

EXHIBIT K

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

3 NORTH CAROLINA STATE)
4 CONFERENCE OF THE NAACP,)
5 et al.,)

6 Plaintiffs,)

7 vs.)

Case No: 1:13-CV-658

8 PATRICK LLOYD MCCRORY, in his)
9 official capacity as the)
10 Governor of North Carolina,)
11 et al.,)

12 Defendants.)

13 LEAGUE OF WOMEN VOTERS OF)
14 NORTH CAROLINA, et al.,)

15 Plaintiffs,)

16 vs.)

Case No: 1:13-CV-660

17 THE STATE OF NORTH CAROLINA,)
18 et al.,)

19 Defendants.)

20 _____)
21 UNITED STATES OF AMERICA,)

22 Plaintiff,)

23 vs.)

Case No: 1:13-CV-861

24 THE STATE OF NORTH CAROLINA,)
25 et al.,)

Defendants.)

VIDEOTAPED DEPOSITION OF

SEAN P. TRENDE

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VIDEOTAPED DEPOSITION OF

SEAN P. TRENDE

8:58 A.M.

FRIDAY, JUNE 6, 2014

OGLETREE DEAKINS NASH SMOAK & STEWART
4208 SIX FORKS ROAD
SUITE 1100
RALEIGH, NORTH CAROLINA

By: Denise Myers Byrd, CSR 8340, RPR, CLR 102409-02

1 09:01 1 false or misleading testimony?

2 09:01 2 A. I do understand that.

3 09:01 3 Q. Is there any reason you think you may not be
4 09:01 4 able to answer my questions truthfully and
5 09:01 5 completely today?

6 09:01 6 A. There are no such reasons.

7 09:01 7 Q. And at any point you would like a break, please
8 09:01 8 let me know and we can accommodate you.

9 09:01 9 And do you understand these
10 09:01 10 instructions?

11 09:01 11 A. I do.

12 09:01 12 Q. Do you have any questions about my
13 09:01 13 instructions?

14 09:01 14 A. No.

15 09:01 15 Q. So, Mr. Trende, how did you prepare for today's
16 09:01 16 deposition?

17 09:01 17 A. I met with my counsel. I reread my expert
18 09:01 18 report. I looked over my analyses. I reread
19 09:01 19 the expert reports from the various expert
20 09:02 20 witnesses. I reread the expert report -- the
21 09:02 21 expert surrebuttal reports. I looked over some
22 09:02 22 of the literature.

23 09:02 23 There may be other things I did, but

24 09:02 24 those are the main things. I did discover in

25 09:02 25 light of a criticism made by Dr. Gronke that

1 09:02 1 there were errors made in one of my coding and

2 09:02 2 regression analyses, and whenever you would

3 09:02 3 like to talk about those errors in the

4 09:02 4 regression analyses I'm happy to do so.

5 09:02 5 Q. Okay. When we get to those we'll certainly

6 09:02 6 discuss those errors.

7 09:02 7 Who did you meet with? You said you

8 09:02 8 met with your attorneys. Who specifically?

9 09:02 9 A. Mr. Farr.

10 09:02 10 Q. Mr. Farr. And for how long did you meet?

11 09:02 11 A. Hard to say. He was in and out.

12 09:02 12 Q. And when did you meet?

13 09:02 13 A. Yesterday.

14 09:02 14 Q. And did you meet for a couple hours, several

15 09:02 15 hours?

16 09:02 16 A. He was in and out during the day.

17 09:03 17 Q. So you can't give me a general estimate of how

18 09:03 18 long you may have met?

19 09:03 19 A. More than two.

20 09:03 20 Q. Okay. Did you meet with anyone else other than

21 09:03 21 Mr. Farr regarding the deposition?

22 09:03 22 A. There was a gentleman in the room whose name I

23 09:03 23 don't know.

24 09:03 24 Q. Was he also an attorney?

25 09:03 25 A. I don't know.

1 09:07 1 Q. And what was your position there?

2 09:07 2 A. I was an associate.

3 09:07 3 Q. And what is your position at Real Clear

4 09:07 4 Politics?

5 09:07 5 A. I'm a senior elections analyst.

6 09:07 6 Q. What do you do as a senior elections analyst?

7 09:07 7 A. The broad answer is I'm sort of the right-hand

8 09:07 8 man for John McIntyre who's the CEO of the

9 09:07 9 company. And so there's a wide array of duties

10 09:07 10 that I attend.

11 09:07 11 The most important ones is I write

12 09:07 12 articles covering elections -- campaigns and

13 09:07 13 elections. I study polls as they come in and

14 09:07 14 go into our averages. I help identify articles

15 09:07 15 to put on to the front page. And those are

16 09:07 16 really the main -- I follow and track

17 09:08 17 elections. I do some help finding URLs for

18 09:08 18 election returns as they're coming in so we can

19 09:08 19 post them on the front page.

20 09:08 20 Q. Okay. And what is Real Clear Politics?

21 09:08 21 A. Real Clear Politics is a website.

22 09:08 22 Q. And what sort of website is it?

23 09:08 23 A. It's a website that is intended as a go-to one

24 09:08 24 stop for all political issues. So we will go

25 09:08 25 and put various articles relating to politics

1 09:08 1 and elections and aggregate them in one place

2 09:08 2 so that readers don't have to go to various

3 09:08 3 websites. We also aggregate polling --

4 09:08 4 aggregate polls so that you aren't getting one

5 09:08 5 poll cherry-picked and thrown at you. You can

6 09:08 6 look and kind of get a better sense of what all

7 09:08 7 the polls are saying.

8 09:08 8 Q. So would it be accurate to describe it as a

9 09:08 9 news aggregator?

10 09:08 10 A. We also produce original content.

11 09:08 11 Q. And are you in charge of producing original

12 09:08 12 content?

13 09:08 13 A. I produce some original content.

14 09:09 14 Q. And that's written exclusively for the website,

15 09:09 15 not a publication in addition to the website?

16 09:09 16 What you --

17 09:09 17 A. I don't understand the question.

18 09:09 18 Q. So what you write for Real Clear Politics and

19 09:09 19 is posted on the website, is that only posted

20 09:09 20 on the website or also published in some other

21 09:09 21 form or publications?

22 09:09 22 A. It does not appear in print and it is not

23 09:09 23 syndicated.

24 09:09 24 Q. And there's no print version of Real Clear

25 09:09 25 Politics; is that correct?

1 09:09 1 A. That is correct.

2 09:09 2 Q. How would you describe your writing for Real

3 09:09 3 Clear Politics?

4 09:09 4 A. You're -- I don't understand the question.

5 09:09 5 Q. Okay. Is it objective news reporting or more

6 09:09 6 editorial or opinion pieces?

7 09:09 7 A. It is not editorial or opinion pieces, nor

8 09:09 8 would I characterize it as -- I would

9 09:10 9 characterize it as objective but not news

10 09:10 10 reporting.

11 09:10 11 It's analysis which is somewhat

12 09:10 12 different than the journalistic take.

13 09:10 13 Q. And is it written from a certain perspective?

14 09:10 14 A. No.

15 09:10 15 Q. So you would call it objective?

16 09:10 16 A. Yes.

17 09:10 17 Q. Are the pieces or the posts you author for Real

18 09:10 18 Clear Politics, are they reviewed prior to

19 09:10 19 being posted on the website?

20 09:10 20 A. Yes.

21 09:10 21 Q. Who reviews them?

22 09:10 22 A. My editor -- my editor in chief and our copy

23 09:10 23 editor.

24 09:10 24 Q. And what are the credentials of your editor and

25 09:10 25 copy editor?

1 09:10 1 A. My editor in chief is a graduate of Princeton
2 09:10 2 University. I don't know what his degree is
3 09:10 3 in. And my copy editor edits for -- he's been
4 09:10 4 a copy editor for probably 30 years.

5 09:10 5 Q. So the pieces you post aren't reviewed by
6 09:10 6 political scientists or other analysts?

7 09:11 7 A. Not -- I'm not going to say I've never sent a
8 09:11 8 draft to some of my political scientist friends
9 09:11 9 or asked for their opinions or thoughts on
10 09:11 10 pieces, but it's not part of the regular
11 09:11 11 process.

12 09:11 12 Q. Do you work for any other websites or
13 09:11 13 publications?

14 09:11 14 A. Yes.

15 09:11 15 Q. What are they?

16 09:11 16 A. Larry Sabato's Crystal Ball.

17 09:11 17 Q. And what is Crystal Ball?

18 09:11 18 A. It's similar to Real Clear Politics. They have
19 09:11 19 a number of regular columnists. It's similar
20 09:11 20 to Real Clear Politics in that they are focused
21 09:11 21 on elections and campaigns and to a lesser
22 09:11 22 degree than us on policy issues. They have a
23 09:11 23 number of columnists who produce original
24 09:11 24 content. They are not an aggregator and it's
25 09:11 25 kind of a weekly newsletter that goes out on

1 09:19 1 information about the demographics of the
2 09:19 2 districts, I would look at that because that's
3 09:19 3 obviously highly relevant for understanding the
4 09:19 4 politics of a district.

5 09:19 5 Had to calculate election returns for
6 09:19 6 some of these districts because they hadn't
7 09:19 7 come out -- they hadn't been published formally
8 09:19 8 by Politico yet. Those are the types of
9 09:19 9 things. I'm sure there's more.

10 09:19 10 Q. Do you have any experience in elections
11 09:19 11 administration?

12 09:19 12 A. No.

13 09:19 13 Q. Have you worked as a consultant on any
14 09:19 14 election-related issues?

15 09:19 15 A. No.

16 09:19 16 Q. You state in your declaration that you are a
17 09:19 17 recognized expert in the field of psephology.

18 09:19 18 A. Election prediction.

19 09:20 19 Q. Is psephology a formally recognized field of
20 09:20 20 study in the United States?

21 09:20 21 A. By whom?

22 09:20 22 Q. That is can someone acquire a degree or
23 09:20 23 professional certification in psephology?

24 09:20 24 A. Not to my knowledge.

25 09:20 25 Q. Are you aware whether any university has a

1 09:20 1 department of psephology?

2 09:20 2 A. No.

3 09:20 3 Q. Are there professional associations of

4 09:20 4 psephology?

5 09:20 5 A. Not to my knowledge.

6 09:20 6 Q. Are there any peer-reviewed professional

7 09:20 7 journals in the field of psephology?

8 09:20 8 A. Well, now -- not specifically dedicated to

9 09:20 9 psephology, no.

10 09:20 10 Q. You also state in your declaration that you are

11 09:20 11 a recognized expert in voter behavior and voter

12 09:20 12 turnout, correct?

13 09:20 13 A. Yes.

14 09:20 14 Q. And what qualifies you as an expert in the

15 09:20 15 scientific analysis of voter behavior?

16 09:21 16 A. Well, I have a graduate degree of political

17 09:21 17 science that involved two semesters of graduate

18 09:21 18 statistics. I took graduate courses on

19 09:21 19 campaigns in elections, three that I can recall

20 09:21 20 at this point, one with Dr. Gronke.

21 09:21 21 Q. What -- what were the ones that you can recall?

22 09:21 22 A. It was -- it was -- I don't remember the

23 09:21 23 specific titles of the courses. I know that I

24 09:21 24 took a course when I was -- I took a course at

25 09:21 25 the University of Central Oklahoma at the

1 09:23 1 A. That falls under the general category of voter

2 09:23 2 turnout and behavior. Yeah, by carefully

3 09:23 3 studying the literature, you can acquire

4 09:24 4 expertise, and I have a greater knowledge than

5 09:24 5 the lay witness would have.

6 09:24 6 Q. So according to you, you're an expert in early

7 09:24 7 voting?

8 09:24 8 A. Yes.

9 09:24 9 Q. Are you an expert in same-day registration?

10 09:24 10 A. Yes.

11 09:24 11 Q. And what qualifies you as an expert in same-day

12 09:24 12 registration?

13 09:24 13 A. The same: By carefully studying the relevant

14 09:24 14 literature, by studying the laws in the various

15 09:24 15 50 states and the District of Columbia, I'm an

16 09:24 16 expert.

17 09:24 17 Q. Are you holding yourself out as an expert in

18 09:24 18 voter photo identification laws?

19 09:24 19 A. Yes.

20 09:24 20 Q. And what qualifies you as an expert in voter

21 09:24 21 photo identification laws?

22 09:24 22 A. By carefully studying the relevant literature,

23 09:24 23 by studying the laws in the 50 states plus the

24 09:24 24 District of Columbia, I have a greater

25 09:24 25 understanding than any lay witness would have,

1 09:24 1 a much greater understanding.

2 09:24 2 And by reviewing the responses that

3 09:24 3 were authored by the various political

4 09:24 4 scientists to my work that I think that it's

5 09:25 5 held up that they haven't successfully

6 09:25 6 criticized it and that qualifies me as an

7 09:25 7 expert, and that's also applicable to the

8 09:25 8 answer on early voting, same-day registration,

9 09:25 9 and if we go to out-of-precinct voting and

10 09:25 10 early registration it will apply there as well.

11 09:25 11 Q. Have you prepared any articles for

12 09:25 12 peer-reviewed journals or publications?

13 09:25 13 A. No.

14 09:25 14 Q. Have you written any articles on early voting

15 09:25 15 for peer-reviewed journals or publications?

16 09:25 16 A. No.

17 09:25 17 Q. Have you written any articles on same-day

18 09:25 18 registration for peer-reviewed professional

19 09:25 19 journals or publications?

20 09:25 20 A. No.

21 09:25 21 MR. FARR: I want to just register an

22 09:25 22 objection to the form of the question to the

23 09:25 23 extent that counsel has used the term

24 09:25 24 "peer-reviewed."

25 09:25 25 MS. MEZA: Okay.

1 09:25 1 BY MS. MEZA:

2 09:25 2 Q. What's your understanding of peer-reviewed?

3 09:25 3 A. Well, my understanding of peer-reviewed is that

4 09:25 4 when you -- when you're using it, I understand

5 09:26 5 you to mean it in the sense that a political

6 09:26 6 science journal would mean it, which is that

7 09:26 7 you submit your article to a political science

8 09:26 8 journal, it's subjected to double blind review

9 09:26 9 and the political scientists or whoever -- you

10 09:26 10 don't have to be a political scientist to peer

11 09:26 11 review -- who are on the other side of the

12 09:26 12 equation look over the manuscript, determine

13 09:26 13 whether they believe it is suitable for

14 09:26 14 publication as is, whether it needs minor

15 09:26 15 revisions, whether it needs major revisions or

16 09:26 16 whether it's unsuitable for publication.

17 09:26 17 Q. And same question for out-of-precinct

18 09:26 18 provisional voting, have you written any

19 09:26 19 articles on out-of-precinct provisional voting

20 09:26 20 for peer-reviewed publications or journals?

21 09:26 21 A. No.

22 09:26 22 Q. So in your current position at Real Clear

23 09:26 23 Politics and the other work you do, do you

24 09:26 24 routinely perform statistical analysis?

25 09:27 25 A. Yes.

1 09:28 1 Q. What is R?

2 09:28 2 A. R is an open source statistical package. It is

3 09:28 3 something of a cross between a programming

4 09:28 4 language and a statistical package. You have

5 09:28 5 to manual input commands and R will execute it

6 09:28 6 and give you the same sorts of output that you

7 09:28 7 would get in something like Excel.

8 09:28 8 Q. And do you have any sort of specialized or

9 09:28 9 formal training in using R?

10 09:28 10 A. No.

11 09:28 11 In addition for my book, I did some of

12 09:28 12 my research at the University of Richmond which

13 09:28 13 offers -- the problem with SPSS and Stata, it

14 09:29 14 costs like \$5,000, but the University of

15 09:29 15 Richmond offered guest passes, and while I was

16 09:29 16 doing research at the University of Richmond to

17 09:29 17 examine exit poll data, I believe they had SPSS

18 09:29 18 and I used that for my book, for parts of my

19 09:29 19 book.

20 09:29 20 Q. And do you use SPSS on a regular basis?

21 09:29 21 A. It is far too expensive for me.

22 09:29 22 Q. In the data analysis you perform on a regular

23 09:29 23 basis, could you describe the kind of data you

24 09:29 24 normally use?

25 09:29 25 A. That is way too broad. I'm sorry, I can't

1 09:29 1 answer that question.

2 09:29 2 Q. What types of data analysis do you perform on,

3 09:29 3 would you say, a regular basis?

4 09:29 4 A. You know I've written something like 200

5 09:29 5 articles or 300 articles for Real Clear

6 09:29 6 Politics over the last four years. So with the

7 09:30 7 caveat that I can't possibly explain everything

8 09:30 8 that I've done even regularly:

9 09:30 9 Election returns, demographic

10 09:30 10 variables, you know, demographic changes in

11 09:30 11 states, population growth, turnout growth.

12 09:30 12 Those are some examples.

13 09:30 13 Q. Okay. And what kind of data does that entail?

14 09:30 14 A. Well, election returns published from various

15 09:30 15 sources. The most common one that I use is

16 09:30 16 Dave Leip's political Atlas which is a common

17 09:30 17 source for people who are doing online work.

18 09:30 18 Dave Leip's political Atlas, though,

19 09:30 19 only goes back regularly -- well, it depends on

20 09:30 20 the state. So I have three books -- well,

21 09:30 21 that's not true. Multiple books of actual

22 09:30 22 election returns that I will use to hard code

23 09:30 23 data that Dave Leip doesn't provide. The

24 09:31 24 returns that you'll find from CNN.com. The

25 09:31 25 exit poll results are published at CNN.com and

1 09:31 1 the New York Times and Fox News and MSNBC.
2 09:31 2 Dr. McDonald, Michael McDonald at
3 09:31 3 George Mason University has published various
4 09:31 4 estimates of turnout for voting eligible
5 09:31 5 population, citizen voting eligible population,
6 09:31 6 et cetera, or citizen voting adult population,
7 09:31 7 et cetera.
8 09:31 8 The various states provide turnout data
9 09:31 9 that I will sometimes use for my work. Again,
10 09:31 10 it's a huge universe. CQ publishes election
11 09:31 11 results that I'll frequently refer to. They do
12 09:31 12 gubernatorial results and all the primary
13 09:31 13 results. Those are hard coded books.
14 09:32 14 There's a series by Michael Dubin
15 09:32 15 that's very good. He's like a teacher in
16 09:32 16 Arizona who has published a number of books
17 09:32 17 that people rely on with complete congressional
18 09:32 18 returns going back to 1787, the breakdown of
19 09:32 19 state legislatures, how many -- if you want to
20 09:32 20 know how many wigs were in the Alabama
21 09:32 21 legislature in 1836, that's a book you can
22 09:32 22 actually pull that data from.
23 09:32 23 Scammon and Wattenberg had a series.
24 09:32 24 Obviously Almanac of American Politics is a
25 09:32 25 good source for election return data and

1 09:32 1 demographic variables.

2 09:32 2 That's -- like I said, that's just a

3 09:32 3 fraction of what I would look at or examples.

4 09:32 4 Q. What about statewide voter registration and

5 09:32 5 participation data, do you use that sort of

6 09:32 6 data on a regular basis?

7 09:32 7 A. I don't know about on a regular basis but I've

8 09:32 8 used it.

9 09:33 9 Q. How often would you say?

10 09:33 10 A. I couldn't say.

11 09:33 11 Q. Is it the primary source of data you use?

12 09:33 12 A. It depends on the sort of article I'm writing.

13 09:33 13 Q. Would you use it more often than election

14 09:33 14 results data, for instance?

15 09:33 15 A. No.

16 09:33 16 Q. And for what particular reasons have you used

17 09:33 17 statewide voter registration and participation

18 09:33 18 data? Could you provide some examples?

19 09:33 19 A. I don't know if I can as I sit here today.

20 09:33 20 Q. You don't recall any examples of when you

21 09:33 21 used -- have had to use statewide voter

22 09:33 22 registration or voter turnout data?

23 09:33 23 A. I know I've used it. I can't think of specific

24 09:33 24 instances. One specific instance would be for

25 09:33 25 the Almanac of American Politics doing district

1 09:33 1 analyses, but I would have to go through my
2 09:34 2 online archive of articles and pull -- see if I
3 09:34 3 can pull the examples.
4 09:34 4 Q. And what usually is your source of this data?
5 09:34 5 A. Well, it's data that's provided by the
6 09:34 6 secretaries of state or the board of elections.
7 09:34 7 Q. And how do you acquire it on a regular basis?
8 09:34 8 A. Online. Online.
9 09:34 9 Q. So it would be accurate to say you get it from
10 09:34 10 their website if it's available on the website?
11 09:34 11 A. Yes.
12 09:34 12 Q. Does the work you do for -- or the data
13 09:34 13 analysis you engage in require you to review
14 09:34 14 and analyze state level voter turnout data?
15 09:34 15 A. Well, yes.
16 09:34 16 Q. Could you provide some examples?
17 09:34 17 A. Well, voter turnout is a -- I think, for
18 09:34 18 example, one piece of work that I did focused
19 09:35 19 on the changes in different sorts of voters
20 09:35 20 from 2008 to 2012. A lot of the analysis had
21 09:35 21 talked about demographic change and the growth
22 09:35 22 of the non-white vote from 2008 to 2012, but if
23 09:35 23 you looked at the data, it didn't actually
24 09:35 24 grow. It fell -- the non-white vote and white
25 09:35 25 vote both fell from 2008 as the baseline which

1 09:41 1 Q. Do you have any prior experience analyzing the
2 09:41 2 effects of voter photo identification
3 09:41 3 requirements on voters' behavior?

4 09:41 4 A. What do you mean by experience?

5 09:41 5 Q. Have you done it before for any reason?

6 09:41 6 A. I don't believe so.

7 09:41 7 Q. And do you have any experience analyzing the
8 09:41 8 effects of changes to early voting schemes or
9 09:41 9 early voting laws on voters' behavior?

10 09:41 10 A. Again, what do you mean? Do you mean as from a
11 09:42 11 lay perspective, from my own interest? Do you
12 09:42 12 mean from publication in a peer-reviewed
13 09:42 13 journal? What do you mean?

14 09:42 14 Q. Have you done it before for any reason?

15 09:42 15 A. I don't know.

