, what we do know is, there's a lot</p> <p>5 of voter confusion about IDs. You know, most voters</p> <p>6 cannot name their congressman. And you cannot</p> <p>7 expect the average voter to necessarily know all the</p> <p>8 in's and out's of a voter photo ID process,</p> <p>9 particularly one as complex at the Wisconsin voter</p> <p>10 ID requirement. Where, for example, you can't just</p> <p>11 use your regular college student ID. Student IDs</p> <p>12 have to fulfill a set of very specific requirements</p> <p>13 that are not typical of other states. You can't use</p> <p>14 your government employee ID, for example.</p> <p>15 So even those who might have IDs are going</p> <p>16 to be confused. And then not necessarily going to</p> <p>17 know whether the ID they have is legitimate for</p> <p>18 voting.</p> <p>19 I cite a study, for example, of Texas in</p> <p>20 my report, which indicates very large numbers of</p> <p>21 individuals, in a very competitive congressional</p> <p>22 district, 23 in Texas, did not vote. Not because</p> <p>23 they didn't have IDs, but because they were</p> <p>24 confused. They weren't certain whether the ID they</p> <p>25 have really was a legitimate ID.</p>
34	<p>1 get it all at once. But if you're saying you can,</p> <p>2 that is certainly possible.</p> <p>3 Q And we're going to talk about your expert</p> <p>4 reports.</p> <p>5 A Sure.</p> <p>6 Q You don't mention the mail-in absentee</p> <p>7 option at all in your reports; do you?</p> <p>8 A I do.</p> <p>9 Q You do?</p> <p>10 A I do.</p> <p>11 Q Okay. And what do you mention about it?</p> <p>12 A I talk about several things about it. I</p> <p>13 mean, we're talking by memory now, because I don't</p> <p>14 have the report in front of me.</p> <p>15 Q Yes.</p> <p>16 A But I talk about the fact that I believe</p> <p>17 Wisconsin was the first state to require photo ID</p> <p>18 for absentee mail in ballots, with certain limited</p> <p>19 exceptions. And that makes the absentee ballot</p> <p>20 process yet more onerous for the kinds of people I'm</p> <p>21 talking about in my report, particularly minorities</p> <p>22 and those of lower socio-economic standing, which is</p> <p>23 also highly correlated with minority status.</p> <p>24 Q Now, are you saying that it's harder for</p> <p>25 someone who already has the ID or it's harder for</p>	36	<p>1 So even those who have IDs, there is going</p> <p>2 to be real issues when it comes to whether it be</p> <p>3 absentee ballot or whether it be ballots at the</p> <p>4 polls. And because Wisconsin imposes this extra</p> <p>5 requirement of a photo ID for absentee ballots, that</p> <p>6 poses a particular barrier for minorities.</p> <p>7 And that study in Texas showed that those</p> <p>8 who didn't vote because they didn't think they had</p> <p>9 acceptable IDs were heavily minority.</p> <p>10 Q Did you write that Texas study?</p> <p>11 A No.</p> <p>12 Q Have you studied the issue of voter</p> <p>13 confusion in Wisconsin as to the voter photo ID law?</p> <p>14 A Yes.</p> <p>15 Q And in what way have you done that?</p> <p>16 A There have been polls on this. There were</p> <p>17 polls about -- before the 2014 election, when people</p> <p>18 were confused not only about what particular ID they</p> <p>19 needed, but whether they needed an ID or not.</p> <p>20 And depending on the poll you look at,</p> <p>21 we're not talking about one or two percent of the</p> <p>22 public confused about something, even that basic,</p> <p>23 far more basic than the intricacies of the voter ID</p> <p>24 law. Anywhere from 25 percent to 50 percent of</p> <p>25 registered voters. And when you looked at the</p>

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1 **registered voters, they were more -- those who were**  
 2 **confused were more heavily minority.**  
 3 Q And so that's from 2014.  
 4 Have you done any studies of Wisconsin as  
 5 to voter confusion about photo ID in the last two  
 6 years?  
 7 **A No. That's the last poll I saw on that.**  
 8 Q You don't know if there have been any  
 9 other polls done since that time?  
 10 **A I am not aware of any, but there certainly**  
 11 **may have been.**  
 12 Q Are you offering any expert opinion in  
 13 this case about whether there is voter confusion  
 14 about the photo identification requirement in the  
 15 last two years?  
 16 **A I might be.**  
 17 Q You might be?  
 18 **A I might be.**  
 19 Q Where does that appear in either of your  
 20 expert reports?  
 21 **A It wasn't in my expert reports. But**  
 22 **that's not what you asked me. You asked me if I**  
 23 **might be giving testimony on this. And, of course,**  
 24 **one of the things that I have been asked to do was**  
 25 **to respond to materials, analyses, reports, evidence**

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1 **presented by the state or by experts for the state.**  
 2 **And I did see some discussion of that**  
 3 **issue in one of the depositions that I briefly**  
 4 **reviewed.**  
 5 Q Okay.  
 6 **A So the state did bring that up.**  
 7 Q And we're going to be talking about the  
 8 poll that you mentioned, very later on in this  
 9 deposition. It's the Marquette University Law  
 10 School poll. Is that the one you're talking about?  
 11 **A Yes.**  
 12 Q Okay. We talked a little bit about your  
 13 past expert work. How many cases have you been  
 14 involved in as a paid expert?  
 15 **A Oh, my gosh.**  
 16 Q Estimate.  
 17 **A I never counted.**  
 18 Q Eighty?  
 19 **A Eighty-five or more.**  
 20 Q Okay. Have you earned over \$2 million  
 21 from your expert work?  
 22 **A You mean over the last 30-some-odd years?**  
 23 Q Yes.  
 24 **A Probably so. I've never counted.**  
 25 Q Have you earned over \$5 million from your

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1 expert work?  
 2 **A I doubt that. But I can't answer your**  
 3 **question because I have never counted separately**  
 4 **income from my expert work as opposed to lots of**  
 5 **other outside incomes.**  
 6 Q Would it be fair to say that you've earned  
 7 millions of dollars from your expert work?  
 8 **A Probably so over a more than 30-year**  
 9 **period. But again, I have not counted.**  
 10 Q In the last year how much have you earned  
 11 from your expert -- paid expert work?  
 12 **A I don't know. But a considerable amount,**  
 13 **because there has just been an avalanche of**  
 14 **litigation over the past -- just the thing about**  
 15 **being an expert. Sometimes you earn nothing, and**  
 16 **sometimes you earn a lot because of just the way in**  
 17 **which litigation goes.**  
 18 **And I have nothing to do with that.**  
 19 **That's, you know, just how our political and legal**  
 20 **system works.**  
 21 Q And you said you testified recently in the  
 22 Virginia case in trial. Correct?  
 23 **A Yes.**  
 24 Q And so you were represented -- or you were  
 25 testifying for the plaintiffs in that case?

40

1 **A Yes.**  
 2 Q In the last five years, have you testified  
 3 for the defendants in any case?  
 4 **A Yes.**  
 5 Q Which case?  
 6 **A Two cases come to mind immediately. But I**  
 7 **think there are three, probably. So it's been a**  
 8 **number.**  
 9 **You want specifics --**  
 10 Q Yes.  
 11 **A -- on the cases? Yeah.**  
 12 **The ones I recall, 2011 I testified in**  
 13 **court on behalf of the defendants in the State of**  
 14 **Illinois on the challenge to the State of Illinois**  
 15 **congressional redistricting plan.**  
 16 **I was also the expert for defendants in**  
 17 **Illinois in a case challenging the state legislative**  
 18 **redistricting plan.**  
 19 **I submitted reports in that case and was**  
 20 **deposed in that case but never ultimately testified**  
 21 **in court because the case was decided on summary**  
 22 **judgment.**  
 23 **And then just recently I testified via**  
 24 **report, because the judges did not ask for oral**  
 25 **testimony. They -- they based their opinion on**

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1 written submitted materials. And that was, I was  
 2 testifying on behalf of defendants on a challenge  
 3 brought by black plaintiffs against congressional  
 4 redistricting plan in the State of Florida. I think  
 5 the opinion on that just came out a couple of days  
 6 ago.  
 7 Q Okay. So --  
 8 A Those are the ones I recall.  
 9 Q So of the approximately 85 cases in which  
 10 you have served as a paid expert, can you estimate  
 11 how many in which you've testified for the state or  
 12 the defendants?  
 13 A I'd say a minority, but, you know, I  
 14 certainly have, as you've seen, even recently  
 15 testified for state and defendants.  
 16 Q Five?  
 17 A Oh, it's more than five.  
 18 Q Ten?  
 19 A At least ten.  
 20 Q Fifteen?  
 21 A I haven't counted, so...  
 22 Q Twenty-five?  
 23 MR. SPIVA: Objection. Calls for  
 24 speculation.  
 25 You can answer.

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1 A I am speculating. I don't think it's 25.  
 2 Q Okay.  
 3 A Yeah, I'm sure it's not 25, but it's  
 4 probably ten.  
 5 Q And in the recent Virginia case, which was  
 6 about voter photo identification, your opinion went  
 7 to what issue?  
 8 A It went to the issue of whether the  
 9 adoption of the photo identification law by the  
 10 State of Virginia was adopted with an intent to  
 11 discriminate against minorities in the State of  
 12 Virginia.  
 13 And that, of course, involves broader  
 14 issues, as well, including responses. I believe I  
 15 testified in response to a number of reports  
 16 submitted by experts for defendants in that case.  
 17 Q Are you an expert witness on legislative  
 18 intent?  
 19 A I have testified on legislative intent in  
 20 quite a few cases.  
 21 Q You consider yourself an expert on  
 22 legislative intent?  
 23 A I'm not sure, you know, anyone would  
 24 narrowly define themselves as an expert in something  
 25 that specific. But certainly my expertise in

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1 political history, quantitative methodologies,  
 2 political analysis, would qualify me as someone with  
 3 the expertise to testify on legislative intent. And  
 4 I have done so in quite a few cases.  
 5 Q And when you say "historical analysis," I  
 6 think of the past, the far past. Your work in this  
 7 case is focused on the very recent past. Correct?  
 8 A Yes. But I've got to qualify what you  
 9 say. My historical work goes right up to the  
 10 present. And I also do a lot of political analysis.  
 11 In other words, for example, we talked  
 12 about the keys to the White House, my system for  
 13 predicting and explaining presidential election  
 14 results.  
 15 I take that right up to the present, you  
 16 know. I predicted the 2012 election. I'm working  
 17 on predicting the 2016 American presidential  
 18 election.  
 19 My book, my 2008 book on the rise of the  
 20 American conservative movement, took it right up to  
 21 the Bush administration.  
 22 So it would be a misstatement to say my  
 23 work is only focused on the distant past. My work  
 24 combines and puts together work on the past going,  
 25 you know, well back into history, with considerable

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1 analysis of the current political situation, as  
 2 well.  
 3 Q Analyzing the current political situation,  
 4 is that something a historian does?  
 5 A It's something absolutely as a political  
 6 historian, I also consider myself a political  
 7 analyst.  
 8 I'm a political historian of recent  
 9 America. And as a political historian of recent  
 10 America, I take my work right up to the present day.  
 11 And my work deals with many, many contemporary  
 12 issues.  
 13 Q And in the Virginia case that we were just  
 14 talking about, your opinion was that the voter photo  
 15 identification requirement showed an intent on the  
 16 part of the legislature to intentionally  
 17 discriminate against racial minorities?  
 18 A Yes.  
 19 Q And what were the primary reasons for that  
 20 conclusion?  
 21 A I'm trying to distinguish Virginia at the  
 22 moment from the other cases.  
 23 The strong political motivation to limit  
 24 voting opportunities for minorities, given recent  
 25 turnout and political voting trends in the State of

45

1 Virginia, the history of discrimination in Virginia,  
 2 the sequence of events leading to the adoption of  
 3 the photo voter ID law, including the control of the  
 4 governorship and the legislature on the part of  
 5 Republicans. The similarity of what was going on in  
 6 Virginia to what was going on in other  
 7 Republican-dominated states facing similar political  
 8 realities.

9 The socio-economic disparities between  
 10 minorities and whites in Virginia. The disparities  
 11 in the possession of the most common forms of voter  
 12 photo identification in Virginia. Contemporary  
 13 statements made by Republican consultants. My  
 14 analysis of the justifications put forth by  
 15 political leaders for the voter -- voter photo ID  
 16 law.

17 And I looked at some of the same studies,  
 18 like the Texas study I looked at here, provisional  
 19 ballot. It's based on no photo voter ID in -- in  
 20 Virginia. I mean, that's --

21 Q Good memory.

22 A Nine or ten things.

23 Q Good memory.

24 So did you look at whether Virginians  
 25 favored a voter photo ID requirement?

46

1 A Absolutely.

2 Q And did they?

3 A You find fairly universal support for  
 4 voter photo ID. But I've got to qualify that in a  
 5 number of ways.

6 First, that's not surprising. Most people  
 7 have driver's licenses, for example. We are not  
 8 talking about something that affects 50 percent of  
 9 voters. We're talking about something that may  
 10 affect, ten, 15, five percent of voters.

11 So for the great majority of people, sure,  
 12 why not support voter photo ID.

13 But even more importantly, these polls are  
 14 generic. They talk generally about photo voter ID.  
 15 They don't talk about specifics of voter photo ID.

16 For example, would voters actually support  
 17 the way in which the voter photo ID law is written  
 18 in Virginia or the way it's written in Wisconsin.  
 19 We don't have direct information on that.

20 We also have some very interesting polling  
 21 data from North Carolina that I am obviously well  
 22 familiar with, having been in the North Carolina  
 23 case in which they say, yes, we support voter photo  
 24 ID.

25 But, Number 1, by very large majorities,

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1 we think they need to be justified by real, concrete  
 2 evidence of voter fraud and, B, we think people  
 3 ought to be able who can't get photo IDs, ought to  
 4 be able to vote by affidavit.

5 And, in fact, North Carolina did modify  
 6 its photo voter ID law to have a form of affidavit  
 7 voting. That is, you could go to the polls. And if  
 8 you don't have an acceptable photo ID, you could  
 9 sign an affidavit of reasonable impediment, with  
 10 lots and lots of options, and still vote. That fit  
 11 what the polls were showing.

12 Q In Virginia did African-Americans favor a  
 13 voter photo ID requirement?

14 A I don't recall. It's usually fairly close  
 15 on African-Americans. But, again, you know, a  
 16 majority of African-Americans have photo voter IDs.  
 17 So it's not surprising. But it's always lower.  
 18 Support by African-Americans is always lower than  
 19 support for voter photo ID than whites, at least in  
 20 the polls that I've seen. And I've seen a lot of  
 21 them.

22 Q In Virginia, then, how did you deal with  
 23 the issue that was suggested that legislators were  
 24 responding to their constituencies in enacting a  
 25 voter photo ID requirement?

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1 A I responded to that in several ways.

2 First of all, in that same poll you had  
 3 other issues on which voters had expressed just as  
 4 powerful support as they had for voter photo ID, but  
 5 the legislature did not act upon those other  
 6 measures; such as the automatic re-enfranchisement  
 7 of felons. And, you know, it's hard to say that  
 8 they were responding to their constituents.

9 Secondly, the poll occurred after the law  
 10 was already put into effect. So it's a little hard  
 11 to say something that happened after the law  
 12 explained it.

13 And, in addition, as I mentioned, these  
 14 are generic polls. They don't necessarily comport  
 15 to any specific voter photo ID. And there was never  
 16 any demonstration in Virginia that I saw that the  
 17 issue mattered to voters.

18 You know, it's one thing to say 65 percent  
 19 support photo identification; it's another thing to  
 20 say it made one bit of difference.

21 Q Nationally, is there overwhelming support  
 22 for voter photo ID requirement?

23 A Yes, there is -- you know, I don't know  
 24 about overwhelming, but there is certainly majority  
 25 support nationally.

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1 **Again, generically.**  
 2 Q Why don't we just get right into the  
 3 expert report.  
 4 A **Sure.**  
 5 Q The way I've put it together, there is the  
 6 report and then there are two attachments. And I'm  
 7 just going to consider that all one exhibit.  
 8 A **That's fine.**  
 9 MR. KAWSKI: So this will be Exhibit 1.  
 10 (Lichtman Deposition Exhibit 1 marked for  
 11 identification and is attached to the transcript.)  
 12 MR. SPIVA: Before you start asking  
 13 questions on that, can we take a break?  
 14 MR. KAWSKI: Sure.  
 15 (A recess was taken.)  
 16 BY MR. KAWSKI:  
 17 Q So we've marked Exhibit 1, which has three  
 18 parts, but really it's all one item. And it's  
 19 before you, Dr. Lichtman. What is Exhibit 1?  
 20 A **My initial report.**  
 21 Q And in this case?  
 22 A **Oh, yes.**  
 23 Q And in addition to your report, we have  
 24 Exhibit 1, which is your CV. Correct?  
 25 A **Yes.**

50

1 Q And Exhibit 2, which is a list of cases in  
 2 which you've been involved. Correct?  
 3 A **Yes.**  
 4 Q Okay. I just want to ask you as a general  
 5 matter what data you relied upon in preparing -- or  
 6 informing opinions in which you asserted in this  
 7 report.  
 8 A **Yes, I think I have a paragraph on that --**  
 9 Q Okay.  
 10 A **-- on Page 3.**  
 11 Q Okay.  
 12 A **I don't know if you want me to repeat it**  
 13 **or you want to just read it.**  
 14 Q Which paragraph?  
 15 A **It's the last full paragraph on the bottom**  
 16 **of Page 3.**  
 17 Q Okay.  
 18 A **It is a pretty broad, you know, array of**  
 19 **data.**  
 20 Q When -- on Page 3, where you state, "My  
 21 analysis draws upon the Wisconsin Government  
 22 Accountability Board's GAB database," do you mean  
 23 the SVRS database?  
 24 A **I don't think so. I don't think I went**  
 25 **into the individual voter files. I think other**

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1 **experts did that.**  
 2 **I looked at things like a voter turnout**  
 3 **and registration and election returns, but not**  
 4 **getting into the voter files.**  
 5 Q Did you look at Department of Motor  
 6 Vehicles data?  
 7 A **I'm not sure I did for the initial report,**  
 8 **because I didn't have it. But I think I certainly**  
 9 **did on the second report, when data began to come**  
 10 **in, and my understanding is it is still coming in.**  
 11 Q Okay. You did not conduct any surveys  
 12 yourself to form your opinions in this case?  
 13 A **I did not.**  
 14 Q And you did not review municipal-level  
 15 data of voting for this case?  
 16 A **I did, actually.**  
 17 Q You did?  
 18 A **I think it's in my second report, though,**  
 19 **not in my first report.**  
 20 Q Okay. We'll get to that.  
 21 What type of municipal data are we talking  
 22 about?  
 23 A **Turnout data.**  
 24 Q Okay.  
 25 A **Because I believe Dr. Hood, I think it**

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1 **was, had made some analyses of provisional balloting**  
 2 **in off-year elections. And I looked at his backup**  
 3 **data, and I did some research of my own on local**  
 4 **elections.**  
 5 Q Have you looked at provisional ballot data  
 6 for the most recent two elections in Wisconsin?  
 7 A **I've asked for it, and I did receive for,**  
 8 **I believe it was the 2015, some provisional ballot**  
 9 **data from Milwaukee.**  
 10 **And other than that, I've only seen**  
 11 **newspaper accounts. I have not received as yet**  
 12 **official provisional ballot data.**  
 13 **I would like to.**  
 14 Q So nothing for 2016.  
 15 A **Just -- there was just a newspaper article**  
 16 **about it. And I also discussed it with one of the**  
 17 **attorneys who had talked to I believe an election**  
 18 **official in Madison. But I did not see actual data.**  
 19 **I just kind of got a report of that interview.**  
 20 Q Okay. If you do obtain the provisional  
 21 ballot data for 2016, you intend to form opinions  
 22 about it?  
 23 A **Probably.**  
 24 Q Okay.  
 25 A **I mean, I can't say, since I haven't seen**

