

## EXHIBIT A

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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2 VIDEOTAPED DEPOSITION OF  
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5 8:58 A.M.  
6 FRIDAY, JUNE 6, 2014  
7  
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THE VIDEOGRAPHER: On record at 8:58 a.m.

Would the court reporter please swear in the witness.

SEAN P. TRENDE,

having been first duly sworn or affirmed to tell the truth, the whole truth and nothing but the truth, testified as follows:

EXAMINATION

BY MS. MEZA:

Q. Good morning, Mr. Trende. How are you?

A. Doing great, thanks.

Q. My name is Catherine Meza and I'm here representing the United States.

Could you please state and spell your full name for the record.

A. Sean, S-E-A-N, Patrick, P-A-T-R-I-C-K, Trende, T-R-E-N-D-E.

Q. And if everyone in the room and on the phone could please introduce yourselves for the record.

MR. COOPER: Dave Cooper for the United States.

MR. MOORE: Toby Moore for the United States.

8

1 MR. HO: Dale Ho, ACLU, on behalf of  
 2 the League of Women Voters plaintiffs.  
 3 MS. EBENSTEIN: Julie Ebenstein, League  
 4 of Women Voters plaintiffs.  
 5 MR. NKWONTA: Uzoma Nkwonta with  
 6 Kirkland & Ellis on behalf of the NAACP  
 7 plaintiffs.  
 8 MS. LIEBERMAN: Denise Lieberman with  
 9 the Advancement Project on behalf of the NAACP  
 10 plaintiffs.  
 11 MR. SCHAAF: Rob Schaaf. I work for  
 12 Ray Starling and Speaker Tillis's office.  
 13 MR. FARR: Tom Farr, Ogletree Deakins,  
 14 and we're here for the defendants.  
 15 And maybe the people on the phone can  
 16 now identify themselves.  
 17 MR. BOWERS: Good morning. This is  
 18 Butch Bowers with the Bowers Law Office in  
 19 Columbia, South Carolina, and I'm appearing by  
 20 telephone on behalf of the Governor.  
 21 MR. FARR: Is there anyone else on the  
 22 phone?  
 23 MR. DONOVAN: Good morning. Dan  
 24 Donovan for plaintiffs.  
 25 MR. FARR: Hey, Dan.

9

1 MR. DONOVAN: Good morning.  
 2 MR. FARR: Okay.  
 3 BY MS. MEZA:  
 4 Q. So, Mr. Trende, have you ever been deposed  
 5 before?  
 6 A. No.  
 7 Q. So I am going to go ahead and go over some  
 8 ground rules for the deposition. I am going to  
 9 be asking questions and you will be providing  
 10 answers.  
 11 The court reporter is transcribing the  
 12 deposition so it's important that when I ask a  
 13 question you provide a verbal response so the  
 14 court reporter can capture your response and  
 15 the -- on the record. She won't be able to  
 16 capture a gesture or other non-verbal response.  
 17 And it's important that you let me finish my  
 18 question before you begin your answer, again,  
 19 so the court reporter can capture both my  
 20 question and your answer.  
 21 Also if I ask a question that you don't  
 22 understand or hear, please let me know and I'll  
 23 gladly repeat it or rephrase it.  
 24 If you -- do you understand that you  
 25 are under oath and subject to perjury for any

10

1 false or misleading testimony?  
 2 A. I do understand that.  
 3 Q. Is there any reason you think you may not be  
 4 able to answer my questions truthfully and  
 5 completely today?  
 6 A. There are no such reasons.  
 7 Q. And at any point you would like a break, please  
 8 let me know and we can accommodate you.  
 9 And do you understand these  
 10 instructions?  
 11 A. I do.  
 12 Q. Do you have any questions about my  
 13 instructions?  
 14 A. No.  
 15 Q. So, Mr. Trende, how did you prepare for today's  
 16 deposition?  
 17 A. I met with my counsel. I reread my expert  
 18 report. I looked over my analyses. I reread  
 19 the expert reports from the various expert  
 20 witnesses. I reread the expert report -- the  
 21 expert surrebuttal reports. I looked over some  
 22 of the literature.  
 23 There may be other things I did, but  
 24 those are the main things. I did discover in  
 25 light of a criticism made by Dr. Gronke that

11

1 there were errors made in one of my coding and  
 2 regression analyses, and whenever you would  
 3 like to talk about those errors in the  
 4 regression analyses I'm happy to do so.  
 5 Q. Okay. When we get to those we'll certainly  
 6 discuss those errors.  
 7 Who did you meet with? You said you  
 8 met with your attorneys. Who specifically?  
 9 A. Mr. Farr.  
 10 Q. Mr. Farr. And for how long did you meet?  
 11 A. Hard to say. He was in and out.  
 12 Q. And when did you meet?  
 13 A. Yesterday.  
 14 Q. And did you meet for a couple hours, several  
 15 hours?  
 16 A. He was in and out during the day.  
 17 Q. So you can't give me a general estimate of how  
 18 long you may have met?  
 19 A. More than two.  
 20 Q. Okay. Did you meet with anyone else other than  
 21 Mr. Farr regarding the deposition?  
 22 A. There was a gentleman in the room whose name I  
 23 don't know.  
 24 Q. Was he also an attorney?  
 25 A. I don't know.

12

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.)

13

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

14

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

16

1 and elections and aggregate them in one place  
 2 so that readers don't have to go to various  
 3 websites. We also aggregate polling --  
 4 aggregate polls so that you aren't getting one  
 5 poll cherry-picked and thrown at you. You can  
 6 look and kind of get a better sense of what all  
 7 the polls are saying.  
 8 Q. So would it be accurate to describe it as a  
 9 news aggregator?  
 10 A. We also produce original content.  
 11 Q. And are you in charge of producing original  
 12 content?  
 13 A. I produce some original content.  
 14 Q. And that's written exclusively for the website,  
 15 not a publication in addition to the website?  
 16 What you --  
 17 A. I don't understand the question.  
 18 Q. So what you write for Real Clear Politics and  
 19 is posted on the website, is that only posted  
 20 on the website or also published in some other  
 21 form or publications?  
 22 A. It does not appear in print and it is not  
 23 syndicated.  
 24 Q. And there's no print version of Real Clear  
 25 Politics; is that correct?

17

1 A. That is correct.  
 2 Q. How would you describe your writing for Real  
 3 Clear Politics?  
 4 A. You're -- I don't understand the question.  
 5 Q. Okay. Is it objective news reporting or more  
 6 editorial or opinion pieces?  
 7 A. It is not editorial or opinion pieces, nor  
 8 would I characterize it as -- I would  
 9 characterize it as objective but not news  
 10 reporting.  
 11 It's analysis which is somewhat  
 12 different than the journalistic take.  
 13 Q. And is it written from a certain perspective?  
 14 A. No.  
 15 Q. So you would call it objective?  
 16 A. Yes.  
 17 Q. Are the pieces or the posts you author for Real  
 18 Clear Politics, are they reviewed prior to  
 19 being posted on the website?  
 20 A. Yes.  
 21 Q. Who reviews them?  
 22 A. My editor -- my editor in chief and our copy  
 23 editor.  
 24 Q. And what are the credentials of your editor and  
 25 copy editor?

18

1 A. My editor in chief is a graduate of Princeton  
 2 University. I don't know what his degree is  
 3 in. And my copy editor edits for -- he's been  
 4 a copy editor for probably 30 years.  
 5 Q. So the pieces you post aren't reviewed by  
 6 political scientists or other analysts?  
 7 A. Not -- I'm not going to say I've never sent a  
 8 draft to some of my political scientist friends  
 9 or asked for their opinions or thoughts on  
 10 pieces, but it's not part of the regular  
 11 process.  
 12 Q. Do you work for any other websites or  
 13 publications?  
 14 A. Yes.  
 15 Q. What are they?  
 16 A. Larry Sabato's Crystal Ball.  
 17 Q. And what is Crystal Ball?  
 18 A. It's similar to Real Clear Politics. They have  
 19 a number of regular columnists. It's similar  
 20 to Real Clear Politics in that they are focused  
 21 on elections and campaigns and to a lesser  
 22 degree than us on policy issues. They have a  
 23 number of columnists who produce original  
 24 content. They are not an aggregator and it's  
 25 kind of a weekly newsletter that goes out on

19

1 the internet.  
 2 Q. And does Crystal Ball have any political  
 3 affiliation?  
 4 A. Not to my knowledge.  
 5 Q. Does it provide commentary from any specific  
 6 perspective or ideology?  
 7 A. No.  
 8 Q. Do you engage in any other type of compensated  
 9 work or business activity?  
 10 A. Yes.  
 11 Q. What are they?  
 12 A. I am an expert witness in this case. I have  
 13 done freelance work that's noted on my resume.  
 14 I've done freelance legal work since leaving  
 15 the full time practice of law, and I'm a  
 16 coauthor of the Almanac of American Politics.  
 17 I'm a coauthor in one of the book series for  
 18 Dr. Larry Sabato who's in charge of the Crystal  
 19 Ball and I have written a book.  
 20 Q. And the freelance work you do -- you said you  
 21 do both freelance writing as well as freelance  
 22 legal work.  
 23 A. Uh-huh.  
 24 Q. Who else do you -- or who else publishes your  
 25 writings? What other source publishes your

20

1 writings?  
 2 A. Well, I haven't done freelance legal -- or  
 3 freelance writing in I think two years, so I  
 4 don't know if I can say anyone publishes my  
 5 writing.  
 6 I was asked by National Review to  
 7 review a book. I was asked by National Review  
 8 and Weekly Standard to write articles that are  
 9 mentioned on my resume. I don't know the  
 10 titles off the top of my head.  
 11 I believe I received compensation for  
 12 writing a review of a book for a website whose  
 13 name I can't remember. It was like \$500 once.  
 14 And I should add to my list of things I  
 15 receive compensation, I receive compensation  
 16 for speaking engagements.  
 17 Q. And these freelance writing assignments, are  
 18 they ones you seek out or are you solicited or  
 19 approached to work on these assignments?  
 20 A. I'm solicited.  
 21 Q. And that has always been the case?  
 22 A. Yes.  
 23 Q. You also said you engage in freelance legal  
 24 work. How often do you do that?  
 25 A. Well, it depends how you classify what I'm

21

1 doing here. I would not call this legal work  
 2 because I'm not doing legal analysis, but for  
 3 tax purposes I keep it in the legal -- the  
 4 legal 1099 report. If you looked at my  
 5 Schedule C it would be under there.  
 6 I haven't done actual freelance legal  
 7 work since we left the State of  
 8 North Carolina -- or State of Virginia, which  
 9 was in 2011.  
 10 Q. And how long -- 2011, how often would you  
 11 engage in freelance legal work?  
 12 A. It varied, but I received a reasonable amount  
 13 of compensation for it. When I first started  
 14 writing for Real Clear Politics, it was a good  
 15 source of supplemental income.  
 16 Q. And could you describe specifically what you  
 17 mean by freelance legal work? Were you  
 18 representing individuals in court? Were you  
 19 reviewing certain documents? What exactly were  
 20 you doing?  
 21 A. Right. So the law firm I was working on when I  
 22 left to be full time at Real Clear Politics had  
 23 a case that was going to trial, and we were --  
 24 I had my final date at the law firm set  
 25 right -- right after that trial was supposed to

22

1 occur. We took a non-suit at trial which meant  
 2 the trial would be extended, so I did -- I  
 3 agreed to help them out with that litigation  
 4 since I knew the facts and documents better  
 5 than anyone.  
 6 I also -- my wife's firm didn't have a  
 7 good brief writer so they asked me to help out  
 8 with some of their healthcare litigation, brief  
 9 writing, so I did that on a freelance basis.  
 10 Q. And you would say those were your two primary  
 11 freelance -- legal freelance jobs?  
 12 A. I'm fairly confident those were the only  
 13 freelance legal jobs I had.  
 14 Q. Okay. So outside of the duties you perform as  
 15 an election analyst for Real Clear Politics, do  
 16 you have any other elections-related work  
 17 experience?  
 18 A. And the Crystal Ball writing.  
 19 Q. Okay.  
 20 A. The writing for the Crystal Ball, the writing  
 21 for the Almanac of American Politics, the  
 22 writing for the Larry Sabato book. And when I  
 23 do speaking engagements, I, you know, always  
 24 pay attention and review all the polls and any  
 25 related election stuff. If it's a speech I'm

23

1 giving in West Virginia, I'll delve into  
 2 West Virginia political and elections history  
 3 so I have a fuller understanding of what is  
 4 going on in that state.  
 5 Q. Could you describe for me what your writing for  
 6 the Almanac of American Politics entailed?  
 7 A. So the Almanac of American Politics covers all  
 8 435 house districts, the senate seats, the  
 9 governorships and then has a general  
 10 description of the state, and within those 435  
 11 congressional districts, it's broken up into  
 12 two sections. The first section is kind of the  
 13 history of the congressional district, a  
 14 description so that someone who wants to know  
 15 about the Fourth District of North Carolina can  
 16 say, okay, this is a district that goes across  
 17 the blue areas of Raleigh and Durham and then  
 18 it has a tail that kind ever swings down into  
 19 Fayetteville.  
 20 And so what I would -- and I was in  
 21 charge of certain states writing the first  
 22 portion of that that described the  
 23 congressional districts.  
 24 Kind of the general form is that you  
 25 give a history of the area, colorful anecdote

24

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

26

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 Q. And that was the universe of what you were  
 2 asked to look at?  
 3 A. Yes. There were discussions about an opinion  
 4 on polling which I did not complete for  
 5 professional reasons. The Public Policy  
 6 Polling has had some questions about its  
 7 methodology, but I have a good relationship  
 8 with Tom Jensen, I like him, and ultimately I  
 9 didn't feel comfortable commenting on those  
 10 objections that have been raised to their  
 11 methodology.  
 12 Q. And when were you retained to work on this  
 13 matter?  
 14 A. February.  
 15 Q. Of 2013?  
 16 A. '14.  
 17 Q. '14.  
 18 Have you had any communications with  
 19 staff from the North Carolina State Board of  
 20 Elections since being retained on this matter?  
 21 A. Yes.  
 22 Q. And who have you communicated with?  
 23 A. I am terrible with names. I couldn't -- I was  
 24 asked -- or I was given a sort of telephonic  
 25 tutorial on the North Carolina individual data

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1 files.  
 2 Q. And was that with more than one individual?  
 3 A. I believe there was only one individual.  
 4 Q. And that was the extent of your communications  
 5 with the State Board of Elections --  
 6 A. Yes.  
 7 Q. -- since being retained?  
 8 A. Yes.  
 9 Q. Have you had any communications with members of  
 10 the North Carolina General Assembly since being  
 11 retained for this matter?  
 12 A. No.  
 13 Q. So we've introduced your report which you have  
 14 in front of you. At whose direction did you  
 15 complete the report?  
 16 A. I don't know that I'll -- Mr. Farr asked me to  
 17 write the report.  
 18 Q. And does the report contain a complete  
 19 statement of all your -- all the opinions that  
 20 you've expressed in this case so far?  
 21 A. Certainly the major ones, yes.  
 22 Q. Does your report contain all the facts or data  
 23 that you considered when forming the opinions  
 24 reflected in the report?  
 25 A. There was one oversight in my list of books

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1 that I consulted. I should have added various  
 2 Almanacs of American Politics.  
 3 Q. And you present two main opinions in your  
 4 report; is that correct?  
 5 A. That's correct.  
 6 Q. And what is your first opinion?  
 7 A. What time is it?  
 8 MR. FARR: Do you want a break?  
 9 THE WITNESS: Yes, I think so. This  
 10 seems like a good time for a break.  
 11 MS. MEZA: Let's take a break then. Is  
 12 ten minutes -- let's go off the record.  
 13 THE VIDEOGRAPHER: Off record at 9:51.  
 14 (Brief Recess.)  
 15 THE VIDEOGRAPHER: On record at  
 16 9:58 a.m.  
 17 BY MS. MEZA:  
 18 Q. Mr. Trende, we were just about to begin  
 19 discussing Opinion 1 in your report. What is  
 20 your Opinion 1?  
 21 A. That the voting reforms contained in HB 589  
 22 place the state within the mainstream of  
 23 American voting laws.  
 24 Q. And what specifically are you referring to when  
 25 you say voting reforms?

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1 A. When I described HB 589 to you earlier, those  
 2 were the reforms that I was talking about.  
 3 Q. So you're characterizing the provisions in  
 4 HB 589 as reforms?  
 5 A. Yes.  
 6 Q. Would you characterize any early voting laws a  
 7 reform?  
 8 A. Yes.  
 9 Q. Would you also characterize any same-day  
 10 registration laws a reform?  
 11 A. Yes.  
 12 Q. Any law pertaining to out-of-precinct  
 13 provisional balloting?  
 14 A. Anything that reforms the election laws I would  
 15 probably refer to as reform. When I talk about  
 16 reform, I understand that some people talk  
 17 about reform with some type of normative  
 18 judgment involved, either they're good or bad.  
 19 I'm just talking about the changes to the law  
 20 in HB 589.  
 21 Q. What do you mean when you say they, quote,  
 22 place the state within the mainstream of  
 23 American voting laws?  
 24 A. That there are -- with respect to the laws at  
 25 issue in HB 589 that plaintiffs are challenging

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1 in this litigation, that it is closer to the  
 2 median state in American politics after the  
 3 changes are implemented than before.  
 4 Q. Could you describe what analyses you conducted  
 5 in arriving at Opinion 1?  
 6 A. I reviewed the legal codes for all 50 states  
 7 and the District of Columbia. There were some  
 8 reports published by the National Conference of  
 9 State Legislatures that summarize the various  
 10 laws. I believe they have early voting laws,  
 11 same-day registration laws and pre-registration  
 12 laws.  
 13 I referred to the election websites for  
 14 the Secretary of State or Board of Elections  
 15 for the 50 states and the District of Columbia.  
 16 I sometimes called Secretary of States office  
 17 directly to answer questions. I referred to  
 18 materials provided by counsel which were  
 19 largely duplicative of the 50 state laws that  
 20 you find online.  
 21 And as I said -- when I say reports  
 22 published by the National Conference of State  
 23 Legislatures, if you look at sites that I  
 24 relied on, there's also a reference to an ACLU  
 25 publication and I believe it was a fair vote

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1 publication on out-of-precinct voting laws that  
 2 I referred to as well.  
 3 Q. And when you were reviewing these materials,  
 4 they reflected these laws as they exist  
 5 currently, correct?  
 6 A. Yes. Well, I can't say that because some of  
 7 the state laws that are available online will  
 8 refer back to repealed sections of the Code.  
 9 So the materials that I reference don't just  
 10 refer to state laws as they appear presently.  
 11 In addition, I think some of the website  
 12 information describes changes to the laws.  
 13 Q. Okay. But what you considered -- what did you  
 14 consider when undertaking the analysis? Was it  
 15 the current version of the law or any previous  
 16 version of the law?  
 17 A. Current version of the law.  
 18 Q. And how many hours did it take for you to  
 19 review the election codes and all these related  
 20 materials would you say?  
 21 A. A lot. I honestly couldn't sit here and tell  
 22 you the number of hours. More than ten.  
 23 Q. Why don't we go to Exhibit 3 of your report.  
 24 And for the record, we actually marked the  
 25 exhibits with page numbers for easy reference,

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1 but otherwise this was the report as received.  
 2 So Exhibit 3 begins on page 17.  
 3 MR. FARR: The one I've got it's page  
 4 14.  
 5 MS. MEZA: Sorry. I'm referring to the  
 6 page numbers on the lower right. You have  
 7 your version.  
 8 MR. FARR: What exhibit number is this?  
 9 THE REPORTER: 103.  
 10 MR. FARR: Okay. Got it.  
 11 BY MS. MEZA,  
 12 Q. So, Mr. Trende, what is reflected in Exhibit 3?  
 13 A. It is state laws requiring -- regarding  
 14 photographic identification requirements,  
 15 states that require photographic  
 16 identification, and if I could find a relevant  
 17 statute, I provided a citation to it.  
 18 Q. And -- so you state that there are presently 31  
 19 states plus the District of Columbia that  
 20 allows citizens to vote without presenting a  
 21 photographic identification and a number of  
 22 other states have laws on the books requiring  
 23 photographic identification some of which are  
 24 not enforced or have been enjoined.  
 25 What specific states are you referring

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1 to? Do you recall?  
 2 A. Well, the states are listed in Exhibit 3 for  
 3 the first sentence.  
 4 For the second sentence, off the top of  
 5 my head, I couldn't list the states where these  
 6 laws have been enjoined.  
 7 My understanding is a photographic ID  
 8 law in Arkansas has been enjoined, a law in  
 9 Wisconsin has been enjoined. Those are the two  
 10 that come to my mind right now.  
 11 Q. Are those somehow reflected on -- in Exhibit 3,  
 12 are those reflected as requiring photo  
 13 identification or as not requiring photo  
 14 identification?  
 15 A. No because these states are characterized as  
 16 requiring photographic identification to vote  
 17 because the opinion involves the comparison of  
 18 legal regimes, not the measurement of effect of  
 19 those regimes.  
 20 Q. And what do you mean by political regimes? You  
 21 made that statement and it's also in paragraph  
 22 19 of your report.  
 23 A. When I refer to political regimes, I'm talking  
 24 about the laws that are in place.  
 25 Q. What do you mean the laws that are in place?

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1 In each specific state or --  
 2 A. Yes, in each specific state.  
 3 Q. Okay. And Exhibit 3 simply lists the state  
 4 codes or the citations to statutes but not any  
 5 of the requirements of any of these individual  
 6 laws; is that correct?  
 7 A. Yes.  
 8 Q. And is it your opinion that all voter photo  
 9 identification laws have the same requirements  
 10 of voters or are there any significant  
 11 differences among photo ID requirements for  
 12 voting?  
 13 A. They do not have the same requirements.  
 14 Q. Okay. Let's look at Exhibit 4. What is  
 15 reflected in Exhibit 4 or what data are you  
 16 recording in Exhibit 4?  
 17 A. I'm sorry. What --  
 18 Q. What data are you recording in Exhibit 4?  
 19 A. Yes. Exhibit 4 reflects state laws regarding  
 20 whether out-of-precinct voting is allowed or  
 21 not. It contains a column or reciting whether  
 22 out-of-precinct votes are counted, the relevant  
 23 statute or in some cases the Secretary of State  
 24 website and then there are notes as to the  
 25 differences in the legal regimes.

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1 Q. And what was the purpose of Exhibit 4 or what  
 2 is the purpose of Exhibit 4?  
 3 A. It is a sort of show-your-work exhibit. It's a  
 4 recitation of the most relevant data that I  
 5 could find. It's -- it's -- rather than trying  
 6 to put all the citations in the body of the  
 7 text, I thought it would be more useful to have  
 8 it more organized in a chart as an exhibit to  
 9 the expert report so the expert report would  
 10 not be cluttered.  
 11 Q. So there's no further analysis other than  
 12 listing whatever states have regarding --  
 13 whatever state laws there are regarding  
 14 out-of-precinct provisional ballots, correct?  
 15 A. In Exhibit 4 it lists the yes or no, it lists  
 16 the statutes and then it has notes on the types  
 17 of laws that are involved in the state.  
 18 Q. Okay. We'll move on to Exhibit 5. What data  
 19 are you recording in Exhibit 5?  
 20 A. This is in-person early voting laws, whether  
 21 the state allows it.  
 22 And I believe that this column for  
 23 early voting allowed is incorrect. It should  
 24 not be relied upon. Instead you should refer  
 25 to the notes column which gives the number of

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1 days of early voting that are allowed in each  
 2 state as well as the statute or Secretary of  
 3 State website or call that I made.  
 4 Q. Okay. So you're stating that the second column  
 5 here, that is incorrect?  
 6 A. Yes.  
 7 Q. And can you tell me specifically what is  
 8 incorrect or what should say yes that says no  
 9 or the other way around?  
 10 A. Probably the most efficient way to do it -- I'm  
 11 not trying to be chippy with this, but if in  
 12 the notes column it says a state has a certain  
 13 number of days of early voting and in Column 2  
 14 it says no, then Column 2 should read yes and  
 15 vice versa.  
 16 Q. So let's -- you want to refer to Exhibit 5 but  
 17 also paragraphs in your declaration.  
 18 A. Okay.  
 19 Q. So in paragraph 26 you state that there are 14  
 20 states allowing for in-person early voting in  
 21 excess of 16 days.  
 22 A. Uh-huh.  
 23 Q. Now, if we go back to Exhibit 5 and even if we  
 24 refer to your notes column listing the days, my  
 25 count is 13. Is there another error?

