

1 ROUGH ASCII 7/26/2012  
2 COMMONWEALTH COURT OF PENNSYLVANIA  
3 IN RE: VIVIETTE APPLEWHITE  
4 Case No. 330-MD-2012

5

6 P R O C E E D I N G S

7 -----

8 JUDGE SIMPSON:

9 Good morning. Please sit down. Is  
10 your witness here?

11 ATTORNEY WALCZAK:

12 Yes, Your Honor. Just as a preliminary  
13 matter we got our exhibits straight. I don't know if  
14 Your Honor wants those now. What we've done is we  
15 took all of the exhibits from yesterday in the order  
16 that they were presented. They're numbered 1 through  
17 15. The only exhibits we did not put in are the four  
18 for --- the five reports, you know, her files. We're  
19 just not going to introduce them as evidence. I've  
20 given a copy to Mr. Cawley. If Your Honor would like  
21 this now or ---?

22 JUDGE SIMPSON:

23 Yes. Would you hand it up to Mr.  
24 Mazin, please.

25 ATTORNEY WALCZAK:

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1 And we'll just start with 16 today.

2 JUDGE SIMPSON:  
3 I see. Okay. So we have exhibits in  
4 the order that they were presented. One, Two, Three,  
5 Four, Five, Six, Seven, Eight, Nine, Ten. Eleven  
6 (11) is an --- is the videotape deposition?

7 (Petitioner's Exhibits 1 through 11  
8 marked for identification.)

9 ATTORNEY WALCZAK:  
10 Yes, Your Honor. That's Nadine Marsh's  
11 DVD.

12 JUDGE SIMPSON:  
13 And 12. And they're moved. Any  
14 objection?

15 (Petitioner's Exhibit 12 marked for  
16 identification.)

17 ATTORNEY CAWLEY:  
18 And there's also a 13, Your Honor. Am  
19 I correct that there's a 13, 14 and 15?

20 ATTORNEY WALCZAK:  
21 Yes.

22 JUDGE SIMPSON:  
23 There's a 13, which is the CV; 14,  
24 which is the social security website shot, and 15  
25 which is and 15 which is the stipulation.

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1 (Petitioner's Exhibits 13 through 15  
2 marked for identification.)

3 ATTORNEY CAWLEY:  
4 And I have no objection, Your Honor.

5 JUDGE SIMPSON:  
6 They are received. And Mr. Mazin, you  
7 may take charge of these.

8 ATTORNEY CAWLEY:  
9 And Your Honor, if it's appropriate at  
10 this time, the Respondents would like to move for the  
11 admission of Commonwealth's Exhibit One, which came  
12 up during Cross Examination.

13 JUDGE SIMPSON:  
14 And One, I believe, was --- just bear  
15 with me a second.

16 ATTORNEY CAWLEY:  
17 It is --- sure.

18 JUDGE SIMPSON:  
19 Okay. It was the same as Claimant's  
20 Exhibit 220-B was numbered 220-B at the time, but  
21 it's the Applewhite IDs and residency documents,  
22 because you were asking her about her address as it  
23 appeared on these Documents.

24 ATTORNEY CAWLEY:  
25 That's correct.

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1 JUDGE SIMPSON:  
2 As I understand it, it's pretty much a  
3 duplicate as to what I just received, but is there  
4 any objection?

5 ATTORNEY WALCZAK:  
6 There's no objection, Your Honor.

7 JUDGE SIMPSON:

8 Respondent's One is also received.

9 JUDGE SIMPSON:

10 Nothing --- let me give you my little  
11 opening statement for today. It's Tuesday, June  
12 26th, in a sign with the times, it is Mick Jagger's  
13 69th birthday today. I never realize that was going  
14 to make me so depressed. When I heard that I really  
15 felt old. I must say. We covered a lot of ground  
16 yesterday, and I look forward to doing so today. You  
17 may call your next witness.

18 ATTORNEY WALCZAK:

19 Claimant's call Matt Barreto.

20 BAILIFF:

21 Please raise your right hand.

22 -----  
23 MATT BARRETO, HAVING BEEN FIRST DULY SWORN,  
24 TESTIFIED AS FOLLOWS:  
25 -----

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1 EXAMINATION ON QUALIFICATIONS

2 BY ATTORNEY WALCZAK:

3 Q. Good morning.

4 A. Good morning.

5 Q. Please state your name.

6 A. My name is Matt Barreto.

7 Q. Where do you live?

8 A. I currently live in Shoreline, Washington.

9 Q. And is that near Seattle?

10 A. Yes.

11 Q. And what do you do?

12 A. I'm an associate professor at the University of  
13 Washington, Political Science department.

14 Q. I would like to mark and put on the screen  
15 Exhibit 16. I show you what's been marked as Exhibit  
16 16. Do you recognize this document?

17 (Petitioner's Exhibit 16 marked for  
18 identification.)

19 A. Yes, I do.

20 BY ATTORNEY WALCZAK:

21 Q. And what is it?

22 A. This is my current CV.

23 Q. And is this a fair and accurate description of  
24 your qualifications and experience?

25 A. Yes, it is.

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1 Q. Let's start at the bottom of the first page  
2 there, if you can scroll up. Can you tell us a  
3 little bit about your educational background?

4 A. Yes. I attended college in New Mexico at  
5 Eastern New Mexico University. I then went to the  
6 University of California Irvine for my Ph.D. work  
7 where I completed a Ph.D. in political science in  
8 2005, and then I joined the faculty of University of  
9 Washington.

10 Q. And what was your Ph.D. in?

11 A. It was in the Department of Political Science  
12 with an emphasis on voting and elections, public  
13 opinion and racial and ethnic politics.

14 Q. And tell us a little bit about your job  
15 experience.

16 A. Sure. I'm currently an associate professor at  
17 the University of Washington in the Department of  
18 Political Science. I am also currently the director  
19 of the Washington Institute for the study of  
20 ethnicity and race, which is a research center in the  
21 College of Arts and Sciences. I have an adjunct  
22 appointment in the University of Washington School of  
23 Law, and I'm currently an executive committee member  
24 for the Center for Statistics and Social Sciences.

25 Q. And what is the Center for Statistics and Social

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1 Sciences?

2 A. That is an interdisciplinary department group at  
3 the University of Washington that draws upon  
4 statisticians and methodologists who are interested  
5 in empirical research, but applying that to real  
6 social science, problems as opposed to doing  
7 statistics for the sake of doing, math equations, and  
8 so it's a nice, group of folks from across different  
9 departments from statistics, sociology, science,  
10 analogy and looking at how we can apply those to  
11 studying real problems.

12 ATTORNEY WALCZAK:

13 Kelby, if you turn to the last page of  
14 this exhibit --- or the second to last page of this  
15 exhibit? I think its the last page. There you go.

16 BY ATTORNEY WALCZAK:

17 Q. Can you talk to us a little bit more about what  
18 it is that you teach at the University of Washington?

19 A. Sure. The classes that I have taught are listed  
20 here. Generally, the courses that I teach are in  
21 American politics. I taught courses on public  
22 opinion. Survey research, statistics and empirical  
23 analysis, campaigns and elections and minority  
24 politics.

25 Q. Now, at the become of that page, it talks about

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1 board and research departments. Can you tell us a  
2 little bit about that?

3 A. These are various research centers or institutes  
4 that I have appointments at.

5 Q. What does it mean to have an appointment?

6 A. That someone from my research center has  
7 contacted you and asked you to serve in either an  
8 advisory or official capacity. Perhaps you might  
9 write scholarship for them that goes out under their  
10 letterhead, perhaps you might advise them on  
11 different research matters generally. You might  
12 attend their events and functions, so these are  
13 various centers or groups that I held research  
14 appointments at since my graduate work.

15 Q. And I see near the bottom of that list is  
16 something called the American National Elections  
17 Study at the University of Michigan. Can you tell us  
18 about that?

19 A. Sure. The American National Election Study is

20 one of the oldest and longest running studies in  
21 political science. It's funded by the National  
22 Science Foundation. It was started in 1948. And  
23 once, connectively every two years doing a large  
24 national study of voter public opinion, voter  
25 knowledge, voter participation, and it has been the

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1 source of a great number --- a great amount of  
2 scholarship that has been published in American  
3 politics. People regularly use that data set to  
4 advance what we know about voters and why they behave  
5 the way they do. In 2010 I was appointed to the  
6 board of overseers.

7 Q. And I think overseers and think undertakers and  
8 don't know the difference always. What does it mean  
9 to be a member of the board of overseers?

10 A. They have the principal investigators of the  
11 study, which are currently based at the University of  
12 Michigan and Stanford University, select about 25 to  
13 30 professors from across the country to join the  
14 board, attend quarterly meetings where they advise  
15 the principal investigators on the different topics.  
16 Talk about the current methodologies and ways to  
17 possibly improve this study, but also to protect it  
18 so we have comparability across the 60 years that  
19 it's been in existence. So I'm one of those members  
20 that will use their research methodology and advises  
21 them on new areas.

22 Q. Now, the testimony we're hoping to offer from



23 you today involves surveys and involves barriers to  
24 voter participation. I want to focus a little bit  
25 about on your experience and background in both of

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1 those things. Let's start first with surveys. Tell  
2 us a little bit about your experience in designing  
3 and executing surveys.

4 A. Sure. One of the other research appointments  
5 that's listed here, in fact, the first one was one of  
6 my first research appointments as a scholar Tomas  
7 Rivera Policy Institute in southern California.  
8 There I started in 1999, and I was part of a team  
9 that designed surveys, both the sample and  
10 questionnaire for surveys that were being conducted  
11 by the institute. From there I went on to study and  
12 have an emphasis on survey research and public  
13 opinion research in my graduate work, taking courses  
14 closely related to those topics and designing and  
15 implementing some additional surveys as a doctoral  
16 student for my own research.

17 Since that time I've collaborated on more than  
18 75 surveys focussing on states and national and  
19 have, as I mentioned earlier have taught classes and  
20 given seminars about survey construction design.

21 Q. And how many of those surveys that you've done  
22 approximately involve issues related to elections?

23 A. I would say virtually all of them were related  
24 to issues of elections due to the nature of my study  
25 in the political science department. There have been

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1 some surveys that were just general studies of public  
2 opinion and voter awareness and knowledge. But  
3 overwhelmingly the surveys that I study are voter  
4 attitudes, voter opinions in the electoral system.

5 Q. And have your studies focussed both on  
6 localities and states and national? Have you looked  
7 at different sort of population codes?

8 A. Yes, absolutely. The studies have taken a wide  
9 range of interests and focus. Oftentimes depending  
10 on the research question that we're interested at the  
11 time. But as an example, I designed implemented  
12 studies that have been specifically just about one  
13 city, many that were in the City of Los Angeles when  
14 I was living in southern California. A number of  
15 them were counseled county or metro wide, and a  
16 number that have been statewide, focussing on  
17 individual states, and quite a few surveys that have  
18 been national in scope. The surveys have also tended  
19 to focus on the overall entire American electorate as  
20 well as studies that focus just specifically on  
21 individual or racial and ethnic groups.

22 Q. And have any of you surveys involved an  
23 assessment of voter ID laws?

24 A. Yes. I believe there are eight surveys that the  
25 primary focus was looking at voter identification

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1 laws, rights to possession, lack of possession of  
2 obtaining photo identification.

3 Q. And one of those eight, the one that you  
4 performed for this case?

5 A. Yes, that's correct.

6 Q. And were any of the others that you done  
7 national in scope?

8 A. Yes. They have been both focussing on some  
9 individual states, also they have been national in  
10 scope. Where we have examined the rates of  
11 possession of photo identification nationally for  
12 different groups, but also focussing on individual  
13 states.

14 Q. And just let me ask you since its been in the  
15 news. There was a court challenge in Wisconsin, or I  
16 guess there are multiple court challenges in  
17 Wisconsin right now. Have you done a similar survey  
18 for the litigation in Wisconsin?

19 A. Yes, that's correct. Myself and Professor  
20 Gabriel Sanchez were involved in writing, designing,  
21 implementing a survey for litigation in the State of  
22 Wisconsin.

23 Q. And who are you working for in the State of  
24 Wisconsin?

25 A. It was the ACLU Foundation in Wisconsin.

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1 Q. And that case is one that's in federal court?

2 A. Yes, I believe so.

3 Q. So that's not one of the cases that has been  
4 decided thus far?

5 A. That's correct.

6 Q. And is that case also under the Voting Rights  
7 Act?

8 A. Yes, that's correct.

9 Q. And did you look at the entire state there,  
10 or ---?

11 A. The study that we did in Wisconsin was just in  
12 Milwaukee County. That was the area where they  
13 decided to bring the lawsuit in terms of rates of  
14 possession and wanted to focus specifically on  
15 Milwaukee County, so that's what we studied.

16 Q. And was the focus of that study slightly  
17 different than what we asked you to do here in  
18 Pennsylvania?

19 A. Yes, certainly. Because it was being brought  
20 under the Federal Voting Act. They were specifically  
21 asking us to assess the right to possession that  
22 cross over in racial and ethnic groups to determine  
23 whether or not there were any differences in the rate  
24 of possession between whites, Hispanics and blacks.

25 Q. Let me just ask you generally on the surveys

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1 that you've done on voter IDs. Is there a range that  
2 you have found in the various studies in terms of the  
3 number of voters who do not have the kind of ID  
4 required under the particular law?

5 A. Yeah. In across the surveys that we implemented

6 asking people what their current rates of possession  
7 valid photo identification are. We seen some fairly  
8 consistent rates where, let's say, between 9 and 15  
9 percent generally --- sometimes maybe one percent  
10 lower, sometimes maybe one percent higher, but we've  
11 seen something in about that range of people who  
12 don't have valid photo ID, depending, of course, on  
13 the intricacy of the state law.

14 Q. Now, let me ask you a little bit about looking  
15 at predictors of voter turnout. Is that a specialty  
16 of yours?

17 A. Yes, absolutely that's one of my primary areas  
18 of focus.

19 Q. And explain for the Court what that means.

20 A. Well, one of the big questions, I guess, that we  
21 grapple with in political science is what motivates  
22 participation in our democracy. So one of the  
23 primary areas of subfields is called voting behavior  
24 and political participation. There were primary  
25 interested in trying to identify what causes people

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1 to register and to vote or to express other forms of  
2 non-electoral participation and what the factors are  
3 that are associated with that we often call  
4 predictors, the factors are that are associated with  
5 higher or lower rates of participation.

6 Q. And can you give us an example of a study that  
7 you've done that's looked at outside the voter ID  
8 context that's looked at predictors of participation?

9 A. Sure. I would say a large number of the studies  
10 that I've conducted are related to voter,  
11 participation and what drives voter participation,  
12 whether you're looking at some of the studies I've  
13 done, comparing cross racial groups. I've completed  
14 a study looking recently at how people who use the  
15 internet for political reasons, if gathering  
16 information, that creates an extra added incentive in  
17 the participators, so we identified things like  
18 Internet access as both something that mobilizes or  
19 that encourages voting, but also the lack of access  
20 as a barrier. Something to causes people to  
21 participate less. I also authored studies looking at  
22 institutional barriers to political participation.  
23 Looking at ---.

24 Q. What do you mean by institutional barriers?

25 A. In this case, generally we divide the predictors

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1 into things that individual level, such as my own  
2 income, education level, race or ethnicity, et  
3 cetera, and then institutional or contextual factors.  
4 A lot of things that are existing in the county, the  
5 state or the electoral system. And one such study I  
6 did was looking at the actual polling place  
7 precincts, what characteristics they had, how well  
8 marked they were, what their overall level of quality  
9 was, the knowledge level of the poll workers inside  
10 the precincts and whether or not that was associated  
11 with a higher or lower voter participation.

12 Q. Have you also looked at how information affects  
13 voters?

14 A. Absolutely. I mean, this is a very important  
15 strand of research within political participation.  
16 The levels of information are directly related to  
17 voter engagement. Voter participation, so that would  
18 be something we would not only want to review, the  
19 latest findings and research on, but also perhaps  
20 include as part of our research design, asking  
21 questions about that sort of thing.

22 ATTORNEY WALCZAK:

23 Your Honor, we would move Professor  
24 Barreto as an expert in science of --- survey science  
25 and barriers to political participation.

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1 JUDGE SIMPSON:

2 Do you wish to be heard?

3 ATTORNEY CAWLEY:

4 No, Your Honor. No objection.

5 JUDGE SIMPSON:

6 He may express an opinion.

7 DIRECT EXAMINATION

8 BY ATTORNEY WALCZAK:

9 Q. Professor Barreto, let me ask you --- and just  
10 upfront let's be fully candid, and who are you  
11 retained by in this case?

12 A. I was retained by the ACLU and the rest of the  
13 team. Arlene Porter.

14 Q. And are you being paid for your services?

15 A. Yes.

16 Q. And how much are you being paid?

17 A. I am being paid \$250 an hour for the work I  
18 completed and testimony.

19 Q. And what is it that you were asked to evaluate  
20 here?

21 A. We were asked to examine the rates of  
22 possession, of valid identification among different  
23 segments of the Pennsylvania population, specifically  
24 looking at three groups, all eligible voters that is  
25 all citizen adults in the State of Pennsylvania.

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1 Q. I am sorry, so that would be anybody who would  
2 be qualified to vote regardless of whether they're  
3 registered?

4 A. That's correct. Anyone who is a citizen adult  
5 and is qualified to vote is an eligible voter.

6 Q. And why would you look at that group and not  
7 just registered voters?

8 A. We also did registered voters. But the eligible  
9 population is particularly an important starting  
10 point, because these are all of the residents who are  
11 able to participate and vote. And we know that in  
12 any given election year, particularly presidential  
13 election years, there are very, very large voter  
14 registration rises. We see the voter registration  
15 numbers fluctuate as much as up to a month before the  
16 election.

17 There are a lot of loss efforts to register



18 voters, so at this point we are not exactly certain  
19 who will be a voter, so we want to start by looking  
20 at all eligible voters. Many of those people who  
21 are currently not registered today will be  
22 registered before the election. So that's our  
23 starting point.

24 Q. So you look at eligible voters?

25 A. Registered is the second segment that we looked

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1 at, people who are currently registered to look at in  
2 Pennsylvania, and the last group is 2008 voters who  
3 residents and voted in the 2008 presidential election  
4 and other contest here in Pennsylvania.

5 Q. So all the data that you measure, you measure  
6 for each of those three groups?

7 A. That's correct. We provide estimates for each  
8 of those three segments of the population. And of  
9 course, they're cascading, which means that  
10 registered voters are also part the eligible voters,  
11 and 2008 voters who are currently registered are also  
12 part of the estimates of registered voters.

13 Q. So the most encompassing, the most embracing  
14 figure is the eligible voters, then it goes down to  
15 registered and actual voters?

16 A. Yes, that's correct.

17 Q. And sir, you were asked to look at the rates at  
18 which people possess IDs. Were you asked to look at  
19 anything else?

20 A. Yes, that was our starting point. We were also

21 asked to consider the degree of public knowledge and  
22 awareness. Of the current statute to see whether or  
23 not people were aware itself and whether they felt  
24 that they were in compliance or not. And we were  
25 also asked to look at the rates of possession of the

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1 underlying documents that would be necessary to  
2 obtain a valid photo ID in the first place. So we  
3 had additional questions related to that. And then  
4 finally we were asked to consider whether or not  
5 there were any differences in these rates of  
6 possession for any additional subgroups or segments  
7 within the state population.

8 Q. So you broke it down in various demographic  
9 ways?

10 A. Yeah, that's correct. We look for, for example,  
11 the most obvious is looking at gender differences  
12 between the rates of possession of men and women,  
13 other than for other demographic characteristics as  
14 well.

15 Q. And based on the research that you've done, have  
16 you formed any opinion opinions to a reasonable  
17 degree of scientific survey certainty about the rates  
18 of possession and the rates of knowledge of  
19 Pennsylvania voters?

20 A. Yes, I have.

21 Q. And what is the basis for that opinion, is it  
22 survey research that you've done?

23 A. Yes, that's correct. The basis for the opinion

24 in this specific case is the survey that was  
25 implemented here in Pennsylvania.

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1 Q. Okay. We'll get into that in just a minute.  
2 Before we get into the details of the Pennsylvania  
3 survey, I want to ask you a little bit more generally  
4 about survey methodology. This may be my own  
5 problem, but you think how can you --- how can you  
6 talk to a few thousand people and be able to then  
7 predict what's going to happen for millions of  
8 people. So tell us a little bit about sort of the  
9 science of survey methodology and how you construct a  
10 survey and just how the process works?

11 A. Sure. Absolutely. So there's been a very long  
12 history of the use and the refinement of surveys in  
13 social science and also in public policy.

14 Q. How far back does this go?

15 A. It goes back throughout almost the history of  
16 the country, people who are trying to take opinions  
17 and gather most famously probably during the early  
18 20th century. There were polls that were starting to  
19 be conducted to try to predict the presidential  
20 election. And one that really sort of highlighted  
21 the need for more science in survey design. Famous  
22 Reader's Digest polls. They would send mailers out  
23 to their subscribers, and just send it to people who  
24 subscribed to their magazine and asked them how they  
25 were going to vote. This tended to produce the

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1 correct results, but in one election they  
2 mispredicted the results, and as a result, a number  
3 of people who are interested in the study of social  
4 and political behaviors started to invest more  
5 heavily in sampling technique, question design,  
6 analysis.

7       And from there, specially the latter half of the  
8 20th century there have been many, many advancements  
9 to really inject more science into survey research  
10 so that we could accurately implement surveys, and  
11 with a high degree of certainty make assessments  
12 about probability and people hold certain attitudes  
13 or different characteristics or traits. There  
14 something that for there is for a survey designers  
15 who do it professionally, and in social scientific  
16 manner its a very serious and rigorous endeavor.

17 Q. Is it considered a science?

18 A. Absolutely. And there's a group of the American  
19 Association of Public Opinion Research which oversees  
20 survey research. They publish ---.

21 Q. Were are they out of?

22 A. This is a national association, and it is a  
23 membership association much like many other  
24 professional associations.

25 Q. And I'm sorry, what's it called?

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1 A. It's call the American Association of Public

2 Opinion Researchers, it's commonly referred to as  
3 APOR. They host a national conference where they  
4 bring people together to present the latest  
5 methodologies and research and public opinion  
6 research. They publish a journal, which is a  
7 peer-reviewed scientific journal talking about not  
8 only what do people think but the science and the  
9 methods of collecting surveys. And they also serve  
10 in capacity as a watchdog group where they will  
11 intervene if they believe that some surveys are not  
12 up to standard, and they will examine those results  
13 to see if they are.

14 Q. So when you say when they intervene, somebody  
15 publishes a survey that's unrelated to anything  
16 they're doing, they can take a look at that and take  
17 some kind of action?

18 A. Yeah, probably an example that was in the news  
19 was during the 2008 presidential primary after the  
20 Iowa election. There were a number of polls that  
21 indicated that Mr. Obama had about a ten point lead  
22 in New Hampshire and he would win New Hampshire. And  
23 Mrs. Clinton won New Hampshire. And almost all the  
24 polls had predicted that she would lose. And after  
25 that happened, the American Association of Public

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1 Opinion Research sent out a call for anyone who  
2 conducted a poll in the State of New Hampshire, to  
3 not only submit they're methodology, but to actually  
4 send over the full data of the poll so that they can

5 examine some of the sub things that were happening in  
6 the polls. Perhaps people were weighing things  
7 differently, perhaps the questions that were worded  
8 were inaccurate, and any of the survey researchers  
9 who were involved in those surveys in New Hampshire  
10 sent their data over, and the American Association of  
11 Public Researchers then went with their panel of  
12 experts and reviewed all of the data to ensure that  
13 it is accurate, or there was an irregularity what was  
14 causing it so they can better understand what was  
15 happening. So it was a regular thing that they would  
16 monitor and be involved, and that helps all of us  
17 have confidence in the survey research field, that  
18 what we're doing is accurate and scientific and is  
19 taken series seriously.

20 Q. Now are you involved at all in APOR?

21 A. Yes. I have been a member of APOR, been at  
22 their conference, and I've also published research on  
23 the public opinion in the Public Opinion Quarterly,  
24 which is their Flagship journal.

25 Q. So are these surveys really reliable?

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25

1 A. Yeah. So the takeaways that if the surveys are  
2 constructed correctly, sample design is given a lot  
3 of thought and is implemented accurately.

4 Q. What do you mean by sample design?

5 A. The sample design is as you indicated. Many  
6 times we interview only a thousand or 1,500 people.  
7 The sample design means how do we pick those people

8 that we're going to interview. Who are those 1,500  
9 people. And that's one of the most important things  
10 to get right when implementing the survey. If the  
11 sample design is done correctly and we get an  
12 accurate sample and the questionnaire is worded  
13 correctly and follows the established social science  
14 protocols, then we can say with a high degree of  
15 certainty that the opinions and the attitude of  
16 behaviors that the people express in the survey are  
17 quite reliable. And in lots of attempts survey  
18 researchers have then gone out and validated some  
19 specific questions so they can identify just how  
20 accurate they are. For example, they might ask  
21 people if they currently own their home or if they're  
22 a renter and then by looking at public records at the  
23 county assessor's level, they can actually verify  
24 whether or not those things are accurate. So there's  
25 been a lot of efforts made to demonstrate that when

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1 surveys are conducted and they're conducted  
2 correctly, they can be extremely accurate.  
3 Q. And you often hear a poll was conducted with  
4 1,200 people, or 1,280 people. It seems to be a kind  
5 of magic number, somewhere around 1,200. Is there  
6 some magic to that?  
7 A. Well, we want to get a sample size that allows  
8 us to generalize about the larger population. And  
9 depending on how many people we interview, we'll have  
10 either a larger error rate or a smaller error rate.

11 And somewhere between a thousand and 1,500 is where  
12 you see a lot of surveys get published, because the  
13 margin of error for --- in this case 1,285 is 2.7  
14 percent if there was ---. That's the highest that  
15 the margin error could be. And it could be somewhat  
16 low depending on the distribution of the responses.  
17 If you only interviewed say a hundred people, the  
18 survey might still be accurate. It might have been  
19 implemented correctly, but your margin of error for  
20 any estimate you have would be closer to nine percent  
21 or ten percent, and so you want to have an effective  
22 sample size that allows you to minimize the potential  
23 margin of error on any of your estimates. And so  
24 that range of 1,200 is quite common in a lot of  
25 surveys, because it allows you to have a fairly,

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1 small margin of error.

2 Q. So for 1,285, what would be the margin of error?

3 A. The margin of error is specifically related to  
4 the point estimate. When I say that the survey on a  
5 margin of error ---.

6 Q. I'm sorry, what do you mean by point estimate?

7 A. The percentage that comes out. So if you see a  
8 poll done on a presidential election in the State of  
9 Pennsylvania, you might see a poll that says that Mr.  
10 Obama is currently favored by 46 percent, and Mr.  
11 Romney is currently favored by 42 percent. Those are  
12 point estimates. The survey is estimating that Mr.  
13 Obama has 46 percent at the poll. So that point



14 estimate, 46 carries some sort of plus or minus on  
15 it, and so the margin of error is related to two  
16 things. One is the overall sample size, how many  
17 total people did we interview. And secondly, the  
18 distribution. So when you have something close to a  
19 50/50 distribution, like 46/42, you have the most  
20 possible room for error. And in this case, 12.7  
21 points.

22 If you have an estimate where 85 percent of the  
23 population gives one answer the margin of error  
24 actually shrinks, because your observing in that  
25 data more consistency. And so if you have 85

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1 percent of people all telling you something then the  
2 margin of error on 1,285 is only 1.9 percent. And  
3 so 2.7 is the overall expected rate, but for given  
4 answers such as some of the ones in our survey, we  
5 estimate smaller margins of error.

6 Q. And the margin of error means that it could be  
7 slightly less by that amount or more by that amount?

8 A. That's correct. That we would have ---  
9 technically what we would say is that we have 95  
10 percent confidence that the real or the true point  
11 estimate is in between that plus or the minus. That  
12 its extremely unlikely that it's anywhere outside  
13 that plus or minus, and that the estimate that we  
14 have the most confidence in is the exact estimate  
15 that was produced.

16 Q. So what are kind of the general aspects of

17 conducting a survey? What goes into figuring out how  
18 to do this?

