

Multiple Documents

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EXHIBIT 4

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

NORTH CAROLINA STATE)
CONFERENCE OF THE NAACP,)
et al.,)
Plaintiffs,)
vs.) Case No: 1:13-CV-658
)
PATRICK LLOYD MCCRORY, in his)
official capacity as the)
Governor of North Carolina,)
et al.,)
Defendants.)

LEAGUE OF WOMEN VOTERS OF)
NORTH CAROLINA, et al.,)
Plaintiffs,)
vs.) Case No: 1:13-CV-660
)
THE STATE OF NORTH CAROLINA,)
et al.,)
Defendants.)

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) Case No: 1:13-CV-861
)
THE STATE OF NORTH CAROLINA,)
et al.,)
Defendants.)

VIDEOTAPED DEPOSITION OF
SEAN P. TRENDE

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25

1 MR. FARR: He was.
 2 BY MS. MEZA:
 3 Q. And who was that?
 4 MR. FARR: I'm not the witness.
 5 THE WITNESS: I don't know his name.
 6 He's a friend of Mr. Farr's, an attorney.
 7 BY MS. MEZA:
 8 Q. Did he engage in the discussion at all?
 9 A. Yes.
 10 Q. And what did you all speak about or what was
 11 the nature of the discussion?
 12 A. The expert reports.
 13 Q. And so you reviewed the other expert reports
 14 and surrebuttals in the matter. Did you review
 15 all of them or specific ones?
 16 A. I think I went through all of them. I don't
 17 know if I went through all the expert reports
 18 because some of them are less relevant to what
 19 I'm talking about than others, but I did go
 20 through all the surrebuttals.
 21 Q. I'm going to go ahead and introduce what I'll
 22 have the court reporter mark as the next
 23 exhibit which I believe is 103.
 24 (WHEREUPON, Plaintiff's Exhibit 103 was
 25 marked for identification.)

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1 THE WITNESS: I think the gentleman's
 2 name in the room is Dale. I'm not being dodgy.
 3 I can't remember any of your names.
 4 MS. MEZA: Okay.
 5 MR. KAUL: Hello everyone.
 6 MS. MEZA: Hi, Josh. We've already
 7 begun.
 8 Could you just state your name for the
 9 record, your full name.
 10 MR. KAUL: Yes. I'm Joshua Kaul. I'm
 11 attorney at Perkins Coie and I represent the
 12 Duke plaintiffs in this case.
 13 BY MS. MEZA:
 14 Q. All right. Mr. Trende, do you recognize the
 15 document I just handed you?
 16 A. Yes.
 17 Q. What is it?
 18 A. It is my declaration in this case.
 19 Q. We'll be discussing this throughout the
 20 deposition so we'll refer to it several times.
 21 Where did you attend college?
 22 A. I went to Yale University.
 23 Q. And when did you graduate?
 24 A. 1995.
 25 Q. And what about graduate education, what school

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1 did you attend and what degrees did you
 2 acquire?
 3 A. I went to Duke University, and I acquired a JD
 4 and a master's degree.
 5 Q. And the master's degree was also at Duke?
 6 A. It was at Duke, yes.
 7 Q. And what was your master's in? What did you
 8 study?
 9 A. Political science.
 10 Q. And can you briefly go over your employment
 11 history?
 12 A. Relevant to this case? You don't want to hear
 13 my bartending jobs, correct?
 14 Q. Your professional employment history.
 15 A. Okay. Just a caveat.
 16 Since I graduated law school, let's
 17 just stipulate that I was a clerk for a year on
 18 the 10th Circuit Court of Appeals. I worked at
 19 Kirkland & Ellis, LLP. I worked at Hunton &
 20 Williams. I worked at David Kamp & Frank, and
 21 I worked at Real Clear Politics.
 22 Q. And at the three -- I assume these were law
 23 firms that you just listed before Real Clear
 24 Politics.
 25 A. And after the clerkship, yes.

15

1 Q. And what was your position there?
 2 A. I was an associate.
 3 Q. And what is your position at Real Clear
 4 Politics?
 5 A. I'm a senior elections analyst.
 6 Q. What do you do as a senior elections analyst?
 7 A. The broad answer is I'm sort of the right-hand
 8 man for John McIntyre who's the CEO of the
 9 company. And so there's a wide array of duties
 10 that I attend.
 11 The most important ones is I write
 12 articles covering elections -- campaigns and
 13 elections. I study polls as they come in and
 14 go into our averages. I help identify articles
 15 to put on to the front page. And those are
 16 really the main -- I follow and track
 17 elections. I do some help finding URLs for
 18 election returns as they're coming in so we can
 19 post them on the front page.
 20 Q. Okay. And what is Real Clear Politics?
 21 A. Real Clear Politics is a website.
 22 Q. And what sort of website is it?
 23 A. It's a website that is intended as a go-to one
 24 stop for all political issues. So we will go
 25 and put various articles relating to politics

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1 that people will enjoy and then you delve down
 2 into the economics of the district, what the
 3 industries are, what the demographics are and
 4 finally kind of what the political affiliation
 5 of the district is.
 6 Now, that's a general -- I'm not saying
 7 I followed that form for every single district,
 8 but those are the general sorts of things that
 9 I wrote about.
 10 Q. What sort of research did you need to do in
 11 order to write the Almanac?
 12 A. Well, it was a lot of historical research.
 13 Some of these states I had -- I didn't have the
 14 level of knowledge that I would want, and there
 15 are all anecdotes that you never heard about,
 16 so I think for every state that I wrote I
 17 bought five or six books some of which were
 18 political trivia and some of which were
 19 history, general histories of the states.
 20 You know, we had research assistants
 21 who would do Lexis searches for the major
 22 cities and towns in the district just to pull
 23 up what's going on, what industries are moving
 24 in or out. If it was -- if it was a state like
 25 North Carolina that provides detailed

25

1 information about the demographics of the
 2 districts, I would look at that because that's
 3 obviously highly relevant for understanding the
 4 politics of a district.
 5 Had to calculate election returns for
 6 some of these districts because they hadn't
 7 come out -- they hadn't been published formally
 8 by Politico yet. Those are the types of
 9 things. I'm sure there's more.
 10 Q. Do you have any experience in elections
 11 administration?
 12 A. No.
 13 Q. Have you worked as a consultant on any
 14 election-related issues?
 15 A. No.
 16 Q. You state in your declaration that you are a
 17 recognized expert in the field of psephology.
 18 A. Election prediction.
 19 Q. Is psephology a formally recognized field of
 20 study in the United States?
 21 A. By whom?
 22 Q. That is can someone acquire a degree or
 23 professional certification in psephology?
 24 A. Not to my knowledge.
 25 Q. Are you aware whether any university has a

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1 department of psephology?
 2 A. No.
 3 Q. Are there professional associations of
 4 psephology?
 5 A. Not to my knowledge.
 6 Q. Are there any peer-reviewed professional
 7 journals in the field of psephology?
 8 A. Well, now -- not specifically dedicated to
 9 psephology, no.
 10 Q. You also state in your declaration that you are
 11 a recognized expert in voter behavior and voter
 12 turnout, correct?
 13 A. Yes.
 14 Q. And what qualifies you as an expert in the
 15 scientific analysis of voter behavior?
 16 A. Well, I have a graduate degree of political
 17 science that involved two semesters of graduate
 18 statistics. I took graduate courses on
 19 campaigns in elections, three that I can recall
 20 at this point, one with Dr. Gronke.
 21 Q. What -- what were the ones that you can recall?
 22 A. It was -- it was -- I don't remember the
 23 specific titles of the courses. I know that I
 24 took a course when I was -- I took a course at
 25 the University of Central Oklahoma at the

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1 graduate level that covered campaigns that
 2 counted towards my master's degree. I took a
 3 course with John Aldridge that dealt with
 4 American elections and campaigns, and I took a
 5 small seminar with John Aldridge and Paul
 6 Gronke that dealt with campaigns and elections.
 7 And in addition for the statistics
 8 classes, you always had to do statistical
 9 projects and I would always choose an election
 10 or turnout-related issue.
 11 Q. And everything you've just named that you are
 12 representing would qualify you as an expert in
 13 the analysis of voter behavior?
 14 A. Well, what do you mean by expert?
 15 Q. You have called yourself an expert in voter
 16 behavior. What do you mean by expert?
 17 A. Sure, sure. Expert is also a legal term, and
 18 so I haven't looked up the regular legal term
 19 or the definition of the legal term of expert.
 20 With the understanding that I'm
 21 referring to my own understanding of what an
 22 expert would be or what people would recognize
 23 as an expert, yeah, that does qualify me as an
 24 expert. It gives me a degree of understanding
 25 that far exceeds what we would call a lay

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1 opinion on these matters, but those aren't the
 2 only things that qualify me as an expert.
 3 Q. What -- do you have anything additional that
 4 would qualify you as an expert in voter
 5 behavior?
 6 A. Sure. Four years of following voter behavior
 7 and writing about it regularly at Real Clear
 8 Politics, at the Crystal Ball, for Dr. Sabato's
 9 book and for the book that I wrote "The Lost
 10 Majority."
 11 Q. And what would you say qualifies you as an
 12 expert in the scientific analysis of voter
 13 turnout?
 14 A. The same.
 15 Q. In addition to what you have just named for us
 16 or stated for us, do you have any additional
 17 formal training in either voter behavior or
 18 voter turnout?
 19 A. Do you mean like course work?
 20 Q. Yes.
 21 A. No. Actually I took an election law class in
 22 the law school, but I guess that probably
 23 doesn't -- voter turnout or voter behavior.
 24 Q. Are you holding yourself out as an expert in
 25 early voting?

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1 A. That falls under the general category of voter
 2 turnout and behavior. Yeah, by carefully
 3 studying the literature, you can acquire
 4 expertise, and I have a greater knowledge than
 5 the lay witness would have.
 6 Q. So according to you, you're an expert in early
 7 voting?
 8 A. Yes.
 9 Q. Are you an expert in same-day registration?
 10 A. Yes.
 11 Q. And what qualifies you as an expert in same-day
 12 registration?
 13 A. The same: By carefully studying the relevant
 14 literature, by studying the laws in the various
 15 50 states and the District of Columbia, I'm an
 16 expert.
 17 Q. Are you holding yourself out as an expert in
 18 voter photo identification laws?
 19 A. Yes.
 20 Q. And what qualifies you as an expert in voter
 21 photo identification laws?
 22 A. By carefully studying the relevant literature,
 23 by studying the laws in the 50 states plus the
 24 District of Columbia, I have a greater
 25 understanding than any lay witness would have,

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1 a much greater understanding.
 2 And by reviewing the responses that
 3 were authored by the various political
 4 scientists to my work that I think that it's
 5 held up that they haven't successfully
 6 criticized it and that qualifies me as an
 7 expert, and that's also applicable to the
 8 answer on early voting, same-day registration,
 9 and if we go to out-of-precinct voting and
 10 early registration it will apply there as well.
 11 Q. Have you prepared any articles for
 12 peer-reviewed journals or publications?
 13 A. No.
 14 Q. Have you written any articles on early voting
 15 for peer-reviewed journals or publications?
 16 A. No.
 17 Q. Have you written any articles on same-day
 18 registration for peer-reviewed professional
 19 journals or publications?
 20 A. No.
 21 MR. FARR: I want to just register an
 22 objection to the form of the question to the
 23 extent that counsel has used the term
 24 "peer-reviewed."
 25 MS. MEZA: Okay.

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1 BY MS. MEZA:
 2 Q. What's your understanding of peer-reviewed?
 3 A. Well, my understanding of peer-reviewed is that
 4 when you -- when you're using it, I understand
 5 you to mean it in the sense that a political
 6 science journal would mean it, which is that
 7 you submit your article to a political science
 8 journal, it's subjected to double blind review
 9 and the political scientists or whoever -- you
 10 don't have to be a political scientist to peer
 11 review -- who are on the other side of the
 12 equation look over the manuscript, determine
 13 whether they believe it is suitable for
 14 publication as is, whether it needs minor
 15 revisions, whether it needs major revisions or
 16 whether it's unsuitable for publication.
 17 Q. And same question for out-of-precinct
 18 provisional voting, have you written any
 19 articles on out-of-precinct provisional voting
 20 for peer-reviewed publications or journals?
 21 A. No.
 22 Q. So in your current position at Real Clear
 23 Politics and the other work you do, do you
 24 routinely perform statistical analysis?
 25 A. Yes.

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1 Q. Could you -- strike that.
 2 What, if any, specialized or formal
 3 training do you have in statistical analysis of
 4 election data?
 5 A. I have two semesters of graduate work in
 6 statistics. In addition, I have many years of
 7 practical experience working with election
 8 data, performing descriptive statistics,
 9 various sorts of regression analyses and so
 10 forth.
 11 Q. And has this all been in your position at Real
 12 Clear Politics?
 13 A. Not the statistical course work.
 14 Q. The experience you have with statistical
 15 analysis as it pertains to elections.
 16 A. And the Crystal Ball and the chapter I wrote
 17 for Dr. Sabato's book and my book that I wrote,
 18 "The Lost Majority."
 19 Q. What software do you typically use when you
 20 perform this data analysis?
 21 A. I will typically use Excel. There are some
 22 functions that you can't do in Excel. I have
 23 a -- what I would call a working proficiency in
 24 R, so I will use that for some sorts of
 25 analyses that Excel can't perform.

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1 Q. What is R?
 2 A. R is an open source statistical package. It is
 3 something of a cross between a programming
 4 language and a statistical package. You have
 5 to manual input commands and R will execute it
 6 and give you the same sorts of output that you
 7 would get in something like Excel.
 8 Q. And do you have any sort of specialized or
 9 formal training in using R?
 10 A. No.
 11 In addition for my book, I did some of
 12 my research at the University of Richmond which
 13 offers -- the problem with SPSS and Stata, it
 14 costs like \$5,000, but the University of
 15 Richmond offered guest passes, and while I was
 16 doing research at the University of Richmond to
 17 examine exit poll data, I believe they had SPSS
 18 and I used that for my book, for parts of my
 19 book.
 20 Q. And do you use SPSS on a regular basis?
 21 A. It is far too expensive for me.
 22 Q. In the data analysis you perform on a regular
 23 basis, could you describe the kind of data you
 24 normally use?
 25 A. That is way too broad. I'm sorry, I can't

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1 answer that question.
 2 Q. What types of data analysis do you perform on,
 3 would you say, a regular basis?
 4 A. You know I've written something like 200
 5 articles or 300 articles for Real Clear
 6 Politics over the last four years. So with the
 7 caveat that I can't possibly explain everything
 8 that I've done even regularly:
 9 Election returns, demographic
 10 variables, you know, demographic changes in
 11 states, population growth, turnout growth.
 12 Those are some examples.
 13 Q. Okay. And what kind of data does that entail?
 14 A. Well, election returns published from various
 15 sources. The most common one that I use is
 16 Dave Leip's political Atlas which is a common
 17 source for people who are doing online work.
 18 Dave Leip's political Atlas, though,
 19 only goes back regularly -- well, it depends on
 20 the state. So I have three books -- well,
 21 that's not true. Multiple books of actual
 22 election returns that I will use to hard code
 23 data that Dave Leip doesn't provide. The
 24 returns that you'll find from CNN.com. The
 25 exit poll results are published at CNN.com and

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1 the New York Times and Fox News and MSNBC.
 2 Dr. McDonald, Michael McDonald at
 3 George Mason University has published various
 4 estimates of turnout for voting eligible
 5 population, citizen voting eligible population,
 6 et cetera, or citizen voting adult population,
 7 et cetera.
 8 The various states provide turnout data
 9 that I will sometimes use for my work. Again,
 10 it's a huge universe. CQ publishes election
 11 results that I'll frequently refer to. They do
 12 gubernatorial results and all the primary
 13 results. Those are hard coded books.
 14 There's a series by Michael Dubin
 15 that's very good. He's like a teacher in
 16 Arizona who has published a number of books
 17 that people rely on with complete congressional
 18 returns going back to 1787, the breakdown of
 19 state legislatures, how many -- if you want to
 20 know how many wigs were in the Alabama
 21 legislature in 1836, that's a book you can
 22 actually pull that data from.
 23 Scammon and Wattenberg had a series.
 24 Obviously Almanac of American Politics is a
 25 good source for election return data and

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1 demographic variables.
 2 That's -- like I said, that's just a
 3 fraction of what I would look at or examples.
 4 Q. What about statewide voter registration and
 5 participation data, do you use that sort of
 6 data on a regular basis?
 7 A. I don't know about on a regular basis but I've
 8 used it.
 9 Q. How often would you say?
 10 A. I couldn't say.
 11 Q. Is it the primary source of data you use?
 12 A. It depends on the sort of article I'm writing.
 13 Q. Would you use it more often than election
 14 results data, for instance?
 15 A. No.
 16 Q. And for what particular reasons have you used
 17 statewide voter registration and participation
 18 data? Could you provide some examples?
 19 A. I don't know if I can as I sit here today.
 20 Q. You don't recall any examples of when you
 21 used -- have had to use statewide voter
 22 registration or voter turnout data?
 23 A. I know I've used it. I can't think of specific
 24 instances. One specific instance would be for
 25 the Almanac of American Politics doing district

