

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

-----:
ONE WISCONSIN INSTITUTE, INC., : Case No.
CITIZEN ACTION OF WISCONSIN :
EDUCATION FUND, INC., RENEE M. : 15-cv-324
GAGNER, ANITA JOHNSON, CODY R. :
NELSON, JENNIFER S. TASSE, :
SCOTT T. TRINDL, MICHAEL R. :
WILDER, JOHNNY M. RANDLE, DAVID :
WALKER, DAVID APONTE, and :
CASSANDRA M. SILAS, :

Plaintiffs, :

vs. :

JUDGE GERALD C. NICHOL, JUDGE :
ELSA LAMELAS, JUDGE THOMAS :
BARLAND, JUDGE HAROLD V. :
FROELICH, JUDGE TIMOTHY VOCKE, :
JUDGE JOHN FRANKE, KEVIN J. :
KENNEDY, MICHAEL HAAS, MARK :
GOTTLIEB, and PATRICK FERNAN, :

all in their official :
capacities, :

Defendants. :

-----:
- - -
Thursday, April 14, 2016
- - -

Oral sworn deposition of NOLAN
McCARTY, Ph.D., held at the Carnegie Center
Executive Suites, 300 Carnegie Center,
Suite 150, Princeton, New Jersey, commencing
at 9:27 a.m. before Sharon L. Martin, RPR,
CCR-NJ, Notary Public.

A P P E A R A N C E S :

PERKINS COIE
BY: ELISABETH C. FROST, ESQUIRE
700 13th Street, NW
Suite 600
Washington, DC 20005-3960
(202) 654-6256
efrost@perkinscoie.com
Counsel for the Plaintiffs

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE
BY: GABE JOHNSON-KARP, ESQUIRE
17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
(608) 267-8904
johnsonkarp@doj.state.wi.us
Counsel for the Defendants

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W I T N E S S I N D E X

TESTIMONY OF: NOLAN McCARTY, Ph.D.

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E X H I B I T S

EXHIBIT NAME DESCRIPTION PAGE
McCarty-1 Journal article 19
McCarty-2 Expert report 32
McCarty-3 Nolan McCarty's Curriculum Vitae 42
McCarty-4 Article, Voting Costs and Voter Turnout in Competitive Elections 68
McCarty-5 Rebuttal Report 169

(Exhibits attached to transcript)

- - -

P R O C E E D I N G S

NOLAN McCARTY, Ph.D., having
been duly sworn, was examined and testified
as follows:

- - -

EXAMINATION

- - -

BY MS. FROST:

Q. Professor McCarty, is it okay to
refer to you as Professor McCarty?

A. Yeah, better than Doctor.

Q. My name is Elisabeth Frost. I'm an
attorney with the law firm of Perkins Coie.
And I represent the Plaintiffs in this
matter.

I know you've been deposed before.
But let's spend a few minutes talking about
some ground rules, just to make sure we're on
the same page. Okay?

A. Okay.

Q. I will be asking you questions and
you'll be answering them. And the court
reporter will be writing down my questions
and your answers. Your answers to my
questions need to be audible to ensure an

1 accurate record of the deposition. Okay?

2 A. Okay.

3 Q. Please wait for me to finish my

4 questions before your answer. This is also

5 to make life easier for the court reporter.

6 Okay?

7 A. Okay.

8 Q. And I will do my best not to cut

9 you off as well. And if it seems like I'm

10 doing that, please let me know and I won't be

11 offended. It's sometimes hard to transition

12 from normal conversational patterns into a

13 deposition pattern. Okay?

14 A. Okay.

15 Q. Sometimes my questions will not be

16 perfectly clear. I try and make them clear,

17 but I'm not always successful. If I ask a

18 question you don't understand, please tell me

19 that you do not understand it and I will try

20 and clarify. Okay?

21 A. Okay.

22 Q. And, similarly, I find that in

23 expert depositions often I use phrases that

24 maybe the expert wouldn't use. The expert

25 has a sense of what I'm saying, but it's not

1 as precise as they would like, and I would

2 ask that you correct me in those situations.

3 Okay?

4 A. Okay.

5 Q. And if I'm using terminology that

6 you don't think is precise or accurate, that

7 you tell me what you think I should be using.

8 Okay?

9 A. Okay.

10 Q. If you answer my question, I will

11 assume you understood it. All right?

12 A. Yes.

13 Q. That was a test.

14 If you need a break at any time for

15 any reason, please say so. If you're in the

16 middle of an answer, I will simply ask that

17 you finish that answer, but then we can take

18 a break. Okay?

19 A. Okay.

20 Q. If when you're answering you think

21 of some documents that might help you

22 remember the answer or give a more accurate

23 answer, tell me. Okay? This isn't a memory

24 test.

25 A. Okay.

1 Q. And I may be able to get those

2 documents. I have some here, but -- but we

3 can work with that. Okay?

4 A. Okay.

5 Q. Sometimes it may happen that you

6 answer a question as completely as you think

7 you can and then later on, maybe minutes,

8 maybe hours you realize, Oh, I would've liked

9 to have expanded on that or added something

10 or clarified. When that happens, let's just

11 get that on the record, right there. Okay?

12 A. Okay.

13 Q. Are you taking any medication of

14 any kind which might make it difficult for

15 you to understand and answer my questions

16 today?

17 A. No.

18 Q. Is there any reason you can think

19 of as to why you will not be able to

20 understand and answer my questions fully and

21 truthfully today?

22 A. No.

23 Q. Okay. Are you familiar with the

24 political science literature that talks about

25 people's decisions about whether to vote as a

1 cost-benefit analysis?

2 A. Yes, I am.

3 Q. What's the general idea that the

4 decision to vote is a cost-benefit analysis?

5 A. So the general idea is that voting

6 carries some benefits. It carries the

7 potential benefit of switching election

8 outcome. And, therefore, the benefits, the

9 probability of changing election outcome

10 times the benefit of that outcome to the

11 voter.

12 There's also other benefits, such

13 as the benefit that accrues from fulfilling

14 one's duty to vote. The benefit that accrues

15 from, the social benefits that accrue from,

16 you know, participating in a community

17 action.

18 So those are the benefits.

19 And then a voter might weigh those

20 against the costs, which include the cost of

21 becoming informed, the cost of becoming

22 registered, the cost of getting themselves to

23 the polls and the costs of, the foregone

24 opportunity cost of if they're voting and,

25 therefore, they're not doing something else.

1 Q. Do you agree that as a general
2 matter when the costs of voting rise,
3 participation rates decline?

4 A. As a theoretical proposition,
5 that's what this framework would apply, but
6 it's an empirical question as to whether or
7 not a particular change in ballots and
8 procedures or electoral procedures measurably
9 increase the costs of voting and whether or
10 not voters are responsive to that particular
11 change in cost.

12 Q. And when you say that's an
13 empirical question, what exactly do you mean?

14 A. I mean that we don't -- we have to
15 observe how voters respond to changes,
16 measure the extent to which they respond to
17 changes and procedures in order to ascertain
18 whether or not the cost was a significant
19 deterrent to participation. Can't be
20 answered in a -- it can't be answered in a
21 theoretical way. It has to be taken to the
22 data.

23 Q. So are you familiar with certain
24 studies that are found when looking at
25 particular data that when certain costs rise,

1 participation rates decline?

2 A. Yes. You know, there are certainly
3 procedures, changes that measurably increase
4 the costs and, therefore, might reduce
5 turnout.

6 Q. And can you give me some examples
7 of those?

8 A. There are -- so there's a lot of
9 studies showing that on rainy days there's
10 less turnout, presumably because the cost of
11 voting is higher, because it's more
12 unpleasant to go to the polls, stand -- stand
13 in line. There are -- you know, there are
14 cross-state studies that correlate
15 participation rates with things like
16 registration policies and other things like
17 that. Looking at the wide variation in
18 voting policies and correlating that across
19 states. So we have some principal, you know,
20 change in electoral rules, could enhance the
21 costs.

22 Other features of the electoral
23 system in terms of mobilization and so forth
24 can increase or decrease the cost of voting.

25 So -- so, clearly, the idea that

1 voting is a cost benefit, can be thought of
2 as a cost-benefit analysis has some validity,
3 but whether or not a particular change in a
4 particular setting has an effect is a -- is
5 an empirical matter that can't really be
6 extrapolated from those previous studies.

7 Q. And have you ever yourself done any
8 analysis about whether particular changes
9 themselves in election laws have caused
10 participation rates to decline?

11 A. Yes, I was an expert witness in the
12 case, the Ohio Democratic Party versus
13 Husted.

14 (Reporter clarification.)

15 THE WITNESS: Husted,
16 H-u-s-t-e-d, where a similar -- mostly
17 changes in the period of early voting, as
18 well as some changes in the process of
19 absentee balloting, whether or not that
20 affected turnout overall and among minority
21 groups.

22 BY MS. FROST:

23 Q. So how did you analyze that in that
24 case?

25 A. I analyzed that by obtaining the

1 Ohio voter file. And then Ohio, like
2 Wisconsin, does not ask voters their race.
3 So I used some statistical procedures to
4 predict the race of each individual. And
5 then I compared voting turnout behavior
6 between 2010, the previous election before
7 the changes in the rules, with 2014, the most
8 similar election after the change in the
9 rules.

10 Q. And in doing that, did you use
11 aggregate or individualized data?

12 A. I used individual data.

13 Q. Okay. And when I say "aggregate or
14 individualized data," what do you understand
15 me to be asking about?

16 A. When you're referring to individual
17 data, it's that the kind of basic unit
18 analysis is a particular voter and
19 information as to whether he or she voted.
20 When you're referring to aggregate data,
21 you're looking at the percentage of people
22 who vote in some kind of geographic unit,
23 like, county, municipality, ward, precinct,
24 census track, census block.

25 Q. Okay. Outside of the expert

1 witness work that you did in Ohio, have you
2 yourself ever analyzed whether the costs of a
3 particular election change have caused
4 participation rates to decline?

5 A. I've done work on turnout and
6 participation. I've not done specific
7 evaluations of particular election law
8 changes.

9 Q. And when you say you've done work
10 on turnout and participation, what has that
11 work been about?

12 A. That work has been about kind of
13 long-term trends in the relationship between
14 income, and citizenship, and voting in
15 national elections.

16 Q. Can you give me a more specific
17 example of some of your work in this area?

18 A. So my work in that area uses the
19 census current population study, which asks
20 questions each November about turnout. And
21 I've used that study to look at the
22 relationship between income and voting; Do
23 higher income individuals vote more often
24 than lower income voters? That fact is
25 something that's well-documented, but my work

1 is basically to look, to see whether there --
2 there was a trend in that area; whether it
3 was increasingly true that high income
4 voters were increasingly more likely to vote
5 than lower income voters.

6 Q. So when you say that fact is
7 more -- is well-documented, you mean the fact
8 that higher income voters are more likely to
9 participate in elections than lower income
10 voters?

11 A. Yes. That's true, yes.

12 Q. Okay. And you agree with that
13 statement?

14 A. Yeah, that is true.

15 Q. Now, I understand that it's an
16 empirical question, but I -- as I'm -- in
17 a -- as a general matter, is it possible that
18 small changes to the cost-benefit calculation
19 can have significant effects on turnout
20 rates?

21 A. In theory, in theory, in theory,
22 it's possible. But it -- the effect of a
23 small change in the cost depends on lots of
24 factors. If it's a small change in cost of
25 people who are very unlikely to vote in the

1 first place, then it would not have an effect
2 on turnout. If it's a small change in cost
3 of people that are very likely to vote, then
4 it would not have a very large change in
5 turnout. So it would have to be a very -- it
6 would have to be a change in cost to the
7 marginal voters, somebody who's more or less
8 indifferent between voting and not voting.

9 And since we need data to assess
10 who's a high income vote -- who's a
11 high-propensity voter, who's a low-propensity
12 voter, who the marginal voter is, what the
13 change in costs are, whether it's likely to
14 hit those people for which they're roughly
15 indifferent between voting and not voting,
16 it's just very hard to say from first
17 principles, whether or not a particular
18 change should have a substantial impact on
19 turnout.

20 Q. So when you say a small change of
21 costs on people very unlikely to vote is
22 unlikely to have, and I don't want to put
23 words in your mouth, but are you saying it's
24 unlikely to have a significant effect on
25 voter turnout or any effect on voter turnout?

1 A. Well, taking the extreme, if
2 there's a person who's not going to vote
3 irregardless of the costs, then it has -- no,
4 it has no, it has no impact. Strictly
5 speaking, if it's someone who's going to vote
6 irregardless, it's going to have no impact.
7 The only way it would have any impact is if
8 it hit the kind of the disproportionate hit,
9 the marginal voters, the people who are, you
10 know, on the fence about voting or not
11 voting.

12 Q. As an analytical matter, how do you
13 identify those people who are never going to
14 vote, irregardless of the costs?

15 A. Typically, a political scientist
16 estimates statistical models using known
17 correlates of voting behavior, and can
18 estimate statistical models predicting
19 whether or not someone is likely to vote or
20 not.

21 Q. And is that an individualized
22 assessment or an aggregate assessment?

23 A. Well, any time -- I mean, you can
24 be using -- you can be doing it on individual
25 data or aggregate data, but any time you're

1 using a statistical model, it's a -- it's
2 essentially about averages and predictions
3 that individuals may vary and may deviate
4 from the model. So, you know, any
5 statistical model is going to carry some
6 amount of imprecision and error.

7 Q. Do you have a sense as to in
8 Wisconsin how big a percentage of the voting
9 age population is unlikely to ever vote,
10 regardless of the costs?

11 A. No, I don't -- I don't have a -- I
12 don't have a calculation of that sort. You
13 know, we know that, you know, in, say, the
14 very prominent Presidential elections of
15 2008, 2012, you know, the highest turn -- the
16 highest turnout overall in recent U.S.
17 history, I don't believe that the turnout
18 rate, I don't want to say -- I don't want to
19 say what it was. It was only -- it was
20 somewhere in the 70s, so one can imagine
21 there is probably a substantial set of people
22 who even under the most ideal circumstances
23 for voting chose not to vote.

24 Q. And do you have an idea as to what
25 percentage of the voting age population of

1 Wisconsin falls into that marginal range of
2 voters that you were just talking about?

3 A. Well, it's hard to pinpoint exactly
4 what the marginal range would be for a cost
5 change for which the magnitude is uncertain.
6 But, you know, for example, there might be a
7 20-point swing between a Presidential
8 election and a -- and a mid-term election.
9 And, therefore, you know, is a -- is a first
10 order. You know, there tend to be people who
11 are responsive as to whether or not there's a
12 Presidential election on the ballot or not.
13 But that's a huge change, I would argue, in
14 the cost-benefit calculation, because most
15 people see the primary benefit and interest
16 in voting as being participating in the
17 Presidential election.

18 So, you know, even if I said there
19 was 20 percent of the people who are on that
20 kind of margin, we're talking about for a
21 very big change in the electoral context.
22 What the size of the marginal population
23 would be for a very small change in election
24 law is just something I don't know. And,
25 therefore, one has to rely on, you know,

1 statistical studies about whether or not a
2 particular intervention increased or
3 decreased turnout.

4 Q. But you would agree that in a close
5 election, an increase or decrease of turnout
6 of only a matter of points can make a major
7 difference in the outcome of the election,
8 correct?

9 A. Well, by definition, if an election
10 would otherwise be tied, then, you know, any
11 person who didn't vote would switch that
12 election. But there's so many thousands of
13 factors that go into participation turnout,
14 and one would be very hard pressed to state
15 that a particular change in election law was
16 the -- was the cause of a changed election
17 outcome.

18 Q. I'm going to hand you a document
19 that I'm going to ask the court reporter to
20 mark as McCarty Deposition 1.

21 (Exhibit McCarty-1, Journal
22 article, is marked for identification.)

23 BY MS. FROST:

24 Q. Okay. Professor McCarty, if you
25 could take a look at the document that was

1 just handed to you, can you tell me what this
2 document is?

3 A. This is a document, it's a journal
4 article on voter ID laws.

5 Q. And what's the title of the journal
6 article?

7 A. Can Voter ID Laws be Administered
8 in a Race-Neutral Matter.

9 Q. And where was this article
10 published?

11 A. The Quarterly Journal of Political
12 Science.

13 Q. And when was it published?

14 A. 2012.

15 Q. And in 2012, did you have any
16 association with the Quarterly Journal of
17 Political Science?

18 A. Yes, I was one of the Editors in
19 Chief.

20 Q. And how many editors did the
21 Quarterly Journal of Political Science
22 have --

23 A. I believe --

24 Q. -- at that time?

25 A. -- at the time they had four,

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1 either -- there two -- two editors in chief
2 and four other subfield editors.

3 Q. And when you say subfield editors?

4 A. So political science tends to be
5 subdivided into American politics,
6 comparative politics, international relations
7 and political theory.

8 Q. So which subfield editor would have
9 been responsible for this article --

10 A. American politics.

11 Q. And I think we're stepping on each
12 other a little bit. So just if you could
13 wait a second.

14 A. Oh, okay.

15 Q. Thank you.

16 In your role as Editor in Chief,
17 did you generally review and comment on the
18 articles that -- that -- I'm going to call it
19 QJPS; is that okay?

20 A. That's perfect.

21 Q. Okay. Published prior to the
22 publication?

23 A. So let me just outline the -- the
24 process.

25 Q. Okay, please.

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1 A. So upon -- upon submission, I and
2 the other co-editor in chief would review the
3 article and then assign it to a subfield
4 editor. The subfield editor would obtain
5 the -- would obtain the outside peer reviews
6 and then would, upon obtaining them would
7 make a recommendation to the Editorial Board
8 as to whether or not an article should be
9 published or not.

10 And then at that time I would have
11 reviewed the article on that outside peer
12 reviews and decided whether or not to accept
13 the recommendation of the subfield editor.

14 Q. So if I'm hearing you right, it
15 sounds like there are at least two points
16 during this process when you have reviewed
17 the article, and make it to some sort of
18 decision as to whether the article would go
19 forward; is that correct?

20 A. That is correct, yes.

21 Q. Okay. Do you remember reviewing
22 and commenting on this article?

23 A. I do not. I mean, I'm sure that
24 I -- I'm sure that I did. I have some
25 recollection of the paper. But, you know, we

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1 get many, many submissions and publish a
2 number of papers. So I don't have any
3 specific -- I don't have any specific
4 knowledge of what I might have thought of the
5 paper when it went out. I -- I certainly
6 would not have published it had I not thought
7 the analysis was sound and if it did not have
8 a good strong endorsement from the outside
9 peer reviews and the subfield editor.

10 Q. Okay. If you can look at the first
11 page of this article and you see the last
12 line of the acknowledgements, Finally, we
13 thank the QJPS editors and an associate
14 editor for their detailed comments.

15 A. Yes.

16 Q. Okay. Is it fair to say that it
17 sounds like the QJPS editor, you would have
18 been one of those editors?

19 A. Yes, that's -- that's correct.

20 Q. And does this refresh your
21 recollection that you offered detailed
22 comments on this article?

23 A. It doesn't -- it does not reflect
24 my recollection, because the way things would
25 work is that an associate editor would often

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1 write up the comments and then they would
2 come out oftentimes under cover of a letter
3 from the editors. So sometimes I would add
4 comments, sometimes I would subtract
5 comments. But to the extent to which I
6 offered substantial comments, I just don't
7 know, because -- and they wouldn't have
8 known. So, you know, it doesn't really tell
9 me how engaged I was in this particular
10 manuscript.

11 Q. But if you would add or subtract
12 comments, that indicates to me that you read
13 the comments before they went out; is that
14 correct?

15 A. Oh, yeah. Yeah. No, I read -- I
16 read the comments. I may well have
17 drafted -- I may well have drafted the
18 letter, but whether or not the gist of the
19 comments were produced by me or by the
20 associate editor, it's just something I don't
21 recall.