53	<p>1 <b>it. But most likely.</b></p> <p>2 Q Okay. In preparing for this case, did you</p> <p>3 read Wisconsin law, the statutes, administrative</p> <p>4 code?</p> <p>5 <b>A Some of it. I mean, I don't remember</b></p> <p>6 <b>exactly, but some of it.</b></p> <p>7 Q Did you read the requirements that the DMV</p> <p>8 has for obtaining ID cards?</p> <p>9 <b>A I believe there is not an official manual</b></p> <p>10 <b>that goes through the exact procedures that one has</b></p> <p>11 <b>to go through to get an ID card.</b></p> <p>12 <b>My understanding from reading the</b></p> <p>13 <b>depositions on this is that it's a discretionary</b></p> <p>14 <b>matter. That there's not a manual which spells out</b></p> <p>15 <b>exactly what it is you have to do to get an ID card.</b></p> <p>16 <b>That there's a lot of discretion involved in the</b></p> <p>17 <b>process.</b></p> <p>18 <b>So to the extent, you know, I could, I</b></p> <p>19 <b>read the depositions and tried to figure out the process.</b></p> <p>20 <b>But I'm not surprised that it's been such a</b></p> <p>21 <b>difficult and tortuous process for the individual</b></p> <p>22 <b>voter.</b></p> <p>23 Q That confuses me. Because have you read</p> <p>24 the Wisconsin Administrative Code Chapter Trans,</p> <p>25 T-R-A-N-S, 102?</p>	55	<p>1 <b>A Yes, I have.</b></p> <p>2 Q -- in Wisconsin?</p> <p>3 And have you seen the guides that are</p> <p>4 available on that website that give step-by-step</p> <p>5 instructions for people to obtain ID cards?</p> <p>6 <b>A Yes. And I think I reported some of that</b></p> <p>7 <b>in here. That's right.</b></p> <p>8 Q But your opinion is still that the process</p> <p>9 is confusing?</p> <p>10 <b>A I think the process is confusing, from</b></p> <p>11 <b>what I've read in the depositions. And there -- I</b></p> <p>12 <b>understand there are a bunch more depositions, which</b></p> <p>13 <b>may clarify things for me or not, which I will look</b></p> <p>14 <b>at, from DMV officials.</b></p> <p>15 <b>But my understanding is there is a lot of</b></p> <p>16 <b>discretion involved in this process.</b></p> <p>17 Q You understand, though, that process in</p> <p>18 which there is discretion that is the subject of the</p> <p>19 depositions does not apply to the hundreds and</p> <p>20 hundreds of thousands of people that have obtained a</p> <p>21 free ID card? You do understand that. Correct?</p> <p>22 MR. SPIVA: Objection to form.</p> <p>23 But you can answer.</p> <p>24 <b>A Yeah, I'm not sure the hundreds of</b></p> <p>25 <b>thousands of people that you're referring to.</b></p>
54	<p>1 <b>A I don't recall that. I do recall reading</b></p> <p>2 <b>administrative codes. And I think I even put that</b></p> <p>3 <b>down in my report of what it takes to get a free</b></p> <p>4 <b>photo voter ID.</b></p> <p>5 <b>But reading the depositions indicated to</b></p> <p>6 <b>me that this is not a cut-and-dried process. That</b></p> <p>7 <b>there is a lot of discretion and a lot of</b></p> <p>8 <b>uncertainty, which is also what I found in reading</b></p> <p>9 <b>the individual records.</b></p> <p>10 <b>So it's not as if one could just look at</b></p> <p>11 <b>some manual and say, Oh, I know exactly, you know,</b></p> <p>12 <b>what it takes to get a photo ID card in Wisconsin.</b></p> <p>13 Q So you understand that the depositions</p> <p>14 you're reading are about the extraordinary proof ID</p> <p>15 petition process. Correct?</p> <p>16 <b>A Correct.</b></p> <p>17 Q And that that process has only been used</p> <p>18 by approximately 12 to 13 hundred individuals?</p> <p>19 <b>A That's correct. Although I'm not sure the</b></p> <p>20 <b>depositions were entirely limited to that.</b></p> <p>21 Q You realize --</p> <p>22 <b>A I think they talked about more broadly the</b></p> <p>23 <b>entire process for obtaining a free photo voter ID</b></p> <p>24 <b>card.</b></p> <p>25 Q Have you looked at the DMV's website --</p>	56	<p>1 <b>But I'm not convinced there's no</b></p> <p>2 <b>discretion in the process at all, given from what</b></p> <p>3 <b>I've read in the depositions there does seem to be</b></p> <p>4 <b>some discretion. And again, there's a whole bunch</b></p> <p>5 <b>more depositions which may clarify this for me.</b></p> <p>6 <b>But, you know, I am a political historian.</b></p> <p>7 <b>I know how these things work. And things may look</b></p> <p>8 <b>cut and dry but they're often not, because you're</b></p> <p>9 <b>dealing with human beings.</b></p> <p>10 Q So what are the requirements to obtain a</p> <p>11 driver license in Wisconsin?</p> <p>12 <b>A Well, you've got to have proof of</b></p> <p>13 <b>identity, proof of citizenship or permanent legal</b></p> <p>14 <b>status in the State of Wisconsin. I believe you've</b></p> <p>15 <b>got to pass a driver's test, and I think there's a</b></p> <p>16 <b>questionnaire about having medical conditions that</b></p> <p>17 <b>might disqualify you from getting a driver's</b></p> <p>18 <b>license.</b></p> <p>19 Q What about proof of identity?</p> <p>20 <b>A I think I mentioned that. If I didn't, I</b></p> <p>21 <b>meant to.</b></p> <p>22 Q What about proof of residence?</p> <p>23 MR. SPIVA: Objection. Asked and</p> <p>24 answered.</p> <p>25 You can answer.</p>

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1       **A I think I mentioned that, too, yeah.**  
2       **Q So is it your position that the Wisconsin**  
3 **administrative code does not set forth the**  
4 **requirements for obtaining a driver license or a**  
5 **state ID card?**  
6       **A I didn't say -- I didn't say it didn't. I**  
7 **said it did. It's just in terms of the free ID**  
8 **card, from my reading of the depositions, it did**  
9 **seem like there was a lot of discretion involved in**  
10 **that process. Certainly in the IDPP process, no**  
11 **doubt about that.**  
12       **Now, the depositions were not in my mind**  
13 **entirely clear about how much discretion there was**  
14 **in the entire process, and maybe that will become**  
15 **clearer when I read the new depositions.**  
16       **Q Okay. When did the voter photo ID law go**  
17 **into effect in Wisconsin?**  
18       **A I believe it is in effect, went into**  
19 **effect for the 2016 primaries and was in effect for**  
20 **an off-year election, as well. I don't think any**  
21 **general, you know, major general election like a**  
22 **midterm or a presidential year has yet experienced**  
23 **the photo ID requirement.**  
24       **Q Since the time that the voter photo ID law**  
25 **was enacted in Wisconsin, how many free ID cards for**

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1 the purposes of voting has Wisconsin issued?  
2       **A It's very unclear because of those who may**  
3 **not need free IDs for voting might check that box**  
4 **because, hey, I can get it for free, rather than**  
5 **paying a fee.**  
6       **But I do know, I did see the analysis of**  
7 **that by your expert, Dr. Hood, which was fraught**  
8 **with error.**  
9       **Q How many IDs? That was my question.**  
10       **A How many -- I don't understand your**  
11 **question because are you talking about generally the**  
12 **DMV issues nondriver's IDs, which could be used for**  
13 **voting or not. So I'm not sure what specifically**  
14 **you're asking me.**  
15       **Also, a lot of the IDs that are issued by**  
16 **the DMV are not brand-new IDs; they're duplicates**  
17 **and renewals.**  
18       **Q So my question, then, to clarify, is, what**  
19 **is your understanding of how many people checked the**  
20 **box to get a free ID card for purposes of voting**  
21 **from the Wisconsin DMV since July 2011?**  
22       **MR. SPIVA: Objection to form.**  
23       **A I think I have those numbers in my**  
24 **rebuttal report. I would rather not repeat them**  
25 **from memory.**

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1       **Q Is it fair to say it's hundreds of**  
2 **thousands?**  
3       **A It could be. But I'm not sure it's large**  
4 **hundreds of thousands. Again, because of some of**  
5 **these issues of duplicates and renewals.**  
6       **Q In Virginia did they have a free photo ID**  
7 **program for voters?**  
8       **A Yes. And it was very different from the**  
9 **program in Wisconsin.**  
10       **Q How many IDs were issued --**  
11       **A Let me finish.**  
12       **Q Go ahead. Go ahead.**  
13       **A I was about to explain what the Virginia**  
14 **free voter ID doesn't have all of the identification**  
15 **requirements that Wisconsin does that has forced at**  
16 **least 1300 people to go into the IDPP.**  
17       **And, by the way, that does not**  
18 **necessarily -- that number is not necessarily**  
19 **indicative of those who tried to get a photo ID for**  
20 **voting and couldn't. Not everyone who couldn't get**  
21 **it otherwise necessarily is going to subject**  
22 **themselves to another process.**  
23       **I don't know how many -- there's no way of**  
24 **knowing how many did not. But the 1300 is a minimal**  
25 **number. But in Virginia it's very different.**

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1 **Virginia has an affidavit requirement. You simply**  
2 **have to go to a state office and, if you're already**  
3 **on the voting rolls, simply affirm your identity.**  
4       **Which is what Virginia used to have, but**  
5 **it had it right at the polls. So what they've done**  
6 **is create two more steps for the voters. And the**  
7 **state, as far as I can see, was unable to show any**  
8 **issues with the affirmation process that -- you**  
9 **know, that led to any kind of voter fraud.**  
10       **Q How many free ID cards were issued for**  
11 **voting in Virginia?**  
12       **A I don't recall. I would have to review my**  
13 **report. I'm sorry.**  
14       **Q Does 800 sound about correct?**  
15       **MR. SPIVA: Objection.**  
16       **A I just don't recall. I would have to**  
17 **look.**  
18       **Q So you have no idea at all, you couldn't**  
19 **estimate?**  
20       **MR. SPIVA: Objection. Calls for**  
21 **speculation.**  
22       **A There have been a lot of cases that I've**  
23 **been working on and, you know --**  
24       **Q Sure there are.**  
25       **A -- without reviewing my report I don't**



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1 want to speculate.  
 2 Q Okay. I don't want you to speculate.  
 3 What is early voting?  
 4 A Early voting is voting prior to election  
 5 day.  
 6 Q Does Wisconsin have early voting?  
 7 A You can vote early in Wisconsin through a  
 8 no-excuse early absentee ballot. That's correct.  
 9 Q But is it truly early voting?  
 10 A I don't know what you mean by "truly early  
 11 voting." Lots and lots of voters in Wisconsin  
 12 manage to vote early. It's not one or two percent;  
 13 it's much larger than that.  
 14 Q Do their ballots count when they vote in  
 15 person absentee? Are they counted on the day they  
 16 vote in person absentee?  
 17 A I don't understand the question. Are  
 18 there -- are their ballots counted with respect to  
 19 the election? Yes.  
 20 Q So the votes are tabulated on the day that  
 21 they in person absentee vote?  
 22 A I didn't say that.  
 23 Q Okay. What did you say?  
 24 A I said their votes are counted as part of  
 25 the tabulation for the election results. I didn't

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1 say what day their votes were tabulated.  
 2 Q So if a voter votes in person absentee, is  
 3 it guaranteed that their vote will be tabulated?  
 4 A Well, it's never guaranteed that anyone's  
 5 vote will be tabulated. We know there are always  
 6 errors and mistakes. But your vote certainly should  
 7 be tabulated, barring some error or mistake.  
 8 Q What type of error or mistake with an  
 9 absentee ballot could result in it not being  
 10 tabulated in Wisconsin?  
 11 A I'm not sure I know all of the details.  
 12 But, you know, if you don't sign a ballot, that  
 13 might be one reason why a ballot might not be  
 14 tabulated.  
 15 Q So what are the topics that you're giving  
 16 an expert opinion on in this case? Just the general  
 17 topics.  
 18 A Yeah. I think I already mentioned my  
 19 report. You know, again, it's laid out here, but  
 20 I'll say it again.  
 21 My report is looking at the intent behind  
 22 not just the adoption of voter ID, but a host of  
 23 measures adopted with respect to voting and  
 24 registration between 2011 and 2014. Looking at  
 25 whether this panoply of changes had the intent to

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1 limit opportunities for minorities to vote,  
 2 particularly Hispanics and African-Americans, and  
 3 register in the State of Wisconsin.  
 4 And that, of course, leads to examination  
 5 of lots of other things, such as disparities in  
 6 socio-economics, disparities in possession of common  
 7 forms of identification, as well as many other  
 8 issues that I address in my two reports.  
 9 In addition, I was asked to respond to any  
 10 material presented by the state or by experts for  
 11 the state or other witnesses for the state. And as  
 12 I said, that's been a -- very much of an ongoing  
 13 process, given that data is still coming in.  
 14 Q You are not providing an expert opinion on  
 15 the number of voters who lack a form of qualifying  
 16 ID in Wisconsin. Correct?  
 17 A That's correct.  
 18 Q And you are not providing an expert  
 19 opinion regarding the turnout rates for any election  
 20 in Wisconsin. Correct?  
 21 MR. SPIVA: Objection to form.  
 22 A That's not true. I think I do -- I do  
 23 examine turnout.  
 24 Q Okay. Are you providing an expert opinion  
 25 regarding the state's interests that support the

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1 challenge laws?  
 2 A Yes.  
 3 Q Are you providing an expert opinion  
 4 regarding whether voter photo ID laws deter people  
 5 from voting?  
 6 A Yes.  
 7 Q Are you providing an expert opinion  
 8 regarding whether voter photo ID laws will deter  
 9 voter fraud?  
 10 A Yes.  
 11 Q Okay. And where is that in your expert  
 12 report?  
 13 A I have to find it. But I do talk about  
 14 voter fraud in my expert report. And I talk about  
 15 it fairly extensively.  
 16 Q Okay.  
 17 A I talk about the fact that -- I think it's  
 18 on Page 20 through 22.  
 19 Q Okay.  
 20 A And if you want me to recount it, I will  
 21 recount it for you.  
 22 Q Not necessary.  
 23 Are you providing an opinion -- an expert  
 24 opinion regarding whether minority voter turnout  
 25 increased in Wisconsin from 2010 to 2014?

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1 **A Only insofar as that might be responsive**  
 2 **to analyses that I've looked at by experts for**  
 3 **defendants. So I believe I am.**  
 4 Q Okay. Are you providing an opinion  
 5 regarding whether minorities used in-person absentee  
 6 voting at a higher rate in 2014 than in 2010?  
 7 **A I don't believe I looked directly at**  
 8 **minorities, but I did look at, because it was**  
 9 **highlighted by one of your experts, use of early**  
 10 **voting, changes over time in Madison and Milwaukee,**  
 11 **the two cities that have the bulk of the minority**  
 12 **population. Certainly the African-American**  
 13 **population, the bulk of, about two thirds, and a**  
 14 **very substantial component of the Hispanic**  
 15 **population, as well.**  
 16 **So that certainly bears on that,**  
 17 **particularly since your experts highlighted that as**  
 18 **one of the ways in which you can gain insight into**  
 19 **its effect on minorities.**  
 20 Q Have you read Dr. Burden's and Dr. Mayor's  
 21 reports in this case?  
 22 **A Some time ago I believe I did.**  
 23 Q Are there any inconsistencies between your  
 24 report and their reports?  
 25 **A I mean, I would have to go over it again**

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1 **in detail. I wasn't looking at it for that. But**  
 2 **nothing leaped out at me when I looked at it.**  
 3 Q Okay. All right. Let's look at Page 1.  
 4 I just want to talk about some language there that  
 5 you emphasized on Page 1 first.  
 6 In the first full paragraph, you see the  
 7 word "intent" is in italics?  
 8 **A Yes.**  
 9 Q "Intent to discriminate." What do you  
 10 mean by the word "intent"? What does that mean to  
 11 you?  
 12 **A Intent refers to the motivation behind any**  
 13 **particular legislation or, for that matter, as a**  
 14 **historian you look at the intent behind any given**  
 15 **decision.**  
 16 **And so the intent is the motivation, the**  
 17 **reasons behind why legislation was adopted or why a**  
 18 **particular decision was made.**  
 19 Q And does the intent in your mind have to  
 20 be shown through direct evidence, through something  
 21 less than direct evidence? What is necessary to  
 22 show intent the way you define it?  
 23 **A Yeah, I think I lay that out in my report,**  
 24 **as well. Indicating that I follow the guidelines of**  
 25 **the Arlington Heights decision by the United States**

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1 **Supreme Court. That's on Page 3 of my report. In**  
 2 **which, in addition to direct evidence, it focuses on**  
 3 **a set of other pieces of evidence that directly bear**  
 4 **upon ascertaining intentional discrimination,**  
 5 **discriminatory impact, historical background,**  
 6 **sequence of events, procedural or substantive**  
 7 **deviations, and the direct evidence contemporaneous**  
 8 **viewpoints expressed by decision-makers.**  
 9 **And I also note, of course, that in this**  
 10 **day and age you're not going to have decision-makers**  
 11 **explicitly saying, By golly, you know, we're doing**  
 12 **this to limit minority voting because that helps**  
 13 **Republicans. Although, by golly, it has come as**  
 14 **close as I've ever seen here in Wisconsin.**  
 15 Q So the Arlington Heights, these relevant  
 16 factors that you point to on Pages 3 and 4, how do  
 17 they work? Is it a checklist that you must meet  
 18 each of the five?  
 19 **A Oh, no. They're guidelines. No such**  
 20 **thing as a checklist, where you, you know, have to**  
 21 **meet every single thing.**  
 22 **You know, if we had ten statements from**  
 23 **legislators, from all the legislative leaders**  
 24 **saying, Yeah, you know, we were behind this because**  
 25 **we wanted to limit minority voting because that gave**

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1 **us political advantage, we wouldn't necessarily have**  
 2 **to go through the other factors.**  
 3 **So it's nothing that mechanical. But, in**  
 4 **fact, I do consider every one of these factors in**  
 5 **my -- in my report.**  
 6 Q How are the factors to be utilized? Is it  
 7 a balancing test?  
 8 **A No. It's a narrative test. It's a test**  
 9 **of how the factors come together to give your**  
 10 **opinion.**  
 11 **Some of them do involve balancing. For**  
 12 **example, looking at the justifications for the law.**  
 13 **You would balance that against the realities.**  
 14 **So if they're saying, for example, By**  
 15 **golly, you know, we are adopting this law because**  
 16 **there is rampant fraud, because there's lots of**  
 17 **voter impersonation in the State of Wisconsin, then**  
 18 **you look at the reality and you see there**  
 19 **essentially isn't any at all, that would -- that**  
 20 **kind of balance would enter into your analysis.**  
 21 Q Which of the five factors involves the  
 22 justifications for the law?  
 23 **A Contemporaneous viewpoints expressed by**  
 24 **decision-makers. Those contemporaneous viewpoints**  
 25 **indicate the kinds of justifications that**

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1 **decision-makers have put forth in their contentions**  
 2 **in support of the law.**  
 3 Q And so if I read the Arlington Heights  
 4 case, that's what the Supreme Court was talking  
 5 about?  
 6 MR. SPIVA: Objection. Calls for a legal  
 7 conclusion.  
 8 A **I don't understand the question anyway.**  
 9 **Arlington Heights is talking about lots and lots of**  
 10 **things that it asks you to look at. It never said**  
 11 **this was exhaustive or complete or, you know,**  
 12 **necessarily the only way to look at it.**  
 13 **But, you know, I've adopted this. And**  
 14 **more broadly, of course, I've applied my expertise**  
 15 **as an historian. As a historian, this is the kind**  
 16 **of thing we do all the time.**  
 17 **If you shut off motivation and intent from**  
 18 **the writing of history, you cut out a huge swath of**  
 19 **historical scholarship. This is the kind of thing**  
 20 **that historians do all of the time.**  
 21 Q Are you an expert on intentional racial  
 22 discrimination?  
 23 A **You asked me a similar question before,**  
 24 **and I'll give you a similar answer.**  
 25 **You know, that's too narrow a kind of**

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1 **expertise. I'm an expert in political history. I'm**  
 2 **an expert in political analysis. I'm an expert in**  
 3 **quantitative analysis. I'm an expert in voting and**  
 4 **civil rights, which gives me the expertise to opine**  
 5 **on that particular subject matter.**  
 6 Q What scholarship have you done on that  
 7 subject matter?  
 8 A **What subject matter?**  
 9 Q Intentional racial discrimination.  
 10 A **Certainly my book on the rise of the**  
 11 **American conservative movement deals extensively**  
 12 **with the issue of intentional racial discrimination.**  
 13 **So that would be one example of scholarship that**  
 14 **addresses that issue fairly extensively.**  
 15 Q Is that a peer-reviewed publication?  
 16 A **It's an award-winning book. It's not an**  
 17 **article. It's much bigger, more ambitious book.**  
 18 **And it was a finalist for the National Book Critics**  
 19 **Circle Award in general nonfiction. That's every**  
 20 **nonfiction book published in the United States.**  
 21 Q Is that peer-reviewed scholarship?  
 22 A **Absolutely. The -- it never would have**  
 23 **gotten accepted if it wasn't peer-reviewed in the**  
 24 **first place.**  
 25 Q What does peer-reviewed mean?