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1 analyses, but I would have to go through my
 2 online archive of articles and pull -- see if I
 3 can pull the examples.
 4 Q. And what usually is your source of this data?
 5 A. Well, it's data that's provided by the
 6 secretaries of state or the board of elections.
 7 Q. And how do you acquire it on a regular basis?
 8 A. Online. Online.
 9 Q. So it would be accurate to say you get it from
 10 their website if it's available on the website?
 11 A. Yes.
 12 Q. Does the work you do for -- or the data
 13 analysis you engage in require you to review
 14 and analyze state level voter turnout data?
 15 A. Well, yes.
 16 Q. Could you provide some examples?
 17 A. Well, voter turnout is a -- I think, for
 18 example, one piece of work that I did focused
 19 on the changes in different sorts of voters
 20 from 2008 to 2012. A lot of the analysis had
 21 talked about demographic change and the growth
 22 of the non-white vote from 2008 to 2012, but if
 23 you looked at the data, it didn't actually
 24 grow. It fell -- the non-white vote and white
 25 vote both fell from 2008 as the baseline which

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1 is kind of surprising and contrary to
 2 conventional wisdom.
 3 So one thing that I did was I looked at
 4 turnout, the number of votes cast on a county
 5 level basis across the country, looked at the
 6 demographic characteristics of the various
 7 counties and did a regression analysis to see
 8 the sorts of voters who stayed home in 2008 and
 9 2012.
 10 It wasn't a perfect -- it wasn't a
 11 perfect exercise because you would have
 12 ecological fallacy issues in that sort of
 13 analysis, but it was enough to give us an idea
 14 of the types of voters who stayed home.
 15 Q. Would it be fair to characterize most, if not
 16 all, of the analysis that you do for Real Clear
 17 Politics as relying on aggregate data versus
 18 individual level data?
 19 A. Yes.
 20 Q. And you just mentioned the term ecological
 21 fallacy. What is your understanding of that
 22 term?
 23 A. Well, ecological fallacy is an example --
 24 like if you were to do a regression analysis
 25 of -- I'm trying to explain it at a level that

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1 will make sense.
 2 If you were to do a regression analysis
 3 where voter turnout -- what I did -- where
 4 voter turnout changed in North Carolina, okay,
 5 so you have your county level data and, you
 6 know, this county is 50 percent African
 7 American and 50 percent white, this county is
 8 25 percent white and 75 -- or non-Hispanic
 9 white and 75 percent African American. So you
 10 have your various data set up and your
 11 regression analysis is the change in turnout.
 12 Okay.
 13 The conclusion you're trying to draw
 14 from that is, well, in the counties where -- in
 15 the counties where turnout fell, it was more
 16 likely to be an African American county,
 17 therefore concluding that African Americans
 18 were more likely to stay home.
 19 Well, that becomes a problem for that
 20 specific type of analysis because you don't
 21 necessarily know that it was the African
 22 Americans that were staying home in the county.
 23 There could be something about white voters in
 24 the heavily African Americans counties that
 25 causes them to stay home.

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1 So you're making an inference from a
 2 broad group of people that -- you're making an
 3 inference about specific people that is drawn
 4 from a broad group of people. So that's just
 5 something you have to be aware of when you're
 6 doing that type of analysis.
 7 Q. And it would -- would it be fair to say that
 8 this is usually the case or that there's a
 9 danger of ecological fallacy when you're using
 10 aggregate data?
 11 A. It depends on the conclusion you're trying to
 12 draw.
 13 Q. Could you elaborate on that?
 14 A. Yeah. The example that I gave was you're
 15 looking at county level data with a dichotomy
 16 between white voters and black voters and
 17 trying to intuit something about each of those
 18 particular groups. If you were just looking
 19 at, say, black aggregate turnout in a county,
 20 okay, you wouldn't have that problem.
 21 Q. Would you say that the statistical analysis
 22 that you undertake for your work at Real Clear
 23 Politics always meets scientific standards and
 24 methods generally accepted in the social
 25 sciences or political science?

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1 A. Such as?
 2 Q. What is your understanding of scientific
 3 standards or methods that would be generally
 4 accepted by social science or political
 5 science?
 6 MR. FARR: Objection to the form.
 7 You may answer.
 8 THE WITNESS: I'm sorry, you're going
 9 to have to be more specific.
 10 BY MS. MEZA:
 11 Q. So you have no understanding of standards that
 12 have been set forth by the social science
 13 community or political scientists in performing
 14 their work, any standards on methodology?
 15 A. It would be like asking me to explain the laws
 16 of North Carolina. I couldn't answer that
 17 question because there are a variety of them.
 18 You have to be more specific.
 19 Q. Well, you say there are a variety of them, a
 20 variety of standards within the social
 21 sciences -- social sciences or political
 22 science.
 23 From your understanding of those
 24 methods or standards, do you believe your work
 25 for Real Clear Politics meets those standards?

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1 MR. FARR: Objection to form.
 2 You may answer.
 3 THE WITNESS: I believe that when I am
 4 writing work that uses, for example -- I'll use
 5 an example. For example, regression analysis.
 6 I believe that my regression analyses will
 7 generally meet the standards of political
 8 science in peer review.
 9 With that said, I'm not writing for a
 10 political science audience. So, for example, I
 11 would not include a history of the literature
 12 in an article that I'm writing for Real Clear
 13 Politics. I would not refer -- I would not use
 14 jargon that they would demand in a peer-
 15 reviewed article because that would go over the
 16 head of my readers.
 17 We have a sort of rule of thumb that
 18 every chart loses 5,000 readers, so we try to
 19 keep those to a minimum.
 20 So I believe that the use of
 21 statistical methods in my articles is
 22 appropriate, but to a certain degree you are
 23 comparing apples and oranges because I'm not
 24 trying to produce peer-reviewed literature.
 25 BY MS. MEZA:

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1 Q. Do you have any prior experience analyzing the
 2 effects of voter photo identification
 3 requirements on voters' behavior?
 4 A. What do you mean by experience?
 5 Q. Have you done it before for any reason?
 6 A. I don't believe so.
 7 Q. And do you have any experience analyzing the
 8 effects of changes to early voting schemes or
 9 early voting laws on voters' behavior?
 10 A. Again, what do you mean? Do you mean as from a
 11 lay perspective, from my own interest? Do you
 12 mean from publication in a peer-reviewed
 13 journal? What do you mean?
 14 Q. Have you done it before for any reason?
 15 A. I don't know.
 16 Q. Also have you ever analyzed the effects of
 17 changes to voter registration requirements or
 18 the elimination of same-day registration on
 19 voters' behavior, again, for any reason?
 20 A. No.
 21 Q. And do you have any experience in analyzing the
 22 effects of changes to provisional voting laws
 23 or out-of-precinct voting on voting behavior?
 24 A. No. And the reason I need to clarify -- the
 25 reason why I said I don't know on the early

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1 voting is that I have had back-and-forths with,
 2 for example, Dr. Mike McDonald on Twitter about
 3 cannibalization of data of early voting. That
 4 was something that I examined before the 2012
 5 election because there was a big debate about
 6 whether the Obama campaign was just pulling
 7 from the regular voting pool into the early
 8 voting pool or whether these were new voters
 9 who would not have otherwise voted. So the
 10 answer to that question is yes.
 11 Q. And what about the question about provisional
 12 voting or out-of-precinct voting?
 13 A. Provisional voting, I probably have. I can't
 14 think of specific examples as I sit here.
 15 Out-of-precinct voting, no.
 16 Q. Do you know what North Carolina's House Bill
 17 589 is?
 18 A. Yes.
 19 Q. And what is your understanding of House Bill
 20 589?
 21 A. My understanding of House Bill 589 it was a law
 22 passed in the legislature that changed
 23 North Carolina's -- excuse me --
 24 North Carolina's voting laws.
 25 With respect to this litigation, my

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1 understanding -- excuse me -- again is that it
 2 expanded the use of no-excuse absentee voting,
 3 that it shortened the early voting period from
 4 17 days to 10 days while extending the times
 5 that early voting was available, that it
 6 eliminated out-of-precinct voting, that it
 7 eliminated preregistration and that it
 8 eliminated same-day registration.
 9 Q. And what is your understanding of this case?
 10 A. My understanding of this case is that it is a
 11 Voting Rights Act and 14TH amendment case
 12 brought by the various plaintiffs against the
 13 various defendants.
 14 Q. And what is your role in this case?
 15 A. I am an expert witness.
 16 Q. And have you ever before been retained to
 17 provide expert testimony?
 18 A. Yes.
 19 Q. When?
 20 A. I believe it was the summer of 2012, summer
 21 2012, I think.
 22 Q. And that was the only instance -- other
 23 instance other than for this matter?
 24 A. Yes.
 25 Q. And what was the nature of that case?

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1 A. That was a Voting Rights Act case brought by
 2 various plaintiffs against various defendants.
 3 Q. Do you recall the nature of the claims
 4 specifically?
 5 A. Yes. It had to do with redistricting. It was
 6 a redistricting case. As I talk it through,
 7 I'm not even sure that the claim was the Voting
 8 Rights Act. That may have been one of the
 9 claims.
 10 That was a multi count complaint, so I
 11 probably couldn't speculate on the exact nature
 12 of the claims without having the complaint in
 13 front of me.
 14 Q. And what was your role in that specific case?
 15 A. I was an expert witness.
 16 Q. What were you providing expert witness
 17 testimony on or what was -- did you prepare a
 18 report for that case?
 19 A. I did prepare a report for that case.
 20 Q. What was the topic of your report?
 21 A. The topic of my report was rating the
 22 competitiveness of various North Carolina state
 23 senate and state legislative districts.
 24 Q. And did you provide testimony in relation to
 25 that case?

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1 A. My understanding is that my expert report was
 2 accepted into evidence without objection. I
 3 don't know if that qualifies as testimony
 4 within the meaning of your question.
 5 Q. Did you provide -- were you deposed and/or did
 6 you provide testimony in court for that case?
 7 A. I was not deposed and I did not provide live
 8 testimony.
 9 Q. What specific tasks were you asked to complete
 10 for this case?
 11 A. I was asked two questions, two basic questions:
 12 With respect to the laws at issue in this case,
 13 how did North Carolina compare to other states
 14 as of pre-passage of HB 589 and post passage of
 15 589.
 16 And I was actually asked three other
 17 questions that sort of merge in my mind into
 18 one: The effect of the Barack Obama campaign,
 19 the effect of North Carolina -- did
 20 North Carolina become a competitive state over
 21 this time and could it have mattered, and what
 22 happened to turnout -- what happened in other
 23 states that may or may not have had similar
 24 laws in place in terms of turnout and --
 25 turnout.

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1 People like to say I voted. It's something
 2 that people lie about. And so that -- that
 3 results in a consistent over-reporting of
 4 whether you voted or not.
 5 CPS attempts to compensate for this by
 6 counting people who did not respond to the
 7 survey as non-voters. That brings the level of
 8 report down, and that is understood to be the
 9 reason that the CPS data don't show the same
 10 level of over-reporting as, say -- as other
 11 surveys have shown.
 12 Q. And being aware of these issues, did you do
 13 anything else to correct for these
 14 imperfections when using this data for your
 15 analysis?
 16 A. Well, by looking at change over time, it does
 17 correct for it somehow, to a certain degree.
 18 Q. How is that?
 19 A. Because within states, there's some evidence in
 20 the literature that the over-report bias is
 21 constant, and if that's the case, then the
 22 constant drops out when you do a subtraction.
 23 In other words -- let's assume two data
 24 points, two years, call them A and B. Okay.
 25 And let's say the real level within a state in

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1 Year A is 60 and in Year B it's 70. Okay. The
 2 difference is 10. If the over report bias is
 3 10 points in each state, so it would show up in
 4 the CPS as 70 and 80. When you subtract the
 5 difference is still ten. The over report drops
 6 out from the subtraction, so that helps to
 7 correct for it.
 8 Q. But in addition to that assumption, you
 9 yourself didn't do anything to correct or
 10 consider any of these issues or imperfections?
 11 A. I don't know that I'll accept the
 12 characterization of that as an assumption since
 13 there's peer-reviewed literature on the subject
 14 suggesting that it is -- that non-response bias
 15 is constant within states.
 16 With that said, I didn't engage in any
 17 additional weighting beyond that done by the
 18 CPS.
 19 Q. And is the CPS data the only data you used in
 20 this two-state comparison reported in paragraph
 21 67 through 81?
 22 A. No.
 23 Q. What else did you use or refer to?
 24 A. In paragraph 79 I was responding to a claim
 25 made in the Leloudis declaration at Note 85.

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1 Dr. Leloudis cited to an article by Philip Bump
 2 in The Wire, and as I sit here right now, I
 3 can't testify to the source of the data for
 4 Dr. Bump or I don't know if he's a doctor.
 5 Philip Bump.
 6 Q. But in terms of the two-state comparison you
 7 did reflected in Figures 3 through 6, did you
 8 use data other than the CPS data?
 9 A. No.
 10 Q. Could you have used other data to conduct this
 11 comparison?
 12 A. Such as?
 13 Q. Was there any other data that would have
 14 provided you the information you used to do the
 15 comparison?
 16 A. I can't provide as I sit here an exhaustive
 17 list of potential data that could be used for
 18 the comparison. One could refer to the
 19 registration and vote counts provided by the
 20 State of North Carolina.
 21 The problem with doing that is that
 22 while it's my understanding that Mississippi
 23 also provides that data, in Mississippi the
 24 response to the racial registration question is
 25 optional rather than mandatory in

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1 North Carolina, so there's a risk of an
 2 apples-to-oranges comparison.
 3 And in addition, I tried to keep the
 4 data sets consistent throughout my piece, and
 5 because not every state tracks registration
 6 much less voting by race, you can't do a
 7 cross-state comparison using actual turnout
 8 data.
 9 Q. Did you actually attempt to acquire either data
 10 from North Carolina or Mississippi or did
 11 you --
 12 A. No.
 13 Q. And why did you choose Mississippi to conduct
 14 this comparison?
 15 A. Because it had the highest African American
 16 turnout in 2012 to my recollection.
 17 Q. Is there any other reason you chose to use
 18 Mississippi over any other state to compare it
 19 to North Carolina?
 20 A. Again, to my recollection -- and this is
 21 without the CPS data sitting in front of me --
 22 my understanding is that North Carolina had the
 23 second highest level of African American
 24 turnout in 2012 and Mississippi was the
 25 highest. Again, this is my recollection.

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1 The first -- the way that we're
 2 focusing on is my attempt to operationalize
 3 the various factors that we all agree affects
 4 turnout and registration.
 5 Second way, though, is to say
 6 regardless of how you might nitpick this
 7 methodology, the plaintiffs' experts have never
 8 attempted this methodology even though they
 9 concede that campaign effects and things going
 10 on in other states are important to take into
 11 account when you're looking at registration and
 12 turnout numbers.
 13 Q. Okay. But the question was in order for you to
 14 come to these conclusions, you didn't engage in
 15 this type of investigation?
 16 A. That's what I'm saying. My first conclusion --
 17 the conclusion is twofold here.
 18 The conclusion is that your experts
 19 have a missing variable, okay, and this is why
 20 this might be important. They concede it's
 21 important.
 22 The second -- but more specifically to
 23 your question, yeah, the Masket article right
 24 here states that the Obama campaign's early
 25 vote -- or field operations resulted in the

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1 statistically significant increase in
 2 Democratic turnout; in fact, it was enough to
 3 flip North Carolina.
 4 Q. And that's the source you're using to come to
 5 that conclusion?
 6 A. Yes.
 7 Q. Not your independent analysis?
 8 A. No. It's peer-reviewed literature.
 9 Q. And did you conduct any analysis to examine
 10 whether the spending led to an increase in use
 11 of same-day registration?
 12 A. Again, the advertising dollars are proxy for
 13 field efforts, for other efforts that are being
 14 used.
 15 Not being able to find the data for
 16 2008 and 2012 on Obama campaign field
 17 operations, you have to look at other data
 18 sources, but, no, I did not engage in this
 19 point in the -- at this point in the expert
 20 report, I didn't engage in that. However,
 21 because state competitiveness is an independent
 22 variable in my regression analyses, at that
 23 point it is taken into account.
 24 Again, I think there was some
 25 misunderstanding. A lot of this is -- there

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1 are important points in this section, but a lot
 2 of this is trying to explain why the variables
 3 were chosen for the regression analysis. It's
 4 introduction for an audience that, you know, if
 5 I were writing an APSI, American Political
 6 Science Review, I could just have five
 7 sentences summarizing all of this because
 8 everyone would understand why the different
 9 variables are being used, but here I think it's
 10 more appropriate to have a lengthy explanation
 11 of what's going on.
 12 Q. Well, then you go on to describe the different
 13 efforts engaged in by the Obama campaign in
 14 2008, and this is in paragraphs 104 through
 15 with 111. What were those efforts?
 16 A. Well, the efforts described is first in
 17 paragraph 105 -- excuse me. Jim Messina, who
 18 is the chief of staff, indicated that as part
 19 of their strategic changes -- basically in
 20 June, I believe, or July of 2008 McCain
 21 launched what's called the Britney Spears
 22 commercial. It basically said Barack or
 23 Senator Obama is a celebrity but there's no
 24 depth there was the argument, and so it was an
 25 attempt to take on the rock star persona that

