

EXHIBIT D

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

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

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

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

VIDEOTAPED DEPOSITION OF
STEPHAN THERNSTROM, Ph.D.

11:39 A.M.

JANUARY 7, 2016

KIRKLAND & ELLIS
655 15th STREET NORTHWEST
SUITE 1200
WASHINGTON, D.C.

By: DEBBIE LEONARD, RDR, CRR

1 Q. And do you have any sense of what your 15:35:06
2 compensation has been thus far? 15:35:12

3 A. I spent about -- it's something over 180 hours. 15:35:14

4 Q. Okay. And have you any guesstimates or any 15:35:26
5 representations have been made to you as to how 15:35:30
6 many hours you're likely to be spending on this 15:35:33
7 matter? 15:35:35

8 A. Well, no. I would assume after the deposition, 15:35:36
9 not much time, until the trial. And then I 15:35:41
10 will be there an unknown number of days, and 15:35:46
11 come back home, and that will be it. 15:35:50

12 Q. Okay. So you mentioned that you looked at some 15:35:52
13 reports a couple times, by Dr. Stewart and 15:36:05
14 Dr. Burden? 15:36:08

15 A. Uh-huh. 15:36:08

16 Q. But could you be as specific as possible as 15:36:08
17 what -- the entirety of what information, 15:36:10
18 facts, data you've been basing your opinions on 15:36:14
19 in this case and that you've reviewed for 15:36:18
20 purposes of this case? 15:36:20

21 A. Well -- 15:36:20

22 MR. FARR: Can I respond to that? 15:36:21

23 MR. SHAPIRO: Sure. 15:36:23

24 MR. FARR: I thought this had been 15:36:23
25 served on plaintiffs' counsel, but it 15:36:25

1 apparently wasn't. It just was sent to 15:36:28
2 Michael. We have an appendix that maybe 15:36:30
3 Michael can ask him about to list all the 15:36:33
4 reports that he looked at. 15:36:36

5 MR. GLICK: I just got it five minutes 15:36:38
6 ago. I printed it. I will bring it in and may 15:36:39
7 use it my examination. 15:36:43

8 MR. SHAPIRO: That's all right. I'm 15:36:44
9 going to go through this quickly. I mean, he 15:36:45
10 may not have any others other than the ones 15:36:47
11 he's -- I would also like to know what his 15:36:49
12 familiarity -- 15:36:52

13 MR. FARR: Oh, sure. I don't mind if 15:36:52
14 you ask -- I'm just, like, apologizing because 15:36:54
15 I thought that had been sent to you-all, but 15:36:57
16 apparently it wasn't. 15:37:00

17 MR. SHAPIRO: I appreciate that. 15:37:01

18 MR. MELLETT: (Inaudible.) 15:37:05

19 THE REPORTER: I'm sorry. I didn't 15:37:05
20 hear that. Do you want it on the record? 15:37:06

21 MR. SHAPIRO: Maybe we can just get an 15:37:07
22 answer to that question since it's been asked. 15:37:08

23 THE WITNESS: So what's the question? 15:37:14

24 BY MR. SHAPIRO: 15:37:15

25 Q. Could you just give us a description to the 15:37:15

1 To confirm, you were retained in this 15:45:34
2 case in the middle of November of 2015? 15:45:36
3 A. Yes. 15:45:38
4 Q. Okay. Fair to say your work on this case did 15:45:38
5 not begin until after the July 2015 trial? 15:45:41
6 A. No, it didn't begin until November 16th. 15:45:45
7 Q. Okay. And you didn't file any reports in this 15:45:48
8 case prior to the July 2015 trial, correct? 15:45:51
9 A. No. I've -- I had no -- I had a dim knowledge 15:45:54
10 there was an important North Carolina voting 15:45:58
11 trial going on, but had no -- 15:46:00
12 Q. But other than your -- what you described as a 15:46:03
13 dim knowledge, you had no knowledge -- you had 15:46:06
14 no involvement -- 15:46:07
15 A. No, I had no contact with any -- 15:46:10
16 Q. You had no involvement in the July 2015 trial, 15:46:12
17 correct? 15:46:15
18 A. Right. No contact with anyone, any of the 15:46:15
19 players. 15:46:18
20 MR. FARR: Dr. Thernstrom, again, try 15:46:18
21 to wait until Mr. Glick is done. 15:46:20
22 THE WITNESS: Yes. 15:46:22
23 MR. FARR: He's pretty good about 15:46:23
24 finishing his questions. 15:46:24
25 BY MR. GLICK: 15:46:25

1 Q. Now, I will mark this as Thernstrom Exhibit 3, 15:46:27
2 and this is the appendix and errata that we 15:46:34
3 received about 20 minutes ago during the 15:46:36
4 deposition listing some of the reports that you 15:46:38
5 consulted in this case. 15:46:45

6 (WHEREUPON, Thernstrom Exhibit 3 was 15:46:45
7 marked for identification.) 15:46:54

8 BY MR. GLICK: 15:46:54

9 Q. Dr. Thernstrom, is this a full list of the 15:46:57
10 reports that you consulted in your work in this 15:46:59
11 matter? 15:47:01

12 A. I believe so. I -- my study got horrendously 15:47:02
13 disorganized by the time -- you know, working 15:47:10
14 as many hours as I was on this stuff, so I 15:47:14
15 might have looked at one or two other reports 15:47:18
16 produced in the case that missed this list, 15:47:23
17 but, you know -- 15:47:28