22 Q. Okay. Let's turn to page 4 of
23 Exhibit 1, please.

24 And do you see the second -- I'd
25 like to draw your attention to the second

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1 full paragraph where it states, Because of
2 the obvious partisan consequences of the
3 stringency of ballot access laws generally;
4 do you see that line?

5 A. Yes.

6 Q. Do you agree that the stringency of
7 ballot access laws can have partisan
8 consequences?

9 A. In theory, yes.

10 Q. Let's continue to look at the same
11 sentence on page 4, the beginning of the
12 second full paragraph. And do you see where
13 it says, as well as the incentives partisans
14 have to manipulate the composition of the
15 electorate?

16 A. I'm sorry. Where, where are we
17 again?

18 Q. It's the same paragraph, the one
19 that begins, Because of the obvious partisan
20 consequences of the stringency of ballot
21 access laws generally and ID requirements in
22 particular. And I'd like to draw your
23 attention to the second part of that sentence
24 that reads, as well as the incentives
25 partisans have to manipulate the composition

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1 of the electorate.

2 A. Yes, I see that.

3 Q. Do you agree that partisans have
4 incentives to manipulate the composition of
5 the electorate?

6 A. In principle, yes.

7 Q. Let's turn to page 29 of Exhibit 1,
8 please. I'd like to draw your attention to
9 the last line in the first full paragraph on
10 that page which reads, Further, United States
11 elections are administered by political
12 partisans who have powerful incentives to
13 manipulate the composition of the electorate.

14 Do you see that sentence?

15 A. Yes, I see that sentence.

16 Q. Do you agree that United States
17 elections are administered by political
18 partisans who have powerful incentives to
19 manipulate the composition of the electorate?

20 A. It -- it varies, the extent to
21 which partisanship plays a role. And
22 election administrations is obviously going
23 to vary, be contextual. Partisans have an
24 incentive perhaps to manipulate the
25 composition of the electorate. Whether in a

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1 particular context that incentive is
2 permitted to be acted upon, I would say
3 varies.

4 Q. And what types of political
5 partisans have an incentive to manipulate the
6 composition of the electorate?

7 A. Presumably those who would like to
8 run and win office.

9 Q. Okay. So it could include members
10 of the State Legislature who enact election
11 laws?

12 A. Perhaps, yes.

13 Q. And it could include local
14 elections officials?

15 A. Perhaps. But, again, depending on
16 how those electorate -- election officials
17 are chosen and professionalized.

18 Q. And what are some of the incentives
19 that political partisans might have to
20 manipulate the composition of the electorate?

21 A. I'm sorry. What do you mean by
22 what incentives?

23 Q. Why would -- I mean, it's -- it's
24 obviously a fairly obvious proposition, but
25 I'd like --

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1 A. Yes.

2 Q. The question is, why would a
3 political partisan might want to manipulate
4 the composition of the electorate?

5 A. Well, if the -- if the composition
6 of the electorate had gave them advantages
7 for winning office through increasing the
8 size of their constituencies or decreasing
9 the size of other constituencies, that would
10 benefit them.

11 Q. Okay. So how might the composition
12 of the electorate be manipulated to serve
13 Republican partisan interests?

14 Or to put it in your words, how
15 might a Republican partisan increase or
16 decrease the size of the Republican
17 electorate?

18 MR. JOHNSON-KARP: Object to
19 form.

20 THE WITNESS: I mean, the way
21 in which any party would get an advantage
22 would be to find ways to get their partisans
23 to turn -- make it easier for their partisans
24 to participate and more difficult for the
25 other partisans to participate.

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1 BY MS. FROST:

2 Q. Okay. And what types of voters

3 tend to support Republican candidates?

4 A. Republican voters.

5 Q. Can you give me any information

6 about the typical demographics of Republican

7 voters?

8 A. Typically, Republican voters are

9 somewhat higher income. Somewhat more

10 educated, except they're less likely to have

11 a college degree than Democratic voters, but

12 more likely to have -- more likely to have a

13 post-high school education. They tend to be

14 whiter. They tend to live in suburban rural

15 areas. They tend to be more socially

16 conservative. They tend to be econom -- more

17 economically conservative.

18 Q. What about age, does age factor

19 into the Republican electorate at all?

20 A. I believe, yes, that Republican

21 voters tend to be older.

22 Q. What, in your opinion as a

23 political scientist, would be the best

24 evidence that laws were passed with the

25 intention of manipulating the composition of

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1 the electorate to serve partisan interests?

2 A. The best evidence would be that

3 there was a change in the laws that was

4 promoted by one party. And that that

5 resulted in a measurable change in election

6 outcome through either increasing the turnout

7 of the favored party or decreasing the

8 turnout of the opposed party.

9 Q. What if you had statements from

10 Legislatures who enacted the law, saying they

11 were meant to make it harder for certain

12 types of voters to vote; would that be good

13 evidence?

14 A. That may be evidence that there was

15 some intent. I'm not sure that that would

16 necessarily be evidence that the procedure

17 that they chose had effectively done what

18 they thought it was going to do.

19 Q. Now, you don't offer an opinion in

20 your report or in this case at all about

21 whether the laws at issue were passed of

22 partisan intent, do you?

23 A. No, I don't.

24 Q. Do you have an opinion as to

25 whether these laws were passed of partisan

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1 intent?

2 A. I believe that the laws that passed

3 were partisan. I mean, obviously the votes

4 were partisan. Whether or not that was

5 explicitly with the purpose of decreasing the

6 turnout of opposition groups or simply

7 because the Republican party nationally has

8 made ballot security a key part priority, I

9 couldn't -- I couldn't tell you.

10 Q. Are you aware of recent statements

11 made by Wisconsin politicians and aides of

12 former Wisconsin politicians that have

13 publicly acknowledged that the intent was, in

14 fact, to suppress certain types of voters?

15 A. No, I'm not aware of those

16 statements.

17 Q. Now, you do state in your report

18 that you can evaluate the available evidence

19 of whether there was any partisan effect,

20 correct? Actually, you know what, scratch

21 that. Let's -- I'll give you your report.

22 I'm not going to --

23 A. Okay.

24 Q. -- ask you to remember a sentence

25 in the middle of the report.

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1 A. Okay.

2 Q. I am handing you a document that I

3 will ask the court reporter to mark as

4 McCarty Exhibit 2. And I'm going to do you a

5 favor and give you the one that's not going

6 to poke a hole in your finger, because I

7 stapled some of these wrong. This one,

8 though, you have to be careful.

9 (Exhibit McCarty-2, Expert

10 report, is marked for identification.)

11 BY MS. FROST:

12 Q. Do you have the document that's

13 been marked as Exhibit 2?

14 A. Yes, I do.

15 Q. And can you tell me what that

16 document is?

17 A. It's my expert report in this case.

18 Q. I'd like to draw your attention to

19 page 5 of this report.

20 (Off-the-record discussion.)

21 BY MS. FROST:

22 Q. I actually misspoke, I'm sorry,

23 it's not page 5 that I want you to look at.

24 It's the bottom of page 19.

25 Do you see the beginning, the

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1 sentence that gets cut off at the bottom of
2 page 19, While it is beyond the scope --

3 A. Yes.

4 Q. -- of my report to assess claims
5 about partisan intent, I can evaluate the
6 available evidence of whether there was any
7 partisan effect.

8 A. Yes.

9 Q. Okay. And then the next line that
10 says, Ideally, one would like to have data on
11 individual voter partisanship.

12 And then I'm jumping on the next
13 line, Without individual data, I have, I
14 assume "tested" is what you meant to say?

15 A. Or -- or "to test."

16 Q. "I have to test," okay, for
17 partisan effects in a more indirect way using
18 aggregate data.

19 Do you see that line?

20 A. Yes.

21 Q. Okay. So to do this, to test the
22 partisan effect of these laws, you looked at
23 the 2010 and 2014 gubernatorial elections; is
24 that correct?

25 A. That's correct, yes.

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1 Q. And both elections involve the same
2 Republican candidate for Governor, correct?

3 A. Yes.

4 Q. And that was Scott Walker?

5 A. Yes.

6 Q. Do you know how many of the people
7 who voted for Walker in 2010 identified as
8 Republicans?

9 A. No, I don't.

10 Q. Do you know how many of the people
11 who voted for Walker in 2014 identified as
12 Republicans?

13 A. No.

14 Q. Do you know how --

15 A. I'm aware it's reported in Alan
16 Lichtmann's response to me, but I don't...

17 THE COURT REPORTER: In whose
18 response?

19 THE WITNESS: Alan Lichtmann,
20 L-i-c-h-t-m-a-n-n.

21 BY MS. FROST:

22 Q. But that's not something that you
23 looked at when you did this analysis?

24 A. No, I did not. I did not look
25 at -- I did not look at that. The -- the

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1 correlation between Republican and the Walker
2 vote was very high. It was reported in the
3 Lichtmann vote. So I focused on whether --
4 the extent to which there was any effect on
5 the Walker vote as a more or less proxy for
6 whether it would have had a Republican
7 advantage.

8 I mean, the extent to which --
9 again, in the hypothetical world, the extent
10 to which politicians might want to manipulate
11 election outcomes make it easier for their
12 top of the ticket candidate to win would be
13 in the top of their priority list. So if you
14 don't find an advantage accrued by the
15 partisan candidate at the top of the ballot,
16 suggests to me that's a pretty good test to
17 whether there was a partisan effect.

18 Q. Can you identify any literature for
19 me that endorses that methodology for
20 analyzing partisan effect?

21 A. While we often -- I mean, it's
22 quite standard in political science to -- to
23 look at voting behavior. Voting behavior is
24 almost always for a particular candidate. So
25 it would be hard for anybody to say there's

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1 something about partisan effect that's
2 separate from the electoral effect.

3 I mean, the goal -- I mean, in the
4 hypothetical world of electoral manipulation,
5 the goal is to elect candidates, not
6 necessarily just to turn out partisans. So I
7 think it's actually the most obvious thing to
8 check, would be to see whether it was a
9 change in the vote share of the candidate
10 that was at the top of the ticket of the
11 party who was responsible for a change in the
12 laws.

13 Q. But certainly in the real world,
14 not the hypothetical world, a lot can happen
15 to influence the way voters behave in
16 elections, correct?

17 A. Oh, sure. Sure, absolutely.

18 Q. And in the real world, people don't
19 always vote for Republican candidates in
20 every election, correct?

21 A person who votes for a Republican
22 candidate in one election, may not vote for a
23 Republican candidate in the next election,
24 correct?

25 A. That's true. But the correlation

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1 is very high. And it's been growing for --
 2 been growing for decades. So...

3 Q. But you don't know how many of the
 4 voters who voted for Walker in 2010 regularly
 5 vote Republicans up and down the ticket?

6 A. No, no, I do not. I do not know.

7 Q. And you don't know how many of the
 8 voters who voted for Walker in 2014 regularly
 9 vote Republicans up and down the ticket?

10 A. No, I do not know, do not know
 11 that --

12 Q. And what do --

13 A. -- specifically.

14 Q. What do political scientists mean
 15 when they refer to a crossover voter?

16 A. They refer to someone who is in one
 17 party and votes for a candidate of another
 18 party.

19 Q. And you don't know how many of the
 20 voters who voted for Walker in 2010 were
 21 crossover voters?

22 A. I do not, no.

23 Q. And you don't know how many of the
 24 voters who voted for Walker in 2014 were
 25 crossover voters?

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1 A. No, I don't know that.

2 Q. You don't know how many of the
 3 voters who voted for Walker in 2010 were
 4 independent voters?

5 A. I do not know that.

6 Q. You don't know how many of the
 7 voters who voted for Walker in 2014 were
 8 independent voters?

9 A. No, I don't know that.

10 Q. And you don't know of any of the
 11 same voters who voted for Walker in 2010
 12 voted against him in 2014?

13 A. I don't know that specifically.
 14 Presumably, there were. And there were
 15 presumably ones who voted against him, who
 16 voted for him. But all I can deal with, all
 17 any statistical model can deal with is the
 18 averages.

19 Q. You don't know how many new voters
 20 voted in 2014 that hadn't voted at all in
 21 Walker's last election?

22 A. I know the aggregate increase in --
 23 I know the aggregate increase in turnout and
 24 I report that somewhere in my report. So,
 25 presumably, that would be some reflection of

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1 people who did not vote in 2010, who then did
 2 vote in 2014.

3 Q. It would be some reflection, but
 4 you don't know how much?

5 A. Okay. Could you repeat the
 6 question, please?

7 Q. How many --

8 A. Because I thought it was a perfect
 9 reflection.

10 Q. How many new voters voted for
 11 Walker --

12 A. Okay.

13 Q. -- in 2014 --

14 A. Okay.

15 Q. -- that hadn't voted in the 2010
 16 gubernatorial election at all?

17 A. Okay. That, I do not know. I -- I
 18 know the number of new voters.

19 Q. Okay. Let's take a look at page 22
 20 of your report. And I'm looking at Figure 1,
 21 the scatter plot there. Do you see that?

22 A. Yes.

23 Q. Can you tell me -- there's some
 24 large circles in the lower left-hand part --

25 A. Yes.

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1 Q. -- quadrant of this scatter plot.

2 A. Yes.

3 Q. Can you tell me what those large
 4 circles represent?

5 A. Okay. As indicated in the report,
 6 the -- all of the dots in this figure are
 7 sized proportionately to the number of voters
 8 in the given municipality. So the very large
 9 circles would be the very largest
 10 municipalities. So, presumably, Milwaukee,
 11 Madison.

12 Q. Okay. And where is Green Bay in
 13 this scatter plot?

14 A. I have no idea.

15 Q. Okay. Where is Kenosha?

16 A. I have no idea.

17 Q. Did you weight the data used in
 18 this scatter plot or is it unweighted?

19 A. I think I will need you to clarify
 20 what you mean.

21 Q. You don't know what I mean when I
 22 say --

23 A. No, no, I -- weighted the data used
 24 in the scatter plot, I mean, is not a -- if
 25 you can be more specific about what you're

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1 asking.

2 Q. Did you weight the data that you

3 used in this analysis?

4 A. Yes. So the regression that was

5 reported involved weighting by the size of

6 the municipalities. The line, the dashed

7 line is estimated, weighting the data by the

8 size of the municipalities.

9 Q. Okay. And I must have missed that

10 in your report. Where in your report does it

11 say that you weighted it?

12 A. The solid line in Figure 1

13 represents the best fitting linear

14 relationship between the two sets of vote

15 shares (weighting by the number of 2010 2010

16 votes.)

17 So it's the first line of the third

18 full paragraph on page 21.

19 Q. Okay. Thank you.

20 Okay. Let's take a step back.

21 How many times have you served as

22 an expert witness?

23 A. So I've -- this will be my fifth

24 case. I believe I don't -- if you have my

25 C.V., I can make sure I'm not forgetting

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1 something.

2 Q. I'm handing you a document that I

3 will ask to be marked as McCarty deposition

4 Exhibit 3.

5 (Exhibit McCarty-3, Nolan

6 McCarty's Curriculum Vitae, is marked for

7 identification.)

8 BY MS. FROST:

9 Q. Do you have the document that's

10 been marked as Exhibit 3 before you?

11 A. Yes.

12 Q. And what is it?

13 A. It's my Curriculum Vitae.

14 Q. Okay. And we were talking about

15 how many times you've served as an expert

16 witness.

17 A. Yes.

18 Q. Does this help you remember how

19 many times you've served as an expert

20 witness?

21 A. Let me just make sure.

22 Q. Take your time.

23 A. Yes. So, actually, this would

24 be -- this will be number six. There's one

25 that's not on here, because it was very, very

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1 recent.

2 Q. And can you show me where on your

3 C.V. are you looking at?

4 A. The last page, page 12.

5 Q. I count five.

6 A. There's another case, the Northeast

7 Coalition for the Homeless versus Husted in

8 Ohio. I actually started, more or less

9 finished that case since then and the C.V.

10 And...

11 Q. And so that was number 5 and

12 number --

13 A. That was number 5 and this will be

14 number -- this will be number 6.

15 Q. Okay. If you don't mind just

16 letting me finish asking my question.

17 A. Okay, sure.

18 Q. Thank you.

19 Let's talk very just briefly about

20 each of these. Okay? So it looks like --

21 are these in chronological order?

22 A. I believe so, yes.

23 Q. So the first one, Romo v. Detzner,

24 who hired you in that case?

25 A. The House of Representatives in the

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1 State of Florida.

2 Q. And what was the issue in that

3 case?

4 A. The challenge to the congressional

5 districting maps.

6 Q. And was the House of

7 Representatives of the State of Florida

8 controlled by Republicans at the time?

9 A. Yes.

10 Q. And did you write a report?

11 A. Yes, I did.

12 Q. Did you give a deposition?

13 A. Yes, I did.

14 Q. Did you testify in court?

15 A. Yes.

16 Q. Were you admitted as an expert?

17 A. Yes.

18 Q. And how did the case turn out?

19 A. The congressional map, the

20 congressional maps were ordered to be

21 altered, moved back to the State Legislature

22 to rem -- for a remedy.

23 Q. So the House of Representatives

24 lost that case?

25 A. Yes.

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1 Q. And the House of Representatives
2 were the Defendants in that case?
3 A. Yes, they were one of the
4 Defendants.
5 Q. And I'm sorry, but wasn't the
6 precise question in that case whether or not
7 the maps were an impermissible partisan
8 gerrymander under the Florida Constitution?
9 A. Yes, that was what the case was
10 about.
11 Q. Let's talk about the second case.
12 And, again, we're still looking at Exhibit 3,
13 your C.V. and we're looking at the back page.
14 NAACP v. Husted, who hired you in that case?
15 A. The Secretary of State, the State
16 of Ohio.
17 Q. Is the Secretary of the State of
18 Ohio an elected position?
19 A. Yes, it is.
20 Q. And is the Secretary of State of
21 Ohio -- or was the Secretary of the State of
22 Ohio at that time John Husted?
23 A. Yes.
24 Q. Is John Husted a Republican?
25 A. Yes.

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1 Q. And Husted was the Defendant in
2 that case?
3 A. Yes.
4 Q. What was that case about?
5 A. My involvement in that case
6 revolved -- there may have been other issues.
7 My involvement was related around changes to
8 the early voting period in the State of Ohio.
9 Q. And specifically what about those
10 changes to the early voting period?
11 A. They reduced the early voting
12 period from something like 31 days to
13 25 days.
14 Q. And what were you -- what did you
15 offer an opinion about, about that reduction?
16 A. I was a rebuttal witness to -- to
17 testimony that was offered that suggested
18 that African Americans disproportionately
19 used early voting. Therefore, the reduction
20 would disproportionately harm their access to
21 the ballot.
22 Q. Did you write a report in that
23 case?
24 A. Yes, I did.
25 Q. Did you give a deposition?

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1 A. Yes, I gave a deposition.
2 Q. Did you testify in court?
3 A. No, the case was -- the case was
4 settled.
5 Q. Let's take -- let's talk about the
6 third case. League of Women Voters of
7 Florida v. Detzner, who hired you in that
8 case?
9 A. The Florida State Senate.
10 Q. And was the Florida State Senate
11 controlled by Republicans at the time?
12 A. Yes, they were.
13 Q. And what was that case about?
14 A. It was about a challenge to the
15 State Senate Districting Maps, that they were
16 impermissibly partisan.
17 Q. Again, under the Florida
18 Constitution?
19 A. Under the Florida Constitution,
20 yes.
21 Q. So a similar issue to the one in
22 Romo v. Detzner?
23 A. Yes.
24 Q. And did you write a report in that
25 case?