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1 people believed had attached to him.
 2 And Messina says, you know, this did
 3 change our strategy, we became sensitive to it
 4 because our poll numbers were beginning to
 5 drop.
 6 And then this is the part that's
 7 quoted: "Finally at the end of September we
 8 got back to saying, look, we're going to do
 9 this again," "this" being the big outdoor
 10 venues because we need to push early voting,
 11 and if you're going to push early voting and
 12 voter registration, you've got to do the big
 13 events.
 14 So this is Senator Obama's chief of
 15 staff saying, yes, our goal here was to target
 16 early voting and voter registration drives.
 17 In paragraph 106, Obama's field
 18 director, which, you know, a knowledgeable
 19 source, he called something he referred to as
 20 the "Starbucks strategy" which is trying to put
 21 as many of these field offices in place in
 22 order to contact people, get them in touch with
 23 volunteers in the various offices in an effort
 24 to have a strong get-out-the-vote drive. And
 25 he says we went after weak voting Democrats

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1 Q. And why not?
 2 A. Because it's a difference-in-differences
 3 regression analysis and so you can either break
 4 them up sequentially or you can pick a start
 5 point and an end point.
 6 For example, in the Leighley and Nagler
 7 book, L-E-I-G-H-L-Y and Nagler, she does an
 8 analysis of same-day registration laws, and
 9 what she does -- she does take all the years
 10 into account but she comes up with an average
 11 of 1960 to 1968, I believe, what the
 12 participation rate was or 19 -- I'm sorry, 1960
 13 through 1972. A lot of the initial same-day
 14 registration laws go into effect in the early
 15 '70s and then she does an average from '76 to
 16 2008. So she's not breaking up segmented.
 17 And so in the same vein, there's no
 18 theoretical reason you can't look at the change
 19 from 2000 to 2012. You can use that as a
 20 measurement.
 21 I use those years 2012 because it's the
 22 most recent election; 2000 because to my
 23 understanding it is the election that
 24 immediately precedes the enactment of the first
 25 law that plaintiffs are trying to have

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1 North Carolina put into place for 2014 and
 2 going forward. So it would -- it would capture
 3 the effects of all the laws that the plaintiffs
 4 are putting into effect.
 5 Q. Okay. You state that -- you just stated,
 6 excuse me, that you excluded the photo
 7 identification laws or the voter identification
 8 laws in your analysis; is that correct?
 9 A. Yes.
 10 Q. Why?
 11 A. In part because plaintiffs' experts didn't
 12 engage in the sort of analysis that they
 13 engaged in for the other laws, at least the
 14 quantitative experts, and I wanted to keep it
 15 apples to apples.
 16 Secondly, because a number of these
 17 laws -- you get a very small end at least for
 18 what Dr. Lichtman calls the strict laws because
 19 a lot of them have been enjoined, especially
 20 previous to the 2012 elections. So given the
 21 totality of that, I thought it was a good
 22 judgment call not to include them.
 23 Q. Okay. And as far as the early voting laws you
 24 included in your tally, you included the laws
 25 regardless of the numbers of days offered

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1 during the early voting period, correct?
 2 A. That's incorrect.
 3 Q. That's incorrect you said?
 4 A. From my regression analysis -- analyses?
 5 Q. Yes.
 6 A. That's incorrect.
 7 Q. So what did you include then?
 8 A. In paragraph 125, I state that performing the
 9 same analysis for each law individually results
 10 in similar conclusions.
 11 So I do it for pre-registration, for
 12 same-day registration, ballots filed out of
 13 precinct, and then nor does the number of days
 14 for early voting correlate with African
 15 American turnout. So for that regression
 16 analysis I did use the number of days.
 17 Q. No. My question was when -- for Figure 11 when
 18 including whether or not the state had one of
 19 these laws in place, you included the early
 20 voting whether or not the state had an early
 21 voting law regardless of the number of days.
 22 A. I'm sorry. I thought we were talking about
 23 Figure 11. That was my fault.
 24 Yes, it's an ordinal counting system.
 25 There's really no way to work in the number of

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1 states to an ordinal operationalization of a
 2 variable. It's a shortcoming of ordinal
 3 operationalizations, but political scientists
 4 still use these ordinal operationalizations
 5 regularly.
 6 Q. And with respect to same-day registration, you
 7 included them, again, regardless of when in the
 8 period they were available -- same-day
 9 registration was available to voters? For
 10 example, whether it was during the full early
 11 voting period as was available in
 12 North Carolina or for a day or during election
 13 day, you didn't take that into account?
 14 A. Not quite accurate, and this was an explanation
 15 I should have included earlier before, but as
 16 you go through back in Figure 1 -- or in
 17 Opinion 1 the various laws -- and I'm making
 18 judgment calls, okay.
 19 So, for example, on page 5, paragraph
 20 22, "Some of the states describe within
 21 paragraph 21 allow for same-day voter
 22 registration."
 23 "Two states, New York and Missouri,
 24 allow for a ballot to be counted if it is cast
 25 in the incorrect precinct but in the correct

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1 did you account at all for when the law was
 2 implemented in any of these jurisdictions?
 3 A. No. That was another judgment call.
 4 Q. And what do you mean that was a judgment call?
 5 A. Well, so you have to make a decision am I only
 6 going to look at laws that were put into effect
 7 in the given time period or am I going to
 8 put -- you know, take into account laws that
 9 existed beforehand.
 10 And regardless of the decision you
 11 make, you're making assumptions about how these
 12 laws work. For example, Wisconsin and
 13 Minnesota implemented their same-day
 14 registration in '74 and '75. I can't remember
 15 which is which. If I included those as states
 16 that had same-day registration or if I were
 17 willing to include states like that as laws
 18 being in effect, I would be making the judgment
 19 call that, yeah, having those laws in effect
 20 can have -- can have some effect downstream
 21 effectively in the later years, but if I were
 22 to code them as zero because they didn't go
 23 into effect during the 2012 -- 2000-2012 time
 24 period, I'm making the judgment call that I
 25 don't believe those are affecting the change in

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1 turnout.
 2 So either way you have to make
 3 assumptions about how these laws work. I made
 4 the judgment call because of what we know in
 5 paragraphs 91 through 116 about the tactics
 6 that were undertaken, strategy, I suppose, by
 7 the Obama campaign trying to use early voting
 8 laws. It wasn't trying to just use early
 9 voting laws that went into effect in the 2000
 10 to 2012 time period. It was using early voting
 11 laws period, or at least we don't have any
 12 evidence that they were trying to discriminate
 13 between when a law was put into effect.
 14 So that was the judgment call I made.
 15 And these judgment calls are made all the time.
 16 Again, in the Leighley and Nagler book that
 17 Dr. Gronke references, her dependent variable
 18 or her -- what she's trying to explain is the
 19 effect of same-day registration laws, okay, and
 20 she looks at the average of the -- or they look
 21 at the average of the time period from 1960 to
 22 '72 and then the average of the time period
 23 from '76 all the way up to 2008, and so
 24 embedded in that decision is an assumption that
 25 these laws continue to have an effect even

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1 after the initial year of input.
 2 I can accept -- excuse me -- an
 3 argument that it could have been done
 4 differently, and I think that would have been
 5 an interesting exercises for plaintiffs'
 6 experts to undertake in their rebuttal briefs,
 7 but the main point, again, in the first -- the
 8 first sentence that is important that you have
 9 to at least make the attempt to take this into
 10 account.
 11 Q. But in your actual analysis, did you -- you
 12 didn't introduce any variables that would
 13 account for the temporal aspect of these laws,
 14 meaning when they were introduced?
 15 A. I'm actually not familiar with any examples in
 16 these articles that do do that and I think it
 17 would be hard to do.
 18 So the answer is no, but I don't know
 19 how I would do it and I don't -- there may be
 20 examples of people who have done so but I'm not
 21 familiar with them at least as I sit here.
 22 Q. So in your analysis, a law that was implemented
 23 in 1999, for instance, was treated in the same
 24 way as a law that was implemented in 2009?
 25 A. Right. Again, to illustrate why this is so

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1 important, you know, there's an increase in CPS
 2 data in North Carolina from 2008 to 2012.
 3 Okay. After all these laws are implemented --
 4 so if I code North Carolina as a zero not
 5 having any laws in place, I'm assuming that
 6 North Carolina's laws had nothing to do with
 7 the increase that occurred between 2008 to
 8 2012. By coding them as laws, I'm at least
 9 opening the possibility that they had some of
 10 that effect.
 11 It's a judgment call, I will confess it
 12 is that, but I think, if anything, it's
 13 probably a judgment call that's more favorable
 14 to plaintiffs.
 15 Q. So in your analysis did you include any
 16 controls in the regression analysis?
 17 A. Yes.
 18 Q. And what were they?
 19 A. Well, the first thing I did was I compared the
 20 change in African American participation to the
 21 number of laws adopted, a simple bivariate
 22 analysis. And Dr. Stewart says you wouldn't
 23 normally do what I did in a political science
 24 journal and that's true because political
 25 scientists would understand what's going on.

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1 What I did here is I introduced the
 2 controls one at a time to illustrate for the
 3 court why it's important to put these controls
 4 in place. I have no idea if people reading
 5 this have conducted regression analysis. So
 6 that the seriatim introduction of variables is
 7 just to illustrate why it's important to do it.
 8 So the first thing I do is a simple
 9 bivariate analysis, changes in African American
 10 participation to number of laws adopted. Then
 11 I do it change in African American
 12 participation, number of laws adopted and I
 13 believe competitiveness of the state. And then
 14 the final way I do it is change in African
 15 American participation, number of laws adopted,
 16 competitiveness -- change competitiveness
 17 status for a state and then the baseline of
 18 African American turnout as of 2000.
 19 Q. Could you have actually included any additional
 20 controls?
 21 A. I tried to think of additional controls that
 22 would be appropriate to be in place and didn't
 23 come up with any, but I don't think that you
 24 necessarily -- I mean, to survive a peer review
 25 I'm fairly confident you don't have to have any

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1 controls, although I don't think it's the best
 2 way to do it. Again, the Erikson and Minnite
 3 piece does this sort of analysis with no
 4 controls in place and draws conclusions about
 5 the impact of photographic identification laws,
 6 and it's published in the journal that
 7 Dr. Gronke is now the editor and chief of.
 8 Q. So when setting up your own analysis, were you
 9 relying on the -- you keep citing the Minnite
 10 piece. Were you relying on their methodology
 11 or were you --
 12 A. Well, this is kind of a complicated answer.
 13 When I was initially asked to check voter
 14 turnout in other states, I asked myself, well,
 15 okay, how would we -- you're going to need a
 16 regression analysis of laws in other states and
 17 you're going to want to look at changes in
 18 voter turnout. So I conceptualized of how the
 19 regression analysis would work based on years
 20 of working with regression analyses before I
 21 read the Minnite piece.
 22 With that said, it was -- you know,
 23 then you look through literature and you're
 24 interested has anyone else done it the way that
 25 I did it. There's the Minnite piece, or the

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1 Erikson and Minnite piece -- and it's
 2 M-I-N-N-I-T-E -- and then the Leighley and
 3 Nagler book includes a section that again
 4 involves a different approach.
 5 And their argument, the reason you want
 6 to do such an approach rather than looking at
 7 the individual CPS data is that when you're
 8 looking at state-level effects, using the
 9 individual data will overstate the significance
 10 of variables.
 11 So you have to cluster your standard
 12 errors. You have to aggregate anyway, and so
 13 using the top line data is the way you would
 14 want to proceed.
 15 I'll also note that the Erikson and
 16 Minnite piece I went back and double-checked
 17 because they publish all of their results in an
 18 appendix and they do not use any weighting. It
 19 is just the top line published CPS data.
 20 So I don't know why Dr. Stewart would
 21 conclude I could not be peer-reviewed because
 22 of -- no wait. I guess that was Dr. Gronke.
 23 Q. Now, you state in paragraph 22 and you just
 24 noted that you -- one of the controls was
 25 classifying states as either contested or

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1 uncontested in both 2012 -- in both 2000 and
 2 2012. How did you go about this
 3 classification?
 4 A. Okay. Part of it is experience as a
 5 psephologist and just knowledge of
 6 United States elections, what was a target
 7 state and what was not in a given year, and
 8 there should be a citation there.
 9 Q. What would be that citation?
 10 A. Yeah, I'm sorry. I wasn't finished. I'm
 11 looking for -- the article is in -- or the
 12 book -- yeah, paragraph 100 of my report refers
 13 to Magleby financing the 2000 election, page
 14 98, and on that page he gives a recitation of
 15 what campaign spending was in the various
 16 states, and so I took that into account.
 17 Again, with the assumption that
 18 advertising is a proxy for the states that
 19 campaigns are concentrating on, and then for
 20 2012 -- I'm sorry, I want to finish the -- be
 21 precise.
 22 In 2012 it was the later citation to
 23 the CNN ad watch tracking site.
 24 Q. So what is the CNN site?
 25 A. I'm not being very efficient. I apologize.

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1 In paragraph -- in paragraph 103, I
 2 refer to the 2008 version. I'm sorry.
 3 For 2012 it was The Washington Post
 4 tracking in my Exhibit 2 sources under online
 5 data sets. It is small "e."
 6 Q. Okay.
 7 A. And so the idea here was that you can use
 8 Partisan Voting Index or Partisan Index, I
 9 should say. Charlie Cook calls it the Partisan
 10 Voting Index, and he got mad at me for calling
 11 my calculation the Partisan Voting Index. It's
 12 slightly different. The things we deal with.
 13 But the Partisan Index is something
 14 that you can use, but the problem is you're
 15 going to miss -- which is basically saying how
 16 close the state is to the national average. In
 17 other words, if a president wins 50 -- wins
 18 50/50 and a state is won by his opponent 60/40,
 19 then that other state was 10 points more
 20 Democratic than the country as a whole and not
 21 competitive.
 22 The problem, though, is that campaigns
 23 do miscalculate, right. We don't get the
 24 results until the election is occurring, and so
 25 campaigns structure their strategy on what

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1 their polling data say, and as we just show --
 2 in other words, we just saw in 2012, sometimes
 3 their polling data fails spectacularly.
 4 And so one example of why there's a
 5 problem with using the results, just relying
 6 strictly on them, is 2000 where George W. Bush
 7 inexplicably spends millions of dollars in
 8 California, goes on a tour of the state the
 9 weekend before the election when he probably
 10 should have been in Florida and loses
 11 California by double digits.
 12 Now, if you were using Partisan Index,
 13 you would conclude that California was not
 14 competitive, but we know that the Bush
 15 administration was substantially targeting
 16 California and treating it as a competitive
 17 state, and so that's why I operationalized it
 18 the way that I operationalized it.
 19 Q. And is your approach a recognized method of
 20 conducting this type of classification?
 21 A. I don't know that political scientists have
 22 recognized it, but people that no one would
 23 dispute who are experts in elections and
 24 turnouts, such as Charlie Cook and Stu
 25 Rothenberg and Larry Sabato, engage in this

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1 sort of analysis all the time.
 2 MS. MEZA: Well, it's a little over
 3 12:30 now and we promised to go to lunch at
 4 this point. We can keep going or we can break
 5 for lunch now.
 6 MR. FARR: What's your choice?
 7 THE WITNESS: I am fine, but it's
 8 whatever -- if people are getting hungry, I'm
 9 not going to -- or just want a break.
 10 MS. MEZA: Why don't we finish up a few
 11 more questions.
 12 THE WITNESS: Okay.
 13 THE VIDEOGRAPHER: Excuse me. May I
 14 change the disk?
 15 MS. MEZA: Why don't we just go ahead
 16 and break then. So we'll break for lunch.
 17 THE VIDEOGRAPHER: Off record at
 18 12:34 p.m.
 19 (Lunch Recess.)
 20 THE VIDEOGRAPHER: On record at
 21 1:36 p.m.
 22 BY MS. MEZA:
 23 Q. Welcome back, Mr. Trende.
 24 So we had left off at paragraph I think
 25 122.

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1 A. Okay.
 2 Q. So what is a multivariate analysis?
 3 A. It is a regression analysis that involves
 4 multiple variables as opposed to bivariate
 5 analysis which is just the independent variable
 6 and the dependent variable.
 7 Q. Were the individual analyses you conducted in
 8 this section, were they multivariate analyses?
 9 A. The regression analysis in paragraph 121 was
 10 bivariate and the regressions in 123, 124 and
 11 125 were multivariate.
 12 Q. And did any of these analyses be conducted in
 13 this cross-state comparison also report
 14 relevant changes in white voter participation
 15 rates?
 16 A. They did not.
 17 Q. Is there a reason for that?
 18 A. You can use that as your dependent variable.
 19 In other words, I suppose you could structure
 20 it what the delta was between white and --
 21 non-Hispanic white and African American
 22 participation in 2000, look at the delta in
 23 2012 and subtract them that way.
 24 The reason that I didn't do that was I
 25 was asked to look at African American

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1 participation rates, and in addition, when we
 2 return the results that suggest these laws
 3 don't affect African American participation
 4 rates, we've gotten to our final answer because
 5 Dr. Stewart or Gronke might object or you might
 6 object in court.

7 Were interested in whether African
 8 American -- how African American and
 9 non-Hispanic white, what the effect of these
 10 laws are on African Americans as they relate to
 11 non-Hispanic whites, but if the answer is they
 12 don't have any effect on African Americans at
 13 all, or at least we don't have evidence of a
 14 statistically significant effect, then we've
 15 answered our question.

