

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

3 NORTH CAROLINA STATE CONFERENCE ) CASE NO. 1:13CV658  
4 OF THE NAACP, et al., )  
5 Plaintiffs, )  
6 V. )  
7 PATRICK LLOYD MCCRORY, in his )  
8 Official capacity as Governor )  
9 Of North Carolina, et al., )  
Defendants. )

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10 LEAGUE OF WOMEN VOTERS OF NORTH ) CASE NO. 1:13CV660  
11 CAROLINA, et al., )  
12 Plaintiffs, )  
13 V. )  
14 STATE OF NORTH CAROLINA, et al., )  
15 Defendants. )

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16 UNITED STATES OF AMERICA, ) CASE NO. 1:13CV861  
17 Plaintiff, )  
18 V. )  
19 STATE OF NORTH CAROLINA, et al., ) Winston-Salem, North Carolina  
20 Defendants. ) July 27, 2015  
9:04 a.m.

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22 TRANSCRIPT OF THE **TRIAL/DAY ELEVEN**  
23 BEFORE THE HONORABLE THOMAS D. SCHROEDER  
24 UNITED STATES DISTRICT JUDGE

25 Proceedings recorded by mechanical stenotype reporter.  
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1 P R O C E E D I N G S

2 **THE COURT:** Good morning.

3 **MR. FARR:** I think it is time for Dr. Thornton to  
4 come back.

5 **THE COURT:** Yes. I think I see her back there.  
6 Good morning.

7 All right. Please proceed. I remind you you are  
8 still under oath.

9 CROSS-EXAMINATION (Continued)

10 **BY MR. COOPER**

11 Q Good morning, Dr. Thornton. Dave Cooper representing the  
12 United States. Welcome back. I hope you are getting over your  
13 cold.

14 A I am starting to, yes. I apologize for my voice.

15 Q I have a few topics I would like to ask you about this  
16 morning. Let me start off, you don't have a doctorate in  
17 political science, do you?

18 A No.

19 Q And you've never authored any peer-reviewed publications  
20 in political science journals; correct?

21 A That's correct.

22 Q You don't consider yourself an expert in early voting, do  
23 you?

24 A No.

25 Q And you don't consider yourself an expert in same-day

1 registration?

2 A That's correct.

3 Q And you don't consider yourself an expert in the use of  
4 out-of-precinct provisional ballots; correct?

5 A No.

6 Q And, Dr. Thornton, you've never previously, before this  
7 case, done any work analyzing voter turnout, have you?

8 A I don't remember.

9 Q Okay. I want to ask you about a statement in your 2015  
10 report. Do you still have your reports up there, the binder  
11 from last Friday?

12 A Yes.

13 Q Okay. I will ask you to turn to your 2015 report, which  
14 is Defendants' Exhibit 309, and to pages 59 and 60. If you  
15 could just take a look at paragraph 92, and let me know when  
16 you are ready to answer questions about it.

17 A I am there.

18 Q Okay. You conclude that paragraph by stating, "Other  
19 factors besides the availability of one-stop voting may  
20 influence the decisions by individuals to vote." Do you see  
21 that?

22 A I am sorry. I am not seeing that.

23 Q It is the last phrase in the paragraph at top of the  
24 page 60.

25 A Oh, I apologize. I was on page 59. Yes.



1 Q And so given that you've just testified that you don't  
2 recall previously analyzing voter turnout, it would be correct  
3 to say that you don't recall previously analyzing the factors  
4 that influence the decisions by individuals to vote; correct?

5 A That's correct. That paragraph is stating what  
6 Dr. Stewart stated.

7 Q Well, the last clause there starts with, "Suggesting that  
8 other factors besides the availability of one-stop voting may  
9 influence the decisions by individuals to vote." So you are  
10 not drawing any inference there?

11 A I think that the statement is -- starts with, "As  
12 Dr. Stewart states and is shown in the figure below, that is  
13 not the case, suggesting that other factors besides the  
14 availability of one-stop voting may influence the decisions by  
15 individuals to vote."

16 Q Okay. And so it would also be the case then that you  
17 don't recall doing any previous work analyzing or making a  
18 comparison between turnout in one election against turnout in  
19 another election; is that right?

20 A As I said, I don't recall the prior work that I've done.

21 Q Okay. Now, in your report, you don't draw any conclusion  
22 about whether turnout in North Carolina would have been  
23 different in 2014 in the absence of H.B. 589; is that right?

24 A That's correct.

25 Q And so, in other words, but for the changes in H.B. 589,

1 we could very well have seen a higher turnout in 2014 than what  
2 we saw in North Carolina?

3 A One doesn't know.

4 Q So it is possible?

5 A It may or may not be possible.

6 Q Let me ask you a few questions about the racial  
7 demographics of the areas where early voting sites are located  
8 that you talked about in your 2014 report and during your  
9 testimony on Friday.

10 First of all, Dr. Thornton, you are not an expert in  
11 election administration; correct?

12 A That's correct.

13 Q And you've never worked for a county board of elections in  
14 North Carolina; right?

15 A That's correct.

16 Q And you've never been involved in the process of choosing  
17 early voting sites either in North Carolina or elsewhere;  
18 right?

19 A That's correct.

20 Q Or in setting the days and hours of availability of early  
21 voting sites?

22 A That is correct.

23 Q Now, in your testimony about this subject, you are  
24 assuming that the ease of access of an early voting site might  
25 impact whether voters would use it; right?

1 A I think that, as an economist, I would say that the  
2 opportunity costs of individuals may vary, depending on where  
3 the location of the site is.

4 Q So, in other words, if an individual, for example, lives  
5 closer to a site, there might be a lower opportunity cost for  
6 that voter to use that site?

7 A Yes.

8 Q And so lowering those opportunity costs would increase the  
9 chances of voters turning out to vote; right?

10 A There is the possibility.

11 Q And I would assume, by the same token, if you reduce ease  
12 of access and you increase those costs, then that would  
13 potentially decrease the demand for voting; is that right?

14 A Everything else being the same, yes.

15 Q Let me ask about you another subject that was in your 2014  
16 report. If you could turn to that report in your binder there,  
17 which is Defendants' Exhibit 246. I want to ask you about  
18 pages 12 and 13, and specifically paragraphs 22 and 23 and  
19 Table 4.

20 In this section of your report, you've reported some data  
21 regarding voter participation rates for Camden, Robeson, and  
22 Swain counties. So this section of your report, you note data  
23 regarding voter participation rates in those three counties:  
24 Camden, Robeson, and Swain; right?

25 A Yes.

1 Q And you didn't mention any other counties in this section  
2 of your report; correct?

3 A I did not. The other counties would have been in my  
4 backup to my report.

5 Q And so in paragraph 22, you note that Robeson and Camden  
6 Counties had the highest and lowest total poverty rates in the  
7 state, according to the 2008 to 2012 ACS data; is that right?

8 A Yes.

9 Q And then you also note here that Swain County had the  
10 highest African-American poverty rate in the state; right?

11 A That is what I stated, yes.

12 Q And you didn't note in this section the African-American  
13 poverty rate for any -- for either of the other counties,  
14 Camden or Robeson, did you?

15 A That's correct.

16 Q Or actually for any other county in the state; right?

17 A That's correct.

18 Q Do you know how many African-Americans live in Swain  
19 County, Dr. Thornton?

20 A I did at one time. This report was written over a year  
21 ago, so I don't recall.

22 Q If I told you that according to the 2010 Census, it was  
23 less than 100, would that refresh your recollection?

24 A Perhaps. I would have to go back and look.

25 Q Let me turn to the subject of out-of-precinct provisional

1 ballots, which you also talked about on Friday. And let me --  
2 just initially, I want to make sure it is clear what an  
3 out-of-precinct voter is.

4 Now, North Carolina offers provisional voting on both  
5 Election Day and during early voting; right?

6 A Yes.

7 Q And an out-of-precinct voter would, for one thing, be a  
8 registered and eligible voter in North Carolina; right?

9 A Yes.

10 Q And it would be a voter that presented to vote on Election  
11 Day in the right county but the wrong precinct; is that  
12 correct?

13 A That is my understanding, yes.

14 Q Okay. Now, one of your conclusions is that a small  
15 portion -- a small portion of the registered voters in 2014  
16 cast out-of-precinct ballots; is that right?

17 A Yes.

18 Q Dr. Thornton, among the material that you reviewed in  
19 preparing your reports, did you review the Fourth Circuit's  
20 October 1, 2014, opinion in this case?

21 A I do not believe so.

22 Q Okay. Now, in 2010, out-of-precinct provisional ballots  
23 were counted either in full or partially; correct?

24 A That's correct.

25 Q And then in 2014, after the enactment of H.B. 589,

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1 out-of-precinct voting was no longer an option; right?

2 A That is correct.

3 Q And so poll workers would have been trained in 2014 to  
4 tell voters that out-of-precinct ballots wouldn't be counted;  
5 right?

6 A I don't know one way or another what they were told.

7 Q Okay. Well, if the law didn't permit an out-of-precinct  
8 ballot to be counted, that would -- to use an economic term,  
9 that would decrease the benefit of casting the ballot for the  
10 voter; right?

11 A If it's not counted, it is not counted. I guess I'm --

12 Q Well, wouldn't the benefit of casting a ballot be reduced  
13 if the voter knows it won't be counted?

14 A If it isn't counted, then certainly it isn't going to  
15 be -- I guess I am not understanding what you are asking me.

16 Q Well, I am asking, isn't it possible that given the new  
17 rule against counting out-of-precinct ballots, wouldn't the  
18 demand for casting out-of-precinct ballots have decreased?

19 A Perhaps. I don't know one way or another.

20 Q And, in fact, in your report, you did report data showing  
21 that the number of out-of-precinct ballots decreased  
22 substantially from 2010 to 2014; right?

23 A It decreased. The numbers were low to begin with,  
24 however.

25 Q I want to show you an exhibit.

1           **MR. COOPER:** May I approach?

2           **THE COURT:** Yes.

3 **BY MR. COOPER**

4 Q       Dr. Thornton, I've handed you Plaintiffs' Exhibit 689,  
5 which is a chart issued by the State Board of Elections in  
6 North Carolina, showing some data regarding provisional ballots  
7 from 2010 and 2014.

8           I just have one very specific question for you, but you  
9 can take a moment to look this over, if you need it.

10 A       I need a magnifying glass.

11 Q       We are going to try to blow up the relevant section on the  
12 screen here to help you out. I know the numbers are a little  
13 small.

14           Last week, we talked a little bit about how many  
15 out-of-precinct ballots were cast by African-Americans in 2014,  
16 and I would like to just direct your attention to that third  
17 category from the top. It is called "Incorrect Precinct" in  
18 this chart. It is highlighted on the screen there. And then  
19 if you look at that middle column that shows the total number  
20 of incorrect precinct ballots cast in 2014, it is -- the total  
21 is 1,935. Do you see that?

22 A       Yes.

23 Q       And then if you look a bit further over to the right, it  
24 shows that on Election Day, black voters cast 775  
25 out-of-precinct -- or incorrect precinct ballots. Do you see

1 that?

2 A Yes.

3 Q So do you have a calculator up there? I believe there is  
4 one on the table there.

5 A May I use my own?

6 Q You may. I just want to ask you to divide those two  
7 numbers. So if you could divide 775 by 1,935 and just confirm  
8 for me that that's about 40 percent.

9 A It is.

10 Q Okay. And so that means that, according to this data from  
11 the State Board of Elections, about 40 percent of  
12 out-of-precinct ballots in 2014 were cast by black voters;  
13 right?

14 A Among those where it's identified, yes.

15 Q Well, there is an unknown category over on the right side.  
16 Do you see that?

17 A Yes.

18 Q So the total would include the unknown racial category;  
19 right?

20 A That's correct.

21 Q So wouldn't it be the case that 40 percent of the total  
22 out-of-precinct ballots were cast by individuals that are  
23 identified in the data as black voters?

24 A Yes.

25 Q And in the 2014 election, black voters comprised about 22



1 percent of the electorate; isn't that right?

2 A Yes.

3 Q Okay. Thank you, Dr. Thornton. That's all the questions  
4 that I have. I believe Mr. Donovan has a few as well.

5 CROSS-EXAMINATION

6 **BY MR. DONOVAN**

7 Q Daniel Donovan for the NAACP Plaintiffs. Dr. Thornton,  
8 following up on your background, you have not engaged in any  
9 formal studies of voting rights; true?

10 A That's correct.

11 Q You have not engaged in any formal studies of election  
12 administration; true?

13 A That's correct.

14 Q And aside from your involvement with this case, you have  
15 not had any other exposure to voting rights; true?

16 A That's, I believe, incorrect.

17 Q Okay. I put your deposition up there, ma'am. If you'll  
18 look at the April 9, 2015, deposition. Let me know when you  
19 get to page 392. Are you there, ma'am?

20 A Yes.

21 Q Okay. In this case, you gave a deposition twice; correct?

22 A Yes.

23 Q And you gave those under oath; correct?

24 A That's correct.

25 Q Okay. And at your April 2015 deposition, at lines 8 to

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1 12, were you asked this question and did you give this answer:

2 "Q Aside from your involvement with this  
3 case, have you had any other exposure to voting  
4 rights?

5 "A No."

6 A That's correct. I apologize if I misunderstood your  
7 question, because I was thinking about, as I also testified,  
8 about working on prior work under my mentor.

9 Q This is the case you can't remember; right?

10 A There are more than one, yes, but it's back in the '80s.

11 Q I understand. Those cases -- I think you were asked, but  
12 let's be sure, you can't tell us the names of those cases;  
13 correct?

14 A That's correct.

15 Q And you can't tell us anything about that case; correct?

16 A Other than, as I testified I believe a year ago, that I  
17 recall looking at a lot of maps.

18 Q Anything else other than that?

19 A That's all I recall at this moment.

20 Q Let's turn to your first report, and before that, you will  
21 have to look at either one. You use a term called, I think,  
22 "CVAP." You define it as civilian voting-age population; is  
23 that right?

24 A No. Citizen voting-age population. I believe I corrected  
25 my testimony on Friday.

1 Q So citizen voting-age population. That's what political  
2 scientists call it.

3 In 2012, the African-American CVAP was about 22 percent;  
4 is that right? Feel free to look at your report.

5 **THE COURT:** You are talking about North Carolina?

6 **MR. DONOVAN:** Yes, I am, Your Honor.

7 **THE WITNESS:** It is a little less than 22 percent.

8 **BY MR. DONOVAN**

9 Q Let's turn to your first report that's been marked for  
10 identification as Defendants' Exhibit 246, page 16. Let me  
11 know when you are there, please.

12 A I am there.

13 Q And this shows the percent of African-American voters  
14 among one-stop voters in North Carolina by date in the 2012  
15 election; is that right?

16 A Yes.

17 Q And the highest percentage days for African-Americans to  
18 vote in person one-stop were on the two Sundays during that  
19 early voting period; true?

20 A That's correct.

21 Q Okay. On the first Sunday, African-Americans accounted  
22 for 43.4 percent of the votes cast that day; is that right?

23 A That's correct.

24 Q Okay. So much greater, or at least a -- about above --  
25 20 percent increase above what their CVAP in 2012 was; correct?

1 A Yes.

2 Q Okay. Let's look at the second Sunday. Second Sunday,  
3 African-Americans voted 36.1 percent of one-stop voters in  
4 person on what that Sunday was, October 28, 2012; correct?

5 A Yes.

6 Q Okay. So, again, that would be above what their CVAP was  
7 in 2012? And by "they," I mean African-Americans.

8 A Yes.

9 Q And let's look at a couple of other days. The first  
10 Saturday before the first Sunday, the African-American  
11 percentage of in-person one-stop was 35.5 percent; correct?

12 A Yes.

13 Q Okay. And, again, that's above the CVAP for  
14 African-Americans in 2012; correct?

15 A Yes.

16 Q And, in fact, if we look at every day you looked at for  
17 2012 in-person early voting, African-Americans voted on each  
18 day in excess of their CVAP in 2012; is that right?

19 A That's correct.

20 Q Let's go to your second report, ma'am, and by that, I  
21 direct your attention to Figure 7 on page 61. Let me know when  
22 you are there.

23 A I'm there.

24 Q And this second report, Dr. Thornton, shows turnout rates  
25 that you calculated; correct?

1 A Yes.

2 Q I want to compare white turnout versus black turnout at  
3 the same time period in 2014. In the 2014 primary election,  
4 black turnout was below white turnout; correct?

5 A Are you referring to the 17.4 to the 13.4 percentages?

6 Q That's what's on your chart; correct?

7 A Yes.

8 Q That's what I am referring to. Do you agree that the  
9 black turnout, according to your chart and calculations, was  
10 below the white turnout at the same period in the 2014 primary?

11 A Yes, as it was in the -- all the other primaries.

12 Q So let's look at the 2014 midterm, comparing black turnout  
13 to white turnout at the same time period. The black turnout  
14 was below the white turnout; correct?

15 A Yes. As it was during all the other midterms for which I  
16 had data.

17 Q Okay. In the 2010 midterm election, do you know who the  
18 North Carolina candidates for U.S. Senate were?

19 A No, not off the top of my head.

20 Q Do you know what the margin of victory was for the winning  
21 candidate for the 2010 Senate race?

22 A No.

23 Q Do you know how much money was spent on the U.S. Senate  
24 race in North Carolina in 2010?

25 A No.

1 Q Okay. In 2014, do you know what the margin of victory was  
2 for the winning U.S. Senate candidate?

3 A Not off the top of my head.

4 Q And at the time you wrote your 2015 report and reached  
5 your conclusions, you did not know that the 2014 North Carolina  
6 U.S. Senate race was the most expensive Senate race in U.S.  
7 history; true?

8 A Yes, I believe I testified about that, that I didn't  
9 remember it one way or the other.

10 Q Ma'am, do you know who Mel Watt is?

11 A I've heard the name.

12 Q Who is he?

13 A I don't know, but I know the name.

14 Q Ma'am, let's turn to page 63, please, Dr. Thornton,  
15 Figure 7. Do you see that, ma'am?

16 A Page 63 reports Figure 8.

17 Q You are right. Figure 8, not Figure 7. Figure 8. And  
18 this compares Caucasian turnout versus Hispanic turnout;  
19 correct?

20 A That is correct.

21 Q And without walking through each of these, the Hispanic  
22 turnout is lower than the Caucasian turnout in the races that  
23 you looked at -- or elections, excuse me; is that correct?

24 A That is correct.

25 Q And what is the difference in turnout rates in the 2012

1 general election between Caucasians and Hispanics?

2 A 2012 general election?

3 Q Yes, ma'am.

4 A 14.5 percentage points.

5 Q And looking at the 2010 midterm election, feel free to use  
6 your calculator, what is the difference in the midterm turnout  
7 rates between Caucasians and Hispanics?

8 A 25.9 percentage points.

9 Q Okay. And comparing that to the 2014, what is the  
10 difference in turnout as you calculated between Hispanics and  
11 Caucasians in the 2014?

12 A 26.4 percentage points.

13 Q Thank you. I want to turn -- Dr. Thornton, do you have  
14 what's been marked for identification Defendants' Exhibit 359?  
15 It's this chart. You should have it. It is the registration  
16 churn.

17 A Yes.

18 Q Okay. And your chart shows that there is a 9.3 to  
19 10.7 percent churn in removals as a percentage of registered  
20 voters. Do you see that.? That's the seventh column from the  
21 left.

22 A I believe you said 10.3. I think you meant to say 10.7.

23 Q Yeah, excuse me if I did. It ranges on your chart from  
24 9.3 to 10.7 percent; is that right?

25 A Yes.

1 Q And those are the removals, and if those people were still  
2 North Carolina citizens, they would need to reregister in order  
3 to vote in the next election; is that right?

4 A Yes.

5 Q And in 2012, let's go one column over, these are new  
6 registrations as a percentage of incoming registered voters.  
7 Do you see that?

8 A Yes.

9 Q I want to focus on the 2010 to 2012 because we are focused  
10 on Presidential elections here. What is the percentage that  
11 were new registrations in your time period, 2010 to 2012?

12 A As calculated by Dr. Stewart, it was 17.9 percent.

13 Q And that number is on your chart, which is DX 359;  
14 correct?

15 A Yes.

16 Q And the 17.9 percent, those are new registrations between  
17 2010 and 2012 as a percentage of what you call the incoming  
18 registered voters; is that right?

19 A Yes.

20 Q Okay. And did you calculate how many of those voters were  
21 North Carolina citizens that needed to reregister because they  
22 moved from one county to another?

23 A No. Neither did Dr. Stewart.

24 Q Did you calculate what percentage of that churn were  
25 same-day registrations?



1 A No.

2 Q Now, in your report, you referred to -- you did some  
3 analysis of what you call out-of-precinct provisional voters,  
4 whether they had previously voted at their, quote, correct  
5 precinct; is that right?

6 A Yes.

7 Q Before H.B. 589, when out-of-precinct ballots were  
8 counted, are you aware whether or not County Boards rejected  
9 out-of-precinct ballots if they determined that that  
10 out-of-precinct voter had voted at their correct precinct in  
11 the past?

12 A I don't know.

13 Q Don't know one way or the other?

14 A I don't believe that -- I believe no, but -- if I'm  
15 understanding your question.

16 Q Let me ask it again to make sure. I asked it in the  
17 negative. Let me ask it in the positive.

18 It is true that before H.B. 589, an out-of-precinct ballot  
19 properly cast would be counted even if that voter had  
20 previously voted at their correct precinct; correct? Do you  
21 want me to take it in steps?

22 A Yes, I apologize.

23 Q Sure. So an out-of-precinct voter is a North Carolina  
24 registered voter who presents in their correct county but at  
25 the wrong precinct; correct?

1 A Yes.

2 Q And pre-H.B. 589, those out-of-precinct ballots were  
3 counted, either in whole or in part, if they were an otherwise  
4 valid voter; true?

5 A Sure.

6 Q Regardless of whether that out-of-precinct voter had at  
7 some point in the past voted at their correct precinct;  
8 correct?

9 A Yes.

10 Q Thank you.

11 **MR. DONOVAN:** Thank you, Your Honor.

12 **BY MS. RIGGS**

13 Q Good morning, Dr. Thornton. We met before at your  
14 depositions. I am Allison Riggs on behalf of the League of  
15 Women Voters Plaintiffs.

16 A Good morning.

17 Q Can you find for me Defendants' Exhibit 362 in the stack  
18 of papers in front of you. It has the distribution of early  
19 voting between the first seven and ten days. Do you see that?

20 A Yes.

21 Q Can you turn to page 3 for me. I want to ask you about  
22 the second table on this page. Are you there?

23 A Yes.

24 Q This table looks at voters who used the first seven days  
25 of early voting in 2012 and then what they did in the 2014

1 midterm; right?

2 A Yes.

3 Q And I want to ask you about the seventh column here  
4 labeled "Percent Voted in 2014." Do you see that?

5 A Yes.

6 Q And the numbers in this column show what percentage of the  
7 voters who used the first seven days of early voting in 2012  
8 who turned out to vote in the 2014 midterm; right?

9 A Yes, among those who were still on the voter rolls.

10 Q Okay. And the percentage of white voters who used the  
11 first seven days of early voting in 2012 who then turned out in  
12 2014 is 77.0 percent; correct?

13 A Yes.

14 Q And the percentage of black voters who used the first  
15 seven days of early voting in 2010 who then turned out in 2014  
16 is 70.8 percent; correct?

17 A Yes.

18 Q So in 2014, African-Americans who used the first seven  
19 days of early voting in 2012 voted at a lower rate in 2014 as  
20 compared to whites who used the first seven days of early  
21 voting in 2012; correct?

22 A Yes. Overall participation is lower among  
23 African-Americans, so I would expect it to be lower, yes.

24 Q And, in fact, in 2014, blacks who had used the first seven  
25 days of early voting turned out at a rate 6.2 points lower than

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1 whites who had used the first seven days of early voting in  
2 2012; correct?

3 A Yes.

4 Q Okay.

5 A As with the last ten days, it's even greater.

6 Q Is even greater than what?

7 A The seven days, and I would expect both to be lower.

8 Q Now, can you turn to Defendants' Exhibit 360, page 3. The  
9 title is "Dr. Stewart's Report: Voters with No Record of  
10 Registration as a Percentage of Total Voters"; right?

11 A Yes.

12 Q Okay. So I am looking at the 2014 row, which has 7,706  
13 provisional ballots recorded for no record of registration; is  
14 that right?

15 A Yes.

16 Q And that number doesn't break up early voting from  
17 Election Day provisional ballots with no record of  
18 registration; correct?

19 A I'm sorry. Could you state -- ask me that again.

20 Q Sure. That 7,706, is that the number -- the total number  
21 for the entire election?

22 A With no record of registration, yes.

23 Q Yes. Okay. And so that combines early voting and  
24 Election Day ballots; correct?

25 A Yes. My recollection is that most of the entries in the

1 provisional data were Election Day.

2 Q Okay. Were you -- did you examine what -- how the numbers  
3 of no record of registration provisional ballots cast during  
4 early voting changed from 2010 to 2014?

5 A No. As I said, nearly -- as I recall, nearly all the  
6 dates in the data either were not reported or were the day of  
7 the Election Day in the provisional data.

8 Q You looked at the exhibit that Defendants produced on all  
9 of the provisional ballots cast in 2014, right, that exhibit  
10 that --

11 A The one that I need a magnifying glass for?

12 Q Yes, that one. You reviewed that document; correct?

13 A To the extent I can read the numbers, yes.

14 Q You didn't do any independent analysis to confirm that the  
15 number of provisional ballots cast during the early voting  
16 period for no record of registration went up to nearly 1,000 in  
17 2014, did you?

18 A What number are you referring to here? I'm sorry.

19 Q So we are looking at the number of provisional ballots for  
20 no record of registration. Do you see that?

21 A Yes.

22 Q And in the first column, the first blue column, we have  
23 from 2010?

24 A Yes.

25 Q And in the second blue column we have 2014?

1 A Yes.

2 Q So my question is: Do you see, in 2014, the second light  
3 blue column after the dark blue 2014 column, the number 968?

4 A I see that.

5 Q Right. That's the number of provisional ballots for no  
6 record of registration cast during early voting in  
7 November 2014; correct?

8 A That's what it says.

9 Q Okay. So then look back with me to 2010. Same early  
10 voting column, the number of provisional ballots cast for no  
11 record of registration during early voting in the November 2010  
12 election was 97. Do you see that?

13 A I see that.

14 Q And is it your understanding that with the loss of  
15 same-day registration, voters could no longer register to vote  
16 during early voting?

17 A That is correct.

18 Q Can you turn with me now to page 18, Figure 6, in your  
19 first report. It is on the screen, too.

20 Dr. Thornton, did you overlay this map with dots  
21 corresponding to 2012 election Sunday voting sites over a map  
22 shaded for population density?

23 A No, I did not.

24 Q So are you aware that in -- where some of these clusters  
25 of early voting sites are, that those are populous urban

1 counties?

2 A I recognize what some of those are, yes.

3 Q And there is a cluster over Wake County?

4 A I believe so, yes.

5 Q And a cluster over Guilford County?

6 A I believe so.

7 Q And a cluster over Mecklenburg County?

8 A Yes.

9 Q Do you know what percentage of the state's population are  
10 in those three counties?

11 A I do not off the top of my head.

12 Q Okay. And then if you will turn with me to Figure 3 on  
13 page 15. Dr. Thornton, on my right here, you were looking at  
14 the demographic composition of census tracts with and without  
15 early voting sites in the 2012 election?

16 A That's correct.

17 Q Are you aware that in almost every county, the county  
18 board of elections served as an early voting site?

19 A I believe that's among the 365.

20 Q Okay. And in some counties were there -- was that the  
21 only early voting site in 2012?

22 A It is possible.

23 Q And you understand that there is no selection process  
24 there? The county board of elections is where it is; it is not  
25 where anyone has decided to locate an early voting site.

1 Correct?

2 A I assume that would be the case, yes.

3 Q Did you look at the racial demographics of the census  
4 tract or ZIP code in which each of those county board of  
5 elections was located?

6 A To the extent that they are in these data, they are  
7 included. So if you are asking me if I isolated those, I did  
8 not isolate.

9 Q So you weren't aware that where the Durham County Board of  
10 Elections is located in that ZIP code, that area is  
11 47.33 percent African-American?

12 A It's quite possible, yes.

13 Q But you didn't look at that?

14 A It would have been in the underlying data.

15 Q You didn't isolate those?

16 A No, I looked at them all in the data.

17 Q And so you also didn't isolate or look at the fact that  
18 where the Guilford County Board of Elections is in Greensboro,  
19 that ZIP code is 66.41 percent African-American?

20 A Are you asking me ZIP code or census tract?

21 Q We'll start with ZIP code.

22 A I did not look at ZIP codes.

23 Q And did you look at the demographics of that particular  
24 census tract?

25 A Among all of them -- they are included. It would have



1 been included, so --

2 Q So you don't remember that it was heavily

3 African-American, that census tract?

4 A I don't recall one way or the other. It would be among  
5 the mix.

6 Q Okay. Dr. Thornton, those are all the questions that I  
7 have.

8 **MS. RIGGS:** I will pass the witness.

9 CROSS-EXAMINATION

10 **BY MR. KAUL**

11 Q Good morning, Dr. Thornton.

12 A Good morning.

13 Q It is good to see you again.

14 You are a managing director of a company called ERS Group;  
15 is that right?

16 A That's correct.

17 Q And managing director means you are one of the people at  
18 the very top of the corporate structure; right?

19 A Yes.

20 Q Nobody is above you in the structure; right?

21 A Our president is.

22 Q Okay. So the president is above you. Anybody else?

23 A Not within the company. That's correct.

24 Q And ERS Group, in significant part, specializes in the  
25 application of economic and statistical analysis to litigation;

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1 correct?

2 A In part.

3 Q And that means that a lot of your company's revenue is  
4 generated through your employees and you're serving as expert  
5 witnesses or consultants in litigation; right?

6 A A portion of it.

7 Q Do you know approximately how much?

8 A No idea.

9 Q And how large is your company?

10 A Currently, it is possibly about 100 people.

11 Q And it's fair to say it's been successful over the years?

12 A Yes.

13 Q And you said last week that you yourself have worked on  
14 hundreds of litigations; correct?

15 A I've worked on them, yes. I also do a lot of proactive  
16 work.

17 Q I would like to ask you a bit about your experience  
18 relating to youth voting and civic engagement. You would not  
19 classify yourself as an expert on youth civic engagement; is  
20 that right?

21 A That's correct.

22 Q And you've never done any work relating to  
23 preregistration; is that right?

24 A That is correct.

25 Q Have you reviewed any scholarly articles on youth voting

1 and civic engagement?

2 A Only as to what I've testified earlier that -- reading,  
3 but not scholarly research.

4 Q And do you have a view as to who the leading experts are  
5 with respect to youth voting and civic engagement?

6 A No.

7 Q And for your work in this case, you didn't compare the  
8 rates at which young North Carolinians and older North  
9 Carolinians used same-day registration, did you?

10 A That's correct.

11 Q Or compared the rates at which young North Carolinians and  
12 older North Carolinians used early voting?

13 A I don't believe so.

14 Q Just for clarification, I will say when I use young North  
15 Carolinians, I mean 18- to 24-year-olds. Okay?

16 A Okay.

17 Q And you didn't compare the rates at which younger North  
18 Carolinians and older North Carolinians voted out of precinct;  
19 correct?

