

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)
7 V.)
8)
9 PATRICK LLOYD MCCRORY, in his)
10 Official capacity as Governor)
11 Of North Carolina, et al.,)
12)
13 Defendants.)

10 LEAGUE OF WOMEN VOTERS OF NORTH) CASE NO. 1:13CV660
11 CAROLINA, et al.,)
12 Plaintiffs,)
13)
14 V.)
15)
16 STATE OF NORTH CAROLINA, et al.,)
17)
18 Defendants.)

16 UNITED STATES OF AMERICA,) CASE NO. 1:13CV861
17)
18 Plaintiff,)
19)
20 V.)
21)
22 STATE OF NORTH CAROLINA, et al.,) Winston-Salem, North Carolina
23) July 28, 2015
24 Defendants.) 9:02 a.m.

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

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I N D E X

DEFENDANTS' WITNESSES:**PAGE:**

SEAN P. TRENDE (Continued)

Direct Examination by Mr. Farr	8
Cross-Examination by Mr. Ho	59
Redirect Examination by Mr. Farr	118

THOMAS B. HOFELLER, PH.D.

Direct Examination by Mr. Farr	130
Cross-Examination by Mr. Donovan	167
Cross-Examination by Ms. Earls	170

KIM W. STRACH

Direct Examination by Mr. Peters	183
----------------------------------	-----

EXHIBITS

<u>Exhibits:</u>		<u>Identified</u>	<u>Received</u>
D-7	Virginia voter turnout by race, 1998-2012	40	126
D-2	Declaration of Sean Trende, 4/25/14		126
D-270	Declaration of Sean Trende, 3/16/15		126
D-212A	Declaration of Dr. Thomas Hofeller, 4/25/14	131	182
D-364	NCSBOE 2014 NC general election results	165	182

EXHIBITS

<u>Exhibits:</u>		<u>Identified</u>	<u>Received</u>
P-741	Leighley & Nagler book: Who Votes Now? Demographics, Issues, Inequality, and Turnout in the United States	73	127
P-738	Mr. Trende's RealClearPolitics article/"Sweeping Conclusions from Census Data are a Mistake," 5/9/13	111	127
P-739	Mr. Trende's RealClearPolitics article/"The Case of the Missing White Voters," 11/8/12	114	127
P-740	Mr. Trende's RealClearPolitics article/"Does GOP have to Pass Immigration Reform?," 6/25/13	116	127

P R O C E E D I N G S

1
2 **THE COURT:** Mr. Donovan, good morning.

3 **MR. DONOVAN:** Good morning, Your Honor. Just want to
4 give an update, and then two issues I want to raise that we
5 could address after Mr. Trende's testimony.

6 **THE COURT:** Okay.

7 **MR. DONOVAN:** Kind of confirming with Defendants'
8 counsel and internally, I think the evidence will likely be
9 closed tomorrow or early Thursday, for your planning.

10 **THE COURT:** All right.

11 **MR. DONOVAN:** With that -- and, again, we can address
12 this after Mr. Trende's -- two issues I would like raise. One
13 is Plaintiffs do -- will renew their request for some
14 additional trial time. And then, number two, I had some
15 questions on kind of closing and guidance from Your Honor.

16 **THE COURT:** Okay. That's a logical request. Why
17 don't we take those up maybe after Mr. Trende's done. And
18 additional trial time for rebuttal evidence or --

19 **MR. DONOVAN:** I think what it is going to include is
20 to complete our cross-examination, some brief rebuttal, and
21 then to make sure we have time for closing.

22 **THE COURT:** Well, there will always be time for
23 closing. We'll make sure that gets done.

24 **MR. DONOVAN:** Thank you.

25 **THE COURT:** Thank you. Okay. Are we ready to

1 proceed?

2 **MR. FARR:** Yes, Your Honor.

3 **THE COURT:** Mr. Trende, I remind you you are still
4 under oath.

5 DIRECT EXAMINATION (Continued)

6 **BY MR. FARR**

7 Q Mr. Trende, do you have your notebook with your reports up
8 at the witness stand with you?

9 A Yes, I do.

10 Q We want to turn to Tab B, which is Exhibit 270. I think
11 we stopped yesterday right before we were going to talk about a
12 figure that you have on page 20 on early voting.

13 A Yes.

14 Q Did you do a similar chart like this in your preliminary
15 injunction report?

16 A I did, yes.

17 Q And is this an updated version?

18 A It is an updated version, yes.

19 Q Could you please explain to the Court what this is.

20 A So the first thing I did here was I looked at the length
21 of the early voting periods by state. So all 50 states plus
22 the District of Columbia from the first day of early voting to
23 the last day of early voting, without respect to days in
24 between, how lengthy that period is.

25 **MR. FARR:** Madame clerk, could you turn on the

1 monitor for us? Thank you.

2 **BY MR. FARR**

3 Q So, Mr. Trende, this figure on page 20 of your report is
4 now on the monitor; correct?

5 A That's correct, yes.

6 Q All right. And so --

7 **THE COURT:** Are these in-person early voting?

8 **THE WITNESS:** So for purposes of this opinion, it is
9 all in-person, no-excuse early voting forms, whether it is
10 in-person, absentee -- classified as in-person, no-excuse
11 absentee, or no-excuse early voting.

12 **THE COURT:** Thank you.

13 **BY MR. FARR**

14 Q In these states, the person has to show up to do early
15 voting?

16 A Correct.

17 Q Show up at the location?

18 A Correct. This is not mail-in absentee.

19 Q Okay. What is the median number of early voting days --
20 explain that, Mr. Trende. When you say early voting days, does
21 this chart reflect the number of actual days for early voting
22 or the time period during which early voting could take place?

23 A This chart is the length of the early voting period, so
24 first day of early voting, the last day of early voting.

25 There is another chart which looks at the actual number of

1 days allowed, but if you look at this chart, the median is
2 14 -- is now a 14-day early voting period.

3 Q Where is North Carolina now in relationship to the median?

4 A North Carolina is ten days -- ten-day period, four days
5 away from the median.

6 Q Okay. Now, Mr. Trende, in your report, did you look at
7 the number of early voting centers in all these various states
8 that have early voting?

9 A I did -- no, not all the states, no. No.

10 Q Did you look at any of them?

11 A I did.

12 Q Which ones?

13 A The numbers are in my report, but I believe I looked at
14 Florida, Texas, Nevada, and Ohio. I believe that's on page 36,
15 paragraph 126.

16 Q Are you aware of how many early voting days -- you are
17 from Ohio; right?

18 A I am, yes.

19 Q Do you know how many early voting centers there are in
20 Ohio at the present time?

21 A There are 88, one for each county.

22 Q So there is one for each county?

23 A Correct.

24 Q Do you know if Ohio has been sued, alleging that they need
25 to have more early voting centers?

1 A There has been litigation brought on that, yes.

2 Q Okay. Do you happen to know the law firm that brought
3 that lawsuit?

4 A I believe it's Perkins Coie.

5 Q Now, when you looked at the other states for early voting
6 centers, how did North Carolina compare to the other states?