16 Q. So it's your contention that there is no
 17 statistically significant effect of these laws
 18 on African American voter participation?
 19 A. Yes. This is the only attempt in this
 20 litigation to try to quantify what the effect
 21 would be, and none of the -- none of the
 22 different ways that I investigated this suggest
 23 a statistically significant effect.

24 Q. And based on your analysis here, can you draw
 25 any conclusions regarding disproportionate use

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1 or reliance on these voting methods by African
 2 American voters?

3 MR. FARR: Objection to the form.

4 THE WITNESS: Can you ask the question
 5 again.

6 BY MS. MEZA:

7 Q. Based on the analyses you conducted, can you
 8 draw any conclusions regarding disproportionate
 9 use of or reliance on these voting methods by
 10 African American voters versus white voters?
 11 MR. FARR: Objection to form.
 12 You may answer.

13 THE WITNESS: Well, there's no
 14 effect -- no evidence of statistically
 15 significant effect on African American turnout.
 16 So there's -- I mean, you've answered your
 17 question at that point: There's no effect on
 18 African American turnout period. I don't know
 19 how else to answer it.

20 BY MS. MEZA:

21 Q. So you also go on to conduct a similar analysis
 22 with respect to midterm elections beginning on
 23 page 33 and paragraph 126.

24 Did you conduct the same analysis with
 25 respect to midterm elections or was it

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1 different in any way?

2 A. First, just as a clarification for the record.
 3 When I say statistical significance, I mean
 4 95 percent confidence which is the traditional
 5 cutoff for use in political science and other
 6 analyses for significance.

7 The regression analysis in this section
 8 is simply the laws variable versus the change
 9 in African American participation. And I see
 10 looking at Figure 14, it says change in African
 11 American participation from 1998 to 2012 and
 12 that should be to 2010.

13 MR. FARR: What figures?
 14 THE WITNESS: That's Figure 13 --
 15 Figure 14.

16 MS. MEZA: Figure 14.

17 THE WITNESS: Yes. I'm sorry. And
 18 then there was also, you know, 126 to 135 is
 19 not simply the regression analysis. There are
 20 other points made in that section as well.

21 BY MS. MEZA:

22 Q. So in terms of the states you considered, were
 23 they the same states you considered for the
 24 prior analysis?
 25 A. Yes.

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1 Q. And in terms of the laws you considered, were
 2 they the same laws you considered with respect
 3 to the prior analysis?
 4 A. Yes.

5 Q. And Figure 14, what does the second column of
 6 Figure 14 represent? You made the correction
 7 that it's 2010, but what calculation did you
 8 conduct to arrive at these results?
 9 A. So the full calculation to arrive at those
 10 results was the -- in each state the African
 11 American turnout rate -- or the number of
 12 African American voters in a state in 2010
 13 divided by the citizen voting age population
 14 reported by the CPS in 2010, that is, the
 15 participation rate for 2010, I took the African
 16 American vote for the state in 1998, the number
 17 of voters, divided it by the number of citizens
 18 of voting age who were African American in the
 19 state and that was the voting rate for 1998 and
 20 then I subtracted them.

21 Q. Did you account for any -- you didn't account
 22 for any intervening years, so nothing between
 23 1998 and 2010?
 24 A. I did not include variables for 2002 or 2006.

25 Q. So the last two columns at least in Figure 11

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1 and Figure 14 should be the same; is that
 2 correct?
 3 A. No.
 4 Q. No. Why not?
 5 A. Because laws change.
 6 Q. So you -- Figure 11 includes laws from 2000 to
 7 2012? I thought the state of the laws that you
 8 accounted for in Figure 11 --
 9 A. And so at the beginning of the deposition I
 10 suggested I had errors.
 11 Q. Okay.
 12 A. And so that was an error. When I was going
 13 through Dr. Gronke's report, he suggested that
 14 California only had two laws in place rather
 15 than three. California enacted -- excuse me --
 16 enacted a law in 2012 that I believe was a
 17 same-day registration law but the law said it
 18 would not go into effect until the Secretary of
 19 State had decide to implement it. So it won't
 20 go into effect until 2016. So it is not
 21 possible for that law to have affected the
 22 change in turnout from 2000 to 2012.
 23 Q. Okay. So that only applies to what's in Figure
 24 11, not Figure 14, correct?
 25 A. Well, let me see. I did correct that Figure

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1 14.
 2 Q. Okay. And your counsel did represent that you
 3 had a supplement. Was that the only correction
 4 in that supplement?
 5 A. No. So then --
 6 Q. Well -- sorry. Just for the record, we have
 7 not seen this before.
 8 MR. FARR: That's because he typed it
 9 up today and I offered to give it to you before
 10 the deposition.
 11 MS. MEZA: Yes. Yes. Yes. I
 12 understand that, but for the record, we've not
 13 seen this before. It's a supplement to
 14 Mr. Trende's report.
 15 MR. FARR: Yes.
 16 MS. MEZA: And given that we haven't
 17 reviewed it before, we would like to reserve
 18 the right to depose again if there is any
 19 reason to do so.
 20 MR. FARR: Well, we would object to
 21 that and we're willing to let you look at this
 22 as long as you'd like and he'll stay until you
 23 have an adequate chance to review it if you'd
 24 like to see it.
 25 MS. MEZA: Well, why don't we run

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1 through this and, again, if there's anything
 2 that comes up that is addressed in the
 3 supplement, you can let us know, but we will
 4 review it after we've completed the
 5 questioning.
 6 THE WITNESS: Okay.
 7 BY MS. MEZA:
 8 Q. Go on. You were about to make another point.
 9 A. I've lost my train of thought.
 10 Q. All right. So I just want to understand, so
 11 Figure 11, the last column includes laws as
 12 they existed in 2012, an accounting of the laws
 13 as they existed in 2012.
 14 A. No. That is an error that Dr. Gronke
 15 identified in his report.
 16 Q. Okay.
 17 A. And that needed to be addressed.
 18 Q. So every one of the numbers in Figure 11 in the
 19 third column is incorrect?
 20 A. No --
 21 Q. Okay.
 22 A. -- that is not correct.
 23 Q. Well, why don't you tell me what is in the
 24 third column in Figure 11 and what needs to be
 25 corrected.

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1 A. I cannot do that off the top of my head.
 2 I can give an example. Minnesota
 3 implemented 46 days early voting, so it now has
 4 more than 17 days of early voting. It did not
 5 have that in 2012.
 6 So when I was calculating the state of
 7 current laws, it was correct to code Minnesota
 8 as a state that had more permissive laws than
 9 North Carolina. However, because that law will
 10 not go into effect until the 2014 elections, it
 11 should not have been coded that way for Figure
 12 11.
 13 Q. Okay.
 14 A. That's an example.
 15 Q. Okay.
 16 A. And I can say there are not many -- I would say
 17 maybe three or four are incorrect.
 18 Q. But absent those incorrect numbers, what you
 19 were reporting here were the laws as they
 20 existed now when you read them. Your
 21 accounting here in the last column in Figure 11
 22 is considering the laws as they currently
 23 exist?
 24 A. Right.
 25 Q. Okay.

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1 question.
 2 BY MR. HO:
 3 Q. Apart from turnout effects, are you offering
 4 any opinion as to whether voters will
 5 increase -- I'm sorry -- will faced increased
 6 burdens to vote as a result of the elimination
 7 of out-of-precinct voting?
 8 MR. FARR: Objection.
 9 THE WITNESS: With the same caveat
 10 about the definition of burden, I cannot offer
 11 an answer to that question.
 12 BY MR. HO:
 13 Q. And apart from turnout, are you offering any
 14 opinion as to whether black voters will
 15 disproportionately face increased burdens to
 16 vote as a result of the elimination of
 17 out-of-precinct voting?
 18 MR. FARR: Objection to form.
 19 THE WITNESS: Same caveat about the
 20 definition of burden. I cannot answer that
 21 question.
 22 BY MR. HO:
 23 Q. I want to turn to your background a little bit,
 24 and Ms. Meza asked you a few questions about
 25 that.

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1 You don't have a doctorate in political
 2 science; is that right?
 3 A. That's correct.
 4 Q. Did you ever think about getting one?
 5 A. Yes.
 6 Q. Why didn't you get one?
 7 A. Because I wanted to be a lawyer sadly.
 8 Q. Why?
 9 You are, however, familiar with the
 10 political science literature on early voting,
 11 correct?
 12 A. Correct.
 13 Q. Who in your estimation are some of the leading
 14 political scientists in the area of early
 15 voting research?
 16 A. Dr. Burden has written quite a lot on it.
 17 Dr. Gronke has written quite a lot on it.
 18 Dr. Michael -- actually, Dr. McDonald at George
 19 Mason University's probably up there.
 20 Dr. Stein has written pretty extensively.
 21 Q. At Rice?
 22 A. Yes.
 23 Q. If you had to pick one of them as sort of the
 24 leading scholar in early voting research, would
 25 you be able to do that?

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1 A. I doubt it.
 2 Q. You're familiar with the work of Professor
 3 Gronke?
 4 A. He's my professor.
 5 Q. At Duke?
 6 A. He'd tell me he taught me everything I know.
 7 Q. Have you reviewed his report in this case?
 8 A. I have.
 9 Q. And have you looked at his c.v. which is
 10 appended to his report?
 11 A. I did not.
 12 Q. But you're familiar with him?
 13 A. Oh, yes.
 14 Q. So in your assessment, is he qualified to
 15 render an opinion about early voting in this
 16 case?
 17 A. I can't offer that legal conclusion.
 18 Q. Not as a legal conclusion.
 19 You noted earlier that the term
 20 "expert," for instance, can have a legal
 21 conclusion.
 22 So is he qualified to offer an opinion
 23 on early voting in North Carolina in the same
 24 loose sense that you used the term "expert" to
 25 describe yourself?

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1 A. He knows more about early voting than the
 2 average lay witness would know.
 3 Q. Do you think he knows more about early voting
 4 than you know?
 5 A. Possibly.
 6 Q. I want to show you something that we'll mark as
 7 Exhibit 106.
 8 (WHEREUPON, Plaintiff's Exhibit 106 was
 9 marked for identification.)
 10 BY MR. HO:
 11 Q. Do you recognize this?
 12 A. I think so.
 13 Q. This is Professor Gronke's calculation of early
 14 voting usage rates by race in North Carolina
 15 using the State's turnout data.
 16 A. Okay.
 17 Q. Do you dispute the factual accuracy of
 18 Professor Gronke's calculations regarding early
 19 voting usage?
 20 A. No.
 21 Q. Do you dispute the factual accuracy of
 22 Professor Gronke's calculations regarding
 23 racial disparities in early voting usage?
 24 MR. FARR: Objection to the form.
 25 THE WITNESS: I would trust that his

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1 Q. And in your view is your experience in doing
 2 that part of what makes you an expert?
 3 A. In the lay sense, yes.
 4 Q. And does that work include assessing
 5 possibilities about turnout among different
 6 racial groups?
 7 A. Yes.
 8 Q. I want to show you something. I think we're at
 9 109.
 10 (WHEREUPON, Plaintiff's Exhibit 109 was
 11 marked for identification.)
 12 BY MR. HO:
 13 Q. Do you recognize this?
 14 A. Yes.
 15 Q. What is this?
 16 A. This is an article I wrote November 12, 2013,
 17 in the wake of the Virginia gubernatorial
 18 election.
 19 Q. What's the title of this post?
 20 A. "How Much Did Demographics Matter in the
 21 Virginia Race?"
 22 Q. Can you turn to the second page. Do you see
 23 where in bold it says "2. The exit polls might
 24 overstate the surge in African American votes?"
 25 A. Yes.

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1 Q. Can you look at the third paragraph below that.
 2 And do you see where you wrote:
 3 "The CPS estimates have their
 4 own problems -- in particular, more
 5 people report voting than actually
 6 did so, and there are some good
 7 reasons to believe that the over-
 8 reporting issue isn't uniform across
 9 demographic groups."
 10 Is that an accurate reading of what you
 11 wrote?
 12 A. Yes.
 13 Q. So let's talk about the CPS data. I know you
 14 did a little bit earlier today.
 15 Just for clarification, that's compiled
 16 by the Census Bureau, right?
 17 A. Correct.
 18 Q. And when we say it's a survey, what do we mean
 19 by that?
 20 A. We mean that people -- when we say it is a
 21 survey, we mean that we are asking people after
 22 the fact to give their answer as opposed to
 23 looking at the hard data that could show up in
 24 a voter file. It's a self response.
 25 Q. So when you mean self response, you mean people

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1 voluntarily give their answers back?
 2 A. Correct.
 3 Q. Ow, you refer to over-reporting earlier in the
 4 CPS. Now, would it be accurate, then, to say
 5 that the CPS data, that in it more people self
 6 report voting than actually voted?
 7 A. Within the individual level data, yes.
 8 Q. And in the passage that you wrote that I read
 9 from a moment ago, am I correct that you meant
 10 to say that there is reason to believe that the
 11 rate at which CPS respondents over report
 12 voting may differ among different racial
 13 groups?
 14 A. I think I meant to write over-reporting issue
 15 isn't uniform among demographic groups.
 16 Q. By demographic groups did you mean racial
 17 groups?
 18 A. I don't know if I was writing with that degree
 19 of precision there.
 20 Q. What did you mean when you said demographic
 21 groups?
 22 A. Demographics encompass a variety of variables.
 23 Q. Some examples?
 24 A. Age, race is one of them, gender, class.
 25 Q. So over-reporting may differ based on those

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1 different demographic factors?
 2 A. No, I didn't say that. I said across
 3 demographic groups. There wasn't any sort of
 4 limitation there.
 5 Q. Can you clarify what you just meant by that?
 6 A. Yeah. The over-reporting issue isn't uniform
 7 across demographic groups. It doesn't mean
 8 that there are no two demographics groups where
 9 they are similar. It just means that of all
 10 the different demographic groups there are
 11 dissimilarities in there.
 12 Q. I want to show you something else. I think
 13 we're at 110.
 14 (WHEREUPON, Plaintiff's Exhibit 110 was
 15 marked for identification.)
 16 BY MR. HO:
 17 Q. Do you recognize this, Mr. Trende?
 18 A. Yes.
 19 Q. What is this?
 20 A. This is an article I wrote for Real Clear
 21 Politics May 9, 2013.
 22 Q. So you're the author of this post?
 23 A. Yes.
 24 Q. What's the title of it?
 25 A. "Sweeping Conclusions From Census Data are a

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1 Mistake."
 2 Q. So let's look at the first page and the bottom.
 3 Do you see where it says:
 4 "But if there is one thing that
 5 we absolutely know about 2012, beyond
 6 any reasonable doubt, it is that
 7 turnout actually dropped from 2008.
 8 In fact, it dropped substantially.
 9 "Dave Wasserman" -- on to the next
 10 page -- "followed the 2012 results as
 11 closely as anyone, and he calculates
 12 that turnout dropped from 131,313,820
 13 in 2008 to" 129,000 -- I'm sorry --
 14 "129,069,194.
 15 "So the CPS data say there were
 16 around 4 million more votes cast in
 17 2012 than was actually the case."
 18 Is that an accurate reading of what you
 19 wrote?
 20 A. Yes.
 21 Q. So we absolutely know in your view that the
 22 Census CPS data was off by 4 million voters in
 23 2012?
 24 A. I wouldn't have any reason to dispute that.
 25 This was written in 20 -- in May of 2013 before

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1 the final vote counts were available in some
 2 places, but like I said, I wouldn't have any
 3 reason to dispute that.
 4 Q. And the CPS had reported that turnout increased
 5 between 2008 and 2012 by 1.8 million, but that
 6 was wrong in your estimation.
 7 A. I don't see that in the part you just read.
 8 Q. Well, if you look at the -- on the first page
 9 starting above where we started, the last
 10 sentence in that paragraph:
 11 "That works out to a total of
 12 1.8 million more votes cast in 2012
 13 than 2008, according to the CPS survey."
 14 A. Yes. Okay.
 15 Q. So the CPS reported the turnout increase
 16 between 2008 and 2012 by 1.8 million voters?
 17 A. That's my recollection.
 18 Q. But in fact, turnout declined between 2008 and
 19 2012.
 20 A. That is true.
 21 Q. And that is true that the CPS over-reported
 22 turnout even though the CPS treats
 23 non-responses as non-voters?
 24 A. Correct.
 25 Q. Now, in light of the article that we read

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1 earlier or we looked at earlier of yours,
 2 Exhibit 109, when the CPS in 2012 overestimates
 3 the number of voters by 4 million, do we have
 4 reason to believe that those 4 million are
 5 proportionately distributed amongst different
 6 demographic groups?
 7 A. I would say we have reason to believe they are
 8 not, a little bit different.
 9 Q. So over-reporting may be -- those 4 million
 10 over-reported votes may be coming
 11 disproportionately from different demographics?
 12 A. Correct.
 13 Q. Are you aware of academic research indicating
 14 that black respondents may tend to over report
 15 voting more frequently than white ones?
 16 A. Yes.
 17 Q. Do you agree with that research?
 18 A. I have no reason to dispute it.
 19 Q. Now, to your knowledge has the Census CPS
 20 over-reported turnout in other elections
 21 besides 2012?
 22 A. That is my recollection. I would prefer to go
 23 back and look at the actual data before making
 24 a final judgment, but I'm not going to fight
 25 with you about it.