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1 A. Yes, I wrote a report responding to
2 some simulation evidence provided by
3 Plaintiff's experts.
4 Q. Did you give a deposition?
5 A. No.
6 Q. Did you testify in court?
7 A. No.
8 Q. What was the outcome of that case?
9 A. The case was dropped. The State
10 Senate conceded that there was a problem and
11 went back and redid the maps.
12 Q. The State Senate conceded that the
13 map was an impermissible Republican
14 gerrymander and agreed to withdraw -- to
15 redraw the maps, correct?
16 MR. JOHNSON-KARP: Object to
17 form.
18 THE WITNESS: I'm not sure what
19 the State Senate conceded, but they did
20 decide to re -- redraw the maps.
21 BY MS. FROST:
22 Q. Was it your expert opinion in that
23 case that the State maps were not a partisan
24 gerrymander?
25 A. My testimony was in direct response

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1 to another expert report, which claimed that
2 it was statistically very, very unlikely that
3 the maps were drawn without partisan intent.
4 I challenged the conclusion of that evidence
5 and said that it was possible that the maps
6 could have been drawn without partisan
7 intent. I never weighed in as to whether or
8 not they actually were drawn with partisan
9 intent or not. It was just a direct response
10 to statistical claims by Plaintiff's experts.

11 Q. And similarly, just to go back to
12 that Romo v. Detzner case, did you offer an
13 opinion in that case that the Congressional
14 map was not a partisan gerrymander?

15 A. No. My conclusion was very similar
16 to the State Senate case, that it just simply
17 that -- that it would have been possible to
18 have drawn such maps without partisan intent.
19 I did not conclude whether or not partisan
20 intent was a presence or not.

21 Q. And the Florida Supreme Court
22 concluded in that case that the map was an
23 impermissible Republican gerrymander,
24 correct?

25 MR. JOHNSON-KARP: Object to

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1 form.

2 THE WITNESS: I don't remember
3 exactly what the overall conclusion was, but
4 two districts were required to be redrawn.

5 BY MS. FROST:

6 Q. Is that true after the case went to
7 the Florida Supreme Court?

8 MR. JOHNSON-KARP: Object to
9 form.

10 THE WITNESS: No. Excuse me,
11 I'm sorry, I was -- I thought you were
12 referring to the -- the Circuit Court
13 decision. No, the State Supreme Court
14 actually did rule that it was impermissible,
15 as far as the gerrymander.

16 BY MS. FROST:

17 Q. And let's -- just sort of moving
18 down the list, we're still on Exhibit 3, the
19 Ohio Democratic Party v. Husted; who hired
20 you in that case?

21 A. The Attorney General, State of
22 Ohio.

23 Q. And is the Attorney General in the
24 State of Ohio an elected position?

25 A. Yes, it is.

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1 Q. And who held that position at the
2 time that you were hired?

3 A. I believe it was Michael DeWine.

4 Q. Is Michael DeWine a Republican?

5 A. Yes, he is.

6 Q. What was that case about?

7 A. This case was -- combined a number
8 of challenges to changing Ohio election law.
9 It kind of renewed the challenge to the
10 change in early voting, and also dealt with
11 some changes to procedures for absentee
12 balloting.

13 Q. Did you write a report in that
14 case?

15 A. Yes, I did.

16 Q. Did you give a deposition?

17 A. Yes, I did.

18 Q. Did you testify in court?

19 A. Yes.

20 Q. Was it your -- what -- what was, in
21 a nutshell, your expert opinion in that case?

22 A. My opinion in that case was that
23 the evidence offered of a negative impact on
24 minority voters was not solid. And that the
25 statistical evidence of any detrimental

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1 effect was not -- was not valid.

2 Q. Did you conclude there was no
3 detrimental effect on minorities in Ohio as a
4 result of those changes?

5 A. No, it's very hard to prove, the no
6 effect. So in any time, one is using kind of
7 quantitative scientific evidence, I think the
8 best one can say is there's an absence of
9 evidence for an effect. And that's what I
10 found.

11 Q. And that's similar to your opinions
12 in this case, correct?

13 A. Oh, absolutely.

14 Q. You're not offering an opinion in
15 this case that there is, in fact, no effect
16 on minority voters or any types of voters as
17 a result of the challenged laws in this case?

18 A. That's right. One can't logically
19 use statistical evidence to prove the no
20 effect. All one can do is say there's an
21 absence of evidence for an effect, and that's
22 what I'm testifying to.

23 Q. And then you said there's an
24 additional case in which you have provided
25 expert witness services that is not on your

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1 C.V. and I believe you said the case name was
2 Northeast Coalition for the Homeless versus
3 Husted?

4 A. I believe that's correct. I may be
5 getting the acronym wrong.

6 Q. Is that case also pending in the
7 Federal District Court in Ohio?

8 A. Yes. As far as I know, it may
9 still be going on.

10 Q. They just had trial in that case?

11 A. They just had trial. And I've even
12 gotten word that they've wrapped up, so I
13 don't know.

14 Q. And who hired you in that case?

15 A. The combination of the Secretary of
16 State and the Attorney General.

17 Q. And, again, at that time, the
18 Secretary of State was still John Husted?

19 A. Yes.

20 Q. And the Attorney General was still
21 Mike DeWine?

22 A. Yes, I believe so.

23 Q. What was the case about?

24 A. That case dealt with procedures for
25 absentee balloting. They required

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1 addition -- they required additional pieces
2 of information. It also involved procedures
3 for approving provisional ballots.

4 Q. And what was your expert opinion in
5 that case?

6 A. My expert opinion in that case is
7 that the statistical evidence offered by the
8 Plaintiffs was not sufficient to demonstrate
9 that there had been a deleterious effect on
10 African Americans or other minority voters.

11 Q. Did you write a report in that
12 case?

13 A. Yes, I did.

14 Q. Did you give a deposition?

15 A. No, I did not.

16 Q. Did you testify in court?

17 A. Yes.

18 Q. All right. And then the last one
19 is the one that you're here for today?

20 A. Yes.

21 Q. And I know the answers to those
22 questions, so I'm not going to ask them.

23 A. See if I can do any better on this
24 case than I did on recalling the other cases.

25 Q. When were you first contacted about

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1 this case?

2 A. So I believe my -- the first
3 contact was in late November of 2015. At the
4 time, due to my schedule and the schedule of
5 the case, we determined that I would not be
6 able to participate. Then my understanding
7 is that the timeline of the trial changed and
8 so I was recontacted around the second week
9 of December and then we determined that there
10 would be time for me to file a rebuttal
11 report.

12 Q. And who contacted you?

13 A. Clay Kawski.

14 Q. Briefly summarize for me what you
15 think this case is about.

16 A. What this case is about?

17 Well, it's about -- at least at the
18 level which I've had to engage the details,
19 it's about whether or not a package of
20 changes to Wisconsin electoral law and
21 procedure might have impacted
22 disproportionately the turnout and
23 participation of African Americans or might
24 have had a partisan impact on subsequent
25 elections.

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1 Q. And what were you asked to do in
2 the context of this case?

3 A. I was asked to respond to the
4 Plaintiffs' expert reports in -- with a
5 particular focus on the issues raised in
6 Professor Mayer's report.

7 Q. How much time have you spent
8 working on this case so far?

9 A. I believe I've spent 34 hours, all
10 told.

11 Q. And how much of that time was spent
12 preparing your expert report in this case?

13 A. Preparing the expert report?

14 My guess is about 25 of those
15 hours.

16 Q. Are you pretty confident about that
17 guess?

18 A. Pretty confident, pretty confident.
19 I mean, obviously, some of the -- some of the
20 total that I gave you involves consultations
21 and other things. And that sounds about
22 right.

23 Q. Are you aware that the Complaint in
24 this case was recently amended to include
25 allegations about the manner in which

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1 Wisconsin is implementing its voter ID law?

2 A. No.

3 Q. Isn't it great, sometimes you say

4 no and I just cross off a bunch of questions.

5 MR. JOHNSON-KARP: Do you want

6 to take a break?

7 THE WITNESS: Yeah, yeah, I

8 think that would be great.

9 MS. FROST: Shall we take a

10 quick break? Okay.

11 (Brief recess.)

12 BY MS. FROST:

13 Q. Professor McCarty, I am going to

14 ask you to turn your attention back to your

15 report that you prepared in this case, which

16 has been marked for the purposes of this

17 deposition, McCarty deposition Exhibit 2.

18 Do you have that document in front

19 of you?

20 A. Yes, I do.

21 Q. Okay. Let's turn to page 5,

22 please.

23 I'd like to talk a little bit about

24 your use of the 2010 and 2014 elections and

25 your analysis, okay?

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1 A. Okay.

2 Q. So do you see -- the second

3 sentence on page 5, do you see where you say,

4 There are many good reasons to focus on such

5 a comparison.

6 And by "such a comparison," you

7 appear to mean comparisons of turnout in 2010

8 and 2014?

9 A. Yes, that's what I meant.

10 Q. Okay. Can you tell me what those

11 many good reasons are?

12 A. Well, as I write, the first and

13 perhaps the most important I guess underlies

14 the strategy in Ken Mayer's report, is that

15 the changes in Wisconsin electoral procedures

16 were implemented over the interval between

17 2010 and 2014.

18 Q. Okay. Are there any other good

19 reasons?

20 A. Second, that they're roughly

21 similar elections. Lots of things differ

22 between Presidential elections and mid-term

23 elections. So in comparison of two mid-term

24 elections, seems to be most appropriate so

25 that we're comparing apples and apples.

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1 I know here, though, there's a

2 difference, in that there was a Senate

3 election in 2010, but not 2014. Other than

4 that, they were very similar in terms of the

5 ballot, the contested elections.

6 And the second is that, at least at

7 the top -- the third point is that at least

8 at the top of the ballot the outcomes were

9 roughly similar.

10 Q. What do you mean by that, "at the

11 top of the ballot the outcomes were roughly

12 similar"?

13 A. So the vote share obtained by the

14 Republican candidate, Scott Walker, was

15 approximately the same in both elections.

16 Q. And why is that important for the

17 purposes of your analysis?

18 A. Well, if there were lots of things

19 that differed between the -- the two

20 elections, such that, say, one election was a

21 blowout and one was a squeaker, that could

22 affect turnout, voters are more likely to

23 vote in highly contested elections than less

24 contested elections.

25 If there was a big partisan swing

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1 between the two elections, such that -- for

2 reasons involving optimism, enthusiasm or

3 whatever, one party turned out at very, very

4 high rates and the other party had a

5 disillusionment and disgust, don't have very

6 low rates, other comparison wouldn't be so

7 great.

8 So the fact that they're kind of

9 reruns suggests that it's a fair task to see

10 whether or not there was any impact in the

11 change in laws.

12 Q. Does the fact that the vote shares

13 between 2010 and 2014 remained virtually

14 identical mean that the underlying dynamics

15 of the election and the electorate were

16 necessarily the same between those two

17 elections?

18 A. Not necessarily. It just means

19 that if there were any dynamics that would

20 have skewed one way, they were counteracted

21 by dynamics that skewed in the other way. So

22 they came out as equal. It's the same type

23 of concern you would have with any kind of,

24 you know, statistical analysis. We're only

25 looking at the average effects. Average

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1 effects were about the same, very similar.
2 So I worry less about the idiosyncrasies of
3 each -- each election, given that they at
4 least in the outcomes turn out to be pretty
5 similar.

6 Q. Let's break that down a little bit.
7 I want to make sure I understand what you're
8 saying.

9 You said that if something skewed,
10 I'm not sure I quite caught that.

11 MS. FROST: Actually, could you
12 read the beginning of his response back to
13 me.

14 (At which time the following
15 answer is read:

16 "ANSWER: Not necessarily. It
17 just means that if there were any dynamics
18 that would have skewed one way, they were
19 counteracted by dynamics that skewed in the
20 other way.")

21 MS. FROST: That's fine.

22 Thanks.

23 BY MS. FROST:

24 Q. But you don't know what dynamics
25 skewed one way and what dynamics skewed the

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1 other way?

2 A. No, no. I just know that it
3 appears they cancelled each other out, if --
4 if, in fact, they existed at all.

5 Q. And, in fact, you admit on page 15
6 of your report, that relationships between
7 demographics and turnout may change from one
8 election to the next for reasons unrelated to
9 voting laws, correct?

10 A. That is correct, yes.

11 Q. Now, as we discussed, both 2010 and
12 2014 were mid-term elections?

13 A. That's correct, yes.

14 Q. So how, if at all, does voter
15 turnout differ between mid-term elections and
16 Presidential election years?

17 A. It tends to be lower.

18 Q. Other -- not just a little lower,
19 right, substantial --

20 A. Considerably, it's considerably
21 lower, yes.

22 Q. Okay. And I think earlier today
23 you had said, I mean, it could be as great as
24 a 20 point difference, correct?

25 A. I -- I -- yes, I said that, I

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1 believe that's pretty much correct.

2 Q. Do you know how much of a
3 difference you tend to see in voter turnout
4 between mid-terms and Presidential elections
5 in Wisconsin?

6 A. I've looked at that data. I -- I
7 don't have it -- I don't have it memorized,
8 but I have -- I have looked at it and it
9 seems to be in that ballpark that I just
10 described.

11 Q. Other than the fact the turnout is
12 considerably smaller in mid-term elections
13 than in Presidential years, what differences,
14 if any, have political scientists identified
15 about the composition of the electorate in
16 mid-term versus Presidential elections?

17 A. Mid-term elections tend to have
18 more engaged voters. Kind of the idea is
19 that people who are kind of less engaged in
20 politics overall only choose to vote in
21 Presidential elections. Mid-term electorates
22 are probably -- well, definitely more
23 educated, higher income, more Republican. I
24 think those are the key differences.

25 Q. Is the mid-term electorate

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1 generally whiter than the Presidential
2 electorate?

3 A. Yes, I believe so. Yes.

4 Q. Now, you used this term earlier
5 today, but I want to make sure I understand
6 it. What is a low-propensity voter versus a
7 high-propensity voter?

8 A. So a low-propensity voter would be
9 someone who's very unlikely to vote.

10 Q. Very unlikely?

11 A. Yes, very unlikely. Somewhat
12 unlike -- I mean, I'm using it kind of
13 generally to indicate someone who's not
14 likely to vote.

15 Q. Do we tend to see more
16 low-propensity voters voting in Presidential
17 election years than in mid-term election
18 years?

19 A. Yes.

20 Q. So they do --

21 A. In a relative term.

22 Q. Okay.

23 A. I mean, relatively low propensity.
24 If they're extremely low propensity, no,
25 because they don't vote in either election.

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1 Q. Are low-propensity and high-

2 propensity voters impacted in precisely the

3 same ways by vote treatment?

4 A. Well, the high-propensity voter --

5 I'm sorry. Could you define what you mean by

6 "vote treatments."

7 Q. Well, it's a word I picked up from

8 the literature. So you may have a better

9 sense of it than I do. But my

10 understanding -- well, have you heard the

11 term "vote treatment"?

12 A. Okay. I just wanted to make sure

13 that you meant the same thing that I meant.

14 Q. Why don't you tell me what you mean

15 when you say "vote treatment."

16 A. I would mean some change to

17 election rules.

18 Q. Then that's what I mean, too.

19 A. Okay.

20 Q. So I'll ask the question again, are

21 low-propensity and high-propensity voters

22 impacted in precisely the same way by vote

23 treatments?

24 A. Presumably not.

25 Q. And, in fact, literature has shown

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1 that low-propensity and high-propensity

2 voters are not impacted in the same ways by

3 vote treatments, correct?

4 A. I think it would depend, I think it

5 would depend on what the vote treatment is.

6 Q. Okay. For example, do

7 low-propensity and high-propensity voters

8 respond the same way to get out the vote

9 treatments?

10 A. Again, it depends a lot on the --

11 it depends a lot on the -- on the context.

12 Q. But there are studies showing --

13 A. Sure. And there are probably

14 studies showing -- showing opposite effects,

15 depending on the -- on the context. If -- if

16 it's a low turnout election overall, then

17 high-propensity voters may be more responsive

18 to get out the vote treatments than

19 low-propensity voters. There's a very high

20 turnout election overall, then it's going to

21 be low-propensity voters are on the margin

22 and, therefore, the get out the vote's going

23 to have a bigger impact on them. It just

24 depends on the context.

25 You know, if you think about a --

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1 you know, you think about a voter's

2 propensity to vote, on average for a typical

3 election, how likely they would be to vote?

4 Well, that's going to differ than their

5 propensity voting in a specific election.

6 And what we're calling electoral treatments

7 will -- can only affect those who are on the

8 kind of the margin. So it really depends on,

9 it's a low turnout election, the marginal

10 voter, the one who's just indifferent between

11 voting and non-voting is going to be a higher

12 propensity voter than would be the case if it

13 were a very high turnout election, where the

14 marginal voter is going to be -- tend to be a

15 very low-propensity voter.

16 Q. I think you just said the vote

17 treatments can only affect people who are on

18 the margin. I just --

19 A. Well, I mean, it's only going to

20 have an observable -- observable effect of

21 people in the margin.

22 Q. And by what you mean "people in the

23 margin," again, are you talking about this in

24 the same way you were talking about this

25 earlier this morning, where you were saying

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1 neither very low-propensity or

2 high-propensity voters, you're talking about

3 people in the middle?

4 A. In the middle.

5 Q. Okay. Sometime when I hear

6 "margin," I think people on the sides.

7 A. Yeah. I -- you know, when I say

8 that, I -- I know that might be confusing,

9 but... And that's the way we kind of talk

10 about it in terms of the cost-benefit

11 analysis.

12 Q. Okay.

13 A. When we do cost-benefit analysis we

14 talk about the relation between the marginal

15 benefit and the marginal cost, and the person

16 for which that exact equal would be the one

17 on the margin.

18 Q. Okay. I am handing you a document

19 that I ask be marked as McCarty deposition

20 Exhibit 4.

21 (Exhibit McCarty-4, Article,

22 Voting Costs and Voter Turnout in Competitive

23 Elections, is marked for identification.)

24 BY MS. FROST:

25 Q. Do you have Exhibit 4 before you?

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1 A. Yes, I do.

2 Q. And can you tell me what that

3 exhibit is?

4 A. It's an article called Voting Costs

5 and Voter Turnout in Competitive Elections.

6 Q. And where was this article

7 published?

8 A. The Quarterly Journal of Political

9 Science.

10 Q. And when was this article

11 published?

12 A. 2010.

13 Q. And were you the Editor in Chief of

14 the Quarterly Journal of Political Science --

15 A. Yes.

16 Q. -- in 2010?

17 A. Yes, I was one of the two Editors

18 in Chief.

19 Q. Okay. Please let me finish my

20 questions before you answer.

21 A. I thought I heard a question mark.

22 Q. And that is my fault. Sometimes I

23 have an upturn at the end that is not -- it

24 is a -- it is faking you out. I apologize.

25 Okay. Please turn to page 341 of

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1 this article which has been marked as

2 Exhibit 4.

3 And I would ask that you draw your

4 attention, please, to the first two sentences

5 underneath the heading, External Validity and

6 Competitive Context.

7 Do you see where it says,

8 Heterogeneous effects appear everywhere in

9 studies of political behavior. A

10 get-out-the-vote treatment can affect voters

11 with high latent propensities to vote more

12 than those with low latent propensities.

13 Do you agree with that statement?

14 A. Yes.

15 Q. And going a little bit further down

16 into the paragraph, do you see the sentence

17 that says, These nonlinearities -- how do you

18 think you say that word?

19 A. Linearities.

20 Q. Linearities, thank you.

21 These nonlinearities matter because

22 the magnitude of effects may be different

23 across types of individuals in substantively

24 important ways.

25 Do you agree with that statement?

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1 A. Yes.

2 Q. Now, when you analyzed turnout in

3 this case, you used aggregate data only,

4 correct?

5 A. Of -- when I analyzed turnout? No.

6 Q. You used individualized data?

7 A. I used the data provided from the

8 voter file from Professor Mayer and evaluated

9 his claims about turnout. And that would

10 have been based on individual data.

11 Q. Okay. Well, let's break this down,

12 because I think maybe you did that in part of

13 your report, but I don't --

14 A. Yes.

15 Q. -- know that you did it in all of

16 it. Okay?

17 A. No, that's -- that's correct, yes.

18 Q. Okay. So if we turn to page 5 of

19 your report, which is Exhibit 2 in this

20 deposition, and I'm looking at the heading

21 Section 2, Analysis of Turnout in 2010 and

22 2014. And that section runs for about a page

23 and-a-half. And it ends at the line, In

24 summary there is little-to-no evidence that

25 changes in Wisconsin electoral law depressed

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1 overall turnout between 2010 and 2014; do you

2 see that on page 7?

