

EXHIBIT I

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

JANET R. THORNTON, Ph.D.

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VIDEOTAPED DEPOSITION OF
JANET R. THORNTON, Ph.D.

9:03 A.M.

MONDAY, JUNE 9, 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 09:27 1 A. It was, as I recall, an allegation of gender
2 09:28 2 discrimination.

3 09:28 3 Q. And what was the context of that gender
4 09:28 4 discrimination allegation?

5 09:28 5 A. It's been a while. My recollection was that it
6 09:28 6 was an allegation of failure to hire.

7 09:28 7 Q. Have you worked on any other matters with
8 09:28 8 Mr. Farr?

9 09:28 9 A. No.

10 09:28 10 Q. Dr. Thornton, do you consider yourself an
11 09:28 11 expert in any particular fields?

12 09:28 12 A. Well, I'm a trained labor economist, an
13 09:28 13 economist in general, and I'm an applied
14 09:28 14 statistician.

15 09:28 15 Q. Are there any other fields in which you
16 09:28 16 consider yourself an expert?

17 09:28 17 A. Well, with my background in economics and
18 09:29 18 applied statistics, I also have a lot of
19 09:29 19 experience, for example, utilizing the Census
20 09:29 20 data and other publicly available data. So in
21 09:29 21 terms of that, I don't know if you would -- I
22 09:29 22 do not know if individuals say that they're an
23 09:29 23 expert in that, but it's part of my training
24 09:29 24 and part of my experience.

25 09:29 25 Q. Are there any other fields or subject matters

1 09:29 1 in which you consider yourself an expert?

2 09:29 2 A. Not that I can think of at this time.

3 09:29 3 Q. And what formal education have you obtained

4 09:29 4 relevant to your expertise?

5 09:29 5 A. I have a bachelor's degree in economics and

6 09:30 6 political science, I have a master's degree in

7 09:30 7 economics, and I have a Ph.D. in economics.

8 09:30 8 Q. During your course work in economics, did you

9 09:30 9 take any classes related to voting, election

10 09:30 10 laws or the analysis of election results?

11 09:30 11 A. Not in economics, but I'm sure when I had -- I

12 09:30 12 obtained my bachelor's degree in political

13 09:30 13 science, which was a long time ago, I believe

14 09:30 14 we had methods courses where we provided or

15 09:30 15 prepared statistical analysis.

16 09:30 16 Q. So that would have been for the course work

17 09:31 17 related to your bachelor's degree in political

18 09:31 18 science that you obtained in 1981?

19 09:31 19 A. That's my recollection.

20 09:31 20 Q. Since then, have you taken any courses or been

21 09:31 21 exposed to any educational materials related to

22 09:31 22 voting, voting laws or election laws or the

23 09:31 23 analysis of election results?

24 09:31 24 A. No, other than some of the examples that are

25 09:31 25 utilized in statistics courses may use examples

1 09:31 1 of voting to describe a concept and show how

2 09:31 2 that -- how the calculations are performed.

3 09:31 3 Q. As we sit here today, do you recall any of

4 09:32 4 those examples that you may have come across?

5 09:32 5 A. Sure. Sometimes I've read in statistics books

6 09:32 6 where a statistical concept is being

7 09:32 7 misinterpreted by the media, so an economist or

8 09:32 8 statistician will prepare a calculation and

9 09:32 9 then it may be misinterpreted by the -- by the

10 09:32 10 media in terms of what that calculation

11 09:32 11 actually means.

12 09:32 12 Q. So other than those examples, have you had any

13 09:32 13 exposure to voting laws or the analysis of

14 09:32 14 election results or voter turnout data?

15 09:32 15 A. Other than what I read, no, not that I can

16 09:33 16 think of.

17 09:33 17 Q. And you mention that you may have taken some

18 09:33 18 courses while working towards your bachelor's

19 09:33 19 degree in political science that related to

20 09:33 20 voting laws or the analysis of voting or

21 09:33 21 election data; is that right?

22 09:33 22 A. Most likely, yes.

23 09:33 23 Q. Do you recall what any of those courses were?

24 09:33 24 A. I believe that one course I recall is we had a

25 09:33 25 methods course which was the application of

1 09:33 1 statistics.

2 09:33 2 Q. Did that course deal with voting laws in any

3 09:33 3 way?

4 09:33 4 A. I'm sure it did, but, of course, you're asking

5 09:33 5 me, you know, to recall, you know, years prior

6 09:33 6 to 1981 and that's a long time ago.

7 09:33 7 Q. You did not pursue a graduate degree in

8 09:33 8 political science, right?

9 09:33 9 A. No, I did not.

10 09:33 10 Q. Why not?

11 09:33 11 A. Would you really like to know?

12 09:34 12 Q. I'm curious.

13 09:34 13 A. Okay. When I started undergraduate school, my
14 09:34 14 goal was to become a diplomat, and so I went to
15 09:34 15 undergraduate school with the goal of getting a
16 09:34 16 degree in political science focusing on
17 09:34 17 international relations. And my political
18 09:34 18 science professors told me what you really need
19 09:34 19 to do is go over to the economics department
20 09:34 20 because the economics degree is much more
21 09:34 21 useful to the diplomatic core than a degree in
22 09:34 22 political science.

23 09:34 23 And then when I was pursuing my
24 09:34 24 graduate degree, they instructed me you'd be
25 09:34 25 better off getting a graduate degree in

1 09:36 1 A. Dr. Joan Haworth.

2 09:36 2 Q. And when did you assist Dr. Joan Haworth?

3 09:36 3 A. It would have likely been in the 1980s and

4 09:36 4 1990s. She retired about three years ago.

5 09:36 5 Q. When you say 1980s and 1990s, you're referring

6 09:36 6 to the early '90s, mid '90s, late '90s or

7 09:36 7 throughout the entire '90s?

8 09:36 8 A. I do not know.

9 09:36 9 Q. Do you know which cases you assisted her with?

10 09:36 10 A. I remember looking at large maps, and I cannot

11 09:37 11 recall which state it was for.

12 09:37 12 Q. Do you recall any of the data analysis that you

13 09:37 13 did?

14 09:37 14 A. I think she and I would have probably had

15 09:37 15 discussions about calculations, but it's been

16 09:37 16 too long.

17 09:37 17 Q. You don't recall what those calculations were

18 09:37 18 or what the analysis was?

19 09:37 19 A. No.

20 09:37 20 Q. Other than the work you did for your mentor,

21 09:37 21 have you done any work relating to voting or

22 09:37 22 election data or election turnout?

23 09:37 23 A. I do not believe so.

24 09:37 24 Q. Have you done any work relating to or that

25 09:37 25 required you to review voting laws?

1 09:37 1 A. Probably not.

2 09:37 2 Q. Before your work on this case, had you reviewed

3 09:38 3 any voting laws?

4 09:38 4 A. Other than, again, the work with my mentor and

5 09:38 5 also when I was in undergraduate school. I

6 09:38 6 don't know.

7 09:38 7 Q. Do you recall what voting laws you may have

8 09:38 8 reviewed when you were working with your

9 09:38 9 mentor?

10 09:38 10 A. No.

11 09:38 11 Q. Before your work on this case, had you ever

12 09:38 12 reviewed any literature related to voting laws

13 09:38 13 or election turnout data?

14 09:38 14 A. I'm sure I have along the way just in the

15 09:38 15 course of reading.

16 09:38 16 Q. Can you recall any specific instances as we sit

17 09:38 17 here today?

18 09:38 18 A. No, I don't know. No, I do not recall anything

19 09:39 19 at this time.

20 09:39 20 Q. Other than the work you did for your mentor

21 09:39 21 involving the maps, is it fair to say that this

22 09:39 22 case was the first instance in which you

23 09:39 23 reviewed or worked with voter turnout data?

24 09:39 24 A. It may be.

25 09:39 25 Q. Did you review any voting laws in connection

1 09:40 1 with this case?

2 09:40 2 A. I did look at HB 589 and I did look at some of
3 09:40 3 the prior cases.

4 09:40 4 Q. When you say prior cases, what are you
5 09:40 5 referring to?

6 09:40 6 A. Litigation involving Voting Rights.

7 09:40 7 Q. Do you remember the names of the cases?

8 09:40 8 A. No. I'd have to pull them from my file.

9 09:40 9 Q. Did anyone provide you with those cases?

10 09:40 10 A. In terms of actually providing them, no.

11 09:40 11 Q. Did anyone tell you what the cases were?

12 09:40 12 A. Mr. Farr may have identified a few and then I
13 09:41 13 may have identified others.

14 09:41 14 Q. Is there anything else Mr. Farr and any other
15 09:41 15 defendants' attorneys identified or asked you
16 09:41 16 to look at?

17 09:41 17 A. Not that I recall.

18 09:41 18 Q. Have you reviewed any literature relating to
19 09:41 19 early voting?

20 09:41 20 A. Yes.

21 09:41 21 Q. Before your work in this case, had you reviewed
22 09:41 22 any literature related to early voting?

23 09:41 23 A. I don't know.

24 09:41 24 Q. Before your work in this case, had you reviewed
25 09:41 25 any literature related to same-day

1 09:42 1 registration?

2 09:42 2 A. I do not believe so.

3 09:42 3 MR. FARR: And I don't mind that you

4 09:42 4 answer the questions, but I'm objecting to the

5 09:42 5 form of the question because we don't know for

6 09:42 6 sure what you mean by early voting or same-day

7 09:42 7 registration.

8 09:42 8 BY MR. NKWONTA:

9 09:42 9 Q. Before your work on this case, had you reviewed

10 09:42 10 any literature related to out-of-precinct

11 09:42 11 voting?

12 09:42 12 MR. FARR: Objection to the form.

13 09:42 13 You may answer the question.

14 09:42 14 THE WITNESS: Probably not.

15 09:42 15 BY MR. NKWONTA:

16 09:42 16 Q. Before your work on this case, had you reviewed

17 09:42 17 any literature related to provisional ballot

18 09:42 18 voting or provisional voting?

19 09:42 19 MR. FARR: Objection to the form.

20 09:42 20 You may answer the question.

21 09:42 21 THE WITNESS: Probably not.

22 09:42 22 BY MR. NKWONTA:

23 09:42 23 Q. Would you say that you have -- let me rephrase

24 09:43 24 the question.

25 09:43 25 Have you ever worked on a case

1 09:43 1 either -- or on any matter either in your
2 09:43 2 professional or educational career that
3 09:43 3 required you to assess voter turnout data or
4 09:43 4 any election-related data?

5 09:43 5 A. It goes back to the work that I had performed
6 09:43 6 or assisted my mentor with, and I do not
7 09:43 7 remember those cases. I may or may not have.
8 09:43 8 I don't know.

9 09:43 9 Q. So as you sit here today, you don't recall
10 09:44 10 whether you have ever in your career worked on
11 09:44 11 any matters or projects or anything that
12 09:44 12 required you to analyze voter turnout data or
13 09:44 13 any election-related data?

14 09:44 14 A. That's correct, I do not recall one way or the
15 09:44 15 other.

16 09:44 16 Q. Have you testified in court before?

17 09:44 17 A. Yes.

18 09:44 18 Q. As an expert?

19 09:44 19 A. Yes.

20 09:44 20 Q. How many times?

21 09:44 21 A. I do not know. For the past four years or so,
22 09:45 22 it's been six times. I do not know the number
23 09:45 23 going back historically.

24 09:45 24 Q. Has the court ever refused to qualify you as an
25 09:45 25 expert in any subject?

1 10:00 1 quickly?

2 10:00 2 A. Relatively so, yes.

3 10:00 3 Q. In paragraph 14 of your report, is that a

4 10:00 4 summary of the opinions that you've reached in

5 10:01 5 this case?

6 10:01 6 A. It is a summary, yes.

7 10:01 7 Q. Do you dispute that African Americans used

8 10:01 8 one-stop voting at a higher rate than white

9 10:01 9 voters in North Carolina?

10 10:01 10 MR. FARR: Objection to the form, but

11 10:01 11 you may answer the question.

12 10:01 12 THE WITNESS: I do not object.