19 A. Well, we sort of referenced this a bit when we  
20 talked about the science of conducting surveys.  
21 There's really three sort of aspects you want to take  
22 into account to make sure your survey is done  
23 correctly. The first is sample design, who are we  
24 going to be interview and to make sure that we get  
25 that exactly right so it would can be reflective of

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1 the full population, and so sample design is very  
2 important. The second is questionnaire design. Even  
3 if we have a good sample of the overall population,  
4 the questions are leading or biased in some way, it  
5 doesn't matter how good the sample is. So that means  
6 a lot of care to make sure that you have the  
7 questions. And the questionnaire is designed in a  
8 scientific manner. And then the third would be  
9 executing the survey to make sure that the survey is  
10 implemented in a social, scientific manner.

11 Q. What would be the vantage of a survey over, say,  
12 a statistical analysis and maybe you could give your  
13 answer in the context of the voter ID situation we  
14 have in this case?

15 A. Well, the advantage of a survey in this  
16 particular case is that it allows us to ask people  
17 what documents they currently possess and it allows  
18 us to know if they actually have those, not have they  
19 ever had one or did they have one in the past. But

20 do they currently have those so that they can produce  
21 them if necessary, and so in the case of analyzing  
22 other data sets, there could be people who appear to  
23 have documents, but like lots of people, sometimes  
24 those documents are lost, stolen or misplaced. And  
25 so in this case we can actually ask people if they

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1 currently possess those documents if they can produce  
2 them. Its also though and there's a debate within  
3 the U.S. Census Bureau that surveys that are  
4 conducted correctly and accurately are more accurate  
5 sometimes than the universe estimates or examine the  
6 entire Population. There's currently a debate most  
7 people leaning on the side of surveys within the  
8 Census Bureau, and you may have seen some discussion  
9 of this perhaps changing or phasing out the  
10 descendant Census where they try to count every  
11 individual person. And probably, if you're telling  
12 someone you're going to count every single person,  
13 you have to then go and count every single person.  
14 And in there are particular groups that are hard to  
15 count for one reason or they --- their records aren't  
16 as accurate for some reason, then you introduce some  
17 systematic bias in there whereas you have a survey  
18 and you not. Trying to count every single person but  
19 rather, randomly. Sample those different, people you  
20 can do a much more effective job of ensuring that  
21 representation and so that's why the Census, in fact,  
22 has been moving to implement more and more surveys

23 because they believe there's a high, degree of  
24 liability.

25 Q. So in the voter ID context, what advantage would

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1 a survey have over say a scientific statistical  
2 comparison between the PennDOT database and the  
3 survey database?

4 A. Well, in the survey we can ask people what types  
5 of ID they have so it's not just are restricted to  
6 just those that are in the PennDOT database. There  
7 are other types of ID such as military ID or passport  
8 or nursing facility IDs that we can ask people  
9 whether or not they have. So we can be exhaustive in  
10 that we can also ask them if they currently possess  
11 those or if they lost them, that's something that a  
12 database won't sell you whether or not you actually  
13 have your ID with you or whether or not it's been  
14 misplaced. Lost, stolen or destroyed in some way, so  
15 it allows us to be more exhaustive and more certain  
16 that we have the data that we're looking for and not  
17 just something.

18 Q. All right. Why don't we talk about the survey  
19 you conducted here in Pennsylvania before we look at  
20 the instrument, let's start by, how did --- talk to  
21 us a little bit about the design of the survey here  
22 in Pennsylvania. I mean, what ---?

23 A. Okay. Certainly. What we wanted to do was to  
24 get the most accurate representation of all residents  
25 who are eligible to vote, registered to vote or who

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1 had voted in Pennsylvania election. And so we  
2 started the discussion on the sample design of who we  
3 would actually interview and what method we would go  
4 about to do that interview. And so ---.

5 Q. who did --- so let's stop there. And what were  
6 the decisions made about who to interview and who to  
7 evaluate?

8 A. So we started with the overall citizen eligible  
9 population, and in the an attempt to reach them we  
10 decided to rely on what's called a random digit dial  
11 for the statewide survey population. Its a random  
12 digit file.

13 Q. what is random digit dial?

14 A. what that means is rather than relying on a list  
15 of people to call whether it's in the phone book or  
16 some other source, the computer will generate based  
17 on known area codes and prefixes will randomly  
18 generate phone numbers so that every possible phone  
19 within a given geography is eligible to be sampled so  
20 there's no exclusion of any types of phone numbers,  
21 and so then the computer would just randomly call  
22 those numbers, and when they got through to a person  
23 they would screen them and see if they were over the  
24 age of 18 a citizen had been a resident of  
25 Pennsylvania. And so that was the approach we took

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1 to dial in to land line, traditional phone numbers  
2 and also wireless or cellphone numbers.

3 Q. So this did include people who own cell phones?

4 A. Yes, absolutely. There's also known prefixes  
5 that you can do random digit dial up to assess or to  
6 include those persons in your sample.

7 Q. So if I understand you correctly, you have  
8 essentially everybody's number, and then it's  
9 randomly selected?

10 A. That's right. And the phone numbers themselves  
11 are randomly generated, so it could even be a case  
12 that one phone number that the computer dials is a  
13 phone number that doesn't exist. The advantage of  
14 doing that is no phone number is left out of possibly  
15 being included in the sample.

16 Q. So that was the starting point for making sure  
17 that were able to include everyone and not exclude  
18 any particular populations within the State of  
19 Pennsylvania? And how many people did you decide to  
20 survey?

21 A. We estimated for a target of about 1,250 or so.  
22 We wanted to come to that range, as we discussed  
23 earlier because we felt it would have the appropriate  
24 margin of error for us to make conclusions with a  
25 high degree of scientific certainty. And we ended up

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1 with 285 completed interviews from the statewide  
2 sample.

3 Q. And did you do something known as an oversample?

4 A. Yes. In addition to the main sample from a  
5 statewide study we conducted two oversamples, one of  
6 Hispanics or Latinos and one of African Americans.  
7 And we targeted for each of those oversamples about  
8 500 completed Interviews. And again we targeted that  
9 number of 500 so it would give us a degree of  
10 liability for those subsamples. We didn't want those  
11 subsamples if we made any statements of subgroups of  
12 voters in this part of the complaint of looking at  
13 possible demographic segments, that we may only had a  
14 hundred completed interviews with Hispanics, that  
15 wouldn't be enough for us to draw a reasonable  
16 conclusion. We wanted to increase those numbers just  
17 for a separate oversample, and so we conducted those  
18 additional interviews with African American persons  
19 and Hispanic households.

20 Q. So in the end, how many total interviews did you  
21 end up doing?

22 A. I believe the total number is 2,321, something  
23 to that nature. As we added these two oversamples,  
24 of 500 each, that ended up about a thousand. And  
25 again, sometimes you end up getting a couple more

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1 completed interviews than you start out with, because  
2 you need to exhaust the sample. It is what is called  
3 reaching all the maximum attempts. And that's a very  
4 important part. Sort of jumping ahead to the  
5 execution of the survey, that the survey made sure

6 that they followed the correct protocols in calling  
7 members back, multiple times, making sure everyone  
8 has and opportunity to participate.

9 Q. why don't we skip to that and then come back to  
10 the survey questionnaire.

11 A. Okay.

12 Q. So then you would design that questionnaire, and  
13 we'll talk about that in a minute. So let's talk  
14 about the execution. So tell us about the execution  
15 of the survey here.

16 A. Sure. So once you have the questionnaire ready  
17 to go, the first thing that will happen is that the  
18 survey research firm will program this questionnaire,  
19 this document that's here as part of the exhibit, and  
20 they will take that and program it in so that the  
21 interviewers who are reading the questions to a  
22 respondent will see it come up on their computer  
23 screen, will have a couple extra notes in there for  
24 them in terms of how to ask a follow-up question or  
25 additional information. That also ensures that they

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1 are able to follow all of the best practices of  
2 randomizing and rotating items so that we don't prime  
3 people with one answer or another so the answer  
4 choices and questions themselves will be rotated  
5 within the survey that's all possible when the survey  
6 firm programs that for the interviewers. And after  
7 the surveys program, then the survey firm will take  
8 the sample, this list of phone numbers that has been



9 generated. Download it into their system and the  
10 survey will be implemented.

11 Q. If you would like some water, you're doing a lot  
12 of talking here?

13 A. So they'll download the phone numbers and  
14 implement and start making calls.

15 Q. Let me ask you this, you hired somebody to do  
16 this?

17 A. I think you guys hired somebody to do this.

18 Q. We hired somebody to do this and who was hired  
19 to do this?

20 A. This is a survey research firm called Pacific  
21 Research. It's a firm that I'm familiar with,  
22 they're based in Renton, Washington. Not too far  
23 from the University of Washington, and I worked with  
24 them on other academic studies.

25 Q. And do they do a lot of this kind of work?

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1 A. Oh, absolutely. They do a very large amount of  
2 survey research work, including survey research work  
3 as we reference in one of the footnotes in the study  
4 for lots of other academic studies, they've also been  
5 involved in numerous legal studies and have been  
6 contracted by the Department of Defense and the IRS.  
7 So they're a very large national recognizable  
8 research firm. That's very important, because we can  
9 ensure that because they've been bedded and have  
10 those credentials, that they will be implementing the  
11 survey in a social and scientific manner.

12 Q. And do you know how many calls that actually had  
13 been made or how many people they had to talk to in  
14 order to get to the 2,000-and-something they got?

15 A. Yeah. We list in the report what the response  
16 rate is of the survey. Again, the response rate is  
17 something that is a calculation generated by this  
18 group APOR that we talked about before, and one of  
19 their requirements is that we implement a survey that  
20 you must indicate what the response rate of the  
21 survey is so that people can have an assessment of  
22 exactly how many calls you had to make and whether or  
23 not this was something that the people wanted to  
24 participate in or not.

25 I believe in this case --- and I don't have the

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1 photo in front of me, that it was somewhere between  
2 20 and 30 percent, 25 percent or so of a response  
3 rate, so from there you can sort of infer how many  
4 calls were made to people if it was 2,000 completed  
5 interviews, and there was a 25 percent response rate  
6 it would have been somewhere in the neighborhood of  
7 8,000, successful calls that were placed and a  
8 quarter of those people responded to the survey.

9 Q. Would it be helpful be for you to have your  
10 report?

11 A. Yes. If you're going to ask me some specific  
12 questions about that. I'm going to refer to pages.

13 Q. There's going to be a lot of numbers ---.

14 JUDGE SIMPSON:

07261012-Applewhite-ROUGH  
I have the report.

15

16 BY ATTORNEY WALCZAK:

17 Q. Okay. And over what period of time of were  
18 these calls made?

19 A. The calls were completed in June. I can give  
20 you the exact dates here. Let me look at survey  
21 methodology.

22 JUDGE SIMPSON:

23 Page 17.

24 A. Yes, there we go. Thank you. We say here that  
25 we began on --- our specific market research began on

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1 June 21st, 2012 and continued through July 2nd of  
2 2012, so about and area of 10 or 11 days that these  
3 calls were conducted.

4 BY ATTORNEY WALCZAK:

5 Q. Anything else that was important about the  
6 execution of the survey before we get to the  
7 questionnaire?

8 A. One of the things that we wanted to ensure was  
9 not only that the sample randomly generated so that  
10 we could select people, but also that multiple call  
11 backs were done to each number. In my opinion, this  
12 is an error that oftentimes polls that come out  
13 really quickly, political polls come out really  
14 quickly after an announcement or a major event, and  
15 they collect the data in two days, don't do a good  
16 job, and that that a lot of people are busy, and the  
17 first time you call them they may not opt into the

18 survey, so we want to make sure that they don't only  
19 take people who answer on the first call. But we  
20 give, for some of those harder to reach numbers,  
21 multiple calls. And that was insisted on in this  
22 instance. That gave us a few extra field days,  
23 having 11 days of being in the field conducting the  
24 survey. And that really ensures that you have a nice  
25 representative sample, not only of selecting the

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1 numbers but then also getting the respondents, and  
2 that you do get some people who don't answer on the  
3 first or even second call, but on the third call they  
4 take your survey and that makes it much, much more  
5 accurate.

6 Q. Anything else on the execution?

7 A. I don't think so.

8 ATTORNEY WALCZAK:

9 Kelby, if you can put up what we have  
10 as Exhibit Five, which I guess we will mark as  
11 Exhibit 18.

12 JUDGE SIMPSON:

13 You have 16. His CV is 16.

14 ATTORNEY WALCZAK:

15 Sixteen (16) and then 17, I believe,  
16 would be next.

17 JUDGE SIMPSON:

18 I think so.

19 ATTORNEY WALCZAK:

20 we'll mark this as Petitioner's Exhibit

21 17.

22 (Petitioner's Exhibit 17 marked for  
23 identification.)

24 ATTORNEY WALCZAK:

25 It's appendix B, scroll up one page,  
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1 please.

2 BY ATTORNEY WALCZAK:

3 Q. I'll show you what's been marked as Petitioner's  
4 Exhibit 17. Does this look familiar?

5 A. Yes, it does.

6 Q. And is this something that you designed?

7 A. Yes. This is what we would call the survey  
8 instrument. This is the set of questions that were  
9 read to the Respondents in Pennsylvania.

10 Q. And this is something that you and a colleague  
11 put together?

12 A. Yes, myself and Professor Gabriel Sanchez at the  
13 University of Mexico put this questionnaire together,  
14 wrote the question.

15 Q. And you mentioned Professor Sanchez, why don't  
16 you just very quickly tell us who Professor Sanchez  
17 is?

18 A. He's an associate professor at the Political  
19 Science and tenure at the University of New Mexico.  
20 And he and I have collaborated in an academic  
21 capacity on studies of voter identification that we  
22 published on this topic. And we have shared data and  
23 research on this. He was also a co-investigator on

24 the wisconsin study that we mentioned earlier, and as  
25 such he served as a co-investigator because we were

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1 using a lot of our shared knowledge, so it's  
2 customary to continue with the collaboration.

3 Q. what I would like to do is go though this,  
4 certainly not word by word, but explain how this  
5 instrument works. And precisely why you asked the  
6 question that you asked, so let's start on this first  
7 page and maybe we can make that a little smaller.  
8 Tell us a little bit --- kind of walk us through how  
9 this survey instrument works.

10 A. So the first stage what we commonly refer to as  
11 the screening questions. Here's where we're  
12 assessing the eligibility of the participants to be,  
13 included in the study, so here you can see that we're  
14 asking people questions to ensure that they are  
15 eligible, meaning that they are over the age of 18 or  
16 rather that is 18 or over, currently a U.S. citizen  
17 and have lived in Pennsylvania. We then ask them  
18 other sorts of questions such as whether or not  
19 they're registered to vote, and interest in providing  
20 estimates about registered voters and also assessing  
21 --- asking about their race and ethnicity just to be  
22 sure that we have a representative sample of  
23 Pennsylvania. So these are just the front matter  
24 that people would get when the survey starts.

25 Q. So this is kind of just you're screening for

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1 eligibility?

2 A. Yeah. We want to be sure that the people we're  
3 talking to are actually eligible voters.

4 Q. Now, just curious on the right-hand side of the  
5 page after each question there seems to be some kind  
6 of codes and numbers. Can you tell us what that is?

7 A. Yeah. What we have here is the full instrument  
8 that we delivered to the Pacific Market Research.  
9 This has not only the question that would have been  
10 read, but how they would have programmed in the  
11 answer choices. This has not only the questions that  
12 would have been read, but how they would have  
13 programmed the answer choices as well as any notes  
14 and graphics that you see there on S-4 where it says  
15 allow multiple response. Those area things,  
16 obviously, that aren't read out aloud, but are  
17 programming notes for the survey for the  
18 interviewers.

19 So when they're speaking to someone and they say  
20 yes, they're registered to vote, that has a number  
21 one by it, which would indicate when the survey  
22 taker clicks yes, or it hits yes, then a one would  
23 show up in the data set. So the data set that are  
24 delivered back to the researchers are just a set of  
25 numbers, one, two, three, four, which is the answer

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1 that each respondent gave to every question.

2 Q. And so that allows --- sort of makes it easier  
3 to do the statistical analysis?

4 A. Yes, that's correct. So instead of actually  
5 having the word yes in there and transferring that to  
6 a number later, we have that --- a one in this case  
7 would stand for yes.

8 Q. Now, when you look at the top and below S-1,  
9 below the bold text, it says, hello, my name is  
10 blank. So is this actually what the survey people  
11 are saying?

12 A. Yes. This is what the interviewers would be  
13 reading the script to the respondents that they call.  
14 And they would just go straight off the script. It  
15 would come up right on their computer screen. And as  
16 they enter a result to an answer, it would take them  
17 to the next question.

18 Q. And is it possible that sometimes you answer a  
19 question a certain way and then you don't have to ask  
20 other questions?

21 A. Yes, that's correct. And so depending on the  
22 answer that someone gives, they might skip over  
23 another question. They might come back to it later,  
24 depending on the answers, but all of that, sort of  
25 the question logic is all part of what is programmed

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1 in there by the programmer.

2 Q. So it's not up to individual interviewer to know  
3 if they answer yes to four, I have to go to six; if  
4 they answer no to four I have to go to five?



5 A. That's correct. It used to be that way in the  
6 past where sometimes you would just have a hard copy  
7 on your desk and you would be reading it, but as the  
8 programming software for surveys became more  
9 sophisticated, it's made it so much easier for the  
10 interviewers to administer the survey more  
11 accurately, and allows researchers to come up with  
12 questions that require skips and logic and to ensure  
13 that those would be implemented correctly.

14 Q. Anything else important about the first page?

15 A. No, I don't think so.

16 Q. Let's go the second page. Now, this says at the  
17 top, it says main questionnaire. Tell us about this  
18 page?

19 A. So after we finish the screen questions to  
20 determine the eligibility we then move on to the main  
21 questions, the general focus of the survey. We,  
22 again, differentiate those from the end of the survey  
23 demographics, where we completed the main, topical  
24 questions that we ask people about their  
25 characteristics and traits. So here are the main

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1 questionnaires. We start off asking people --- you  
2 can see there's this if. It has if S-3 equals one,  
3 that's an example that you gave earlier. So only  
4 registered voters would get this question about when  
5 they had voted, they wanted to look at whether they  
6 were polling place or absentee voters, so that we and  
7 can determine if those who are voting in the polling

8 place were experiencing higher level of rates. Those  
9 are the ones ---.

10 Q. When you say, I'm sorry, experiencing higher or  
11 lower rates, that would be a possession of the ---?

12 A. A possession of valid voter ID. Correct. And  
13 then we come into a couple questions here item number  
14 two and three related to public knowledge. As I  
15 indicated at the start that was one of the areas that  
16 we want wanted to probe and determine. So we ask  
17 people what their knowledge of the current voter ID  
18 law was, and what their self-assessment of their own  
19 compliance with that law given their --- what they  
20 know about what ID they have?

21 Q. What do you mean by their self-assessment, what  
22 are you looking for there?

23 A. We can see there in question three you say if a  
24 poll worker did happen to ask you to show a valid  
25 photo ID in order to vote, as far as you know, do you

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1 currently possess a valid photo ID.

2 Q. So you're asking them that?

3 A. Yeah. We wanted to know if they think that  
4 they're probably complying with the law when they go  
5 and attempt to vote. And so that was an important  
6 question for us to determine whether or not the  
7 public here felt that whatever documents they  
8 currently possesses were the ones that they would  
9 need.

10 Q. So ultimately, you would be able to look and see

11 if how many of those folks are mistaken?

12 A. That's correct. And so we then, for the rest of  
13 the survey ---. In fact, starting on the very next  
14 question, question four, we then go through a series  
15 of questions where we ask people what sorts of  
16 identification they have, the characteristics of that  
17 identification, and then we create an assessment  
18 based on the factual answers they've given us as to  
19 whether or not they do or don't meet the current  
20 standards, and then that allows us to compare that to  
21 what people told us up on top. And this question  
22 three, to see how many people said yes, I do, but  
23 then based on the answers they gave us to specific  
24 questions, we assess it. No, in fact, they don't.

25 Q. So how did you construct the next set of

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1 questions when you're asking what kinds of ID people  
2 have?

3 A. When you see there starting in question four and  
4 I believe it continues through question nine, this is  
5 a section of the survey we're asking people about,  
6 the different types of identification they have. We  
7 reviewed the current voter ID statute as well as the  
8 frequently asked questions that the Department of  
9 State has put out explaining what exact types of  
10 identification you need, as well as explaining what  
11 exact types of underlying documents you need. So we  
12 attempted to rely exactly on what the voters would be  
13 relying on in getting that information to see if they

14 comply or not, and then we constructed questions  
15 based on the current law?

16 Q. And this is pretty important. So let's look at  
17 --- so what kinds of IDs were you asking about and  
18 how did you structure those questions here?

19 A. Sure. So the first one, question four we asked  
20 people whether or not they have a current  
21 Pennsylvania driver's license. If they say yes, you  
22 can see there that that causes them to get a  
23 follow-up question, question five where we ask them  
24 to take their driver's license out to look at it and  
25 to verify what the expiration date is on the driver's

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1 license and to determine whether or not it would be  
2 considered valid, and that would be what was already  
3 current, or if it had expired, the expiration date  
4 back on November 6, 2011. If they didn't remember,  
5 and if they didn't have it in their possession, we  
6 asked them if they knew that it was within the last  
7 four years or not, giving them a date frame, given  
8 them how long it takes an ID to expire.

9 Q. So why did you ask them if it was expired after  
10 November 6th, 2011?

11 A. Well, under the statute, an ID can still be  
12 considered valid and used as up-to-date if it has  
13 expired within the last year of the election. So in  
14 this case, it would have been November 6th, 2011.

15 Q. So you're taking into account exactly what the  
16 statute says?

17 A. Yeah, absolutely. Throughout the entire survey  
18 we attempted to take into account as best we can,  
19 what the exact statute says and to specifically ask  
20 people whether or not their ID complies.

21 Q. Let's go to the next page, and if you mind  
22 continuing there?

23 A. Sure. So if they did not have a Pennsylvania  
24 driver's license that was currently up-to-date or  
25 that would be valid since November 6th, 2011, they

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1 then got this question, as you can see here, where  
2 you say, okay, instead of at driver's license, do you  
3 happen to have any other of the following forms of  
4 identification. Just tell me yes or no. And then  
5 you can see if there's a note there to the  
6 interviewer, which they programmed into the survey.  
7 When they read the list --- and they read the list,  
8 these three additional types of identification in  
9 Pennsylvania; non-driver photo ID card was issued by  
10 PennDOT, U.S. passport, or a U.S. military ID card  
11 with some examples given there. And if they had any  
12 of these, then they got a very similar follow-up  
13 question asking them about the expiration date and  
14 whether or not it was currently up-to-date?

15 Q. Okay. Now, if people have any of the four IDs  
16 you covered thus far, do you stop on asking about  
17 other IDs?

18 A. No, not Necessarily. We wanted to find out not  
19 only did they have --- was it current, so the

20 follow-up question about whether or not it is current  
21 is very important. And then if they said ---  
22 regardless of what they said, they still got another  
23 question later asking about their name. One of the  
24 people who didn't have any of these four IDs, we then  
25 ask them another series of questions, which I believe

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1 is question eight.

2 Q. Go to the next page.

3 A. Where we say all right, instead of those types  
4 of identification, do you happen to have one of these  
5 other forms of identification with your photo. And  
6 here we have another list of five additional types of  
7 identification that they could have that you could  
8 see there. And if they had any of those five, they  
9 again, got the follow-up questions, asking them in  
10 this case. If there was an expiration date printed  
11 on it. And if there was an expiration date printed  
12 on it, if it was currently up-to-date.

13 Q. Now, on these did you do the one year sort of  
14 lag that you have on the PennDOT IDs or ---?

15 A. No, our understanding was that that only applied  
16 to the non-driver ID and the Pennsylvania driver's  
17 license, but on these that they had to have an ID ---  
18 an expiration date printed, I know the expiration  
19 date needed to either be current or say indefinite.  
20 So we structure our questions in such a way to ensure  
21 that people have IDs that were non-expired.

22 And then I'll mention two other things, you can

23 see in 8-B and 8-C, if the only form of  
24 identification that the respondent had was an  
25 official photo ID from a Pennsylvania long-term

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1 nursing facility, assisted living residence or  
2 personal care home, we ask them for the specific  
3 name of that, that way it can be checked to see if  
4 that specific facility is in compliance, or  
5 otherwise, that the only form of ID they had was an  
6 unexpired photo ID from an accredited college or  
7 university, we asked them for the name so that we  
8 can check and determine whether or not that  
9 university is on the list of ones that were  
10 compliant with the law.

11 Q. So that covers all of the IDs allowed under the  
12 new law?

13 A. That's correct. At the time the survey was  
14 fielded and based on our review of the statute and  
15 the frequently asked questions, listing what types of  
16 identification. These are the specific ones that  
17 were allowed and used for the specific regulations in  
18 terms of the expiration dates.

19 Q. Let's go to the next set of questions, which I  
20 believe deal with name. Tell us about these.

21 A. That's correct. So the final question in this  
22 group of questions about assessing whether or not  
23 someone currently possesses a valid photo ID, there's  
24 a question about whether or not their name matched.  
25 I believe that the statute uses the language

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1 substantially conform. And in this question, for  
2 people who have an ID that was not expired we made it  
3 through all the various questions, and they were a  
4 yes, that they had one of these IDs that were was not  
5 expired. Then they got this question, where we ask  
6 people whether or not the name that was printed on  
7 their ID was their full, legal name exactly as it  
8 would appear on the Pennsylvania voter registration  
9 numbers or if there was a difference. And so this  
10 was an opportunity for respondents whose name had  
11 changed, if they had been married, and all sorts of  
12 other reasons could support report that the ID --- that  
13 the name printed on their official photo ID was or  
14 was not a match to the name that would be listed in  
15 the voter registration records.

16 Q. Let me ask you this, because the statute says  
17 the name has to substantially conform. Why didn't  
18 you ask people if their name substantially conformed  
19 to the voter registration?

20 A. Well, I think in my opinion that's a fairly  
21 fuzzy term. I think that's one that the average  
22 person is not going to know what that means, and it's  
23 one that requires a bit of subjectivity. You and I  
24 ourselves could look at names and disagree whether or  
25 not we think that a name substantially conforms or

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1 not. And I think that it is potentially one of the  
2 concerns in this case, is that it's not clear cut.  
3 So we attempted to provide data here on what people  
4 are telling us themselves as to whether or not they  
5 feel that their name matches or not. And this  
6 captures the percentage of people who say no, their  
7 name doesn't match, that it is not the same as on  
8 their official photo ID as it is on the voter  
9 registration records. And if the name doesn't match,  
10 then it is up to the original poll worker, or whoever  
11 is deciding that that day on whether or not that's a  
12 substantial conform or not, and so because of that,  
13 we wanted to provide the data on a number of people  
14 who are potentially at risk in this case.

15 Q. And so I guess, is it fair to say that  
16 empirically it would be difficult to measure whether  
17 the name substantially conformed, just because that's  
18 an insufficiently precise term?

19 A. Oh, certainly. I mean, it would be very, very  
20 difficult, because there's not an exact definition of  
21 what that would be. It appears to be on a  
22 case-by-case basis, which could, in fact, inject more  
23 concern in there if some poll workers are stricter,  
24 on what substantially conforms means to them and  
25 other poll workers are more lax. You could see that

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1 in different precincts and in different parts of the  
2 state that is implemented different. And because of

3 that, we wanted to provide an estimate on the total  
4 number of people who tell us that their name does not  
5 match. Anybody whose name matches should be at no  
6 risk at all for having this substantially conformed.  
7 They're telling us, yes, my name is the same. Anyone  
8 whose name doesn't match, through their voluntary  
9 management would be at some level of risk, them being  
10 excluded for not being able to participate.

11 Q. So for instance, if you had Richard on one or  
12 Dick on another, which is a common nickname, what  
13 happens there?

14 A. Well, as you can see in the question, we're  
15 relying on the respondent to tell us whether or not  
16 they believe that it's their full legal name or not.  
17 And in the cases where there's an extremely minor  
18 difference, I would imagine that the respondent would  
19 tell us that it is their name. But in cases where  
20 someone goes by their nickname, which is what we  
21 referenced or if they change their name after they  
22 got married, to give a couple of examples of the  
23 types of names that may not match. The respondent is  
24 likely to have said no, my name doesn't match, it's  
25 not my full legal name. And that would be up to

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1 determination of the individual poll worker who's  
2 checking the names to determine whether or not that  
3 any particular voter substantially conforms or not.

4 Q. Are you aware of any standards of guide poll  
5 workers about what substantially conforms and

6 doesn't?

7 A. I am not aware of any standards, and at the time  
8 that we constructed this specific question, we  
9 intended to look to see if we could slightly change  
10 the wording of a question in one way or another to  
11 some sort of specific objective measure. We were  
12 unable to find any.