7 A It turned out pretty well. If you look at it in terms of
8 the number of early voting centers per vote cast, North
9 Carolina has one center for every 7,600 votes cast in 2014.
10 Texas and Florida worked out to about one center for every
11 18,000 votes cast. Ohio was one center for every 34,700 votes
12 cast. Nevada was in the lead. It had one center for 680.

13 Again, this wasn't a nationwide sample, but in terms of
14 where North Carolina stood with some states that I believe
15 Dr. Gronke had suggested looking at, it came out pretty well.

16 Q Do you know if any of the Plaintiffs' experts looked at
17 the number of early voting centers in states that have early
18 voting?

19 A I know that they said I should, but I don't believe any of
20 them actually conducted their own investigation.

21 Q Okay. Now, let's turn to the next figure in your report,
22 which is on page 23. Do you see that?

23 A Yes.

24 Q And can you tell the Court what this is?

25 A So this is the number of days of early voting, the actual

1 number of days provided. One of the interesting things about
2 North Carolina -- and this occurred to me after the preliminary
3 injunction phase -- is that it has the same number of days of
4 early voting and the same length of the early voting period. I
5 am not sure -- remember my standard was to use whatever the
6 relief sought by Plaintiffs was, but in this case, it wasn't
7 really clear whether the period or the number of days was their
8 standard. So I also looked at the number of early voting days
9 by state.

10 Q So explain that in more detail. Why would some states
11 have fewer early voting days than the time period for early
12 voting?

13 A So a lot of states, they don't allow it on the weekends or
14 they won't allow it on Sunday. Some states, like I believe
15 Vermont, you do it at the Boards of Elections during regular
16 business hours. So it wouldn't be open on the weekends. Some
17 of the states with lengthier early voting time periods, it runs
18 into Columbus Day, so a lot of them are closed on Columbus Day,
19 not all.

20 Q Okay. So under this analysis, what's the median?

21 A The median is 11 days of early voting.

22 Q And if H.B. 589 had not been enacted, how -- where would
23 North Carolina be on this chart if it had not been enacted?

24 A I think it would have the 14th most number of days.

25 Q Okay. On this chart, would North Carolina have 17 days?

1 A It would be the 15th most number of days, and it would be
2 17 days, yes.

3 Q And how far away -- if H.B. 589 had not been enacted, how
4 far away would North Carolina be from the median?

5 A Six days.

6 Q Okay. Now, you've updated these charts since your
7 preliminary injunction hearing?

8 A That's correct.

9 Q The ones we looked at on page 20 and page 23?

10 A Correct.

11 Q Have any of the Plaintiffs' experts criticized these
12 charts?

13 A Dr. Stewart didn't think that I should have included the
14 states that didn't have any early voting. I don't think that
15 can reasonably be said to inform the Court about where North
16 Carolina sits in a national context. You can sort of see by
17 asking yourself, if North Carolina had done away with early
18 voting altogether and I had just listed the states with no
19 early voting, I don't think that would be acceptable. I think
20 you have to look at all of them.

21 There was some quibbling over the coding of some states,
22 but, ultimately, that was much ado about nothing. Dr. Gronke
23 suggested that some counties in Virginia have de facto,
24 no-excuse absentee voting during Presidential years, but we
25 also -- he codes it the same way on his website that I code it.

1 Q On his website, how did he code it?

2 A He has Virginia as not being an early voting state. So we
3 ultimately agree on that.

4 Q Which is the way you coded it in this report?

5 A That's the way I coded it, yes.

6 Q Now, Mr. Trende, I want to turn to your analysis of the
7 states with same-day registration laws, which begins on page 29
8 of your report. Could you explain to the Court the difference
9 between same-day registration and something called Election Day
10 registration?

11 A So same-day registration has come to be discussed as
12 registration during the early voting period where you can cast
13 an early ballot and register to vote at the same time.
14 Election Day --

15 Q Can I stop you for a second. Is that the practice that
16 was in place in North Carolina prior to the passage of
17 H.B. 589?

18 A Yes.

19 Q So what's Election Day registration?

20 A Election Day registration is being able to vote on the
21 actual official, what we all think of as Election Day. So
22 November 8th, 2016.

23 Q Okay. Now, could you turn to page 32 and the chart that's
24 at the top of the page on page 32.

25 A I misspoke. I said Election Day registration was being

1 able to vote on Election Day. I meant being able to register
2 on Election Day.

3 Q Okay. And register and vote?

4 A That's correct, yes.

5 Q Okay. Now, the chart on page 32, could you explain to the
6 Court what this is.

7 A So this is the list of states that have Election Day
8 registration only, Election Day registration plus same-day
9 registration, and then states that, at least under the standard
10 sought by Plaintiffs, have neither. I believe Vermont, since I
11 have done this, has enacted same-day registration, but that was
12 only a few weeks ago.

13 Q Okay. So there's three columns in this chart on page 32,
14 one for Election Day registration, one for -- you say EDR plus
15 SDR?

16 A That's correct.

17 Q What does that mean?

18 A They are abbreviations for Election Day registration and
19 same-day registration respectively.

20 Q Okay. Does that column mean they have both or that they
21 could have either one?

22 A Both.

23 Q Okay. And then the last column you have is "Neither"?

24 A Correct.

25 Q What does that mean?

1 A Neither same-day registration nor Election Day
2 registration. There are some judgment calls in there, but the
3 overwhelming number clearly don't have either.

4 Q So excluding Vermont, how many states in your summary are
5 you reporting as not having either Election Day or same-day
6 registration?

7 A Thirty-six.

8 Q And you say there were some judgment calls there?

9 A Correct.

10 Q Could you explain those to the Court?

11 A So Vermont was one of those judgment calls because its
12 normal registration window overlapped with its early voting
13 period. So there was a period of de facto same-day
14 registration.

15 Ohio had the same practice in place. The early voting
16 period was 35 days, which overlapped with Ohio's registration
17 cutoff. So there was a six-day period where you had de facto
18 same-day registration.

19 This was a tough call, but ultimately Larocca and
20 Klemanski do not classify Ohio as having same-day registration.
21 I believe Dr. Burden does. So there is a split of authority.

22 What I ultimately did was what I always try to do, which
23 is to say, what is the relief that Plaintiffs are seeking here.
24 I thought that having six days of same-day registration,
25 30 days out from Election Day, was fundamentally dissimilar

1 from what we are talking about here.

2 Q Okay. Was that referred to as Golden Week?

3 A It is called Golden Week, yes. Or was.

4 Q Were there any other judgment calls that you made?

5 A Montana has what's called late registration. The problem
6 with Montana is that, to my understanding, it is not a one-stop
7 process. You have to go to different places, which, again, is
8 different. It's lesser than what Plaintiffs are seeking here.
9 So I coded that as a non-same-day registration state.