16 09:42 16 Q. Also have you ever analyzed the effects of
17 09:42 17 changes to voter registration requirements or
18 09:42 18 the elimination of same-day registration on
19 09:42 19 voters' behavior, again, for any reason?

20 09:42 20 A. No.

21 09:42 21 Q. And do you have any experience in analyzing the
22 09:42 22 effects of changes to provisional voting laws
23 09:42 23 or out-of-precinct voting on voting behavior?

24 09:42 24 A. No. And the reason I need to clarify -- the
25 09:42 25 reason why I said I don't know on the early

1 09:42 1 voting is that I have had back-and-forths with,
2 09:42 2 for example, Dr. Mike McDonald on Twitter about
3 09:42 3 cannibalization of data of early voting. That
4 09:42 4 was something that I examined before the 2012
5 09:42 5 election because there was a big debate about
6 09:42 6 whether the Obama campaign was just pulling
7 09:43 7 from the regular voting pool into the early
8 09:43 8 voting pool or whether these were new voters
9 09:43 9 who would not have otherwise voted. So the
10 09:43 10 answer to that question is yes.

11 09:43 11 Q. And what about the question about provisional
12 09:43 12 voting or out-of-precinct voting?

13 09:43 13 A. Provisional voting, I probably have. I can't
14 09:43 14 think of specific examples as I sit here.
15 09:43 15 Out-of-precinct voting, no.

16 09:43 16 Q. Do you know what North Carolina's House Bill
17 09:43 17 589 is?

18 09:43 18 A. Yes.

19 09:43 19 Q. And what is your understanding of House Bill
20 09:43 20 589?

21 09:43 21 A. My understanding of House Bill 589 it was a law
22 09:43 22 passed in the legislature that changed
23 09:43 23 North Carolina's -- excuse me --
24 09:43 24 North Carolina's voting laws.

25 09:43 25 With respect to this litigation, my

1 10:46 1 You may answer.

2 10:46 2 THE WITNESS: I have no idea how this
3 10:46 3 information might be used. And again, these
4 10:46 4 data are used as a variable for Opinion 2. For
5 10:46 5 the purposes of Opinion 1, all I'm doing is
6 10:46 6 stating what the laws are. It's -- I won't say
7 10:46 7 the equivalent. It's similar to what an
8 10:46 8 associate might do a 50 state survey in
9 10:46 9 summarizing the data.

10 10:46 10 BY MS. MEZA:

11 10:46 11 Q. Let's move on to your Opinion 2 and that's
12 10:47 12 beginning on page 15 of your declaration.

13 10:47 13 What is your Opinion 2?

14 10:47 14 A. The data do not consistently support the
15 10:47 15 turnout effects predicted by plaintiffs.

16 10:47 16 Q. And what information or materials did you
17 10:47 17 review when arriving at Opinion 2?

18 10:47 18 A. I looked -- I examined the laws in the 50
19 10:47 19 states plus the District of Columbia. I looked
20 10:47 20 at the literature on the various laws at issue
21 10:47 21 in this case. I examined -- here I'll give
22 10:47 22 this back to you.

23 10:47 23 I examined the data from the current
24 10:47 24 population surveys, voter and registration
25 10:48 25 supplement. I looked at competitiveness of

1 10:48 1 states.

2 10:48 2 And there may be other sources of

3 10:48 3 information that are mentioned in the report or

4 10:48 4 in the -- in Exhibit 2 to the report, but those

5 10:48 5 are the main sources of information.

6 10:48 6 Q. And what analyses did you conduct in arriving

7 10:48 7 at Opinion 2?

8 10:48 8 A. Over the course of the pages for Opinion 2,

9 10:48 9 there were various analyses, simple, you know,

10 10:48 10 descriptive line charts were employed, there

11 10:48 11 were bivariate regression analyses employed and

12 10:48 12 multivariate regression analyses employed.

13 10:49 13 There was some review of literature that was

14 10:49 14 employed.

15 10:49 15 I think those are -- there may be other

16 10:49 16 techniques that as we kind of narrow down we

17 10:49 17 can discuss, but those were the main

18 10:49 18 techniques.

19 10:49 19 Q. All right. Why don't we go ahead and do that.

20 10:49 20 On page 17 beginning with paragraph 67,

21 10:49 21 could you describe what analysis you conducted

22 10:49 22 with respect to this first section beginning on

23 10:49 23 paragraph 67?

24 10:49 24 A. And continue through?

25 10:49 25 Q. Through paragraph 81.

1 10:49 1 A. Okay. So in paragraphs 67 through 70,
2 10:50 2 reflecting the realization that people who read
3 10:50 3 this report may not be familiar with what the
4 10:50 4 CPS is and what the voter and registration
5 10:50 5 supplement to the CPS is, although I generally
6 10:50 6 refer to it as the CPS data which is what most
7 10:50 7 people refer to it as.
8 10:50 8 I described what the CPS is and some of
9 10:50 9 the issues that arise with CPS data. There
10 10:50 10 really are no perfect data in voting and
11 10:50 11 turnout on a national basis, so it's important
12 10:50 12 to know about the limitations. 71 also
13 10:50 13 describes a slight change in the data set.
14 10:50 14 And then I provide as an illustration
15 10:50 15 for the court or for the parties, whoever is
16 10:51 16 reading this report, why it might be important
17 10:51 17 to look at other states other than
18 10:51 18 North Carolina and why you would need to do
19 10:51 19 that when trying to calculate the impact these
20 10:51 20 laws would have on turnout and registration.
21 10:51 21 Q. Okay. So why don't we kind of go back to some
22 10:51 22 of what you've stated already.
23 10:51 23 What is the Current Population Survey?
24 10:51 24 A. Well, the Current Population Survey is a survey
25 10:51 25 undertaken by the Census Bureau of a large

1 10:51 1 sample of American households. It's what's

2 10:51 2 used to calculate the unemployment rate.

3 10:51 3 Q. Okay. Now, you state in paragraph 69, the

4 10:51 4 second sentence:

5 10:51 5 "Because voters are required to

6 10:52 6 respond to the CPS, it lacks many of

7 10:52 7 the problems with non-response bias

8 10:52 8 that pervade other modern surveys."

9 10:52 9 What is your source for the information

10 10:52 10 that voters are required to respond to the CPS?

11 10:52 11 A. It's a Census survey. I don't know that the

12 10:52 12 penalty is jail time for not responding, but it

13 10:52 13 is not like the exit poll where you come out of

14 10:52 14 the exit poll center and they ask you would you

15 10:52 15 like to respond to this or not. It is a Census

16 10:52 16 Bureau publication.

17 10:52 17 Q. And you indicate again in paragraph 70 that the

18 10:52 18 CPS data is imperfect.

19 10:52 19 A. Correct.

20 10:52 20 Q. In what way?

21 10:52 21 A. There are -- there are two ways that are

22 10:52 22 particularly relevant for political science

23 10:53 23 work with the CPS. The first -- and this is

24 10:53 24 common to all surveys of voting behavior is

25 10:53 25 there is such desirability bias at work.

1 10:53 1 People like to say I voted. It's something
2 10:53 2 that people lie about. And so that -- that
3 10:53 3 results in a consistent over-reporting of
4 10:53 4 whether you voted or not.

5 10:53 5 CPS attempts to compensate for this by
6 10:53 6 counting people who did not respond to the
7 10:53 7 survey as non-voters. That brings the level of
8 10:53 8 report down, and that is understood to be the
9 10:53 9 reason that the CPS data don't show the same
10 10:53 10 level of over-reporting as, say -- as other
11 10:53 11 surveys have shown.

12 10:54 12 Q. And being aware of these issues, did you do
13 10:54 13 anything else to correct for these
14 10:54 14 imperfections when using this data for your
15 10:54 15 analysis?

16 10:54 16 A. Well, by looking at change over time, it does
17 10:54 17 correct for it somehow, to a certain degree.

18 10:54 18 Q. How is that?

19 10:54 19 A. Because within states, there's some evidence in
20 10:54 20 the literature that the over-report bias is
21 10:54 21 constant, and if that's the case, then the
22 10:54 22 constant drops out when you do a subtraction.

23 10:54 23 In other words -- let's assume two data
24 10:54 24 points, two years, call them A and B. Okay.
25 10:54 25 And let's say the real level within a state in

1 10:54 1 Year A is 60 and in Year B it's 70. Okay. The

2 10:54 2 difference is 10. If the over report bias is

3 10:55 3 10 points in each state, so it would show up in

4 10:55 4 the CPS as 70 and 80. When you subtract the

5 10:55 5 difference is still ten. The over report drops

6 10:55 6 out from the subtraction, so that helps to

7 10:55 7 correct for it.

8 10:55 8 Q. But in addition to that assumption, you

9 10:55 9 yourself didn't do anything to correct or

10 10:55 10 consider any of these issues or imperfections?

11 10:55 11 A. I don't know that I'll accept the

12 10:55 12 characterization of that as an assumption since

13 10:55 13 there's peer-reviewed literature on the subject

14 10:55 14 suggesting that it is -- that non-response bias

15 10:55 15 is constant within states.

16 10:55 16 With that said, I didn't engage in any

17 10:55 17 additional weighting beyond that done by the

18 10:55 18 CPS.

19 10:55 19 Q. And is the CPS data the only data you used in

20 10:55 20 this two-state comparison reported in paragraph

21 10:55 21 67 through 81?

22 10:56 22 A. No.

23 10:56 23 Q. What else did you use or refer to?

24 10:56 24 A. In paragraph 79 I was responding to a claim

25 10:56 25 made in the Leloudis declaration at Note 85.

1 10:56 1 Dr. Leloudis cited to an article by Philip Bump
2 10:56 2 in The Wire, and as I sit here right now, I
3 10:56 3 can't testify to the source of the data for
4 10:56 4 Dr. Bump or I don't know if he's a doctor.
5 10:56 5 Philip Bump.

6 10:56 6 Q. But in terms of the two-state comparison you
7 10:56 7 did reflected in Figures 3 through 6, did you
8 10:56 8 use data other than the CPS data?

9 10:56 9 A. No.

10 10:57 10 Q. Could you have used other data to conduct this
11 10:57 11 comparison?

12 10:57 12 A. Such as?

13 10:57 13 Q. Was there any other data that would have
14 10:57 14 provided you the information you used to do the
15 10:57 15 comparison?

16 10:57 16 A. I can't provide as I sit here an exhaustive
17 10:57 17 list of potential data that could be used for
18 10:57 18 the comparison. One could refer to the
19 10:57 19 registration and vote counts provided by the
20 10:57 20 State of North Carolina.

21 10:58 21 The problem with doing that is that
22 10:58 22 while it's my understanding that Mississippi
23 10:58 23 also provides that data, in Mississippi the
24 10:58 24 response to the racial registration question is
25 10:58 25 optional rather than mandatory in

1 10:58 1 North Carolina, so there's a risk of an

2 10:58 2 apples-to-oranges comparison.

3 10:58 3 And in addition, I tried to keep the

4 10:58 4 data sets consistent throughout my piece, and

5 10:58 5 because not every state tracks registration

6 10:58 6 much less voting by race, you can't do a

7 10:58 7 cross-state comparison using actual turnout

8 10:58 8 data.

9 10:58 9 Q. Did you actually attempt to acquire either data

10 10:58 10 from North Carolina or Mississippi or did

11 10:58 11 you --

12 10:58 12 A. No.

13 10:59 13 Q. And why did you choose Mississippi to conduct

14 10:59 14 this comparison?

15 10:59 15 A. Because it had the highest African American

16 10:59 16 turnout in 2012 to my recollection.

17 10:59 17 Q. Is there any other reason you chose to use

18 10:59 18 Mississippi over any other state to compare it

19 10:59 19 to North Carolina?

20 10:59 20 A. Again, to my recollection -- and this is

21 10:59 21 without the CPS data sitting in front of me --

22 10:59 22 my understanding is that North Carolina had the

23 10:59 23 second highest level of African American

24 10:59 24 turnout in 2012 and Mississippi was the

25 10:59 25 highest. Again, this is my recollection.

1 11:11 1 where you identified what state you were

2 11:11 2 actually comparing to North Carolina.

3 11:11 3 Could you tell us what's reflected in

4 11:11 4 both Figure 5 and Figure 6?

5 11:12 5 A. Figure 5 is the percent of African Americans

6 11:12 6 who are registered to vote in State A, which is

7 11:12 7 Mississippi, in State B, which is

8 11:12 8 North Carolina, and figure -- did you just ask

9 11:12 9 Figure 5?

10 11:12 10 Q. Figure 5 and Figure 6.

11 11:12 11 A. Figure 6 is the percent of African Americans

12 11:12 12 who reported voting in State A, which is

13 11:12 13 Mississippi, and State B, which is

14 11:12 14 North Carolina.

15 11:12 15 Q. And what conclusions did you draw about African

16 11:12 16 American registration in Mississippi versus

17 11:12 17 North Carolina?

18 11:12 18 A. Well, first and foremost, that it is a useful

19 11:12 19 illustration to help the court understand why

20 11:12 20 you have to look at what is going on in states

21 11:12 21 besides North Carolina, because you have

22 11:12 22 similar turnout and registration effects

23 11:12 23 occurring in states even if they don't have the

24 11:13 24 sorts of laws that North Carolina has in place.

25 11:13 25 Secondly, as I say in 73, in the middle

1 11:13 1 of the 1990s State B catches up with State A in
2 11:13 2 terms of African American registration and
3 11:13 3 voting participation rates, and after that
4 11:13 4 there are voting and participation increase at
5 11:13 5 roughly the same rates in both states.

6 11:13 6 Q. And what about Figure 6?

7 11:13 7 A. Paragraph 73 says African American registration
8 11:13 8 and voting participating.

9 11:13 9 Q. I'm sorry. Okay. So going back to 73, you are
10 11:14 10 stating that registration and participation are
11 11:14 11 increasing at roughly the same rates in both
12 11:14 12 states. What precisely do you mean by that?

13 11:14 13 What is "roughly the same rates"?

14 11:14 14 A. If you take 1996 as the baseline and you look
15 11:14 15 on the chart at the rate of increase for
16 11:14 16 registration in North Carolina and Mississippi,
17 11:14 17 they're similar. And if you look in Figure 6,
18 11:14 18 taking 1996 as a baseline, they increase at
19 11:15 19 roughly similar rates.

20 11:15 20 Q. Why 1996, why is that the baseline?

21 11:15 21 A. Because as I say in paragraph 73, as you can
22 11:15 22 see -- well, there's two reasons.

23 11:15 23 Beginning in the middle of the 1990s
24 11:15 24 State B catches up with State A.

25 11:15 25 Second, to my understanding, 1999 is

1 11:15 1 when North Carolina first instituted no-excuse
2 11:15 2 early voting, and so you would look at the
3 11:15 3 election year preceding that as a baseline for
4 11:15 4 total analysis of how election liberalization
5 11:15 5 affects North Carolina with respect to the laws
6 11:15 6 in question in this case.

7 11:15 7 And third -- again, this is

8 11:15 8 descriptive, not quantitative. So I'm

9 11:16 9 describing what's going on in North Carolina.

10 11:16 10 So you see this convergence between the states

11 11:16 11 and then they mostly start moving together.

12 11:16 12 Q. I'm going to ask the court reporter to mark the

13 11:16 13 next Exhibit 105.

14 11:16 14 (WHEREUPON, Plaintiff's Exhibit 105 was

15 11:16 15 marked for identification.)

16 11:16 16 BY MS. MEZA:

17 11:16 17 Q. I'll give you a moment to read that.

18 11:16 18 A. Okay. It's on both sides, right?

19 11:16 19 Q. Yes.

20 11:16 20 A. Double sided.

21 11:17 21 Q. So when we received your report, there wasn't

22 11:17 22 underlying data for what you -- the data you

23 11:17 23 presented in Figures 3 through 6 and

24 11:17 24 plaintiffs' counsel requested from defendants

25 11:17 25 the underlying data and that's what's reflected

1 11:17 1 in what I just handed you.

2 11:17 2 A. That's my understanding, yes.

3 11:18 3 Q. So if we go back to Figure 6 and refer to what

4 11:18 4 is I think the second bullet point in the

5 11:18 5 exhibit, is that the data that you used to

6 11:19 6 create Figure 6?

7 11:19 7 A. I believe so, yes.

8 11:19 8 Q. So if we take two points on this data -- why

9 11:19 9 don't we begin with Mississippi.

10 11:19 10 Now, as listed, the data point for

11 11:19 11 2000, the percent of African American turnout

12 11:19 12 or voting that's reflected in Figure 6

13 11:19 13 corresponds to -- for Mississippi 58.4.

14 11:20 14 A. Can I borrow your pen again?

15 11:20 15 Q. Sure. Actually, I'll ask you not to mark on

16 11:20 16 the original copy of the --

17 11:20 17 A. Shoot, I am so sorry.

18 11:20 18 Q. I should have -- I should have let you know

19 11:20 19 before.

20 11:20 20 A. I am really sorry about that.

21 11:20 21 Q. If you need to take notes, if you could do that

22 11:20 22 on a separate sheet.

23 11:20 23 A. I am --

24 11:20 24 Q. Okay. So let's -- again, so let's go back

25 11:20 25 again. These were provided as a list so --

1 11:20 1 MR. FARR: Do you have an extra copy?

2 11:20 2 MS. MEZA: So it will be helpful to

3 11:20 3 write this down.

4 11:20 4 No. I think I passed them all out.

5 11:20 5 Sorry.

6 11:20 6 BY MS. MEZA:

7 11:20 7 Q. So for Mississippi, the turnout that you -- the

8 11:21 8 turnout figure that you used to create Figure 6

9 11:21 9 in 2000, that was 58.4?

10 11:21 10 A. Yes.

11 11:21 11 Q. Okay. And for 2012, that was 82.4?

12 11:21 12 A. Yes.

13 11:21 13 Q. Now --

14 11:21 14 MR. FARR: What was it?

15 11:21 15 MS. MEZA: 82.4.

16 11:21 16 MR. FARR: Okay.

17 11:21 17 BY MS. MEZA:

18 11:21 18 Q. And let's do the same for North Carolina.

19 11:21 19 What's reflected again in Figure 6, percent of

20 11:21 20 African American voter turnout in

21 11:21 21 North Carolina in 2000 is 47.9.

22 11:21 22 A. Uh-huh.

23 11:22 23 Q. And in 2012 is 80.2.

24 11:22 24 A. Yes.

25 11:22 25 Q. Now, can you tell me what the percent increase

1 11:22 1 was for Mississippi between 2000 and 2012 and

2 11:22 2 for North Carolina between 2000 and 2012? And

3 11:22 3 we can talk through the calculation, if

4 11:22 4 necessary, and we also have a calculator

5 11:22 5 available if you need one.

6 11:22 6 A. Yeah, I think I will need a calculator. I'm

7 11:22 7 sorry. Okay.

8 11:22 8 Q. Okay. So we have the data points for 2000 and

9 11:23 9 2012 as reflected in Figure 6, and if we could

10 11:23 10 calculate the percent of increase in

11 11:23 11 Mississippi and the percent of increase in

12 11:23 12 North Carolina between those two periods for

13 11:23 13 those two years.

14 11:23 14 A. (Witness complying.)

15 11:23 15 I'm having trouble operating the

16 11:23 16 calculator. I'm sorry. Okay.

17 11:24 17 Q. Okay. So why don't we talk through your

18 11:24 18 calculation and make sure we both arrive at the

19 11:24 19 same numbers.

20 11:24 20 So for Mississippi, what was your

21 11:24 21 calculation and what was your conclusion?

22 11:24 22 A. The calculation was divide the -- we're in

23 11:25 23 Figure 6 -- the percentage of African Americans

24 11:25 24 voting in 2012 by the percentage of African

25 11:25 25 Americans voting in 2000 revealing either

1 11:25 1 100 -- 2012 was 141 percent of 2000 revealing a

2 11:25 2 41 percent increase using 2000 as a baseline.

3 11:25 3 Q. And what was your result for North Carolina?

4 11:25 4 A. So again, dividing 80.2 by 47.9, the 2012

5 11:25 5 turnout is 167 percent of 2000 turnout

6 11:25 6 using -- or 67 percent increase using 2000 as

7 11:25 7 the baseline.

8 11:25 8 Q. I came about my answer in a different way but I

9 11:25 9 think we both arrived at the same number.

10 11:26 10 So in Mississippi, the percent of

11 11:26 11 increase was 41 percent, correct?

12 11:26 12 A. Using 2000 as a baseline.

13 11:26 13 Q. Between 2000 and 2012.

14 11:26 14 And in North Carolina the percent

15 11:26 15 increase was 67 between 2000 and 2012, correct?

16 11:26 16 A. Yes.

17 11:26 17 Q. So would you still call the percent of increase

18 11:26 18 between the two states as roughly the same

19 11:26 19 rate? Do you believe that --

20 11:26 20 A. Beginning in the middle of the 1990s, yes.

21 11:26 21 Q. What about for this time period between 2000

22 11:26 22 and 2012?

23 11:26 23 A. If you look from 2000 to 2012, they are

24 11:27 24 dissimilar. If you look for 1996 to 2012, they

25 11:27 25 increase at almost the identical rate. If you

1 11:49 1 specific case -- or for this declaration?

2 11:49 2 A. I don't have any reason to believe it's a

3 11:49 3 controversial conclusion that such an analysis

4 11:49 4 would be warranted.

5 11:49 5 Q. And did you conduct any analyses to examine

6 11:49 6 whether this spending led to an increase in the

7 11:49 7 use of early voting in North Carolina?

8 11:50 8 A. Well, again, the money in advertising is being

9 11:50 9 used as a proxy.

10 11:50 10 In paragraph 104, for example, I refer

11 11:50 11 to Seth Masket's work on Obama field offices

12 11:50 12 and whether they aided mobilization efforts.

13 11:50 13 So that's an example of how the ultimate

14 11:50 14 investment by the Obama campaign could pay

15 11:50 15 dividends.

16 11:50 16 In addition, you have statements from

17 11:50 17 Obama campaign administrators who were saying,

18 11:50 18 yes, we were investing massive sums of money in

19 11:50 19 these target states and get-out-the-vote

20 11:50 20 efforts, especially targeting early voting.