13 10:01 13 BY MR. NKWONTA:

14 10:02 14 Q. You do not dispute that African Americans used

15 10:02 15 the first week of the one-stop voting period at

16 10:02 16 higher rates than white voters in

17 10:02 17 North Carolina?

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

19 10:02 19 You may answer the question.

20 10:02 20 THE WITNESS: Could you say that again.

21 10:02 21 I apologize.

22 10:02 22 (Record read.)

23 10:02 23 THE WITNESS: If I could just say that

24 10:02 24 the percent African American is higher in the

25 10:03 25 first week than in the second week, if I'm

1 10:03 1 understanding the point.

2 10:03 2 BY MR. NKWONTA:

3 10:03 3 Q. It's higher than the rate or the percentage of

4 10:03 4 white voters that used early voting in the

5 10:03 5 first week?

6 10:03 6 MR. FARR: I'm sorry, Uzoma. Objection

7 10:03 7 to the form.

8 10:03 8 You can answer the question.

9 10:03 9 THE WITNESS: Percent African American

10 10:03 10 is higher in the first week, so mathematically

11 10:03 11 I believe that is the case.

12 10:03 12 BY MR. NKWONTA:

13 10:03 13 Q. You believe that's the case that African

14 10:03 14 Americans use the first week of early voting at

15 10:03 15 higher rates than white voters in

16 10:03 16 North Carolina?

17 10:03 17 MR. FARR: Objection to the form.

18 10:03 18 THE WITNESS: Probably so, yes.

19 10:03 19 BY MR. NKWONTA:

20 10:04 20 Q. Do you dispute that African Americans use

21 10:04 21 same-day registration at higher rates than

22 10:04 22 white voters in North Carolina?

23 10:04 23 MR. FARR: Objection to the form.

24 10:04 24 THE WITNESS: I did not look at that.

25 10:04 25 I believe it is in some of the plaintiff

1 10:04 1 experts report. I believe that is the case,

2 10:04 2 but I don't recall off the top of my head what

3 10:04 3 those percentages were.

4 10:04 4 BY MR. NKWONTA:

5 10:04 5 Q. But do you not dispute that African Americans

6 10:04 6 use same-day registration at higher rates than

7 10:04 7 white voters in North Carolina?

8 10:04 8 A. I haven't looked at that question.

9 10:04 9 Q. So as you sit here today, do you dispute that

10 10:04 10 fact or that assertion?

11 10:04 11 A. I'm not disputing it.

12 10:04 12 Q. Do you dispute that African Americans used

13 10:04 13 out-of-precinct voting at higher rates -- let

14 10:04 14 me rephrase.

15 10:05 15 Do you dispute that African Americans

16 10:05 16 cast a disproportionately higher number of

17 10:05 17 provisional ballots out of precinct than white

18 10:05 18 voters in North Carolina?

19 10:05 19 A. I believe that is the case.

20 10:05 20 Q. I want to draw your attention to paragraph

21 10:05 21 18 of your report. You mention in paragraph 18

22 10:06 22 that African American voters had a

23 10:06 23 statistically significantly higher

24 10:06 24 participation rate among registered voters in

25 10:06 25 each of the general elections in 2008 and 2012

1 10:23 1 Q. Looking at the 2006 midterm election in

2 10:23 2 Table 1, the African American participation

3 10:23 3 rate was 28.3 percent, right?

4 10:23 4 A. The percentage among African Americans was

5 10:24 5 28.3 percent.

6 10:24 6 Q. The title of the column says "African American

7 10:24 7 Participation Rate," right?

8 10:24 8 A. Yes, and I was defining what I meant by that.

9 10:24 9 Q. Understood.

10 10:24 10 And the 2010 midterm election, the

11 10:24 11 African American participation rate, as you've

12 10:24 12 calculated it, was 40.4 percent, right?

13 10:24 13 A. Yes.

14 10:24 14 Q. So between 2006 and 2010, the African American

15 10:24 15 participation rate increased significantly,

16 10:24 16 right?

17 10:24 17 A. It increased, yes.

18 10:24 18 Q. In fact, it increased at a higher rate than the

19 10:24 19 increase in the white participation rate

20 10:24 20 between 2006 and 2010 rate?

21 10:24 21 A. Yes.

22 10:25 22 Q. So when comparing the African American

23 10:25 23 participation rate among midterm elections,

24 10:25 24 according to your calculations, the African

25 10:25 25 American participation rate increased at a

1 10:25 1 higher rate than the white participation rate

2 10:25 2 since 2006, right?

3 10:25 3 A. If we compare those two percentages, it did

4 10:25 4 increase, yes.

5 10:25 5 Q. And you don't include any analysis of any

6 10:25 6 midterm elections as you stated in your -- in

7 10:25 7 Table 1 before 2006, right?

8 10:25 8 A. No. As I testified earlier, I did not have the

9 10:25 9 data to do so.

10 10:25 10 Q. Now, you mention that you compared the African

11 10:25 11 American turnout rate to the white turnout rate

12 10:26 12 in 2010 and 2006 with their relative rates in

13 10:26 13 the 2008 and 2012 general elections. Is that

14 10:26 14 fair? Let me rephrase the question.

15 10:26 15 You mention that the turnout rate of

16 10:26 16 African American voters compared to white

17 10:26 17 voters decreased from the general elections to

18 10:26 18 the midterm elections. Is that fair?

19 10:26 19 A. Yes. It's significantly lower.

20 10:26 20 Q. And you agree that the turnout rate for all

21 10:26 21 races was significantly lower in the midterm

22 10:26 22 elections compared to the general elections,

23 10:26 23 correct?

24 10:26 24 A. It's lower for both African American and

25 10:26 25 Caucasian voters, yes.

1 10:26 1 Q. In comparing the turnout rate between -- or the
2 10:26 2 changes in turnout rate between white voters
3 10:27 3 and African American voters, any changes in the
4 10:27 4 relative turnout rate between the two races can
5 10:27 5 be attributable to changes in turnout for white
6 10:27 6 voters or black voters, right?

7 10:27 7 MR. FARR: Objection to the form.

8 10:27 8 If you can answer that, you may.

9 10:27 9 THE WITNESS: Can you repeat the
10 10:27 10 question. I apologize.

11 10:27 11 (Record Read.)

12 10:27 12 MR. NKWONTA: Let me rephrase the
13 10:27 13 question.

14 10:27 14 THE WITNESS: Thank you.

15 10:27 15 BY MR. NKWONTA:

16 10:27 16 Q. Did you determine whether white voter turnout
17 10:28 17 increased at a higher rate from the 2006 to
18 10:28 18 2010 general election -- or midterm elections?
19 10:28 19 Sorry.

20 10:28 20 A. No.

21 10:28 21 Q. When assessing the African American
22 10:28 22 participation rate, how did you calculate
23 10:28 23 participation rate?

24 10:28 24 A. I calculated it based on the number of
25 10:28 25 individuals who voted divided by their

1 10:28 1 composition among the registered voters.

2 10:29 2 Q. Could you elaborate on that? You divided the

3 10:29 3 number of individuals who voted by their

4 10:29 4 composition among registered voters?

5 10:29 5 A. Yes.

6 10:29 6 Q. What do you mean by "composition among

7 10:29 7 registered voters"?

8 10:29 8 A. The number of individuals in the demographic

9 10:29 9 group who were registered to vote.

10 10:29 10 Q. So the numerator would be the number of

11 10:29 11 African Americans who voted if you were

12 10:29 12 assessing African American participation rate?

13 10:29 13 A. Yes.

14 10:29 14 Q. And the denominator would be the number of

15 10:29 15 registered African American voters?

16 10:29 16 A. Yes.

17 10:29 17 Q. Why did you choose to measure the participation

18 10:29 18 rate as a function of registered voters rather

19 10:29 19 than the voting age population?

20 10:29 20 A. There were a number of reasons. One, I was

21 10:30 21 reviewing Dr. Gronke, Dr. Lichtman and

22 10:30 22 Dr. Stewart's reports and they focused on the

23 10:30 23 utilization of, for example, early voting in

24 10:30 24 comparison to those who do not use early

25 10:30 25 voting. They also looked at the days in which

1 10:40 1 increased significantly?

2 10:40 2 MR. FARR: Objection.

3 10:40 3 THE WITNESS: Yes, as did the Caucasian

4 10:40 4 rate.

5 10:40 5 BY MR. NKWONTA:

6 10:41 6 Q. When you're comparing midterm elections to

7 10:41 7 other midterm elections in your chart, you only

8 10:41 8 see an increase in the African American

9 10:41 9 participation rate, right?

10 10:41 10 A. It increased, yes.

11 10:41 11 Q. When you're comparing primary elections to

12 10:41 12 other primary elections in your chart, you only

13 10:41 13 see an increase in the African American rate,

14 10:41 14 correct?

15 10:41 15 MR. FARR: Objection. And I object to

16 10:41 16 the last question because that's not what the

17 10:41 17 chart says.

18 10:41 18 BY MR. NKWONTA:

19 10:41 19 Q. You may answer.

20 10:41 20 A. Could you state it again.

21 10:41 21 (Record Read.)

22 10:41 22 THE WITNESS: It increased as did the

23 10:41 23 Caucasian rate.

24 10:41 24 BY MR. NKWONTA:

25 10:42 25 Q. Do you know how or what methods the African

1 11:49 1 A. For North Carolina, there's a lot of variation
2 11:49 2 from less than 4,000 to I believe over 10,000.

3 11:49 3 Q. So a census tract in North Carolina can have
4 11:49 4 over 10,000 people?

5 11:49 5 A. I believe that's what the Census data show.

6 11:49 6 Q. In terms of the size of the census tract, can
7 11:49 7 you give me a general idea of the range and the
8 11:49 8 geographic size of census tracts?

9 11:49 9 A. It depends -- it varies depending on whether
10 11:49 10 we're looking at urban areas or rural areas.

11 11:49 11 Q. Let's start with urban areas. Can you give me
12 11:49 12 a general idea of the range and geographic size
13 11:49 13 of the census tract in urban areas?

14 11:49 14 A. Well, a census tract may be composed of a few
15 11:49 15 Census blocks in an urban area depending on the
16 11:50 16 density.

17 11:50 17 Q. Can it also be as large as city limits
18 11:50 18 depending on the density?

19 11:50 19 A. It could be. Generally that's not what I have
20 11:50 20 found because when you're looking at more dense
21 11:50 21 populations, it's -- generally just a few
22 11:50 22 Census blocks make up a census tract.

23 11:50 23 Q. So an early voting location or one-stop voting
24 11:50 24 location in a census tract may be closer to
25 11:50 25 voters in another census tract than it is to

1 11:50 1 some voters in the same census tract, correct?

2 11:50 2 A. It could be.

3 11:50 3 Q. Depending on where it's located, correct?

4 11:50 4 A. It could be.

5 11:50 5 Q. And the analysis you've done doesn't indicate

6 11:50 6 where any of the African American voters or

7 11:51 7 Caucasian voters live with respect to the early

8 11:51 8 voting sites in the census tract, correct?

9 11:51 9 A. No. As I've -- it's looking at the composition

10 11:51 10 of each of the census tracts.

11 11:51 11 Q. So you agree that there's no way to tell from

12 11:51 12 your analysis whether the African Americans in

13 11:51 13 a census tract are actually closer to the early

14 11:51 14 voting locations than those in the next census

15 11:51 15 tract?

16 11:51 16 MR. FARR: Objection to the form.

17 11:51 17 You may answer.

18 11:51 18 THE WITNESS: Well, when we think about

19 11:51 19 how the Census constructs census tracts and

20 11:51 20 blocks, it's looking at a lot of different

21 11:51 21 variables such as natural barriers and other

22 11:52 22 barriers. It's looking at how to properly

23 11:52 23 group individuals. So to say that a census

24 11:52 24 tract doesn't consider those sorts of factors

25 11:52 25 would be incorrect.

1 11:52 1 So you could have two census tracts
2 11:52 2 next to one another but that doesn't mean that
3 11:52 3 it's actually easier to get to the early voting
4 11:52 4 site from another census tract. Census tract
5 11:52 5 is looking at how the Census Bureau found it
6 11:52 6 it's best to identify how to group the
7 11:52 7 population.