3 A. Yes.

4 Q. Okay. So for this section --

5 A. All right. This -- this section is

6 based on aggregate data, statewide totals.

7 Q. So by using the aggregate data

8 only, you were not able to distinguish

9 between high-propensity and low-propensity

10 voters, were you?

11 A. No, that's -- that section had a

12 very limited purpose, which was just to

13 demonstrate that contrary to the assertions

14 in various Plaintiffs' reports, turnout in

15 Wisconsin did not decline between 2010 and

16 2014.

17 Q. Okay. So you may have intended it

18 to have a very limited approach, but I

19 actually think it says some interesting

20 things and I'd like to talk to you about

21 that.

22 A. Sure.

23 Q. So, first let's just start with

24 this line that we were just talking about on

25 page 7, There is little-to-no evidence that

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1 the changes in Wisconsin electoral law
 2 depressed overall turnout between 2010 and
 3 2014; do you see that?
 4 A. Yes, I see that.
 5 Q. And we've covered this a bit, but I
 6 just want to make sure I understand.
 7 You write little-to-no evidence.
 8 You are not offering an opinion that the
 9 changes in Wisconsin electoral law at issue
 10 in this case did not depress turnout between
 11 2010 and 2014, right?
 12 A. Yes, I'm arguing that there's an
 13 absence of evidence that it depressed it.
 14 One can hardly know what the counterfactual
 15 would have been absent those changes.
 16 Q. And when you say, One can hardly
 17 know what the counterfactual would have been
 18 absent those changes, what you are saying,
 19 correct, is that you don't know whether
 20 turnout might have been even higher without
 21 those changes to election law, correct?
 22 A. That's -- that's -- that's correct.
 23 Although, I consider some possibilities,
 24 which is that there was an upward trend that
 25 was, say, truncated by the laws, but there's

1 no evidence of an upward -- there's no
 2 evidence of an upward trend before 2010. So
 3 it's not just simply the turnout went up.
 4 That turnout went up was not the sole basis
 5 of -- of that conclusion.
 6 Q. Correct. And we'll talk a little
 7 bit about that in just a moment.
 8 A. Yeah.
 9 Q. Do you consider yourself an expert
 10 in voter turnout?
 11 A. I have done some work on voter
 12 turnout.
 13 Q. What work have you done on voter
 14 turnout?
 15 A. Work that we described -- that I
 16 described earlier in looking at long-term
 17 changes in the relationship between income
 18 and voting at the national level.
 19 Q. Okay. What about voter turnout in
 20 response to specific election laws?
 21 A. I have not done academic work, but
 22 I have testified on that in the cases that we
 23 discussed earlier.
 24 Q. So outside of your expert work, you
 25 have not done work in that area?

1 A. On the evaluation of changes in
 2 election law to turn -- to turnout, no.
 3 However, the methodological issues involved
 4 in doing such analysis are quite similar to
 5 many other things that I've done in other
 6 areas of election law, such as the effect of
 7 reapportionment in gerrymandering.
 8 Q. How is it similar to the effect of
 9 reapportionment in gerrymandering?
 10 A. Well, the statistical procedures
 11 you look at outcomes before an intervention
 12 or it can affect a -- a -- treatment. And
 13 you look at outcomes after and you evaluate
 14 the magnitude of the differences.
 15 Q. And you do that based on aggregate
 16 data only?
 17 A. Well, in the case of -- in the case
 18 of reapportionment and redistricting, it has
 19 to be aggregated if you're looking at it --
 20 you know, the outcomes that you're interested
 21 in are aggregated. Like, how many seats go
 22 to which party.
 23 Q. Right.
 24 But in -- in redistricting you're
 25 talking about voters being assigned to

1 different districts, totally outside their
 2 own control, you're not talking about
 3 individual voter --
 4 A. Yeah.
 5 Q. -- behaviors?
 6 A. Yeah, I'm not talking about
 7 individual voter behaviors. So I'm not doing
 8 an evaluation, but the statistic -- the
 9 statistical processes for evaluating policy
 10 changes is essentially the same, whether
 11 you're talking about individual voters or
 12 aggregate outcomes, like gerrymandering.
 13 Q. But you would agree that when
 14 you're talking about the ways that particular
 15 voting laws affect the electorate is a
 16 different question, because it turns on how
 17 voter behavior changes in response to those
 18 laws?
 19 MR. JOHNSON-KARP: Object to
 20 form.
 21 THE WITNESS: That is correct.
 22 But the procedure is to have a measure of
 23 voter behavior before the laws, a measure of
 24 voter behavior after the laws and compare the
 25 differences before, pre and post.

1 BY MS. FROST:
2 Q. But when you're looking just at
3 aggregate data, you're not looking at how an
4 individual voter behaves before and after the
5 law, you're just looking at the electorate as
6 a whole, which you admit can change from
7 election to election?

8 MR. JOHNSON-KARP: Object to
9 form.

10 THE WITNESS: Yes, that's true.
11 Although, individual behavior can change from
12 election to election having nothing to do
13 with the changes. So that's why we evaluate
14 whether it's a change on average.

15 So the real question about
16 individual versus aggregate is not about
17 whether or not you'd want to evaluate it by
18 comparing a pre and post, it's about whether
19 you were concerned about aggregation bias
20 associated with aggregating individual
21 behavior to aggregate levels.

22 BY MS. FROST:
23 Q. So tell me about aggregation bias,
24 what does that mean?

25 A. So aggregation bias refers to the

1 fact that there are logical reasons to be
2 concerned about drawing inferences about
3 individual behavior from aggregate behavior.
4 So, for example, suppose you saw a decline in
5 turnout in heavily African American
6 municipalities. One would not necessarily be
7 able to say that's because African Americans
8 as individuals lower their frequency of
9 voting or whether that whites who live in
10 those heavily African American municipalities
11 changed their behavior.

12 Q. Did you in this case look at
13 changes in turnout in municipalities that
14 were heavily African American versus
15 municipalities --

16 A. Yes, I did, given the -- given
17 the -- given the available data, I did -- was
18 forced to do an analysis of the aggregates.
19 The individual level data on partisanship,
20 which Professor Ghitza says was provided to
21 the -- Professor Mayer, was not made
22 available for me to do that analysis. So...

23 Q. I'm sorry. You looked at that on a
24 municipal-by-municipal basis?

25 A. Yes.

1 Q. Where is that?

2 A. That's Section 4.

3 Q. What page in Section 4, starting?

4 A. It starts on page 19. So the
5 turnout comparison actually is in Figure 2 on
6 page 23.

7 Q. But this isn't looking at it based
8 on race, this is looking at it based on
9 partisanship, correct?

10 A. Oh, okay. I thought the question
11 was more generally about whether I used
12 aggregate data at the municipal level. Yes,
13 I did, but not -- not -- not on race. I -- I
14 misheard the question.

15 Q. And would you agree that African
16 American voters might behave differently in
17 urban areas than they do in rural areas in
18 response to changes in election laws?

19 A. That's -- that's -- that's possibly
20 true, but would -- would they act differently
21 than whites in rural areas or whites in urban
22 areas is the question that we'd want to know.

23 Q. But you didn't ask that question?

24 A. I didn't -- I did not ask that, I
25 did not ask that question.

1 Q. If what one is trying to do is to
2 determine whether certain election laws make
3 it more difficult for voters of a certain
4 race to participate in elections, how is
5 looking at aggregate data on overall turnout
6 useful in answering that question?

7 A. It is a first step in evaluating
8 whether or not the change in election law had
9 an im -- had an impact on particular racial
10 groups. You want -- might want to know
11 whether it had an impact overall.

12 It's in principle the change in
13 election law could have affected white
14 voters, as well as African American voters.
15 And so that's the first section, just simply
16 took a look at, is there any evidence, this
17 kind of macro level that turnout was
18 suppressed and that turnout was lower in 2014
19 than in 2000 -- in 2010. It does not,
20 section does not claim to address the
21 question about whether or not there's a
22 racially disparate impact. It's just a
23 question of getting the facts into the record
24 that turnout surged between 2014 and 2010.
25 And indicated that that surge was much

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1 greater than any previous surge in Wis -- in
2 Wisconsin history. And, therefore, is not
3 consistent with just a continuation of a
4 trend.

5 Q. Did you look at whether there was a
6 racially disparate impact between 2010 and
7 2014?

8 A. No. I evaluated the -- the
9 evidence that Professor Mayer provided and I
10 questioned and pointed to several reasons to
11 be skeptical of his results.

12 Q. But your results show that the
13 disparity between turnout -- for the
14 disparity in turnout between white voters and
15 black voters and white voters and Hispanic
16 voters between 2010 and 2014 actually
17 increases, correct?

18 A. So which -- which results are you
19 referring to?

20 Q. Well, let's -- let's talk about
21 Table 1.

22 A. Okay.

23 Q. On page 11. And, again, we're --

24 A. All right. To be clear, this is
25 based on individual -- this is based on

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1 individual data provided by Professor Mayer.

2 Q. That's right. So this is not an
3 analysis based on aggregate data, this is --

4 A. That's...

5 Q. -- an analysis based on
6 individualized data, correct?

7 A. That's correct.

8 Q. Okay. So Table 1 on page 11 -- and
9 this is page 11 of your report prepared in
10 this case, which has been marked as
11 Exhibit 2. This is where we find out if I
12 can really do math. Don't hold your breath.

13 I'm going to give this to you.

14 Okay. Table 1 on page 11 entitled
15 Turnout By Racial Groups in 2010 and 2014; do
16 you see that table?

17 A. Yes.

18 Q. Let's talk about each of these
19 columns. The first one is obviously race,
20 right, white, black, Hispanic?

21 A. Yes.

22 Q. And can you tell me what it is you
23 meant to convey with that column?

24 A. That column presents my estimate of
25 turnout by the various racial and ethnic

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1 groups in the 2014 election.

2 Q. Okay. And as compared to the 2010
3 election, correct?

4 A. Well, 2010 is the next column.

5 Q. Okay. Oh, sorry. By the first
6 column I actually was starting at -- at real
7 basic principles with white, black, Hispanic,
8 total.

9 A. Okay.

10 Q. So can you tell me what you meant
11 to convey with that column?

12 A. The white, black, Hispanic are just
13 the labels for the various racial and ethnic
14 groups for which we're doing analysis.

15 Q. Okay. And how did you define
16 black?

17 A. Black was defined exactly as
18 Professor Mayer had defined it in his study,
19 which was based on a statistical procedure
20 conducted by Catalist to estimate from on the
21 basis of an individual's surname and their
22 census track, the probability that they
23 identified as African American.

24 Q. And the same is true of Hispanic?

25 A. That is correct, yes.

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1 Q. Okay.

2 A. So my definitions are identical to
3 those of Professor Mayer.

4 Q. The second column that is titled
5 2014, what is that column?

6 A. That's -- my estimate of the
7 percentage of turnout in that election by
8 each of the aforementioned groups.

9 Q. And the third column with 2010 at
10 the top?

11 A. That's my estimate of the turnout
12 of each of the groups for the 2010 election.

13 Q. The next column is titled Diff,
14 what is that?

15 A. That's -- D-i-f-f is short for
16 difference. That's just the difference in
17 the proportion of turnout for a group for
18 2014, minus its proportion of turnout for
19 2010.

20 Q. So, to be clear, although there are
21 percentage symbols after the numbers listed
22 in that column, this column is meant to
23 represent a difference in percentage points?

24 A. That is -- that is correct.

25 Q. It's not the difference in

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1 percentage of turnout?

2 A. That is correct.

3 Q. Okay. So, for example, in the

4 column analyzing turnout for white voters, we

5 get the Diff number by taking 72.8 percent,

6 subtracting 65.5 percent and we get 7.3

7 percentage points?

8 A. That is correct, yes.

9 Q. So 65.5 is not 7.3 percent of 72.8?

10 A. That is correct, yes.

11 Q. I'm doing okay so far.

12 A. Yeah, A plus.

13 Q. Thanks.

14 And then you have this last column

15 titled Ratio?

16 A. Yes.

17 Q. And I want to make sure I

18 understand this correctly, I'm not trying to

19 put words in your mouth.

20 A. Sure.

21 Q. I saw the word "ratio" and I

22 automatically had a panic attack.

23 So what this basically means is

24 that the turnout of whites in 2014 was about

25 111 percent of what it was in 2010; is that

1 right?

2 A. Yes.

3 Q. Okay. So, again, and I'm not

4 harping on this, but the difference in the

5 turnout for white voters between 2010 and

6 2014 was about 11 percent?

7 A. 11 percent higher, yes.

8 Q. Okay. Not 7.3 percent?

9 A. No, that's just the percentage

10 point difference.

11 Q. Okay. And I think your table also

12 tells us, but correct me if I'm wrong, the

13 total numbers at the bottom. Does that tell

14 us that in 2010 64.3 percent of registered

15 voters turned out to vote?

16 A. Yes. But based on my estimate,

17 which is based on a weighted sample that I

18 needed to do to correct for the attrition in

19 the file, but given that estimate that's

20 the -- that's what comes out. So it may not

21 match because of the problems associated with

22 the attrition, the roll off, and you might

23 need to re-weight it, may not match official

24 numbers.

25 Q. Okay. And in -- in 2014, the table

1 tells us that 71.3 percent of voters turned

2 out to vote?

3 A. That's correct, yeah.

4 Q. And, again, that's about an

5 11 percent increase in turnout overall

6 between 2010 and 2014?

7 A. Yeah, that's what the table shows.

8 Q. Okay. And you don't try to

9 identify the reasons for that increase in

10 turnout?

11 A. No.

12 Q. Okay. Let's take a closer look at

13 the 2010 column in Table 1 of your report.

14 So you say that in 2010

15 65.5 percent of white registered voters

16 turned out to vote, correct?

17 A. I estimate that that is correct.

18 Q. Okay. And I understand these are

19 estimates. I'm not going to hold you to --

20 you know, I just want to talk what the table

21 says.

22 A. Okay.

23 Q. And the same year, 56.2 percent of

24 black registered voters turned out to vote,

25 right?

1 A. Yes.

2 Q. So in 2010, there was a disparity

3 in turnout between white and black registered

4 voters of 9.3 percentage points?

5 A. That is correct.

6 Q. And your table tells us that in

7 2010 only 4 point -- 43.3 percent of Hispanic

8 registered voters turned out?

9 A. Yes.

10 Q. And if we can compare that to the

11 percentage of white voters that turned out in

12 2010, we see there was a disparity in turnout

13 between white and Hispanic voters of 22.2

14 percentage points?

15 A. That is correct, yes.

16 Q. You don't need the calculator? I

17 needed the calculator. That's why you're a

18 professor and I am not.

19 Okay. Let's keep talking about

20 this table.

21 What I want to talk about now is

22 what it tells us about the disparity in

23 turnout of registered voters for each of

24 these racial groups. What happens to the

25 disparity between white and black turnout in

1 2014?

2 A. In terms of the percentage point

3 gap, it increased slightly.

4 Q. Okay. So if we look at the first

5 column in your Table 1, we have white turnout

6 in 2014 at 72.8 percent, correct?

7 A. That's correct.

8 Q. We have black turnout in 2014 at

9 62.2 percent?

10 A. I'm sorry?

11 Oh, yeah. Okay, yes, black turn --

12 yes.

13 Q. So in 2014, we now have a disparity

14 between white and black turnout of 10.6

15 percentage points?

16 A. That is correct.

17 Q. And so the disparity has gone up

18 since 2010, according to your table?

19 A. Measured in the absolute percentage

20 point difference, yes.

21 Q. What about the disparity in turnout

22 between white and Hispanic voters in 2014,

23 how does that compare to the 22.2 point

24 disparity we observed in 2010?

25 A. I believe it is now 23.6, so it's

1 slightly higher.

2 Q. So it's gone up, too?

3 A. Yes.

4 Q. What -- I think you -- you touched

5 on this, but I just want to make sure. What

6 data did you use to calculate the figures you

7 have in Table 1?

8 A. The data of the State voter file

9 that Professor Mayer provided.

10 Q. Okay. And did you do anything to

11 it before you used it?

12 A. As described in the report, I

13 needed to correct for the attrition, the fact

14 that voters tend to remain on the voter files

15 longer than non-voters. And any attempts to

16 calculate turnout by groups or overall

17 without correcting for it would be severely

18 biased. So I used the procedure as described

19 in the report to weight the individual

20 observations for each group based -- for --

21 for each person and in each county based on

22 the roll-off patterns in that particular

23 county.

24 Q. Did you do anything else, anything

25 not described in your report?

1 A. No.

2 Q. And then let's look at Table 2,

3 which is on page 13 of your report. Now,

4 that table is titled Turnout of Voting Age

5 Citizens, right?

6 A. That's correct, yes.

7 Q. So the difference between Table 1

8 and Table 2, other than the fact that the

9 numbers are a little different, but is in

10 Table 1 we're looking at the turnout by

11 racial groups, so does that include entire

12 populations?

13 What does that mean?

14 What's the difference between

15 racial groups, turnout of racial groups

16 versus the turnout of voting age citizens?

17 A. So the Table 1 is based on the

18 people who are actually in the registration

19 file.

20 Q. Oh, that's right. I'm sorry. Yes,

21 I had a moment.

22 Okay. So just so we're clear,

23 Table 1, Turnout By Racial Groups, this

24 actually means, although it's not in the

25 title, but it is in your report, that this is

1 about registered voters?

2 A. Yes.

3 Q. Okay. While Table 2 is Turnout of

4 Voting Age Citizens. So that would include

5 voting age citizens who are not registered

6 voters?

7 A. That is correct.

8 Q. But it would also include

9 registered voters?

10 A. Yes.

11 Q. So it's a -- just a larger group?

12 A. It's just a larger group.

13 Q. Okay.

14 A. And that's why the turnout numbers

15 are lower.

16 Q. Because registered voters tend to

17 vote at higher rates than non-registered

18 voters?

19 A. Yes. Non-registered voters don't

20 vote, because they're not supposed to.

21 Q. Until they register, until they

22 become registered voters.

23 Why did you do this analysis with

24 regard to voting age citizens, as well as

25 just in regard to registered voters?

1 A. So it was in recognition that some
2 of the changes in Wisconsin law took place
3 might have affected rates of registration.
4 So you wouldn't want -- you'd want to -- some
5 sense of control for that effect.

6 So we'd like to know that even
7 though turnout among registrants went up,
8 it's not because the number of registrants
9 went down. So by benchmarking it to the
10 entire eligible population, we could
11 eliminate that possibility.

12 Q. What -- did you use the same data
13 to calculate the figures you have in Table 2
14 as you did to calculate the figures in
15 Table 1?

16 A. The data on who voted is exactly
17 the same. The denominator, though, is the
18 citizen vote -- the citizen voting age
19 population, which I had to obtain from the
20 census for each of the -- for each of the
21 municipal -- for each of the -- or, actually,
22 for this -- let me be careful here.

23 Yeah, I -- I calculated the
24 statewide citizen voting age populations for
25 each of those elections, for each of the

1 three groups.

2 Q. Okay. And everything you did to
3 the data is described in your report?

4 A. That's correct, yes. As well as
5 all of the statistical programs that I would
6 have used for these calculations were made
7 available.

8 Q. What do you mean by "were made
9 available"?

10 A. As part of my sub -- submission, I
11 submitted all my computer files.

12 Q. Gotcha.

13 Do you identify in your report
14 which -- I'm sorry, what -- it's not
15 software, it's -- what's it called? What --
16 this shows how little I understand computers.

17 A. Well, software. I mean, it's a
18 statistical program, STATA, which is exactly
19 the same one that Professor Mayer used.