21 11:50 21 But again, part of the problem with

22 11:50 22 this line of questioning -- and I just don't

23 11:51 23 want to leave any confusion out there -- is

24 11:51 24 that this entire section functions in two ways

25 11:51 25 and we're only focusing on one.

1 11:51 1 The first -- the way that we're
2 11:51 2 focusing on is my attempt to operationalize
3 11:51 3 these various factors that we all agree affects
4 11:51 4 turnout and registration.

5 11:51 5 Second way, though, is to say
6 11:51 6 regardless of how you might nitpick this
7 11:51 7 methodology, the plaintiffs' experts have never
8 11:51 8 attempted this methodology even though they
9 11:51 9 concede that campaign effects and things going
10 11:51 10 on in other states are important to take into
11 11:51 11 account when you're looking at registration and
12 11:51 12 turnout numbers.

13 11:51 13 Q. Okay. But the question was in order for you to
14 11:51 14 come to these conclusions, you didn't engage in
15 11:51 15 this type of investigation?

16 11:51 16 A. That's what I'm saying. My first conclusion --
17 11:51 17 the conclusion is twofold here.

18 11:51 18 The conclusion is that your experts
19 11:51 19 have a missing variable, okay, and this is why
20 11:52 20 this might be important. They concede it's
21 11:52 21 important.

22 11:52 22 The second -- but more specifically to
23 11:52 23 your question, yeah, the Masket article right
24 11:52 24 here states that the Obama campaign's early
25 11:52 25 vote -- or field operations resulted in the

1 11:52 1 statistically significant increase in

2 11:52 2 Democratic turnout; in fact, it was enough to

3 11:52 3 flip North Carolina.

4 11:52 4 Q. And that's the source you're using to come to

5 11:52 5 that conclusion?

6 11:52 6 A. Yes.

7 11:52 7 Q. Not your independent analysis?

8 11:52 8 A. No. It's peer-reviewed literature.

9 11:52 9 Q. And did you conduct any analysis to examine

10 11:52 10 whether the spending led to an increase in use

11 11:52 11 of same-day registration?

12 11:52 12 A. Again, the advertising dollars are proxy for

13 11:52 13 field efforts, for other efforts that are being

14 11:53 14 used.

15 11:53 15 Not being able to find the data for

16 11:53 16 2008 and 2012 on Obama campaign field

17 11:53 17 operations, you have to look at other data

18 11:53 18 sources, but, no, I did not engage in this

19 11:53 19 point in the -- at this point in the expert

20 11:53 20 report, I didn't engage in that. However,

21 11:53 21 because state competitiveness is an independent

22 11:53 22 variable in my regression analyses, at that

23 11:53 23 point it is taken into account.

24 11:53 24 Again, I think there was some

25 11:53 25 misunderstanding. A lot of this is -- there

1 12:22 1 after the initial year of input.

2 12:22 2 I can accept -- excuse me -- an

3 12:22 3 argument that it could have been done

4 12:22 4 differently, and I think that would have been

5 12:22 5 an interesting exercises for plaintiffs'

6 12:22 6 experts to undertake in their rebuttal briefs,

7 12:22 7 but the main point, again, in the first -- the

8 12:22 8 first sentence that is important that you have

9 12:22 9 to at least make the attempt to take this into

10 12:22 10 account.

11 12:22 11 Q. But in your actual analysis, did you -- you

12 12:22 12 didn't introduce any variables that would

13 12:22 13 account for the temporal aspect of these laws,

14 12:22 14 meaning when they were introduced?

15 12:23 15 A. I'm actually not familiar with any examples in

16 12:23 16 these articles that do do that and I think it

17 12:23 17 would be hard to do.

18 12:23 18 So the answer is no, but I don't know

19 12:23 19 how I would do it and I don't -- there may be

20 12:23 20 examples of people who have done so but I'm not

21 12:23 21 familiar with them at least as I sit here.

22 12:23 22 Q. So in your analysis, a law that was implemented

23 12:23 23 in 1999, for instance, was treated in the same

24 12:23 24 way as a law that was implemented in 2009?

25 12:23 25 A. Right. Again, to illustrate why this is so

1 12:23 1 important, you know, there's an increase in CPS

2 12:23 2 data in North Carolina from 2008 to 2012.

3 12:23 3 Okay. After all these laws are implemented --

4 12:23 4 so if I code North Carolina as a zero not

5 12:23 5 having any laws in place, I'm assuming that

6 12:23 6 North Carolina's laws had nothing to do with

7 12:23 7 the increase that occurred between 2008 to

8 12:23 8 2012. By coding them as laws, I'm at least

9 12:23 9 opening the possibility that they had some of

10 12:24 10 that effect.

11 12:24 11 It's a judgment call, I will confess it

12 12:24 12 is that, but I think, if anything, it's

13 12:24 13 probably a judgment call that's more favorable

14 12:24 14 to plaintiffs.

15 12:24 15 Q. So in your analysis did you include any

16 12:24 16 controls in the regression analysis?

17 12:24 17 A. Yes.

18 12:24 18 Q. And what were they?

19 12:24 19 A. Well, the first thing I did was I compared the

20 12:24 20 change in African American participation to the

21 12:24 21 number of laws adopted, a simple bivariate

22 12:24 22 analysis. And Dr. Stewart says you wouldn't

23 12:24 23 normally do what I did in a political science

24 12:24 24 journal and that's true because political

25 12:24 25 scientists would understand what's going on.

1 01:36 1 A. Okay.

2 01:36 2 Q. So what is a multivariate analysis?

3 01:36 3 A. It is a regression analysis that involves
4 01:36 4 multiple variables as opposed to bivariate
5 01:36 5 analysis which is just the independent variable
6 01:36 6 and the dependent variable.

7 01:36 7 Q. Were the individual analyses you conducted in
8 01:36 8 this section, were they multivariate analyses?

9 01:36 9 A. The regression analysis in paragraph 121 was
10 01:36 10 bivariate and the regressions in 123, 124 and
11 01:37 11 125 were multivariate.

12 01:37 12 Q. And did any of these analyses be conducted in
13 01:37 13 this cross-state comparison also report
14 01:37 14 relevant changes in white voter participation
15 01:37 15 rates?

16 01:37 16 A. They did not.

17 01:37 17 Q. Is there a reason for that?

18 01:37 18 A. You can use that as your dependent variable.
19 01:37 19 In other words, I suppose you could structure
20 01:37 20 it what the delta was between white and --
21 01:37 21 non-Hispanic white and African American
22 01:37 22 participation in 2000, look at the delta in
23 01:37 23 2012 and subtract them that way.

24 01:38 24 The reason that I didn't do that was I
25 01:38 25 was asked to look at African American

1 01:43 1 and Figure 14 should be the same; is that

2 01:43 2 correct?

3 01:43 3 A. No.

4 01:43 4 Q. No. Why not?

5 01:44 5 A. Because laws change.

6 01:44 6 Q. So you -- Figure 11 includes laws from 2000 to

7 01:44 7 2012? I thought the state of the laws that you

8 01:44 8 accounted for in Figure 11 --

9 01:44 9 A. And so at the beginning of the deposition I

10 01:44 10 suggested I had errors.

11 01:44 11 Q. Okay.

12 01:44 12 A. And so that was an error. When I was going

13 01:44 13 through Dr. Gronke's report, he suggested that

14 01:44 14 California only had two laws in place rather

15 01:44 15 than three. California enacted -- excuse me --

16 01:44 16 enacted a law in 2012 that I believe was a

17 01:44 17 same-day registration law but the law said it

18 01:44 18 would not go into effect until the Secretary of

19 01:44 19 State had decide to implement it. So it won't

20 01:45 20 go into effect until 2016. So it is not

21 01:45 21 possible for that law to have affected the

22 01:45 22 change in turnout from 2000 to 2012.

23 01:45 23 Q. Okay. So that only applies to what's in Figure

24 01:45 24 11, not Figure 14, correct?

25 01:45 25 A. Well, let me see. I did correct that Figure

1 01:51 1 When I was reading the laws and looking
2 01:51 2 at the laws, I was looking at the current state
3 01:51 3 of the law.

4 01:52 4 Q. Mr. Trende, do you contest that voter
5 01:52 5 registration rates among African American
6 01:52 6 voters in North Carolina have surged in the
7 01:52 7 past decade compared to the voter registration
8 01:52 8 rates of white voters in North Carolina?

9 01:52 9 MR. FARR: Object to the form.

10 01:52 10 THE WITNESS: I mean, I think surged is
11 01:52 11 a vague term that I can't give an opinion on.

12 01:52 12 BY MS. MEZA:

13 01:52 13 Q. Do you contest that voter registration rates
14 01:52 14 among minority voters in North Carolina have
15 01:52 15 increased in the past decade compared to the
16 01:52 16 voter registration rates of white voters in
17 01:52 17 North Carolina? Or let's use the word
18 01:52 18 surpassed.

19 01:53 19 A. I don't believe that I have that data in my
20 01:53 20 report. If those data are available in
21 01:53 21 different expert reports, I couldn't offer an
22 01:53 22 opinion on them without having them in front of
23 01:53 23 me.

24 01:53 24 Q. Do you contest that the North Carolina State
25 01:53 25 Board of Elections' data shows that African

1 01:53 1 American voters used early voting in a -- in

2 01:53 2 higher percentages than white voters

3 01:53 3 particularly in general election years?

4 01:54 4 MR. FARR: Objection to the form.

5 01:54 5 THE WITNESS: I don't think I would

6 01:54 6 offer an opinion on that question as stated.

7 01:54 7 To the extent it's asking me to make

8 01:54 8 any sort of prediction about what would happen

9 01:54 9 in a year like 2016, I have no opinion on that.

10 01:54 10 I think that's an important question, though,

11 01:54 11 that is largely unanswered in this litigation.

12 01:54 12 BY MS. MEZA:

13 01:54 13 Q. Well, the question isn't asking you to

14 01:54 14 speculate about future use, but as whatever's

15 01:54 15 reflected in the data currently, do you contest

16 01:54 16 that African American voters use early voting

17 01:54 17 in higher percentages than white voters?

18 01:54 18 MR. FARR: Objection to the form.

19 01:54 19 THE WITNESS: Without having those data

20 01:54 20 in front of me, I'm not sure I could answer

21 01:55 21 that question.

22 01:55 22 My recollection is that that is true of

23 01:55 23 2012 and 2008 but not of 2004 and that that

24 01:55 24 leads to the question of whether there's

25 01:55 25 something anomalous in 2008 and 2012 driving

1 01:55 1 it. Perhaps if that anomalous event were
2 01:55 2 removed, we would see something more like 2004.
3 01:55 3 It's an important question that would have to
4 01:55 4 be controlled for that unfortunately
5 01:55 5 plaintiffs' experts don't attempt to answer.

6 01:55 6 BY MS. MEZA:

7 01:55 7 Q. Did you attempt to answer that question?

8 01:55 8 A. No.

9 01:55 9 Q. Did you attempt to answer that question with
10 01:55 10 respect to any of the other provisions?

11 01:55 11 A. Well, the regression analysis, again, gives
12 01:55 12 some -- gives evidence that we don't see a
13 01:55 13 statistically significant increase in African
14 01:55 14 American voting in states with these sorts of
15 01:55 15 laws adopted. So the fact that there's no
16 01:55 16 statistically significant relationship casts
17 01:55 17 doubt on the idea that removal of these laws
18 01:56 18 would have any effect on African American
19 01:56 19 turnout or that these laws, what was driving,
20 01:56 20 as you put it, surge in turnout that we saw in
21 01:56 21 2008 and 2012.

22 01:56 22 With that said, the fact that there was
23 01:56 23 a regression to mean in 2010 when the president
24 01:56 24 was not on the ballot, when there weren't
25 01:56 25 presidential early voter drives going on is a

1 02:11 1 ask you a question about voter registration

2 02:11 2 drives.

3 02:11 3 My question was about whether or not

4 02:11 4 reductions in early voting would increase

5 02:11 5 burdens on voters, right, and whether you

6 02:11 6 looked at that question through the lens of any

7 02:11 7 data other than turnout effects.

8 02:11 8 A. Such as registration.

9 02:11 9 Q. How would early voting affect registration

10 02:11 10 rates?

11 02:11 11 A. Well, that's a good point. For early voting it

12 02:11 12 wouldn't affect registration.

13 02:11 13 Q. So let me repeat my question.

14 02:11 14 MR. FARR: Wait, wait, wait. Are you

15 02:11 15 finished?

16 02:11 16 THE WITNESS: Yeah. Except to the

17 02:11 17 extent -- well, I don't know.

18 02:11 18 BY MR. HO:

19 02:11 19 Q. So with respect to early voting and whether or

20 02:11 20 not reductions in early voting would impose any

21 02:11 21 burdens on voters, did you look at that

22 02:11 22 question through the lens of any data other

23 02:11 23 than turnout effects?

24 02:11 24 A. Such as?

25 02:12 25 Q. I described burdens on voters in terms of

1 02:12 1 increased effort, time or money in order to

2 02:12 2 cast a vote. Did you look at any of those?

3 02:12 3 A. I looked at many things other than turnout.

4 02:12 4 For example, I looked at registration.

5 02:12 5 Now -- I'm going to finish answering your

6 02:12 6 question.

7 02:12 7 So I am not going to say that none of

8 02:12 8 these things -- other things that are in my

9 02:12 9 report besides turnout numbers would have

10 02:12 10 something to do with early voting. Could be

11 02:12 11 that registration efforts by the Obama campaign

12 02:12 12 would overlap with its get-out-the-vote efforts

13 02:12 13 in a state like -- in the state.

14 02:13 14 And so a lot of it -- the answer

15 02:13 15 depends. If you say, well, what about this

16 02:13 16 sort of burden with respect to early voting,

17 02:13 17 then I could answer the question, but in the

18 02:13 18 whole universe of potential burdens that my

19 02:13 19 report could be relevant to, I can't answer

20 02:13 20 your question.

21 02:13 21 Q. Apart from turnout, are you offering any

22 02:13 22 opinion as to whether black voters will

23 02:13 23 disproportionately face higher burdens to vote

24 02:13 24 as a result of the reductions in early voting?

25 02:13 25 MR. FARR: Objection to the form.

1 02:13 1 THE WITNESS: Again, without having a
2 02:13 2 better idea of what you mean by burden, with
3 02:13 3 the idea of burden being something so broad as
4 02:13 4 to encompass potentially a single construction
5 02:13 5 project in front of a site, I cannot possibly
6 02:13 6 answer that question.

7 02:13 7 BY MR. HO:

8 02:13 8 Q. Are you offering any opinion as to whether
9 02:14 9 voters will generally increase -- will face
10 02:14 10 increased burdens to register as a result of
11 02:14 11 the elimination of same-day registration in
12 02:14 12 North Carolina?

13 02:14 13 MR. FARR: Objection to the form.

14 02:14 14 THE WITNESS: With the same caveat
15 02:14 15 about the definition of burden, I cannot answer
16 02:14 16 that question.

17 02:14 17 BY MR. HO:

18 02:14 18 Q. Are you apart from turnout offering any opinion
19 02:14 19 as to whether black voters will
20 02:14 20 disproportionately face increased burdens to
21 02:14 21 register as a result of the elimination of
22 02:14 22 same-day registration?

23 02:14 23 MR. FARR: Objection to form.

24 02:14 24 THE WITNESS: Same answer on -- with
25 02:14 25 the caveat about the way you phrased the

1 02:14 1 question.

2 02:14 2 BY MR. HO:

3 02:14 3 Q. Apart from turnout effects, are you offering

4 02:14 4 any opinion as to whether voters will

5 02:14 5 increase -- I'm sorry -- will faced increased

6 02:14 6 burdens to vote as a result of the elimination

7 02:14 7 of out-of-precinct voting?

8 02:14 8 MR. FARR: Objection.

9 02:14 9 THE WITNESS: With the same caveat

10 02:14 10 about the definition of burden, I cannot offer

11 02:14 11 an answer to that question.

12 02:14 12 BY MR. HO:

13 02:14 13 Q. And apart from turnout, are you offering any

14 02:14 14 opinion as to whether black voters will

15 02:15 15 disproportionately face increased burdens to

16 02:15 16 vote as a result of the elimination of

17 02:15 17 out-of-precinct voting?

18 02:15 18 MR. FARR: Objection to form.

19 02:15 19 THE WITNESS: Same caveat about the

20 02:15 20 definition of burden. I cannot answer that

21 02:15 21 question.

22 02:15 22 BY MR. HO:

23 02:15 23 Q. I want to turn to your background a little bit,

24 02:15 24 and Ms. Meza asked you a few questions about

25 02:15 25 that.

1 02:15 1 You don't have a doctorate in political
2 02:15 2 science; is that right?

3 02:15 3 A. That's correct.

4 02:15 4 Q. Did you ever think about getting one?

5 02:15 5 A. Yes.

6 02:15 6 Q. Why didn't you get one?

7 02:15 7 A. Because I wanted to be a lawyer sadly.

8 02:15 8 Q. Why?

9 02:15 9 You are, however, familiar with the
10 02:15 10 political science literature on early voting,
11 02:15 11 correct?

12 02:15 12 A. Correct.

13 02:15 13 Q. Who in your estimation are some of the leading
14 02:15 14 political scientists in the area of early
15 02:15 15 voting research?

16 02:15 16 A. Dr. Burden has written quite a lot on it.

17 02:15 17 Dr. Gronke has written quite a lot on it.

18 02:16 18 Dr. Michael -- actually, Dr. McDonald at George

19 02:16 19 Mason University's probably up there.

20 02:16 20 Dr. Stein has written pretty extensively.

21 02:16 21 Q. At Rice?

22 02:16 22 A. Yes.

23 02:16 23 Q. If you had to pick one of them as sort of the

24 02:16 24 leading scholar in early voting research, would

25 02:16 25 you be able to do that?

1 02:16 1 A. I doubt it.

2 02:16 2 Q. You're familiar with the work of Professor

3 02:16 3 Gronke?

4 02:16 4 A. He's my professor.

5 02:16 5 Q. At Duke?

6 02:16 6 A. He'd tell me he taught me everything I know.

7 02:16 7 Q. Have you reviewed his report in this case?

8 02:16 8 A. I have.

9 02:16 9 Q. And have you looked at his c.v. which is

10 02:16 10 appended to his report?

11 02:16 11 A. I did not.

12 02:16 12 Q. But you're familiar with him?

13 02:16 13 A. Oh, yes.

14 02:16 14 Q. So in your assessment, is he qualified to

15 02:16 15 render an opinion about early voting in this

16 02:16 16 case?

17 02:16 17 A. I can't offer that legal conclusion.

18 02:16 18 Q. Not as a legal conclusion.

19 02:16 19 You noted earlier that the term

20 02:16 20 "expert," for instance, can have a legal

21 02:16 21 conclusion.

22 02:17 22 So is he qualified to offer an opinion

23 02:17 23 on early voting in North Carolina in the same

24 02:17 24 loose sense that you used the term "expert" to

25 02:17 25 describe yourself?

1 02:17 1 A. He knows more about early voting than the

2 02:17 2 average lay witness would know.

3 02:17 3 Q. Do you think he knows more about early voting

4 02:17 4 than you know?

5 02:17 5 A. Possibly.

6 02:17 6 Q. I want to show you something that we'll mark as

7 02:17 7 Exhibit 106.

8 02:17 8 (WHEREUPON, Plaintiff's Exhibit 106 was

9 02:17 9 marked for identification.)

10 02:17 10 BY MR. HO:

11 02:17 11 Q. Do you recognize this?

12 02:17 12 A. I think so.

13 02:17 13 Q. This is Professor Gronke's calculation of early

14 02:17 14 voting usage rates by race in North Carolina

15 02:17 15 using the State's turnout data.

16 02:18 16 A. Okay.

17 02:18 17 Q. Do you dispute the factual accuracy of

18 02:18 18 Professor Gronke's calculations regarding early

19 02:18 19 voting usage?

20 02:18 20 A. No.

21 02:18 21 Q. Do you dispute the factual accuracy of

22 02:18 22 Professor Gronke's calculations regarding

23 02:18 23 racial disparities in early voting usage?

24 02:18 24 MR. FARR: Objection to the form.

25 02:18 25 THE WITNESS: I would trust that his

1 02:18 1 math is correct.

2 02:18 2 BY MR. HO:

3 02:18 3 Q. He has similar calculations in his report

4 02:18 4 regarding same-day registration usage. Do you

5 02:18 5 dispute those calculations?

6 02:18 6 A. I did not go and check his math.

7 02:18 7 Q. Do you dispute his calculations regarding

8 02:18 8 racial disparities in same-day registration

9 02:18 9 usage by race?

10 02:18 10 MR. FARR: Objection to form.

11 02:18 11 THE WITNESS: Again, I did not go back

12 02:18 12 and check his math.

13 02:18 13 MR. HO: I want to show you an

14 02:18 14 exhibit what we'll mark as Exhibit 107.

15 02:19 15 (WHEREUPON, Plaintiff's Exhibit 107 was

16 02:19 16 marked for identification.)

17 02:19 17 BY MR. HO:

18 02:19 18 Q. Do you recognize this?

19 02:19 19 A. Not off the top of my head, no.

20 02:19 20 Q. If I tell you that these are Professor Gronke's

21 02:19 21 statistical significance calculations for early

22 02:19 22 voting usage in his report and that this is in

23 02:19 23 his report, will you believe me?

24 02:19 24 A. I would have no reason not to believe you.

25 02:19 25 Q. Do you in your report or otherwise dispute the

1 02:19 1 validity of his statistical significance

2 02:19 2 calculations regarding racial disparities in

3 02:19 3 early voting usage?

4 02:19 4 MR. FARR: Objection to form.

5 02:19 5 THE WITNESS: I never went back and

6 02:19 6 double-checked his math, so I don't believe --

7 02:19 7 I don't believe I question his calculations.

8 02:19 8 MR. HO: I'll show you something else.

9 02:19 9 I think this is 108.

10 02:20 10 (WHEREUPON, Plaintiff's Exhibit 108 was

11 02:20 11 marked for identification.)

12 02:20 12 THE WITNESS: This is my inspiration to

13 02:20 13 used dash lines instead of color.

14 02:20 14 BY MR. HO:

15 02:20 15 Q. I apologize if these are not in color.

16 02:20 16 A. That's okay.