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1 **A Other scholars look at your work.**  
 2 Q That's all it means?  
 3 **A That's what peer-reviewed means. It is**  
 4 **evaluation of your scholarship by other scholars in**  
 5 **the field.**  
 6 **Now, you can be more specific, but**  
 7 **generically that's what peer-reviewed means.**  
 8 Q What other peer-reviewed scholarship have  
 9 you done on the issue of intentional racial  
 10 discrimination?  
 11 A **I would have to think about it. Yes.**  
 12 **Early on I did an article in the Journal of Negro**  
 13 **History, a peer-reviewed publication, that dealt**  
 14 **with the issue of intentional voter discrimination.**  
 15 Q Perhaps it would help --  
 16 A **And I believe I published a book chapter**  
 17 **that dealt with that, as well.**  
 18 Q Would it help to look at Exhibit 1, your  
 19 CV?  
 20 A **If you want to.**  
 21 Q Let's look at it.  
 22 So I know this is kind of long.  
 23 A **Yes, it is.**  
 24 Q There's a lot to remember.  
 25 A **Yes.**

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1 Q Could you point me to the examples of  
 2 peer-reviewed scholarship in your CV that deal with  
 3 the issue of intentional racial discrimination?  
 4 A **Yes.**  
 5 Q Okay.  
 6 A **We already talked about my book, White**  
 7 **Protestant Nation, the Rise of the American**  
 8 **Conservative Movement.**  
 9 Q Uh-huh.  
 10 A **We talked about my article in the Journal**  
 11 **of Negro History.**  
 12 Q And which page is that on in this?  
 13 A **The first -- the first page under**  
 14 **Scholarly Articles. There doesn't seem to be page**  
 15 **numbers. Oh, Page 5. There it is.**  
 16 Q You're talking about the October 1969  
 17 article?  
 18 A **Yes.**  
 19 Q Okay.  
 20 A **That directly dealt with that topic.**  
 21 **To some extent I dealt with it in my book,**  
 22 **another book, Prejudice in the Old Politics.**  
 23 Q Okay.  
 24 A **Presidential election of 1928.**  
 25 **I don't remember this article, to be**

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1 **honest with you. It was a long time ago.**  
 2 **Discriminatory Election Systems and the Political**  
 3 **Cohesion Doctrine obviously dealt with racial**  
 4 **discrimination.**  
 5 Q Let me stop you there.  
 6 A **Let me finish. I don't recall if that**  
 7 **article dealt with the issue of intent or not, and**  
 8 **it may have.**  
 9 Q And I'm talking about only peer-reviewed  
 10 journals. Is that one peer-reviewed?  
 11 MR. SPIVA: Objection. That's a different  
 12 question than you asked.  
 13 A **Yeah, I'm not sure what you mean. But I**  
 14 **don't believe so.**  
 15 Q Okay.  
 16 A **Again, I don't recall all the details of**  
 17 **all of these articles. The article in the Journal**  
 18 **of Law and Politics on black/white voter**  
 19 **registration disparities, I don't remember if that**  
 20 **dealt with intentional discrimination or not. It**  
 21 **may have.**  
 22 **That wasn't the focus of it. Obviously**  
 23 **the focus of it was documenting registration**  
 24 **disparities. But, obviously, there was a reason**  
 25 **behind these registration disparities that had to do**

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1 **with intentional discrimination in the State of**  
 2 **Mississippi, particularly the vestiges of the dual**  
 3 **registration system.**  
 4 **There may have been some discussion of it**  
 5 **in other articles and books, but I don't see**  
 6 **anything directly on it other than the things I've**  
 7 **already highlighted for you.**  
 8 Q So just so I'm clear on the question I  
 9 asked, in this 21-page Exhibit 1, I've asked you to  
 10 point me to the peer-reviewed scholarship about the  
 11 topic of intentional racial discrimination.  
 12 Correct?  
 13 A **Yes.**  
 14 Q And you've pointed me to four, maybe five  
 15 examples.  
 16 A **That's about right.**  
 17 Q All of those are peer-reviewed journals?  
 18 A **Now you've changed your question again.**  
 19 **First you said peer-reviewed scholarship,**  
 20 **now you said peer-reviewed journals. Books get**  
 21 **peer-reviewed, you have to understand, or they**  
 22 **wouldn't get published. And probably peer-reviewed**  
 23 **even more extensively than articles, because there**  
 24 **is a big commitment that a publisher has to make to**  
 25 **publishing a book.**

75

1 **So it's both articles and books.**  
 2 Q Do you sit on the editorial boards of any  
 3 journals?  
 4 A **No. I don't have time for that.**  
 5 Q Have you ever?  
 6 A **Yeah, I was once on the editorial board of**  
 7 **the International Journal of Information Systems.**  
 8 **But I really didn't do much, because I didn't have**  
 9 **time. They wanted me to be a -- one of the editors.**  
 10 **And I said you can use my name, but, you know, I'm**  
 11 **really not going to be able to get involved in this**  
 12 **because I don't have time.**  
 13 Q So you didn't -- did you peer-review any  
 14 articles?  
 15 A **I have peer-reviewed articles, absolutely,**  
 16 **for journals.**  
 17 Q Okay. But those four or five, again  
 18 peer-reviewed scholarship --  
 19 A **Right.**  
 20 Q -- including books, those four or five are  
 21 the only examples?  
 22 A **The only ones I can come up with at the**  
 23 **moment.**  
 24 **As I told you, other scholarship may well**  
 25 **have addressed that issue even though it was not**

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1 **directly on the issue.**  
 2 Q Okay. What other qualifications do you  
 3 have to give an expert opinion on intentional racial  
 4 discrimination?  
 5 MR. SPIVA: Objection. Other than what --  
 6 MR. KAWSKI: Other than what he just  
 7 defined.  
 8 A **I've already gone over a lot of this. As**  
 9 **I said, I've been a practicing historian for 43**  
 10 **years. I have published, depending on how you**  
 11 **count, anywhere from seven to nine books, scores of**  
 12 **articles. I've won major national awards. And this**  
 13 **is what historians do. Historians assess and weigh**  
 14 **the intent behind -- as a political historian,**  
 15 **political acts and political decisions.**  
 16 **Not to mention, of course, my experience**  
 17 **in voting rights. Extensive experience in voting**  
 18 **rights, as well as scholarship on voting rights and**  
 19 **civil rights.**  
 20 Q Have your expert opinions been subject to  
 21 any challenges in cases? And I mean challenges to  
 22 have them excluded.  
 23 A **Out of 85 cases, one failed.**  
 24 Q And what was that?  
 25 A **It was in I think the Jublieer political**

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1 gerrymandering case, when I was challenged about  
 2 opinions on political gerrymandering. And I  
 3 remember I was driving back from the hearing, and  
 4 that quickly the judge rejected the challenge. It  
 5 is the only time I have ever been challenged in, you  
 6 know, 85-plus cases. And as I said, it was quickly  
 7 dismissed.

8 Q So no one has filed a motion to exclude,  
 9 as far as you know --

10 A Oh, they filed motions to exclude.  
 11 Absolutely. But, I mean, I don't know the details  
 12 of those motions. I'm not a lawyer.

13 But I'm not aware of ever my testimony  
 14 being excluded.

15 Q Okay.

16 A And those exclusion motions, as I  
 17 understand them, don't have anything to do with my  
 18 expertise. They have to do with legal issues.

19 Q Okay. Page 4.

20 A Where are we on the -- still on the CV?

21 Q No. Off the CV, back to the report.

22 A We're off the CV. What are we on now?

23 MR. SPIVA: Off the record.  
 24 (A discussion was held off the record.)  
 25 BY MR. KAWSKI:

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1 Q Looking at Page 4 of the report. You have  
 2 a statement, "Wisconsin has a history of  
 3 discrimination against African-Americans and  
 4 Hispanics that is reflected in current racial  
 5 disparities," and it goes on.

6 Do you see that?

7 A Yeah.

8 Q When you say "Wisconsin has a history,"  
 9 are you talking about official state-sponsored  
 10 discrimination?

11 A There is certainly, that is an element of  
 12 it, yes.

13 Q Okay. What --

14 A Not the only element.

15 Q What are the aspects of that  
 16 state-sponsored discrimination that you're  
 17 highlighting in your opinion?

18 A Well, as I said, this was something that I  
 19 derived from Professor Burden, who was directly  
 20 addressing the issue of the history of  
 21 discrimination.

22 But off the top of my head, I can mention  
 23 some of the things that historically involved  
 24 official state action. Such as, back in the 19th  
 25 century, singling out African-Americans for special

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1 treatment when it came to voting. You had to  
 2 actually pass a referendum to even enable  
 3 African-Americans to vote in the State of Wisconsin.

4 There was the 5,000 rule, that only those  
 5 with -- in municipalities of 5,000 or more had to  
 6 register, which obviously had a direct  
 7 discriminatory burden on African-Americans, who  
 8 tended to live in more urban communities.

9 The history of school segregation that was  
 10 not resolved in the major city until decades after  
 11 the Brown vs. Board of Education. The lack of  
 12 Spanish-language ballots in the State of Wisconsin  
 13 that required justice department intervention.

14 Those are some examples of official  
 15 discrimination.

16 Q Do you have any others?

17 A Well, these are just off the top of my  
 18 head. As I said, I derived these from the Burden  
 19 report. I'm not saying those are exclusive, but  
 20 those are the four or five examples that come to  
 21 mind.

22 Q With regard to the ballots, is that a  
 23 state issue? When I say "state," I mean State of  
 24 Wisconsin issue.

25 A Regard to what ballots?

80

1 Q The Spanish-language ballots issue you  
 2 just mentioned. Is that --

3 A Well, it's primarily a local issue. But  
 4 certainly the state could have, you know, taken  
 5 action. And local bodies are, you know, part of the  
 6 state.

7 Q What about the segregation issue; is that  
 8 a state issue?

9 A Again, that is, I believe, an issue within  
 10 the City of Milwaukee. But certainly the state is  
 11 involved and implicated in this -- in this as well.

12 Q And how so?

13 A State certainly could have taken action to  
 14 deal with segregation within the City of Milwaukee.  
 15 We've seen states intervene in many, many ways in  
 16 educational local systems. But the state did  
 17 nothing.

18 Q Was that an example of intentional racial  
 19 discrimination on the part of the state?

20 A I didn't get into, on these historical  
 21 examples, whether the discrimination was intentional  
 22 or not. I was simply looking at whether there was,  
 23 in fact, a history of discrimination.

24 So that was not something that, you know,  
 25 I specifically looked at.

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1 Q What about the ballots? Again, was that  
 2 an example of intentional racial discrimination on  
 3 the part of the State of Wisconsin?  
 4 A Same answer. I did not go behind these  
 5 actions to determine whether they were intentional  
 6 or not. But things are rarely done by accident.  
 7 And my experience as an analyst is that  
 8 decision-makers understand the implications of  
 9 their -- you could not miss the fact that the 5,000  
 10 rule had a disparate impact upon minorities in  
 11 Wisconsin. And, obviously, the 19th century  
 12 provisions regarding voting were clearly  
 13 intentional.  
 14 Q And how does that compare to a state like  
 15 Virginia in terms of examples of state-sponsored  
 16 official discrimination?  
 17 A I didn't do a -- as I said, I didn't even  
 18 do this analysis for Wisconsin. I derived it  
 19 primarily from the Burden report.  
 20 So what I've conveyed to you is my memory  
 21 of what I read in the Burden report. But I am also  
 22 generally familiar with these histories.  
 23 It's a different situation. It's not a  
 24 southern state. And I have not gone down and done a  
 25 line-by-line comparison of Virginia and Wisconsin.

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1 And you probably wouldn't, because, you know, the  
 2 histories are so different.  
 3 Q So would Virginia, in your estimation,  
 4 have more specific examples of state-sponsored  
 5 discrimination, racial discrimination?  
 6 A If you went back --  
 7 MR. SPIVA: Just one second.  
 8 Objection to form.  
 9 You can answer.  
 10 A Probably if you went back historically,  
 11 they would.  
 12 Q Okay. Now, you talk about it in the same  
 13 paragraph where you mention Wisconsin has a history  
 14 of discrimination that is reflected in current  
 15 racial disparities on such socio-economic measures  
 16 as income, unemployment, poverty, education,  
 17 housing, the availability of vehicles and  
 18 telephones, and health.  
 19 A Correct.  
 20 Q So explain for me how those socio-economic  
 21 measures stem from the state-sponsored official  
 22 discrimination in Wisconsin.  
 23 A Well, it's partly the state-sponsored, and  
 24 obviously partly nonstate-sponsored history of  
 25 discrimination.

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1 But when you have things such as  
 2 segregated education systems, segregated housing  
 3 that separates minorities and whites, that is going  
 4 to have an implication on factors such as income,  
 5 education, health, and other standard socio-economic  
 6 measures.  
 7 Q What have the defendants in this case -- I  
 8 mean, if you know who they are, what have they done  
 9 that has been an example of official state-sponsored  
 10 discrimination?  
 11 A I'm not sure who the defendants are  
 12 exactly, so I can't answer your question.  
 13 Q Well, I mean, the defendants are the  
 14 individual members of the Government Accountability  
 15 Board, and then the Secretary of the Department of  
 16 Transportation, and the administrator of the  
 17 Division of Motor Vehicles of the Department of  
 18 Transportation.  
 19 So what have those individuals done?  
 20 A Well, if you're talking about the  
 21 administrator of the Department of Transportation, I  
 22 think they have, in fact, engaged in discriminatory  
 23 practices.  
 24 Q Racially discriminatory practices?  
 25 A Racially discriminatory practices.

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1 Because I think the denials of voter  
 2 identification cards under the law are very heavily  
 3 racially tilted. That is, at least in the ones I've  
 4 seen -- and as I said this is a moving target  
 5 because more are coming in -- those who were denied  
 6 free IDs were overwhelmingly Hispanics and  
 7 African-Americans. And, indeed, those in the  
 8 process where I actually had individual records were  
 9 overwhelmingly Hispanic and African-American.  
 10 And I think virtually all of the Hispanics  
 11 and African-Americans in this set of record were  
 12 denied IDs, and the three whites were given IDs. So  
 13 there was certainly, if you're talking about  
 14 Secretary of Transportation, which I believe  
 15 oversees the Department of Motor Vehicles, there  
 16 certainly is at least on its face evidence of racial  
 17 discrimination.  
 18 And there is so much discretion in that.  
 19 So it's not just some manual that everyone is  
 20 following that leads to these racially disparate  
 21 affects. But, again, this is a moving target.  
 22 There are depositions I haven't seen. There's  
 23 additional evidence that I haven't seen.  
 24 But so far there certainly seems to be  
 25 pretty clear evidence of racial discrimination, you

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1 **know, going up to the Department of Transportation,**  
 2 **which has responsibility for overseeing the DMV.**  
 3 Q So it's your opinion that the Secretary of  
 4 the Department of Transportation in Wisconsin is  
 5 engaged in intentional racial discrimination?  
 6 A I didn't say that.  
 7 Q Okay. What is your opinion, then?  
 8 A My opinion is that the process places  
 9 disparate burdens on African-Americans and  
 10 Hispanics, as compared to whites. It's a process  
 11 that is overseen by the Department of  
 12 Transportation. And it's a process fraught with  
 13 lots and lots of discretion.  
 14 So while I'm not saying the Secretary is  
 15 personally involved in intentionally discriminating,  
 16 I'm saying the process over which he presides is  
 17 racially discriminatory. And I think while, again,  
 18 there's lots of evidence I have to look at, there's  
 19 some inferences that one can draw about intent here.  
 20 That -- let me explain. We just had an  
 21 opinion from a three-judge panel of the fourth  
 22 circuit by Judge Easterbrook, who was the judge who  
 23 had overturned district court opinion by Judge  
 24 Adelman. And he pointed to this process and how it  
 25 was personally affecting individuals, denying them

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1 **the right to vote. Something I highlighted in my**  
 2 **report. I haven't seen anything like this since the**  
 3 **days of literacy tests.**  
 4 And he says, you know, there can be a  
 5 corrective for this. Well, why didn't the state on  
 6 its own initiative move for a corrective? Why did  
 7 they let this process go on and on and on and on for  
 8 months and years, and had to be instructed by the  
 9 4th circuit to consider a corrective?  
 10 And all the sudden I see a memorandum from  
 11 the Governor talking about a possible corrective for  
 12 this, after they are forced to do so, essentially,  
 13 by the fourth circuit after they're facing  
 14 litigation.  
 15 Q Let's talk about that memorandum. So what  
 16 memorandum are you talking about?  
 17 A I just saw it. It was something about a  
 18 new rule that under certain circumstances would  
 19 enable persons to get a free ID by affidavit.  
 20 Q And so, I mean, I don't want you to  
 21 speculate about that. But how would that impact  
 22 your opinions in this case?  
 23 A Very directly.  
 24 MR. SPIVA: Well, I'm going to just lodge  
 25 an objection and caution you not to speculate, as

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1 this is materials you haven't had a chance to  
 2 review.  
 3 But you can answer.  
 4 A Yeah, I haven't had a chance to review.  
 5 Of course I just looked at it. It just came out.  
 6 But it strengthens my finding that this  
 7 was initially adopted and implemented with intent to  
 8 limit opportunities for minorities, particularly  
 9 Hispanics and African-Americans, to register and  
 10 vote in the State of Wisconsin.  
 11 And the reason is, this was rejected, an  
 12 affidavit option. It was voted down at the time  
 13 that Act 23 was adopted. The state has known for  
 14 some time about the difficulties of the IDPP  
 15 process, about people who were, you know, knowing --  
 16 had any information that they were fraudsters.  
 17 And certainly they weren't. No fraudster  
 18 would go through this process if they weren't U.S.  
 19 citizens, and yet they were told they couldn't vote.  
 20 And only after the pressure of litigation  
 21 and the pressure of adverse opinion from the fourth  
 22 circuit did they suddenly wake up and say, Oh, maybe  
 23 we ought to do at least some minor thing to rectify  
 24 these problems, problems that were evident for a  
 25 very long time. At least since 2015.

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1 Q So at this point you don't understand what  
 2 that change to the IDPP is going to involve; do you?  
 3 A Not in detail. But that doesn't matter.  
 4 That's not my point. My point is quite a different  
 5 one. My point is, they only took action under  
 6 pressure.  
 7 Q When did you think --  
 8 A Let me finish.  
 9 Q Okay.  
 10 A Very similar to what happened in the  
 11 petition process in the first place.  
 12 There was no petition process until the  
 13 State Supreme Court forced them to adopt a petition  
 14 process.  
 15 So we see a pattern here. We see a  
 16 pattern of the state not taking obvious amelioratory  
 17 steps which would ease the burden of this law upon  
 18 low-income persons, low-education persons, persons  
 19 with language difficulties, and minorities.  
 20 And, of course, the two are correlated.  
 21 And it's not as if the State of Wisconsin did not  
 22 have before it examples of other states that had  
 23 adopted these kind of amelioratory measures, like  
 24 South Carolina, where the court actually said this  
 25 was critical. This was critical in our providing

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1 preclearance to South Carolina.  
 2 So it was a wealth of information that the  
 3 state already had, and they never acted until some  
 4 external agency forced them to.  
 5 Q So going back to, just so I'm clear, it is  
 6 not your expert opinion that the Secretary of the  
 7 Department of Transportation is engaging in  
 8 intentional racial discrimination?  
 9 MR. SPIVA: Object to form.  
 10 But you can answer.  
 11 A I think I already answered that.  
 12 Q Okay.  
 13 A As I said, I don't -- I have not looked at  
 14 any information coming directly from the Secretary.  
 15 But he is presiding over a discriminatory process.  
 16 That's all I can tell you.  
 17 Q So who are the racists at the DMV --  
 18 MR. SPIVA: Objection.  
 19 Q -- that are engaging in this intentional  
 20 racial discrimination?  
 21 A I --  
 22 MR. SPIVA: Objection to form.  
 23 But you can answer.  
 24 A I never called anyone a racist.  
 25 Q So who at the DMV is engaging in

90

1 intentional racial discrimination?  
 2 A You mean what particular persons?  
 3 Q Yes.  
 4 A I can't say what particular persons. I  
 5 can only talk about a process that is racially  
 6 discriminatory, that was known to be racially  
 7 discriminatory, and in which the state did not take  
 8 ameliorative action until lawsuits are filed,  
 9 they're facing liability, and get adverse opinion  
 10 from Judge Easterbrook.  
 11 Q Do you agree, though, that for there to be  
 12 any intentional racial discrimination there would  
 13 have to be a person engaging in it?  
 14 MR. SPIVA: Objection to the extent it  
 15 calls for a legal conclusion.  
 16 A I don't think you have to psycho analyze  
 17 an individual person. But you could look at both  
 18 the circumstantial and direct evidence, and from  
 19 that draw inferences about intent.  
 20 And in addition to the direct evidence, in  
 21 our colloquy that we've been having so far, I've  
 22 given ample reasons why one would draw the inference  
 23 that the state decision-makers, the governor, the  
 24 legislature, the ultimate authorities here, had  
 25 intent to discriminate against minorities by

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1 limiting their opportunity to register and vote.  
 2 Q So the legislature has no oversight  
 3 directly over the IDPP. Is that right?  
 4 A It doesn't directly oversee it. But it  
 5 certainly could hold hearings, legislature has that  
 6 power, on the IDPP process. And I am not aware that  
 7 it's held any hearings.  
 8 And it certainly could have adopted,  
 9 either way back when in 2011 or once it was known  
 10 that this was a problematic process, an ameliorative  
 11 measure. It didn't do so.  
 12 Q So it's your expert opinion that the  
 13 issues you've highlighted with the IDPP can be used  
 14 to ascertain legislative intent when the law was  
 15 passed in 2011?  
 16 A No. You have not correctly analyzed my  
 17 position at all.  
 18 I have lots of reasons, even before I knew  
 19 about the IDPP process, about what was going on in  
 20 2011. What I am saying is, now that I know  
 21 something about the IDPP process, and what was done  
 22 and what wasn't done, that reinforces my opinion  
 23 with regard to legislative intent.  
 24 Q Page 4 of the report, you state that this  
 25 information was available to the legislature.

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1 Do you see that?  
 2 A I do.  
 3 Q What evidence did you rely upon to  
 4 conclude that the information, while available, was  
 5 actually reviewed by the legislature?  
 6 A Well, there is no way to directly know  
 7 what any legislative or legislative body in this  
 8 case reviewed, because this was adopted so quickly,  
 9 without extensive hearings and review.  
 10 But I've been watching politics for 50  
 11 years. I've, you know, written extensively on  
 12 politics. I've been a redistricting advisor to  
 13 state and local governments. Politicians live and  
 14 breathe this stuff. They have to know about racial  
 15 disparities in socio-economic standings. They would  
 16 have to be -- you know, stop their ears and close  
 17 their eyes not to know these things.  
 18 Because this relates to their careers and  
 19 their lives. And it's pretty common knowledge.  
 20 Q In the same page you state that Wisconsin,  
 21 quote, "had an exemplary electoral system." And I  
 22 emphasize the word "had."  
 23 A Where is that? I'm sorry.  
 24 Q Third from the bottom bullet point, Page  
 25 4.