20 THE COURT REPORTER: What's the
21 name of it?

22 THE WITNESS: STATA, S-T-A-T-A,
23 all of the letters are capitalized, for
24 trademark reasons.

25 BY MS. FROST:

1 Q. And did you -- do you identify when
2 you use STATA in your report?

3 A. In this report?

4 Q. Yeah.

5 A. I'm not sure that I -- I'm not sure
6 that I do.

7 Q. Did you use STATA in all the same
8 circumstances that Dr. Mayer used STATA?

9 A. I -- I essentially only use STATA.
10 There may be other instances where he did not
11 for some reasons, but they were not things
12 that I was responding to. So everything was
13 done in STATA.

14 In fact, in many cases, my work
15 appended upon the STATA files that he
16 submitted to me, just to make sure that I was
17 doing everything exactly as he had done, up
18 until the point at which I proposed --

19 Q. Okay. But you didn't --

20 A. -- deviations.

21 Q. You didn't use any statistical
22 program other than the STATA for your expert
23 work in this case?

24 A. No.

25 Q. Let's look at Table 2, page 13 of

1 your expert report, which has been marked as
2 Exhibit 2 for the purposes of this
3 deposition. Now, according to this table, in
4 2010, 54.5 of the white voting age citizens
5 in Wisconsin turned out to vote, correct?

6 A. That's correct.

7 Q. Okay. 46.2 of black voting age
8 citizens turned out to vote that same year?

9 A. That's correct, yes.

10 Q. So in 2010 there was a disparity
11 between black and white turnout of voting age
12 citizens of 8.3 percentage points?

13 A. That's correct.

14 Q. Now, in 2014, 59.1 of white voting
15 age citizens turned out to vote, correct?

16 A. That's correct.

17 Q. While 50.2 of black voting age
18 citizens did, correct?

19 A. Correct.

20 Q. Meaning that in 2014, there was a
21 disparity between black and white turnout of
22 8.9 percentage points?

23 A. That's correct, yes.

24 Q. So, again, the disparity went up?

25 A. The percentage point difference

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1 went up, yeah.

2 Q. Right.

3 What about Hispanics as opposed to

4 white voters, let's do the same calculation.

5 It's not even really a calculation. It's an

6 observation, I guess.

7 According to your Table 2, turnout

8 of Hispanic voting age citizens in 2010 was

9 21.4 percent?

10 A. Yes.

11 Q. And that's citizens, right?

12 A. Yeah, the denominator -- the

13 denominator is the number of Hispanic

14 citizens of voting age in Wisconsin.

15 Q. Okay. Now, compared to white

16 turnout of voting aged citizens in 2010,

17 that's a difference of 33.1 percentage

18 points, correct?

19 A. That's correct.

20 Q. And if we look at 2014, that

21 disparity increases, doesn't it?

22 A. It's 26.1 in 2014, that is a larger

23 gap.

24 Q. 36.1?

25 A. 36.1, yes.

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1 Q. You just made my day, having me

2 correct you on some math.

3 A. I'll put the glasses back on. My

4 vision...

5 Q. Now, you say in your report that

6 Wisconsin started with a very high turnout

7 level in 2010; is that correct?

8 A. It's relatively high compared to

9 other states.

10 Q. Okay. And that large gains from

11 states with already high turnout rates are

12 rare; is that something you say in your

13 report?

14 A. Yes, I -- I just noted that of

15 this -- of the states that were in the top

16 ten in 2014, most of them actually saw a

17 turnout fall.

18 Q. So that's what that statement is

19 based on, just how those states in the top

20 ten performed --

21 A. Yes, yes.

22 Q. -- between 2010 and 2014 --

23 A. Yes.

24 Q. -- correct?

25 A. Yes.

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1 Q. You're not making some sort of

2 broader statement about how, let me finish,

3 large gains from states with already high

4 turnout rates are rare?

5 A. No, I would just -- it was just a

6 way of summarizing the point I just made

7 about the data.

8 Q. And, specifically, about the data

9 about states turnout rates between 2010 and

10 2014, correct?

11 A. Specifically, yes, yeah.

12 Q. Now, Wisconsin actually saw a

13 higher increase in turnout in the 2012 recall

14 election, didn't it?

15 A. Higher than what?

16 Q. Than in 2014.

17 A. It had a higher turnout in 2012

18 than 2014? That's possible. Again, I was

19 focused on the comparison 2010, 2014.

20 Q. Okay. But you didn't mention that

21 election in your report, the recall election?

22 A. No, I did not. No. I may have

23 mentioned one -- in one very narrow place,

24 which was to criticize the use of it as a

25 predictor of behavior in 2014, given that

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1 some of the legal changes had taken place

2 prior to the recall election, as I understand

3 it. And, therefore, it wasn't as clean a

4 comparison as comparing the 2010 election in

5 2014, for which none of the changes had taken

6 place --

7 Q. Okay. But we have a --

8 A. -- in 2010.

9 Q. But we have -- I will represent to

10 you, we have a higher overall turnout in

11 Wisconsin in 2012 for the recall election.

12 Okay? Okay?

13 A. Yeah, that does not surprise me,

14 no.

15 Q. Several of the laws challenged in

16 this lawsuit were not in effect at the time

17 of the recall, correct?

18 A. That's my understanding, yes.

19 Q. So then two years later, we have a

20 lower recount in a regular -- a lower overall

21 voter turnout in a regularly scheduled

22 election, correct?

23 A. That is correct.

24 Q. Do you think that is relevant to

25 your analysis?

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1 A. Again, I think that the best kind
2 of industry standard for doing this type of
3 analysis is to compare apples and apples.
4 And I would say that the 2012 recall election
5 was an extremely unusual, high profile
6 election. And, therefore, would be hard to
7 know how to use it in an analysis like this.

8 Q. Well, it was extremely unusual, but
9 certainly doesn't it tell us something about
10 what's happening with the voters in
11 Wisconsin?

12 A. Well, what we would want to know is
13 like suppose we had a recall election without
14 the laws in place and we can compare the two
15 recall elections. That's the best
16 comparison; we don't have that. So I, you
17 know, followed the standard practice of
18 trying to find two elections that are roughly
19 similar, one pre and one post and compare
20 them.

21 Q. That turnout bump in between 2010
22 and 2014, you think that's entirely
23 irrelevant to your conclusion that there's
24 little to no evidence that the laws impacted
25 turnout?

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1 A. I -- I don't think -- I don't think
2 it's helpful for doing the type of comparison
3 that I was doing.

4 Q. Okay. But do you think it's
5 relevant to that question as to whether the
6 challenged laws impacted overall turnout?

7 A. No, it's just too -- it's just too
8 different an election to compare it to
9 2000 -- to 2014. Had there been a
10 Presidential -- had there been a Presidential
11 election at the same time, turnout would have
12 been higher.

13 Q. Even though --

14 A. You wouldn't want to compare that,
15 so...

16 Q. Even though we have Scott Walker
17 again on the ballot, correct?

18 A. Yes.

19 Q. Now, let's look at Table 1 in your
20 report. And let's look at -- this is on page
21 11 of your report, which has been marked as
22 Exhibit 2 in this deposition. The total
23 numbers on the bottom, this chart shows the
24 overall turnout of eligible voters increased
25 between 2010 and 2014 by 7 percentage points,

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1 correct?

2 A. On Table 1?

3 Q. Yeah.

4 A. It's not eligible voters. It's
5 registered voters.

6 Q. Sorry, registered voters, I
7 apologize.

8 So this table shows that the
9 overall turnout of registered voters
10 increased between 2010 and 2014 by 7
11 percentage points, right?

12 A. Yes, that's what the table shows.

13 Q. That's this Diff column?

14 A. Yes.

15 Q. Now, I think you said that some of
16 your academic work has been about turnout in
17 Presidential elections; is that correct?

18 A. And -- and mid-term elections.

19 Q. Okay. Do you happen to know how
20 much voter turnout of registered voters
21 increased in the Presidential election
22 between 2000 and 2004?

23 A. Increased for the Presidential
24 election?

25 I wouldn't know the registered, I

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1 wouldn't be able to tell you the registered
2 number. All my work was based on citizen
3 voting, essentially based on citizen voting
4 age population.

5 Q. Okay. So, and if we look at your
6 Table 2, that's the number we see, the Total
7 column in the Diff column, that's 4.1
8 percentage points. So in Wisconsin what we
9 observe is that the turnout of voting age
10 citizens increased between 2010, 2014 by 4.1
11 percentage points; is that correct?

12 A. That is correct, yeah.

13 Q. So do you remember who ran for
14 President in the general election in 2000 and
15 2004?

16 A. Yes.

17 Q. Who, who ran in 2004?

18 A. That was an election between George
19 Bush and Al Gore. Oh, I'm sorry, you're
20 asking about -- you asked 2004?

21 Q. 2004, yeah.

22 A. Got me off track.

23 Q. 2004.

24 A. 2004, it was John Kerry versus
25 George Bush.

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1 Q. And when we're talking about George
2 Bush, we're talking George W. Bush?

3 A. That is correct, yes.

4 Q. Are you familiar with studies that
5 have shown that -- actually, back up just a
6 second.

7 Would it surprise you to learn that
8 overall turnout increased by 7 percentage
9 points between 2000 and 2004 in the
10 Presidential election?

11 A. That would not surprise me, no.

12 Q. Why not?

13 A. It seems plausible with my
14 recollection of these data.

15 Q. Is that a standard increase in
16 turnout between Presidential election years?

17 A. If that's the number, I would say
18 that's probably larger than the standard
19 increase.

20 Q. And are you familiar with studies
21 that have shown that the main reason that
22 turnout increased by that amount, which I
23 will represent to you is a larger than
24 standard number of increase in turnout
25 between Presidential elections, but are you

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1 aware of studies that have shown the reason
2 or the main reason that turnout increased by
3 that amount, 7 percentage points from 2000 to
4 2004, was the fact that George W. Bush was by
5 2004 an extremely polarizing political
6 candidate?

7 A. I'm not aware of the studies you're
8 referring to.

9 Q. Would you be surprised -- or do you
10 have any reason to doubt that that's the
11 case?

12 A. Yeah, I would have reasons to
13 doubt. There are other big increases in
14 turnout that don't involve polarizing
15 candidates. So you'd have to do a more
16 rigorous comparison than just simply asking
17 voters whether they voted because they found
18 George Bush polarizing.

19 Q. But you don't know whether or not
20 that was -- how those studies were conducted?

21 A. I -- I don't know how, but I don't
22 know any other way at which you would conduct
23 such a study.

24 Q. And you --

25 A. Because polarizing is -- it's hard

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1 to know what that means, other than simply
2 asking somebody whether they find an
3 individual polarizing or not.

4 Q. You yourself have not studied the
5 reasons for the increase in turnout between
6 2000 and 2004, the Presidential election?

7 A. No, I have not.

8 Q. Do you disagree that when you have
9 a particularly polarizing candidate that
10 itself can impact turnout?

11 A. Sure, it's one of the many factors
12 that might increase turnout.

13 Q. And, in fact, that's an example of
14 one factor that might increase turnout that
15 is probably a lot of factors combined, right?

16 A. Yes, yes. One of many factors,
17 yes.

18 Q. And what I mean by that is, for
19 example, when you have a highly polarizing
20 candidate, you might see more turnout because
21 voters are motivated to come out and vote for
22 or against that person?

23 A. Yes, that's possible.

24 Q. You might have more enthusiastic
25 get out the vote efforts?

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1 A. Sure.

2 Q. You might have more money spent in
3 the election?

4 A. It's possible, yes.

5 Q. You might have more ads?

6 A. Yes.

7 Q. You might have more effective ads?

8 A. Perhaps.

9 Q. You might have -- okay. That's
10 what I got there.

11 In 2014 Governor Walker was a very
12 polarizing candidate, wasn't he?

13 A. Yes, I believe that there were
14 strong opinions on both sides.

15 Q. A lot had happened since he was
16 first elected in 2010, right?

17 MR. JOHNSON-KARP: Object to
18 form.

19 THE WITNESS: It was a
20 controversial first term.

21 BY MS. FROST:

22 Q. In fact, there were massive
23 protests involving tens of thousands of
24 people at the State Capitol in 2011 against a
25 bill introduced by Walker, correct?

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1 A. That is correct, yes.

2 Q. And the voters of Wisconsin

3 attempted to get him recalled in 2012,

4 correct?

5 A. That is correct, yes.

6 Q. And before Walker was re-elected in

7 2014, didn't polls show him to have only a

8 very narrow lead, sometimes within the margin

9 of error?

10 A. I recall reading -- I recall

11 reading that.

12 Q. Okay.

13 A. But the final outcome is also

14 something that's close in the marginal of

15 error.

16 Q. You --

17 A. Marginal error polls are usually

18 about four percent. His -- his final lead

19 wasn't very much larger than the margin of

20 error. So we don't know that there's any --

21 so the statement you make could be true, yet

22 the outcome be totally consistent with what

23 those polls were finding at the time without

24 any other change.

25 Q. He won reelection by margin of

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1 almost 6 percentage points, right?

2 A. Okay. Yeah, that -- that's right,

3 I was thinking 5, but, yeah, 5.8.

4 Q. And you don't think the fact that

5 an election that was so contentious that many

6 people thought would be much closer ended up

7 being won by almost 6 percentage points could

8 potentially be due to the fact that

9 Wisconsin's new laws did, in fact, suppress

10 turnout among traditional Democratic

11 constituencies?

12 MR. JOHNSON-KARP: Object to

13 form.

14 THE WITNESS: Lots of things

15 are possible. I just don't see any evidence

16 that that was the reason.

17 BY MS. FROST:

18 Q. Did you control for that

19 possibility in any of the analyses that you

20 conducted for this case?

21 A. I conducted analysis where I looked

22 at variations in turnout across

23 municipalities and I looked for differences

24 in the --

25 (Off-the-record discussion.)

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1 THE WITNESS: I conducted --

2 so, I mean, it wasn't an ideal analysis, but

3 I conducted analyses of the variation between

4 the two elections in 2010 and 2014, both in

5 terms of the Walker share and in terms of the

6 turnout. So one, roughly speaking, would

7 expect that there was a big polarizing

8 effect, that you would see huge differences

9 between 2010 and 2014 in the most Walker

10 municipalities and huge differences between

11 the Walker vote in the least Walker

12 municipalities. I did not find that.

13 Q. But as you said earlier, we don't

14 know whether more people would have voted in

15 this election but for these laws?

16 A. That's true. And, I mean, there's

17 no way to document that counterfactual, one

18 way or another --

19 Q. Your analysis gives us no insight

20 into that?

21 A. I believe some insight. I mean,

22 the -- the increase was very large. It's

23 not -- was not the case that Wisconsin had

24 been trending toward more turnout. And so

25 extrapolating -- there's no trend to

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1 extrapolate. So it's hard -- you know, it's

2 hard to know. But, you know...

3 Q. So are you telling me there's

4 nothing you could have done to control for

5 the competitiveness of that election?

6 A. We -- to control for something, you

7 need some variation. You need some

8 election -- at the same time, it's less

9 competitive and more competitive than you can

10 control.

11 Looking at this election over

12 election, essentially the same strategy that

13 Professor Mayer used. There's -- there's no

14 way to -- to -- to look at the extent to

15 which polarization or competitiveness

16 would've affected these results.

17 Q. Did you look at -- I mean, if you

18 look at, like, public FEC reports or similar

19 things in Wisconsin, you can see how much

20 money was spent on the races in the

21 gubernatorial from 2010 to 2014. Did you

22 look to see if there was any difference in

23 that?

24 A. No, I did not look at that.

25 That wouldn't have answered the

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1 question, because there's a far amount, large
2 amount of uncertainty as to whether or not
3 campaign spending would increase or depress
4 turnout. There's contention about
5 demobilizing effects of campaign expenditure
6 versus evidence for the mobilizing effects of
7 campaign expenditures. So just looking at
8 aggregate expenditure totals wouldn't have
9 been very helpful in controlling for that
10 issue.

11 Q. But do you not think it's -- when
12 you're presenting your findings, you don't
13 think it's important to say, Look, there are
14 all these other things going on in Wisconsin
15 that potentially could have affected the
16 turnout? I mean, you're just looking at
17 these aggregate numbers and you're saying, I
18 don't see any evidence of this, but you're
19 ignoring everything that was happening in
20 Wisconsin. And you don't mention in your
21 report at all, and I'm wondering why you
22 don't mention any of this in your report?

23 MR. JOHNSON-KARP: Object to
24 form.

25 THE WITNESS: I acknowledged on

1 several occasions is there are lots of things
2 that can affect -- that can affect turnout.
3 And all I'm doing is responding to the
4 evidence that was provided, that there was an
5 effect in arguing that that is not good
6 evidence that there was. I was not trying to
7 argue that there was an effect, but I've been
8 in a situation where I was trying to put
9 forward, you know, my own report, trying to
10 document as closely as possible that there
11 could not have possibly been an effect and
12 had more than the three weeks I had, then
13 there might have been some other things that
14 I could have -- other parts of context that I
15 could have added. But, you know, if you look
16 at -- look at the data I do show, whether or
17 not the counterfactual is true or not, we
18 find that, you know, the -- proportionately,
19 blacks were no less likely to vote in 2014
20 over 2010 than were whites. Yes, the
21 absolute magnitude changes, but that's
22 because the baselines are different. Same
23 thing is roughly true for Hispanics. So
24 there wasn't really a mystery that I was
25 trying to explain. It was just simply that,

1 you know, we don't find the effects, the
2 differences that the Plaintiffs' experts had
3 provided and that's what my focus was on, not
4 on doing a full analysis of everything that
5 could have possibly affected the 2014
6 gubernatorial election.

7 Q. Okay. What else might you have
8 done if you had more time?

9 A. Well, I think the central -- I
10 mean, a lot of central questions revolve
11 around the partisan, the partisan effect,
12 potential partisan effects.

13 The individual level data, linking
14 estimates of partisanship to individual
15 voters would have been very useful. With
16 proper time, I might have been able to
17 acquire it. I know that the experts -- the
18 experts -- I mean, the Plaintiffs' experts
19 had that data and chose not to use it, or
20 provide it or even use it to rebut the
21 aggregate analysis that I did do, but I think
22 that would be the highest priority, would be
23 to look at individual level voting choice
24 between the two elections on the basis of
25 partisanship. That, I wasn't able to do,

1 because the data wasn't -- wasn't available.

2 Q. But you had that data for race,
3 right, and you didn't do it --

4 A. I didn't have it for race.

5 Q. You didn't do the individualized
6 analysis --

7 A. No, this is --

8 Q. -- for the effect of race?

9 A. These are individual analyses.

10 These are the -- I mean, these are the
11 turnout rates of individuals based on their
12 estimate of race. Yes, I have to average up,
13 all statistical analysis has to -- you know,
14 has to do. There is something like -- I
15 think -- what is it? Five -- five million
16 registered voters? I can't look at every
17 individual piece of data, so you have to
18 average and present the data in some way.
19 And these tables present the averages, you
20 know, for these -- for these groups.

21 Q. These --

22 A. And I -- and I find that -- you
23 know, that there was about a nine percent
24 increase of black voting age citizen, nine
25 percent chance, increasing the chance that

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1 they would vote.

2 Q. But they don't tell you whether a

3 black citizen that voted in 2010 was more or

4 less likely to vote in 2014, they don't tell

5 you that about the individual voter, do they?

6 A. This -- this table -- this table

7 does not -- this table does not report that,

8 no.

9 Q. And you did not do that analysis,

10 did you?

11 A. No, I don't believe I -- I don't

12 believe I did that analysis, no.

13 Q. Do you know if the population of

14 black voting age citizens changed in

15 Wisconsin from 2010 to 2014?

16 A. I know the change in proportions,

17 their change in proportion of the citizen

18 voting age population is reported on page 13.

19 They were 5.3 percent of the citizen voting

20 age population in 2010 and they were

21 5.79 percent of the voting age population in

22 2014.

23 Q. Okay. So that increased, correct?

24 A. That increased, yeah, by a smidge.

25 Q. But you don't know anything about

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1 those new black citizens, correct?

2 A. No. I don't know whether they're

3 people who did not live in Wisconsin before,

4 I don't know whether they're, you know,

5 people who were 16 in 2010 and 20 in 2014.