17 02:20 17 Q. This is Professor Gronke's logistic regression

18 02:20 18 analysis of early voting usage by race that's

19 02:20 19 found in his report. It controls for age and

20 02:20 20 party.

21 02:20 21 Do you dispute the validity of these

22 02:20 22 calculations?

23 02:20 23 A. I don't believe I offer any opinion either way

24 02:20 24 on these calculations.

25 02:20 25 Q. I'd like to turn now, if I may, to some of your

1 02:23 1 Q. And in your view is your experience in doing
2 02:23 2 that part of what makes you an expert?

3 02:23 3 A. In the lay sense, yes.

4 02:23 4 Q. And does that work include assessing
5 02:23 5 possibilities about turnout among different
6 02:23 6 racial groups?

7 02:23 7 A. Yes.

8 02:23 8 Q. I want to show you something. I think we're at
9 02:23 9 109.

10 02:23 10 (WHEREUPON, Plaintiff's Exhibit 109 was
11 02:23 11 marked for identification.)

12 02:23 12 BY MR. HO:

13 02:24 13 Q. Do you recognize this?

14 02:24 14 A. Yes.

15 02:24 15 Q. What is this?

16 02:24 16 A. This is an article I wrote November 12, 2013,
17 02:24 17 in the wake of the Virginia gubernatorial
18 02:24 18 election.

19 02:24 19 Q. What's the title of this post?

20 02:24 20 A. "How Much Did Demographics Matter in the
21 02:24 21 Virginia Race?"

22 02:24 22 Q. Can you turn to the second page. Do you see
23 02:24 23 where in bold it says "2. The exit polls might
24 02:24 24 overstate the surge in African American votes"?

25 02:24 25 A. Yes.

1 02:24 1 Q. Can you look at the third paragraph below that.

2 02:24 2 And do you see where you wrote:

3 02:24 3 "The CPS estimates have their

4 02:24 4 own problems -- in particular, more

5 02:24 5 people report voting than actually

6 02:24 6 did so, and there are some good

7 02:24 7 reasons to believe that the over-

8 02:24 8 reporting issue isn't uniform across

9 02:24 9 demographic groups."

10 02:24 10 Is that an accurate reading of what you

11 02:25 11 wrote?

12 02:25 12 A. Yes.

13 02:25 13 Q. So let's talk about the CPS data. I know you

14 02:25 14 did a little bit earlier today.

15 02:25 15 Just for clarification, that's compiled

16 02:25 16 by the Census Bureau, right?

17 02:25 17 A. Correct.

18 02:25 18 Q. And when we say it's a survey, what do we mean

19 02:25 19 by that?

20 02:25 20 A. We mean that people -- when we say it is a

21 02:25 21 survey, we mean that we are asking people after

22 02:25 22 the fact to give their answer as opposed to

23 02:25 23 looking at the hard data that could show up in

24 02:25 24 a voter file. It's a self response.

25 02:25 25 Q. So when you mean self response, you mean people

1 02:25 1 voluntarily give their answers back?

2 02:25 2 A. Correct.

3 02:25 3 Q. Ow, you refer to over-reporting earlier in the

4 02:25 4 CPS. Now, would it be accurate, then, to say

5 02:25 5 that the CPS data, that in it more people self

6 02:25 6 report voting than actually voted?

7 02:26 7 A. Within the individual level data, yes.

8 02:26 8 Q. And in the passage that you wrote that I read

9 02:26 9 from a moment ago, am I correct that you meant

10 02:26 10 to say that there is reason to believe that the

11 02:26 11 rate at which CPS respondents over report

12 02:26 12 voting may differ among different racial

13 02:26 13 groups?

14 02:26 14 A. I think I meant to write over-reporting issue

15 02:26 15 isn't uniform among demographic groups.

16 02:26 16 Q. By demographic groups did you mean racial

17 02:26 17 groups?

18 02:26 18 A. I don't know if I was writing with that degree

19 02:26 19 of precision there.

20 02:26 20 Q. What did you mean when you said demographic

21 02:26 21 groups?

22 02:26 22 A. Demographics encompass a variety of variables.

23 02:26 23 Q. Some examples?

24 02:26 24 A. Age, race is one of them, gender, class.

25 02:26 25 Q. So over-reporting may differ based on those

1 02:26 1 different demographic factors?

2 02:26 2 A. No, I didn't say that. I said across

3 02:27 3 demographic groups. There wasn't any sort of

4 02:27 4 limitation there.

5 02:27 5 Q. Can you clarify what you just meant by that?

6 02:27 6 A. Yeah. The over-reporting issue isn't uniform

7 02:27 7 across demographic groups. It doesn't mean

8 02:27 8 that there are no two demographics groups where

9 02:27 9 they are similar. It just means that of all

10 02:27 10 the different demographic groups there are

11 02:27 11 dissimilarities in there.

12 02:27 12 Q. I want to show you something else. I think

13 02:27 13 we're at 110.

14 02:27 14 (WHEREUPON, Plaintiff's Exhibit 110 was

15 02:27 15 marked for identification.)

16 02:27 16 BY MR. HO:

17 02:27 17 Q. Do you recognize this, Mr. Trende?

18 02:27 18 A. Yes.

19 02:27 19 Q. What is this?

20 02:27 20 A. This is an article I wrote for Real Clear

21 02:27 21 Politics May 9, 2013.

22 02:28 22 Q. So you're the author of this post?

23 02:28 23 A. Yes.

24 02:28 24 Q. What's the title of it?

25 02:28 25 A. "Sweeping Conclusions From Census Data are a

1 02:28 1 Mistake."

2 02:28 2 Q. So let's look at the first page and the bottom.

3 02:28 3 Do you see where it says:

4 02:28 4 "But if there is one thing that

5 02:28 5 we absolutely know about 2012, beyond

6 02:28 6 any reasonable doubt, it is that

7 02:28 7 turnout actually dropped from 2008.

8 02:28 8 In fact, it dropped substantially.

9 02:28 9 "Dave Wasserman" -- on to the next

10 02:28 10 page -- "followed the 2012 results as

11 02:28 11 closely as anyone, and he calculates

12 02:28 12 that turnout dropped from 131,313,820

13 02:28 13 in 2008 to" 129,000 -- I'm sorry --

14 02:28 14 "129,069,194.

15 02:28 15 "So the CPS data say there were

16 02:28 16 around 4 million more votes cast in

17 02:28 17 2012 than was actually the case."

18 02:28 18 Is that an accurate reading of what you

19 02:28 19 wrote?

20 02:29 20 A. Yes.

21 02:29 21 Q. So we absolutely know in your view that the

22 02:29 22 Census CPS data was off by 4 million voters in

23 02:29 23 2012?

24 02:29 24 A. I wouldn't have any reason to dispute that.

25 02:29 25 This was written in 20 -- in May of 2013 before

1 02:29 1 the final vote counts were available in some
2 02:29 2 places, but like I said, I wouldn't have any
3 02:29 3 reason to dispute that.

4 02:29 4 Q. And the CPS had reported that turnout increased
5 02:29 5 between 2008 and 2012 by 1.8 million, but that
6 02:29 6 was wrong in your estimation.

7 02:29 7 A. I don't see that in the part you just read.

8 02:29 8 Q. Well, if you look at the -- on the first page
9 02:29 9 starting above where we started, the last
10 02:29 10 sentence in that paragraph:

11 02:29 11 "That works out to a total of
12 02:29 12 1.8 million more votes cast in 2012
13 02:29 13 than 2008, according to the CPS survey."

14 02:29 14 A. Yes. Okay.

15 02:30 15 Q. So the CPS reported the turnout increase
16 02:30 16 between 2008 and 2012 by 1.8 million voters?

17 02:30 17 A. That's my recollection.

18 02:30 18 Q. But in fact, turnout declined between 2008 and
19 02:30 19 2012.

20 02:30 20 A. That is true.

21 02:30 21 Q. And that is true that the CPS over-reported
22 02:30 22 turnout even though the CPS treats
23 02:30 23 non-responses as non-voters?

24 02:30 24 A. Correct.

25 02:30 25 Q. Now, in light of the article that we read

1 02:30 1 earlier or we looked at earlier of yours,
2 02:30 2 Exhibit 109, when the CPS in 2012 overestimates
3 02:30 3 the number of voters by 4 million, do we have
4 02:30 4 reason to believe that those 4 million are
5 02:30 5 proportionately distributed amongst different
6 02:30 6 demographic groups?

7 02:30 7 A. I would say we have reason to believe they are
8 02:31 8 not, a little bit different.

9 02:31 9 Q. So over-reporting may be -- those 4 million
10 02:31 10 over-reported votes may be coming
11 02:31 11 disproportionately from different demographics?

12 02:31 12 A. Correct.

13 02:31 13 Q. Are you aware of academic research indicating
14 02:31 14 that black respondents may tend to over report
15 02:31 15 voting more frequently than white ones?

16 02:31 16 A. Yes.

17 02:31 17 Q. Do you agree with that research?

18 02:31 18 A. I have no reason to dispute it.

19 02:31 19 Q. Now, to your knowledge has the Census CPS
20 02:31 20 over-reported turnout in other elections
21 02:31 21 besides 2012?

22 02:31 22 A. That is my recollection. I would prefer to go
23 02:31 23 back and look at the actual data before making
24 02:31 24 a final judgment, but I'm not going to fight
25 02:31 25 with you about it.

1 02:31 1 Q. 2012 is not the first time it happened?

2 02:32 2 A. I don't think so, no.

3 02:32 3 Q. To your knowledge, does the rate at which the

4 02:32 4 CPS over reports voting remain constant from

5 02:32 5 election to election?

6 02:32 6 A. Now, when you say the rate at which the CPS

7 02:32 7 over reports --

8 02:32 8 Q. I mean nationally.

9 02:32 9 A. Well, but you mean the top line number that

10 02:32 10 they publish?

11 02:32 11 Q. Yes.

12 02:32 12 A. Okay. Then I don't believe it's constant.

13 02:32 13 Q. It varies from election year to election year?

14 02:32 14 A. That's right.

15 02:32 15 Q. And what about from state to state, does it

16 02:32 16 vary from state to state, the level of

17 02:32 17 over-reporting in the Census -- in the CPS

18 02:32 18 data?

19 02:32 19 A. Among states?

20 02:32 20 Q. Well, is the over-reporting rate identical in

21 02:32 21 each state --

22 02:32 22 A. Right.

23 02:32 23 Q. -- in the CPS?

24 02:32 24 A. Among different states the rates differ.

25 02:32 25 Q. And you're aware of academic research

1 02:32 1 indicating that over-reporting rates are

2 02:32 2 different among different states?

3 02:32 3 A. Correct.

4 02:32 4 Q. Now, you said earlier during this deposition

5 02:33 5 that the over-reporting rate tends to be

6 02:33 6 constant within states from election to

7 02:33 7 election; is that right?

8 02:33 8 A. That there is peer-reviewed literature that

9 02:33 9 supports this, yes.

10 02:33 10 Q. What is that peer-reviewed literature?

11 02:33 11 A. I cannot think of the citation off the top of

12 02:33 12 my head, but I can get it to you after a break.

13 02:33 13 Q. Is it cited in your report?

14 02:33 14 A. I don't believe it is.

15 02:33 15 Q. Why didn't you cite that in your report?

16 02:33 16 A. I didn't cite it.

17 02:33 17 Q. Did you review that literature before you

18 02:33 18 drafted your report?

19 02:33 19 A. Yes.

20 02:33 20 Q. When?

21 02:33 21 A. I cannot say with certainty what the first time

22 02:33 22 I read that literature was. I know I conducted

23 02:33 23 my first round of literature review with this

24 02:33 24 report specifically in mind within a few weeks

25 02:33 25 of being hired -- or engaged for this, so I

1 02:34 1 would assume it was then.

2 02:34 2 Q. So you didn't look at that literature before

3 02:34 3 you started working on this report?

4 02:34 4 A. I didn't say that.

5 02:34 5 Q. Well, you just said that you looked at it the

6 02:34 6 first time when you first started looking for

7 02:34 7 this report.

8 02:34 8 A. No. I said with this litigation and this

9 02:34 9 expert report in mind.

10 02:34 10 Q. So you looked at it before you started working

11 02:34 11 on this report?

12 02:34 12 A. I don't know.

13 02:34 13 Q. You can't recall?

14 02:34 14 A. I can't recall.

15 02:34 15 Q. Can we look back at your post Sweeping

16 02:34 16 Conclusions from Census Data are a Mistake?

17 02:34 17 Can we turn to the third page.

18 02:34 18 Can we look at the end of it, and the

19 02:34 19 last two sentences:

20 02:34 20 "But because of this known issue,

21 02:34 21 analysts and reporters should avoid

22 02:34 22 making sweeping pronouncements on the

23 02:34 23 basis of this data. There's just too

24 02:34 24 much that we don't know."

25 02:34 25 Is that an accurate reading of what you

1 02:34 1 wrote?

2 02:34 2 A. That is what I wrote.

3 02:34 3 Q. And by known issue, you're referring to

4 02:35 4 over-reporting of turnout in the Census CPS

5 02:35 5 data?

6 02:35 6 A. Correct.

7 02:35 7 Q. And so because of the over-reporting issue, you

8 02:35 8 would not in your own writing for Real Clear

9 02:35 9 Politics make sweeping pronouncements on the

10 02:35 10 basis of Census CPS data?

11 02:35 11 A. So to understand that, we have to understand

12 02:35 12 what I mean when I'm talking about analysts and

13 02:35 13 reporters. And this entire article is written

14 02:35 14 in the context of -- if you go back to page 1,

15 02:35 15 paragraph 2:

16 02:35 16 "The recent release has been

17 02:35 17 reported by others with banner

18 02:35 18 headlines like this one: 'For the

19 02:35 19 First Time on Record, Black Voting

20 02:35 20 Rate Outpaced Rate for Whites in 2012.'

21 02:35 21 A flood of analysis has predictably

22 02:35 22 followed, ranging from deep dives into

23 02:35 23 the data, to commentary," et cetera,

24 02:35 24 et cetera.

25 02:35 25 So that is the context in which I am

1 02:35 1 writing this. So you should not have a glaring

2 02:35 2 headline to that effect without at least taking

3 02:36 3 into account the issues that are involved

4 02:36 4 within the data.

5 02:36 5 This is an informational piece since a

6 02:36 6 lot of journalists and analysts read my work to

7 02:36 7 say, hey, there's at least a red flag here that

8 02:36 8 you should think about before you trumpet any

9 02:36 9 results.

10 02:36 10 Q. So in your writing, though, because you're

11 02:36 11 addressing analysts and reporters -- and you're

12 02:36 12 an analyst?

13 02:36 13 A. Yes.

14 02:36 14 Q. A reporter?

15 02:36 15 A. No. Yes then no.

16 02:36 16 Q. Would you take your own advice and avoid making

17 02:36 17 sweeping pronouncements on the basis of these

18 02:36 18 data?

19 02:36 19 A. I wouldn't write a blaring headline like "For

20 02:36 20 the First Time on Record, Black Voting Rate

21 02:36 21 Outpaced Rate for Whites in 2012," which is the

22 02:36 22 context in which I'm writing this piece.

23 02:36 23 Q. In addition to analysts and reporters, would

24 02:37 24 you also caution courts not to make sweeping

25 02:37 25 pronouncements on the basis of CPS data?

1 02:37 1 A. Of the sorts such as "For the First Time on

2 02:37 2 Record, Black Voting Rate Outpaced Rate for

3 02:37 3 Whites in 2012." That would be a caution.

4 02:37 4 Q. And would you agree that because the CPS

5 02:37 5 over-reporting rate is not constant from

6 02:37 6 election to election that we should be cautious

7 02:37 7 about using CPS data to compare turnout rates

8 02:37 8 in different elections?

9 02:37 9 A. It's certainly something you should be aware

10 02:37 10 of.

11 02:37 11 Q. Would you agree that because the CPS

12 02:37 12 over-reporting rate is not constant amongst

13 02:37 13 states that we should be cautious about using

14 02:37 14 CPS data to compare turnout rates in different

15 02:37 15 states?

16 02:37 16 A. You mean top line turnout rates?

17 02:37 17 Q. Yes.

18 02:37 18 A. That's certainly something you should take into

19 02:37 19 account.

20 02:37 20 Q. Would you also agree that because the CPS

21 02:37 21 over-reporting rate is not constant among

22 02:37 22 different demographic groups that we should be

23 02:38 23 cautious about using the CPS data to compare

24 02:38 24 turnout rates of different demographic groups?

25 02:38 25 A. If you're going to compare turnout rates

1 02:38 1 between different demographic groups, it is a
2 02:38 2 limitation of the CPS data to which you should
3 02:38 3 be aware.

4 02:38 4 And so if you were to write a report
5 02:38 5 that talked about these sorts of issues, you
6 02:38 6 would want to identify that issue within the
7 02:38 7 report.

8 02:38 8 Q. I'd like to move to something else. I think
9 02:38 9 this is 111.

10 02:38 10 (WHEREUPON, Plaintiff's Exhibit 111 was
11 02:38 11 marked for identification.)

12 02:38 12 BY MR. HO:

13 02:38 13 Q. Do you recognize this?

14 02:38 14 A. This is getting ancient on me, but it looks
15 02:38 15 like an article for Real Clear Politics that I
16 02:38 16 wrote in 2012.

17 02:38 17 Q. In April of 2012?

18 02:38 18 A. Yes.

19 02:38 19 Q. And it concerns forecasts for the November 2012
20 02:39 20 election?

21 02:39 21 A. I honestly don't remember this article so
22 02:39 22 you're going to have to give me a second.

23 02:39 23 MR. FARR: Take your time to read the
24 02:39 24 whole article.

25 02:39 25 BY MR. HO:

1 03:14 1 quick break.

2 03:14 2 MR. HO: Okay.

3 03:14 3 THE VIDEOGRAPHER: Off record at 3:15.

4 03:15 4 (Brief Recess.)

5 03:23 5 THE VIDEOGRAPHER: On record at 3:23.

6 03:23 6 BY MR. HO:

7 03:23 7 Q. Mr. Trende, could we turn to your expert

8 03:23 8 report? Do you have a copy of it in front of

9 03:23 9 you?

10 03:23 10 A. Sure.

11 03:23 11 Q. Could you turn to page 30, section titled

12 03:23 12 "Cross-State Comparison."

13 03:23 13 A. Okay.

14 03:23 14 Q. So Ms. Meza asked you a few questions about

15 03:23 15 this. I just have a few follow-up questions.

16 03:24 16 Is it fair to say that in this section

17 03:24 17 you attempted to determine if there is a

18 03:24 18 statistically significant relationship between

19 03:24 19 the change in African American turnout between

20 03:24 20 2000 and 2012 in states and the number of

21 03:24 21 voting reforms implemented in those states?

22 03:24 22 A. The number of voting reforms similar to the

23 03:24 23 types of voting reforms that are at issue in

24 03:24 24 this litigation.

25 03:24 25 Q. Right. By voting reforms, I mean early voting,

1 03:24 1 same-day registration, out-of-precinct

2 03:24 2 balloting and pre-registration.

3 03:24 3 A. "These reforms" we'll call it.

4 03:24 4 Q. Is that fair to say that's what you're doing

5 03:24 5 here?

6 03:24 6 A. Yes.

7 03:24 7 Q. You're not offering an opinion, are you, as to

8 03:24 8 whether or not African American turnout rose

9 03:24 9 relative to white turnout in any of these

10 03:24 10 states, correct?

11 03:24 11 A. Correct.

12 03:24 12 Q. Now, in arriving at the conclusions that you

13 03:25 13 reach from this analysis, it's important that

14 03:25 14 the underlying data that you use in this

15 03:25 15 analysis be accurate, correct?

16 03:25 16 A. Correct.

17 03:25 17 Q. So if the turnout numbers that you use in this

18 03:25 18 analysis are not accurate, that could affect

19 03:25 19 the results, correct?

20 03:25 20 A. It could.

21 03:25 21 Q. And if there are errors in the number of

22 03:25 22 reforms you believe that these states have,

23 03:25 23 that could also affect your analysis, correct?

24 03:25 24 A. Correct.

25 03:25 25 Q. Let's talk about Figure 11 which we spent some

1 03:25 1 time on earlier. In the second column in
2 03:25 2 Figure 11. This is where you report the change
3 03:25 3 in African American turnout in each of these
4 03:25 4 states between 2000 and 2012, correct?
5 03:25 5 A. Correct.
6 03:25 6 Q. And in measuring this, you relied on Census CPS
7 03:25 7 data?
8 03:25 8 A. Correct.
9 03:25 9 Q. Did you rely on any other data in this column?
10 03:25 10 A. No.
11 03:25 11 Q. Now, when you relied on the Census CPS data in
12 03:25 12 your analysis, did you attempt to weight the
13 03:25 13 data to account for the problem of
14 03:25 14 over-reporting of turnout?
15 03:26 15 A. No.
16 03:26 16 Q. And you -- when you use the Census CPS data to
17 03:26 17 compare turnout in different years, you didn't
18 03:26 18 attempt to reweight the data to account for the
19 03:26 19 fact that over-reporting rates vary from year
20 03:26 20 to year, did you?
21 03:26 21 A. No.
22 03:26 22 Q. And when you relied on the CPS data to compare
23 03:26 23 turnout rate in different states, you didn't
24 03:26 24 attempt to reweight the data to account for the
25 03:26 25 fact that over-reporting rates vary from state

1 03:26 1 to state?

2 03:26 2 A. No.

3 03:26 3 Q. When you relied on the CPS data in your

4 03:26 4 analysis, you didn't attempt to reweight the

5 03:26 5 data to account for the fact that

6 03:26 6 over-reporting rates vary among different

7 03:26 7 racial groups, did you?

8 03:26 8 A. I'm only looking at one racial group.

9 03:26 9 Q. Well, on page 22, Figure 8, you're comparing

10 03:27 10 African American participation rates to white

11 03:27 11 participation rates, correct?

12 03:27 12 A. Correct.

13 03:27 13 Q. And in Figure 8, you rely on CPS data, correct?

14 03:27 14 A. Correct.

15 03:27 15 Q. And in comparing African American and white

16 03:27 16 turnout rates, you did not in this part of your

17 03:27 17 report mention the issue that reporting rates

18 03:27 18 differ among different demographic groups, did

19 03:27 19 you?