8 11:52 8 BY MR. NKWONTA:

9 11:52 9 Q. I understand that, but the location of the
10 11:52 10 early voting site within the census tract is
11 11:52 11 unknown based on your research thus far, right?

12 11:52 12 MR. FARR: Objection to the form.

13 11:53 13 THE WITNESS: Well, I did geocode each
14 11:53 14 of those locations so I do know where it is.

15 11:53 15 BY MR. NKWONTA:

16 11:53 16 Q. The location of the voters -- or the African
17 11:53 17 American voters in relation to the voting site
18 11:53 18 within a census tract is unknown according to
19 11:53 19 your analysis thus far, right?

20 11:53 20 MR. FARR: Objection to the form.

21 11:53 21 THE WITNESS: Well, I did not report in
22 11:53 22 here, but I also did look at it by Census block
23 11:53 23 which is you're looking at a much smaller area.
24 11:53 24 I did not include it because one could
25 11:53 25 argue that, well, as you've done here, that the

1 01:31 1 decrease.

2 01:31 2 Q. You agree that that would affect the list of

3 01:31 3 registered voters in North Carolina, those

4 01:31 4 coming into the state or leaving the state?

5 01:31 5 A. It may.

6 01:31 6 Q. But you haven't looked into the racial

7 01:31 7 composition of those coming into the state or

8 01:32 8 leaving the state?

9 01:32 9 A. No.

10 01:32 10 Q. In paragraph 41 you discuss out-of-precinct

11 01:32 11 ballots which you refer to as provisional

12 01:32 12 voting; is that correct?

13 01:32 13 A. I believe that's how Dr. Stewart described it.

14 01:32 14 Q. I'm asking about how you described it.

15 01:32 15 When you refer to provisional voting in

16 01:32 16 your report, are you referring to the casting

17 01:32 17 of out-of-precinct ballots?

18 01:33 18 A. Yes.

19 01:33 19 Q. You criticize Dr. Stewart for not adjusting for

20 01:33 20 the lower participation rate among Caucasians

21 01:33 21 during the 2012 election.

22 01:33 22 A. I think that mischaracterizes what I wrote.

23 01:33 23 Q. Explain how it mischaracterizes what you wrote.

24 01:33 24 A. My understand is that Dr. Stewart used the

25 01:33 25 events of 2012 and used that to assume that by

1 01:33 1 removing out-of-precinct ballots it would have

2 01:33 2 a differential impact of .2 percent among

3 01:33 3 African Americans and .1 percent among

4 01:33 4 Caucasians.

5 01:33 5 My statement is that to assume that in

6 01:34 6 the future the basis will be the same as 2012

7 01:34 7 is speculative because between -- in 2012 you

8 01:34 8 have the increase numbers between 2008 and

9 01:34 9 2012.

10 01:34 10 So my point is he's assuming an -- in

11 01:34 11 economics, we call ceteris paribus which means

12 01:34 12 everything else is the same. He's assuming

13 01:34 13 everything else is the same; that we can see

14 01:34 14 changes between 2008 and 2012 so in the future

15 01:34 15 it may or may not be the same.

16 01:34 16 Q. What changes between 2008 and 2012 do you think

17 01:34 17 are relevant to Dr. Stewart's calculations?

18 01:34 18 A. He shows the number of out of -- the numbers of

19 01:35 19 out of precincts -- pardon me -- the number of

20 01:35 20 out-of-precinct ballots increased regardless of

21 01:35 21 race or ethnicity in that time period, and I

22 01:35 22 think it's important to understand why that

23 01:35 23 happened to then ascertain whether those whys

24 01:35 24 will have any impact on future elections.

25 01:35 25 Q. Did you do anything to ascertain why that

1 01:35 1 happened?

2 01:35 2 A. No, I did not.

3 01:35 3 Q. Do you know when the General Assembly first

4 01:35 4 clarified that -- the procedure for counting

5 01:35 5 out-of-precinct ballots?

6 01:35 6 A. I do not recall.

7 01:35 7 Q. And you don't know if the procedure for casting

8 01:36 8 out-of-precinct ballots changed at some point

9 01:36 9 between the 2004 and 2008 general election?

10 01:36 10 A. Between 2004 and 2008, I don't know, but I was

11 01:36 11 not looking at 2004.

12 01:36 12 Q. You do suggest that the experts have not

13 01:36 13 addressed why out-of-precinct ballots

14 01:36 14 increased, right?

15 01:36 15 A. Yes. In the context of understanding -- I was

16 01:36 16 responding to Dr. Stewart's opinion that it

17 01:36 17 would have a differential impact of .2 percent

18 01:36 18 to .1 percent between African Americans and

19 01:36 19 Caucasians respectively.

20 01:36 20 So I was attempting on -- not

21 01:36 21 attempting, but I was stating that in order to

22 01:37 22 ascertain if that is an accurate estimate, one

23 01:37 23 would need to have an understanding of the

24 01:37 24 factors that influenced the out-of-precinct

25 01:37 25 ballots.

1 01:37 1 Q. And you have not identified any other factors

2 01:37 2 that would influence the increase in the

3 01:37 3 out-of-precinct ballots, have you?

4 01:37 4 A. I have not. I've reviewed the data and I do

5 01:37 5 not know.

6 01:38 6 Q. The data or the percentages you included in

7 01:38 7 paragraph 41 of your report shows that African

8 01:38 8 Americans cast out-of-precinct ballots at a

9 01:38 9 disproportionately higher rate than white

10 01:38 10 voters, correct?

11 01:38 11 A. It's looking at the increase, so they increased

12 01:38 12 in terms of the usage more so than Caucasians.

13 01:38 13 Q. Are you familiar with any studies or data that

14 01:38 14 shows that African Americans move at higher

15 01:38 15 rates than whites?

16 01:38 16 A. I've read of those studies.

17 01:38 17 Here we're looking within the county,

18 01:38 18 and I think to ascertain whether that is the

19 01:39 19 factor, one would want to take a look at

20 01:39 20 whether the addresses of those out-of-precinct

21 01:39 21 voters changed over time.

22 01:39 22 Q. Have you looked or come across data addressing

23 01:39 23 the rates at which African Americans move

24 01:39 24 within the county compared to whites?

25 01:39 25 A. I have read that there's somewhat more

1 01:39 1 mobility. Whether that is the factor here, I

2 01:39 2 think you'd have to ascertain whether these

3 01:39 3 individuals actually changed residence.

4 01:39 4 Q. When you say there's more mobility, where did

5 01:39 5 you read that?

6 01:39 6 A. I believe it was in one of those -- the

7 01:39 7 surrebuttal reports. I have not verified it.

8 01:39 8 Q. You have not reviewed the data supporting it?

9 01:39 9 A. I have not.

10 01:40 10 Q. Throughout your report you considered a number

11 01:40 11 of other factors that may account for the

12 01:40 12 differential use in certain voting procedures

13 01:40 13 or may account for voter turnout. Is that

14 01:40 14 fair?

15 01:40 15 A. I would restate what I've done as in terms of

16 01:40 16 I've looked to determine if there are

17 01:40 17 statistically significant differences in

18 01:40 18 various characteristics by race and ethnicity.

19 01:40 19 Q. And the characteristics you came up with

20 01:40 20 included the location of the early voting

21 01:41 21 sites, right?

22 01:41 22 A. Yes.

23 01:41 23 Q. The location of Sunday voting sites?

24 01:41 24 A. Yes.

25 01:41 25 Q. Any other characteristics that you came up with

1 01:42 1 report, the thing that I -- I looked at census
2 01:42 2 blocks among the elements that I did not
3 01:42 3 include in my report.

4 01:42 4 BY MR. NKWONTA:

5 01:43 5 Q. Anything else?

6 01:43 6 A. Not that I remember.

7 01:43 7 MR. NKWONTA: That's all the questions
8 01:43 8 that I have at this moment, and I will pass the
9 01:43 9 witness to co-counsel.

10 01:43 10 THE VIDEOGRAPHER: Off record at
11 01:43 11 1:42 p.m.

12 01:43 12 (Brief Recess.)

13 01:45 13 THE VIDEOGRAPHER: On record at
14 01:45 14 1:45 p.m.

15 01:45 15 EXAMINATION

16 01:45 16 BY MS. EBENSTEIN:

17 01:45 17 Q. Good afternoon, Dr. Thornton.

18 01:45 18 A. Good afternoon.

19 01:45 19 Q. I'm Julie Ebenstein. I'm an attorney on behalf
20 01:45 20 the League of Women Voters plaintiffs, and I'm
21 01:45 21 going to ask you some questions this afternoon.
22 01:45 22 To the degree that I can, I won't repeat, but
23 01:45 23 that means I may jump around a little bit with
24 01:45 24 the topics in your report.

25 01:45 25 First, would you describe yourself as

1 01:45 1 an expert in early voting?

2 01:45 2 A. No.

3 01:45 3 Q. Would you describe yourself as an expert in

4 01:45 4 same-day registration?

5 01:45 5 A. If I understand what you're asking me in terms

6 01:45 6 of an expert in terms of why people utilize

7 01:45 7 certain techniques or early registration, no.

8 01:45 8 Q. Would you hold yourself out as an expert in the

9 01:46 9 use of provisional ballots or out-of-precinct

10 01:46 10 ballots?

11 01:46 11 A. Not in terms of why people use something, no.

12 01:46 12 Q. Would you hold yourself out as an expert in any

13 01:46 13 of those three topics in terms of some other

14 01:46 14 factor?

15 01:46 15 A. Well, in terms of analyzing the data as an

16 01:46 16 economist and applied statistician, my

17 01:46 17 background gives me the expertise to analyze

18 01:46 18 the information.

19 01:46 19 Q. So analyze the data in general but without a

20 01:46 20 specific expertise in any of those three

21 01:46 21 topics?

22 01:46 22 A. Yes.

23 01:46 23 Q. And would you -- would you describe yourself as

24 01:46 24 an expert in elections administration?

25 01:46 25 A. No.

1 02:10 1 I calculated it this way as it was
2 02:10 2 reported on the North Carolina Board of
3 02:10 3 Elections' website.

4 02:10 4 Q. If you looked at voter turnout for those dates
5 02:10 5 that you mention, 1984, 1992, 2008 and 2012,
6 02:10 6 with participation calculated by turnout
7 02:10 7 divided by voting age population -- I'd like to
8 02:10 8 do that now just using the numbers in front of
9 02:10 9 you. And we have a calculator, although you
10 02:10 10 could take my word for it but with the
11 02:10 11 estimations.

12 02:10 12 MR. FARR: What are we doing?

13 02:10 13 MS. EBENSTEIN: We're going to look at
14 02:10 14 the -- -

15 02:10 15 THE WITNESS: May I use my own
16 02:10 16 calculator?

17 02:10 17 MS. EBENSTEIN: Sure, of course.

18 02:10 18 We're going to look at the turnout rate
19 02:10 19 calculated using the voting age population as
20 02:10 20 all the other experts did instead of using the
21 02:11 21 registered voters numbers the way that

22 02:11 22 Dr. Thornton did.

23 02:11 23 THE WITNESS: What would you like me to
24 02:11 24 calculate?

25 02:11 25 BY MS. EBENSTEIN:

1 02:11 1 Q. The voter participation from 1984, based on the
2 02:11 2 numbers on your table, it would be 2,239,051
3 02:11 3 divided by 4,585,788 in 1984.

4 02:11 4 MR. FARR: Where's this coming from?

5 02:11 5 MS. EBENSTEIN: Her chart, Table 3.

6 02:11 6 MR. FARR: I know, but where's the -- I
7 02:11 7 don't understand this question. Please explain
8 02:11 8 this.

9 02:11 9 BY MS. EBENSTEIN:

10 02:11 10 Q. Like I said a moment ago, if we calculated
11 02:11 11 participation by voter turnout divided by the
12 02:11 12 voting age population -- and I'm getting those
13 02:12 13 numbers based on the numbers in Dr. Thornton's
14 02:12 14 Table 3, Column 6 is turnout. Column 2 is
15 02:12 15 voting age population.

16 02:12 16 MR. FARR: Okay.

17 02:12 17 BY MS. EBENSTEIN:

18 02:12 18 Q. To calculate turnout -- or excuse me --
19 02:12 19 participation by turnout divided by the voting
20 02:12 20 age population for the four dates that she
21 02:12 21 mentioned. That's what I would like to look
22 02:12 22 at.