20 A That is correct.

21 Q And you don't have any expertise in residency for the  
22 purpose of voting; is that right?

23 A No, other than I've read and I've cited to a description,  
24 but I wouldn't say I'm an expert.

25 Q That's something that you learned in the course of your

1 work in this case; is that correct?

2 A Yes.

3 Q And the citations that you included in your report were  
4 provided to you by somebody else; correct?

5 A That's correct.

6 Q You didn't speak to anybody at the State Board of  
7 Elections about the rules for students registering to vote; is  
8 that right?

9 A I do not believe so.

10 Q All right. You said in your testimony last Friday that  
11 you've done many regressions that allowed you to ask a question  
12 by simultaneously controlling for other factors; is that right?

13 A Yes.

14 Q And I think you gave an example of when -- whether  
15 somebody -- whether when somebody drops out of school -- you  
16 gave an example of when someone drops out of school, taking  
17 into account whether their parent had a college degree or what  
18 the income of the family was; right?

19 A I believe that was my testimony, yes.

20 Q And why do you control for other factors in doing that  
21 sort of analysis?

22 A If we want to filter out to estimate a single effect and  
23 to simultaneously control for those other factors that may be  
24 correlated, we would include these additional factors.

25 Q Now, your 2015 expert report compares turnout in 2014 in

1 North Carolina to turnout in 2010 in North Carolina; correct?

2 A Yes.

3 Q And in making those comparisons, did you control for other  
4 factors?

5 A No.

6 Q Let me direct your attention to page 78 of your report,  
7 which contains Table 13, your 2014 report. All right. And you  
8 find in Table 13 that turnout among young voters was only  
9 one-half of a percentage point higher in 2014 than it was in  
10 2010; correct?

11 A Yes.

12 Q And do you know how that increase compares to the increase  
13 in turnout for voters who were 25 and older in North Carolina  
14 in 2014 versus 2010?

15 A I did not measure that, or it could have been in my  
16 backup. I just can't remember if -- it may have been in my  
17 backup.

18 Q Do you know how it compares to the overall increase in  
19 turnout in North Carolina from 2010 to 2014?

20 A No, only if we were to look at the other analyses, you can  
21 see the increases.

22 Q Which analyses are you referring to?

23 A If you were to look at, for example, Table 5.

24 Q I'm sorry? Which table is that?

25 A Table 5 at page 66.

1 Q Does that indicate to you what the overall increase in  
2 turnout was in North Carolina from 2010 to 2014?

3 A No. As I said, this would be specific to particular  
4 groups.

5 Q So is there anywhere in your report where we can find the  
6 overall increase in turnout in North Carolina from 2010 to  
7 2014?

8 A No.

9 Q Now, let's turn to page 77 of the 2015 report and  
10 specifically Table 11. Now, this table indicates that the  
11 share of North Carolina voters who were young voters increased  
12 by .7 percentage points from 2010 to 2014; is that right?

13 A That is correct.

14 Q And is it your understanding that preregistration went  
15 into effect on January 1, 2010?

16 A I recall that it went in effect in 2010.

17 Q If it went into effective on January 1st, 2010,  
18 preregistration would have been in place for just over ten  
19 months prior to the 2010 election; right?

20 A Yes.

21 Q And most preregistrants would not have been old enough to  
22 vote -- to become official registered voters, rather, in the  
23 2010 election; correct?

24 A Correct.

25 Q After that election --

1 A I should say I haven't looked at the distribution of those  
2 ages. So an average, yes.

3 Q After that election, preregistration remained in effect  
4 for the remainder of 2010, for all of 2011, for all of 2012,  
5 and for the first nine months of 2013; right?

6 A I believe so.

7 Q So that's nearly three-quarters of the time between the  
8 2010 and 2014 elections; right?

9 A Yes.

10 Q And the vast majority of those preregistrants would have  
11 been eligible -- would have been fully registered voters by the  
12 time of the 2014 election; right?

13 A Without looking at the distribution, I don't know; but on  
14 average, I would think so, yes.

15 Q And you said the share of registered voters that were made  
16 up by young voters increased from 2010 to 2014; right?

17 A Yes.

18 Q I would like to ask you a little bit about out-of-precinct  
19 voting. I am trying to avoid covering much ground that my  
20 cocounsel covered.

21 First, let me direct your attention to page 88 of your  
22 2015 report. And in Table 18 you identify the number of  
23 out-of-precinct votes as 1,643 for the 2014 midterm election;  
24 is that right?

25 A Yes.

1 Q Now, is that your own calculation?

2 A That came from Dr. Stewart's report.

3 Q Now, you referred to that number before as minuscule; is  
4 that right?

5 A As a proportion, yes.

6 Q And you mean as a proportion of the overall number of  
7 votes cast; is that right?

8 A Either votes cast or among registered voters.

9 Q If you were to compare it to certain other numbers, it  
10 could be a large number, though; right?

11 A It depends on what those numbers are.

12 Q Have you compared that number to the number of cases of  
13 voter impersonation, in-person fraud referred from the Board of  
14 Elections to district attorneys during the period from 2000 to  
15 2013?

16 A No.

17 Q Just for the sake of argument, let's say that number is  
18 two. If that were the case, this number would be more than 800  
19 times larger than the number of in-person voter impersonation  
20 fraud cases referred from the State Board of Elections to  
21 district attorneys over that 14-year period; correct?

22 A If your number is correct, yes. I have no way of knowing.

23 Q And you testified earlier about Dr. Levine's report;  
24 correct?

25 A Yes.



1 Q And I believe you criticized him for using voting-age  
2 population in assessing turnout; is that right?

3 A I did so in my -- relative to using the citizen voting-age  
4 population.

5 Q Okay. Now, you yourself used voting-age population rather  
6 than citizen voting-age population in your first report on  
7 several occasions; right?

8 A Yes.

9 Q And do you know how the youth share of the citizen  
10 voting-age population compares to the youth share of the  
11 overall voting-age population?

12 A I do not know, and one clarification is in my earlier  
13 report, particularly when I am looking at some of the census  
14 data, the voting-age population data wasn't always available.  
15 So in those cases -- I mean, pardon me, the citizen voting-age  
16 population wasn't always available; therefore, I had to use the  
17 voting-age population.

18 Q Voting-age population data is actually much more readily  
19 available than citizen voting-age population; isn't that right?

20 A It is.

21 Q And would you be surprised to know that the youth share of  
22 the voting-age population and of the citizen voting-age  
23 population in North Carolina both round to 14.7 percent?

24 A I don't know off the top of my head, but that contradicts  
25 what is in Dr. Levine's report because I think he reports it at

1 being 13.1 or 13.2 percent.

2 Q Do you recall what year he was reporting?

3 A 2013.

4 Q Do you know what the numbers are for 2014?

5 A No. Was that the one-year or was that the five-year  
6 sample?

7 Q I don't know the answer to that. Do you?

8 A No. You are asking me the question. I don't know. I am  
9 asking you what information you relied on.

10 **MR. KAUL:** No further questions.

11 **THE COURT:** Anything further from any of the  
12 Plaintiffs?

13 All right. Mr. Farr?

14 **MR. FARR:** Just a very few, Your Honor.

15 REDIRECT EXAMINATION

16 **BY MR. FARR**

17 Q Dr. Thornton, could you look to Exhibit 360, which is  
18 titled "Dr. Stewart's Report: Out-of-Precinct Votes as a  
19 Percentage of Total Votes."

20 Do you have that?

21 A Yes.

22 Q I just want to ask you about the first page. Where --  
23 where did the information for this report come from?

24 A Dr. Stewart's report.

25 Q And so you were asked questions about why on this report

1 you didn't distinguish between provisional ballots -- actually,  
2 I want to go to -- hold on for a second.

3 I want to turn to the last page of this exhibit. And that  
4 last page says "Dr. Stewart's Report: Voters with No Record of  
5 Registration as a Percentage of Total Voters." Do you see  
6 that?

7 A Yes.

8 Q Okay. And where did the information from this report come  
9 from?

10 A Dr. Stewart's report.

11 Q So when Dr. Stewart looked at the number of provisional  
12 ballots cast for no record of registration in 2014, did he  
13 distinguish between provisional ballots counted during early  
14 voting -- or cast during early voting versus those cast on  
15 Election Day?

16 A No, he did not.

17 **MR. FARR:** That's all I have, Your Honor.

18 **THE COURT:** All right. Anything further?

19 **MR. DONOVAN:** No, Your Honor.

20 **THE COURT:** All right. Dr. Thornton, you may step  
21 down.

22 **MR. FARR:** May I move some exhibits into evidence?

23 **THE COURT:** Yes.

24 **MR. FARR:** The Defendants would like to move into  
25 evidence Exhibit 246, which is Dr. Thornton's 4/25/14 report;

1 Exhibit 309, which is Dr. Thornton's 3/16/15 report;  
2 Exhibit 245, which is Dr. Thornton's 4/8/15 report,  
3 Exhibit 359, which is a report that Dr. Thornton prepared about  
4 the voter churn; Exhibit 360 --

5 **THE COURT:** I'm sorry. Let me back up. 309, and  
6 what's after 309?

7 **MR. FARR:** 245, Your Honor, which is her third  
8 report, which is dated April 18th, 2015; Exhibit 359, which is  
9 a report that she made partially based upon the exhibit  
10 Dr. Stewart produced about the churn and the vote; Exhibit 360,  
11 which was a percentage of vote -- total vote for certain  
12 provisional ballots that was based upon Dr. Stewart's report;  
13 Exhibit 361, which is a percentage of provisional ballots  
14 compared to the total vote from Dr. Thornton's report; and  
15 Exhibit 362, which was a report that studied early voting  
16 patterns, comparing people who voted in the first seven days of  
17 early voting and whether they voted in a subsequent election.

18 **THE COURT:** Any objection?

19 **MR. DONOVAN:** Your Honor, no objection to 359, 360,  
20 361, and 362. We do have objections in part that I would like  
21 to be heard on on the other reports, but only in part.

22 **THE COURT:** All right. The Exhibits 359, -60, -61  
23 and -62 are admitted.

24 **MR. DONOVAN:** Your Honor, on Dr. Thornton's reports,  
25 there is really three sections that we have. One is a notation

1 for you. The other two are objections. One is -- much of her  
2 2015 report deals with photo ID, which we don't object to  
3 coming in, but it shouldn't be considered as it is not part of  
4 this case. She did additional matching after H.B. 589 was  
5 passed.

6 It's the same as Dr. Stewart's and some others who  
7 did -- it's different where Dr. Lichtman and others talked  
8 about what the legislator knew.

9 **THE COURT:** Right.

10 **MR. DONOVAN:** But I think the parties have an  
11 agreement that anything regarding photo ID that's kind of post,  
12 unless it's identifying differently, doesn't come in, at least  
13 for your consideration at this point.

14 **THE COURT:** Okay. Are there specific portions of the  
15 report that you can tell me --

16 **MR. DONOVAN:** Yes, I can.

17 **THE COURT:** -- with some precision?

18 **MR. DONOVAN:** Yes, I can. I also, after the break,  
19 can give you kind of the redline and give it to counsel, and  
20 similar to the other objections, you can take it under  
21 advisement. We would have no objection to that.

22 **THE COURT:** I would like to rule on as many things as  
23 I can in open court. My homework assignments are mounting.

24 **MR. DONOVAN:** So, Your Honor, if you look at the 2015  
25 report.

1           **THE COURT:** Yes.

2           **MR. DONOVAN:** One moment. There are a few other  
3 stray lines, but primarily pages 15 to the top of 49 address  
4 photo ID.

5           **THE COURT:** All right.

6           **MR. DONOVAN:** That's Number 1, Your Honor. Number 2  
7 goes back to our objections on some of her statements, and they  
8 can't really be opinions for lack of qualification, regarding  
9 the socioeconomic data and her kind of reviewing online forms,  
10 and then she comes to conclusions and criticisms of other  
11 experts. That's in pages 49 to 58.

12           **THE COURT:** Of the same report?

13           **MR. DONOVAN:** Of the same report, Your Honor. For  
14 the reasons stated before, she did -- she does not, in the  
15 report and she did not on the stand, give any quantitative  
16 analysis of that which she was qualified as an expert in,  
17 quote, economics and applied statistical analyses.

18           What she does in her report -- I agree she did not on  
19 the stand, which was why there wasn't the need to further  
20 object, but she makes conclusions and criticisms of experts who  
21 have been qualified in the social sciences in this type of  
22 work. And for those, we don't believe she's qualified;  
23 therefore, it should not come into evidence.

24           **THE COURT:** So your objection is to pages 49 to what?

25           **MR. DONOVAN:** Fifty-eight, Your Honor.

1           **THE COURT:** All right.

2           **MR. DONOVAN:** And the last, Your Honor, I would have  
3 to give you the redline. There are -- as I said in the  
4 beginning, we don't object to her doing what I refer to as, as  
5 any expert does from time to time, kind of data crunching or  
6 statistical analysis; and that's what she appears to have  
7 limited herself to on the stand. In her report, however, she  
8 makes conclusions about what why voters would have done certain  
9 things based on the data. I think from the cross-examination  
10 and actually the direct examination, we've shown that she has  
11 no identifiable experience with these voting practices, any  
12 voting rights cases that she can remember, any studies in  
13 election administration.

14           So, again, her data crunching or statistical analysis  
15 we don't object to, but specific conclusions where she then  
16 says this is why voters -- or this is why voters may or may not  
17 have done things, we do object to for lack of qualifications.

18           **THE COURT:** How am I supposed to know which ones you  
19 object to?

20           **MR. DONOVAN:** That's why I was going to give you a  
21 little redline of the specifics. That's a little harder, I  
22 agree, because I need -- she has tables which we don't object  
23 to and data.

24           **THE COURT:** Is that objection in your motion to  
25 strike her testimony?

1           **MR. DONOVAN:** In -- mostly. I am not sure if it's  
2 all. I need to check, but there are examples of that, yes,  
3 Your Honor.

4           **THE COURT:** I think you should focus on the ones that  
5 you've previously moved. That would be the starting point, I  
6 think, because that was part of the reason we had the pretrial  
7 process. Okay. So when can you identify those for me?

8           **MR. DONOVAN:** I should be able to right after the  
9 break. I have some of them. I just want to make sure I have a  
10 set that I can give you and Mr. Farr.

11           **THE COURT:** Mr. Farr -- so what was the objection to  
12 246 and 245? I thought what I heard was the objection to  
13 pages 15 through 58 essentially dealt with 309?

14           **MR. DONOVAN:** So, Your Honor, in DX246, the '14  
15 report, it is only her conclusions in paragraph 42. So's a  
16 limited objection to that. 215 --

17           **THE COURT:** Hold on just a minute.

18           **MR. DONOVAN:** Sure.

19           **THE COURT:** 246 is her first report. Paragraph 3?

20           **MR. DONOVAN:** Paragraph 43, so it is on page 25. And  
21 then the first sentence of 42.

22           **THE COURT:** All right. Mr. Farr, did you want to be  
23 heard?

24           **MR. FARR:** I am a little confused, Your Honor. I do  
25 want to say that, first of all, starting with her second



1 report, which I think is April 15 or 16th --

2 **THE COURT:** Exhibit 309?

3 **MR. FARR:** Yes.

4 **THE COURT:** Okay.

5 **MR. FARR:** Your Honor, the first section of that  
6 report, which I think goes to page 58, is largely on the  
7 matching issues. We didn't redact that because the United  
8 States didn't redact the part of Dr. Webster's report on  
9 matching issues.

10 **THE COURT:** I'm sorry. The matching issues, is that  
11 photo ID?

12 **MR. FARR:** Yes, sir.

13 **THE COURT:** Is there anything in the photo ID portion  
14 that's relevant for my consideration?

15 **MR. FARR:** No, sir, not at this point in time, except  
16 for pages 49 to 52, where she goes over the process for  
17 applying for Medicaid and other welfare benefits. Those would  
18 be only the parts of that section that we think should come  
19 into evidence.

20 **THE COURT:** All right. Hold on just a minute.  
21 That's paragraph 78 through 84?

22 **MR. FARR:** I think so, Your Honor. Let me confirm  
23 that. I think it's actually only 82, Your Honor. She starts  
24 talking about DMV offices in paragraph 83. So at this time,  
25 this is really not relevant to what the issues are before the

1 Court.

2 **THE COURT:** Okay. Hold on just a minute.

3 **MR. FARR:** Counsel asked me to repeat that, Your  
4 Honor.

5 **THE COURT:** All right.

6 **MR. FARR:** It is my belief that the first section of  
7 her 2015 report deals with the photo ID issues, except for  
8 paragraphs 78 through 82, which explain her testimony or a  
9 reference point for her testimony about the steps and the  
10 difficulty for applying for social welfare benefits, and we  
11 think that should come into evidence.

12 The rest of it, Your Honor, again, we didn't redact  
13 it because the United States didn't redact Dr. Webster's  
14 report. We agree that the rest of -- the first part of her  
15 2015 main report is not relevant to the issues before the Court  
16 at this point in time.

17 **MR. DONOVAN:** Your Honor, we are not asking for it to  
18 be redacted.

19 **THE COURT:** I understand. That leaves for my  
20 consideration pages 49 and 58.

21 **MR. DONOVAN:** I think it's narrower, Your Honor. I  
22 think -- correct me, Mr. Farr, but I think it is 49 to 52, Your  
23 Honor, because he --

24 **THE COURT:** Well, that's as to the photo ID, and then  
25 you also object to 49 to 58 based on her criticisms of other

1 experts.

2 **MR. DONOVAN:** But based on Mr. Farr's  
3 representations, I think he's -- we've narrowed it because he's  
4 only proposing that Your Honor consider paragraph 78 through  
5 82, if I am right.

6 **MR. FARR:** Yes, Your Honor, that's correct. So only  
7 the part of her -- the 2015 report, Your Honor, that we think  
8 should be considered at this point in time are paragraphs 78  
9 through 82, and they appear on pages 49 to page 52.

10 **THE COURT:** Okay. What about paragraphs 42 and 43 of  
11 Exhibit 246, which is her first report?

12 **MR. FARR:** Well, Your Honor, I don't know what  
13 Mr. Donovan is going to give me later today, but most of what  
14 Dr. Thornton says about voting patterns in these reports are  
15 typically quotes from the Plaintiffs' experts. And on  
16 paragraphs 42 through 43, I think that -- based upon her  
17 expertise as an economist and a statistician, I think that  
18 those conclusions are valid conclusions, and she basically is  
19 saying that there is something else that must be going on  
20 besides the voting practices. She doesn't really go --  
21 elaborate any more than that.

22 **THE COURT:** I am going to overrule the objection as to  
23 246. It is admitted. Largely, what she is doing is, by her  
24 statistical analysis, ruling out some of the arguments that are  
25 made based on the data. And as to Exhibit 245, there appears

1 to be no objection to that. Am I correct about that,  
2 Dr. Donovan?

3 **MR. DONOVAN:** I believe that's right.

4 **THE COURT:** 245 is admitted.

5 As to 309, the Defendants agree that the portion to  
6 consider for me are paragraphs 78 through 82, and I am going to  
7 take a look at that later. I am inclined to consider it,  
8 keeping in mind her background and what it is that she's  
9 actually trained to do.

10 **MR. FARR:** Thank you, Your Honor.

11 **THE COURT:** I think anybody can look at some things  
12 and draw conclusions, and that's a fair thing for an expert to  
13 do, even if they haven't gone to school to determine that a  
14 six-page form is longer than a three-page form, for example.  
15 So I will have to read it more carefully to see exactly what  
16 the conclusion is.

17 **MR. FARR:** Thank you, Your Honor.

18 **THE COURT:** So 309 is admitted. And for my  
19 consideration, I am going to admit the report because that's  
20 what we did with the others, but the parties are agreeing that  
21 my consideration is, at most, paragraphs 78 to 82, and I will  
22 take a look at those.

23 Okay. Do we have another witness?

24 **MR. BOWERS:** Yes, Your Honor. The Defendants call  
25 Dr. Trey Hood to the stand.

1 **M.V. HOOD, III, PH.D.**, DEFENDANTS' WITNESS, at 10:21 a.m.,  
2 being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 **BY MR. BOWERS**

5 Q Please state your full name for the record.

6 A I'm M.V. Hood, III. Most people call me Trey because I am  
7 the third.

8 Q Dr. Hood, please tell the Court your educational  
9 background.

10 A I have three degrees in political science. The first, a  
11 BS from Texas A&M, an MA from Baylor University, and a Ph.D.  
12 from Texas Tech University.

13 Q Dr. Hood, where are you currently employed?

14 A I'm a professor of political science at the University of  
15 Georgia. I also serve currently as a director of graduate  
16 programs for our department.

17 Q How long have you been at UGA?

18 A Since August of 1999.

19 Q Are you a full professor?

20 A Yes.

21 Q Are you tenured?

22 A Yes.

23 Q Do you teach?

24 A Yes.

25 Q What courses?

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1 A I teach a variety of courses in American politics,  
2 everything from introductory survey courses of American  
3 government. There is an honors variant to that class that I  
4 teach as well. I teach typically once a year a course on  
5 southern politics, and I've taught that frequently at the  
6 undergraduate level and also at the graduate level; and we talk  
7 about quite a variety of issues in that course, including  
8 voting rights, redistricting, lots of different topics in that  
9 class.

10 I also have taught a graduate course in election  
11 administration for our department in the past, and in the more  
12 distant past, I have taught undergraduate courses on research  
13 methods as well.

14 Q Dr. Hood, please describe briefly the subject matter of  
15 your field.

16 A Well, generally, I study American politics and policy.  
17 More specifically under that heading, I would say some areas  
18 that I focus on are racial politics, again southern politics,  
19 election administration.

20 Q Would you say those areas are specialties?

21 A Yes. I both typically teach and do research in those  
22 particular areas. Again, I also -- research focuses as well as  
23 in the area of election administration, which for me has  
24 included various topics like voter ID, redistricting, early  
25 voting, and voter fraud.

1 Q Dr. Hood, have you been published in peer-reviewed  
2 publications in this field?

3 A Yes.

4 Q How many times?

5 A I don't know specifically in the area of election  
6 administration. I have somewhere over 30 peer-reviewed  
7 publications. I don't think I have 40. Somewhere between 30  
8 and 40. I have other types of publications like book chapters,  
9 some of which deal with things like redistricting. I also have  
10 a peer-reviewed university press book about political change in  
11 the South from post World War II to the present.

12 Q Do you serve on any editorial boards?

13 A Yes. Currently I am serving on two journal editorial  
14 boards. One is *Social Science Quarterly*, and the second is  
15 *Election Law Administration*, which is a journal really wholly  
16 devoted to the study of election administration.

17 Q And have you ever been a member of any professional  
18 organizations?

19 A Yes. I have been a member of, you know, a number of  
20 typically different types of political science professional  
21 organizations like the American Political Science Association.  
22 Currently, I'm a member of the Southern Political Science  
23 Association, for example. So, yes.

24 Q Have you ever received any external funding to conduct  
25 research?

1 A Yes, I've received external funding from the National  
2 Science Foundation. I have also received external funding from  
3 The Pew Charitable Trusts, and that was specifically to study  
4 actually early voting in the state of Georgia in the 2008  
5 election.

6 Q Have you ever been qualified as an expert witness and  
7 testified in court before?

8 A Yes.

9 Q Please tell the Court how many times and what kind of  
10 cases those were.

11 A I believe from memory that I have testified in court six  
12 times now. Those cases involved different subject matter, like  
13 voter ID, redistricting. One was a Section 2 vote dilution  
14 analysis, for instance.

15 Q Have you ever also served as a consulting expert in any  
16 election-related cases?

17 A Yes, I have also served as a consultant.

18 Q Okay. About how many times, if you recall?

19 A Again, off the top of my head, I am thinking about six  
20 different times.

21 Q Okay. And in those cases, were you retained only by  
22 Defendants or only by Plaintiffs or a mix?

23 A It was a mix.

24 **MR. BOWERS:** Your Honor, at this time, we tender  
25 Dr. Hood as an expert witness in the field of American politics



1 specifically in the areas of electoral politics, racial  
2 politics, southern politics, and election administration.

3 **MR. HO:** No objection, Your Honor.

4 **THE COURT:** All right. He may give his opinions.

5 **MR. BOWERS:** Thank you, Your Honor.

6 **BY MR. BOWERS**

7 Q Dr. Hood, have you submitted a report in this matter?

8 A Yes.

9 **MR. BOWERS:** Your Honor, may I approach?

10 **THE COURT:** Yes.

11 **BY MR. BOWERS**

12 Q Dr. Hood, I've handed up what's been marked as Defendants'  
13 Exhibit 268, which is your expert rebuttal report; is that  
14 correct?

15 A Yes, that's correct.

16 Q Okay. And this was completed in March of 2015; correct?

17 A March 16, 2015, yes.

18 Q Okay. And, Dr. Hood, what were you asked to do in this  
19 case?

20 A I was generally asked to opine about the effects of  
21 H.B. 589. More specifically, I also provided some rebuttal to  
22 Plaintiffs' experts in this case, specifically Professors  
23 Stewart, Gronke, Clotfelter, Burden, and Summers.

24 Q Dr. Hood, this report covers -- the first portion of the  
25 report covers the photo ID piece of H.B. 589, does it not?

1 A Yes, a large amount of material in my report does focus on  
2 voter ID.

3 **MR. BOWERS:** Your Honor, for the record, I will note  
4 that that's pages 4 through 33 of his report, and that will be  
5 important for later.

6 **BY MR. BOWERS**

7 Q But we are not going to focus on that here today,  
8 Dr. Hood; correct?

9 A Yes.

10 Q I would like to turn your attention to page 34 in your  
11 report.

12 **MR. BOWERS:** Your Honor, I see it's about 10:30. Do  
13 you want to take a break now?

14 **THE COURT:** Let's go about ten more minutes, if  
15 that's all right.

16 **MR. BOWERS:** Yes, that's perfect.

17 **BY MR. BOWERS**

18 Q Dr. Hood, on page 34, what were you asked to analyze  
19 regarding H.B. 589 and the early voting?

20 A This is specifically a section in my report that's a  
21 rebuttal to Professor Gronke's report. So this deals with  
22 early in-person voting and H.B. 589.

23 Q Did you focus on a particular election or elections?

24 A Yes. So when this report was issued, obviously, the 2014  
25 midterm had occurred. So I focused on the 2014 midterm and the

1 most proximate midterm preceding that, the 2010 midterm. So  
2 those were the two elections I focused on in this section of my  
3 report.

4 Q And I think you stated this, but just to make sure I'm  
5 clear. This portion of your report is in rebuttal to Professor  
6 Gronke?

7 A Yes.

8 Q On early voting?

9 A Yes. It solely covers those topics, yes.

10 Q And Professor Gronke's report was issued prior to  
11 November 2014; correct?

12 A Well, one of them was. I think he submitted another  
13 report after that time period.

14 Q But his initial report?

15 A Yes, that's correct.

16 Q And, Dr. Hood, tell the Court, what did Professor Gronke  
17 predict for the 2014 election in North Carolina?

18 A So, again, this was prior to the 2014 midterm occurring.  
19 I pulled some quotes from Professor Gronke's report that I  
20 think are representative of what he expected to happen. I can  
21 read those quotes, if you like.

22 Q Yes, please do.

23 A Okay. Again, I am quoting Professor Gronke on page 34 of  
24 my report, paragraph 66. This is Professor Gronke, "I conclude  
25 that the analyses in this report that the changes to early

1 in-person voting that I have reviewed -- eliminating the first  
2 seven days of one-stop early voting -- will have a differential  
3 and negative impact on the ability of African-Americans to cast  
4 a ballot in North Carolina. I know of no empirical argument by  
5 which one could conclude that African-American voters -- or any  
6 voters for that matter -- will successfully adjust to  
7 40 percent fewer early voting days, regardless of the  
8 possibility of longer hours on those days."

9 Q Okay. Dr. Hood, based on his predictions and analyses,  
10 did you develop any hypotheses that could be tested based on  
11 those predictions?

12 A Yes. And, again, there is another paragraph I won't  
13 read --

14 Q Pardon my interruption. Go ahead.

15 A Do you want me to read that as well?

16 Q Yes.

17 A This is, again, part of what Professor Gronke is  
18 concluding in his report. "I conclude from the analysis in  
19 this report that, because same-day voter registration has been  
20 shown to be a strong and consistent predictor of higher  
21 turnout, the elimination of same-day registration during the  
22 election process, whether during one-stop voting or on Election  
23 Day, will lower overall turnout. In particular, I conclude  
24 that eliminating same-day registration will have a disparate  
25 impact on African-American voters because they take advantage

1 of same-day registration at a significantly higher rate." End  
2 quote.

3 Q Thank you, Dr. Hood. In response to that, what did you  
4 do?

5 A I developed some hypotheses to test. Since we had had the  
6 implementation of at least those parts of H.B. 589 in the 2014  
7 midterm, I could compare turnout on various factors in the 2014  
8 midterm to the 2010 midterm. So I developed four -- initially  
9 four testable hypotheses, and these are housed in paragraph 67  
10 of my report.

11 Q Let's go through those, please.

12 A Okay. The first is the question, did overall turnout  
13 increase in 2014 compared to the last midterm election? Two,  
14 did black turnout increase in 2014 compared to the last midterm  
15 election? Three, did one-stop early in-person voting usage  
16 increase in 2014 compared to the last midterm election? And,  
17 four, did black one-stop usage increase in 2014 compared to the  
18 last midterm election?

19 Let me just say I may use the terms "one-stop voting" and  
20 "early in-person voting" interchangeably in this exchange, just  
21 so everyone knows what I am talking about.

22 Q Thank you, Dr. Hood. For purposes of your analysis, where  
23 did you obtain your data?

24 A From the North Carolina State Board of Elections.

25 Q Now, are your findings in this analysis reflected on

1 page 35, table 12?

2 A Yes. Those are the findings in tabular format. I think  
3 there are also a few demonstratives, some figures created.

4 **MR. BOWERS:** Your Honor, may I approach?

5 **THE COURT:** Yes.

6 **BY MR. BOWERS**

7 Q Dr. Hood, I've handed up a couple of demonstratives that  
8 you prepared. And we've followed the same numbering convention  
9 that the Plaintiffs use. You will see the first is TH-1 and  
10 second is TH-2. Do you see that?

11 A Yes, sir.

12 Q Dr. Hood, let's focus on TH-1, Figure A.

13 A Okay. This is a graphic that again takes the data in  
14 Table 12 in tabular format and puts it in a graphical format.  
15 This deals with overall turnout comparisons, 2010 general and  
16 the 2014 general. So total turnout -- again, the red bars in  
17 this case are indicative of 2010, blue 2014, and green are the  
18 percentage differences there.

19 So the first set of bars to one's left would be total  
20 turnout, those two elections. Turnout overall goes from 43.5  
21 percent in 2010 to 44.3 percent in 2014, which is about a .9  
22 increase, about one percentage point.

23 Then I have turnout broken out by black and white. And  
24 North Carolina is one of the few states, there are six in all,  
25 where the race of the registrants is recorded. So we are not

1 estimating this. This is, again, from the voter registration  
2 database.