20 03:27 20 A. No, no, not with -- you were asking me

21 03:27 21 specifically with Figure 12.

22 03:27 22 Q. I'm asking about Figure 8.

23 03:27 23 A. Correct.

24 03:27 24 Q. When you rely on CPS data in Figure 8, you

25 03:27 25 didn't attempt to reweight the data to adjust

1 03:27 1 for the problem of differential over-reporting

2 03:27 2 rates by demographic groups in Figure 8, did

3 03:27 3 you?

4 03:27 4 A. No.

5 03:27 5 Q. Now, let's turn back to -- if you don't mind --

6 03:28 6 actually, can we go back to paragraph 70 in

7 03:28 7 your report. In this paragraph you discuss

8 03:28 8 something written by Professor Michael

9 03:28 9 McDonald.

10 03:28 10 A. Correct.

11 03:28 11 Q. Okay.

12 03:28 12 MR. HO: Can we mark this as 116.

13 03:28 13 (WHEREUPON, Plaintiff's Exhibit 116 was

14 03:28 14 marked for identification.)

15 03:28 15 BY MR. HO:

16 03:28 16 Q. Take a look at that and let me know.

17 03:31 17 A. Okay.

18 03:31 18 Q. This is the piece by Professor McDonald that

19 03:31 19 you're citing to in paragraph 70 of your

20 03:31 20 report?

21 03:31 21 A. Correct.

22 03:31 22 Q. Do you see on the second page of this, the

23 03:31 23 second long paragraph under the header

24 03:31 24 "Non-Response Bias," the sentence that begins

25 03:31 25 "Why does non-response matter? As I have

1 03:31 1 discussed previously, non-response" --

2 03:32 2 A. I'm sorry. Where did you say?

3 03:32 3 Q. Do you see the header that says "Non-Response

4 03:32 4 Bias" in bold?

5 03:32 5 A. Yes.

6 03:32 6 Q. Do you see about the second long paragraph --

7 03:32 7 A. I'm sorry, second long -- yeah.

8 03:32 8 Q. -- that starts "Why does non-response" --

9 03:32 9 A. Proceed.

10 03:32 10 Q. So it reads:

11 03:32 11 "Why does non-response matter?

12 03:32 12 As I have discussed previously,

13 03:32 13 non-response to the voting and

14 03:32 14 registration supplement has been

15 03:32 15 increasing over time and varies across

16 03:32 16 important demographic groups -- such

17 03:32 17 as race and ethnicity -- which can

18 03:32 18 lead to erroneous conclusions when

19 03:32 19 making temporal comparisons of

20 03:32 20 registration and turnout rates."

21 03:32 21 Did I read that accurately?

22 03:32 22 A. Yes.

23 03:32 23 Q. So this is the nonresponsive issue that you

24 03:32 24 were discussing with Ms. Meza earlier that some

25 03:32 25 people don't return the CPS survey?

1 03:32 1 A. Right.

2 03:32 2 Q. This is different from the over-reporting issue

3 03:32 3 that you and I were talking about earlier?

4 03:32 4 A. Yeah, yeah, okay. This is part of the

5 03:33 5 non-response issue, but yeah.

6 03:33 6 Q. So the next sentence Professor McDonald writes:

7 03:33 7 "The good news is that the 2012 CPS

8 03:33 8 non-response modestly declined from 2008

9 03:33 9 to 2012 -- from 13.8 percent in 2008 to

10 03:33 10 12.8 percent in 2012 -- reversing the

11 03:33 11 upward trend."

12 03:33 12 Is that accurate?

13 03:33 13 A. Uh-huh.

14 03:33 14 Q. So based on what I just read there, is it fair

15 03:33 15 to say that the non-response rate for the CPS

16 03:33 16 varies from year to year?

17 03:33 17 A. Yes.

18 03:33 18 Q. And non-respondents don't face any penalties

19 03:33 19 for failing to respond to the CPS survey, do

20 03:33 20 they?

21 03:33 21 A. I don't believe so.

22 03:33 22 Q. They're not required to respond by law, are

23 03:33 23 they?

24 03:33 24 A. They definitely aren't required to respond to

25 03:33 25 every question in the voter and registration

1 03:33 1 supplement, no.

2 03:33 2 Q. Do you see the next sentence down that reads:

3 03:34 3 "The decline in non-response was

4 03:34 4 mostly centered on African Americans of

5 03:34 5 which 18 percent did not respond in

6 03:34 6 2008 compared with 15 percent in 2012.

7 03:34 7 In comparison, non-Hispanic white

8 03:34 8 non-response declined from 12.8 percent

9 03:34 9 in 2008 to 12.2 percent in 2012."

10 03:34 10 Accurate reading?

11 03:34 11 A. I didn't -- yes.

12 03:34 12 Q. Based on this passage, fair to say that the

13 03:34 13 non-response rate in the CPS varies among

14 03:34 14 different racial groups?

15 03:34 15 A. Yes.

16 03:34 16 Q. And varies even within a single racial group by

17 03:34 17 year?

18 03:34 18 A. Yes.

19 03:34 19 Q. And you are aware, are you not, that Professor

20 03:34 20 McDonald in this piece suggests adjusting CPS

21 03:34 21 data to account for these different

22 03:34 22 non-response rates by removing non-respondents

23 03:34 23 from the data altogether?

24 03:34 24 A. Yes.

25 03:34 25 Q. And in some of your own work for Real Clear

1 03:34 1 Politics, you've done just that, haven't you?

2 03:35 2 A. Actually I don't think I have.

3 03:35 3 Q. You don't remember writing an article in June

4 03:35 4 of 2013 called "The Case of the Missing White

5 03:35 5 Voters Revisited" in which you adjusted the CPS

6 03:35 6 data to account for the non-response rate?

7 03:35 7 A. I remember writing the article. I don't

8 03:35 8 remember that I adjusted the CPS data to

9 03:35 9 account for the non-response rate.

10 03:35 10 I've written about 200 articles. I

11 03:35 11 can't remember everything I've ever done,

12 03:35 12 Mr. Ho.

13 03:35 13 Q. That's okay. For your report in this case,

14 03:35 14 when you used the CPS data, you did not attempt

15 03:35 15 to adjust for the non-response rate as

16 03:35 16 described by Professor McDonald, correct?

17 03:35 17 A. Correct.

18 03:35 18 Q. Do you know whether in light of Professor

19 03:35 19 McDonald's research and other academic research

20 03:35 20 since 2012 peer-reviewed journals in the field

21 03:35 21 of political science would today accept a paper

22 03:36 22 concerning race and turnout for publication if

23 03:36 23 that paper relied exclusively on unadjusted CPS

24 03:36 24 data?

25 03:36 25 A. If they were talking exclusively about the

1 03:36 1 African American share of the electorate during

2 03:36 2 the multivariate regression analysis, I don't

3 03:36 3 know the answer to that.

4 03:36 4 Q. You've heard the term "validated data" before?

5 03:36 5 A. Yes.

6 03:36 6 Q. What do you understand that term to mean in the

7 03:36 7 context of elections and turnout?

8 03:36 8 A. My understanding is that that is the actual

9 03:36 9 results reported by the State of

10 03:36 10 North Carolina.

11 03:36 11 Q. So that's different from a survey like the CPS?

12 03:36 12 A. Yes.

13 03:36 13 Q. Right because the CPS relies on a statistical

14 03:36 14 sample to provide aggregate numbers?

15 03:36 15 A. That is a difference, yes.

16 03:36 16 Q. So the validated data for North Carolina

17 03:36 17 turnout was available to you, correct?

18 03:37 18 A. Yes.

19 03:37 19 Q. And you testified earlier that you received a

20 03:37 20 tutorial from the State Board of Elections

21 03:37 21 about it?

22 03:37 22 A. Yes.

23 03:37 23 Q. When considering turnout in North Carolina, you

24 03:37 24 didn't use the validated data, correct?

25 03:37 25 A. Of course not.

1 03:37 1 Q. When -- you testified earlier that you have
2 03:37 2 used the validated data in the past for your
3 03:37 3 analysis, correct?

4 03:37 4 A. I have used validated data before, yes.

5 03:37 5 Q. And you're aware that Professors Gronke and
6 03:37 6 Stewart rely on validated data in their
7 03:37 7 reports, correct?

8 03:37 8 A. Yes.

9 03:37 9 Q. And you didn't rely on validated data in states
10 03:37 10 other than North Carolina, correct?

11 03:37 11 A. Correct.

12 03:37 12 Q. I want to turn back to your report and I want
13 03:37 13 to talk to you again about Figure 14.

14 03:37 14 A. Which page?

15 03:37 15 Q. Page 37.

16 03:37 16 A. Okay.

17 03:37 17 Q. I want to talk to you about the last column.
18 03:37 18 You referred to this earlier in your deposition
19 03:38 19 as an ordinal system, I think; is that right?

20 03:38 20 A. Yeah.

21 03:38 21 Q. So essentially, correct me if I'm wrong, for
22 03:38 22 each state you assigned a number of points from
23 03:38 23 zero to 4 based on the number of reforms that
24 03:38 24 are at issue in this case that we've described
25 03:38 25 earlier based on the number of those reforms

1 03:38 1 that they had in effect before the 2012

2 03:38 2 election, correct?

3 03:38 3 A. Right.

4 03:38 4 Q. When you count the number of reforms that a

5 03:38 5 state has, does it matter in your view if that

6 03:38 6 reform was actually in effect for the 2012

7 03:38 7 election?

8 03:38 8 A. Yes.

9 03:38 9 Q. So it would not be sufficient if a state had,

10 03:38 10 say, adopted a reform by statute but had yet to

11 03:38 11 implement it before the 2012 election, correct?

12 03:38 12 A. Correct. That would be in error.

13 03:38 13 Q. If you included a state like that -- a reform

14 03:38 14 like that, you would consider that an error?

15 03:38 15 A. Absolutely.

16 03:38 16 Q. How did you go about compiling these

17 03:38 17 statistics? Did you do it personally?

18 03:38 18 A. Yes.

19 03:38 19 Q. You didn't have someone else do it for you?

20 03:39 20 A. No.

21 03:39 21 Q. No one else worked with you in compiling the

22 03:39 22 state laws?

23 03:39 23 A. Well, that's a different question. As I said

24 03:39 24 early in the thing, there was more copies of

25 03:39 25 state laws supplied by counsel that I relied on

1 03:39 1 and a summary, but that was not used in

2 03:39 2 compiling these statistics.

3 03:39 3 MR. HO: Tom, we'd like to -- and I'll

4 03:39 4 put this in writing afterwards -- request the

5 03:39 5 copies of state laws that you provided to

6 03:39 6 Mr. Trende.

7 03:39 7 MR. FARR: Noted.

8 03:39 8 BY MR. HO:

9 03:39 9 Q. So we talked about California earlier. You

10 03:39 10 list California here as adopting -- you know

11 03:39 11 what, I'm sorry, I want to go back to Figure 11

12 03:39 12 which is on page 31.

13 03:39 13 You -- and this has the same ordinal

14 03:40 14 system in the last column as what we were

15 03:40 15 discussing earlier?

16 03:40 16 A. Right.

17 03:40 17 Q. You describe California as adopting three

18 03:40 18 reforms here.

19 03:40 19 A. Correct.

20 03:40 20 Q. But we've already established that, to be

21 03:40 21 accurate, you should have written two --

22 03:40 22 A. Correct.

23 03:40 23 Q. -- correct? So that was a mistake?

24 03:40 24 A. It was a mistake.

25 03:40 25 Q. So Minnesota we've talked about, too?

1 03:40 1 A. Correct.

2 03:40 2 Q. Minnesota you say had two reforms --

3 03:40 3 A. Correct.

4 03:40 4 Q. -- here?

5 03:40 5 Those are early voting and same-day

6 03:40 6 registration?

7 03:40 7 A. That's right.

8 03:40 8 Q. But early voting, at least the early voting

9 03:40 9 period that is relevant for these purposes was

10 03:40 10 not in effect in Minnesota for the 2012

11 03:40 11 election, correct?

12 03:40 12 A. That's correct.

13 03:40 13 Q. So this also was a mistake, correct?

14 03:40 14 A. Yes.

15 03:40 15 Q. You should have listed Minnesota as only having

16 03:40 16 one reform, correct?

17 03:40 17 A. Yes.

18 03:40 18 Q. Connecticut, you list -- you list Connecticut

19 03:40 19 as having one reform in question, correct?

20 03:41 20 A. Correct.

21 03:41 21 Q. Is that reform same-day registration?

22 03:41 22 A. I don't know.

23 03:41 23 Q. Can we look at your exhibits in your report?

24 03:41 24 A. Sure.

25 03:41 25 Q. Can we look at the packet of exhibits page 20.

1 03:41 1 A. Okay.

2 03:41 2 Q. This is your list of states for the same-day

3 03:41 3 registration?

4 03:41 4 A. Correct.

5 03:41 5 Q. The second column has the registration

6 03:41 6 deadline?

7 03:41 7 A. I'm sorry. No. Page 20. I'm using the --

8 03:41 8 Q. Oh, you're using the DOJ numbering. Let's use

9 03:41 9 your numbering because I don't have the DOJ

10 03:41 10 one. Let's use your numbering.

11 03:41 11 So page 20, which is Exhibit 6 or your

12 03:41 12 report, same-day registration, correct?

13 03:41 13 A. Okay.

14 03:41 14 Q. Second column, that's the registration

15 03:41 15 deadline, correct?

16 03:41 16 A. Correct.

17 03:41 17 Q. So for Connecticut, you list Connecticut as

18 03:41 18 having no registration deadline, right?

19 03:41 19 A. Correct.

20 03:41 20 Q. So you're coding Connecticut as a same-day

21 03:42 21 registration state, correct?

22 03:42 22 A. Correct.

23 03:42 23 Q. Do you know when Connecticut adopted same-day

24 03:42 24 registration?

25 03:42 25 A. I believe it adopted it in 2012 for all races,

1 03:42 1 and I think it had it for presidential races

2 03:42 2 before that.

3 03:42 3 Q. Do you know if it was in effect for -- same-day

4 03:42 4 registration was effect in Connecticut for the

5 03:42 5 2012 election?

6 03:42 6 A. I don't.

7 03:42 7 Q. Let's mark this as 116.

8 03:42 8 THE REPORTER: 117.

9 03:42 9 MR. HO: 117. Thank you.

10 03:42 10 (WHEREUPON, Plaintiff's Exhibit 117 was

11 03:42 11 marked for identification.)

12 03:42 12 BY MR. HO:

13 03:42 13 Q. Take a moment to look at that and let me know

14 03:42 14 when you're ready.

15 03:42 15 A. Okay. Okay.

16 03:43 16 Q. Do you recognize this?

17 03:43 17 A. Yes.

18 03:43 18 Q. You've looked at it before?

19 03:43 19 A. Yes.

20 03:43 20 Q. You -- this is from the National Conference of

21 03:43 21 State Legislatures --

22 03:43 22 A. Yes.

23 03:43 23 Q. -- which you testified earlier you've relied on

24 03:43 24 as a source for your report here?

25 03:43 25 A. Yes.

1 03:43 1 Q. And this is a list of states that have same-day

2 03:43 2 registration, correct?

3 03:43 3 A. Correct.

4 03:43 4 Q. We'll come back to this but I want to show you

5 03:43 5 something else. I'll mark this as 118.

6 03:43 6 (WHEREUPON, Plaintiff's Exhibit 118 was

7 03:43 7 marked for identification.)

8 03:43 8 BY MR. HO:

9 03:44 9 Q. So Exhibit 117 from the National Conference of

10 03:44 10 State Legislatures indicates that Connecticut

11 03:44 11 adopted same-day registration in 2012, correct?

12 03:44 12 A. Correct.

13 03:44 13 Q. Exhibit 118 is the election day registration

14 03:44 14 statute from Connecticut, correct?

15 03:44 15 A. Correct.

16 03:44 16 Q. Can you turn to the third page under "Credits"

17 03:44 17 at the bottom?

18 03:44 18 A. Uh-huh.

19 03:44 19 Q. Do you see -- what is the effective date for

20 03:44 20 the election day registration statute in

21 03:44 21 Connecticut?

22 03:44 22 A. For this election day statute in Connecticut,

23 03:44 23 July 1st, 2013.

24 03:44 24 Q. So this statute was not in effect for the

25 03:44 25 November 2012 election, correct?

1 03:44 1 A. This statute was not in effect for the 2012

2 03:44 2 election, no.

3 03:44 3 Q. Did Connecticut have a different statute in

4 03:44 4 effect for same-day registration in the

5 03:44 5 November 2012 election?

6 03:44 6 A. As I said, my recollection is they had it for

7 03:45 7 presidential, but I'm not completely certain as

8 03:45 8 we sit here about that.

9 03:45 9 Q. If that recollection is incorrect, then would

10 03:45 10 it be correct to say that Connecticut had

11 03:45 11 same-day registration in 2012?

12 03:45 12 A. Can we try that again.

13 03:45 13 Q. Sure. If what you -- if your recollection is

14 03:45 14 incorrect, then did Connecticut have same-day

15 03:45 15 registration for any elections in 2012?

16 03:45 16 A. If Connecticut did not have a different version

17 03:45 17 of an election day registration statute in

18 03:45 18 effect in 2012, then it did not have same-day

19 03:45 19 registration in 2012.

20 03:45 20 Q. And if that were so, it would be incorrect for

21 03:45 21 you to describe Connecticut as a same-day

22 03:45 22 registration state in your analysis here?

23 03:45 23 A. Correct.

24 03:45 24 Q. Going back to Figure 11, Washington, DC -- you

25 03:46 25 treat Washington, DC, as having three reforms

1 03:55 1 A. Correct.

2 03:55 2 Q. So if we take same-day registration as an

3 03:55 3 example, basically you looked at states that

4 03:55 4 had same-day registration and you tried to see

5 03:55 5 if African American turnout increased in those

6 03:55 6 states relative to states that didn't have

7 03:55 7 same-day registration?

8 03:55 8 A. Correct.

9 03:55 9 Q. Let me show you something we'll mark as 120.

10 03:55 10 (WHEREUPON, Plaintiff's Exhibit 120 was

11 03:55 11 marked for identification.)

12 03:55 12 BY MR. HO:

13 03:56 13 Q. Are you ready?

14 03:56 14 A. Yes.

15 03:56 15 Q. Is this familiar to you?

16 03:56 16 A. Yes.

17 03:56 17 Q. What is it?

18 03:56 18 A. I believe it is an image of a spreadsheet page

19 03:56 19 that I supplied to you in response to your

20 03:56 20 request on the e-mail that was marked

21 03:56 21 Exhibit 100 something earlier today that shows

22 03:56 22 the data used for a regression analysis.

23 03:56 23 Q. The regression analysis you performed with

24 03:56 24 respect to same-day registration? If I

25 03:56 25 represent to you that the tab in the Excel file

1 03:56 1 that was sent to us was labeled SDR, would you

2 03:56 2 believe me?

3 03:56 3 A. I would believe you.

4 03:56 4 Q. Okay. And these are the statistical

5 03:56 5 significance calculations, then, that you

6 03:56 6 performed in measuring whether or not same-day

7 03:56 7 registration, the presence of it correlated

8 03:56 8 with increased African American turnout?

9 03:56 9 A. No. These are statistical significance

10 03:57 10 calculations.

11 03:57 11 Q. But if I look at the column that says laws --

12 03:57 12 leave that aside.

13 03:57 13 If I look at the column that says laws,

14 03:57 14 these are the states where there's a 1, these

15 03:57 15 are the states that you code as having same-day

16 03:57 16 registration, correct?

17 03:57 17 A. Correct.

18 03:57 18 Q. And we've already established California is

19 03:57 19 coded incorrectly.

20 03:57 20 A. Correct.

21 03:57 21 Q. Right. And so is Connecticut.

22 03:57 22 A. With a caveat.

23 03:57 23 Q. Now, Colorado you code as having same-day

24 03:57 24 registration?

25 03:57 25 A. It is coded incorrectly.

1 03:57 1 Q. Colorado is also coded incorrectly?

2 03:57 2 A. Correct.

3 03:57 3 Q. How many states total are coded here as being

4 03:57 4 same-day registration states?

5 03:57 5 A. I believe six.

6 03:57 6 Q. Six. So of the six states you've coded as

7 03:57 7 having same-day registration, three are

8 03:57 8 incorrectly coded?

9 03:57 9 A. With caveat.

10 03:57 10 Q. That would be half of the states?

11 03:57 11 A. Yes, with a caveat.

12 03:57 12 Q. You did not code North Carolina as a state with

13 03:58 13 same-day registration, correct?

14 03:58 14 A. Correct.

15 03:58 15 Q. North Carolina had same-day registration in

16 03:58 16 effect in 2012, correct?

17 03:58 17 A. Correct.

18 03:58 18 Q. For purposes of your analysis, North Carolina

19 03:58 19 shouldn't be excluded from the list of states

20 03:58 20 that had same-day registration then?

21 03:58 21 A. That is correct.

22 03:58 22 Q. So you incorrectly coded North Carolina,

23 03:58 23 correct?

24 03:58 24 A. Yes.

25 03:58 25 Q. That was a mistake?

1 03:58 1 A. That was a mistake.

2 03:58 2 Q. When you code states that have same-day

3 03:58 3 registration, you don't attempt to account for

4 03:58 4 when a state adopted same-day registration,

5 03:58 5 correct?

6 03:58 6 A. That is correct.

7 03:58 7 Q. So if a state adopted same-day registration in

8 03:58 8 the 1970s or one adopted same-day registration

9 03:58 9 in 2008, you code those states identically for

10 03:58 10 purposes of the regression analysis?

11 03:58 11 A. Correct.

12 03:58 12 Q. And you do that even though it's possible that

13 03:58 13 the adoption of same-day registration would

14 03:58 14 have an effect on turnout decades earlier?

15 03:59 15 A. Sure. As I described earlier, you're making a

16 03:59 16 judgment call either way. You either make the

17 03:59 17 call that it isn't having any effect today or

18 03:59 18 you make a call that it is having an effect

19 03:59 19 today. I made it in a way that I think is

20 03:59 20 probably more generous to plaintiffs.