13 Q. Let's turn to the next page. Now, this appears  
14 to be a new phase of the questionnaire. Can you tell  
15 us about this?

16 A. Yeah, here in the next set of questions, 10  
17 through 16, I believe. We're now turning to and  
18 examine the rates of possession of the underlying  
19 documents that people may have, that they would need  
20 in order to obtain a PennDOT ID in the first place.  
21 And so in addition to examining whether or not they  
22 currently possess a valid photo ID, we also wanted to  
23 assess the degree too which people have these  
24 underlying document that would be necessary to go and  
25 obtain. So again, reviewing the guidelines and the

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1 frequently asked questions that the state provides  
2 and what you need and what types of ID and documents  
3 are valid to get that ID, we've structured some  
4 questions here to try ---.

5 Q. And were the documents you were asking about the  
6 ones you found listed on the PennDOT website?

7 A. Yes, that's correct.

8 Q. And so just take us through this. I don't think

9 we have to focus in quite the detail here, but just  
10 quickly take us through these questions.

11 A. Sure. Essentially we're looking at three  
12 different categories of underlying documents. The  
13 first is documentary proof of citizenship, the second  
14 is proof of identity, and the third is proof of  
15 address. And we need to ensure that any eligible  
16 voter has all three of those in order for them to  
17 obtain a valid photo ID. So we start out by asking  
18 about birth certificate or naturalization  
19 certificate, passport. Other things that prove your  
20 citizenship, whether or not they have those or not.  
21 Respondents were born in Puerto Rico, which there's a  
22 fairly large Puerto Rican population. And  
23 Pennsylvania has one of the highest percentages of  
24 Puerto Ricans in the Hispanic population in the  
25 United States.

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1 we ask the follow-up question as to whether or  
2 not the birth certificate they have was issued after  
3 July 1, 2010, which is when the Commonwealth of  
4 Puerto Rico changed their laws on what was accepted  
5 and not accepted as a valid birth certificate. If  
6 they were born in any other U.S. states,  
7 territories, we ask them if they currently have an  
8 official copy of their birth certificate, not  
9 photocopy they would be able to have --- to  
10 determine whether or not they would be able to meet  
11 that first burden of citizenship.

12 Q. If you slow down a bit.  
13 A. And if they didn't have those, we'd also ask if  
14 they had a passport, which would be --- could be used  
15 to establish citizenship. After that we asked them  
16 specifically if they had their Social Security card,  
17 and if they had their actual Social Security card,  
18 not another photocopy, because that would be needed  
19 to establish proof of identity, that was the only  
20 document that you could have. For that there wasn't  
21 any substitutes. And then finally we concluded with  
22 question 16, where we asked them whether or not they  
23 had proof of address. In order to get proof of  
24 address, they would need to have two documents  
25 with their current address, and there was a specific

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1 set of the types of documents that they could have  
2 that didn't have a letter from their aunt or  
3 something like that. They had to have some sort of  
4 official mail that had their name and address on it  
5 to show that that is where they lived.  
6 Q. Where did you get that list from?  
7 A. We got this list from our review of the official  
8 state guidelines and types of documents that would  
9 qualify. And so we asked him about these six  
10 additional types of documents. We recorded yes/no  
11 for each of them. And anyone who did not have two  
12 --- so if you had zero or one of these documents ---  
13 we then ask you a follow-up question where we ask  
14 that someone that they live with does have these two

15 documents and has a valid photo ID who could go with  
16 them and provide their proof of address, which the  
17 law allows. And so from that series of questions  
18 we're able to establish what percentage of that  
19 population does not have proof of address.

20 Q. Okay. All right, then. The next section down  
21 is ---?

22 A. We have one final question you should see before  
23 the demographics, where we ask people who are  
24 currently registered to vote whether or not they  
25 actually voted in the 2008 election. And again, that

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1 was there to allow us to establish the actual voters.  
2 And here we're referring to the --- whether or not  
3 they voted in the 2008 election in Pennsylvania so  
4 that we can be sure we're talking about Pennsylvania  
5 voters and not someone who perhaps lived in another  
6 state and moved, so I wanted to be very clear on  
7 that.

8 Q. Okay. Demographics?

9 A. Then to conclude the survey we asked a set of  
10 very standard demographic questions, so that we can  
11 help do two things here. One is to help assess the  
12 reliability and representative nature of the survey.  
13 We want to ask these questions so we can determine  
14 that we have the correct proportion of people of  
15 different regions of the state, different educational  
16 backgrounds, different income brackets, and this  
17 helps us assess and show that the survey is very,

18 very reliable. And where there are any differences,  
19 we can, compare those to the official Census  
20 estimates and put post stratification, which means  
21 you're putting them on after the fact, to correct for  
22 any possible difference. And that's a very important  
23 step that you need to do. And if you didn't ask  
24 these demographic questions, you would not be able to  
25 assess that reliability and correct for any issues

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1 that we needed to correct.

2 Q. Okay. Here's what I want to do then. Let's go  
3 through these demographic ---

4 A. Sure.

5 Q. --- questions and then I want to come back to  
6 this concept of post stratification.

7 A. Okay.

8 Q. So walk us through the demographic questions.

9 A. So some of the demographic questions we've asked  
10 earlier in the survey because we needed to.

11 Questions about race or ethnicity we ask at the very  
12 front. The question about place and birth we had

13 asked just before. Had questioned about birth

14 certificates, but the remainder of them are here. We

15 asked how long you lived in Pennsylvania and how long

16 you've lived at your current address. For anyone who

17 was not born in the United States we asked them what

18 year they became a citizen. This helps us get some

19 parameters on the mobility and the newness of the

20 population to ensure that it's reflected on what the

21 Census shows. We then want to ask them a question  
22 about what their highest level of education that they  
23 completed, year of birth, whether or not they're a  
24 homeowner or renter or living with someone so that we  
25 can establish their residential patterns.

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1 We then asked two questions, here on D-6 and  
2 D-6B. We asked them whether or not they have access  
3 --- regular access to a car. This, I would say, is  
4 probably not a demographic question that goes in  
5 every survey that we conduct. Although it is a  
6 question that the U.S. Census also does ask because  
7 it's an important thing for them to keep track in  
8 terms of transportation, public transportation, and  
9 so we use a version of that question where we ask  
10 whether or not they had access to a car. If they  
11 don't have access to a car in their household, we  
12 ask whether or not they have other form of reliable  
13 transportation, mass transit by train, and then we  
14 go back and ask them questions. Questions about  
15 their party's affiliation and questions about their  
16 income, I believe are on the last page. Yes.

17 And then finally the interviewer reports the  
18 gender of the person they've been speaking with.  
19 And then finally they conclude, just to make sure  
20 we're speaking with Pennsylvania residents and we  
21 don't have somebody who has a cellphone that is out  
22 of state or a number that has been misdialed, to  
23 just confirm that they are, in fact, a resident of



24 Pennsylvania by giving us their ZIP code or to  
25 confirm that again. And again, this just helps us

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1 to be 100 percent certain that we are talking to  
2 eligible residents of Pennsylvania.

3 Q. And do you know whether, in fact, when you did  
4 this validation that you found people who told you  
5 they were in Pennsylvania who, in fact, were not?

6 A. Yeah. So we have that screening question in the  
7 very beginning where we say are you currently a  
8 resident of Pennsylvania for more than 30 days, et  
9 cetera. And there could be people who think of  
10 themselves as Pennsylvania residents, but then  
11 afterwards when we remind them again, are you  
12 currently a resident, do you live in Pennsylvania,  
13 and they say, no, and I believe that there may have  
14 been two or three or four. A very small number, but  
15 it's important for us to ask that question, because  
16 then we would have excluded them from the analysis.  
17 So it gives two opportunities to be sure that we're  
18 talking about the correct population.

19 Q. All right. Let's come back to this concept of  
20 stratification, because there's a reason I went into  
21 law. So explain to us --- or after you get these  
22 surveys back and you have --- I guess you have  
23 numbers --- you have certain numbers for each of the  
24 answers?

25 A. Correct.

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1 Q. There is something that you do with that.  
2 Explain for us what it is that you do with those  
3 numbers then.  
4 A. Sure. So when we design the survey at the  
5 outset as we said, we want to make sure that we're  
6 giving everyone in the state an equal opportunity to  
7 participate. That doesn't mean that when you  
8 implement the survey that everyone is capable to  
9 respond at the exact same rate. And in particular,  
10 almost any survey that is conducted in any location  
11 or among any group, we'll tend to get two demographic  
12 subgroups which are not represented at the exact  
13 correct portion. The first is gender that women are  
14 slightly more likely than men to agree to take a  
15 survey. And the second is age, that older  
16 respondents are more likely to take a survey than  
17 younger respondents. And so instead of just taking  
18 the results of the survey and just saying that these  
19 are the real results, what we do, which is consistent  
20 with all surveys that are conducted scientifically is  
21 we say let's correct for any skews that might be  
22 there by weighing the results of it.

23 And so if 56 percent of your respondents are  
24 women, and according to the Census they make up 51  
25 percent of all citizen adults in the state, we would

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1 weight that 56 so that it became 51. And so that

2 men instead of being 44 would be 49. So that when  
3 you tabulate the results, it's based on the correct  
4 and true characteristics of the state population.  
5 Same thing with age, if slightly more older people  
6 take the survey than younger people, we would weight  
7 them so that they were of correct proportions. And  
8 to do that we compared to the U.S. Census Current  
9 Population Survey, most recent data we could get  
10 from the State of Pennsylvania.

11 Q. And is this consistent with the science of  
12 survey methodology?

13 A. Yes. Yes, absolutely. This is quite  
14 consistent. There have been a number of published  
15 usage articles on this topic that demonstrate that  
16 this method of post stratification rates greatly  
17 increases the reliability and helps ensure against  
18 any bias in the survey.

19 Q. And is it a goal to keep that adjustment that's  
20 done to a minimum?

21 A. Yes, that's correct. And so in this case while  
22 other adjustments might be made just to tweak things  
23 by one or two percentage points, outside of age and  
24 gender, if the survey is implemented correctly at the  
25 outset and design, you're typically doing extremely

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1 small adjustments for other things such as income,  
2 education and other sorts of categories to reflect  
3 the nature of the state, and that was the case here.

4 Q. And so the adjustments that you did make were

5 consistent with the science of the survey  
6 methodology?

7 A. Yes, absolutely. And they were relatively  
8 minor, which is a good sign. It means that the  
9 original raw data itself is very accurate.

10 Q. Anything else that you think we should know  
11 about the survey that was done before we actually get  
12 into the results?

13 A. I don't think so. We discussed a little bit  
14 about what the survey, specifically research does.  
15 There's time we want to make sure that we're rotating  
16 answer options and categories when they're direct to  
17 the respondent.

18 Q. Yeah, please ---. Why don't you please explain  
19 that?

20 A. So that they're not always led with the same  
21 questions that could influence the way they give an  
22 answer to another question, you want to ensure that  
23 the questions are rotated within the survey to make  
24 picture that people don't always hear something  
25 first, which would then, perhaps, convince a small,

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1 percentage of people to give a slightly higher or  
2 lower answer somewhere else, and so they done that  
3 throughout the --- and rotated and randomized the  
4 answer choices and other things like that so that  
5 within the survey itself, we're not introducing any  
6 what are called priming effects.

7 ATTORNEY WALCZAK:

8                   Your Honor, we're about to get into the  
9 results, and Your Honor, had talked yesterday  
10 about ---.

11                   JUDGE SIMPSON:

12                   I would rather take a break when he's  
13 finished with Direct, because once he starts --- once  
14 he starts Cross, I don't want to take a break during.  
15 Cross Examination.

16                   ATTORNEY WALCZAK:

17                   I think that the results --- I mean,  
18 we're going to be at least an hour on the results.  
19 There's a lot of data.

20                   JUDGE SIMPSON:

21                   well, is there anything objection to  
22 taking a break now?

23                   ATTORNEY CAWLEY:

24                   Not at all, Your Honor.

25                   JUDGE SIMPSON:

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1                   It's about 10:30. we'll take a break  
2 until 11:00.

3                   BAILIFF:

4                   Commonwealth Court is now in recess.

5 RECESS TAKEN

6                   JUDGE SIMPSON:

7                   You may be seated.

8 BY ATTORNEY WALCZAK:

9 Q. Professor Barreto, just a couple of things  
10 before we get into the tables. I want to follow up

11 on the morning --- from earlier this morning, when  
12 the survey was performed, when were the calls made?

13 A. The calls were made I believe that was page 17  
14 that we were referring to earlier. We made the calls  
15 during 4:00 p.m. to 9:00 p.m. Monday through Friday  
16 and 12:00 p.m. to 8:00 p.m. Saturday and Sunday. So  
17 that we could give as wide a range as possible of  
18 time for interviewers to reach respondents and to  
19 avoid calling during the more general work hours when  
20 lots of people wouldn't be home. So in the evenings  
21 and then throughout the days on weekends.

22 Q. And so does that promote getting an accurate  
23 cross sample of the population?

24 A. Yeah, that's very important in order to give  
25 equal opportunity for everyone to participate in the

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1 study. These are the hours that most people are  
2 available. But for some people who might work in the  
3 evenings then we have the entire day and afternoon on  
4 the weekends from 12:00 to 8:00 in which we can  
5 target people and call them. So we want to make sure  
6 that everyone has an opportunity to participate in  
7 the study.

8 Q. Let me ask you also this, were there participant  
9 in the study whose English was of limited  
10 proficiency?

11 A. Yes, for any respondents whose English was of  
12 limited proficiency, this was particularly the  
13 Hispanic over sample, the survey was available in

14 English or Spanish. And for that particular over  
15 sample the interviewers that were used were bilingual  
16 themselves so they could take the survey in either  
17 language and not have to put the person on hold, et  
18 cetera. So that was available and they be again  
19 helps increase the accuracy and representative nature  
20 of this sample.

21 Q. And are people of limited English proficiency  
22 allowed to vote in this country?

23 A. Yes, absolutely. In lots of counties they are  
24 required by law to print ballot in other languages,  
25 most notably Spanish.

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1 Q. And do you know whether Pennsylvania has any of  
2 those counties?

3 A. I don't know off the top of my head, but I would  
4 guess Philadelphia County.

5 Q. And one other question before we get into the  
6 survey results, I had asked you about who hired the  
7 survey company and your answer had been that we the  
8 lawyers did, and just want to clarify, who selected  
9 the survey company?

10 A. Myself and Professor Sanchez. We selected the  
11 survey company. What I meant is I'm not writing them  
12 any check or anything for that.

13 Q. But the selection of the company was entirely up  
14 to you?

15 A. Absolutely, absolutely. And I have for many  
16 years reviewed --- I have worked with multiple,

17 different survey research firms over the years,  
18 dozens. And as part of that been able to identify  
19 Pacific Market Research as one of the most proficient  
20 in following social science methods. Some survey  
21 research firm, because they're for profit businesses,  
22 sometimes take shortcuts and don't always follow  
23 through on the academic side. This is a regular  
24 complaint. Academics have conferences and exchanging  
25 notes with each other like, don't use these people

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1 they did this. Because for us we don't want whatever  
2 is the cheapest, we want whatever is the most  
3 accurate. So that's the most important thing for us  
4 and Pacific has been very very accurate and I think  
5 that's evident by the other contracts that they have  
6 been selected.

7 Q. Okay. All right. Let's mark your Exhibit A  
8 from your expert report as Plaintiff's Exhibit 18.

9 ATTORNEY WALCZAK:

10 Your Honor, if its easier to follow  
11 along I have a paper copy.

12 JUDGE SIMPSON:

13 I have a paper copy.

14 BY ATTORNEY WALCZAK:

15 Q. I asked you at the outset whether you had an  
16 opinion to a reasonable degree of scientific  
17 certainty about the impact of the voter ID,  
18 Pennsylvania's voter ID law on voters here in  
19 Pennsylvania. Are the results of the survey your



20 professional opinion?

21 A. Yes.

22 ATTORNEY WALCZAK:

23 Rather than preface every question with  
24 that, Your Honor I'd just like to assume that applies  
25 to everything he's going to testify to in terms of

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1 these results.

2 BY ATTORNEY WALCZAK:

3 Q. All right. We are we're going to walk through  
4 not exactly sequentially in in here, but almost, the  
5 results of the survey. So if we could ---.

6 ATTORNEY WALCZAK:

7 Kelby, if you could put that up. No  
8 you can't put that up. There we go.

9 BY ATTORNEY WALCZAK:

10 Q. Let's start with table one. So what is table  
11 one?

12 A. Table one is a summary table that indicates the  
13 percentage as well as the raw number estimate for the  
14 number of residents of Pennsylvania that have or  
15 don't have a valid photo ID. We have broken that out  
16 there by three segments of the population. First,  
17 all eligible voters to be discussed are everyone over  
18 the age of 18 and older who are citizens and  
19 residents of Pennsylvania. Then we have there in the  
20 middle just people who are registered voters. Then  
21 on the end just people who indicated that they voted  
22 in the 2008 election year in Pennsylvania.

23 Q. So what are the percentages and totals, let's  
24 start with eligible voters, who don't have valid  
25 photo ID under the Pennsylvania law.

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1 A. So, on so on the second row there you see we  
2 have a line that says, has a valid photo ID. That  
3 means non-expired with name. And overall we found  
4 85.6 percent of eligible voters have a valid ID,  
5 meaning that 14.4 percent do not have a valid ID.

6 Q. And so let's stay with that column, so explain  
7 the numbers below that.

8 A. Sure. So underneath that we have the estimated  
9 actual number of people who would fit in each of  
10 those categories who have and don't have based on the  
11 total population of citizen adults in Pennsylvania,  
12 that we have indicated there at the top under the row  
13 total population. So the first line we see is the  
14 estimated number and this is simply taking that total  
15 population and multiplying it by 14.4 percent which  
16 we arrive at 1,364,433.

17 Q. So that's the number of eligible voters who  
18 would not have valid ID?

19 A. That's correct. That's our estimate based on  
20 this survey that 1.3 million, essentially, of  
21 eligible voters do not have a valid ID.

22 Q. Now below that you've got lower bound estimate  
23 and upper bound estimate. Explain those?

24 A. Sure. We talked about earlier item issues, such  
25 as the margin of error on a survey. In this

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1 particular case when you have a point estimate of  
2 14.4, it's farther away from that 50/50 equal divide  
3 where there's more uncertainty. So here we have a  
4 bit more certainty over this point estimate, and the  
5 margin of error on this is 1.9 percent. So what  
6 we've done is lowered the estimate by 1.9 percent so  
7 it would be 12.5. And we increased it by 1.9 percent  
8 so that it would be 16.3. And those are the bounds  
9 which we would say we have 95 percent confidence that  
10 the actual answer to the question, what percentage  
11 don't have a valid ID is in there. If we replicated  
12 this survey, we used the same methodology, we would  
13 get an answer that's within that bounds of 12.5 to  
14 16.3. And so we've taken those bounds and provided a  
15 lower bound estimate and an upper bound estimate.  
16 The lower bound estimate that you see there takes the  
17 number of 12.5, I believe and the upper bound  
18 estimate would use the number of 16.3. Again just  
19 multiplying it by the total number of voters.

20 Q. So the lower bound estimate is that there would  
21 be 1.184 million eligible voters without the ID?

22 A. That's correct. That would be the lowest that  
23 we would think the number would be with statistical  
24 reliability.

25 Q. But the upper level is that it could be as many

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1 as 1.54 million?

2 A. Yes, that's correct.

3 Q. Let's go over to the next column which is  
4 registered voters there. Did you find a significant  
5 difference between the rates of possession by the  
6 eligible voters and the registered voters?

7 A. We found that overall, among people who were  
8 registered to vote that 12.8 percent did not have a  
9 valid photo ID. You can see that it is a bit lower  
10 than the 14.4, but it's not statistically different.  
11 Generally we would say that the rates of possession  
12 are somewhat similar to each other. But overall we  
13 estimate that 12.8 percent of registered voters lack  
14 a valid photo ID.

15 Q. And obviously, the overall total population of  
16 registered voter is smaller than the total population  
17 of eligible voters?

18 A. Yes. We indicated based on data from the State  
19 of Pennsylvania that there's approximately 8.2  
20 million registered voters. We use that as the total  
21 population there. Multiply 12.8 times that number,  
22 8.2 million, and we arrive at an overall estimate of  
23 1,055,200 who lack photo ID.

24 Q. Now that's a figure of the voters who were  
25 registered at the time of the poll?

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1 A. Of citizens who were registered at the time of  
2 the survey, correct.

3 Q. And I think you testified earlier, especially,  
4 in presidential election years, there's a lot of new  
5 voters being registered?

6 A. Yeah, that's correct. We would expect that the  
7 total number of registered voters will fluctuate and  
8 increase between now and election day.

9 Q. So that mean some percentage of folks who are in  
10 that eligible voters category, but not already  
11 registered are going to shift over to registered  
12 voters?

13 A. Yes, that's our expectation.

14 Q. Then the third column --- I'm sorry, the  
15 registered voters range applying ---?

16 A. Yes, again we've taken the range there, the  
17 lower and upper bound, the total number of registered  
18 voters in the survey is smaller than the overall  
19 sample size of 1, 285 because some of the people in  
20 the survey were not registered to vote so they have  
21 been excluded. And so the registered voters has a  
22 slightly different margin of error. We would take  
23 the margin of error estimate for each of those  
24 columns; eligible, registered and actual voters and  
25 apply that so we can generate the lower and upper

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1 bound estimate.

2 Q. And what's the range for registered voters?

3 A. The range for registered voters we find that the  
4 lowest reliable estimate that we generate is 890,325  
5 registered voters lack valid ID. And the upper bound

6 is 1,220,076.

7 Q. Okay. Let's look at the third column there  
8 which is 2008 voters. Remind us what that is?

9 A. Those are people who indicated in the survey,  
10 among those who are currently registered that they  
11 actually voted here in Pennsylvania in the 2008  
12 election in November of 2008. And among this group,  
13 people who actually voted, we found that overall 12.6  
14 percent lack a valid photo ID.

15 Q. So the population here is smaller than the other  
16 two categories; correct?

17 A. Correct the total population you see here in row  
18 one is indicative of just the number of voters that  
19 participated in the 2008 election.

20 Q. What's that number?

21 A. 6,010,519.

22 Q. So are you saying that based on this survey that  
23 of the six million or so people who actually voted in  
24 the presidential election that about 750,000 of them  
25 do not have valid ID?

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1 A. That's correct. We arrive at that estimate by  
2 taking the six million multiplying it by 12.6 percent  
3 and arriving at 757,325 people who actually voted in  
4 2008 that after answering our survey questions we  
5 deemed they did not have a valid photo ID.

6 Q. And what's the range you found when you applied  
7 the margin of error?

8 A. The lower bound estimate is 625,094 and the

9 upper bound estimate is 889,557.

10 Q. So those are the numbers applied to the people  
11 who actually voted in 2008?

12 A. That's correct. In all these cases we expect  
13 that the estimate number is the most accurate but  
14 that the true number is definitely in that range, it  
15 is not outside those bounds.

16 Q. So that's somewhere between 625,000 and 889,000  
17 people who voted in the presidential election in 2008  
18 would not have the ID required to show up at the  
19 polls in 2012 or right now?

20 A. Yes, that's correct. These are among people who  
21 voted in the 2008 election and then after answering a  
22 series of questions they do not have an ID which is  
23 non-expired and name conforming.

24 Q. We are going to skip table two and we're going  
25 to come back to that at the end. Let's go down to

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1 tables three and four. Now I believe the rest of  
2 these tables break down the numbers that you just  
3 gave us in different ways; is that right?

4 A. Yes, that's correct. Tables three through six  
5 are looking at those rates of possession of valid ID  
6 and looking at some of the possible reasons why  
7 someone would not.

8 Q. Why don't you take us through, start and take us  
9 through tables three and four, how do those work?

10 A. Sure. So in tables three and four we are  
11 showing somewhat similar data just presented in a

12 slightly different way of answering two different  
13 questions. In table tree we're showing each of the  
14 categories of whether or not someone possesses or  
15 doesn't possess, then the follow-up question of  
16 whether or not it's expired or not and then the other  
17 follow-up question of whether or not the name is  
18 conforming and we are indicating the percentages that  
19 said yes or no at each step so that we can essential  
20 show how we arrived at those calculations of 14.4 and  
21 how did we get there and showing each step along the  
22 way.

23 Q. All right. Let me ask you a question. So when  
24 I look at this --- let's take the eligible voters  
25 column, so I look at that and the question there is

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1 has a driver's license or any other form of photo ID  
2 and says, 98.6 percent have that; is that correct?

3 A. Correct. Correct.

4 Q. So does that mean that the 98.6 percent of the  
5 people have valid photo ID?

6 A. No, not at all. What that indicates is to the  
7 very first sets of questions respondents told us that  
8 98.6 percent of respondents told us that they do have  
9 a photo identification. That would then get them to  
10 the follow-up question of whether or not the  
11 identification that they have is currently  
12 up-to-date, valid and name conforms.

13 Q. So that's kind of self identified, people who  
14 think they have a valid ID?



15 A. Correct. This is the answers that respondents  
16 gave us when we asked them questions such as do you  
17 have a driver's license, do you have a non-driver ID  
18 card, do you have a military ID, et cetera. That  
19 98.6 percent of respondents said they had and 1.4  
20 percent of respondents said they did not have any ID  
21 at all in their possession.

22 Q. So out of all the people you surveyed only 1.4  
23 percent told you that they did not have a valid ID to  
24 vote?

25 A. No. 14.4 percent did not have a valid ID to

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1 vote. 1.4 percent had no photo ID card at all,  
2 whether it was expired, their name was wrong, they  
3 have no ID card in their possession at all.

4 Q. Then there's two rows below that top entry.  
5 Explain those.

6 A. So we wanted to provide break outs here  
7 throughout the process for driver's licenses since  
8 that is a dominant form of identification, that when  
9 people have an identification, a card, that was the  
10 overwhelming answer. And so what we see here on the  
11 very second row is that 88.5 percent of people in  
12 Pennsylvania, eligible voters tell us that they do  
13 have a driver's license. That doesn't mean that it's  
14 not expired, it doesn't mean their name matches. But  
15 that 88.5 percent that respond said they have it,  
16 which indicates that 11.5 percent of the state told  
17 us they do not have a driver's license.

18 Q. And what's the third row there?  
19 A. The third row is the additional percent that  
20 gets you up to that 98.6 and that is that an  
21 additional 10.1 percent of eligible voters do not  
22 have a driver's license but they indicated in the  
23 survey that they did have some other form of  
24 identification such as a non-driver PennDOT ID or  
25 military ID or some other form of identification when

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1 asked the question.

2 Q. So these are people who have some form of the  
3 valid ID under the law without checking whether it's  
4 expired or there's name conforming?

5 A. Yeah, I would say these people have some form of  
6 accepted ID. I would be hesitant these were valid  
7 because the way we used it in our study is that if  
8 its --- if we held a valid ID it that means it's not  
9 expired and name conforming. But these people, 98.6  
10 are the ones that possess some sort of ID card that  
11 could be valid it if was up to date and had a name.

12 Q. So it's one of the categories of accepted IDs,  
13 PennDOT, driver, non driver, military?

14 A. That's correct. That's correct.

15 Q. Let's go to that next set of data there where it  
16 says any has any photo ID which is non expired.  
17 Explain that.

18 A. Sure. So while 98.6 percent of the population  
19 explains to have an ID card we find only 89.9 have a  
20 photo ID card which is not expired. And that

21 indicated that 10.1 percent do not have that, that a  
22 considerable number of people are dropping out of  
23 being valid because whatever ID they do is have not  
24 up to date, is not current.

25 Q. So explain to us the entries below that, which I

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1 think refine that.

2 A. Sure. And so here again we look at three  
3 different categories this time. Those that have a  
4 driver's license, which is non-expired, those who  
5 have a driver's license or non-driver ID card,  
6 PennDOT ID, and those that have some other form, such  
7 as the military ID or school ID are other forms that  
8 are accepted. So what you see on the second row as a  
9 non expired driver's license, you can compare that to  
10 the second row in the top category. So overall 88.5  
11 percent of people in our survey said they have a  
12 driver's license, but only 80.5 percent of people in  
13 our survey have a non expired driver' license and  
14 that indicates that eight percent of people have an  
15 expired driver's license.

16 Q. Now when you say expired are you looking at  
17 whether it's current right now or are you looking  
18 whether its expired for purposes of being able to  
19 vote?