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1 **A Yes, that's correct.**  
 2 Q And I emphasize the word "had."  
 3 **A Correct.**  
 4 Q It is your opinion that Wisconsin no  
 5 longer has an exemplary electoral system?  
 6 **A Correct.**  
 7 Q And why is that?  
 8 **A Because of the voter ID law and these**  
 9 **other pieces of legislation that I cite make it less**  
 10 **exemplary -- less exemplary than it has been, in my**  
 11 **opinion.**  
 12 Q Next sentence of the same bullet point,  
 13 "It" -- meaning Wisconsin -- "was a national leader  
 14 in voter turnout."  
 15 **A That's correct.**  
 16 Q It is no longer a national leader in voter  
 17 turnout?  
 18 **A No, I didn't say that. But this is**  
 19 **critical. We're talking about at the time these**  
 20 **laws were adopted. Because this goes to intent.**  
 21 **It was one of the very few states that was**  
 22 **right at the top of the list in terms of election**  
 23 **administration and was one of the very few states**  
 24 **that was at the top of the list in terms of voter**  
 25 **turnout.**

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1 **In other words, the system wasn't broken.**  
 2 **The system didn't need fixing. So one can't say,**  
 3 **Oh, we had to adopt 15 new measures because**  
 4 **Wisconsin was in trouble with when it came to**  
 5 **election administration and turnout.**  
 6 Q So has Wisconsin's voter turnout declined  
 7 since these measures have been enacted?  
 8 **A I think voter photo ID just came into play**  
 9 **recently. But so far, in the aggregate, no.**  
 10 Q And in the two most recent elections,  
 11 February and April 2016, in which voter photo ID was  
 12 in effect, how has turnout been?  
 13 **A I don't -- I don't recall the February**  
 14 **2015 turnout. But the turnout in the primary was**  
 15 **very strong.**  
 16 Q And was it, in fact, the highest turnout  
 17 in any presidential primary since 1972?  
 18 **A I believe that's right.**  
 19 Q How do you explain that?  
 20 **A You cannot measure a discriminatory system**  
 21 **by aggregate turnout. You have to look at what's**  
 22 **going on among the individuals.**  
 23 **And I have not seen any individual level**  
 24 **analysis of 2016. I have seen some for 2014. And**  
 25 **you did see rising white relative to minority**

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1 **turnout, exactly, you know, following intent.**  
 2 **But generally you cannot determine the**  
 3 **effects of racially discriminatory laws by aggregate**  
 4 **turnout, because so many factors are involved in**  
 5 **aggregate turnout.**  
 6 **For example, in this primary, very rare to**  
 7 **have two very hot contests in both parties going on**  
 8 **at the same time. Didn't have that in 2012. Didn't**  
 9 **have that in 2008. This is something brand-new.**  
 10 **We also had some very exciting and**  
 11 **interesting candidates. You know, Bernie Sanders,**  
 12 **someone pretty new on the Democratic side. Donald**  
 13 **Trump, someone quite new and controversial on the**  
 14 **Republican side.**  
 15 **And you kind of had a -- both a pro and**  
 16 **con effect in stimulating turnout in the primary**  
 17 **election.**  
 18 **There is also the efficiency of the get**  
 19 **out -- the vote campaign, as well as changes in the**  
 20 **population. You know, has the population increased**  
 21 **over this time as well.**  
 22 **Those are just a few examples of things**  
 23 **that are big effects on aggregate turnouts. That's**  
 24 **why you've got to look at the individual level. And**  
 25 **I think I talked about this quite a bit in my**

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1 **rebuttal report.**  
 2 Q So second to last bullet point on Page 4.  
 3 You state, "Wisconsin was the most restrictive  
 4 identification law in the nation at that time,"  
 5 meaning in 2011?  
 6 **A That's correct.**  
 7 Q Using, again, the past tense "was," is it  
 8 now your position that Wisconsin is not the most  
 9 restrictive identification law in the nation?  
 10 **A Well, again, the reason I said "was," I**  
 11 **was looking at intent. And, you know, one of the**  
 12 **arguments that's always made in favor of voter ID,**  
 13 **Oh, we're just conforming to other states. So**  
 14 **Wisconsin doesn't conform to other states.**  
 15 **And even today one could make an argument**  
 16 **it's certainly if not the most restrictive, it's one**  
 17 **of the most restrictive. One of the very few**  
 18 **restrictive voter ID laws in the country. Yes, that**  
 19 **continues to be the case.**  
 20 Q What about the recent change that the  
 21 legislature enacted allowing for veterans' ID cards?  
 22 **A That helps. But it still -- you know,**  
 23 **there's still lots of kinds of ID cards that are**  
 24 **either not involved or are written in a way that**  
 25 **makes it very restrictive.**

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1 **Plus, there is no alternative mechanism.**  
 2 **Plus, you have to have a voter ID for absentee**  
 3 **ballots. Plus, you have this very difficult process**  
 4 **for getting a free voter ID card.**  
 5 Q And you said that the legislature rejected  
 6 all amendments. I'm talking about on Page 5 you  
 7 talk about the amendments that were rejected, top  
 8 bullet point.  
 9 **A Yeah.**  
 10 Q You do acknowledge, though, that the  
 11 legislature enacted the free voter ID program.  
 12 Correct?  
 13 **A They had to, or the law would have been**  
 14 **declared -- clearly would have been struck down if**  
 15 **they had no free ID program.**  
 16 Q Okay. Now, something on Page 5 really  
 17 piqued my interest, which is the bullet point, third  
 18 from the last bullet point. "There is rare direct  
 19 evidence from a Republican decision-maker."  
 20 Do you see that?  
 21 **A I do.**  
 22 Q What is that?  
 23 **A That's the Schultz evidence.**  
 24 Q Okay. And so that's later on it's at Page  
 25 40 or 50 something, Page 51?

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1 **A Something like that. It's well into my**  
 2 **report.**  
 3 Q That --  
 4 **A Let me finish. That is quite**  
 5 **extraordinary for someone who voted for the law, who**  
 6 **was a long-time Republican, to say, you know,**  
 7 **I've -- I've now realized, you know, what my**  
 8 **colleagues really doing was suppressing votes, and**  
 9 **they shouldn't be doing that. We should be reaching**  
 10 **out. We should be doing what Eisenhower did.**  
 11 **That's really extraordinary, to have a**  
 12 **decision-maker directly say, this law was designed**  
 13 **to suppress -- suppress votes.**  
 14 Q Now, when you say -- that statement from  
 15 Senator Schultz, what aspect of it indicates to you  
 16 that it was a racial motivation to suppress votes?  
 17 **A Well, let's look at it specifically,**  
 18 **rather than trying to -- what page did you say it**  
 19 **was on? It's well into the report.**  
 20 Q Yeah. We're getting ahead of ourselves.  
 21 **A I think it's on 51.**  
 22 Q Okay. I think you're right.  
 23 **A And I think it's filled with racial**  
 24 **reference.**  
 25 Q Okay. Highlight them for me.

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1 **A In the spirit of the champion of the 1957**  
 2 **voting rights act. What was the 1957 voting rights**  
 3 **act designed to do? To combat racial discrimination**  
 4 **against minorities, particularly against**  
 5 **African-Americans. That's exactly what the 1957**  
 6 **voting rights act under Republican President Dwight**  
 7 **Eisenhower wanted to do.**  
 8 **So clearly by referencing the 1957 voting**  
 9 **rights act, you're talking about race.**  
 10 Q So what I don't understand there is,  
 11 Schultz voted for the law. Correct?  
 12 **A Absolutely. That's what makes this**  
 13 **statement so significant.**  
 14 Q So how --  
 15 **A It's not -- let me finish. It's not some**  
 16 **Democrat grousing about the law.**  
 17 Q So how is he acting in the spirit of the  
 18 champion of the 1957 voting rights act then? He  
 19 would seem to, if he was passing voter ID, he is  
 20 saying I was acting in the spirit of the champion of  
 21 the 1957 voting rights act?  
 22 **A Well, I think he said he's had second**  
 23 **thoughts about that. And he thinks that what he did**  
 24 **in voting for that was mistaken, and not in the**  
 25 **spirit, which he has tried to represent in his**

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1 **political career as a Republican in Wisconsin.**  
 2 Q But that is not, in fact, what he said.  
 3 **A What is not, in fact, what he said?**  
 4 Q What you just said.  
 5 **A He absolutely talks about the 1957 voting**  
 6 **rights act.**  
 7 Q He says, "In the spirit of the champion of  
 8 the 1957 voting rights act, I have been trying to  
 9 send a message that we are not encouraging voting."  
 10 **A Right.**  
 11 Q So how is voting for the law you say is  
 12 intentionally racially discriminatory in the spirit  
 13 of the 1957 voting rights act?  
 14 **A It isn't. And I think it's quite clear**  
 15 **from these statements that he regrets what he did in**  
 16 **voting for Act 23. You know, if he still believed**  
 17 **Act 23 was not racially discriminatory, he wouldn't**  
 18 **be saying all these things.**  
 19 Q So he is -- is he saying that -- you're  
 20 saying that this is evidence that he believes he was  
 21 himself engaged in intentional racial  
 22 discrimination?  
 23 **A Not necessarily. But at least he was**  
 24 **going along, along with what he now believes to be**  
 25 **intentional racial discrimination, yes.**

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1 **He doesn't go deeply into his own**  
 2 **motivations. But I think he makes clear that this**  
 3 **bill was adopted with the intent to suppress votes,**  
 4 **particularly of minorities.**  
 5 Q In doing legislative intent analysis, and  
 6 opining upon it --  
 7 A Yes.  
 8 Q -- is it common to look to statements made  
 9 post hoc, several years into the future after the  
 10 law was passed?  
 11 A Certainly, if they cast light on what was  
 12 done at the time the law was passed. Particularly  
 13 by a decision-maker who voted for the law.  
 14 I mean, it's not like this is some  
 15 ambitious politician trying to gain some political  
 16 advantage of this. He's at the end of his career.  
 17 He has no political motivation. If anything, this  
 18 is against his interest, because it goes against his  
 19 colleagues of many decades.  
 20 And so, you know, that's one thing you  
 21 look at, you know, is there some other motivation  
 22 for making the statement. And quite the contrary.  
 23 There would be every reason to not jump into this  
 24 controversy at the end of your political career.  
 25 Q Is there any other, as you say, rare

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1 direct evidence from a Republican decision-maker of  
 2 the intentional racial discrimination?  
 3 A Absolutely.  
 4 Q There is?  
 5 A Yes. We have the statement that I think I  
 6 mentioned to you at the very beginning of this  
 7 deposition that just came out by now Congressman,  
 8 then Senator Grothman, who was very much involved in  
 9 passing these laws that I'm talking about.  
 10 And he said quite explicitly, in helping  
 11 us to win the presidential election in Wisconsin,  
 12 that the voter ID law -- I'm not -- I am  
 13 paraphrasing -- is going to help us a little bit.  
 14 Q And why would that be racist?  
 15 A You're using a term that I'm not using.  
 16 I'm not saying he --  
 17 Q Why would that be evidence of intentional  
 18 racial discrimination?  
 19 MR. SPIVA: Wait. He is not finished.  
 20 A I'm not finished.  
 21 Q Okay.  
 22 A You're using a term I have not used  
 23 anywhere in my report or anywhere in my testimony.  
 24 I am not accusing people of being racist. I am  
 25 accusing politicians of being politicians. That is,

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1 by suppressing the votes of minorities, you're going  
 2 to get political advantage to your party.  
 3 I am not saying they are personally  
 4 racist. I don't know whether they are or not. But,  
 5 clearly, if voter ID was not suppressing the votes  
 6 of Democrats, it would not be helping Senator  
 7 Grothman to get the Republicans to win the general  
 8 election of 2016.  
 9 And we know what is the most loyal  
 10 Democratic base in the State of Wisconsin, and in  
 11 fact anywhere, is the African-American voter base.  
 12 And, secondly, the Latino voter base.  
 13 Q And so it is your opinion, then, that  
 14 voter ID laws suppress the vote of  
 15 African-Americans?  
 16 A Yes. And I haven't finished answering  
 17 your first question. I'll elaborate on that, if  
 18 you'd like.  
 19 But there is additional direct evidence  
 20 from a staffer, who I believe his name was Aulbaugh,  
 21 who is now running a coffee shop or some such. And  
 22 he was in on the meetings.  
 23 And he said quite clearly in his  
 24 opinion -- and he said he was a 30-year Republican  
 25 operative, he is, again, not someone who is involved

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1 in politics and trying to get political advantage,  
 2 as far as I know.  
 3 And he said clearly his understanding of  
 4 those meetings were that the Republicans involved  
 5 fully understood that this bill would give them  
 6 political advantage by limiting minority votes.  
 7 Q Have you spoken with him?  
 8 A No. I just watched his interview on  
 9 television.  
 10 Q Okay.  
 11 A He was pretty plain, what he had to say.  
 12 Q Okay. So those three things, the Schultz  
 13 quote from Page 51 of your report, the Grothman  
 14 quote from very recently, and the Todd Aulbaugh  
 15 statements, those are the rare direct evidence --  
 16 A There's another one.  
 17 Q Okay.  
 18 A Another Grothman. And that is not talking  
 19 about voter ID, but I believe he was talking about  
 20 early voting. Saying we want to nip it in the bud,  
 21 what's going on in Milwaukee and Madison.  
 22 Q Okay.  
 23 A Again, not talking about uniformity or,  
 24 you know, any of the other justifications. But,  
 25 clearly, he did not want to see the spread of early

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1 voting practices. And, of course, early voting is  
 2 disproportionately used by minorities.  
 3 Q Anything else? Any other examples?  
 4 A Well, there are other examples outside of  
 5 Wisconsin by nationally prominent Republican  
 6 consultants. So there is a fellow by the name of  
 7 Trantor who works for Optimist Consulting, a  
 8 Republican consulting firm. And they specialize in  
 9 election dynamics and doing quantitative analysis of  
 10 elections.  
 11 And he said very clearly we're benefited  
 12 by things like long lines and voter ID. We'll do  
 13 whatever it takes as political professionals to win  
 14 elections.  
 15 You also have a -- it's a fairly old  
 16 statement, but it's by very, very prominent  
 17 Republican Paul Weyrich, one of the founders of the  
 18 modern conservative Republican party. Someone I  
 19 talk a lot about in my book, he's that famous.  
 20 And he said, We don't want everyone to  
 21 vote. We benefit as Republicans when the vote is  
 22 limited.  
 23 So while, you know, those four statements,  
 24 which is a lot of direct statements from any one  
 25 state, this sort of nationally prominent Republicans

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1 saying much the same thing.  
 2 And, of course, we're all familiar with  
 3 what, I think it was a speaker or a legislative  
 4 leader in Pennsylvania said something very similar  
 5 to what Grothman said about voter ID helping us in  
 6 this case to elect Romney in Pennsylvania.  
 7 Q So in doing analysis of legislative  
 8 intent, do we -- is it acceptable to look to the  
 9 statements of staff members of legislators?  
 10 A Of course. Staff memories are intimately  
 11 involved in the process of adopting legislation.  
 12 It's not just done by members of the legislatures  
 13 alone, but they're always consulting and working  
 14 with their staff.  
 15 And this guy was in the meeting. He was  
 16 there. He is an eyewitness.  
 17 Q What if it turns out he wasn't in the  
 18 meeting?  
 19 A Well, that would obviously diminish the  
 20 impact of what he had to say, of course. I  
 21 understand that. I'm only going on at this point  
 22 what I know. And I guess, you know, you can hash  
 23 that out at trial or whatever.  
 24 Q Sure.  
 25 A I need a break now.

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1 MR. KAWSKI: Oh, sure. Off the record,  
 2 please.  
 3 (A recess was taken.)  
 4 BY MR. KAWSKI:  
 5 Q So we were talking about the direct  
 6 evidence of intentional racial discrimination that  
 7 you highlighted.  
 8 A Yes.  
 9 Q And we talked about a number of examples.  
 10 Are there others you can think of that you want to  
 11 highlight today?  
 12 A You know, we had certainly -- in the Texas  
 13 case we had seen some examples as well of  
 14 politicians talking about not wanting to enfranchise  
 15 African-Americans or Hispanics because that just  
 16 meant enfranchising Democratic voters.  
 17 So it's not as if what's being said here  
 18 in Wisconsin is out of line from what I've heard in  
 19 other places, as well.  
 20 Q Do you find the evidence from other states  
 21 to be relevant to the analysis of Wisconsin  
 22 legislative intent?  
 23 A Yes.  
 24 Q And why is that?  
 25 A Because I have a section in my report on

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1 this, where I show that other states are facing  
 2 similar situations, as in Wisconsin. You know,  
 3 demographic pressure on the white vote, the minority  
 4 vote being much more Democratic than the white vote.  
 5 And I have a table showing in virtually every  
 6 instance a recent adoption of voter photo ID laws.  
 7 It's been Republicans responsible for those laws.  
 8 So it's not as if Wisconsin is not part of  
 9 a pattern; it is.  
 10 Q Let's shift gears a little bit, then.  
 11 A Sure.  
 12 Q Just looking at Pages 6 through 14 of your  
 13 report.  
 14 A Yes.  
 15 Q You talk about and illustrate the  
 16 socio-economic factors that we talked about a little  
 17 earlier. Correct? You have tables that talk about  
 18 the differences and disparities between whites and  
 19 minorities --  
 20 A Correct.  
 21 Q -- in various factors.  
 22 A That's right.  
 23 Q Could you explain how all of this  
 24 information about socio-economic disparities is  
 25 relevant to determining whether these laws were

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1 passed with a racially discriminatory intent?  
 2 **A Yeah. I think it's directly relevant.**  
 3 **Because whenever you're placing additional**  
 4 **burdens on the opportunity to vote or to register,**  
 5 **those burdens are not going to be felt uniformly**  
 6 **across the persons in the state.**  
 7 **That is, they're going to fall with**  
 8 **special force upon those who have lower**  
 9 **socio-economic standing.**  
 10 **For example, education, income may**  
 11 **directly affect whether or not you have a photo**  
 12 **voter ID and your ability to navigate the entire**  
 13 **process of voter photo identification. It may well**  
 14 **affect your ability under various restrictions to**  
 15 **register to vote.**  
 16 **Whether you own a vehicle, whether you can**  
 17 **get to certain places, whether you understand all of**  
 18 **the laws. All of these things are directly and**  
 19 **intimately tied to socio-economic standing.**  
 20 **In fact, it is one of the best established**  
 21 **findings of political history and political science**  
 22 **that political participation is very much dependent**  
 23 **upon socio-economic standing.**  
 24 **Q Going ahead to Page 16.**  
 25 **A Okay.**

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1 **Q I noticed that some of these tables**  
 2 **reference exit polling conducted by Edison Research?**  
 3 **A Yes.**  
 4 **Q For example, Table 6.**  
 5 **A Yes, that's correct.**  
 6 **Q What is Edison Research?**  
 7 **A They're just a group that does all the**  
 8 **exit polling. Whenever you see CNN report the exit**  
 9 **poll or NBC, or any of them -- it doesn't matter**  
 10 **because they are all the same -- they're all**  
 11 **conducted by the name exit polling outfit.**  
 12 **So that's what they do.**  
 13 **Q How reliable is exit polling?**  
 14 **A It's pretty reliable. I mean, nothing is**  
 15 **perfect in political analysis. But it's pretty well**  
 16 **stood the test of time. Particularly when you're**  
 17 **exit-polling something as major as a gubernatorial**  
 18 **or a presidential contest.**  
 19 **And they -- you know, they add up pretty**  
 20 **well to the actual -- actual vote.**  
 21 **Q So in Table 6, for example, in stating the**  
 22 **results of this exit poll, you did not indicate what**  
 23 **the margin of error was. Correct?**  
 24 **A No. I did the best estimate that was**  
 25 **available through the exit poll, the point estimate.**

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1 **That's correct. To show the trend and pattern.**  
 2 **Q Do you know what the sample size for this**  
 3 **exit poll in Table 6 was?**  
 4 **A I don't recall exactly what the sample**  
 5 **size was.**  
 6 **Q Do you know what the margin of error was?**  
 7 **A I don't recall exactly what the margin of**  
 8 **error. And that would depend upon whether you**  
 9 **wanted to do it at the .9 level, the .95 level,**  
 10 **the .9. But these are the best estimates that we**  
 11 **have. And I certainly didn't see anything in any of**  
 12 **your expert reports challenging these because they**  
 13 **were erroneous or the margin of error was too large.**  
 14 **I saw your experts using the same exact**  
 15 **exit polling results.**  
 16 **Q So is it typical, though, to report a**  
 17 **margin of error when you're reporting exit poll**  
 18 **results?**  
 19 **A Not usually. You know, when I've seen --**  
 20 **because they are generally so well established and**  
 21 **so well reliable, typically when I've seen exit**  
 22 **polling reports, when they're not, you know, fine**  
 23 **line for, like, a municipality but for a whole**  
 24 **state, for a big election, I've just seen the point**  
 25 **estimates. That's standard.**

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1 **Q So in social science, though, is it**  
 2 **typical to report a margin of error in your**  
 3 **analysis?**  
 4 **A Sometimes you do; sometimes you don't.**  
 5 **Depending upon the purpose.**  
 6 **I'm just looking here at the overall**  
 7 **trend. I'm not trying to specify, you know, to the**  
 8 **tenth of a percentage point what the exact turnout**  
 9 **was.**  
 10 **Q So we don't know how many people were**  
 11 **surveyed for the Table 6 data?**  
 12 **A I don't recall the exact number. But it's**  
 13 **not a little, tiny sample. It's not like 50 or 100**  
 14 **people. It's much larger than that.**  
 15 **Q Okay. And, again, is it standard in**  
 16 **social science to indicate for a survey how many**  
 17 **people were surveyed?**  
 18 **A These exit polls are so standard that, as**  
 19 **I have seen them used, they're used exactly the way**  
 20 **I've used them and exactly the way your experts have**  
 21 **used them.**  
 22 **Q Okay. Page 17, next page. First**  
 23 **sentence. "Exit poll data demonstrates that**  
 24 **Republican electoral success in Wisconsin turns in**  
 25 **part on the white voter turnout relative to minority**