18 Q. Were there other non-report documents that you 15:47:29
19 reviewed as part of your work in this case? 15:47:31

20 A. Well, I've certainly done a certain amount of 15:47:34
21 searches, searching on the Web, downloading 15:47:42
22 articles relevant to this. I mean, that's -- 15:47:46
23 for example, I got on to -- well, I won't -- 15:47:51

24 Q. Documents -- 15:47:54

25 A. It's cited. 15:47:55

1 or Shaw v. Reno case? 15:51:58

2 A. No. 15:51:59

3 Q. If we look back at Thernstrom Exhibit 3, your 15:52:00

4 appendix and errata -- 15:52:03

5 A. Uh-huh. 15:52:06

6 Q. -- and a list of reports you consulted, you'd 15:52:06

7 agree that some of the reports that you looked 15:52:13

8 at for your work on this case were issued in 15:52:16

9 December of 2014, the Burden report, the -- one 15:52:20

10 of the Burden reports -- 15:52:23

11 A. Yes. 15:52:24

12 Q. -- one of the Minnite reports and one of the 15:52:24

13 Stewart reports? 15:52:27

14 A. Yes. 15:52:28

15 Q. But you also reviewed reports from 2014 and 15:52:28

16 early 2015, correct? 15:52:31

17 A. Yes. 15:52:33

18 Q. If we turn back -- and I'm sorry to keep going 15:52:34

19 back and forth. If we turn back to your 15:52:40

20 report, which, I believe, is Thernstrom 1, and 15:52:42

21 turn to page 3 under the subheading where it 15:52:47

22 says "My assignment in this case." 15:52:49

23 A. Uh-huh. Yeah. 15:52:52

24 Q. Here you write, "I was asked to assess the 15:52:59

25 expert witness testimony offered by experts for 15:53:03

1 the plaintiffs in the most recent round of 15:53:04
2 expert submissions at the beginning of 15:53:07
3 December." Do you see that? 15:53:09

4 A. Yes. 15:53:09

5 Q. And as we discussed here, you also reviewed 15:53:09
6 older expert submissions, correct? 15:53:13

7 A. Yes. 15:53:16

8 Q. Okay. Now, Dr. Thernstrom, you did not perform 15:53:16
9 any original work -- any original -- strike 15:53:19
10 that. 15:53:22

11 Dr. Thernstrom, you did not perform any 15:53:22
12 original research for your work in this case, 15:53:24
13 correct? 15:53:28

14 A. Well, I would need a definition of original 15:53:28
15 research. Research has a very broad meaning. 15:53:32
16 I did spend a certain amount of time searching 15:53:37
17 the literature on the topics related to this 15:53:43
18 case. I've downloaded probably a hundred 15:53:48
19 articles, most of which are worthless, but I 15:53:52
20 made use, for example, in this report of what I 15:53:57
21 found an extremely interesting and impressive 15:54:06
22 piece of work. 15:54:10

23 This article in note 30, Mycoff, Wagner 15:54:11
24 and Wilson, and there are plenty of other 15:54:17
25 articles I looked at. So in one sense that is 15:54:20

1 never got to in this report, and so I didn't 16:05:30
2 cite it. I've looked at a lot of articles I 16:05:33
3 haven't cited or discussed here. I mean, 16:05:35
4 it's -- 16:05:38
5 Q. One of the other things that you address in 16:05:45
6 your report are the results and the turnout 16:05:51
7 results in the 2014 election, correct? 16:05:57
8 A. Uh-huh, correct. 16:06:00
9 Q. And you criticized, say, Dr. Burden and 16:06:00
10 Dr. Stewart regarding the 2014 election -- 16:06:11
11 A. Uh-huh. 16:06:13
12 Q. -- correct? 16:06:13
13 You'd agree that in their December 2015 16:06:14
14 reports, neither Dr. Stewart nor Dr. Burden 16:06:20
15 referred to the 2014 election results or 16:06:24
16 predictions, correct? 16:06:27
17 A. Well, my memory, even though I've written this 16:06:29
18 up in some detail, is -- I'll assume you -- 16:06:32
19 you're right. I mean, I was very struck that 16:06:36
20 in the -- the first reports they wrote after 16:06:39
21 having this knowledge, they managed not to 16:06:41
22 recognize it and to hide it away in Appendix U 16:06:44
23 and so on. 16:06:48
24 I don't recall -- and I don't think 16:06:50
25 they've ever addressed it to my satisfaction, 16:06:53

1 but the latest reports I don't think go into 16:06:55
2 that at all, do they? 16:06:59

3 Q. Let me ask you this: You'd agree that the 16:07:00
4 photo ID requirement that's being challenged 16:07:02
5 now was not in place for the 2014 -- 16:07:04

6 A. Oh, of course. 16:07:08

7 Q. -- elections, correct? 16:07:09

8 A. Correct, yes. 16:07:11

9 Q. And so the 2014 elections don't tell us how the 16:07:12
10 photo ID requirement will impact voters in 2016 16:07:14
11 or beyond, correct? 16:07:17

12 A. No, definitely not. Though they do tell us to 16:07:18
13 be a little wary of predictions made by the 16:07:22
14 people who did not forecast correctly the 16:07:25
15 impact of the first three measures that are now 16:07:28
16 governing elections. 16:07:32

17 Q. The 2014 election is just one election, 16:07:34
18 correct? 16:07:40

19 A. Of course, yeah. 16:07:40

20 Q. You'd agree it would be preferable to assess 16:07:41
21 the effect of election laws over more than one 16:07:44
22 election? 16:07:46

23 A. Absolutely, yes. 16:07:47

24 Q. For instance, a trend that exists over two or 16:07:49
25 three elections would be more meaningful -- 16:07:51