21 03:59 21 Q. Let's go back to your report and specifically

22 03:59 22 your comparison between North Carolina and

23 03:59 23 Mississippi which starts on page 17. Ms. Meza

24 03:59 24 already asked you a few questions about this.

25 03:59 25 I only have a few follow-up questions.

1 04:04 1 and North Carolina is a reason to believe that
2 04:04 2 there would be differences in the way that they
3 04:05 3 are put into place.

4 04:05 4 Q. But you don't know if -- never mind, we can
5 04:05 5 leave that there.

6 04:05 6 Can we turn to page 37 of your report,
7 04:05 7 the header "The Florida Example."

8 04:05 8 A. Uh-huh.

9 04:05 9 Q. In this section of the report is it fair to say
10 04:05 10 that your opinion is that elections data from
11 04:05 11 Florida in 2012 do not necessarily support the
12 04:05 12 notion that Florida's early voting cutbacks
13 04:05 13 resulted in less early voting in Florida?

14 04:05 14 MR. FARR: Objection to the form.

15 04:05 15 THE WITNESS: No, I don't believe I say
16 04:05 16 that.

17 04:05 17 BY MR. HO:

18 04:05 18 Q. So you're not saying that early voting
19 04:05 19 reductions in Florida were not responsible for
20 04:06 20 less early voting in Florida?

21 04:06 21 A. There's three negatives in that question. Can
22 04:06 22 you rephrase it?

23 04:06 23 Q. I think there were two.

24 04:06 24 A. Depends how you qualify "less."

25 04:06 25 Q. Are you saying that early voting reductions in

1 04:06 1 Florida did not result in less early voting in

2 04:06 2 Florida?

3 04:06 3 A. I don't -- I don't believe I am saying that,

4 04:06 4 no.

5 04:06 5 Q. You are aware that lines and waiting times to

6 04:06 6 vote in Florida during the early voting period

7 04:06 7 in 2012 were longer than in the early voting

8 04:06 8 period in Florida in 2008?

9 04:06 9 MR. FARR: Objection. You didn't lay a

10 04:06 10 foundation for that.

11 04:06 11 THE WITNESS: I read that in

12 04:06 12 Dr. Stewart's and Dr. Gronke's reports.

13 04:06 13 BY MR. HO:

14 04:06 14 Q. Have you read that elsewhere?

15 04:06 15 A. Yes.

16 04:06 16 Q. Are you offering any opinion as to the cause of

17 04:06 17 those longer lines?

18 04:06 18 A. No.

19 04:06 19 Q. Are you aware that lines and waiting times to

20 04:07 20 vote in Florida on election day in 2012 were

21 04:07 21 longer than in 2008?

22 04:07 22 MR. FARR: Objection to the form.

23 04:07 23 THE WITNESS: I have read that in

24 04:07 24 Dr. Gronke's and Dr. Stewart's report and

25 04:07 25 elsewhere.

1 04:07 1 BY MR. HO:

2 04:07 2 Q. Are you offering an opinion as to the cause of
3 04:07 3 those longer lines?

4 04:07 4 A. No.

5 04:07 5 Q. Can we look at page 39 of your report?

6 04:07 6 A. Yes.

7 04:07 7 Q. The table at the top, Figure 15.

8 04:07 8 A. Yes.

9 04:07 9 Q. According to your table, the total number of
10 04:07 10 early voters in Florida declined by over
11 04:07 11 280,000; is that right?

12 04:07 12 A. That is right.

13 04:07 13 Q. And yet overall, according to your table, the
14 04:07 14 total number of voters overall in Florida
15 04:07 15 increased by almost 80,000; is that correct?

16 04:07 16 A. Yes.

17 04:07 17 Q. Will you infer from that that more voters
18 04:07 18 appeared in Florida on election day in 2012
19 04:08 19 than in 2008?

20 04:08 20 A. Yes.

21 04:08 21 Q. In paragraph 143 you talk about marginal
22 04:08 22 voters, right, and you write:

23 04:08 23 "The data suggest an alternate

24 04:08 24 narrative. Rather than long lines

25 04:08 25 incentivizing marginal early voters

1 04:12 1 A. I don't know if I would call it an inference,
2 04:12 2 but it's a possibility that I would want to
3 04:12 3 explore and either say isn't what happened or
4 04:12 4 it's unlikely that it happened or -- no,
5 04:12 5 actually, this is a pretty good explanation.

6 04:12 6 Q. You're not expressing an opinion either way as
7 04:12 7 to whether or not that happened?

8 04:12 8 A. No. As I say, this is not to suggest that
9 04:12 9 Drs. Gronke and Stewart are conclusively wrong.
10 04:12 10 It's just something that if a court is
11 04:12 11 going to rely on this possibility, this is an
12 04:12 12 alternate causation of a story I think hangs
13 04:12 13 together reasonably well that it would need to
14 04:12 14 have explained away.

15 04:12 15 Q. Can we turn to page 40 of your report, the
16 04:12 16 section title "Scholarly Literature."
17 04:12 17 You testified earlier that in
18 04:13 18 peer-reviewed academic writings it's generally
19 04:13 19 appropriate to provide a history of the
20 04:13 20 academic literature in the area that you're
21 04:13 21 writing about; is that right?

22 04:13 22 A. Yes.

23 04:13 23 Q. Is that what you try to do here in this section
24 04:13 24 of the report?

25 04:13 25 A. No.

1 04:13 1 Q. In paragraphs 146 through 148 of this report
2 04:13 2 you discuss several academic articles on
3 04:13 3 voting, I believe a total of six, and one blog
4 04:13 4 post. Does that sound right to you?

5 04:13 5 A. We're going through 148?

6 04:13 6 Q. Yes.

7 04:13 7 A. I think I count seven.

8 04:13 8 Q. Let's run through them just to make sure.

9 04:13 9 A. Late in the day, yeah.

10 04:13 10 Q. Let's find out who's more tired.

11 04:14 11 LaRocca and Klemanski in 2011, right,

12 04:14 12 that's one?

13 04:14 13 A. Right.

14 04:14 14 Q. And that's Exhibit 8 of your report.

15 04:14 15 Giammo and Brox from 2010. That's

16 04:14 16 another one.

17 04:14 17 A. Right.

18 04:14 18 Q. So we're at two. That's not included as an

19 04:14 19 exhibit in your report?

20 04:14 20 A. Right.

21 04:14 21 Q. Burden, et al., from 2014, that's included as

22 04:14 22 Exhibit 9.

23 04:14 23 A. Uh-huh.

24 04:14 24 Q. Burden, et al., from 2009. That's Exhibit 10

25 04:14 25 in your report?

1 04:14 1 A. Uh-huh.

2 04:14 2 Q. Gronke, et al., 2007. That's Exhibit 11 in

3 04:14 3 your report?

4 04:14 4 A. Okay.

5 04:14 5 Q. Gronke, et al., 2004. That's Exhibit 12 in

6 04:14 6 your report?

7 04:14 7 A. Yes.

8 04:14 8 Q. So that's six articles --

9 04:14 9 A. Yes.

10 04:14 10 Q. -- right?

11 04:14 11 And then the Crowell 2014 blog post?

12 04:14 12 A. Yes.

13 04:14 13 Q. And that's not included as an exhibit in your

14 04:14 14 report.

15 04:14 15 A. Did we not --

16 04:14 16 Q. Don't worry. I have a copy.

17 04:14 17 A. No, I guess we didn't.

18 04:14 18 Q. So --

19 04:14 19 MR. FARR: There's two more, isn't

20 04:14 20 there?

21 04:14 21 THE WITNESS: Well, he's getting into

22 04:14 22 149 at that point. He's limited himself to

23 04:14 23 148.

24 04:14 24 MR. FARR: Okay.

25 04:14 25 BY MR. HO:

1 04:15 1 Q. These articles are the sum total of the
2 04:15 2 articles you cite about early voting; is that
3 04:15 3 right?

4 04:15 4 A. Correct.

5 04:15 5 Q. And your assertion in your report is that these
6 04:15 6 seven articles conclude that early voting does
7 04:15 7 not increase turnout; is that right?

8 04:15 8 A. No.

9 04:15 9 Q. No, you're --

10 04:15 10 A. Given the conflicting nature -- given the
11 04:15 11 conflicting nature of the peer-reviewed
12 04:15 12 scholarly literature regarding the effects of
13 04:15 13 these laws on turnout, it is difficult to
14 04:15 14 conclude that we should expect a decline in
15 04:15 15 participation in North Carolina.

16 04:15 16 Q. So you're not saying that these articles say
17 04:15 17 that early voting has no effect on turnout?

18 04:15 18 A. I say it's conflicting.

19 04:15 19 Q. Now, other than these articles, did you in
20 04:15 20 formulating your opinion about early voting and
21 04:15 21 turnout read any other academic thesis on early
22 04:15 22 voting?

23 04:15 23 A. I read quite a few, yes.

24 04:15 24 Q. Which ones?

25 04:15 25 A. I couldn't recite them off the top of my head.

1 04:16 1 Q. You didn't mention those other reports in here?

2 04:16 2 A. No.

3 04:16 3 Q. Can you think of any examples of them?

4 04:16 4 A. I think earlier in my deposition I mentioned

5 04:16 5 Alvarez's 2012 piece.

6 04:16 6 Q. Alvarez in 2012 concludes that minority voters

7 04:16 7 disproportionately rely on early voting, does

8 04:16 8 he not?

9 04:16 9 A. Off the top of my head, I thought Alvarez was

10 04:16 10 talking about income, but I would have to go

11 04:16 11 back and reread the article.

12 04:16 12 Q. You didn't mention the Alvarez article in your

13 04:16 13 report?

14 04:16 14 A. No.

15 04:16 15 Q. You decided --

16 04:16 16 (Brief Interruption.)

17 04:16 17 MR. FARR: This suggests the department

18 04:16 18 had something like that when you've been on the

19 04:16 19 phone too long.

20 04:16 20 MS. MEZA: I don't know that we've had

21 04:16 21 a conference call go on this long, and I don't

22 04:17 22 know that they call in for depositions.

23 04:17 23 BY MR. HO:

24 04:17 24 Q. So you chose not to mention those other

25 04:17 25 articles that you read in your report?

1 04:17 1 A. I didn't mention them, no.

2 04:17 2 Q. You're aware that under the rules you're

3 04:17 3 obliged to list all the materials on which you

4 04:17 4 relied in formulating your opinion?

5 04:17 5 MR. FARR: Objection to the form.

6 04:17 6 THE WITNESS: If I listed every article

7 04:17 7 that I ever read that was remotely related to

8 04:17 8 the opinions that I formed, we would have a

9 04:17 9 stack of articles to the ceiling.

10 04:17 10 These are the major articles on which I

11 04:17 11 relied.

12 04:17 12 BY MR. HO:

13 04:17 13 Q. Did you look at any article suggesting that

14 04:17 14 early voting increases turnout?

15 04:17 15 A. What do you mean by suggesting?

16 04:17 16 Q. Did you read any articles where the author

17 04:17 17 suggested based on empirical research that

18 04:17 18 early voting produces an increase in turnout?

19 04:17 19 A. I don't know if I did.

20 04:18 20 Q. You're aware that there are articles that posit

21 04:18 21 that relationship?

22 04:18 22 A. Well, I know that Dr. Gronke has cited some

23 04:18 23 articles in his report that hypothesize that

24 04:18 24 because of 2008 and 2012 we should conclude

25 04:18 25 that there's been a phase shift. That's just

1 04:18 1 not a view that I necessarily agree with.

2 04:18 2 Q. Did you read those articles?

3 04:18 3 A. Do you have Dr. Gronke's report?

4 04:18 4 Q. I don't.

5 04:18 5 A. I read -- I know I read some articles that he

6 04:18 6 cites to.

7 04:18 7 Q. Do you remember off the top of your head

8 04:18 8 whether or not you read articles cited in

9 04:18 9 Dr. Gronke's report positing that early voting

10 04:19 10 increases turnout?

11 04:19 11 A. I don't remember the exact conclusion. If you

12 04:19 12 told me that the Smith article in one of his

13 04:19 13 footnotes had that presupposition, I wouldn't

14 04:19 14 disagree with you.

15 04:19 15 Q. Did you look at academic papers concerning

16 04:19 16 differential use of early voting across racial

17 04:19 17 groups?

18 04:19 18 A. I know that is part of the literature, and I'm

19 04:19 19 sure I did read some of those articles.

20 04:19 20 Q. Do you remember any of them -- can you tell me

21 04:19 21 any of them here today?

22 04:19 22 A. No. That wasn't the direct concern of my

23 04:19 23 report and so I didn't make mental notes of

24 04:20 24 those articles.

25 04:20 25 I do think, again, the -- he has two

1 04:20 1 Smith articles that he cites to that I believe

2 04:20 2 do talk about differential rates, but without

3 04:20 3 the report --

4 04:20 4 Q. Did you read those Smith articles?

5 04:20 5 A. I did.

6 04:20 6 Q. But you didn't cite them?

7 04:20 7 A. No.

8 04:20 8 Q. You only cited the academic pieces that you

9 04:20 9 thought would serve your conclusion?

10 04:20 10 MR. FARR: Objection to the form.

11 04:20 11 THE WITNESS: No. I note that there is

12 04:20 12 conflicting nature of peer-reviewed scholarly

13 04:20 13 literature and cited the ones that are most

14 04:20 14 directly -- that bear the most heavily on the

15 04:20 15 turnout issue as well as ones that tended to

16 04:20 16 be, I thought, relevant.

17 04:20 17 BY MR. HO:

18 04:20 18 Q. Your report does not contain a discussion of

19 04:20 19 the academic literature on same-day

20 04:20 20 registration, does it?

21 04:20 21 A. No.

22 04:20 22 Q. You didn't think that was important?

23 04:20 23 A. No.

24 04:20 24 Q. Are you aware of a scholarly consensus that

25 04:21 25 same-day registration increases turnout?

1 04:21 1 A. Yes.

2 04:21 2 Q. And you're aware that that literature indicates
3 04:21 3 positive effects on low-income voters?

4 04:21 4 A. Caveat about your definition low-income voters.
5 04:21 5 I will stipulate to differential effects among
6 04:21 6 income groups.

7 04:21 7 Q. You didn't think to mention that in your
8 04:21 8 report?

9 04:21 9 A. No.

10 04:21 10 Q. You're aware of the literature indicating that
11 04:21 11 same-day registration has a positive effect on
12 04:21 12 African American turnout?

13 04:21 13 A. I don't know that I did read anything on that.

14 04:21 14 Q. Do any of the articles that you cite here, the
15 04:21 15 seven that we listed, discuss same-day
16 04:21 16 registration?

17 04:21 17 A. I believe the 2014 Burden piece does.

18 04:22 18 Q. To your knowledge, what does Professor Burden
19 04:22 19 conclude about the effect of same-day
20 04:22 20 registration?

21 04:22 21 A. I believe he says that it can partly counteract
22 04:22 22 the depressive effect of early voting on
23 04:22 23 turnout, same-day registration.

24 04:22 24 Q. Do any of the articles that you cite conclude
25 04:22 25 that same-day registration has no effect on

1 04:22 1 turnout?

2 04:22 2 A. I don't believe so.

3 04:22 3 Q. Are you aware of a single peer-reviewed article

4 04:22 4 indicating that same-day registration has no

5 04:22 5 effect on turnout?

6 04:22 6 A. On total turnout, no.

7 04:22 7 Q. So I want to talk about the different articles

8 04:22 8 you cite here. Let's talk about the LaRocca

9 04:22 9 and Klemanski article.

10 04:22 10 A. Okay.

11 04:22 11 Q. That was published in 2011?

12 04:22 12 A. Yes.

13 04:22 13 Q. It's based on data up into the 2008 election;

14 04:23 14 is that right? Do you remember? You can turn

15 04:23 15 to page 84 of the article.

16 04:23 16 A. Okay. So it discusses the 2000, 2004 and 2008

17 04:23 17 elections.

18 04:23 18 Q. Doesn't go past 2008, correct?

19 04:23 19 A. No.

20 04:23 20 Q. This article does not look at whether there are

21 04:23 21 differential effects of early voting on

22 04:23 22 different racial groups, does it, to your

23 04:23 23 recollection?

24 04:23 24 A. I don't believe it does.

25 04:23 25 Q. This article looks at the effect that adding

1 04:23 1 early voting has on turnout, correct?

2 04:23 2 A. Come again.

3 04:23 3 Q. This article looks at what effect, if any,

4 04:23 4 adding early voting opportunities has on

5 04:23 5 turnout, correct?

6 04:23 6 A. Correct.

7 04:23 7 Q. It does not look at the effect of removing

8 04:23 8 early voting opportunities and what that might

9 04:23 9 have on turnout, correct?

10 04:24 10 A. I guess that's technically true, yeah.

11 04:24 11 Q. Let's talk about the Giammo and Brox article

12 04:24 12 from 2010.

13 04:24 13 A. Okay.

14 04:24 14 Q. That article is based on data up until the 2006

15 04:24 15 election, correct?

16 04:24 16 A. I believe that's right.

17 04:24 17 Q. That article does not look at whether there are

18 04:24 18 differential effects of early voting on

19 04:24 19 different racial groups, correct?

20 04:24 20 A. Without the article in front of me, I can't say

21 04:24 21 that conclusively, but as I sit here today, I

22 04:24 22 wouldn't have reason to disagree with you.

23 04:24 23 Q. To your recollection, it doesn't?

24 04:24 24 A. Correct.

25 04:24 25 Q. That article does not look at what effects, if

1 04:24 1 any, there are for removing early voting
2 04:24 2 opportunities on turnout, does it?
3 04:24 3 A. Technically I believe that's correct.
4 04:24 4 Q. All right. Let's talk about the Burden, et
5 04:24 5 al., 2014 and 2009 articles.
6 04:24 6 A. We can lump them together.
7 04:24 7 Q. They're essentially the same article, right?
8 04:24 8 A. It's a fair point that Dr. Gronke makes, yes.
9 04:24 9 Q. So these articles are both based on data up
10 04:25 10 until the 2008 election, correct?
11 04:25 11 A. Correct.
12 04:25 12 Q. Nothing post 2008?
13 04:25 13 A. Correct.
14 04:25 14 Q. And the article does not look at differential
15 04:25 15 effects of early voting on different racial
16 04:25 16 groups, correct, to your recollection?
17 04:25 17 A. Correct, because he is using race as a
18 04:25 18 demographic control, so the relationship would
19 04:25 19 be between racial turnout -- race and turnout,
20 04:25 20 yes.
21 04:25 21 Q. So he doesn't essentially evaluate whether or
22 04:26 22 not early voting has different effects on
23 04:26 23 different racial groups?
24 04:26 24 A. Not to my recollection.
25 04:26 25 Q. And he doesn't attempt to look at whether or

1 04:26 1 not removing early voting opportunities has any
2 04:26 2 effect on turnout, correct?
3 04:26 3 A. Technically speaking, that would be correct.
4 04:26 4 Q. So can we talk about the Gronke article, et
5 04:26 5 al., from 2007 which is Exhibit 11 in your
6 04:26 6 report.
7 04:26 7 A. Yes.
8 04:26 8 Q. Could you turn to page 642 of the article?
9 04:26 9 A. Yes.
10 04:26 10 Q. In the first column, the last paragraph, do you
11 04:26 11 see where he writes:
12 04:26 12 "The empirical evidence on turnout
13 04:26 13 is also positive, but less so. Early
14 04:26 14 voting should increase turnout,
15 04:26 15 theoretically, by easing the resource
16 04:26 16 demands of voting, primarily by
17 04:26 17 eliminating the need to go to the
18 04:26 18 polling booth or by providing more
19 04:26 19 convenient times to vote. The empirical
20 04:26 20 evidence supports this expectation.
21 04:26 21 "Liberalized absentee balloting
22 04:26 22 leads to a small but significant growth
23 04:26 23 in turnout. EIP also stimulates
24 04:26 24 participation, again only slightly."
25 04:26 25 Did I read that accurately?

1 04:26 1 Q. By EIP, do you mean that to mean early

2 04:26 2 in-person voting?

3 04:26 3 A. Yes.

4 04:26 4 Q. So Professor Gronke's view in 2007 was that

5 04:26 5 early in-person voting stimulates

6 04:26 6 participation, correct?

7 04:26 7 A. Correct.

8 04:27 8 Q. Well, but later he writes:

9 04:27 9 "We want to highlight, however,

10 04:27 10 the relatively large negative and stable

11 04:27 11 coefficient associated with EIP voting

12 04:27 12 in both models albeit in both cases with

13 04:27 13 large standard errors."

14 04:27 14 So I don't know that he necessarily

15 04:27 15 embraces the view that strong.

16 04:27 16 Q. That's the portion of the article that you cite

17 04:27 17 and quote in your report that you just read

18 04:27 18 back, correct?

19 04:27 19 A. Yes.

20 04:27 20 Q. But you didn't read or quote or cite the

21 04:27 21 portion of the article that I just read in your

22 04:27 22 report, did you?

23 04:27 23 A. I didn't cite that, no.

24 04:27 24 Q. You just thought you would leave that out?

25 04:27 25 MR. FARR: Objection to form. For

1 04:27 1 God's sake.

2 04:27 2 THE WITNESS: I thought I would cite

3 04:27 3 the portion that came towards his conclusion,

4 04:27 4 not the statement that he made in the middle of

5 04:27 5 the article.

6 04:27 6 BY MR. HO:

7 04:27 7 Q. This article looks at data up until the 2004

8 04:27 8 election, correct?

9 04:27 9 A. I'm not sure that's right.

10 04:27 10 Q. Do you see the boldfaced header in the second

11 04:27 11 column on page 642 "Early Voting and Turnout"?

12 04:28 12 A. Well, yes, but I'm also looking at the chart at

13 04:28 13 the top of page 642 that says 2006.

14 04:28 14 Q. So 2006, looks at data up until 2006?

15 04:28 15 A. Correct.

16 04:28 16 Q. Nothing after that?

17 04:28 17 A. Oh, I see what's going on with what Dr. Gronke

18 04:28 18 says on 642. He says "The empirical evidence

19 04:28 19 on turnout is also positive. The empirical

20 04:28 20 evidence supports his expectation," but later

21 04:28 21 on in the page, which I'm assuming you read, he

22 04:28 22 said "These past studies, while helpful, are

23 04:28 23 hampered by limitations and research design and

24 04:29 24 methodology that limit their applicability to

25 04:29 25 the past decade of reforms. More importantly

1 04:29 1 for our purposes, many of these studies are
2 04:29 2 ancient history from the perspective of early
3 04:29 3 voting."