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1 MR. FARR: What paragraph of his report  
 2 are you referencing?  
 3 MS. MEZA: I'm referring to paragraph  
 4 26. There he states that there are 14 states  
 5 allowing for early voting in excess of 16 days.  
 6 THE WITNESS: Yes.  
 7 BY MS. MEZA:  
 8 Q. "Yes" what?  
 9 A. What was your question?  
 10 Q. Well, my question was that you're stating that  
 11 there are 14 and Exhibit 5 reflects that there  
 12 are 13 if I count for your notes column.  
 13 A. Yes.  
 14 Q. So it is 13, not 14; is that correct?  
 15 A. Oh, I don't know that.  
 16 Q. What is the accurate information? Is it what  
 17 you're stating in paragraph 16 or is it what's  
 18 in Exhibit 5?  
 19 MR. FARR: Paragraph 26.  
 20 MS. MEZA: I'm sorry, paragraph 26.  
 21 THE WITNESS: I couldn't tell you off  
 22 the top of my head.  
 23 BY MS. MEZA:  
 24 Q. Why don't we go on to paragraph 27. There you  
 25 state that there are 17 states and the District

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1 of Columbia that allow for in-person early  
 2 voting but for periods of less than 17 days.  
 3 That's what you state in paragraph 27.  
 4 If we refer back to Exhibit 5, I  
 5 count -- again, referring to your notes  
 6 column -- that there are 18 states with a  
 7 period of early voting of less than 17 days in  
 8 addition to the District of Columbia.  
 9 MR. FARR: Take your time to review  
 10 those.  
 11 BY MS. MEZA:  
 12 Q. Take as much as time as you need.  
 13 A. I've reviewed it.  
 14 Q. So is your statement in paragraph 27 correct or  
 15 is the data reflected in or reported in  
 16 Exhibit 5 correct?  
 17 A. Off the top of my head I cannot say.  
 18 Q. But there is a discrepancy?  
 19 A. There is a discrepancy.  
 20 Q. In paragraph 28 you state that there are 18  
 21 states that do not allow for any in-person  
 22 early voting and now in Exhibit 15 I count that  
 23 there are 19 states -- again, referring to your  
 24 notes column -- that do not have a period of  
 25 in-person early voting.

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1 Could you tell us which one is correct  
 2 or whether you agree that there's a discrepancy  
 3 and which -- if there is, whether your  
 4 statement in 28 or the data reflected in  
 5 Exhibit 5 is correct?  
 6 A. There does seem to be a discrepancy.  
 7 Can you tell me again the numbers that  
 8 were your count?  
 9 Q. Okay. So in paragraph 28 you're stating that  
 10 there are 18 states that do not have any sort  
 11 of in-person early voting. Exhibit 15 --  
 12 A. Can I borrow your pen or a pen?  
 13 Q. And Exhibit 15 reflects that there are -- I'm  
 14 sorry.  
 15 Exhibit 5 reflects that there are 19  
 16 states with no in-person early voting.  
 17 A. What were your counts for 26 and 27?  
 18 Q. 26 -- Exhibit 5 notes that there are 13 states  
 19 that have early voting in excess of 16 days --  
 20 MR. FARR: Counsel, I think you meant  
 21 Exhibit 4.  
 22 THE WITNESS: It's Exhibit 5.  
 23 And 27 your count was?  
 24 BY MS. MEZA:  
 25 Q. So 27, the data you're reporting in Exhibit 5

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1 is that there are 18 states in addition to the  
 2 District of Columbia with less than 17 days of  
 3 in-person early voting.  
 4 I just want to go back to my question  
 5 regarding paragraph 28. You agree that there  
 6 is a discrepancy?  
 7 A. Your numbers add up to 50 and there are 50  
 8 states plus the District of Columbia so  
 9 something's not right.  
 10 Q. Well, I'm asking you. I mean, you're reporting  
 11 18 in paragraph 28 and from my count in  
 12 Exhibit 5 there are 19 where there is no  
 13 indication of early voting days in the notes  
 14 column. I'm simply counting the two --  
 15 counting what's reflected in Exhibit 5 and  
 16 asking whether there's a discrepancy and asking  
 17 which one is correct.  
 18 A. Yeah, I understand, but there's a discrepancy  
 19 between your count and the number of  
 20 observations in Exhibit 5.  
 21 The number of states that you were  
 22 giving me adds up to 50 and there are 50 states  
 23 and the District of Columbia in Exhibit 5. So  
 24 somewhere, I don't know where, there's a  
 25 discrepancy between your count and what's

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1 reflected in Exhibit 5.  
 2 Q. Well, you tell me, then -- if you'd like to  
 3 take some time to review Exhibit 5 -- whether  
 4 you stand by your statement in paragraph 26, in  
 5 paragraph 27 and in paragraph 28.  
 6 A. If you would like to go off the record, this  
 7 could take 15, 20 minutes.  
 8 Q. Sure, we could go off the record if you --  
 9 well, you can take as much time as you need to  
 10 review Exhibit 5.  
 11 A. I'm not comfortable sitting here on video  
 12 camera for 15 minutes adding up the numbers.  
 13 If you will agree to turn the video  
 14 camera off, I'll sit down and go through and  
 15 try to figure out where the discrepancy is.  
 16 This is going to create a photographic record  
 17 of me sitting silent for 15 minutes trying to  
 18 add this up, and the discrepancy is between  
 19 your count and the number of observations in  
 20 the exhibit. So that's what I'm going to try  
 21 to figure out.  
 22 MR. FARR: If you don't want to go off  
 23 the record, then we'll just move on.  
 24 MS. MEZA: Okay.  
 25 BY MS. MEZA:

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1 Q. You've agreed that there's a discrepancy  
 2 between paragraph 26 and what is reported in  
 3 Exhibit 5; in paragraph 27 and what's reported  
 4 in Exhibit 5; and at this point you can't say  
 5 whether you agree that there's a discrepancy  
 6 between what you are reporting in paragraph 28  
 7 and what's reflected in Exhibit 5?  
 8 A. No because the numbers that you're giving me as  
 9 your claim of what's here don't add up to the  
 10 total number of observations, so there's some  
 11 nuance that's being missed somewhere that has  
 12 to be figured out.  
 13 I mean, I did a quick count and  
 14 seemingly agreed with you on 26 and 27, but  
 15 since 13 plus 18 plus 19 -- is that -- that is  
 16 50, I believe.  
 17 MR. STEIN: That's up to 49. So it's  
 18 two off.  
 19 BY MS. MEZA:  
 20 Q. So are you going to answer my question or are  
 21 you -- unless we go off the record?  
 22 A. I told you if you want to go off the record and  
 23 give me some time where I'm not sitting in a  
 24 video camera stone cold silent, I'm happy to do  
 25 it, but the discrepancy arises in your total

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1 count.  
 2 Q. Okay. Well, then, we can move on.  
 3 So going back to your declaration  
 4 paragraph 30 you state that my review of state  
 5 law brought to light several differences with  
 6 Dr. Stewart's characterization of early voting  
 7 laws. An explanation of why there are  
 8 differences in our charts, several of which are  
 9 truly judgment calls, follows.  
 10 What did you mean by judgment calls?  
 11 A. I meant how you code some of these states will  
 12 depend upon the judgment being made by the  
 13 person who is coding the state.  
 14 MS. MEZA: Can we just go off the  
 15 record for one minute.  
 16 THE WITNESS: Yes.  
 17 THE VIDEOGRAPHER: Off record at  
 18 10:23 a.m.  
 19 (Brief Recess.)  
 20 THE VIDEOGRAPHER: On record at  
 21 10:28 a.m.  
 22 BY MS. MEZA:  
 23 Q. Okay, back on the record. I just wanted to  
 24 point something out. We were able to add up  
 25 the numbers reflected in paragraphs 26, 27 and

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1 28 and they add up to 49 plus the District of  
 2 Columbia, and the numbers I provided added up  
 3 to 50 plus the District of Columbia. So that  
 4 may be where the discrepancy lies so we can  
 5 move on.  
 6 A. I -- well, you aren't asking a question, so --  
 7 but that's not right.  
 8 Q. Let's move on.  
 9 I am going to ask the court reporter to  
 10 mark the next exhibit which is Exhibit 104.  
 11 (WHEREUPON, Plaintiff's Exhibit 104 was  
 12 marked for identification.)  
 13 BY MS. MEZA:  
 14 Q. Do you recognize what I've just handed you,  
 15 Mr. Trende?  
 16 A. Yes.  
 17 Q. Can you tell us what it is?  
 18 A. It is a page from Dr. Stewart's report, page  
 19 56, containing Figure 11 and part of paragraph  
 20 131.  
 21 Q. And you understand that Dr. Stewart's analysis  
 22 reflected in Figure 11 of his report used data  
 23 from the Early Voting Information Center or the  
 24 EVIC website maintained by Dr. Gronke?  
 25 A. Yes.

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1 Q. And Dr. Stewart also stated in the report, and  
 2 it's reflected in Figure 11, that the  
 3 information is from the 2012 general election  
 4 on the left side. And on the right side --  
 5 A. He states that, yes. He states that. Although  
 6 I don't think North Carolina had 10 days of  
 7 early voting in the 2012 election.  
 8 Q. Well, what's reflected on the right side is the  
 9 law post HB 589.  
 10 A. But only in North Carolina.  
 11 Q. Yes. And when you reviewed the laws, again,  
 12 you said that you've reviewed them as they  
 13 exist at the time of your review, not in 2012.  
 14 A. Correct.  
 15 Q. And some of the differences that you identified  
 16 in Dr. Stewart's accounting of early voting  
 17 laws were due to the changes that had occurred  
 18 since 2012; is that correct?  
 19 A. Correct.  
 20 Q. Why don't we turn to your Figure 1 in page 11  
 21 of your declaration.  
 22 MR. FARR: What page is that on  
 23 Exhibit 103?  
 24 MS. MEZA: It's not in the exhibit  
 25 section. It's in the declaration page 11,

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1 Figure 1.  
 2 MR. FARR: Okay.  
 3 BY MS. MEZA:  
 4 Q. So let's take a look at what's reflected in  
 5 Figure 1. Would you let us know what's  
 6 reflected in your Figure 1?  
 7 A. It is the number of days that states have  
 8 no-excuse early voting available.  
 9 Q. Okay. And according to your declaration, your  
 10 analysis found in 2012 --  
 11 A. Where are we?  
 12 Q. We're looking at what's reflected in Figure 1.  
 13 A. I know, but you said "according to your  
 14 declaration," and I'm just wondering where we  
 15 are.  
 16 Q. Sorry.  
 17 A. That's okay.  
 18 Q. Well, let's look at what's in Figure 1.  
 19 A. Okay.  
 20 Q. What's reflected in Figure 1 is that the total  
 21 number of days in North Carolina's early voting  
 22 period in 2012 ranked the 19 shortest; is that  
 23 correct?  
 24 A. Oh, the 19th shortest. I count 35.  
 25 Q. You count 35 what? I'm sorry. You count that

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1 it's the 35th shortest?  
 2 A. Yes.  
 3 Q. Well, I'm sorry. Of the days of the states  
 4 that have early voting periods, what's  
 5 reflected in Figure 1 is a total of 33; is that  
 6 correct?  
 7 A. Can you rephrase that question? I'm sorry. I  
 8 might not be making the mental gear shift.  
 9 Q. Okay. What's reflected in Figure 1, these are  
 10 the 50 states on the Y axis and what the graph  
 11 shows --  
 12 A. Plus the District of Columbia.  
 13 Q. Plus the District of Columbia. And what the  
 14 graph shows are -- so for the states that do  
 15 have an early voting period, the graph on the  
 16 X axis shows the number of days; is that  
 17 correct?  
 18 A. Yes, that is correct.  
 19 Q. And the total number of states plus the  
 20 District of Columbia reflected as having any  
 21 days, not zero --  
 22 A. Okay.  
 23 Q. -- is a total of 33.  
 24 A. I'm sorry, I did not understand that question.  
 25 Yes.

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1 Q. And among those 33, your chart reflects that in  
 2 2012 North Carolina had the 19th shortest early  
 3 voting period. Is that accurate?  
 4 MR. FARR: I'm going to object to the  
 5 form of that question.  
 6 THE WITNESS: I can't say because this  
 7 chart shows laws as they exist today.  
 8 BY MS. MEZA:  
 9 Q. Okay. But what's reflected here shows that  
 10 among these it had the 19th shortest early  
 11 voting period in 2012?  
 12 A. No, that's not right.  
 13 Q. North Carolina had the shortest --  
 14 A. No, it doesn't say anything about what states  
 15 are doing in 2012.  
 16 Q. Well, how -- what is reflected about North  
 17 Carolina in 2012 in your Figure 1?  
 18 A. This chart says that compared to state laws  
 19 today, North Carolina -- North Carolina's 2012  
 20 version of the law, which to my understanding  
 21 plaintiffs are trying to -- are asking the  
 22 court to reimplement for the 2014 elections  
 23 vis-a-vis the preliminary injunction, that's  
 24 the comparison being made, not to the laws that  
 25 existed in 2012.

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1 Q. Okay. What about North Carolina's law  
 2 presently post HB 589, can you let us know what  
 3 it reflects -- what Figure 1 reflects in terms  
 4 of where it ranks in these 33 states that  
 5 currently have an early voting period?  
 6 A. It is tied for fifth.  
 7 Q. Okay. And if we could go back to Dr. Stewart's  
 8 Figure 11 and if we take a look at the data  
 9 reflected on the right hand of the chart which  
 10 indicates that this reflects data for  
 11 North Carolina post HB 589, would you say that  
 12 the data reflected there is substantially the  
 13 same as what you -- what's reflected in your  
 14 Figure 1?  
 15 A. It's not the same.  
 16 Q. It's not the same. Is it substantially the  
 17 same?  
 18 A. What do you mean by "substantially"? It's  
 19 not -- North Carolina is fifth. It's no longer  
 20 tied for fifth.  
 21 Q. That's what's reflected in your figure?  
 22 A. In my figure it is tied for fifth. In  
 23 Dr. Stewart's it is fifth.  
 24 Q. Would you say that that's basically a similar  
 25 conclusion or are those two radically

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1 different?  
 2 A. They are not radically different.  
 3 Q. Okay. Let's move on.  
 4 A. As I understand the term radically to be. I'm  
 5 not making any legal judgments.  
 6 Q. Okay. Let's move on to Exhibit 6 of your  
 7 declaration. Okay. What data are you  
 8 recording in Exhibit 6?  
 9 A. For the same-day registration -- it's state  
 10 registration laws, the registration deadline  
 11 and any notes regarding the state.  
 12 Q. And what was the purpose of Exhibit 6?  
 13 A. It was to summarize the statutes regarding  
 14 same-day registration laws.  
 15 Q. And do you state any general conclusions in  
 16 your declaration regarding the data reflected  
 17 in Exhibit 6?  
 18 A. I think it's in reverse, quite frankly. I  
 19 believe the data reflect what's in the  
 20 declaration and not the other way around.  
 21 Q. Well, did you make -- other than reporting that  
 22 same-day registration exists in these states,  
 23 are you making any conclusions about what you  
 24 report in Exhibit 6?  
 25 A. Yes.

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1 as a same-day registration state.  
 2 Q. Okay. And outside of, again, reporting what  
 3 the state of same-day registration is in these  
 4 jurisdictions, you're not making any additional  
 5 conclusions about that information?  
 6 A. In paragraphs 45 to 47, no.  
 7 Q. Now, let's move on to Exhibit 7. And what  
 8 information or data are you reporting in  
 9 Exhibit 7?  
 10 A. I'm sorry, I was on the wrong page. This is  
 11 page 30 on your numbering?  
 12 Q. Yes.  
 13 A. Excuse me. Whether a state allows for  
 14 pre-registration at the age of 16, the relevant  
 15 statute and then notes about the varying laws  
 16 that are in place.  
 17 Q. Okay. And does your declaration make any --  
 18 state any general conclusions you have about  
 19 that data or about what's reflected in  
 20 Exhibit 7?  
 21 A. In paragraphs 48 and 49 I state that six states  
 22 plus the District of Columbia allow for  
 23 pre-registration at the age of 16 and that --  
 24 again, a judgment call -- North Dakota doesn't  
 25 have a voter registration law so even though it

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1 Q. And what are those conclusions?  
 2 A. You refer to paragraphs 45 through 47 of my  
 3 declaration, they summarize conclusions about  
 4 registration laws.  
 5 Q. Okay. And could you let us know what they are?  
 6 A. That 11 states plus the District of Columbia  
 7 have laws in place that allow for same-day  
 8 registration. One state allows for same-day  
 9 registration but only for the purpose of voting  
 10 for the president or vice president of the  
 11 United States.  
 12 As Dr. Gronke once said in an APSA  
 13 paper, there are a bewildering array of  
 14 election laws and so sometimes you have to make  
 15 judgment calls on how to code them.  
 16 And because Alaska had only a limited  
 17 number of offices, you could  
 18 register -- register for and was more  
 19 restrictive than the State of North Carolina's  
 20 law pre-HB 589. I did not code Alaska as a  
 21 same-day registration state.  
 22 Also North Dakota is technically  
 23 same-day registration state because it does not  
 24 have a voter registration law in place.  
 25 They're fundamentally the same. So I coded it

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1 technically doesn't allow for pre-registration  
 2 at the age of 16, it's because there is no  
 3 registration, so I made the call to count that  
 4 as a pre-registration state.  
 5 Q. And outside of what's in 48 and 49, are you --  
 6 you're not making any conclusions or stating  
 7 any additional opinions about what's reflected  
 8 in Exhibit 7, correct?  
 9 A. Not at this point in the report.  
 10 Q. And why did you conduct this comparison of  
 11 North Carolina's election laws with the laws of  
 12 other states?  
 13 A. Because I was asked to do so by counsel.  
 14 Q. And did this comparison reveal anything about  
 15 the provisions of HB 589 on North Carolina  
 16 voters?  
 17 A. No, not as with respect to Opinion 1. I mean,  
 18 if data are relevant, they're basically a  
 19 variable in Opinion 2, but with respect to  
 20 Opinion 1, no.  
 21 Q. Did the analyses that you conducted in support  
 22 of Opinion 1 consider whether any of the  
 23 provisions of HB 589 will have a  
 24 disproportionate burden on minority voters?  
 25 MR. FARR: Objection to the form.

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1 You may answer.  
 2 THE WITNESS: I have no idea how this  
 3 information might be used. And again, these  
 4 data are used as a variable for Opinion 2. For  
 5 the purposes of Opinion 1, all I'm doing is  
 6 stating what the laws are. It's -- I won't say  
 7 the equivalent. It's similar to what an  
 8 associate might do a 50 state survey in  
 9 summarizing the data.  
 10 BY MS. MEZA:  
 11 Q. Let's move on to your Opinion 2 and that's  
 12 beginning on page 15 of your declaration.  
 13 What is your Opinion 2?  
 14 A. The data do not consistently support the  
 15 turnout effects predicted by plaintiffs.  
 16 Q. And what information or materials did you  
 17 review when arriving at Opinion 2?  
 18 A. I looked -- I examined the laws in the 50  
 19 states plus the District of Columbia. I looked  
 20 at the literature on the various laws at issue  
 21 in this case. I examined -- here I'll give  
 22 this back to you.  
 23 I examined the data from the current  
 24 population surveys, voter and registration  
 25 supplement. I looked at competitiveness of

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1 states.  
 2 And there may be other sources of  
 3 information that are mentioned in the report or  
 4 in the -- in Exhibit 2 to the report, but those  
 5 are the main sources of information.  
 6 Q. And what analyses did you conduct in arriving  
 7 at Opinion 2?  
 8 A. Over the course of the pages for Opinion 2,  
 9 there were various analyses, simple, you know,  
 10 descriptive line charts were employed, there  
 11 were bivariate regression analyses employed and  
 12 multivariate regression analyses employed.  
 13 There was some review of literature that was  
 14 employed.  
 15 I think those are -- there may be other  
 16 techniques that as we kind of narrow down we  
 17 can discuss, but those were the main  
 18 techniques.  
 19 Q. All right. Why don't we go ahead and do that.  
 20 On page 17 beginning with paragraph 67,  
 21 could you describe what analysis you conducted  
 22 with respect to this first section beginning on  
 23 paragraph 67?  
 24 A. And continue through?  
 25 Q. Through paragraph 81.

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1 A. Okay. So in paragraphs 67 through 70,  
 2 reflecting the realization that people who read  
 3 this report may not be familiar with what the  
 4 CPS is and what the voter and registration  
 5 supplement to the CPS is, although I generally  
 6 refer to it as the CPS data which is what most  
 7 people refer to it as.  
 8 I described what the CPS is and some of  
 9 the issues that arise with CPS data. There  
 10 really are no perfect data in voting and  
 11 turnout on a national basis, so it's important  
 12 to know about the limitations. 71 also  
 13 describes a slight change in the data set.  
 14 And then I provide as an illustration  
 15 for the court or for the parties, whoever is  
 16 reading this report, why it might be important  
 17 to look at other states other than  
 18 North Carolina and why you would need to do  
 19 that when trying to calculate the impact these  
 20 laws would have on turnout and registration.  
 21 Q. Okay. So why don't we kind of go back to some  
 22 of what you've stated already.  
 23 What is the Current Population Survey?  
 24 A. Well, the Current Population Survey is a survey  
 25 undertaken by the Census Bureau of a large

79

1 sample of American households. It's what's  
 2 used to calculate the unemployment rate.  
 3 Q. Okay. Now, you state in paragraph 69, the  
 4 second sentence:  
 5 "Because voters are required to  
 6 respond to the CPS, it lacks many of  
 7 the problems with non-response bias  
 8 that pervade other modern surveys."  
 9 What is your source for the information  
 10 that voters are required to respond to the CPS?  
 11 A. It's a Census survey. I don't know that the  
 12 penalty is jail time for not responding, but it  
 13 is not like the exit poll where you come out of  
 14 the exit poll center and they ask you would you  
 15 like to respond to this or not. It is a Census  
 16 Bureau publication.  
 17 Q. And you indicate again in paragraph 70 that the  
 18 CPS data is imperfect.  
 19 A. Correct.  
 20 Q. In what way?  
 21 A. There are -- there are two ways that are  
 22 particularly relevant for political science  
 23 work with the CPS. The first -- and this is  
 24 common to all surveys of voting behavior is  
 25 there is such desirability bias at work.

80

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

81

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

83

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 It's also important to understand as  
 2 part of that answer that I chose that -- the  
 3 purpose of this, which there was some confusion  
 4 in the expert rebuttals about, was to provide  
 5 an illustration as I note in paragraph 81  
 6 rather than any sort of dispositive analysis of  
 7 what the differences could be.  
 8 Q. Why don't we turn to paragraph 76. The first  
 9 sentence there you state:  
 10 "During the time period  
 11 represented in Figures 3 through 6,  
 12 North Carolina greatly relaxed its  
 13 restrictions on voter registration  
 14 and voting."  
 15 Is it your opinion that these specific  
 16 changes to North Carolina law did away with  
 17 restrictions to -- in voter registration?  
 18 MR. FARR: Objection to the form.  
 19 You may answer.  
 20 THE WITNESS: Precisely as you asked  
 21 that question, it's ambiguous. I don't believe  
 22 it did away with all restrictions on voter  
 23 registration and voting, but it did do away  
 24 with restrictions on voter registration and  
 25 voting.