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1 Q. 2012 is not the first time it happened?
 2 A. I don't think so, no.
 3 Q. To your knowledge, does the rate at which the
 4 CPS over reports voting remain constant from
 5 election to election?
 6 A. Now, when you say the rate at which the CPS
 7 over reports --
 8 Q. I mean nationally.
 9 A. Well, but you mean the top line number that
 10 they publish?
 11 Q. Yes.
 12 A. Okay. Then I don't believe it's constant.
 13 Q. It varies from election year to election year?
 14 A. That's right.
 15 Q. And what about from state to state, does it
 16 vary from state to state, the level of
 17 over-reporting in the Census -- in the CPS
 18 data?
 19 A. Among states?
 20 Q. Well, is the over-reporting rate identical in
 21 each state --
 22 A. Right.
 23 Q. -- in the CPS?
 24 A. Among different states the rates differ.
 25 Q. And you're aware of academic research

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1 indicating that over-reporting rates are
 2 different among different states?
 3 A. Correct.
 4 Q. Now, you said earlier during this deposition
 5 that the over-reporting rate tends to be
 6 constant within states from election to
 7 election; is that right?
 8 A. That there is peer-reviewed literature that
 9 supports this, yes.
 10 Q. What is that peer-reviewed literature?
 11 A. I cannot think of the citation off the top of
 12 my head, but I can get it to you after a break.
 13 Q. Is it cited in your report?
 14 A. I don't believe it is.
 15 Q. Why didn't you cite that in your report?
 16 A. I didn't cite it.
 17 Q. Did you review that literature before you
 18 drafted your report?
 19 A. Yes.
 20 Q. When?
 21 A. I cannot say with certainty what the first time
 22 I read that literature was. I know I conducted
 23 my first round of literature review with this
 24 report specifically in mind within a few weeks
 25 of being hired -- or engaged for this, so I

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1 would assume it was then.
 2 Q. So you didn't look at that literature before
 3 you started working on this report?
 4 A. I didn't say that.
 5 Q. Well, you just said that you looked at it the
 6 first time when you first started looking for
 7 this report.
 8 A. No. I said with this litigation and this
 9 expert report in mind.
 10 Q. So you looked at it before you started working
 11 on this report?
 12 A. I don't know.
 13 Q. You can't recall?
 14 A. I can't recall.
 15 Q. Can we look back at your post Sweeping
 16 Conclusions from Census Data are a Mistake?
 17 Can we turn to the third page.
 18 Can we look at the end of it, and the
 19 last two sentences:
 20 "But because of this known issue,
 21 analysts and reporters should avoid
 22 making sweeping pronouncements on the
 23 basis of this data. There's just too
 24 much that we don't know."
 25 Is that an accurate reading of what you

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1 wrote?
 2 A. That is what I wrote.
 3 Q. And by known issue, you're referring to
 4 over-reporting of turnout in the Census CPS
 5 data?
 6 A. Correct.
 7 Q. And so because of the over-reporting issue, you
 8 would not in your own writing for Real Clear
 9 Politics make sweeping pronouncements on the
 10 basis of Census CPS data?
 11 A. So to understand that, we have to understand
 12 what I mean when I'm talking about analysts and
 13 reporters. And this entire article is written
 14 in the context of -- if you go back to page 1,
 15 paragraph 2:
 16 "The recent release has been
 17 reported by others with banner
 18 headlines like this one: 'For the
 19 First Time on Record, Black Voting
 20 Rate Outpaced Rate for Whites in 2012.'
 21 A flood of analysis has predictably
 22 followed, ranging from deep dives into
 23 the data, to commentary," et cetera,
 24 et cetera.
 25 So that is the context in which I am

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1 writing this. So you should not have a glaring
 2 headline to that effect without at least taking
 3 into account the issues that are involved
 4 within the data.
 5 This is an informational piece since a
 6 lot of journalists and analysts read my work to
 7 say, hey, there's at least a red flag here that
 8 you should think about before you trumpet any
 9 results.
 10 Q. So in your writing, though, because you're
 11 addressing analysts and reporters -- and you're
 12 an analyst?
 13 A. Yes.
 14 Q. A reporter?
 15 A. No. Yes then no.
 16 Q. Would you take your own advice and avoid making
 17 sweeping pronouncements on the basis of these
 18 data?
 19 A. I wouldn't write a blaring headline like "For
 20 the First Time on Record, Black Voting Rate
 21 Outpaced Rate for Whites in 2012," which is the
 22 context in which I'm writing this piece.
 23 Q. In addition to analysts and reporters, would
 24 you also caution courts not to make sweeping
 25 pronouncements on the basis of CPS data?

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1 Q. And you speak at conferences?
 2 A. Yes.
 3 Q. You've spoken at the Cato Institute?
 4 A. Yes.
 5 Q. It's a libertarian think tank?
 6 A. Yes.
 7 Q. You've spoken at the American Enterprise
 8 Institute?
 9 A. Yes.
 10 Q. That's a conservative think tank?
 11 A. Yes.
 12 Q. You've appeared on the Steve Malzberg Show on
 13 the Newsmax TV channel, correct?
 14 A. Yes.
 15 Q. Conservative cable TV channel?
 16 A. Yes.
 17 Q. You've been on the radio on WMAL Washington,
 18 correct?
 19 A. Yes.
 20 Q. Conservative radio news program?
 21 A. I don't know.
 22 Q. Now, we've gone for about almost an hour or an
 23 hour.
 24 A. I don't have a watch.
 25 MR. KAUL: I would ask that we take a

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1 quick break.
 2 MR. HO: Okay.
 3 THE VIDEOGRAPHER: Off record at 3:15.
 4 (Brief Recess.)
 5 THE VIDEOGRAPHER: On record at 3:23.
 6 BY MR. HO:
 7 Q. Mr. Trende, could we turn to your expert
 8 report? Do you have a copy of it in front of
 9 you?
 10 A. Sure.
 11 Q. Could you turn to page 30, section titled
 12 "Cross-State Comparison."
 13 A. Okay.
 14 Q. So Ms. Meza asked you a few questions about
 15 this. I just have a few follow-up questions.
 16 Is it fair to say that in this section
 17 you attempted to determine if there is a
 18 statistically significant relationship between
 19 the change in African American turnout between
 20 2000 and 2012 in states and the number of
 21 voting reforms implemented in those states?
 22 A. The number of voting reforms similar to the
 23 types of voting reforms that are at issue in
 24 this litigation.
 25 Q. Right. By voting reforms, I mean early voting,

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1 same-day registration, out-of-precinct
 2 balloting and pre-registration.
 3 A. "These reforms" we'll call it.
 4 Q. Is that fair to say that's what you're doing
 5 here?
 6 A. Yes.
 7 Q. You're not offering an opinion, are you, as to
 8 whether or not African American turnout rose
 9 relative to white turnout in any of these
 10 states, correct?
 11 A. Correct.
 12 Q. Now, in arriving at the conclusions that you
 13 reach from this analysis, it's important that
 14 the underlying data that you use in this
 15 analysis be accurate, correct?
 16 A. Correct.
 17 Q. So if the turnout numbers that you use in this
 18 analysis are not accurate, that could affect
 19 the results, correct?
 20 A. It could.
 21 Q. And if there are errors in the number of
 22 reforms you believe that these states have,
 23 that could also affect your analysis, correct?
 24 A. Correct.
 25 Q. Let's talk about Figure 11 which we spent some

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1 time on earlier. In the second column in
 2 Figure 11. This is where you report the change
 3 in African American turnout in each of these
 4 states between 2000 and 2012, correct?
 5 A. Correct.
 6 Q. And in measuring this, you relied on Census CPS
 7 data?
 8 A. Correct.
 9 Q. Did you rely on any other data in this column?
 10 A. No.
 11 Q. Now, when you relied on the Census CPS data in
 12 your analysis, did you attempt to weight the
 13 data to account for the problem of
 14 over-reporting of turnout?
 15 A. No.
 16 Q. And you -- when you use the Census CPS data to
 17 compare turnout in different years, you didn't
 18 attempt to reweight the data to account for the
 19 fact that over-reporting rates vary from year
 20 to year, did you?
 21 A. No.
 22 Q. And when you relied on the CPS data to compare
 23 turnout rate in different states, you didn't
 24 attempt to reweight the data to account for the
 25 fact that over-reporting rates vary from state

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1 to state?
 2 A. No.
 3 Q. When you relied on the CPS data in your
 4 analysis, you didn't attempt to reweight the
 5 data to account for the fact that
 6 over-reporting rates vary among different
 7 racial groups, did you?
 8 A. I'm only looking at one racial group.
 9 Q. Well, on page 22, Figure 8, you're comparing
 10 African American participation rates to white
 11 participation rates, correct?
 12 A. Correct.
 13 Q. And in Figure 8, you rely on CPS data, correct?
 14 A. Correct.
 15 Q. And in comparing African American and white
 16 turnout rates, you did not in this part of your
 17 report mention the issue that reporting rates
 18 differ among different demographic groups, did
 19 you?
 20 A. No, no, not with -- you were asking me
 21 specifically with Figure 12.
 22 Q. I'm asking about Figure 8.
 23 A. Correct.
 24 Q. When you rely on CPS data in Figure 8, you
 25 didn't attempt to reweight the data to adjust

209

1 discussed previously, non-response" --
 2 A. I'm sorry. Where did you say?
 3 Q. Do you see the header that says "Non-Response
 4 Bias" in bold?
 5 A. Yes.
 6 Q. Do you see about the second long paragraph --
 7 A. I'm sorry, second long -- yeah.
 8 Q. -- that starts "Why does non-response" --
 9 A. Proceed.
 10 Q. So it reads:
 11 "Why does non-response matter?
 12 As I have discussed previously,
 13 non-response to the voting and
 14 registration supplement has been
 15 increasing over time and varies across
 16 important demographic groups -- such
 17 as race and ethnicity -- which can
 18 lead to erroneous conclusions when
 19 making temporal comparisons of
 20 registration and turnout rates."
 21 Did I read that accurately?
 22 A. Yes.
 23 Q. So this is the nonresponsive issue that you
 24 were discussing with Ms. Meza earlier that some
 25 people don't return the CPS survey?

211

1 for the problem of differential over-reporting
 2 rates by demographic groups in Figure 8, did
 3 you?
 4 A. No.
 5 Q. Now, let's turn back to -- if you don't mind --
 6 actually, can we go back to paragraph 70 in
 7 your report. In this paragraph you discuss
 8 something written by Professor Michael
 9 McDonald.
 10 A. Correct.
 11 Q. Okay.
 12 MR. HO: Can we mark this as 116.
 13 (WHEREUPON, Plaintiff's Exhibit 116 was
 14 marked for identification.)
 15 BY MR. HO:
 16 Q. Take a look at that and let me know.
 17 A. Okay.
 18 Q. This is the piece by Professor McDonald that
 19 you're citing to in paragraph 70 of your
 20 report?
 21 A. Correct.
 22 Q. Do you see on the second page of this, the
 23 second long paragraph under the header
 24 "Non-Response Bias," the sentence that begins
 25 "Why does non-response matter? As I have

210

1 A. Right.
 2 Q. This is different from the over-reporting issue
 3 that you and I were talking about earlier?
 4 A. Yeah, yeah, okay. This is part of the
 5 non-response issue, but yeah.
 6 Q. So the next sentence Professor McDonald writes:
 7 "The good news is that the 2012 CPS
 8 non-response modestly declined from 2008
 9 to 2012 -- from 13.8 percent in 2008 to
 10 12.8 percent in 2012 -- reversing the
 11 upward trend."
 12 Is that accurate?
 13 A. Uh-huh.
 14 Q. So based on what I just read there, is it fair
 15 to say that the non-response rate for the CPS
 16 varies from year to year?
 17 A. Yes.
 18 Q. And non-respondents don't face any penalties
 19 for failing to respond to the CPS survey, do
 20 they?
 21 A. I don't believe so.
 22 Q. They're not required to respond by law, are
 23 they?
 24 A. They definitely aren't required to respond to
 25 every question in the voter and registration

212

1 supplement, no.
 2 Q. Do you see the next sentence down that reads:
 3 "The decline in non-response was
 4 mostly centered on African Americans of
 5 which 18 percent did not respond in
 6 2008 compared with 15 percent in 2012.
 7 In comparison, non-Hispanic white
 8 non-response declined from 12.8 percent
 9 in 2008 to 12.2 percent in 2012."
 10 Accurate reading?
 11 A. I didn't -- yes.
 12 Q. Based on this passage, fair to say that the
 13 non-response rate in the CPS varies among
 14 different racial groups?
 15 A. Yes.
 16 Q. And varies even within a single racial group by
 17 year?
 18 A. Yes.
 19 Q. And you are aware, are you not, that Professor
 20 McDonald in this piece suggests adjusting CPS
 21 data to account for these different
 22 non-response rates by removing non-respondents
 23 from the data altogether?
 24 A. Yes.
 25 Q. And in some of your own work for Real Clear

213

1 Politics, you've done just that, haven't you?
 2 A. Actually I don't think I have.
 3 Q. You don't remember writing an article in June
 4 of 2013 called "The Case of the Missing White
 5 Voters Revisited" in which you adjusted the CPS
 6 data to account for the non-response rate?
 7 A. I remember writing the article. I don't
 8 remember that I adjusted the CPS data to
 9 account for the non-response rate.
 10 I've written about 200 articles. I
 11 can't remember everything I've ever done,
 12 Mr. Ho.
 13 Q. That's okay. For your report in this case,
 14 when you used the CPS data, you did not attempt
 15 to adjust for the non-response rate as
 16 described by Professor McDonald, correct?
 17 A. Correct.
 18 Q. Do you know whether in light of Professor
 19 McDonald's research and other academic research
 20 since 2012 peer-reviewed journals in the field
 21 of political science would today accept a paper
 22 concerning race and turnout for publication if
 23 that paper relied exclusively on unadjusted CPS
 24 data?
 25 A. If they were talking exclusively about the

214

1 African American share of the electorate during
 2 the multivariate regression analysis, I don't
 3 know the answer to that.
 4 Q. You've heard the term "validated data" before?
 5 A. Yes.
 6 Q. What do you understand that term to mean in the
 7 context of elections and turnout?
 8 A. My understanding is that that is the actual
 9 results reported by the State of
 10 North Carolina.
 11 Q. So that's different from a survey like the CPS?
 12 A. Yes.
 13 Q. Right because the CPS relies on a statistical
 14 sample to provide aggregate numbers?
 15 A. That is a difference, yes.
 16 Q. So the validated data for North Carolina
 17 turnout was available to you, correct?
 18 A. Yes.
 19 Q. And you testified earlier that you received a
 20 tutorial from the State Board of Elections
 21 about it?
 22 A. Yes.
 23 Q. When considering turnout in North Carolina, you
 24 didn't use the validated data, correct?
 25 A. Of course not.

215

1 Q. When -- you testified earlier that you have
 2 used the validated data in the past for your
 3 analysis, correct?
 4 A. I have used validated data before, yes.
 5 Q. And you're aware that Professors Gronke and
 6 Stewart rely on validated data in their
 7 reports, correct?
 8 A. Yes.
 9 Q. And you didn't rely on validated data in states
 10 other than North Carolina, correct?
 11 A. Correct.
 12 Q. I want to turn back to your report and I want
 13 to talk to you again about Figure 14.
 14 A. Which page?
 15 Q. Page 37.
 16 A. Okay.
 17 Q. I want to talk to you about the last column.
 18 You referred to this earlier in your deposition
 19 as an ordinal system, I think; is that right?
 20 A. Yeah.
 21 Q. So essentially, correct me if I'm wrong, for
 22 each state you assigned a number of points from
 23 zero to 4 based on the number of reforms that
 24 are at issue in this case that we've described
 25 earlier based on the number of those reforms

216

1 that they had in effect before the 2012
 2 election, correct?
 3 A. Right.
 4 Q. When you count the number of reforms that a
 5 state has, does it matter in your view if that
 6 reform was actually in effect for the 2012
 7 election?
 8 A. Yes.
 9 Q. So it would not be sufficient if a state had,
 10 say, adopted a reform by statute but had yet to
 11 implement it before the 2012 election, correct?
 12 A. Correct. That would be in error.
 13 Q. If you included a state like that -- a reform
 14 like that, you would consider that an error?
 15 A. Absolutely.
 16 Q. How did you go about compiling these
 17 statistics? Did you do it personally?
 18 A. Yes.
 19 Q. You didn't have someone else do it for you?
 20 A. No.
 21 Q. No one else worked with you in compiling the
 22 state laws?
 23 A. Well, that's a different question. As I said
 24 early in the thing, there was more copies of
 25 state laws supplied by counsel that I relied on

217

1 A. Correct.
 2 Q. Minnesota you say had two reforms --
 3 A. Correct.
 4 Q. -- here?
 5 Those are early voting and same-day
 6 registration?
 7 A. That's right.
 8 Q. But early voting, at least the early voting
 9 period that is relevant for these purposes was
 10 not in effect in Minnesota for the 2012
 11 election, correct?
 12 A. That's correct.
 13 Q. So this also was a mistake, correct?
 14 A. Yes.
 15 Q. You should have listed Minnesota as only having
 16 one reform, correct?
 17 A. Yes.
 18 Q. Connecticut, you list -- you list Connecticut
 19 as having one reform in question, correct?
 20 A. Correct.
 21 Q. Is that reform same-day registration?
 22 A. I don't know.
 23 Q. Can we look at your exhibits in your report?
 24 A. Sure.
 25 Q. Can we look at the packet of exhibits page 20.