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1 turnout."  
 2 Do you see that?  
 3 **A Of course.**  
 4 Q You say in part it turns on white voter  
 5 turnout relative. What other things would impact  
 6 Republican electoral success in Wisconsin?  
 7 **A Well, all kinds of things could impact,**  
 8 **such as the strength and weaknesses of particular**  
 9 **candidates, scandals that might affect candidates,**  
 10 **the particular issues that are raised in election.**  
 11 **These are all particularized factors to particular**  
 12 **elections. They are obviously going to have an**  
 13 **effect.**  
 14 **But as a generic factor that affects**  
 15 **essentially every election, is the relative shares**  
 16 **of the vote cast by whites and minorities. Because**  
 17 **there is such a big gap between them.**  
 18 Q Is it possible to control for -- in an  
 19 analysis control for those factors that you just  
 20 mentioned, such as scandals, interest, so forth?  
 21 **A In a sense I did.**  
 22 Q Okay.  
 23 **A Not formally. But in practice. Because**  
 24 **I've looked at so many elections.**  
 25 **It's not as if I just looked at one**

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1 **election. I looked at a great variety of elections,**  
 2 **with a great variety of candidates, a great variety**  
 3 **of personalities. And you consistently see in every**  
 4 **single one of these elections a very large gap**  
 5 **between whites and blacks.**  
 6 **We obviously have less data for Hispanics,**  
 7 **but to the extent we have data, it shows a gap**  
 8 **between whites and Hispanics as well.**  
 9 **So these findings are not being jiggered**  
 10 **in any particular significant way by the**  
 11 **particularized features of these elections, because**  
 12 **I've looked at so many and they all show the same**  
 13 **pattern.**  
 14 Q For example, in the -- on Page 18, Table  
 15 8, in the 2010 U.S. Senate race, Feingold versus  
 16 Johnson.  
 17 **A Yeah.**  
 18 Q It would be possible to control for  
 19 incumbency when Feingold was the incumbent there?  
 20 **A No.**  
 21 Q Why not?  
 22 **A You would have to do a whole series of**  
 23 **analysis. You can't control for incumbency in one**  
 24 **individual election.**  
 25 **But as you know here, we've got lots of**

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1 **elections, some of which involve incumbents, some of**  
 2 **which don't involve incumbents. And, yet, we have**  
 3 **the same kind of patterns holding.**  
 4 Q I mean, in 2010 in Wisconsin, are you  
 5 aware that there was -- perhaps it's beyond  
 6 Wisconsin, there was a Republican groundswell of  
 7 support and Republican candidates took very many  
 8 races in Wisconsin. Correct?  
 9 **A That's right.**  
 10 Q Would it be possible to control for  
 11 something like that in terms of a model you might  
 12 make to determine whether minority turnout is truly  
 13 impacting Republican success?  
 14 **A Well, we're not looking at turnout in this**  
 15 **table.**  
 16 Q Okay.  
 17 **A We're actually looking at the voting**  
 18 **patterns of minorities and whites. And they are no**  
 19 **different in that particular election than they are**  
 20 **in lots of other elections. All of them show a**  
 21 **similar gap between white and black voting,**  
 22 **regardless of any particular circumstance, whether**  
 23 **it's a good Republican year like 2006 or a good**  
 24 **Democratic year.**  
 25 **You may see the levels change. In other**

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1 **words, in a good Republican year you're going to see**  
 2 **generally a higher level of votes for Republicans.**  
 3 **That follows automatically, because otherwise it**  
 4 **wouldn't be a good Republican year.**  
 5 **And in a good Democratic year you'll see**  
 6 **lower levels of results for Republicans.**  
 7 **But whether it's a good Democratic year or**  
 8 **a good Republican year, you see similar patterns of**  
 9 **difference, which is what this table is designed to**  
 10 **demonstrate.**  
 11 Q And this very topic comes up on Page 21 of  
 12 your report. You say, Then in 2010 a good  
 13 Republican year nationally, Republicans gained  
 14 control.  
 15 Do you see that?  
 16 **A Of course.**  
 17 Q Why was 2010 a good Republican year  
 18 nationally?  
 19 **A You want me to give you my explanation of**  
 20 **it?**  
 21 Q Short explanation.  
 22 **A Yeah, I mean, you're asking me these**  
 23 **open-ended questions. And I'll try to be brief.**  
 24 **There's some -- first there's a general**  
 25 **theory, called surge and decline.**

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1 **Are you familiar with that?**  
 2 Q Yeah.  
 3 **A You get a surge for the presidential**  
 4 **candidates, you got a surge for Obama in 2008. And**  
 5 **then a lot of those voters who surge for Obama were**  
 6 **not necessarily going to come back and vote for the**  
 7 **Democrats in 2010. So midterm elections generally,**  
 8 **absent special circumstances like the impeachment of**  
 9 **Bill Clinton, generally go against the party holding**  
 10 **the White House.**  
 11 **And I think more generically, you know,**  
 12 **there was a lot of dissatisfaction in 2010 with what**  
 13 **was going on in the country, what was going on in**  
 14 **the Obama administration. A lot of analysts,**  
 15 **including myself, called this a no election. People**  
 16 **are unhappy so they're voting no. And who are they**  
 17 **voting no for? The party that's in control.**  
 18 **That's a very brief and not complete**  
 19 **shorthand explanation of why 2010 was across the**  
 20 **board a good Republican year.**  
 21 Q And based on what you know, that same  
 22 explanation would apply to why it was a good  
 23 Republican year in Wisconsin?  
 24 **A As a generic explanation, yes. It was a**  
 25 **good Republican year almost everywhere. Wisconsin**

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1 **was not unique.**  
 2 Q Okay. And then, again, we talked about  
 3 this a little bit. On Page 22 you state, middle  
 4 paragraph, "In recent elections prior to 2011,  
 5 Wisconsin was a national leader in the turnout of  
 6 voters."  
 7 Is it -- you see that statement?  
 8 **A Yes.**  
 9 Q Is it your expert opinion that Wisconsin  
 10 is no longer a national leader in the turnout of  
 11 voters?  
 12 **A We discussed that. I never said that.**  
 13 Q Okay.  
 14 **A I never said that, you know, at the**  
 15 **aggregate level Wisconsin is no longer a national**  
 16 **leader.**  
 17 **But we don't have enough elections to tell**  
 18 **yet. You know, the full panoply of laws passed are**  
 19 **just now going into effect. We haven't even had a**  
 20 **presidential election or a major midterm election**  
 21 **with all the laws in effect.**  
 22 **So my answer would have to be qualified by**  
 23 **the fact that we don't know enough. We haven't had**  
 24 **enough experience under these laws to make that**  
 25 **judgment.**

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1 Q What would you like to see to have enough  
 2 data to make a judgment?  
 3 **A Well, at least a presidential and a**  
 4 **midterm.**  
 5 Q Okay. So perhaps after the 2016  
 6 presidential and the 2018 midterm with voter ID in  
 7 place, then we might know?  
 8 **A It's not just voter ID in place. It's all**  
 9 **the other things.**  
 10 **Nor am I making an argument that voter ID**  
 11 **and these other laws are necessarily going to be**  
 12 **manifest in a change in aggregate turnout. We've**  
 13 **already gone through that whole colloquy.**  
 14 Q You've read Professor McCarty's report?  
 15 **A I don't remember it. My general**  
 16 **impression was it didn't directly deal with the same**  
 17 **issues I was dealing with, so I glanced at it.**  
 18 Q Okay.  
 19 **A I --**  
 20 Q But you read Professor Hood's report?  
 21 **A Oh, yes. Professor Hood's report I've**  
 22 **certainly read.**  
 23 Q Okay. And so what -- do you recall what  
 24 he concluded about turnout in Wisconsin and the  
 25 trend in turnout, given that these changes have

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1 occurred recently?  
 2 **A I don't recall specifically. You would**  
 3 **have to --**  
 4 Q Okay.  
 5 **A Because he said a lot of things about**  
 6 **turnout. You would have to show me the part of the**  
 7 **report, and I'll respond to it.**  
 8 Q Okay. And then talked a little bit  
 9 earlier about, you know, voter impersonation fraud  
 10 and voter fraud. Right? We talked a little about  
 11 that?  
 12 **A Just a little.**  
 13 Q Now we're getting to the part of the  
 14 report that addresses that.  
 15 **A Yes.**  
 16 Q So I want to bring out another exhibit.  
 17 So we can set the report to the side for now.  
 18 **A Sure. What page of my report are we**  
 19 **dealing with now?**  
 20 Q I think 22 and 23. Maybe not.  
 21 **A No, that doesn't deal with fraud.**  
 22 Q Okay. It's here. It's 23 and 24, top of  
 23 24 here. You state, "Despite the lack of" --  
 24 **A Right. But I have a much more extensive**  
 25 **discussion of fraud elsewhere in my report, earlier**

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1 **in my report, actually.**  
 2 Q We'll set the report aside for now, and I  
 3 have another exhibit.  
 4 **A Sure.**  
 5 MR. KAWSKI: Please mark that as Exhibit  
 6 2.  
 7 (Lichtman Deposition Exhibit 2 marked for  
 8 identification and is attached to the transcript.)  
 9 Q Take a look at Exhibit 2.  
 10 **A Yeah.**  
 11 Q Do you recognize what that is?  
 12 **A I do.**  
 13 Q What is it?  
 14 **A It is the -- I believe it's the Supreme**  
 15 **Court opinion, the 2008 Crawford case involving the**  
 16 **Indiana voter photo ID law.**  
 17 Q You've read it?  
 18 **A Yeah. Not recently but I've certainly**  
 19 **read it.**  
 20 Q Do you recall what the Justice Stevens  
 21 opinion said about voter fraud?  
 22 **A I think he found that there was no**  
 23 **extensive evidence of voter fraud.**  
 24 Q Could you turn to -- you see there's page  
 25 numbering, Page 195. There is a heading, Voter

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1 Fraud.  
 2 And, again, the page number is --  
 3 **A I see pages in the bottom here.**  
 4 Q They're kind of interlined into the  
 5 text in bold.  
 6 **A If you could maybe direct me to these**  
 7 **pages in the bottom, it would be easier.**  
 8 Q Okay. Page 8 at the bottom.  
 9 **A Page 8. Yeah. Voter Fraud. Yeah.**  
 10 Q Okay. And do you recall reading this at  
 11 one point?  
 12 **A Yes.**  
 13 Q Okay. So you see the sentence, second  
 14 sentence of that paragraph under Voter Fraud, "The  
 15 record contains no evidence of any such fraud  
 16 actually occurring in Indiana at any time in its  
 17 history."  
 18 Do you see that sentence?  
 19 **A I do.**  
 20 Q And is that what you were just referring  
 21 to?  
 22 **A Yes.**  
 23 Q Yet in this case the Supreme Court upheld  
 24 Indiana's law. Correct?  
 25 **A Correct.**

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1 MR. SPIVA: Objection. Well, okay. I  
 2 mean, if you're just asking him factually whether  
 3 they upheld the law, that's fine. I didn't know if  
 4 you were asking for a legal conclusion.  
 5 MR. KAWSKI: No.  
 6 Q How would you explain that?  
 7 MR. SPIVA: Objection to the extent it  
 8 calls for a legal conclusion.  
 9 **A You know, I've answered all of your**  
 10 **questions. But I now do think you're asking me to**  
 11 **explicate the legal reasoning of the Supreme Court.**  
 12 **And I'm going to decline to do that. I'm not a**  
 13 **lawyer.**  
 14 Q I said how would you explain that, not how  
 15 the Supreme Court explained that.  
 16 MR. SPIVA: Objection. Explain what?  
 17 Q How would you explain that, you know, this  
 18 law was deemed valid, but there was no evidence of  
 19 any voter fraud?  
 20 MR. SPIVA: Objection. Calls for a legal  
 21 conclusion.  
 22 **A Yeah, I'm -- again, I'm -- if you're**  
 23 **asking me for my opinion, that's one thing. If**  
 24 **you're asking me to explain legal reasoning, you**  
 25 **know, I'm not a lawyer.**

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1 Q Okay. Let's go to another sentence. Same  
 2 paragraph. "It remains true, however, that flagrant  
 3 examples of such fraud in other parts of the country  
 4 have been documented throughout this nation's  
 5 history by respected historians and journalists."  
 6 Do you see that?  
 7 **A I do.**  
 8 Q Do you agree that that's an accurate  
 9 recounting of history?  
 10 **A Ancient history, maybe. But it's not an**  
 11 **accurate recounting of recent history. And it would**  
 12 **be a highly inaccurate recounting of history since**  
 13 **2008.**  
 14 Q Okay.  
 15 **A So I would -- I would take a lot of issue**  
 16 **with that statement as a historian.**  
 17 Q What do you mean by "ancient history"?  
 18 **A You know, 19th century, early 20th century**  
 19 **history. But let's say we're looking at the period**  
 20 **from 2000 onward.**  
 21 **There is virtually no evidence of voter**  
 22 **impersonation fraud existing anywhere in America.**  
 23 **And I cite some of the studies with respect to that,**  
 24 **both in Wisconsin and nationwide.**  
 25 **Those studies may not have been available**



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1 at the time this decision was rendered. They are  
 2 available now. And they show a very different  
 3 conclusion from that which the Supreme Court reached  
 4 in 2008.  
 5 Q So you think that things have changed and  
 6 perhaps the Supreme Court's decision is not correct  
 7 anymore?  
 8 MR. SPIVA: Objection. Calls for a legal  
 9 conclusion.  
 10 A Yeah, I'm not going to make a legal. But  
 11 I think substantively the Supreme Court decision is  
 12 not correct. And remember, they are dependent upon  
 13 what was presented to them. Justice Stevens is not  
 14 doing his own independent analysis of voter fraud.  
 15 And I don't know what was presented to them.  
 16 But based on what I know, taking into  
 17 account even the last 15 years, which has been  
 18 extensively studied, there is virtually no evidence  
 19 whatsoever of voter impersonation fraud.  
 20 Q So same paragraph, last sentence of that  
 21 paragraph. Do you see where it states, "Not only is  
 22 the risk of voter fraud real, but that it could  
 23 affect the outcome of a close election."  
 24 Do you see that?  
 25 A I do.

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1 Q Do you agree that the risk of voter fraud  
 2 is real?  
 3 A Not very real, no. I think on the list of  
 4 things that I would worry about on elections,  
 5 particularly impersonation type of voter fraud that  
 6 involved identity, is virtually nonexistent.  
 7 And even where close elections have been  
 8 studied extensively looking for this, they haven't  
 9 found it.  
 10 Q Do you agree that voter fraud could affect  
 11 the outcome of a close election?  
 12 A Anything is possible. But I have not seen  
 13 any evidence, certainly not of in-person  
 14 impersonation type of voter fraud --  
 15 Q Okay.  
 16 A -- that affected the outcome of a close  
 17 election.  
 18 And given the virtual nonexistence of  
 19 voter fraud within the State of Wisconsin, as it  
 20 relates to identity, a close election is far more  
 21 likely, far more likely to be affected by  
 22 restrictions on voting of the kind passed in  
 23 Wisconsin than voter fraud involving identity.  
 24 Q So when you say "voter fraud," what do you  
 25 mean by the words "voter fraud"?

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1 A I said voter fraud involving identity.  
 2 That is someone impersonating someone else.  
 3 Q Are you familiar with the case of Robert  
 4 Monroe from Shorewood in Wisconsin, criminal case?  
 5 A If -- I believe there has been one -- if  
 6 you're highlighting the one criminal case in 15  
 7 years that involved voter impersonation, that's  
 8 probably it.  
 9 Q I don't think it involved voter  
 10 impersonation.  
 11 A Okay. Then I'm not sure what the case is.  
 12 Q It involved absentee ballot fraud in  
 13 multiple voting.  
 14 A Then I am not familiar with it.  
 15 Q If you turn to the bottom, Page 9. So  
 16 next page. Top of the page, left-hand corner. The  
 17 sentence, "While the most effective method of  
 18 preventing election fraud may well be debatable, the  
 19 propriety of doing so is perfectly clear."  
 20 Do you see that?  
 21 A Yes.  
 22 Q Do you agree with that statement?  
 23 MR. SPIVA: Objection. Calls for a legal  
 24 conclusion.  
 25 A Yeah, as far as -- and I'm not sure what

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1 they're talking about when they say, "the most  
 2 effective method of preventing election fraud."  
 3 I don't see voter ID as an effective  
 4 method for preventing election fraud, if that's what  
 5 they're referring to. I don't know. You pulled  
 6 that out of context.  
 7 Q Do you agree that the propriety of  
 8 preventing election fraud is perfectly clear?  
 9 A I'm not sure what's meant by the propriety  
 10 of doing so. So it's -- you're pulling things out  
 11 of context, that it's a little difficult for me to  
 12 respond to.  
 13 Q Do you agree that there is propriety in  
 14 preventing election fraud?  
 15 A Is there -- yes, of course, in the  
 16 abstract. But in reality, voter ID laws do nothing  
 17 to prevent election fraud, or essentially nothing.  
 18 Because the problem that they are designed to deal  
 19 with essentially doesn't exist.  
 20 Q Okay. Back to your report, Page 24. You  
 21 talk about how there were some Democrats who joined  
 22 the Republican majority in voting for Act 23.  
 23 Do you remember that?  
 24 A Three.  
 25 Q First of all, who are the three, if you

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1 remember?

2 **A I don't remember. I'm sorry.**

3 Q Why do you think they did that?

4 **A I have no idea. It's -- when you're**

5 **dealing with such a small minority, it's, you**

6 **know -- you're not dealing with large numbers of**

7 **legislators acting in a particular way. Who knows,**

8 **you know, what favors they may have been promised or**

9 **anything else to do this. I have no -- I'm not**

10 **saying they were. I'm just saying I have no idea**

11 **why they did this.**

12 **But, you know, they are the exception to**

13 **the rule.**

14 Q Wouldn't it be political suicide?

15 **A It depends what districts they represent**

16 **and, you know, as I said, what they were promised**

17 **and what they were offered. Not necessarily for**

18 **such a small number.**

19 **Yes, you know, you have to raise some**

20 **concerns if it was 40 Democrats voting for it. But**

21 **three is very idiosyncratic.**

22 Q What does that tell you about the intent

23 of the legislature?

24 **A I don't think it tells me much of**

25 **anything.**

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1 Q No?

2 **A Except for the fact that overwhelmingly**

3 **these bills were passed along partisan lines, with a**

4 **very minor exception.**

5 Q Could it be said they were passed with

6 bipartisan support?

7 **A I don't think so. I don't think three**

8 **cross-over votes in the entire legislature indicates**

9 **bipartisan support.**

10 Q Is there some threshold that would

11 indicate bipartisan support?

12 **A Not necessarily. But it would have to be**

13 **more than token.**

14 Q Okay.

15 **A It would have to be something, more**

16 **substantial proportion. Certainly if it was**

17 **majority support or near majority support, you would**

18 **say, yes, this is bipartisan legislation.**

19 Q Okay.

20 MR. SPIVA: If you're going to switch

21 gears, it might be a good place to stop.

22 MR. KAWSKI: Yes. Let's stop.

23 (A recess was taken.)

24 BY MR. KAWSKI:

25 Q Looking at your report on Page 26.

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1 **A Yes.**

2 Q Third paragraph, you talk about strict

3 photo identification states like Wisconsin.

4 **A Yes.**

5 Q And then you go on to discuss provisional

6 ballots and how that alternative works. Correct?

7 MR. SPIVA: Are you talking about 26 on

8 the report or 26 on the -- you know, there's, like,

9 an ECF page number at the top.

10 **A Yeah, I don't see --**

11 Q Twenty-six at the bottom of the page.

12 **A Oh, okay.**

13 Q Yeah.

14 **A Yes, I see it now.**

15 Q So is it the provisional ballot aspect

16 that makes the law, in your mind, strict?

17 **A Well, you can phrase it that way. I**

18 **prefer to phrase it a little more broadly. That is,**

19 **the law is strict in that if you don't have an**

20 **acceptable ID, you have to take additional action to**

21 **enable your vote to count. You can't correct the**

22 **action right there at the polls.**

23 **So in the case of Wisconsin, you've got to**

24 **either get an ID or fetch an ID and come back by, I**

25 **think it's 8 o'clock on election day or 4 p.m. on**

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1 **Friday.**

2 Q So would you only characterize voter photo

3 ID laws as nonstrict if they have some kind of, like

4 you say, at the polling place on election day

5 alternative?

6 **A Yes. And there are many -- you know, lots**

7 **of different kinds of alternatives.**

8 Q Okay. Pages 27 and 28, you look at data

9 from a survey of performance of American elections

10 from 2008.

11 **A I think it's 28 and 29, actually, I have**

12 **the table on that.**

13 Q Actually, I'm looking at, again, the

14 bottom of the pages.

15 **A Oh, I'm sorry.**

16 Q Twenty-seven and 28.

17 **A Yes, I reference it there, but the tables**

18 **are a little later.**

19 Q Is there any evidence that you've seen

20 that this survey was placed before the Wisconsin

21 legislature as something they were made aware of?