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1 and going forward, so I would consider that low  
 2 permissiveness, and Wisconsin was in the  
 3 middle.  
 4 Q. Well, could you provide us more information as  
 5 to what these scales or this permissive  
 6 categorization entails? Did you yourself  
 7 conduct any independent analysis -- what was  
 8 your analysis of permissiveness other than  
 9 placing the states into these categories? How  
 10 did you go about determining that they fit into  
 11 these categories?  
 12 A. So if you go back to Figure 2 on page 13 of my  
 13 expert report -- I'll answer your question and  
 14 then there's an explanation that I think will  
 15 clear up some of the confusion here.  
 16 The answer to your question is that in  
 17 Figure 2 on page 13 of my expert report, I have  
 18 columns summarizing the number of states that  
 19 implement a certain number of laws at issue in  
 20 this case. Okay. And so North Carolina was a  
 21 5 and Mississippi was a zero, and I can't as I  
 22 sit here recall what Wisconsin was, but it was  
 23 neither a zero or a five. It was middling.  
 24 Now, I think what we're getting at is a  
 25 criticism -- and Arizona, Arkansas and

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1 BY MS. MEZA:  
 2 Q. Now, in paragraph 79 you make statements  
 3 regarding African American turnout in  
 4 Wisconsin, Mississippi and North Carolina and  
 5 indicate that the turnout there might be termed  
 6 as -- or characterized as middling, low and  
 7 highly permissive voting regimes.  
 8 What did you mean by middling  
 9 permissive voting regimes?  
 10 A. Well, permissiveness is a term that's used in a  
 11 peer-reviewed article by Alvarez -- I think  
 12 it's 2012 -- that deals with how restrictive or  
 13 permissive a voting regime is.  
 14 For -- I state that because it was  
 15 included in quotes in some of the responses, so  
 16 there's some question as to why that word  
 17 choice was put in place.  
 18 As to middling, low and highly  
 19 permissive, with respect to the laws that are  
 20 at issue in this case, North Carolina had the  
 21 most liberal, if you will, or permissive of the  
 22 voting regimes of any of the states,  
 23 Mississippi had none of the laws in place that  
 24 plaintiffs to my understanding are urging the  
 25 court to put into place for the 2014 elections

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1 Washington it would be a similar call.  
 2 Now, I think what we're getting at here  
 3 is a criticism that I believe was in  
 4 Dr. Stewart's sur-reply that these are not  
 5 rigorous standards that would not be employed  
 6 by a peer-reviewed journal which misses the  
 7 point of what I was trying to do here.  
 8 This is an illustration. This is an  
 9 anecdote to illustrate the difficulty in  
 10 looking in one state. And anecdotes are  
 11 commonplace in peer-reviewed journals. They're  
 12 employed by Dr. Gronke, for example, in some of  
 13 his peer-reviewed work in APSA speeches.  
 14 If you look at the citation that I am  
 15 making, it is back to the Leloudis declaration  
 16 at Note 85 where Dr. Leloudis is making a claim  
 17 to my recollection about North Carolina's  
 18 turnout rate without engaging in any sort of  
 19 statistical analysis.  
 20 And so I was making a similar  
 21 qualitative analysis showing why you can't just  
 22 look at North Carolina. In other words, I  
 23 think Dr. Stewart and perhaps Dr. Gronke was a  
 24 bit confused about what the point of paragraph  
 25 79 is.

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1 Q. Did you actually state in 79 or elsewhere that  
 2 that was the point of what you were doing?  
 3 A. Yes. That's the citation to Dr. Bump, okay,  
 4 which includes this data, and then the unusual  
 5 cited in Leloudis declaration at Note 85 which  
 6 says you need to go back to the Leloudis  
 7 declaration to see what this is in response to.  
 8 Q. Again, did you actually explicitly state that  
 9 this was meant to be an anecdote versus an  
 10 actual?  
 11 A. Yes. In paragraph 81, I say "the foregoing"  
 12 which refers back to I think commonly  
 13 understood 67 through 81.  
 14 "The foregoing is not meant as  
 15 a dispositive analysis but rather  
 16 illustrates the difficulty with making  
 17 the jump from theory to practice the  
 18 plaintiffs' experts attempt to make."  
 19 In other words, this was written with  
 20 the idea in mind, you know, in a peer-reviewed  
 21 article, you might throw an anecdote or two out  
 22 and then you can just jump into the analysis,  
 23 but that is not the audience that is going to  
 24 read this expert report. So it's useful to  
 25 explain why there can be problems with just

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1 looking at what's just occurring in  
 2 North Carolina. You have to look at other  
 3 states.  
 4 So you have a state like Mississippi  
 5 that has similar rates of increase but none of  
 6 the laws in place that North Carolina has. You  
 7 have these top three states that Dr. -- or  
 8 these top three states from the citation that  
 9 Dr. Leloudis makes that have a variety of laws  
 10 in place. You have the bottom three that have  
 11 a variety of laws in place.  
 12 That doesn't end the inquiry. It just  
 13 suggests there are additional inquiries to be  
 14 made that none of the plaintiffs' experts make  
 15 despite two opportunities to do so.  
 16 I mean, this goes back to Wolfinger and  
 17 Rosenstone, the book that Dr. Stewart cites to.  
 18 If you look at the chart in his expert report  
 19 with the data output from Wolfinger and  
 20 Rosenstone, there's a control in place for  
 21 governors' races, in other words, for campaign  
 22 effects, and Wolfinger and Rosenstone are  
 23 engaging in an analysis of voter effects in all  
 24 51 states.  
 25 I mean, if that is the apotheosis of

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1 what we're supposed to be doing for survey  
 2 research and design, then, yes, you can't just  
 3 look at what's happening in one state. You  
 4 have to look at multiple states, and this is a  
 5 more readable version of that explanation.  
 6 Q. And so your -- is it your opinion that the  
 7 analysis you conducted at least for this  
 8 specific section of your report was not  
 9 intended to be a rigorous statistical analysis  
 10 of either what's -- registration or turnout in  
 11 North Carolina or any other state?  
 12 A. Confining ourselves to paragraph 67 to 81, it's  
 13 not meant as any sort of dispositive analysis.  
 14 It's merely an illustration so that the court  
 15 understands why the analyses that follow are  
 16 important.  
 17 I mean this -- this entire Opinion 2  
 18 functions in two different ways and those two  
 19 ways are very important.  
 20 The first is to say that there are data  
 21 that plaintiffs' experts concede are important  
 22 and can have effects on registration and  
 23 turnout that they do not take account of. It's  
 24 explained to the court why -- it's a shield and  
 25 a sword. It's explaining to the court why

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1 there's a flaw in the plaintiffs' experts  
 2 reports because they aren't controlling for  
 3 important variables, it's omitted variable  
 4 bias, if you will, or under determination.  
 5 Secondly, it suggests, yeah, if you  
 6 look at the data and design a survey, it  
 7 suggests that the turnout effects we might  
 8 expect if these laws did provide barriers to  
 9 turnout voting and registration, those affects  
 10 we cannot conclude exist. So it functions in  
 11 two different ways.  
 12 Q. Now, going back to 79, what are you saying  
 13 about North Carolina in terms of  
 14 permissiveness?  
 15 A. As of 2012 with respect to the five laws at  
 16 issue in the state, it was a highly permissive  
 17 voting regime because it was the only state in  
 18 the country that didn't require photographic  
 19 identification, that had 17 or more days of  
 20 early voting, that had pre-registration at age  
 21 16, that had same-day registration and that  
 22 allowed -- and that counted ballots that were  
 23 cast out of precinct.  
 24 Q. Okay. So I want to go back to what's in these  
 25 figures, Figure 5 and Figure 6. So that's

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1 where you identified what state you were  
 2 actually comparing to North Carolina.  
 3 Could you tell us what's reflected in  
 4 both Figure 5 and Figure 6?  
 5 A. Figure 5 is the percent of African Americans  
 6 who are registered to vote in State A, which is  
 7 Mississippi, in State B, which is  
 8 North Carolina, and figure -- did you just ask  
 9 Figure 5?  
 10 Q. Figure 5 and Figure 6.  
 11 A. Figure 6 is the percent of African Americans  
 12 who reported voting in State A, which is  
 13 Mississippi, and State B, which is  
 14 North Carolina.  
 15 Q. And what conclusions did you draw about African  
 16 American registration in Mississippi versus  
 17 North Carolina?  
 18 A. Well, first and foremost, that it is a useful  
 19 illustration to help the court understand why  
 20 you have to look at what is going on in states  
 21 besides North Carolina, because you have  
 22 similar turnout and registration effects  
 23 occurring in states even if they don't have the  
 24 sorts of laws that North Carolina has in place.  
 25 Secondly, as I say in 73, in the middle

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1 of the 1990s State B catches up with State A in  
 2 terms of African American registration and  
 3 voting participation rates, and after that  
 4 there are voting and participation increase at  
 5 roughly the same rates in both states.  
 6 Q. And what about Figure 6?  
 7 A. Paragraph 73 says African American registration  
 8 and voting participating.  
 9 Q. I'm sorry. Okay. So going back to 73, you are  
 10 stating that registration and participation are  
 11 increasing at roughly the same rates in both  
 12 states. What precisely do you mean by that?  
 13 What is "roughly the same rates"?  
 14 A. If you take 1996 as the baseline and you look  
 15 on the chart at the rate of increase for  
 16 registration in North Carolina and Mississippi,  
 17 they're similar. And if you look in Figure 6,  
 18 taking 1996 as a baseline, they increase at  
 19 roughly similar rates.  
 20 Q. Why 1996, why is that the baseline?  
 21 A. Because as I say in paragraph 73, as you can  
 22 see -- well, there's two reasons.  
 23 Beginning in the middle of the 1990s  
 24 State B catches up with State A.  
 25 Second, to my understanding, 1999 is

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1 when North Carolina first instituted no-excuse  
 2 early voting, and so you would look at the  
 3 election year preceding that as a baseline for  
 4 total analysis of how election liberalization  
 5 affects North Carolina with respect to the laws  
 6 in question in this case.  
 7 And third -- again, this is  
 8 descriptive, not quantitative. So I'm  
 9 describing what's going on in North Carolina.  
 10 So you see this convergence between the states  
 11 and then they mostly start moving together.  
 12 Q. I'm going to ask the court reporter to mark the  
 13 next Exhibit 105.  
 14 (WHEREUPON, Plaintiff's Exhibit 105 was  
 15 marked for identification.)  
 16 BY MS. MEZA:  
 17 Q. I'll give you a moment to read that.  
 18 A. Okay. It's on both sides, right?  
 19 Q. Yes.  
 20 A. Double sided.  
 21 Q. So when we received your report, there wasn't  
 22 underlying data for what you -- the data you  
 23 presented in Figures 3 through 6 and  
 24 plaintiffs' counsel requested from defendants  
 25 the underlying data and that's what's reflected

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1 in what I just handed you.  
 2 A. That's my understanding, yes.  
 3 Q. So if we go back to Figure 6 and refer to what  
 4 is I think the second bullet point in the  
 5 exhibit, is that the data that you used to  
 6 create Figure 6?  
 7 A. I believe so, yes.  
 8 Q. So if we take two points on this data -- why  
 9 don't we begin with Mississippi.  
 10 Now, as listed, the data point for  
 11 2000, the percent of African American turnout  
 12 or voting that's reflected in Figure 6  
 13 corresponds to -- for Mississippi 58.4.  
 14 A. Can I borrow your pen again?  
 15 Q. Sure. Actually, I'll ask you not to mark on  
 16 the original copy of the --  
 17 A. Shoot, I am so sorry.  
 18 Q. I should have -- I should have let you know  
 19 before.  
 20 A. I am really sorry about that.  
 21 Q. If you need to take notes, if you could do that  
 22 on a separate sheet.  
 23 A. I am --  
 24 Q. Okay. So let's -- again, so let's go back  
 25 again. These were provided as a list so --

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1 MR. FARR: Do you have an extra copy?  
 2 MS. MEZA: So it will be helpful to  
 3 write this down.  
 4 No. I think I passed them all out.  
 5 Sorry.  
 6 BY MS. MEZA:  
 7 Q. So for Mississippi, the turnout that you -- the  
 8 turnout figure that you used to create Figure 6  
 9 in 2000, that was 58.4?  
 10 A. Yes.  
 11 Q. Okay. And for 2012, that was 82.4?  
 12 A. Yes.  
 13 Q. Now --  
 14 MR. FARR: What was it?  
 15 MS. MEZA: 82.4.  
 16 MR. FARR: Okay.  
 17 BY MS. MEZA:  
 18 Q. And let's do the same for North Carolina.  
 19 What's reflected again in Figure 6, percent of  
 20 African American voter turnout in  
 21 North Carolina in 2000 is 47.9.  
 22 A. Uh-huh.  
 23 Q. And in 2012 is 80.2.  
 24 A. Yes.  
 25 Q. Now, can you tell me what the percent increase

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1 was for Mississippi between 2000 and 2012 and  
 2 for North Carolina between 2000 and 2012? And  
 3 we can talk through the calculation, if  
 4 necessary, and we also have a calculator  
 5 available if you need one.  
 6 A. Yeah, I think I will need a calculator. I'm  
 7 sorry. Okay.  
 8 Q. Okay. So we have the data points for 2000 and  
 9 2012 as reflected in Figure 6, and if we could  
 10 calculate the percent of increase in  
 11 Mississippi and the percent of increase in  
 12 North Carolina between those two periods for  
 13 those two years.  
 14 A. (Witness complying.)  
 15 I'm having trouble operating the  
 16 calculator. I'm sorry. Okay.  
 17 Q. Okay. So why don't we talk through your  
 18 calculation and make sure we both arrive at the  
 19 same numbers.  
 20 So for Mississippi, what was your  
 21 calculation and what was your conclusion?  
 22 A. The calculation was divide the -- we're in  
 23 Figure 6 -- the percentage of African Americans  
 24 voting in 2012 by the percentage of African  
 25 Americans voting in 2000 revealing either

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1 100 -- 2012 was 141 percent of 2000 revealing a  
 2 41 percent increase using 2000 as a baseline.  
 3 Q. And what was your result for North Carolina?  
 4 A. So again, dividing 80.2 by 47.9, the 2012  
 5 turnout is 167 percent of 2000 turnout  
 6 using -- or 67 percent increase using 2000 as  
 7 the baseline.  
 8 Q. I came about my answer in a different way but I  
 9 think we both arrived at the same number.  
 10 So in Mississippi, the percent of  
 11 increase was 41 percent, correct?  
 12 A. Using 2000 as a baseline.  
 13 Q. Between 2000 and 2012.  
 14 And in North Carolina the percent  
 15 increase was 67 between 2000 and 2012, correct?  
 16 A. Yes.  
 17 Q. So would you still call the percent of increase  
 18 between the two states as roughly the same  
 19 rate? Do you believe that --  
 20 A. Beginning in the middle of the 1990s, yes.  
 21 Q. What about for this time period between 2000  
 22 and 2012?  
 23 A. If you look from 2000 to 2012, they are  
 24 dissimilar. If you look for 1996 to 2012, they  
 25 increase at almost the identical rate. If you

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1 look from 2004 to 2012, they increase at almost  
 2 the identical rate.  
 3 Q. So for this specific time period, 2000 to 2012,  
 4 is it still your position that that's roughly  
 5 the same rate?  
 6 A. From 2000 to 2012 you could make a judgment  
 7 call about whether it's roughly the same rate.  
 8 Q. And what is your judgment call?  
 9 A. Without having put any standards in place for  
 10 what constitutes roughly the same rate, with  
 11 that as a caveat, you know, I would eyeball it  
 12 and say no different, but again, that's only  
 13 2000 as the baseline. As a matter of fact, I  
 14 think that's the only year where that's the  
 15 case of the five.  
 16 Q. However, based on what's presented in these  
 17 figures, it's accurate to say that the rate of  
 18 increase in voter American -- excuse me -- in  
 19 African American voter participation in  
 20 North Carolina was greater than the rate of  
 21 increase in African American voter  
 22 participation in Mississippi. Is that  
 23 accurate?  
 24 A. Can you ask that again.  
 25 MR. FARR: I object to the form.

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1 BY MS. MEZA:  
 2 Q. Based on what's reflected in these figures,  
 3 it's accurate to say that the African American  
 4 participation rate is greater than the African  
 5 American -- in North Carolina is greater than  
 6 the African American participation rate in  
 7 Mississippi --  
 8 A. No. The --  
 9 Q. -- for this time period.  
 10 A. The African American participation rate in  
 11 North Carolina is less than that of  
 12 Mississippi. African American participation  
 13 rate is 80.2 percent. In Mississippi it's  
 14 82.4.  
 15 Q. I stated my question incorrectly.  
 16 The rate of increase in the African  
 17 American participation rate in North Carolina  
 18 is greater than the rate of increase of African  
 19 American participation in Mississippi.  
 20 MR. FARR: Objection to the form.  
 21 You may answer.  
 22 THE WITNESS: It is less with 1996 as a  
 23 baseline, it is identical with 2004 as a  
 24 baseline, and it is less with 2000 as a  
 25 baseline -- more with 2000 as a baseline. I'm

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1 sorry, I misspoke.  
 2 BY MS. MEZA:  
 3 Q. Okay. Let's move on to page 23 of your report.  
 4 Now, that's beginning where the section you've  
 5 titled "North Carolina's Emergence As a Target  
 6 State" begins.  
 7 A. Oh, okay. I'm sorry.  
 8 Q. The actual substance of it begins on page 24  
 9 beginning on paragraph 91.  
 10 MR. FARR: Catherine, since you're  
 11 going onto a new topic, would you mind if we  
 12 took a break at this point.  
 13 MS. MEZA: No, not at all. We can do  
 14 another 10 minutes, about 11:30.  
 15 MR. FARR: That would be fine. Why  
 16 don't we go until a little bit after 12:30  
 17 before we take a lunch break.  
 18 THE VIDEOGRAPHER: Off record at 11:31.  
 19 (Brief Recess.)  
 20 THE VIDEOGRAPHER: On record at  
 21 11:41 a.m.  
 22 BY MS. MEZA:  
 23 Q. So we started to discuss what begins on the  
 24 section -- the section that begins on paragraph  
 25 91 of your declaration.

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1 A. Okay.  
 2 Q. And that goes through paragraph 116. And what  
 3 is the opinion that you're setting forth in  
 4 this section?  
 5 A. So the opinion that I'm setting forth in this  
 6 section is ultimately the same as in the other  
 7 sections here which is that because there are  
 8 other forces that affect voting turnout and  
 9 registration, something that I believe  
 10 Dr. Gronke said any political scientist would  
 11 agree with in his surrebuttal, that to make  
 12 predictions about what the effects of changes  
 13 in voting and registration laws would be you  
 14 have to take account of those other changes and  
 15 rule them out as possible drivers of the data  
 16 output.  
 17 And so what I'm doing here is providing  
 18 an illustration of one of those drivers which  
 19 is that North Carolina became a swing state  
 20 during the time period from 1996 to 2012  
 21 causing the national parties to begin to pour  
 22 in substantial amounts of money and resources  
 23 for get-out-the-vote efforts and particularly  
 24 at registering Democratic voters and African  
 25 Americans in particular and that this could

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1 account for all or part of the effects that the  
 2 experts are describing.  
 3 In addition, my recollection is that  
 4 there were at least suggestions in some of the  
 5 expert witness reports, I believe the  
 6 historical ones, that North Carolina's  
 7 competitiveness was a result of these laws, and  
 8 so what this illustrates is that there were  
 9 actually longer term forces at work and forces  
 10 that go well beyond what's being discussed in  
 11 this litigation.  
 12 Q. And you believe that the analysis that you  
 13 undertook and report here leads to that  
 14 conclusion?  
 15 A. Yes, those conclusions.  
 16 Q. If we could go to paragraph 103, and there you  
 17 state:  
 18 "In 2008, Barack Obama invested  
 19 heavily in the State of North Carolina,  
 20 both in the crucial Democratic primary  
 21 and in the general election. Obama  
 22 spent over 15 million in advertising  
 23 compared to just \$3.8 million in  
 24 advertising by the McCain campaign."  
 25 Now, this is referring to the amounts

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1 that the campaigns spent in advertising,  
 2 correct?  
 3 A. Correct.  
 4 Q. So this -- or these numbers don't include the  
 5 amounts that were spent in either field -- on  
 6 either field operations or get-out-the-vote  
 7 efforts?  
 8 A. Correct. They're proxies.  
 9 Q. In coming to this conclusion, did you attempt  
 10 to determine how much the campaign spent in  
 11 North Carolina on field operations and get-out-  
 12 the-vote efforts?  
 13 A. Yes.  
 14 Q. And is that reported in your declaration?  
 15 A. No.  
 16 Q. Why not?  
 17 A. Because I couldn't find the data.  
 18 Q. So you attempted to look for the data but you  
 19 didn't actually find it and/or report it here?  
 20 A. Correct.  
 21 Q. Or take it into account in coming to your  
 22 conclusions?  
 23 A. These spending numbers are intended as proxies  
 24 for it. In other words, the campaigns aren't  
 25 going to spend money on advertising in states

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1 that they're not making some sort of effort to  
 2 win, and similarly if they're making an effort  
 3 to win a state, they're not going to completely  
 4 stay off the air. So I will disagree with the  
 5 claim that I'm not taking that into account.  
 6 Q. When you say "that," what do you mean?  
 7 A. Field operations and such.  
 8 Q. And the numbers reported here indicate that the  
 9 Obama campaign outspent the McCain campaign in  
 10 advertising in North Carolina by a factor of  
 11 more than three; is that correct? Would you  
 12 agree with that?  
 13 A. Yes.  
 14 Q. Were there any other states in which the Obama  
 15 campaign outspent the McCain campaign by such a  
 16 large margin?  
 17 A. I don't know as I sit here today.  
 18 Q. And you didn't research that or look into it  
 19 for your declaration?  
 20 A. I didn't look at the ratio between Obama  
 21 spending and McCain spending in the various  
 22 states, no.  
 23 Q. And what was -- or what is your opinion on --  
 24 regarding the impact of the money spent on  
 25 advertising on the outcome of the 2008

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1 presidential election in North Carolina?  
 2 A. Well, there's varying conclusions about the  
 3 effectiveness of advertising and the effect  
 4 that they have on turnout. It's one of those  
 5 things where I couldn't sit here and say  
 6 there's a consensus on the effect of  
 7 advertising.  
 8 What I'm saying here is that from the  
 9 data we have, or at least the data I was able  
 10 to find, spending is a decent proxy for where  
 11 the campaigns are directing their resources in  
 12 an attempt to make the state competitive.  
 13 Q. And what is your source for that?  
 14 A. Again, years of examining elections and doing  
 15 it -- doing election analysis for a living.  
 16 Campaigns do not invest advertising  
 17 dollars in states they don't wish to contest  
 18 unless they do a small initial buy to test the  
 19 waters. And similarly, they don't invest  
 20 heavily in get-out-the-vote efforts without  
 21 having a corresponding advertising campaign. I  
 22 don't think any expert would dispute that  
 23 statement.  
 24 Q. But you don't conduct any independent analysis  
 25 in order to come to that conclusion for this

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1 specific case -- or for this declaration?  
 2 A. I don't have any reason to believe it's a  
 3 controversial conclusion that such an analysis  
 4 would be warranted.  
 5 Q. And did you conduct any analyses to examine  
 6 whether this spending led to an increase in the  
 7 use of early voting in North Carolina?  
 8 A. Well, again, the money in advertising is being  
 9 used as a proxy.  
 10 In paragraph 104, for example, I refer  
 11 to Seth Masket's work on Obama field offices  
 12 and whether they aided mobilization efforts.  
 13 So that's an example of how the ultimate  
 14 investment by the Obama campaign could pay  
 15 dividends.  
 16 In addition, you have statements from  
 17 Obama campaign administrators who were saying,  
 18 yes, we were investing massive sums of money in  
 19 these target states and get-out-the-vote  
 20 efforts, especially targeting early voting.  
 21 But again, part of the problem with  
 22 this line of questioning -- and I just don't  
 23 want to leave any confusion out there -- is  
 24 that this entire section functions in two ways  
 25 and we're only focusing on one.

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1 The first -- the way that we're  
 2 focusing on is my attempt to operationalize  
 3 these 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 wherever they were and give us some examples of  
 2 places that he did so.  
 3 And then he says in paragraph -- I  
 4 quote this in paragraph 108 -- that early  
 5 voting in particular was a target of the Obama  
 6 campaign in part because it would energize --  
 7 it would energize people to do so.  
 8 But then in paragraph 109 I state  
 9 that -- you know, what Carson says that in  
 10 states that didn't have early voting available,  
 11 they employed different strategies to get out  
 12 the vote. In other words, they didn't just  
 13 give up on the get-out-the-vote effort and  
 14 having precinct captains and everything in the  
 15 states that didn't have early voting. They  
 16 employed traditional advertising.  
 17 But the concern that he describes in  
 18 the book and at the citation is that -- you  
 19 know, what the real goal here from the Obama  
 20 campaign if you read the segments, not just  
 21 what's quoted but the full citation, was that  
 22 this was going -- they were trying to bank  
 23 votes, which is to say when you've cast your  
 24 vote 30 days out, you can't revoke it.  
 25 And so, you know, you can imagine a

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1 scenario -- you can think of, for example, the  
 2 2002 Minnesota senate election. Senator  
 3 Wellstone dies in a tragic plane crash 10 days  
 4 before the election. Well, those votes are  
 5 banked for the democratic candidate. And so  
 6 nothing that happens can change it. If Obama  
 7 loses a debate, nothing can change it.  
 8 And Carson describes, he says to  
 9 McCain, that's why I think you guys were  
 10 hitting us so hard in Pennsylvania because it  
 11 doesn't have early voting and so we didn't have  
 12 any banking going on. They had built nearly an  
 13 insurmountable wall, you know, in a lot of  
 14 these states by the time election day occurred.  
 15 Then there are a couple articles just  
 16 confirming what I don't think anyone would  
 17 deny, that the Obama campaign was trying to  
 18 register new voters, African Americans in  
 19 particular.  
 20 And then this in paragraph 111, it's  
 21 one of the conclusions that this helped move  
 22 the state closer to the Democrats compared to  
 23 the country as a whole.  
 24 Q. And how do you know that based on these efforts  
 25 or that these efforts actually had any effect?