10 Q When you say you have to go to different places, what did
11 you mean by that?

12 A I mean you have to go register in one place. Then you
13 have to go and vote in a different place. It doesn't offer the
14 same level of convenience that Plaintiffs allege.

15 And then North Dakota, you can say it technically doesn't
16 have same-day registration, but it doesn't have a registration
17 law at all. So I think you have to count that as a same-day
18 registration/Election Day registration state.

19 Q Okay. Any other judgment calls that you can remember
20 right now?

21 A I believe that's it.

22 Q Okay. Now, Mr. Trende, let's turn to your analysis of
23 preregistration. What was the benchmark you used for
24 evaluating preregistration laws?

25 A It was at the age of 16.

1 Q Why did you use that?

2 A That's the standard that Plaintiffs are seeking here. I
3 thought that 17 or being able to vote in the next election were
4 lesser than what Plaintiffs would accept --

5 Q Okay.

6 A -- under their Complaint.

7 Q And based upon your analysis, what did you find about the
8 number of states that allow preregistration of 16-year-olds?

9 A So in paragraph 106 -- this is a typo. It is not an
10 error. I said ten states plus the District of Columbia. It's
11 ten states including the District of Columbia -- but my count
12 has ten -- allow preregistration at the age of 16. Colorado,
13 Delaware -- you want me to list those states?

14 Q Sure.

15 A District of Columbia, Florida, Hawaii, Massachusetts,
16 Maryland, I counted North Dakota because it doesn't have a
17 registration law, and Rhode Island.

18 Q Okay. All right. Now, Mr. Trende, have any of the
19 Plaintiffs' experts challenged your opinion that a majority of
20 the states do not have same-day registration?

21 A I don't believe so.

22 Q And have any of the Plaintiffs' experts challenged your
23 summary that a majority of the states do not have
24 preregistration for 16-year-olds?

25 A I don't believe so.

1 Q All right. Now, let's turn to the conclusions that you
2 reached about where North Carolina stands in the rest of the
3 country. Could you please turn to page 111, and do you see the
4 chart that's on page 111?

5 A Paragraph 111?

6 Q Paragraph 110 and 111. I'm sorry.

7 A Yes, I see it.

8 Q Could you explain to the Court what that chart is?

9 A So this is a histogram, which is a way of showing
10 classifications. You put -- you put the states effectively in
11 what are called bins. That is the term of art. And so what I
12 have done here is counted up the number of laws we've
13 discussed -- it might be better to refer to them as legal
14 practices -- and the number of the states that have the legal
15 practices that Plaintiffs seek here.

16 So a zero would be a state that has preregistration at 16,
17 out-of-precinct voting, same-day registration, or Election Day
18 registration, a 17-day early voting period, since that was the
19 metric that ended up more favorable to Plaintiffs for the
20 median, and does not have a photo ID law. So that kind of
21 negative inserted there is why I say it is probably better to
22 just refer to it here as legal practices.

23 Q Okay. So I was a little confused by that. On this chart,
24 could you explain the bottom part of the chart? What does that
25 mean?

1 A So the bottom part is the -- for each column, that is the
2 number of laws we are talking about. So zero is zero laws, or
3 legal practices. Two is the number of states with two laws, or
4 legal practices. Four is the number of states with four of the
5 five laws, or if you prefer, legal practices. And then I don't
6 think the numbers came through in between, but you would have
7 one, three, and five as well.

8 Q Okay. So post 589, which one of those buckets is North
9 Carolina in?

10 A North Carolina, along with other eight other states, is in
11 zero -- or seven other states is in zero.

12 Q And then how many states did you conclude are in the other
13 buckets?

14 A As of today now, because this is updated, it's 14 were in
15 one, 19 were in two, 5 were in three, 5 were in four, and then
16 no states had all five of the practices being sought here.

17 That median has shifted in the past couple of years. If
18 you really want to know exactly post 589, or at least where
19 things stood a year ago, closer to H.B. 589, that's in the
20 preliminary injunction report.

21 Q Okay. So at the -- prior to the enactment of 589, how
22 many states would have been in the bucket with five of the
23 practices?

24 A North Carolina.

25 Q And after the enactment of 589, how many states are in the

1 bucket with five of the practices?

2 A No states.

3 Q And have you evaluated -- if we eliminated the photo
4 identification issue from this case, have you been able to
5 calculate how many states would be in the bucket if we were
6 just looking at the four election practices that are at issue
7 in this trial?

8 A It would still be zero. The numbers would be 16 and zero,
9 20 in one, 10 in two, and 5 in three.

10 Q And how many in four?

11 A Zero.

12 Q Okay. And how many in five?

13 A Well, we would only be looking at four practices.

14 Q Okay. Right. Mr. Trende, now I am -- we are going to
15 turn your Opinion Number 2. Okay?

16 A Yes.

17 **MR. HO:** Your Honor, just for the record, we just
18 note our objection in that this opinion is the subject of a
19 pending *Daubert* motion.

20 **THE COURT:** I understand. I've reserved on that.

21 **BY MR. FARR**

22 Q Mr. Trende, I want to talk you about -- as I read your
23 report, you've got kind of like two parts of Opinion 2. You've
24 got a part where you don't rely on your regression analysis,
25 and then you have your regression analysis. Is that a fair

1 statement?

2 A That's correct. The first part -- the opinion primarily
3 focuses as a critique of Plaintiffs' experts, which is why it's
4 styled the way it is. The data do not support Plaintiffs'
5 conclusions regarding the effects of H.B. 589 on minority
6 voting, and the primary reason for that is drawing upon my
7 experience as an elections analyst, having written a book about
8 the 2008 -- largely about the 2008 campaigns and followed 2012
9 for a living, and knowing just how statistics work, I don't
10 think you can do what Plaintiffs' experts at times have done,
11 which is to say, these laws went into effect in North Carolina
12 over the 2000s, African-American turnout increased over the
13 2000s, and then draw the causal connection.

14 You have to look at a broader range of things. One of the
15 major things, I don't think you can do a competent analysis of
16 Democratic or African-American or youth turnout without really
17 looking at what the Presidential campaign in 2008 and 2012 was
18 doing. So that's the first half.

19 Q So how about summarizing why you don't think the
20 Plaintiffs' data supports a connection between the voting laws
21 and voter turnout?

22 A Well, again, it is not enough to say, you know, during
23 2008 and 2012, and now 2014, African-Americans used early
24 voting disproportionately, because all the experts, to my
25 understanding, agreed that campaign effects and mobilization

1 efforts affect these things.

2 As a matter of fact, I think Plaintiffs' experts rely on
3 that heavily now for 2014. I don't think, though, that you can
4 just apply that to explain 2014. You have to ask if it
5 explains 2012 and 2008 as well.

6 That's crucial because if what's really going on is
7 mobilization efforts, if the various groups, some of whom are
8 represented in this courtroom, are getting out the vote, the
9 Obama campaign and then the Hagan campaign are focusing on
10 early voting, that's going to be responsible for a lot, if not
11 all, of the shift; and you would expect to see a different
12 result than Plaintiffs predict.