22 **A I can't say that this survey particularly**

23 **was placed. Although it may have been mentioned in**

24 **some of the material that was placed before them.**

25 **I know that there was lots of information**

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1 placed before them. Some of it by a group of  
 2 professors who sent them a letter, other  
 3 information, probably more of an anecdotal rather  
 4 than statistical, was presented by African-American  
 5 legislators.  
 6 I don't recall if the letter actually  
 7 referenced this survey. It may well have.  
 8 Q Okay. And so in terms of the analysis  
 9 that you've done in this case, a 2008 survey is  
 10 still relevant?  
 11 A It's extremely relevant. Because I'm  
 12 talking about intent. And this is something that  
 13 was readily available and consistent with other  
 14 findings at the time they adopted Act 23 in 2011.  
 15 Q Okay. And I guess what I mean by that is,  
 16 three years passed between the time of the survey  
 17 and 2011, that doesn't change the analysis for you?  
 18 A Well, that was the last presidential  
 19 election. So it was the last biggest sample that we  
 20 had for this information.  
 21 Plus, it doesn't get released instantly.  
 22 You're talking about some time in 2009.  
 23 Q Okay. On Page 29 at the bottom, then,  
 24 Table 11 talks about passport possession rates?  
 25 A Yes.

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1 Q And again it's referencing the same 2008  
 2 survey?  
 3 A Yes.  
 4 Q You have not in your expert analysis  
 5 studied the possession of passports and who  
 6 possesses them in Wisconsin in 2016; have you?  
 7 A No.  
 8 Q Okay. Do you know if anyone has?  
 9 A I'm not aware. And I haven't looked for  
 10 it, so I can't say.  
 11 Q Okay. But would you agree that the  
 12 possession rates probably should be similar to what  
 13 is in Table 11?  
 14 A You're asking me for speculation. I will  
 15 speculate. I'm not sure the levels will be the  
 16 same, but there's a pretty good chance that the  
 17 disparities would still exist and still be at least  
 18 somewhat similar.  
 19 Q Okay. Top of Page 30.  
 20 A Yes.  
 21 Q You make a statement, "African-Americans  
 22 and Hispanics were substantially more likely to be  
 23 deterred from voting because they lacked the  
 24 requisite identification."  
 25 And that statement, is that based on the

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1 2008 survey that we were just talking about?  
 2 A Correct.  
 3 Q Okay.  
 4 A The survey that was obviously available  
 5 before Act 23 was enacted.  
 6 Q Are you aware of any other surveys that  
 7 have analyzed that issue, or was that the only we  
 8 have?  
 9 MR. SPIVA: Objection to form.  
 10 A There may be some question, I'm not sure  
 11 back then, at some point in the Cooperative  
 12 Congressional Election Survey. But I don't recall  
 13 the exact form of the question.  
 14 Q And when was that survey completed?  
 15 A That's like these. It's done every  
 16 midterm and presidential year.  
 17 Q Okay. Let's set the report to the side  
 18 for now.  
 19 A Okay.  
 20 Q I am going to bring out another exhibit.  
 21 MR. KAWSKI: So a copy for the witness.  
 22 (Lichtman Deposition Exhibit 3 marked for  
 23 identification and is attached to the transcript.)  
 24 Q Take a look at Exhibit 3.  
 25 A I'm familiar with this article.

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1 Q You are. What is it?  
 2 A It is an article on identification  
 3 requirements evidenced from experience of voters on  
 4 election day, published in January 2009.  
 5 Q And that's in -- if you look at the bottom  
 6 right-hand corner of the first page, it says PS. Is  
 7 that -- your understanding is PS is PS, Political  
 8 Science and Politics, a journal?  
 9 A Correct.  
 10 Q I would like you to take a look at Page  
 11 129.  
 12 A Okay.  
 13 Q And if you see the first full paragraph  
 14 immediately before the first full paragraph. It  
 15 asks the question, "How many people were" denied the  
 16 right -- "denied the vote as a result of voter  
 17 identification requests."  
 18 Do you see that?  
 19 A I do.  
 20 Q And then the author in the next sentence  
 21 states, "The answer is, very few."  
 22 Do you see that?  
 23 A I do.  
 24 Q And then he discusses two surveys, a 2006  
 25 and 2008 survey in this paragraph?

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1 **A I believe that's right.**  
 2 Q Are you familiar with those surveys?  
 3 **A I am.**  
 4 Q And you see in the third -- or in the  
 5 second full paragraph, the author concludes that  
 6 these surveys stated that this is an exceptionally  
 7 low rate of denial of access to the vote.  
 8 Do you see that?  
 9 **A I do.**  
 10 Q How do you respond to these surveys?  
 11 **A They were very limited surveys.**  
 12 **My recollection -- and we can delve**  
 13 **through the article to make sure my recollection is**  
 14 **correct -- is they did a general election in 2006**  
 15 **and then only a primary election in 2008. And in**  
 16 **2006, of course, I believe it was only one state**  
 17 **that had a -- I think it was either Indiana -- I**  
 18 **think it was Indiana. But there was only one state**  
 19 **that had a strict voter photo ID law. There was**  
 20 **more states in 2008. And we're dealing with a**  
 21 **presidential election with a vastly higher turnout**  
 22 **than primary elections.**  
 23 **So I think the more updated but still**  
 24 **available survey from 2008 is much more reliable**  
 25 **than anything they have concluded here because they**

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1 **were not the best elections to look at and there was**  
 2 **minimal strict voter photo ID laws in effect at this**  
 3 **time.**  
 4 Q And so the author Stephen Ansolabehere.  
 5 Are you familiar with his work?  
 6 **A I am.**  
 7 Q Do you know him?  
 8 **A In passing.**  
 9 Q Is he a respected scholar in this area of  
 10 election?  
 11 **A Yeah. I'm not attacking Ansolabehere**  
 12 **here. I'm just saying the limitations of the**  
 13 **survey.**  
 14 Q Do you disagree with the conclusions he is  
 15 making about voter ID presenting an insignificant  
 16 barrier to voting?  
 17 **A I do.**  
 18 Q Okay.  
 19 **A I think more updated evidence shows it's**  
 20 **not.**  
 21 Q What more updated evidence is available?  
 22 **A There is a wealth of more updated evidence**  
 23 **available. Not only do we have the 2008 survey, we**  
 24 **have subsequent surveys which are much more reliable**  
 25 **because they include much greater number of states**

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1 **that actually have strict voter photo IDs. Of**  
 2 **course, with only one state operable, you're going**  
 3 **to find very low levels of those deterred from**  
 4 **voting by photo ID.**  
 5 **But as more states adopt laws, you have**  
 6 **more people indicating that they were deterred in**  
 7 **this fashion. And moreover, even the most recent**  
 8 **studies, which include many more states -- this is**  
 9 **only a minority of states. I think there were only**  
 10 **nine states.**  
 11 **So there is very little you can conclude**  
 12 **overall about the effects of voter photo ID from**  
 13 **this evidence from way back then. And the more**  
 14 **recent evidence shows much greater effects.**  
 15 Q What -- specifically what surveys are you  
 16 talking about?  
 17 **A The survey of the performance of American**  
 18 **elections and the Cooperative Congressional Election**  
 19 **Study.**  
 20 Q And you said that cooperative  
 21 collection --  
 22 **A Cooperative -- I believe that's one of the**  
 23 **ones he cites here. Cooperative Congressional**  
 24 **Election Survey.**  
 25 Q And so you're saying what year of that

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1 survey would show different results?  
 2 **A 2008 onward. We already have different**  
 3 **results being shown in my table in the performance**  
 4 **of American elections, even though a relatively**  
 5 **small number of states, even in 2008, had strict**  
 6 **voter photo identifications.**  
 7 **Later studies show, in fact, that you**  
 8 **could attribute a lack of voting on the part**  
 9 **nationwide of millions of registered voters as a**  
 10 **result of voter photo ID laws.**  
 11 Q You said there is a more recent CCES?  
 12 **A Yes.**  
 13 Q That concludes otherwise?  
 14 **A Yes.**  
 15 Q Where is it cited --  
 16 **A All of the CCES and SPAE, are, as I told**  
 17 **you, conducted every two years.**  
 18 Q Okay. And so you're saying that there's  
 19 an SPAE that's more recent than 2008?  
 20 **A Yes.**  
 21 Q There is. So where is it cited in your  
 22 report?  
 23 **A Well, I cited the 2008 because that was**  
 24 **available at the time they made their decisions.**  
 25 **You asked me then the question about**

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1 subsequent SPAEs, which would not have been  
 2 available at the time they made their decision on  
 3 voter photo ID. And they show very substantial  
 4 deterrent rates as a result of voter photo ID as  
 5 more states adopt the strict form.  
 6 Q Okay. And so going back to Page 129,  
 7 then, the third full paragraph.  
 8 Do you see where it states, "Of the 1,113  
 9 nonvoters in the survey, four cited this reason" --  
 10 A I'm sorry, where are we?  
 11 Q Third full paragraph.  
 12 A One rejoined to these findings?  
 13 Is that the one?  
 14 Q Yes, that paragraph.  
 15 A Okay.  
 16 Q So it states, "Of the 1,113 nonvoters in  
 17 the survey, four cited this as a reason." And I  
 18 think it's referring to, "I did not have proper  
 19 identification," as a reason for not voting.  
 20 "And these individuals cited other reasons  
 21 as well, bad weather and forgot to vote. All told,  
 22 then, only seven out of 4,000 people, less than two  
 23 tenths of one percent of the electorate, could be  
 24 considered nonvoters at least in part because of  
 25 voter identification."

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1 Do you see all that?  
 2 A Of course.  
 3 Q How do you respond to that?  
 4 A I think I already have. You're dealing  
 5 with one state, maybe two --  
 6 Q Okay.  
 7 A -- out of the 50 states.  
 8 And it's not a big population state.  
 9 So if your denominator is all the voters,  
 10 you're not going to expect anybody, tiny percentage  
 11 to be affected by voter photo ID, because only a  
 12 tiny percentage of voters are even covered by voter  
 13 photo ID.  
 14 And as I said, these are not the best  
 15 elections to look at. It's what -- it's what he had  
 16 available to him at the time that he was doing this  
 17 study.  
 18 We have much better evidence later on  
 19 which shows much bigger effects.  
 20 Q Okay. And your understanding, then, is  
 21 that the 2006 and 2008 studies referenced by  
 22 Dr. Ansolabehere in this article focused only on  
 23 Indiana?  
 24 A They can only focus on states that had  
 25 strict voter photo ID laws. And there were one,

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1 maybe two states that had them in effect when these  
 2 studies were operable.  
 3 Q Is it your understanding that he was  
 4 focussing on only strict variance of the voter photo  
 5 ID law?  
 6 A You're missing my point. He wasn't  
 7 focused on any particular state. He was saying of  
 8 the entire universe of voters from all 50 states,  
 9 what percentage cited a lack of appropriate ID.  
 10 And my point is, by its definition that  
 11 percentage is going to be very small because the  
 12 denominator includes the vast majority of voters who  
 13 are not in states with strict voter ID. A tiny  
 14 percentage of voters are in states with strict photo  
 15 voter IDs. So, not surprisingly, you're going to  
 16 find only a tiny percentage of voters cited that as  
 17 a reason for not voting.  
 18 Q Page 130, do you see there's the heading  
 19 Discussion?  
 20 A I do.  
 21 Q The author states, "The experience of  
 22 individuals at the polls on election day suggest  
 23 that there is much less to the voter identification  
 24 controversy than appears in the pages of the court  
 25 decisions of the debates and public forums."

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1 Do you see that sentence?  
 2 A I do.  
 3 Q It's true that you disagree with that,  
 4 that you think there is more to it than this author  
 5 is saying?  
 6 A Well, this author -- what he says is  
 7 obsolete. It's just not up to date in terms of a  
 8 totally different universe with respect to voter  
 9 photo ID laws after this study was taken.  
 10 And if you go on a little further, it  
 11 says, "A majority of Americans say that voter fraud  
 12 is common, but voter identification laws and  
 13 practices has little effect on those beliefs."  
 14 So it's also saying the justification for  
 15 these laws, based on what he saw at the time, had no  
 16 basis.  
 17 Q And so I'm seeing a little bit of a -- I  
 18 don't know how to characterize it. But you relied  
 19 on a 2008 survey in your work in this case.  
 20 Correct?  
 21 A Because that was what was available to the  
 22 legislature at the time.  
 23 I have also, as I have testified, looked  
 24 at more recent studies which show even greater  
 25 effects of photo voter ID.

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1 Q But those studies you did not talk about  
 2 in your expert work in this case.  
 3 A I've talked about them in response to your  
 4 questions. But I put the 2008 study, which shows  
 5 significant effects, because that was available when  
 6 the legislature made its 2011 decisions, plus lots  
 7 of information was directly presented to them saying  
 8 the same thing as what this study indicates.  
 9 Q Is it fair to say you will not be in this  
 10 case relying on any survey of the performance of  
 11 American elections after the 2008 survey?  
 12 A That's not fair. You brought it up. It's  
 13 become an issue in the case. Not necessarily for  
 14 what happened in 2011, but for the consequences, if  
 15 that becomes an issue in the case, I may well be,  
 16 since you asked me about it, talking about  
 17 subsequent surveys.  
 18 Q I guess how would it be relevant, though,  
 19 to your analysis of the intent of the legislature to  
 20 look at subsequent surveys?  
 21 A It wouldn't be relevant, in my mind. But  
 22 your experts have looked at things subsequent to the  
 23 adoption of the law. And you raised this survey as  
 24 kind of presenting evidence that voter photo ID is  
 25 not a problem.

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1 So if that becomes an issue, and it then  
 2 becomes relevant for me to present some of the  
 3 testimony we've talked about this afternoon -- I'm  
 4 not saying I will, but I'm not saying I won't.  
 5 Q Okay. All right. We can set that one,  
 6 Exhibit 3, to the side.  
 7 All right. So Table 12 again on Page 30  
 8 of your report, did that survey study Wisconsin at  
 9 all?  
 10 A It did.  
 11 Q It did?  
 12 A Of course.  
 13 Q Okay. How could it, though, when  
 14 Wisconsin had not passed -- implemented a voter ID  
 15 lawyer?  
 16 A These are -- this is like this study.  
 17 These are nationwide results. They are not limited  
 18 to only those states that had strict voter photo ID  
 19 laws.  
 20 Q So you're drawing -- your opinion is drawn  
 21 from not Wisconsin-specific survey but a nationwide  
 22 survey.  
 23 A It can't be, since at that time Wisconsin  
 24 did not have a voter photo ID law in place.  
 25 But this shows what the consequences would

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1 be of putting one into place, which they did in  
 2 2011.  
 3 Q Are you aware of any Wisconsin-specific  
 4 survey that touches upon this topic of deterrence of  
 5 minorities from voting due to a voter photo ID law?  
 6 A You mean subsequent to the adoption of the  
 7 voter photo ID law in Wisconsin?  
 8 Q Yes.  
 9 A I believe it's only been used in a couple  
 10 of elections. One was an off year, and one was a  
 11 primary. And I don't believe any of these surveys  
 12 studied the Wisconsin 2015 election or the Wisconsin  
 13 2016 primary.  
 14 So at this point I'm not aware of any  
 15 studies that look at the deterrence effect in those  
 16 two elections.  
 17 But we do know for certain that there was  
 18 some voters disenfranchised in those elections by  
 19 the voter photo ID law specifically. We don't know  
 20 the number because all the information is not  
 21 available. But we know there were some.  
 22 Q Skipping ahead to Page 34 of the report.  
 23 The first full paragraph on that page states, "It is  
 24 telling that Wisconsin only provided a mechanism by  
 25 which voters can obtain a, quote/unquote, free ID in

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1 2014 after being forced to do so by Wisconsin  
 2 Supreme Court decision that made no-cost  
 3 documentation a condition of the implementation of  
 4 the voter photo ID law."  
 5 Do you see that sentence?  
 6 A Yes.  
 7 Q Is that factually accurate that --  
 8 A I believe it is. I believe until the  
 9 Wisconsin Supreme Court decision, they did not have  
 10 in place the same petition process. And I haven't  
 11 seen anything, any files on the petition process,  
 12 prior to that decision.  
 13 Q Okay. So it's your position that from  
 14 July -- from 2011, mid 2011, I believe it's July, up  
 15 until 2014, there was no free ID program in  
 16 Wisconsin?  
 17 A I didn't say that.  
 18 Q Okay.  
 19 A That's why I put free --  
 20 Q In quotes?  
 21 A -- in quotes.  
 22 Because the idea itself didn't necessarily  
 23 cost you. You couldn't charge for the ID. I mean,  
 24 you know, as we discussed. That would have been,  
 25 you know, a red-flag signal on this law.

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1 **But, underlying documents cost. And**  
 2 **that's what -- why you have this petition process.**  
 3 Q Okay. So the quotation marks around the  
 4 word "free" are very important to your analysis?  
 5 **A Yes. I even say, no-cost documentation.**  
 6 **I don't say no-cost IDs.**  
 7 Q Okay.  
 8 Page 35, you talk about a FoodShare bill?  
 9 **A Yes.**  
 10 Q What does this have to do with anything?  
 11 **A I think it is essential to the whole issue**  
 12 **here. I mean, it goes right to the heart of intent.**  
 13 Q Okay.  
 14 **A If, in fact, the intent had nothing to do**  
 15 **with race but had to do with increasing confidence**  
 16 **in the elections, deterring voter fraud, there would**  
 17 **have been absolutely no reason not to allow a photo**  
 18 **ID for the FoodShare program to count for voting.**  
 19 **Not only didn't they authorize this, but**  
 20 **the Republicans in the legislature explicitly**  
 21 **rejected an amendment to authorize, under this law**  
 22 **that they were working on, photo IDs for food stamps**  
 23 **for voting.**  
 24 **I cannot think of an explanation for that,**  
 25 **other than the fact that the FoodShare program is**

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1 **overwhelmingly minority. As I point out on Table**  
 2 **36. You've got non-Hispanic blacks, 365 percent**  
 3 **higher than non-Hispanic whites in participation in**  
 4 **food aid. Hispanics 241 percent higher.**  
 5 **It certainly can't be justified by a lack**  
 6 **of security of these IDs. You've got to go**  
 7 **through -- you know, you're giving them money, in**  
 8 **effect. You have to go through an incredibly**  
 9 **exacting process to get one of these IDs, including**  
 10 **income statements, expense statements. You actually**  
 11 **have to have an interview. You actually have to**  
 12 **sign up for an employment program.**  
 13 **So it seems to me not just not including**  
 14 **this but rejecting it is a clear indication of the**  
 15 **racial intent behind the law. Because whether or**  
 16 **not you actually saw these statistics, it's**  
 17 **certainly common knowledge that minorities are**  
 18 **poorer than whites and minorities are greater**  
 19 **recipients of welfare.**  
 20 **In fact, that's a common argument you hear**  
 21 **made all the time.**  
 22 Q But the legislature didn't pass the  
 23 FoodShare photo ID bill.  
 24 **A It doesn't matter.**  
 25 Q It doesn't?

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1 **A It doesn't matter to my analysis. What**  
 2 **matters to my analysis is while they were**  
 3 **considering it and while it still could have passed,**  
 4 **they rejected the idea that if we establish this,**  
 5 **you can use it for voting.**  
 6 Q So you --  
 7 **A They may have rejected it for entirely**  
 8 **other reasons, but that's irrelevant to how this**  
 9 **bears upon my intent analysis.**  
 10 Q So it's your position that a bill that the  
 11 legislature failed to enact in 2015 bears upon  
 12 whether the legislature intentionally discriminated  
 13 on the basis of race in 2011?  
 14 **A Absolutely. Because it goes to the heart**  
 15 **of the issue. Are you really concerned with voter**  
 16 **fraud or confidence, or are you really concerned**  
 17 **with a law that has a particularized impact on**  
 18 **limiting minority and voter opportunity -- minority**  
 19 **voter opportunities?**  
 20 **If your only concern was voter confidence**  
 21 **and fraud, then certainly you would have allowed, if**  
 22 **you established it, food stamp photo IDs to be used**  
 23 **for voting.**  
 24 Q Isn't that quite attenuated?  
 25 **A I think it's direct, right on point. I**

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1 **don't see how -- it would be hard to devise a more**  
 2 **on-point test. We have this totally secure ID, far**  
 3 **more secure than other IDs that you've authorized**  
 4 **for voting and, yet, you reject the idea that this**  
 5 **can be used for voting.**  
 6 **And, oh, by the way, blacks are almost**  
 7 **five times more likely to have such IDs, and**  
 8 **Hispanics are almost four times more likely to have**  
 9 **such IDs.**  
 10 **Unless, again, you're thinking the**  
 11 **legislature is living on the moon, they know this.**  
 12 Q You agree the legislature did not pass  
 13 this FoodShare law?  
 14 **A Understood. I'm not trying to analyze the**  
 15 **FoodShare bill as a FoodShare bill. I am analyzing**  
 16 **the FoodShare bill for the insight that it provides**  
 17 **on the decision-making of the legislature regarding**  
 18 **photo voter ID.**  
 19 Q Page 38 at the very top.  
 20 **A Sure.**  
 21 Q Talks about the exclusion of  
 22 post-secondary technical schools?  
 23 **A Yes.**  
 24 Q And you now know that by administrative  
 25 rule, that is a permissible ID?