3 Overall turnout for black North Carolinians goes from  
4 40.4 percent in 2010 to 42.2 percent in 2014, or 1.8 percent  
5 plus. For whites, turnout goes up 1.3 percent from 45.5 in  
6 2010 to 46.8 in 2012.

7 **THE COURT:** Is this a place where we can stop?

8 **MR. BOWERS:** Sure.

9 **THE COURT:** Why don't we take our 20-minute break.

10 (The Court recessed at 10:38 a.m. )

11 (The Court was called back to order at 11:02 a.m.)

12 **THE COURT:** Mr. Bowers.

13 **MR. BOWERS:** Thank you, Your Honor.

14 **BY MR. BOWERS**

15 Q Dr. Hood, when we broke, you were talking about your  
16 demonstrative TH-1, which is labeled Figure A, and that was a  
17 demonstrative using data taken from your Table 12 on page 35;  
18 is that correct?

19 A That's correct.

20 Q Just to briefly summarize, what were your findings that  
21 are reflected on Figure A, TH-1?

22 A Overall, turnout went up from the 2010 to the 2014 general  
23 election, and, more specifically, black turnout also went up  
24 across those two election cycles.

25 Q Okay. Let's look now at the second demonstrative, TH-2,

1 which you've identified as Figure B. That also interprets  
2 information from your Table 12 on page 35; correct?

3 A That's correct.

4 Q Okay. Please tell the Court what TH-2 reveals.

5 A This figure is plotting specifically one-stop turnout, or  
6 early in-person voting turnout, again from the 2010 election  
7 cycle to the 2014 election cycle, and it again has the similar  
8 breakout to section A -- or, excuse me, Figure A.

9 The first set of bars gives total one-stop turnout. We  
10 can see in 2010, it is 33.6 percent, and it increases to  
11 37.4 percent in 2014. So that's a net plus of 3.8 percent.

12 And then looking specifically at black and white one-stop  
13 turnout, black one-stop turnout goes from 36.0 percent to  
14 45.0 percent, or plus 9.0 percent. And white one-stop turnout  
15 also increases by -- to a lesser degree, of 2.4 percent, going  
16 from 33.1 percent in 2010 to 35.5 percent in 2014.

17 Q Okay. Dr. Hood, you testified earlier that Professor  
18 Gronke predicted that there would be a lower overall turnout.  
19 What do you conclude from your analysis?

20 A So this would correspond to Hypothesis 3 and 4, again on  
21 page 34. Both one-stop turnout in total, and, more  
22 specifically, black one-stop turnout, increases from 2010 to  
23 2014.

24 Q Okay. So was Professor Gronke right in his prediction?

25 A Well, the evidence I collected and analyzed is counter to



1 his prediction. There is actually a positive effect as opposed  
2 to a negative effect. Again, I am not saying that from a  
3 causal standpoint, but I am just saying in terms of the  
4 numbers, there is a positive effect.

5 Q Dr. Hood, you also performed a voter transition analysis  
6 similar to the one conducted by Professor Gronke; correct?

7 A That's correct.

8 Q Okay. And why did you do this?

9 A Well, I did -- I did things slightly differently from  
10 Professor Gronke. He compared what happened to one-stop voters  
11 in the 2012 general to what they did in the 2014 general.  
12 Again, I believe the better comparison point would be the  
13 preceding midterm election. So I compared what one-stop voters  
14 in 2010 do and the 2014 general.

15 Q Okay. And what did you find?

16 A The results of the analysis I conducted are in Table 13 on  
17 page 37. So, again, I took the 2014 voter registration  
18 database and located everyone who had voted early in 2010 and  
19 created a panel, or a group, and I studied what this group did  
20 in the 2014 election. So these are voters that had voted early  
21 in 2010 who were still eligible to vote in 2014. They are  
22 still on the rolls.

23 So these are the different possibilities for these  
24 particular voters. They could vote again early in person, or  
25 one-stop. They could vote curbside, absentee by mail. They

1 could vote on Election Day at the precinct. I have a category  
2 "Other" that included some provisional votes. Or they might  
3 not have turned out in 2014. That's the "Did Not Vote"  
4 category.

5 Now, Professor Gronke's analysis, in his analysis, he  
6 called this the dropoff rate. I am just calling it -- I am  
7 just categorizing it as these are individuals that didn't turn  
8 out to vote. I can't really tell you why or why not they did  
9 not turn out to vote.

10 So what can you discern from this exercise? If we look at  
11 the column for all, so that's all 2010 one-stop voters who are  
12 still eligible to vote in 2014, 56.38 percent again voted early  
13 in person in 2014, so more than half.

14 It is interesting, though, that 23.2 percent, so just  
15 under a quarter, went from one-stop voting in 2010 to voting at  
16 the precinct on Election Day in 2014. 16.68 percent, so just  
17 under 17 percent, did not vote for some reason out of that  
18 cohort.

19 And then again, I have things divided up into black and  
20 white 2010 one-stop voters. For black 2010 one-stop voters,  
21 60.8 percent again voted one-stop in 2014 compared to  
22 55.69 percent of white 2010 one-stop voters again turning out  
23 to vote one-stop in 2014.

24 So -- and then the last column in the Table 13 to the  
25 right is just the black-white difference. So black 2010

1 one-stop voters turned out again to vote early in 2014 at a  
2 higher rate than white 2010 one-stop voters.

3 Then looking down the column for black one-stop voters,  
4 again 19.64 percent did vote at the precinct, so just under  
5 20 percent, compared to 24.19 percent of white one-stop voters  
6 from 2010 who in 2014 voted at the precinct.

7 The rate at which these one-stop voters did not return to  
8 the polls for whatever reason, so I am looking at the "Did Not  
9 Vote" category there, it's -- for black one-stop voters, it's  
10 15.77 percent, so just under 16 percent; for whites, it's just  
11 under 17 percent, 16.60 percent. So the differential there is  
12 a negative .83 percent.

13 What can we discern from this more generally? There is  
14 some talk that early in-person voting may be habitual. I don't  
15 know if that's the case or not. I certainly would probably  
16 have to collect more data on this. I can say voting may be  
17 habitual among these -- among this set of electors because most  
18 of them did return to vote in one form or another. I mean, if  
19 you have a group and 84 percent are returning to the polls,  
20 that's quite high. So that's one of the things I can say.

21 Second, one-stop voters in 2010 seemed to have been able  
22 to adjust to changes in law in 2014, especially the decrease in  
23 days from 17 to 10. It doesn't seem to have affected things to  
24 any great extent.

25 So those are some of the things that I can conclude from

1 my voter transition analysis I conducted.

2 Q Okay. Thank you, Dr. Hood. Did you also look at the  
3 behavior of voters in the 2010 and 2014 Democratic Primaries?

4 A I did.

5 Q Why did you take a look at that?

6 A Well, this is an interesting case. Again, one of the  
7 reasons I looked at the Democratic Primary is because, of  
8 course, most black North Carolinians vote in the Democratic  
9 Primary as opposed to the Republican Primary.

10 And so again in 2010, we have a situation where you have a  
11 17-day early voting period and you have a Democratic U.S.  
12 Senate Primary that's heavily contested. I believe it was  
13 Elaine Marshall was the top vote-getter, but she failed to get  
14 the required 40 percent of the vote, and it actually went to a  
15 runoff. That's the runoff threshold in North Carolina. I  
16 think there were actually six people in that U.S. Democratic  
17 Senate Primary initially before the runoff.

18 So longer early voting period, competitive U.S. Senate --  
19 competitive Democratic Primary election for the U.S. Senate  
20 compared to 2014 where you have an incumbent U.S. Senator Kay  
21 Hagan running again for renomination for the Democratic Party.  
22 I think she gets -- well, it says 77.2 percent of the vote in  
23 my report. So that's not very competitive.

24 You also have a situation where the early voting period  
25 has been reduced from 17 to 10 days. So this is an interesting

1 comparison point where we can look, at least in this set of  
2 elections, at both competition and the length of the early  
3 voting period.

4       So the hypothesis I would form initially is that in 2010,  
5 you should have higher early voting turnout. You have a longer  
6 voting period and much a more competitive election, and  
7 theoretically, again, if I am hypothesizing, in 2014, one-stop  
8 voting should drop because you have a shorter one-stop voting  
9 period in terms of the number of days and a less competitive  
10 U.S. Senate Democratic Primary.

11       So the results of this are on page 39. Now, I want to  
12 point out I inadvertently also called this Table 13. We  
13 already talked about Table 13. So I apologize. I will call  
14 this Table 13A, but the heading is correct.

15       So this is what happens in these two Democratic Primaries  
16 in 2010 and 2014. Total turnout in the primary increases. If  
17 we look at, for instance, black turnout in the Democratic  
18 Primary, it increases 5.8 percent from 31.43 in 2010 to 37.26  
19 in 2014.

20       White turnout in the Democratic Primary actually drops 6.3  
21 points; but then if we look at Democratic Primary turnout in  
22 these two election cycles specifically for one-stop turnout, we  
23 see black one-stop turnout in the 2010 to the 2014 Democratic  
24 Primary goes up 6.8 points, as does white one-stop turnout. It  
25 goes up 5.9 points.

1       So, again, the initial hypothesis I would have formed is  
2 refuted by these findings, which show that in an election cycle  
3 that had a much less -- or almost noncompetitive essentially  
4 Democratic Primary for U.S. Senate and a shortened early voting  
5 period actually saw higher rates of turnout in the early voting  
6 period for those.

7 Q     Dr. Hood, did you also look at early voting in 2010 as  
8 compared to 2014 on a day-by-day basis?

9 A     Yes.

10 Q    Where does that begin in your report?

11 A    That begins -- the text begins on page 39, and it  
12 continues through page 43, and there are several figures there  
13 that look at one-stop voting on a day-by-day basis for 2010 and  
14 2014.

15 Q    Okay. Let's start with Figure 3. Tell the Court about  
16 that, Figure 3 on page 40.

17 A    Figure 3 and Figure 4 show overall early voting turnout.  
18 And, again, these are in raw figures. So the red bars are the  
19 number of one-stop votes on a given day in the 2010 general  
20 election, and the blue bars are the number of one-stop voters  
21 on a given day in the 2014 general election.

22       So, of course, in 2014, the blue bars don't start until  
23 day 8 because there is a shortened voting period there.

24 Q    Okay.

25 A    And table -- so Table 3 is a day-by-day just count --

1 excuse me, Figure 3 is a day-by day count. Figure 4 is a  
2 cumulative count for those elections across those same days.

3 Q And tell the Court briefly, what does that show?

4 A Figure 4 again shows that within five days of early voting  
5 in 2014, for instance, the cumulative figures in terms of  
6 turnout have pulled almost even with the first 12 days of early  
7 voting in 2010. You can see on day 12 there, the bars are  
8 almost even. And after that point, cumulative one-stop voting  
9 in 2014 outstrips that for 2010 for days 13, 14, 15, 16, 17.

10 Q Okay. How about Figures 5 and 6, what do those show?

11 A Figures 5 and 6 are analogous to the ones we just  
12 discussed except these are just for black voters. So, again,  
13 there is a day-by-day tally for the number of black one-stop  
14 votes cast and then there is a cumulative tally as well, which  
15 is in Figure 6.

16 While we are on this, I would just like to point out that  
17 there is an appendix to my report, Appendix A, which are some  
18 additional figures.

19 Q Is that page 57 of your report?

20 A That's 57. So if you would like to see the percentile  
21 turnout, that's there. These are just the raw figures of  
22 Figures 5 and 6.

23 Q Dr. Hood, from your day-by-day analysis of early voting in  
24 2010 as compared to 2014, what conclusions do you draw?

25 A Well, let's -- we haven't really discussed these in any

1 detail. Let's look --

2 Q Let's do that.

3 A Let's look at Figures 5 and 6. Figure 5, black one-stop  
4 turnout in 2010 and 2014, so, again, you start out with just  
5 red bars because there are no early voting days in 2014. You  
6 can see that at least in the 2010 midterm, black one-stop  
7 voting is fairly flat really at about 5,000 or slightly around  
8 that number, between 5 and 10,000. But for the first eight  
9 days or so, it is fairly flat. Days 3 and 4 are weekend days,  
10 so that's why you see the drop there.

11 And then as is typical in some other states that I've  
12 looked at, for instance, Georgia, states that have longer early  
13 voting periods usually exhibit sort of a J curve. So the  
14 closer you get to the election, early voting turnout tends to  
15 increase. And you see this a little bit. If you are just  
16 looking at the red bars, again, days 1 through 8 is fairly  
17 flat, and then it starts to pick up -- 10 and 11 again are  
18 weekend days. It starts to pick up in 12, 13, 14, 15, 16,  
19 drops down a little bit in 17. Sort of J curve now.

20 Now, contrast that with what we see in 2014 with black  
21 one-stop turnout. On day 8, which is the first day of one-stop  
22 voting in 2014, there is a much higher turnout level; and this  
23 is really sustained over the course of most of the 10-day early  
24 voting period for black one-stop turnout, except for days 10  
25 and 11, which are weekend days.



1 But it's as though the one-stop vote in this case has been  
2 shifted essentially to the right, closer to the calendar day of  
3 the election. You don't really see the J pattern there as much  
4 as a much higher and sustained turnout rate from the beginning  
5 of the early voting period.

6 If we look at Figure 6, again, this is cumulative turnout  
7 for black one-stop voters. The first -- let's look at day 8,  
8 for instance. So that's the first day we can compare 2010 to  
9 2014. 2014 one-stop turnout in day 8 is about 69 percent of  
10 the cumulative turnout of 2010 early voting from days 1 through  
11 8. So the first day of early voting turnout in 2014 saw  
12 about -- just under 70 percent, 69 percent, of the number of  
13 votes that occurred in days 1 through 8 for the 2010 turnout.

14 And then by day 9, the second day of early voting, in 2014  
15 compared to day 9 in 2010, black one-stop turnout had just  
16 slightly, in a cumulative fashion, eclipsed one-stop turnout  
17 from the 2010 election. From that point on, it just ticks  
18 upward and upward. And so from day 9 through 17 essentially,  
19 2014 cumulative one-stop turnout is outstripping that for 2010  
20 cumulative turnout.

21 Q What do you conclude from that?

22 A Well, one of the things I conclude is that, again, voters  
23 have adjusted. They have shifted rightward in the calendar  
24 towards the Election Day; and, again, from the transition  
25 analysis and other things we've looked at, it doesn't appear

1 that the shortened early voting period is a hindrance to these  
2 voters. They've just shifted when they vote. And, of course,  
3 it didn't affect overall turnout either, either overall in the  
4 election or during the one-stop period.

5 Q So just to wrap up this portion of your analysis, tell the  
6 Court your overall conclusion about the impact of H.B. 589 and  
7 its effect on early voting in North Carolina.

8 A Well, from the data I collected and analyzed, I can't find  
9 any evidence that H.B. 589 hindered the ability of voters to  
10 vote early in 2014; and I can extend that summation to black  
11 voters in particular.

12 Q Thank you, Dr. Hood.

13 What is the next portion of your report? I think it's  
14 denominated in Section B on page 43. Tell the Court about  
15 that.

16 A This was a response to Professor Burden's report. He  
17 collected some data and opined specifically about a number of  
18 the Senate Factors.

19 Q And briefly, remind the Court what did Dr. Burden conclude  
20 in his examination?

21 A Well, he concluded -- and, again, some of what I report  
22 doesn't necessarily disagree with Professor Burden's. I think  
23 we disagree on our interpretation of some of these facts and  
24 figures, but it includes that -- concludes, excuse me, that  
25 there have been recent gains made in black political

1 participation in North Carolina recently, but that it's  
2 possible that H.B. 589 may interrupt these gains made in black  
3 participation rates.

4 Q And what is your response to that based on your own  
5 analysis?

6 A Well, again, I guess we can talk about some of the data  
7 that I collected. Just in general, I don't disagree with that  
8 summation. I agree with the fact or with his conclusion that  
9 black participation in a number of areas has increased  
10 certainly in more recent history in North Carolina. I don't  
11 know that those gains are subject to being lost by H.B. 589,  
12 though.

13 Q Dr. Hood, let's take a look at Table 14 on page 44 on your  
14 report.

15 A Okay. These are just turnout rates for various elections  
16 that I collected. These are not one-stop turnout rates. These  
17 are just total turnouts for those federal election cycles from  
18 2000 to 2014. I also have these in Table 15 as well.

19 And again, in North Carolina, we don't have to guess or  
20 estimate race or registrants or turnout rates by race. Those  
21 facts are known. So again, these data come from, again, the  
22 North Carolina Board of Elections.

23 Q All right. Let's flip over to page 46 and Figure 7.

24 A Well, can I go back to --

25 Q Sure.

1 A If you look at page 45, Table 15, these are turnout rates  
2 for blacks and whites. I've got them categorized in the two  
3 different time periods, 2000 to 2006 and 2008 to 2014. And  
4 then I also have them categorized by whether they are midterm  
5 or Presidential elections. Then I just have a white minus  
6 black difference figure there in terms of turnout rates.

7 So, for instance, if you look at 2000 to 2006, that  
8 column, and you look across from the midterm, the white-black  
9 differential is 9.16 percent; but if you look in the later time  
10 period, which is more approximate to us, 2010 through 2014,  
11 there is still a gap, but it's dropped now down to less than 5  
12 points, 4.93 percent.

13 Then if you look down to the 2000 through 2006 column  
14 again, the Presidential elections, the black-white gap there in  
15 turnout is 7.03 percent; but then if you look at the 2008  
16 through '12 column, the black-white difference is actually  
17 negative at that point. So black turnout in Presidential  
18 elections is actually higher than white turnout. So there is a  
19 negative of -- a negative 1.88 percent.

20 So over time, one of the things we are seeing in terms of  
21 turnout in North Carolina in terms of black and white turnout  
22 rates is that, again, in a later time period, blacks have now  
23 eclipsed whites in terms of Presidential turnout levels, and in  
24 terms of midterm turnout levels, the gap seems to be rapidly  
25 closing.

1 Q All right. Dr. Hood, and then Figure 7 on page 46 --

2 A Okay. These are --

3 Q -- tell the Court about that, please.

4 A These are registration rates, Figure 7, black and white  
5 registration rates. Again, let's just talk -- the red bars are  
6 the percentage of whites registered in North Carolina. The  
7 blue bars are the percent of blacks registered in North  
8 Carolina. And the -- I don't really know what color that is,  
9 purple-like bars there, the third set of bars there is the  
10 black-white difference in registration rates.

11 So in 2000, whites were registered at a higher rate than  
12 blacks in North Carolina by 10 points essentially, 9.9. What  
13 you see, though, if you trace that set of bars across from 2000  
14 through 2014, is that with the exception of one year in 2010,  
15 there's almost a monotonic increase in black registration rates  
16 relative to that of whites to where now in 2014, it is now  
17 black North Carolinians that are registered at a higher rate  
18 than whites by 6 points. So that pattern is very easy to see  
19 if you just sort of trace across the bottom of the figure  
20 there.

21 So, certainly, in terms -- again, if we are looking at  
22 differentials in black and white participation rates in terms  
23 of registration, since 2008, blacks have been registered at a  
24 higher rate in North Carolina than whites.

25 Q So both turnout rates and registration rates have

1 increased for blacks in North Carolina; correct?

2 A Yes. Certainly over this time period.

3 Q Okay. Is there anything else you would like to tell the  
4 Court about your rebuttal to Dr. Burden's analysis?

5 A Well, one other factor I did look at is -- and he looked  
6 at it as well to a certain extent, but not to the depth that I  
7 did, are the number of black office holding levels. So  
8 congress, state house, state senate, and I also looked at the  
9 number of county commission seats held by black North  
10 Carolinians.

11 Just in general -- this is on page 47, beginning with  
12 paragraph 96, but just in general, what we see is that the  
13 black voting-age population is about 22 percent; and what we  
14 see is that fairly close in line with this, that black office  
15 holding levels are just slightly below that percent. So they  
16 are about on par with their voting-age population figure for  
17 the state.

18 So, for instance, in 2014, there were 19 percent,  
19 19.0 percent, of county commission seats were held by black  
20 North Carolinians.

21 Q So, overall, what is your -- what are your conclusions in  
22 response to Dr. Burden's analysis?

23 A Well, again, I think we would both state that certainly  
24 even in the last ten years, certainly, if we go back further  
25 than that, that there have been major gains by black North

1 Carolinians in the area of political participation and office  
2 holding.

3       Where I differ again with Professor Burden would be on  
4 what might the future hold. We've already seen one election  
5 cycle that implemented parts of H.B. 589 minus this  
6 identification component, and it doesn't seem to have affected  
7 some of these metrics that I looked at. So counter to  
8 Professor Burden, I don't know that -- or I would state that I  
9 don't find any evidence of a negative impact from H.B. 589 on  
10 these particular metrics.

11 Q     All right. Dr. Hood, let's move on to your rebuttal of  
12 Professor Clotfelter's report. I believe that begins on  
13 page 48 of your report?

14 A     That's correct.

15 Q     Okay. What does Dr. Clotfelter look at, and what did he  
16 conclude?

17 A     He looks at black and white disparity rates.  
18 Specifically, he tends to concentrate on educational disparity  
19 rates. I also gathered some statistics on black and white  
20 disparity rates, both in the area of education and income.

21       I think one of the things that Professor Clotfelter fails  
22 to do in his report, though, is to make a case -- again, I am  
23 not necessarily arguing that these gaps don't exist. I don't  
24 have any reason to question the statistics gathered by  
25 Professor Clotfelter, but I do disagree with some of his

1 conclusions, one of those being he doesn't really make a causal  
2 argument that these gaps that he found, these disparate rates,  
3 are in any way affecting the ability of blacks in North  
4 Carolina to participate politically, so connecting the dots  
5 there.

6 But I also collected black and white statistics for high  
7 school graduation, the percentage of North Carolinians who have  
8 a bachelor's degree and the poverty rate, and did some  
9 comparisons. And I also created a different statistic, black  
10 minus white, but what I did is to put North Carolina in  
11 perspective with the 49 other states, Puerto Rico, and the  
12 District of Columbia. Again, this is all encapsulated in my  
13 report.

14 But if you do that, it is interesting to find that -- of  
15 course, North Carolina has room for improvement, but they are  
16 usually in the middle of this distribution, somewhere in the  
17 middle, most of the time around the mean.

18 So they can certainly improve, but they're not at the  
19 bottom of that distribution certainly, and it is interesting  
20 that there are other states up above North Carolina. So, in  
21 other words, when I say up above the distribution, I mean they  
22 have larger black-white disparity rates on these factors.  
23 Other states up above North Carolina that have larger gaps --  
24 and, again, we are talking about Senate Factors -- that never  
25 had implemented, for instance, de jure segregation laws.



1           So states like sometimes -- like New York, New Jersey,  
2 Michigan, Wisconsin, Massachusetts oftentimes have worse  
3 disparity rates or the gap in disparity is worse than even  
4 compared to North Carolina, and the specific figures are there  
5 mostly on pages 49 and 50 for these comparisons.

6 Q       All right. Dr. Hood, anything else about -- in response  
7 to Dr. Clotfelter?

8 A       I think I covered it.

9 Q       Okay. I think you did, too. I've got one final question  
10 for you, Dr. Hood.

11           Last week you heard some testimony -- I believe it was  
12 Ms. Strach was on the stand. She was asked something along the  
13 lines of if she thought there would be an increase in  
14 provisional ballots in future elections as a result of the  
15 reasonable impediment amendment to H.B. 589 that was recently  
16 enacted. Have you done any research on that precise question  
17 from any other states?

18 A       Yes.

19 Q       Tell the Court about that, please.

20 A       Yes. I collected data from South Carolina, which is the  
21 only other state that I am aware of that has a reasonable  
22 impediment affidavit, and in 2014, the 2014 general election in  
23 South Carolina, which is the first general election following  
24 implementation of South Carolina's voter ID bill, there were  
25 131 reasonable impediment affidavits executed South Carolina.

1 Now, there is one caveat to that. I have data I collected  
2 from 45 of 46 counties. The missing county is Spartanburg  
3 County. I called and talked to the election administrator  
4 there, and they didn't collect those figures. So I don't know,  
5 and I guess we'll never know, what it is in Spartanburg; but  
6 for 45 of the 46 counties, again, the total number of  
7 reasonable impediment affidavits was 131.

8 Q Out of how many total votes cast statewide?

9 A That wouldn't be a fair comparison because --

10 Q Excluding Spartanburg County.

11 A Okay. So it was just shy of 1.2 million votes in those 45  
12 counties.

13 **MR. HO:** Your Honor, Plaintiffs object. This portion  
14 of Dr. Hood's testimony refers to the voter ID portion of his  
15 report, which I think the parties agree is not at issue right  
16 now.

17 **MR. BOWERS:** That's correct, but, Your Honor, we -- I  
18 think this goes to some of the long lines testimony that we  
19 heard from Plaintiffs' experts and impact on lines and impact  
20 on waiting times, and so it really doesn't have anything to do  
21 with the substance of the photo ID provision. It just goes to  
22 show that the reasonable impediment provision of H.B. 589 will  
23 not have any impact on waiting times.

24 **THE COURT:** Overruled.

25 **MR. BOWERS:** Your Honor, no further questions.

1 Thank you, Dr. Hood. Please answer any questions  
2 that Mr. Ho may have.

3 CROSS-EXAMINATION

4 **BY MR. HO**

5 Q Good morning, Dr. Hood.

6 A Good morning.

7 Q It is good to see you again.

8 A You as well.

9 Q There have been a lot of experts testifying in this case,  
10 Dr. Hood. I just want to ask you about a couple of them.  
11 During your testimony today, you mentioned Dr. Gronke a few  
12 times; correct?

13 A Yes, that's correct.

14 Q You consider Dr. Gronke one of the nation's leading  
15 experts on early voting; correct?

16 A Yes, I would have to say so. He runs a research center  
17 for one thing on that topic.

18 Q Now, Dr. Hood, among other things, you examined  
19 Dr. Gronke's expert reports in this case; correct?

20 A Yes, I did.

21 Q And you also examined some expert reports by the  
22 Department of Justice's expert in this case, Dr. Charles  
23 Stewart; correct?

24 A Yes.

25 Q Now, Dr. Hood, you are aware that both Dr. Stewart and

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1 Dr. Gronke looked at early voting usage rates in North  
2 Carolina; right?

3 A Yes, certainly Dr. Gronke did.

4 Q And you don't dispute Dr. Stewart's and Dr. Gronke's  
5 findings that African-Americans used early voting at higher  
6 rates than whites in each of the last four Presidential  
7 elections; right?

8 A Well, I don't have that in my report. I didn't make those  
9 comparison points. I mean, if I, in fact, could look at the  
10 reports, I could tell you.

11 Q Okay.

12 A I didn't collect those data.

13 **MR. HO:** Could we turn the monitors on and could we  
14 put up PX234, please? Can you bring up page 7 of the PDF,  
15 which is page 6.

16 **BY MR. HO**

17 Q This is Figure 2 from Dr. Gronke's 2015 report, PX234. It  
18 shows that African-Americans used early voting at higher rates  
19 than whites in each of last four general elections in North  
20 Carolina; right, Dr. Hood?

21 A I am looking. Hang on.

22 Q Take your time.

23 A Yes, according to Professor Gronke's report, 2008 through  
24 2014, that would be a true statement.

25 Q And you don't dispute those findings; correct?

1 A I don't have any reason on the face of it to dispute those  
2 numbers.

3 Q Can we turn to page 8 of the report, Figure 3? These are  
4 Dr. Gronke's findings that African-Americans used early voting  
5 at higher rates than white voters in North Carolina even when  
6 controlling for partisanship and age. Do you see that,  
7 Dr. Hood?

8 A I am looking at it. Yes, it seems to be a regression  
9 model.

10 Q Just let me know --

11 A Are we looking at the figure, or the tabular data above  
12 the figure?

13 Q Let's just look at the figure.

14 A Okay. I can barely read the axis, but it would appear  
15 that at least from the models that Professor Gronke produces  
16 here -- so these are predicted probabilities from the model  
17 that he ran, it looks like, that the predicted probability of a  
18 black North Carolinian voting early is greater than that of the  
19 predicted probability of a white North Carolinian voting early,  
20 at least from 2008 on.

21 Q And you don't dispute those findings; right, Dr. Hood?

22 A Well, again, I didn't analyze -- the two elections I  
23 analyzed were 2010 and 2014. I didn't specifically run any  
24 data on any other election cycle.

25 Q Your analysis in this case with respect to early voting

1 was limited to the 2010 and 2014 midterm elections; right?

2 A I think that's accurate, yes.

3 Q But you don't dispute these findings one way or the other?

4 A Well, I don't have the data in my report to dispute this.

5 Q Now, you are also aware of the fact that both Dr. Stewart  
6 and Dr. Gronke found that African-Americans used same-day  
7 registration at higher rates than whites in the 2008, 2010, and  
8 2012 general elections, Dr. Hood?

9 A I believe I remember that from Professor Gronke's report.  
10 I don't -- I can't recall from memory what Professor Stewart  
11 had said about that.

12 Q And you don't have any reason to dispute that conclusion,  
13 do you, Dr. Hood?

14 A I didn't collect those figures.

15 Q So you don't dispute it one way or the other?

16 A No.

17 Q Now, Dr. Hood, in your own research, on the use of  
18 same-day registration in the 2008 general election in North  
19 Carolina, you also found that African-Americans used same-day  
20 registration at higher rates than white voters; correct?

21 A Can we look at that so I know what I am talking about?

22 Q You conducted research on the use of same-day registration  
23 in the 2008 general election in North Carolina; right,  
24 Dr. Hood?

25 A Yes, we wrote a conference paper on that.

1           **MR. HO:** Permission to approach, Your Honor?

2           **THE COURT:** Yes.

3 **BY MR. HO**

4 Q       Dr. Hood, you were deposed in this case; correct?

5 A       That's correct.

6 Q       And you were deposed on April 8, 2015; correct?

7 A       Yes.

8 Q       And your answers during that deposition were given under  
9 oath; correct?

10 A       Of course, yes.

11 Q       Okay. Could you turn to page 191 in the deposition  
12 transcript, Dr. Hood. Let me know when you are there.

13 A       Okay.

14 Q       I am going to start at line 20 with the question (quoted  
15 as read):

16           "Q       Black voters were -- that black  
17 voters were more likely than white voters to  
18 use one-stop voting in the 2008 general  
19 election?

20           "A       Well, in the -- looks like .02 versus  
21 .01 essentially, approximately there, those  
22 first two columns there -- well, it says -- it  
23 says in the sentence below, 'with the help of  
24 predicted probabilities, we see that a voter  
25 who is both black and a registered Democrat has

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1 a .02 probability of voting one-stop while a  
2 voter who is white and a registered Democrat  
3 has a .01 probability.' So more likely by .01,  
4 yes.

5 "Q Twice as likely, in fact?

6 "A Well, yes."

7 Were those my questions and your answers?

8 A Yes.

9 Q And in this conversation we had, when you used the term  
10 "one-stop," you were referring to same-day registration users;  
11 correct?

12 A We had -- for that project, we had tried to isolate  
13 same-day registrants, yes. I didn't necessarily have the same  
14 degree of accuracy with the data I had that I did in this case,  
15 but, basically, we were taking individuals who had registered  
16 between one date and another date.

17 Q And you found that African-Americans were twice as likely  
18 as whites to use same-day registration in the 2008 Presidential  
19 election; correct, Dr. Hood?