23 02:12 23 MR. FARR: All right.

24 02:13 24 BY MS. EBENSTEIN:

25 02:13 25 Q. I appreciate that you wanted to calculate that

1 02:13 1 independently.

2 02:14 2 What rates did you get using the voting

3 02:14 3 age population?

4 02:14 4 A. Calculating it the way you asked me to,

5 02:14 5 assuming I haven't made any errors, in 1984,

6 02:14 6 it's 48.8 percent; 1992, 50.4 percent; and in

7 02:14 7 2008 and 2012, it's approximately 61 percent.

8 02:14 8 Q. Would you agree that calculating voter

9 02:14 9 participation rates the way that I just

10 02:14 10 described in 2008 and 2012 are not similar to

11 02:14 11 participation rates in 1984 and 1992, that is

12 02:14 12 to say, is 48.8 and 50.4 similar to 61 percent

13 02:14 13 and 61 percent as you use it in paragraph 21?

14 02:15 14 A. In terms of the calculation as you've asked me

15 02:15 15 to calculate, they are different.

16 02:15 16 Q. Now, after referencing the voter participation

17 02:15 17 rates in paragraph 21, your second sentence is:

18 02:15 18 "Therefore, the decision by

19 02:15 19 individuals to register to vote and to

20 02:15 20 participate in voting are not solely

21 02:15 21 tied to the availability of one-stop

22 02:15 22 voting as these statistics show."

23 02:15 23 Sorry, let me ask a different question

24 02:15 24 first.

25 02:15 25 Is voter participation higher in 2008

1 02:15 1 and 2012 when there was one-stop voting than in

2 02:15 2 1984 and 1992 when there was not?

3 02:15 3 A. If you look at among registered voters, no.

4 02:16 4 Q. Right. If you look at those participation

5 02:16 5 rates as we just calculated them using the

6 02:16 6 method that other experts on both sides of this

7 02:16 7 case I believe have used, is voter

8 02:16 8 participation higher in 2008 and 2012 when

9 02:16 9 there was one-stop voting than in 1984 and

10 02:16 10 1992?

11 02:16 11 MR. FARR: Objection to the form

12 02:16 12 because there was one-stop voting before 2008

13 02:16 13 and 2012.

14 02:16 14 THE WITNESS: Based on the way in which

15 02:16 15 you've asked me to calculate it for the two

16 02:16 16 years in 2008 and 2012, it's higher than in

17 02:16 17 1984 and 1992.

18 02:16 18 BY MS. EBENSTEIN:

19 02:16 19 Q. Does using the voting age population figure for

20 02:16 20 the -- to calculate participation change your

21 02:16 21 opinion in paragraph 21?

22 02:17 22 A. No, it does not.

23 02:17 23 Q. What difference in participation rate

24 02:17 24 calculated as we've just done it would change

25 02:17 25 your opinion that participation rates are

1 04:18 1 correlation between the number of hours
2 04:18 2 available in a county in the percent African
3 04:18 3 American as well.
4 04:18 4 Q. So is it your opinion that the number of hours
5 04:18 5 that an early voting site is open increases the
6 04:18 6 use of the early voting site?
7 04:18 7 A. I'm not -- I didn't study -- did not study
8 04:18 8 that.
9 04:18 9 What I did study was to ask the
10 04:18 10 question if the number of hours available in a
11 04:18 11 county was correlated with the percent African
12 04:19 12 American and found it to be significantly so.
13 04:19 13 Q. Okay. In paragraph 29, the final sentence of
14 04:19 14 that paragraph you say"
15 04:19 15 "None of the experts examined the
16 04:19 16 impact of the placement of voting sites
17 04:19 17 on the availability of one-stop voting."
18 04:19 18 Did I read that correctly?
19 04:19 19 A. That's what it says.
20 04:19 20 Q. What do you mean by the availability of
21 04:19 21 one-stop voting in this context?
22 04:19 22 A. In the way in which I have in the report, in
23 04:19 23 other words, considered the racial and ethnic
24 04:19 24 composition of the areas in which there is
25 04:19 25 one-stop voting, an early voting site and

1 04:29 1 Is it fair to say, then, that you're
2 04:29 2 saying one possible reason that somebody may
3 04:29 3 vote early is because there's an early voting
4 04:30 4 site located in their census tract?

5 04:30 5 A. What I am -- I'll try to articulate it a little
6 04:30 6 differently. Individuals have a decision to
7 04:30 7 make as to whether they are going to vote
8 04:30 8 early. In terms of the opportunity to vote on
9 04:30 9 Sunday, some individuals may have that
10 04:30 10 opportunity and some may not because it may not
11 04:30 11 be available.

12 04:30 12 In terms of looking in terms of the
13 04:30 13 opportunity cost associated with early voting,
14 04:30 14 to the extent that they're located in some
15 04:30 15 areas and not in other areas is going to be in
16 04:30 16 part influence the decisions of individuals
17 04:30 17 when they look at the opportunity cost
18 04:30 18 associated with that early voting.

19 04:31 19 Q. Okay. When you were doing the analysis that
20 04:31 20 you describe in paragraphs 26 through 34, which
21 04:31 21 is where you look at the census tracts and
22 04:31 22 location of early voting sites, did you look at
23 04:31 23 voter registration or voter history data -- I
24 04:31 24 mean, did you look at who voted at each of
25 04:31 25 these sites?

1 04:31 1 A. No, I did not.

2 04:31 2 Q. Did you analyze whether the individuals who

3 04:31 3 lived in these census tracts voted at these

4 04:31 4 early voting sites -- excuse me -- voted at the

5 04:31 5 early voting site in their census tract?

6 04:31 6 A. I did not look at that question.

7 04:32 7 Q. Let's look at paragraph 35. In paragraph 35,

8 04:32 8 is it right that you reported that you found a

9 04:32 9 statistically significant correlation between

10 04:32 10 the number of hours early voting was available

11 04:32 11 in a county and in counties with higher

12 04:32 12 proportion of African American voting age

13 04:32 13 population?

14 04:32 14 A. I found a significant correlation between the

15 04:32 15 hours open and the percent African American in

16 04:32 16 the county.

17 04:32 17 Q. In paragraph 35 you refer to counties having a

18 04:33 18 higher proportion of African American voting

19 04:33 19 age population.

20 04:33 20 What does higher proportion of African

21 04:33 21 American voting age population mean in that

22 04:33 22 context?

23 04:33 23 A. Calculating the percent African American among

24 04:33 24 the voting age population in the county.

25 04:33 25 Q. Higher than what, though?

1 04:36 1 Q. In your work with ERS Group, did you ever
2 04:36 2 conduct regression analysis?

3 04:36 3 A. I have conducted thousands of regression
4 04:36 4 analyses.

5 04:36 5 Q. Did you do a regression analysis to reach the
6 04:36 6 opinion that you or the observation that you
7 04:36 7 describe in paragraph 35?

8 04:36 8 A. No. I was responding to Dr. Stewart's
9 04:36 9 regression analysis, and in that regression
10 04:36 10 analysis he did not account for the proportion
11 04:36 11 African American and so I wanted to test to see
12 04:36 12 whether there was a correlation and a
13 04:36 13 significant correlation between the percent
14 04:36 14 African American and the number of hours
15 04:36 15 available in a county.

16 04:36 16 Q. And when you say the percent African American,
17 04:36 17 you mean of the voting age population?

18 04:36 18 A. Yes.

19 04:36 19 Q. Do you recall that Dr. Stewart looked at the
20 04:37 20 relationship between the number of open hours
21 04:37 21 and the number of African American registered
22 04:37 22 voters in the county?

23 04:37 23 A. No. As I recall, he looked at non-white
24 04:37 24 voters.

25 04:37 25 Q. Non-white registered voters?

1 04:40 1 he constructed it, one, it did not look at the
2 04:40 2 proportion African American. It was looking,
3 04:41 3 as I recall, at raw numbers and it was looking
4 04:41 4 at non-white. And at this point in time I
5 04:41 5 cannot recall how he defined it -- how he
6 04:41 6 measured it. I believe it was the number and
7 04:41 7 not the proportion, but I would need to check
8 04:41 8 that.

9 04:41 9 But nonetheless, I was responding to
10 04:41 10 show that there is a statistically significant
11 04:41 11 correlation between the percent African
12 04:41 12 American in the county and the number of hours
13 04:41 13 available.

14 04:41 14 Q. Let's turn to paragraph 37. In this paragraph
15 04:42 15 you talk about Dr. Stewart's analysis based on
16 04:42 16 the Survey of the Performance of American
17 04:42 17 Elections; is that right?

18 04:42 18 A. Yes.

19 04:42 19 Q. Are you familiar with the Survey of the
20 04:42 20 Performance of American Elections?

21 04:42 21 A. I am now familiar -- somewhat familiar with it.
22 04:42 22 I haven't studied it fully.

23 04:42 23 Q. Prior to your work on this case, had you ever
24 04:42 24 looked at it before?

25 04:42 25 A. No.

1 04:42 1 Q. What's your understanding of what it is?

2 04:42 2 A. It's a survey I believe of 200 online

3 04:42 3 respondents to the waiting times associated

4 04:42 4 with voting.

5 04:42 5 Q. Is that your understanding of what the entire

6 04:42 6 Survey of the Performance of American Elections

7 04:42 7 is?

8 04:42 8 A. I do not know all the details. My focus was on

9 04:42 9 the number of respondents from each state and

10 04:43 10 my understanding is it's approximately 200

11 04:43 11 respondents from each state and it's online.

12 04:43 12 Q. And did you look -- what part of the data did

13 04:43 13 you look at?

14 04:43 14 A. I have not downloaded the data.

15 04:43 15 Q. Okay. Did you look at any of the data directly

16 04:43 16 or did you just look at what was included in

17 04:43 17 Dr. Stewart's report?

18 04:43 18 A. Given the time, I only looked at what he had.

19 04:43 19 Q. You write in paragraph 37 that Dr. Stewart's

20 04:43 20 sample for North Carolina is small.

21 04:43 21 What does "small" mean in this context?

22 04:43 22 A. In -- when we prepare samples in surveys, we

23 04:44 23 are looking at several factors in defining

24 04:44 24 reliability of the sample, and by that there

25 04:44 25 are a lot of different -- not a lot. There are

1 04:44 1 different forms of error. There are sample
2 04:44 2 error. There's response bias error, and I
3 04:44 3 can't measure the response bias error, but I
4 04:44 4 can measure a margin of error. And I -- if you
5 04:44 5 do not mind, in my example, I use 50 percent as
6 04:44 6 an illustration.

7 04:44 7 In his surrebuttal report, Dr. Stewart
8 04:44 8 indicated that the actual margin of error is
9 04:44 9 3.4 percent based on the calculation. I would
10 04:45 10 agree with him, but it doesn't change my
11 04:45 11 conclusion.

12 04:45 12 Q. Which is?

13 04:45 13 A. Okay. It would be helpful if I had his report
14 04:45 14 in front of me.

15 04:45 15 Q. I have a copy of it. If you would like, we
16 04:45 16 would have to introduce it as an exhibit.

17 04:45 17 MR. FARR: I was going to do it later.

18 04:45 18 MS. RYAN: That's fine, then. It's
19 04:45 19 already there.

20 04:45 20 MR. FARR: Sure.

21 04:45 21 MS. RYAN: What are we up to on exhibit
22 04:45 22 number?

23 04:45 23 THE REPORTER: 124.

24 04:45 24 MS. RYAN: So I am introducing the
25 04:45 25 declaration of Dr. Charles Stewart as Exhibit

1 04:45 1 124, and I have the surrebuttal report as well

2 04:45 2 if that is helpful.

3 04:45 3 THE WITNESS: If I need it, I'll ask

4 04:45 4 for it.

5 04:45 5 MR. FARR: What I was planning on

6 04:45 6 introducing was the surrebuttal.

7 04:45 7 (WHEREUPON, Plaintiff's Exhibit 124 was

8 04:45 8 marked for identification.)

9 04:45 9 BY MS. RYAN:

10 04:46 10 Q. And I'm sorry, I didn't write down the

11 04:46 11 paragraph number but it looks like you found it

12 04:46 12 in Dr. Stewart's report.