20 A. In all the cases where we're using that word  
21 non-expired as an abbreviation for current for  
22 purposes of voting we indicate that not only in the  
23 report but in table one as a footnote, number four

24 where we say, PennDOT IDs can be expired by up to one  
25 year. And the survey asked respondents that their

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1 PennDOT ID was up to date or had an expiration date  
2 after November 6th, 2011.

3 Q. So whenever you use current PennDOT ID in this,  
4 you actually mean it's expired after November of ---?

5 A. That's correct. That it would be valid for  
6 purposes of voting.

7 Q. So some number of people who have driver's  
8 licenses don't have licenses that are expired after  
9 November of 2011?

10 A. Yes. In fact we found it is a large number of  
11 people. 8.8 percent who indicated that their  
12 driver's license is not currently up to date. And if  
13 you recall we asked people during the survey to  
14 actually take their driver's license or non-driver ID  
15 card out to look at it and verify that so that they  
16 were actually looking at the expiration date while we  
17 were talking to them.

18 Q. And what's the next row there?

19 A. The next row underneath we combined the driver's  
20 license and the non-driver PennDOT ID together  
21 because these are both types of ID cards that are  
22 issued by PennDOT. And there you can see that  
23 overall 89.3 percent of respondents have a  
24 non-expired driver's license or a non-driver ID card,  
25 which means that 10.7 percent do not have one or the

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1 the other. So this combines both driver's license  
2 and non-driver ID.

3 Q. And then what's that third row?

4 A. And the final row indicates the additional  
5 percentage that they don't have any PennDOT ID,  
6 meaning they don't have a driver's license or an ID  
7 card but they have some other form of non-expired  
8 photo ID, such as the military ID, nursing facility  
9 ID, the county employee ID, the other IDs that are  
10 accepted that we asked about. And you can see that  
11 there that it's a small percentage, 0.6 percent but  
12 for those folks that is their only form of ID and  
13 adding these numbers together, 89.3 and. 6 you get  
14 up to the total of 89.9. So these are all,  
15 subcategories to demonstrate what percentage of the  
16 population has or is lacking and for what reason.

17 Q. I want to understand that last row we just  
18 looked at. So those are people who don't have one of  
19 the PennDOT IDs either driver or non driver; correct?

20 A. Correct.

21 Q. So those are the people whose only ID is one of  
22 the other categories?

23 A. That's correct. That we asked about.

24 Q. So that would be one of the other categories  
25 listed in the law?

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1 A. Yes.

2 Q. So that's people who don't have a driver's  
3 license or PennDOT ID but may have nursing home or  
4 a ---?

5 A. Military.

6 Q. Military, student, passport?

7 A. Passport and any other forms. Yes.

8 Q. So that's only .6 percent?

9 A. Correct. So that's why we pulled out the  
10 PennDOT IDs in that line together because they do  
11 represent the bulk of the types of IDs that people  
12 have.

13 Q. All right. Then let's look at this third set of  
14 rows there. What is that?

15 A. The final reason for someone to have or not have  
16 a valid ID is related to name conforming, whether  
17 your name essentially conforms. And we can see there  
18 that when we were originally at --- 89.9 percent had  
19 a non-expired up to date ID that falls down to 85.6  
20 that have, which means that 14.4 percent did not have  
21 a valid driver's license or non-driver ID or any form  
22 of ID in which their name conforms.

23 Q. And again, as you're using valid here this isn't  
24 valid for purposes of driving, this is valid for  
25 purposes of voting?

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1 A. That's correct. That they have a valid photo ID  
2 there in that final category that's non-expired and  
3 name conforming, which would meet the statute.

4 Q. So what are the next two rows there?

5 A. Again here we break it up by driver's licenses,  
6 so you can see how many people sort of fall out each  
7 step of the way and that is that 76.8 percent of the  
8 population that we surveyed has a driver's license  
9 that is valid for the purposes of voting, meaning it  
10 is not expired and that their name conforms. And  
11 then you can see the remainder, another 8.8 percent  
12 has some other form of ID such as a PennDOT  
13 non-driver ID or any other form of accepted ID which  
14 is non-expired and name conforms.

15 Q. So when you take all that, that's how you get to  
16 the 14.4 percent of eligible voters do not have a  
17 valid ID for voting?

18 A. That's correct. And I think if you look at  
19 table four it provides a nice little summary of that  
20 sort of going backwards from the total population to  
21 the percent that lacks.

22 Q. Why don't you go over that?

23 A. So table four, we start with the total  
24 population which would just be a hundred percent of  
25 the people we interview. And then we show what

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1 percent falls out at each step of the process and  
2 these are all numbers that can be also found within  
3 table three somewhere. But you see that the first  
4 is, that has no driver's license or any form of ID  
5 they just don't have, they don't possess at all an ID  
6 card, is 1.4 percent of the population just as we  
7 also reported at the top of table three. Then

8 there's an additional 8.7 percent of the population  
9 in the survey which has an ID but the ID is expired  
10 for purposes of voting. There is then an additional  
11 4.3 percent of eligible voters who has an up-to-date  
12 ID, have a non-expired ID but they told us that their  
13 name does not match. So by adding those three  
14 categories together is how we arrive at the 14.4.  
15 These are the three reasons why someone could  
16 possible not have a valid ID.

17 Q. And obviously we've been looking at the first  
18 column of data there which is eligible voters, is the  
19 methodology the same for the next two columns there?

20 A. Yes, absolutely. These are just subsets of all  
21 registered voters and 2008 voters and we provide for  
22 each of the groups the percentage who falls out with  
23 having a valid ID for each of those three reasons,  
24 But we can arrive at those total estimates of 14.4  
25 for eligible, 12.8 percent for registered voters who

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1 lack and 12.6 percent for 2008 voters who lack.

2 Q. And so just to clarify, look at table four the  
3 last column, that's of the people who voted in  
4 presidential election in 2008, .06 percent do not  
5 have any form of ID?

6 A. That's correct. That of the people who actually  
7 voted .06 percent say they have no driver's license  
8 or any ID card whatsoever, that among those actual  
9 voters in 2008 7.4 percent have an ID card, but it is  
10 expired or not current for purposes of voting. And



11 then 4.6 percent have a non-expired ID, so it's up to  
12 date but their name doesn't match and that gives us  
13 the total of 12.6 percent of 2008 voters who we say  
14 do not have a valid photo ID for purposes of voting.

15 Q. Have you now --- have you replied those  
16 percentages to the population totals?

17 A. Yes, we have. And that is summarized in the  
18 next set of tables, table five and table six where we  
19 did the same thing starting with the total population  
20 numbers and then multiplying these percentages to  
21 get ---.

22 Q. So when we're looking at the total numbers of  
23 people, for instance, who have some form of ID other  
24 than PennDOT that's valid, how many people are we  
25 talking about?

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1 A. So in the middle section is where we group  
2 together all of those PennDOT folks and the very last  
3 line says, does not have a PennDOT ID but has some  
4 other form of non-expired photo ID. And there we  
5 estimate that it would be about in the total  
6 population of eligible voters 56,852 as compared to  
7 the number above that, 8.4 million is the number that  
8 have a valid PennDOT ID?

9 Q. Can you tell us from that what the predominant  
10 form of ID is in Pennsylvania?

11 A. Yeah, the dominant form ahead of that higher is  
12 the non-expired driver's license which is 7.6  
13 million. The next would be the non-driver ID card

14 which would be about 840,000 or so. And so the  
15 PennDOT ID does appear to be the one that the  
16 overwhelming majority of people who have an ID that's  
17 what they have.

18 Q. Let's go down to table six and look at those  
19 numbers. So how many people have no form of ID at  
20 all?

21 A. Among the eligible population we estimate that  
22 132,652 people have no ID whatsoever, they don't have  
23 an ID card at all and that is 90,681 registered  
24 voters and 36,063 people who actually voted in 2008.

25 Q. So, again, that's of the voters from 2008,

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1 36,000 of them don't have any ---.

2 A. They have they have no ID card whatsoever.

3 Q. So then going down that --- those numbers show  
4 how many people have the different kinds of IDs or  
5 don't have the different kinds of IDs?

6 A. Right they show the number of people that would  
7 be eliminated as voters for each of these three  
8 reasons. So those numbers we just reviewed are the  
9 people who just have no ID whatsoever. The middle  
10 category there indicates these are the number of  
11 people who have ID, but that ID is expired for  
12 purposes of voting. There you can see that among  
13 eligible voters we estimate that is 824,446 people  
14 who have an expired ID. And then the third category  
15 under that is ---.

16 Q. Wait, let me stop you for a second. So what

17 you're looking at there is just whether it's an  
18 approved form of ID and it's non-expired?

19 A. That's correct.

20 Q. That does not take into account whether there's  
21 name conformance or not?

22 A. That's correct. We've broken these out as three  
23 separate areas. So that middle area means the only  
24 thing we checked at that point is if they have an ID  
25 and that the ID is up-to-date for purposes of voting.

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1 Q. So if I'm reading this right, the number of  
2 registered voters who do not have a non-expired  
3 acceptable ID is 626,000?

4 A. And you would also add in the 90,000 above who  
5 have no ID whatsoever. So 90,000 registered voters  
6 have no ID card at all. 626,000 registered voters  
7 have an ID card in their possession which is expired.  
8 So if we stop there that would be roughly 716,000  
9 registered voters who do not have a valid ID in their  
10 possession that is currently up-to-date.

11 Q. So that's the number without even considering  
12 name conformance?

13 A. Yes,. That's correct. And that's also found  
14 just ahead in table five, in the middle column you  
15 see 717,207, it says don't have, in that middle area  
16 has any photo ID which is non-expired 717,207  
17 register voters do not have any photo ID which is  
18 non-expired

19 Q. And then looking at 2008 voters, it's almost

20 half a million people who voted in 2008 do not have a  
21 non-expired photo ID?

22 A. That's correct. You would add the 36,000 who  
23 have no ID whatsoever to the 444,000 who have an ID  
24 but their ID is expired and you would get about  
25 480,000 voters in 2008 who do not have an ID which is

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1 current for purposes of voting.

2 Q. Okay. So now let's go back to table six and go  
3 down to the next line which is name nonconforming?

4 A. Yes. So we estimated that in table four that  
5 approximately 4.3 percent of all eligible voters have  
6 an ID but an ID in which the name doesn't conform.  
7 So that 4.3 percent represents among eligible voters  
8 407,435 people and we would add that to the above  
9 categories to arrive at our total number that we  
10 estimate do not have a valid photo ID for purposes of  
11 voting, which among the eligible population is again  
12 1,364,433.

13 Q. And then in the third column there for 2008  
14 voters it's about a little over three quarters of a  
15 million that do not have ID to vote?

16 A. That's correct. We estimate that 757,325 people  
17 who voted in the 2008 election do not possess a valid  
18 ID that would be valid in the current statute.

19 Q. I want to come back to the name conforming. We  
20 had a discussion about the way you could measure that  
21 and some of the difficulties that you had?

22 A. Uh-huh (yes).

23 Q. So is it possible that some of the folks who  
24 said they don't match could in fact be allowed to  
25 vote?

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1 A. The way we constructed the question was to  
2 assess the total number of people who don't match and  
3 the reason we constructed the question in that way  
4 was because as a starting point anyone who matches  
5 their name should have no problem at all showing that  
6 their name substantially conforms. Anyone who finds  
7 themselves in a position in which their name does not  
8 match for whatever the reason is would be subject to  
9 some extra scrutiny to ensure that it would, quote,  
10 substantial conform. So it's possible that some  
11 people in the substantially conformed area that we  
12 identified that the mismatch is minor and that the  
13 poll worker will allow them to vote. We don't know  
14 that. That decision --- my understanding of the law  
15 would be that that decision would be up to the poll  
16 worker to decide for themselves whether or not it  
17 substantially conforms. And that a number of people  
18 who indicate their name doesn't match, especially  
19 those for reasons of marriage who change their last  
20 name, would not have a substantially conforming name  
21 and would be prevented from voting.

22 Q. So some percentage of the folks in the non name  
23 conforming, they may be able to vote and some won't  
24 and you just can't measure that?

25 A. It would be at the discretion of the poll worker

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1 would be my understanding. It could be that all  
2 407,435 would not be allowed to vote or it could be  
3 that some of those could convince the poll worker  
4 that their name does substantially conform.

5 Q. So those are people that are at risk?

6 A. Absolutely. They've indicated to us on the  
7 survey that their name does not match on their  
8 official photo ID and what the voter registration  
9 would indicate.

10 Q. Now, there is some uncertainty in how big that  
11 number is because of the ambiguity and the term  
12 substantially conform?

13 A. Yes, I would agree with that.

14 Q. So even if you take that number out, how many  
15 people do not have an ID that is valid because it's  
16 expired?

17 A. Well in the entire eligible voting population,  
18 we count the 956,998 who do not not have an ID that  
19 is currently up to date for purposes of voting. That  
20 adds together the second and third rows there in  
21 table six. And again that arrives you at 956,000.

22 Q. And what's the number for registered voters?

23 A. For registered voters it's 717,207 who do not  
24 have an ID which is currently up to date for purposes  
25 of voting. And for 2008 voters, people who actually

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1 voted in 2008, there are 480,842 who do not have an  
2 ID which is currently up to date.

3 Q. And then the number will be somewhere north of  
4 there or higher than that depending on what  
5 percentage of the non name match are not allowed to  
6 vote?

7 A. Yeah. Absolutely there's no question in my mind  
8 that the number will be higher than that because some  
9 of these people who indicated that their name doesn't  
10 match are going to have a problem proving that their  
11 name substantially conforms. So those people we know  
12 their name doesn't match. They're going to  
13 potentially be at the polling place and have to try  
14 to prove that their name matches. If it doesn't  
15 substantially conform in the mind of the poll worker,  
16 according to the law they would not be able to vote.

17 Q. All right. Let's go to the next set of tables,  
18 tables seven and eight. What are you measuring here?

19 A. On tables seven and eight we are measuring the  
20 rates of possession or lack of possession of the  
21 underlying documents that are necessary in order to  
22 obtain a PennDOT ID. As I indicated before there are  
23 three primary types of documents that someone would  
24 need to provide, the first is documentary proof of  
25 citizenship, the second is a Social Security card and

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1 the third is proof of address.

2 Q. So explain --- so that's the first three rows in

3 table seven. And then what are the fourth and fifth  
4 rows?

5 A. Sure. So after taking what people told us to  
6 those questions we then created a category here that  
7 says whether you have all three required documents  
8 needed to obtain a valid ID or whether you lack one  
9 or more. So in the first row, we see that 81.8  
10 percent of eligible voters in Pennsylvania have all  
11 three required documents. That means that 18.2  
12 percent do not have all three, meaning they lack at  
13 least. They may have two of them, they may only have  
14 one of them, or they may have none, but they do not  
15 have all three. So we identify 18.2 percent as not  
16 having those underlying documents. And the final row  
17 there takes into account what people told us on the  
18 previous tables of whether or not they had a valid  
19 photo ID and we attempted to isolate the number of  
20 people who lack both a valid photo ID and they also  
21 do not have the three documents necessary to obtain  
22 those. And there we estimate that overall the entire  
23 state that there's four percent of the eligible  
24 population who neither has a valid photo ID nor do  
25 they have the underlying documents that they would

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1 need to be obtain a valid photo ID.

2 Q. So if we go over to the subsequent columns under  
3 registered voters, you're saying it was 3.4 percent  
4 of registered voters have neither the ID nor the  
5 documents to get the ID?



6 Q. That's correct. The calculations are exactly  
7 the same so it's 3.4 percent of those currently  
8 registered and 2.9 percent of those who voted in  
9 2008?

10 Q. Now is table eight applying those percentages to  
11 the number of voters?

12 A. Yes, that's correct. Table eight is similar to  
13 the tables we just reviewed which contains the raw  
14 number estimates to show how many people do or do not  
15 have these different types of documents that they  
16 would need to obtain a valid photo ID.

17 Q. So as far as eligible voters the number of  
18 eligible voters who don't have valid photo ID and the  
19 three required documents is what?

20 A. The number of people who lack the documents and  
21 also lack a valid ID is 379,009, which you can see  
22 there at the very become column. The number just  
23 above that 1.7 million indicates the overall number  
24 of people who do not have all three of those  
25 documents.

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1 Q. But that number includes people who may have ID?

2 A. That's correct. That includes people who may  
3 have photo ID. And the number below it are just the  
4 people that have none, they do not have a valid photo  
5 ID and they also do not have the documents required  
6 to obtain a valid photo ID.

7 Q. So going over to the next column that would be  
8 280,000 registered voters have neither ID nor the

9 documents to obtain it?

10 A. That's correct. 280,000 registered voters and  
11 174,000 people who voted in 2008 don't have a valid  
12 photo ID nor do they have all three necessary  
13 documents that they would need to obtain a valid  
14 photo ID.

15 Q. Now there's a fourth column on these two charts,  
16 can you explain that fourth column, please?

17 A. Yes, this is how we arrived at those numbers we  
18 were just talking about. But we also looked at most  
19 crucially the rates of having these underlying  
20 documents. Among those people who previously told us  
21 on the other questions that they do not have a valid  
22 photo ID, in my opinion these are the folks who we  
23 should have the most concern for because they  
24 currently do not have a valid photo ID and so we want  
25 to find out well do they have the documents they need

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1 to obtain one.

2 Q. So explain to us and maybe use the don't have  
3 column to explain what the numbers are there in table  
4 seven under that fourth column?

5 Q. Sure. So if you look at the category of don't  
6 have you can see the number of people without a valid  
7 ID, 16.4 percent do not have citizenship, 11.9  
8 percent ---.

9 Q. Proof of citizenship is primarily birth  
10 certificate?

11 A. That is copy of birth certificate with raised

12 seal or U.S. passport or official naturalization  
13 certificate for those who are foreign. 16.4 don't  
14 have that. 11.9 percent don't have their official  
15 social security card, and 6.2 percent of them don't  
16 have a proof of the address. When we look at the  
17 number who lack one or more of those, because you  
18 need all three to obtain ID, we look at the number  
19 who have one or more, we find this group particularly  
20 is at risk, over a quarter at 27.6 percent of those  
21 who don't have an ID don't have an ability ability to  
22 get one.

23 Q. So when you go down down to table eight in that  
24 fourth column that's applying those percentages to  
25 the totals?

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1 A. That's correct.

2 Q. So there's 366,000 people who don't have valid  
3 ID or the documents to get that ID?

4 A. Among those people. That's correct.

5 Q. And that would be --- am I correct in saying  
6 there's 174,000 people who voted in, 2008 who are in  
7 that category?

8 Q. That's correct. 184,000 people who indicated  
9 they voted in that election, that they don't have the  
10 valid ID and they don't have the necessary documents  
11 to obtain it.

12 Q. Let's turn to table nine? What is this?

13 A. Table nine indicates the place of birth among  
14 the respondents in the survey, this was one of the

15 questions that with was part of the underlying  
16 documents so we could determine whether we would ask  
17 the respondent whether they had a birth certificate  
18 from the state, whether it was from Puerto Rico your  
19 or whether they had a naturalization certificate.

20 Q. And how are these results important?

21 A. Well what these results indicate is that across  
22 the board 75 percent of the respondents were born in  
23 the State of Pennsylvania, but that means that 24.6  
24 percent were born outside the State of Pennsylvania.  
25 As the birth certificate becomes an important

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1 document that you would need to obtain in order to  
2 get a PennDOT ID or other types of ID there is a  
3 substantially number of residents of Pennsylvania who  
4 are eligible to vote who were born outside the State  
5 of Pennsylvania and if they don't have those forms of  
6 citizenship, meaning their official birth  
7 certificate, they would be needing to interact with  
8 other state agencies in order to get those documents.

9 Q. Let me ask you, are you aware that I guess it  
10 was during --- may have been during the course of the  
11 survey, that the Department of State changed the  
12 process for getting an ID if you're born in  
13 Pennsylvania?

14 A. Yes, I've been made aware of that.

15 Q. And what's your understanding of that?

16 A. That persons who were born in the State of  
17 Pennsylvania should be able to have their birth

18 certificates verified through some sort of state  
19 database.

20 Q. So it makes it easier for people who were born  
21 in Pennsylvania to produce the ID?

22 A. Assuming they can find those electronic records  
23 then those persons born in the State of Pennsylvania  
24 would certainly have an advantage if they needed to  
25 track down their birth certificate than anyone born

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1 somewhere else.

2 Q. So do people who are born outside Pennsylvania  
3 have a disadvantage?

4 A. I would say they would have a harder time  
5 because they would be having to interact with  
6 additional state agencies across the country and  
7 perhaps provide other proof of their residence or of  
8 their birth. In some cases, in some states you  
9 actually have to show a photo ID in order to get and  
10 get these other sources of record. So those who were  
11 born outside of Pennsylvania have many more layer of  
12 bureaucracy to deal with.

13 Q. And does this process of simplifying the ID  
14 acquisition or getting ID for Pennsylvania voters,  
15 does this have a disproportionate affect on different  
16 demographic groups?

17 A. Yeah, one of the things that we looked at here  
18 in the bottom half of the table is the place of birth  
19 by race or ethnicity and the population of the  
20 eligible voting population in Pennsylvania and

21 overall we found that 80 percent of white respondents  
22 to our survey were born in the State of Pennsylvania  
23 but that only 66 percent of the African American  
24 respondents were born in the State of Pennsylvania  
25 and that a very small percentage, only 13 percent of

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1 Hispanic respondents were born in the State of  
2 Pennsylvania. What this indicates to me is that  
3 African Americans and Latinos would have a harder  
4 time being able to produce a birth certificate  
5 because they have much lower rates of being born in  
6 the State of Pennsylvania.

7 Q. So this change in the process where people born  
8 in Pennsylvania don't need to show a birth  
9 certificate has a disproportionate affect on people  
10 of color?

11 A. Yeah, it was disadvantage African Americans and  
12 Latinos for sure because they would not be have their  
13 birth certificate pulled up as quickly and easily as  
14 whites who are actually much more likely to have been  
15 born in the State of Pennsylvania than either of  
16 those two minority groups.

17 Q. Let's go to the next tables and we'll go though  
18 these tables much more quickly now.

19 JUDGE SIMPSON:

20 Thank you.

21 ATTORNEY WALCZAK:

22 I'll take that as a hint, Judge.

23 BY ATTORNEY WALCZAK:

24 Q. Starting with table 10, what have you done here  
25 now starting with this table?

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1 A. In the remainder of the tables here we now have  
2 a rates of possession among suburbs in the  
3 populations, you can see the header there. And we  
4 then have gone through and replicated the tables that  
5 we discussed above for different demographic groups.  
6 Table ten here we're starting with gender and you can  
7 see by focusing on the last line, has the valid photo  
8 ID, non-expired and name conforming.

9 Q. I'm sorry, which line are we talking about here?

10 A. The third bold line there, has a valid photo ID,  
11 that's correct.

12 Q. Okay. That while overall we reported and just  
13 discussed that 14.4 percent of the entire population  
14 lacks a valid photo ID, this number is significantly  
15 higher for women, 17.2 percent of women lack a  
16 non-expired name conforming ID compared to only 11.5  
17 percent of men. So it certainly affects both genders  
18 but women are more negatively affected by this law?

19 Q. And is that a statistically significant  
20 difference?

21 A. Yes, it is. That gap isn't one that wasn't just  
22 observed, but was statistically different.

23 Q. And do you have an opinion as to the cause of  
24 that ---?

25 A. I think for sure we reference it in the report

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1 that part of this disparity would certainly be due to  
2 the name conforming issue. Women would be much more  
3 likely than men to have changed their name during  
4 marriage and depending on when that name change took  
5 place the name on the photo ID may not be the same as  
6 the one on the voter registration records. So that's  
7 one particular reason why women could be more  
8 impacted by this.

9 Q. Let's go to table 11. Is there also a  
10 difference in --- this looks at possession of the  
11 underlying documents?

12 A. Table 11 is still a --- it's just among  
13 registered voters. You'll notice a pattern  
14 throughout in which we look at the eligible and then  
15 we look at the registered population. In the tables  
16 we also look at the voting population but we  
17 replicate the tables here. But it just demonstrates  
18 that this trend and this difference holds even among  
19 registered voters because women who are currently  
20 would be more disadvantaged than men according to  
21 this.

22 Q. So men --- what's the percentage of men who  
23 have?

24 A. Overall, we find that 89 percent of men do have  
25 a valid photo ID and 11 percent lack. For women we

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1 find that 85 percent have a valid ID and that



2 indicates here that 14.8 percent lack ID.

3 Q. And this is for register voters?

4 A. This is among registered voters.

5 Q. Okay. Let's go to the next?

6 A. Fourteen (14) would be the next subsection.

7 Here on 14 we're examining the rates by racial and  
8 ethnic groups. And here we find, for example, again  
9 looking at that third bold face line that 14.0  
10 percent of whites lack a photo ID. In comparison  
11 18.3 of Latinos, 24 percent of other ethnic groups  
12 lack a valid photo ID. So again we find some  
13 differences here in terms of access among different  
14 racial and ethnic groups.

15 Q. Okay. Let's go to the next set of tables.

16 A. That would be table 18. Here we're looking at  
17 the rates by age. Once again if you look at the  
18 bottom category there it has a valid photo ID,  
19 non-expiring, name conforming. We find variation  
20 across the different age groups. In particular we  
21 found that those in the younger cohort, 18 to 34 and  
22 those in the older cohort, over the age of 75 lack ID  
23 at higher rates. 17.9 percent of people between 18  
24 to 34 lack a valid photo ID and 17.8 percent of  
25 people over the age of 75. That compares say against

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1 people who are in one of the middle categories, 35 to  
2 54 in which only ten percent. So in this case if the  
3 law were implemented fully we would expect many many  
4 more younger and also older voters would be prevented

5 from voting as compared to those in the middle age  
6 categories.

7 Q. So it has a disproportionate impact on the young  
8 and the old?

9 A. Yes.

10 Q. Let's go on to the next set of categories.

11 A. Next is education on table 22.

12 Q. What do you find about education?

13 A. Here on education we find a similar strong  
14 relationship between levels of education and access  
15 to rates of valid photo ID. For example among those  
16 who have not completed their high school degree, 18.5  
17 percent do not have a valid photo ID. In contrast  
18 those who are college graduates only 8.3 percent lack  
19 a valid photo ID. So this difference of 10  
20 percentage points is quite substantial and would  
21 indicate to us that those residents of Pennsylvania,  
22 those eligible voters who don't have a high school  
23 diploma or in the lower educational bracket would be  
24 much more severely affected by this law than those  
25 with a college degree and would be more slightly more

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1 likely to navigate to be able to vote.

2 Q. Okay. Let's go to the next set.

3 A. The next set is table 26 where we have our  
4 results broken out by income categories. Here we  
5 find again a similar trend where people live in  
6 households with less than \$20,000 of annual income,  
7 22 percent lack an accepted photo identification and

8 as you go into the higher income categories you see  
9 that possession rate goes down to 8.2 percent, again  
10 of people over \$80,000 in income who lack so it's  
11 over double the affect here. Twenty-two (22) percent  
12 of the lowest income households lack a valid photo ID  
13 compared only 8.2 percent of the highest income  
14 households.

15 Q. All right, next?

16 A. Next we have broken out the results by access to  
17 transportation. We discussed --- and this is table  
18 30. We discussed this previously when talking about  
19 the questions that appear in the demographic section  
20 and that we asked people about whether or not they  
21 have regular access to a car, whether they don't have  
22 access to a car but they have some other type of  
23 transportation that is reliable, or whether they have  
24 no access to transportation at all. And here we can  
25 see very large differences in the rates of

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1 possession, that is among people who have access to a  
2 car 11.1 percent lack a valid photo ID. Among people  
3 who don't have a car ---.

4 Q. I'm sorry, just so I understand, so people who  
5 have access to a car, 11.1 percent don't have photo  
6 ID, don't they have driver's licenses?

7 A. You can see here they are more likely to have  
8 driver's licenses than any of the other categories  
9 but even there not everyone has a driver's license  
10 that is currently up to date and perhaps has been

11 name conforming. It could be that their parent  
12 sibling in their household have the car. The  
13 question was whether or not they had access to a car,  
14 whether it was them or someone in their household.  
15 By comparison 29.7 percent, almost a third of people  
16 who don't have access to a car, but they do have  
17 other transportation such as they ride the bus, they  
18 ride the bike, et cetera, 29.7 do not have a valid  
19 photo ID and you can see at the top for the primary  
20 reason here is that very small percentage of this  
21 population have a driver's license. Only 37.5  
22 percent of people who don't have access to a car have  
23 a driver's license. And because that's the main form  
24 of identification identified in our survey, these  
25 people are particularly at risk because they don't

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1 have regular need for ID because ride the bus or take  
2 a train or something else, they do not have in many  
3 cases the prime ID that would be necessary to vote.  
4 And the final column there are people who indicated  
5 no, they don't have access to a car nor do they have  
6 access to reliable transportation. This is a smaller  
7 percentage but it's an important percentage of the  
8 population in Pennsylvania and here we find 41.6,  
9 very very large number in this group is a special  
10 disadvantage and they do not have valid photo ID.