13 If you don't at least try to analyze that and control for
14 it, I don't think you can draw causal connections.

15 Q Okay. We'll get into that in a second. First, let's turn
16 to page 44 of your report. Are you there?

17 A Yes.

18 Q Could you tell the Court what the chart is at the bottom
19 of page 44?

20 A Okay. So what I am trying to do here is illustrate --
21 just an illustration, an introduction. There was a lot of
22 confusion about that, but this is an illustration of why you
23 might be concerned about just looking at North Carolina. So
24 these are two states, the percentage of African-Americans
25 registered in State A and State B. They follow similar

1 patterns.

2 Q And if we turn to page 45, what is the chart at the top of
3 that page?

4 A So this is the voting participation rates in these states.
5 So, again, unknown State A and unknown State B. You have,
6 again, similar trend lines of African-American participation in
7 these states --

8 Q All right.

9 A -- using the CPS data.

10 Q Okay. If we look at the chart on page 45 at the bottom of
11 the page, could you tell the Court what this is?

12 A So this is the chart on page 44 drawn with the states
13 listed. So the top line is the registration rate in
14 Mississippi according to the CPS, and the bottom line is the
15 registration rate in North Carolina, again, according to the
16 CPS.

17 So you have a state, Mississippi, that has none of the
18 practices in place, none of them, that Plaintiffs are seeking.
19 It has a similar rate of improvement for African-American
20 registration over the relevant time period.

21 Q Okay. And if we turn to page 46, what's that?

22 A So this is the voting rates chart, the top chart on
23 page 45 redone, and the top line is Mississippi and the bottom
24 line is North Carolina.

25 So the fact that you have similar rates of increase in a

1 state like Mississippi with none of these practices, this is an
2 illustration of why you can't just look at one state.

3 Now, there is a lot of reasons that Mississippi could have
4 a similar rate of increase. And that's why what you ultimately
5 need to do, if you are going to draw the conclusions that
6 Plaintiffs' experts try to draw, you have to look at all the
7 states, try to do some sort of cross-state comparison to
8 control for other effects to try to validate or, rather,
9 invalidate the hypothesis.

10 Q We've heard testimony about validated data. Does North
11 Carolina have validated data for registration statistics based
12 upon race?

13 A It does.

14 Q Did Mississippi at the time that you did this?

15 A I am not sure about the registration statistics in
16 Mississippi. It does not have voting statistics by race.

17 Q So why did you use the CPS data to do these charts?

18 A Because, to my knowledge, there is no other way except
19 exit polls, which don't give participation rates actually. So
20 I think the CPS is the only way that we can draw this
21 comparison between these two states.

22 Q Have Plaintiffs' experts used CPS data and reports given
23 in this case or articles that you reviewed?

24 A I believe they are in some of the reports, and, certainly,
25 Dr. Erikson and Minnite's article uses CPS to test the effect

1 of voter ID laws. Dr. Burden uses CPS data in a 2014 article
2 to test the effect of early voting and same-day registration
3 laws. CPS has been used in turnout going back to Wolfinger
4 Rosenstone *Who Votes*, one of the first books written on the
5 turnout issue in the modern era. It is commonly used.

6 Q The Minnite report, who is the first author?

7 A Robert Erikson.

8 Q This is going to relate to some future questions. What
9 did do they in that article?

10 A They did what's called a difference-in-differences model
11 to test the effect of photographic identification laws. They
12 looked at the percentage of I believe it is registered voters
13 who voted in 2002 and then in 2006 in each individual state,
14 and they measured the change.

15 So these are purely hypothetical numbers; but if the
16 participation rate in 2002 was 50 percent in a given state and
17 then in 2006 was 55 percent, they coded the participation rate
18 as having increased, and they measured that with respect to
19 photographic -- or identification laws, not just photographic,
20 but identification laws implemented in those states to see if
21 there was any relationship between these laws and turnout in
22 the states.

23 Q Are you aware of any testimony by experts -- Plaintiffs'
24 experts that a cross-state comparison like the one you just
25 described is a recognized way of testing for whether election

1 laws have impact on turnout? Has anyone -- do you recall
2 whether Dr. Stewart said that was a recognized system for
3 testing that?

4 A Dr. Stewart insisted that you should use individual-level
5 data. The sort of analysis Dr. Burden does is where you go
6 into the CPS, you draw the 100,000 respondents out of
7 DataFerrett and you run what's called logit, or logistic
8 regression, on those voters.

9 Drs. Erikson and Minnite are highly critical of that
10 approach, and say that you should use an aggregate approach
11 with the difference-in-differences model for some complex
12 technical reasons. I know that the Leighley and Nagler book
13 uses a difference-in-differences model as well.

14 Q You just explained different ways to do a cross-state
15 analysis. Isn't it true Dr. Stewart agreed that a cross-state
16 analysis was an appropriate way to test the effect of election
17 law on turnout?

18 A He has a different idea about how it should be done, but
19 ultimately he -- I think that's a fair reading of his
20 testimony.

21 Q And are you familiar with the Dr. Burden article about the
22 effect of early voting on turnout?

23 A Correct. I am.

24 Q Did he do a cross-state analysis in that article?

25 A Absolutely. Now, he's taken the individual-level response

1 from all 50 states. I believe he clusters them by standard
2 error by state, which in a way aggregates the data, but he's
3 looking at all -- data from the all the states.

4 Q All right. Regardless of the way you would do a
5 cross-state analysis, have any of the Plaintiffs' experts
6 attempted in this case to do a cross-state analysis to reach a
7 conclusion on the effect of the voting practices at issue in
8 this case on turnout?

9 A Not by race. I don't know what the -- I haven't done much
10 with the Duke Intervenors, so I don't know how they approach
11 this, but I don't believe any of the other parties' experts
12 have done so.

13 Q All right. Now, I want to ask you about the problems with
14 the CPS data. Have you heard about those from Plaintiffs'
15 experts?

16 A Prior to Plaintiffs' experts, I had heard about it, but I
17 have heard about it from them as well.

18 Q So what are the limitations of the CPS data?

19 A I think I mentioned yesterday, people lie about a lot of
20 things. We know that they consistently lie about church
21 attendance and whether they voted. They also misstate later on
22 who they voted for. People like to say they voted for the
23 winner.

24 So we see that in all measurements of voter turnout. What
25 the CPS does, and part in an effort to correct for that, is to

1 categorize anyone who says they did not vote as not voting. To
2 clarify what I mean by that, if someone says, "I don't know,"
3 CPS classifies that as a no vote. It reduces the reported
4 turnout rates to something closer to what we know the actual
5 turnout rates in the states to be.

6 Q Okay. Now, I am going to get a little ahead of myself
7 because we're going to talk about your regression analysis
8 later, but are you aware of any proposed fixes for the CPS
9 data?