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1 A. Well, that's the Masket article which finds a  
 2 statistically significant effect on Democratic  
 3 voter turnout.  
 4 Q. Did you do a similar review to see whether the  
 5 McCain campaign had engaged in any of these  
 6 efforts?  
 7 A. I'm sure they did. I don't think they were as  
 8 effective because they didn't have nearly as  
 9 much money as President Obama did.  
 10 Q. Did you actually look into that question?  
 11 A. No.  
 12 Q. So you don't know whether or not the McCain  
 13 campaign engaged in these efforts conclusively  
 14 and/or whether they had any effect?  
 15 A. Oh, I can state that the McCain campaign  
 16 engaged in some of these efforts and I'm sure  
 17 they had an effect.  
 18 Again, the point of all this is that  
 19 campaign effects matter, and when you make the  
 20 state competitive, you're going to have an  
 21 effect on turnout. Regardless of who is  
 22 pouring millions of dollars into early voting  
 23 and registration drives, you're going to have  
 24 an effect. Again, this is uncontroversial.  
 25 So the first point is you have to try

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1 to take advantage -- try to take this into  
 2 account, which plaintiffs' experts don't do,  
 3 but second, when you do take it into account,  
 4 and there may be -- there are always ways to  
 5 criticize research design, but when you do take  
 6 it into account this way, you don't find the  
 7 statistically significant effect that we might  
 8 hope to find.  
 9 Q. Let's move on to page 30. Now, you've titled  
 10 this section "Cross-State Comparison" beginning  
 11 on paragraph 117.  
 12 Can you describe specifically what  
 13 analysis or research you undertook in this  
 14 section?  
 15 A. Okay. So -- excuse me. Perhaps the best way  
 16 to explain this is to go back to the charts  
 17 that we were discussing, Mississippi versus  
 18 North Carolina, and we see the trend line  
 19 that's going on in Mississippi and the trend  
 20 line that's going on in North Carolina.  
 21 Now, in his surrebuttal, Dr. Gronke  
 22 says, "Well, look, if you put Alabama on this,  
 23 it doesn't have any of the laws in place, it's  
 24 a flat line."  
 25 Okay. Well, that's true, which is why

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1 the Mississippi and North Carolina thing is  
 2 just an illustration to introduce these  
 3 concepts to the judge.  
 4 If you took DC which has three of these  
 5 laws in place and layer it, it has a similar  
 6 trend line to Alabama's. Okay.  
 7 And so what we really ultimately want  
 8 to do is try to put all the states we can on  
 9 this chart to compare them all and then put  
 10 various controls in place -- we talked about,  
 11 you know, just descriptively Mississippi had no  
 12 laws, North Carolina had five laws, but we try  
 13 to put these laws in a different column and  
 14 then see if there's any correlations that -- at  
 15 that point exist between the number of laws in  
 16 place and North Carolina.  
 17 In other words, it's an attempt to do a  
 18 structured statistical analysis to correct for  
 19 the shortcomings in an illustrative analysis  
 20 that Dr. Gronke and Stewart point out in the  
 21 illustrative section.  
 22 Q. And how many states did you actually include in  
 23 your cross-state analysis?  
 24 A. 33 states and the District of Columbia.  
 25 As Dr. Stewart points out in a footnote

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1 in his surrebuttal, Montana had one African  
 2 American respondent in 2012 which means that  
 3 the error of margin for that is plus or minus  
 4 98 percent. Census doesn't publish the top  
 5 line numbers for that reason and so I didn't  
 6 use it.  
 7 Q. Well, you state in paragraph 118 that you used  
 8 or listed states for which CPS data has an  
 9 unbroken data series for African American voter  
 10 participation between 2000 and 2012.  
 11 What did you mean by unbroken data  
 12 series?  
 13 A. So the CPS publishes aggregate data. Those are  
 14 the spreadsheets that I provide links to in  
 15 Exhibit 105, but there are some states for  
 16 which CPS does not publish top line numbers for  
 17 African American participation because the  
 18 error -- it's misleading to publish them  
 19 because the error margins are so high.  
 20 As Dr. Stewart again notes, with one  
 21 respondent in Montana, you can't really -- your  
 22 answer is either going to be a hundred percent  
 23 or zero percent, and we can be fairly confident  
 24 that African American turnout in Montana was  
 25 neither 100 percent nor zero percent.

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1 So we know there are some states that  
 2 we can't reliably include in our aggregate  
 3 totals.  
 4 So the question that Dr. Stewart raises  
 5 is where you draw the line. And rather than  
 6 input my own ad hoc judgments of where the line  
 7 should be drawn, I deferred to the Census, and  
 8 if the Census was comfortable publishing an  
 9 unbroken line of African American participation  
 10 data points, then I used it, and if it wasn't  
 11 comfortable doing so, I didn't use it.  
 12 Q. And by unbroken, there wasn't any missing data  
 13 for any point in time?  
 14 A. Correct.  
 15 Q. So looking at Figure 11, what is reflected in  
 16 Figure 11 or what is recorded in Figure 11?  
 17 A. This is the change in African American -- it is  
 18 the change in African American participation  
 19 versus the number of laws at issue in this case  
 20 adopted by a state excluding photographic  
 21 identification.  
 22 Q. And how did you arrive at the numbers in the  
 23 second column?  
 24 A. They were taken from my charts at the beginning  
 25 of the piece, my calculations.

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1 Q. What specifically?  
 2 A. Opinion 1. To be a little more precise for the  
 3 record, it is a recitation of Figure 2 on page  
 4 13 without photographic ID.  
 5 Q. Well, to be clear about this column in  
 6 particular, you -- I'm assuming you subtracted  
 7 voter participation in 2012 -- African American  
 8 voter participation in 2012 from African  
 9 American voter participation in 2000, is that  
 10 right, for the -- for this second column  
 11 specifically, these percentages?  
 12 A. I think that's right, yeah. Yeah, because --  
 13 yeah. So 2012 minus 2000. I suppose that does  
 14 look confusing in the column title. I  
 15 apologize.  
 16 Q. And what election -- well, you took into  
 17 consideration the general election in those two  
 18 years?  
 19 A. Correct.  
 20 Q. And you didn't include in the analysis any data  
 21 on voter participation rates in the years  
 22 between those two years?  
 23 A. Correct.  
 24 Q. Just beginning in 2000 and ending in 2012?  
 25 A. Correct.

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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 polling place."  
 2 Then I say "Because this is a narrow  
 3 exception and is more restrictive than the  
 4 previous law in North Carolina, these states  
 5 are classified here as refusing to count votes  
 6 cast in the incorrect precinct."  
 7 So sometimes you have to make judgment  
 8 calls about these states. And the general rule  
 9 of thumb that I tried to follow was that  
 10 because there's a certain threshold that  
 11 plaintiffs are trying to push North Carolina  
 12 towards, for example, 17 days of early voting,  
 13 if the law in a state was more restrictive than  
 14 what plaintiffs would push North Carolina  
 15 towards, I excluded it.  
 16 And this is relevant to one particular  
 17 example that Dr. Gronke brings up which is  
 18 Ohio. Ohio has something that we call Golden  
 19 Week which is when -- the registration cutoff  
 20 is 30 days before the election, and early  
 21 voting extends back to 35 days before the  
 22 election, and so there's actually a period of  
 23 six days where you can register to vote and  
 24 then vote on the same day in the early voting  
 25 period.

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1 Now, this raises the question: Do you  
 2 count this as a same-day registration state,  
 3 and the answers have varied. Dr. Burden counts  
 4 it as a same-day registration state in his  
 5 analysis. I am blanking on the name. It's one  
 6 of the articles in my appendix. I think it's  
 7 LaRocca and Klemanski does not count it as a  
 8 same-day registration state because they think  
 9 it's too remote.  
 10 In making that judgment call between  
 11 two peer-reviewed articles, I looked at my  
 12 general standard which is it was more  
 13 restrictive than what plaintiffs were looking  
 14 for, I didn't code it. So Ohio is not coded  
 15 even though it does have some degree of  
 16 same-day registration, and in making that call  
 17 with regard to the question I did look at the  
 18 number of days.  
 19 Q. And this sort of coding you're referring to,  
 20 would you say that that's something that's  
 21 recognized as a standard methodology when doing  
 22 this sort of analysis, recognize that standard  
 23 methodology by standards of the social sciences  
 24 or political science?  
 25 MR. FARR: Objection to the form.

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1 You may answer.  
 2 THE WITNESS: Yeah. I mean, again,  
 3 with the caveat in place, there are many  
 4 objective standards for political science and  
 5 social science. An example -- who is the  
 6 League of Women Voters?  
 7 MS. EBENSTEIN: Two of us.  
 8 THE WITNESS: Lorraine Minnite, is that  
 9 her name, Minute.  
 10 MS. LIEBERMAN: Minnite.  
 11 THE WITNESS: I'm sorry. So Erikson  
 12 and Minnite have an article where they seek to  
 13 test the effects of voter registration laws and  
 14 one of the ways -- and so they have change in  
 15 participation from 2002 to 2006 and then as  
 16 their dependent variable they look at the  
 17 restrictiveness of the state photo  
 18 identification law. And so what they do is  
 19 they create an ordinal counting system where I  
 20 believe zero is you have to state your name,  
 21 1 is you have to state your name and sign a  
 22 book, 2 is you state your name and sign a book  
 23 and they compare it to the signature on file.  
 24 I'm not sure I'm getting the specifics  
 25 of the ordinal system correct, but it's the

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1 system that they put in place. And one of the  
 2 problems that ordinal systems have is it  
 3 assumes the difference between zero and 1 is  
 4 the same as between 1 and 2 even though we  
 5 might suspect that might not be true.  
 6 Going from stating your name to signing  
 7 a book probably has less impact from going to  
 8 being requested a photo identification being  
 9 required to show a photo identification  
 10 assuming such an impact exists.  
 11 But, yeah, there are numerous examples  
 12 of ordinal independent -- or ordinal  
 13 independent variables in political science.  
 14 BY MS. MEZA:  
 15 Q. And you're stating that the process you engaged  
 16 in here was similar to what you just described?  
 17 A. Absolutely. There are shortcomings to it which  
 18 I acknowledge which is why in paragraph 125 I  
 19 tested the laws one at a time.  
 20 Q. So you just mentioned the ordinal system. So  
 21 what's the total misrepresentation of an  
 22 ordinal system?  
 23 A. I'm sorry.  
 24 Q. Strike that.  
 25 So again, when including these laws,

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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 A. Except for North Carolina which I noticed.  
 2 Q. Okay. And that is also the case for the third  
 3 column in Figure 14, this is an accounting of  
 4 the law as they currently exist?  
 5 A. No.  
 6 Q. Again, with the caveat that they're numbers  
 7 that may need to be corrected.  
 8 A. That's not correct either.  
 9 Q. Okay.  
 10 A. Because I -- well, first off, although it  
 11 didn't go into the regression analysis this  
 12 way, North Carolina is listed as a zero. It  
 13 didn't -- like I said, I checked the variable  
 14 and the regression and it was a four there.  
 15 And California is not coded as current  
 16 law. As you can see, California was a three in  
 17 Figure 11 but in Figure 14 it's a two.  
 18 Q. Okay. So what is represented in the last  
 19 column in Figure 14?  
 20 A. It is the state of the laws as they were in  
 21 2010, although some of the errors for 2013 --  
 22 long story short. I caught some of the errors  
 23 when I made the table for 2010, Figure 14, but  
 24 not all of them, and after Dr. Gronke caught  
 25 the California error, I went back and rechecked

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1 my work.  
 2 Q. Because you initially represented when we were  
 3 talking about how you had come up -- how you  
 4 had accounted for these laws in the 50 states,  
 5 you said you had looked at the laws as they  
 6 existed currently but you also looked at prior  
 7 versions or earlier states of the law?  
 8 A. No. I looked -- I looked at the laws as they  
 9 exist today when I was going through the state  
 10 statutes, but as I mentioned, there are also  
 11 previous versions of the laws in state  
 12 statutes, and if you look at the websites that  
 13 I went to and so forth, they also tell you when  
 14 the laws changed, so I know when laws were  
 15 adopted and I know -- as I stated in my expert  
 16 report, for example, at paragraph 39,  
 17 Dr. Stewart does not include Minnesota on his  
 18 chart. Minnesota allows for 46 days of  
 19 no-excuse in-person absentee voting beginning  
 20 in 2014 and cite to the Minneapolis Post  
 21 article.  
 22 So it's not that I was never aware that  
 23 other versions of the laws had existed at  
 24 different points in time, nor is it that I  
 25 didn't receive any information about it.

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1 When I was reading the laws and looking  
 2 at the laws, I was looking at the current state  
 3 of the law.  
 4 Q. Mr. Trende, do you contest that voter  
 5 registration rates among African American  
 6 voters in North Carolina have surged in the  
 7 past decade compared to the voter registration  
 8 rates of white voters in North Carolina?  
 9 MR. FARR: Object to the form.  
 10 THE WITNESS: I mean, I think surged is  
 11 a vague term that I can't give an opinion on.  
 12 BY MS. MEZA:  
 13 Q. Do you contest that voter registration rates  
 14 among minority voters in North Carolina have  
 15 increased in the past decade compared to the  
 16 voter registration rates of white voters in  
 17 North Carolina? Or let's use the word  
 18 surpassed.  
 19 A. I don't believe that I have that data in my  
 20 report. If those data are available in  
 21 different expert reports, I couldn't offer an  
 22 opinion on them without having them in front of  
 23 me.  
 24 Q. Do you contest that the North Carolina State  
 25 Board of Elections' data shows that African

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1 American voters used early voting in a -- in  
 2 higher percentages than white voters  
 3 particularly in general election years?  
 4 MR. FARR: Objection to the form.  
 5 THE WITNESS: I don't think I would  
 6 offer an opinion on that question as stated.  
 7 To the extent it's asking me to make  
 8 any sort of prediction about what would happen  
 9 in a year like 2016, I have no opinion on that.  
 10 I think that's an important question, though,  
 11 that is largely unanswered in this litigation.  
 12 BY MS. MEZA:  
 13 Q. Well, the question isn't asking you to  
 14 speculate about future use, but as whatever's  
 15 reflected in the data currently, do you contest  
 16 that African American voters use early voting  
 17 in higher percentages than white voters?  
 18 MR. FARR: Objection to the form.  
 19 THE WITNESS: Without having those data  
 20 in front of me, I'm not sure I could answer  
 21 that question.  
 22 My recollection is that that is true of  
 23 2012 and 2008 but not of 2004 and that that  
 24 leads to the question of whether there's  
 25 something anomalous in 2008 and 2012 driving

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1 it. Perhaps if that anomalous event were  
 2 removed, we would see something more like 2004.  
 3 It's an important question that would have to  
 4 be controlled for that unfortunately  
 5 plaintiffs' experts don't attempt to answer.  
 6 BY MS. MEZA:  
 7 Q. Did you attempt to answer that question?  
 8 A. No.  
 9 Q. Did you attempt to answer that question with  
 10 respect to any of the other provisions?  
 11 A. Well, the regression analysis, again, gives  
 12 some -- gives evidence that we don't see a  
 13 statistically significant increase in African  
 14 American voting in states with these sorts of  
 15 laws adopted. So the fact that there's no  
 16 statistically significant relationship casts  
 17 doubt on the idea that removal of these laws  
 18 would have any effect on African American  
 19 turnout or that these laws, what was driving,  
 20 as you put it, surge in turnout that we saw in  
 21 2008 and 2012.  
 22 With that said, the fact that there was  
 23 a regression to mean in 2010 when the president  
 24 was not on the ballot, when there weren't  
 25 presidential early voter drives going on is a

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1 real problem for concluding anything about 2016  
 2 or years going forward.  
 3 MS. MEZA: I'm going to go ahead and  
 4 conclude my questions there. We can either  
 5 take a break or my colleague can take over.  
 6 MR. FARR: Are you ready to go?  
 7 THE WITNESS: Stretch for a second.  
 8 THE VIDEOGRAPHER: Off record at  
 9 1:56 p.m.  
 10 (Brief Recess.)  
 11 THE VIDEOGRAPHER: On record at  
 12 2:02 p.m.  
 13 THE WITNESS: I stated that Drs.  
 14 Erikson and Minnite do not reweight their data  
 15 in their article, they don't make mentioning of  
 16 reweighting the data in their article, and when  
 17 I went and compared the outputs that they  
 18 published at the end of the article, it was  
 19 identical to what you would get if you took the  
 20 unweighted -- unweighted CPS data and  
 21 performed the calculation.  
 22 It may be that they weighted it, but as  
 23 I said, you know, when you're doing a  
 24 subtraction, the weights would tend to drop out  
 25 if there's a standard rate of change and that's

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1 how they got to the same result that you get  
 2 with the unweighted data.  
 3 So I am extremely confident that they  
 4 did not weight it, but there's a possibility  
 5 that they did reweight it and then the weight  
 6 just dropped out with subtraction.  
 7 EXAMINATION  
 8 BY MR. HO:  
 9 Q. Good afternoon, Mr. Trende. We met at the  
 10 beginning of the morning. My name is Dale Ho  
 11 and I represent the League of Women Voters  
 12 plaintiffs in this case.  
 13 A. Hi.  
 14 Q. Hi. I have a few questions for you.  
 15 But just to follow up on what you just  
 16 said about the article by Professors Minnite  
 17 and Erikson, do you remember off the top of  
 18 your head when that article was published?  
 19 A. It was published in 2009, the year before  
 20 Dr. Gronke became the editor and chief of the  
 21 Election Law Journal.  
 22 Q. Mr. Trende, is it your opinion that the voting  
 23 reforms that have been repealed by HB 589 --  
 24 and specifically when I say that, I am going to  
 25 be referring to early voting for 17 days,

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1 same-day registration and out-of-precinct  
 2 voting.  
 3 Is it your opinion that those voting  
 4 reforms have no effect on voter turnout?  
 5 MR. FARR: Objection to the form, but  
 6 you can answer the question.  
 7 THE WITNESS: That is not how I would  
 8 state my opinion, no.  
 9 BY MR. HO:  
 10 Q. So those reforms may have some effect on voter  
 11 turnout?  
 12 A. They could.  
 13 Q. Is it your opinion that those reforms have no  
 14 effect on African American turnout?  
 15 A. I do not make that strong a statement.  
 16 Q. So in your view, is it possible that those  
 17 reforms have an effect on African American  
 18 turnout?  
 19 A. Whenever you make a statement about statistical  
 20 confidence, you are leaving open a possibility  
 21 that there is a relationship. The question is  
 22 whether that confidence rises to the standard  
 23 cutoff of 95 percent confidence.  
 24 Q. Is it fair to say that in your opinion voters  
 25 in North Carolina will continue to turnout at

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1 roughly the same rate that they would have if  
 2 HB 589 had not been enacted?  
 3 A. I don't offer an opinion that strong.  
 4 My opinion is that there are -- there's  
 5 evidence and the only evidence that's being set  
 6 forth about turnout suggests that we have no  
 7 confidence about what effect it will have  
 8 either way and that plaintiffs' experts didn't  
 9 engage in this sort of analysis.  
 10 Q. Apart from turnout effects, are you offering  
 11 any opinion as to whether voters will face  
 12 increased burdens to vote as a result of the  
 13 reduction of early voting as enacted by HB 589?  
 14 MR. FARR: Objection to the form.  
 15 THE WITNESS: What do you mean by  
 16 burdens?  
 17 BY MR. HO:  
 18 Q. By burdens, I mean the expenditure of increased  
 19 time or effort in order to vote.  
 20 A. With that broad of a definition of burden, I  
 21 don't think I can offer an opinion either way.  
 22 A construction site being set up in  
 23 front of one precinct that was  
 24 disproportionately white would place a burden  
 25 in the totality on Hispanic white voting.

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1 So if you're going to define it that  
 2 broad, then I can't offer an opinion one way or  
 3 the other.  
 4 Q. No opinion one way or the other as to whether  
 5 or not the reduction in early voting is going  
 6 to increase burdens experienced by voters in  
 7 North Carolina?  
 8 MR. FARR: Objection to form.  
 9 You may answer.  
 10 THE WITNESS: No because the question  
 11 is whether we have -- what degree of confidence  
 12 we have that this would impose some sort of  
 13 burden on the voters in North Carolina.  
 14 BY MR. HO:  
 15 Q. But apart from looking at turnout effects, have  
 16 you looked at any other kinds of data regarding  
 17 the burdens of the reduction in early voting  
 18 would have on voters in North Carolina?  
 19 MR. FARR: Objection.  
 20 You may answer.  
 21 THE WITNESS: Well, sure. I mean, the  
 22 consensus in the literature, though there seems  
 23 to be a debate about what the consensus is,  
 24 that with early voting you're mostly shifting  
 25 people from election day into the early voting

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1 time period.  
 2 So if you're getting people to turnout  
 3 anyway and if we see similar rates voting in  
 4 other states, I don't think that you can say  
 5 with any degree of confidence either way that  
 6 there was a burden imposed. It would be an odd  
 7 burden that didn't actually result in any  
 8 degree in change in voting rates.  
 9 BY MR. HO:  
 10 Q. So are you saying that it's impossible to  
 11 measure burdens on voters other than looking at  
 12 turnout?  
 13 A. No. I'm saying that if you're going to talk  
 14 about burdens in voting, I'm not saying it's  
 15 impossible that there would be a burden placed  
 16 on voting that didn't result in a decrease in  
 17 turnout.  
 18 I'm saying it strikes me as something  
 19 that would be unusual, and for the Voting  
 20 Rights Act, I'm not sure how relevant that  
 21 would be.  
 22 Q. Well, I'm not asking you questions about legal  
 23 conclusions or relevance, but did you look at  
 24 anything other than turnout in attempting to  
 25 measure the burdens that a reduction in early

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1 voting would have on voters?  
 2 A. Sure, lots of things.  
 3 Q. What other than turnout? Because you cited the  
 4 literature on turnout in early voting. I'm  
 5 trying to ask you if you looked at anything  
 6 other than turnout effects concerning the  
 7 burdens on voters.  
 8 A. Sure. I discuss, for example, in paragraphs 91  
 9 through 116, in particular the section on Obama  
 10 campaign strategy, about efforts that were  
 11 meant not just to turnout voters and make them  
 12 vote but to register them, and that goes to the  
 13 question any time -- especially in 2008 and  
 14 2012 -- that you're observing a difference  
 15 between non-Hispanic white voters and African  
 16 American voters, a state like North Carolina  
 17 that is not as racially polarized in its voting  
 18 at times as, say, Mississippi but that does  
 19 have a differential in registration rates, that  
 20 that effort by Democrats to increase  
 21 registration among Democrats is going to create  
 22 a different -- or have the tendency to create a  
 23 differential effect not just in turnout but  
 24 also in registration.  
 25 Q. Mr. Trende --

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1 A. No, no, no. I'm going to finish my answer.  
 2 Q. Well, you're not finishing my question which is  
 3 about early voting.  
 4 A. Yes, I am.  
 5 No, I'm not.  
 6 Q. You're talking about registration efforts.  
 7 A. Are you going to let me finish my answer to  
 8 you, Mr. Ho.  
 9 Q. Well, you can, but I'd like you to answer my  
 10 question.  
 11 A. Then if you don't like my answer and don't feel  
 12 I've answered it, then you can re-ask it.  
 13 So the rest of the answer is that so if  
 14 you don't have a campaign working on, say,  
 15 registration drives, that this can -- this  
 16 might cause a reduction in that differential.  
 17 In other words, by looking at what's going on  
 18 with registration drives can explain the  
 19 differential or possibly explain the  
 20 differential that your experts are identifying,  
 21 and so by not taking that into account, your  
 22 experts aren't taking into account important  
 23 variable.  
 24 Q. Mr. Trende, I didn't ask you a question about  
 25 what my experts took into account. I didn't

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1 ask you a question about voter registration  
 2 drives.  
 3 My question was about whether or not  
 4 reductions in early voting would increase  
 5 burdens on voters, right, and whether you  
 6 looked at that question through the lens of any  
 7 data other than turnout effects.  
 8 A. Such as registration.  
 9 Q. How would early voting affect registration  
 10 rates?  
 11 A. Well, that's a good point. For early voting it  
 12 wouldn't affect registration.  
 13 Q. So let me repeat my question.  
 14 MR. FARR: Wait, wait, wait. Are you  
 15 finished?  
 16 THE WITNESS: Yeah. Except to the  
 17 extent -- well, I don't know.  
 18 BY MR. HO:  
 19 Q. So with respect to early voting and whether or  
 20 not reductions in early voting would impose any  
 21 burdens on voters, did you look at that  
 22 question through the lens of any data other  
 23 than turnout effects?  
 24 A. Such as?  
 25 Q. I described burdens on voters in terms of

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1 increased effort, time or money in order to  
 2 cast a vote. Did you look at any of those?  
 3 A. I looked at many things other than turnout.  
 4 For example, I looked at registration.  
 5 Now -- I'm going to finish answering your  
 6 question.  
 7 So I am not going to say that none of  
 8 these things -- other things that are in my  
 9 report besides turnout numbers would have  
 10 something to do with early voting. Could be  
 11 that registration efforts by the Obama campaign  
 12 would overlap with its get-out-the-vote efforts  
 13 in a state like -- in the state.  
 14 And so a lot of it -- the answer  
 15 depends. If you say, well, what about this  
 16 sort of burden with respect to early voting,  
 17 then I could answer the question, but in the  
 18 whole universe of potential burdens that my  
 19 report could be relevant to, I can't answer  
 20 your question.  
 21 Q. Apart from turnout, are you offering any  
 22 opinion as to whether black voters will  
 23 disproportionately face higher burdens to vote  
 24 as a result of the reductions in early voting?  
 25 MR. FARR: Objection to the form.