11 Q. So now are those people in a particular  
12 difficult situation in terms of obtaining ID?

13 A. We would estimate that they look to be. They

14 don't have the means --- they're telling us they  
15 don't have a means of transportation, if they are  
16 going to need to go to some office in order to get  
17 that, unless it's within walking distance it would  
18 create some additional burden for them for sure. And  
19 I believe the final demographic would be ---.

20 Q. I'm sorry, let me go back to table 26.

21 A. Sure.

22 Q. You talked about how the rates of people not  
23 having ID are substantially higher for people making  
24 less than \$20,000; is that correct?

25 A. Yes.

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1 Q. Is the problem of people not having ID limited  
2 to low income people?

3 A. No, I mean as you can see from this table there  
4 are still notable percentages of people in the middle  
5 income category, 14.6 and 13.8 who lack. And even  
6 among the highest income earners 7.1 and 8.2 percent  
7 continue to lack. The point is that it's especially  
8 felt among lower income households and as part of  
9 this segmentation portion of our study we wanted to  
10 determine not only what percent overall statewide  
11 lacked, but whether or not this would impact all  
12 Pennsylvanians equally or certain types of people  
13 because of their characteristics would be more at  
14 risk of being shut down.

15 Q. All right. Let's go after transportation.

16 A. We were going to going to regional, I believe,

17 which is table 34.

18 Q. And what did you find when you looked at it by  
19 region?

20 A. Here on region we grouped the state into five  
21 regions with two urban counties being the highest in  
22 lacking.

23 Q. So you're talking about Philadelphia --- explain  
24 the regions for us here.

25 A. Sure. We have provided five regions, the first

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1 that's listed there is Philadelphia County. It  
2 includes the entire county limits of Philadelphia.  
3 The next is Philadelphia suburbs and that includes  
4 the counties that are just on the perimeter of  
5 Philadelphia which are enumerated here. After  
6 that ---.

7 Q. Could you enumerate those for the record?

8 A. Sure. That includes Delaware, Bucks, Chester,  
9 and Montgomery Counties.

10 Q. And then the next ---?

11 A. The next is Allegheny where Pittsburgh is and we  
12 include here Allegheny County, so we include the  
13 entire county. We then have an item called the  
14 northeast and that includes Berks, Carbon, Lehigh,  
15 Monroe, Northampton and Schuylkill.

16 A. I have no idea how to pronounce the last one.

17 A. Schuylkill.

18 JUDGE SIMPSON:

19 You're not from from around here are

20 you?

21 A. In Washington State that would be Schuylkill  
22 (different pronunciation).

23 OFF RECORD DISCUSSION

24 BY ATTORNEY WALCZAK:

25 Q. Berks I believe is also B-E-R-K-S, but I think

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1 we know what you're referring to there. And so now  
2 let's look at the results and what did you find in  
3 terms of rates of people not having IDs by region?

4 A. Sure. So what we found are that the two most  
5 urban populations here, Allegheny County and  
6 Philadelphia County have the highest rates of lacking  
7 photo ID. So a person in this counties would be  
8 disproportionately affected by this. In Allegheny  
9 County 18.7 percent of respondents who reside there  
10 do not have a valid photo ID as compared to say 12.4  
11 percent of people who live in the Philadelphia  
12 suburbs. Again that would be income categories. We  
13 don't find a particular region of the state in which  
14 very few people would be affected. Across the state  
15 we see double digits of percentages of people who  
16 would be affected by this law. It just happens to be  
17 that there is a larger affect in Philadelphia and  
18 Allegheny County than anywhere else.

19 Q. Okay. Next?

20 A. That concludes the subgroups, the segmentation  
21 of how we divided up the demographics and attempted  
22 to look at how the access to the valid photo ID

23 differed from those different segments.

24 Q. Before we go to knowledge, which would be our  
25 last section, do you have an opinion as to who will

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1 be primarily affected by the Pennsylvania voter photo  
2 ID law?

3 A. Yeah, as we review not only in the top half but  
4 here in the demographic analysis I think we came away  
5 with two conclusions, first that there's really no  
6 subsegment that has extremely high access rates. We  
7 did not find a subgroup in which 99 percent of people  
8 would be okay. It certainly affects people of all  
9 different walks of life, different parts of the state  
10 at fairly high rates. Where we did find  
11 discrepancies we found that it tended to be resource  
12 related, meaning that people who have lower income,  
13 lower education levels, racial minorities, young or  
14 old were more likely to be affected. And because of  
15 the issue we discussed earlier about name change,  
16 that women were also more likely to be affected by  
17 this than men. So while it will affect a lot of  
18 people throughout the entire state across all  
19 different walks of life, if implemented fully our  
20 estimation is that it will have an unequal affect.  
21 It means it would affect the most the people in the  
22 lower socioeconomic brackets in Pennsylvania.

23 JUDGE SIMPSON:

24 would you pause for a moment, please?

25 Okay, thank you.



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1 BY ATTORNEY WALCZAK:

2 Q. All right. There is a little table that we  
3 skipped back --- it's table two. Go back to table  
4 two. Can you tell us what table two is?

5 A. Sure. Table two provides a summary of the  
6 results to our questions on the survey as to whether  
7 or not the respondents are aware and know of the  
8 Pennsylvania voter ID law and whether or not they  
9 believe that they are themselves in compliance with  
10 the Pennsylvania voter ID law.

11 Q. Okay. Can you go over with us the numbers here  
12 and the entries? How's this work?

13 A. Sure. Overall among eligible voters starting in  
14 the first column of table two we found that 62.7  
15 percent were aware and said that, yes, they knew  
16 Pennsylvania does have a voter ID law that would  
17 require voters to show a photo ID before voting in  
18 person, which indicates that 37.3 percent of all  
19 respondents were not aware that this law existed.  
20 The next row under that ---.

21 Q. Let's just play that out to the other two  
22 columns. What are the numbers for registered voters  
23 and 2008 voters.

24 A. Sure. We found fairly consistent results. Only  
25 slightly higher levels of knowledge of the law among

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1 registered and natural voters. Among people who are  
2 registered to vote 65.7 percent were aware and 34.3  
3 percent were not aware of the law. And among people  
4 who acutally voted in 2008, a very similar rate, 65.8  
5 percent of those people said they were aware of the  
6 law and 34.2 percent of people were not aware of the  
7 law.

8 Q. So these were people who didn't know that  
9 Pennsylvania had passed a photo ID law?

10 A. That's correct. They said that they did not  
11 know. They could've said two possible choices to get  
12 them to the no category. They could have said no  
13 Pennsylvania does not have that law, or they could've  
14 said I don't know I have not heard and I have no  
15 idea. So it was both the people who said I don't  
16 know or people who actually gave the opposite or  
17 incorrect answer and said no. And among voters we  
18 found that was 34.2 percent.

19 Q. And when was this law pased?

20 A. I believe the law was passed in March, in the  
21 spring this year.

22 Q. And this survey was taken when?

23 A. The survey was conducted in late June. June  
24 21st to July 2nd.

25 Q. So it's more than three months after the law had

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1 been in effect?

2 A. Yes. The law had been in effect, there had

3 presumably been discussion and presentation of the  
4 law. It wasn't the case that voters could have not  
5 known that the law was there.

6 Q. What's the next row on table two?

7 A. After that we asked them that if a poll worker  
8 asked them their official photo ID in Pennsylvania do  
9 they believe that currently have a valid photo ID  
10 that they can show to the poll work or do they think  
11 that they don't and they would have to obtain that.

12 Q. So what are the results there?

13 A. Overall we found that 97.8 percent of  
14 respondents believe they have a valid photo ID. And  
15 only 2.2 percent volunteered that they don't believe  
16 that they have a valid photo ID.

17 Q. So if all the eligible voters, almost 98 percent  
18 believe and thought that they had an ID that they can  
19 use in November?

20 A. That's correct. And you can see here that it's  
21 slightly higher among registered voters and actual  
22 voters. Among registered voters 98.8 percent believe  
23 that they have a valid photo ID that they can use to  
24 vote. And among 2008 voters 98.7 percent believe  
25 they currently have a valid ID.

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1 Q. So what is the third row there.

2 A. The third row we just isolated those people who  
3 said, yes, I have a valid photo ID. Then we looked  
4 at their answers to the questions from table one  
5 above as to whether or not they actually did have a

6 valid photo ID and what we found was that 13.1  
7 percent of the eligible population believe they have  
8 a valid photo ID. They told us that, yes, I have a  
9 valid photo ID that I can use to vote. But when we  
10 asked them questions about the expiration date and  
11 name conforming other things they did not have a  
12 valid photo ID. And you can see that that is also 12  
13 percent, 12.1 percent of registered voters who  
14 believed they have a valid ID, but they do not. And  
15 11.8 percent of people who voted in 2008 are in that  
16 category that they believe they have a valid photo ID  
17 but in reality they do not.

18 Q. So these people are mistaken?

19 A. Yes, these are people who are mistaken. They  
20 think that they are currently in possession of a  
21 valid photo ID, but when we query them about the  
22 types of ID they had, we were able to determine that  
23 they would not be able to meet the standard.

24 Q. What is the significance of the fact that these  
25 people are mistaken?

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1 A. We think this is quite a significant issue  
2 related to voter knowledge or misinformation or  
3 misperception here. And that is that a very large  
4 percentage of people believe they have the ID and are  
5 mistaken and if those folks believe that they have a  
6 valid photo ID it's quite unlikely or it would be  
7 very difficult to convince them that they don't  
8 because they believe that they have a valid photo ID

9 and they believe that they can use it for purposes of  
10 voting.

11 Q. When and how are those people likely to find out  
12 that they have an improper ID?

13 A. My guess would be that for the majority of them  
14 that would be when they attempt to vote. These are  
15 the people who think the ID they have in their wallet  
16 or purse or pocket will work for voting and they may  
17 attempt to vote in a future election and be told that  
18 that ID is not valid by the poll worker because it  
19 either has expired or the name doesn't conform.

20 Q. So what is the significance of the fact that 37  
21 percent of eligible voters don't know about the law?

22 A. I think that's also quite important. This law  
23 in Pennsylvania would represent a substantial change  
24 in practice of what the voter experiences when they  
25 go into polling place to vote. And over a third at

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1 37 percent indicated that they were unaware that this  
2 law existed and it means that few people --- well it  
3 means two things. One for people who don't have the  
4 ID if they are unaware of the law at all they are  
5 unlikely to get or take any of the steps that might  
6 be necessary to get a valid photo ID because they're  
7 not aware that this law exists. The second is that  
8 there are people who know that the voter ID law  
9 exists but they mistakenly believe that they have the  
10 right credentials and so on both accounts that public  
11 knowledge of the law is a very very important aspect.

12 Q. Let me just --- I want to finish with some  
13 questions about a new ID. Are you aware that the  
14 state has announced that they are going to issue and  
15 allow a new form of photo ID to be used at the polls?

16 A. Yes, I read about that.

17 Q. And what's your understanding of that ID?

18 A. I have to say that I don't fully understand  
19 exactly how it will work yet, and who will be  
20 eligible. The understanding that I have is that if  
21 you can demonstrate that you don't have the other  
22 forms of ID and that you're not able to obtain them  
23 that you might be able to obtain this new ID by still  
24 providing some documents whether it's address or  
25 Social Security card or something. And that they

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1 would then be eligible to go get that ID.

2 Q. I want to ask you for your opinions on the  
3 likelihood that every voter who does not have a valid  
4 form of photo ID will get one of these IDs by the  
5 time of the election. All right. So let me ask you,  
6 do you have --- given the rates that you found of  
7 people who don't have the right kind of ID, do you  
8 have an opinion as to whether or not the State of  
9 Pennsylvania can give assurance that all of the folks  
10 who don't have ID will have that ID on election day?

11 A. I think that it would be almost impossible for  
12 anyone to give that assurance for two reasons. One  
13 is that there still are a large number of people in  
14 the survey who not only lack the ID but they lack the

15 necessary documents to obtain an ID and there are  
16 still people who are not going to be able to  
17 demonstrate their proof of address or provide a  
18 social security number or proof of citizenship if  
19 they need to obtain a birth certificate from another  
20 state. So those people will regardless of the new  
21 law have a very hard time even obtaining that. And  
22 the second is that, as we indicated, a very large  
23 percentage of people, 97.8, believe that they are in  
24 compliance with the law. They believe they have an  
25 ID. And also as we discussed in table three 98.6

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1 percent of people in Pennsylvania have some sort of  
2 ID, it just isn't up to date and have the name  
3 conform. So for the average person, they do possess  
4 some sort of ID card and they do believe that ID card  
5 is valid. And so they have no reason to go get one  
6 of these new IDs or to change their ID or anything  
7 because as far as they know they have an ID and they  
8 believe that it would work. It would only work if  
9 they were specifically targeting people who lack all  
10 identification whatsoever, which was 1.4 of the  
11 population. But again, even those people, a large  
12 number lack the underlying document. So I think it  
13 would be quite difficult to convince those people who  
14 believe they are already in compliance that they need  
15 to change.

16 Q. And do you have an opinion as to whether a  
17 tremendous education campaign talking about

18 availability of ID that people have to go to PennDOT  
19 to get, that they can get it very easily can assure  
20 that all voters who don't have proper ID are able to  
21 get it by election day?

22 A. Yes. What the research generally shows in this  
23 area are that the people who pay the most attention  
24 to those sorts of public service announcements  
25 related to voting and elections are people in the

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1 highest levels of education and political interest.  
2 These are people that we've suggested already have  
3 the highest rates of having a valid ID and that the  
4 people who are perhaps more in need are less likely  
5 to be aware or fully understand or even fully pay  
6 attention to those sorts of ads. There's been a lot  
7 of research in political science related to messaging  
8 and ads and public service announcements and it's  
9 quite difficult in a short time span to get someone's  
10 attention especially when they believe they are  
11 already in compliance and convince them that they are  
12 not in compliance and that they need to take some  
13 additional steps in order to change that.

14 Q. Now if in fact is there research out there on  
15 the ability to educate the public in a short period  
16 of time on an important issue?

17 A. Yeah, absolutely there are a number of published  
18 research studies that have looked at how voters  
19 respond to campaign advertisements. And campaign  
20 advertisement are certainly even more apparent and



21 more frequent than public service announcements. And  
22 studies have found quite convincingly that after a  
23 campaign advertisement run and voters were exposed to  
24 them and indicated that they were exposed to them,  
25 that in surveys and exit polls, when they exit the

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1 voting booths, they still incorrectly answered  
2 questions about the state initiatives that they were  
3 voting on including what they learn from some of the  
4 advertising campaigns. Because there will be here in  
5 Pennsylvania so many other political acts, the  
6 airways will be saturated with political information  
7 and this will make it very difficult for voters to  
8 see through all the rest of those ads to focus on any  
9 education campaign that may be being conducted and  
10 again we will have to convince them because 97.8  
11 percent of the population believe they are already in  
12 compliance. If I believe I'm already in compliance  
13 and I hear an ad that says, don't forget you need ---  
14 I'm just going to tune that out because I'm thinking  
15 I already got it. This ad is not for me it's for  
16 somebody who doesn't have an ID card at all. And so  
17 I think it's an exceptional challenge in an extremely  
18 short amount of time to do that. And then that would  
19 presume people go out and have the time and the  
20 resources and the ability to go and get the photo ID,  
21 but first you have to convince them that they  
22 actually need it and largely they don't believe they  
23 do.

24 07261012-Applewhite-ROUGH  
ATTORNEY WALCZAK:

25 No further questions, Your Honor.

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1 JUDGE SIMPSON:

2 what's your pleasure?

3 ATTORNEY CAWLEY:

4 I would be fine with taking a break at  
5 this point, Your Honor, if that's what you're  
6 inclined to do.

7 JUDGE SIMPSON:

8 Yes. I normally don't like to breakup  
9 the testimony of an expert witness on Cross  
10 Examination, so I would either want to take a break  
11 now or make you run and finish. How long do you  
12 think your Cross Examination will go?

13 ATTORNEY CAWLEY:

14 Well I guess it wouldn't be all that  
15 specific to say considerably shorter than the Direct  
16 but I would estimate no more than 30 minutes.  
17 Perhaps slightly longer than that.

18 JUDGE SIMPSON:

19 Any requests from your side? Do you  
20 care what we do? Let's take a break now. It's  
21 about 12:30, we'll come back at 1:30. We will be in  
22 recess until 1:30.

23 BAILIFF:

24 Commonwealth Court is now in recess.

25 RECESS TAKEN

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1 BAILIFF:  
2 Ladies and gentlemen, Commonwealth  
3 Court is now in session.  
4 JUDGE SIMPSON:  
5 Proceed.  
6 CROSS EXAMINATION  
7 BY ATTORNEY CAWLEY:  
8 Q. Good afternoon, Professor Barreto.  
9 A. Good afternoon.  
10 Q. My name is Patrick Cawley. I represent the  
11 government Respondents in this case, and I am going  
12 to ask you some questions. I believe you've been  
13 through this drill before.  
14 A. Okay. Thank you.  
15 Q. To start out with, on the cover of your report  
16 you were listed as the principal investigator; right?  
17 A. Yes.  
18 Q. And your co-investigator is Gabriel Sanchez?  
19 A. That's correct.  
20 Q. And you and Gabriel Sanchez were the co-founders  
21 of a group called Latino Decisions; right?  
22 A. No, that's incorrect.  
23 Q. That's incorrect. Could you explain how that's  
24 incorrect?  
25 A. I'm one of the founders and Gary Segura who is a

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1 professor at Stanford is a co-founder, not Gabriel

2 Sanchez.

3 Q. Okay. Is Gabriel Sanchez affiliated with that  
4 group as well?

5 A. Yes, he's the research director.

6 Q. And Latino Decisions actively follows political  
7 issues and elections around the country where they  
8 pertain to Latinos; correct?

9 A. Yes.

10 Q. And in your CV at page 72, which is Appendix C,  
11 you list affiliated research centers that your  
12 affiliated with; correct?

13 A. Yes.

14 Q. But you don't list Latino Decisions. Was there  
15 a reason for that?

16 A. I don't have that in front of me.

17 Q. Okay.

18 WITNESS REVIEWS DOCUMENT

19 A. They're listed on page 80.

20 BY ATTORNEY CAWLEY:

21 Q. Okay. Is there a reason Latino Decisions was  
22 not listed for you and Doctor Sanchez on this report?

23 A. I don't understand the question.

24 JUDGE SIMPSON:

25 He just said it's on the on page 80.

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1 ATTORNEY CAWLEY:

2 And I'm referring now to the expert  
3 report.

4 BY ATTORNEY CAWLEY:

5 Q. And I'm asking on the cover you list the  
6 universities that you are affiliated with; right?

7 A. Correct.

8 Q. And I'm just asking if there was a reason why  
9 Latino Decisions was not listed if the two of you do  
10 the same sort of investigations or research for  
11 Latino Decisions?

12 A. Sure. We were approached as on behalf of the  
13 university affiliations to work on this as a part of  
14 --- in line with our other academic research. We  
15 were we were not approached as a Latino polling firm  
16 to do this research, so ---.

17 Q. Okay. Again, going to your CV, in your book  
18 manuscripts it indicates that you wrote or are  
19 writing a manuscript called Change We Can't Believe  
20 In, Exploring the Sources and Consequences of Tea  
21 Party Support. Is that something that you are an  
22 author on?

23 A. Yes. Although, I think the title has slightly  
24 changed.

25 Q. Okay.

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1 A. The editors of the press get to be in charge of  
2 the title. It's kind of based on what they think  
3 will sell.

4 Q. Okay. Well, is it safe to say this manuscript  
5 is critical regardless of the title of the Tea Party?

6 A. I wouldn't say critical. It's just a review of  
7 the opinions that people in the participation ranks,

8 the people who signify the Tea Party.

9 Q. Okay. And when you said it's change we can't  
10 believe in, at least in an initial title, does that  
11 indicate that the authors view that you don't believe  
12 or share in the views of those who support the Tea  
13 Party?

14 A. No. It's a play of on words on the change we  
15 can believe in, which is the part of the President's  
16 slogan that this is the --- the argument is that Tea  
17 Party members debate. In fact, they use that, it's  
18 change we can believe in.

19 Q. Okay. And in another section of your CV you  
20 list academic journal articles. And one of them is  
21 The Tea Party In the Age of Obama Mainstream  
22 Conservative --- Conservatism Or Out-Group Anxiety.  
23 Is that an article that you are an author on?

24 A. Yeah. That's number 27?

25 Q. I believe so, yes.

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1 A. Uh-huh (yes).

2 Q. And do you include in that article that the Tea  
3 Party is suffering from out-group anxiety?

4 A. I believe we make reference to that. I don't  
5 know if it's --- I don't have it in front of me, so I  
6 don't know exactly what the conclusion states. But  
7 that's one of the items that we look at.

8 Q. Okay. Looking at number 17, there's an article  
9 entitled The Disproportionate Impact of Voter ID  
10 Requirements on the Electorate, New Evidence From

11 Indiana. That's an article that you are an author  
12 on?

13 A. Yes.

14 Q. And are you conclusions in that article against  
15 voter ID requirements?

16 A. The conclusions in the article, I believe are  
17 that just reviewing the evidence from a survey that  
18 we conducted in the state of Indiana, that in the  
19 State of Indiana, we found voter ID requirements  
20 would more heavily affect African-Americans.

21 Q. And Gabriel Sanchez is a co-author on that  
22 article?

23 A. Yes, that's correct.

24 Q. Have you ever written on the opposite side of  
25 the voter ID requirement issue, coming out in support

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1 of them?

2 A. We haven't really taken a side. We just  
3 reviewed the evidence. Some of our early work, we  
4 were just doing investigations all around without  
5 taking any sides at all. So I don't really  
6 understand the question.

7 Q. I'll ask a slightly different question. Have  
8 you ever reported findings that show that voter ID  
9 requirements are more beneficial than they are  
10 harmful?

11 A. Again, I don't know how --- I don't think we  
12 describe our data as beneficial or harmful. I think  
13 we describe the rates of possession and then, you

14 know, allow readers to draw conclusions about, you  
15 know, what would happen. So I don't necessarily  
16 agree with the phrasing of the question.

17 Q. Okay. Well, then I'll change the phrasing of  
18 the question. Referring to the article you just  
19 described and the conclusions you reached as to the  
20 consequences for African-Americans, have you ever  
21 published findings that indicate that  
22 African-Americans are not disenfranchised or harmed  
23 by voter ID requirements?

24 A. Well, in the current survey, as we reviewed  
25 earlier, one of the tables where we identified

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1 ethnicity, we identified that Hispanics in the State  
2 of Pennsylvania would be the most affected, but that  
3 African-Americans had similar rates of possession as  
4 whites here in the State of Pennsylvania.

5 Q. Okay. Switching to some of your other research  
6 for the people who employed you here. You were in  
7 January of this year paid \$60,000 by the ACLU for six  
8 months of work in Wisconsin; is that right?

9 A. No, I wasn't paid. Most of that money went to  
10 the survey research center, Pacific Market Research.  
11 I was paid just for my work on the expert report.  
12 That was the overall amount of the cost of the  
13 project.

14 Q. Okay.

15 A. But yes, I did work with them, as we discussed  
16 earlier this morning.



17 Q. And you consulted or testified for the ACLU on  
18 at least three other occasions, Milwaukee and twice  
19 in the State of Washington; is that right?

20 A. Once in the State of Washington and once in the  
21 State of California.

22 Q. Okay. I'd like to talk about the purpose of the  
23 survey that you conducted for this case. Am I  
24 correct that the objective of your report is to  
25 determine the rates of possession and lack of

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1 possession of valid photo identification among the  
2 eligible voting population, the registered voting  
3 population and 2008 voters?

4 A. Yeah, I believe you read that directly from the  
5 report.

6 Q. Yes. And so you were retained to create a  
7 research design that would allow for the examination  
8 of the percent of the these three groups, eligible,  
9 registered and 2008 voting populations; correct.

10 A. Yes.

11 Q. And you were asked about this during your Direct  
12 Examination. But at page five of your report in  
13 about the middle, you conclude or opine that the  
14 approach that you took, that being a survey, is the  
15 most accurate way to assess rates of possession of  
16 valid photo ID, because you were able to directly  
17 contact the voters and figure out whether they had  
18 multiple forms of ID or whether they had IDs that had  
19 expired; correct?

20 A. Yeah, I believe that is somewhere on the top of  
21 page five.

22 Q. Okay. And are you aware that the Respondents in  
23 this case produced to the Petitioners, the entire  
24 database of registered voters, as well as the entire  
25 database of persons holding a driver's license or

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1 photo ID card with PennDOT?

2 A. I have heard that someone had done some analysis  
3 of that, yes.

4 Q. Okay.

5 A. I have not received a copy of it.

6 Q. Okay. And so from that answer, I can conclude  
7 correctly that you did not do any examination of that  
8 raw data in the two databases?

9 A. That's correct, not for Pennsylvania.

10 Q. And you did not conduct a comparison here in  
11 Pennsylvania of those two databases to determine  
12 which registered voters do not show up show up in the  
13 PennDOT database?

14 A. I have not.

15 Q. And you have opined here today that the PennDOT  
16 driver's license, number one, and photo ID, number  
17 two, are the main forms of identification among  
18 Pennsylvania voters; correct?

19 A. The driver's and non-driver photo ID card in our  
20 survey were the two documents that people indicated  
21 they had access to.

22 Q. Okay. So while the approach of comparing two

23 different databases might have the weakness that you  
24 point out that it doesn't get at multiple forms of  
25 ID, don't you at least know when you compare two

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1 large databases like that, that you are counting for  
2 a hundred percent or close to a hundred percent of  
3 one type of ID?

4 A. well, a lot depends on the analysis. I've seen  
5 lots of database analysis before, in which there are  
6 lots of errors and problems in merging the matching.  
7 This is an extremely technical and sophisticated  
8 thing to do, to merge and match the files. And so  
9 that by itself can produce a whole host of errors,  
10 which is one of the reasons that Professor Sanchez  
11 and I have opted to focus on surveys because we don't  
12 have that possible error of merging and matching not  
13 working correctly.

14 Q. So the challenge when you compare two databases  
15 is making sure that you're matching them up and  
16 getting an accurate apple to apple instead of apple  
17 to orange sort of match; right?

18 A. More or less.

19 Q. It's the matching that's the challenge, it's not  
20 lacking a complete set of data, is it?

21 A. well, you still lack the people who say only  
22 have a passport or a military ID or other sorts of  
23 things.

24 Q. Fair point. I was saying you're not lacking  
25 data as to the document form of ID in Pennsylvania.

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1 You have all of the PennDOT driver's license and  
2 photo ID holders. It's just a matter of whether you  
3 can match them up with the other database to make a  
4 comparison; right?

5 A. Presuming that both databases are accurate and  
6 up to date, yes.

7 Q. And so for --- on the other hand, a phone  
8 survey, for that to have any reliability, as you  
9 said, it comes down to the sample design being done  
10 correctly; right?

11 A. Yes.

12 Q. And also the questionnaire being worded in a way  
13 that allows for accurate and unbiased responses?

14 A. Yes.

15 Q. So if --- just focussing now on the survey  
16 because you've identified the challenges of a  
17 database match, focussing on the survey, if there are  
18 mistakes or if it's --- if you don't do correctly the  
19 sample design or the questionnaire, the  
20 representativeness of a survey will suffer?

21 A. Sure. There are a lot of ways that if the  
22 survey is not designed carefully that there could be  
23 questions about it.

24 Q. Okay. Let's talk about the target population  
25 and the sample populations. In the language of

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1 statistics, am I right that these three categories  
2 eligible, registered and voted in 2008 are your  
3 target populations?

4 A. Correct.

5 Q. So in other words, with your survey, you are  
6 trying to give an accurate picture of all  
7 Pennsylvanians that fit in those three populations  
8 and whether or not they possess a valid photo ID?