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1 and a summary, but that was not used in
 2 compiling these statistics.
 3 MR. HO: Tom, we'd like to -- and I'll
 4 put this in writing afterwards -- request the
 5 copies of state laws that you provided to
 6 Mr. Trende.
 7 MR. FARR: Noted.
 8 BY MR. HO:
 9 Q. So we talked about California earlier. You
 10 list California here as adopting -- you know
 11 what, I'm sorry, I want to go back to Figure 11
 12 which is on page 31.
 13 You -- and this has the same ordinal
 14 system in the last column as what we were
 15 discussing earlier?
 16 A. Right.
 17 Q. You describe California as adopting three
 18 reforms here.
 19 A. Correct.
 20 Q. But we've already established that, to be
 21 accurate, you should have written two --
 22 A. Correct.
 23 Q. -- correct? So that was a mistake?
 24 A. It was a mistake.
 25 Q. So Minnesota we've talked about, too?

218

1 A. Okay.
 2 Q. This is your list of states for the same-day
 3 registration?
 4 A. Correct.
 5 Q. The second column has the registration
 6 deadline?
 7 A. I'm sorry. No. Page 20. I'm using the --
 8 Q. Oh, you're using the DOJ numbering. Let's use
 9 your numbering because I don't have the DOJ
 10 one. Let's use your numbering.
 11 So page 20, which is Exhibit 6 or your
 12 report, same-day registration, correct?
 13 A. Okay.
 14 Q. Second column, that's the registration
 15 deadline, correct?
 16 A. Correct.
 17 Q. So for Connecticut, you list Connecticut as
 18 having no registration deadline, right?
 19 A. Correct.
 20 Q. So you're coding Connecticut as a same-day
 21 registration state, correct?
 22 A. Correct.
 23 Q. Do you know when Connecticut adopted same-day
 24 registration?
 25 A. I believe it adopted it in 2012 for all races,

220

1 and I think it had it for presidential races
 2 before that.
 3 Q. Do you know if it was in effect for -- same-day
 4 registration was effect in Connecticut for the
 5 2012 election?
 6 A. I don't.
 7 Q. Let's mark this as 116.
 8 THE REPORTER: 117.
 9 MR. HO: 117. Thank you.
 10 (WHEREUPON, Plaintiff's Exhibit 117 was
 11 marked for identification.)
 12 BY MR. HO:
 13 Q. Take a moment to look at that and let me know
 14 when you're ready.
 15 A. Okay. Okay.
 16 Q. Do you recognize this?
 17 A. Yes.
 18 Q. You've looked at it before?
 19 A. Yes.
 20 Q. You -- this is from the National Conference of
 21 State Legislatures --
 22 A. Yes.
 23 Q. -- which you testified earlier you've relied on
 24 as a source for your report here?
 25 A. Yes.

221

1 Q. And this is a list of states that have same-day
 2 registration, correct?
 3 A. Correct.
 4 Q. We'll come back to this but I want to show you
 5 something else. I'll mark this as 118.
 6 (WHEREUPON, Plaintiff's Exhibit 118 was
 7 marked for identification.)
 8 BY MR. HO:
 9 Q. So Exhibit 117 from the National Conference of
 10 State Legislatures indicates that Connecticut
 11 adopted same-day registration in 2012, correct?
 12 A. Correct.
 13 Q. Exhibit 118 is the election day registration
 14 statute from Connecticut, correct?
 15 A. Correct.
 16 Q. Can you turn to the third page under "Credits"
 17 at the bottom?
 18 A. Uh-huh.
 19 Q. Do you see -- what is the effective date for
 20 the election day registration statute in
 21 Connecticut?
 22 A. For this election day statute in Connecticut,
 23 July 1st, 2013.
 24 Q. So this statute was not in effect for the
 25 November 2012 election, correct?

222

1 A. This statute was not in effect for the 2012
 2 election, no.
 3 Q. Did Connecticut have a different statute in
 4 effect for same-day registration in the
 5 November 2012 election?
 6 A. As I said, my recollection is they had it for
 7 presidential, but I'm not completely certain as
 8 we sit here about that.
 9 Q. If that recollection is incorrect, then would
 10 it be correct to say that Connecticut had
 11 same-day registration in 2012?
 12 A. Can we try that again.
 13 Q. Sure. If what you -- if your recollection is
 14 incorrect, then did Connecticut have same-day
 15 registration for any elections in 2012?
 16 A. If Connecticut did not have a different version
 17 of an election day registration statute in
 18 effect in 2012, then it did not have same-day
 19 registration in 2012.
 20 Q. And if that were so, it would be incorrect for
 21 you to describe Connecticut as a same-day
 22 registration state in your analysis here?
 23 A. Correct.
 24 Q. Going back to Figure 11, Washington, DC -- you
 25 treat Washington, DC, as having three reforms

223

1 of the four reforms, correct?
 2 A. Correct.
 3 Q. Do you remember which those are?
 4 A. No.
 5 Q. Let's mark this as 119.
 6 (WHEREUPON, Plaintiff's Exhibit 119 was
 7 marked for identification.)
 8 BY MR. HO:
 9 Q. My questions are going to be limited to the
 10 summary on the first page.
 11 A. It's still legalese.
 12 Q. Just let me know when you're ready.
 13 A. Okay.
 14 Q. This is the Omnibus Election Reform Amendment
 15 Act of 2009 for the District of Columbia.
 16 A. Okay.
 17 Q. On the first page, the summary at the top of
 18 the bill, do you see about five lines down --
 19 one, two, three, four, five -- after the first
 20 comma, in describing what this bill does, it
 21 states:
 22 "...to allow for pre-registration of
 23 persons 16 years older" --
 24 A. Sic.
 25 Q. -- "to establish a polling place worker

224

1 check-off on voter registration forms,
 2 to add the Department of Corrections
 3 and the Department of Youth
 4 Rehabilitation services to agencies
 5 covered under the National Voter
 6 Registration Act, to permit same-day
 7 registration, to require the Board to
 8 submit an automatic-voter-registration
 9 feasibility study, to allow for no-fault
 10 absentee voting, to require the use of
 11 early voting centers, to allow out-of-
 12 precinct voters to cast special ballots
 13 for federal and District-wide elections."
 14 Did I read that correctly?
 15 A. Yes.
 16 Q. So the District of Columbia has
 17 pre-registration, correct?
 18 A. Uh-huh.
 19 Q. Has same-day registration, correct?
 20 A. Okay.
 21 Q. Has early voting? I'm just talking about this
 22 summary here.
 23 A. Okay.
 24 Q. Has early voting? Yes?
 25 A. Yes.

225

1 Q. And has out-of-precinct voting, correct?
 2 A. Yes.
 3 Q. So it has four reforms, correct?
 4 A. Sort of.
 5 Q. What do you mean by "sort of"?
 6 A. How many days of early voting does it have?
 7 Q. Why don't you tell me.
 8 A. 13.
 9 Q. So if a state has 13 days of early voting, you
 10 treat it as not an early voting state for
 11 purposes of your regression analysis?
 12 A. I believe that's right because, remember, my
 13 analysis was states -- it was -- it had to be
 14 less restrictive.
 15 So example, Tennessee has early voting,
 16 it has 16 days of early voting but it's coded
 17 as a zero because the threshold the plaintiffs
 18 are seeking to establish in this case is
 19 17 days of early voting.
 20 Q. So if a state has less than 17 days of early
 21 voting, you treat that as a state without early
 22 voting for purposes of your analysis here?
 23 A. It's an ordinal system. You don't get a lot of
 24 discretion.
 25 Q. But based on your own criteria, right, we've

226

1 established that you miscounted the number of
 2 reforms in California, Minnesota and
 3 Connecticut, correct?
 4 A. With caveat on Connecticut. I'll agree to
 5 California and Minnesota.
 6 Q. Your first regression analysis --
 7 A. Correct.
 8 Q. -- the one described in paragraph 121.
 9 A. Correct.
 10 Q. Here you did not attempt to control for other
 11 variables; it's a bivariate analysis, correct?
 12 A. Correct.
 13 Q. In 122 -- paragraph 122 you try to introduce a
 14 few controls, correct?
 15 MR. FARR: Objection to the form.
 16 THE WITNESS: I -- I discuss one
 17 control.
 18 BY MR. HO:
 19 Q. And that control was competitiveness.
 20 A. Correct.
 21 Q. How do you decide whether or not a state was
 22 competitive? What criteria did you use?
 23 A. As I described earlier, and I'll incorporate by
 24 reference my answer earlier in case there's
 25 something I don't recite again, my years of

227

1 experience as a psephologist, someone who
 2 follows elections closely, projects elections,
 3 the spending that was done by the campaigns in
 4 the state. Those are the major ones that I can
 5 call to mind right now.
 6 Q. Now, in paragraph 125 you try to perform a
 7 similar analysis for each individual reform,
 8 correct?
 9 A. Oh, I don't try to do so.
 10 MR. FARR: Object to the form.
 11 Go ahead.
 12 BY MR. HO:
 13 Q. You perform a similar analysis for each
 14 individual reform which in your ordinal system
 15 earlier you did four all four reforms
 16 simultaneously.
 17 A. I think the way I would characterize it is that
 18 I use the same controls that I describe in 122
 19 and 124 with the same dependent variable, but
 20 one of my independent variable changes which is
 21 the number of laws.
 22 Q. So is it fair to say, in essence, you sought to
 23 determine whether the adoption of each reform
 24 individually had an effect on African American
 25 turnout between 2000 and 2012?

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1 A. Correct.
 2 Q. So if we take same-day registration as an
 3 example, basically you looked at states that
 4 had same-day registration and you tried to see
 5 if African American turnout increased in those
 6 states relative to states that didn't have
 7 same-day registration?
 8 A. Correct.
 9 Q. Let me show you something we'll mark as 120.
 10 (WHEREUPON, Plaintiff's Exhibit 120 was
 11 marked for identification.)
 12 BY MR. HO:
 13 Q. Are you ready?
 14 A. Yes.
 15 Q. Is this familiar to you?
 16 A. Yes.
 17 Q. What is it?
 18 A. I believe it is an image of a spreadsheet page
 19 that I supplied to you in response to your
 20 request on the e-mail that was marked
 21 Exhibit 100 something earlier today that shows
 22 the data used for a regression analysis.
 23 Q. The regression analysis you performed with
 24 respect to same-day registration? If I
 25 represent to you that the tab in the Excel file

229

1 that was sent to us was labeled SDR, would you
 2 believe me?
 3 A. I would believe you.
 4 Q. Okay. And these are the statistical
 5 significance calculations, then, that you
 6 performed in measuring whether or not same-day
 7 registration, the presence of it correlated
 8 with increased African American turnout?
 9 A. No. These are statistical significance
 10 calculations.
 11 Q. But if I look at the column that says laws --
 12 leave that aside.
 13 If I look at the column that says laws,
 14 these are the states where there's a 1, these
 15 are the states that you code as having same-day
 16 registration, correct?
 17 A. Correct.
 18 Q. And we've already established California is
 19 coded incorrectly.
 20 A. Correct.
 21 Q. Right. And so is Connecticut.
 22 A. With a caveat.
 23 Q. Now, Colorado you code as having same-day
 24 registration?
 25 A. It is coded incorrectly.

230

1 Q. Colorado is also coded incorrectly?
 2 A. Correct.
 3 Q. How many states total are coded here as being
 4 same-day registration states?
 5 A. I believe six.
 6 Q. Six. So of the six states you've coded as
 7 having same-day registration, three are
 8 incorrectly coded?
 9 A. With caveat.
 10 Q. That would be half of the states?
 11 A. Yes, with a caveat.
 12 Q. You did not code North Carolina as a state with
 13 same-day registration, correct?
 14 A. Correct.
 15 Q. North Carolina had same-day registration in
 16 effect in 2012, correct?
 17 A. Correct.
 18 Q. For purposes of your analysis, North Carolina
 19 shouldn't be excluded from the list of states
 20 that had same-day registration then?
 21 A. That is correct.
 22 Q. So you incorrectly coded North Carolina,
 23 correct?
 24 A. Yes.
 25 Q. That was a mistake?

231

1 A. That was a mistake.
 2 Q. When you code states that have same-day
 3 registration, you don't attempt to account for
 4 when a state adopted same-day registration,
 5 correct?
 6 A. That is correct.
 7 Q. So if a state adopted same-day registration in
 8 the 1970s or one adopted same-day registration
 9 in 2008, you code those states identically for
 10 purposes of the regression analysis?
 11 A. Correct.
 12 Q. And you do that even though it's possible that
 13 the adoption of same-day registration would
 14 have an effect on turnout decades earlier?
 15 A. Sure. As I described earlier, you're making a
 16 judgment call either way. You either make the
 17 call that it isn't having any effect today or
 18 you make a call that it is having an effect
 19 today. I made it in a way that I think is
 20 probably more generous to plaintiffs.
 21 Q. Let's go back to your report and specifically
 22 your comparison between North Carolina and
 23 Mississippi which starts on page 17. Ms. Meza
 24 already asked you a few questions about this.
 25 I only have a few follow-up questions.

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1 A. I don't know if I would call it an inference,
 2 but it's a possibility that I would want to
 3 explore and either say isn't what happened or
 4 it's unlikely that it happened or -- no,
 5 actually, this is a pretty good explanation.
 6 Q. You're not expressing an opinion either way as
 7 to whether or not that happened?
 8 A. No. As I say, this is not to suggest that
 9 Drs. Gronke and Stewart are conclusively wrong.
 10 It's just something that if a court is
 11 going to rely on this possibility, this is an
 12 alternate causation of a story I think hangs
 13 together reasonably well that it would need to
 14 have explained away.
 15 Q. Can we turn to page 40 of your report, the
 16 section title "Scholarly Literature."
 17 You testified earlier that in
 18 peer-reviewed academic writings it's generally
 19 appropriate to provide a history of the
 20 academic literature in the area that you're
 21 writing about; is that right?
 22 A. Yes.
 23 Q. Is that what you try to do here in this section
 24 of the report?
 25 A. No.

245

1 Q. In paragraphs 146 through 148 of this report
 2 you discuss several academic articles on
 3 voting, I believe a total of six, and one blog
 4 post. Does that sound right to you?
 5 A. We're going through 148?
 6 Q. Yes.
 7 A. I think I count seven.
 8 Q. Let's run through them just to make sure.
 9 A. Late in the day, yeah.
 10 Q. Let's find out who's more tired.
 11 LaRocca and Klemanski in 2011, right,
 12 that's one?
 13 A. Right.
 14 Q. And that's Exhibit 8 of your report.
 15 Giammo and Brox from 2010. That's
 16 another one.
 17 A. Right.
 18 Q. So we're at two. That's not included as an
 19 exhibit in your report?
 20 A. Right.
 21 Q. Burden, et al., from 2014, that's included as
 22 Exhibit 9.
 23 A. Uh-huh.
 24 Q. Burden, et al., from 2009. That's Exhibit 10
 25 in your report?

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1 A. Uh-huh.
 2 Q. Gronke, et al., 2007. That's Exhibit 11 in
 3 your report?
 4 A. Okay.
 5 Q. Gronke, et al., 2004. That's Exhibit 12 in
 6 your report?
 7 A. Yes.
 8 Q. So that's six articles --
 9 A. Yes.
 10 Q. -- right?
 11 And then the Crowell 2014 blog post?
 12 A. Yes.
 13 Q. And that's not included as an exhibit in your
 14 report.
 15 A. Did we not --
 16 Q. Don't worry. I have a copy.
 17 A. No, I guess we didn't.
 18 Q. So --
 19 MR. FARR: There's two more, isn't
 20 there?
 21 THE WITNESS: Well, he's getting into
 22 149 at that point. He's limited himself to
 23 148.
 24 MR. FARR: Okay.
 25 BY MR. HO:

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1 Q. These articles are the sum total of the
 2 articles you cite about early voting; is that
 3 right?
 4 A. Correct.
 5 Q. And your assertion in your report is that these
 6 seven articles conclude that early voting does
 7 not increase turnout; is that right?
 8 A. No.
 9 Q. No, you're --
 10 A. Given the conflicting nature -- given the
 11 conflicting nature of the peer-reviewed
 12 scholarly literature regarding the effects of
 13 these laws on turnout, it is difficult to
 14 conclude that we should expect a decline in
 15 participation in North Carolina.
 16 Q. So you're not saying that these articles say
 17 that early voting has no effect on turnout?
 18 A. I say it's conflicting.
 19 Q. Now, other than these articles, did you in
 20 formulating your opinion about early voting and
 21 turnout read any other academic thesis on early
 22 voting?
 23 A. I read quite a few, yes.
 24 Q. Which ones?
 25 A. I couldn't recite them off the top of my head.