13 04:46 13 A. I'm focusing on Table 9 of his report on page

14 04:46 14 74.

15 04:46 15 Q. Okay.

16 04:46 16 A. And maybe I didn't write this clearly in my

17 04:46 17 report so I apologize with that if it wasn't

18 04:46 18 clear, but my point is in North Carolina, for

19 04:46 19 those based on the responses, those with more

20 04:47 20 than one hour, it was 5.9 percent for

21 04:47 21 North Carolina and 5.2 percent nationwide.

22 04:47 22 So if we take the North Carolina value

23 04:47 23 of 5.9 and a margin of error of 3.4 percent,

24 04:47 24 that gives us a 95 percent confidence interval

25 04:47 25 of 2.5 to 9.3 percent. And Dr. Stewart asserts

1 04:47 1 in his surrebuttal report that the 5.9 percent

2 04:47 2 is the most likely value.

3 04:47 3 That is incorrect. It violates the

4 04:47 4 statistical principle that the point of a

5 04:47 5 95 percent confidence interval is that you have

6 04:47 6 an equal likelihood of any value within that

7 04:47 7 95 percent confidence interval.

8 04:47 8 So with that, the 5.2 percent with the

9 04:48 9 nationwide is within the 95 percent confidence

10 04:48 10 interval for North Carolina. So statistically

11 04:48 11 speaking, they aren't different and that's

12 04:48 12 important.

13 04:48 13 So my point of -- in my report, which I

14 04:48 14 obviously did not make clear, was that the

15 04:48 15 margin of error is something he did not report,

16 04:48 16 he didn't calculate it, and it needs to be

17 04:48 17 considered, and that's the context of the small

18 04:48 18 sample.

19 04:48 19 You have a margin of error and in that

20 04:48 20 context at looking at more than one hour, for

21 04:48 21 example, the estimate for the nationwide is

22 04:48 22 within the estimate of -- for North Carolina.

23 04:48 23 Q. So then you're saying that the -- correct me if

24 04:49 24 I'm getting this wrong, the problem with what

25 04:49 25 you characterize as the small size of the

1 04:49 1 sample is that it makes for a margin of error

2 04:49 2 that you consider to be too large?

3 04:49 3 A. It means that with the smaller the sample,

4 04:49 4 everything else being the same, you will have a

5 04:49 5 higher margin of error. And margin of error is

6 04:49 6 important because within that range, each of

7 04:49 7 those values is equally likely.

8 04:49 8 Q. So doesn't the margin of error account for this

9 04:49 9 size of the sample?

10 04:49 10 A. It does. And as I illustrated, the 5.2 is

11 04:49 11 within the range plus or minus around the

12 04:49 12 5.9 percent.

13 04:50 13 Q. So is it your opinion that Dr. Stewart's sample

14 04:50 14 size was not large enough to calculate a

15 04:50 15 statistical estimate of wait times in

16 04:50 16 North Carolina?

17 04:50 17 A. My opinion is that he can calculate it, but as

18 04:50 18 he reported in the data for the CPS, which is a

19 04:50 19 much larger sample and he reported the margin

20 04:50 20 of error, as I recall, I would have expected if

21 04:50 21 he calculated it here and described it in the

22 04:50 22 CPS data, he would have similarly reported it

23 04:50 23 in Table 9 as well as in his appendix --

24 04:50 24 exhibits -- appendix tables.

25 04:50 25 Q. And I think you mentioned earlier that he did

1 04:50 1 calculate it in his surrebuttal report and you

2 04:51 2 said you agree with the calculation that he

3 04:51 3 provided there?

4 04:51 4 A. For those with more than one hour and it's the

5 04:51 5 only calculation he prepared.

6 04:51 6 Q. I'd like to turn to paragraph 39.

7 04:51 7 Did you form an opinion about the

8 04:51 8 effect of eliminating same-day registration on

9 04:51 9 African American voters?

10 04:51 10 A. No, I did not.

11 04:51 11 Q. What's your understanding of how voter

12 04:51 12 registration works in North Carolina?

13 04:51 13 A. Well, you need to be a citizen of the U.S. You

14 04:52 14 need to be a resident of North Carolina for at

15 04:52 15 least I believe 30 days. You need to register

16 04:52 16 to vote 25 days before an election, and you

17 04:52 17 need to be age 18 or older, and you cannot be a

18 04:52 18 convicted felon unless you've had your

19 04:52 19 privileges allowed.

20 04:52 20 Q. In paragraph 39 you're referring to

21 04:52 21 Dr. Stewart's report again, and you say his

22 04:52 22 assumption that 3 percent of African Americans

23 04:52 23 being unable to vote because of same-day

24 04:52 24 registration is speculative because it is based

25 04:52 25 on what occurred in 2012 and not based on an

1 04:56 1 THE WITNESS: I'd have to go back and
2 04:56 2 review that. At this point late in the day I'm
3 04:56 3 not recalling all of those details.

4 04:56 4 BY MS. RYAN:

5 04:56 5 Q. Did you analyze the number of North Carolina

6 04:56 6 voters who moved between counties each year?

7 04:56 7 A. I did not.

8 04:56 8 Q. And I assume that means you did not analyze the

9 04:56 9 number of African Americans in North Carolina

10 04:56 10 who move between counties each year; is that

11 04:56 11 right?

12 04:56 12 A. I did not.

13 04:56 13 Q. Let's turn to page 24 and we'll talk about in

14 04:56 14 paragraph 31 provisional voting.

15 04:56 15 A. Do you mean 41?

16 04:56 16 Q. I'm sorry, I mean 41.

17 04:57 17 What's your understanding of

18 04:57 18 provisional ballot voting in North Carolina?

19 04:57 19 A. In terms of what I focused on, the

20 04:57 20 out-of-precinct provisional votes, for example,

21 04:57 21 that were in 2012, I believe they were about

22 04:57 22 7,500 and those were individuals who voted

23 04:57 23 within the same county but at the incorrect

24 04:57 24 precinct.

25 04:57 25 Q. Okay. So you focused on provisional ballots

1 04:57 1 cast for the out-of-precinct reason?

2 04:57 2 A. Yes.

3 04:57 3 Q. And when you say out of precinct, what do you

4 04:57 4 mean?

5 04:57 5 A. They voted at a precinct other than the

6 04:57 6 precinct at which they were registered or for

7 04:57 7 which they were registered.

8 04:57 8 Q. Do you have an opinion about the effect on

9 04:57 9 African American voters of prohibiting the

10 04:58 10 counting of provisional ballots cast out of

11 04:58 11 precinct?

12 04:58 12 A. Among the 7,500 or so ballots in 2012, I do not

13 04:58 13 recall the percent African American. It was my

14 04:58 14 recollection somewhere between 20 and

15 04:58 15 30 percent, but I may be incorrect about that.

16 04:58 16 That's my recollection.

17 04:58 17 Q. And what is that recollection based on?

18 04:58 18 A. Having looked at I believe the data in maybe

19 04:58 19 Dr. Stewart's report. I don't remember.

20 04:58 20 Q. So you're not contesting the calculations that

21 04:58 21 Dr. Stewart did in terms of comparing how many

22 04:58 22 African American voters cast out-of-precinct

23 04:59 23 ballots compared to how many white voters cast

24 04:59 24 out-of-precinct ballots in 2012?

25 04:59 25 A. I did not find an error, but I didn't

1 04:59 1 specifically check every number.

2 04:59 2 Q. Did you analyze the data yourself on

3 04:59 3 out-of-precinct provisional ballots?

4 04:59 4 A. I looked at the data trying to get a sense of

5 04:59 5 it. In terms of preparing a statistical

6 04:59 6 analysis, no. I looked at the data, though.

7 04:59 7 Q. In paragraph 41, toward the bottom, I think

8 04:59 8 it's the second to last sentence, you say:

9 04:59 9 "Nor does Dr. Stewart adjust for

10 04:59 10 the lower participation rate among

11 04:59 11 Caucasians during the 2012 election."

12 05:00 12 What do you mean by that?

13 05:00 13 A. My statement there is that the African American

14 05:00 14 participation rate overall was higher.

15 05:00 15 Therefore I'd expect that if we looked at

16 05:00 16 out-of-precinct ballots it would be higher as a

17 05:00 17 proportion if that's the pattern. And so one

18 05:00 18 would need to take into account that you have a

19 05:00 19 lower participation rate among Caucasians

20 05:00 20 overall.

21 05:00 21 Q. Do you mean lower compared -- a lower

22 05:00 22 participation rate among Caucasians compared to

23 05:00 23 African Americans?

24 05:00 24 A. Yes.

25 05:00 25 Q. Okay. So Dr. Stewart calculated proportions,

1 05:01 1 of course, because the absolute numbers are
2 05:01 2 very different between African American voters
3 05:01 3 and white voters. In what way did he -- and he
4 05:01 4 looked at the number -- the proportion was
5 05:01 5 based on how many black voters cast an
6 05:01 6 out-of-precinct provisional ballot compared to
7 05:01 7 how many black voters voted in the 2012
8 05:01 8 election, and same with white voters, so that
9 05:01 9 .2 percent of all ballots cast, the .2 percent
10 05:01 10 number is the percent of all ballots cast by
11 05:01 11 African American voters in the 2012 general
12 05:02 12 election that were out-of-precinct provisional
13 05:02 13 ballots, same with the figure on white voters,
14 05:02 14 1 percent of all ballots cast by white voters
15 05:02 15 in the 2012 general election?
16 05:02 16 MR. FARR: Do you mean 0.1 percent?
17 05:02 17 MS. RYAN: I'm sorry. Yes, I do.
18 05:02 18 BY MS. RYAN:
19 05:02 19 Q. 0.2 percent of all ballots cast by African
20 05:02 20 American voters in the 2012 general election
21 05:02 21 were out of precinct provisional ballots and
22 05:02 22 0.1 percent of all ballots cast by white voters
23 05:02 23 were out-of-precinct provisional ballots.
24 05:02 24 Can you explain to me how it is that
25 05:02 25 this calculation does not take into account the

1 05:02 1 lower participation rate among white voters?

2 05:02 2 A. Because your foundation is still who voted, and

3 05:02 3 that's the baseline, and it doesn't adjust for

4 05:03 4 the fact that you had a lower participation

5 05:03 5 rate to begin with.

6 05:03 6 So by definition, the way he calculated

7 05:03 7 it, I can see why he has these calculations,

8 05:03 8 but it's based on what happened in 2012 and

9 05:03 9 what happened -- by that I mean the number --

10 05:03 10 the absolute number of ballots cast where at

11 05:03 11 the same time the voter participation increased

12 05:03 12 for African Americans relative to Caucasian

13 05:03 13 voters.

14 05:03 14 Q. But there's always going to be a difference

15 05:03 15 in -- excuse me, I shouldn't say always. Maybe

16 05:03 16 there wouldn't always be a difference, but in

17 05:03 17 all of these elections we're looking at there's

18 05:03 18 a difference in the rates of participation

19 05:04 19 between African American and white voters. Are

20 05:04 20 you saying that means you can never compare?

21 05:04 21 A. What I'm stating is he estimates .2 percent and

22 05:04 22 .1 percent, but it's based solely on a few

23 05:04 23 numbers in 2012.

24 05:04 24 And so my point is that there were a

25 05:04 25 lot of things that look different in 2012

1 05:04 1 versus 2008, and as a consequence, it is
2 05:04 2 somewhat speculative to assume that what
3 05:04 3 happened in 2012 is going to influence the
4 05:04 4 future. Moreover, I have not done this but I
5 05:04 5 would want to take a look at those
6 05:04 6 out-of-precinct ballots and identify if the
7 05:05 7 individuals actually did change their
8 05:05 8 residence.

9 05:05 9 Q. Why would you want to look at that?

10 05:05 10 A. Well, I think that there is a difference
11 05:05 11 between an out-of-precinct -- when the person
12 05:05 12 who actually did move and an out-of-precinct
13 05:05 13 vote when the individual did not move.

14 05:05 14 Q. Do you know whether there's a difference in
15 05:05 15 terms of whether that person's ballot will be
16 05:05 16 counted under HB 589?