9 A. Yes. Our starting point though was to start  
10 with eligible --- citizens eligible in the  
11 population. And so the overarching design is geared  
12 towards ensuring that first step. Once we have a  
13 citizen-eligible respondents on the phone, we can  
14 then attempt to determine if they're registered to  
15 vote and if they voted.

16 Q. Okay. I'll just focus on the one of the three  
17 categories, eligible voters. And the idea, as you  
18 said, with saying eligible in addition to those who  
19 are already registered is the assumption that people  
20 could be registering today, tomorrow, et cetera;  
21 Right?

22 A. Correct.

23 Q. So take taking just the eligible voter  
24 population, that's --- you are attempting with your  
25 survey to give an accurate picture of that group of

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1 people in Pennsylvania and whether they have a valid  
2 photo ID law --- a valid photo ID under the photo ID

3 law?

4 A. Yes.

5 Q. Okay. And the sample population is the  
6 percentage of that target population that actually  
7 has some chance of getting a phone call during the  
8 survey; right?

9 A. More or less.

10 Q. Okay.

11 A. More or less.

12 Q. Okay. So obviously if you want to have a  
13 representative sample of all eligible voters in  
14 Pennsylvania, you have to make sure that there aren't  
15 large groups of people within that target population  
16 that have zero chance of getting a phone call; right?

17 A. You would want to minimize that to the extent  
18 that you could.

19 Q. Okay. So this could be done with any of the  
20 three target populations, but we'll stick with  
21 eligible voters in Pennsylvania. If there are  
22 registered Pennsylvania voters who are serving in  
23 the military away from home between January 21 and  
24 July 2nd, 2012, there's little or no chance that they  
25 are going to get a phone call from you; right?

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1 A. I'm not certain if --- they would be eligible if  
2 they had a phone number that was a domestic phone  
3 number that was listed on the rates or on the rolls  
4 to participate in the study. I would have to look  
5 and confirm if we made any international calls or

6 not, but they wouldn't be excluded if they had a  
7 domestic phone number that was listed.

8 Q. And when you say you would have to look into the  
9 record to see if international calls were made,  
10 that's not anything that's been in the report before  
11 the court, is it?

12 A. No.

13 Q. Okay. So if there are registered Pennsylvania  
14 voters who don't have a landline and have a cellphone  
15 that was not on the list used by Pacific Market  
16 Research. There's no chance that they're going to  
17 get a phone call; right?

18 A. All the phones are also similarly randomly  
19 dialed. So there are known cellphone exchanges, and  
20 the cellphones --- any possible cellphone number  
21 could have been dialed.

22 Q. Okay. I think we need to get to an issue that  
23 you're addressing right now. And that's that Pacific  
24 Market Research, which was your survey firm, had a  
25 list of phone numbers; right?

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1 A. The way a random digit dial works is that the  
2 list is generated randomly. So right now if we  
3 generated a random list of numbers, you and I might  
4 generate a different list. So it's separate from  
5 going through a phone book and getting the actual  
6 list of numbers.

7 Q. Okay. But you refer to them using a list in you  
8 report, don't you?

9 A. If I refer to a list, it's only the list of  
10 random numbers that have been generated.

11 Q. Okay. But ---.

12 A. It's important to note that it is not a listed  
13 sample for the statewide RDD.

14 Q. When you say list in there, you don't provide  
15 any information about the details of that list, such  
16 as what numbers are included in that list, where the  
17 numbers are drawn from, do you?

18 A. Yes.

19 Q. Where in your report do you provide details  
20 about the list?

21 A. I describe the list in the methodology, talking  
22 about how random digit dialing works in saying that,  
23 again, it's not a listed sample. I believe I  
24 specifically distinguish it from a listed sample and  
25 that numbers are randomly generated. And then those,

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1 randomly generated numbers populate a computer which  
2 will randomly pick some of those phone numbers to  
3 call or dial.

4 Q. And cellphone numbers are included in this  
5 source of randomly generated numbers; right?

6 A. Correct. They are separate prefixes for  
7 cellphones. You can create a random digit dial list  
8 for cellphones that you will not go to the cellphone  
9 carriers and get their numbers. So even somebody who  
10 activated a number today could be, technically,  
11 eligible because we could pick their number.



12 Q. What I'm saying is, in your report is there any  
13 way to tell which carriers are included in the random  
14 digit dial?

15 A. All of them.

16 Q. Does that appear in your report?

17 A. That's how random digit dial works. That these  
18 numbers are just made up out of thin air so every  
19 possible number that exists in Pennsylvania could  
20 have been dialed.

21 Q. And the computer generation, is that something  
22 that you put together?

23 A. No.

24 Q. Is that something that's in the possession of  
25 Pacific Market Research?

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1 A. Yes, they have a list of numbers.

2 Q. So you're testifying that their system draws on  
3 all phone numbers available?

4 A. Correct.

5 Q. And is that described in the report?

6 A. That's how random digit dial works, and I  
7 believe I described it fairly accurately.

8 Q. Speaking of Pacific Market Research, you  
9 indicated that they were selected by you and your  
10 colleague but they were separately compensated and  
11 retained; is that correct?

12 A. That's correct.

13 Q. Do you know how much --- have you seen the  
14 agreement between the people who hired you and

15 Pacific Market Research?

16 A. I don't believe so.

17 Q. Do you know how much they're being paid for  
18 their contribution to this report?

19 A. I don't know exactly.

20 Q. Do you know if they were provided any different  
21 instructions on how to do their portion of this  
22 report.

23 A. We provided the instructions, Professor Sanchez  
24 and myself.

25 Q. And do you know if the attorneys who hired you

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1 or whoever hired you provided a separate set of  
2 instructions. Do you have any way of knowing?

3 A. Not to my knowledge.

4 Q. Getting back to people who might have little or  
5 no chance of being in the sample population. You  
6 indicated that the numbers are drawn from every  
7 possible number in Pennsylvania; is that right?

8 A. Correct.

9 Q. So if there are registered voters who, for  
10 example, live in Philadelphia but they have no  
11 landline and they have a cellphone where they work in  
12 New Jersey, they're not going to be in that group,  
13 are they?

14 A. I believe they would not be.

15 Q. Now, the actual calls were made during the time  
16 period of June 21st of this year and July 2nd of this  
17 year; right?

- 18 A. That's correct.
- 19 Q. Could you agree with me that's a common time for
- 20 summer vacations that people might not be at home?
- 21 A. Possibly.
- 22 Q. Well, let me step back a bit. You reside in the
- 23 State of Washington; right?
- 24 A. Yes.
- 25 Q. Are you familiar with how common or not common

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- 1 it might be in Pennsylvania to go to the beach during
- 2 that time period of the year?
- 3 A. I am not.
- 4 Q. Okay. Well, let's --- children are generally
- 5 out of school during that time frame; right?
- 6 A. I guess. Depends on the school calendar.
- 7 Q. Okay. Was that ever considered as a factor that
- 8 this might be during a vacation season and people
- 9 might not be home?
- 10 A. No. The reason that the survey was in the field
- 11 for 11 days is to allow us to maximize the number of
- 12 attempts.
- 13 Q. Sure. But that doesn't explain why it started
- 14 on June 21st and ended on July 2nd, does it? Was
- 15 there a reason for picking that period of time?
- 16 A. Well, we needed to get the data collected as
- 17 soon as possible so that we could analyze the data
- 18 and prepare the report for this trial.
- 19 Q. So it had more to do with when you were retained
- 20 and as soon as you could start? Didn't decide to

21 ---?

22 A. Correct. Correct.

23 Q. So it was not considered that this might be a  
24 time period when a number of people might not be  
25 home?

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1 A. I don't think that it would produce any possible  
2 bias at all.

3 Q. Well, if that were true wouldn't that indicate  
4 that people who can afford to take a summer vacation  
5 would be less represented than those who can't afford  
6 to take a summer vacation?

7 A. Possibly only people who only have a landline  
8 and were gone for more than 11 days.

9 Q. Well, even if they had a cellphone, wouldn't  
10 that affect the likelihood of participation if people  
11 were away from home?

12 A. I don't have any data on how many. People  
13 answer their cellphone all over the place.

14 Q. Okay. And again, wouldn't this factor  
15 potentially indicate that those who can't afford to  
16 go away during this time frame are more likely to be  
17 home?

18 A. You know, people travel at all times, so I don't  
19 believe there would be any bias at all.

20 Q. Well, if that were the case, again, assuming  
21 that people are away during that time, wouldn't that  
22 have implications for the level of income that a  
23 person might have, the level of education the person

24 might have and perhaps even their racial or ethnic  
25 background?

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1 A. The understanding of survey research is that if  
2 you implement a poll, that at any given day that poll  
3 is implemented, some occurrences are happening.  
4 Someone is away from their home that day. Someone is  
5 just coming home from a vacation or business trip  
6 that day. Someone just activated a cellphone that  
7 day. So unless there is evidence to suggest that  
8 this time frame independently biased that, we would  
9 have no reason to suspect otherwise. Secondly even  
10 if we slightly underpolled people in the highest  
11 income bracket, as I discussed previously, we put  
12 post-application weights on, so that the tabulation  
13 of the data is an exact match to the demographics of  
14 the State of Pennsylvania. So if ten extra people  
15 who were really wealthy were on a two-weeks long  
16 vacation that should have been polled but weren't,  
17 they are accounted for in post-application of this.  
18 So if the expected number of wealthy people should  
19 have been ten percent but it was only nine, we have  
20 adjusted it so that it was accurately reflecting the  
21 full demographics, not just at the income level.  
22 Everything.

23 Q. Okay. Now, along those same lines in certain  
24 factors that you would expect in any survey, isn't it  
25 true that if you make phones call in the same time,

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1 period every day, there will inevitably be people who  
2 will never going to be around because of work  
3 schedules?

4 A. Correct. That's why we call on weekends and try  
5 to leave the large calling window as possible.

6 Q. Right. And so you made three calls ---

7 A. Correct.

8 Q. --- total to number?

9 A. To each number.

10 Q. To each number. So if somebody works Monday  
11 through Friday, and two calls were made during Monday  
12 through Friday, there's only a one call chance that  
13 you're going to catch them on the Saturday and Sunday  
14 time frame; right?

15 A. We would have to look at how the calls were  
16 spaced out, but each call number was called three  
17 times.

18 Q. Is that data about the rotation or spacing out  
19 of phone calls part of your report?

20 A. No. That's available from Pacific.

21 Q. So there are no appendixes or citations to  
22 Pacific Market Research information like that, is  
23 there?

24 A. No.

25 Q. Okay. And so I guess along the same lines, if

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1 you have someone in a call center working for

2 Pacific, we don't know if they're calling getting no  
3 answer, hanging up, calling the same number again,  
4 hanging up?

5 A. They're not allowed to do that. The computer  
6 regulate when the call back happens.

7 Q. And that's generated randomly?

8 A. Yes. Well, we can set parameters depending on  
9 the length of the study and try to space them out  
10 over then length of the study for the exact reason  
11 that you identified. If you doing a three-day study,  
12 you would set call backs for the following day. If  
13 you were doing a six-day study, it might be every  
14 other day, et cetera. So that's in the computer, it  
15 tells when the call backs take place. Unless the  
16 respondents answers and specifically requests and  
17 says call me back tomorrow 7:00 p.m., in which case  
18 they will.

19 Q. Okay. And so basically, the random generation  
20 of this random digit dial, I believe it was, is done  
21 entirely by the computer system within the possession  
22 of Pacific Market Research; right?

23 A. That's my understanding, yes.

24 Q. And you described generally your understanding  
25 of that computer system, but keep in mind that we

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1 don't have a witness from Pacific, as far as I know,  
2 who's going to describe that. There's a right way  
3 and wrong way to do truly random --- to get a truly  
4 random generation of numbers, isn't there?

5 A. There's really only one way to do it.

6 Q. There's one way to do it. I mean, in other  
7 words, there are ---?

8 A. There's not really a wrong way, there's only one  
9 way.

10 Q. So you're saying it's not possible that their  
11 computer system could generate numbers that a  
12 statistician would say are not truly random?

13 A. No.

14 Q. That's not possible?

15 A. Not for the system that they use, no.

16 Q. You're testifying that you're familiar with  
17 their system and it's not possible that it generated  
18 numbers in a non-random fashion?

19 A. No.

20 Q. But we don't have any information in your report  
21 that would back that up --- I mean, that would  
22 provide any data one way or the other on that, do we?

23 A. It's a fairly, noncontroversial issue, so just  
24 the description of random digit dial explains what's  
25 happening. Any other survey methodologist would look

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1 at that and, you know, agree that it's happening. If  
2 there was a specific cause for concern, then someone  
3 might ask to look at other sorts of information.

4 Q. And my point is that as an expert witness,  
5 you're speaking to laypeople who are not other survey  
6 methodologists and so are we to assume this was all  
7 on the level because PMR is a --- Pacific Market



8 Research is a reputable firm?

9 A. Well, that. And we give instructions to say we  
10 went want a random digit dial that's randomly  
11 generated. They have the capability to do that so  
12 they would have no incentive to not do that.

13 Q. Isn't one method of ensuring that there's an  
14 equal probability of people from all over, random  
15 people being called is to do cluster samples, for  
16 example, a number of calls only in a rural area, a  
17 number of calls only in an urban area?

18 A. No. In my opinion that technique is not nearly  
19 as accurate as a pure RDD.

20 Q. I have some specific questions about statements  
21 made in your report. On page 17, you make a  
22 reference to known cell numbers. That indicates to  
23 me that there are unknown cell numbers. Can you tell  
24 us anything about the universe of unknown cellphones  
25 numbers?

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1 A. I was talking about unknown cell exchanges. So  
2 those are the first few digits of the cellphone  
3 numbers. And the cellphone carriers and FCC  
4 maintains a list of exchanges that are eligible for  
5 phone numbers --- cellphones. And there are some  
6 exchanges that are not eligible to be cellphone  
7 numbers. So that's what makes it possible to RDD and  
8 to generate these lists of random cellphone numbers,  
9 is that there are known cellphone exchanges, not the  
10 full ten-digit number, but just the exchange.

11 Q. We heard some testimony yesterday about people  
12 of limited means who had a prepaid cellphone with an  
13 allotted number of minutes on it. Would those  
14 numbers be included in the random digital dial?

15 A. Yes, they should be.

16 Q. Do you know for sure that they are?

17 A. There's no reason they wouldn't be.

18 Q. Starting near the stop of top of page 18, you  
19 state that allowing Spanish to be an option,  
20 quote/unquote, ensure that no communication problems  
21 will occur. If there are a large populations in  
22 Pennsylvania, say, of people from Asian countries who  
23 struggle with English and don't know any Spanish, you  
24 can't really say that allowing the Spanish option  
25 ensures that there are no communication breakdowns,

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1 can you?

2 A. I think that we are referring to no  
3 communications breakdowns for the Hispanic sample,  
4 but your point would be correct.

5 Q. Okay. And I'm not going to belabor the point  
6 then, but I mean, if there are --- you have people  
7 coming from eastern European countries in Pittsburgh  
8 or towns around Scranton, the same issue, they may  
9 not speak Spanish so that doesn't really enhance the  
10 communication there, does it?

11 A. We only offer the survey in English and Spanish,  
12 so I don't have the current rates of other language  
13 isolation, which is what is referred to. That's the

14 number of people who only speak another language but  
15 they don't have the ability to speak English.

16 Q. Just going to a basic assumption here, at the  
17 very outset of your report, you tout the  
18 effectiveness of the survey approach over the  
19 database comparison approach because it allows you to  
20 communicate directly with the voters; right?

21 A. Yes.

22 Q. So obviously communication breakdowns would  
23 diminish the benefit of going the route of surveys  
24 instead of database comparison?

25 A. If there were a large number of people who

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1 didn't speak English or Spanish and they had  
2 systematically different rates of access, then yes.  
3 If their rates of access were exactly the same as the  
4 English and Spanish speaking populations, then there  
5 would be no bias.

6 Q. Okay. Turning to the questions and the possible  
7 answers, we don't have, as part of the report, any of  
8 the actual answers from participants, do we?

9 A. You mean the raw data?

10 Q. Right.

11 A. Correct.

12 Q. So we might have been --- by raw data, just  
13 we're on the same page, the indications, and you  
14 mentioned earlier the coding, what you would put in  
15 for a yes, what you would put in for a no, we don't  
16 have that from every single person who was called as

17 to what their answers were; right?

18 A. It's not on this report.

19 Q. Is there any way in your report for us to tell  
20 that every time somebody said I don't know or I'm not  
21 sure? Is there any way to know if that they  
22 understood the question?

23 A. All the questions, the interviewers are  
24 instructed to repeat the question. If the respondent  
25 has any trouble understanding exactly what the people

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1 are getting act in the question. Still sometimes  
2 respondents don't know the answer to a question, and  
3 then they'll indicate I don't know.

4 Q. And they might truly just not know the answer to  
5 the question and they understand the question. But  
6 isn't it possible that they'll simply say I don't  
7 know if they don't understand it?

8 A. No. Usually, they'll say I don't understand the  
9 question and repeat it. And the interviewers then  
10 repeat the question to them.

11 Q. But if it's not that way, there's no way to tell  
12 from the raw data or from your report?

13 A. I mean in all of the surveys that I've overseen  
14 and at Pacific Market Research, the surveyors do  
15 interviews day in and day out, so they have a very  
16 good rapport with respondents. They understand  
17 typically when a respondent doesn't understand the  
18 question or when you ask him a factual question that  
19 they don't know the answer to. I don't think that's

20 any concern in this case.

21 Q. You indicated at the bottom of page 17 that  
22 numbers were dialed and redialed up to three times to  
23 avoid, quote, any possible nonresponse bias. Is  
24 there something magical about making three calls that  
25 makes you so certainly certain that there is no

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1 nonresponse bias in this survey?

2 A. There's been a number of academic studies that  
3 look at this issue called nonresponse bias. And  
4 generally, the largest finding is that if you call  
5 the number at least twice and you get a healthy  
6 number of people who answer on the second attempt,  
7 that you eliminated almost all of the nonresponse  
8 bias. If you call three times you virtually  
9 eliminated all of the nonresponse bias. And so it's  
10 a number that most people settle on because in peer  
11 reviews, they've demonstrated that that's the number  
12 that you need to get. At addition call backs, you  
13 don't really yield that many more completes. And the  
14 person who answers on the fourth attempt is not  
15 subsequently different than the person it took three  
16 attempts to answer.

17 Q. I would like to turn to what is question nine in  
18 the survey instrument, which says is the name that is  
19 printed on your driver's license or photo ID your  
20 full legal name exactly as it would appear on the  
21 Pennsylvania voter registration record or is there a  
22 difference. Do you have any information to verify

23 these responses?

24 A. Let me get a copy of the instrument to answer  
25 that.

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1 Q. I'm on page ---.

2 A. Let me get a copy of the instrument.

3 Q. So take your time. Go to question nine.

4 A. Yes.

5 Q. And I'll start the question over again. There  
6 was testimony during the Direct about direct match  
7 versus substantial conformity. Is it your testimony  
8 that it would be empirically difficult to get an  
9 answer that you can rely on if you allowed  
10 substantial conformity to be the standard in that  
11 answer?

12 A. Yes. We thought that would be difficult for the  
13 respondent to objectively understand what that meant  
14 and so we opted for this version of the question.

15 Q. Right. But you understood that the voter ID law  
16 says substantial conformity; right?

17 A. Correct. Yes.

18 Q. And you have expressed a concern that poll  
19 workers will have discretion in deciding whether  
20 there is substantial conformity?

21 A. I think that it is --- I mean, my own person  
22 opinion is that it is a nonobjective criteria and  
23 that different reasonable people could interpret it  
24 differently. And that each individual poll worker  
25 could interpret that somewhat differently.

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1 Q. Okay. So when we get to the end of the major  
2 conclusions of your report that are expressed in the  
3 tables, again sticking with eligible voters, as we  
4 did at the beginning of this Cross Examination, in  
5 table four, you have a total number of people who do  
6 not have a valid ID in Pennsylvania among the  
7 eligible voters at 14.4 percent?

8 A. That's correct.

9 Q. So if we just move up a couple from there ---  
10 I'm sorry. Right above that total is the number 4.3  
11 percent for has a non-expired ID but the name is not  
12 conforming. So that's entirely based on the answers  
13 given to you by the participant as to whether their  
14 name was a direct match?

15 A. That's based on the answer to question nine.

16 Q. Okay. But I mean isn't it possible that --- and  
17 again, this goes back the discretion that the poll  
18 workers that you have. Isn't it possible that the  
19 person answering your question might see that their  
20 name says Jim on one and James on the other, and they  
21 say, well, that is a match so their answer is a  
22 direct match?

23 A. It's possible that a respondent in that  
24 situation of Jim and James might think that's close  
25 enough match and say it's a match. And so we would

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1 not be excluding that person or it's also possible  
2 that they might say that is not a match.

3 Q. So that person could say actually, no, because  
4 one says Jim and the other says James, but another  
5 participant might say, Jim, James, yeah, it's a  
6 direct match; right?

7 A. It's possible that they might say yeah. The way  
8 we worded the question was whether or not your full  
9 legal name that's printed on your photo  
10 identification card is a match, is an exact match to  
11 what --- the name that would be listed on the  
12 Pennsylvania voter registration record is. So I  
13 would suggest that most people who don't match would  
14 say no.

15 Q. Isn't it possible, though, that part of this 4.3  
16 percent because of the discretion that poll workers  
17 have might be diminished when it comes to a poll  
18 worker saying that Jim and James is a substantial  
19 conforming match?

20 A. Yeah, I think we reviewed that earlier in the  
21 direct that some of these folks might be close enough  
22 that a poll worker believes that they're eligible to  
23 vote. Many of them may not be. And I think the  
24 larger concern that we had was that that may not be  
25 applied equally. There could be certain types of

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1 precincts in parts of town where the substantial  
2 conforming is more strictly applied. There could be



3 other places where it's more, loosely applied.

4 Q. And I think we can agree that if somebody had a  
5 photo ID and that their first name is Frank and they  
6 have a voter registration and their first name is  
7 Jim, that that's not a match and that doesn't  
8 substantially conform; right?

9 A. That would be my interpretation.

10 Q. Right. So that person would definitely stay in  
11 the 4.3 percent in table four, wouldn't they?

12 A. Yes.

13 Q. But much more commonly there might be somebody  
14 with the Jim and James situation, and that person  
15 could very well be approved to vote by the poll  
16 worker?

17 A. I don't know how much --- how common that would  
18 be, so I don't know.

19 Q. You don't know how common that would be?

20 A. We doesn't know among these 4.3 how many of them  
21 are considerable mismatches and how many of them are  
22 nickname mismatches that are common nicknames.

23 Q. Right. And because of the discretion that is  
24 with the poll workers or in the case of a provisional  
25 vote --- well I'll back up. Are you aware that if a

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1 poll worker were to say that is not a substantial  
2 conformist that that person can still cast a  
3 provisional vote and then it would go before the c  
4 county Board of Elections?

5 A. That's usually the most cases that there is a

6 discretion that is in play. Provisional ballots are  
7 available.

8 Q. So there's a couple levels of discretion then,  
9 isn't there, as to allowing a name to be  
10 substantially conforming to the ID?

11 A. It's possible. The issue is --- and I think  
12 this whole discussion goes to why it's an important  
13 and fuzzy issue, is that these 4.3 percent of  
14 Pennsylvanians are indicating to us that their name  
15 doesn't match. And they are then going to be at risk  
16 of finding themselves in some sort of limbo where  
17 possibly they'll get denied, possibly they'll have a  
18 provisional ballot. They might require follow-up.  
19 They have to send a letter somewhere or appear  
20 somewhere. And so it's putting any of the burden,  
21 including at the one end, all 4.3 percent of them  
22 could be prevented from voting if that's determined  
23 that their names don't substantially conform.

24 Q. And by exactly the same rational 4.3 is a fuzzy  
25 number in that every one of them could be determined

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1 to be in substantial conformance; couldn't they?  
2 Correct?

3 A. I think that it would be a very --- I mean, I  
4 would be very surprised if all 4.3, because we know  
5 for sure that there at least a number of women who's  
6 names changed through marriage and other things like  
7 that.

8 Q. But you said you don't know the likelihood ---

9 now you're getting into likelihoods though.

10 A. That's correct.

11 Q. So we don't know that that 4.3 percent is a hard  
12 number, but we also don't know that it's going to be  
13 zero, put it could be anywhere in between depending  
14 on what the poll workers and the county Boards of  
15 Elections do with names that may or may not  
16 substantially conform?

17 A. Correct.

18 Q. And towards getting a precise answer that you  
19 can empirically rely on in that same question, it was  
20 just the one question, wasn't it, does your name ---  
21 is your name a direct match?

22 A. Yes, just question nine.

23 Q. Is it's not a series of questions that allows  
24 them to get out a card and confirm that each  
25 character is in the same order and so forth?

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1 A. No.

2 Q. And if there are voters who have, say, a married  
3 name on a photo ID and a maiden name on a voter  
4 registration card, those people could conceivably  
5 change their voter registration over the next three  
6 months; right?

7 A. It's possible that they could change their voter  
8 registration records.

9 Q. Well, that's not something that --- the report  
10 doesn't indicate that's not going to happen, does it?

11 A. No, it's just quite unlikely. Most --- all of

12 the research suggests that once people register, they  
13 almost never update their registration records. And  
14 that --- so that's an extremely uncommon practice for  
15 people to change their voter registration records.

16 Q. So you don't think that with news about the  
17 voter ID law that that 4.3 percent is going to go  
18 down even further because people with a married name  
19 are changing their voter registration to keep them  
20 consistent?

21 A. Well, I don't know how many people are going to  
22 change and but new people would also be getting  
23 married who are currently a perfect match, and by  
24 election day, they may not. So some people come in  
25 to the system who are now --- some people are perfect

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1 matches right now. But if they get married and  
2 change their name and get a new driver's license,  
3 then they would no longer be a perfect match. This  
4 is the most common thing that happens is that after  
5 people get married and change their name, women in  
6 particular, they might get a new driver's license but  
7 they're already registered to vote and they would not  
8 probably not be in the voter registration system. So  
9 while some people could perhaps take steps to update  
10 their voter registration record, other people will be  
11 --- every time people are getting married and  
12 updating their driver's license, if they are not  
13 going and updating their voter records, which is  
14 extremely rare, then they're going to be a mismatch.

15 Q. And this gets to an important point that these  
16 tables that we went through are a snapshot of  
17 Pennsylvania voters between June 21st, 2012 and July  
18 2nd, 2012; right?

19 A. That's correct.

20 Q. That's the data that you collected, that's what  
21 in these tables?

22 A. Correct. The way that we typically interpret  
23 surveys is that we would expect that if we replicated  
24 the study at any time that we would get --- with the  
25 same sample methodology that we would get virtually

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1 identical results within that margin of error, unless  
2 there was some other reason to suspect otherwise.

3 Q. Okay. On the same table, if we go up one from  
4 the 4.3 percent, you list that 8.7 percent of  
5 eligible voters has an ID but the ID is expired. Did  
6 I interpret that correctly?

7 A. Yes. And we said earlier that an expired would  
8 mean not current for purposes of voting.

9 Q. So more than a year expired on the driver's  
10 license would be part of that?

11 A. Or non-driver ID, correct.

12 Q. And so are you aware that someone who had a  
13 driver's license or a photo ID card from PennDOT any  
14 time since 1990 can simply go to driver's license  
15 center and have their photo taken and get a free  
16 photo ID for voting purposes?

17 A. Correct. That they are able --- eligible to do

18 that. The question is whether or not these people  
19 will actually do it.

20 Q. Whether they will do it, sure. But in this 8.7  
21 percent is there any information in your report to  
22 indicate which of these people fall within the 1990  
23 to the present population?

24 A. We don't have a table that breaks that down.

25 Q. So if people do take vantage of that option,

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1 they maybe in that 8.7 percent and over the next  
2 three months it goes down for that reason, doesn't  
3 it?

4 A. It's possible that people who have an expired ID  
5 could return and go through the process to renew it.  
6 In my opinion, it's extremely unlikely. That's not  
7 something that is common practice that people are  
8 going to be doing. A number of the people perhaps  
9 have expired IDs that are quite expired. Obviously,  
10 if their ID is expired by only a year, which would  
11 already be expired for purposes of driving, we're  
12 counting them as eligible. And so it's been, you  
13 know, a year already and they haven't gone and  
14 updated their ID, so typically we always see about  
15 the same rate within a population which carries an  
16 expired ID card. We don't usually see that suddenly  
17 go down to just one percent. It almost always comes  
18 that at any given time, you know, there's about eight  
19 percent of people in the state that have an expired  
20 ID card.