20 A Well, .01 versus .02. Those are probabilities.

21 Q And it is twice as likely for African-American to use  
22 same-day registration; correct?

23 A If you do the math, yes.

24 Q Okay. You also found in that research that same-day  
25 registrants were more likely to be young voters; correct?



1 A I believe so. But is there something you are specifically  
2 referring to?

3 Q Sure. We could look at again --

4 **THE COURT:** Why don't you ask him the questions, and  
5 if he doesn't give you the answer you think -- you can cross  
6 him with the transcript. I am confused by your using the  
7 transcript for examination.

8 **MR. HO:** Sorry, Your Honor.

9 **THE COURT:** Do you understand what I am saying?

10 **MR. HO:** Yes.

11 **THE COURT:** In other words, ask him the question and  
12 maybe he knows the answer.

13 **MR. HO:** Okay. Can you repeat the last question,  
14 please?

15 (Following question read back: Okay. You also found  
16 in that research that same-day registrants were more likely to  
17 be young voters; correct?)

18 **THE WITNESS:** I believe so, but I don't have that in  
19 front of me. I can't state with 100 degree of certainty.

20 **BY MR. HO**

21 Q Can you look at page 191 of the deposition transcript and  
22 start on line 10 and read that to yourself, Dr. Hood, and tell  
23 me if that refreshes your recollection.

24 A Well, that's where we just were. That's talking about  
25 black and white.

1 Q I mean line 10.

2 A Line 10, page 191?

3 Q Uh-huh. I'm sorry. I have the page number wrong. Page  
4 192, line 10.

5 A Okay. Yes. So according to the model that we ran for  
6 that, from the coefficient, the older someone is the less  
7 likely they would be to be a one-stop voter -- or let me put in  
8 terms so we are not muddling everything, same-day registrants.

9 Q Same-day registrants --

10 A During the one-stop period.

11 Q I'm sorry?

12 A Well, let me start over. So according to the model  
13 coefficient there, age is inversely related to the probability  
14 that someone may be a same-day registrant during the one-stop  
15 period.

16 Q So another way of putting that would be the older one  
17 gets, the less likely that person is to use same-day  
18 registration during the one-stop period?

19 A According to that model for that election and that year,  
20 yes.

21 Q Your research for that election and that year?

22 A Yes. Yes.

23 Q Dr. Hood, prior to your work in this case, you conducted a  
24 survey for the Pew Center published in 2009 about voters'  
25 experiences at the polls; correct?

1 A 2008?

2 Q Well, it was published in 2009, regarding the 2008 voter  
3 experience; right?

4 A That's fair.

5 **MR. HO:** Okay. Permission to approach, Your Honor?

6 **THE COURT:** Yes.

7 **MR. HO:** This has been marked as PX733. It was  
8 Deposition Exhibit 386.

9 **BY MR. HO**

10 Q Dr. Hood, is this the paper that you co-authored for the  
11 Pew Center for the results of your survey?

12 A Yes.

13 Q And your survey included some questions addressed to early  
14 voters; correct?

15 A Yes, it did. So this was a survey that looked at voting  
16 practices in Georgia in 2008 in three counties, Clark, Lee, and  
17 Forsyth Counties, I believe.

18 Q And in your survey, you found that nearly all early voters  
19 in your survey indicated that they were likely to use early  
20 voting again in the future; correct?

21 A I would have to refresh myself.

22 Q Sure. Can you take a look at page 8 and the last  
23 paragraph on that page.

24 A There is a high percentage of early voters from those  
25 counties that we surveyed who said they were likely to vote

1 early again; that's true.

2 Q In your survey, more than 80 percent of early voters  
3 indicated that they would be very likely to vote early again;  
4 right, Dr. Hood?

5 A That's a quote, yes.

6 Q And you have no reason to doubt what they were telling you  
7 in this survey, do you, Dr. Hood?

8 A I don't think the survey respondents were being  
9 disingenuous, if that's what you mean.

10 Q Any reason to doubt what they were telling you?

11 A No.

12 Q You also found that among your survey respondents, almost  
13 90 percent of early voters found early voting more convenient  
14 than voting on Election Day; correct?

15 A Again, I would have to -- do you have a particular place  
16 you want me to look at?

17 Q Sure. If you wouldn't mind, if you would turn to page 10  
18 and the second full paragraph on that page.

19 A Okay.

20 Q So almost 90 percent of your survey respondents who used  
21 early voting found that early voting was more convenient than  
22 voting on Election Day; correct?

23 A That's what they reported to us, yes.

24 Q And you don't have any reason to doubt what they were  
25 telling you; correct?

1 A No.

2 Q And based on that, you yourself would conclude that early  
3 voters are likely to use that method of voting again in future  
4 elections; right, Dr. Hood?

5 A Well, again, I would have to sort of qualify that. It  
6 appears that there would probably be a large percentage of  
7 early voters who might return to vote early again. I didn't  
8 necessarily find that -- again, from my voter transition  
9 analysis I did in North Carolina, I think those individuals are  
10 probably, quote, habitual voters; you know, maybe a majority of  
11 them are early voters, but not all of them.

12 So, again, this sort of has to be qualified. This is in  
13 Georgia. This is in 2008, and I can't necessarily blanketly  
14 apply that to any other state.

15 Q Well, just taking the results of your survey, early voters  
16 from your survey were likely to be early voters in subsequent  
17 elections; right, Dr. Hood?

18 A They are reporting to us, yes, that they are likely to  
19 turn out to vote early again in the survey; that's true.

20 Q Now, in this paper for Pew, you opined that early voting  
21 may enable Election Day to be less congested; right, Dr. Hood?

22 A I think that may be a different paper. If it's in here,  
23 you can point to it. There is another article we wrote that  
24 was more on sort of the election administration aspects of  
25 early voting that I am thinking of.

1 Q Let's stick with this one for a minute.

2 A Okay.

3 Q Can you turn to page 14 and take a look at the last  
4 paragraph about three lines down, starting with the sentence  
5 "Conversely."

6 A Okay.

7 Q Does that refresh your recollection, Dr. Hood?

8 A Yes.

9 Q So you opined that having --

10 A What was the question?

11 Q I'm sorry. Go ahead, please.

12 A What was the question again?

13 Q You opine in this paper that having a large number of  
14 voters vote early can reduce congestion on Election Day; right?

15 A Well, that's what it says, yes. Now, I think, again, I  
16 need to qualify a little bit. I know in other published work  
17 that that's a possibility, but that local election  
18 administrators really have to be in tune with everything. In  
19 other words, it is a matter of shifting resources, for  
20 instance, to precincts that had high early voting turnout on  
21 Election Day. You would think they would have probably lower  
22 Election Day turnouts. So you would shift resources to  
23 precincts that have low early voting turnouts.

24 Again, it has to be part of a comprehensive plan, I would  
25 say, and election administrators at the local level have to

1 be -- have to have a concerted effort to make that happen. It  
2 is possible.

3 Q Let's break down what you just said in couple of pieces so  
4 that I make sure I understand what you are saying, Dr. Hood.  
5 You would agree, right, that when a precinct experiences or an  
6 area experiences high early voting turnout, one can expect  
7 there to be less Election Day congestion in that area; right,  
8 Dr. Hood?

9 A Well, I would use the geographic term "precinct." I mean,  
10 that's how we vote. That's how we vote in North Carolina. So,  
11 again, early voting turnout may be countywide; right? So it is  
12 how many people are voting from a particular precinct early,  
13 though, that may reduce the number of voters on Election Day at  
14 that precinct potentially.

15 Q And if that's the case, that would allow election  
16 administrators on Election Day to better allocate resources to  
17 reduce lines or congestion at the polls on Election Day; right,  
18 Dr. Hood?

19 A It is a possibility, yes.

20 Q Okay. Now, can you -- can we bring up, if you wouldn't  
21 mind, Defendants' Exhibit 268, Table 13.

22 **MR. BOWERS:** That's page 37.

23 **MR. HO:** Thank you.

24 **BY MR. HO**

25 Q This is your transition analysis for early voters from

1 2010 and what they did in 2014, Dr. Hood?

2 A No.

3 Q No, this is not the right one. Go back a page. This is  
4 it now. So this is -- I can't see the page number on the  
5 screen, but it's after paragraph 76.

6 **MR. BOWERS:** That's page 37.

7 **MR. HO:** Thank you.

8 **BY MR. HO**

9 Q So Table 13, this is your transition analysis of early  
10 voters from 2010 and what they did in 2014; right, Dr. Hood?

11 A That's correct.

12 Q And of those early voters, 23.2 percent of them switched  
13 to voting on Election Day. That's what the first column shows?

14 A Yes.

15 Q H.B. 589 doesn't increase the amount of resources that are  
16 available at the polls on Election Day, does it, Dr. Hood?

17 A I don't think it specifically does that, no.

18 Q In your report, you are not offering any opinion, are you,  
19 as to whether or not reducing seven days of early voting will  
20 affect waiting times to vote in the next Presidential year, are  
21 you, Dr. Hood?

22 A I didn't offer an opinion on that matter, no.

23 Q Now, a moment ago, Dr. Hood, you referred to a  
24 peer-reviewed paper that you published on early voting; right?

25 A Yes.



1 Q From the elections administration context?

2 A Yes, that's true.

3 Q In the course of writing that article, you performed a  
4 literature review of some the existing academic scholarship on  
5 early voting; correct?

6 A Yes.

7 Q In the course of conducting that literature review, you  
8 found that existing research on early voting results in  
9 increased accuracy with respect to the vote count; correct?

10 A I report -- that's not -- those aren't my research  
11 findings.

12 Q Right.

13 A This isn't a literature review. I may have reported that  
14 someone else found that.

15 Q So you reported that the existing literature on early  
16 voting shows that early voting increases the accuracy of the  
17 vote count, not your literature or your research, but the  
18 existing academic scholarship on this topic; right?

19 A That's fair, yes.

20 Q And nothing has changed since you conducted that  
21 literature review that would lead you to reassess that  
22 evaluation; correct, Dr. Hood?

23 A Well, in fairness, I would have to go back and look at  
24 what's been published since then. So I would have to start  
25 again and look and see what's been published since that date

1 regarding that topic in the academic literature if I were to  
2 make a statement about that again.

3 Q I mean, early voting is among the issues that you  
4 researched; right, Dr. Hood?

5 A That's correct.

6 Q And you keep up to date on the early voting literature;  
7 right, Dr. Hood?

8 A I try to. Well, I can't tell you that I can cite to every  
9 article that's out there.

10 Q We all do our best; right?

11 A Right.

12 Q You haven't read anything in the last five years that  
13 would lead you to alter your assessment that the literature on  
14 early voting shows that early voting results in increased  
15 accuracy with respect to the vote count, have you, Dr. Hood?

16 **MR. BOWERS:** Objection. I think counsel  
17 mischaracterized it as his data.

18 **MR. HO:** I said it was his assessment of the early  
19 voting literature.

20 **THE COURT:** All right. Overruled.

21 **THE WITNESS:** I can't think of anything, sitting here  
22 today, no.

23 **BY MR. HO**

24 Q Dr. Hood, you have also studied the issue of voter fraud;  
25 correct?

1 A Correct.

2 Q And you've published a peer-reviewed academic journal on  
3 voter fraud; right, Dr. Hood?

4 A Correct. The article is really about a methodology to  
5 study voter fraud, but that's true.

6 **MR. HO:** Permission to approach, Your Honor?

7 **THE COURT:** Yes.

8 **BY MR. HO**

9 Q So this was Deposition Exhibit 381. It's been marked as  
10 Plaintiffs' Exhibit 734.

11 **MR. HO:** If I may, Your Honor, before I proceed, I  
12 would like to move Dr. Hood's survey of Georgia early voters  
13 into evidence. That was PX733.

14 **MR. BOWERS:** No objection.

15 **THE COURT:** Okay. Normally people move evidence in  
16 their own case, but if there is no objection, it's admitted.

17 **MR. BOWERS:** No objection.

18 **MR. HO:** Thank you.

19 **BY MR. HO**

20 Q So this is your article about voter fraud; right,  
21 Dr. Hood?

22 A Correct.

23 Q Now, like in your other academic research, this article  
24 contains a literature review of the existing scholarship on the  
25 topic that you are addressing here; right, Dr. Hood?

1 A That's correct.

2 Q Does that start on page 77 of this article?

3 A I would say it really starts on the first page --

4 Q Okay.

5 A -- and then goes on to page 77 and then maybe a little bit  
6 on to page 78 even.

7 Q Now, Dr. Hood, in your literature review, you cite to the  
8 findings by Dr. Lorraine Minnite "that criminal voter fraud is  
9 episodic and rare relative to the total number of votes cast in  
10 a given year or election cycle"; right?

11 A If you can just point me to where you are at.

12 Q Sure. Can you look at page 77?

13 A Okay.

14 Q The second paragraph on the page.

15 A That's a quote from Professor Minnite, yes.

16 Q So you cite her findings in your paper. You cite her  
17 findings "that criminal voter fraud is episodic and rare  
18 relative to the total number of votes cast..."; right,  
19 Dr. Hood?

20 A Yes. But let me say that this paper goes on to actually  
21 criticize, to some degree, her methodology that she employed in  
22 the study of voter fraud; and we introduced another methodology  
23 to study voter fraud, just to be fair.

24 Q We'll talk about that.

25 A Okay.

1 Q But I appreciate you pointing that out, Dr. Hood.

2 Now, as of today, Dr. Hood, you would agree, wouldn't you,  
3 that the bulk of academic research on voter fraud is in  
4 agreement with Professor Minnite that evidence of voter fraud  
5 is an extremely atypical phenomenon?

6 A Well, for one thing, she defines voter fraud differently  
7 from -- I use the term "election fraud," which is a little more  
8 encompassing and could include more than just voters. It could  
9 include election officials, elected office holders, lots of  
10 different actors. So I sort of come at it from that angle.  
11 Cast a larger net, if you will.

12 Q We'll talk about your method in just a second, but let's  
13 stick with Dr. Minnite's method here. You would agree, would  
14 you not, that as of today, the bulk of academic research in  
15 this area remains in agreement with her, that evidence of voter  
16 fraud is an extremely atypical phenomenon; right, Dr. Hood?

17 A Well, I know that's what she says because I read her book,  
18 and I haven't seen -- to be honest with you, I haven't seen a  
19 whole lot more come out on this particular topic. It is not  
20 easy to study voter fraud.

21 Q Can I ask you to turn page 154 of your deposition  
22 transcript, Dr. Hood.

23 A Okay. I'm there.

24 Q Let's look at page -- I mean, line 25:

25 "Q So the bulk of academic research in

1 this area remains in agreement with Professor  
2 Minnite that evidence of voter fraud is an  
3 extremely atypical phenomenon?

4 "A Probably most published sources in  
5 political science would agree with that, yes,  
6 on this topic."

7 Was that my question and your answer?

8 A Yes, that's accurate.

9 Q Now, let's talk about your article and your method that  
10 you employed here.

11 A Okay.

12 Q Now, the difference between what you do and what  
13 Dr. Minnite does is you developed a method in this paper that  
14 attempts to detect voter fraud even in the absence of a formal  
15 criminal prosecution; right, Dr. Hood?

16 A I think that's fair. Or reported, period. You know,  
17 media report, criminal prosecution, anything, yes. It's  
18 designed to try to detect voter fraud where it is not  
19 necessarily even being reported. I think that's fair.

20 Q And so you looked through elections records, not just at  
21 formal reports; right?

22 A Well, I started with some very large-scale database in  
23 Georgia. This is just in Georgia, and we used the 2006 midterm  
24 as an example.

25 Q And basically, correct me if I'm wrong, what you were

1 looking for in this article was evidence that people had cast  
2 ballots in the name of deceased registrants; is that right,  
3 Dr. Hood?

4 A That's accurate. I mean, I guess we can't say the dead  
5 are voting themselves; right? So someone voting on their  
6 behalf, I am specifically looking for that type of fraud.

7 Q And you flagged in your initial review of these databases  
8 any ballots that looked questionable to you; right, Dr. Hood?

9 A Yes, that's fair.

10 Q And is it also fair to say that the vast majority, over 90  
11 percent, of the questionable ballots that you flagged were  
12 absentee ballots as opposed to in-person ballots?

13 A Well, if you look at Table 2 -- I mean, I can answer your  
14 question by looking at Table 2.

15 Q That's on page 89 of the report.

16 A Yes, sir, I'm sorry. Page 89, Table 2, there were -- we  
17 just called them questionable ballots. You know, this wasn't a  
18 legal exercise for us. So we are just calling them  
19 questionable ballots. Sixty-two are absentee and four were in  
20 person. So we identified 66 in all.

21 Q Let's break that down. So you found 66 questionable  
22 ballots?

23 A Yes.

24 Q Sixty-two of the sixty-six ballots are absentee, meaning  
25 by mail; right?

1 A Right.

2 Q And only four out of the sixty-six are in-person ballots;  
3 right, Dr. Hood?

4 A Right.

5 Q Now, of the four questionable in-person ballots, you  
6 ultimately determined all four of those to be clerical issues,  
7 not instances of voter fraud; right, Dr. Hood?

8 A Yes, that's correct. It was, for instance, a father and  
9 son that had a very close name. You know, they were right by  
10 each other in the poll books, and the poll worker had  
11 accidentally checked in the wrong person, for instance.

12 Q And --

13 A One of them was also due to just an error in the database,  
14 period, just a data error.

15 Q And of the 62 questionable absentee ballots, Dr. Hood, you  
16 didn't find any evidence that any of those were fraudulently  
17 cast, did you?

18 A Well, if we look at Table 3, which is on page 91, that  
19 sort of breaks down the absentee ballots. There were five of  
20 these votes cast for which we were never able to get any  
21 additional information on them from the counties. So can't  
22 make the determination one way or the other. We just call them  
23 indeterminate; but most of the other absentee ballots that were  
24 questionable that were cast, we were able to clear one way or  
25 the other using additional documentation from county

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1 registrars.

2 Q Let me break that down for a second, Dr. Hood. There were  
3 62 questionable absentee ballots that you found; correct?

4 A Yes.

5 Q And 57 of those 62 you were able to clear as being  
6 legitimate votes; correct, Dr. Hood?

7 A It was very painful, but, yes. It took some time.

8 Q Five were indeterminate?

9 A Did not receive any additional information from the  
10 counties, yes. So --

11 Q So you didn't find evidence one way or the other that  
12 those five were fraudulent? You just didn't get any  
13 information from the county elections officials one way or the  
14 other that would help you make an assessment; right, Dr. Hood?

15 A That's fair. That's what we report in the article.

16 Q So overall in this article, after you designed a new  
17 method of trying to detect voter fraud, independent of formal  
18 reports, fair to say that you found no evidence that any of the  
19 questionable ballots that you examined were fraudulently cast  
20 by someone?

21 A Well, again, with the caveat that we were looking at one  
22 election, the 2006 midterm in Georgia, for a specific type of  
23 voter fraud. We didn't look for necessarily all types of voter  
24 fraud. The specific type of voter fraud, which is someone  
25 voting on behalf of someone who is deceased, that's -- with

1 those caveats, then that's a correct statement.

2 Q But you found no evidence of voter fraud with respect to  
3 that particular type of fraud in this election?

4 A That's true, yes.

5 Q Offhand, do you know how many ballots were cast in the  
6 2006 midterm election in Georgia?

7 A Not from memory. It may be in our article. Probably is  
8 somewhere, I would assume.

9 Q I don't have any cards -- I don't know this one either.  
10 Would you think it's fair to say that it's over a million?

11 A I would say, sitting here, it is an academic question. We  
12 can look it up. That's what I mean by that.

13 Q That's fair. I want to shift topics for a minute,  
14 Dr. Hood. Now, you testified that you teach research methods  
15 in political science; right, Dr. Hood?

16 A I have in the past, yes.

17 Q Fair to say you are an expert in political science  
18 research methods?

19 A I wouldn't call myself a methodologist.

20 Q Do you think you are an expert in political science  
21 research methods?

22 A I am certainly competent to teach undergraduates research  
23 methods.

24 Q That's better than me.

25 A We have people literally devoted to just that study. We

1 call them methodologists. I've never called myself a  
2 methodologist.

3 Q Fair enough. It is not your primary area of expertise,  
4 but it is something that you are qualified to teach in a  
5 university setting, research methods?

6 A Yes. At least some courses.

7 Q Do you consider yourself an expert on voter turnout,  
8 Dr. Hood?

9 A Yes.

10 Q And you've published peer-reviewed scholarship that  
11 attempts to measure the affects of voting laws on turnout;  
12 right, Dr. Hood?

13 A Yes.

14 Q And so, for example, you've written an article that  
15 attempts to measure the effect of Georgia's voter ID law on  
16 turnout in Georgia; right, Dr. Hood?

17 A That's true, yes.

18 Q And I don't want to get into the substance of this since  
19 voter ID isn't a portion of the proceedings right now, but I  
20 just want to understand your methods in this. So I want to ask  
21 you a few questions about that.

22 Just so I am clear, this article, you found that Georgia's  
23 voter ID law had a depressive effect of about 24,000 votes in  
24 the 2008 Presidential election; right, Dr. Hood?

25 A I would have to look at that number again. I mean, I

1 didn't think we were -- I don't know how much I can get into  
2 this.

3 **MR. BOWERS:** Your Honor, I am going to object to this  
4 line of questioning. Not only do I question its relevance, it  
5 also goes far beyond the scope of both the direct examination  
6 and Dr. Hood's report that he submitted in this case.

7 **THE COURT:** Well, generally speaking,  
8 cross-examination, I am pretty much going to allow people to go  
9 pretty widely, as long as it's within the relevancy of the  
10 lawsuit. Each of the parties is defining in their own sense  
11 how they think the voter ID portion of the case is constrained.  
12 I hear different things from different people.

13 If you -- if you want to ask him your question, you  
14 are free to ask the question that you asked. Overruled as to  
15 this question.

16 **THE WITNESS:** Okay. Well, this is what I can  
17 respond. I don't have the article in front of me. I don't  
18 remember exact numbers, but I do remember that overall we  
19 calculated that there was a slight depressive effect of about  
20 .4 percent turnout, but there was not a specific racial effect.  
21 That's what I remember from the article, just sitting here.

22 **BY MR. HO**

23 Q You don't remember roughly what that translates to in  
24 terms of absolute numbers of voters?

25 A I really don't want to just throw a number out.

1           **THE COURT:** When was your article published?

2           **THE WITNESS:** I am looking it up, Your Honor.

3           **MR. HO:** I have a copy of it here, Your Honor. If I  
4 could approach?

5           **THE COURT:** Yes.

6           **MR. HO:** This was Deposition Exhibit 376. It's been  
7 premarked as PX735.

8           **THE WITNESS:** 2012, Your Honor.

9           **THE COURT:** All right.

10 **BY MR. HO**

11 Q       This is your article about the effect of Georgia's voter  
12 ID law on turnout, Dr. Hood?

13 A       Yes.

14 Q       And it was published in a peer-reviewed journal?

15 A       Correct.

16 Q       So I don't want to ask about your conclusions about voter  
17 ID specifically, Dr. Hood, but I want to ask you a few  
18 questions about how you go about measuring the effect of a  
19 voting law on turnout.

20           Now, correct me if I'm wrong, but broadly speaking, in  
21 this article, in attempting to measure the effect of Georgia's  
22 voter ID law on turnout, you looked at voter behavior in the  
23 2004 Presidential election, which was before the ID law was  
24 passed, and then you looked at voter behavior in the 2008  
25 Presidential election, after the voter ID law was passed. Is

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1 that fair?

2 A That's completely fair, yes.

3 Q And you used data from Presidential elections series, 2004  
4 and 2008, not midterm data, say, 2006 and 2010?

5 A That's correct. The law was cleared to be implemented in  
6 2007, if I'm remembering correctly. So the next election cycle  
7 would have been 2008, which was a Presidential election  
8 obviously.

9 Q And you did not -- I'm sorry. Let me start that again.

10 I want to ask you about the type of data that you used in  
11 analyzing turnout, Dr. Hood. You used actual turnout  
12 statistics, official statistics from the State of Georgia, what  
13 we would call validated data; right, Dr. Hood?

14 A That's true, yes, I used the voter registration and  
15 history databases from the Georgia Secretary of State.

16 Q You did not use survey data like the Census Bureau's  
17 Current Population Survey, which we could call unvalidated  
18 data; right, Dr. Hood?

19 A It is not validated, no.

20 Q And you didn't use that kind of survey data when trying to  
21 measure the effect of Georgia's voter ID law on turnout; right,  
22 Dr. Hood?

23 A That's correct; we didn't use that sort of data.

24 Q In your view as an expert on turnout, when measuring the  
25 effect of voting laws on turnout, it's better to use actual

1 official voting data from the states, validated data, rather  
2 than survey data like the CPS; right, Dr. Hood?

3 A Well, I think I've stated a number of times in court, in  
4 fact, if there's a choice, I am going to use validated data  
5 from the state.

6 Q And one of the reasons you would make that choice,  
7 Dr. Hood, is the problem of overreporting in the CPS, which is  
8 an issue that we've had some testimony on in this case,  
9 Dr. Hood, right, the overreporting problem?

10 A That's one problem with CPS, that's --

11 Q Because it inflates turnout numbers; right, Dr. Hood?

12 A It can if people are falsely reporting.

13 Q And research has shown that the overreporting rate is  
14 often higher amongst African-Americans in particular; right,  
15 Dr. Hood?

16 A Previous research that I am aware of that I made use of,  
17 yes, shows that overreporting on the part of blacks can be  
18 greater.

19 Q And the fact that different racial groups may overreport  
20 at different rates in this CPS can confound efforts to use  
21 survey data like the CPS to measure the effect of a voting law  
22 on turnout among different racial groups; right, Dr. Hood?

23 A That fact has to be taken into account, yes, I would agree  
24 with that.

25 Q And ultimately, Dr. Hood, it is true that you as a

1 political scientist believe that one cannot draw credible  
2 conclusions about turnout from the CPS; right, Dr. Hood?

3 A I don't know that I've said that. Again, if I have a  
4 choice, I am going to use data from a state that's been  
5 validated. That may or may not be the case for various  
6 research projects I am working on.

7 Q Dr. Hood, can I ask you to look at your deposition  
8 transcript, page 92. Just let me know when you are there.

9 A Okay.

10 Q Could you look at line 14:

11 "Q As a political scientist, in this  
12 report, you said you would not draw a credible  
13 conclusion from the CPS data; right, Dr. Hood?

14 "A That's what I say in the report,  
15 yes."

16 Was that my question and your answer?

17 A Yes, but I don't think it's in -- I am trying to look. I  
18 think it's in a slightly different context. I think I was  
19 referring to the report that was looking at third-party  
20 registration, reported third-party registration in the CPS, not  
21 turnout. I think that's what was being referenced here.

22 Q Well, I have a copy of that report, Dr. Hood.

23 A Okay.

24 Q This was Deposition Exhibit 378. It's been premarked as  
25 PX736. That is an expert report that you provided in early



1 voting litigation in Florida in 2012; right, Dr. Hood?

2 A Yes.

3 Q Could you turn to page 34, Dr. Hood.

4 A Okay. I'm there.

5 Q So in your report, in reference to the CPS, you state that  
6 someone -- that one cannot draw credible conclusions from the  
7 data; right, Dr. Hood?

8 A I do state that, yes.

9 Q And in the second paragraph on page 31 --

10 A Again, this is in reference to analyzing third-party  
11 registration activities.

12 Q I understand that that's the issue that you are addressing  
13 in this report, Dr. Hood, but in the second paragraph on  
14 page 31, you reference the overreporting problem with respect  
15 to turnout as a reason for inaccuracies in the CPS data; right,  
16 Dr. Hood?

17 A Yes.

18 Q So that's the reason why you would not draw credible  
19 conclusions from the CPS data; right, Dr. Hood?

20 A That's one of them, yes, as we discussed. It is not  
21 validated on that particular issue.

22 Q And as a political scientist -- I'm sorry, let me start  
23 that again.

24 And because, as a political scientist, you would not draw  
25 credible conclusions from the CPS data about turnout, you would

1 not ask a Court to draw credible conclusions about turnout  
2 based on the CPS data, would you, Dr. Hood?

3 A Well, again, I think I stated this a number of times. I  
4 mean, if turnout data exists that are validated, I am going to  
5 use those.

6 Q Could I ask you to look at page 92 of your deposition  
7 transcript, Dr. Hood?

8 A Okay.

9 Q Line 18:

10 "Q And you are also saying that you  
11 would not ask a Court to draw credible  
12 conclusions based on the CPS data; right,  
13 Dr. Hood?

14 "A Well, this was written for Court.  
15 So, yes, you can make that inference."  
16 Is that my question and your answer?

17 A Yes, that's correct.

18 Q I want to ask you a little bit more about your voter ID  
19 article, if we can turn back to that. Now, this article does  
20 not use aggregate level turnout statistics as its basis for  
21 assessing the effect of Georgia's voter ID law; right,  
22 Dr. Hood?

23 A Well, what we are doing here is that we are using  
24 individual records from the voter registration database, and we  
25 are aggregating up to a certain point. I mean, we are running

1 models, we are producing predicted probabilities from the  
2 model, and it's these probabilities that are really being  
3 compared to make an assessment. I think that's fair.

4 Q So let me back up for a second. There is a difference  
5 between aggregate data on the one hand and individual data on  
6 the other hand in political science research; right, Dr. Hood?

7 A Yes. I mean, there is some -- like Table 1 uses  
8 essentially aggregate level data at that point.

9 Q Just so we can explain that difference for everyone,  
10 aggregate turnout is -- one example of that would be the total  
11 level of turnout in an election; right, Dr. Hood?

12 A The State would be the level of analysis at that point,  
13 yes.

14 Q On the other hand, you could have an individual level  
15 analysis where you look at individual voters and whether or not  
16 they turn out in one election or another; right, Dr. Hood?

17 A Yes, I mean, you could keep it at that level.

18 Q And in this article, when you tried to measure the effect  
19 of Georgia's voter ID law on voters, you wanted to look at the  
20 behavior of individual voters; right, Dr. Hood?

21 A Yes, we were tracking individual voters.

22 Q You didn't just compare aggregate turnout in 2004 and  
23 compare it to aggregate turnout in 2008 and attempt to draw  
24 conclusions about the effect of Georgia's voter ID law; right,  
25 Dr. Hood?

1 A Well, Table 1 does that to some extent.

2 Q You didn't stop at Table 1; right?

3 A No, we didn't stop at Table 1.

4 Q If you had just done that, only compared aggregate turnout  
5 in 2004 to aggregate turnout in 2008, you would agree, wouldn't  
6 you, Dr. Hood, that that would not have enabled you to make  
7 causal inferences about the effect of the voter ID law on  
8 individual voters; right, Dr. Hood?

9 A All right. This is what I would say in reference to that.  
10 Again, it all depends on the setup of the research design. At  
11 a certain point here we are running what's called a  
12 difference-in-difference test. Okay? And what we can do with  
13 the electorate -- what we did with the electorate in Georgia,  
14 we were able to divide the electorate up by different criteria.  
15 So we had a group of registrants who had ID and we had a group  
16 that did not have ID, and we knew that. Those were factors we  
17 knew.

18 In 2008, we had a group that had ID and a group that did  
19 not have ID, and we can calculate their turnout rates from the  
20 voter history file.