17 05:05 17 A. Under HB 589, out-of-precinct provisional
18 05:05 18 ballots are not counted.

19 05:05 19 Q. Is that true regardless of whether the person
20 05:05 20 moved?

21 05:05 21 MR. FARR: Objection; calls for a legal
22 05:05 22 conclusion, but if you can answer that.

23 05:05 23 THE WITNESS: I'm not sure if I
24 05:05 24 understand the question.

25 05:05 25 The question as I understand it is

1 05:05 1 where is an individual registered and where did

2 05:06 2 they vote. So the question I have is would

3 05:06 3 your precinct have changed -- did your precinct

4 05:06 4 that you voted at change because you decided to

5 05:06 5 go to that precinct because it was closer to

6 05:06 6 your new residence or did you not have a change

7 05:06 7 in residence and decided to vote at a different

8 05:06 8 precinct.

9 05:06 9 I don't know the answer to that

10 05:06 10 question, but I think that that is an -- that

11 05:06 11 would inform the discussion.

12 05:06 12 BY MS. RYAN:

13 05:06 13 Q. Do you know what a transfer provisional ballot

14 05:06 14 is in North Carolina?

15 05:06 15 A. I did at one time, but not as I sit here. I

16 05:06 16 know I looked at that.

17 05:06 17 Q. That's okay. Do you have an opinion about how

18 05:07 18 Dr. Stewart should have calculated the rate at

19 05:07 19 which African American and white voters used

20 05:07 20 out-of-precinct provisional balloting?

21 05:07 21 A. I think to have an understanding of the actual

22 05:07 22 impact, one should consider looking at the

23 05:07 23 question that I just raised in terms of did an

24 05:07 24 individual's precinct -- would the individual's

25 05:07 25 precinct have changed or would it have remained

1 05:07 1 the same. I think that's an informative --
2 05:07 2 that would inform the discussion and also
3 05:07 3 looking into the future as to estimates of the
4 05:08 4 racial composition of the voting age
5 05:08 5 population, because this is, again, assuming
6 05:08 6 that everything remains the same as 2012.
7 05:08 7 Q. Did you do that analysis that you just
8 05:08 8 mentioned?
9 05:08 9 A. As I testified earlier, no.
10 05:08 10 Q. You also say in this paragraph, I think it's
11 05:08 11 the last sentence:
12 05:08 12 "These estimates are speculative
13 05:08 13 and do not adjust for other factors
14 05:08 14 influencing the decisions by individuals
15 05:08 15 to vote and/or vote at the incorrect
16 05:08 16 precinct."
17 05:08 17 In your opinion, what other factors
18 05:08 18 should be considered?
19 05:08 19 A. I think what I just described is in a sense
20 05:08 20 what I'm -- I would want to look at. In
21 05:09 21 addition, I would want to know what's the
22 05:09 22 proximity of the vote at which -- at the
23 05:09 23 precinct at which they voted at and the
24 05:09 24 precinct at which they were registered at to
25 05:09 25 see if -- how close are they.

1 05:09 1 So I think that one would want to look

2 05:09 2 at those questions before undertaking an

3 05:09 3 estimate.

4 05:09 4 Q. So I think you've identified two factors. One

5 05:09 5 is did the voter move since the last election.

6 05:09 6 Is that what you're saying?

7 05:09 7 A. Yes.

8 05:09 8 Q. And two, how close is the precinct in which the

9 05:09 9 voter voted to the precinct in which the voter

10 05:09 10 was registered to vote.

11 05:09 11 A. Yes. And I also testified earlier that one

12 05:10 12 would want to take into account the future

13 05:10 13 composition of the -- of the voting age

14 05:10 14 population to determine if it's possible that

15 05:10 15 those percentages -- both percentages could go

16 05:10 16 down. I don't know. Or they could go up. I

17 05:10 17 don't know.

18 05:10 18 Q. And these are factors you would like to take

19 05:10 19 into consideration to evaluate the impact on

20 05:10 20 African American voters of eliminating the

21 05:10 21 out-of-precinct provisional ballot option?

22 05:10 22 A. Yes.

23 05:10 23 Q. Is that right? Okay.

24 05:10 24 But you have not conducted those

25 05:10 25 analyses?

1 05:10 1 A. To date I have not.

2 05:11 2 MS. RYAN: I think that is all I have.

3 05:11 3 I think it might be worth us taking just a

4 05:11 4 quick break to powwow.

5 05:11 5 MR. FARR: That would be fine.

6 05:11 6 MS. RYAN: Can we go off the record.

7 05:11 7 MR. FARR: And we'll be prepared to

8 05:11 8 start up if you don't have any more questions.

9 05:11 9 THE VIDEOGRAPHER: Off record at 5:11.

10 05:11 10 (Brief Recess.)

11 05:26 11 THE VIDEOGRAPHER: On record at

12 05:27 12 5:27 p.m.

13 05:27 13 EXAMINATION

14 05:27 14 BY MR. FARR:

15 05:27 15 Q. Good afternoon, Dr. Thornton.

16 05:27 16 A. Good afternoon again.

17 05:27 17 Q. I'm Tom Farr. We know each other, right?

18 05:27 18 A. (Witness nodding head up and down.)

19 05:27 19 Q. I have a few questions to ask you related to

20 05:27 20 issues that came up during your examination by

21 05:27 21 plaintiffs' counsel.

22 05:27 22 My first question I wanted to ask is

23 05:27 23 can you explain some of the things that you do

24 05:27 24 in your practice that relate to the

25 05:27 25 calculations and testimony that you've given

1 05:27 1 here today?

2 05:27 2 A. Sure. In my work on a day-to-day basis in

3 05:27 3 terms of the employment discrimination matters

4 05:27 4 I work on, in terms of audits I perform for

5 05:27 5 various entities, in the housing work I do as

6 05:27 6 well as the credit and lending work that I do,

7 05:27 7 I prepare analyses to determine if there's

8 05:28 8 adverse impact. So I prepare a variety of

9 05:28 9 tests that determine if outcomes are

10 05:28 10 statistically significantly different.

11 05:28 11 Whether it's using availability data or

12 05:28 12 other data, Census data, I'm looking at whether

13 05:28 13 or not there are statistically significant

14 05:28 14 outcomes impacting groups of individuals.

15 05:28 15 In addition, in the housing work I've

16 05:28 16 done in my own personal research as well as in

17 05:28 17 my work -- employment work and credit and

18 05:28 18 lending work, I use Census data in a variety of

19 05:28 19 ways and survey data to determine if there are

20 05:28 20 differences among groups of individuals.

21 05:28 21 Q. And you've testified that you have been an

22 05:28 22 expert in employment cases?

23 05:28 23 A. Yes.

24 05:28 24 Q. Can you tell us about the types of issues that

25 05:29 25 come up in the employment cases that you've

1 05:29 1 worked on?

2 05:29 2 A. Sure. There have been allegations of race,

3 05:29 3 age, ethnicity, gender and religion

4 05:29 4 discrimination that I've analyzed in the

5 05:29 5 context of hiring, promotion, termination,

6 05:29 6 compensation and initial placement -- initial

7 05:29 7 placement, among others.

8 05:29 8 Q. Are you familiar with the term disparate

9 05:29 9 impact?

10 05:29 10 A. Yes.

11 05:29 11 Q. Can you tell us what that means?

12 05:29 12 A. From a layperson's standpoint, it's whether or

13 05:29 13 not there is an outcome that adversely impacts

14 05:29 14 a group as the result of an otherwise neutral

15 05:29 15 policy. So we're looking to determine from an

16 05:29 16 economist and statistician standpoint whether

17 05:29 17 or not there are statistically significant

18 05:30 18 differences in the outcomes.

19 05:30 19 Q. Have you ever testified in cases involving

20 05:30 20 allegations of disparate impact?

21 05:30 21 A. Yes.

22 05:30 22 Q. All right. Can you turn to Exhibit -- your

23 05:30 23 report, Exhibit 123, and I'd like for you to

24 05:30 24 turn to Table 3. All right.

25 05:30 25 Now, Dr. Thornton, did you -- what did

1 05:30 1 you testify or could you refresh my memory
2 05:30 2 about your source of the information in the
3 05:30 3 column that's described as number of registered
4 05:30 4 voters?

5 05:30 5 A. I relied upon the table that's available at the
6 05:30 6 website that I've identified at the
7 05:30 7 North Carolina Bureau -- Board of Elections'
8 05:31 8 website.

9 05:31 9 Q. All right. So let's look for 2008. You report
10 05:31 10 6,262,566 registered voters; is that correct?

11 05:31 11 A. That's correct.

12 05:31 12 Q. And you took that information off the State
13 05:31 13 Board of Elections' website?

14 05:31 14 A. Yes.

15 05:31 15 Q. Do you know what day in 2008 that that figure
16 05:31 16 corresponds to? Was it January 1st, 2008,
17 05:31 17 July 1st, 2008, December 31, 2008?

18 05:31 18 A. I do not know. It's based on the data that
19 05:31 19 were provided on the website.

20 05:31 20 Q. All right. And during your direct -- or the
21 05:31 21 direct examination by plaintiffs' counsel, you
22 05:31 22 were asked to do some calculations about
23 05:31 23 turnout in comparison to voting age population
24 05:31 24 for 2008, 2012. Do you recall that?

25 05:31 25 A. Yes.

1 05:31 1 Q. And I recall that you calculated -- and I may

2 05:31 2 have gotten this wrong, but I wrote down that

3 05:31 3 the percentage of turnout versus voting age

4 05:31 4 population for both elections was 61 percent;

5 05:32 5 is that right?

6 05:32 6 A. That's correct.

7 05:32 7 Q. Now, from that calculation, could one discern

8 05:32 8 whether there's a causal relationship between

9 05:32 9 early voting and same-day registration and the

10 05:32 10 increase in the percentage of the voting age

11 05:32 11 population?

12 05:32 12 A. I cannot tell that from these numbers one way

13 05:32 13 or the other.

14 05:32 14 Q. And if someone wanted to examine that, you'd

15 05:32 15 have an opinion as to what they should possibly

16 05:32 16 look at?

17 05:32 17 A. Well, I think I would want to consider the

18 05:32 18 factors that Dr. Gronke identified, the factors

19 05:32 19 that can influence the decision to register to

20 05:32 20 vote, the decision to turnout to vote among

21 05:32 21 those registered voters, and I would want to

22 05:32 22 look to see if those factors influence the

23 05:32 23 outcomes.

24 05:32 24 Q. What about factors, would the practices in

25 05:32 25 other states have any impact on any inquiry as

1 05:33 1 to whether same-day registration and early
2 05:33 2 voting in North Carolina caused the increase in
3 05:33 3 the percentage of voters as compared to voting
4 05:33 4 age population?

5 05:33 5 MR. NKWONTA: Objection; form.

6 05:33 6 MR. FARR: You may answer.

7 05:33 7 THE WITNESS: Potentially one could

8 05:33 8 compare the outcomes in other states with and

9 05:33 9 without early voting and same-day registration

10 05:33 10 to determine if they had similar outcomes or

11 05:33 11 different outcomes.

12 05:33 12 BY MR. FARR:

13 05:33 13 Q. And do you recall if any of plaintiffs' experts

14 05:33 14 made such an inquiry?

15 05:33 15 A. I do not recall that they did.

16 05:33 16 Q. All right. Now I'd like you to turn to your

17 05:33 17 report -- or not your report. I want you to

18 05:33 18 turn to Mr. Trende's report, which has been

19 05:33 19 marked previously as Exhibit 103, and I want

20 05:33 20 you to turn to page -- or paragraph 121.