21 Q. But we have a special occasion though or a  
22 special set of circumstances with the change in the  
23 law in Pennsylvania. So my question is, isn't it  
24 possible that in order to comply with the law, if for  
25 no other reason, part of that 8.7 percent will become

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1 among the population that has and unexpired ID? I  
2 mean, isn't that likely to happen to some extent that  
3 over the next three months people will go in to get a  
4 valid ID?

5 A. I don't use the word likely. I would agree that  
6 it's possible that people could go and get their ID.  
7 We could talk more about why I don't think that.

8 Q. Right. And that's get into your outreach and  
9 the public education and your scepticism that that's  
10 going to have any effect; is that right?

11 A. That's part of it. But as you add, there's an  
12 entirely long line of research in political science  
13 specifically on this issue of voter registration and  
14 voting regulations that goes all the way back to the  
15 research on poll taxes that was being conducted in the  
16 '30s and '40s and '50s. That regardless of whether  
17 it's free or not free, whatever the case is, the more  
18 hurdles and steps that you require for people to go  
19 through, each one dramatically decreases the  
20 probability that people will do that. So we could  
21 say it's possible someone could drive their car an  
22 entire lap around the state. They have the ability  
23 to do that. But they're unlikely to do that. The

24 more hurdles that you put in front of a person, the  
25 research only points in one direction, that that

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1 would decrease the likelihood that they would take  
2 those steps to do that. Then that gets coupled with  
3 what you mentioned before, my scepticism that in the  
4 compressed amount of time that the outreach could be  
5 extremely successful.

6 Q. I am going to switch to a slightly different  
7 topic that I'm not sure was covered adequately  
8 before. But voter turnout is a phenomenon that  
9 you've studied extensively, isn't it?

10 A. Yes.

11 Q. We're not making an assumption with these  
12 numbers or these tables that a hundred percent of the  
13 eligible voters are going to show up on November 6th  
14 and not have a photo ID; right?

15 A. I don't anticipate there will be a hundred  
16 percent turnout of the eligible population.

17 Q. And do you expect that there will be a hundred  
18 percent turnout of registered voters in November?

19 A. No.

20 Q. And do you expect that there will be a hundred  
21 percent turnout of 2008 voters in November of this  
22 year?

23 A. They'll have, by far, the high rates of  
24 attempted participation in 2012.

25 Q. Out of those three?

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1 A. Yes.

2 Q. That's doesn't mean that they're going to be a  
3 hundred percent?

4 A. No. But it should be close to 95.

5 Q. Are you aware of recent data in Pennsylvania  
6 that even in presidential elections the number was  
7 closer to 65?

8 A. That's among the eligible.

9 Q. Okay. You're saying --- but okay. So since  
10 then ---?

11 A. I'm saying among people who vote in presidential  
12 elections that's the denominator, that they always  
13 tend to vote in presidential elections.

14 Q. So in other words, if we're not looking at a  
15 hundred percent --- we've been talking about the  
16 eligible voter population from the beginning, we're  
17 not looking at 14.4 percent of the population  
18 necessarily showing up in November and not having  
19 --- that's not your testimony? You're just saying  
20 those were not equipped?

21 A. I think that there's a miscommunication here.  
22 The idea is that among the people who eligible to  
23 vote, 14.4 percent do not have the ID to vote. Some  
24 of the people who don't have the ID to vote are not  
25 going to vote. Some of the people who do have the

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1 ID to vote aren't going to vote. And so unless

2 there's evidence to suggest that those 14.4 percent  
3 are absolutely not going to vote, we would expect,  
4 specially because those rates are consistent for the  
5 people who actually did vote, it's 12.6 percent,  
6 that among active voters that there would be a large  
7 percentage, probably closer to the 12.6 percent that  
8 would do not have a valid ID. The 2008 population  
9 would be our best approximation for measuring 2012.

10 Q. Focusing on the middle of the second --- of  
11 registered voters, I'm interested in how you  
12 ascertained that people are, in fact, registered  
13 voters. If you look at question five from the  
14 instrument, the question says if you can take out  
15 take out your driver's license real quick and check  
16 the expiration date. And that's pertaining to  
17 drivers who may have an expired ID?

18 A. Correct.

19 Q. Okay. But on page --- in question S3, which in  
20 my copy is page 63, the question simply asks would  
21 the official public voter records indicate that you  
22 are currently registered to vote here in Pennsylvania  
23 or not. So that question doesn't ask the participant  
24 to take out a voter registration card; right?

25 A. Well, first of all it's not a question?

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1 Q. Could you read the question?

2 A. There's two sentences before that.

3 Q. Okay. Go ahead.

4 A. In talking to people about voting, we often find

5 that many people do not have the time to register to  
6 vote or just weren't interested in registering. How  
7 about you? would the official public voter records  
8 indicate that you are currently registered to vote  
9 here in Pennsylvania or not?

10 Q. And is there any follow-up information to  
11 ascertain whether the person is registered?

12 A. No. I mean, most people who do have a valid  
13 photo ID tend to have it either with them or near  
14 them, so we're able to ask that follow-up question on  
15 question five. I don't know anybody who carries the  
16 voter registration card around with them. So it's  
17 not the sort of thing that you can ask. The way that  
18 we ask the question here is one that has been tested  
19 through a number of different experimental ways of  
20 testing that included the national election study  
21 that we discussed earlier. And by telling the  
22 respondent that we know that lots of people aren't  
23 registered to vote, and also telling them that we  
24 would like to ask what the official public records  
25 would show. That cues a high sense of giving the

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1 right answer. And so people have the sense that  
2 they're going to tell us whether or not they're  
3 actually registered to vote because we're in voter  
4 rules and procedures. So this has been determined to  
5 one be one of the best ways to try to answer that  
6 question.

7 Q. So based on that, if you ask --- if a person

8 says that they are registered, you assume that  
9 they're registered?

10 A. That's correct. We don't have their address  
11 here because it's a random digit dial survey. So we  
12 don't attempt to look at the voter rules in this sort  
13 of capacity.

14 Q. On page 22, you discuss, quote, two possible  
15 scenarios that could negatively impact the voting  
16 eligible population in November of 2012. Did you  
17 study any scenarios that to that could positively  
18 affect vote eligible population?

19 A. Affect them positively in what way?

20 Q. Well, you suggest scenarios where people are  
21 eligible but may end up showing up without voter ID  
22 --- without a photo ID to enable them to vote. Did  
23 you look at any scenarios that would increase the  
24 likelihood of people showing up with photo ID to  
25 vote?

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1 A. That wasn't the objective of the study. The  
2 study objective was just to determine the rates of  
3 possession. It wasn't a study to determine voter  
4 mobilization.

5 Q. At the bottom of 23, you say those who are  
6 unaware of the new voter ID law may not bring the  
7 proper credentials with them to the voting booth on  
8 election day. Is there any data to support that they  
9 may or they may not? Is there information in your  
10 report to suggest that somebody who has the proper

11 credentials won't bring it with them?

12 A. If they're not aware that --- the section there  
13 I refer to is that 37 percent of the voting eligible  
14 population is unaware of the law. At least some  
15 percentage of those people who do not know that there  
16 is a photo identification requirement for in-person  
17 voting, since there has not been one in the past, may  
18 not bring their photo identification with them to the  
19 polls.

20 Q. The survey didn't include any questions about  
21 whether the participant in the survey regularly  
22 carries their driver's license or their photo ID with  
23 them, does it?

24 A. No.

25 Q. Would asking that question mitigate some of the

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1 speculation about whether someone will or won't bring  
2 their photo IDs to the polls?

3 A. Sure. We're not attempting to say all these  
4 folks are. We're just identifying that as a problem,  
5 that if 37 percent of people are not aware of the law  
6 --- I don't think anybody would agree that hundred  
7 percent of the people who have valid ID carry it with  
8 them a hundred percent of the time. We've all been  
9 somewhere where we didn't have our license with us.  
10 And the idea is if 37 percent of the population is  
11 not aware of the law, at least some percentage of  
12 people who are actually meeting the requirements,  
13 according to our survey, are going to be further

14 impacted because their going to attempt to vote and  
15 because of their limited knowledge of the law,  
16 they're not going to be able to produce the proper  
17 credentials on election day.

18 Q. I'd like to turn to your testimony about public  
19 outreach and education and your scepticism about that  
20 an ad campaign can change public awareness about an  
21 issue. Did I correctly state that, first of all, you  
22 concluded that ad campaigns are not necessarily  
23 effective in correcting misperceptions or even  
24 outright ignorance about a given issue; right?

25 A. I would say especially in a suppressed amount of

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1 time.

2 Q. And on page 24 of your report, you cite the  
3 Lupita study; right?

4 A. Yes.

5 Q. And that involves insurance reform elections. I  
6 assume it was California, so I assume there was a  
7 valid resolution?

8 A. Correct.

9 Q. And what that found was even after an ad  
10 campaign, 14 to 19 percent had low levels of  
11 knowledge on the issue that was on that resolution?

12 A. Correct. That after an extensive, millions and  
13 million of dollars of ads being around talking about  
14 issues, that when asked factual questions about the  
15 initiatives, 14 percent answered --- I think they  
16 asked them a battery of like ten questions. And 14

17 percent got every single one wrong. And in  
18 additional --- so it's not between, it's additional,  
19 so combined it's 33 percent. And additional 19  
20 percent only got one or two correct.

21 Q. And even if we assume that insurance reforms are  
22 as important to the average person as voting, isn't  
23 that 14 to 19 percent range better than what's you  
24 just stated as the current level of unawareness about  
25 the voter ID law in Pennsylvania?

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1 A. No. It's 14 and 19, so that adds up to 33,  
2 which is quite close to 34, which is the percentage  
3 of registered voters who don't know.

4 Q. And as far as this study goes, this had to do  
5 --- this was only studying the effects of an ad  
6 campaign; right?

7 A. This particular study was by Lupita, but as you  
8 can see above that, I reference a couple of other  
9 studies, just about voter knowledge in general,  
10 including things that we oftentimes presume voters  
11 know such as the name of the vice president of what  
12 the Bill of Rights is and things like that.

13 Q. But you're not suggesting that an ad campaign  
14 would have no effect on voter awareness about the  
15 voter ID law?

16 A. No. It could have an effect. What the Lupita  
17 article highlights is that it could actually lead to  
18 more misinformation. So you might find two people  
19 that saw the ad campaign and realize they were out of

20 compliance, but there could be additional people who  
21 saw the ad campaign and were assured that they were  
22 already in compliance and cause them to not go out  
23 and get additional pieces of information. That's the  
24 underlying point of his research.

25 Q. Okay. And if the public education campaign

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1 involves more than just ads on TV or radio or  
2 wherever ads are made, but actually involves direct  
3 contact with the voters, that's different, isn't it?

4 A. That's another level of outreach certainly. But  
5 based on my reading of the literature, including the  
6 research I've done on voter sophistication and  
7 knowledge among voters, I do not believe that there  
8 is enough time to change people's perceptions on two  
9 fronts. One is just the awareness of the law. But  
10 secondly is the fact that most people, 98 percent of  
11 the people, currently believe they have a valid ID.  
12 Those people who are the most at risk of tuning the  
13 ad campaign out.

14 Q. And aren't you assuming the content of the ad  
15 campaign though? I mean, If the ad campaign  
16 specifically said you must have one of the following  
17 IDs, wouldn't that be addressing --- that's not just  
18 saying make sure you have photo ID, is it? That's  
19 addressing that exact concerns, isn't it?

20 A. You know, we would have all have to wait and see  
21 how good the ad campaign is. But if the ad campaign  
22 said exactly what you said, you must have one of the



23 following IDs, then that would be a good example of  
24 one that would be bad, because 98.6 percent of people  
25 have one. So if they heard that, they would go, ah,

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1 good, I'm covered. The issue would be that they have  
2 an expired ID or their name doesn't match, so we  
3 would have to look specifically at the content of the  
4 that, then we would have to measure the saturation,  
5 whether or not people heard that and whether or not  
6 they were able to actually sort of ferret that out,  
7 as I said before, in the giant mix of all the ads  
8 that are just going to saturate the Pennsylvania  
9 market.

10 Q. Sure. And you testified earlier about how many  
11 political ads there may be as we get closer to  
12 November. But on that topic, political campaigns  
13 don't just air TV and radio ads, they also knock on  
14 doors, especially on the local level, they go to the  
15 county fairs and they do what's called grassroots  
16 politics; right?

17 A. Yes.

18 Q. So that's taking the message straight to the  
19 voters; right?

20 A. Sure.

21 Q. So to the extent that an ad campaign is  
22 supplemented with going to straight to the voters  
23 about photo ID that increases its effectiveness,  
24 doesn't it?

25 A. The issue here is two. One is that the state

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1 would have the ability to connect with the voter  
2 specifically, especially in the outreach, actually  
3 connect with the voter to get their attention and  
4 convince them that this is happening. Typically when  
5 ad campaigns happen, television and advertising, as  
6 you've seem to alluded to, is at least less personal.  
7 And so it's less effective, but it reaches a mass  
8 audience. You put these commercials out and well  
9 maybe I'll get a couple of people. Lots of people  
10 are fast forwarding through the commercials or  
11 they're leaving the room or all sorts of things  
12 because they think it doesn't apply to them. So I  
13 think there are multiple types of contact. You  
14 increase your opportunity to connect with the voter.  
15 But it still presumes that you can do that in a way  
16 that gets the voter attention and convinces them that  
17 they need to take these steps. Even if that were to  
18 happen and some amount of voters out of the 14.4 that  
19 we estimate did receive the ad campaign realize that  
20 they were out of compliance, it doesn't guarantee  
21 that they're going to have the time or the resources  
22 or the ability to go and correct the problem. And  
23 that's what I referenced earlier in referencing other  
24 research that suggests the more things that you're  
25 asking a voter to do in a short time before and

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1 election, the less likely that they're going to be  
2 able to do that.

3 Q. And toward that end, I would like to focus on  
4 table eight in terms of having less thing to things  
5 to do. I just wanted to focus on the number there  
6 about people who have or don't have Social Security  
7 cards. In that table doesn't it indicate that among  
8 registered voters, that number is 122,667? I'm  
9 sorry. Take your time and get there, table eight.

10 A. That's correct.

11 Q. And among 2008 voters, that number who do not  
12 have Social Security cards is 33,419?

13 A. That would be 7.5. I think that my guess is  
14 that --- if notice the line below is exactly the  
15 same.

16 Q. I'm getting to the table myself.

17 JUDGE SIMPSON:

18 I noticed it.

19 A. That's just a copy and paste issue there.

20 33,419 is 2.1 percent of 6 million. So 7.5 percent  
21 would be about 70,000 or so, I would guess.

22 BY ATTORNEY CAWLEY:

23 Q. Okay. I'm looking just at the line that has  
24 Social Security card and if we go all the way to the  
25 end of the far right, those who don't have a Social

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1 Security card among those who also do not have a  
2 valid ID is 159,184?

3 A. That looks right.

4 Q. Okay. And your numbers don't isolate, and I'm  
5 now kind of referring to the table seven immediately  
6 above it, you don't isolate just those people who  
7 lack a birth certificate, do you?

8 A. Well, we do because --- oh, just a birth  
9 certificate. No. We say any proof of documentary  
10 proof of citizenship.

11 Q. Because that number, the number of people who  
12 don't have a birth certificate is wrapped up with  
13 passports and other proofs of citizenship, identity  
14 and residence; right?

15 A. Not residence. Has documentary proof of  
16 citizenship would be --- to have that you have to  
17 have other official birth certificate or a  
18 naturalization certificate or a U.S. passport would  
19 suffice.

20 Q. So birth certificate by itself is not broken  
21 out; right?

22 A. No.

23 Q. And you said near the end of your testimony on  
24 Direct Examination that people will not be able to  
25 provide a Social Security number. Were you basing

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1 that on the table eight figures on who does not have  
2 a Social Security card?

3 A. Yes. The question we asked was whether or not  
4 you actually had an official copy of your Social  
5 Security card.

6 Q. Okay. But that doesn't indicate whether people  
7 know their social security number or not; right?

8 A. No, it does not. But my inclination would be  
9 that most people who don't have a card are less  
10 likely to know their social security number. But we  
11 did not ask a specific question as to whether or not  
12 they know number by number.

13 ATTORNEY CAWLEY:

14 Those are all the questions I have.

15 Thank you.

16 ATTORNEY WALCZAK:

17 Your Honor probably thinks with  
18 trepidation every time I stand up now, but we have no  
19 further questions for Professor Barreto.

20 JUDGE SIMPSON:

21 Bear with me a moment. May I see the  
22 exhibits, please?

23 JUDGE SIMPSON:

24 All right. There was an exhibit that  
25 was marked this morning that I do not have here. It

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1 is the CV, 16. May I see it, please?

2 JUDGE SIMPSON:

3 Okay. If there are no further,  
4 questions, then thank you very much for your time.

5 You may step down. You're free to leave.

6 OFF RECORD DISCUSSION

7 ATTORNEY GERSCH:

8 Should we call our next witness, Your

9 Honor?

10 JUDGE SIMPSON:

11 well, how long is your witness going to  
12 take? I've heard an awful lot today and I'm probably  
13 not as sharp as I was yesterday.

14 ATTORNEY GERSCH:

15 This will not be a figure witness. It  
16 would be the Commonwealth official. It would be the  
17 Commonwealth ---.

18 ATTORNEY SMITH:

19 Half an hour, 45 minutes. I think I  
20 can make it in half an hour.

21 JUDGE SIMPSON:

22 Okay. Let's do it.

23 ATTORNEY SMITH:

24 Petitioners call Rebecca Oyler.

25 BAILIFF:

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1 Please raise your right hand.

2 -----

3 REBECCA OYLER, HAVING FIRST BEEN DULY SWORN,  
4 TESTIFIED AS FOLLOWS:

5 -----

6 DIRECT EXAMINATION

7 BY ATTORNEY SMITH:

8 Q. Good afternoon, Ms. Oyler.

9 A. Good afternoon.

10 Q. We met once before. But in case you don't  
11 remember, my name is Rosemary Smith, and I'm one of

12 the attorneys representing the Petitioners in this  
13 case.

14 A. Hi Ms. Smith.

15 Q. Could you please state your name for the record?

16 A. Rebecca K. Oyler.

17 Q. And you worked at the Pennsylvania Department of  
18 State since 2000; is that right?

19 A. Yes.

20 Q. You began as the director of policy back in  
21 2000?

22 A. Yes.

23 Q. Then from 2003 to beginning of 2011, you were  
24 over at the shore office as a project analyst; is  
25 that right?

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1 A. Yes.

2 Q. Then since early 2011, you've been back in the  
3 position of director of policy for the Department of  
4 State; is that correct?

5 A. Yes.

6 Q. And as policy director, your roll is as a  
7 liaison between the Governor's Policy Office and the  
8 Department of State; right?

9 A. Yes.

10 Q. Are you familiar with Pennsylvania's Act 18 of  
11 2012?

12 A. Yes.

13 Q. And just so we're on the same page, I may refer  
14 to it as Act 18 or the photo ID law, but you will

15 know what I am talking about?  
16 A. Yes.  
17 Q. And the Department of State supported passage of  
18 Act 18?  
19 A. Yes.  
20 Q. And in your role as policy director, you did  
21 some of the research that supported the passage of  
22 Act 18?  
23 A. That's right. Yes.  
24 Q. So you worked in the Department of State for  
25 over a decade?

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1 A. Yes. Twelve (12) years.  
2 Q. And for seven to eight of those years, you were  
3 actually working in the shore office and focussed  
4 exclusively on election-related issues?  
5 A. Yes, exactly.  
6 Q. So fair to say, you are knowledgeable about the  
7 requirements for voting both before the passage of  
8 Act 18 and since its enactment?  
9 A. Yes.  
10 Q. So let's start with before Act 18. Before Act  
11 18 the first time a person voted in a precinct, they  
12 had to present a form of identification?  
13 A. Yes.  
14 Q. And that form of identification could be a photo  
15 ID but it did not have to be a photo ID; right?  
16 A. That's correct.  
17 Q. To present something like a utility bill?



18 A. Yes.

19 Q. And then before Act 18, after the first time you  
20 voted in a precinct, you did not have to present any  
21 form of ID?

22 A. Right.

23 Q. You would go; you would sign your name in a poll  
24 book; right?

25 A. Yes.

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1 Q. And that signature would be compared to the  
2 signature in the registration system?

3 A. Yes.

4 Q. Okay. So just to sum up before Act 18, at no  
5 point were you required to present photo  
6 identification; is that fair?

7 A. Right. Yes.

8 Q. Just give you a moment to pour the water.

9 A. Sorry.

10 Q. All right. Now, I want to turn to the  
11 requirements under Act 18. And to help us do this a  
12 little more quickly, I'm going to ask to put up the  
13 voter ID log FAQ, which we'll mark as Petitioner's  
14 Exhibit 19. Do you recognize this document?

15 (Petitioner's Exhibit 19 marked for  
16 identification.)

17 A. Yes.

18 BY ATTORNEY CLARKE:

19 Q. And this version, can you scroll down to the  
20 second page, at the bottom it was updated May 24th.

21 Does that make it the current version?

22 A. I believe so.

23 Q. And this is available on the Department of

24 State's website, votespa.com?

25 A. Yes.

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1 Q. And it's intended to be an accurate description  
2 of the requirements associated with the photo ID law?

3 A. Yes.

4 Q. All right. So beginning with page two, you move  
5 up a little bit and you can zoom in a little bit,  
6 this described --- at the very top it says, let me  
7 pull up my copy so I can see it. Starting with the  
8 November of 2012 general election, and you have a  
9 copy next to you as well, Pennsylvania law now  
10 requires voters to show and acceptable photo ID. And  
11 then it says, the first description is all IDs must  
12 contain a name, a photo and an expiration date that  
13 is current, unless noted otherwise; did I read that  
14 right?

15 A. Yes.

16 Q. So let's begin with that first requirement, the  
17 name requirement. Every ID --- acceptable ID has to  
18 have a name on it; right?

19 A. Yes.

20 Q. There are no exceptions to that?

21 A. No.

22 Q. And under Act 18 the name has to substantially  
23 conform to the name in the Voter Registration System;

24 right?

25 A. Yes, correct.

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1 Q. They don't have to be an exact match, but they  
2 have to substantially conform?

3 A. Right. Yes.

4 Q. And the substantially conformed requirement is  
5 not on this FAQ; is it?

6 A. No, it's not.

7 Q. The Department of State does not have authority  
8 to define for the county's what it means to  
9 substantially conform; right?

10 A. Yes, the statute gives no guidance as to what is  
11 meant by substantially conform, no.

12 Q. And in the absence of that guidance, the  
13 Department of State can't define it for the counties;  
14 can it?

15 A. That's right, yes.

16 Q. Cannot?

17 A. Cannot.

18 Q. The Department of State could issue some  
19 guidance but it wouldn't be binding?

20 A. Yes, that's correct.

21 Q. So at the end of the day each County Board is  
22 going to have discretion to interpret that term?

23 A. Yes.

24 Q. In fact, on election day in the absence of other  
25 guidance it's going to be the poll workers who are

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1 interpreting the term substantially conformed?

2 A. Yes, on election day. Yes.

3 Q. And those poll workers may necessarily have  
4 received any training; is that right?

5 A. The poll worker must receive training from the  
6 county before election.

7 Q. Well, the counties have to provide training; is  
8 that right?

9 A. Yes.

10 Q. The poll workers are not required to attend the  
11 training?

12 A. Yes, that's true.

13 Q. Okay. Moving to the next requirement, which is  
14 the --- well, I'm skipping, but the expiration date.  
15 Most IDs have to have an expiration date under the  
16 law; is that fair?

17 A. Yes.

18 Q. And I see on this page there, they identify two  
19 exceptions to that, one is that a PennDOT ID can be  
20 up to 12 months past its expiration date; is that  
21 right?

22 A. Yes.

23 Q. And the second is that a U.S. active duty and  
24 retired military IDs may designate an expiration date  
25 that is indefinite; is that right?

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1 A. Yes.

2 Q. Are those the only who exceptions to the  
3 expiration date requirement, that you're aware of?

4 A. Yes.

5 Q. Now, the expiration date can be a sticker; is  
6 that right?

7 A. Yes.

8 Q. The sticker has to be issued by the institution  
9 that issued the ID; is that right?

10 A. Yes. That's the guidance that we've given.  
11 Yes.

12 Q. Okay. So in other words, I can't take my ID  
13 with no expiration date on it and make myself a  
14 sticker, stick it on there and show up?

15 A. No, because the time your ID wouldn't have been  
16 issued by a institution then.

17 Q. Okay. But at the end of the day the poll worker  
18 is not going to have any way of knowing whether a  
19 sticker was actually stuck on by a institution that  
20 issued the ID; are they?

21 A. Not in authoritatively, no. But in  
22 practicalities, we believe that the counties will  
23 work with the institutions in their counties, so that  
24 the poll workers will be able to be aware of what  
25 types of stickers might be provided in universities

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1 surrounding the polling places. So all the stickers  
2 should look the same, they should be uniform, and so  
3 poll workers should know what to expect.

4 Q. So that's Department of State's hope as to how

5 it's going to work and practice?

6 A. Yes.

7 Q. But to be clear, at the end of the day there  
8 could be a poll worker looking at a sticker and not  
9 able to know who put that sticker on there?

10 A. Yes. But we know that county have worked with  
11 institutions in their own counties to make sure that  
12 that's --- that that procedure is thought out ahead  
13 of time.

14 Q. To minimize problems?

15 A. To minimize problems, right.

16 Q. So we discussed the name requirement which is  
17 the name that has to substantially conform, the  
18 expiration date which can be a sticker; the last  
19 requirement is the photo itself. And at the bottom  
20 of this section, can you scroll down a little, there  
21 is an objection notice --- I'm sorry, an exception  
22 noted to that, to the photo requirement. And that's  
23 for individuals who have a religious objection to  
24 being photographed; is that right?

25 A. Yes.

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1 Q. Okay. So setting aside the exceptions that we  
2 just discussed, we basically covered the three  
3 primary elements for a acceptable photo ID; is that  
4 fair?

5 A. Yes.

6 Q. And we also have listed here the groups of  
7 entities that can issue that ID; right?

8 A. Yes.

9 Q. There are four. And the first is photo IDs  
10 issued by the U.S. Government or Commonwealth of  
11 Pennsylvania, the second is employee photo  
12 identification issued by federal Pennsylvania ---  
13 Pennsylvania county or Pennsylvania municipal  
14 governments. And the third is those issued by an  
15 accredited public --- Pennsylvania public or private  
16 institution of higher learning. And the fourth is an  
17 identification issued by a Pennsylvania care  
18 facility; is that right?

19 A. Yes.

20 Q. So just to get a sense of what's not covered  
21 here. For example, an ID issued by a transit  
22 authority, like SEPTA, that would not be covered;  
23 correct?

24 A. No.

25 Q. And by covered, I mean would not qualify as  
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1 accepted under the ID law?

2 A. Right, that would not.

3 Q. That would not; okay. And ID issued to an  
4 employee of a school district, that would not qualify  
5 under the law; correct?

6 A. No, a school district is not a municipality.

7 Q. So teachers cannot use their school IDs to vote?

8 A. No.

9 Q. Now, with respect to institutions --- the third  
10 and the fourth categories, the institutions of higher

11 learning and the care facilities. The law does not  
12 speak to how --- who those institutions can issue  
13 their IDs to; correct?

14 A. That's correct, yes.

15 Q. So if a care facility wants to issue an ID to  
16 its nurses, it can do that?

17 A. Yes.

18 Q. And if care facility wants to issue and ID to a  
19 person --- a stranger who comes in off the street,  
20 they can do that?

21 A. Theoretically, yes.

22 Q. Okay. Moving to the bottom of the this page, it  
23 says when a voter does not have an acceptable form of  
24 ID. And the answer there indicates that person can  
25 obtain a free PennDOT ID; right?

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1 A. Yes.

2 Q. Okay. So if we move to the next page, it's  
3 going to be the --- this is the beginning of the  
4 requirements for obtaining a PennDOT ID. And at top  
5 the first category of voters it addresses people who  
6 have previously had a driver's license or PennDOT ID;  
7 correct?

8 A. Yes.

9 Q. And those individuals who previously had an ID  
10 they can come into a PennDOT office, complete an  
11 application, sign the affirmation, they do not have  
12 another ID, and they can get a new ID; right?

13 A. Yes.



14 Q. They do not have to provide any documentation?

15 A. Yes, as long as their information is still

16 contained within the PennDOT database. Yes.