21 So not dodging your question, but, again, it's all  
22 dependent on the research design. In that case we are  
23 essentially using aggregate groups, performing a  
24 difference-in-difference research design, and getting an  
25 answer.

1 Q So my question, Dr. Hood -- I understand that that's what  
2 you did in your paper. My question is: If you had just  
3 compared aggregate total turnout in 2004 to aggregate total  
4 turnout in 2008, that would not have given you, as a political  
5 scientist, the evidence that you need to make causal inferences  
6 about the effect of the new law on individual voters; right,  
7 Dr. Hood?

8 A Well, not those two pieces of information alone. Again,  
9 what we are doing, though, is comparing more than just those  
10 two pieces of information in this article.

11 Q Oh, yes, I am aware that you do more than that in this  
12 article; but if that's all you had done, that's not enough to  
13 make causal inferences about the effect of the law on voters  
14 individually; right, Dr. Hood?

15 A I might just use the term "inferences."

16 Q Okay. And one of the reasons for that, Dr. Hood, that you  
17 can't just take aggregate turnout in one election and compare  
18 it to aggregate turnout in another election to make causal  
19 inferences about voters is that there are a lot of different  
20 factors that can affect aggregate levels of turnout from one  
21 election to another; right, Dr. Hood?

22 A Turnout is a multifaceted issue, yes, that's true.

23 **MR. HO:** Your Honor, I have -- this is probably a  
24 good time to take a break, if you would like, or I can  
25 continue.

1           **THE COURT:** No, that's fine. We'll take our lunch  
2 break here. You can step down. We will see you all at 2:00.

3           (The Court recessed at 12:30 p.m.)

4           (The Court was called back to order at 2:02 p.m.)

5           **THE COURT:** Mr. Ho.

6           **MR. HO:** Thank you, Your Honor. Before I proceed  
7 with questioning, with the Court's permission, I would like to  
8 move two of the exhibits that I asked a few questions about  
9 into evidence: PX734, Dr. Hood's article concerning voter  
10 fraud, and PX735, Dr. Hood's article concerning voter ID.

11          **THE COURT:** Any objection?

12          **MR. FARR:** Contrary to the goose/gander rule, Your  
13 Honor, we do not object.

14          **THE COURT:** All right. They are admitted.

15          **MR. HO:** Thank you, Your Honor.

16 **BY MR. HO**

17 Q Hello again, Dr. Hood.

18 A Hello.

19 Q So right before the lunch break, I believe you said  
20 something to the effect of there are a lot of different factors  
21 that can affect turnout.

22 A I believe that's correct, yes.

23 Q And, now, some of those factors have to do with the  
24 particular electoral environment in a given year. Would you  
25 agree with that, Dr. Hood?

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1 A Yes.

2 Q So just to take one example, the competitiveness of an  
3 election can effect overall turnout levels; right, Dr. Hood?

4 A Yes.

5 Q And the mix of offices that are up for election can effect  
6 overall turnout levels; right, Dr. Hood?

7 A Yes. Both those factors tend to relate back to interest  
8 in the campaign, for instance, or a particular campaign. They  
9 are somewhat interconnected.

10 Q And the level of spending can also affect the overall  
11 turnout level in a given election; right, Dr. Hood?

12 A Up to a point, yes. At some point we reach a saturation  
13 level.

14 Q The particular tactics that campaigns use in their  
15 mobilization efforts, their Get Out the Vote efforts, those  
16 kind of things can also affect overall turnout levels in a  
17 given election; right, Dr. Hood?

18 A Yes.

19 Q And the particular candidates and issues in a given  
20 election can also affect overall turnout levels in a given  
21 year; right, Dr. Hood?

22 A Yes.

23 Q The level of voter interest in a given year can also  
24 affect the overall turnout level in that year; right, Dr. Hood?

25 A Yes. And, I mean, as I said, a lot of these factors are

1 interconnected with one another, including voter interest and  
2 how competitive the election is, what is the mix of elections,  
3 et cetera.

4 Q You would also agree that whatever voting laws are in  
5 place can also potentially affect turnout in a given year;  
6 right, Dr. Hood?

7 A There is a potential, yes.

8 Q Now, we just talked about the factors that are particular  
9 to the electoral context in a given year. But it's also true,  
10 Dr. Hood, isn't it, that individual characteristics can also  
11 affect the propensity of individual voters to turn out in a  
12 given election?

13 A Such as?

14 Q So, for instance, socioeconomic factors have sometimes  
15 correlated with an individual's propensity to turn out in a  
16 given election; right, Dr. Hood?

17 A That's correct. I would probably use the term "correlate"  
18 as opposed to "cause," for instance. Yes, we've noticed a  
19 correlation between socioeconomic status and the propensity to  
20 turn out certainly.

21 Q You've noticed a -- have you ever noticed a correlation  
22 between education levels and an individual's propensity to turn  
23 out?

24 A Yes.

25 Q Would you say --



1 A Typically education level -- I mean, at the individual  
2 level, if we have individual-level data, education is the --  
3 typically the single best predictor for turnout, not the only  
4 predictor, but if we just had one factor about someone.

5 Q And age can be correlated with turnout; right, Dr. Hood?

6 A Yes. Up until the various highest point, it tends to tail  
7 off a little bit. So it's a positive relationship up until  
8 very old age, and it tails off a little bit up at the top.

9 Q Sex can also affect turnout?

10 A There can be gender differences, yes.

11 Q Income can affect turnout?

12 A Yes.

13 Q Race and ethnicity can affect turnout?

14 A Well, affect -- they are certainly correlated at times  
15 with turnout, yes.

16 Q So let's turn back to your analysis of the effect of  
17 Georgia's voter ID law. Now, broadly speaking, Dr. Hood, when  
18 testing the effect of Georgia's voter ID law, you didn't just  
19 look at whether voters without ID were less likely to vote in  
20 2008 as compared to voters with ID; right, Dr. Hood?

21 A Well, that was the primary purpose of the exercise, what  
22 you just described.

23 Q You didn't stop your analysis there; right?

24 A We included other variables in our model, if that's what  
25 you're getting at, yes.

1 Q And those variables included some of the demographic facts  
2 that we just discussed?

3 A Where we had them, yes. Voter registration files are  
4 somewhat limited in the type of individual-level data they  
5 contain.

6 Q So, for instance, specifically you included sex as one of  
7 the factors that you tried to control for when assessing the  
8 effect of the voter ID law; right?

9 A That's correct.

10 Q You also considered -- I'm sorry. You also controlled for  
11 age when assessing the effect of the voter ID law; right,  
12 Dr. Hood?

13 A Yes.

14 Q And you also controlled for income when assessing the  
15 affect of the voter ID law; right, Dr. Hood?

16 A Well, we had a control for income. Let me just be clear  
17 that that was not an individual-level variable. We can place  
18 someone within a specific ZIP code, and we knew the median ZIP  
19 code -- the median income for that ZIP code. So that's what  
20 we're using in that case.

21 Q And you controlled for that income level of the ZIP code  
22 where the person lives when assessing the effect of the voter  
23 ID law; correct?

24 A That's correct, yes.

25 Q And those controls allowed you to have greater

1 substantiation of your findings about the effect of the voter  
2 ID law; right, Dr. Hood?

3 A Yes. I mean, what we would like to say as social  
4 scientists is that holding those factors constant or  
5 controlling for those factors, what is the effect of our  
6 primary variable of interest, for instance, in this case,  
7 whether someone had an ID or not.

8 Q Now, if you hadn't introduced those controls, if you had  
9 just compared voters without ID to voters with ID and didn't  
10 control for other variables, you would just describe that as  
11 cursory evidence about the effect of the voter ID law; right,  
12 Dr. Hood?

13 A I don't think I've ever used the word "cursory."

14 Q Could you turn to page 402 in your --

15 A Maybe so. What page?

16 Q 402. Can you start about halfway down with the sentence  
17 that begins, "Although turnout falls in general," and just read  
18 that.

19 A 402; is that correct?

20 Q I believe so.

21 A Okay. Where are you at this point?

22 Q If you look at the screen, about halfway down, the  
23 sentence that starts with, "Although."

24 A Okay. Okay.

25 Q So when you just compare turnout numbers of people who

1 have ID against people who don't have ID, that's just cursory  
2 evidence; right?

3 A Well, according to what I wrote here, yes. That's  
4 referring up to Table 1, yes.

5 Q And when you provide controls, that gives you greater  
6 substantiation; right, Dr. Hood?

7 A That's typically the way we do things in the social  
8 sciences, yes.

9 Q Okay. So let's talk about your report in this case,  
10 Dr. Hood. And, specifically, I would like to talk about your  
11 portion of your report about early voting starting on page 34.  
12 Just let me know when you are there.

13 A Okay.

14 Q Now, in this section you offer your report in this case  
15 that North Carolina voters were not burdened due to the early  
16 voting cutbacks in 2014; correct?

17 A Yes, I couldn't find any kind of negative impact.

18 Q And that opinion is based entirely on an analysis of  
19 turnout in 2014 as compared to 2010; right, Dr. Hood?

20 A Well, I present different types of analyses; but, yes,  
21 they are all based on a 2010 to 2014 comparison; that's  
22 correct.

23 Q A comparison of turnout specifically; right, Dr. Hood?

24 A Turnout, yes. Sometimes different types of turnout.

25 Sometimes turnouts differentiated in different ways, but yes.

1 Q You didn't try to engage in any analysis independent of  
2 turnout of the types of -- let me start that question again.  
3 I'm sorry.

4 Your opinion isn't based on any direct assessment of  
5 burdens that voters faced in 2014 like time waiting in line or  
6 lost time off of work. That's separate and apart from your  
7 turnout analysis; right, Dr. Hood?

8 A I don't control for those factors. I guess that's the way  
9 I state that.

10 Q You didn't try to assess those factors independently of  
11 turnout; right?

12 A No, I don't have measures for those.

13 Q And your opinion as to whether African-American voters in  
14 particular were burdened in 2014 is similarly based solely upon  
15 your analysis of different kinds of turnout data; right,  
16 Dr. Hood?

17 A Yes. Yes, it's the same data.

18 Q So I just want to ask you about something on page 34 of  
19 your report where you quote from Dr. Gronke's first report in  
20 this case. In paragraph 66 you're quoting Dr. Gronke's  
21 predictions about the effect of the early voting reductions and  
22 the elimination of same-day registration; right?

23 A Yes, that's correct.

24 Q Now, in the passages that you are quoting, does Dr. Gronke  
25 make any mention of turnout levels in the 2010 midterm

1 election?

2 A 2010 or 2014?

3 Q 2010.

4 A Not specifically, no.

5 Q Does he make any comparative statements about what the  
6 turnout levels will be in 2014 as compared to 2010 in the  
7 paragraphs that you are quoting?

8 A No, he doesn't make a comparative statement, no.

9 Q He doesn't make any comparative statement between past and  
10 future elections; right, Dr. Hood?

11 A Well, I wouldn't go that far. I mean, he is making a  
12 comparison of elections where there is a 17-day one-stop voting  
13 period versus a ten-day one-stop voting period. He is making  
14 that comparison.

15 Q But he is not making a comparative assessment of whether  
16 or not turnout will decline relative to any particular election  
17 in the past, is he, Dr. Hood?

18 A Well, I would just say that he is making a statement about  
19 elections where there is a one-day one-stop period versus a  
20 ten-day one-stop period. I guess you can compare back to  
21 whatever election you want to do in that period perhaps.

22 Q But is he, in this paragraphs that you quote, making  
23 reference to a specific past election and saying that turnout  
24 will decline relative to that specific election?

25 A Not a specific election, no, but a period of elections.

1 Q Okay. Let's talk about the analysis in -- I'm sorry.  
2 That's your reading of his report; right?

3 A That's fair, yes.

4 Q Okay. Let's talk about your report now in a little bit  
5 more detail. I want to ask you a few questions about the  
6 different kinds of turnout data that you relied on. I believe  
7 you went over this with Mr. Bowers on direct. I just want to  
8 enumerate the universe of different kinds of data that you  
9 used.

10 I believe first on page 35, Table 12, you compare  
11 aggregate total turnout and aggregate early voting turnout in  
12 the 2014 midterm in North Carolina as compared to the 2010  
13 midterm; right, Dr. Hood?

14 A Yes, I think that's a fair assessment of that table.

15 Q And then next --

16 A I also controlled for race within that table.

17 Q Yes. Of course, you have some racial breakdowns in this  
18 table.

19 Next on page 37, Table 13, you have aggregate statistics  
20 about how early voters from 2010 behaved in the 2014 midterm;  
21 right, Dr. Hood?

22 A That's correct. Although I guess we're parsing words  
23 perhaps. These are individual-level observations I've  
24 aggregated up in these categories, but I started with  
25 individual-level data.

1 Q Right. But the data that you are presenting here are  
2 aggregate numbers; right?

3 A That's true.

4 Q This is not kind of the individual-level analysis that you  
5 did in your voter ID paper where you calculate the  
6 probabilities of individuals voting in a particular election;  
7 right?

8 A Right. That's correct.

9 Q Now, third, on page 39, you have aggregate turnout and  
10 early voting aggregate turnout in the 2014 Democratic Primary  
11 as compared to the 2010 Democratic Primary; right?

12 A That's correct.

13 Q And then fourth, on page 39, that's also labeled  
14 Table 13 -- I believe you referred to it as Table 13A on  
15 direct -- you have early voting turnout broken down by day in  
16 2014 as compared to 2010; right, Dr. Hood?

17 A Well, those aren't in a table. Those are just --

18 Q I'm sorry, figures.

19 A Those are figures.

20 Q Figures. And on page 41 -- 40 and 41, I'm sorry, these  
21 are your --

22 **THE COURT:** You said page 39. Do you mean 39 or 40?

23 **MR. HO:** I'm sorry. I've gotten a little confused  
24 myself, Your Honor. I apologize.

25 **THE COURT:** You said page 39, Table 13.



1           **MR. HO:** Then I misspoke. Let me try again from  
2 there, Your Honor.

3 **BY MR. HO**

4 Q Page 39, Table 13A, I think you referred to it as, this is  
5 a Democratic Primary?

6 A That's correct.

7 Q 2014 compared to 2010?

8 A Right.

9 Q Aggregate turnout in those two elections; right?

10 A Right.

11 Q And then on page 40, Figure 3, this is the day-by-day  
12 early voting totals in 2014 compared to 2010; right?

13 A That's correct.

14 Q Another way of describing this might be it is the  
15 aggregate early voting totals from 2010 and 2014 that you have  
16 in Table 12 just divided up on each day of the early voting  
17 period; right?

18 A That's correct.

19 Q Now, all the datasets that you used, Dr. Hood --

20 A There is one more analysis in this section.

21 Q Right. I'm sorry. I apologize. The next page, page 41,  
22 Figure 4, that's also the day-by-day totals but accumulated  
23 each day; right, Dr. Hood?

24 A That's true. There is still one more analysis back on  
25 page 38 where I look at new registrants.

1 Q Well, let's just start with these, the ones that you --  
2 these are the ones that you talked about with Mr. Bowers;  
3 right?

4 A That's true, yes.

5 Q We didn't talk about the new registrants with Mr. Bowers  
6 during your direct testimony; right?

7 A Right.

8 Q So when I talk about your data going forward and your sets  
9 of data, I am going to be referring to the different tables and  
10 figures that you've discussed with Mr. Bowers on direct, if  
11 that's okay.

12 A Okay.

13 Q Great. Now, all of these datasets that we talked about,  
14 these were all derived from official validated turnout data  
15 from the State; right, Dr. Hood?

16 A They are from the North Carolina State Board of Elections.

17 Q So fair to say that your practice in this report was  
18 consistent with what you said in your voter ID paper about  
19 preferring to use validated data from the State when it's  
20 available as opposed to survey data; right?

21 A That's a fair statement, yes.

22 Q Now, all the data that we talked about in your tables and  
23 your figures, all of that is data from the 2010 and 2014  
24 midterms in North Carolina; correct?

25 A That is correct.

1 Q Now, you didn't look at any data from any other state  
2 that, say, cut early voting before a Presidential election;  
3 right, Dr. Hood?

4 A This is just solely North Carolina.

5 Q And you didn't look at any Presidential elections; right,  
6 Dr. Hood?

7 A That's correct.

8 Q And you could have analyzed some data from another state  
9 that cut early voting before a Presidential election for this  
10 report, couldn't you, Dr. Hood?

11 A I could have. I didn't think it was as germane as the  
12 comparisons I made here, though.

13 Q Dr. Hood, can you think of one previous example in which  
14 you analyzed the effect of a voting access law on turnout in a  
15 peer-reviewed publication in which you used midterm rather than  
16 Presidential elections data?

17 A Yes.

18 Q What is that?

19 A Well, I can think of an article I wrote that involves  
20 election administration which used a midterm election.

21 Q Right. My question, though, Dr. Hood, was not about  
22 elections administration.

23 A Okay.

24 Q You've written about the effect of voting laws on turnout  
25 before; right, Dr. Hood?

1 A Correct.

2 Q And can you think of one article that you've published in  
3 a peer-reviewed journal that examines the effect of a voting  
4 access law on turnout that used midterm rather than  
5 Presidential elections data?

6 A I don't have it in front of me, but it's possible that the  
7 "Worth a Thousand Words" article may have had some midterm  
8 election data in it. I would have to look back on that.

9 Q Do you remember one way or the other?

10 A Well, I believe it does. I can't state with certainty  
11 because I don't have it in front of me.

12 Q Okay. So you can't remember with any certainty whether or  
13 not, in a peer-reviewed publication, you ever used midterm  
14 elections data to analyze the effect of a voting access law on  
15 turnout; correct?

16 A Most of it's been Presidential election years, perhaps  
17 with that one exception.

18 Q But you can't say for certain whether or not that article  
19 actually used midterm elections data to analyze the effect of a  
20 voting law on turnout; right, Dr. Hood?

21 A I can't say with certainty again. I would have to look at  
22 it.

23 Q Now, when we went over your different sources of data, one  
24 of the sources of data was a comparison between primary  
25 elections in 2010 and 2014; right, Dr. Hood?

1 A Correct.

2 **MR. HO:** Now, can we bring that up on the screen  
3 actually.

4 **BY MR. HO**

5 Q This is page 39 of your report, Table 13.

6 **THE COURT:** Is this 13A?

7 **MR. HO:** I think this is --

8 **THE WITNESS:** 13A, Your Honor.

9 **MR. HO:** -- 13A, yes.

10 **BY MR. HO**

11 Q Now, when you look at black turnout and white turnout in  
12 the 2014 election, black turnout is 37.26 percent?

13 A In 2014.

14 Q The primary, Democratic Primary?

15 A Right.

16 Q And white turnout is 59.05 percent?

17 A Yes.

18 Q So we don't have parity between black and white turnout in  
19 the 2014 Democratic Primary, do we, Dr. Hood?

20 A Whites have a higher turnout rate in a Democratic Primary,  
21 yes, that's true.

22 Q And, in fact, it's almost 22 percentage points higher;  
23 correct?

24 A Yes.

25 Q Now, as a general matter, Dr. Hood, you would agree that

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1 primary elections have lower turnout than general elections?

2 A As a general rule, yes.

3 Q And according to your table here, total turnout in terms  
4 of number of voters participating in the Democratic Primary in  
5 2014 was just over 500,000; is that right?

6 A Yes.

7 Q Can we bring up page 35 of the report and Table 12. This  
8 shows us overall turnout in the 2014 general election; right,  
9 Dr. Hood?

10 A That's correct.

11 Q And overall turnout in the 2014 general election -- there  
12 were almost 3 million voters in the 2014 general; right?

13 A 2.9 million, yes.

14 Q So about six times as many as participated in the primary  
15 that same year?

16 A Yes.

17 Q Fair to say that the voters who show up in the primary  
18 tend to be the most committed partisans, as a general matter,  
19 Dr. Hood?

20 A I think that's fair, yes.

21 Q It's kind of a different pool of voters showing up at a  
22 primary as opposed to a general election; right, Dr. Hood?

23 A Typically, yes.

24 Q Now, you've analyzed turnout in the past and the effect of  
25 voting laws on turnout; right, Dr. Hood?

1 A Correct.

2 Q Have you ever published an article that sought to analyze  
3 the effect of a voting law on turnout with data from a primary  
4 election in a peer-reviewed article?

5 A No.

6 Q And can you think of a single peer-reviewed article  
7 written by anyone else that's attempted to analyze the effect  
8 of a voting law on turnout using primary elections data?

9 A Not off the top of my head, no.

10 Q So if you tried to publish your primary elections data  
11 analysis that you have in your report here, that would be  
12 unprecedented; right, Dr. Hood?

13 A I am typically not associated with the word  
14 "unprecedented." I probably wouldn't publish the primary  
15 analysis by itself. I mean, I would probably have other  
16 analyses. It wouldn't just be on the primary.

17 Q Now, let's back up for a moment and just talk about all of  
18 these different sets of data that you discussed with  
19 Mr. Bowers, the figures in the tables that we talked about  
20 here.

21 A Okay.

22 Q Now, all four -- or five, I guess, datasets that we  
23 discussed, all of them are aggregated turnout figures; right,  
24 Dr. Hood?

25 A Let me say that we've talked a lot about individual- and

1 aggregate-level data. Both are used in social sciences. There  
2 is a difference between -- in this case I've got  
3 individual-level data. I've aggregated it up into certain  
4 units, like states, for instance. Sometimes we never have  
5 individual-level data. Sometimes we may only have data at,  
6 say, the precinct level if we are looking at an election  
7 outcome or votes. So there is that difference there, yes. I  
8 am reporting aggregate totals, for instance, in percentages,  
9 but I am starting with individual-level data records.

10 Q But you don't conduct anywhere in this report the kind of  
11 individual-level analysis looking at the probability of  
12 individual voters to vote both before and after the change in  
13 law, right, Dr. Hood, like you did with your voter ID paper?

14 A I don't use statistical models, that's fair, yes.

15 Q Would you say that you use some data that's aggregated up?

16 A Yes, it's in these tables.

17 Q Now, you agreed right before the break that aggregate  
18 turnout can be affected by lots of factors. Do you remember  
19 that, Dr. Hood?

20 A I think most political scientists would agree with that,  
21 yes.

22 Q And just a few minutes ago you agreed that competition,  
23 for instance, is one of those factors?

24 A Certainly.

25 Q Now, you are aware that the 2010 Senate race in North



1 Carolina was decided by about 12 percentage points; correct?

2 A Yes, that's about correct.

3 Q Now, in your review, that is not a very competitive race;  
4 right, Dr. Hood?

5 A Typically, I don't think most political scientists would  
6 define that as a competitive race, no.

7 Q More than 10 percentage points generally is a landslide;  
8 right?

9 A I don't know that it's a landslide. It is just not  
10 competitive.

11 Q Now, by contrast, the 2014 North Carolina Senate race was  
12 decided by 1.5 points; correct?

13 A Yes, from what I remember.

14 Q And you would agree then that that was a much more  
15 competitive race than the 2010 Senate race; correct?

16 A Yes, on that metric, certainly.

17 Q Could we bring up one of the demonstratives, TH-1.  
18 Here is your comparison of aggregate turnout data from  
19 2010 to aggregate turnout data from 2014; right, Dr. Hood?

20 A Correct.

21 Q And in presenting this data, you did not account for the  
22 fact that the 2014 midterm election was, in your words, much  
23 more competitive than the 2010 midterm election; correct?

24 A The numbers speak for themselves. This is -- the  
25 comparison point is simply a comparison of turnout in these two

1 midterms. I am not controlling for other factors.

2 Q You were here on Friday for the start of Dr. Thornton's  
3 testimony; correct?

4 A Yes.

5 Q And you saw some of the figures that Dr. Thornton  
6 presented comparing 2010 elections data to 2014 elections data  
7 in North Carolina?

8 A To be honest with you, I really couldn't see them very  
9 well from -- from where I was sitting, I couldn't see the  
10 figures.

11 Q You heard her testify about it, though; right, Dr. Hood?

12 A Yes.

13 Q And to the best of your knowledge, Dr. Thornton didn't in  
14 any way attempt to account for the differences in the  
15 competitive environment in 2014 compared to 2010, did she?

16 A Not from what I can remember.

17 Q Now, let's talk about the mix of offices in 2014. In  
18 2014, there was an open House seat on the Democratic side due  
19 to the retirement of a longtime incumbent Democratic  
20 congressman named Mel Watt. You are aware of that; right,  
21 Dr. Hood?

22 A Yes.

23 Q That fact could certainly affect turnout, including among  
24 African-Americans in 2014; right, Dr. Hood?

25 A Well, in that district at least. Not statewide, per se,

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1 but in that district.

2 Q So I recall you saying during your direct testimony that  
3 the 2014 primary was not competitive at the Senate level on the  
4 Democratic side.

5 A Yes, not very competitive.

6 Q Now, your primary analysis of the 2014 Democratic Primary  
7 didn't take into account Mel Watt's retirement and the  
8 competition for his open seat in North Carolina; correct,  
9 Dr. Hood?

10 A Correct.

11 Q And you are aware that Mel Watt's district is one of only  
12 two majority black districts in the state of North Carolina,  
13 Dr. Hood?

14 A Yes, I am aware of that.

15 Q So there are a lot of African-Americans who reside in that  
16 district; right, Dr. Hood?

17 A By definition, yes.

18 Q And his retirement and the open seat and the competition  
19 for that seat would certainly have an effect on  
20 African-American turnout in that district; right, Dr. Hood?

21 A In that district, yes.

22 Q And in comparing turnout between 2010 and 2014, you didn't  
23 account for the fact or control for the fact that there was an  
24 open House seat in 2014 on the Democratic side that was not  
25 open in 2010; correct, Dr. Hood?

1 A I didn't look at that, no.

2 Q Now, let's talk about levels of spending in 2010. The  
3 Senate race in North Carolina in 2010, you are aware, was below  
4 the national average for a Senate campaign that year of about  
5 \$20 million; right, Dr. Hood?

6 A Well, you are representing that to me. I can't say that I  
7 can recall that fact by myself.

8 Q I will represent to you that it was between 10- and  
9 \$15 million, which is below the national average that year for  
10 a Senate race of \$20 million. Do you have any reason to  
11 dispute that, Dr. Hood?

12 **MR. BOWERS:** Objection, no foundation.

13 **MR. HO:** Those figures are in Dr. Burden's report and  
14 also Dr. Gronke's report, Your Honor, which have all been  
15 admitted into evidence.

16 **THE COURT:** Overruled. If he knows.

17 **THE WITNESS:** I don't know that fact by itself, just  
18 sitting here.

19 **BY MR. HO**

20 Q Now, you are aware that the 2014 Senate race in North  
21 Carolina cost \$110 million; right, Dr. Hood?

22 A That's the figure I approximately remember, yes.

23 Q And you are aware that that's the most expensive Senate  
24 race in United States history?

25 A I have seen it quoted as that, yes.

1 Q Now, in comparing turnout between 2010 and 2014, you  
2 didn't attempt to take into account the fact that 2014 featured  
3 much higher spending levels as compared to 2010, did you,  
4 Dr. Hood?

5 A I didn't control for the level of spending, no.

6 Q When you sat through Dr. Thornton's testimony, it did not  
7 appear that she had taken that into account either, the  
8 different levels of spending in 2010 and 2014, did it,  
9 Dr. Hood?

10 A I don't remember that specifically.

11 Q Let's talk about campaign tactics for a moment, Dr. Hood,  
12 which you testified earlier can affect turnout. In the 2010  
13 Senate race, you are aware of the fact that there were a total  
14 of about 8,900 TV ads that were aired, Dr. Hood?

15 A I can't -- again, some facts I can't quote.

16 Q You wouldn't dispute --

17 A I didn't collect that data. I didn't collect those facts.  
18 So it's hard for me to sit here and know those things.

19 Q But I will represent to you that's what Dr. Burden states  
20 in his -- in one of his reports. Do you have any reason to  
21 dispute that?

22 A Not on its face, no.

23 Q And you are aware that in the 2014 Senate race, a total of  
24 69,000 TV ads were aired?

25 A Again, I didn't collect those data.

1 Q So that's in Dr. Burden's report. I will represent that  
2 to you. And you reviewed Dr. Burden's report; right, Dr. Hood?

3 A Yes, I don't have it memorized, though.

4 Q Now, in comparing turnout and aggregate turnout numbers  
5 from 2010 to 2014, did you in any way attempt to account for  
6 the fact that there were tens of thousands more commercials  
7 aired in 2014 as compared to 2010?

8 A I did not control for the level of advertising between  
9 those two elections.

10 Q In Dr. Thornton's comparisons of turnout data from 2010 to  
11 2014, did it appear that she attempted to control for the  
12 different levels of advertising in 2014 as compared to 2010?

13 A I don't recall. I don't think so, but I don't recall.

14 Q The only difference that your comparison of turnout  
15 between 2010 and 2014 takes into account is the change in law  
16 that happened between those two elections; isn't that right,  
17 Dr. Hood?

18 A Well, that's the big one, yes. I also controlled for some  
19 factors in some cases, like race, for instance.

20 Q You break out the turnout numbers by race; right,  
21 Dr. Hood?

22 A Right. That's the same thing as controlling, just in a  
23 different way. It doesn't have to be in a multivariate model  
24 to use the word "control."

25 Q Can we bring up page 35 of Dr. Hood's report, Table 12.

1 Now, according to this table, Dr. Hood, total turnout, or  
2 the percentage of turnout anyway, between 2010 and 2014  
3 increased by .86 percent; is that right?

4 A Correct.

5 Q Or, I'm sorry, is that .86 percentage points?

6 A Yes. It's just the difference between those two numbers.

7 Q So in spite of the fact that over 100 million was spent in  
8 2014 as compared to 2010, turnout -- total turnout in 2014 went  
9 up less than one percentage point compared to 2010; is that  
10 right, Dr. Hood?

11 A From these numbers, yes.

12 Q Now, I just want to ask you a few more questions,  
13 Dr. Hood, about your transition analysis of voters on page 37.

14 Now, I think you said on direct you can't tell us why some  
15 of these early voters from 2010 did or did not vote in 2014;  
16 right, Dr. Hood?

17 A Yes. I would like to say no one can. All we know is  
18 whether they turned out to vote or not and what method they  
19 used if they did turn out to vote.

20 Q Just like all of your other analyses that we've discussed,  
21 Dr. Hood, this transition analysis does not in any way attempt  
22 to control for the differences in electoral environment in 2014  
23 as compared to 2010; right, Dr. Hood?

24 A It does in a rudimentary way. Again, I am controlling for  
25 the fact that in 2010 there was one set of rules in place for

1 early voting, and that changed in 2014. So I am controlling  
2 for that.

3 Q But you are not attempting to control for the differences  
4 in competition, advertising, campaign spending, mix of offices  
5 between 2010 and 2014; right, Dr. Hood?

6 A That's fair, although the mix of offices is approximately  
7 the same, since they are both midterm election years.

8 Q Now, when you examined the behavior of these individual  
9 voters, you did not attempt to account for any of the  
10 individual demographic factors that might affect an  
11 individual's propensity to turn out, like age, sex, or income,  
12 in a manner similar to what you did in your voter ID paper;  
13 right, Dr. Hood?