6 No, I don't know that.

7 Q. And you don't know whether they're

8 low-propensity or high-propensity voters?

9 A. No, I don't know that. Although,

10 if the new ones were low-propensity vote --

11 were low-propensity voters, it would

12 strengthen the case that I made. And

13 oftentimes the evidence in the literature

14 suggests that younger voters are

15 low-propensity voters and people who've

16 recently moved to a new community are

17 low-propensity voters.

18 So the best guess on the basis of

19 the research would be that the additions to

20 the voting population were -- were low --

21 were low-propensity voters and so the fact

22 that you're adding low-propensity voters and,

23 yet, the turnout rates are increasing, would

24 strengthen the case. In fact, if it had been

25 the same under those hypotheses, if it were

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1 the same black population, the increase and

2 the turnout rate would have been higher.

3 Q. Did you look at how low-propensity

4 voters behaved in Wisconsin in the 2014

5 gubernatorial election, in particular?

6 A. No, I did not isolate voters as to

7 whether they're high or low propensity to

8 vote.

9 Q. And you would agree that, of

10 course, the way that a particular voter may

11 behave from one election to another can

12 change?

13 A. Yes, of course. So I'm looking at

14 the averages, can change in both directions,

15 what happened on average.

16 Q. An average of all voters, not

17 low-propensity versus high-propensity voters,

18 correct?

19 A. That's correct, yes.

20 Q. And so we don't know, based on your

21 report, whether low-propensity voters

22 attempted to vote or turned out to vote in

23 greater numbers than usual in 2014 due to the

24 highly polarizing nature of Walker's

25 candidacy, do we?

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1 MR. JOHNSON-KARP: Object to

2 form.

3 THE WITNESS: No, I don't know.

4 BY MS. FROST:

5 Q. And, of course, these tables don't

6 tell us anything about people who tried to

7 vote but couldn't, correct?

8 A. That is correct, yes.

9 Q. And, in any event, when you say

10 Wisconsin had a very high turnout level in

11 2010, you mean based on all voters,

12 regardless of race, correct?

13 A. Yes.

14 Q. And you say that in your report

15 that in 2010 Wisconsin had the sixth largest

16 VAP and fourth largest VEP turnout in the

17 U.S.?

18 A. Yeah, if you could direct me, I can

19 confirm.

20 Q. I think it's near the beginning.

21 Let me find it. I feel like it's on page 6.

22 Yeah, page 6, second full paragraph near the

23 bottom.

24 A. Yes, that's what I wrote.

25 Q. And, again, when we're talking

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1 about VAP and VEP, that's including all
2 voters, no matter what their race, correct?

3 A. That's correct. And also, it's
4 also included in whether or not they're
5 citizens or not. So it's different than the
6 citizen VAP and -- well, VAP would control
7 for whether they're citizens, but the VAP
8 would include -- would include non-citizens
9 in the denominator.

10 Q. Did you look to see how African
11 American turnout in Wisconsin compared to
12 other states?

13 A. No, I did not -- I did not make
14 that comparison. Many states don't -- like
15 Wisconsin, do not -- do not require
16 registrants to indicate their race. And so
17 there's no generally accepted data set that
18 would compare the racial turnout rates. Some
19 of them, to the extent to which they exist,
20 they're based on surveys, such as the current
21 population survey. But as I indicated in my
22 report, I found there's some reliability
23 issues in the measurement of African American
24 turnout rate at the State level from those
25 data. And that Professor Burden in using

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1 those data erroneously found a decline of
2 black turnout rate from 2010 to 2014,
3 something that's not evident when you look at
4 the actual individual level data.

5 So the only way I could have done
6 such a comparison would be to use the current
7 population studies from the various states.
8 The samples are quite small for smaller
9 racial groups. There's lots of noise, lots
10 of error. And so it just would not have been
11 a useful exercise to try to do those
12 comparisons.

13 Q. And the same is true of Hispanic
14 turnout in Wisconsin compared to other
15 states, you didn't look at that?

16 A. I did not look at that. It would
17 run into the same problems. In fact, the
18 problems would probably be even worse.

19 Q. And by your own numbers in your
20 Tables 1 and 2, it looks like 2010 and 2014,
21 Hispanic turnout never gets over 50 percent;
22 is that right?

23 A. Hispanic turnout is a percentage of
24 registrants, hasn't reached 50 percent.

25 Q. What about as a turnout --

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1 A. Turn -- turnout -- turnout --
2 Hispanic registration is very low in
3 Wisconsin and in lots of places. Therefore,
4 you know, the percentage of Hispanic
5 participation as a function of the voting age
6 citizenry is -- is -- is really closer to
7 25 percent, tops.

8 Q. And that disparity gets worse,
9 we've established, between 2010 and 2014?

10 A. Well, the difference -- again, the
11 difference between white turnout and Hispanic
12 turnout in percentage point terms, does
13 increase. Hispanics, exclusively, their
14 propensity to vote only rose seven --
15 seven percent. They're only seven percent
16 more likely to vote as compared to eight for
17 whites and nine for blacks. So -- so
18 Hispanics are low -- low turn -- are low --
19 are low turn -- are low turnout and have not
20 expanded their turnout as quickly as the
21 other groups.

22 Q. And you're not offering any opinion
23 as to the impact of these laws in Wisconsin
24 on Hispanic voters?

25 A. No, I'm not offering any opinion.

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1 I -- I will, you know, stipulate that, you
2 know, they turn out slow and they witnessed a
3 less substantial increase than the other
4 groups.

5 Q. So then doesn't that mean they
6 would have much more room to increase; isn't
7 that correct, their turnout has much more
8 room to grow?

9 A. That's possible, but it also may
10 reflect there's features of that community
11 that it's just not conducive to turnout, even
12 in the best of circumstances. And we don't
13 know the extent to which the treatment, as
14 we've been calling it, you know, would have
15 affected them more or less, given that, you
16 know -- because of language, other things,
17 mobility, being new communities, all things
18 which are typical in Hispanic population in
19 the U.S. That that's the cause of low
20 turnout and then impressive increase.

21 Q. As a general matter, when you make
22 changes to a state's registration laws, is
23 this more or less likely to impact voters
24 with higher mobility?

25 MR. JOHNSON-KARP: Object to

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1 form.

2 THE WITNESS: Well, voters who

3 change locations have to -- have to register.

4 So it's a -- kind of a mechanical matter,

5 yes, it has to. Now, the question is, you

6 know, how big are those burdens. And is it

7 the registration burden itself that's

8 preventing new residents from voting or is it

9 just a simple, you know, lack of a fit into

10 the local community, a lack of engagement in

11 the local community that's typical of people

12 who've just -- who've just moved. So there

13 are lots of reasons why new residents might

14 register at low rate, reregister at low

15 rates, some of which may have to do with the

16 process of the registration, some of which

17 may have to do with lots of other -- lots of

18 factors. People who move tend to be younger.

19 Younger voters tend to vote less, therefore

20 register less. So there's a lot of things

21 that -- that could impact that. So I

22 wouldn't rule out in principle that the

23 effects could be bigger for groups that move

24 around a lot. But there are lots of things

25 that are kind of working against the

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1 participation of those groups in elections.

2 BY MS. FROST:

3 Q. Let's look at Table 3 in your

4 report. It's on page 17 of the document

5 that's been marked as McCarty deposition

6 Exhibit 2. Can you just walk me through

7 this? I have to admit this table confounds

8 me.

9 A. Okay.

10 Q. I cannot figure it out.

11 A. Okay. I'm happy to do that.

12 The context, of course, is that

13 Professor Mayer's voter file data is a

14 snapshot from 2015. Yet, he uses that to

15 estimate turnout rates, as well as models of

16 turnout for elections prior to 2014, 2008,

17 '10, '12, whatever. The problem, of course,

18 with doing that is that the 2015 voter file

19 is going to be an inaccurate record of both

20 who was eligible to vote in 2006, in 2010, as

21 well as an inaccurate record of who

22 actually -- who actually did vote, because of

23 the problem of roll off or what I call

24 attrition.

25 So there's a feature, I think is a

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1 general feature, but it's especially true in

2 the Wisconsin case, that people who vote tend

3 to remain on the voter rolls. People who

4 don't vote tend to roll off. So from one

5 election to the next, people who stay on the

6 rolls are disproportionately voters; people

7 who didn't vote, disproportionately leave.

8 So that means when you try to do a -- that

9 means that when you try to do turnout

10 calculation in one of the earlier elections,

11 you have a biased sample of people that's --

12 tends to overrepresent or oversample voters.

13 Okay. So, you know, if you look at the

14 2015 -- if you look at the 2015 voter file

15 and look at the people who voted in 2006 --

16 look, it's going to dispro -- and look at

17 the -- how people voted in 2006, they're

18 disproportionately going to be voters,

19 because of this dis -- dis -- asymmetry in

20 the rates -- in the rates of -- in the rates

21 of roll off.

22 Now, how does this affect the

23 racial differences in turnout? Well, there's

24 a ceiling effect, no group can vote more than

25 100 percent. So if you systematically

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1 throwing non-voters off the voting rolls and

2 keeping the voters, then almost everybody is

3 a voter, whether they're white or black, and

4 it's going to kind of compress in the

5 estimate of the racial -- of the racial

6 difference. Okay?

7 So what I did in 2000 -- in -- I'm

8 sorry, in Table 3, is I tried to show that

9 effect. Okay. So what I do is I take, for

10 each of the mid-term elections in the voter

11 file, again, so I can -- so that I can

12 compare, you know, apples to apples, I take

13 the various samples. I take people who are

14 in the voter file in 2006, there's one

15 sample. The second sample is the people, all

16 the people who were in the voter file for

17 2008, all the people who are in 2010, '12,

18 '14, et cetera. So they're kind of -- only

19 really true difference between the races is

20 going to be for the 2004 -- is going to be

21 for the 2014 election based on the people who

22 are actually in the sample in 2014 you find a

23 racial difference of 10.5.

24 The point I wanted to make is that

25 when you go back to kind of previous

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1 elections, the racial gap is going to
2 necessarily be smaller, because you're
3 over -- voters are overrepresented in those
4 files. So if you take a look at the 2014
5 election and you look at the people who are
6 in the voter file in 2006, the racial gap was
7 only 2.8 percent, compared to the observed
8 racial gap of 10.5.

9 So all the elections that Professor
10 Mayer analyzed prior to 2014 are going to
11 have a downward bias in the estimate of the
12 racial gap. So that's what this table is
13 reflecting.

14 If you analyze the -- if you
15 analyze the -- so if you analyze -- if you're
16 analyzing the -- for example -- walk through
17 one of these cases. So if you take the
18 sample of people who are in the file in 2008,
19 the racial gap would be 5.8 in 2006, it would
20 be .05 in 2010 and 2.8 in 2014. Okay. So
21 they're smaller compared to what you would
22 find if you use the 2008 sample, which is
23 less roll off, less attrition. So you'd have
24 a racial gap of 10.8 in 2010 and a racial gap
25 of only 8.3 in 2014. So if you looked at

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1 that sample, actually the racial gap, the
2 racial gap goes down. If you look at it
3 based on the 2010 sample, again, you get a
4 racial gap of 9.3 in 2010 and only one of 8.1
5 in 2014. These are all impacted by this
6 attrition rate.

7 The other point I wanted to make
8 about the table is that the bulk of his
9 analysis is comparing an increase in the
10 racial gap. Implicitly in his regression
11 analysis it compares to the racial gap in
12 2010, where he finds that blacks --
13 controlling for lots and lots of stuff,
14 blacks were no less likely to vote than
15 whites, with 2014 where he finds an effective
16 race. Well, as you can see from the table,
17 2010 is the sole election for which based on
18 the 2006 sample there's almost no racial gap.
19 The 2010 election, if you use the 2008
20 sample, you'd actually have a larger racial
21 gap than 2014 would have had, as would be the
22 case for -- for 2010.

23 So the table really gets at the
24 extent to which the conclusion that the
25 racial gap in his model increases between

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1 2010 and 2014 is really driven in quite a
2 lot, large degree by his choice of using the
3 snapshot 2014 and then using the full sample
4 of people who are in the file as of 2006.

5 Q. Okay. I have a couple follow-up
6 questions.

7 A. Okay, good.

8 Q. So if I'm following you, which is a
9 big if, but if I'm following you, still this
10 number 10.5 for 2014 for the sample, 2014 for
11 the election should be right, do you dispute
12 that number?

13 A. Yes, but with the -- with the one
14 caveat, that that's the gap only among the
15 people who are just in -- who are just in the
16 sample -- no, no. Yes, that -- that would be
17 right, yes. Those would be the right gaps,
18 sorry.

19 Q. Okay.

20 A. Those would be the right gaps.
21 Yeah, the gaps actually observed for those
22 elections.

23 Q. Okay. Do you have any reason to
24 believe that African Americans roll off the
25 rolls at higher rates than other voters?

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1 A. No, I don't, did not have any data
2 on roll-off rate by race. I -- I did -- in
3 the -- in the weighting that I did in other
4 parts, I did -- I use county level data on
5 roll off to control, but I don't know if I
6 looked to see whether there could be
7 correlation with how African American the
8 municipality was. So, so I don't know the
9 answer to that.

10 Q. Do you think that's an important
11 question to ask?

12 A. It would certainly add precision to
13 the -- it would add precision to these
14 questions to -- to know the -- to know the
15 answer. If -- as I describe in the report,
16 it could have -- it could affect -- it could
17 affect the results, not obviously in one
18 direction or another. Again, it depends
19 mostly on the relative rates of roll off of
20 voters and non-voters much more than the kind
21 of rate -- the roll-off rates of African
22 Americans versus whites. So if for some
23 reason that African American non-voters are
24 rolling off at much faster rates than African
25 American voters are, that would, I think that

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1 would be the most substantial impact on these
2 results.

3 Q. And how would that impact these
4 results?

5 A. See if I have a section -- I have a
6 section on that, so let me try not to
7 reinvent the wheel.

8 So on page 10, again, this -- this
9 applies to the calculations of weights, but
10 also, therefore, it would be relating to
11 the -- these roll-off effects. So I say the
12 largest threat to correct calculations would
13 be if it were the case that within each
14 municipality one group of non-voters had a
15 disproportionate roll-off rate.

16 If that were the case, my procedure
17 would overestimate the turnout of that group,
18 because if I -- if they're rolling off
19 disproportionately, then I'm sort of keeping
20 too many of them -- too many of them on and,
21 therefore, I would overestimate the turnout
22 of that group and underestimate the turnout
23 of other groups. For example, if within each
24 district, black non-voters rolled off at
25 higher rates, my estimate of the number of

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1 black non-voters would be too small and the
2 estimate of black turnout would be inflated.
3 Such a bias would tend to understate the
4 change in black turnout between 2010 and
5 2014, which would work to favor the
6 Plaintiffs' arguments.

7 Q. So for some reason this sentence
8 confused me. I've read it several times and
9 I'm trying to figure out what, exactly what
10 you're saying.

11 So are you saying that if black
12 voters roll off at higher rates --

13 A. The hypothetical here is that black
14 non-voters rolled off at higher rates.

15 Q. What if black voters rolled off at
16 higher rates?

17 A. What really matters for these
18 calculations is, again, we want to know the
19 turn -- we want to know the turn -- we want
20 to know what the turnout of the group is. So
21 if the groups -- if voters and non-voters of
22 a particular group are kind of equally likely
23 to roll off, then our sample of the people
24 that are left over is representative and,
25 therefore, would have no effect in the

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1 calculation of turnout. The main effect --
2 the main place where there'd be an effect of
3 turnout is if one groups of non-voters would
4 roll off in a much -- in a much greater rate
5 than their roll off of their voters. So it's
6 really the relative roll off of voters and
7 non-voters and how that varies across groups
8 that would matter.

9 Q. But you didn't do any of this
10 analysis, correct, you didn't look at how --

11 A. No, no, I didn't -- I -- I would
12 not have had the ability to do the analysis
13 in the basis of the data that was available.

14 Q. Why is that?

15 A. Because, you know, when looking
16 at -- so when I look at a vote -- if I look
17 at a voter file from 2015 and I see who's on
18 the -- who's on there in 2010, I don't -- you
19 know, I -- I -- I just don't see the people
20 who should have been there but weren't, and
21 that's what I need to know in order to do
22 these calculations.

23 Q. I don't understand. Can you --

24 A. Well, there -- so there are
25 some miss -- so -- so there's some missing

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1 people, in the 2015 voter file there's some
2 missing people. There are people who were
3 el -- who were registered but didn't vote in
4 2010, there were some people who voted in
5 2010 but have left the rolls. In order to
6 calculate the roll-off rates per groups, I'd
7 need to know the racial composition of people
8 that are not in the data. So I need to know
9 what percentage of the roll off was black,
10 what percentage of the roll off was white.

11 Q. But don't --

12 A. And I didn't -- for voters and
13 non-voters and I didn't -- I didn't have that
14 and I don't see how one would get that.

15 Q. You don't have the racial data for
16 the people who were in the voter file in 2010
17 but are no longer in the voter file in 2015?

18 A. That's correct, yes.

19 Q. Haven't you in other cases done --
20 at least one other case, I'm thinking about
21 one of the Ohio cases, done your own race
22 appending to data?

23 A. Yes. But that involves me having
24 the names and the locations of these
25 invisible people.

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1 Q. And that's --

2 A. Which I don't have.

3 Q. Couldn't you have gotten that from

4 Defendants in this case?

5 A. Could I have gone back and asked

6 them for a 2010 voter file?

7 Q. Yeah.

8 A. I -- I don't -- I don't believe so.

9 My understanding was that Wisconsin just made

10 available the current voter file. And that

11 they did not have archived voter files. They

12 only had the current voter file, that they

13 did not have archived voter files. I mean,

14 if -- if there had been archived voter files,

15 the Plaintiffs could have obtained them as

16 well and done the analysis without the

17 problems of attrition. So...

18 Q. Did you ask for archived voter

19 files from the Defendants?

20 A. I think I -- I don't think I asked

21 specifically. I think I was told what was

22 available. And then what was available was

23 the data, the 2015 voter file, which had to

24 be obtained -- which had to be obtained

25 through court order, because there was some

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1 confidential information in it. So I -- I

2 don't know if I asked directly or just

3 assumed, given what was apparently available

4 when I went to the website, that there wasn't

5 one. So, so...

6 Q. What can you tell me about

7 Wisconsin's list maintenance process?

8 A. I have no direct information about

9 how they maintained the list.

10 Q. And when I say "list maintenance,"

11 what do you understand me to be referring to?

12 A. I'm assuming -- assuming you mean

13 the process by which people get removed from

14 the voter file or from the registered voter

15 list.

16 Q. So you don't know how that works in

17 Wisconsin?

18 A. No, I don't.

19 Q. And you don't know how officially

20 it's implemented?

21 A. No, I don't know.

22 Q. If Wisconsin, in fact, engages in

23 regular aggressive list maintenance, would

24 that affect the roll-off problem that you

25 identify in your report?

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1 A. That would be more roll offs. And

2 there'd be more uncertainty about what the

3 rates of turnout were in previous elections.

4 It would obviously also affect some of the

5 conclusions made by the Plaintiffs' experts

6 who essentially used the same data without

7 trying to even correct for the roll off.

8 Q. Now, in critiquing Mayer's report,

9 you only focus on two of his models. Why is

10 that?

11 A. Well, I focused on those two. I

12 mentioned -- I mentioned that he does for

13 another, but then argue that it doesn't I

14 think effectively deal with the problem. I

15 think it's mostly presentational by focusing

16 on those two, I could raise issues that I

17 needed to and then I simply noted that his

18 other models do not address these issues

19 directly.

20 Q. Let's look at page 7, let's look at

21 page 7 of your report, footnote nine. Do you

22 see that footnote?

23 A. Yes.

24 Q. Do you see where you say, Catalyst

25 is a for-profit firm?

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1 A. Yes.

2 Q. But has long operated in the

3 support of Democratic Party and progressive

4 candidates.