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1 **A I do. And I commented on that in my**  
 2 **rebuttal report.**  
 3 Q Okay. And so do you agree, then, that  
 4 African-Americans and Hispanics who you believe are  
 5 more likely to be at those institutions now have yet  
 6 another alternative for ID?  
 7 **A For a limited number. But it's not**  
 8 **because of anything from the legislature did. The**  
 9 **legislature didn't decide, Oh, my gosh, we made a**  
 10 **mistake here. As you said, it was something that**  
 11 **came out of the GAB, not the legislature.**  
 12 **So, again, what we see here is a common**  
 13 **pattern of action, fairly obvious action, to**  
 14 **ameliorate the effects on minorities coming from**  
 15 **something external to the legislature in three**  
 16 **specific examples that we have now seen.**  
 17 Q The legislature has the ability to stop  
 18 rule-making that it believes is inconsistent with  
 19 the law. Correct?  
 20 **A I would imagine if -- by a vote of the**  
 21 **legislature they could have done that.**  
 22 Q But they didn't stop the technical college  
 23 rule?  
 24 **A I think that would have, you know, greatly**  
 25 **enhanced the notion that they were intentionally**

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1 **discriminating. If they had done something that**  
 2 **blatant, overturned a rule that helped**  
 3 **African-Americans and Hispanics for no good reason,**  
 4 **I think they would have put themselves in a lot of**  
 5 **jeopardy.**  
 6 Q Page 39, first full paragraph.  
 7 **A Yes. Okay.**  
 8 Q In this section you've gone through  
 9 several different changes in the law. And in this  
 10 sentence, first full paragraph, you say, "Taken  
 11 together, these many restrictions on options to  
 12 register to vote impose disproportionate burdens on  
 13 African-Americans and Hispanics."  
 14 Do you see that?  
 15 **A Of course.**  
 16 Q Is it your opinion that to have the  
 17 discriminatory effect that you believe existed, that  
 18 the laws must be considered together, or can they be  
 19 considered separately from each other?  
 20 **A Either way.**  
 21 Q Okay.  
 22 **A You can do it both ways. And I do it both**  
 23 **ways.**  
 24 Q Okay. So it's your opinion then that any  
 25 one of these particular acts that you outlined in

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1 this section of the report, any one can be analyzed  
 2 to have a racially discriminatory impact?  
 3 **A I believe I analyze if not every single**  
 4 **one, certainly virtually every single one. But in**  
 5 **doing an intent analysis, you don't only analyze**  
 6 **them individually. Because their impact is not only**  
 7 **felt individually; their impact is felt**  
 8 **collectively.**  
 9 **That is, voters have to face all the**  
 10 **rules, not just one.**  
 11 Q So in doing legislative intent analysis,  
 12 is it commonplace to look at the motivations for  
 13 bills that were passed by different legislatures,  
 14 different members of the legislature?  
 15 **A Absolutely. Because we're talking about**  
 16 **the same political party passing these bills.**  
 17 **In other words, remember the rationale**  
 18 **here is, by limiting the votes of African-Americans**  
 19 **and Hispanics, for all the reasons we've laid out,**  
 20 **you're deriving political benefits to Republicans.**  
 21 **And it's not like it was a Republican legislature**  
 22 **that passed one and then a Democratic legislature**  
 23 **that passed another. These were all passed by**  
 24 **Republican legislatures and signed by a Republican**  
 25 **governor.**

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1 Q And so legislative intent focuses more on  
 2 parties than individual legislators?  
 3 **A Not so.**  
 4 Q No?  
 5 **A In this case, it focuses on party. It**  
 6 **could focus on all kinds of different things. But**  
 7 **in this case, we've got to look for a motive as to**  
 8 **why you're getting bill after bill after bill after**  
 9 **bill that poses a disparate burden on minorities.**  
 10 **And in this case, the motivation, for all the**  
 11 **reasons I've laid out, is the direct link between**  
 12 **partisan advantage and discriminatory legislation**  
 13 **with respect to minorities.**  
 14 **And we also, as we have gone over, have**  
 15 **direct evidence of that.**  
 16 Q Is that consistent with the Arlington  
 17 Heights framework?  
 18 **A Absolutely consistent with the Arlington**  
 19 **Heights framework. It asks you to look at sequence**  
 20 **of events. It asks you to look at contemporary**  
 21 **statements. Of course it is very much consistent**  
 22 **with the Arlington Heights.**  
 23 Q It's not too much cobbling together?  
 24 **A No. I don't think you're cobbling**  
 25 **together at all. Because you've got these common --**



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1 **many common threads that we've talked about.**  
 2 Q Page 39 you discuss the corroboration  
 3 option that was -- no longer exists. Correct?  
 4 **A That's right.**  
 5 Q So this, the last paragraph on Page 39, is  
 6 this really all the analysis you're doing with  
 7 regard to corroboration, or is there more analysis?  
 8 **A I don't know of any more, and I don't see**  
 9 **anything from your experts that I had to respond to**  
 10 **on this.**  
 11 Q Okay. So there's no other evidence you're  
 12 relying upon as to corroboration, other than this  
 13 single paragraph, what's stated there on Page --  
 14 **A I am not aware of any other evidence, as I**  
 15 **said, I didn't see anything from your experts that I**  
 16 **needed to respond to. So unless something new comes**  
 17 **across, and as I said we're getting new things all**  
 18 **the time, this is what I have.**  
 19 Q So in this paragraph on Page 39, you say,  
 20 "According to internal GAB e-mails, a total of  
 21 35,332 Wisconsin citizens had registered through  
 22 corroboration from 2006 through October 2012."  
 23 Do you see that?  
 24 **A I do.**  
 25 Q Do you know what the total number of

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1 citizens who had registered in that same period is?  
 2 **A Oh, it's much, much larger.**  
 3 Q Are we talking millions?  
 4 **A Could well be.**  
 5 Q Okay. But you don't know?  
 6 **A I don't have the number right off the top**  
 7 **of my head, no. But it's much larger than this.**  
 8 Q Did you look at the number?  
 9 **A No. Because my concern here was not to**  
 10 **establish this as a percentage. Because I don't**  
 11 **believe you need to have some percentage threshold**  
 12 **for a law to have a discriminatory effect.**  
 13 **As Justice Easterbrook said, voting is**  
 14 **personal. And even if it has an effect on a very**  
 15 **small number of Wisconsin citizens, it still impacts**  
 16 **the right to vote.**  
 17 **And so my concern was just to document the**  
 18 **number, not necessarily the percentage. And I**  
 19 **certainly recognize that's a very small percentage,**  
 20 **but it's a lot of people.**  
 21 Q So of that 35,332, how many were white?  
 22 **A I think I said statistics are not**  
 23 **available by race. So we had to do some inferring**  
 24 **from socio-economic standing.**  
 25 Q Okay. So you don't have direct evidence

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1 of how many African-Americans use the corroboration  
 2 option. Correct?  
 3 **A I think I say that right in the paragraph.**  
 4 Q Okay. Page 40. You discuss the  
 5 elimination of the requirement of special  
 6 registration deputies at high schools?  
 7 **A Yes.**  
 8 Q And did you have any data that show how  
 9 many African-American or Hispanic voters use an SRD  
 10 at a public high school?  
 11 **A We don't know, because you don't register**  
 12 **by race in Wisconsin. So, again, which is perfectly**  
 13 **acceptable practice, you've got to do some**  
 14 **inferring. And we can see African-Americans are**  
 15 **overrepresented among public high school students.**  
 16 Q But we don't know if they were more likely  
 17 to use that option to register. Correct?  
 18 **A Well, more of them would have had that**  
 19 **option available relative to whites. But because we**  
 20 **don't have registration by race, we don't have the**  
 21 **final statistics on that, that's correct.**  
 22 Q Okay. Page 41, there is a -- the first  
 23 paragraph you state, "In addition, restrictions on  
 24 registration by college and university students have  
 25 a specific disparate impact on potential

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1 African-American voters."  
 2 Do you see that?  
 3 **A Yeah.**  
 4 Q You did not have data with regard to what  
 5 African-American voters were impacted by these  
 6 changes?  
 7 **A You can't, because we don't know -- we**  
 8 **don't have registration by race. Again, we've got**  
 9 **to look at the populations directly affected. And I**  
 10 **think you see a pattern here.**  
 11 Q Right. I mean, I'm going to keep asking  
 12 the questions. But --  
 13 **A Right. And I'll give you the same answer.**  
 14 **We don't have registration by race in Wisconsin,**  
 15 **like we did in North Carolina.**  
 16 Q Wouldn't that be the best evidence of  
 17 these racial impacts?  
 18 **A That would. But it doesn't mean that this**  
 19 **evidence isn't good evidence, particularly when the**  
 20 **pattern is so common.**  
 21 **You know, if you cut into a pie five times**  
 22 **or six times and you find it's cherry every time,**  
 23 **you might think, yeah, I'm dealing with a cherry pie**  
 24 **here.**  
 25 Q Are we cutting into the same pie each time

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1 here?

2 **A Yeah. You're cutting into the pie of**

3 **potential registrants.**

4 Q Okay. Second paragraph on Page 41.

5 You're talking about the abrogation of a Madison

6 ordinance?

7 **A Correct.**

8 Q Is this the only analysis of that law

9 change that you've done for this case?

10 **A Yes. Because, again, I don't have**

11 **registration on race. But again we see the same**

12 **pattern. You're targeting a group that is very**

13 **disproportionately minority.**

14 Q Let's flip to Page 46. And here you talk

15 about the change from a ten-day durational residency

16 requirement to a 28-day.

17 **A Right.**

18 Q Do you know what the requirement is here

19 in Maryland where you vote?

20 **A I don't. I haven't registered in Maryland**

21 **since the '70s.**

22 Q Okay. All right. Why do we have

23 durational residency requirements at all?

24 **A Well, I know what some of the**

25 **justifications for durational residency requirements**

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1 **are. I'm not sure I necessarily agree with them or**

2 **find them necessary. Particularly in a state that**

3 **has, you know, same day.**

4 Q So what are the justifications that you

5 know?

6 **A Administrative convenience, to give the**

7 **administrators more time to process whatever it**

8 **needs to be processed. But, obviously, you've got**

9 **good processing in a state with same-day**

10 **registration.**

11 **Maybe to establish a certain degree of**

12 **attachment to the state before having an opportunity**

13 **to vote. Those are some of the justifications I've**

14 **heard.**

15 Q And then this Page 46, is this the only

16 place in any of your reports that you've analyzed

17 this durational residency requirement?

18 **A I believe that's right.**

19 Q Okay. And do you intend to offer any

20 further expert opinions on that requirement?

21 **A Only if it's brought up by the state.**

22 Q Okay. Page 47, at the top you talk about

23 fixing absentee ballot mistakes?

24 **A Right.**

25 Q And Act 227?

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1 **A Right.**

2 Q This -- on Page 47, is this the only

3 opinion you intend to offer in this case regarding

4 that challenge?

5 **A Unless I have to respond to something**

6 **presented by the state, that's correct. Again, we**

7 **don't have voting by race.**

8 Q Okay. So the next section of your report

9 talks about procedural and substantive deviations.

10 Correct?

11 **A That's right.**

12 Q Tell me, what are procedural deviations

13 and what are substantive deviations?

14 **A Procedural have to do with the mechanisms**

15 **and manner by which a law is passed. Substantive**

16 **have to do with the changes from the status quo that**

17 **the law represents.**

18 Q You concluded that procedural deviations

19 did occur in the passage of these challenge laws.

20 Correct?

21 **A Right. But that was not my main point,**

22 **obviously. Since the Republicans controlled the**

23 **matter and could get what they want.**

24 Q So you have -- by number you come up --

25 you go through a number of what you perceive as

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1 procedural deviations.

2 **A Procedural and substantive.**

3 Q And substantive. The first of which is

4 that Republicans in the legislature introduced

5 legislation late in sessions with little time for

6 debate, discussion, and analysis. Correct?

7 **A Yes.**

8 Q Is that a procedural or a substantive

9 deviation?

10 **A I think it's a little bit of both.**

11 Q Okay. Could you explain?

12 **A Yeah. It is procedural in the sense that**

13 **while it is not a violation of rules, it does have**

14 **an impact procedurally to do that in terms of what**

15 **you can go through.**

16 **And it's definitely substantive, because**

17 **as the Republican says, it doesn't give people time**

18 **to comment. It doesn't give you time to adequately**

19 **examine the implications. It's the kind of thing**

20 **you do when you want to rush something through with**

21 **limited scrutiny.**

22 Q So in the Arlington Heights analysis,

23 introducing legislation late is considered a

24 procedural or substantive deviation?

25 **A I think so. Particularly when it involves**

165	<p>1 the fundamental right to vote. Of all things that</p> <p>2 ought to be very, very seriously considered, that</p> <p>3 ought to be weighed with great seriousness, is the</p> <p>4 fundamental right to vote. And I've seen commentary</p> <p>5 on that from legislators in other states talking</p> <p>6 about the extended process that they felt was</p> <p>7 necessary to go through before you change things</p> <p>8 implicating the right to vote.</p> <p>9 This is not laws on the color of the paint</p> <p>10 of state house offices. This involves what the</p> <p>11 Supreme Court has said is the foundational right of</p> <p>12 Americans.</p> <p>13 Q Then the second procedural or substantive</p> <p>14 deviation that you highlight is the magnitude of</p> <p>15 measures that were passed?</p> <p>16 A That's correct.</p> <p>17 Q So why would the number of laws that were</p> <p>18 passed show a procedural substantive deviation?</p> <p>19 A Well, again, it's not illegal to pass such</p> <p>20 measures. But the fact that this makes Wisconsin</p> <p>21 such an outlier, it's very unusual. It's</p> <p>22 deviational, if that's a word, to in such a brief</p> <p>23 period of time adopt so many measures directly</p> <p>24 implicating the right to vote. You know, even more</p> <p>25 so than North Carolina, which had been under the</p>	167	<p>1 before.</p> <p>2 Q Grothman?</p> <p>3 A And he's not a legislator, but a staffer.</p> <p>4 Q Okay. So those are the three, Schultz,</p> <p>5 Grothman, Aulbaugh?</p> <p>6 A From within Wisconsin. We talked about</p> <p>7 other nationally -- national figures making similar</p> <p>8 statements.</p> <p>9 Q No other Wisconsin?</p> <p>10 A Not that I am aware of at this time. But</p> <p>11 as I said, this has been an incredible moving</p> <p>12 target.</p> <p>13 Q Okay. On Page 53, you talk about examples</p> <p>14 that are commonly raised for use of an ID card.</p> <p>15 Correct?</p> <p>16 A Yes.</p> <p>17 Q One of which is getting married?</p> <p>18 A Yes.</p> <p>19 Q And you state, "Although county practices</p> <p>20 may vary under Wisconsin state law, birth</p> <p>21 certificate but not a photo ID is required for</p> <p>22 obtaining a marriage license."</p> <p>23 Do you see that?</p> <p>24 A Correct.</p> <p>25 Q Are you aware of any jurisdictions in</p>
166	<p>1 microscope for doing what they did.</p> <p>2 And, obviously, as we talked about, it is</p> <p>3 substantive. Because these are cumulative.</p> <p>4 Q And then the third procedural or</p> <p>5 substantive deviation you highlight is that</p> <p>6 Republicans gained unified control of state</p> <p>7 government in 2010?</p> <p>8 A Right.</p> <p>9 Q How would that be considered a deviation</p> <p>10 of any sort?</p> <p>11 A Well, it is a deviation from the past</p> <p>12 politics of the state.</p> <p>13 Again, I'm not saying it's illegal or</p> <p>14 anything like that. But it's important because it</p> <p>15 helps explain the timing of these laws.</p> <p>16 Q We are now going to move to Page 51 that</p> <p>17 we talked about, the Dale Schultz quote --</p> <p>18 A Yes.</p> <p>19 Q -- earlier.</p> <p>20 A Yes, we have.</p> <p>21 Q Do you have -- are there statements by any</p> <p>22 other Wisconsin Republican legislator that you're</p> <p>23 relying upon to show contemporaneous viewpoints of</p> <p>24 decision-makers?</p> <p>25 A Yes. Grothman. We've talked about that</p>	168	<p>1 Wisconsin that do require a photo ID card to get a</p> <p>2 marriage license?</p> <p>3 A I think there might be some. But, you</p> <p>4 know, I haven't combed through every single</p> <p>5 jurisdiction. But I wouldn't be surprised that</p> <p>6 there was.</p> <p>7 Q Let show you --</p> <p>8 A -- let me finish. That's why I said</p> <p>9 county practices vary.</p> <p>10 MR. KAWSKI: Here's another exhibit.</p> <p>11 (Lichtman Deposition Exhibit 4 marked for</p> <p>12 identification and is attached to the transcript.)</p> <p>13 Q So this is Exhibit 4. Take a look at it,</p> <p>14 let me know if you've seen it before.</p> <p>15 A I might have. As I said, I looked at some</p> <p>16 of these counties, but I wasn't going to go through</p> <p>17 72 counties in Wisconsin and try to parse out all of</p> <p>18 their laws. Because my basic point was we're</p> <p>19 talking about state law, and state law does not</p> <p>20 require it.</p> <p>21 Q So this is, I will represent to you, a</p> <p>22 printout from the Milwaukee County website. If you</p> <p>23 go to Page 3, there is a heading Marriage License</p> <p>24 Application Requirements.</p> <p>25 Do you see that?</p>

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1 **A Yes.**

2 Q And then second bullet point below that

3 heading, "Each applicant must show valid photo ID,

4 such as valid driver's license."

5 Do you see that?

6 **A I see that.**

7 Q So marriage is an important right, just

8 like voting. Correct?

9 **A Yes.**

10 Q It's a fundamental right?

11 **A Yes.**

12 Q So why do you think Milwaukee County is

13 requiring a photo ID to exercise that fundamental

14 right?

15 **A I'm not sure they are.**

16 Q No?

17 **A Let me tell you why.**

18 Q Okay.

19 **A First of all, I don't know what a valid**

20 **photo ID is.**

21 Q Right. I don't, either.

22 **A It could be a vastly wider array. Could**

23 **be you know. My AU faculty ID. They don't specify.**

24 **So this is not comparable to the Wisconsin**

25 **voting photo ID law, which is extremely restrictive.**

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1 **Plus, for example, while if you took a**

2 **superficial look at the Transportation Security**

3 **Agency, you would think you had to bring a photo ID.**

4 **But, in fact, there are all kinds of exceptions if**

5 **you don't have it.**

6 **I have no idea whether there are**

7 **exceptions in Milwaukee. There may well be.**

8 Q Wouldn't the fact that it says "valid

9 photo ID" suggest that there is a lot of discretion

10 in the hands of government as to whether you get a

11 marriage certificate or license?

12 **A There may well be. And that's why I said**

13 **there may also be exceptions.**

14 Q Okay.

15 **A And there often aren't, even when you say**

16 **you have to show a photo ID. So you would have to**

17 **delve a little more deeply.**

18 Q But you acknowledge, though, that it

19 appears Milwaukee County requires a photo ID to get

20 a marriage license?

21 **A That's what it says. But I am not sure in**

22 **practice what that means. Let me look at this a**

23 **little more and see if there's any further**

24 **clarification.**

25 **No, there is no further clarification**

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1 **here.**

2 Q Okay. Next exhibit is going to be the

3 rebuttal report.

4 **A Okay.**

5 MR. KAWSKI: So if you want to mark that

6 one Exhibit 5.

7 (Lichtman Deposition Exhibit 5 marked for

8 identification and is attached to the transcript.)

9 MR. SPIVA: While we mark this, do you

10 mind if we take a short break?

11 MR. KAWSKI: Sure.

12 (A recess was taken.)

13 BY MR. KAWSKI:

14 Q So please take a look at Exhibit 5 and let

15 me know what that is.

16 **A Oh, okay. This just blacks out names.**

17 **Right.**

18 Q Yes.

19 **A That's fine. I'm just going through it**

20 **quickly. This is my rebuttal report. This is**

21 **complete.**

22 Q So I did bring -- there were two versions

23 that were filed in court.

24 **A Right.**

25 Q One was the redacted, one was the not

172

1 redacted.

2 **A Right.**

3 Q I used the redacted one.

4 **A So you're not going to ask me about names.**

5 Q No.

6 **A Okay.**

7 Q So this is your rebuttal report executed

8 February 16th, 2016. Correct?

9 **A Yes.**

10 Q In this case.

11 When did you write it?

12 **A After I saw the report of defendants'**

13 **expert.**

14 Q So maybe in January 2016?

15 **A Well, through February 16th, yeah.**

16 Q When you wrote your initial report, you

17 didn't have the information you talk about in this

18 report with regard to individual voters who use the

19 IDPP?

20 **A I had no individual voter data.**

21 Q Do you recall when you were provided with

22 that individual voter data?