14 A That's true. Although we don't know anyone's income  
15 level. That would have to be estimated.

16 Q You could have estimated it in North Carolina the same way  
17 you did in your voter ID paper; right, Dr. Hood?

18 A Yes, that's true.

19 Q And you didn't do that?

20 A No.

21 Q And you saw Dr. Thornton's analysis -- or you heard  
22 Dr. Thornton's transition analyses that she described on  
23 Friday?

24 A Yes, I was here.

25 Q And Dr. Thornton's voter transition analyses, like yours,



1 did not attempt to account for any individual factors that  
2 might affect a voter's propensity to turn out, like age, sex,  
3 or income, in the manner that you did in your voter ID study;  
4 right, Dr. Hood?

5 A Not that I recall. Not that I recall.

6 Q Thank you, Dr. Hood. I don't have any further questions  
7 at this time. I believe the Department of Justice has some.

8 CROSS-EXAMINATION

9 **BY MR. FISHER**

10 Q Good afternoon, Dr. Hood.

11 A Good afternoon.

12 Q Spencer Fisher representing the United States. We met at  
13 your deposition; right?

14 A Yes, sir.

15 Q I just have a few more questions to follow up with you,  
16 and the first is, as a political scientist with an emphasis on  
17 studying the history of the South, you would agree with me that  
18 historic segregation in the North Carolina schools has harmed  
19 black educational outcomes in North Carolina; correct?

20 A I can state from the data I collected there are  
21 educational disparities between blacks and whites in North  
22 Carolina.

23 Q You explicitly note in your report that income and  
24 education gaps exist in North Carolina; is that right?

25 A That's fair, yes.

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1 Q Now, you've also acknowledged in other cases when you've  
2 testified that the greater costs a voting system imposes, such  
3 as the time and effort it takes to overcome administrative  
4 requirements or other barriers to successfully voting (sic),  
5 the less likely a voter is to vote; is that right?

6 A Yes. Let's be clear. We are not talking about a monetary  
7 cost.

8 Q Dr. Hood, that's all I asked you.

9 **THE COURT:** Well, he can explain his answer.

10 **THE WITNESS:** No, I'm using the word "costs" in terms  
11 of monetary costs in that particular sentence, but that's a  
12 very old theory in political science, yes.

13 **BY MR. FISHER**

14 Q And you've testified elsewhere that you can't think of a  
15 political science concept -- and you just mentioned it's an old  
16 concept -- you can't think of a concept that is more firmly  
17 established with respect to voter turnout than the idea that  
18 the more costs a system imposes, the less likely a voter is to  
19 turn out; true?

20 A It's been around a long time as a concept, as a  
21 theoretical framework for studying turnout in political  
22 science.

23 Q It's been around a long time, but you've testified  
24 elsewhere that there is no concept more firmly established in  
25 political science; is that right?

1 A In political science or in the turnout -- the study of  
2 turnout in political science?

3 Q Dr. Hood, I will ask the question again.

4 A Okay.

5 Q We can look at your cross-examination in Texas. You've  
6 testified elsewhere that you can't think of a political science  
7 concept that is more firmly established with respect to voter  
8 turnout than the idea that the more costs a system imposes, the  
9 less likely a voter may be to turn out; true?

10 A Yes, in terms of turnout again.

11 Q You would agree with me that registering to vote is a  
12 cost; right?

13 A Yes. Again, not talking about a monetary cost.

14 Q And you agree that the effort required to participate in  
15 the electoral process can be a cost, even if it doesn't involve  
16 the expenditure of money, as you've mentioned, not a monetary  
17 cost; correct?

18 A Sure.

19 Q And you've talked about turnout here, and you've  
20 testified -- we've looked at the demonstratives. Mr. Ho just  
21 went through a long explanation with you on turnout in 2010 and  
22 2014; but other than looking at turnout, you've not studied the  
23 burden that the changes brought about by H.B. 589 placed on  
24 minorities voters in this case; is that correct?

25 A That was my chief dependent variable of interest I was

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1 studying, yes.

2 Q It was the only variable -- turnout was the only variable  
3 that you looked at; is that correct?

4 A Well, dependent variable. Not only variable, dependent  
5 variable. That's what I was trying to look for an effect with.

6 Q So you were looking for the effect using turnout; correct?

7 A That's correct.

8 Q Okay. And there is nothing in your report in this case  
9 that addresses the question of burdens that could be caused by  
10 reduction in early voting that's not specifically linked to  
11 turnout; correct?

12 A Well, all my opinions in this section of my report are  
13 based on the turnout variables, so, yes.

14 Q Okay. Earlier you testified about your article "Much Ado  
15 About Nothing." I believe that's Plaintiffs' Exhibit 735.  
16 That's the Georgia voter ID article; is that correct?

17 A That's correct. I mean, there was more than one, but  
18 that's on the Georgia voter ID statute.

19 Q And you testified -- you answered earlier a question about  
20 the conclusion of that article, concluding that the Georgia law  
21 had a suppressive effect on turnout; true?

22 A Yes, it had a slight suppressive effect. That's not the  
23 end of the story, though.

24 Q But that article was published in 2012; is that right?

25 A That's when it was published, yes.

1 Q You also testified about "They Just Do Not Vote Like They  
2 Used To," and that's Plaintiffs' Exhibit 734, and that's the  
3 article where you talk about voter fraud and the methodology  
4 that you developed; is that right?

5 A That's correct.

6 Q Okay. In that article, as you testified earlier, you and  
7 your co-authors set out a general methodology for detecting  
8 evidence of contemporary election fraud; is that fair?

9 A That's fair, yes.

10 Q As you testified earlier, you did not find evidence of  
11 in-person voter fraud using that methodology; is that correct?

12 A For that election and for that type of voter fraud we were  
13 looking for, no. That's correct. It's in that context.

14 Q And that article was also published in 2012; is that  
15 right?

16 A Yes.

17 Q Okay. So both of those articles were published in 2012  
18 and available publicly to anyone that had a question --  
19 policymaker, for instance, that had a question about voter  
20 fraud or about voter ID; is that right?

21 A Certainly. I mean, it's in the public domain.

22 Q Now, you noted earlier that you've only authored one  
23 peer-reviewed article dealing with early voting; is that  
24 correct?

25 A That's correct.

1 Q And that article concerned, and we've talked about it here  
2 today, the 2008 election in Georgia; is that right?

3 A That's correct.

4 Q And that's the full body of your peer-reviewed scholarship  
5 on early voting; is that right?

6 A Peer reviewed, yes.

7 Q You did not publish any peer-reviewed articles with regard  
8 to the 2010 election, for instance, on early voting?

9 A No.

10 Q You didn't publish any peer-reviewed articles on early  
11 voting based on the results of the 2012 election; true?

12 A That's true.

13 Q You didn't publish any peer-reviewed articles on early  
14 voting based on the results of the 2014 election; correct?

15 A That's correct.

16 Q You are familiar with Dr. Charles Stewart; correct?

17 A Yes.

18 Q And he -- you consider Dr. Stewart to be well respected in  
19 the field of political science; true?

20 A True.

21 Q If we could -- if you could take a look at paragraph 3 of  
22 your report, and we'll bring it up on the screen as well. I  
23 think you mentioned earlier you've testified in court six times  
24 in other voting rights cases. Was that your testimony earlier?

25 A I think that's correct, yes.

1 Q If we look at paragraph 3 of your report, I count seven  
2 cases there. Are you combining the *Jones* case and the *Frank*  
3 case because they were consolidated?

4 A They were, yes.

5 Q Okay. So the cases that you list here in paragraph 3 of  
6 your report all involve the jurisdiction that had been alleged  
7 to have maintained a discriminatory practice; is that right?

8 A Yes.

9 Q So it's fair to say that all the jurisdictions you worked  
10 for, as set out in your report, were jurisdictions alleged to  
11 have been maintaining a discriminatory practice; is that  
12 correct?

13 A Yes. They were being -- practices were being challenged.

14 Q But as an expert, you worked for, and as set out in your  
15 report, jurisdictions that were alleged to have maintained  
16 discriminatory practices in all of those cases; is that  
17 correct?

18 A Yes, I believe that's correct.

19 Q Now, there was at least one voting case where you did  
20 testify on behalf of a party claiming racial discrimination; is  
21 that right?

22 A Yes.

23 Q And that one case where you testified on behalf of a party  
24 claiming racial discrimination was in Georgia in the *Billups*  
25 case; is that correct?

1 A Yes.

2 Q And in the *Billups* case -- and this article came up  
3 earlier -- you submitted a report that was essentially the  
4 study contained in your "Worth a Thousand Words" article; is  
5 that correct?

6 A That's correct.

7 Q And the Georgia Court threw out your analysis and your  
8 report in that case on *Daubert* grounds because it was not  
9 reliable; is that correct?

10 A That's correct.

11 Q You didn't include *Billups* in paragraph 3 of your report;  
12 is that correct?

13 A No, these were cases where I believe I appeared in person.

14 Q Let's talk about a case where you appeared in person. You  
15 performed a voter ID database matching in the Wisconsin case,  
16 the federal case *Frank v. Walker*; is that correct?

17 A Yes.

18 Q And the Court in that case gave greater weight to the  
19 Plaintiffs' expert's testimony concerning database matching  
20 than it did yours; is that correct?

21 **MR. BOWERS:** Objection. Calls for a legal  
22 conclusion.

23 **THE COURT:** He's welcome to -- I am going to overrule  
24 it, but I will read the opinion.

25 **MR. FARR:** Your Honor, could I ask him to say which



1 opinion? Because there is a District Court opinion in that  
2 case, and there's a Circuit Court opinion.

3 **MR. FISHER:** I am referring to the District Court --  
4 I'm sorry, the Circuit Court opinion.

5 **THE COURT:** Which one are you referring to?

6 **MR. FISHER:** The Circuit Court opinion.

7 **THE WITNESS:** The Circuit Court opinion?

8 **BY MR. FISHER**

9 Q Are you aware of what the Court said about your database  
10 matching in *Frank v. Walker*?

11 A Are we talking about the District Court or the Circuit  
12 Court? Because I think you just said Circuit Court.

13 Q Let's bring it up.

14 **MR. FISHER:** Your Honor, may I approach?

15 **THE COURT:** Yes.

16 **MR. FARR:** Do you have a copy?

17 **BY MR. FISHER**

18 Q If you turn to page 882, and this is 17 F. Supp. 3d 837.

19 A Okay. 882.

20 Q Okay. It says, "and as explained below, I find that his  
21 use of identification numbers in these ways renders his  
22 conclusions about the numbers of registered voters without an  
23 ID suspect. Therefore, I give greater weight to Beatty's  
24 conclusions than I do Hood's." Do you see that?

25 A Yes.

1 Q Does that refresh your recollection about what the Court  
2 said about your ID matching in that case?

3 A The District Court; right.

4 Q In the *NAACP v. Walker*, the State case, the Court  
5 similarly stated that you did not adequately explain or justify  
6 your conclusions in that case; is that correct? Do you recall  
7 that?

8 **MR. BOWERS:** Your Honor, which decision is that?

9 **MR. FISHER:** This is *NAACP v. Walker*.

10 **MR. FARR:** Was that the trial court decision or  
11 Supreme Court decision?

12 **MR. FISHER:** Supreme Court decision.

13 **THE WITNESS:** It's been quite a while since I've  
14 looked at this.

15 **MR. FISHER:** Okay. May I approach, Your Honor?

16 **THE COURT:** Yes.

17 **BY MR. FISHER**

18 Q That's on page 291.

19 **THE COURT:** What is the citation?

20 **MR. FISHER:** 851 N.W. 2d 262.

21 **BY MR. FISHER**

22 Q Did you find it, Dr. Hood?

23 A Okay.

24 Q We'll bring it up on the screen for you to make it a  
25 little easier.

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1           **MR. FARR:** Could I just ask a question? Is that the  
2 dissenting opinion?

3           **THE COURT:** I don't know what he is reading from. I  
4 don't have a copy.

5 **BY MR. FISHER**

6 Q       So "Hood did not adequately explain or justify his  
7 conclusion that the Wisconsin data available, when evaluated  
8 using the 'exact Match' method was not sufficiently reliable to  
9 estimate the number of eligible voters who lack the required  
10 photo ID." Do you see that, Dr. Hood? And it's on your screen  
11 if you can't find it.

12 A       Yes, I think this was from a dissent, right, that's part  
13 of this opinion?

14 Q       Dr. Hood, you also worked as an expert witness in the  
15 recent voter ID case in *Texas v. Perry*; is that correct?

16 A       Yes.

17           **MR. FISHER:** Let's bring up page 37 of that opinion.

18           **THE COURT:** What is the citation?

19           **MR. FISHER:** Your Honor, this would be -- I just have  
20 a slip cite, 2014 WL 5090258. May I approach, Your Honor?

21           **THE COURT:** Yes.

22 **BY MR. FISHER**

23 Q       We will bring it up on the screen as well. This is  
24 page 37.

25 A       Okay.

1 Q We'll highlight this for you. I will go ahead and read  
2 it. "On cross-examination, Plaintiffs pointed out a multitude  
3 of errors, omissions, and inconsistencies in Dr. Hood's  
4 methodology, report, and rebuttal testimony, which Dr. Hood  
5 failed to adequately respond to or explain. The Court thus  
6 finds Dr. Hood's testimony and analysis unconvincing and gives  
7 it little weight." Did I read that correctly, Dr. Hood?

8 A Yes.

9 Q You also testified in the *Florida v. United States* case;  
10 correct?

11 A Yes.

12 **MR. FISHER:** Your Honor, may I approach?

13 **THE COURT:** Yes.

14 **BY MR. FISHER**

15 Q If you look at page 324 of that opinion, we'll bring it up  
16 on the screen.

17 **THE COURT:** What is the citation?

18 **MR. FISHER:** I apologize, Your Honor. It's  
19 885 F. Supp. 2d 299, District Court, District of Columbia.

20 **BY MR. FISHER**

21 Q I will quote from page 324. "And finding that  
22 African-American voters in the covered counties will be  
23 disproportionately affected by the reduction in early voting  
24 days under the new law, we reject the contrary opinions of  
25 Florida's expert witness, Professor Hood. We do so because we

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1 find that the analysis underlying his conclusions suffers from  
2 a number of methodological flaws." Did I read that correctly,  
3 Dr. Hood?

4 A Yes.

5 Q And if you look at page 324, one of the flaws in that case  
6 was that you asserted that "the effects of the early voting  
7 changes" in Florida "would be disproportionately borne by white  
8 voters because they comprise the greater share of total number  
9 of early votes cast in the covered counties" that were at  
10 issue; is that right?

11 A Where are you reading from specifically?

12 Q That's on page 324. We can bring that up for you.

13 A Okay.

14 Q It might help if you look at the monitor. It might make  
15 it a little easier.

16 If you look at the first sentence there, did I read that  
17 correctly? "Professor Hood asserts that the effects of the  
18 early voting changes would be disproportionately borne by white  
19 voters because they comprise the greatest share of total number  
20 of early votes cast in the covered counties?" Is that correct?

21 A Yes.

22 Q So in this case, you used absolute numbers to evaluate the  
23 impact of changes to early voting; is that correct?

24 A Some absolute numbers, some percentages, not just one or  
25 the other.

1 Q But the accepted practice in social sciences is when  
2 affecting the -- when assessing the effects of a voting change  
3 would be to look at the rate of the impact on different groups,  
4 not simply the result expressed in absolute numbers; is that  
5 correct?

6 A Yes, I think that's what I have done here.

7 Q The Court in that case was ultimately convinced by  
8 Dr. Gronke's analysis and not yours; is that correct?

9 A The side he was working on won the case.

10 Q And the Florida case is the only early voting case that  
11 you've been involved in up until this point; is that correct?

12 A Yes, that's correct.

13 Q And going back to paragraph 3 of your report in this case,  
14 Dr. Hood, you didn't include any of this information about any  
15 of these cases in your report submitted in this matter, did  
16 you?

17 A Well, I listed the cases.

18 Q Did you include any of the information that we've just  
19 discussed about what the Courts have said about your opinions  
20 in these cases in this case?

21 A No.

22 **MR. FISHER:** Thank you, Dr. Hood.

23 **THE WITNESS:** Thank you.

24 **THE COURT:** Anybody else on the Plaintiffs' side?

25 **MR. HO:** No, Your Honor.

1           **THE COURT:** All right. Mr. Bowers, any redirect?

2           **MR. BOWERS:** Yes, thank you, Your Honor.

3                                 REDIRECT EXAMINATION

4 **BY MR. BOWERS**

5 Q     Dr. Hood, Mr. Fisher, ironically enough, was asking you  
6 about suffering from methodological flaws, and I want to ask  
7 you a couple of questions about some of the cases that he cited  
8 to you where you served as an expert witness. Let's first talk  
9 about the Wisconsin State Court case.

10 A     Okay.

11 Q     That's the *NAACP v. Walker*?

12 A     That's correct.

13 Q     Turn to page 281 in that case, please, sir.

14 A     Okay. I think I am there.

15 Q     281 in the left-hand column --

16 A     Okay.

17 Q     -- do you see the names Abrahamson, C.J., and Crooks,  
18 Bradley, J.J., dissent?

19 A     Yes.

20 Q     And then below, do you see Shirley S. Abrahamson, Chief  
21 justice, dissenting?

22 A     Yes.

23 Q     Okay. That's on page 281 of the opinion; right?

24 A     Yes, that's true.

25 Q     Where does the portion criticizing your analysis exist in

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1 the opinion?

2 A I think it was on page 284. Maybe not.

3 Q I think it is page 291.

4 A 291.

5 Q Within the dissent; correct?

6 A It seems to be, yes.

7 Q Okay. Do you understand -- I know you are not a lawyer,  
8 but do you understand what the dissent is in a judicial  
9 opinion?

10 A Yes.

11 Q What is it?

12 A It's an opinion from the side that wasn't in the majority  
13 in the case.

14 Q Thank you. Let's also look at the federal case that we  
15 just discussed -- or that Mr. Fisher discussed with you, *Frank*  
16 *v. Walker* from Wisconsin.

17 A Okay.

18 Q That's a District Court case from Wisconsin; correct?

19 A That's correct, yes.

20 Q Are you aware that that case was appealed to the Circuit  
21 Court?

22 A Yes.

23 Q Are you aware of what the Circuit Court found?

24 A It eventually reversed the District Court.

25 Q It reversed. Okay. Thank you, Dr. Hood.



1 How about the Texas case that Mr. Fisher asked you about?

2 Is that case on appeal to the Fifth Circuit?

3 A Yes.

4 Q Okay. I want to go back to some of the questions that

5 Mr. Ho was asking you, this notion of aggregate-level data

6 versus individual-level data. Is the use of aggregate-level

7 data common in your field?

8 A Yes.

9 Q And is it recognized to be reliable?

10 A Yes. In some cases, all we have is aggregate-level data

11 for some things.

12 Q Okay. Mr. Ho asked you some questions about Plaintiffs'

13 Exhibit 733. That's your survey of Georgia voters in the 2008

14 general election. Do you see that?

15 A Yes. Got a lot of paper up here. Yes.

16 Q Was that a survey of the whole state or just three

17 counties?

18 A No. As I said, it was a survey of three counties in

19 Georgia: Lee, Forsyth, and Clark.

20 Q And in that survey, were you asking respondents about

21 their likely behavior in future elections?

22 A Yes, we did ask some questions about that.

23 Q Okay. And in your report for this case, here today, you

24 looked at actual turnout data; correct?

25 A Yes, in this case because parts of H.B. 589 were

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1 implemented and we have a before and after comparison point,  
2 2010 and 2014, I would argue.

3 Q And what's more reliable, the projections or actual data?

4 A I will just say it's easier for social scientists to look  
5 back in time to try to explain things after they've occurred.

6 Q Move on to Plaintiffs' Exhibit 734 that Mr. Ho was asking  
7 you about. Do you have that still?

8 A Yes.

9 Q Okay. Look on page 77.

10 A Okay.

11 Q And Mr. Ho asked you some questions about Dr. Minnite's  
12 conclusions "that evidence of voter fraud is an extremely  
13 atypical phenomenon." Do you see that? That's the last  
14 sentence of the second paragraph.

15 A Yes, I see that.

16 Q Okay. In the very next paragraph at the end, read that  
17 phrase that you have italicized, please.

18 A The quotation? Allen -- "As Allen and Allen state", that?

19 Q Yes.

20 A Okay. "As Allen and Allen state, the very nature of the  
21 subject matter, of course, like other illegal, immoral, or  
22 irregular activities, makes it unlikely that conclusive  
23 documentary evidence of fraud will be found."

24 Q Okay. Set that one to the side. Let's look at  
25 Plaintiffs' Exhibit 735, please.

1 A Okay.

2 Q This was your analysis about the Georgia voter ID statute;  
3 right?

4 A Yes.

5 Q Does Georgia keep voter registration data by race?

6 A Yes.

7 Q Okay. How many states use validated data; do you know?

8 A You know, if you are looking at the states' voter  
9 registration rolls and their voter history -- I haven't used  
10 voter registration rolls from every state in the Union. Most  
11 of them are going to be able to tell you whether something --  
12 whether someone has turned out to vote or not.

13 Q Okay. If you don't have validated data, what do you use?

14 A Well, you have to turn to other types of data, either  
15 survey data or aggregate-level data to make inferences with.

16 Q And in that instance, is CPS data considered reliable?

17 A Well, again, it is not my first preference, but if that's  
18 all we have to go on, then sometimes we have to turn to other  
19 data sources.

20 Q Do you know -- I think you mentioned Georgia keeps voter  
21 registration data by race. North Carolina does, too, as well;  
22 correct?

23 A That's correct.

24 Q Are you aware of how many states keep registration data by  
25 race?

1 A Yes.

2 Q How many?

3 A There are six in all: South Carolina, North Carolina,  
4 Georgia, Louisiana, Florida, and more recently Alabama has made  
5 some data available. That's been very recent.

6 Q And did you use validated data -- I think you testified to  
7 this on direct. I just want to confirm it. Did you use  
8 validated data for -- from the North Carolina State Board of  
9 Elections for your analysis in this case?

10 A Certainly, yes.

11 Q Dr. Hood, did anything that you were asked on  
12 cross-examination change your opinions or conclusions given  
13 here today?

14 A Not concerning the effects of H.B. 589 on the early voting  
15 in North Carolina, no.

16 **MR. BOWERS:** Thank you, sir. No further questions,  
17 Your Honor.

18 **THE COURT:** All right. Anything further?

19 **MR. HO:** No, Your Honor.

20 **THE COURT:** All right. Thank you. Sir, you may step  
21 down.

22 **THE WITNESS:** Thank you.

23 **MR. BOWERS:** Your Honor, may we move to admit  
24 Defendants' Exhibit 268, which is Dr. Hood's report, as well as  
25 TH-1 and TH-2, the demonstratives?

1           **MR. FISHER:** Your Honor, we just want to note two  
2 things on this. One was mentioned by Mr. Bowers earlier, and  
3 that's pages 4 through 33 of Dr. Hood's report concern voter  
4 identification. I would note also, just to add to that, the  
5 conclusions, paragraph 122 through 126, seem to all address  
6 voter identification as well, as well as about half of  
7 paragraph 127.

8           The United States will also note that paragraphs 110  
9 through 121 of Dr. Hood's report concern low-literacy voters  
10 and a criticism of Dr. Hood's -- I'm sorry -- Summers' report  
11 that was submitted in this matter on usability testing. We  
12 don't believe that Dr. Hood, in his explanation of his  
13 qualifications and on direct, when he further qualified the  
14 experience he has with regard to research methods, has the  
15 knowledge, skill, or experience to give his conclusions about  
16 usability testing and usability testing involving low-literacy  
17 voters.

18           **THE COURT:** Was that the subject of a pretrial motion  
19 in limine?

20           **MR. FISHER:** It's not, Your Honor.

21           **THE COURT:** Okay.

22           **MR. BOWERS:** Your Honor, I would agree with the  
23 Plaintiffs as it relates to the photo ID portions. As I said  
24 at the outset, pages 4 through 33 are -- deal with photo ID  
25 analysis, and we don't think the Court needs to consider that.

1 I don't know how we excise that out of the exhibit as it's  
2 introduced into evidence, but we would state for the record  
3 that you don't need to consider that, and the provisions in the  
4 conclusions -- in his overall conclusions that deal with the  
5 photo ID provisions, you can disregard those as well.

6           The last piece that Mr. Fisher was talking about, the  
7 analysis of Professor Summers' report, that's paragraphs 110  
8 through 121, there was no objection to anything with regard to  
9 Dr. Hood's testimony. And as your question just elicited,  
10 there was never a motion in limine filed in -- with regard to  
11 his rebuttal of Dr. Summers. So we would ask that you accept  
12 that portion of his report into evidence.

13           **MR. FISHER:** It wasn't addressed on direct.

14           **THE COURT:** Well, there's a lot of stuff that hasn't  
15 been addressed because I have several thousand pages of expert  
16 reports that have been admitted into the record for later  
17 reading. I think that's true on both sides, if I am not  
18 mistaken. I am going to admit 268. Pages 4 through 33 are not  
19 being offered as consistent with others, and I will certainly  
20 apply that same rule to the conclusions in paragraphs 122 to  
21 126 that deal with voter ID. I understand that they are not  
22 applicable at this point in time.

23           As to the remainder, the objection is overruled. And  
24 you also said I think -- is it TH-1 and TH-2?

25           **MR. BOWERS:** Yes, sir.



1 Q Did you receive any honors with your degrees?

2 A Both of those were cum laude.

3 Q Did you do any coursework that is relevant to what you've  
4 been asked to do in this litigation?

5 A Yes, I took a course in law school on elections law and on  
6 federal practice of civil rights. I took two semesters of  
7 graduate-level statistics, and all of my other coursework for  
8 the master's degree was in American politics, specifically  
9 focusing on campaigns and elections.

10 Q So could you describe the difference between a coursework  
11 for a master's degree and a bachelor's degree?

12 A So to put it together, the first thing, obviously, is  
13 you're in the classroom with the other Ph.D. students; but,  
14 more broadly, you are being asked to transition along with the  
15 other Ph.D. students from being a consumer of knowledge as an  
16 undergrad to being a producer of knowledge as a grad student.

17 Q And what are the sort of expectations you have for a  
18 master's degree?

19 A Well, the expectations for the master's degree is you're  
20 going to do the same sorts of coursework and you are going  
21 to -- you know, in the classroom, professors are wanting you to  
22 learn the -- do the reading that you would do for a Ph.D., and  
23 as one of my professors put it in a seminar, they judge the  
24 success of a seminar by the number of published papers that  
25 come out of it.



1 Q Did you publish any papers while you were getting your  
2 master's degree?

3 A No, sir.

4 Q Why is that?

5 A Because I was going to be a lawyer, and it wasn't -- it's  
6 not relevant to work as a lawyer, and it's not relevant to my  
7 work as an elections analyst today.

8 Q Did any of your professors suggest that you publish a  
9 paper?

10 A Yes.

11 Q And who was that? And what did he suggest?

12 A Dr. Aldrich, in the class that he joint taught with  
13 Dr. Gronke, suggested that I submit my paper to *The Journal of*  
14 *Politics*. I remember that because he sat on the board, and I  
15 believe he still does. And also he suggested that my master's  
16 thesis be published.

17 Q And the paper that you prepared --

18 **MR. HO:** Objection, hearsay, Your Honor.

19 **THE COURT:** I haven't heard the rest of the question.  
20 What is the question? Are you asking -- to the next question?

21 **MR. HO:** Actually, to the previous question, Your  
22 Honor, the out-of-court statements by Mr. Trende's faculty  
23 members.

24 **THE COURT:** Oh, okay. All right. It's a little  
25 late. Overruled.

1 **BY MR. FARR**

2 Q The paper that you were asked to publish, did it include a  
3 regression analysis?

4 A It did.

5 Q Can you tell the Court what a regression analysis is?

6 A So what you are doing with a regression analysis is you  
7 are testing the correlation between different variables. So an  
8 example of one that I did in 2014, we were interested in which  
9 candidates were likely to lose and win in the 2014 Senate  
10 elections. So what you would do is you would input for 2012,  
11 2010, going back, the different candidates for Senate in all  
12 the elections. And then in the next column -- and that's your  
13 dependent variable. That's what you are interested in  
14 measuring.

15 In the next columns, you input what's called the  
16 independent variables, the variables that you believe have an  
17 effect on the outcomes, so Presidential job approval in the  
18 state, incumbency, whether there is a problematic candidate, as  
19 we like to call it, like Todd Akin or a few others.

20 So what the regression analysis -- a way to think about  
21 it, what a regression analysis allows you to do is to take two  
22 of the columns and kind of put a pin on it. So incumbency and  
23 problematic candidates, put a pin on it. And then you move the  
24 other variable, the Presidential job approval, and you see if  
25 the outcome moves with it. And then you put a pin on the other

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1 two variables and you move the third one up and down and see if  
2 the outcome moves along with it. It's a way of testing whether  
3 there is a correlation.

4 The regression analysis then gives you an equation, in  
5 effect, that you can plug future outcomes into, and it tells  
6 you that if things stay the same, this is what the outcome  
7 should be in these elections.

8 Q Now, while you were working on your master's degree, did  
9 you publish a thesis?

10 A I did.

11 Q What was your thesis on?

12 A It was on the application of non-parametric scaling  
13 techniques to Supreme Court voting patterns in the early 20th  
14 Century.

15 Q Did you have an adviser?

16 A I did.

17 Q Who was that?

18 A John Aldrich.

19 Q And who is that?

20 A He is one of the preeminent political scientists dealing  
21 with American politics, especially with parties and how they  
22 relate to the electoral system. His most famous book is  
23 *Why Parties?*

24 Q And did you take classes with Dr. Aldrich -- is he a  
25 Ph.D.?

1 A Yes, he is a Ph.D.

2 Q I got confused last time about calling you Dr. Trende. So  
3 I needed to check on that.

4 Did you take any classes with him?

5 A I took a number of classes with him, and then some of my  
6 coursework was independent studies with him.

7 Q Okay. Do you know Dr. Paul Gronke?

8 A Yes, I know Dr. Gronke.

9 Q And was he a professor at Duke?

10 A He team-taught a course with Dr. Aldrich on American  
11 politics and elections.

12 Q Did you take that class?

13 A I did.

14 Q When did you graduate?

15 A I graduated in 2001.

16 Q And after you graduated, what was your first job?

17 A I clerked on the United States Court of Appeals for the  
18 10th Circuit.

19 Q And who was the judge that you clerked for?

20 A It was Chief Judge Deanell Reece Tacha, T-A-C-H-A.

21 Q And then what did you do after that?

22 A I was an associate at the law firm of Kirkland & Ellis,  
23 LLP, in the DC office.

24 Q Did you have any other experience with law firms after  
25 that?

1 A After I left Kirkland, I went to Hunton & Williams in  
2 Richmond, Virginia, and then a small firm in Newport News.

3 Q How long did you work at Kirkland & Ellis?

4 A I was there from 2005 to 2009.

5 Q And what sort of work did you do at Kirkland & Ellis?

6 A I was at -- I did typical lawyer work, analysis of  
7 statutes, reading case law, a lot of brief and motion writing.  
8 I was more focused on the brief and motion side than on the  
9 discovery side.

10 Q And that involved reviewing statutes?

11 A It did.

12 Q And did you -- was it fair to say you routinely  
13 interpreted statutes in your job at Kirkland & Ellis and your  
14 other law firms?