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1 A. Yes.
 2 Q. And you're aware that that literature indicates
 3 positive effects on low-income voters?
 4 A. Caveat about your definition low-income voters.
 5 I will stipulate to differential effects among
 6 income groups.
 7 Q. You didn't think to mention that in your
 8 report?
 9 A. No.
 10 Q. You're aware of the literature indicating that
 11 same-day registration has a positive effect on
 12 African American turnout?
 13 A. I don't know that I did read anything on that.
 14 Q. Do any of the articles that you cite here, the
 15 seven that we listed, discuss same-day
 16 registration?
 17 A. I believe the 2014 Burden piece does.
 18 Q. To your knowledge, what does Professor Burden
 19 conclude about the effect of same-day
 20 registration?
 21 A. I believe he says that it can partly counteract
 22 the depressive effect of early voting on
 23 turnout, same-day registration.
 24 Q. Do any of the articles that you cite conclude
 25 that same-day registration has no effect on

253

1 turnout?
 2 A. I don't believe so.
 3 Q. Are you aware of a single peer-reviewed article
 4 indicating that same-day registration has no
 5 effect on turnout?
 6 A. On total turnout, no.
 7 Q. So I want to talk about the different articles
 8 you cite here. Let's talk about the LaRocca
 9 and Klemanski article.
 10 A. Okay.
 11 Q. That was published in 2011?
 12 A. Yes.
 13 Q. It's based on data up into the 2008 election;
 14 is that right? Do you remember? You can turn
 15 to page 84 of the article.
 16 A. Okay. So it discusses the 2000, 2004 and 2008
 17 elections.
 18 Q. Doesn't go past 2008, correct?
 19 A. No.
 20 Q. This article does not look at whether there are
 21 differential effects of early voting on
 22 different racial groups, does it, to your
 23 recollection?
 24 A. I don't believe it does.
 25 Q. This article looks at the effect that adding

254

1 early voting has on turnout, correct?
 2 A. Come again.
 3 Q. This article looks at what effect, if any,
 4 adding early voting opportunities has on
 5 turnout, correct?
 6 A. Correct.
 7 Q. It does not look at the effect of removing
 8 early voting opportunities and what that might
 9 have on turnout, correct?
 10 A. I guess that's technically true, yeah.
 11 Q. Let's talk about the Giammo and Brox article
 12 from 2010.
 13 A. Okay.
 14 Q. That article is based on data up until the 2006
 15 election, correct?
 16 A. I believe that's right.
 17 Q. That article does not look at whether there are
 18 differential effects of early voting on
 19 different racial groups, correct?
 20 A. Without the article in front of me, I can't say
 21 that conclusively, but as I sit here today, I
 22 wouldn't have reason to disagree with you.
 23 Q. To your recollection, it doesn't?
 24 A. Correct.
 25 Q. That article does not look at what effects, if

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1 any, there are for removing early voting
 2 opportunities on turnout, does it?
 3 A. Technically I believe that's correct.
 4 Q. All right. Let's talk about the Burden, et
 5 al., 2014 and 2009 articles.
 6 A. We can lump them together.
 7 Q. They're essentially the same article, right?
 8 A. It's a fair point that Dr. Gronke makes, yes.
 9 Q. So these articles are both based on data up
 10 until the 2008 election, correct?
 11 A. Correct.
 12 Q. Nothing post 2008?
 13 A. Correct.
 14 Q. And the article does not look at differential
 15 effects of early voting on different racial
 16 groups, correct, to your recollection?
 17 A. Correct, because he is using race as a
 18 demographic control, so the relationship would
 19 be between racial turnout -- race and turnout,
 20 yes.
 21 Q. So he doesn't essentially evaluate whether or
 22 not early voting has different effects on
 23 different racial groups?
 24 A. Not to my recollection.
 25 Q. And he doesn't attempt to look at whether or

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1 Crowell?
 2 A. He is a -- I believe a political scientist at
 3 one of the North Carolina universities.
 4 Q. To your knowledge, does Professor Crowell have
 5 any experience on analyzing early voting data?
 6 A. I don't know.
 7 Q. This is a blog post, right?
 8 A. Yes.
 9 Q. Do you know if this blog post was subject to
 10 peer review?
 11 A. I would be surprised if it were.
 12 Q. And do you remember that in his blog post he
 13 acknowledges that his analysis is, quote, "not
 14 very sophisticated"?
 15 A. Yes.
 16 Q. And --
 17 A. That's in my quote.
 18 Q. And you remember that in his blog post he
 19 acknowledges that, quote, "same-day
 20 registration and voting can increase turnout
 21 somewhat"?
 22 A. Well, yes.
 23 Q. And do you remember that he acknowledges in his
 24 blog post that he has not examined whether
 25 registration and voting changes over the years

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1 have affected white and black voters
 2 differently?
 3 A. Correct.
 4 Q. So --
 5 A. This is all why it's in a different paragraph
 6 than the list of the peer-reviewed literature.
 7 It's not intended as a --
 8 Q. Well, I didn't mean to suggest it here.
 9 A. Well, yes, you did.
 10 Q. No, no. I'm just trying to close out what is
 11 in and what is not in Crowell's blog post.
 12 So taking these articles and Professor
 13 Crowell's blog post in totality, it's correct
 14 that none of these pieces look at data from
 15 after the 2008 election, right?
 16 A. I believe that's correct.
 17 Q. And none of these articles examine data
 18 regarding possible differential effects of
 19 early voting opportunities on different racial
 20 groups?
 21 A. I think that's correct.
 22 Q. And none of them look at whether or not
 23 removing early voting opportunities has any
 24 effect on turnout?
 25 A. I think that's technically correct.

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1 Q. Can we turn back to your report and page 23 of
 2 it under the heading "North Carolina's
 3 Emergence As a Target State."
 4 MR. FARR: Can I ask a question?
 5 MR. HO: Sure.
 6 MR. FARR: Mr. Videographer, where are
 7 we in the deposition? How many hours have we
 8 gone now?
 9 THE VIDEOGRAPHER: Five hours and
 10 56 minutes.
 11 MR. FARR: We're right at six hours.
 12 I'm going to need 15 to 20 minutes of time to
 13 do cross-examination, so we're going to hold
 14 you all to seven hours in this deposition.
 15 MR. HO: We also reserve the right to
 16 call Mr. Trende back for deposition regarding
 17 the supplemental papers that you tried to give
 18 us today.
 19 MR. FARR: That's noted.
 20 BY MR. HO:
 21 Q. So theory on campaign resources --
 22 A. I'll just state there's a good chance you all
 23 coming to Columbus, Ohio, if that's the case.
 24 My oldest son has Autism. I'm the primary
 25 caregiver in the afternoon for that, and I have

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1 to set up care for him to help my wife out so
 2 he doesn't beat her up.
 3 So if it's going to be on short notice,
 4 we might have to do something a little
 5 different.
 6 MR. HO: We'll make whatever
 7 arrangements that need to be made.
 8 MR. FARR: And it's also assuming we
 9 agree to it.
 10 THE WITNESS: If we do it.
 11 MR. HO: We'll make whatever
 12 arrangements are necessary for your family,
 13 Mr. Trende.
 14 BY MR. HO:
 15 Q. So this section that starts at the bottom of 23
 16 and continues on, is it fair to say in your
 17 opinion in this section is that the recent
 18 growth in African American turnout in North
 19 Carolina is largely attributable to the
 20 presidential campaign's efforts in the 2008 and
 21 2012?
 22 A. I think that's a possibility that needed to be
 23 explored.
 24 Q. Have you personally conducted an empirical
 25 analysis of whether or not the amount of

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1 resources that a campaign spends in a state is
 2 correlated with early voting usage?
 3 A. That's the question.
 4 Q. Have you determined whether or not there's a
 5 correlation between campaign spending and early
 6 voting usage in a state?
 7 A. No. That's the question that the plaintiffs'
 8 experts needed to account for. It's a big one.
 9 Q. Have you attempted to demonstrate any
 10 correlation between campaign resources and
 11 same-day registration usage?
 12 A. No.
 13 Q. What about campaign resources and
 14 out-of-precinct voting?
 15 A. No.
 16 Q. If we jump forward on page, sorry, 28,
 17 paragraph 111, you say:
 18 "As a result of these efforts,
 19 North Carolina, compared to the country
 20 as a whole, moved further towards the
 21 Democrats."
 22 MR. FARR: Which page? Which paragraph
 23 are you on, please?
 24 MR. HO: Paragraph 111.
 25 THE WITNESS: Okay.

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1 when you have followed an election closely for
 2 a living, it's impossible to list everything
 3 that could possibly inform your opinion.
 4 These are the data points that I put
 5 out in the report in support of it, but insofar
 6 as what my opinion is, I mean, it's impossible
 7 to summarize everything that forms that
 8 opinion.
 9 Q. Is there anything else that was important in
 10 formulating your opinion that you did not cite
 11 here?
 12 A. Again, my expertise and my experience in years
 13 as a psephologist and someone who follows the
 14 2012 election, these are the specific things
 15 that I put forth.
 16 Q. But no specific secondary material that was
 17 important for you in formulating your opinion
 18 about -- in paragraph 111 other than the
 19 materials that you cite here?
 20 A. Again, I'll repeat my answer: There are years
 21 of experience and articles that inform the
 22 opinion that are being developed that I recall,
 23 but as far as specific citations that I give
 24 you, I mean -- you know, there is Kate Kenski's
 25 book which -- the Obama presidency which I know

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1 BY MR. HO:
 2 Q. What kind of efforts are you referring to?
 3 A. Well, I'm talking in the context of the 2008
 4 elections, so I'm referring back to in 2008
 5 Barack Obama invested heavily in the state of
 6 North Carolina.
 7 Q. Paragraph 103?
 8 A. Yes. Obama spent 15 million in advertising.
 9 The Obama campaign invested heavily in
 10 on-the-ground voter mobilization efforts.
 11 Basically, without taking up all our
 12 time, the things that are in paragraph 103 to
 13 110.
 14 Q. Anything else? Are you referring to anything
 15 else other than the efforts described in
 16 paragraph 103 and 110?
 17 A. With the caveat that I'm not saying these are
 18 the only efforts or the only things that
 19 affected North Carolina's movement. Though
 20 when I say "these efforts," yes, those are what
 21 I'm referring back to.
 22 Q. Did you rely on anything other than the
 23 secondary sources that you cite in the
 24 paragraphs 103 to 110?
 25 A. Again, when you have done this for five years,

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1 discusses this.
 2 As I sit here and try to recite all of
 3 the things that I could have ever read that
 4 would give me this impression to begin with, I
 5 can probably come up with a stack of -- I could
 6 probably go on and on and on, but these are the
 7 specific citations that I set forth.
 8 Q. In paragraph 104 you talk about an article by
 9 Seth Masket --
 10 A. Yes.
 11 Q. -- about field offices and whether their
 12 presence had an effect on turnout.
 13 A. Yes.
 14 Q. Does that article to your recollection say
 15 anything about early voting usage?
 16 A. I don't believe so.
 17 Q. Does that article to the best of your
 18 recollection say anything about same-day
 19 registration usage?
 20 A. I can't recall.
 21 Q. Does that article to the best of your
 22 recollection say anything about disparate
 23 reliance on early voting by members of
 24 different racial groups?
 25 A. I can't recall.

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1 would correlate with a number of voting reforms
 2 that the State had adopted, right?
 3 A. Correct.
 4 Q. That regression doesn't allow for any
 5 differences in the way each reform affects
 6 turnout, right?
 7 A. That is a limitation of ordinal ranking systems
 8 in regression analysis.
 9 Q. So that ranking system assumes that
 10 out-of-precinct voting affects turnout the same
 11 way that same-day registration does?
 12 A. Correct. Like I said in the Minnite --
 13 Minnite, is that right -- in her article when
 14 she's looking at voter ID laws, they do a seven
 15 point scale and it assumes that the difference
 16 between being asked for your name and writing
 17 your name is the same as the difference between
 18 being required to show a photo ID, but you can
 19 sign an affidavit versus being able to sign a
 20 photo ID, you can't sign an affidavit. That
 21 may or may not be the case, but it's an
 22 assumption embedded in ordinal systems.
 23 Q. Your article is -- I'm sorry.
 24 Your report is different from Minnite's
 25 article in the sense that you are comparing

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1 the laws one at a time, that has some
 2 shortcomings as well as you get a small number
 3 of observations in place, but again, this
 4 Opinion 2 has two senses. The first is to
 5 illustrate why there are other variables out
 6 there that you would want to take account of,
 7 the plaintiffs' experts do not, and second is
 8 to offer that there isn't a significant effect
 9 on turnout.
 10 Q. So my question was is there a way to run the
 11 regression that takes into account the way each
 12 law affects turnout differently?
 13 A. Right. And the answer to that is the
 14 subsequent regressions that I do at the end of
 15 that section look at each law individually.
 16 Q. So you're saying, yes, there is a way to take
 17 into account the way different laws affect
 18 turnout?
 19 A. Yes. The reason you do it both ways is that
 20 there are limitations to both approaches. This
 21 is all very tough stuff to sort out.
 22 Q. Is the second approach that you identify in
 23 paragraph 125 of your report, is that the only
 24 other way to run the regression and take into
 25 account the way the different laws affect

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1 different laws, right?
 2 A. Oh, yeah. And I don't mean to suggest that our
 3 approaches are identical, and I'm sorry if I
 4 left that impression. I'm just saying the
 5 basic structure of our analyses are similar.
 6 We do different operationalizations of laws and
 7 we're answering a similar-yet-different
 8 question.
 9 Q. So you would agree, though, that your
 10 regression analysis assumes that out-of-
 11 precinct voting and same-day registration and
 12 elections and pre-registration all have the
 13 same equal effect on voter participation or
 14 turnout?
 15 A. That is an assumption embedded in all ordinal
 16 variable systems.
 17 Q. That is the assumption in your regression,
 18 right?
 19 A. Yeah, that is the assumption in all ordinal
 20 systems. This is an ordinal system; therefore
 21 that is an assumption in the system.
 22 Q. Is there a way to run or conduct this
 23 regression and take into account the way each
 24 of these laws affect turnout?
 25 A. What I do later on in the analysis where I run

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1 turnout?
 2 A. I am sure -- I mean, there are a multiplicity
 3 of statistical techniques that I half expected
 4 plaintiffs' experts to employ in their
 5 surrebuttal briefs. You know, you can do as
 6 Dr. Gronke refers to a cross pooled time series
 7 data where the data are in -- all in a
 8 single -- a single data set with -- I believe
 9 when you do it two independent variables. That
 10 is a very complex thing because you run into
 11 all sorts of problems.
 12 There are probably other approaches.
 13 As you read through the literature, you see
 14 many, many approaches employed to try to
 15 measure these things. I just employed two and
 16 they're the only two.
 17 Q. Those other approaches that you've mentioned
 18 and that are referred to, are you able to
 19 conduct those regressions?
 20 A. I could probably do the two independent
 21 variable one. I've never done it before and
 22 wouldn't feel comfortable doing it for an
 23 expert report.
 24 You know, as to other potential
 25 approaches, you know, you'd have to give me

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1 examples.
 2 Q. So the approach used in your report for your
 3 multivariate regression analysis is the
 4 approach that you're comfortable with?
 5 A. I am comfortable with this approach. And all
 6 survey -- all designs have limitations to them,
 7 they have caveats, especially in an area like
 8 this where there are, you know, in some of
 9 these instances only a few states that have
 10 adopted the laws.
 11 So this is a best effort to do it.
 12 There may be ways to improve upon it. Like I
 13 said, I was surprised that none were suggested
 14 in the rebuttal reports or attempted, I should
 15 say.
 16 Q. Did anyone ever ask you in this case to review
 17 data from the State Board of Elections, the
 18 North Carolina State Board of Elections?
 19 A. No.
 20 Q. And you did not review data from the North
 21 Carolina State Board of Elections, right?
 22 A. I don't think that's correct.
 23 Q. What data did you review from the North
 24 Carolina State Board of Elections?
 25 A. Well, as I said, part of my preparation for

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1 this was a tutorial on -- from a member of the
 2 State Board of Elections on where the data was
 3 located and -- I mean, if you go to the State
 4 Board of Elections' website, there's a huge
 5 number of files. Excuse me. So I did look at
 6 that data.
 7 Q. Aside --
 8 A. Those data.
 9 Q. Aside from that initial tutorial, did you at
 10 any point review data from the State Board of
 11 Elections?
 12 A. Yes.
 13 Q. For what purpose?
 14 A. I was looking into turnout data, but I didn't
 15 draw any firm conclusions from it.
 16 Q. What specifically did you look at when you
 17 refer to turnout data?
 18 A. Like I said, I didn't draw -- you asked if I
 19 looked at it and, yes, I looked at the turnout
 20 data in the files and a few other files, but
 21 nothing to the point that I drew any sort or
 22 even approached any sort of firm conclusion.
 23 I know I returned to that data after it
 24 was shown to me in the tutorial, but I didn't
 25 utilize the data in any way.