4 04:29 4 So that's what he later says about that
5 04:29 5 before conducting his own analysis and
6 04:29 6 concluding that there's a relatively large
7 04:29 7 negative and stable coefficient associated with
8 04:29 8 early in-person voting.

9 04:29 9 Q. And you're aware that in his report in this
10 04:29 10 case Professor Gronke opines that the post 2008
11 04:29 11 elections data leads to a contrary conclusion?

12 04:29 12 A. I know he opines that.

13 04:29 13 Q. Exhibit 12 in your report is Gronke's paper
14 04:29 14 from 2004. So it's not obviously based on any
15 04:29 15 election data after that?

16 04:29 16 A. Right.

17 04:29 17 Q. And it doesn't look at differential effects of
18 04:29 18 early voting across different racial groups,
19 04:29 19 does it?

20 04:29 20 A. Correct.

21 04:29 21 Q. And neither does the article that we were
22 04:29 22 talking about a moment ago, the 2007 article?

23 04:29 23 A. Correct.

24 04:29 24 Q. The Crowell blog post which I think is the last
25 04:30 25 piece that you cite on early voting, who's

1 04:30 1 Crowell?

2 04:30 2 A. He is a -- I believe a political scientist at

3 04:30 3 one of the North Carolina universities.

4 04:30 4 Q. To your knowledge, does Professor Crowell have

5 04:30 5 any experience on analyzing early voting data?

6 04:30 6 A. I don't know.

7 04:30 7 Q. This is a blog post, right?

8 04:30 8 A. Yes.

9 04:30 9 Q. Do you know if this blog post was subject to

10 04:30 10 peer review?

11 04:30 11 A. I would be surprised if it were.

12 04:30 12 Q. And do you remember that in his blog post he

13 04:30 13 acknowledges that his analysis is, quote, "not

14 04:30 14 very sophisticated"?

15 04:30 15 A. Yes.

16 04:30 16 Q. And --

17 04:30 17 A. That's in my quote.

18 04:30 18 Q. And you remember that in his blog post he

19 04:30 19 acknowledges that, quote, "same-day

20 04:30 20 registration and voting can increase turnout

21 04:30 21 somewhat"?

22 04:30 22 A. Well, yes.

23 04:30 23 Q. And do you remember that he acknowledges in his

24 04:30 24 blog post that he has not examined whether

25 04:30 25 registration and voting changes over the years

1 04:30 1 have affected white and black voters
2 04:31 2 differently?
3 04:31 3 A. Correct.
4 04:31 4 Q. So --
5 04:31 5 A. This is all why it's in a different paragraph
6 04:31 6 than the list of the peer-reviewed literature.
7 04:31 7 It's not intended as a --
8 04:31 8 Q. Well, I didn't mean to suggest it here.
9 04:31 9 A. Well, yes, you did.
10 04:31 10 Q. No, no. I'm just trying to close out what is
11 04:31 11 in and what is not in Crowell's blog post.
12 04:31 12 So taking these articles and Professor
13 04:31 13 Crowell's blog post in totality, it's correct
14 04:31 14 that none of these pieces look at data from
15 04:31 15 after the 2008 election, right?
16 04:31 16 A. I believe that's correct.
17 04:31 17 Q. And none of these articles examine data
18 04:31 18 regarding possible differential effects of
19 04:31 19 early voting opportunities on different racial
20 04:31 20 groups?
21 04:31 21 A. I think that's correct.
22 04:31 22 Q. And none of them look at whether or not
23 04:31 23 removing early voting opportunities has any
24 04:31 24 effect on turnout?
25 04:31 25 A. I think that's technically correct.

1 04:31 1 Q. Can we turn back to your report and page 23 of

2 04:31 2 it under the heading "North Carolina's

3 04:32 3 Emergence As a Target State."

4 04:32 4 MR. FARR: Can I ask a question?

5 04:32 5 MR. HO: Sure.

6 04:32 6 MR. FARR: Mr. Videographer, where are

7 04:32 7 we in the deposition? How many hours have we

8 04:32 8 gone now?

9 04:32 9 THE VIDEOGRAPHER: Five hours and

10 04:32 10 56 minutes.

11 04:32 11 MR. FARR: We're right at six hours.

12 04:32 12 I'm going to need 15 to 20 minutes of time to

13 04:32 13 do cross-examination, so we're going to hold

14 04:32 14 you all to seven hours in this deposition.

15 04:32 15 MR. HO: We also reserve the right to

16 04:32 16 call Mr. Trende back for deposition regarding

17 04:32 17 the supplemental papers that you tried to give

18 04:32 18 us today.

19 04:32 19 MR. FARR: That's noted.

20 04:32 20 BY MR. HO:

21 04:32 21 Q. So theory on campaign resources --

22 04:32 22 A. I'll just state there's a good chance you all

23 04:32 23 coming to Columbus, Ohio, if that's the case.

24 04:32 24 My oldest son has Autism. I'm the primary

25 04:32 25 caregiver in the afternoon for that, and I have

1 04:32 1 to set up care for him to help my wife out so

2 04:32 2 he doesn't beat her up.

3 04:32 3 So if it's going to be on short notice,

4 04:33 4 we might have to do something a little

5 04:33 5 different.

6 04:33 6 MR. HO: We'll make whatever

7 04:33 7 arrangements that need to be made.

8 04:33 8 MR. FARR: And it's also assuming we

9 04:33 9 agree to it.

10 04:33 10 THE WITNESS: If we do it.

11 04:33 11 MR. HO: We'll make whatever

12 04:33 12 arrangements are necessary for your family,

13 04:33 13 Mr. Trende.

14 04:33 14 BY MR. HO:

15 04:33 15 Q. So this section that starts at the bottom of 23

16 04:33 16 and continues on, is it fair to say in your

17 04:33 17 opinion in this section is that the recent

18 04:33 18 growth in African American turnout in North

19 04:33 19 Carolina is largely attributable to the

20 04:33 20 presidential campaign's efforts in the 2008 and

21 04:33 21 2012?

22 04:33 22 A. I think that's a possibility that needed to be

23 04:33 23 explored.

24 04:33 24 Q. Have you personally conducted an empirical

25 04:33 25 analysis of whether or not the amount of

1 04:33 1 resources that a campaign spends in a state is

2 04:33 2 correlated with early voting usage?

3 04:33 3 A. That's the question.

4 04:33 4 Q. Have you determined whether or not there's a

5 04:33 5 correlation between campaign spending and early

6 04:33 6 voting usage in a state?

7 04:33 7 A. No. That's the question that the plaintiffs'

8 04:34 8 experts needed to account for. It's a big one.

9 04:34 9 Q. Have you attempted to demonstrate any

10 04:34 10 correlation between campaign resources and

11 04:34 11 same-day registration usage?

12 04:34 12 A. No.

13 04:34 13 Q. What about campaign resources and

14 04:34 14 out-of-precinct voting?

15 04:34 15 A. No.

16 04:34 16 Q. If we jump forward on page, sorry, 28,

17 04:34 17 paragraph 111, you say:

18 04:34 18 "As a result of these efforts,

19 04:34 19 North Carolina, compared to the country

20 04:34 20 as a whole, moved further towards the

21 04:34 21 Democrats."

22 04:34 22 MR. FARR: Which page? Which paragraph

23 04:34 23 are you on, please?

24 04:34 24 MR. HO: Paragraph 111.

25 04:34 25 THE WITNESS: Okay.

1 04:37 1 discusses this.

2 04:37 2 As I sit here and try to recite all of

3 04:37 3 the things that I could have ever read that

4 04:37 4 would give me this impression to begin with, I

5 04:37 5 can probably come up with a stack of -- I could

6 04:37 6 probably go on and on and on, but these are the

7 04:37 7 specific citations that I set forth.

8 04:37 8 Q. In paragraph 104 you talk about an article by

9 04:37 9 Seth Masket --

10 04:37 10 A. Yes.

11 04:37 11 Q. -- about field offices and whether their

12 04:37 12 presence had an effect on turnout.

13 04:37 13 A. Yes.

14 04:37 14 Q. Does that article to your recollection say

15 04:37 15 anything about early voting usage?

16 04:37 16 A. I don't believe so.

17 04:37 17 Q. Does that article to the best of your

18 04:37 18 recollection say anything about same-day

19 04:37 19 registration usage?

20 04:37 20 A. I can't recall.

21 04:37 21 Q. Does that article to the best of your

22 04:37 22 recollection say anything about disparate

23 04:38 23 reliance on early voting by members of

24 04:38 24 different racial groups?

25 04:38 25 A. I can't recall.

1 04:38 1 Q. What about disparate reliance by members of

2 04:38 2 different racial groups on same-day

3 04:38 3 registration?

4 04:38 4 A. I can't recall, but I would be surprised if it

5 04:38 5 did.

6 04:38 6 Q. In paragraph 105 you cite a New Yorker article

7 04:38 7 by Ryan Lizza about the Obama campaign strategy

8 04:38 8 with respect to early voting.

9 04:38 9 A. Correct.

10 04:38 10 Q. Is that article specifically about

11 04:38 11 North Carolina?

12 04:38 12 A. No.

13 04:38 13 Q. Does it mention North Carolina to your

14 04:38 14 recollection?

15 04:38 15 A. I'm not going to cop to that without the

16 04:38 16 article in front of me.

17 04:38 17 Q. In paragraphs 106 through 109 you cite a book

18 04:38 18 about the Obama campaign's "Starbucks

19 04:38 19 strategy."

20 04:38 20 A. I don't think that's correct.

21 04:38 21 Q. Well, paragraph 106 mentions the "Starbucks

22 04:38 22 strategy."

23 04:38 23 A. Correct.

24 04:38 24 Q. And this book is by Kathleen Hall Jamieson?

25 04:38 25 A. I would say Jamieson.

1 04:41 1 (Brief Recess.)

2 04:53 2 THE VIDEOGRAPHER: On record at

3 04:53 3 4:53 p.m.

4 04:53 4 EXAMINATION

5 04:53 5 BY MR. NKWONTA:

6 04:53 6 Q. Good afternoon, Mr. Trende. My name is Uzoma

7 04:53 7 Nkwonta and I represent the North Carolina

8 04:53 8 State Conference of the NAACP plaintiff group.

9 04:53 9 I just want to ask you a few follow-up

10 04:53 10 questions from your discussion earlier --

11 04:53 11 A. Of course.

12 04:53 12 Q. -- with Ms. Meza and Mr. Ho.

13 04:53 13 First, you mentioned while conducting

14 04:53 14 your multivariate regression that some of the

15 04:53 15 variables you considered were changes in

16 04:53 16 African American participation, the number of

17 04:53 17 laws adopted, competitiveness and a baseline

18 04:54 18 for African American participation in 2000; is

19 04:54 19 that correct?

20 04:54 20 A. I believe that is correct, yes.

21 04:54 21 Q. And in assessing the number of laws adopted,

22 04:54 22 you used an ordinal process or ordinal

23 04:54 23 numbering system, right?

24 04:54 24 A. For one -- for two of the regressions, yes.

25 04:54 25 Q. And that means you assigned a number which

1 04:54 1 would correlate with a number of voting reforms

2 04:54 2 that the State had adopted, right?

3 04:54 3 A. Correct.

4 04:54 4 Q. That regression doesn't allow for any

5 04:54 5 differences in the way each reform affects

6 04:54 6 turnout, right?

7 04:54 7 A. That is a limitation of ordinal ranking systems

8 04:54 8 in regression analysis.

9 04:54 9 Q. So that ranking system assumes that

10 04:54 10 out-of-precinct voting affects turnout the same

11 04:54 11 way that same-day registration does?

12 04:54 12 A. Correct. Like I said in the Minnite --

13 04:55 13 Minnite, is that right -- in her article when

14 04:55 14 she's looking at voter ID laws, they do a seven

15 04:55 15 point scale and it assumes that the difference

16 04:55 16 between being asked for your name and writing

17 04:55 17 your name is the same as the difference between

18 04:55 18 being required to show a photo ID, but you can

19 04:55 19 sign an affidavit versus being able to sign a

20 04:55 20 photo ID, you can't sign an affidavit. That

21 04:55 21 may or may not be the case, but it's an

22 04:55 22 assumption embedded in ordinal systems.

23 04:55 23 Q. Your article is -- I'm sorry.

24 04:55 24 Your report is different from Minnite's

25 04:55 25 article in the sense that you are comparing

1 04:55 1 different laws, right?

2 04:55 2 A. Oh, yeah. And I don't mean to suggest that our

3 04:55 3 approaches are identical, and I'm sorry if I

4 04:55 4 left that impression. I'm just saying the

5 04:55 5 basic structure of our analyses are similar.

6 04:55 6 We do different operationalizations of laws and

7 04:55 7 we're answering a similar-yet-different

8 04:56 8 question.

9 04:56 9 Q. So you would agree, though, that your

10 04:56 10 regression analysis assumes that out-of-

11 04:56 11 precinct voting and same-day registration and

12 04:56 12 elections and pre-registration all have the

13 04:56 13 same equal effect on voter participation or

14 04:56 14 turnout?

15 04:56 15 A. That is an assumption embedded in all ordinal

16 04:56 16 variable systems.

17 04:56 17 Q. That is the assumption in your regression,

18 04:56 18 right?

19 04:56 19 A. Yeah, that is the assumption in all ordinal

20 04:56 20 systems. This is an ordinal system; therefore

21 04:56 21 that is an assumption in the system.

22 04:56 22 Q. Is there a way to run or conduct this

23 04:56 23 regression and take into account the way each

24 04:56 24 of these laws affect turnout?

25 04:56 25 A. What I do later on in the analysis where I run

1 05:02 1 Q. Before you were retained in this case, had you

2 05:02 2 reviewed other states' laws relating to

3 05:02 3 out-of-precinct voting?

4 05:02 4 A. No.

5 05:02 5 Q. Before you were retained in this case, had you

6 05:02 6 reviewed any state's laws relating to

7 05:02 7 pre-registration?

8 05:02 8 A. No.

9 05:02 9 Q. Before you were retained in this case, had you

10 05:02 10 reviewed any state's laws related to same-day

11 05:02 11 registration?

12 05:02 12 A. Are we going to include election day

13 05:02 13 legislation in the same-day registration rubric

14 05:02 14 for this discussion?

15 05:02 15 Q. No.

16 05:03 16 A. I don't know if I read Ohio's laws before that.

17 05:03 17 I know that the Golden Week issue had come up

18 05:03 18 before in things I had read and heard about. I

19 05:03 19 just don't know if I had actually read the

20 05:03 20 statute for that.

21 05:03 21 Q. Before you were retained in this case, had you

22 05:03 22 reviewed other states' laws relating to early

23 05:03 23 voting?

24 05:03 24 A. Yes.

25 05:03 25 Q. Is it fair to say for same-day registration,

1 05:03 1 out-of-precinct voting and pre-registration you

2 05:03 2 don't recall reviewing any states' laws

3 05:03 3 relating to these voting reforms before you

4 05:03 4 were retained in this case?

5 05:03 5 A. Correct.

6 05:03 6 Q. Before you were retained in this case, had you

7 05:03 7 ever conducted an examination or analysis of

8 05:03 8 the effect of any election law or voting law on

9 05:03 9 voter turnout?

10 05:04 10 A. I will say -- I will say this: Again, I have

11 05:04 11 2- to 300 articles -- well, maybe 200 articles

12 05:04 12 from Real Clear Politics up on the site. Some

13 05:04 13 of them have discussed early voting. I cannot

14 05:04 14 say with certainty whether there was a

15 05:04 15 prediction of turnout on the basis embedded in

16 05:04 16 those articles. I don't think I had engaged in

17 05:04 17 a conclusion or in a -- that's the caveat.

18 05:04 18 With respect to out of precinct and

19 05:04 19 pre-registration, no.

20 05:04 20 Q. Before you were retained in this case, had you

21 05:04 21 ever conducted any statistical analysis of the

22 05:04 22 effect of any voting laws on voter turnout?

23 05:04 23 A. Again, the same caveat about early voting

24 05:04 24 somewhere in my writings. Not -- and

25 05:05 25 statistical analysis is a vague term. I can

1 05:38 1 effect?

2 05:39 2 A. I don't offer an opinion as to when their
3 05:39 3 primary effect would be. I didn't undertake
4 05:39 4 that sort of measurement.

5 05:39 5 Q. If those same-day registration laws were to
6 05:39 6 have a significant effect on same -- I'm
7 05:39 7 sorry -- on African American voter
8 05:39 8 participation within the few years after it was
9 05:39 9 implemented and then it was flat thereafter,
10 05:39 10 that would show up in this chart as though
11 05:39 11 same-day registration had no impact on African
12 05:39 12 American voter participation, right?

13 05:39 13 MR. FARR: Objection to form.

14 05:39 14 MR. KAUL: You can answer.

15 05:39 15 THE WITNESS: Repeat the question.

16 05:39 16 BY MR. KAUL:

17 05:39 17 Q. If in the example of Wisconsin the 1970's
18 05:39 18 change to same-day registration resulted in an
19 05:39 19 immediate increase in African American voting
20 05:39 20 percentage and then it remained flat after
21 05:39 21 that, that would show up in your analysis as
22 05:39 22 though same-day registration had no impact; is
23 05:40 23 that right?

24 05:40 24 A. It sounds like that's probably correct, yes.

25 05:40 25 Q. And you said before that you thought the way

1 05:40 1 you drew your major judgment call helped
2 05:40 2 plaintiffs. How is that so?
3 05:40 3 A. Because -- oh, no, you make -- I understand
4 05:40 4 what you're getting at here and you make a fair
5 05:40 5 point that if a state were zero and had these
6 05:40 6 laws in effect, it would code as not having an
7 05:40 7 effect, but, you know, you look at the states
8 05:40 8 that don't have much of an effect on African
9 05:40 9 American participation -- like Texas is a zero;
10 05:40 10 you look at Wisconsin as a 13 -- I believe that
11 05:40 11 the assumption embedded in this that the law in
12 05:40 12 Wisconsin drove some of that turnout comes out
13 05:41 13 to a net benefit for plaintiffs, but it would
14 05:41 14 be interesting to have someone run the
15 05:41 15 regression a different way as part of a
16 05:41 16 rebuttal and see if it comes out with different
17 05:41 17 results. That is an interesting question.
18 05:41 18 Q. Did you consider using just laws adopted in the
19 05:41 19 period from 2000 to 2012 in listing the number
20 05:41 20 of laws adopted?
21 05:41 21 A. Yes.
22 05:41 22 Q. Why did you use that approach?
23 05:41 23 A. Well, as I explained, I didn't want to proceed
24 05:41 24 with the assumption that these laws would not
25 05:41 25 be having any effect on turnout. As a matter

1 05:41 1 of fact, I am sure that if I made that call the
2 05:41 2 other way we would be having the discussion why
3 05:41 3 I didn't make it this way. And one good
4 05:41 4 example of that, again, is according to the CPS
5 05:41 5 data an increase in North Carolina -- in
6 05:41 6 participation in North Carolina between 2008
7 05:41 7 and 2012.

8 05:41 8 If I had made the judgment call in the
9 05:41 9 way that you suggest, I would be embedding an
10 05:42 10 assumption that North Carolina's laws had
11 05:42 11 nothing to do with that portion of the
12 05:42 12 increase. So it just struck me -- especially
13 05:42 13 given the overall theory of how President Obama
14 05:42 14 and his campaign -- or Senator Obama and his
15 05:42 15 campaign in the case of 2008 was using these
16 05:42 16 laws that I should make the judgment call that
17 05:42 17 these laws were still having some sort of
18 05:42 18 effect in the relevant time period.

19 05:42 19 Q. Let me draw your attention to page 32,
20 05:42 20 paragraph 121. You say that your analysis
21 05:42 21 revealed a positive correlation between the
22 05:42 22 number of laws the state passes and the
23 05:42 23 increase in African American participation but
24 05:42 24 that is not statistically significant at the
25 05:42 25 95 percent confidence level.

1 05:42 1 A. Correct.

2 05:42 2 Q. Do you see that? Did you run that analysis at
3 05:42 3 other confidence levels?

4 05:42 4 A. Well, the confidence level is 82.

5 05:42 5 Q. Okay. So -- and what that means in lay terms

6 05:43 6 there is an 82 percent chance that the laws

7 05:43 7 passed have a positive impact on African

8 05:43 8 American participation; is that right?

9 05:43 9 A. That's a way you can interpret it.

10 05:43 10 Q. How else can you interpret it?

11 05:43 11 A. That is a way that you can explain it. You can

12 05:43 12 explain it in statistical terms, but in lay

13 05:43 13 terms, yeah, I think that is a way to explain

14 05:43 14 it.

15 05:43 15 Q. So it is your conclusion based on that that

16 05:43 16 it's more likely than not that the laws

17 05:43 17 increase African American participation, right?

18 05:43 18 A. Without any controls in place, what it says

19 05:43 19 really is that we're -- well, let's see how I

20 05:43 20 explain this.

21 05:44 21 I think the technical way to put it is

22 05:44 22 we're 18 -- there's an 18 percent chance on the

23 05:44 23 basis of this that we would still accept the

24 05:44 24 null hypothesis which is that there was no

25 05:44 25 effect on turnout.

1 05:46 1 A. Oh, I see what you're saying. I didn't weight
2 05:46 2 them by population in any sort of way with
3 05:46 3 respect to paragraph 122.

4 05:46 4 Q. Okay. So California was treated the same as
5 05:46 5 Arkansas?

6 05:46 6 A. Right. So if California -- if California was
7 05:46 7 competitive in 2000, it was a 1 and if Arkansas
8 05:46 8 was competitive in 2000 it was a 1, and if they
9 05:46 9 weren't competitive in 2012, they were both
10 05:46 10 zeros or whatever the codes are. It would be
11 05:47 11 the same.

12 05:47 12 Q. Now, you did not do any analysis of the impact
13 05:47 13 of the laws at issue on waiting times to vote;
14 05:47 14 is that right?

15 05:47 15 A. No. Yes, that is correct, I did not do that
16 05:47 16 analysis.