5 A. It says "causes," but...

6 Q. Oh, does it?

7 A. Yes.

8 Q. Why do you make that point?

9 A. That there was not possible for me

10 to obtain the data upon -- that they use

11 directly. I had to depend on that that was

12 provided to me through the Plaintiffs' case.

13 Q. But why is the fact that Catalyst

14 is a for-profit firm relevant?

15 A. I don't know.

16 Q. If they're for-profit, doesn't that

17 mean they have a monetary incentive to do a

18 good job of matching --

19 A. Yeah.

20 Q. -- voters?

21 A. Yeah.

22 Did they have a good -- did they

23 have a profit incentive -- well, they have a

24 profit incentive to match voters, but my

25 point was they -- they may have that

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1 profiting center, but they don't have
2 profiting centers to sell --
3 Q. To sell to you?
4 A. To sell to me.
5 Q. I gotcha.
6 Did you do anything to check the
7 Catalist data?
8 A. No, no, there's -- there's -- was
9 not sufficient information in what they
10 provided to know anything about their
11 underlying model or how it was computed. In
12 fact, when I went to the sources, I tried to
13 consult, I suggested that it was a
14 proprietary model. And I think that that's
15 actually mentioned in Dr. Ghitza's report.
16 So there wasn't really much I could do.
17 So I simply took the stuff on race
18 at face value, you know, and dealt with other
19 issues that I felt were important.
20 Q. So I understand you're saying that
21 with the information that was given to you,
22 you felt like you couldn't check it, but
23 aren't there certain external ways you could
24 do at least some checking to see if Catalist
25 was getting voters' race right?

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1 I mean, you know the race of some
2 Wisconsin voters, don't you?
3 A. Yes. In principle, I could have
4 done some spot checks like that, but I did
5 not.
6 Q. And when you make the point that
7 Catalist has long operated in the support of
8 Democratic Party and progressive candidates,
9 why do you make that point?
10 A. Simply to indicate that it wasn't
11 possible for me to obtain their data
12 directly.
13 Q. Because you're not a -- you're not
14 a Democratic Party or a progressive cause?
15 A. Nor my -- my client is not.
16 Q. Okay. But you were --
17 A. I as a -- I as a person might be
18 able to estimate a case for given this data,
19 but not for this purpose.
20 Q. But you weren't making -- that
21 sentence was not meant to imply that the
22 Catalist data was false in any way?
23 A. No, no, no. It's just to indicate
24 why I wasn't able to obtain certain
25 information about the data and to obtain the

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1 data on partisanship.
2 Q. Now, we touched on this briefly in
3 a slightly different context, but in at least
4 one other case in which you gave expert
5 testimony you did your own race appending,
6 right?
7 A. Yeah. Yes, I did. That was a case
8 where there was much more lead time and we
9 were able to contract with somebody to do the
10 necessary geocoding in order to -- to do the
11 coding. That was not the circumstances I
12 found myself in in this -- in this case. So
13 I decided it was better to focus on other
14 issues and rely on others.
15 Now, I would not -- I wouldn't --
16 what I did would not have matched Catalist,
17 because they use presumably a different
18 model. If they were just using the kind of
19 off-the-shelf model that I used, they
20 wouldn't call it proprietary. So even if I
21 could or had time to do it, I thought it was
22 probably just better just to not get into
23 debates about the imputation of race, but to,
24 you know, take Professor Mayer's data and
25 show even taking that at face value, there's

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1 some problems in the analysis that he did.
2 Q. And, in fact, Catalist -- this is
3 one of the things that Catalist does as a
4 regular part of its business, it's not a
5 regular part of your business to append race
6 data to voter files?
7 A. A regular part of my business?
8 Q. Yeah.
9 A. No, it's not.
10 MS. FROST: Why don't -- should
11 we break for lunch, should we take a shorter
12 break? What do people think? Let's go off
13 the record for a little bit.
14 (Brief recess.)
15 BY MS. FROST:
16 Q. All right. Professor McCarty, are
17 you familiar with something called the
18 backlash hypothesis as related to repressive
19 voting laws?
20 A. I mean, I understand the notion of
21 backlash. I've not seen specific discussions
22 about backlash related to repressive voting
23 laws.
24 Q. And when you say you understand the
25 concept of backlash, can you tell me --

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1 A. Well, just generally people will
2 refer to backlash as being something which a
3 group mobilizes in response to something that
4 they don't like.

5 Q. And if -- if one were to apply --
6 if one were to find the backlash hypothesis
7 applied to restrictive voting laws, might you
8 expect to see an artificially high turnout in
9 the election immediately following the
10 changes to election laws?

11 A. You would expect to find a high
12 turnout among the group that was backslashing.
13 So you might -- so you might to see, you
14 know, in a hypothetical of that repressive
15 voting laws targeted to group A, you'd expect
16 to see disproportionate increases in the
17 turnout of group A.

18 Q. And have you done any research or
19 analysis in that area?

20 A. No, I have not.

21 Q. Did you do anything to control for
22 the possibility in your analyses for this
23 case the turnout in the 2014 election can at
24 least, in part, be attributed to a backlash
25 effect?

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1 A. I looked at the, you know, election
2 over election changes at the municipal level.
3 One would expect to see, if there were
4 backlash, one would expect to see the turnout
5 concentrated in those areas that had higher
6 concentrations, potentially higher
7 concentrations in the voters who are
8 affected. I did not find a substantial
9 increase in turnout in the most democratic
10 municipalities. But other than that, I
11 didn't -- did nothing that would reflect on
12 that question.

13 Q. But, again, we're talking about
14 2014, which was the election involving a
15 highly polarizing candidate, correct?

16 A. Yes.

17 Q. So is it possible that the
18 increases in turnout that you observed in
19 different populations could be attributed to
20 different things?

21 A. Yeah, that's always possible.

22 Q. So is it possible that the increase
23 that you saw in the Republican areas was an
24 indication of Republican support for Governor
25 Walker; is that possible?

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1 A. That's possible, yeah.

2 Q. And is it possible that the
3 increase in turnout that you saw among
4 traditional Democratic constituencies could
5 have been attributed, at least in part, to a
6 backlash effect?

7 A. Yeah, there are lots of stories one
8 could construct, I suppose. I just don't --
9 haven't seen in this particular case evidence
10 that that rationalize is defined in that I
11 just described.

12 Q. Okay. But you didn't analyze that,
13 in particular?

14 A. No, I did not.

15 Q. Now, let's look at Exhibit 2, which
16 is the expert report that you prepared for
17 this case. And let's turn to page 5, please.
18 Now, on this page I'm looking at the last
19 paragraph and -- actually, strike that.

20 I'm actually looking at the first
21 paragraph. In the middle of the paragraph,
22 I'm looking at the sentence that says, There
23 was a U.S. Senate election in 2010, but not
24 in 2014, however. This fact should work
25 against higher turnout in 2014.

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1 Do you see that?

2 A. Yes.

3 Q. What's your basis for that
4 statement?

5 A. Well, that there was an additional
6 high profile election in 2010 that would --
7 for which there was not one in 2014. Having
8 a Senate race might have a modest impact on
9 the turnout in a particular election.

10 Q. Does voter turnout always increase
11 when there is a U.S. Senate election on the
12 ballot?

13 A. No, I don't -- I don't think so.
14 And I think on average, there might be a
15 slight effect. But that means that sometimes
16 there's a large effect, sometimes there's not
17 an effect, but, on average, there's probably
18 a small effect.

19 Q. Okay. And what's that statement
20 based on?

21 A. The data that I have -- data that I
22 have looked at, I've -- I've not published it
23 anywhere, but, you know, several years ago I
24 looked to see whether or not turnout was
25 reflective of having a Presidential candidate

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1 versus a Senate candidate on the ballot. I
2 seem to recall there being a small positive
3 impact of having a Senate election in the
4 ballot.

5 Q. Okay. Historically, has voter
6 turnout in Wisconsin been higher in years
7 when there's a U.S. Senate election on the
8 ballot?

9 A. I don't know. I did not check
10 that.

11 Q. But turnout was higher in 2012 when
12 there was no Senate candidate on the ballot,
13 correct, we've established that?

14 A. That's true, yeah.

15 Q. Let's talk a little bit more about
16 aggregation bias. You've already told me
17 what aggregation bias is. How do political
18 scientists counter aggregation bias?

19 A. Well, usually the best solution to
20 aggregation bias is not to use aggregate
21 data, but to use individual level data. So
22 you don't have run-in as the problem.

23 (Off-the-record discussion.)

24 THE WITNESS: Yeah, I'll just
25 back up.

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1 Generally, the best solution is
2 to use individual data. And, therefore, you
3 don't have aggregation bias, because you're
4 using individual data.

5 BY MS. FROST:

6 Q. So aggregation bias happens when
7 you use aggregate data?

8 A. That's correct.

9 Q. And if you use aggregation -- if
10 you use aggregate data, what can you do, if
11 anything, to counter aggregation bias?

12 A. Well, you could include more
13 controlled variables for other factors which
14 might correlate with the outcome that you're
15 interested in studying. You might do a
16 comparison across two points in time at this
17 same level of aggregation, because looking at
18 that difference will control for many of the
19 unobserved factors that cause aggregation
20 bias. Those are the two main things.

21 More controlled variables, or
22 comparing outcomes at two different points in
23 time in order to eliminate the effects of the
24 omitted variables that generate the bias in
25 the first place.

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1 Q. And I take it you -- if I were to
2 ask you did you do any of these things here,
3 you would say I controlled outcomes at two
4 different points in time --

5 A. Yes.

6 Q. -- correct?

7 A. That would be what I would say.

8 Q. What about the first part, that
9 first option you said, which was to control
10 for variables, did you do anything like that?

11 A. I did not, I did not do that.
12 Looking at two points in time essentially
13 has -- has the effect of controlling for
14 variables that don't change very much between
15 those two points in time, but I did not
16 control for any variables that might have
17 changed between 2010 and 2014.

18 Q. But it doesn't tell you why those
19 variables didn't change between those
20 two points in time, correct?

21 A. No. I mean, they -- I mean, the
22 type of things that don't change from one
23 point -- that don't change very much from one
24 point in time are things like urbanization,
25 the underlying populatate -- the underlying

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1 populations, the voting locations, things
2 of -- things of that sort. So I'm not trying
3 to explain why they didn't change, I'm just
4 taking as a fact that if you look at any
5 geographic area in a four-year interval,
6 there are lots of things that might affect
7 turnout that just don't change very much from
8 one election to the other. There are things
9 that change and I did not -- was not able to
10 control for them, but I did control for --
11 implicitly for lots of things that might
12 affect turnout, so... Features the
13 underlying population, the local party
14 structures, urbanization. The general
15 locations of ballot polling places, they
16 might have changed a little bit over time,
17 but, in general, they probably didn't change
18 huge amounts. So...

19 So that's the best I could do,
20 because the individual level data was not
21 made available in this case. Otherwise, I
22 would have not done any of this stuff that I
23 did and I would have looked at the individual
24 level data on partisanship to see whether or
25 not Republican versus Democratic voters were

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1 more or less likely to vote in one election
2 than the other.

3 Q. But to give some examples of things
4 that you didn't even implicitly control for,
5 for example, how get out the vote efforts may
6 have changed from 2010 to 2014, correct?

7 A. Yeah. Would not have controlled if
8 certain get out the vote efforts were more
9 heavily concentrated in some areas versus
10 others in 2014 than they were in 2010.

11 Q. And you didn't control for how
12 voters felt about Governor Walker between
13 2010 and 2014?

14 A. No, no, I did not use polling data.

15 Q. What's the ecological inference
16 problem?

17 A. Well, the ecological inference
18 problem is just simply a description of the
19 problems of aggregation bias, that if we
20 observe -- reserve an aggregate relationship
21 where not logic -- it may be logically
22 invalid to impute an individual level
23 relationship from that.

24 Q. So that it may not be valid to make
25 inferences about individual behavior based on

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1 aggregate data, unless certain approaches are
2 taken; is that correct?

3 A. That sounds right, yeah.

4 Q. And, in fact, isn't it true that
5 even the direction of an inference can
6 change?

7 A. Yes, in principle, yes.

8 Q. And political scientists have
9 developed solutions to the ecological
10 inference problem, correct?

11 A. They made suggestions on how to
12 deal with particular types of problems, yes.

13 Q. Okay. Can you give me some
14 examples of some of those suggestions?

15 A. Well, some -- two of them I've
16 already mentioned. One is, you know, running
17 regressions with more controlled variables.
18 The other might be to look at changes from
19 one point in time, which has the effect of
20 controlling for many of the things you would
21 want to control for. There are more
22 elaborate statistical procedures, such as
23 that proposed by Gary King, which tries to
24 leverage the information about the individual
25 relationships that are implied by aggregate

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1 data without making a firm conclusion about
2 the individual relationship.

3 Q. Now, when you talk about
4 regressions with more controlled variables,
5 to be fair, it's a little bit more than a
6 suggestion, right? I mean, that's a
7 well-accepted analytical approach to address
8 this problem.

9 A. Yeah, it doesn't eliminate the --
10 it doesn't eliminate the problem, that's why
11 I said suggestions.

12 Of course, the problem with using
13 controlled variables is that -- I mean,
14 ultimately, what you say you want to know is
15 what -- you know, just give you one example
16 why you might not want to do this. Suppose
17 you wanted to just know the kind of the
18 racial -- the racial impact. Well, you start
19 including information about aggregate levels
20 of education, aggregate income, all those
21 things which might correlate with race, and
22 you might be attributing some of the things
23 that have to do with race through income,
24 education, so forth. And so in that context
25 you might not want to do it, that's why I

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1 said it's a suggestion for a particular
2 context. It really depends what you want --
3 what you want to know.

4 Q. But doesn't Section 2 of the Voting
5 Rights Act make all of those things that you
6 just mentioned, educational attainment,
7 income, all of those things, relevant to the
8 question as to how these things impact --

9 MR. JOHNSON-KARP: I'm going to
10 object to the extent it asks for a legal
11 conclusion.

12 MS. FROST: That's fine.

13 BY MS. FROST:

14 Q. You can answer.

15 A. Yeah, well, the question was should
16 I include controls for these things or --
17 that's different than the question of should
18 one study whether higher or lower educated
19 people vote or whether higher or lower income
20 people vote. So I think they're slightly --
21 slightly different questions.

22 So if it's, if what you want to
23 know is a racial impact, there's an open
24 question as to whether or not you want to
25 control for lots of things that are

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1 correlated with race.

2 If you're interested in impact of
3 educational attainment, there's an open
4 question about how much you want to control
5 for things that are incidentally correlated
6 with educational attainment.

7 Q. Let's look at page 16 of your
8 report, the first full paragraph. It's easy
9 to find because the language I'm interested
10 in is bolded and italicized.

11 A. Yes.

12 Q. So I am looking at the first full
13 paragraph, which says, A more correct, but
14 still possibly misleading version of
15 Professor Mayer's statement would be
16 "Controlling for vote history, African
17 American registrants were more likely than
18 other voters to vote in 2010."

19 Do you see that statement?

20 A. Yes. Yes, I do.

21 Q. Can you explain to me why you think
22 that it is important to add the words
23 "controlling for vote history"?

24 A. Yes. Because if you do not control
25 for vote history, if it's not included in the

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1 regression, African American registrants
2 would be less likely than voters -- than
3 other voters to vote in 2010.

4 Q. Isn't this just another way of
5 saying that you think that the individualized
6 analysis is misleading and the impact of
7 these laws should rest entirely on aggregate
8 analysis?

9 A. No, I don't -- I don't think so. I
10 just -- I think sort of lay into my previous
11 concern that, you know, what you want to --
12 what you want to know is whether or not the
13 impact of laws changed the -- changed the
14 likelihood that an African American would
15 vote between 2010 and 2014.

16 Controlling for previous vote
17 history, as I argue in that paragraph, kind
18 of confounds -- confounds that relationship.
19 So it doesn't have anything to do with the
20 difference between individual and aggregate
21 data. It just matters how one wants to
22 specify the statistical model that's used.

23 Q. If you're trying to analyze the
24 effects of a law on a voter, would it make a
25 difference to know that that voter voted in

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1 2010, but not 2014, while another voter,
2 we're looking at the impacts of the law,
3 didn't vote in either election?

4 A. You might want to know that, you
5 might want to know that for certain -- for
6 certain questions. That's not actually how
7 the -- his models are set up. His models
8 aren't let's look at all the people who voted
9 in 2010, let's -- and then see whether or not
10 they're -- African Americans were more or
11 less likely to vote than white voters and
12 then look at all the people who didn't vote,
13 are African Americans more likely or less
14 likely to vote, look at the subsamples.

15 What he does instead is he looks at
16 the previous -- he measures the previous
17 vote, he measures the previous vote history,
18 something that's highly correlated with race,
19 and uses that as a regressor in the
20 regression. And so much of the impact of
21 race in the 2010 vote is going to be picked
22 up by this previous history.

23 I mean, I don't think it's
24 controversial that African Americans voted at
25 a lower rate than did whites in 2006, in

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1 2008, is to control elections. And,
2 therefore, the impact that's going to --
3 having something that's so highly correlated
4 with race and including in the regression
5 whether they voted in 2010 is going to
6 downwardly -- is going to reduce the
7 coefficient on race in 2010 toward -- toward
8 zero. Or in this case actually, you know,
9 make it possible that it's positive.

10 Q. But you agree, I mean, I think
11 you've now said it several times, that race
12 is correlated with other variables that can
13 influence turnout?

14 A. That's correct, yes.

15 Q. For example, race is often
16 correlated with residential stability?

17 A. Yeah.

18 Q. And with economic status?

19 A. Yeah.

20 Q. And educational attainment?

21 A. Yes.

22 Q. And, ultimately, isn't the very
23 function of multiple regression techniques to
24 control for these other variables?

25 A. Well, it's different than, say -- I

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1 mean -- so stop me if this gets kind of too
 2 in -- too into the...
 3 Q. Okay.
 4 A. There's a difference between -- I
 5 didn't criticize him for controlling for
 6 other things in the analysis. I -- I
 7 criticized him specifically for doing
 8 something that we call running kind of a
 9 lag-dependent variable. So did you vote is a
 10 function of whether you voted.
 11 There are kind of well-established
 12 understandings about the cost and benefits of
 13 doing that. And I think in this particular
 14 context, there wasn't an appropriate -- it
 15 was an appropriate thing to do, that it
 16 was -- in and of itself it was too close to
 17 running the dependent variable on both sides
 18 of the -- dependent variable on both sides of
 19 the regression. If we run a regression of
 20 Y on Y, nothing else is going to explain
 21 anything.
 22 My argument here is that by
 23 controlling for vote history, he's -- he's
 24 going very close to running regression of
 25 Y on Y and so it's not surprising that these

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1 other factors are not statistically
 2 significant.
 3 Q. So without the vote -- but if you
 4 don't control for the vote history, don't you
 5 load the race factor even more?
 6 A. Yeah, yeah, but -- but his point is
 7 that there's no effect of race in 2010. And
 8 I'm just saying that that's only because he
 9 controlled for the vote history that he found
 10 that relationship.
 11 Q. How long is a Wisconsin driver's
 12 license good for?
 13 A. I have no idea.
 14 Q. How many people had an
 15 identification in 2010 in Wisconsin that no
 16 longer have an identification in 2015?
 17 A. I have no idea.
 18 Q. How many people who didn't have an
 19 ID in 2010 now have one in 2015?
 20 A. I do not know.
 21 Q. Would you expect that number to be
 22 higher, more people have IDs in -- or sorry,
 23 scratch that.
 24 Would you expect that you would see
 25 an increase of people who didn't have an ID

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1 in 2010 having an ID by 2015?
 2 MR. JOHNSON-KARP: Object to
 3 form.
 4 THE WITNESS: I -- I -- I -- I
 5 have no -- I have no idea.
 6 BY MS. FROST:
 7 Q. Okay. Let's look at your report
 8 again, Exhibit 2 in this deposition. And
 9 let's talk about absentee voting for just a
 10 minute.
 11 A. Okay.
 12 Q. Turn to page 24, please. And I am
 13 looking at your Tables 4 and 5; do you see
 14 those?
 15 A. Yes.
 16 Q. And these tables look a lot like
 17 Tables 1 and 2, which we discussed earlier,
 18 right?
 19 A. That's -- that's right.
 20 Q. And, again, so we're clear, the
 21 column titled Diff, this means the difference
 22 in percentage points, not the difference in
 23 percentage, correct?
 24 A. That's correct, yes.
 25 Q. And your tables here show that

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1 there's a disparity between white and black
 2 voters in Wisconsin who use absentee voting,
 3 correct?
 4 A. That's in the use of absentee
 5 voting.
 6 Q. Okay. So in 2010, 6.1 percent of
 7 white registrants in Wisconsin voted
 8 absentee, while only 3.8 percent of black
 9 registrants did, correct?
 10 A. That's correct, yes.
 11 Q. And that's a 2.3 percentage point
 12 difference?
 13 A. Yes.
 14 Q. If we look at 2014, now in the text
 15 of your report, you focus on the fact that as
 16 a share of registrants black usage of
 17 absentee voting more than doubled; is that
 18 correct?
 19 A. That's correct, yes.
 20 Q. But even with that increased use,
 21 the disparity between white registrants and
 22 black registrants who voted absentee actually
 23 increased from 2010 to 2014, didn't it?
 24 A. That's correct, because the rate
 25 of -- the baseline rate of usage for whites

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1 was almost double that of blacks in 2010.