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1 THE WITNESS: Again, without having a  
 2 better idea of what you mean by burden, with  
 3 the idea of burden being something so broad as  
 4 to encompass potentially a single construction  
 5 project in front of a site, I cannot possibly  
 6 answer that question.  
 7 BY MR. HO:  
 8 Q. Are you offering any opinion as to whether  
 9 voters will generally increase -- will face  
 10 increased burdens to register as a result of  
 11 the elimination of same-day registration in  
 12 North Carolina?  
 13 MR. FARR: Objection to the form.  
 14 THE WITNESS: With the same caveat  
 15 about the definition of burden, I cannot answer  
 16 that question.  
 17 BY MR. HO:  
 18 Q. Are you apart from turnout offering any opinion  
 19 as to whether black voters will  
 20 disproportionately face increased burdens to  
 21 register as a result of the elimination of  
 22 same-day registration?  
 23 MR. FARR: Objection to form.  
 24 THE WITNESS: Same answer on -- with  
 25 the caveat about the way you phrased the

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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 math is correct.  
 2 BY MR. HO:  
 3 Q. He has similar calculations in his report  
 4 regarding same-day registration usage. Do you  
 5 dispute those calculations?  
 6 A. I did not go and check his math.  
 7 Q. Do you dispute his calculations regarding  
 8 racial disparities in same-day registration  
 9 usage by race?  
 10 MR. FARR: Objection to form.  
 11 THE WITNESS: Again, I did not go back  
 12 and check his math.  
 13 MR. HO: I want to show you an  
 14 exhibit what we'll mark as Exhibit 107.  
 15 (WHEREUPON, Plaintiff's Exhibit 107 was  
 16 marked for identification.)  
 17 BY MR. HO:  
 18 Q. Do you recognize this?  
 19 A. Not off the top of my head, no.  
 20 Q. If I tell you that these are Professor Gronke's  
 21 statistical significance calculations for early  
 22 voting usage in his report and that this is in  
 23 his report, will you believe me?  
 24 A. I would have no reason not to believe you.  
 25 Q. Do you in your report or otherwise dispute the

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1 validity of his statistical significance  
 2 calculations regarding racial disparities in  
 3 early voting usage?  
 4 MR. FARR: Objection to form.  
 5 THE WITNESS: I never went back and  
 6 double-checked his math, so I don't believe --  
 7 I don't believe I question his calculations.  
 8 MR. HO: I'll show you something else.  
 9 I think this is 108.  
 10 (WHEREUPON, Plaintiff's Exhibit 108 was  
 11 marked for identification.)  
 12 THE WITNESS: This is my inspiration to  
 13 used dash lines instead of color.  
 14 BY MR. HO:  
 15 Q. I apologize if these are not in color.  
 16 A. That's okay.  
 17 Q. This is Professor Gronke's logistic regression  
 18 analysis of early voting usage by race that's  
 19 found in his report. It controls for age and  
 20 party.  
 21 Do you dispute the validity of these  
 22 calculations?  
 23 A. I don't believe I offer any opinion either way  
 24 on these calculations.  
 25 Q. I'd like to turn now, if I may, to some of your

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1 work for Real Clear Politics.  
 2 A. Okay.  
 3 Q. So does your work for Real Clear Politics --  
 4 I'll call it RCP for short sometimes -- does  
 5 that involve analyzing turnout data?  
 6 A. Yes.  
 7 Q. And does it include analyzing turnout data  
 8 among different racial groups?  
 9 A. Yes.  
 10 Q. Have you ever had to critically evaluate  
 11 another analyst's usage of turnout data?  
 12 A. What do you mean by critically evaluate?  
 13 Q. Find flaws in, identify errors in other  
 14 analysts' use of turnout data.  
 15 A. I've certainly had discussions with people. I  
 16 try to be nice.  
 17 Q. But in your writings have you ever identified  
 18 some flaws that other people have made in their  
 19 usage of turnout data?  
 20 A. I will say yes.  
 21 Q. In your estimation, is your experience in doing  
 22 that part of what makes you qualified to render  
 23 an opinion in this case?  
 24 A. I don't know. I mean, I'm not going to offer a  
 25 legal analysis of what makes we qualified or

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1 unqualified.  
 2 Q. Well, you said that you're an expert.  
 3 A. Well, but as I said -- that's different. I  
 4 said I was an expert which is different than  
 5 potentially whether I'm an expert qualified to  
 6 give an opinion in this case.  
 7 Q. Fair enough.  
 8 So is your experience analyzing other  
 9 people's use of turnout data part of what makes  
 10 you an expert?  
 11 A. In the lay sense?  
 12 Q. Yes.  
 13 A. Yes.  
 14 Q. And does your work for RCP involve predicting  
 15 election results?  
 16 A. Yes.  
 17 Q. And as part of your work predicting election  
 18 results, do you sometimes make predictions  
 19 about turnout?  
 20 A. Without rereading the 200 articles that I've  
 21 written -- so big caveat on this answer -- I  
 22 think the tendency is not to make a prediction  
 23 about turnout as much as to analyze  
 24 possibilities or to dispute other people's  
 25 potential predictions about turnout.

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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 A. Of the sorts such as "For the First Time on  
 2 Record, Black Voting Rate Outpaced Rate for  
 3 Whites in 2012." That would be a caution.  
 4 Q. And would you agree that because the CPS  
 5 over-reporting rate is not constant from  
 6 election to election that we should be cautious  
 7 about using CPS data to compare turnout rates  
 8 in different elections?  
 9 A. It's certainly something you should be aware  
 10 of.  
 11 Q. Would you agree that because the CPS  
 12 over-reporting rate is not constant amongst  
 13 states that we should be cautious about using  
 14 CPS data to compare turnout rates in different  
 15 states?  
 16 A. You mean top line turnout rates?  
 17 Q. Yes.  
 18 A. That's certainly something you should take into  
 19 account.  
 20 Q. Would you also agree that because the CPS  
 21 over-reporting rate is not constant among  
 22 different demographic groups that we should be  
 23 cautious about using the CPS data to compare  
 24 turnout rates of different demographic groups?  
 25 A. If you're going to compare turnout rates

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1 between different demographic groups, it is a  
 2 limitation of the CPS data to which you should  
 3 be aware.  
 4 And so if you were to write a report  
 5 that talked about these sorts of issues, you  
 6 would want to identify that issue within the  
 7 report.  
 8 Q. I'd like to move to something else. I think  
 9 this is 111.  
 10 (WHEREUPON, Plaintiff's Exhibit 111 was  
 11 marked for identification.)  
 12 BY MR. HO:  
 13 Q. Do you recognize this?  
 14 A. This is getting ancient on me, but it looks  
 15 like an article for Real Clear Politics that I  
 16 wrote in 2012.  
 17 Q. In April of 2012?  
 18 A. Yes.  
 19 Q. And it concerns forecasts for the November 2012  
 20 election?  
 21 A. I honestly don't remember this article so  
 22 you're going to have to give me a second.  
 23 MR. FARR: Take your time to read the  
 24 whole article.  
 25 BY MR. HO:

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1 Q. Just let me know when you feel ready.  
 2 A. Okay.  
 3 Q. So you wrote this in April 2012?  
 4 A. Yes.  
 5 Q. And it concerns forecasts for the November 2012  
 6 election?  
 7 A. Yes.  
 8 Q. On the second page in bold you write:  
 9 "The minority share of the  
 10 electorate will probably stay flat, or  
 11 even decrease, in 2012."  
 12 A. Yes.  
 13 Q. That's -- I read that accurately?  
 14 A. That is an accurate reading.  
 15 Q. So is it fair to say that in your assessment as  
 16 of the date of this article that the percentage  
 17 of electorate comprised of minority voters was  
 18 not likely to increase from 2008 to 2012?  
 19 A. I said it was probably going to stay flat or  
 20 potentially decrease.  
 21 Q. On the third page, fourth full paragraph down,  
 22 that starts with "Taken together," you write:  
 23 "Taken together, it is hard  
 24 today see how the white vote will be  
 25 depressed another three points from

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1 2008. African Americans are unlikely  
 2 to be a substantially larger share of  
 3 the electorate than they were in 2008,  
 4 and may even shrink somewhat."  
 5 Did I read that accurately?  
 6 A. You did read that accurately.  
 7 Q. So it was your assessment that the share of the  
 8 electorate nationally, that is, white, was  
 9 unlikely to decline three percentage points  
 10 from 2008?  
 11 A. The share was unlikely to decline, yes.  
 12 Q. Let's turn to another one and mark this as 112.  
 13 (WHEREUPON, Plaintiff's Exhibit 112 was  
 14 marked for identification.)  
 15 BY MR. HO:  
 16 Q. Just let me know when you're ready.  
 17 A. Okay.  
 18 Q. You wrote this?  
 19 A. Yes.  
 20 Q. What's the title of it?  
 21 A. "Minority Turnout and the Racial Breakdown of  
 22 Polls."  
 23 Q. This was for RCP?  
 24 A. Yes.  
 25 Q. And you wrote this in August 2012?

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1 A. Yes.  
 2 Q. And that was three months before the  
 3 November 2012 election?  
 4 A. No.  
 5 Q. August 29, 2012?  
 6 A. Oh, wait, I miscounted.  
 7 Q. So it's --  
 8 A. It's been a long day.  
 9 Q. That's all right.  
 10 So it was less than three months before  
 11 the election?  
 12 A. Yes.  
 13 Q. Can we turn to the second page.  
 14 A. Uh-huh.  
 15 Q. Third full paragraph you write:  
 16 "While one certainly can make the  
 17 case that the minority share of the  
 18 electorate will be the same in 2012 as  
 19 in 2008, or even greater than 2008  
 20 (more implausible, as I argue here), one  
 21 can look at things such as low Latino  
 22 enthusiasm and the disproportionate  
 23 impact the recession has had on minority  
 24 registration and suspect that it might  
 25 fall."

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1 from the article that we read earlier, the one  
 2 from April of 2012, the white share of the  
 3 electorate declined in 2012 compared to 2008,  
 4 correct?  
 5 A. That is correct.  
 6 Q. And in fact, it declined about three points,  
 7 correct?  
 8 A. I don't have the exact numbers in front of me.  
 9 Q. Does that sound right to you, three points?  
 10 A. It's either two or three.  
 11 Q. Three points is the exact amount that you  
 12 previously opined would be hard to see  
 13 happening?  
 14 A. Where would that be?  
 15 Q. In your --  
 16 A. I know but where.  
 17 Q. In your -- what we marked as Exhibit 111, third  
 18 page, fourth full paragraph: "Taken together,  
 19 it's hard to see how the white vote will be  
 20 depressed another three points from 2008."  
 21 A. Yes, it was hard to see in April of 2012.  
 22 Q. But in fact, that's precisely what happened?  
 23 A. It is.  
 24 Q. So your prediction was wrong?  
 25 A. Yes.

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1 Did I accurately read what you wrote?  
 2 A. That is what I wrote.  
 3 Q. So is it fair to say that in your assessment as  
 4 of the date of this article, which was three  
 5 months before the election, was that it was  
 6 implausible that minorities would make up a  
 7 larger share of the electorate in 2012 than  
 8 they did in 2008?  
 9 A. Oh, no.  
 10 Q. You say "implausible, as I argue here."  
 11 A. No. You truncate my quote.  
 12 Q. Okay. Can you explain that to me?  
 13 A. Yes. I said "more implausible, as I argue  
 14 here."  
 15 Q. So it's more implausible -- in your assessment  
 16 at this time, it was more implausible that the  
 17 minority share of the electorate would grow as  
 18 opposed to staying flat?  
 19 A. It was less likely that it would grow and then  
 20 it would stay flat.  
 21 Q. Okay. Now, you testified earlier when Ms. Meza  
 22 was asking you questions that white turnout  
 23 decreased from 2008 to 2012, correct?  
 24 A. Yes.  
 25 Q. And in fact, notwithstanding your prediction

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1 Q. And in fact, notwithstanding your earlier  
 2 prediction that it was more implausible that  
 3 minority voters would increase as a share of  
 4 the electorate in 2012 compared to 2008, they  
 5 increased, right, between 2012 and 2008 as a  
 6 share of the electorate?  
 7 A. Yeah.  
 8 Q. And the black turnout rate increased between  
 9 2008 and 2012?  
 10 A. The black turnout rate --  
 11 Q. Yes.  
 12 A. -- increased from 2012 -- 2008 to 2012.  
 13 Q. I'm sorry. The black share of the electorate  
 14 increased between 2008 and 2012.  
 15 A. Okay. I'm actually not sure if that's right,  
 16 but it was at the very least constant.  
 17 Q. Let me show you this which we'll mark as 113.  
 18 (WHEREUPON, Plaintiff's Exhibit 113 was  
 19 marked for identification.)  
 20 BY MR. HO:  
 21 Q. Take a few moments, let me know when you're  
 22 ready to discuss it.  
 23 A. (Witness complying.)  
 24 Okay.  
 25 Q. Do you recognize this?

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1 A. Yes.  
 2 Q. You wrote it?  
 3 A. Yes.  
 4 Q. For Real Clear Politics?  
 5 A. Yes.  
 6 Q. After the 2012 election?  
 7 A. Yes.  
 8 Q. And what's the title of it?  
 9 A. "The Case of the Missing White Voters."  
 10 Q. On the first page, could you look at the second  
 11 to last paragraph where you write:  
 12 "For Republicans, that despair  
 13 now comes from an electorate that seems  
 14 to have undergone a sea change. In the  
 15 2008 final exit polls (unavailable on  
 16 line), the electorate was 75 percent  
 17 white, 12.2 percent African American,  
 18 8.4 Latino, with 4.5 percent distributed  
 19 to other ethnicities. We'll have to  
 20 wait for this year's absolute final exit  
 21 polls to come in to know the exact  
 22 estimate of the composition this time,  
 23 but right now it appears to be pegged at  
 24 about 72 percent white, 13 percent black,  
 25 10 percent Latino and 5 percent 'other.'"

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1 Did I read what you wrote accurately.  
 2 THE WITNESS: You did.  
 3 BY MR. HO:  
 4 Q. So here the white share of the electorate  
 5 between 2008 and 2012 declined by three points,  
 6 correct?  
 7 A. Yes.  
 8 Q. And the black share of the electorate  
 9 increased, correct, from 20.2 percent African  
 10 American to 13 percent black?  
 11 A. Well, we can't say that's 13 because we don't  
 12 have the exit poll data released to calculate  
 13 it to tenths, but it increased at least to  
 14 12.5 percent.  
 15 Q. And the Latino share of the electorate also  
 16 increased?  
 17 A. Yes.  
 18 Q. So fair to say that your predictions that  
 19 minority turnout was -- sorry -- the minority  
 20 share of the electorate between 2008 and 2012  
 21 was unlikely to increase, that prediction was  
 22 incorrect?  
 23 A. You can never say that something that is  
 24 unlikely or likely to happen is correct or  
 25 incorrect, but there was an increase.

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1 Q. Fair enough. You said it was unlikely and then  
 2 it happened?  
 3 A. That is correct, assuming that I actually said  
 4 unlikely.  
 5 Q. Can we look at something else you wrote and  
 6 we'll mark this as 113.  
 7 THE REPORTER: 114.  
 8 MR. HO: 114. My apologies.  
 9 (WHEREUPON, Plaintiff's Exhibit 114 was  
 10 marked for identification.)  
 11 THE WITNESS: Okay.  
 12 BY MR. HO:  
 13 Q. Do you recognize this?  
 14 A. It's walk down memory lane, but I think I  
 15 remember this, yeah.  
 16 Q. You wrote this for Real Clear Politics?  
 17 A. Yes.  
 18 Q. What's the date on this?  
 19 A. October 27, 2010.  
 20 Q. So this was written just a couple weeks before  
 21 the November 2010 general election?  
 22 A. It might even be one week.  
 23 Q. On the first page, do you see where in bold it  
 24 states, or you write, rather, "Early voting  
 25 suggests a much more heavily Republican

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1 electorate than 2008"?  
 2 A. Yeah.  
 3 Q. I read that accurately?  
 4 So your views in this article turned in  
 5 part on your analysis of early voting data?  
 6 A. In 2010, yes.  
 7 Q. Can we turn to the third page. You see the  
 8 first full paragraph "In almost every state"?  
 9 A. Uh-huh.  
 10 Q. You see a couple lines down there's a sentence  
 11 that starts "Moreover, the early voting"?  
 12 A. Uh-huh.  
 13 Q. So you write:  
 14 "Moreover, the early voting  
 15 electorate suggests that Republicans  
 16 are currently running ahead in key  
 17 tossup Senate contests in Colorado,  
 18 Nevada, Pennsylvania and Washington  
 19 State, and are running very close in  
 20 California state.  
 21 "This would suggest greater Senate  
 22 gains than 1994 and would probably hand  
 23 the GOP control of the Senate, even if  
 24 Democrats were to hold onto their  
 25 apparent early lead in West Virginia."

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1 A. Uh-huh.  
 2 Q. Did I read that accurately?  
 3 A. You did read that accurately.  
 4 Q. So based on your analysis of the early voting  
 5 data, you wrote that the GOP would probably  
 6 gain control of the Senate in 2010?  
 7 A. No.  
 8 Q. You wrote that the GOP would probably gain  
 9 control of the Senate in 2010, didn't you?  
 10 A. No.  
 11 Q. The last sentence says "would probably hand the  
 12 GOP control of the Senate."  
 13 A. It does say that.  
 14 MR. FARR: What page is that?  
 15 THE WITNESS: This is -- right there.  
 16 BY MR. HO:  
 17 Q. You write "This would suggest greater gains --  
 18 Senate gains than 1994 and would probably hand  
 19 the GOP control of the senate."  
 20 A. Yes.  
 21 Q. And now you're saying you did not in fact say  
 22 the GOP was probably going to gain control of  
 23 the Senate in the 2010?  
 24 A. That's right. I say this, the switch from  
 25 actual Senate -- weighting by early voting

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1 numbers to Senate polls, that analysis, if it  
 2 holds true, would suggest it, but I don't  
 3 believe that I hold that out as dispositive  
 4 analysis as the basis of prediction. It's just  
 5 saying this is a way that you can look at the  
 6 data and this is what the implications of that  
 7 could be.  
 8 Q. So what you're saying is based on your analysis  
 9 of the early voting data, that the GOP could  
 10 gain control of the Senate in the 2010?  
 11 A. Saying that -- using -- because the -- what I  
 12 am saying, I think -- and we're going back to  
 13 2010 here, but reading this carefully says that  
 14 this analysis, which is going from actual polls  
 15 and then weighting them by the early vote  
 16 numbers, if those numbers held, the GOP would  
 17 gain control of the Senate.  
 18 I don't know that I made a particular  
 19 projection on the basis of that. This is in  
 20 the middle of the article. I think I have some  
 21 caveats later on about what would happen, and I  
 22 don't think that my -- I don't think that my  
 23 conclusion in this article is that the GOP  
 24 would gain control of the Senate.  
 25 Q. So what you're saying is if your analysis of

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1 the early voting returns were applied to  
 2 polling data and the trends you detected in  
 3 early voting continued, the GOP would gain  
 4 control of the Senate probably?  
 5 A. I'm not going to agree with the  
 6 characterization of what I did because I did  
 7 this four years ago. I don't remember my exact  
 8 approach here.  
 9 What I said is that looking -- just  
 10 looking at the chart, it looks like there were  
 11 actual polls and then I weighted somehow by  
 12 what I saw in the early voting numbers and I  
 13 said if these trends were to continue, we would  
 14 see the GOP take control of the Senate, but I  
 15 don't believe that there is an actual  
 16 prediction where I say, hey, this is going to  
 17 happen.  
 18 In fact, what I say back on page 1 is  
 19 the GOP is probably slated to -- this is  
 20 talking more about House stuff, but it's slated  
 21 to undo the Democratic gains from 2006 to 2008,  
 22 which would have been about 30 House seats and  
 23 6 Senate seats, and they are still compared to  
 24 early voting data from 2008 to 2010 and such  
 25 and such.

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1 No, I don't make any claim that bold.  
 2 That's out of context.  
 3 Q. All right. I want to ask you about one more of  
 4 your posts. We'll mark this as 115.  
 5 (WHEREUPON, Plaintiff's Exhibit 115 was  
 6 marked for identification.)  
 7 BY MR. HO:  
 8 Q. Just take a look at that and tell me when  
 9 you're ready.  
 10 A. Do you have Parts 1, 3 and 4 of this?  
 11 Q. I don't.  
 12 A. This is Part 2 of a four-part article. We  
 13 don't have the complete article. It's not a  
 14 complete exhibit.  
 15 Q. Is that a legal conclusion?  
 16 A. I'll look at it for you.  
 17 Q. Thank you.  
 18 MR. FARR: Well, I'll say it's not a  
 19 complete exhibit, Dale, if that satisfies your  
 20 desire for a legal conclusion.  
 21 MR. HO: Thank you for your conclusion,  
 22 Tom.  
 23 MR. FARR: I'm sure you're much  
 24 appreciative.  
 25 THE WITNESS: Okay.

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1 BY MR. HO:  
 2 Q. Do you recognize this?  
 3 A. Yes.  
 4 Q. You wrote this for Real Clear Politics?  
 5 A. Yes.  
 6 Q. Can you turn to the third page and the last  
 7 paragraph. You write "This really just  
 8 illustrates an overlooked point."  
 9 MR. FARR: Wait a second. I'm not with  
 10 you.  
 11 MR. HO: I'm sorry. I'm not on the  
 12 third page at all.  
 13 THE WITNESS: It's a long day.  
 14 MR. HO: Yeah.  
 15 BY MR. HO:  
 16 Q. Second to last page. Do you see where you  
 17 write at the bottom:  
 18 "This really just illustrates an  
 19 overlooked point. Democrats like to  
 20 mock the GOP as the 'Party of White  
 21 People' after the 2012 elections. But  
 22 from a purely electoral perspective,  
 23 that's not a terrible thing to be."  
 24 Did I accurately read what you wrote?  
 25 A. Yeah.

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1 Q. Why is it not in your opinion a terrible thing  
 2 to be the "Party of White People"?  
 3 A. It's a terrible thing to be the "Party of White  
 4 People."  
 5 Q. You said that's not a terrible thing to be.  
 6 A. Dale, you've got to stop truncating my  
 7 sentences. I said "from a purely electoral  
 8 perspective, that's not a terrible thing to  
 9 be."  
 10 In fact, in the last sentence, I say  
 11 "Tomorrow we'll talk in more detail about the  
 12 Hispanic vote, run some more simulations, and  
 13 conclude, happily, why this hyper-polarized  
 14 future isn't going to come to pass."  
 15 Q. But from an electoral perspective, you're  
 16 saying it's not a terrible thing to be the  
 17 "Party of White People"?  
 18 A. Because whites constitute 70 percent of the  
 19 electorate and will probably be a majority of  
 20 the electorate for the next 20 or 30 years. So  
 21 from the point of view of electoral politics,  
 22 doing well among white voters is not a bad  
 23 thing.  
 24 Q. You said, though, just a second ago, I'm  
 25 interested, you said, "Oh, no, it is a terrible

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1 thing to be the 'Party of White People.'"  
 2 A. From an electoral perspective, it's not a bad  
 3 thing.  
 4 Q. No, no, not. But when I first read it and I  
 5 asked you why it's not a terrible thing to be  
 6 the "Party of White People," you said, "Oh, no,  
 7 it is a terrible thing to be" --  
 8 A. Yes.  
 9 Q. What did you mean by that?  
 10 A. Because I don't think a racially polarized  
 11 future is good for the country.  
 12 Q. I want to ask you a few questions about your  
 13 other writings.  
 14 You wrote a book. You referred to it a  
 15 few times in this deposition as "The Lost  
 16 Majority."  
 17 A. Yes.  
 18 Q. That was not its original title, right, that  
 19 you had planned for it?  
 20 A. I don't remember.  
 21 Q. The original title that you had planned was not  
 22 something like "The Big Red Rebound. Why  
 23 Republicans Will be Back in Charge Sooner Than  
 24 you Think"?  
 25 A. Oh, okay. When I was going to co-write it, a

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1 similar version of the book, back in 2009 or  
 2 maybe 2010 -- no, 2009 with Jay Cost, it was  
 3 going to be a different book, and that was  
 4 going to be the title, "Big Red Rebound."  
 5 Q. That title and some of the other articles that  
 6 we've looked at today seem to take the  
 7 perspective of strategy from the Republican  
 8 Party side. Is that fair to say?  
 9 A. No.  
 10 Q. It's not fair to say that's the perspective you  
 11 adopt in your writing?  
 12 A. No.  
 13 Q. You mentioned earlier that you've written for  
 14 the National Review?  
 15 A. Yes.  
 16 Q. It's a conservative publication, correct?  
 17 A. It is.  
 18 Q. The Weekly Standard?  
 19 A. Correct.  
 20 Q. Also a conservative publication?  
 21 A. Yes.  
 22 Q. In addition to writing for Real Clear Politics  
 23 and these magazines, you make appearances in  
 24 the media and on television sometimes?  
 25 A. Yes.