10 A Yes. There was an article written in December of -- well,
11 winter -- late 2013, so about three or four months before the
12 expert reports were filed, that suggested that one possible way
13 to address this issue would be -- this is really convoluted,
14 but you go into the individual-level data, you just remove the
15 people who don't say yes or no, which increases the reported
16 turnout rates, and then you weight all of the respondents down
17 to the actual reported turnout rates in their respective
18 states.

19 The article doesn't contain any tests to see whether it
20 actually results in better, improved results for individual
21 states by comparing it to validated data or something along
22 those lines, but that is the suggestion.

23 Q Are you aware of anyone who published about that topic
24 before the 2013 article that you just mentioned?

25 A Dr. Michael McDonald wrote about it online. I wrote --

1 building on Dr. McDonald's piece, I wrote a piece about the
2 issues with the CPS report online at RealClearPolitics. So I
3 was well familiar with them before this litigation started.

4 Q When did Dr. McDonald write his opinion; do you recall?

5 A It would have been right after the CPS came out in early
6 2013. He had written about it previously, but there were some
7 news reports saying that the African-American participation
8 rate had exceeded the non-Hispanic white participation rate for
9 the first time ever, and the newspapers were trumpeting this
10 everywhere.

11 And Dr. McDonald said if you do this correction, it
12 actually looks like that occurred first -- well, actually, I
13 think he just drops nonrespondents. I don't think he reweights
14 back down. If you do a correction, it looks like
15 African-American participation exceeded non-Hispanic white
16 participation for the first time in 2008.

17 So my article was basically making a similar point to
18 McDonald's, that newspapers and journalists who aren't fully
19 aware of the CPS data should be careful with it before they
20 start broadcasting conclusions from it.

21 Q Now, in your report, did you make any of these fixes that
22 were suggested?

23 A Not in my preliminary injunction report. In my second
24 report, I did with the second set of regression analyses that I
25 ran.

1 Q We'll get to that in a second. When you made these
2 changes, did it change the results?

3 A It didn't change the results, and it is not surprising. I
4 mean, when you compare it to actual validated data, the
5 reweighted CPS gives worse results than the un- -- well, the
6 regular CPS data. So I am not surprised.

7 Q "Worse results," what do you mean by that?

8 A Further from the reported rates.

9 Q Okay. Now, have any of the experts in this case done
10 studies with CPS data that was not corrected in the way that
11 the 2013 article suggested?

12 A All of them. I am not sure that there's -- I mean, there
13 might be one or two out there that have used it, but
14 Dr. Burden's article in 2014 certainly doesn't reweight. The
15 Leighley and Nagler book that I described earlier has a lengthy
16 discussion of the problems with the CPS data, but concludes
17 that the flaws are, you know, not fatal.

18 Drs. Minnite and Erikson, obviously they are publishing
19 back in 2009, but they are not reweighting. Almost all of the
20 literature that we discuss here is using the standard reported
21 CPS numbers.

22 Q All right. Now, Dr. Trende, I want to move to another
23 topic here.

24 A Mister.

25 Q Mr. Trende. I'm sorry. I am, like, getting too old to do

1 this. So I apologize to everyone here in the courtroom.

2 I want to ask you if you had an opinion on whether the
3 historical trends of African-American participation nationally
4 has any impact in this case.

5 A Yes. Again, if you're saying there was an increase in
6 participation in North Carolina, again, I say you want to look
7 at what's going on not just in North Carolina, because this
8 could be part of a national trend. You need to test for this
9 because you can draw conclusions.

10 Q Can I direct your attention to page 52 of your report.
11 And do you see the Figure 7 on page 52?

12 A Yes.

13 Q Could you explain to the Court what this represents?

14 A So this is the African-American national participation in
15 voting. It shows that the long-term trend nationally, dating
16 back to 1976, is an increased participation rate.

17 Q What are you measuring in this chart? When you are
18 saying -- like in 2012, it looks like the participation rate is
19 close to 70 percent. 70 percent of what?

20 A It's the citizen voting-age population, or CVAP is what it
21 is called for short. This is actually also validated
22 independently by exit polls data, which shows a consistently
23 increasing share of the electorate for African-American voters.

24 Q So let's turn to page 53 and Figure 8. And if you could
25 explain to the Court what this represents.

1 A So this is African-American voting participation as a
2 percentage of white participation, or non-Hispanic white
3 participation. And, again, you see the same trend, a
4 convergence of African-American participation on non-Hispanic
5 white participation culminating in 2012.

6 Q And, again, what data is this based on?

7 A This is using the CPS data.

8 Q And so at the end of the line there, at the end of the
9 chart on the right-hand side, the line goes above 100 percent.
10 Could you tell me what that means?

11 A That means that African-Americans are participating at a
12 higher rate.

13 Q Than?

14 A Non-Hispanic whites.

15 Q And that's as of when?

16 A That's as of 2012.

17 Q All right. So could you turn to page 54, please. Do you
18 see the chart on page 54?

19 A Yes.

20 Q Can you tell the Court what this is?

21 A So this is overlaying the African-American voter
22 participation rate in North Carolina, the dashed line, with the
23 rate nationally, and it just shows that there is a similar
24 trend line. And then there is a quick regression analysis I
25 did to validate that. It is not just our eyes playing tricks

1 on us. The lines really do move together; they correlate.

2 Q And so what does that mean, they correlate?

3 A It just means that the trend in North Carolina, at least
4 in part, and probably mostly, is related to -- it's being
5 replicated nationally.

6 Q All right. Now, Mr. Trende, in your professional
7 position, we've talked about how part of your job is to
8 evaluate elections in various states and to make predictions
9 about what's going to happen in a particular state.

10 Do you have an opinion on what's changed about North
11 Carolina in recent years about its competitiveness on a
12 national basis?

13 A Yes. North Carolina has really in the last 20 years
14 emerged as a target state or a competitive state. It is
15 something that people had kind of talked about potentially in
16 the 1990s, and it's kind of a neat example of that coming to
17 pass, those predictions here being proved true. The state has
18 definitely become more competitive in the past 20 years.

19 Q When you mean more competitive, more competitive in what
20 type of elections?

21 A Presidential elections. I don't think there is any
22 dispute that North Carolina has moved towards the center of
23 American politics in terms of voting at the Presidential level,
24 and we've seen a number of competitive Senate races at the same
25 time.

1 Q Could you turn to page 57 of your report, Figure 10. I
2 want you to really take your time on this one because I want to
3 make sure the Court understands this. Can you please explain
4 what Figure 10 is?

5 A This is what's called the Partisan Index of North
6 Carolina. Also a term used is Partisan Voter Index, PVI. So
7 to understand why you do the exercise I am about to describe,
8 you can think of the state of Massachusetts in 1984, which
9 narrowly went for Ronald Reagan. Now, if you are just looking
10 at the simple "who did it vote for" result, you are looking at
11 it and saying, wow, Massachusetts is a purple state, but then
12 you would actually look at the state. It had a Democratic
13 governor, two Democratic senators. I believe 10 of the 11
14 congressmen at the time were Democrats. The State legislature
15 was Democratic. It was a blue state.