2 Q. So in 2014 a full 11.2 percent of

3 white registrants used absentee voting, while

4 only 7.6 percent of black registrants did?

5 A. That's correct, yes.

6 Q. And that's a 3.6 percentage point

7 disparity, correct?

8 A. Yes.

9 Q. Want to use the calculator? Just a

10 matter of pride, isn't it, now?

11 As for Hispanics, if we look at

12 Table 4, it shows that in 2010 there was a 4

13 point disparity between white registrants'

14 and Hispanic registrants' use of absentee

15 voting, correct?

16 A. That's correct.

17 Q. And in 2014 that disparity

18 increases to 7.2 percentage points --

19 A. Yes.

20 Q. -- right?

21 A. Yes.

22 Q. What do you make of the fact that

23 your analysis shows that the disparity in

24 turnout is actually increasing between white

25 and minority voters using the absentee voting

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1 in Wisconsin?

2 A. Well, I make of the fact that the

3 white population is a population that's

4 traditionally at a higher propensity to use

5 absentee voting. Their increase was

6 proportionately less, but that

7 proportionately less increase still add to an

8 absolute increase. It was bigger, because

9 the baseline was larger.

10 Q. But the disparity increased?

11 A. The disparity increased, but the

12 rate in which black voters turns to absentee

13 voting was larger.

14 Q. So you don't think the disparity is

15 meaningful considering the impact of the

16 election laws at issue in this case?

17 A. No, I think the, I think the most

18 relevant thing is that essentially the odds

19 at which a -- you know, a black voter

20 transitioned to using absentee voting doubled

21 and the white transition rate was not quite

22 as high.

23 Q. So you say -- I think you say the

24 most relevant or the most meaningful. Do you

25 think the disparity is meaningful or relevant

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1 at all in considering the impact of the

2 election laws at issue in this case?

3 A. Well, so the -- it may be relevant,

4 but I think it's not obviously relevant in --

5 in how it -- in how it cuts. So...

6 If I recall, I believe it's

7 Professor Burden's report stresses the

8 increased usage or the high levels of usage

9 of absentee votes by African Americans is a

10 reason to believe that African Americans

11 might be disproportionately harmed by these

12 changes. The reason why that there's a

13 continued disparity is that actually, in

14 actuality, the rate of usage of absentee

15 votes by blacks was much lower than whites,

16 even before the laws, even before the laws

17 changed. So I'm not sure what to make of,

18 you know, the fact that -- that growing

19 disparity was perhaps just simply a function

20 of the baseline, the percentage changes,

21 proportional changes were greater for blacks

22 than they were for whites. And the relevance

23 question is why there was a disparity in

24 2010? And I presume it did not have anything

25 to do with the laws that were passed in 2012

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1 and 2013. So I'm not sure how the disparity

2 and the fact that it grew, despite the

3 proportionally greater usage by blacks, cuts.

4 Q. Do you think the fact that there

5 was a disparity in 2010 is relevant to the

6 question of whether or not African Americans

7 and Hispanics in Wisconsin have historically

8 faced more barriers to voting than white

9 voters?

10 A. It's the -- I mean, there's a -- I

11 mean, there's two possible interpretations.

12 One is that there are barriers. One is that

13 African Americans chose, for whatever reason,

14 to cast their ballots disproportionately in

15 person relative to absentee.

16 Q. What about the turnout, the overall

17 turnout numbers that we were discussing, do

18 you think that's relevant to the question of

19 whether or not African Americans and

20 Hispanics have historically faced greater

21 barriers to voting in Wisconsin than whites?

22 A. Again, it is relevant to analyze

23 whether or not such a preexisting disparity,

24 what it says about Wisconsin's relative

25 history in terms of barriers to voting. But

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1 I don't know if that differential in and of
2 itself suggests differential barriers, or
3 differential interests or differentials in
4 demographics, but might -- it might affect
5 voting. So...

6 So, yeah, I think it's relevant,
7 but I don't know that it's dispositive.

8 Q. Do you agree that our nation has a
9 history of race based administration of
10 facially neutral laws governing access to the
11 ballot?

12 A. Yes, there are historical evidence
13 of discrimination related to the ballot,
14 there's no question about that.

15 Q. We're almost done. We're going to
16 close out with one last exhibit.

17 MS. FROST: I'm going to ask
18 that the court reporter mark this as McCarty
19 deposition Exhibit 5.

20 (Exhibit McCarty-5, Rebuttal
21 Report, is marked for identification.)

22 BY MS. FROST:

23 Q. Professor McCarty, have you seen
24 this document before?

25 A. No, I have not.

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1 Q. I'm only going to ask you a few
2 questions about the last pages, 6 and 7. So
3 if you want to take a few minutes to read it.

4 A. Okay.

5 Q. I will represent to you that this
6 is, as it is titled on the front, a Rebuttal
7 Report that Professor Ken Mayer submitted in
8 this litigation.

9 A. Okay.

10 Q. So do we want to go off the record
11 for a few minutes while you read?

12 A. Sure.

13 Q. I'm just going to ask you questions
14 about this Section V, McCarty's Weighting
15 Method for Recalculating Turnout.

16 A. (At which time the Witness reviews
17 the document.)

18 (Brief recess.)

19 BY MS. FROST:

20 Q. All right. Professor McCarty, I've
21 just handed you a document that we have
22 marked McCarty deposition Exhibit 5. And I
23 represented to you that this is a rebuttal
24 report prepared by Professor Ken Mayer in
25 this litigation. Have you seen this document

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1 before?

2 A. No, I have not.

3 Q. Did you just spend some time
4 reading it?

5 A. Yes, I did.

6 Q. I'm going to ask that you draw your
7 attention, please, to page 6. And I'm
8 particularly focusing -- or I'd ask you to
9 take a look at the sentence, the first
10 sentence in the last paragraph where
11 Professor Mayer writes, There are two
12 problems with his approach.

13 And in this sentence, understand
14 the "his" to be your approach, Professor
15 McCarty. And, specifically, what Professor
16 Mayer is writing about here is your methods
17 to show that the aggregate turnout increased
18 between 2010 and 2014 for all races and in
19 total.

20 A. Okay.

21 Q. Okay?

22 A. Okay.

23 Q. So Professor Mayer says that you
24 concede that your weighting method works only
25 as long as roll-off rates are uncorrelated

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1 with race at the voting district level.

2 Do you agree with that statement?

3 A. Yeah, it's a direct quote.

4 Q. And then he goes on to say that, If
5 that, in fact, happens, if minority voters
6 are more likely to fall out of the SVRS than
7 white voters, the result would be an
8 underestimation of the change in black
9 turnout between 2010 and 2014, which would
10 work in the Plaintiffs' argument.

11 Do you agree with that statement?

12 A. Yes, I believe it's a quote.

13 Q. Okay. So the next sentence is, The
14 difficulty with his argument is that although
15 this is an empirical question, the effects of
16 a higher roll-off rate for minority voters is
17 identical to a fall-off of turnout among
18 minority voters who remain on the SVRS.

19 Do you agree with that statement?

20 A. No.

21 Q. Why not?

22 A. Well, to the extent to which I
23 understand it, I don't. One of the
24 difficulties I'm having in -- in parsing what
25 he's written is he makes no distinction

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1 between the roll off of voters and
2 non-voters, which I think is crucial, which I
3 think is crucial to this question. So I
4 don't know whether he means a higher rate,
5 roll-off rate of minority voters relative to
6 minority non-voters, whether he means a
7 higher roll-off rate of minority voters
8 relative... So I -- I don't know if the -- I
9 don't know what the relation is to. And
10 that's kind of crucial in answering this
11 question.

12 Q. So he's referring -- what if he is
13 referring to a higher roll-off rate for
14 minority voters as compared to a roll-off
15 rate for white voters?

16 A. Assuming the same roll-off rates
17 for the two groups among non-voters? Because
18 that's -- that's sort of crucial.

19 Q. Why is that crucial?

20 A. Because, essentially, what we want
21 to know is if we look at the population of
22 African Americans that are in the data in
23 2010, we'd want to know whether or not
24 they're representative of other voters who
25 are actually participated or could have

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1 participated in the 2010 election. So if
2 voters -- if black voters and black
3 non-voters roll off at the same rates, then
4 it's going to be representative, a
5 representative sample. And, therefore, does
6 not depend on the relationship of black
7 roll-off rates to white roll-off rates or any
8 other roll-off rates.

9 So, for example, suppose -- suppose
10 50 percent -- suppose we observed -- suppose
11 we observe 50 percent -- suppose there was
12 50 percent turnout among African Americans in
13 2010 based on who was in the voter file in
14 2010.

15 Q. So 50 percent turnout of registered
16 voters?

17 A. Fifty percent -- 50 percent turnout
18 of registered African American voters in
19 2010, suppose that half the voters dropped
20 off, and then half the non-voters dropped
21 off, then I computed the -- then I computed
22 the turnout rate; on average, it would be
23 exactly 50 percent, as before.

24 Q. And that's because your tables --
25 when we're talking about your computations,

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1 they distinguish -- well, no. This is where
2 I don't understand.

3 When you're talking -- and I think
4 we need to go back to, like, super basics --

5 A. Okay.

6 Q. -- in listening to you.

7 Non-voters versus voters, how do
8 you define, when you're talking about
9 non-voters in this context, how are you
10 defining a non-voter?

11 A. The most simple way, someone who
12 did not vote --

13 Q. Someone who is registered to vote?

14 A. Who is registered, but did not vote
15 in that election.

16 Q. In a single election?

17 A. In a single election.

18 Q. Okay. And so then a voter is
19 simply someone who's registered to vote and
20 voted in that single election?

21 A. Yes.

22 Q. And for this context, which
23 election are we talking about?

24 A. So he's making reference to -- so
25 2014, this doesn't matter, I'm assuming

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1 throughout that the 2014 voter records are --
2 would have been almost identical to the 2015.
3 So -- so this is really only about the 2010
4 election.

5 So the -- in 2010, there were
6 people registered, some voted, some didn't
7 vote. Some of those who voted stayed on the
8 rolls through 2015, some of those who voted
9 left the rolls before 2014 or '15, some of
10 those who didn't vote stayed on the rolls,
11 some of those who didn't vote left the rolls.

12 Q. So --

13 A. What I want to know is, like, is
14 the set of people who stayed on the rolls
15 throughout 2015, is it representative of the
16 people who actually were registered in 2010?
17 Because the core -- the problem with all --

18 Q. Right.

19 A. -- all this is we don't know who
20 was registered in 2010, because we don't have
21 a 2010 voter registration file.

22 Q. Let's talk a little bit about why
23 people roll off the voter files. Okay?

24 Will you agree with me it's pretty
25 unusual for someone to affirmatively act to

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1 cancel their voter registration?

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

3 probably true.

4 Q. And so why do people roll off the

5 voter files?

6 What happens to cause someone to

7 roll off the voter files?

8 A. Well, they could move within the

9 State of Wisconsin and reregister at a new

10 address. And in this context, that would be

11 treated, that would be treated as roll off.

12 Q. So that --

13 A. No, actually, let me -- let me --

14 I'm not sure whether that's true or not. Let

15 me -- let me back up.

16 I -- I don't -- yeah, I don't know

17 how a change of address or change of

18 jurisdiction is handled. So I'm going -- I'm

19 going to retract that.

20 Q. And you're saying you don't know

21 how it's handled in Wisconsin?

22 A. I don't know how it's handled in

23 Wisconsin.

24 Q. But as a general matter --

25 A. Not just how it's handled, how it's

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1 reflected in the voter file.

2 Q. Okay. But as a general matter, you

3 would agree that mobility is -- mobility of

4 the voters is one of the higher causes of

5 roll off on a voter file?

6 A. Oh, sure. Yeah.

7 Q. And African American voters, as a

8 group, tend to be more mobile than white

9 voters, correct?

10 A. I don't know specifically. I don't

11 know specifically to Wisconsin. That

12 probably is as a national finding, but...

13 Q. Okay. And that's not something you

14 looked at --

15 A. No.

16 Q. -- specific --

17 A. No.

18 Q. -- to Wisconsin?

19 A. No.

20 Q. Please let me finish the question,

21 because I think we're driving her a little

22 nuts.

23 Do you have any reason to believe

24 that voters and non-voters as you define them

25 roll off the rolls at different rates?

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1 A. Yes, I report that they roll off at

2 different rates.

3 Q. Where do you report that?

4 A. If they rolled off at the same rate

5 I wouldn't have done the weighting, because

6 the voter file would have been representative

7 of those people who were eligible in 2010.

8 Oh, okay. So I -- I mean, I did

9 not phrase it the roll off of non-voters

10 greater than voters, but it's the second

11 paragraph -- or the first full paragraph of

12 page 8, I say that not -- oh, I actually, do

13 say that, that non-voters roll off at higher

14 rates, then I guess that's implicitly that

15 they roll off at higher rates than voters, is

16 documented in Tables 4 and 5 of Professor

17 Mayer's report. Table 4 reveals that the

18 SVRS file undercounts registrants relative to

19 the calculations of the Wisconsin

20 Governmental -- Government Accountability

21 Board by 736,610 or 21.3 percent of the

22 total. But Table 5 reports that the SVRS

23 underreports 2010 voters by 180,194 or

24 8.2 percent of the total.

25 So the pattern is exactly that

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1 which would produce upward biases in the 2010

2 turnout rates. So it's not entirely clear

3 here, but it's simply the cause of the fact

4 that registrants declined by 21 percent and

5 voters only declined by 8.2 percent implies

6 that the roll off of non-voters is about

7 twice as big as the roll off of voters.

8 Q. What impact would it have if

9 Wisconsin had an aggressive list maintenance

10 program?

11 A. Well, I mean, there would be more

12 roll off. I don't know necessarily whether

13 that would affect the relative roll off of

14 voters versus non-voters or not -- or not.

15 Q. You might know that if you knew how

16 Wisconsin's list maintenance program worked?

17 A. Yeah, if I had those details, I

18 might be able to make a prediction about

19 that, yeah.

20 Q. Okay. And although you say that --

21 A. I would -- I would -- oh, sorry.

22 Q. Please. Please go ahead.

23 A. I would just imagine that almost

24 any list management system is going to be one

25 in which non-voters roll off more than --

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1 more than voters, because if they had voted
2 recently, then they probably are not the sort
3 of person who might have moved or gone out of
4 state, for which the list management system
5 is supposed to pick up.

6 Q. But still you don't know -- scratch
7 that, strike that. We've established that.

8 Okay. Let's look back at Professor
9 Mayer's rebuttal report. We're still on
10 page 7 and now I'm looking at this last
11 sentence in the first paragraph, if they do
12 not roll off, but simply refrain from voting,
13 we observe the same effect, which is a drop
14 off in turnout from 2014 to -- or 2010 to
15 2014.

16 Do you agree with that statement?

17 A. In isolation, I don't know how to
18 answer it in isolation, because it refers to
19 the same effect. I'm not sure the effect in
20 the previous sentence is one that I
21 necessarily agreed to. But, yes, if voters
22 who instead of rolling off simply refrained
23 from voting, that would result in
24 lower turn -- that would result in lower
25 turnout.

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1 Q. It would look the same from the
2 numbers that you're looking at?

3 A. One -- one of the things that
4 confuses me about this paragraph is I'm not
5 reporting a drop in turnout from 2010 to
6 2014, I'm reporting an increase. So I -- so
7 I find this very confusing, both because --
8 because of that and the fact that I'm not
9 quite sure what he's arguing, because he
10 hasn't differentiated between the roll off of
11 voters versus non-voters and how that relates
12 to the relative roll offs of voters and
13 non-voters of other groups.

14 So I'm very confused as to what I'm
15 being asked to agree to. So --

16 Q. Okay.

17 A. -- I think I'd prefer not to agree.

18 Q. That's fair. No.

19 Okay. What about the last sentence
20 of this paragraph and the one I'm looking at,
21 it is likely that the voting changes
22 challenged in this litigation themselves
23 cause a higher roll-off rate for minorities.
24 And my question for you is, did you do any
25 analysis to determine whether the voting

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1 changes challenged in this litigation
2 themselves cause a higher roll-off rate for
3 minorities?

4 A. No. No, I didn't, I did not.

5 Q. Okay.

6 A. I -- I use roll-off rate, I use
7 roll-off rate at the -- at the county level.
8 So just in general -- so what matters is
9 within a county whether there's differential
10 roll off of minorities versus non-minorities,
11 non-voters versus voters. I mean, it's kind
12 of -- to say, it's kind of a forthright
13 thing.

14 So for whatever reason, a heavily
15 minority county rolled off a lot more voters,
16 it could well be the case that there were
17 more minority roll off, but that would not
18 have affected my results, because I was
19 looking at -- I was using roll-off rates
20 specifically within -- within county, not
21 across county.

22 Q. Okay. But you're not -- you didn't
23 do any analysis and you're not offering any
24 opinion about whether --

25 A. No.

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1 Q. -- the changes in the Wisconsin
2 laws --

3 A. No.

4 Q. -- could have themselves caused
5 increased roll off among African Americans?

6 A. No, I'm not.

7 Q. Or among any voters at all?

8 A. No, I'm not.

9 Q. Okay.

10 A. From my perspective, the roll off
11 is kind of a nuance. They're trying to
12 get the -- evaluate the claims that were made
13 about turnout.

14 Q. Those are all the questions. I
15 have. Thank you very much.

16 A. Thank you.

17 MR. JOHNSON-KARP: I don't have
18 anything.

19 (Witness excused.)

20 (Deposition concluded at
21 approximately 1:19 p.m.)

22 (Signature Waived)

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C E R T I F I C A T E

I, Sharon L. Martin, a Notary public and Certified Court Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, Nolan McCarty, Ph.D., was duly sworn by me to testify to the truth, the whole truth and noting but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY, that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Handwritten signature of Sharon L. Martin

SHARON L. MARTIN, CCR, RPR
CCR Number: 30XI00202100
Dated: 4/17/2016

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[identification - johnny]

Table with multiple columns of words and their associated counts, including 'impute', 'inaccurate', 'identify', 'incentive', etc.

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[johnson - literature]

Table with multiple columns of words and their associated counts, including 'johnson', 'know', 'knowledge', 'lead', etc.

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[litigation - mean]

Table with multiple columns of words and their associated counts, including 'litigation', 'looked', 'lunch', 'm', 'madison', etc.

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[mean - numbers]

Table with multiple columns of words and their associated counts, including 'mouth', 'move', 'new', 'moved', etc.

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