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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 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 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 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

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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

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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?

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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

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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

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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

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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.

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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

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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

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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?

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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 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,

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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.

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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?

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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

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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

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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

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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

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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

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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?

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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 MR. FARR: What page are you on?  
 2 MR. HO: Page 17.  
 3 BY MR. HO:  
 4 Q. You testified earlier that you chose  
 5 Mississippi as a comparator for North Carolina  
 6 because Mississippi had the highest African  
 7 American turnout in 2012; is that right?  
 8 A. That is my recollection.  
 9 Q. Is that explained in your report?  
 10 A. No.  
 11 Q. Why didn't you choose a different southern  
 12 state?  
 13 A. I believe the way that I came to this  
 14 conclusion or using Mississippi was  
 15 Dr. Leloudis in paragraph -- as described in  
 16 paragraph 79 had a comment about the level of  
 17 turnout in North Carolina, and I went and read  
 18 his column and state that was similar in  
 19 turnout to North Carolina was Mississippi, and  
 20 so that's why I chose Mississippi as an  
 21 illustration because I knew Mississippi didn't  
 22 have any of the laws in question in the state  
 23 to help illustrate to the court why it's  
 24 important to do a comparison to states other  
 25 than North Carolina with the understanding that

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1 the court might not -- may have engaged in  
 2 regression analysis before, may have engaged in  
 3 these types of inquiries before or it may not  
 4 have.  
 5 Q. So the criteria you used in choosing  
 6 Mississippi were that it had the highest level  
 7 of turnout, that Professor Leloudis mentioned  
 8 Mississippi and that Mississippi did not have  
 9 any reforms at issue in this case?  
 10 A. I don't believe Mr. -- is it Mr. Leloudis or is  
 11 it doctor?  
 12 Q. I believe it is doctor.  
 13 A. I don't believe Dr. Leloudis mentioned  
 14 Mississippi. It was mentioned in an article to  
 15 which he cites.  
 16 Q. So other than those three factors, are there  
 17 any other criteria that led you to choose  
 18 Mississippi as the comparator for  
 19 North Carolina here?  
 20 A. No, I don't believe so.  
 21 Q. Do you know if a two-state comparison along  
 22 these lines is an accepted method for measuring  
 23 the effects of a legal regime on turnout  
 24 according to the prevailing standards in the  
 25 field of political science?

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1 MR. FARR: Objection to the form.  
 2 THE WITNESS: Caveat in place about  
 3 whatever the prevailing standards of political  
 4 science were, if I were going to make an  
 5 affirmative statement about what turnout was  
 6 rather than illustrating a deficiency in  
 7 someone else's approach and why additional  
 8 inquiry is needed and my declaration ended at  
 9 paragraph 81, I don't think this would stand as  
 10 definitive proof which is why I stated it is  
 11 not definitive proof.  
 12 BY MR. HO:  
 13 Q. Are you familiar with the term "comparative  
 14 case study" as it is used in political science?  
 15 A. I can reason out what it means.  
 16 Q. But have you heard it before?  
 17 A. Yes.  
 18 Q. Well, what does it mean to you?  
 19 A. Reasoning it out, it is a system for choosing  
 20 case studies that make comparisons and  
 21 sometimes you can draw conclusions from a case  
 22 study.  
 23 Q. Do you know what criteria should be used for  
 24 selecting cases for a comparative case study in  
 25 accordance with prevailing standards in

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1 political science?  
 2 A. Not off the top of my head. I haven't done a  
 3 case study in quite some time.  
 4 Q. Do you know if the criteria by which you  
 5 selected Mississippi as a comparator for  
 6 North Carolina would accord with the prevailing  
 7 standards in political science for selecting  
 8 cases for a comparative case study?  
 9 A. I wouldn't call this a comparative case study.  
 10 Q. For purposes of this comparison, you used the  
 11 unweighted CPS data, correct?  
 12 A. Correct.  
 13 Q. You do not use validated data from the states,  
 14 correct?  
 15 A. Correct.  
 16 Q. Now, you say -- you said earlier you didn't do  
 17 that because race information is mandatory in  
 18 the voter file in North Carolina but not in  
 19 Mississippi. Is that accurate?  
 20 A. It is. That's my understanding.  
 21 Q. What do you mean by mandatory?  
 22 A. I don't believe you're given an option not to  
 23 fill that out in North Carolina but you are in  
 24 Mississippi. That is something that I read in  
 25 a review of states that track by race and

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1 states that don't.  
 2 Q. Do you know if there are any consequences for  
 3 failing to check a race box in your voter  
 4 registration form in North Carolina?  
 5 A. I don't.  
 6 Q. Do you know if the rate at which people  
 7 registering to vote in North Carolina and  
 8 Mississippi -- I'm sorry, let me rephrase that  
 9 question.  
 10 Do you know if when people register to  
 11 vote in North Carolina and Mississippi the rate  
 12 at which registrants fail to check a race box  
 13 varies as among those two states?  
 14 A. I don't.  
 15 Q. Any reason to believe that it's different in  
 16 the two states?  
 17 A. I mean there are reasons, sure.  
 18 Q. Do you have any reason to believe that it's  
 19 different in the two states?  
 20 A. If there are different regimes in place, then  
 21 there are reasons to believe that they would be  
 22 different.  
 23 Q. Are you aware of one here?  
 24 A. The fact that my understanding is that there  
 25 are different regimes in place in Mississippi

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1 and North Carolina is a reason to believe that  
 2 there would be differences in the way that they  
 3 are put into place.  
 4 Q. But you don't know if -- never mind, we can  
 5 leave that there.  
 6 Can we turn to page 37 of your report,  
 7 the header "The Florida Example."  
 8 A. Uh-huh.  
 9 Q. In this section of the report is it fair to say  
 10 that your opinion is that elections data from  
 11 Florida in 2012 do not necessarily support the  
 12 notion that Florida's early voting cutbacks  
 13 resulted in less early voting in Florida?  
 14 MR. FARR: Objection to the form.  
 15 THE WITNESS: No, I don't believe I say  
 16 that.  
 17 BY MR. HO:  
 18 Q. So you're not saying that early voting  
 19 reductions in Florida were not responsible for  
 20 less early voting in Florida?  
 21 A. There's three negatives in that question. Can  
 22 you rephrase it?  
 23 Q. I think there were two.  
 24 A. Depends how you qualify "less."  
 25 Q. Are you saying that early voting reductions in

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1 Florida did not result in less early voting in  
 2 Florida?  
 3 A. I don't -- I don't believe I am saying that,  
 4 no.  
 5 Q. You are aware that lines and waiting times to  
 6 vote in Florida during the early voting period  
 7 in 2012 were longer than in the early voting  
 8 period in Florida in 2008?  
 9 MR. FARR: Objection. You didn't lay a  
 10 foundation for that.  
 11 THE WITNESS: I read that in  
 12 Dr. Stewart's and Dr. Gronke's reports.  
 13 BY MR. HO:  
 14 Q. Have you read that elsewhere?  
 15 A. Yes.  
 16 Q. Are you offering any opinion as to the cause of  
 17 those longer lines?  
 18 A. No.  
 19 Q. Are you aware that lines and waiting times to  
 20 vote in Florida on election day in 2012 were  
 21 longer than in 2008?  
 22 MR. FARR: Objection to the form.  
 23 THE WITNESS: I have read that in  
 24 Dr. Gronke's and Dr. Stewart's report and  
 25 elsewhere.

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1 BY MR. HO:  
 2 Q. Are you offering an opinion as to the cause of  
 3 those longer lines?  
 4 A. No.  
 5 Q. Can we look at page 39 of your report?  
 6 A. Yes.  
 7 Q. The table at the top, Figure 15.  
 8 A. Yes.  
 9 Q. According to your table, the total number of  
 10 early voters in Florida declined by over  
 11 280,000; is that right?  
 12 A. That is right.  
 13 Q. And yet overall, according to your table, the  
 14 total number of voters overall in Florida  
 15 increased by almost 80,000; is that correct?  
 16 A. Yes.  
 17 Q. Will you infer from that that more voters  
 18 appeared in Florida on election day in 2012  
 19 than in 2008?  
 20 A. Yes.  
 21 Q. In paragraph 143 you talk about marginal  
 22 voters, right, and you write:  
 23 "The data suggest an alternate  
 24 narrative. Rather than long lines  
 25 incentivizing marginal early voters

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1 to stay home, marginal early voters  
 2 failed to vote because they were  
 3 marginal voters."  
 4 What do you mean by marginal voter?  
 5 A. A marginal voter is someone who -- like to  
 6 illustrate, if we were to imagine a scale of  
 7 how committed you were or likely to vote from a  
 8 scale of 1 to 10, a marginal voter would be  
 9 someone who was lower on that scale. I'm not  
 10 going to suggest a complete cutoff but less  
 11 enthusiastic voters might be a reasonable  
 12 approximation.  
 13 Q. Does the percentage of marginal voters vary  
 14 from state to state?  
 15 A. I would suspect, yes.  
 16 Q. Did you make any attempt to compare the number  
 17 of so-called marginal voters in Florida to any  
 18 other state?  
 19 A. No.  
 20 Q. Did you in this section of your report make any  
 21 effort to compare early voting turnout in  
 22 Florida in 2012 to that of any other state?  
 23 A. No.  
 24 Q. Did you make any attempt to compare the change  
 25 in early voting -- early voting turnout in

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1 Florida in 2012 to that of any other state?  
 2 A. No. My goal here is to critique something that  
 3 Drs. Gronke and Stewart don't take into account  
 4 a possibility and to offer that up.  
 5 Q. Is it possible in your estimation that some  
 6 marginal voters in Florida were affected by the  
 7 reduction in early voting?  
 8 MR. FARR: Objection.  
 9 THE WITNESS: I don't know.  
 10 BY MR. HO:  
 11 Q. So four rows down in paragraph 143 you write:  
 12 "In other words, the overall decline  
 13 in African American participation in  
 14 Florida's early voting period was not a  
 15 manifestation of longer lines, but was  
 16 simply a manifestation of declining  
 17 interest overall.  
 18 "To the extent that it was a  
 19 manifestation of longer lines, the voters  
 20 who were interested in voting shifted  
 21 their voting strategies to election day  
 22 accordingly."  
 23 So are you saying that some voters may  
 24 have been affected by long lines during the  
 25 early voting period?

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1 MR. FARR: Objection.  
 2 THE WITNESS: I don't think I offer an  
 3 opinion either way there.  
 4 BY MR. HO:  
 5 Q. When you say "voters who were interested in  
 6 voting shifted their strategies to election day  
 7 accordingly," are you suggesting that some  
 8 voters switched from early voting to  
 9 election-day voting in 2012?  
 10 A. I'm sorry. Where is it?  
 11 Q. It's the last sentence that I read back to you  
 12 earlier. To the extent that it was a  
 13 manifestation of longer lines, are you  
 14 suggesting that some voters switched from the  
 15 early voting period in Florida to election day?  
 16 A. I'm suggesting it's a possibility that should  
 17 be taken into consideration and wasn't.  
 18 Q. Do you think a significant number of voters did  
 19 that?  
 20 A. I think it's possible.  
 21 Q. Do you think that happened, though?  
 22 A. I think it's possible.  
 23 All I say here is the data suggests an  
 24 alternate narrative and this is what the  
 25 alternate narrative would be. And then I say

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1 it's not to suggest that Drs. Gronke and  
 2 Stewart are conclusively wrong.  
 3 It's just this is an alternate causal  
 4 mechanism that kind of jumps off the page that  
 5 should be accounted for if you're going to try  
 6 to draw conclusions about the effect of the  
 7 reduction of early voting hours in Florida on  
 8 turnout.  
 9 Q. What do you mean when you say "jumps off the  
 10 page"? It seems you're attaching some  
 11 significance to this.  
 12 A. No. To me when I look at the decline in early  
 13 voting data in Florida and then I look at the  
 14 fact that turnout in Florida increased while  
 15 the total voting in the United States  
 16 decreased, it's a line of inquiry that I would  
 17 want to pursue if I were going to make  
 18 affirmative statements about the causal  
 19 connection between the turnout in Florida and  
 20 what happened in early voting.  
 21 It's possible that these voters shifted  
 22 back most -- the voters who were going to vote  
 23 still voted, they just voted on election day.  
 24 Q. So reasonable inference is that more people  
 25 voted on election day as a result?

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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.

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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 Q. You didn't mention those other reports in here?  
 2 A. No.  
 3 Q. Can you think of any examples of them?  
 4 A. I think earlier in my deposition I mentioned  
 5 Alvarez's 2012 piece.  
 6 Q. Alvarez in 2012 concludes that minority voters  
 7 disproportionately rely on early voting, does  
 8 he not?  
 9 A. Off the top of my head, I thought Alvarez was  
 10 talking about income, but I would have to go  
 11 back and reread the article.  
 12 Q. You didn't mention the Alvarez article in your  
 13 report?  
 14 A. No.  
 15 Q. You decided --  
 16 (Brief Interruption.)  
 17 MR. FARR: This suggests the department  
 18 had something like that when you've been on the  
 19 phone too long.  
 20 MS. MEZA: I don't know that we've had  
 21 a conference call go on this long, and I don't  
 22 know that they call in for depositions.  
 23 BY MR. HO:  
 24 Q. So you chose not to mention those other  
 25 articles that you read in your report?

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1 A. I didn't mention them, no.  
 2 Q. You're aware that under the rules you're  
 3 obliged to list all the materials on which you  
 4 relied in formulating your opinion?  
 5 MR. FARR: Objection to the form.  
 6 THE WITNESS: If I listed every article  
 7 that I ever read that was remotely related to  
 8 the opinions that I formed, we would have a  
 9 stack of articles to the ceiling.  
 10 These are the major articles on which I  
 11 relied.  
 12 BY MR. HO:  
 13 Q. Did you look at any article suggesting that  
 14 early voting increases turnout?  
 15 A. What do you mean by suggesting?  
 16 Q. Did you read any articles where the author  
 17 suggested based on empirical research that  
 18 early voting produces an increase in turnout?  
 19 A. I don't know if I did.  
 20 Q. You're aware that there are articles that posit  
 21 that relationship?  
 22 A. Well, I know that Dr. Gronke has cited some  
 23 articles in his report that hypothesize that  
 24 because of 2008 and 2012 we should conclude  
 25 that there's been a phase shift. That's just

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1 not a view that I necessarily agree with.  
 2 Q. Did you read those articles?  
 3 A. Do you have Dr. Gronke's report?  
 4 Q. I don't.  
 5 A. I read -- I know I read some articles that he  
 6 cites to.  
 7 Q. Do you remember off the top of your head  
 8 whether or not you read articles cited in  
 9 Dr. Gronke's report positing that early voting  
 10 increases turnout?  
 11 A. I don't remember the exact conclusion. If you  
 12 told me that the Smith article in one of his  
 13 footnotes had that presupposition, I wouldn't  
 14 disagree with you.  
 15 Q. Did you look at academic papers concerning  
 16 differential use of early voting across racial  
 17 groups?  
 18 A. I know that is part of the literature, and I'm  
 19 sure I did read some of those articles.  
 20 Q. Do you remember any of them -- can you tell me  
 21 any of them here today?  
 22 A. No. That wasn't the direct concern of my  
 23 report and so I didn't make mental notes of  
 24 those articles.  
 25 I do think, again, the -- he has two

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1 Smith articles that he cites to that I believe  
 2 do talk about differential rates, but without  
 3 the report --  
 4 Q. Did you read those Smith articles?  
 5 A. I did.  
 6 Q. But you didn't cite them?  
 7 A. No.  
 8 Q. You only cited the academic pieces that you  
 9 thought would serve your conclusion?  
 10 MR. FARR: Objection to the form.  
 11 THE WITNESS: No. I note that there is  
 12 conflicting nature of peer-reviewed scholarly  
 13 literature and cited the ones that are most  
 14 directly -- that bear the most heavily on the  
 15 turnout issue as well as ones that tended to  
 16 be, I thought, relevant.  
 17 BY MR. HO:  
 18 Q. Your report does not contain a discussion of  
 19 the academic literature on same-day  
 20 registration, does it?  
 21 A. No.  
 22 Q. You didn't think that was important?  
 23 A. No.  
 24 Q. Are you aware of a scholarly consensus that  
 25 same-day registration increases turnout?

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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

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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

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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 not removing early voting opportunities has any  
 2 effect on turnout, correct?  
 3 A. Technically speaking, that would be correct.  
 4 Q. So can we talk about the Gronke article, et  
 5 al., from 2007 which is Exhibit 11 in your  
 6 report.  
 7 A. Yes.  
 8 Q. Could you turn to page 642 of the article?  
 9 A. Yes.  
 10 Q. In the first column, the last paragraph, do you  
 11 see where he writes:  
 12 "The empirical evidence on turnout  
 13 is also positive, but less so. Early  
 14 voting should increase turnout,  
 15 theoretically, by easing the resource  
 16 demands of voting, primarily by  
 17 eliminating the need to go to the  
 18 polling booth or by providing more  
 19 convenient times to vote. The empirical  
 20 evidence supports this expectation.  
 21 "Liberalized absentee balloting  
 22 leads to a small but significant growth  
 23 in turnout. EIP also stimulates  
 24 participation, again only slightly."  
 25 Did I read that accurately?

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1 Q. By EIP, do you mean that to mean early  
 2 in-person voting?  
 3 A. Yes.  
 4 Q. So Professor Gronke's view in 2007 was that  
 5 early in-person voting stimulates  
 6 participation, correct?  
 7 A. Correct.  
 8 Q. Well, but later he writes:  
 9 "We want to highlight, however,  
 10 the relatively large negative and stable  
 11 coefficient associated with EIP voting  
 12 in both models albeit in both cases with  
 13 large standard errors."  
 14 So I don't know that he necessarily  
 15 embraces the view that strong.  
 16 Q. That's the portion of the article that you cite  
 17 and quote in your report that you just read  
 18 back, correct?  
 19 A. Yes.  
 20 Q. But you didn't read or quote or cite the  
 21 portion of the article that I just read in your  
 22 report, did you?  
 23 A. I didn't cite that, no.  
 24 Q. You just thought you would leave that out?  
 25 MR. FARR: Objection to form. For

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1 God's sake.  
 2 THE WITNESS: I thought I would cite  
 3 the portion that came towards his conclusion,  
 4 not the statement that he made in the middle of  
 5 the article.  
 6 BY MR. HO:  
 7 Q. This article looks at data up until the 2004  
 8 election, correct?  
 9 A. I'm not sure that's right.  
 10 Q. Do you see the boldfaced header in the second  
 11 column on page 642 "Early Voting and Turnout"?  
 12 A. Well, yes, but I'm also looking at the chart at  
 13 the top of page 642 that says 2006.  
 14 Q. So 2006, looks at data up until 2006?  
 15 A. Correct.  
 16 Q. Nothing after that?  
 17 A. Oh, I see what's going on with what Dr. Gronke  
 18 says on 642. He says "The empirical evidence  
 19 on turnout is also positive. The empirical  
 20 evidence supports his expectation," but later  
 21 on in the page, which I'm assuming you read, he  
 22 said "These past studies, while helpful, are  
 23 hampered by limitations and research design and  
 24 methodology that limit their applicability to  
 25 the past decade of reforms. More importantly

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1 for our purposes, many of these studies are  
 2 ancient history from the perspective of early  
 3 voting."  
 4 So that's what he later says about that  
 5 before conducting his own analysis and  
 6 concluding that there's a relatively large  
 7 negative and stable coefficient associated with  
 8 early in-person voting.  
 9 Q. And you're aware that in his report in this  
 10 case Professor Gronke opines that the post 2008  
 11 elections data leads to a contrary conclusion?  
 12 A. I know he opines that.  
 13 Q. Exhibit 12 in your report is Gronke's paper  
 14 from 2004. So it's not obviously based on any  
 15 election data after that?  
 16 A. Right.  
 17 Q. And it doesn't look at differential effects of  
 18 early voting across different racial groups,  
 19 does it?  
 20 A. Correct.  
 21 Q. And neither does the article that we were  
 22 talking about a moment ago, the 2007 article?  
 23 A. Correct.  
 24 Q. The Crowell blog post which I think is the last  
 25 piece that you cite on early voting, who's

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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 Q. What about disparate reliance by members of  
2 different racial groups on same-day  
3 registration?  
4 A. I can't recall, but I would be surprised if it  
5 did.  
6 Q. In paragraph 105 you cite a New Yorker article  
7 by Ryan Lizza about the Obama campaign strategy  
8 with respect to early voting.  
9 A. Correct.  
10 Q. Is that article specifically about  
11 North Carolina?  
12 A. No.  
13 Q. Does it mention North Carolina to your  
14 recollection?  
15 A. I'm not going to cop to that without the  
16 article in front of me.  
17 Q. In paragraphs 106 through 109 you cite a book  
18 about the Obama campaign's "Starbucks  
19 strategy."  
20 A. I don't think that's correct.  
21 Q. Well, paragraph 106 mentions the "Starbucks  
22 strategy."  
23 A. Correct.  
24 Q. And this book is by Kathleen Hall Jamieson?  
25 A. I would say Jamieson.

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1 Q. Jamieson. Who is Kathleen Hall Jamieson?  
2 A. I believe she's a political scientist.  
3 Q. Are the sentences that you quote from her book  
4 in paragraphs 106 to 109 specifically about  
5 North Carolina?  
6 A. No.  
7 Q. And in paragraph 110 you cite a Washington Post  
8 article and a USA Today article about the Obama  
9 campaign's voter registration work.  
10 A. Uh-huh.  
11 Q. Are either of those articles about  
12 North Carolina?  
13 A. Without them in front of me, I can't say if  
14 they discussed registration in North Carolina  
15 or not.  
16 Q. To your recollection, do any of the materials  
17 you cite in paragraphs 105 to 110, do any of  
18 those materials refer to the Obama campaign's  
19 efforts in North Carolina specifically?  
20 A. Again, without the documents in front of me, I  
21 can't say conclusively one way or the other.  
22 Q. Do you know if it is considered within the  
23 prevailing norms of political science to form  
24 an opinion as to the cause of turnout patterns  
25 based on quotes in newspaper and magazine

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1 articles?  
2 MR. FARR: Objection to the form of the  
3 question.  
4 THE WITNESS: Political scientists draw  
5 conclusions from these sorts of work all the  
6 time.  
7 BY MR. HO:  
8 Q. Okay.  
9 A. Including Dr. Gronke who I believe in his 2004  
10 APSA paper draws on statements by Ken Mehlman,  
11 a Kerry campaign official, and two other  
12 officials. In his PS paper I believe, to my  
13 recollection, that he states that election  
14 officials enjoy certain laws insights into the  
15 Secretary of State in Oregon Bill Bradley -- or  
16 Bill Bradbury. Is it Bill -- Bradbury. So I  
17 don't think this is unusual.  
18 MR. HO: Those are all the questions I  
19 have. I think some others may have some so  
20 perhaps now would be a good point.  
21 THE WITNESS: What time is it?  
22 THE REPORTER: Do you want to go off  
23 the record?  
24 MR. FARR: Off the record.  
25 THE VIDEOGRAPHER: Off record at 4:41.