15 A In a Court, I would say the judge or the judiciary  
16 interprets them, but I tried to give opinions on how those  
17 statutes would be interpreted, not to be too pedantic.

18 Q After your last legal job, when did you stop working with  
19 that firm?

20 A That was in early 2010 when I got the full-time offer from  
21 RealClearPolitics.

22 Q And what is RealClearPolitics?

23 A RealClearPolitics is a website that aims to be a one-stop  
24 shop for all political and election information that's  
25 available.

1 Q And what is your job title there?

2 A I'm the senior elections analyst.

3 Q What does that mean?

4 A It means that I am basically the right-hand man to John  
5 McIntyre, who is the CEO and founder of the firm. I'm the  
6 public face of the website. So basically my job, in a  
7 nutshell, is to try to know everything that I can possibly know  
8 about campaigns and elections so that when I am asked to speak  
9 or do an interview or appear on a panel, I am not being  
10 blindsided by a question or a statement.

11 Q What sort of things do people ask you to provide for them  
12 at RealClearPolitics?

13 A A lot of what I do, at least within the website, is  
14 writing. I write articles on elections, what's factoring into  
15 them, what the likely outcomes are going to be. I try to use  
16 the political science knowledge that I gained in my master's  
17 degree to explain at a very kind of high level so that people  
18 can actually understand it and develop informed opinions about  
19 what's going on with the elections.

20 Q And in your position at RealClearPolitics, do you ever  
21 perform regression analysis?

22 A Routinely. I mean, regression analysis has this air of  
23 mystique about; it, but it's a tool, just like addition is a  
24 tool, and you can apply it in various situations once you  
25 understand it.

1 Q Do you give speeches and interviews?

2 A I do.

3 Q Can you tell us about some of the places where you have  
4 given speeches and interviews?

5 A The Brookings Institution, the Bipartisan Policy Center,  
6 American Enterprise Institute, Cato Institute. I have appeared  
7 on the Brian Lehrer Show, on the Diane Rehm Show. I appear on  
8 Fox News Radio, the John Batchelor Show. Really a huge variety  
9 of places.

10 Q Do you have a policy for determining when or where you  
11 will give a speech?

12 A No. Basically if someone asks, I will appear.

13 Q Does the ideology of the organization asking you to give a  
14 speech or interview have an impact on whether you do it or not?

15 A No. I will appear on liberal, conservative, moderate  
16 platforms. It makes no difference to me.

17 Q Have you written any articles outside of  
18 RealClearPolitics?

19 A I have written articles in books. I published two pieces  
20 in *National Review*, one in *The Weekly Standard*, and one  
21 recently in *Politico Magazine*.

22 Q And you say you've published books on politics?

23 A Four books -- well, published in my own name or as a  
24 co-author or chapters in four books, yes.

25 Q Could you tell the Court about those?

1 A So the first -- my own book is called *The Lost Majority:*  
2 *Why the Future of Government is Up for Grabs and Who Will Take*  
3 *It*. It is an attempt to explain -- after the 2008 elections,  
4 many people thought that the Obama coalition had fundamentally  
5 transformed American politics, and James Carville wrote a book  
6 called *40 More Years: Why the Democrats* -- I can't remember the  
7 exact subtitle, but it was why the Democrats were going to stay  
8 in power forever. And then in -- we had the 2010 elections,  
9 and a lot of people were shocked that things turned out the way  
10 they did.

11 So the thesis of the book was to look at demographic  
12 trends over the past 100 years and say, you know, we never have  
13 sort of straight-line projections that a lot of the -- what we  
14 call the emerging Democrat majority theorists thought we would  
15 see, and that we shouldn't have been surprised. That's my  
16 book.

17 I was a co-author for *The Almanac of American Politics*  
18 *2014* --

19 Q Could you tell the Judge what *The Almanac of American*  
20 *Politics* is?

21 A It is a book started -- it's a series, I guess, started in  
22 1970 from Michael Barone back when he was extremely liberal.  
23 It was supposed to be a handbook for student activists to go  
24 lobby members of Congress, that they would understand the  
25 district, they would understand the ideology of the



1 legislators.

2       And so what we do is we take all the 435 Congressional  
3 districts and we do a writeup at the beginning of the -- kind  
4 of the history behind the districts, demographic, economic,  
5 educational trends within the districts and then Chuck  
6 McCutcheon, who was a co-author at the time, did the writeups  
7 of the individual legislators, their backgrounds, their voting  
8 patterns and so forth.

9 Q       And what edition have you participated in?

10 A       I participated in the 2014 edition, which covered the 2012  
11 elections.

12 Q       Anything in particular that you wrote about?

13 A       Well, the states that I did tended to focus on the South,  
14 and I did do the districts for North Carolina in particular,  
15 and because North Carolina had a significant redistricting  
16 effort in 2012, all those districts needed to be reinvestigated  
17 and rewritten.

18 Q       Okay. Now, do you know somebody named Larry Sabato?

19 A       I know Dr. Sabato well.

20 Q       Have you worked with him?

21 A       I am a -- I think senior columnist is my title or --

22 Q       First of all, let me stop you. Who is Larry Sabato?

23 A       Larry Sabato is a political scientist at the University of  
24 Virginia who runs the Center for Politics. He is involved  
25 in, again, the type of thing that I do, trying to explain at a

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1 basic level the concepts of political science so that readers  
2 can gain a more informed view of what's going on with the  
3 elections without acquiring a Ph.D.

4       So I was hired as a senior columnist, I believe is my  
5 title, and I publish -- tend to publish a monthly column for  
6 their journal. I also wrote chapters for two of his books.  
7 After every election, Dr. Sabato publishes an anthology with  
8 articles from -- I think Michael Toner of the FEC did a chapter  
9 on campaigns, a couple of Ph.D.s in political science submit  
10 chapters, and I do chapters for the books covering the 2012 to  
11 2014 elections.

12 Q     Okay. Now, Mr. Trende, have you ever written a  
13 peer-reviewed article?

14 A     No, never.

15 Q     Why not?

16 A     Well, again, it is not relevant to what I do. There would  
17 be very little career reward for me publishing a peer-reviewed  
18 article.

19 Q     Okay. Have you ever served as a peer reviewer?

20 A     I have.

21 Q     And what is a peer reviewer?

22 A     A peer reviewer is someone who is asked -- so when you  
23 submit to a journal, the editorial staff takes a look at the  
24 submission; and if they like it, they send it to peer  
25 reviewers, who are typically, though not always, Ph.D.s with

1 expertise in the field, to decide if it's up to standards, to  
2 decide -- you can look at the underlying data and decide if the  
3 different regression analyses or other analyses have been  
4 performed appropriately.

5 Q How many times have you -- have you served as peer  
6 reviewer?

7 A I have done it twice for political science journals in the  
8 last two years.

9 Q Have political scientists ever cited your work?

10 A Yes.

11 Q Can you tell us about that?

12 A It happens frequently, but the most recent example that I  
13 can think of is Dr. Hawley from the University of Alabama  
14 published a book, I think it is *White Voters in 21st Century*  
15 *America*, and he has an entire chapter devoted to a missing --  
16 my missing white voters theory that I published in 2013 and  
17 2012.

18 Q All right. Do you have your notebook of your reports up  
19 there?

20 A Yes.

21 Q Could you turn to Tab B for a second. Do you see that?

22 A Yes.

23 Q Is that the report that you -- and this is Exhibit 270?

24 A Yes, sir.

25 Q This is a report you prepared in this case in March of

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1 2015?

2 A Yes, March 2015.

3 Q Okay. And I'm going through this right now because I  
4 wanted to make sure the Court knows. If you turn to Tab 1, is  
5 that a copy of your résumé there, Mr. Trende?

6 A Yes, it is.

7 Q Now, and that lists your books and articles that you have  
8 written?

9 A Yes.

10 Q All right. Now --

11 A I believe so.

12 Q There is a term that I have come to know called  
13 "psephology"?

14 A Yes.

15 Q Can you spell that for the court reporter?

16 A P-S-E-P-H-O-L-O-G-Y.

17 Q So that's a real word; right?

18 A That is a real word. It has a Wikipedia entry, and it's  
19 used in day-to-day parlance.

20 Q Can you explain to the Court what it is?

21 A Psephology is nothing more than the term for the study of  
22 elections and campaigns as they relate to elections. There  
23 tends to be a focus on prediction, but there doesn't have to  
24 be.

25 Q Now, is there a journal of psephology?

1 A There is no journal of psephology.

2 Q Is there a department at some university of psephology?

3 A There is no department of psephology that I know of.

4 Q Do you have any understanding of why that's so?

5 A Well, if you look at the structure of political science,  
6 underneath the headline of political science there's basically  
7 five subcategories: American, comparative, international,  
8 methodology, and theory. And then underneath American,  
9 there's -- if you look at a Ph.D. reading list, there is a  
10 large number of subjects. Sometimes campaigns and elections  
11 will be a subcategory. Sometimes it will be jammed into  
12 political opinion. But basically psephology is nothing more  
13 than a subdiscipline or a sub subdiscipline within political  
14 science.

15 Q Do journals publish articles about psephology?

16 A Yes. For an example, every election cycle, *PS*, which is  
17 the *Journal of Political Science*, publishes a roundtable of  
18 predictions for the forthcoming elections where different --

19 **THE COURT REPORTER:** I'm sorry. Can I get you to  
20 slow down?

21 **THE WITNESS:** Yes, I'm sorry. I get going.  
22 Publishes a round of predictions from various political  
23 scientists about how their models suggests the forthcoming  
24 election will turn out, and then there is just generalized  
25 articles studying elections that would fall under the rubric.

1           **THE COURT:** Is this a good time to take a break?

2           **MR. FARR:** Sure, Your Honor.

3           **THE COURT:** We'll take our 20-minute break, and then  
4 we'll come back.

5           (The Court recessed at 3:32 p.m.)

6           (The Court was called back to order at 3:57 p.m.)

7           **THE COURT:** All right.

8           **MR. FARR:** Thank you, Your Honor.

9 **BY MR. FARR**

10 Q       Mr. Trende, when you're doing work at RealClearPolitics,  
11 what sort of data do you typically look at to do your analysis  
12 and write articles?

13 A       Well, it's really a wide range of data. One of the --  
14 some of the key pieces, especially if you are doing something  
15 related to turnout or demographics, are the exit polls and the  
16 Current Population Survey. To a lesser extent, the data from  
17 the secretary of state's offices, because we don't get it for  
18 as many states.

19 Q       Could you tell the Court what you mean by "exit polls"?

20 A       So during an election, the -- it's kind of a long story;  
21 but to make it brief, during an election, the media  
22 organizations pay for people to stand outside of the polling  
23 places in key precincts and ask people as they come out, did  
24 you vote, ask about some demographic characteristics, who they  
25 voted for, what was important in their voting, and so forth.

1 And then those data are transmitted to a centralized location  
2 to try to get a sense for what the -- what the demographic  
3 breakdown of the state was and then, crucially, how those  
4 different demographics voted.

5 Q Okay. And then tell the Court what your understanding is  
6 of CPS.

7 A So the Current Population Survey is administered -- the  
8 Census Bureau does it. It uses it to compute the unemployment  
9 rate; but after election, a few weeks after the election, the  
10 CPS data has the Voting and Registration Supplement, which asks  
11 people whether they were registered to vote, whether they  
12 actually voted. There is, I think, seven questions, and then  
13 there is the usual battery of demographic characteristics so  
14 you can get a sense within each state -- a better sense because  
15 there is a big sample size.

16 Q And do people have to respond to that?

17 A No. No. It is not a mandatory survey. I think I had put  
18 in earlier that it was, but that's actually I think the ACS,  
19 the American Community Survey, that I had messed up.

20 Q Please tell the Court what the American Community Survey  
21 is.

22 A The American Community Survey is the follow-up to the long  
23 form census that generates a lot of the data that the long form  
24 census used to generate.

25 Q And what is the response rate like to the CPS survey?

1 A The CPS survey has a -- I believe a high response rate,  
2 but the problem with the data is that people -- we know that  
3 there's two things -- there's multiple things that people lie  
4 about, but two of the things that people lie about are whether  
5 they go to church on Sundays and whether or not they voted. So  
6 you do have this effect with the CPS data of -- we know how  
7 many people actually voted because we can count the votes, and  
8 you end up with a larger number of people saying that they  
9 voted than actually did.

10 Q And had you used and were you familiar with the CPS data  
11 before we engaged you in this case?

12 A Yes.

13 Q Had you written any articles about it?

14 A I have, yes.

15 Q Do you remember what those were?

16 A There was a fight about whether African-American -- the  
17 African-American participation rate had increased or decreased  
18 between 2008 and 2012 that revolved around the CPS data.  
19 Involved in that was how the CPS data -- you know, how you  
20 could account for this overreporting rate, and I weighed in on  
21 that.

22 Q Okay. And how do you get the underlying data for the CPS?

23 A So you can go to a fairly Byzantine website called  
24 DataFerrett where you can download the individual responses.  
25 So that will tell you that Respondent No. 2572 is an



1 African-American male age 65 in the state of Arizona, and he  
2 voted -- he was registered to vote but did not actually vote.  
3 You can get that individual level for all, I think, usually  
4 around 100,000-plus respondents.

5 Q Now, Mr. Trende, in working for RealClearPolitics, does  
6 RealClearPolitics track the Presidential races?

7 A We do track the Presidential races, yes.

8 Q And what other races do you track?

9 A The major ones that we track are Senate, gubernatorial,  
10 and House elections, which is where I do probably the most of  
11 my work, House and Senate. We do some state legislatures, some  
12 legal work, but the main focus is on the federal elections.

13 Q Okay. And on the federal elections and gubernatorial  
14 elections, is this done regionally or is this a national  
15 tracking that you do?

16 A Well, I don't know -- sometimes I will write a piece like  
17 about the demise of Southern Democrats. So that would be a  
18 regional piece. I did one, I think, at the end of 2014 about  
19 why that happened. But, you know, we will look at the federal  
20 level at aggregate, at all 50 states aggregated. We'll also  
21 look at individual races and, you know, do writeups about what  
22 was happening in each races, try to predict individual races  
23 and generally try to inform the public about what's going on in  
24 these races.

25 Q And so for Congress, does RealClearPolitics report on just

1 one or two Congressional races, or do they look at it on a  
2 national level?

3 A We would look at it on a national level, although we would  
4 look at it both as an aggregate, you know, what's the share of  
5 the popular vote that the polls are showing. We'd also look at  
6 individual races to say, you know, okay, the Robin Hayes is in  
7 trouble in North Carolina '08 -- in 2008.

8 Q Now, in your work at RealClearPolitics, did you ever  
9 become familiar with early voting?

10 A I did, yes.

11 Q And what does that mean to you?

12 A Early voting, it's a catchall term for early in-person and  
13 no-excuse in-person absentee voting. It is basically a system  
14 that allows you to go to a place and cast your ballot before  
15 the actual Election Day without having to provide an excuse for  
16 doing so.

17 Q And has an analysis of early voting become more important  
18 in recent elections?

19 A Absolutely, both in the prediction field because people  
20 are interested --

21 **MR. HO:** Objection to this, Your Honor. Mr. Trende  
22 hasn't been qualified as an expert in anything yet, and now  
23 he's offering an opinion about --

24 **MR. FARR:** I am still laying this foundation for what  
25 we're going to offer him as an expert on, Your Honor, showing

1 that his experience in this.

2           **THE COURT:** Okay. Overruled for now. I will allow  
3 you to voir dire him later.

4 **BY MR. FARR**

5 Q     So I just want to know, have you written about early  
6 voting?

7 A     It is of increased interest to what I am doing as an  
8 analyst because there is questions about whether you can  
9 predict the election on the basis of early voting returns, and  
10 embedded in that is a question of whether the people who vote  
11 on Election Day are new voters or -- I'm sorry, who vote early  
12 are new voters or whether you're just what we call  
13 cannibalizing voters, taking them from Election Day and  
14 shifting them into early voting when they would have voted  
15 anyway. And there's questions of whether early voting is a  
16 measurement of enthusiasm. So that's all stuff that we are  
17 interested in.

18 Q     All right. Now, do you serve on any boards or committees  
19 related to demographic projections as it relates to elections?

20 A     I do. I serve on the States of Change board -- it's a  
21 joint enterprise of the Center for American Progress, Brookings  
22 Institution, and American Enterprise Institute -- in an attempt  
23 to recreate the demographic projections that are no longer  
24 published by the Census Bureau.

25           And one addition to an earlier question you had asked me

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1 about speeches, I was also -- I also in 2012 went to Brussels  
2 as a panel discussion before the EEAS, which is the state  
3 department for the EU, about the upcoming American elections.

4 Q Without giving your opinion at this time, Mr. Trende,  
5 could you tell the Court what you've been asked to do in this  
6 case?

7 A I have been asked to look at the laws in the 50 states,  
8 plus the District of Columbia, in an attempt to place North  
9 Carolina's laws in a national context. And then also render  
10 opinion -- an opinion about whether we can draw conclusions  
11 about the relationship between the laws in this case and  
12 turnout among different groups.

13 Q Did you consult any peer-reviewed literature for those?

14 A I did, yes.

15 Q Would you tell us what that was?

16 A Well, there is a vast body of literature on Election Day  
17 registration, less so on same-day registration. There is some  
18 on early voting that you would want to look at because, you  
19 know, you do an independent investigation, but you also want to  
20 validate that your conclusions are consistent with what others  
21 have found looking at it. For example, Dr. Gronke's article  
22 gives a Venn diagram of different laws, and I believe the  
23 Larocca and Klemanski, K-L-E-M -- I am not even going to try to  
24 spell it. I'm sorry. It's Klemanski with a K -- their data is  
25 available online. So you can compare it to that, just to make

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1 sure that, if you have an inconsistency, like I found between  
2 my report and Dr. Stewart's, you can explain that  
3 inconsistency.

4 Q Did you consult any other sources?

5 A I did look at the other expert opinions, again, to see if  
6 things were consistent; and if there was an inconsistency, you  
7 want to be able to explain it. And the statutes, that was the  
8 primary source for what I was doing was actually going in and  
9 looking at the statutes in the various states to figure out  
10 what their voting laws were.

11 Q And, Mr. Trende, have you ever given expert testimony in  
12 cases before?

13 A I have never testified live. I have been retained as an  
14 expert, and my understanding is that my reports have come in  
15 without objection, but I never testified live.

16 Q Can you tell -- has your expert report ever been admitted  
17 into evidence in any cases in North Carolina?

18 A My understanding is that in the *Dickson v. Rucho* case, my  
19 opinion came in without objection.

20 Q And tell the Court what that was all about.

21 A That was a litigation about the state legislative  
22 districts in North Carolina. I don't recall whether it was a  
23 *Shaw* case or a Voting Rights Act case or both, but it had to do  
24 with the racial composition of the districts and the partisan  
25 lean of the districts.

1 Q And what -- how many districts did you analyze in that  
2 case; do you remember?

3 A It was all of them.

4 Q Do you recall if you analyzed more than one plan?

5 A Yeah, there were six plans, and I want to say it's 120  
6 House districts and 40 Senate, but that's -- I might be off on  
7 that. So it ends up being over a thousand districts.

8 Q What was the other case in which your expert testimony was  
9 accepted by the Court?

10 A That was the *NAACP v. Husted*, H-U-S-T-E-D, case in Ohio,  
11 which dealt with the early voting and same-day registration  
12 laws.

13 Q Okay.

14 A And no one testified, to my understanding, as an expert in  
15 that case. It was done on the papers.

16 Q You submitted a report in that case?

17 A I did submit a report and was deposed.

18 Q Was your report disqualified?

19 A Not to my knowledge.

20 **MR. FARR:** All right. Your Honor, we would like to  
21 tender now Mr. Trende as an expert in U.S. campaigns and  
22 elections, the voting laws at issue in this case, United States  
23 demographics, and voting behavior.

24 **THE COURT:** Hold on just a minute.

25 **MR. HO:** Permission to voir dire the witness?



1 A Right. Two classes on statistics taken over the span of  
2 two semesters.

3 Q Okay. And your master's thesis was on the United States  
4 Supreme Court; correct?

5 A That was covered, yes. I wouldn't say that's what it was  
6 on.

7 Q Your master's thesis was not on elections or voting  
8 patterns?

9 A That's correct.

10 Q How many professors were on your committee for your  
11 master's thesis, Mr. Trende?

12 A Three.

13 Q A Ph.D. thesis typically has five; is that right?

14 A It's possible.

15 Q You don't know one way or the other; right?

16 A I do not know how many people are typically on a Ph.D.  
17 committee, no.

18 Q Now, you described yourself as a psephologist, Mr. Trende?

19 A That is part of what I do, yes.

20 Q And you would describe psephology as election prediction?

21 A I believe it is broader; more broadly, the analysis of  
22 elections and campaigns.

23 **MR. HO:** Permission to approach, Your Honor?

24 **THE COURT:** Yes.

25 **BY MR. HO**



1 Q Mr. Trende, you were deposed twice in this case; correct?

2 A Yes.

3 Q The first time you were deposed was on June 6, 2014;  
4 correct?

5 A Yes.

6 Q Could you turn to page 26 in that deposition transcript,  
7 which I just handed you. Just let me know when you are there.

8 A Okay.

9 Q Look at line 16, please.

10 A Yes.

11 Q (Quoted as read):

12 "Q You state in your declaration that  
13 you are a recognized expert in the field of  
14 psephology.

15 "A Election prediction." Period.

16 Those are the -- that was the question and your answer?

17 A There was no question, but I did say "election  
18 prediction."

19 Q You didn't during your deposition describe psephology as  
20 anything beyond election prediction; correct, Mr. Trende?

21 A I don't know where I used the term "psephology" in there.

22 Q As part of your work as a psephologist predicting  
23 elections, you write for a website called Crystal Ball;  
24 correct, Mr. Trende?

25 A That's correct.

1 Q That's published online?

2 A That's correct.

3 Q It is not in print like a newspaper; right?

4 A Not to my knowledge.

5 Q And you also write for RealClearPolitics?

6 A That's correct.

7 Q And RealClearPolitics is a website; right?

8 A Yes.

9 Q It's not in print; it's not syndicated?

10 A No, it is not syndicated.

11 Q It is like a blog; right?

12 A No.

13 Q How would you describe it then?

14 A A website.

15 Q I am just going to read the Wikipedia -- you mentioned  
16 Wikipedia at one point during your direct testimony. I am just  
17 going to read the Wikipedia description of RealClearPolitics.  
18 I just want to know if you agree with it or not.

19 "Patrick Stack of *Time* magazine has described the site's  
20 commentary section as 'right-leaning.' The site has been  
21 described as being run by conservatives and 'containing opinion  
22 pieces from multiple media sources.' In 2009,  
23 RealClearPolitics was described as a weblog 'in the  
24 conservative pantheon' by Richard Davis."

25 Do you agree with that characterization, Mr. Trende?

1 A What part of it?

2 Q Are there parts of it that you disagree with it?

3 A As I just stated, I don't think we are a blog. At one  
4 point, there was a RealClearPolitics blog. There is isn't  
5 anymore. There hasn't been for several years. Whether it's  
6 right leaning, left leaning, down the middle depends largely on  
7 your point of view. I am sure from the perspective of some  
8 people, we lean right. I know from my inbox that some people  
9 are convinced we lean left.

10 Q Now, your work for RealClearPolitics is not generally  
11 peer-reviewed by political scientists prior to publication;  
12 correct?

13 A It is not peer-reviewed.

14 Q It is not peer-reviewed by anyone; correct?

15 A Within the -- it is edited, but it's not peer-reviewed in  
16 the sense that we use the term "peer-reviewed."

17 Q Who is your editor?

18 A John McIntyre, and then there is a copy editor.

19 Q Is Mr. McIntyre -- he doesn't review every one of your  
20 posts before they go up; right, Mr. Trende?

21 A There is a second person, Nick Nordseth who sometimes  
22 reviews them. I don't believe anything I published in the last  
23 few years goes up without being reviewed by one of them.

24 Q Some of your publications have gone up without being  
25 reviewed by anyone; right, Mr. Trende?

1 A I don't know if that's true.

2 Q You don't know one way or the other?

3 A I mean, you would have to give me an example. If you told  
4 me that there was something I had done that went up without  
5 being reviewed by anyone, and gave me some evidence on it, I  
6 wouldn't disagree with you. As I sit here today, I actually  
7 can't think of articles I did that weren't reviewed by someone.

8 Q I think you told Mr. Farr that you haven't written any  
9 articles for a publication that has been peer-reviewed by  
10 political scientists; right?

11 A That's correct.

12 Q So that includes any article concerning the voting  
13 practices at issue in this case. You haven't written anything  
14 about those voting practices in a peer-reviewed journal;  
15 correct, Mr. Trende?

16 A I have written nothing peer-reviewed.

17 Q So your work on elections has never been tested by the  
18 rigors of peer review, correct, Mr. Trende, prior to  
19 publication?

20 A Prior to publication, no. After publication, I think I  
21 have gotten commentary and feedback that is every bit as  
22 rigorous as peer review, but not prior.

23 Q Now, prior to your work in this case, you had not reviewed  
24 any state's laws with respect to same-day registration;  
25 correct, Mr. Trende?

1 A I think that's right, yes.

2 Q And prior to this case, you had not reviewed any state's  
3 laws with respect to out-of-precinct voting; right, Mr. Trende?

4 A Prior to the preliminary injunction phase of this case;  
5 correct. I'm sorry, what was the subject issue for the last  
6 question?

7 Q Out-of-precinct voting.

8 A Out-of-precinct voting, that's correct.

9 Q Prior to this case, you had not reviewed any state's laws  
10 with respect to preregistration; correct, Mr. Trende?

11 A Prior to the pre -- the preliminary injunction phase of  
12 this case, that's correct.

13 Q Now, prior to your work on this case, you did not have any  
14 experience analyzing the effect of changes to voter  
15 registration requirements on voter behavior; right, Mr. Trende?

16 A I think that's right.

17 Q Now, prior to your work in this case, you did not have any  
18 experience analyzing the effect of changes to same-day  
19 registration specifically on voter behavior; right, Mr. Trende?

20 A That's correct.

21 Q And prior to this case, you did not have any experience  
22 analyzing the effect of changes to out-of-precinct voting on  
23 voter behavior; right, Mr. Trende?

24 A That's correct.

25 Q And prior to your work on this case, you did not have any

1 experience analyzing the effect of changes to preregistration  
2 on voter behavior; correct, Mr. Trende?

3 A Again, with the caveat about the preliminary injunction  
4 phase, yes, that's correct.

5 Q So when I say "this case," I mean this case as filed in  
6 this case, including the preliminary injunction proceedings.  
7 Is that okay?

8 A Yes.

9 Q Now, you would say, Mr. Trende, that prior to your work on  
10 this case, you did have some experience analyzing the effect of  
11 early voting on voter behavior; right, Mr. Trende?

12 A That's correct.

13 Q And the sum total of your experience prior to this case of  
14 analyzing the effect of changes to early voting laws on voter  
15 behavior consisted of some back-and-forths on Twitter; right,  
16 Mr. Trende?

17 A No.

18 Q Mr. Trende, can you turn to page 44 in your deposition  
19 transcript, please?

20 A Uh-huh.

21 Q Can you look at line 7?

22 A Uh-huh, yes.

23 Q (Quoted as read):

24 "Q And do you have any experience  
25 analyzing the effect of changes to early voting

1 schemes or early voting laws on voters'  
2 behavior?

3 "A Again, what do you mean? Do you mean  
4 as from a lay perspective, from my own  
5 interest? Do you mean from publication in a  
6 peer-reviewed journal? What do you mean?

7 "Q Have you done it before for any  
8 reason?

9 "A I don't know."

10 Were those the questions and your answer, Mr. Trende?

11 A Yes.

12 Q And could you turn to page 45. Let's stay on page 44. My  
13 apologies. Can we turn to line 21:

14 "Q And do you have any experience in  
15 analyzing the effects of changes to provisional  
16 voting laws or out-of-precinct voting behavior?

17 "A No. And the reason I need to  
18 clarify -- the reason why I said I don't know  
19 on the early voting is that I have had  
20 back-and-forths with, for example, Dr. Mike  
21 McDonough on Twitter about cannibalization of  
22 data of early voting. That was something that  
23 I examined before the 2012 election because  
24 there was a big debate about whether the Obama  
25 campaign was just pulling from the regular

1 voting pools into the early voting pool or  
2 whether these new voters who would not have  
3 otherwise voted. So the answer to that  
4 question is yes."

5 A That is an example I provided. One example.

6 Q You didn't provide any other examples during your  
7 deposition; right?

8 A No, and you moved on to -- or whoever was asking the  
9 questions moved on to a different issue. But that was an  
10 example I provided that showed, yes, the answer to your  
11 question, or whoever was asking the questions, was I do recall  
12 some instances.

13 Q Now, in your report in this case -- we are not going to  
14 get into the substance of it yet, but you attempt to measure  
15 the relationship between voting laws at issue -- the voting  
16 laws that are issue in this case and African-American turnout;  
17 correct?

18 A That's correct.

19 Q Now, no one else in this case, in your opinion, has tried  
20 to do that; right?

21 A Not with the regression analysis, to my understanding.

22 Q We have political scientists, both on the Plaintiffs' side  
23 and we have some Ph.D.s on the Defendants' side, and you are  
24 the only person in this case to try such an analysis; right,  
25 Mr. Trende?



1 A There are thousands of pages of expert reports. I don't  
2 know everything that went into every expert report. To my  
3 recollection, as I sit here, I don't think anyone else has done  
4 a regression analysis looking at changes of the voting laws and  
5 how they relate to African-American turnout.

6 Q And you can't think of an example, Mr. Trende, of work  
7 that you performed prior to this case in which you conducted a  
8 similar analysis involving a regression to measure the effect  
9 of a law on voter turnout; correct?

10 A I don't think I can; but, as I said, regression analysis  
11 is a tool. It's like addition. Once you've learned how to add  
12 apples, you know how to add, you know, miles or any other  
13 thing. Similarly, regression analysis is a tool that allows  
14 you to check for correlations between different effects. When  
15 you know how to run a regression analysis, you know how to run  
16 it in different circumstances --

17 Q Thank you. I heard your answer about what a regression  
18 analysis is.

19 **MR. FARR:** Your Honor, may he finish his answer when  
20 he's asked a question, please --

21 **THE COURT:** Yes.

22 **MR. FARR:** -- instead of being interrupted?

23 **THE COURT:** Please don't interrupt the witness.

24 **BY MR. HO**

25 Q Thank you, Mr. Trende. I've heard your answer on direct

1 as to what a regression analysis is. My question is whether  
2 you have ever performed a regression analysis prior to your  
3 work in this case concerning the effect of voting laws on voter  
4 turnout?

5 A I believe the first sentence in my answer answered that  
6 question.

7 Q And the answer is no; correct, Mr. Trende?

8 A The answer is whatever answer I gave as the first sentence  
9 the first time you asked that question.

10 **THE COURT:** You can answer the question. What is the  
11 answer?

12 **THE WITNESS:** The answer is I can't recall looking at  
13 a relationship between a voting law and turnout between --  
14 turnout as in regards to African-Americans or any other group  
15 before this, but regression analysis is a generalizable tool.