17 Q. And my understanding is that that is true for

18 people from 1990 forward?

19 A. Yes, for the most part, I believe.

20 Q. People with IDs in the system from 1990 forward?

21 A. Yes.

22 Q. Now, the second category is for people who never

23 had a PennDOT ID; right? And those people do have to

24 present documentation?

25 A. Yes.

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1 Q. They have to present a Social Security card?

2 A. Yes.

3 Q. They have to present either a Certificate of

4 Citizenship, a Certificate of Naturalization or a

5 birth certificate with a raised seal?

6 A. Yes.

7 Q. So in practical experience, most people of those

8 three it's going to be a birth certificate with a

9 raised seal that they would present?

10 A. Likely, yes.

11 Q. And then they also have to present two proofs of

12 residency?

13 A. Yes.

14 Q. Now, speaking along the little, would you agree

15 with me that the next page, so all of page three, is

16 more information on the --- how to get a PennDOT ID?

17 A. Yes.

18 Q. Okay. And turning to the next page, page four,  
19 all the way to the very bottom this is just --- this  
20 is more information on how to get a PennDOT ID?

21 A. Yes.

22 Q. Okay. So at the very bottom we finally get to  
23 what if a voter shows up at the polling place without  
24 an acceptable, and if you go click the next page it  
25 says ID. So now we're dealing with the person who's

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1 --- on election day at the polls and doesn't have an  
2 ID; right?

3 A. Right.

4 Q. And the answer is that that voter can cast a  
5 provisional ballot; right?

6 A. Yes.

7 Q. That provisional ballot is only going to count  
8 if a voter provides acceptable ID to the County Board  
9 of Elections within six calendar days of the  
10 election; right?

11 A. Right. Yes.

12 Q. So even if a person casts a provisional ballot,  
13 they're still going to have to present an acceptable  
14 ID if they want that vote to count; right?

15 A. Yes.

16 Q. So if a person is just not able to obtain a  
17 photo ID, casting a provisional ballot is not going  
18 to make their vote count?

19 A. No, there's an exception for indigent voters.

20 Q. And we'll get to that in a second. But  
21 generally speaking, a person who's not able to get an  
22 ID is not getting any help from this provisional  
23 ballot?

24 A. This will help the person who accidentally left  
25 their ID at their house or home, and is able to

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1 obtain it after the election and provide it.

2 Q. It will not help the person who simply can't get  
3 an ID, didn't have one before; can't get one after?

4 A. It will give them six days to get one, yes.

5 Q. Right. But this is the person who cannot get an  
6 ID?

7 A. Who cannot get one in six days?

8 Q. Right.

9 A. Yes, that will be a problem.

10 Q. And if we go to the next page, up to page five,  
11 right there. This is the --- you see the top it says  
12 what if a voter cannot afford to obtain an acceptable  
13 ID, is this the indigent exception that you were just  
14 referring to?

15 A. Yes.

16 Q. So this says that certain people can cast a  
17 provisional ballot and --- without an acceptable ID,  
18 and have that ballot count if they can sign an  
19 affirmation that affirms certain things; right?

20 A. Yes.

21 Q. They have to affirm that they are the same  
22 person who cast the provisional ballot?

23 A. Yes.

24 Q. They have to affirm that they are indigent?

25 A. Yes.

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1 Q. And they have to affirm that they have unable to  
2 obtain identification without the payment of a fee?

3 A. Yes.

4 Q. There is no definition of indigent in the  
5 statute?

6 A. No.

7 Q. So again, each County Board of Elections has the  
8 discretion to define that term differently?

9 A. Yes. Though, I think in this case the General  
10 Assembly attended the affirmation, that's signed by  
11 the voter to be sufficient evidence that the vote is  
12 indigent.

13 Q. That is your interpretation?

14 A. Yes.

15 Q. That is not binding on the counties?

16 A. No, I suppose not.

17 Q. The Department of State has taken steps to  
18 reduce or mitigate the circumstances where a person  
19 might sign the indigent's affirmation; is that right?

20 A. Yes.

21 Q. They waive certain --- or they worked with other  
22 agencies to waive certain fees?

23 A. Yes. Yes.

24 Q. So for example, a person born in Pennsylvania  
25 whose birth certificate is on file with the

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1 Department of Health can have their --- that  
2 confirmed without paying a fee?

3 A. That's right, yes.

4 Q. And the PennDOT voting ID itself is free for  
5 people who are using it for voting purposes?

6 A. Yes.

7 Q. So there will be people in Pennsylvania who do  
8 not have to pay any fees to obtain a PennDOT ID for  
9 voting purposes?

10 A. Yes, that's the hope.

11 Q. And those people could not sign an indigent's  
12 affirmation?

13 A. Unless there is some other fee that their ---  
14 for instance, if they had to take off work and take  
15 a, you know, pay penalty for going to get the ID, or  
16 there's some other payment that they may have to make  
17 that's unavoidable in the circumstances, I think they  
18 would be legitimately able to sign this affirmation.

19 Q. Are you aware of individuals who would have to  
20 pay a fee to go get an ID from work?

21 A. No. But I'm not ruling out the possibility that  
22 there may be some.

23 Q. I understand. And I should have asked this  
24 earlier. But it also notes that the indigency  
25 affirmation has to be provided to the County Board of

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1 Elections within six calendar days; right?

2 A. Yes.

3 Q. Now, the Department of State is planning to  
4 advise counties on that requirement; right?

5 A. On which requirement?

6 Q. I'm sorry, on the indigency affirmation?

7 A. On issuance and acceptance of indigency?

8 A. Yeah, sure.

9 Q. And specifically plan to advise counties that  
10 they have the indigent's affirmation at the polling  
11 plates?

12 A. Yes.

13 Q. And that is because if a person can sign the  
14 affirmation at the polling place they don't have to  
15 come back within six calendar days to provide it to  
16 the County Board of Elections; right?

17 A. That's right. Although, they do have the option  
18 of mailing it or sending it electronically, too.

19 Q. Okay. But the reason that you're advising that  
20 they have it at the polling place is to avoid that  
21 --- the inconvenience that you recognize might occur?

22 A. Yes.

23 Q. And this again is at the guidance of the  
24 Department of State, which the counties are not bound  
25 by; correct?

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1 A. Yes.

2 Q. So the counties could choose not to provide the

3 indigent's affirmation at their polling places?

4 A. They could.

5 Q. Let's return to the FAQ on --- the second half

6 of this page addressed the absentee ballot

7 requirements; right?

8 A. Yes.

9 Q. Now, not all voters in Pennsylvania are entitled

10 to vote absentee; right?

11 A. That's right, yes.

12 Q. You have to meet certain requirements?

13 A. Yes.

14 Q. But assuming you meet those requirements and you

15 can vote absentee under Act 18, you do not have to

16 present any form of photo ID in order to vote; right?

17 A. Right.

18 Q. If you do not have a PennDOT ID or a driver's

19 license number you can provide the last four digits

20 of your social security number; right?

21 A. Yes.

22 Q. And you're personally involved in your role at

23 the Department of State in developing the absentee

24 ballot exception to the photo ID law; right?

25 A. Yes.

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1 Q. So under Act 18, providing the last four digits

2 of you social security number is a sufficient proof

3 of identification for voting purposes?

4 A. Yes, for absentee purposes.

5 Q. Well, is it not sufficient proof of

6 identification for in-person voting purposes?

7 A. Providing the last four digits of the Social  
8 Security number?

9 Q. Yes.

10 A. No, not for in-person.

11 Q. What makes you believe that?

12 A. The statute doesn't allow the last four digits  
13 of a social security number to be provided, it  
14 requires a photo ID in the polling place.

15 Q. I see. I see. But a photo ID obtained on the  
16 basis of the last four digits of social security  
17 number would be sufficient for voting purposes?

18 A. Yes, it's the picture, the photo that's at issue  
19 in the polling place.

20 Q. I understand. But setting aside the photo, the  
21 actual having your social security card, that's not  
22 required?

23 A. No.

24 Q. And having a birth certificate, that's not  
25 required?

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1 A. No.

2 Q. So summing up the rules that we just covered,  
3 individuals generally, under Act 18, must present  
4 acceptable photo ID in order to vote; right?

5 A. Yes.

6 Q. And they can avoid that requirement if they have  
7 a religious objection to having their photograph  
8 taken, if they can sign the indigent's affirmation or



9 if they can vote absentee; right?

10 A. Right. Although we don't consider the absentee  
11 process an exception to the identification  
12 requirement it's just nearly an alternative process.

13 Q. Okay. I'm sorry. Just a manic difference. But  
14 I understand what you mean.

15 A. Okay.

16 Q. But if you're voting absentee you do not have to  
17 present a photo ID, that's all I was getting at?

18 A. Yes.

19 Q. So there are individuals who are eligible to  
20 vote and who have to show acceptable photo ID who to  
21 vote, but who are currently unable to obtain an  
22 acceptable photo ID; correct?

23 A. Yes, I think that's true.

24 Q. And the Department of State became aware of that  
25 fact that there are people who are eligible to vote,

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1 who will have to show acceptable photo ID to vote but  
2 who cannot obtain that ID and, the Department of  
3 State --- became aware of that fact around the time  
4 this lawsuit was filed?

5 A. Yes, in the spring time.

6 Q. So before the spring, you --- the Department of  
7 State did not know that there were individuals out  
8 there who would be unable to obtain ID?

9 A. No, we were not clear on that.

10 Q. I'd like to pull up what we will mark as  
11 Petitioner's Exhibit 20.

12 07261012-Applewhite-ROUGH  
13 (Petitioner's Exhibit 20 marked for  
14 identification.)

15 ATTORNEY CLARKE:

16 And this is --- Patrick, I provided  
17 two.

18 BY ATTORNEY CLARKE:

19 Q. Do you recognize this document.

20 A. Yes.

21 Q. This is an e-mail from Kathleen Kotula dated  
22 June 12th, 2012 to you and a number of other people  
23 at the Department of State?

24 A. Yes.

25 Q. And Ms. Kotula is an attorney working with ---  
within the Department of State; right?

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1 A. Yes.

2 Q. And in this e-mail she is summarizing thoughts  
3 on potential processes and requirements for a new  
4 form of Department of State ID; right.

5 A. Yes.

6 Q. And in the progression of doing that, Ms. Kotula  
7 identifies four categories of people who she says may  
8 need to obtain --- I'm sorry, may not be able to  
9 obtain the free non-driver's license photo ID from  
10 the Department of Transportation; right?

11 A. Yes.

12 Q. Okay. And looking in the first category that  
13 she has there, she identified persons who were born  
14 in another state, and then the bullet below she's

15 described those people as persons who would otherwise  
16 have to pay a fee and/or go through a difficult  
17 process to obtain a certified copy of their birth  
18 record, ---

19 A. Yes.

20 Q. --- generally; is that fair? And you do agree  
21 that there are people who were born in other states  
22 who would have to go through a difficult process or  
23 pay a fee in order to obtain their birth record?

24 A. It seems that way, yes.

25 Q. Moving to the second category. She had advised

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1 persons born in Pennsylvania who are unable to obtain  
2 their social security card or replacement because  
3 they do not have a certified copy of their birth  
4 certificate, do you agree that there are people in  
5 Pennsylvania --- born in Pennsylvania who are not  
6 able to obtain their social security card?

7 A. Yes, I guess so.

8 Q. And you're not basing that on ---

9 A. Personal knowledge.

10 Q. --- the e-mail along, you're basing it on your  
11 experience working within the Department of State;  
12 right?

13 A. I don't have any personal knowledge of  
14 individuals who are caught in these circumstances,  
15 only that --- from news reports and other information  
16 that there are people who fall into these categories.

17 Q. And your experience working with PennDOT; is

18 that right?

19 A. Yes.

20 Q. Moving to the third category. Ms. Kotula who  
21 identified persons born in Pennsylvania who are  
22 unable to obtain PennDOT IDs because they are unable  
23 to verify their birth record through the Department  
24 of Health?

25 A. Yes.

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1 Q. You agree that there, in your words, seem to be  
2 people in this category as well?

3 A. Yes.

4 Q. Okay. And then finally, the fourth category she  
5 identified persons who have out of state driver's  
6 licenses who are attending school in Pennsylvania and  
7 do not want to surrender their out of state ID, so  
8 that --- they cannot obtain a free non-driver's  
9 license photo ID. Do you agree that there are  
10 individuals in that category as well?

11 A. Yes.

12 Q. Every eligible voter in Pennsylvania has a right  
13 to vote; right?

14 A. Yes.

15 Q. And the Department of State wants people to  
16 exercise their right to vote if they wish?

17 A. Absolutely.

18 Q. It is not acceptable to have anyone, who wishes  
19 to vote, and who is eligible to vote, but who cannot  
20 obtain the required ID?

21 A. That's correct.

22 Q. If Act 18 prevented eligible qualified voters  
23 from voting, it would reduce the integrity of  
24 elections?

25 A. Yes, if it did, it would. Yes.

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1 Q. Before passage of Act 18 you were involved in a  
2 project to estimate the number of Pennsylvanians who  
3 did not have PennDOT issued IDs; correct?

4 A. Yes.

5 Q. And you conducted that estimate in roughly June  
6 of 2011?

7 A. Yes.

8 Q. The House Appropriations Committee asked you to  
9 conduct that estimate?

10 A. Yes, they asked for an estimate of the amount of  
11 money that it would cost us to issue free ID cards.  
12 So it was in the context of that estimate.

13 Q. Got it. So the purpose of the estimate was to  
14 determine how much it was going to cost, and the  
15 request came from the House Appropriations Committee?

16 A. Right, yes.

17 Q. You didn't have a lot of time to do that  
18 estimate; did you?

19 A. No.

20 Q. They gave you 24 hour turnaround?

21 A. Thereabouts, yes.

22 Q. And you did this in about 24 hours?

23 A. Yes.

24 Q. Let's pull up what will be marked as  
25 Petitioner's Exhibit 20 (sic). And this is Exhibit  
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1 174.

2 ATTORNEY SMITH:

3 Twenty-one (21).

4 BY ATTORNEY CLARKE:

5 Q. Twenty-one (21), I'm sorry. I'm showing you a  
6 June 27th, 2011 e-mail which is from you. Do you  
7 recognize this e-mail?

8 (Petitioner's Exhibit 21 marked for  
9 identification.)

10 A. Yes.

11 BY ATTORNEY CLARKE:

12 Q. And you sent this?

13 A. Yes.

14 Q. Directing your attention to the attachment which  
15 is the third page, does this reflect the calculations  
16 on which your estimate of Pennsylvania voters without  
17 PennDOT ID was based?

18 A. Yes.

19 Q. All right. I'm going to ask you in a little  
20 more detail about certain of the --- lines. But  
21 generally speaking, is it fair it say that what you  
22 did was you took a number for the population, you  
23 subtracted the number of PennDOT IDs issued; you came  
24 up with a percentage of the population without  
25 PennDOT IDs?

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1 A. Yes, that's right.

2 Q. And then you applied that percentage to  
3 registered voters to come up with a registered voters  
4 number as well?

5 A. The registered voters number was used to  
6 estimate the amount of --- the number of voters who  
7 would be requested to use an ID.

8 Q. Right. But you used the same percentages that  
9 you had used for the adult population?

10 A. Yes.

11 Q. Or that you had obtained for the adult  
12 population number?

13 A. Yes.

14 Q. So I want you to direct your attention first to  
15 the adult population number, which is line two in  
16 this graph that we'll look at. This number reflects  
17 the adult citizen population in Pennsylvania;  
18 correct?

19 A. Yes.

20 Q. And just so we're on the same page, it's the  
21 9,611,626 number?

22 A. Right.

23 Q. And you used the number of the adult citizen  
24 population because you're only interested in the  
25 individuals who are eligible to vote; right?

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1 A. That's right, yes.

2 Q. And now going down to the third line, the adult  
3 population about PennDOT issued IDs. That number was  
4 provided to you by someone at PennDOT; correct?

5 A. Yes.

6 Q. You don't know who generated this number,  
7 actually; do you?

8 A. I don't.

9 Q. And setting aside who generated it, is it your  
10 understanding that this number reflects the number of  
11 PennDOT IDs issued to individuals over 18?

12 A. Yes.

13 Q. Is it also your understanding that this number  
14 includes IDs issued to individuals who are not  
15 citizens?

16 A. Yes.

17 Q. You discussed that issue with PennDOT at some  
18 point; correct?

19 A. I did, yes. They could not, at the time tell me  
20 what percentage of that number was issued to  
21 non-citizens, but they assured me that it was very  
22 few.

23 Q. But they never showed you any numbers on that?

24 A. Not at the time, no.

25 Q. And other than the possibility of IDs issued to

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1 non-citizens, you did not discuss with anyone at  
2 PennDOT what --- anything else that would or would  
3 not be included in that 9,522,304 number; did you?

4 A. No, my understanding of that number was, it was



5 the number of driver's licenses and PennDOT photo  
6 identification cards that have been issued to adults  
7 18 and over, that's it.

8 Q. Right. And you didn't discuss that number  
9 further beyond the individual of non-citizens what we  
10 just discussed?

11 A. No.

12 Q. You asked PennDOT at some point for any prior  
13 estimates that they conducted of individuals without  
14 PennDOT IDs; right?

15 A. I did ask the question as to whether they had  
16 any information on how many Pennsylvania citizens did  
17 not have IDs.

18 Q. And they never answered that question?

19 A. They didn't answer it, right.

20 Q. So on this page you reached the estimated that  
21 roughly one percent or 89,000 eligible voters do not  
22 have a PennDOT ID; correct?

23 A. Yes.

24 Q. And you thought that at 81 percent of registered  
25 voters to reach a total of 75,891 estimated

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1 registered voters who do not have ID --- PennDOT ID?

2 A. Yes, that's correct.

3 Q. Beyond this document neither you or anyone else  
4 at the Department of State conducted any further  
5 analysis to verify the accuracy of this estimate  
6 prior to enactment of the photo ID law; correct?

7 A. No, not prior to enactment.

8 Q. And before enactment of law you never looked  
9 either manually or at the computer at individual  
10 voters to determine whether they had PennDOT ID;  
11 right?

12 A. No, we did not. That's a long extensive project  
13 that we did not have a chance to undertake.

14 Q. Right. So you never tried to match individual  
15 voters with PennDOT ID numbers ---

16 A. No, I did not.

17 Q. --- prior to enacting the law?

18 A. Right.

19 Q. Now, this estimate was then included as part of  
20 the fiscal note in the legislative process; right?

21 A. Yes.

22 Q. But you're aware that beginning at approximately  
23 June of this year, 2012, the Department of State and  
24 PennDOT did perform the more thorough analysis we  
25 were just discussing of matching up Pennsylvania

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1 voters with PennDOT IDs; correct?

2 A. Yes.

3 Q. And you monitored the progress of that analysis;  
4 right?

5 A. Yes.

6 Q. But you weren't directly involved in the  
7 calculations?

8 A. No.

9 Q. But generally speaking your understanding is  
10 that that process involved matching individuals in

11 the Voter Registration System with individuals in the  
12 PennDOT database; right?

13 A. Yes.

14 Q. And that analysis concluded that for  
15 approximately nine percent of registered voters they  
16 were not able to identify a PennDOT ID from the  
17 PennDOT database?

18 Q. We are not able to generate a statistical  
19 conclusive match for nine percent.

20 Q. And that's a total of 759,000 registered voters?

21 A. Yes, that is.

22 Q. In light of that information and all the  
23 information that you have today, if you were asked  
24 today for the Department of State's estimate of the  
25 number of registered voters, who without PennDOT ID,

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1 you would say that it's a number greater than one  
2 percent; correct?

3 A. Likely greater than one percent, yes.

4 ATTORNEY CLARKE:

5 No further questions.

6 JUDGE SIMPSON:

7 You may inquire.

8 CROSS EXAMINATION

9 BY ATTORNEY WALCZAK:

10 Q. Ms. Oyler, you were asked some questions about  
11 the law governing what a voter must do to establish  
12 identity before Act 18, so I'm going to follow-up on  
13 that. Were you working at the Department of State

14 when the Help America Vote Act was enacted?

15 A. Yes.

16 Q. And is that what you were describing when you  
17 were asked about forms of identification?

18 A. Yes. Both the Help America Vote Act and Act 150  
19 of 2002, which implemented it in Pennsylvania.

20 Q. Okay. When the identification requirements  
21 under the Help America Vote Act and when Act 150 were  
22 enacted, did the Department of State become aware of  
23 any significant problems in the counties implementing  
24 that Act on election day?

25 A. Significant problems, no.

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1 Q. You were asked near the end of your testimony  
2 about match up of the voter registration database  
3 with the PennDOT database resulting in nine percent  
4 that there could not be a match for. Are there any  
5 reasons, that you know of, why further matches could  
6 not be made between the two databases?

7 A. Well, the reason we initially began the project  
8 was to try to --- to try to have the ability to  
9 populate driver's licenses and social security  
10 numbers --- partial social security numbers into the  
11 voter registration database for which we would need  
12 an absolute certain, exact match between the voter  
13 and the PennDOT record.

14 Q. And did that have anything to do with the voter  
15 ID law?

16 A. Yes, it did. We were embarking on that project

17 in part because we wanted to make it easier to ---  
18 for the counties and for the voters to comply with  
19 the absentee component that would require either a  
20 driver's license or a partial Social Security number.  
21 So to the extent that we could populate these numbers  
22 in our own database, it would make it much easier to  
23 comply with that section of the voter ID law. So in  
24 order for us to be permitted to populate those  
25 numbers into the voter registration record, we had to

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1 be absolutely certain that it was the same person,  
2 otherwise we would jeopardize the integrity of the  
3 voter registration record. So the 91 percent  
4 represents voters for whom we were absolutely certain  
5 we could match to the Department of Transportation's  
6 database. So we believe that the actual number of  
7 voters who have PennDOT records is much higher than  
8 91 percent. But we couldn't establish a conclusive  
9 exact match.

10 Q. Okay. And getting to the nine percent for whom  
11 you could not establish a match that you felt was  
12 reliable, are there reasons such as typos in names  
13 that would make a difference in that remaining nine  
14 percent.

15 A. Yes, typos is one reason why a match might not  
16 be able to be completed, nicknames or variations in  
17 names might be another reason. Spaces and special  
18 characters in the name would also be a reason, for  
19 instance a voter registration database allows a user

20 to enter a special character, like an apostrophe or a  
21 dash, and the PennDOT database does not permit that.  
22 So any names containing a special character would not  
23 match between the two databases. And we mentioned  
24 typos, those are some of the major reasons. For  
25 instance, if a voter got married and changed her

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1 name, she also would be identified if she hadn't  
2 changed her voter registration record. And we've  
3 gotten calls from voters who received a letter ---.  
4 Q. Explain what the letter is for the Court?  
5 A. Sure. We determined an abundance of caution  
6 that we were going to provide a letter to all 759,000  
7 of those records we identified as not conclusively  
8 matching. We were going to provide this letter so  
9 that --- just in case the voter does not have a valid  
10 form of ID, it would give them instructions and an  
11 opportunity to get one as soon as possible so that  
12 they could obviously vote in time for November. We  
13 began sending these letters a few weeks ago, and my  
14 understanding is the last of them is to go out  
15 tomorrow. So we sent out in the neighborhood of  
16 400,000 to 500,000 so far; we've received a lot back  
17 undeliverable and we've gotten calls in our Election  
18 Bureau questioning, you know, why did I get this  
19 letter or what does this mean. So as an example, one  
20 person called our Election Bureau and said that her  
21 minor son received a letter, her minor son is not  
22 eligible to vote; she didn't understand why he had

23 received a letter. Typos in voter registration  
24 records, for which we instruct the voter to contact  
25 their county to correct. We've gotten calls

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1 regarding how do I change my name on my voter  
2 registration record because that's my maiden name.  
3 And we've gotten calls and information that voters  
4 who received the mailing are deceased.

5 Q. Okay. So for each of these purposes --- or each  
6 of these reasons you just stated, is that why you  
7 think that the number is --- of people who have a  
8 PennDOT ID is actually higher than 91 percent?

9 A. Yes, absolute.

10 Q. You were asked during Direct Examination if the  
11 Department of State wants the vote to be available to  
12 everyone who is eligible, are you and your colleagues  
13 in the Department of State implementing this law with  
14 any sort of partisan favorer?

15 A. Absolutely not.

16 ATTORNEY WALCZAK:

17 Those are all the questions I have.

18 Thank you.

19 ATTORNEY CLARKE:

20 No further questions.

21 JUDGE SIMPSON:

22 You may step down. You're free to

23 leave. Let's call it a day. So it's about 3:25.

24 What do you have for tomorrow, another Commonwealth  
25 witness?

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1 ATTORNEY GERSCH:

2 I think we're going to start with ---  
3 Shannon Royer who's going to be called out of turn to  
4 accommodate his vacation, he is the Deputy Secretary  
5 of the Commonwealth. And so Mr. Cawley will call him  
6 and we'll cross exam, if that's already with the  
7 Court.

8 JUDGE SIMPSON:

9 Thank you. Thank you.

10 ATTORNEY GERSCH:

11 And then following that we'll have Mr.  
12 Walczak, who's an Election Official from Allegheny  
13 County. We will have Michelle Levy, who is an expert  
14 witness similar to Ms. Ludt, that you heard from.

15 JUDGE SIMPSON:

16 This is the fraud?

17 ATTORNEY GERSCH:

18 On difficulty getting ID. Then we'll  
19 have a person who's had trouble getting ID, and his  
20 mother. This is a disabled person, an autistic  
21 person. And then we'll have two Petitioners', and if  
22 this moves quickly we'll move to another Commonwealth  
23 witness Mr. Myers from the Department of  
24 Transportation. I don't know how long Your Honor was  
25 intending on going tomorrow. Some of these witnesses

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1 should move quicker.

2 JUDGE SIMPSON:

3 Should we deal with the exhibits that  
4 were identified today? Are you ready to do that?

5 ATTORNEY GERSCH:

6 Yes.

7 ATTORNEY CLARKE:

8 Sure.

9 ATTORNEY WALCZAK:

10 Your Honor, we would --- we would not  
11 move Professor Barreto's report, but we would move  
12 his CV, his survey instrument and his ---

13 JUDGE SIMPSON:

14 Exhibit Eight, the tables of results.

15 ATTORNEY WALCZAK:

16 --- his tables. I think those may be  
17 the only three that we marked.

18 JUDGE SIMPSON:

19 Those are 16, 17 and 18?

20 ATTORNEY WALCZAK:

21 Right. So we would move those ---  
22 their admission.

23 JUDGE SIMPSON:

24 In the absence of objection they are  
25 received. We also have several exhibits that were

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1 identified with this last witness 19, 20 and 21.

2 ATTORNEY CLARKE:

3 Yes. We would move for the admission  
4 of all three of those exhibits as well.

5 ATTORNEY SCHMIDT:

6 No objection, Your Honor.

7 ATTORNEY WALCZAK:

8 But that means I need the exhibits then  
9 --- or I should say Mr. Murzyn needs the exhibits.

10 JUDGE SIMPSON:

11 Anything else before we finish today?

12 ATTORNEY GERSCH:

13 Your Honor, how late were we?

14 JUDGE SIMPSON:

15 There seems to be some ---. I'm not  
16 sure we have the exhibits from the professor's  
17 testimony.

18 OFF RECORD DISCUSSION

19 JUDGE SIMPSON:

20 Folks, that's all. We're just trying  
21 to track down the exhibits. You're free to stay here  
22 and watch us.

23 OFF RECORD DISCUSSION

24 ATTORNEY GERSCH:

25 Your Honor, we're just wondering what

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1 your inclination was as to how late to go tomorrow.

2 JUDGE SIMPSON:

3 I'd like to break at 3:00 or so. But  
4 depending on finishing a witness, be aware that I  
5 think a TV station was to come in and photograph our

6 empty courtroom, because we're not allowed to take  
7 photographs while in session or on recess, but when  
8 we're adjourned and nobody's around then something  
9 --- they're going to be coming in before we start  
10 tomorrow. So if there's something you don't want  
11 hanging around, then you keep that in mind. But if  
12 you put it in your room.

13 ATTORNEY CLARKE:

14 Okay.

15 OFF RECORD DISCUSSION

16 JUDGE SIMPSON:

17 Is there anything else that you want me  
18 to address before we break?

19 ATTORNEY CLARKE:

20 No.

21 ATTORNEY GERSCH:

22 No, Your Honor.

23 JUDGE SIMPSON:

24 All right. Thank you for your time.

25 We are adjourned.

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2 HEARING CONCLUDED AT 6:30 P.M.

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