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1 (Brief Recess.)  
2 THE VIDEOGRAPHER: On record at  
3 4:53 p.m.  
4 EXAMINATION  
5 BY MR. NKWONTA:  
6 Q. Good afternoon, Mr. Trende. My name is Uzoma  
7 Nkwonta and I represent the North Carolina  
8 State Conference of the NAACP plaintiff group.  
9 I just want to ask you a few follow-up  
10 questions from your discussion earlier --  
11 A. Of course.  
12 Q. -- with Ms. Meza and Mr. Ho.  
13 First, you mentioned while conducting  
14 your multivariate regression that some of the  
15 variables you considered were changes in  
16 African American participation, the number of  
17 laws adopted, competitiveness and a baseline  
18 for African American participation in 2000; is  
19 that correct?  
20 A. I believe that is correct, yes.  
21 Q. And in assessing the number of laws adopted,  
22 you used an ordinal process or ordinal  
23 numbering system, right?  
24 A. For one -- for two of the regressions, yes.  
25 Q. And that means you assigned a number which

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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 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 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 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 A. Yes.  
 2 Q. And you measure turnout by looking at the  
 3 number of voters that actually voted compared  
 4 to the CVAP, correct?  
 5 A. Correct.  
 6 Q. Have you ever seen turnout measured by  
 7 comparing the number of voters to the number of  
 8 registered voters?  
 9 A. Yes.  
 10 Q. And why did you choose your method which is --  
 11 A. Oh, wait, choosing the number of voter -- so  
 12 the percentage of registered voters -- okay.  
 13 Go ahead. I just had to clear my mind for a  
 14 second. Yes. Okay.  
 15 Q. Why did you select your method rather than  
 16 measuring the number of voters over the number  
 17 of registered voters?  
 18 A. Because one -- because two of the laws in  
 19 question involve registration, and so if I  
 20 were -- as I talk it through right now, I still  
 21 think it's right -- I thought you should use  
 22 the voting adult population -- the citizen vote  
 23 eligible adult population because registration  
 24 was something that was in question with these  
 25 laws.

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1 I don't know if I -- I know I used the word  
 2 anomalous. I don't know if I called it  
 3 anomalous because I think at least what I was  
 4 getting at was that the differential between  
 5 white and African American usage of early  
 6 voting in 2008 and 2012 looks very different  
 7 than what you see in 2010, 2006, 2004, 2002.  
 8 So if I called it definitively  
 9 anomalous, I would -- I would caveat that now  
 10 potentially anomalous. That's something that  
 11 should be investigated to ask if there's  
 12 something unique that was driving that  
 13 differential about the year.  
 14 You would definitely -- if you were  
 15 going to try to make projections about what was  
 16 going forward, you would definitely want to ask  
 17 yourself are these outliers or are they part of  
 18 a trend going forward. You wouldn't want to  
 19 assume they are the basis for a trend. That is  
 20 how I read Dr. Stewart and Gronke.  
 21 Q. So you're not opining that the 2008 and 2012  
 22 election were outliers?  
 23 A. I am opining -- well, if you look at the other  
 24 years, they look like outliers, okay. What you  
 25 would label an outlying data, it's, you know,

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1 Q. So what would that do to the data if -- let me  
 2 rephrase that.  
 3 What would that do to your results if  
 4 you measured participation by comparing the  
 5 number of voters to the number of registered  
 6 voters while assessing these laws?  
 7 A. Well, I don't know what the result on the  
 8 outcome would be, but again, if part of what's  
 9 driving the effect, if any, as a registration  
 10 law seems to me you shouldn't be using the  
 11 registered population because that begs the  
 12 question. You should use the adult population  
 13 and not use your baseline something that's  
 14 being affected by the variables.  
 15 Q. So that method would be improper.  
 16 A. I think there would be problems with it. What  
 17 the effect of those problems, if any, would be,  
 18 I couldn't state as I sit here.  
 19 Q. You also mention or suggested that there was  
 20 something anomalous about 2008 and 2012 during  
 21 your testimony earlier today.  
 22 A. Oh, okay.  
 23 Q. And what were you referring to specifically?  
 24 A. I don't remember my exact wording to the best  
 25 of my recollection as I sit here right now, and

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1 some-of-these-kids-are-not-like-the-others  
 2 approach to it.  
 3 I guess the question is, though, when  
 4 you say they're anomalous, that kind of assumes  
 5 that not only is it outlying data but they're  
 6 fundamentally dissimilar than the rest, that  
 7 you really do need to remove them from the data  
 8 set, and that is a question that I think needs  
 9 to be explored. You know, was it the Obama  
 10 campaign that was driving this difference that  
 11 kind of regresses to the mean in 2010 or is it  
 12 just presidential elections. I don't think we  
 13 can just make assumptions about that.  
 14 Q. But you don't have an answer to that question  
 15 right now, do you?  
 16 A. No, no. I think there was -- I think there was  
 17 some misunderstanding said about Opinion 2.  
 18 Opinion 2 is meant first to suggest  
 19 that there are -- that the plaintiffs' experts'  
 20 exploration of the data is underdetermined or  
 21 has an omitted variable, and second it's to  
 22 provide some sort of statistical analysis  
 23 suggesting that, yes, this is an exploration  
 24 worth undertaking.  
 25 There is evidence that these are

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1 anomalous, but at the end of the day, I think  
 2 what I write, for example, in paragraph 151 and  
 3 152, "plaintiffs' experts failed to control  
 4 adequately for national effects." In other  
 5 words, they don't control for this possibility  
 6 and fail to place North Carolina surge in  
 7 minority participation during the 2000 in any  
 8 sort of context. It's just sort of laid out  
 9 there.

10 And then, like I said, the theoretical  
 11 claims plaintiffs' experts make has merit, but  
 12 the real world evidence that they offer is  
 13 thin, and that's the real problem with the  
 14 plaintiffs' reports.

15 Q. You're not here to answer that question, right?  
 16 A. I provide substantial evidence that there's --  
 17 and the only evidence that exists right now  
 18 that there's no statistically significant  
 19 relationship between these laws and African  
 20 American turnout.

21 Q. What I'm asking is something different, though.  
 22 I'm asking whether you have an answer to  
 23 whether 2008 and 2012 elections were anomalous  
 24 or outliers.  
 25 A. I have suspicions that they were outliers and

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1 that they were anomalous. I think it is hard  
 2 to say that definitively at this point without  
 3 more data and -- but I would not give -- I  
 4 don't think it would be responsible to give a  
 5 definitive answer to that question either way.

6 MR. NKWONTA: That's all the questions  
 7 I have for this moment, and I will pass the  
 8 witness.

9 MR. KAUL: Do you want me to go ahead  
 10 or do you want me to take a break?

11 MR. FARR: Is there going to be more  
 12 questions from plaintiffs?

13 MR. KAUL: Yes.

14 MR. FARR: You can go ahead and then  
 15 we'll take a short break before I start. This  
 16 is Tom Farr, so please have at it.

17 THE WITNESS: Who is this?

18 MR. KAUL: This is Josh Kaul. I'm an  
 19 attorney from Perkins Coie, and I represent the  
 20 Duke intervenor plaintiffs in this case.

21 EXAMINATION

22 BY MR. KAUL:

23 Q. As you can tell, I am obviously appearing by  
 24 conference call, so if you have any trouble  
 25 hearing anything I'm saying, certainly please

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1 let me know that. Okay?

2 A. Okay.

3 Q. First I'm going to refer to -- primarily to  
 4 your expert report in this case. So I assume  
 5 you have a copy of that in front of you; is  
 6 that right?

7 A. That is correct.

8 Q. If I refer to page numbers or paragraphs, I'm  
 9 referring to that. Also I'm going to make  
 10 reference to the challenge provisions, and by  
 11 that I mean the provisions that you talk about  
 12 in your report. Okay?

13 A. I am unclear on that.

14 Q. You are unclear, you said?

15 A. I am unclear what you meant by what you just  
 16 said.

17 Q. I'm sorry. I'm going to make reference to the  
 18 challenged provisions, and by that I mean the  
 19 provisions -- the changes in North Carolina law  
 20 that you discuss in your report.

21 A. Okay.

22 Q. Okay.

23 A. Yeah.

24 Q. So first, did you draw any conclusions about  
 25 the impact of the challenge provisions on the

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1 turnout of young voters?

2 A. Not directly, no.

3 Q. When you say not directly, did you draw  
 4 indirect conclusions?

5 A. African American and minority voters tend to be  
 6 younger so there's going to be a correlation  
 7 between opinions about race and age, but as I  
 8 said, I don't make direct conclusions about the  
 9 youth vote.

10 Q. And drawing your attention to paragraph 19 of  
 11 your report on page 4, did you compare the  
 12 restrictiveness of different voter ID laws  
 13 among the states?

14 A. No.

15 Q. Why not?

16 A. Because I didn't take plaintiffs' complaint to  
 17 make a differentiation between the different  
 18 types of photographic identification laws.

19 I took plaintiffs' complaint to be that  
 20 North Carolina should not -- if the court rules  
 21 for plaintiffs, North Carolina would not have a  
 22 photographic identification law on the books.

23 And as I stated, my general approach to  
 24 coding states was if the state had a law that  
 25 was more restrictive than what plaintiffs are

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1 asking for for relief in this case, I coded it  
 2 as not having that law, and if it was more  
 3 permissive, I coded it as having that law.  
 4 Q. You didn't draw any conclusions as to whether  
 5 North Carolina's law was more or less  
 6 restrictive, the voter ID law, that is, than  
 7 the voter ID laws of other states?  
 8 A. No.  
 9 Q. All right. And let me draw your attention to  
 10 paragraph 24 in the report. You say that you  
 11 classified Connecticut and Massachusetts as  
 12 refusing to count votes cast in the wrong  
 13 precinct even though they count votes cast so  
 14 long as they're cast in the correct city or  
 15 town; is that right?  
 16 A. Correct.  
 17 Q. Now, the reason you do that is because that  
 18 rule is more permissive -- I'm sorry -- more  
 19 restrictive than North Carolina law was prior  
 20 to HB 589; is that right?  
 21 A. Yes.  
 22 Q. All right. But this rule that Connecticut and  
 23 Massachusetts has is also more permissive than  
 24 the rule that North Carolina has as a result of  
 25 HB 589, right?

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1 A. Yes.  
 2 Q. But for purposes of the analysis, the ordinal  
 3 analysis you conduct, these are treated as  
 4 though they're the same as North Carolina; is  
 5 that right?  
 6 A. Yes.  
 7 Q. And Opinion 1 on page 4 is with respect to  
 8 North Carolina laws following HB 589; is that  
 9 right?  
 10 A. I believe that's right.  
 11 Q. And is it your understanding that in this  
 12 litigation, the constitutionality of the  
 13 provisions that are implemented by HB 589 is  
 14 what's at issue?  
 15 A. I'm not going to opine as to the nature of  
 16 plaintiffs' complaint.  
 17 Q. Well, what's your understanding?  
 18 A. My understanding is that there is a  
 19 constitutional claim made by plaintiffs, but I  
 20 don't know if that is the only claim or if that  
 21 is the major claim they are pursuing.  
 22 My understanding it's not the only  
 23 claim, although I have not read the recent  
 24 intervenor's claim.  
 25 Q. And is it your understanding the provisions

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1 that are at issue are the ones that are the  
 2 result of HB 589 rather than the ones that  
 3 preceded HB 589?  
 4 A. I don't know if that's -- if what you're trying  
 5 to ask me is, you know, would there have been a  
 6 lawsuit pre 589. You know, I'm assuming there  
 7 wouldn't be and I assume the lawsuit is about  
 8 the changes as a result of 589.  
 9 Q. What I'm wondering is why you compared the  
 10 regimes to North Carolina law prior to HB 589  
 11 rather than North Carolina law after HB 589.  
 12 A. Because the baseline -- the question that I'm  
 13 trying to answer here is what effect is created  
 14 by this movement with 589 vis-a-vis the  
 15 baseline that plaintiffs are trying to  
 16 reestablish in this case.  
 17 Q. So the ultimate question is what the effect of  
 18 the provisions implemented by HB 589 will have,  
 19 right?  
 20 MR. FARR: Objection to the form.  
 21 BY MR. KAUL:  
 22 Q. You can answer.  
 23 A. What do you mean by the ultimate question?  
 24 Q. Well, Opinion 1 you draw a conclusion about the  
 25 impact of HB 589 with respect to whether the

295

1 voting reforms place North Carolina within the  
 2 mainstream; is that right?  
 3 A. I don't think there's any conclusion about the  
 4 impact of these laws in Opinion 1.  
 5 Q. Well, Opinion 1 states that the voting reforms  
 6 contained in HB 589 place the state within the  
 7 mainstream of American voting laws; is that  
 8 right?  
 9 A. Correct.  
 10 Q. So what the law was prior to HB 589 doesn't  
 11 impact that opinion; is that right?  
 12 A. I'm sorry, I really don't understand that  
 13 question.  
 14 Q. How does North Carolina law prior to HB 589  
 15 affect whether the reforms in HB 589 place the  
 16 state within the mainstream of American voting?  
 17 A. Because as I understand it, the relief the  
 18 plaintiffs are asking for here is to implement  
 19 at least with respect to these five laws status  
 20 quo ante in North Carolina, and so you compare  
 21 where North Carolina was with the old regime,  
 22 you compare it in the new regime with respect  
 23 to the baseline the plaintiffs are asking for.  
 24 Q. Why is the baseline relevant to whether the law  
 25 following HB 589 is within the mainstream of

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1 American voting laws?  
 2 A. Because that is -- the voting laws, as I  
 3 explained, that are examined in this opinion by  
 4 the laws that are asked for -- that relate to  
 5 the relief that plaintiffs are asking for.  
 6 If plaintiffs had asked for relief  
 7 before these laws, those are the laws that I  
 8 would have examined.  
 9 Q. Right. But aren't you complaining two separate  
 10 issues, mainly what plaintiffs are asking for  
 11 and what HB 589 does?  
 12 A. I don't know that those are separate issues.  
 13 I'm assuming that what plaintiffs are asking  
 14 for is related to what 589 does. I don't see  
 15 how they're separate.  
 16 Q. Well, there are certain provisions that as a  
 17 result of 589 are more restrictive than other  
 18 states' laws but prior to HB 589 were less  
 19 restrictive than other states' laws, right?  
 20 A. Can you repeat that? I'm sorry, I'm just  
 21 having a hard time following this line of  
 22 questioning. I'm honestly not trying to be  
 23 difficult.  
 24 Q. Let me draw your attention to paragraph 24  
 25 again.

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1 A. Okay.  
 2 Q. So there it's clear that Connecticut and  
 3 Massachusetts law are more permissive than  
 4 North Carolina law after HB 589 but they are  
 5 less permissive than North Carolina law prior  
 6 to HB 589; is that right?  
 7 A. I think that's right, yes.  
 8 Q. But they're treated for purposes of your  
 9 analysis as though they are the same as the law  
 10 post HB 589, correct?  
 11 A. Because the baseline for the analysis is the  
 12 relief that plaintiffs are asking for.  
 13 Q. Now, you say in Figure 2, page 13, you  
 14 categorize North Carolina as one of the nine  
 15 most restrictive states with respect to the  
 16 laws at issue; is that right?  
 17 A. I don't know that I recall it restrictive but  
 18 it is coded as a zero.  
 19 Q. Well, when you were drawing the conclusion that  
 20 North Carolina was in the mainstream, that was  
 21 based on these challenge provisions; is that  
 22 right?  
 23 A. Correct.  
 24 Q. North Carolina's tied for the most -- it's on  
 25 the far end, it's tied for the far end of the

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1 poll; is that right?  
 2 A. It is one of nine states that are coded as a  
 3 zero, correct.  
 4 Q. So you still classify it as being within the  
 5 mainstream?  
 6 A. Yes, it is close to the median.  
 7 Q. How is being one of nine states on the far end  
 8 close to the median?  
 9 A. Because there are 17 states that have one and  
 10 that suggests that the median is one such law  
 11 and having zero is close to one and is much  
 12 closer than five.  
 13 Q. So essentially no state under this analysis  
 14 could be outside the mainstream in terms of its  
 15 restrictiveness; is that right?  
 16 A. I believe a state with five such laws, it would  
 17 be the only state with five such laws, would be  
 18 outside the mainstream with respect to these  
 19 laws.  
 20 Q. So it can be outside the mainstream with  
 21 respect to its permissiveness under this  
 22 analysis but not with respect to its  
 23 restrictiveness?  
 24 A. Because of the legal regimes that are in place  
 25 in different states and because of the five

299

1 laws that plaintiffs have opted to challenge, a  
 2 state with no such law is close to the median  
 3 of American politics.  
 4 Q. Right. And it would be impossible under this  
 5 analysis for a state to make the laws at issue  
 6 so restrictive that it's outside the  
 7 mainstream, right?  
 8 A. With respect to the five laws that the  
 9 plaintiffs have opted to challenge in this  
 10 state -- in this case, you could not get away  
 11 from the median to the left on this, no.  
 12 Q. All right. By the way, page 14, paragraph 60  
 13 states there are nine of those states and then  
 14 it lists eight. Do you know what the ninth one  
 15 is?  
 16 A. Not as I sit here now off the top of my head.  
 17 Q. As you sit there, is it your understanding that  
 18 there are in fact nine and that one was just  
 19 left out or there are actually eight?  
 20 A. I'm going to get out a calculator, if that is  
 21 okay with you, and add up the jurisdictions  
 22 that I describe.  
 23 I believe the totals that I have here  
 24 is correct and I just left a state off my  
 25 list --

300

1 Q. Okay.

2 A. -- because they add up. The states that I list

3 or the numbers that I have 5, 7, 13, 17 and 9

4 add up to 51.

5 Q. All right. Let me draw your attention to

6 paragraph 63 on page 15. You write that "Even

7 accepting, arguendo, their demonstration that

8 African Americans" and then you continue. Do

9 you see that?

10 A. Yes.

11 Q. Do you draw any conclusions with respect to

12 whether the plaintiffs' experts had in fact

13 demonstrated those points?

14 A. No.

15 Q. So you don't agree with those points

16 necessarily but you don't dispute them either?

17 A. Right. I assume for sake of argument because I

18 haven't conducted the same sort of

19 investigation that plaintiffs' experts

20 conducted into those questions. I just assume

21 it for the sake of argument.

22 I don't know or I didn't know when

23 writing this report what other defense experts

24 might be opining on.

25 Q. All right. Now, in paragraph 79 --

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1 MR. FARR: Excuse me. Can we get an

2 update on time?

3 THE VIDEOGRAPHER: Six hours and

4 47 minutes.

5 MR. FARR: Six hours and 47 minutes.

6 MR. KAUL: Thank you. I'm trying to

7 move quickly due to the time.

8 BY MR. KAUL:

9 Q. Paragraph 79 you said that with respect to the

10 practices at issue -- and I'm not quoting you

11 there, but with respect to practices at issue,

12 is it fair to say that you characterize

13 North Carolina as highly permissive?

14 A. As of 2012, yes.

15 Q. Now, was that your assessment for

16 North Carolina's election laws overall or just

17 with respect to the provisions at issue?

18 A. With respect to the provisions at issue.

19 Q. All right. Let me draw your attention to

20 Figure 11 on page 31 which has been the subject

21 of some discussion?

22 Now, first with respect to the

23 right-hand column regarding the number of laws

24 adopted, are these figures the same as those

25 included in Figure 2 except that they don't

302

1 include voter ID?

2 A. No.

3 Q. How are they different?

4 A. In addition to the voter ID issue,

5 North Carolina is coded as a 4 rather than a

6 zero.

7 Q. Okay. Other than that are they the same?

8 A. Yes, I believe so.

9 Q. Are they at least intended to be the same?

10 A. I'm sorry.

11 Q. They were intended to be the same at least --

12 strike that.

13 Now, you were saying before that you

14 counted a state as having adopted or having

15 laws adopted regardless of when those laws were

16 actually adopted; isn't that right?

17 A. Yes.

18 Q. And you gave an example earlier about Minnesota

19 and Wisconsin having adopted their same-day

20 registration laws in the 1970s.

21 Do you recall that?

22 A. Yes.

23 Q. Wouldn't an expert expect any increase in the

24 African American vote share resulting from

25 those laws to have taken place in the years

303

1 shortly after their adoption, that is, the

2 1970s or 1980s?

3 A. Some experts might.

4 Q. What about you?

5 A. Well, as I said in our earlier discussion --

6 not our earlier discussion but collectively

7 "our" -- I think there's a judgment call to be

8 made here.

9 I think you have to at least admit of

10 the possibility that as the Obama campaign in

11 some of these states was pressing forward with

12 early voting and encouraging voters to vote

13 that to the extent that these laws do affect

14 turnout that already extant laws that were

15 being used to a different degree in 2008 and

16 2012 could create an effect. You have to make

17 the assumption one way or the other.

18 Q. Well, I'm asking you with respect to the

19 same-day registration laws in Wisconsin and

20 Minnesota, what is your judgment as to whether

21 they were likely to have an effect prior to

22 2000 or after 2000?

23 A. I don't think that's an either/or. They can

24 have an effect in both.

25 Q. When do you think they had their primary

304

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

305

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

306

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.

307

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.

308

1 Q. And an 82 percent chance that there was an  
 2 effect, right?  
 3 A. Yes.  
 4 Q. All right. Regarding the controls, let me draw  
 5 your attention to paragraph 122.  
 6 A. Uh-huh.  
 7 Q. You mentioned earlier the example of California  
 8 and how Karl -- I don't know if you mentioned  
 9 Karl Rove or how the Bush campaign wasted it  
 10 his time there.  
 11 A. Yes.  
 12 Q. Did the Gore campaign invest significant  
 13 resources in California in that campaign also?  
 14 A. I don't believe so.  
 15 Q. All right. And Republican voters are  
 16 overwhelmingly white; is that right?  
 17 A. That is correct.  
 18 Q. And African American voters are overwhelmingly  
 19 Democratic?  
 20 A. Yes.  
 21 Q. So if the Republicans invested resources but  
 22 Democrats did not in California in 2000,  
 23 wouldn't you expect not to see a noticeable  
 24 increase in African American turnout as a  
 25 result of the expenditure of those resources?

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1 A. Well, it depends how you think that investing  
 2 of resources works. I can actually have an  
 3 understanding of how that would have an effect  
 4 by having advertisements on the air, letting  
 5 everyone know that there's -- you know, that  
 6 there's an election coming on, what the  
 7 people's positions are, giving the impression  
 8 and making statements that it's going to be a  
 9 close race. I wouldn't say that there wouldn't  
 10 be an effect.  
 11 Q. It's also possible, though, that the Bush  
 12 campaign targeted its voters with its  
 13 commercials and particular its turnout efforts  
 14 and that there would have been minimal effect  
 15 on African Americans; is that right?  
 16 A. Oh, it's possible.  
 17 Q. Now, when you were using those states as  
 18 controls, did you treat each state the same or  
 19 did you -- did bigger states have a bigger  
 20 impact because of their population?  
 21 A. Can you ask that a different way?  
 22 Q. Did you treat Arkansas and California the same  
 23 in terms of their impact on the analysis  
 24 because they're both states or was California  
 25 much more significant because it's larger?

310

1 A. Oh, I see what you're saying. I didn't weight  
 2 them by population in any sort of way with  
 3 respect to paragraph 122.  
 4 Q. Okay. So California was treated the same as  
 5 Arkansas?  
 6 A. Right. So if California -- if California was  
 7 competitive in 2000, it was a 1 and if Arkansas  
 8 was competitive in 2000 it was a 1, and if they  
 9 weren't competitive in 2012, they were both  
 10 zeros or whatever the codes are. It would be  
 11 the same.  
 12 Q. Now, you did not do any analysis of the impact  
 13 of the laws at issue on waiting times to vote;  
 14 is that right?  
 15 A. No. Yes, that is correct, I did not do that  
 16 analysis.  
 17 Q. And you didn't do any analysis on the amount of  
 18 time at work that would be lost as a result of  
 19 these provisions; is that right?  
 20 A. Assuming that there is such work to be --  
 21 amount of time at work to be lost, I did not  
 22 conduct any analysis of it.  
 23 Q. And you didn't do any analysis of any increased  
 24 expense required for obtaining documents  
 25 necessary for voter ID as a result of this law,

311

1 right?  
 2 A. I did not look into the expense of documents  
 3 for voter ID.  
 4 Q. At the very end of your report -- and I realize  
 5 I'm almost out of time so I will conclude  
 6 here -- you quote in paragraph 153 Crowell. Do  
 7 you see that?  
 8 A. Yes.  
 9 Q. Are you endorsing what he says in that quoted  
 10 statement?  
 11 A. I don't know if I endorse every word of it, but  
 12 I think the general thrust of it I think is a  
 13 good summary of what is presented in my report.  
 14 Q. Which words in particular do you not endorse?  
 15 A. Well, I didn't conduct an examination, for  
 16 example, on whether it is -- noticeably easier  
 17 to register to vote and to stay on the rolls.  
 18 I think there is a judgment noticeably  
 19 that I don't know if I agree with to the extent  
 20 that he is making it. I don't have an opinion  
 21 on that.  
 22 Q. Do you agree that it's easier to register to  
 23 vote or that it was, I'm sorry, prior to  
 24 HB 589?  
 25 MR. FARR: Objection to the form.