21 05:34 21 And, Ms. Thornton, I will tell you that

22 05:34 22 I am convinced of all the attorneys in this

23 05:34 23 room I am the most ignorant when it comes to

24 05:34 24 statistical analysis, so if I ask the question

25 05:34 25 inartfully that I asked, for example, on Friday

1 05:34 1 I referred to regression as retrogression
2 05:34 2 analysis because I had a long day also, but I
3 05:34 3 wanted to ask you a question about paragraph
4 05:34 4 121.
5 05:34 5 Do you see where there's a reference --
6 05:34 6 well, first I want you to explain what's the
7 05:34 7 null hypothesis versus the alternative
8 05:34 8 hypothesis and how does that relate to
9 05:34 9 regression analysis.
10 05:34 10 A. The null hypothesis is the hypothesis that
11 05:34 11 you're testing and the inferences that one
12 05:34 12 draws is in relation to the null hypothesis.
13 05:34 13 So here as I understand the model, the
14 05:35 14 model tests the number of laws passed and
15 05:35 15 examines the relationship between the number of
16 05:35 16 laws passed and the increase in the African
17 05:35 17 American participation rate. So the null
18 05:35 18 hypothesis is that there isn't a relationship,
19 05:35 19 that there -- let me restate it.
20 05:35 20 The null hypothesis is that the
21 05:35 21 increase in the African American participation
22 05:35 22 rate does not impact -- is not impacted by the
23 05:35 23 number of laws.
24 05:35 24 Here the probability associated with
25 05:35 25 the affect and where the affect to be tested is

1 05:36 1 that the number of laws does not -- is not
2 05:36 2 influenced or the -- the number of laws does
3 05:36 3 not result in an increase in the African
4 05:36 4 American participation statistically speaking
5 05:36 5 which means that you're not rejecting the null
6 05:36 6 hypothesis.

7 05:36 7 So the likelihood that there's an
8 05:36 8 increase in African American participation is
9 05:36 9 not a statistically significant factor.

10 05:36 10 Q. Okay. And explain to me what the P -- there's
11 05:36 11 a part in that paragraph in the second sentence
12 05:36 12 at the bottom says P equals .18.

13 05:36 13 MS. RYAN: Tom, can I object about the
14 05:36 14 scope of the redirect. It looks like you're
15 05:36 15 having her testify about Mr. Trende's report.

16 05:36 16 MR. FARR: Sure.

17 05:36 17 MS. RYAN: Not clear to me how that
18 05:37 18 relates to --

19 05:37 19 MR. FARR: It relates because there was
20 05:37 20 an improper question to Mr. Trende during the
21 05:37 21 question and I'm asking Dr. Thornton to clear
22 05:37 22 that up and your objection is noted.

23 05:37 23 BY MR. FARR:

24 05:37 24 Q. So what does P equal .18 mean?

25 05:37 25 A. Okay. The probability of this outcome

1 05:37 1 occurring by chance is a probability of
2 05:37 2 18 percent which means that you start with the
3 05:37 3 assumption that the null hypothesis is true.
4 05:37 4 If the null hypothesis is true that
5 05:37 5 there is not a difference, then the probability
6 05:37 6 of this outcome occurring by chance of
7 05:37 7 something this extreme or worse is 18 percent,
8 05:37 8 meaning it's not statistically significant.
9 05:37 9 Q. Now, does that mean that if you subtract 18
10 05:37 10 from 100, you get 82 percent, does that mean
11 05:37 11 there's an 82 percent likelihood that the laws
12 05:37 12 had an impact on increased registration or
13 05:38 13 voting?
14 05:38 14 A. No. That's sometimes referred to as the
15 05:38 15 confusion of the inverse, and what that means
16 05:38 16 is the probability cannot be used to talk about
17 05:38 17 the probability of the alternative hypothesis.
18 05:38 18 That's -- in statistics books it's
19 05:38 19 described in some as the -- as the confusion of
20 05:38 20 the inverse.
21 05:38 21 The only thing that the P value can
22 05:38 22 tell us is that the probability of an outcome
23 05:38 23 of this amount or more extreme occurring by
24 05:38 24 chance given the null hypothesis is 18 percent.
25 05:38 25 Q. So that's -- that calculation doesn't say

1 05:38 1 anything about the likelihood of the laws

2 05:38 2 impacting voter registration or turnout?

3 05:38 3 MR. NKWONTA: Objection; leading.

4 05:38 4 MS. RYAN: Also we object. We're just

5 05:38 5 going to put it on the record we have a

6 05:38 6 standing objection to this line of questioning

7 05:39 7 having Dr. Thornton testify in the place of

8 05:39 8 Mr. Trende.

9 05:39 9 MR. FARR: Yes, I understand that, and

10 05:39 10 the reason why I'm doing this is because

11 05:39 11 utterly improper question was asked of

12 05:39 12 Mr. Trende during his deposition.

13 05:39 13 MS. RYAN: I cannot speak to what

14 05:39 14 happened on Friday, I wasn't here, but for the

15 05:39 15 record, our objection to this entire line of

16 05:39 16 questioning is clear.

17 05:39 17 MR. FARR: Great, we note that.

18 05:39 18 BY MR. FARR:

19 05:39 19 Q. But is that true? Do you remember my last

20 05:39 20 question?

21 05:39 21 A. If the question was asking me is the P value

22 05:39 22 can state anything about the alternative

23 05:39 23 hypothesis, the answer is no.

24 05:39 24 Q. All right. Thank you. That's all I have for

25 05:39 25 that.

1 05:39 1 All right. Now you were asked during

2 05:39 2 your direct examination about calculations you

3 05:39 3 made involving the 2014 primary.

4 05:39 4 A. Yes.

5 05:39 5 Q. I am going to ask the court reporter to mark

6 05:39 6 this, whatever number we're up to.

7 05:40 7 THE REPORTER: 125.

8 05:40 8 (WHEREUPON, Defendant's Exhibit 125 was

9 05:40 9 marked for identification.)

10 05:40 10 BY MR. FARR:

11 05:40 11 Q. All right. Dr. Thornton, just in general,

12 05:40 12 could you explain in general what -- we're

13 05:40 13 going to walk through all the charts but I

14 05:40 14 would like you to explain in general what

15 05:40 15 Exhibit 125 is.

16 05:40 16 A. 125 looks at either the percent African

17 05:40 17 American, the percent Hispanic, the percent

18 05:40 18 Caucasian among those who voted in the 2010

19 05:40 19 primary versus the -- pardon me, the 2010

20 05:40 20 midterm election versus the 2014 midterm

21 05:40 21 election and it also looks at the composition

22 05:41 22 among African Americans and among Caucasians

23 05:41 23 and among Hispanics who turned out to vote

24 05:41 24 among the registered voters.

25 05:41 25 Q. All right. And can I ask you what -- just say

1 05:41 1 if it's clear it's been discussed earlier, but

2 05:41 2 what data did you rely upon in preparing these

3 05:41 3 charts?

4 05:41 4 A. It was the update to the encrypted data that

5 05:41 5 Mr. Burris provided to the parties,

6 05:41 6 specifically the voter snapshot, the voter

7 05:41 7 history file and the look-up file that

8 05:41 8 associates an election to an election code.

9 05:41 9 Q. And this information was developed by

10 05:41 10 Mr. Burris after the 2014 primary?

11 05:41 11 MR. NKWONTA: Objection; leading.

12 05:41 12 THE WITNESS: Yes.

13 05:41 13 BY MR. FARR:

14 05:41 14 Q. Okay. So let's go through the charts. The

15 05:42 15 first chart at the top of the page, tell me

16 05:42 16 what the title of that chart is.

17 05:42 17 A. It looks at the voter participation rate, so

18 05:42 18 the turnout rates in North Carolina among the

19 05:42 19 registered voters by race in election. So it

20 05:42 20 compares the percentage among Caucasians who

21 05:42 21 voted among those registered and the percentage

22 05:42 22 among African Americans who turned out and

23 05:42 23 voted among the registered voters.

24 05:42 24 Q. Okay. And the first column is -- can we

25 05:42 25 explain that?

1 05:42 1 A. The first column identifies the election and I

2 05:42 2 have indicated primary and I believe -- those

3 05:42 3 are the primary elections.

4 05:42 4 Q. All right. And could you explain the other

5 05:42 5 columns, please?

6 05:42 6 A. Then the next column looks at the percent among

7 05:43 7 Caucasians who were registered to vote, a

8 05:43 8 percentage who voted and then the next column

9 05:43 9 looks at the percentage among African Americans

10 05:43 10 who turned out and voted.

11 05:43 11 Q. And what's the third column?

12 05:43 12 A. The difference between those two percentages.

13 05:43 13 Q. And what's the fourth column?

14 05:43 14 A. The number standard deviations associated with

15 05:43 15 the difference.

16 05:43 16 Q. And can you tell us how you performed the

17 05:43 17 standard deviation calculation?

18 05:43 18 A. I believe I was asked earlier this -- or

19 05:43 19 earlier this afternoon in terms of how I

20 05:43 20 computed a test proportion and I believe I

21 05:43 21 testified that you're looking at the overall

22 05:43 22 proportion among the two groups and you're

23 05:43 23 taking into account the difference between the

24 05:43 24 two proportions and taking into account the

25 05:43 25 number in the groups who were compared.

1 05:44 1 Q. Okay. And what's the significance of your

2 05:44 2 calculations under the standard deviation

3 05:44 3 column?

4 05:44 4 A. That these differences are significantly

5 05:44 5 different and therefore unlikely to occur by

6 05:44 6 random chance alone.

7 05:44 7 Q. Okay. All right. Let's go to the next chart

8 05:44 8 on the -- that's on page 1 of this exhibit and

9 05:44 9 it's entitled "Voter Participation Rates

10 05:44 10 (Turnout Rates) in North Carolina Among

11 05:44 11 Registered Voters by Race and Election,

12 05:44 12 Caucasian, Non-Hispanic compared to Hispanic."

13 05:44 13 Can you tell us what that is?

14 05:44 14 A. It's a similar calculation but rather than

15 05:44 15 comparing the Caucasian turnout rate to the

16 05:44 16 African American turnout rate, I'm comparing

17 05:44 17 the Caucasian turnout rate to the Hispanic

18 05:44 18 turnout rate.

19 05:44 19 Q. Okay. And then the third chart on page one,

20 05:44 20 can you -- can you explain the title of that

21 05:45 21 and what this is, please?

22 05:45 22 A. Sure. I wanted to look at not just the

23 05:45 23 percentage among the groups but wanted to look

24 05:45 24 at the turnout rates to see what the difference

25 05:45 25 was between the 2010 election, the 2014

1 05:45 1 election. So this looks at, for example, the
2 05:45 2 percent African American among all registered
3 05:45 3 voters who voted and then compared that in 2010
4 05:45 4 to 2014, and then similarly did the same thing
5 05:45 5 for Hispanic and Caucasian voters.

6 05:45 6 Q. Okay. So would you please explain the columns?

7 05:45 7 A. Sure. So the 2010 turnout rate is looking at
8 05:45 8 the percent African American among the
9 05:46 9 registered voters, all registered voters who
10 05:46 10 voted in 2010, and then the 2014 turnout is the
11 05:46 11 number of African Americans as a percentage of
12 05:46 12 all of the individuals who were registered to
13 05:46 13 vote regardless of their race or ethnicity, and
14 05:46 14 then I compared the percentage difference and
15 05:46 15 determined whether the difference was
16 05:46 16 statistically significant.

17 05:46 17 And I did the same thing for Hispanic
18 05:46 18 and Caucasian registered voters and compared in
19 05:46 19 each instance the percent African American,
20 05:46 20 percent Hispanic and the percent Caucasian
21 05:46 21 increased between the 2010 and the 2014
22 05:46 22 election as a percentage of the registered
23 05:46 23 voters.

24 05:46 24 Q. All right. And it's your understanding -- and

25 05:47 25 I think you've testified to this and you were

1 05:47 1 asked several times -- the 2014 primary, the
2 05:47 2 election practices that we described is
3 05:47 3 same-day registration, 17 days early voting and
4 05:47 4 out-of-precinct voting. Those were not in
5 05:47 5 place for the 2014 primary; is that correct?
6 05:47 6 A. That's correct.
7 05:47 7 Q. And is it also correct that despite that, the
8 05:47 8 turnout rate for African Americans was up in
9 05:47 9 the 2014 primary compared to the 2010 primary
10 05:47 10 when all the practices were in place?
11 05:47 11 MR. NKWONTA: Objection.
12 05:47 12 THE WITNESS: Based on the statistics
13 05:47 13 that I've calculated, that is correct.
14 05:47 14 BY MR. FARR:
15 05:47 15 Q. All right. Let's turn to page 2 and let's look
16 05:47 16 at the first chart.
17 05:47 17 Could you tell us the title of that
18 05:47 18 chart and then explain the significance of this
19 05:47 19 chart?
20 05:47 20 A. This is the comparison of usage of voting at
21 05:47 21 early voting sites between 2010 and 2014
22 05:47 22 primary elections in North Carolina among those
23 05:47 23 who voted within each demographic category.
24 05:48 24 Q. Okay. So could you explain those columns in a
25 05:48 25 little more detail.