23 **A Pretty shortly before I finished this**

24 **report.**

25 Q Okay. And you were provided that by

173

1 counsel?  
 2 **A Yes.**  
 3 Q Okay.  
 4 **A With the stipulation that it had come from**  
 5 **the state.**  
 6 Q Okay.  
 7 **A Not that it was something worked up by**  
 8 **counsel.**  
 9 Q Okay. I'm going to flip you ahead right  
 10 away to Page 14, Table 7. I think it touches on an  
 11 issue we've talked about already.  
 12 **A We briefly talked about that, that's**  
 13 **correct.**  
 14 Q So Table 7, you're summarizing the  
 15 percentages of newly issued renewal and duplicate  
 16 nondriver IDs that the Wisconsin DMV issued from  
 17 July 2011 through September 2015.  
 18 **A Right. That was the last data I had at**  
 19 **that time. More data is coming in.**  
 20 Q Right.  
 21 **A But that's what I had then.**  
 22 Q So below the table you state, "However,  
 23 the vast majority of IDs included in this analysis,  
 24 80 percent, are free IDs."  
 25 **A Right. They're not all free IDs.**

174

1 Q Okay. So of the total IDs, the number  
 2 here in Table 7 is 498,244. Eighty percent of those  
 3 were free IDs?  
 4 **A I believe that's right.**  
 5 Q Okay. So approximately, in your  
 6 estimation, 400,000 free ID cards were issued  
 7 between July 2011 and September 2015.  
 8 **A Approximately. Counting duplicates,**  
 9 **renewals, and new.**  
 10 **And that number of which are free and**  
 11 **which aren't aren't broken down into these separate**  
 12 **three categories. That's why I had to put the**  
 13 **footnote on the bottom, just to make sure I was as**  
 14 **accurate as I could be within the parameters of the**  
 15 **data.**  
 16 Q Okay. And so I want to ask if the 80  
 17 percent free ID, can that be applied to the newly  
 18 issued IDs column, meaning 80 percent of the count  
 19 for newly issued IDs would be considered free IDs?  
 20 **A I think I just explained, they didn't**  
 21 **doubly break it down. That is, they didn't break it**  
 22 **down into free and nonfree, and then break it down**  
 23 **into newly, duplicate, and renewal.**  
 24 **So we don't know. It's probably not going**  
 25 **to vary enormously from that, but I can't tell you**

175

1 **with specificity those percentages.**  
 2 Q Okay. All right. And we've talked about  
 3 how -- you used numbers that were available to you  
 4 at the time, and that there are more recent numbers  
 5 available. Correct?  
 6 **A I believe that's right.**  
 7 Q Okay. And that if you're given the more  
 8 recent data, you will form opinions about it?  
 9 **A Of course. I'm not going to blind myself**  
 10 **to it.**  
 11 Q Okay. And you have not analyzed any data  
 12 about the February 2016 or April 2016 elections?  
 13 **A Only what I saw in the press. And I was**  
 14 **given one document from Milwaukee for 2015.**  
 15 Q Okay.  
 16 **A Which I just got last night.**  
 17 Q You talk in this report about the Texas  
 18 law and the Texas decision by the fifth circuit?  
 19 **A That's correct.**  
 20 Q You were an expert in the Texas case?  
 21 **A Correct.**  
 22 Q What was your role or area of expertise in  
 23 that case?  
 24 **A It was similar to this one, analyzing**  
 25 **intent.**

176

1 Q Okay. And so you concluded that the Texas  
 2 voter ID law was passed with a racially  
 3 discriminatory intent?  
 4 **A I did.**  
 5 Q And that conclusion has since been vacated  
 6 by the fifth circuit?  
 7 **A Not exactly.**  
 8 Q No? Okay. What's your understanding?  
 9 **A I will tell you my understanding. Again**  
 10 **not being a lawyer. But my understanding is that**  
 11 **the fifth circuit didn't refer to me at all or any**  
 12 **expert work. There were some legal issues in the**  
 13 **district court which found discriminatory intent.**  
 14 **And they remanded the issue back to the district**  
 15 **court for reconsideration of the intent issue in**  
 16 **light, like I said, not of anything I said, but in**  
 17 **light of these legal issues.**  
 18 Q And so they remanded it. But then  
 19 subsequent to that the entire fifth circuit is now  
 20 taking up the case?  
 21 **A That is correct.**  
 22 Q So your -- the opinion that incorporated  
 23 your analysis has been vacated. Correct?  
 24 **A I don't know what you mean by that. My**  
 25 **understanding is it was remanded back to the**

177

1 **district. I don't know what the legal posture is,**  
 2 **since the fifth circuit simply said we are going to**  
 3 **look at it.**  
 4 Q Okay. But to date you haven't been asked  
 5 to testify again in Texas?  
 6 A **No. Because it's up before the en banc**  
 7 **fifth circuit and I don't believe they're taking**  
 8 **testimony.**  
 9 Q And so no one has asked you to prepare any  
 10 supplemental reports in Texas?  
 11 A **No, no one has asked me to prepare**  
 12 **anything. That may happen depending on, you know,**  
 13 **where all of this goes. And it could be -- things**  
 14 **in Texas move slowly.**  
 15 Q Right.  
 16 A **It could be a long time.**  
 17 Q Right. On Pages 11 and 12 of this  
 18 rebuttal, you talk about the usage of in-person  
 19 absentee voting. Correct?  
 20 A **Yes.**  
 21 Q And you conclude that the rate of  
 22 in-person absentee voting went up in Madison and  
 23 Milwaukee between 2010 and 2014. Correct?  
 24 A **Absolutely.**  
 25 Q Okay. And so that -- that is the period

178

1 of time that we're talking about here when these  
 2 laws, with the exception of the voter ID law, were  
 3 in effect?  
 4 A **I believe that's right. There was a law I**  
 5 **think that was dated to 2014. I can't swear whether**  
 6 **it was in effect or not. But basically that's**  
 7 **correct. With the exception of voter photo ID.**  
 8 Q Okay.  
 9 A **But, of course, that was not what I was**  
 10 **analyzing. You understand that.**  
 11 Q Right. I understand that.  
 12 A **Okay. Fair enough.**  
 13 Q All right. I don't really have any other  
 14 questions about that report.  
 15 A **Okay.**  
 16 Q But I do have a couple more exhibits that  
 17 I may as well just bring out together.  
 18 A **Sure.**  
 19 Q We've talked a little bit about them.  
 20 A **That's fine.**  
 21 Q All right.  
 22 A **It looks like it's those polls.**  
 23 Q Yeah, those polls. So one is the  
 24 Marquette poll, and the other is the Pew Research  
 25 Center poll.

179

1 (Lichtman Deposition Exhibit 6 and Exhibit  
 2 7 marked for identification and are attached to the  
 3 transcript.)  
 4 Q So take a look at Exhibit 6 and Exhibit 7.  
 5 A **Do you want me to look at the whole --**  
 6 **there's a lot of pages here.**  
 7 Q You can flip through. If you want to.  
 8 A **I really don't want to.**  
 9 Q Marquette was Exhibit 6.  
 10 A **I am familiar with this poll, yes. So if**  
 11 **you want to direct me to anything within the poll,**  
 12 **that's fine.**  
 13 Q Okay.  
 14 A **I don't need to read through the whole**  
 15 **thing.**  
 16 Q Sure. What is Exhibit 6?  
 17 A **It is a Marquette Law School Poll**  
 18 **conducted between October 23rd and October 26, 2014.**  
 19 **What I don't know and I'm not going to**  
 20 **take the time at the moment is what aspects of the**  
 21 **poll -- it was a very big poll -- are included in**  
 22 **this particular exhibit.**  
 23 Q Okay. If you'll flip to the page that has  
 24 Question Number 18.  
 25 A **Sure. I'm there.**

180

1 Q Okay. And you see, "Do you favor/oppose  
 2 requiring a government-issued photo ID to vote"?  
 3 A **I do.**  
 4 Q And you see that 60.4 percent of Wisconsin  
 5 likely voters who are polled favored such a  
 6 requirement?  
 7 A **Correct.**  
 8 Q And 36 percent opposed?  
 9 A **Correct.**  
 10 Q 3.1 percent didn't know?  
 11 A **Correct.**  
 12 Q At the time this poll was conducted, was  
 13 the voter photo voter ID requirement in effect?  
 14 A **That is a tricky question.**  
 15 Q Not really.  
 16 A **It was enacted, but I don't believe it was**  
 17 **operable.**  
 18 Q Right. But there was -- are you familiar  
 19 with another Marquette Law School poll that was  
 20 conducted only weeks before this one?  
 21 A **I think it was conducted in March. Is**  
 22 **that the one you're thinking about?**  
 23 Q This was October 9th, 2014.  
 24 A **I'm not. You know, there's a lot of**  
 25 **Marquette polls. I'm not sure I can spotlight each**

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1 **one of them by the exact date. But if you show it**  
 2 **to me, I'm happy to talk about it.**  
 3 Q I just wanted to know if you're aware of  
 4 that one.  
 5 **A Yeah, I'm aware there are constant**  
 6 **Marquette polls.**  
 7 Q Okay. So in terms of the Question 18 and  
 8 it shows that 60.4 percent of those polled likely  
 9 voters favored a photo ID requirement, how do you  
 10 react to that?  
 11 **A Well, we talked about that before. It's**  
 12 **not surprising, because most people aren't affected**  
 13 **by photo ID. You know, it's -- the minorities,**  
 14 **it's -- not all minorities, by any means. Even a**  
 15 **minority of minorities who are affected.**  
 16 **So, you know, the majority of people have**  
 17 **photo IDs, so it doesn't affect them. And there's**  
 18 **been a lot of talk about it. And you find this**  
 19 **everywhere.**  
 20 **But, on the other hand, you also find 56.1**  
 21 **percent, almost the same, probably within the margin**  
 22 **of error, want to raise the minimum wage. And you**  
 23 **don't see the Republican legislature moving to raise**  
 24 **the minimum wage.**  
 25 **And this is the point I made earlier about**

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1 **other polling data that I point to in my report as**  
 2 **strong or stronger than support for government photo**  
 3 **ID, but the legislature is not acting on those**  
 4 **things.**  
 5 Q Take a look at Exhibit 7.  
 6 Do you recognize that exhibit?  
 7 **A God, I've seen so many polls. I don't see**  
 8 **a date on this. But ask me questions about it.**  
 9 Q Sure.  
 10 **A September 12th. Yeah, I do see it.**  
 11 Q October 11th, 2012, on the first page, do  
 12 you see that?  
 13 **A Yes. Okay. Fair enough.**  
 14 Q Very small.  
 15 MR. SPIVA: Please, is this an excerpt or  
 16 is it --  
 17 MR. KAWSKI: I believe it's the -- pulled  
 18 it from the Pew Research Center website, so it's a  
 19 summary.  
 20 MR. SPIVA: Okay. I got it. Okay. I  
 21 just wanted to know.  
 22 Q So have you seen this before?  
 23 **A I think so.**  
 24 Q Okay. And so you see the table on the  
 25 first page there showing the -- the first question

183

1 that it's summarizing a survey is, "Should voters be  
 2 required to show official photo ID before they vote  
 3 on election day."  
 4 Do you see that?  
 5 **A I do.**  
 6 Q And of all respondents, 77 percent agreed  
 7 that you should, 95 percent of Republicans agreed  
 8 that you should, 61 percent of Democrats agreed that  
 9 you should and 83 percent of independents agreed  
 10 that you should.  
 11 **A Yeah. Of course. Those are the numbers.**  
 12 Q Okay. And so that's from September 12th  
 13 through the 16th, 2012, a poll conducted during that  
 14 time frame. Correct?  
 15 **A That's correct.**  
 16 Q And conducted of registered voters?  
 17 **A It says all registered voters.**  
 18 Q Okay. And I guess what it doesn't state  
 19 is that whether it's polling nationwide or in just  
 20 states with strict requirements. Correct? It  
 21 doesn't say that?  
 22 **A It doesn't.**  
 23 Q So I guess we don't know if it's a  
 24 national poll or not.  
 25 But does that -- do those numbers surprise

184

1 you at all?  
 2 **A I suspect, by the way, it's a national**  
 3 **number.**  
 4 Q Okay.  
 5 **A No. We've already discussed this at**  
 6 **length. I'm not surprised by the fact that the**  
 7 **majority should be favoring an idea.**  
 8 **And look what it says, "official photo**  
 9 **ID." But Wisconsin eliminates lots of official**  
 10 **photo IDs. So you certainly could not cite this**  
 11 **poll as support for Wisconsin's photo voter ID law,**  
 12 **which elaborates the point I made before. You have**  
 13 **to look at exactly what these polls are asking**  
 14 **people. And they're not necessarily asking people**  
 15 **in terms of the specific voter ID law you have in**  
 16 **Wisconsin.**  
 17 Q Some of the required forms in Wisconsin  
 18 are official photo IDs. Correct?  
 19 **A Some, but there are huge ones, like**  
 20 **government employee IDs, that are eliminated.**  
 21 Q What about non-official photo IDs that  
 22 Wisconsin permits?  
 23 **A It does permit -- I'm trying to think what**  
 24 **it does permit. I have to look.**  
 25 Q Tribal IDs, for example?

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1 **A Yes. But I don't think it permits very**  
 2 **many non-official IDs.**  
 3 Q In terms of the number of categories in  
 4 Wisconsin, I believe that -- would it be fair to say  
 5 there are about nine categories of types of IDs?  
 6 **A Something like that.**  
 7 Q But within those nine categories --  
 8 **A I think I have it in my report.**  
 9 Q I think you do, too. But even within  
 10 those categories, isn't it fair to say that there  
 11 are dozens of variants? Some of the categories  
 12 include dozens of options. Correct?  
 13 **A I don't know what that means. Let's go to**  
 14 **the actual. It would be better if we turn to it.**  
 15 Q Sure.  
 16 **A Here it is. Okay. I think it's on Page**  
 17 **24.**  
 18 Q Okay. And this is the initial report,  
 19 Exhibit 1?  
 20 **A Yeah.**  
 21 Q Okay. So Page 24 of Exhibit 1, you list  
 22 the various forms of ID cards. Correct?  
 23 **A Right. Yeah.**  
 24 Q So, for example, in the -- the military ID  
 25 card issued by the U.S. uniformed services -- excuse

186

1 me. You agree that there are several different  
 2 military ID cards that would be permitted?  
 3 **A Well, obviously Army, Navy, Marines. But**  
 4 **you're talking about a tiny percentage. And those**  
 5 **differences aren't especially meaningful.**  
 6 Q Okay. What about the college -- college  
 7 or accredited university ID cards, which you  
 8 reference on Page 25 of Exhibit 1?  
 9 **A Right. Those are very restrictive.**  
 10 **They're not just broadly permitted college IDs.**  
 11 **It's got to have the date of issuance, the signature**  
 12 **of the students, and expiration date no later than**  
 13 **two years, and a separate document.**  
 14 **And as we well know from the testimony of**  
 15 **the GAB at the time this was adopted, most student**  
 16 **IDs in the State of Wisconsin did not conform to**  
 17 **these requirements.**  
 18 Q So in selecting so many different  
 19 categories, though, doesn't it create a challenge  
 20 for the poll worker who has to familiarize himself  
 21 or herself with all the forms that are permitted?  
 22 **A No. I don't think it's the number of**  
 23 **categories. I think it's the way you define the IDs**  
 24 **that are more important.**  
 25 **If you simply allowed any official**

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1 **government ID, it would actually make it a lot**  
 2 **easier for the poll workers. And all of these**  
 3 **distinctions that you have in here in the Wisconsin**  
 4 **voter ID law, that departs markedly from laws that**  
 5 **have been compared to it, like Georgia and Indiana,**  
 6 **where I can present any government-issued ID. Here**  
 7 **I can't.**  
 8 Q In one of your reports you have a table  
 9 that compares the various states. Correct?  
 10 **A I think it's in my rebuttal report. I**  
 11 **think it was not my table, it was Hood's table, and**  
 12 **I commented on Hood's table.**  
 13 Q Okay.  
 14 **A Are we going to that now?**  
 15 Q Yes. That's on Page 10 of the rebuttal  
 16 report, which is Exhibit 5.  
 17 **A Okay. Yeah.**  
 18 Q And so the point you're making is that in  
 19 Georgia there is a category of federal, state, local  
 20 government employees IDs that Georgia permits,  
 21 Wisconsin does not. That is one of your points?  
 22 **A Yes. I have many points, but that's one**  
 23 **of them.**  
 24 Q Okay. And then I see that Georgia does  
 25 not permit the U.S. citizenship certificate, but

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1 Wisconsin does?  
 2 **A That's correct.**  
 3 Q Okay. How do -- I know that this is --  
 4 you said that Table 16 was Hood's table.  
 5 Could you describe for me how Virginia's  
 6 law aligns with these states?  
 7 **A You know, you don't want me doing this**  
 8 **from memory. I've been through so many of these**  
 9 **laws. But I believe I comment on Virginia's law in**  
 10 **here.**  
 11 Q Okay.  
 12 **A So if we can just turn to what I said**  
 13 **about it.**  
 14 Q Okay.  
 15 **A I think that would be better than relying**  
 16 **on my memory.**  
 17 **Ah. Here is what I say about the Virginia**  
 18 **law. I do remember.**  
 19 **In Virginia you can get a free photo ID**  
 20 **without documentation. You just go to the state**  
 21 **office and affirm I'm Allan Lichtman and I get a**  
 22 **free ID. That's fundamentally different, obviously,**  
 23 **than Wisconsin.**  
 24 Q But as we talked about earlier, you didn't  
 25 remember the number of people that used that option,



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1 but it was very small number?

2 **A I don't remember the number. But it is**

3 **available in Virginia. However many use it and will**

4 **use it over time, who knows? I don't think there's**

5 **been a presidential election yet that's been**

6 **conducted in Virginia under the new voter photo ID**

7 **law. Which is also in the hands of a judge.**

8 Q Has their law been in place yet, in

9 effect?

10 **A I think just for 2014 and '15.**

11 Q Okay. Let's talk about just a couple

12 alternatives that have come up recently as law

13 changes that are proposed. One of which is online

14 voter registration in Wisconsin. A bill has been

15 proposed?

16 **A Right.**

17 Q Have you followed that?

18 **A I thought you could do, but maybe I**

19 **misread. Maybe I read that a bill was proposed**

20 **rather than that being already an option. But I am**

21 **happy to take your representation of it.**

22 Q Sure. So you're not aware of the bill,

23 the specifics of it?

24 **A No. Again, I probably, when I was reading**

25 **through the material, I thought it was already**

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1 **adopted. But now you're telling me it's just being**

2 **considered.**

3 Q Okay.

4 **A I am not aware of the details of it.**

5 Q Okay. In Wisconsin we have the option of

6 same-day registration.

7 **A That's correct.**

8 Q On election day.

9 **A Yes.**

10 Q How does that impact, you know, whether

11 Wisconsin is a very permissive or not so permissive

12 state in terms of its registration practices, in

13 your mind?

14 **A Well, that's, I think -- I don't know**

15 **about the word "permissive," it carries certain**

16 **connotations to it.**

17 **But let's say open state with respect to**

18 **registration, absolutely. That's one of the reasons**

19 **why Wisconsin has ranked so high on election**

20 **administration and ranked so high on voter turnout**

21 **as part of my analysis of a system that wasn't**

22 **broken and didn't need to be fixed.**

23 Q Is election day registration common or

24 uncommon in terms of how many states have it?

25 **A It's not common, but it's increasingly**

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1 **common. You've had a trend in recent years towards**

2 **election day registration.**

3 **I'm not sure of the exact number now**

4 **because it is a moving target. There may be**

5 **approximately a dozen states have adopted same-day**

6 **registration.**

7 Q And is there also a trend moving towards

8 automatically registering voters when they take

9 certain actions?

10 **A Well, I don't know if you would call it a**

11 **trend. But Oregon adopted that very recently. And**

12 **I believe it was path-breaking for Oregon to do**

13 **that. I'm not sure any other state had done that to**

14 **that point, at least in modern history.**

15 **And I believe it's being considered**

16 **elsewhere.**

17 Q And you mentioned that in Maryland you're

18 able to vote from your home electronically.

19 Correct?

20 **A I haven't tried it. So I don't know. But**

21 **I'm going to try.**

22 Q Is it something new?

23 **A I've never voted absentee before, so I**

24 **can't say.**

25 Q Okay.

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1 MR. KAWSKI: Why don't we take a break

2 now. I'm going to go through my notes, but we're

3 almost done.

4 MR. SPIVA: Okay. Great.

5 (A recess was taken.)

6 MR. KAWSKI: I have no further questions.

7 MR. SPIVA: Oh, okay. That was easy. All

8 right. Thank you. I don't have any questions.

9 MR. KAWSKI: All right. We're all set.

10 Done.

11 COURT REPORTER: Mr Spiva, do you need a

12 copy?

13 MR. SPIVA: Oh, yes.

14 MR. KAWSKI: I just need a PDF copy.

15 (Off the record at 2:02 p.m.)

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Debra Ann Whitehead, the officer before whom  
3 the foregoing deposition was taken, do hereby  
4 certify that the foregoing transcript is a true and  
5 correct record of the testimony given; that said  
6 testimony was taken by me stenographically and  
7 thereafter reduced to typewriting under my  
8 direction; that reading and signing was not  
9 requested; and that I am neither counsel for,  
10 related to, nor employed by any of the parties to  
11 this case and have no interest, financial or  
12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my hand and  
14 affixed my notarial seal this 1st day of May, 2016.

15  
16 My commission expires:  
17 September 14, 2018

18  
19 -----

20 NOTARY PUBLIC IN AND FOR THE  
21 DISTRICT OF COLUMBIA

22  
23  
24  
25

<b>A</b>			
<b>ability</b>	168:19 172:4,17	<b>accolade</b>	132:13 133:6 139:1
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21:7 24:14 27:3	<b>absent</b>	<b>accounts</b>	<b>address</b>
30:21 34:3,11,12,12	117:8	52:11	27:13,15,16,18,21 63:8
34:16,21 35:5 36:17	<b>absentee</b>	<b>accredited</b>	<b>addressed</b>
36:18,21,22 37:5,13	28:21,23,24 29:1,23,24	186:7	75:25
37:14 38:7,10,12	30:4,6,9 31:1,2,11,13	<b>accurate</b>	<b>addresses</b>
39:14 42:6 43:12	31:18 32:6,10,14,15	124:8,11 148:7 174:14	70:14 120:14
44:14 46:8,9,14,15	32:21,23,24,25 33:1,4	<b>accusing</b>	<b>addressing</b>
48:24 51:22 52:16,22	33:9,16,17 34:6,18,19	102:24,25	78:20
54:14,22 56:16,19,22	36:3,5 61:8,15,16,21	<b>acknowledge</b>	<b>Adelman</b>
57:11,13 58:11 59:13	62:2,9 65:5 97:2	97:10 170:18	85:24
60:14 64:13,14,17	127:12 162:23 177:19	<b>across</b>	<b>adequately</b>
65:13 66:4 69:5,9	177:22 191:23	109:6 117:19 157:17	164:18
71:11 72:6,10,16 73:9	<b>absolutely</b>	<b>act</b>	<b>administration</b>
74:10,16 77:1 78:9	19:9 23:20 31:20 44:5	48:5 87:13 99:2,3,6,9	19:25 30:20 43:21
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