17 05:47 17 Q. And you didn't do any analysis on the amount of
18 05:47 18 time at work that would be lost as a result of
19 05:47 19 these provisions; is that right?

20 05:47 20 A. Assuming that there is such work to be --
21 05:47 21 amount of time at work to be lost, I did not
22 05:47 22 conduct any analysis of it.

23 05:47 23 Q. And you didn't do any analysis of any increased
24 05:47 24 expense required for obtaining documents
25 05:47 25 necessary for voter ID as a result of this law,

1 06:00 1 Q. And did you prepare that?

2 06:00 2 A. I did prepare this.

3 06:00 3 Q. When did you prepare it?

4 06:00 4 A. I wrote this last night.

5 06:00 5 Q. Okay. And you were present at the beginning of

6 06:00 6 your deposition?

7 06:00 7 A. Yes.

8 06:00 8 Q. And did you recall that I offered to give this

9 06:01 9 to counsel for the plaintiffs at the beginning

10 06:01 10 of the deposition and they did not take it?

11 06:01 11 A. I do recall that.

12 06:01 12 Q. And can you tell us what this is?

13 06:01 13 A. This is a correction to errors in my regression

14 06:01 14 analysis. After reading Dr. Gronke's analysis

15 06:01 15 that one of the variables had miscoded, I came

16 06:01 16 to agree with his analysis of that miscoding,

17 06:01 17 and being paranoid that led me to check the

18 06:01 18 rest of my coding and that's when I realized

19 06:01 19 that I had used the coding for the laws

20 06:01 20 variable as they exist today, not as they had

21 06:01 21 existed in 2012 and so I corrected the data.

22 06:01 22 Q. Did you check to see whether any of the errors

23 06:01 23 that you discovered changed any of the opinions

24 06:01 24 you've offered in your original report?

25 06:01 25 A. They do not.

1 06:01 1 Q. All right. I am going to ask -- go ahead,

2 06:01 2 please.

3 06:01 3 A. The values do change somewhat, but nothing

4 06:02 4 changes the ultimate opinion that there's

5 06:02 5 no -- that there's no statistically significant

6 06:02 6 impact.

7 06:02 7 Q. Okay.

8 06:02 8 A. And those changes in the values are all listed

9 06:02 9 in this declaration.

10 06:02 10 Q. All right, sir.

11 06:02 11 I am going to ask the court reporter to

12 06:02 12 hand you an exhibit that I am going to ask her

13 06:02 13 to mark as Exhibit 122.

14 06:02 14 (WHEREUPON, Defendant's Exhibit 122 was

15 06:02 15 marked for identification.)

16 06:02 16 BY MR. FARR:

17 06:02 17 Q. Mr. Trende, do you know who prepared

18 06:02 18 Exhibit 122?

19 06:02 19 A. I did.

20 06:02 20 Q. And who asked you to do this?

21 06:02 21 A. Tom Farr did.

22 06:02 22 Q. And could you please tell us what Exhibit 122

23 06:02 23 is.

24 06:02 24 A. It is -- it's a little bit difficult to

25 06:02 25 explain, but basically it looks at Virginia

1 06:02 1 voter turnout by race from 1998 to -- through

2 06:03 2 2012 and makes comparisons between black and

3 06:03 3 white turnout.

4 06:03 4 Q. Okay. And so you have elections listed for '98

5 06:03 5 through 2012?

6 06:03 6 A. That's correct.

7 06:03 7 Q. And that includes presidential elections and

8 06:03 8 off-year elections?

9 06:03 9 A. That's correct.

10 06:03 10 Q. And then the two groups that you compare are

11 06:03 11 black and white?

12 06:03 12 A. African American and white, yes.

13 06:03 13 Q. And what does white mean?

14 06:03 14 A. For purposes of this table, white is shorthand

15 06:03 15 to non-Hispanic white.

16 06:03 16 Q. Okay. And then the next column, Percent of

17 06:03 17 Citizen Voting Age Population, could you tell

18 06:03 18 us what that is?

19 06:03 19 A. For each election year, it is the percentage of

20 06:03 20 the citizen voting age population reflected by

21 06:03 21 the Current Population Survey for African

22 06:03 22 Americans and non-Hispanic whites.

23 06:03 23 Q. Okay. What does the column that's labeled

24 06:03 24 Percentage of the Electorate?

25 06:04 25 A. That is the -- so this is a little different

1 06:04 1 than what I had shown before. It is the
2 06:04 2 percentage -- it is the share of the electorate
3 06:04 3 for both African American and non-Hispanic
4 06:04 4 whites in Virginia.
5 06:04 5 Q. And then the next column says Under/
6 06:04 6 Overrepresentation of the Electorate. What is
7 06:04 7 that?
8 06:04 8 A. That is the difference between the percentage
9 06:04 9 of the electorate and the percent of the
10 06:04 10 citizen voting age population. If the -- if a
11 06:04 11 group was a smaller share of the electorate
12 06:04 12 than its population would suggest, it is
13 06:04 13 considered a negative value and if it's more
14 06:04 14 it's a positive value.
15 06:04 15 Q. Then what is the final column, Difference in
16 06:04 16 Under/Overrepresentation?
17 06:04 17 A. That's the -- that's the white share -- that's
18 06:04 18 the over -- or the overrepresentation of the
19 06:04 19 white share less the overrepresentation of the
20 06:04 20 African American share which is in many
21 06:04 21 instances negative so it's really
22 06:04 22 underrepresentation.
23 06:04 23 Q. Okay. Now, I want to switch gears to another
24 06:05 24 topic.
25 06:05 25 Do you remember when counsel for -- I

1 06:05 1 believe it's for the League of Women Voters was

2 06:05 2 talking to you about Dr. Gronke and Dr. Stewart

3 06:05 3 used validated data. Do you remember that line

4 06:05 4 of questioning?

5 06:05 5 A. Yes.

6 06:05 6 Q. Did he ask you how many states that they looked

7 06:05 7 at in using validated data?

8 06:05 8 A. I don't believe he did.

9 06:05 9 Q. Do you remember from the reports that they

10 06:05 10 prepared how many states they looked at using

11 06:05 11 validated data?

12 06:05 12 A. I believe in depth one and with respect to a

13 06:05 13 discreet question another one.

14 06:05 14 Q. So -- and what were those?

15 06:05 15 A. North Carolina and Florida.

16 06:05 16 Q. Which one was the validated used for only a

17 06:05 17 discreet issue?

18 06:05 18 A. For Florida.

19 06:05 19 Q. What was that discreet issue?

20 06:05 20 A. The early voting turnout in 2012.

21 06:05 21 Q. Okay. Now, could you turn to page 19 of your

22 06:05 22 report. I'm looking at Figure 5 and 6.

23 06:06 23 A. Yes.

24 06:06 24 Q. Now, it's my understanding that the lines that

25 06:06 25 you drew on Figure 5 and 6 are based upon

1 06:06 1 what's been described as the CPS data.

2 06:06 2 A. Yes.

3 06:06 3 Q. So that's not validated data, right?

4 06:06 4 A. Correct.

5 06:06 5 Q. Okay. Have any of the plaintiffs' experts

6 06:06 6 prepared versions of Figure 5 or 6 to refute

7 06:06 7 what's depicting here, Figures 5 and 6?

8 06:06 8 A. No, they haven't.

9 06:06 9 Q. Did either Dr. Gronke or Dr. Stewart use

10 06:06 10 validated data for North Carolina or

11 06:06 11 Mississippi to respond to the representations

12 06:06 12 you're making on Figures 5 and 6?

13 06:06 13 A. No, they didn't offer any proof that these

14 06:06 14 lines are off or wrong.

15 06:06 15 Q. Okay. So plaintiffs' experts did not use

16 06:06 16 validated data to use what you're representing

17 06:06 17 in Figures 5 and 6 are somehow incorrect or not

18 06:07 18 properly weighted; is that correct?

19 06:07 19 A. No. They only suggested it as a possibility.

20 06:07 20 Q. But they didn't use the validated data to draw

21 06:07 21 comparable lines for North Carolina and

22 06:07 22 Mississippi, did they?

23 06:07 23 A. No.

24 06:07 24 Q. And I recall that one of the experts added a

25 06:07 25 line for Alabama.

1 06:09 1 between 2012 and 2008.

2 06:09 2 Q. What about participation between non-Hispanic

3 06:09 3 whites versus African Americans?

4 06:09 4 A. From 2008 to 2012, the participation rate, as I

5 06:09 5 say in paragraph 142, was down 3.3 percent

6 06:09 6 among non-Hispanic whites but only .9 percent

7 06:09 7 among African Americans.

8 06:09 8 Q. And what did you mean by participation?

9 06:09 9 A. I mean the share of the citizen voting age

10 06:09 10 population that voted.

11 06:09 11 Q. So assuming there were long lines in Florida as

12 06:09 12 we've heard today described, would this

13 06:09 13 information suggest that they may have had

14 06:09 14 bigger impact on white participation than

15 06:09 15 African American participation?

16 06:09 16 A. It suggests --

17 06:09 17 MR. HO: Objection; form.

18 06:09 18 THE WITNESS: It suggests they may have

19 06:10 19 done so.

20 06:10 20 BY MR. FARR:

21 06:10 21 Q. I want to talk to you about your predictions

22 06:10 22 for the 2012 election.

23 06:10 23 A. Okay.

24 06:10 24 Q. And we had -- this is -- I confused myself with

25 06:10 25 an earlier question. I think we had testimony

1 06:10 1 that the black percentage of the electorate for
2 06:10 2 the 2012 election was higher than in 2008.

3 06:10 3 A. I honestly can't remember at this point what
4 06:10 4 the exact question was.

5 06:10 5 Q. Okay. Well, was there -- did whites turnout --
6 06:10 6 when you predicted that earlier in the year
7 06:10 7 that you thought Romney had a chance in
8 06:10 8 winning, what assumptions did you make about
9 06:10 9 white turnout at that point in time?

10 06:10 10 A. Oh, I thought -- I thought that white turnout
11 06:10 11 was going to at the very least be stable, if
12 06:10 12 not grow because the white share of the
13 06:10 13 population had grown.

14 06:10 14 Q. What in fact happened in 2012?

15 06:10 15 A. The number of white voters -- and I misspoke.

16 06:11 16 The white share of the population didn't grow
17 06:11 17 but the number of whites grew so you would

18 06:11 18 expect total number of white voters to grow as

19 06:11 19 well, just as you would with most other

20 06:11 20 demographic groups, but instead the reason that

21 06:11 21 I was wrong about the white share of the

22 06:11 22 electorate is that the number of whites

23 06:11 23 actually dropped by about 5 million.

24 06:11 24 Q. Okay. And did that -- did that result in a

25 06:11 25 higher percentage of the electorate being black

1 06:11 1 in 2012 than in 2008?

2 06:11 2 A. Yes. If the number -- if the number of whites

3 06:11 3 who -- non-Hispanic whites who voted in 2008

4 06:11 4 had turned out in 2012 and kept pace with their

5 06:11 5 increasing -- with population growth, yeah,

6 06:11 6 that would have decreased the African American

7 06:12 7 share of the electorate.

8 06:12 8 Q. Okay. I want to ask you a question about the

9 06:12 9 CPS data, and there was some questions about

10 06:12 10 why you didn't weight the CPS data.

11 06:12 11 Could you explain why you didn't weight

12 06:12 12 the CPS data?

13 06:12 13 A. Yeah. So -- so there's a couple reasons. The

14 06:12 14 first is that a large portion of the political

15 06:12 15 science literature or at least some of the

16 06:12 16 political science literature extant on this

17 06:12 17 doesn't employ weighting techniques. So I

18 06:12 18 don't believe that every political science --

19 06:12 19 every piece of political science literature

20 06:12 20 that's been written that didn't employ

21 06:12 21 weighting techniques is presumptively invalid.

22 06:12 22 That would be a huge declaration to make.

23 06:12 23 So with that, I didn't think there was

24 06:12 24 anything wrong with not using weighting, but

25 06:12 25 there are some additional reasons, as I

1 06:13 1 explained I think in the first
2 06:13 2 cross-examination.
3 06:13 3 Most of the -- or at least -- at the
4 06:13 4 very least many of the political science
5 06:13 5 analyses here are doing the -- the individual
6 06:13 6 data which precludes you from doing change over
7 06:13 7 time, but when you're doing change over time,
8 06:13 8 there will be stability -- at least some of the
9 06:13 9 over report will cancel out within a state.
10 06:13 10 Because I'm comparing state to state,
11 06:13 11 it's less of an issue, but most importantly I'm
12 06:13 12 not looking at overall turnout. I am looking
13 06:13 13 at turnout particularly among African
14 06:13 14 Americans.
15 06:13 15 So a lot of the differences that Mr. Ho
16 06:13 16 was discussing aren't as much of an issue. In
17 06:14 17 the regression analysis is doesn't matter if
18 06:14 18 the over report rates between whites and
19 06:14 19 African Americans are different because the
20 06:14 20 regression analysis is only looking at African
21 06:14 21 Americans.
22 06:14 22 And the final point, and this really
23 06:14 23 kind of gets down into the weeds, but when you
24 06:14 24 drop observations -- and when you drop your
25 06:14 25 observations, you're still making an assumption

1 06:14 1 about the way those dropped observations vote.

2 06:14 2 You're effectively weighting them as having

3 06:14 3 voted in the same way that the respondents

4 06:14 4 voted. That may or may not be true and

5 06:14 5 especially may or may not be true with regard

6 06:14 6 to different groups, but then -- so once you

7 06:14 7 drop the populations, you created this over --

8 06:14 8 when you drop your observations, you actually

9 06:14 9 make the over report show up worse.

10 06:14 10 So what a lot of people do -- this was

11 06:15 11 in a 2013 Public Opinion Quarterly article.

12 06:15 12 The recommendation is to after you do that,

13 06:15 13 weight it back to the actual turnout as found

14 06:15 14 by Dr. McDonald in a given state.

15 06:15 15 And so that again has assumption --

16 06:15 16 that builds in assumptions about how people

17 06:15 17 would and would not have voted. And more

18 06:15 18 importantly, when you weight back to the

19 06:15 19 population of the state, you're weighting back

20 06:15 20 to total validated turnout, not just to African

21 06:15 21 American turnout, which is what the subject of

22 06:15 22 my investigation is. It may skew the African

23 06:15 23 American turnout further.

24 06:15 24 Q. Now, your retrogression analysis, did you look

25 06:15 25 at 34 states?

1 06:15 1 A. Yes, 33 states and the District of Columbia.

2 06:15 2 Q. Why did you pick those states?

3 06:15 3 A. Because the Census Bureau didn't feel

4 06:15 4 comfortable publishing top line numbers for

5 06:15 5 those states consistently.

6 06:15 6 Q. Did all those states have validated data on

7 06:16 7 voting and registration?

8 06:16 8 A. No.

9 06:16 9 Q. Does that have any connection to your decision

10 06:16 10 to use the CPS data?

11 06:16 11 A. Yes. I mean, I could use -- excuse me --

12 06:16 12 actual voting data in North Carolina for the

13 06:16 13 regression analysis, but if I were to then

14 06:16 14 include, say, Oklahoma, which I don't believe

15 06:16 15 has validated data by race, I would have to use

16 06:16 16 the CPS there and then I'm doing an apples-to-

17 06:16 17 oranges comparison, and given that it made

18 06:16 18 sense --

19 06:16 19 (Brief Interruption.)

20 06:16 20 THE WITNESS: -- to keep the apples to

21 06:16 21 apples consistent throughout.

22 06:16 22 BY MR. FARR:

23 06:16 23 Q. Okay. Now, did the plaintiffs' experts conduct

24 06:16 24 a retrogression analysis comparing other states

25 06:16 25 in these voting practices?

1 06:16 1 A. There was no regression analysis in the

2 06:17 2 plaintiffs' reports to my recollection.

3 06:17 3 Q. And did the plaintiffs' experts attempt to

4 06:17 4 account for the impact of the Obama campaign on

5 06:17 5 early voting?

6 06:17 6 A. No. Dr. Stewart submitted over 200 pages of

7 06:17 7 expert report and exhibits and I believe the

8 06:17 8 word Obama appears in it four times, once in

9 06:17 9 the bibliography.

10 06:17 10 Q. Did any of the plaintiffs' experts attempt to

11 06:17 11 account for the Obama campaign's impact on

12 06:17 12 same-day registration?

13 06:17 13 A. No, not to my knowledge.

14 06:17 14 Q. Did any of the plaintiffs' experts attempt to

15 06:17 15 account for the Obama campaign's impact on

16 06:17 16 out-of-precinct voting?

17 06:17 17 A. No. And that was surprising given that

18 06:17 18 Dr. Gronke to my recollection declares in his

19 06:17 19 surrebuttal brief that everyone knows that

20 06:17 20 these things have effect on turnout.

21 06:17 21 Q. Did any of the plaintiffs' experts -- I may

22 06:17 22 have asked this already -- did they attempt to

23 06:17 23 discern the impact of the Obama campaign on

24 06:18 24 pre-registration?

25 06:18 25 A. Not to my recollection.

1 06:18 1 Q. And on same-day registration?

2 06:18 2 A. Not to my recollection.

3 06:18 3 Q. Okay. You were asked by counsel about all your
4 06:18 4 television appearances?

5 06:18 5 A. Not all of them.

6 06:18 6 Q. We didn't get them all?

7 06:18 7 A. No.

8 06:18 8 Q. Could you tell us about some of your other

9 06:18 9 television appearances or appearances with the

10 06:18 10 news media?

11 06:18 11 A. Well, basically anyone who asks me to -- within

12 06:18 12 reason, anyone who asks me to be on a

13 06:18 13 television show or radio show, I'll give

14 06:18 14 them -- if it's about an election-related

15 06:18 15 topic, I will generally appear if I'm

16 06:18 16 available.

17 06:18 17 Q. Well, can you name some of these individuals

18 06:18 18 who you've gone on TV with?

19 06:18 19 A. Well, besides the ones that Mr. Ho listed off,

20 06:18 20 I've been on the Chris Matthews Show.

21 06:18 21 Q. Would he be considered conservative?

22 06:18 22 A. I don't think so.

23 06:18 23 Q. What else?

24 06:18 24 A. The Steve -- Up With Steve Kornacki.

25 06:19 25 Q. Is he conservative?

1 06:19 1 A. No.

2 06:19 2 Q. Okay. Anyone else?

3 06:19 3 A. I'm sure I've been other television shows, but

4 06:19 4 those are the ones -- I've been on CNN Radio

5 06:19 5 multiple times. I've been on the Diane Rehm's

6 06:19 6 show. I've been on an NPR show out of

7 06:19 7 Philadelphia. I can't remember the name of it.

8 06:19 8 I've been on NPR a couple times. I've been on

9 06:19 9 the Brian Lehrer show. And I wouldn't

10 06:19 10 characterize Dan or Brian Lehrer as

11 06:19 11 conservatives to my knowledge.

12 06:19 12 Q. Are you familiar with I think it's a blog

13 06:19 13 called the Daily Kos?

14 06:19 14 A. Oh, yes.

15 06:19 15 Q. Have you had any involvement with the Daily

16 06:19 16 Kos?

17 06:19 17 A. They cite to me pretty regularly. I have a

18 06:19 18 good rapport with their editor in chief.

19 06:20 19 Q. Do you remember Arlen Specter?

20 06:20 20 A. Oh, I also have a good rapport with Nate Silver

21 06:20 21 at FiveThirtyEight who cites to me frequently.

22 06:20 22 Q. Okay. Thank you.

23 06:20 23 Do you have -- and he works for the

24 06:20 24 New York Times?

25 06:20 25 A. He worked for the New York Times and now runs

1 06:20 1 his blog as part of -- as part of ESPN and

2 06:20 2 Grantland.

3 06:20 3 Q. And he cited you while he was working for the

4 06:20 4 New York Times?

5 06:20 5 A. Yes.

6 06:20 6 Q. And would that be considered a conservative

7 06:20 7 publication?

8 06:20 8 A. I don't think anyone would call it

9 06:20 9 conservative.

10 06:20 10 Q. All right. What about -- you mentioned to me

11 06:20 11 something about unskewed polls.

12 06:20 12 A. So there's this phenomenon, I think I actually

13 06:20 13 refer to it or link to it in one of the

14 06:20 14 articles that Mr. Ho gave to me, though he

15 06:20 15 didn't have me read that or ask me about it.

16 06:20 16 There was this phenomenon in 2012 where

17 06:20 17 a lot of conservatives looked at polls and said

18 06:21 18 there aren't near enough Republicans in those

19 06:21 19 polls, these polls are skewed, and they tried

20 06:21 20 to, quote, "unskew the polls" and say actually

21 06:21 21 Mr. Romney or Governor Romney is doing quite a

22 06:21 22 bit better than the polls suggest because you

23 06:21 23 should have, you know, 37 percent of

24 06:21 24 Republicans rather than 31 percent.

25 06:21 25 Q. Okay. Do you remember Senator Specter?

1 06:21 1 A. Oh, and on the unskewed polls phenomenon, one
2 06:21 2 of the things about it, I wrote the very first
3 06:21 3 article to my knowledge that was critical of it
4 06:21 4 and said this is absolutely ridiculous. You
5 06:21 5 can't -- you can't look at these polls or at
6 06:21 6 least it's extremely problematic to look at
7 06:21 7 these polls and reweight the party
8 06:21 8 identification.

9 06:21 9 Some people do it, but because party
10 06:21 10 identification isn't a fixed effect, you know,
11 06:21 11 the argument that these conservatives were
12 06:21 12 making was invalid.

13 06:22 13 Q. So the conservatives were making arguments that
14 06:22 14 all the polls were skewed and you disputed
15 06:22 15 that?

16 06:22 16 A. Yes.

17 06:22 17 Q. And their polls didn't turn out to be so good
18 06:22 18 in 2012, did they?

19 06:22 19 A. No.

20 06:22 20 Q. I've asked you a couple times about Senator
21 06:22 21 Specter. Can you tell us about any predictions
22 06:22 22 or thoughts you had about Senator Specter when
23 06:22 23 he switched parties?

24 06:22 24 A. Yeah. When he switched parties, I wrote an
25 06:22 25 article -- I might have even called the Club