312

1 BY MR. KAUL:  
 2 Q. You can answer.  
 3 A. For some people it might be easier to vote --  
 4 to register to vote with same-day registration  
 5 and pre-registration, but I don't know if it's  
 6 noticeably easier.  
 7 Q. All right. And is it true that about the same  
 8 proportion of citizens go to the polls in  
 9 North Carolina now as they did before?  
 10 A. Well, I don't think that's right with respect  
 11 to if his baseline is 32 years ago, but I don't  
 12 recall what North Carolina's turnout was  
 13 overall in 1980.  
 14 MR. FARR: Josh, are you wrapping up?  
 15 We're at seven hours.  
 16 MR. KAUL: I am, yeah. I appreciate  
 17 the little leeway you're granting me here.  
 18 BY MR. KAUL:  
 19 Q. I'm sorry. Why did you refer to -- I'm sorry.  
 20 Okay.  
 21 But certainly between 2000 and 2012  
 22 North Carolina saw a significant increase in  
 23 voter turnout; is that right?  
 24 A. Without the data in front of me, I can't say  
 25 definitively, but I believe that is correct.

313

1 MR. KAUL: All right. I think that's  
 2 it for me. Thank you very much.  
 3 MR. FARR: We're going to take a very  
 4 short break, five minutes.  
 5 THE VIDEOGRAPHER: Off record at 5:51.  
 6 (Brief Recess.)  
 7 THE VIDEOGRAPHER: On record at  
 8 6:00 p.m.  
 9 EXAMINATION  
 10 BY MR. FARR:  
 11 Q. Mr. Trende, I'm Tom Farr. I represent the  
 12 defendants in this case.  
 13 We know each other, right?  
 14 A. Yes.  
 15 Q. I am going to ask the court reporter to mark an  
 16 exhibit as Exhibit 121 and then she can  
 17 distribute it to the rest of the attorneys here  
 18 today.  
 19 (WHEREUPON, Defendant's Exhibit 121 was  
 20 marked for identification.)  
 21 BY MR. FARR:  
 22 Q. Mr. Trende, can you tell us what Exhibit 121  
 23 is?  
 24 A. It is a supplement to the declaration that the  
 25 state filed earlier in this case.

314

1 Q. And did you prepare that?  
 2 A. I did prepare this.  
 3 Q. When did you prepare it?  
 4 A. I wrote this last night.  
 5 Q. Okay. And you were present at the beginning of  
 6 your deposition?  
 7 A. Yes.  
 8 Q. And did you recall that I offered to give this  
 9 to counsel for the plaintiffs at the beginning  
 10 of the deposition and they did not take it?  
 11 A. I do recall that.  
 12 Q. And can you tell us what this is?  
 13 A. This is a correction to errors in my regression  
 14 analysis. After reading Dr. Gronke's analysis  
 15 that one of the variables had miscoded, I came  
 16 to agree with his analysis of that miscoding,  
 17 and being paranoid that led me to check the  
 18 rest of my coding and that's when I realized  
 19 that I had used the coding for the laws  
 20 variable as they exist today, not as they had  
 21 existed in 2012 and so I corrected the data.  
 22 Q. Did you check to see whether any of the errors  
 23 that you discovered changed any of the opinions  
 24 you've offered in your original report?  
 25 A. They do not.

315

1 Q. All right. I am going to ask -- go ahead,  
 2 please.  
 3 A. The values do change somewhat, but nothing  
 4 changes the ultimate opinion that there's  
 5 no -- that there's no statistically significant  
 6 impact.  
 7 Q. Okay.  
 8 A. And those changes in the values are all listed  
 9 in this declaration.  
 10 Q. All right, sir.  
 11 I am going to ask the court reporter to  
 12 hand you an exhibit that I am going to ask her  
 13 to mark as Exhibit 122.  
 14 (WHEREUPON, Defendant's Exhibit 122 was  
 15 marked for identification.)  
 16 BY MR. FARR:  
 17 Q. Mr. Trende, do you know who prepared  
 18 Exhibit 122?  
 19 A. I did.  
 20 Q. And who asked you to do this?  
 21 A. Tom Farr did.  
 22 Q. And could you please tell us what Exhibit 122  
 23 is.  
 24 A. It is -- it's a little bit difficult to  
 25 explain, but basically it looks at Virginia

316



1 voter turnout by race from 1998 to -- through  
 2 2012 and makes comparisons between black and  
 3 white turnout.  
 4 Q. Okay. And so you have elections listed for '98  
 5 through 2012?  
 6 A. That's correct.  
 7 Q. And that includes presidential elections and  
 8 off-year elections?  
 9 A. That's correct.  
 10 Q. And then the two groups that you compare are  
 11 black and white?  
 12 A. African American and white, yes.  
 13 Q. And what does white mean?  
 14 A. For purposes of this table, white is shorthand  
 15 to non-Hispanic white.  
 16 Q. Okay. And then the next column, Percent of  
 17 Citizen Voting Age Population, could you tell  
 18 us what that is?  
 19 A. For each election year, it is the percentage of  
 20 the citizen voting age population reflected by  
 21 the Current Population Survey for African  
 22 Americans and non-Hispanic whites.  
 23 Q. Okay. What does the column that's labeled  
 24 Percentage of the Electorate?  
 25 A. That is the -- so this is a little different

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1 than what I had shown before. It is the  
 2 percentage -- it is the share of the electorate  
 3 for both African American and non-Hispanic  
 4 whites in Virginia.  
 5 Q. And then the next column says Under/  
 6 Overrepresentation of the Electorate. What is  
 7 that?  
 8 A. That is the difference between the percentage  
 9 of the electorate and the percent of the  
 10 citizen voting age population. If the -- if a  
 11 group was a smaller share of the electorate  
 12 than its population would suggest, it is  
 13 considered a negative value and if it's more  
 14 it's a positive value.  
 15 Q. Then what is the final column, Difference in  
 16 Under/Overrepresentation?  
 17 A. That's the -- that's the white share -- that's  
 18 the over -- or the overrepresentation of the  
 19 white share less the overrepresentation of the  
 20 African American share which is in many  
 21 instances negative so it's really  
 22 underrepresentation.  
 23 Q. Okay. Now, I want to switch gears to another  
 24 topic.  
 25 Do you remember when counsel for -- I

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1 believe it's for the League of Women Voters was  
 2 talking to you about Dr. Gronke and Dr. Stewart  
 3 used validated data. Do you remember that line  
 4 of questioning?  
 5 A. Yes.  
 6 Q. Did he ask you how many states that they looked  
 7 at in using validated data?  
 8 A. I don't believe he did.  
 9 Q. Do you remember from the reports that they  
 10 prepared how many states they looked at using  
 11 validated data?  
 12 A. I believe in depth one and with respect to a  
 13 discreet question another one.  
 14 Q. So -- and what were those?  
 15 A. North Carolina and Florida.  
 16 Q. Which one was the validated used for only a  
 17 discreet issue?  
 18 A. For Florida.  
 19 Q. What was that discreet issue?  
 20 A. The early voting turnout in 2012.  
 21 Q. Okay. Now, could you turn to page 19 of your  
 22 report. I'm looking at Figure 5 and 6.  
 23 A. Yes.  
 24 Q. Now, it's my understanding that the lines that  
 25 you drew on Figure 5 and 6 are based upon

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1 what's been described as the CPS data.  
 2 A. Yes.  
 3 Q. So that's not validated data, right?  
 4 A. Correct.  
 5 Q. Okay. Have any of the plaintiffs' experts  
 6 prepared versions of Figure 5 or 6 to refute  
 7 what's depicting here, Figures 5 and 6?  
 8 A. No, they haven't.  
 9 Q. Did either Dr. Gronke or Dr. Stewart use  
 10 validated data for North Carolina or  
 11 Mississippi to respond to the representations  
 12 you're making on Figures 5 and 6?  
 13 A. No, they didn't offer any proof that these  
 14 lines are off or wrong.  
 15 Q. Okay. So plaintiffs' experts did not use  
 16 validated data to use what you're representing  
 17 in Figures 5 and 6 are somehow incorrect or not  
 18 properly weighted; is that correct?  
 19 A. No. They only suggested it as a possibility.  
 20 Q. But they didn't use the validated data to draw  
 21 comparable lines for North Carolina and  
 22 Mississippi, did they?  
 23 A. No.  
 24 Q. And I recall that one of the experts added a  
 25 line for Alabama.

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1 A. Yes. Dr. Gronke did.  
 2 Q. What data did Dr. Gronke use? Did he use  
 3 validated data for that or did he use the CPS  
 4 data, if you remember?  
 5 A. Without the report in front of me, it's  
 6 difficult -- I can't say definitively, but my  
 7 understanding is that he drew on CPS data for  
 8 that.  
 9 Q. Now, I wanted to ask you about Florida a little  
 10 bit here if I can find the right page. I'm  
 11 looking for the page of your report about the  
 12 turnout in Florida in 2012. I got it. It's  
 13 page 39 of your report. Okay.  
 14 Now, who won the presidential election  
 15 in Florida in 2012?  
 16 A. President Obama.  
 17 Q. Okay. And there was some testimony about the  
 18 share of the African American percentage of the  
 19 electorate in Florida that we went over earlier  
 20 today. Do you recall that?  
 21 A. I know we discussed the numbers in the chart on  
 22 Figure 15.  
 23 Q. All right. Let me ask you: In Florida, was  
 24 there lower turnout in 2012 than in 2008?  
 25 A. In Florida, no. Turnout increased slightly

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1 between 2012 and 2008.  
 2 Q. What about participation between non-Hispanic  
 3 whites versus African Americans?  
 4 A. From 2008 to 2012, the participation rate, as I  
 5 say in paragraph 142, was down 3.3 percent  
 6 among non-Hispanic whites but only .9 percent  
 7 among African Americans.  
 8 Q. And what did you mean by participation?  
 9 A. I mean the share of the citizen voting age  
 10 population that voted.  
 11 Q. So assuming there were long lines in Florida as  
 12 we've heard today described, would this  
 13 information suggest that they may have had  
 14 bigger impact on white participation than  
 15 African American participation?  
 16 A. It suggests --  
 17 MR. HO: Objection; form.  
 18 THE WITNESS: It suggests they may have  
 19 done so.  
 20 BY MR. FARR:  
 21 Q. I want to talk to you about your predictions  
 22 for the 2012 election.  
 23 A. Okay.  
 24 Q. And we had -- this is -- I confused myself with  
 25 an earlier question. I think we had testimony

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1 that the black percentage of the electorate for  
 2 the 2012 election was higher than in 2008.  
 3 A. I honestly can't remember at this point what  
 4 the exact question was.  
 5 Q. Okay. Well, was there -- did whites turnout --  
 6 when you predicted that earlier in the year  
 7 that you thought Romney had a chance in  
 8 winning, what assumptions did you make about  
 9 white turnout at that point in time?  
 10 A. Oh, I thought -- I thought that white turnout  
 11 was going to at the very least be stable, if  
 12 not grow because the white share of the  
 13 population had grown.  
 14 Q. What in fact happened in 2012?  
 15 A. The number of white voters -- and I misspoke.  
 16 The white share of the population didn't grow  
 17 but the number of whites grew so you would  
 18 expect total number of white voters to grow as  
 19 well, just as you would with most other  
 20 demographic groups, but instead the reason that  
 21 I was wrong about the white share of the  
 22 electorate is that the number of whites  
 23 actually dropped by about 5 million.  
 24 Q. Okay. And did that -- did that result in a  
 25 higher percentage of the electorate being black

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1 in 2012 than in 2008?  
 2 A. Yes. If the number -- if the number of whites  
 3 who -- non-Hispanic whites who voted in 2008  
 4 had turned out in 2012 and kept pace with their  
 5 increasing -- with population growth, yeah,  
 6 that would have decreased the African American  
 7 share of the electorate.  
 8 Q. Okay. I want to ask you a question about the  
 9 CPS data, and there was some questions about  
 10 why you didn't weight the CPS data.  
 11 Could you explain why you didn't weight  
 12 the CPS data?  
 13 A. Yeah. So -- so there's a couple reasons. The  
 14 first is that a large portion of the political  
 15 science literature or at least some of the  
 16 political science literature extant on this  
 17 doesn't employ weighting techniques. So I  
 18 don't believe that every political science --  
 19 every piece of political science literature  
 20 that's been written that didn't employ  
 21 weighting techniques is presumptively invalid.  
 22 That would be a huge declaration to make.  
 23 So with that, I didn't think there was  
 24 anything wrong with not using weighting, but  
 25 there are some additional reasons, as I

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1 explained I think in the first  
 2 cross-examination.  
 3 Most of the -- or at least -- at the  
 4 very least many of the political science  
 5 analyses here are doing the -- the individual  
 6 data which precludes you from doing change over  
 7 time, but when you're doing change over time,  
 8 there will be stability -- at least some of the  
 9 over report will cancel out within a state.  
 10 Because I'm comparing state to state,  
 11 it's less of an issue, but most importantly I'm  
 12 not looking at overall turnout. I am looking  
 13 at turnout particularly among African  
 14 Americans.  
 15 So a lot of the differences that Mr. Ho  
 16 was discussing aren't as much of an issue. In  
 17 the regression analysis is doesn't matter if  
 18 the over report rates between whites and  
 19 African Americans are different because the  
 20 regression analysis is only looking at African  
 21 Americans.  
 22 And the final point, and this really  
 23 kind of gets down into the weeds, but when you  
 24 drop observations -- and when you drop your  
 25 observations, you're still making an assumption

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1 about the way those dropped observations vote.  
 2 You're effectively weighting them as having  
 3 voted in the same way that the respondents  
 4 voted. That may or may not be true and  
 5 especially may or may not be true with regard  
 6 to different groups, but then -- so once you  
 7 drop the populations, you created this over --  
 8 when you drop your observations, you actually  
 9 make the over report show up worse.  
 10 So what a lot of people do -- this was  
 11 in a 2013 Public Opinion Quarterly article.  
 12 The recommendation is to after you do that,  
 13 weight it back to the actual turnout as found  
 14 by Dr. McDonald in a given state.  
 15 And so that again has assumption --  
 16 that builds in assumptions about how people  
 17 would and would not have voted. And more  
 18 importantly, when you weight back to the  
 19 population of the state, you're weighting back  
 20 to total validated turnout, not just to African  
 21 American turnout, which is what the subject of  
 22 my investigation is. It may skew the African  
 23 American turnout further.  
 24 Q. Now, your retrogression analysis, did you look  
 25 at 34 states?

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1 A. Yes, 33 states and the District of Columbia.  
 2 Q. Why did you pick those states?  
 3 A. Because the Census Bureau didn't feel  
 4 comfortable publishing top line numbers for  
 5 those states consistently.  
 6 Q. Did all those states have validated data on  
 7 voting and registration?  
 8 A. No.  
 9 Q. Does that have any connection to your decision  
 10 to use the CPS data?  
 11 A. Yes. I mean, I could use -- excuse me --  
 12 actual voting data in North Carolina for the  
 13 regression analysis, but if I were to then  
 14 include, say, Oklahoma, which I don't believe  
 15 has validated data by race, I would have to use  
 16 the CPS there and then I'm doing an apples-to-  
 17 oranges comparison, and given that it made  
 18 sense --  
 19 (Brief Interruption.)  
 20 THE WITNESS: -- to keep the apples to  
 21 apples consistent throughout.  
 22 BY MR. FARR:  
 23 Q. Okay. Now, did the plaintiffs' experts conduct  
 24 a retrogression analysis comparing other states  
 25 in these voting practices?

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1 A. There was no regression analysis in the  
 2 plaintiffs' reports to my recollection.  
 3 Q. And did the plaintiffs' experts attempt to  
 4 account for the impact of the Obama campaign on  
 5 early voting?  
 6 A. No. Dr. Stewart submitted over 200 pages of  
 7 expert report and exhibits and I believe the  
 8 word Obama appears in it four times, once in  
 9 the bibliography.  
 10 Q. Did any of the plaintiffs' experts attempt to  
 11 account for the Obama campaign's impact on  
 12 same-day registration?  
 13 A. No, not to my knowledge.  
 14 Q. Did any of the plaintiffs' experts attempt to  
 15 account for the Obama campaign's impact on  
 16 out-of-precinct voting?  
 17 A. No. And that was surprising given that  
 18 Dr. Gronke to my recollection declares in his  
 19 surrebuttal brief that everyone knows that  
 20 these things have effect on turnout.  
 21 Q. Did any of the plaintiffs' experts -- I may  
 22 have asked this already -- did they attempt to  
 23 discern the impact of the Obama campaign on  
 24 pre-registration?  
 25 A. Not to my recollection.

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1 Q. And on same-day registration?  
 2 A. Not to my recollection.  
 3 Q. Okay. You were asked by counsel about all your  
 4 television appearances?  
 5 A. Not all of them.  
 6 Q. We didn't get them all?  
 7 A. No.  
 8 Q. Could you tell us about some of your other  
 9 television appearances or appearances with the  
 10 news media?  
 11 A. Well, basically anyone who asks me to -- within  
 12 reason, anyone who asks me to be on a  
 13 television show or radio show, I'll give  
 14 them -- if it's about an election-related  
 15 topic, I will generally appear if I'm  
 16 available.  
 17 Q. Well, can you name some of these individuals  
 18 who you've gone on TV with?  
 19 A. Well, besides the ones that Mr. Ho listed off,  
 20 I've been on the Chris Matthews Show.  
 21 Q. Would he be considered conservative?  
 22 A. I don't think so.  
 23 Q. What else?  
 24 A. The Steve -- Up With Steve Kornacki.  
 25 Q. Is he conservative?

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1 A. No.  
 2 Q. Okay. Anyone else?  
 3 A. I'm sure I've been other television shows, but  
 4 those are the ones -- I've been on CNN Radio  
 5 multiple times. I've been on the Diane Rehm's  
 6 show. I've been on an NPR show out of  
 7 Philadelphia. I can't remember the name of it.  
 8 I've been on NPR a couple times. I've been on  
 9 the Brian Lehrer show. And I wouldn't  
 10 characterize Dan or Brian Lehrer as  
 11 conservatives to my knowledge.  
 12 Q. Are you familiar with I think it's a blog  
 13 called the Daily Kos?  
 14 A. Oh, yes.  
 15 Q. Have you had any involvement with the Daily  
 16 Kos?  
 17 A. They cite to me pretty regularly. I have a  
 18 good rapport with their editor in chief.  
 19 Q. Do you remember Arlen Specter?  
 20 A. Oh, I also have a good rapport with Nate Silver  
 21 at FiveThirtyEight who cites to me frequently.  
 22 Q. Okay. Thank you.  
 23 Do you have -- and he works for the  
 24 New York Times?  
 25 A. He worked for the New York Times and now runs

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1 his blog as part of -- as part of ESPN and  
 2 Grantland.  
 3 Q. And he cited you while he was working for the  
 4 New York Times?  
 5 A. Yes.  
 6 Q. And would that be considered a conservative  
 7 publication?  
 8 A. I don't think anyone would call it  
 9 conservative.  
 10 Q. All right. What about -- you mentioned to me  
 11 something about unskewed polls.  
 12 A. So there's this phenomenon, I think I actually  
 13 refer to it or link to it in one of the  
 14 articles that Mr. Ho gave to me, though he  
 15 didn't have me read that or ask me about it.  
 16 There was this phenomenon in 2012 where  
 17 a lot of conservatives looked at polls and said  
 18 there aren't near enough Republicans in those  
 19 polls, these polls are skewed, and they tried  
 20 to, quote, "unskew the polls" and say actually  
 21 Mr. Romney or Governor Romney is doing quite a  
 22 bit better than the polls suggest because you  
 23 should have, you know, 37 percent of  
 24 Republicans rather than 31 percent.  
 25 Q. Okay. Do you remember Senator Specter?

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1 A. Oh, and on the unskewed polls phenomenon, one  
 2 of the things about it, I wrote the very first  
 3 article to my knowledge that was critical of it  
 4 and said this is absolutely ridiculous. You  
 5 can't -- you can't look at these polls or at  
 6 least it's extremely problematic to look at  
 7 these polls and reweight the party  
 8 identification.  
 9 Some people do it, but because party  
 10 identification isn't a fixed effect, you know,  
 11 the argument that these conservatives were  
 12 making was invalid.  
 13 Q. So the conservatives were making arguments that  
 14 all the polls were skewed and you disputed  
 15 that?  
 16 A. Yes.  
 17 Q. And their polls didn't turn out to be so good  
 18 in 2012, did they?  
 19 A. No.  
 20 Q. I've asked you a couple times about Senator  
 21 Specter. Can you tell us about any predictions  
 22 or thoughts you had about Senator Specter when  
 23 he switched parties?  
 24 A. Yeah. When he switched parties, I wrote an  
 25 article -- I might have even called the Club

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1 for Growth a cancer on the Republican Party or  
 2 I might have taken it out, but anyway, I said  
 3 that I didn't think that Pat Toomey would have  
 4 any chance of winning that election to my  
 5 recollection.  
 6 Q. So you missed out on a Republican with Romney  
 7 and you missed out on the Democrats with  
 8 Specter, I guess.  
 9 A. I didn't miss out on a Republican with Romney.  
 10 Early in the year, as was the case with Nate  
 11 Silver, I thought that Romney was likely to  
 12 win, but once the Democratic convention  
 13 occurred and President Obama jumped out to the  
 14 lead in the polls, I think I pretty  
 15 consistently stated that Mr. Obama or President  
 16 Obama was the favorite.  
 17 Q. Did you ever predict that Romney would win  
 18 after the Democratic convention?  
 19 A. I don't believe I did.  
 20 Q. Do you have any projections about the senate  
 21 elections in 2016?  
 22 A. I have.  
 23 Q. What are they?  
 24 MR. NKWONTA: Objection. I think these  
 25 are beyond the scope of the direct.

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1 THE WITNESS: That the Democrats would  
 2 be likely to pick up four to five seats in any  
 3 neutral year.  
 4 MR. FARR: Okay. That's all I have.  
 5 Thank you, Mr. Trende.  
 6 THE WITNESS: Thank you.  
 7 THE VIDEOGRAPHER: This concludes the  
 8 deposition. The time is 6:23.  
 9 [SIGNATURE RESERVED]  
 10 [DEPOSITION CONCLUDED AT 6:23 P.M.]  
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1 A C K N O W L E D G E M E N T O F D E P O N E N T  
 2  
 3 I, SEAN P. TRENDE, declare under the penalties  
 4 of perjury under the State of North Carolina that I have  
 5 read the foregoing 334 pages, which contain a correct  
 6 transcription of answers made by me to the questions  
 7 therein recorded, with the exception(s) and/or  
 8 addition(s) reflected on the correction sheet attached  
 9 hereto, if any.  
 10 Signed this the day of , 2014.  
 11  
 12  
 13 SEAN P. TRENDE  
 14  
 15 State of:  
 16 County of:  
 17 Subscribed and sworn to before me  
 18 this day of , 2014.  
 19  
 20  
 21 Notary Public  
 22 My commission expires:  
 23  
 24  
 25

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1 E R R A T A S H E E T  
 2 Case Name: NAACP vs. McCrory and Related Cases  
 3 Witness Name: SEAN P. TRENDE  
 4 Deposition Date: Friday, June 6, 2014  
 5  
 6 Page/Line Reads Should Read  
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<p>1 STATE OF NORTH CAROLINA )  2 ) CERTIFICATE  3 COUNTY OF WAKE )  4  5 I, DENISE MYERS BYRD, Court Reporter and Notary  6 Public, the officer before whom the foregoing proceeding was  7 conducted, do hereby certify that the witness whose testimony  8 appears in the foregoing proceeding were duly sworn by me;  9 that the testimony of said witness was taken by me to the  10 best of my ability and thereafter transcribed under my  11 supervision; and that the foregoing pages, inclusive,  12 constitute a true and accurate transcription of the testimony  13 of the witness(es).  14 Before completion of the deposition, review of the  15 transcript [X] was [ ] was not requested. If requested, any  16 changes made by the deponent (and provided to the reporter)  17 during the period allowed are appended hereto.  18 I further certify that I am neither counsel for,  19 related to, nor employed by any of the parties to this  20 action, and further, that I am not a relative or employee of  21 any attorney or counsel employed by the parties thereof, nor  22 financially or otherwise interested in the outcome of said  23 action. This the 16th day of June 2014.  24  25 Denise Myers Byrd  CSR 8340, RPR, CLR 102409-02</p> <p style="text-align: right;">337</p>	

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