16 What the analysis missed that said it was purple is that
17 Ronald Reagan was winning nationally with 59 percent of the
18 vote. The states tend to move together in tandem with respect
19 to national effects.

20 So when you look at Massachusetts 1984, 52 percent for
21 Ronald Reagan, but compare it to the national 59 percent for
22 Ronald Reagan, the state was seven points more Democratic than
23 the country as a whole, which lines up better with what we know
24 about the actual partisanship of Massachusetts.

25 So what people who study elections will typically do to

1 try to control for these national effects -- or if you're
2 looking at the partisanship, say, of Congressional districts,
3 it is a measure we use for the Almanac of American Politics.
4 We use this PVI to try to control for a landslide one way or
5 another. And so that's what I've done here for North Carolina.

6 Q Can you explain to the Court how you've applied that
7 analysis to North Carolina in Figure 10?

8 A So it's the same basic application. So in 1972, you would
9 look at Richard Nixon's national share of the vote compared to
10 George McGovern, and then you would look at how Richard Nixon
11 performed in North Carolina vis-a-vis George McGovern, and it
12 is about nine points better. So in 1972, at the Presidential
13 level, North Carolina had a nine-point Republican lean.

14 1976, southern Democrat Jimmy Carter topped the ticket and
15 northern Republican Gerald Ford. The Partisan Index of North
16 Carolina shifts. If you would look at a longer-term trend,
17 this is more in line with the trend at the time. North
18 Carolina in 1976 was four point-some percent better for Jimmy
19 Carter than the country as a whole.

20 1980, it was a little bit closer to the country as a
21 whole, and then there is just this pronounced progression, the
22 state becoming increasingly Republican at the Presidential
23 level up until 1996.

24 Q And then what happened after 1996?

25 A So 1996 represents a bit of an inflection point. In 2000,

1 the state was a little bit more Democratic compared to the
2 country as a whole than it had been in 1996, and then in each
3 successive year, it becomes progressively less Republican.

4 Now, you want look at this and say, well, in 2008,
5 President Obama carried North Carolina. Why do you have it as
6 a Republican lean? And the answer is, again, to remind
7 yourself that we are comparing the state to the national
8 average. And so although President Obama, then Senator Obama,
9 narrowly carried North Carolina in 2008, he won nationally by
10 7.3 percent. So compared to the country as a whole, the state
11 still had a Republican lean, though not as pronounced as it had
12 been in 2004, 2000, or 1996.

13 Q So in 2008, President Obama won North Carolina?

14 A That's correct.

15 Q And in 2012, it was Governor Romney who carried North
16 Carolina. Would you agree it was by a close margin?

17 A Yes, it was a close state. Certainly hotly contested in
18 2012.

19 Q Do you have an opinion on why, even though North Carolina
20 was a leaning Republican state, how President Obama was able to
21 do so well in North Carolina?

22 A Well, part of it was the long-term trend in the state,
23 and, you know, he certainly targeted the state heavily in 2008,
24 but, again, you had this long-term trend in states like 2000
25 and 2004 where the state wasn't competitive.

1 Q Are you aware of how exactly the Obama campaign organized
2 and ran its election in North Carolina in 2008 and 2012?

3 A Yes. In states where -- I don't think there is any
4 dispute about this again. In states where early voting was
5 available, the Obama campaign targeted early voting. States
6 where early voting wasn't available, like Pennsylvania, the
7 Obama campaign utilized more traditional Get Out the Vote
8 efforts, but the ultimate goal was to get supporters to the
9 polls.

10 Q Did you rely on any particular sources to reach that
11 conclusion?

12 A Well, again, part of it is my just my experience following
13 the campaigns and having written a book, in large part, about
14 2008 and lived the 2012 campaign, but I didn't stop there. I
15 mean, to illustrate what was going on, I looked at the amount
16 of spending in the state. I looked for statements by Obama
17 campaign officials after the fact and some during the fact as
18 to what their strategies were.

19 There is a book by Kathleen Hall Jamieson called *Electing*
20 *the President* which represents a series of panels of different
21 campaign officials explaining -- it's largely a text or a
22 transcript of those panels where campaign officials were
23 describing what they had done. So there is a variety --

24 **MR. HO:** Just an objection here. Mr. Trende is
25 referring to certain paragraphs in his report, paragraphs 203

1 to 206, and, in particular, quotations from a magazine and a
2 book by a communications professor, which, in turn, quote Obama
3 campaign officials.

4 Now, there have been some objections raised by
5 Defendants to newspaper articles relied upon by some of
6 Plaintiffs' experts. So under the goose-gander rule, if those
7 objections are to stand, we would request that these materials
8 be excluded or at least not relied on for the truth of the
9 matter asserted.

10 **MR. FARR:** Your Honor, may I respond to that?

11 **THE COURT:** Yes.

12 **MR. FARR:** I think there is a little confusion about
13 the proper goose and the proper gander to compare to. The
14 objections we raised were newspaper stories that the Plaintiffs
15 were trying to admit as admissions by legislators.

16 The type of thing that Mr. Trende is relying upon was
17 relied upon ad nauseam by the Plaintiffs' experts in this case
18 to give their opinions as historians and their methodology,
19 that they explained that it was perfectly appropriate to look
20 at matters like this to reach these types of opinions.

21 So this is not a goose-gander thing. We are not
22 asking that these be treated as an admission by the Obama
23 campaign. It is just the sort of stuff that experts like
24 Mr. Trende rely upon, as demonstrated by the testimony given by
25 the Plaintiffs' experts.

1 **THE COURT:** Overruled.

2 **MR. FARR:** May I approach?

3 **THE COURT:** Yes.

4 **BY MR. FARR**

5 Q Mr. Trende, I am handing you something that's been marked
6 as Defendants' Exhibit 7. Could you please explain to the
7 Court what that is?

8 A So this is a recitation I prepared of Virginia voter
9 turnout by race from 1998 to 2012 to show the trend line of
10 participation rates in Virginia.

11 Q Let's talk about this to make sure that the Court
12 understands this exhibit. What data did you use to create this
13 exhibit?

14 A This is based upon the Current Population Survey, the CPS
15 data.

16 Q All right. And Footnote 2, could you explain what that
17 means?

18 A For purposes of -- when you are looking at the CPS data,
19 it only -- anyone who -- white is treated as a race. Hispanic
20 is treated as an ethnicity. So you will have people that will
21 respond to both. The term of art for CPS data is "non-Hispanic
22 whites." I just wanted to clarify that that's what I was
23 referring to.