16 **BY MR. HO**

17 Q Now, you testified on direct, Mr. Trende, that you studied  
18 statutes as a lawyer?

19 A Yes.

20 Q And one of the bases on which you hold yourself out to be  
21 an expert in this case is that you carefully studied the  
22 relevant laws at issue in this case, Mr. Trende?

23 A It is, as Dr. Gronke said, a bewildering array of laws,  
24 but I did look at them, yes.

25 Q Now, when you studied the relevant laws at issue in this

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1 case, you did it personally; right?

2 A Yes.

3 Q You didn't have someone else compile that data for you;  
4 right?

5 A Counsel for North Carolina sent me a box of statutes, but  
6 it was sorely lacking, and I basically started over from  
7 scratch, with due respect.

8 **MR. FARR:** Sorry about that.

9 **BY MR. HO**

10 Q Now, when you were trying to analyze the effect of a  
11 voting law on African-American turnout in your report, it was  
12 important that the law actually be in effect in the time period  
13 that you were considering; right?

14 A That's right. And at the preliminary injunction phase,  
15 there was a cut-and-paste error that, the first time I ran the  
16 regressions, it did not match up to what was in place at  
17 the time the law was passed.

18 Q So just so we are clear. The time period you looked at in  
19 your report was from 2000 to 2012; correct, Mr. Trende?

20 A Correct.

21 Q And for a law to be relevant to your analysis, it had to  
22 be in effect before 2012; right, Mr. Trende?

23 A That's correct.

24 Q If the law was not in effect as of 2012 and you included  
25 it, that would be an error; right, Mr. Trende?

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1 A And just for clarification, this is Opinion 2, not Opinion  
2 1. Opinion 1, I used a different standard, but for Opinion 2,  
3 yes.

4 Q That's your quantitative regression analysis; right,  
5 Mr. Trende?

6 A Correct.

7 Q So in your regression analysis in your 2014 report in this  
8 case, Mr. Trende, you coded California as having same-day  
9 registration; correct?

10 A I had a cut-and-paste error that resulted in it being  
11 coded that way.

12 Q But California did not, in fact, have same-day  
13 registration?

14 A That's correct, yes.

15 Q So you mistakenly included California as a same-day  
16 registration state in your regression analysis in 2014; right,  
17 Mr. Trende?

18 A That's correct.

19 **MR. FARR:** Your Honor, I've got to raise a question  
20 here. Is this going to the weight and credibility of his  
21 report, or are these questions going to his qualifications?

22 **THE COURT:** Well, to the extent they go to  
23 credibility, it is going to be charged against your time  
24 because this is normal cross-examination. A lot of it does  
25 seem to go to credibility; but if you are going to

1 qualification, you ought to focus on that, but --

2 **MR. HO:** Mr. Trende has held himself out as an expert  
3 on the basis of having carefully studied these voting laws.

4 **THE COURT:** I understand that, but I think some of  
5 these do go to credibility; but if you want that use that, I am  
6 going to be less sympathetic to giving you more time. But if  
7 you -- I am not going to tell you how to do your own voir dire  
8 and cross-examination. You are welcome to do that how you  
9 wish, but I would encourage you to stick to what you want to  
10 argue for purposes of the qualifications in this case.

11 **BY MR. HO**

12 Q So there were a series of errors in your 2014 report in  
13 terms of how you coded states, Mr. Trende?

14 A There was one error that was a cut-and-paste error that  
15 resulted in miscodings. I knew, for example, that North  
16 Carolina had law -- had put laws into effect. The  
17 cut-and-paste resulted in it not being coded that way, but we  
18 fixed it, of course, at the deposition before there was a  
19 ruling at the preliminary injunction phase because I caught  
20 those errors.

21 Q So your regression analysis of 2014, where you attempted  
22 to measure the quantitative effect of voting laws on turnout,  
23 you mistakenly did not include North Carolina as a state that  
24 had same-day registration, preregistration, and 17 days of  
25 early voting; right, Mr. Trende?

1 A It's one of the reasons that we caught the error and had  
2 the revised estimates available for you at the deposition  
3 before the actual hearing.

4 Q Now, Mr. Farr asked you some questions about your  
5 testimony in Ohio.

6 A Yes.

7 Q Now, the District Court did not credit your opinion in  
8 that case; correct?

9 A I don't know if that's true or not. What do you mean by  
10 "did not credit"?

11 Q The District Court didn't rely on your opinion when it  
12 enjoined early voting cutbacks in Ohio; correct?

13 A I don't know if that's true or not.

14 Q You don't know one way or the other?

15 A I don't know.

16 Q The Sixth Circuit, in affirming the District Court's  
17 ruling, described you as an elections analyst for the political  
18 website RealClearPolitics, "who apparently has not conducted a  
19 peer-reviewed analysis similar to the one at issue here." Do  
20 you remember that, Mr. Trende?

21 A I don't remember that.

22 Q Okay. We have copies of the Sixth Circuit's opinion in  
23 this case. It is *Ohio State Conference of the NAACP v. Husted*.

24 **THE COURT:** What is the precedential value of that  
25 opinion? I thought it was vacated.

1           **MR. HO:** It was vacated as moot, Your Honor. The  
2 ruling was limited to a preliminary injunction concerning the  
3 November 2014 election when it was stayed by the Supreme Court.  
4 That covered the 2014 election.

5 **BY MR. HO**

6 Q       Could you turn to page 536, which I marked with a Post-it  
7 note.

8 A       Yes.

9 Q       The Sixth Circuit noted that the District Court did not  
10 credit your opinion; correct?

11 A       Well, again, I don't know what you mean by the broad term  
12 "credit." The opinion speaks for itself. My interpretation of  
13 it is that, regarding some of the codings, they gave deference  
14 to a District Court ruling, but I don't remember that from the  
15 District Court ruling.

16           **MR. HO:** So, Your Honor, Plaintiffs have filed a  
17 motion in limine with respect to Mr. Trende, a *Daubert* motion,  
18 objecting to his qualifications and moving to strike his  
19 reports and his testimony in this case.

20           We are happy to rest on the papers and happy also to  
21 address that motion, if you would like. He's testified that he  
22 hasn't conducted any kind of analysis similar to the one in  
23 this case. He's never conducted any peer-reviewed research.  
24 These are hallmarks of expertise under *Daubert*.

25           Even if the Court were to consider him as having some

1 sort of generalized expertise in politics, the cases that we  
2 cite in our motion are clear that for someone to be qualified  
3 as an expert, that person has to have experience in the  
4 specific subject matter at hand.

5           So there is a decision *Ortho-Clinical* from the Middle  
6 District here --

7           **THE COURT:** Do they have to have experience, or do  
8 they just have to be able to assist the trier of fact?

9           **MR. HO:** That's the standard, I think, for relevance,  
10 Your Honor. In order to be qualified under *Daubert*, an expert  
11 has to have the hallmarks of expertise, which are knowledge,  
12 skill, experience, training and education in a relevant area.  
13 And so people with generalized experience -- like a doctor, for  
14 instance, in the *Ortho-Clinical* case was excluded because that  
15 doctor had no experience in pediatrics, which was the  
16 particular issue in the case.

17           **THE COURT:** Tell me why he is not capable of  
18 testifying to what the laws are in all 50 states as they relate  
19 to the various mechanisms at issue in our case.

20           **MR. HO:** Well, the laws, I think, speak for  
21 themselves in terms of what they are in all 50 states. There  
22 is no testimony from an expert that can assist the trier -- the  
23 trier of fact, Your Honor in this case, in determining what  
24 those laws are.

25           To the extent that Mr. Trende would like to



1 characterize those laws as being in the mainstream, as he puts  
2 it, or outside of the mainstream, he simply lacks the  
3 background and expertise to do so.

4           **THE COURT:** How is that different from some of the  
5 historians that the Plaintiffs have put on where the public  
6 records speaks for itself? And I didn't need a historian to  
7 tell me what the public record was, but it was convenient to  
8 have the historian organize it so I could understand it better.  
9 How is not that the same here with the 50 states' laws?

10           **MR. HO:** I think the historians in those cases, Your  
11 Honor, brought to bear a recognized methodology that's been  
12 subject to the rigors of peer review that can assist the trier  
13 of fact in interpreting the events that have happened.

14           If Mr. Trende simply wants to testify as to what the  
15 laws are in each of the 50 states, I don't think we would have  
16 an objection. To the extent that he wants to characterize  
17 particular laws as being within the mainstream or outside of  
18 the mainstream, he lacks any particular expertise in that  
19 subject. He hasn't even examined any states' laws with respect  
20 to the challenged practices at issue prior to the work in this  
21 case. He's worked -- an opinion in this case does not grow  
22 naturally or organically out of --

23           **THE COURT:** Isn't there a saying "there's a first  
24 time for everything"? Why would that not go to credibility? I  
25 grant you, it would go to credibility. Why would it not, in

1 this case, resolve that if he's qualified by training and  
2 experience to talk about various laws in various jurisdictions?

3 **MR. HO:** Well, I would submit, Your Honor, it would  
4 go to the admissibility of his testimony for the same reasons  
5 cited by the Courts in a number of cases where witnesses with  
6 general expertise in the subject matter have been excluded. So  
7 even in elections law cases, the *Koppell* case from the Southern  
8 District of New York --

9 **THE COURT:** Let me back up just a minute. It sounds  
10 like -- I have questions about the Sixth Circuit opinion.  
11 Whether it's vacated as moot or vacated for whatever, it's  
12 vacated. So vacated in my view is vacated. But the Court,  
13 right below the part you highlighted, says, "We conclude the  
14 District Court did not clearly err by crediting Smith's  
15 findings over Trende's," so.

16 **MR. HO:** There was no *Daubert* motion filed in that  
17 case, as far as I know, Your Honor. So I think it would read  
18 too much into that language to say then that the District Court  
19 took Mr. Trende's background and applied it only to the issue  
20 of the weight of his testimony, but the issue of the  
21 admissibility of his testimony was never squarely put before  
22 the District Court. Now --

23 **THE COURT:** It's an uphill battle on the 50-state one  
24 because, it seems to me, he can testify to that; but I don't  
25 know what his other opinions are.

1           There's been a lot of criticism in the case by the  
2 Plaintiffs that the defense experts were not considering  
3 factors other than raw numbers; and I don't know all that's in  
4 his report, but based on one of the headings I read quickly, if  
5 he's getting into other factors -- is that what he is going to  
6 do?

7           **MR. HO:** I wouldn't want to try to characterize his  
8 testimony for him. My understanding is he attempts to measure  
9 whether or not there is a correlation between the voting  
10 practices at issue in this case and African-American turnout  
11 between 2000 and 2012. I think, based on his own testimony on  
12 direct when Mr. Farr was attempting to lay the foundation, he's  
13 plainly not qualified to render that opinion.

14           **THE COURT:** Okay. Do you want to be heard, Mr. Farr,  
15 at all?

16           **MR. FARR:** Your Honor, I think that as you hear the  
17 testimony, you can give whatever weight and credibility you  
18 choose to do with the testimony; but I believe we've  
19 established the Mr. Trende is more than qualified to give the  
20 opinions that we want him to give in this case.

21           **THE COURT:** All right. I don't know all of his  
22 opinions. I don't know what's going to be offered. So I am  
23 going to reserve on your motion. I am going to listen to what  
24 he has to say. I will be very interested in your  
25 cross-examination, and then we'll see where we go from there.

1 I do think on the 50-state part, that seems pretty  
2 clear to me that he ought to be able to organize those, and  
3 what he's going to say about them, I don't know. I will wait  
4 to hear that. So rather than to draw it out anymore, I think I  
5 will just reserve, read the papers; and if there is anything in  
6 particular that you are concerned about, make your objection as  
7 we go along.

8 **MR. HO:** Thank you, Your Honor.

9 **THE COURT:** Thank you.

10 **MR. FARR:** Thank you, Your Honor. Your Honor, before  
11 I start into his report, I do want to ask him a couple of  
12 questions about matters that have come up during the course of  
13 this case that I think he can provide information to the Court  
14 that would be quite helpful.

15 **BY MR. FARR**

16 Q Mr. Trende, were you here when Dr. Lichtman testified?

17 A I was not.

18 Q If I represented to you that he testified that a  
19 competitive race in the North Carolina 12th Congressional  
20 District had a positive impact on African-American turnout in  
21 2014, would you accept that representation?

22 A In a general election?

23 Q Yes, just a -- I'm just trying to tell you what  
24 Dr. Lichtman said.

25 A I don't believe that race was competitive at all.

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1 Q Okay. Well, I am going to get to that. Will you accept  
2 my representation that Dr. Lichtman testified that it was a  
3 competitive race that helped to increase black turnout in 2014?

4 **MR. DONOVAN:** Your Honor, I am going to object. That  
5 wasn't Dr. Lichtman's testimony. We have the rough  
6 transcripts. I would request the page before we have testimony  
7 based on that false assumption of the testimony.

8 **MR. FARR:** That is not a false assumption, counsel.  
9 He absolutely testified that a competitive race in the  
10 12th District had an impact on African-American turnout.

11 **THE COURT:** Just ask the witness a hypothetical  
12 question. Then I will resolve what happened at the trial.

13 **BY MR. FARR**

14 Q All right. So were you here in the courtroom today?

15 A Yes, I was.

16 Q Did you hear counsel for the Plaintiffs examine Dr. Hood  
17 on whether the competitive Congressional race in the  
18 12th Congressional district had a positive impact on turnout in  
19 the general election?

20 A That was my understanding.

21 Q Okay. And did you hear counsel make a comment that if the  
22 margin of victory was greater than 10 percent, that he asked  
23 Dr. Hood if that would be a landslide? Do you remember that?

24 A I do remember that, yes.

25 Q Now, are you familiar with what happened in the general

1 election in the 12th Congressional District in North Carolina  
2 in 2014?

3 A I know that the successor to Mel Watt was re-elected by a  
4 substantial margin -- or was elected by a substantial margin.  
5 I don't know the exact numbers.

6 Q Do you believe that the margin of victory for the  
7 Democratic candidate in the 12th Congressional District in 2014  
8 was greater than 10 percent?

9 A I would be shocked if it wasn't. It's such an  
10 overwhelmingly Democratic district.

11 Q All right. Thank you. Now, Mr. Trende, you gave a report  
12 at the preliminary injunction stage; is that correct?

13 A That is correct, yes.

14 Q And just briefly, because we're going to talk mainly about  
15 your second report, but, in general, tell the Court what your  
16 conclusions were in your first report, which would be  
17 Exhibit 2.

18 A In the first report, I said that North Carolina's election  
19 laws were within the mainstream of American politics, that the  
20 laws -- at least with respect to the laws in this case, the  
21 legal regime brought about by the changes in North Carolina  
22 election law were -- put it in closer to the median of American  
23 politics than it was before.

24 The second opinion was that there wasn't sufficient  
25 evidence to draw any conclusions about the effect of these laws

1 on turnout and that what evidence we had simply suggested there  
2 wouldn't be an effect on turnout.

3 Q Did you recall how Plaintiffs' experts reacted to your  
4 opinions?

5 A They had some visceral responses to it, yes.

6 Q Do you recall any specific criticisms by any of the  
7 experts?

8 A There were a number of criticisms about the methodology,  
9 about different data uses. There was criticism about the  
10 overall conclusion with Dr. Gronke saying that he wasn't aware  
11 of any empirical evidence that would suggest that  
12 African-American voters, or any voters, would be able to  
13 successfully adjust to the reduction of early voting days by  
14 40 percent. There was testimony from him -- or evidence  
15 submitted by him or argument by him that same-day registration  
16 would depress turnout. There was a whole swath of response.

17 Q Did you interpret their reports as predicting that turnout  
18 would go down as a result of H.B. 589?

19 A I think it's the only reasonable way to interpret it. You  
20 have Dr. Burden providing testimony that if you burden  
21 someone's right to vote, they become less likely to vote. You  
22 have Dr. Stewart providing testimony that some 70 percent of  
23 the African-American electorate would be burdened by this law.

24 So it kind of -- I do believe it follows from that that  
25 you would see a decrease in turnout. You have the various

1 testimony comparing these laws to Jim Crow laws. There is  
2 political science literature, a book that came out shortly  
3 before my report was published, saying that Jim Crow reduced  
4 turnout by around 20 percent. So I do think that is the upshot  
5 of Plaintiffs' experts' predictions.

6 Q All right, sir. Now, I would like to turn to your second  
7 report, which is Exhibit --

8 **MR. FARR:** I'm sorry, Your Honor. I have a hard time  
9 reading this on this blue piece of paper.

10 **BY MR. FARR**

11 Q I think it is 270, Exhibit 270, which is under Tab B in  
12 your notebook.

13 A Yes.

14 Q Now, what do we ask you to do in this second report you  
15 did for March of 2015?

16 A The first thing was to take the results from 2014 and  
17 apply them, update them with regard to the specific vote  
18 outcomes, and then the second was to update my earlier two  
19 opinions from the preliminary injunction phase.

20 Q And can you summarize your conclusions that you reached?  
21 And then we will go into them in more detail.

22 A It was that -- I think contrary to what predictions were,  
23 that there was a -- that the numbers showed that  
24 African-American turnout improved, that -- and then the other  
25 two opinions remained the same.



1 Q Which were?

2 A That North Carolina's election laws are within the  
3 mainstream of American politics and that we still didn't have  
4 sufficient basis to conclude that these laws would effect  
5 turnout.

6 Q All right. Let's start going through your report,  
7 Mr. Trende. Could you turn to page 9 of Exhibit 270? And do  
8 you see the chart that's on page 9?

9 A Yes, I do.

10 Q Could you explain what that is to the Court?

11 A So this is just -- these data are taken from Dr. Burden's  
12 report. It shows white and African-American voter turnout in  
13 the 2002, 2006, 2010, and 2014 elections. 2002, which was a  
14 reasonably competitive election, 44 percent of non-Hispanic  
15 whites -- I used the term "whites" in the article, but I mean  
16 non-Hispanic whites -- were voting and 34 percent of  
17 African-Americans voted in that election. 2006, which had some  
18 competitive House races, but I don't believe had a  
19 top-of-the-ticket race, 36 percent of whites voted, 24 percent  
20 of African-Americans voted.

21 Q Can I interrupt you, Mr. Trende? What do you mean by  
22 "top-of-the-ticket race"?

23 A Senate or gubernatorial, a statewide top-of-the-ticket,  
24 topline race.

25 Q Okay.

1 A In 2010, which was, again, a modestly competitive race in  
2 North Carolina, credible candidate on the Democratic side,  
3 spent several million dollars, 42 percent of non-Hispanic  
4 whites voted and 37 percent of African-Americans voted.

5 And then in 2014, 43 percent, which was a very competitive  
6 race, the numbers were 43 percent for whites and 40 percent for  
7 African-Americans.

8 Q All right. So, Mr. Trende, comparing 2010 to 2014, the  
9 percentage of white and African-American voters, both rose?

10 A With respect to 2010, that's correct.

11 Q And which one of those groups rose at a higher rate?

12 A The African-American population's participation rate rose  
13 the most.

14 Q Okay. So the Caucasians, their participation rate rose by  
15 1 percent?

16 A Yes.

17 Q And African-Americans rose by 3 percent?

18 A That's correct.

19 Q So that would be three times the rate of the Caucasian  
20 group?

21 A That's right.

22 Q Could you turn, please, to figure -- your figure you have  
23 on page 12 of Exhibit 270. Are you there?

24 A Yes, sir.

25 Q Could you tell the Court what this is?

1 A This is the African-American share of the electorate in  
2 different states from 2012 to 2014. And up until a couple of  
3 weeks ago, we didn't have the Current Population Survey data  
4 for these states, so I used the exit polling data to show that  
5 there typically is a decline in the African-American share of  
6 the electorate when you go from a Presidential electorate to a  
7 midterm electorate.

8 I don't think this is controversial. The point of this is  
9 that when you see a decline comparing a Presidential year to a  
10 midterm year in African-American participation and different  
11 groups, you have to place it in a broader context.

12 Q Now, I want to make sure it is clear to the Court. You've  
13 heard testimony today about validated data as it relates to  
14 percentage of voters by race. What does that mean?

15 A So the validated data would be the North Carolina State  
16 Board of Elections data, for example, that tells you this -- it  
17 tells you with certainty this many African-American voters  
18 turned out in 2014, 2012, et cetera.

19 Q Why can you determine that in North Carolina?

20 A Because North Carolina is one of the few states that keeps  
21 that sort of data.

22 Q And how many states keep that sort of data, as far as you  
23 know?

24 A As far as I know -- well, my knowledge is of five, which  
25 is Florida, South Carolina, Georgia, North Carolina, and

1 Louisiana. I heard Dr. Hood testify that Alabama has recently  
2 implemented that, but I haven't looked at those data.

3 Q So if political scientists were going to look at racial  
4 issues and elections in states that didn't have validated data,  
5 what information would they need to look at?

6 A They would need -- they could look at the exit polls  
7 because you can get the individual data from the exit polls  
8 eventually, if you have a Roper Center subscription, or you can  
9 look at the Current Population Survey to obtain those data.  
10 You couldn't have done it for 2014 until a few weeks ago.

11 Q And why is that?

12 A Because it wasn't available. It wasn't published for 2014  
13 until a few weeks ago.

14 Q All right. Could you turn to page 13 and your chart  
15 that's on that page. Could you tell the Court what this is?

16 A So Dr. Gronke, in his report, had a kind of clever way to  
17 get around the campaign effects issue. What he did was he  
18 looked -- he got the matched list, which is the list of people  
19 who had voted in 2012, by their names, the individual data from  
20 North Carolina, and then looked to see what became of these  
21 voters in 2014. And so what he found is effectively what's in  
22 the left -- I have the three pairs of columns.

23 Q Okay.

24 A His findings -- mine are a little different, but the  
25 findings --

1 Q Let's explain the column on the left. What is that?

2 A So if you look at non-Hispanic white voters from 2012 to  
3 2014, 29.7 percent of non-Hispanic white voters who cast early  
4 ballots in 2012 didn't return to vote -- DNV is the  
5 abbreviation I use -- in 2014. If you look at the next pair on  
6 the left, the share of African-American early voters -- that  
7 is, those who cast early votes in 2012 who didn't return to  
8 vote in 2014 -- it was 37.3 percent of those voters, a higher  
9 number. The difference is 7.7 percent.

10 Q All right. What is the next comparison you made on this  
11 chart?

12 A So what I thought was, well, Dr. Gronke looks at early  
13 voters as a sort of controlled experiment because you are  
14 controlling for campaign effects, you have a controlled body of  
15 participants, but what wasn't included was Election Day voters.  
16 And so I was curious what happened with the Election Day voters  
17 because you would get a sort -- it is a not perfectly  
18 controlled experiment, but it is close to it because the  
19 early -- the Election Day voters wouldn't be directly affected  
20 by the decrease in the number of days of early voting. They  
21 wouldn't be affected by the elimination of same-day  
22 registration laws. And since the testimony is that those have  
23 the -- affect the most number of voters, those early voting  
24 practices should have the largest effect.

25 But when I looked at Election Day voters, it turned out

1 that 40.8 percent of Election Day voters from 2012 didn't  
2 return to vote.

3 Q And what race were you --

4 A These are non-Hispanic whites, I'm sorry, didn't return to  
5 vote in 2014. And 52.9 percent of African-American Election  
6 Day voters didn't return to vote in 2014.

7 So then if you look at the third pair on the right, the  
8 gap between non-Hispanic white and African-American  
9 participation returning to vote in 2014 was actually higher for  
10 Election Day voters than for early voters.

11 Q And what conclusions did you draw from this?

12 A I think it's then -- to the extent that you can draw the  
13 types of conclusions Dr. Gronke was trying to draw, I don't  
14 think you can do it anymore once you look and see that turnout  
15 was actually worse, the decline in turnout was actually worse  
16 among Election Day voters who weren't directly subjected to the  
17 alleged effects of these laws.

18 Q And what data did you use to prepare the chart on page 13?

19 A This is validated data from the North Carolina State Board  
20 of Elections.

21 Q All right. Now, Dr. Gronke, I want to turn to your  
22 Opinion Number 1, which starts on page 16.

23 **MR. HO:** I think you mean Mr. Trende.

24 **MR. FARR:** Mr. Trende, I'm sorry. I apologize. I am  
25 not as good as you folks who get this better than I do.

1 **BY MR. FARR**

2 Q Mr. Trende, so on page 16, this is your Opinion 1  
3 regarding the state survey that you performed; is that right?

4 A Yes, it is.

5 Q All right. Let's turn to page 17. And what were your  
6 findings concerning the number of states that had photo  
7 identification requirements?

8 A Nineteen jurisdictions required citizens to present  
9 photographic ID.

10 Q Are those states listed in paragraph 55?

11 A They are.

12 Q Could you read them into the record, please?

13 A It is Alabama, Florida, Georgia, Hawaii, Idaho, Indiana,  
14 Kansas, Louisiana, Michigan, Mississippi, New Hampshire, North  
15 Carolina, Rhode Island, South Carolina, South Dakota,  
16 Tennessee, Texas, Virginia, and Wisconsin.

17 Q And are you aware of any Plaintiff experts who have  
18 disagreed with your tally on the number of states that have  
19 photo ID?

20 A No, I am not.

21 Q All right. Now, your next opinion was on out-of-precinct  
22 voting?

23 A That's correct.

24 Q And could you -- you have some explanations on that on  
25 pages 18 and 19. So could you first start out by saying how

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1 many states don't accept a ballot cast in a wrong precinct?

2 A Thirty-one.

3 Q And is that in paragraph 56?

4 A It is.

5 Q Could you read those states into the record, please?

6 A Alabama, Arizona, Arkansas, Delaware, Florida, Hawaii,  
7 Idaho, Indiana, Iowa, Kentucky, Maine, Michigan, Minnesota,  
8 Mississippi, Montana, Nebraska, Nevada, New Hampshire, North  
9 Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South  
10 Dakota, Tennessee, Texas, Vermont, Virginia, Utah, Wisconsin,  
11 and West Virginia.

12 Q So 31 states would have the same practice that currently  
13 exists in North Carolina?

14 A That is my understanding, yes.

15 Q Have any Plaintiffs experts in this case questioned your  
16 tally in regards to the states that have an out-of-precinct  
17 voting practice that's similar to North Carolina?

18 A Not to my knowledge, no.

19 Q All right. Now, you have a few more examples of states  
20 with some type of out-of-precinct restrictions. Could you  
21 explain those to the Court?

22 A So, again, Dr. Gronke's motif of a bewildering array of  
23 practices, not all states are cut and dry and you have to make  
24 calls. So New York and Missouri allow for ballots counted if  
25 you are in the wrong precinct but the correct polling place.



1 It's the right church, wrong pew. So if you have an instance  
2 where a particular polling place has multiple precincts and you  
3 go to the wrong line, these states will count the ballot in  
4 that narrow instance.

5 I had to make a judgment call on that, and, ultimately,  
6 the question that I tried to ask myself in these judgment-call  
7 scenarios was: Would the state meet the standard that  
8 Plaintiffs, as I understand it, are trying to move North  
9 Carolina back to?

10 I don't believe right church, wrong pew meets that  
11 standard of counting countywide out-of-precinct ballots. So I  
12 classified these states as not meeting the threshold.

13 Q Could you tell Court about some of these states?

14 A Well, that was New York and Missouri. There's two more  
15 states, Connecticut and Massachusetts, which count ballots cast  
16 in the wrong precinct so long as they are in the correct town  
17 or city. But, again, this is a narrower exception than I  
18 understand to be sought here, and, quite frankly, in  
19 Connecticut and Massachusetts, a lot of precincts are entire  
20 towns. So in those situations, it doesn't do much good under  
21 the standard being sought here.

22 Q During -- in your deposition, as you just described, what  
23 was your baseline for evaluating the laws at issue here?

24 A You know, there is always an almost infinite number of  
25 ways you could count these things up. So in an attempt to kind

1 of cabin my discretion in and, I think, produce the evidence  
2 that is the most relevant for the Court, I took as my baseline  
3 always what is the relief being sought here. In other words,  
4 what is the threshold that if North Carolina fell below, it  
5 wouldn't seek -- it wouldn't meet the relief something sought.  
6 So 17 days of early voting is what North Carolina -- what they  
7 are trying to return North Carolina to. So if a state had  
8 16 days, it didn't meet the threshold.

9 Q All right.

10 **MR. HO:** Objection, Your Honor, to the extent that  
11 his testimony is not just simple stating what the laws are in  
12 each of these states but actually about what evidence is most  
13 relevant to the Court's assessment. I think that goes --  
14 that's clearly beyond the range of any kind of expertise that  
15 he's been offered for and also gets to ultimate questions that  
16 are left to you as the trier of fact.

17 **MR. FARR:** Your Honor, all I asked him to do was to  
18 explain the baseline that he was using to compare the other  
19 states to North Carolina.

20 **THE COURT:** Overruled.

21 **BY MR. FARR**

22 Q Now, were you criticized during your deposition for the  
23 baseline you chose; do you remember?

24 A There was a suggestion to use the baseline of where North  
25 Carolina is today. So what would these things look like if you

1 looked just in the context of ten days of early voting where  
2 these four states would be counted as allowing out-of-precinct  
3 voting because they are more liberal than what North Carolina  
4 has today. That was the suggestion made, yes.

5 Q Why did you reject that?

6 A Well, a number of reasons. The first is that it still  
7 doesn't meet the standard being sought. I don't think it would  
8 be good enough to -- it would be good enough to look at if  
9 North Carolina had a right church, wrong pew law, but, more  
10 importantly, once you -- I felt that once that I detached  
11 myself from the sort of objective criteria that I didn't  
12 choose, there is an infinite number of laws I could look at.  
13 So I could look at the number of days of absentee voting that  
14 North Carolina uses where it looks quite good. I could look at  
15 the number of precincts per vote cast --

16 Q Can I stop you for a second? What did you just mean by  
17 that, the number of absentee days for voting?

18 A The length of the absentee voting period --

19 Q For what?

20 A -- for mail-in.

21 Q How does North Carolina compare to other states?

22 A It has one of the most liberal regimes in the country for  
23 that. Now, Plaintiffs' experts might say, well, you could  
24 also -- you could look at different sorts of early voting laws.  
25 There's just so many different ways you can cut it down. I

1 felt to take my discretion out and use the baseline established  
2 by the Plaintiffs was the fairest, most objective way to do it.

3 Q All right. Now, let's turn to your report on early  
4 voting, which begins on page 19. Could you turn to page 20 and  
5 explain to the Court --

6 **THE COURT:** Let me ask you: Are you getting into a  
7 new area, because it's 5:00?

8 **MR. FARR:** This would be a fine place to stop.

9 **THE COURT:** Okay. Any issue you need to raise  
10 tonight? No?

11 All right. See you tomorrow at 9:00. Have a good  
12 evening.

13 (The Court recessed at 5:01 p.m.)

14

15 END OF TRIAL DAY ELEVEN

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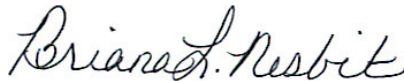
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1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER  
4  
5

6 I, Briana L. Nesbit, Official Court Reporter,  
7 certify that the foregoing transcript is a true and correct  
8 transcript of the proceedings in the above-entitled matter.  
9

10 Dated this 9th day of August 2015.  
11

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14 Briana L. Nesbit, RPR  
15 Official Court Reporter  
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