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1 Q. Before you were retained in this case, had you
 2 reviewed other states' laws relating to
 3 out-of-precinct voting?
 4 A. No.
 5 Q. Before you were retained in this case, had you
 6 reviewed any state's laws relating to
 7 pre-registration?
 8 A. No.
 9 Q. Before you were retained in this case, had you
 10 reviewed any state's laws related to same-day
 11 registration?
 12 A. Are we going to include election day
 13 legislation in the same-day registration rubric
 14 for this discussion?
 15 Q. No.
 16 A. I don't know if I read Ohio's laws before that.
 17 I know that the Golden Week issue had come up
 18 before in things I had read and heard about. I
 19 just don't know if I had actually read the
 20 statute for that.
 21 Q. Before you were retained in this case, had you
 22 reviewed other states' laws relating to early
 23 voting?
 24 A. Yes.
 25 Q. Is it fair to say for same-day registration,

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1 out-of-precinct voting and pre-registration you
 2 don't recall reviewing any states' laws
 3 relating to these voting reforms before you
 4 were retained in this case?
 5 A. Correct.
 6 Q. Before you were retained in this case, had you
 7 ever conducted an examination or analysis of
 8 the effect of any election law or voting law on
 9 voter turnout?
 10 A. I will say -- I will say this: Again, I have
 11 2- to 300 articles -- well, maybe 200 articles
 12 from Real Clear Politics up on the site. Some
 13 of them have discussed early voting. I cannot
 14 say with certainty whether there was a
 15 prediction of turnout on the basis embedded in
 16 those articles. I don't think I had engaged in
 17 a conclusion or in a -- that's the caveat.
 18 With respect to out of precinct and
 19 pre-registration, no.
 20 Q. Before you were retained in this case, had you
 21 ever conducted any statistical analysis of the
 22 effect of any voting laws on voter turnout?
 23 A. Again, the same caveat about early voting
 24 somewhere in my writings. Not -- and
 25 statistical analysis is a vague term. I can

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1 say with certainty no on out-of-precinct voting
 2 and pre-registration.
 3 Q. Before you were retained in this case, had you
 4 ever conducted any regression or any analysis
 5 involving a regression to determine the effect
 6 of any variable on voter turnout?
 7 A. Any variable -- I'm sorry, you're going to have
 8 to repeat that question.
 9 Q. Before you were retained in this case, had you
 10 ever prepared a regression or conducted any
 11 analysis involving a regression in order to
 12 measure the effect of a law on voter turnout?
 13 A. I'm sure I've done that. I can't cite specific
 14 instances without my body of work in front of
 15 me, but I would be very surprised if that had
 16 never -- if that had never been done.
 17 Q. As you sit here today, you can't think of any
 18 examples?
 19 A. Well, no.
 20 Q. In the footnote on page 40 of your report --
 21 A. Okay.
 22 Q. -- you mention that same-day registration
 23 comparisons are difficult because the way
 24 they're implemented, correct?
 25 A. Correct.

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1 Q. In this report, though, you do compare same
 2 day -- you do compare different states with
 3 same-day registration, correct?
 4 A. Correct.
 5 Q. And you don't take into account any of the
 6 differences in the way same-day registration is
 7 implemented in these states, do you?
 8 A. No. Like I say, it's difficult to do that.
 9 Q. Very early on in the deposition, hours ago, you
 10 were discussing your deposition prep session,
 11 you mentioned an individual named Dale in the
 12 session. Do you recall that?
 13 A. I believe that was his name.
 14 Q. Do you remember what you discussed with Dale?
 15 A. No.
 16 Q. How did he contribute to the preparation
 17 session?
 18 A. He was a very nice man. He told a lot of
 19 stories about the good ol' days of litigation.
 20 Q. Did he ask you any questions about the case?
 21 A. You know, I actually don't think he did.
 22 Q. When you're measuring voter participation in
 23 your report, what are the two variables that go
 24 into that measurement?
 25 A. Where are we?

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1 Q. Anywhere in your report. For instance, Figure
 2 11 you mention the change in African American
 3 participation as a heading.
 4 A. Right.
 5 Q. What are the two variables that go into that
 6 measurement?
 7 A. It is citizen -- well, as it appears in the
 8 CPS -- well, it's four data points that create
 9 the variable. It's the number of African
 10 American citizens in the state in 2000 and
 11 2012, so that's two, and then the number of
 12 African American voters in the state in 2000
 13 and 2012, so that's another two.
 14 Q. And when you say African American citizens, are
 15 you referring to the citizen voting age
 16 population?
 17 A. Right.
 18 Q. And why do you choose to use the citizen voting
 19 age population rather than the voting age
 20 population?
 21 A. Because if you're not a citizen, my
 22 understanding is you can't vote.
 23 Q. So any analysis that relied on the voting age
 24 population or any analysis of voter
 25 participation relied on the voting age

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1 population would you consider that to be
 2 accurate?
 3 A. If you are discussing the African American
 4 population, I actually don't think it's a huge
 5 issue. I was being precise with CVAP.
 6 You know, with the Hispanic population,
 7 with the larger immigrant base, it is more of a
 8 problem, but with the African American
 9 population, I don't know that it actually would
 10 produce any differential effects.
 11 Q. So if you're not limiting yourself to the
 12 African American population, if you were to use
 13 the voting age population without -- without
 14 narrowing to the CVAP, would that create errors
 15 in your analysis?
 16 A. Well, again, when you're talking about
 17 everyone, you know, Hispanics are a smaller
 18 share of that, and especially if you're
 19 subtracting over time, some of that error is
 20 going to be subtracted out.
 21 You know, I think it would be better to
 22 use CVAP but, I don't think it would be the
 23 death of the analysis not to do so.
 24 Q. Of those data points you mentioned, the CVAP is
 25 the denominator, correct?

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1 effect?
 2 A. I don't offer an opinion as to when their
 3 primary effect would be. I didn't undertake
 4 that sort of measurement.
 5 Q. If those same-day registration laws were to
 6 have a significant effect on same -- I'm
 7 sorry -- on African American voter
 8 participation within the few years after it was
 9 implemented and then it was flat thereafter,
 10 that would show up in this chart as though
 11 same-day registration had no impact on African
 12 American voter participation, right?
 13 MR. FARR: Objection to form.
 14 MR. KAUL: You can answer.
 15 THE WITNESS: Repeat the question.
 16 BY MR. KAUL:
 17 Q. If in the example of Wisconsin the 1970's
 18 change to same-day registration resulted in an
 19 immediate increase in African American voting
 20 percentage and then it remained flat after
 21 that, that would show up in your analysis as
 22 though same-day registration had no impact; is
 23 that right?
 24 A. It sounds like that's probably correct, yes.
 25 Q. And you said before that you thought the way

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1 you drew your major judgment call helped
 2 plaintiffs. How is that so?
 3 A. Because -- oh, no, you make -- I understand
 4 what you're getting at here and you make a fair
 5 point that if a state were zero and had these
 6 laws in effect, it would code as not having an
 7 effect, but, you know, you look at the states
 8 that don't have much of an effect on African
 9 American participation -- like Texas is a zero;
 10 you look at Wisconsin as a 13 -- I believe that
 11 the assumption embedded in this that the law in
 12 Wisconsin drove some of that turnout comes out
 13 to a net benefit for plaintiffs, but it would
 14 be interesting to have someone run the
 15 regression a different way as part of a
 16 rebuttal and see if it comes out with different
 17 results. That is an interesting question.
 18 Q. Did you consider using just laws adopted in the
 19 period from 2000 to 2012 in listing the number
 20 of laws adopted?
 21 A. Yes.
 22 Q. Why did you use that approach?
 23 A. Well, as I explained, I didn't want to proceed
 24 with the assumption that these laws would not
 25 be having any effect on turnout. As a matter

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1 of fact, I am sure that if I made that call the
 2 other way we would be having the discussion why
 3 I didn't make it this way. And one good
 4 example of that, again, is according to the CPS
 5 data an increase in North Carolina -- in
 6 participation in North Carolina between 2008
 7 and 2012.
 8 If I had made the judgment call in the
 9 way that you suggest, I would be embedding an
 10 assumption that North Carolina's laws had
 11 nothing to do with that portion of the
 12 increase. So it just struck me -- especially
 13 given the overall theory of how President Obama
 14 and his campaign -- or Senator Obama and his
 15 campaign in the case of 2008 was using these
 16 laws that I should make the judgment call that
 17 these laws were still having some sort of
 18 effect in the relevant time period.
 19 Q. Let me draw your attention to page 32,
 20 paragraph 121. You say that your analysis
 21 revealed a positive correlation between the
 22 number of laws the state passes and the
 23 increase in African American participation but
 24 that is not statistically significant at the
 25 95 percent confidence level.

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1 A. Correct.
 2 Q. Do you see that? Did you run that analysis at
 3 other confidence levels?
 4 A. Well, the confidence level is 82.
 5 Q. Okay. So -- and what that means in lay terms
 6 there is an 82 percent chance that the laws
 7 passed have a positive impact on African
 8 American participation; is that right?
 9 A. That's a way you can interpret it.
 10 Q. How else can you interpret it?
 11 A. That is a way that you can explain it. You can
 12 explain it in statistical terms, but in lay
 13 terms, yeah, I think that is a way to explain
 14 it.
 15 Q. So it is your conclusion based on that that
 16 it's more likely than not that the laws
 17 increase African American participation, right?
 18 A. Without any controls in place, what it says
 19 really is that we're -- well, let's see how I
 20 explain this.
 21 I think the technical way to put it is
 22 we're 18 -- there's an 18 percent chance on the
 23 basis of this that we would still accept the
 24 null hypothesis which is that there was no
 25 effect on turnout.

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

NORTH CAROLINA STATE CONFERENCE)
OF THE NAACP,)
et al.,)
Plaintiffs,)
vs.) Case No: 1:13-CV-658
PATRICK LLOYD MCCRORY, in his)
official capacity as the)
Governor of North Carolina,)
et al.,)
Defendants.)

LEAGUE OF WOMEN VOTERS OF)
NORTH CAROLINA, et al.,)
Plaintiffs,)
vs.) Case No: 1:13-CV-660
THE STATE OF NORTH CAROLINA,)
et al.,)
Defendants.)

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) Case No: 1:13-CV-861
THE STATE OF NORTH CAROLINA,)
et al.,)
Defendants.)

VIDEOTAPED DEPOSITION
OF
SEAN P. TRENDE - VOLUME II

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2 VIDEOTAPED DEPOSITION

3 OF

4 SEAN P. TRENDE - VOLUME II

5 9:01 A.M.

6

7 FRIDAY, APRIL 10, 2015

8

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1 there?
 2 A. I probably would have registered before the
 3 2012 elections.
 4 Q. Where were you registered to vote before then?
 5 A. Virginia.
 6 Q. How long were you registered to vote in
 7 Virginia?
 8 A. I can't remember if I was registered to vote in
 9 2002 because I moved there in, like, October
 10 and there wasn't a competitive race that year
 11 so it wouldn't have been a huge incentive to do
 12 so. Certainly before the 2004 elections.
 13 Q. And were you registered to vote anywhere before
 14 Virginia?
 15 A. I'm not certain. I've lived in other states,
 16 but I'm not certain if I was registered to vote
 17 there or not.
 18 Q. Were you registered -- what party affiliation
 19 did you have when you were registered in
 20 Virginia?
 21 A. I don't believe Virginia has registration by
 22 party ID.
 23 Q. What about Ohio?
 24 A. Ohio does not have registration by party ID.
 25 Q. Have you ever been registered or affiliated

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1 Q. So in your last deposition, you spent a bunch
 2 of time with Ms. Meza talking about your
 3 qualifications and your past experience, and
 4 what I want to do now is really examine since
 5 your last deposition what you've been up to.
 6 So as of your last deposition in 2014,
 7 last deposition with us, you'd never written an
 8 article for a peer-reviewed journal or
 9 publication; is that right?
 10 A. That's correct.
 11 Q. Have you since your last deposition?
 12 A. No.
 13 Q. Okay. So you've never -- never, including
 14 since your last deposition, written a
 15 peer-reviewed journal article on same-day
 16 registration?
 17 A. No.
 18 Q. Or on early voting?
 19 A. Of course not.
 20 Q. Or on out-of-precinct provisional voting?
 21 A. No.
 22 Q. Am I right that you have done some litigation
 23 consulting other places since your last
 24 deposition in this case?
 25 A. Yes.

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1 with a political party?
 2 A. If I have been registered with a political
 3 party, it might have been in Oklahoma back in
 4 the '90s. I think that was the last place I
 5 lived that had registration by party ID.
 6 Q. Okay. What were you registered as in Oklahoma?
 7 A. I don't know. That was 20 years ago.
 8 Q. Have you ever made political donations to
 9 candidates?
 10 A. Yes.
 11 Q. Who have you donated money to?
 12 A. In 2008, I donated to Rudy Giuliani \$250 and
 13 then John McCain and I think that's it.
 14 Q. Those are the only donations you've ever made
 15 to political candidates?
 16 A. I think that's right.
 17 Q. Have you ever made donations to political
 18 action committees?
 19 A. No, not to my recollection.
 20 Q. And both Mr. Giuliani and Mr. McCain were
 21 Republican candidates at the time?
 22 A. Some might disagree with that, but, yeah, they
 23 were.
 24 MR. FARR: We only disagree on McCain.
 25 BY MS. RIGGS:

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1 Q. Can you tell me about that?
 2 A. I was retained by the -- I think it was the --
 3 I think my client is the Attorney General of
 4 Ohio, not the state, in their early voting
 5 litigation and same-day registration
 6 litigation.
 7 Q. Were you deposed in that case?
 8 A. Yes.
 9 Q. Did you testify in --
 10 A. I did not give live testimony.
 11 Q. What opinions did you -- well, wait, let me
 12 take a step back.
 13 Did you produce a report in that case?
 14 A. I did.
 15 Q. Just one?
 16 A. I believe that's correct.
 17 Q. What opinions did you offer in that report?
 18 A. I believe they were similar to the opinions
 19 that I offered here with respect to what -- the
 20 changes in Ohio's law -- where the change is in
 21 Ohio's law positioned it with respect to early
 22 voting and same-day registration compared to
 23 other states and then an opinion on turnout.
 24 Q. When did you produce this report in Ohio?
 25 A. I believe it was in July of 2014. It might

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1 CPS data similar to what it was when you were
 2 deposited in 2014?
 3 A. Like I said, I didn't review my deposition
 4 transcript from 2014 so I'm not sure exactly
 5 what the opinions were there.
 6 Q. Okay. Let me ask you a few things, then.
 7 Are you aware that with the use of CPS
 8 data -- well, first, why don't you tell me what
 9 your understanding is of what the CPS data is.
 10 A. CPS data is -- it's the Current Population
 11 Survey conducted by the Census Bureau. It's
 12 usually used to calculate the unemployment
 13 rate, but after every even year election, they
 14 ask a battery of questions about registration,
 15 whether you voted or not, why you didn't vote
 16 and so forth, and so you end up with a huge
 17 data set of a variety of demographic variables
 18 and whether the individual voted or not.
 19 Q. And are you aware of criticism of the CPS that
 20 there is a problem with over-reporting in
 21 turnout?
 22 A. It's a little more complicated than that, but
 23 as a general matter, yes.
 24 Q. And when you do -- when you use CPS data, do
 25 you attempt to weight the data to account for

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1 that over-reporting of turnout?
 2 A. I'm not certain you can.
 3 Q. Are you aware of another criticism that with
 4 the CPS you can have varying over-reporting
 5 rates from year to year?
 6 A. Yeah. Yeah. I believe that Hur and Achen or
 7 Achen article goes into that.
 8 Q. And have you in using CPS data ever attempted
 9 to re-weight the data to account for that
 10 variation in over-reporting by year?
 11 A. Oh, I've reproduced the Hur and Achen -- it's
 12 A-C-H-E-N. I've done the exercise Hur and
 13 Achen suggest.
 14 Q. Did you do it in this report?
 15 A. I did.
 16 Q. Okay. I'll get to that in a second.
 17 Are you aware of another criticism of
 18 the CPS data that there are -- that the
 19 over-reporting rates can vary among different
 20 racial groups?
 21 A. Yes.
 22 Q. Okay. And have you ever attempted to re-weight
 23 data to account for that?
 24 A. I have done that.
 25 Q. Did you do that in this report?

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1 A. Where -- and this stipulation goes to your
 2 last -- my previous answer to the similar
 3 question: Where noted, I did.
 4 Q. Where not noted you didn't?
 5 A. Right.
 6 Q. And are you aware that another criticism on CPS
 7 data is that over-reporting rates vary from
 8 state to state?
 9 A. Yes.
 10 Q. And have you ever re-weighted data to account
 11 for that?
 12 A. I have engaged in the exercise suggested by Hur
 13 and Achen.
 14 Q. Did you do so for this report?
 15 A. Where noted.
 16 Q. Where noted. All right.
 17 So then I want to talk a little bit
 18 more about the Hur and Achen study. And what I
 19 want to talk about is in Paragraph 164 why you
 20 disagree with Hur and Achen's -- well, I guess,
 21 do you agree with their suggested fixes or
 22 their opinions generally?
 23 A. I'm disagreeing with Dr. Gronke.
 24 Q. Okay. And one of those reasons -- one of those
 25 basis for disagreement is the fact that the Hur

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1 and Achen study was only released in 2012 -- or
 2 published in late 2013? I'm sorry.
 3 A. Yeah, I think that's actually a typo in my cite
 4 to Public Opinion Quarterly. It was like 2013,
 5 I believe.
 6 Q. Okay.
 7 A. Yeah, that's part of it. I mean, this article
 8 came out shortly before the expert reports were
 9 published in 2014. It's not like this is some
 10 time-honored technique that political
 11 scientists have been using for 40 years, and if
 12 something had been used over time, then I would
 13 say, yes, it's an approach that you should use
 14 here.
 15 I think it's interesting, but I'm just
 16 not convinced that it gives -- it's been used
 17 enough to be assured that it gives better
 18 results than the traditional way of using the
 19 CPS data.
 20 Q. And the fact that the Leighley and Nagler book,
 21 which was, if I'm correct, published before the
 22 Hur and Achen study, the fact that they didn't
 23 re-weight the data that way supports your point
 24 of disagreement there?
 25 A. Actually, I believe that book was published

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General Information

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