24 Q Okay. Now, let's look at -- this is titled "Virginia
25 Voter Turnout by Race, 1998 through 2012"; is that correct?

1 A That's correct.

2 Q So the first column on the left where you have the years,
3 what does that represent?

4 A That is the election year that I am looking at.

5 Q And then for each election year, you have it broken down
6 in the second column between black and white voters?

7 A That's correct.

8 Q And what is the column that's titled "Percent of Citizen
9 Voting-age Population"?

10 A So according to the CPS data, in 1998 African-Americans
11 were 21.1 percent of the citizen voting-age population in
12 Virginia and 75.7 percent of the non-Hispanic white citizen
13 voting-age population.

14 Q Okay. And then the next column that you have is
15 "Percentage of the Electorate"?

16 A That's right. So in the actual election in 1998,
17 according to the CPS data, non-Hispanic whites were
18 81.5 percent of the electorate, and 16.8 percent were
19 African-American. Again, those numbers are repeated going
20 down.

21 Q And then let's move to the next column where you got --
22 it's labeled "Under/Overrepresentation of the Electorate."

23 A So in -- this is basically the third column subtracted
24 from the fourth. In plain terms, that is -- if the groups were
25 to turn out at the rates of their percentage of the CPS

1 population, if that's our expectation, this shows how much
2 better or worse they did than that expectation.

3 So African-Americans in 1998 in Virginia were 21.1 of the
4 percent of the population but 16.8 percent of the electorate
5 underrepresented by 4.3 percent, and non-Hispanic whites were
6 overrepresented by 5.8 percent.

7 Q And you are referring to your analysis of the 1998
8 election there?

9 A That's correct. That was in 1998. And then that
10 difference is labeled in the final column, whites -- and it is
11 not 10.1 percent overrepresented. It is 10.1 percentage points
12 overrepresented, non-Hispanic whites in 1998 with respect to
13 African-Americans.

14 Q Okay. All right. Let's look at the -- 2004 was a
15 Presidential election year?

16 A That's correct.

17 Q Do you recall who carried the state of Virginia in 2004?

18 A President Bush.

19 Q And could we run through the numbers in all these columns
20 for 2004?

21 A So in the 2004 election, non-Hispanic whites were
22 75.3 percent of the citizen population, 80.6 percent of the
23 electorate. So they were overrepresented by 5.3 percent. If
24 you look at African-Americans, 18.4 percent of the citizen
25 voting-age population, 15.2 percent of the electorate. So

1 underrepresented by 3.2 percent. That's a gap of eight and a
2 half percent percentage points.

3 Q And explain that again, please. Whites were eight and a
4 half percent what?

5 A Whites where 8.5 percentage points more -- I guess the way
6 to think of it is they were 8.5 percentage points more of the
7 electorate than you would expect based upon the share of the
8 citizen voting-age population.

9 Q All right. Now, let's turn to 2008. Could you go through
10 the numbers for that, please. And that's a Presidential year;
11 right?

12 A That is a Presidential year.

13 Q Who carried Virginia in 2008?

14 A Then Senator Obama.

15 Q All right. So can you run through the numbers for the
16 2008 election in Virginia?

17 A So in 2008, non-Hispanic whites were 73.6 percent of the
18 citizen voting-age population and 74.4 percent of the
19 electorate. So they were overrepresented by .8 percent. In
20 2008, African-Americans were 18.9 percent of the citizen
21 voting-age population, 18.8 percent of the electorate. So they
22 were underrepresented by .1 percent. The difference at that
23 point in 2008 is .9 percent.

24 Q And how did the difference in 2008 in the year that
25 Senator Obama won Virginia -- how did that compare to the

1 difference in over and underrepresentation in 2004 when
2 President Bush won Virginia?

3 A It was substantially less. It was 7.4 percentage points
4 less.

5 Q Okay. So now let's turn to the 2012 Presidential
6 election. And who won Virginia in 2012?

7 A President Obama won it once again.

8 Q And can you go over the numbers for this, please?

9 A African-Americans in 2012 were 18.8 percent of the citizen
10 voting-age population. They are 18.9 percent of the
11 electorate. So African-American voters were actually
12 overrepresented by a tenth of a percent in Virginia in 2012,
13 relative to population share, which, again, is our baseline.

14 Non-Hispanic whites were 75.2 percent of the citizen
15 voting-age population, 73.5 percent of the electorate, down --
16 underrepresented by 1.7 percent.

17 Q What was the difference in over and underrepresentation?

18 A It was 1.8 percentage points.

19 Q In favor of which group?

20 A African-American -- non-Hispanic whites were
21 underrepresented by 1.8 percentage points relative to
22 African-Americans.

23 Q Okay.

24 A African-Americans were a larger share of the electorate
25 than you would have expected based on CVAP; non-Hispanic whites

1 were a smaller share.

2 Q So President Obama won Virginia in both 2008 and 2012?

3 A Correct.

4 Q Did Virginia have early voting in either of those years?

5 A It did not.

6 Q Did Virginia have same-day registration in either of those
7 two elections?

8 A It did not.

9 Q Did Virginia have out-of-precinct voting in either of
10 those two elections?

11 A It did not.

12 Q Did Virginia have preregistration of 16-year-olds in
13 either of those two elections?

14 A It did not.

15 Q Thanks. Now, Mr. Trende, I would like to move to what I
16 believe will be the final part of your testimony, which is your
17 cross-state comparison which begins on page 67 of your report.
18 Are you there?

19 A I am, yes.

20 Q Could you explain to the Court, why did you do a
21 cross-state comparison?

22 A Well, for two reasons. The first -- the main reason,
23 we've talked a lot about the types of things you would have to
24 try to control for if you were going to draw an inference
25 relating these laws to turnout rates. We say you have to look

1 at all the states, or at least as many as you can.

2 You know, one of the criticisms of the Mississippi chart
3 is that there's other states you could look at that don't have
4 those trend lines, and that's exactly correct. And so what you
5 want to do -- what you do, in effect, with the regression
6 analysis is you keep layering state after state on that chart
7 and draw what's called the best fit with the regression
8 analysis that has, after a few controls are applied, whether --
9 it explains whether or not there is a correlation.

10 So the first reason I did this was to just -- again, as an
11 illustration of the sort of thing Plaintiffs' experts would
12 have to do to draw the conclusions that they do to try to have
13 some sort of control for national effects put into place. The
14 second reason --

15 Q I got a question for you.

16 A Yeah.

17 Q Did you look at all the states in doing this comparison?

18 A I looked at all the states where the Census Bureau
19 published top-line numbers. You literally cannot --

20 Q What's a top-line number?

21 A The top-line is the summary number. So if turnout was
22 45.9 percent, the Census will publish that number. It is
23 called -- we call it the top-line. You literally cannot do all
24 51 (sic) states because a state like Montana in 2012 did not
25 have any African-American respondents in the voting sample.

1 So --

2 Q If we pull up page 62 of your report --

3 A Yes.

4 Q -- if you go to the bottom, there is a chart that lists a
5 bunch of states.

6 A Yes.

7 Q It goes on to page 63. Are these the states that you
8 studied?

9 A Those are the states that I studied where the Census
10 published top-line numbers for African-American participation.