1 05:48 1 A. Sure. So for each group of voters, I -- among
2 05:48 2 those who voted, I looked at the -- for
3 05:48 3 example, the percentage of African Americans
4 05:48 4 who voted at an early voting site in 2010 as
5 05:48 5 compared to 2014. I computed the difference in
6 05:48 6 those two percentages and determined whether or
7 05:48 7 not they were statistically different.

8 05:48 8 Q. And is this showing that the percentage of
9 05:48 9 registered African Americans who used early
10 05:48 10 voting in 2014 is higher than it was in 2010?

11 05:48 11 A. As a percentage, yes.

12 05:48 12 Q. All right. Let's look at the second chart on
13 05:48 13 page 2. Could you explain what that is,
14 05:48 14 please?

15 05:48 15 A. In addition to looking at early voting, I
16 05:48 16 looked at all forms of absentee voting and
17 05:49 17 determined that the same calculation but rather
18 05:49 18 than looking at the votes at early voting site,
19 05:49 19 I looked at all forms of absentee voting, and
20 05:49 20 in each instance for African American, Hispanic
21 05:49 21 and Caucasian individuals, the percentage using
22 05:49 22 any form of absentee voting increased between
23 05:49 23 2010 and then as compared to the 2014 election,
24 05:49 24 and with respect to African Americans and
25 05:49 25 Caucasians the differences are statistically

1 05:49 1 significant.

2 05:49 2 Q. All right. And let's go to the third chart on

3 05:49 3 the second page and please explain what that

4 05:49 4 is.

5 05:50 5 A. Rather than looking at the registered voters,

6 05:50 6 in this chart I'm looking at the comparison of

7 05:50 7 the percent African American and the percent

8 05:50 8 Hispanic among those who voted in each of those

9 05:50 9 two elections.

10 05:50 10 So here I'm calculating the number of,

11 05:50 11 for example, African American and Hispanic

12 05:50 12 individuals who voted in each of the elections

13 05:50 13 as a percentage of the total number who voted,

14 05:50 14 and in each instance, the percentage increased

15 05:50 15 in -- between the 2010 and 2014 election, and I

16 05:50 16 found that the number of standard deviation

17 05:50 17 suggests the differences are statistically

18 05:50 18 significant.

19 05:50 19 Q. So make sure I understand this, in 2010

20 05:50 20 primary, African Americans constituted a

21 05:51 21 17.2 percent of the total voters in the 2010

22 05:51 22 primary?

23 05:51 23 A. Yes.

24 05:51 24 Q. And in the 2014 primary, African Americans

25 05:51 25 constituted 19.0 of the total voters?

1 05:51 1 MR. NKWONTA: Objection; leading.

2 05:51 2 THE WITNESS: That's what my chart

3 05:51 3 shows, yes.

4 05:51 4 BY MR. FARR:

5 05:51 5 Q. So that was an increase of 1.8 percent?

6 05:51 6 A. Yes.

7 05:51 7 Q. Let's go to --

8 05:51 8 MS. RIGGS: Tom, I am going to

9 05:51 9 interrupt you for one second. I'd like to note

10 05:51 10 our objection to the entire exhibit as the

11 05:51 11 supplemental expert analysis not current and

12 05:51 12 we're going to want to leave this deposition

13 05:51 13 open to reexamine Dr. Thornton at a later date

14 05:51 14 after we've had time to review these ten charts

15 05:51 15 and the underlying data that I assume you'll

16 05:51 16 provide to us as quickly as possible that were

17 05:51 17 only first disclosed to us at 5:40 p.m. today.

18 05:51 18 MR. FARR: And yes, and they were also

19 05:51 19 disclosed to you that the data has just become

20 05:51 20 available and it's also publicly available to

21 05:51 21 your experts who could have gotten it off the

22 05:52 22 web page and check on it also, but we'll

23 05:52 23 discuss a future deposition with you.

24 05:52 24 MS. RIGGS: Thank you.

25 05:52 25 BY MR. FARR:

1 05:52 1 Q. Now let's go to page 3. What's it the first

2 05:52 2 chart on page 3?

3 05:52 3 A. These data are from the website directly. I

4 05:52 4 looked at the percentage of African American

5 05:52 5 and Hispanics among registered voters between

6 05:52 6 the 2010 and the 2014 primary elections.

7 05:52 7 So this does not look at who voted but

8 05:52 8 who was registered. And between the 2010

9 05:52 9 primary and the 2014 election, the percent

10 05:52 10 African American and the percent Hispanic among

11 05:52 11 the registered voters increased.

12 05:52 12 Q. All right. And let's look at the second chart

13 05:52 13 on page 3. Could you please explain what that

14 05:53 14 is?

15 05:53 15 A. I also looked at the -- looked to determine if

16 05:53 16 the percentage increase or decrease between the

17 05:53 17 2013 municipal election and the 2014 primary

18 05:53 18 election and they remained constant.

19 05:53 19 Q. And is it your understanding that same-day

20 05:53 20 registration, 17 days of early voting and

21 05:53 21 out-of-precinct voting were all still in place

22 05:53 22 for the 2013 municipal election?

23 05:53 23 A. That is my understanding.

24 05:53 24 Q. All right. What is the third chart on page 3?

25 05:53 25 A. It prepares a similar calculation but looks at

1 05:53 1 and compares the 2012 and -- in the general
2 05:53 2 election and the 2014 primary election. And
3 05:53 3 here the percent African American has remained
4 05:53 4 constant and the percent Hispanic among the
5 05:53 5 registered voters has increased slightly.

6 05:53 6 Q. All right. Let's turn to the last page of
7 05:53 7 Exhibit 125. And could you explain what that
8 05:53 8 chart is?

9 05:53 9 A. This looks at the net difference in the number
10 05:54 10 of registered voters between the 2013 municipal
11 05:54 11 point in time and the 2014 primary election,
12 05:54 12 and there was a net change of registered voters
13 05:54 13 of 41,459 in terms of an increase.

14 05:54 14 And I looked then at the composition of
15 05:54 15 that increase, and they were 22.4 percent
16 05:54 16 African American, 61.9 percent Caucasian and
17 05:54 17 15.6 percent among other demographic groups.

18 05:54 18 Q. Okay. Now can I have a short break.

19 05:54 19 THE VIDEOGRAPHER: Off record at 5:54.

20 05:54 20 (Brief Recess.)

21 05:56 21 THE VIDEOGRAPHER: On record at

22 05:56 22 5:56 p.m.

23 05:56 23 BY MR. FARR:

24 05:56 24 Q. I'm going to ask the court reporter to give you
25 05:56 25 another exhibit which I think we'll be marked

1 05:56 1 as Exhibit 126.

2 05:57 2 (WHEREUPON, Defendant's Exhibit 126 was
3 05:57 3 marked for identification.)

4 05:57 4 BY MR. FARR:

5 05:57 5 Q. All right. Dr. Stewart, during your
6 05:57 6 examination you've been asked questions about
7 05:57 7 various surrebuttal reports by plaintiffs'
8 05:57 8 experts, and one of the surrebuttals that came
9 05:57 9 up was the surrebuttal of Dr. Stewart.

10 05:57 10 Do you recognize Exhibit 126?

11 05:57 11 A. Yes.

12 05:57 12 Q. And what is that?

13 05:57 13 A. It's Dr. Stewart's surrebuttal report in this
14 05:57 14 matter.

15 05:57 15 Q. And do you have an opinion about the regression
16 05:57 16 analysis that Dr. Stewart performed in this
17 05:57 17 exhibit?

18 05:57 18 A. Yes.

19 05:57 19 Q. Can you share that with us?

20 05:57 20 A. Paragraph 99 Dr. Stewart describes a multiple
21 05:57 21 regression analysis that he conducted. And as
22 05:58 22 I understand his analysis, his dependent
23 05:58 23 variable was each of the categories of the
24 05:58 24 survey. So, for example, no waiting time, less
25 05:58 25 than ten minutes, et cetera. And he used

1 05:58 1 ordinary least squares regression analysis to
2 05:58 2 test to see if there was a relationship between
3 05:58 3 whether or not you were a voter in
4 05:58 4 North Carolina in that wait time.

5 05:58 5 And first, these are categorical data,
6 05:58 6 so in my opinion, he should have used a
7 05:58 7 different analysis other than a regression
8 05:58 8 analysis.

9 05:58 9 So, for example, his coefficient for a
10 05:58 10 voter in North Carolina is .44, so that would
11 05:59 11 mean that he's estimating less than half of a
12 05:59 12 category difference, and there is no such thing
13 05:59 13 here as less than a half category difference
14 05:59 14 because they're discreet categories. You
15 05:59 15 either didn't have any wait time, you had less
16 05:59 16 than 10 minutes, you had 10 to 30 minutes, so
17 05:59 17 on up to more than one hour.

18 05:59 18 In addition, they're not uniform
19 05:59 19 categories. So you have one category with
20 05:59 20 10 minutes and another category that has
21 05:59 21 30 minutes and another one that's unlimited,
22 05:59 22 it's one hour or longer.

23 05:59 23 So the interpretation of a half of a
24 05:59 24 category is difficult here when you cannot have
25 05:59 25 a half a category. So he's estimating that

1 05:59 1 voters in North Carolina were in slightly more
2 06:00 2 than -- slightly more than one category or just
3 06:00 3 slightly more than a category difference
4 06:00 4 between voters in North Carolina and other
5 06:00 5 states.

6 06:00 6 So, one, he's using in my opinion an
7 06:00 7 improper technique for categorical data and as
8 06:00 8 partially, then, you have a coefficient that
9 06:00 9 isn't very meaningful because there's no such
10 06:00 10 thing as a half of a category.

11 06:00 11 And then in terms of his conclusion
12 06:00 12 drawn at paragraph 99, he is committing the
13 06:00 13 confusion of the inverse here. When he stated
14 06:00 14 that he opines that we discover probability
15 06:00 15 that North Carolina early voters waited longer
16 06:00 16 on average than early voters nationwide is
17 06:01 17 99.9 percent, and that is an improper use of
18 06:01 18 statistics.

19 06:01 19 What we can say here is given the null
20 06:01 20 hypothesis that there isn't a difference, the
21 06:01 21 probability of an outcome as extreme or not
22 06:01 22 results in the standard deviation of 4.98.

23 06:01 23 Q. What does that mean?

24 06:01 24 A. That means in terms of voters in

25 06:01 25 North Carolina, they had -- the outcome of the

1 06:01 1 .44 of a category is statistically significant,

2 06:01 2 and so you would -- given the null hypothesis

3 06:01 3 that there isn't a difference.

4 06:01 4 This outcome doesn't tell you anything

5 06:01 5 about the alternative hypothesis, that is, that

6 06:01 6 there is a difference. So in his last sentence

7 06:01 7 here is committing the confusion of the

8 06:01 8 inverse.

9 06:01 9 Q. All right. That's all I have.

10 06:02 10 MS. RIGGS: Just while we're still on
11 06:02 11 the record, the data that I'm requesting is the
12 06:02 12 set that Marc Burriss provided to Dr. Thornton
13 06:02 13 when she testified was provided to all
14 06:02 14 plaintiffs because of the reasons I discussed
15 06:02 15 earlier about how voter -- voter files are
16 06:02 16 changing day by day, so we want to see the data
17 06:02 17 set that she saw from Mark.

18 06:02 18 MR. FARR: What she saw was the
19 06:02 19 encrypted hard drive and whatever he sent her
20 06:02 20 from the primary and we'll send you that.

21 06:02 21 MS. RIGGS: That's what I was asking
22 06:02 22 for. And again, registering for the record
23 06:02 23 that we'd like to reexamine Dr. Thornton at a
24 06:02 24 later date after we've had time to review this
25 06:02 25 analysis and that we while I understand this