11 Q Okay. Now, I interrupted you. Could you go -- could you
12 continue to explain the second reason why you did this report.

13 A The second reason I did the report was I just figured that
14 this is a testable hypothesis. Is there a relationship between
15 these voting laws and African-American participation?

16 So rather than just kind of give an illustration of what
17 you would have to do, I wanted to go ahead and do it to see if
18 it did have a relationship, using the sorts of tools that I
19 used routinely to test these hypotheses in my day-to-day work.

20 Q Did any of the Plaintiffs' experts even attempt to do a
21 study like this?

22 A Again, I don't know with respect to the Intervenor
23 Plaintiffs, but the other Plaintiffs, I don't believe any of
24 their experts did anything like this. They have done it in
25 their professional careers. They just didn't do it here.

1 Q Could you explain to the Court what exactly you did?

2 A So when I first was asked about turnout, I kind of got in
3 my mind, okay, this is a difference-in-differences problem.
4 You want to compare the turnout at the beginning of the period
5 with what happened to turnout after the laws were fully in
6 place in North Carolina, the most recent election.

7 And so I looked at the states where North Carolina -- or
8 I'm sorry, I looked at the states where the Census had produced
9 these numbers and looked at the change in African-American
10 participation from 2000 to 2012.

11 Q Let me ask you a question right there.

12 A Yes.

13 Q We are still looking at your chart.

14 A Yes.

15 Q So you've got the state on the left-hand side. You've got
16 change in African-American participation from 2000 to 2012 as
17 the second column?

18 A Yes.

19 Q And what is the third column?

20 A The number of laws that were adopted.

21 Q And when you say "number of laws adopted," what are you
22 referring to?

23 A The number -- the -- of the relief sought by Plaintiffs,
24 the number of states that had those practices in place by the
25 end of the time period.

1 Q Now, please continue and explain how you did your
2 analysis.

3 A So what I did -- when you do a multivariate analysis for
4 publication, what you'll typically do is put all your controls
5 in place at once and run it.

6 What I wanted to do was illustrate the importance of
7 putting these controls in place. So I ran it the first time
8 with just a simple bivariate regression analysis, which is to
9 say just the dependent variable and one independent variable,
10 change in African-American participation versus the number of
11 laws; and it didn't produce a statistically significant result.

12 So then the next thing I did was add a control for -- a
13 control for competitiveness, rating these states whether they
14 had a competitive election or did not in 2000 and 2012,
15 measuring the change. And when you did that, as we would
16 expect, the significance falls further of the laws variable.
17 So --

18 Q Significance being what?

19 A When you are testing significance, you are testing -- you
20 are actually testing the null hypothesis. Basically a
21 95 percent confidence level is the standard practice for what
22 we need before we accept something as knowledge. And so if
23 something doesn't reach the 95 percent confidence level, the P
24 stat reported here doesn't fall below .05, we don't claim to
25 have any knowledge about whether the correlation is real or

1 just random chance.

2 Q The second time you did this, you added a control for
3 states where you thought there was a competitive election?

4 A Right. Whether the states -- whether the competitiveness
5 of the states had changed. You would expect that as a state
6 becomes less competitive that you would see drops in turnouts;
7 as it became more, you would see an increase. And that's what
8 we see.

9 Then you say to yourself, well, you are doing a
10 difference-in-differences regression, and so if a state --
11 African-American participation varies widely across states. If
12 a state at is 90 percent to begin with, it can't increase
13 another 20 percentage points because you can't go past 100;
14 whereas, if the state starts out at 40 percent participation,
15 it could easily increase 20 percent over time.

16 As a matter of fact, given national trends, we might
17 expect that. So there is an additional control put in for the
18 baseline of African-American participation. When you put that
19 in place, the laws variable is still not statistically
20 significant.

21 Q So I want to make sure I understand this. The first test
22 you did was a bivariate analysis?

23 A It's really all the same test. The actual test is the
24 last one reported. I just wanted to illustrate the importance
25 and effect of adding controls.

1 Q Okay. So -- but the first time you did the test, you
2 found no statistically significant connection between the
3 election laws and turnout?

4 A Right.

5 Q And then when you added the control for competitiveness,
6 the result was that it became even more attenuated for any sort
7 of argument that there was a connection between the laws and
8 turnout; is that right?

9 A Yes.

10 Q All right. Now, you've done this analysis -- you did this
11 analysis for your preliminary injunction deposition; correct?

12 A Correct.

13 Q Before the time that you had your deposition taken, in the
14 preliminary injunction analysis, had you found any errors?

15 A Yes. It was extremely embarrassing. I had done -- cut
16 and pasted for the laws variable from the wrong column, and it
17 was a mistake in the coding.

18 Q Now, had you provided corrections for those errors at the
19 time your preliminary injunction deposition was taken?

20 A I did. I did.

21 Q When you corrected for those errors, did it change your
22 conclusions?

23 A No. Basically, what we are doing -- Dr. Stewart and I had
24 a disagreement about how some of the states should be coded.
25 He characterized it as a sensitivity analysis, and what he did

1 was said, even if what Mr. Trende said is true, it doesn't
2 change the result.

3 It's the same thing here. When you correct -- the
4 question is, if there is errors, when you correct those errors,
5 does it change the result. And it did not change my
6 conclusions. The variables -- the P did not fall below .05.
7 The laws variable, which is the one we are interested in, does
8 not become statistically significant with the recoding -- or
9 the corrected coding.

10 Q So your conclusion was that the laws at issue in this
11 case -- that there was no statistically significant evidence
12 that they had an impact on turnout; is that correct?

13 A That's correct. We did not have any controlled -- other
14 than the regression analysis here and the forthcoming one, we
15 don't have a controlled experiment that takes account of
16 national effects that would give us confidence to say that
17 there is, in fact, a relationship between these laws and
18 turnout.

19 Q Now, are you familiar with Dr. Burden's article on
20 analyzing whether early voting and same-day registration had an
21 effect on turnout?

22 A I am.

23 Q Did he do a cross-state comparison?

24 A He did.

25 Q And what was his conclusion about whether early voting and

1 same-day registration had a positive impact on turnout?

2 A Dr. Burden's conclusion is that early voting diminishes
3 the impact of mobilization efforts and kind of the civic day of
4 responsibility. The way I think about it is, in Virginia, you
5 would go into the office and on Election Day everyone had
6 "I Voted" stickers on. In a state with a lengthy early voting
7 period, that's spread out and the impact is diminished.

8 And so what Dr. Burden ultimately concludes is that the
9 early voting implementation decreases turnout. Same-day
10 registration can mitigate the effect of that somewhat but not
11 enough to turn the overall result positive.

12 Q Okay. Now, Mr. Trende, during the course of this case,
13 have you ever equated Election Day registration to same-day
14 registration?

15 A Yes.

16 Q When did you do that and why?

17 A Well, in my analysis, that's -- I put them together
18 because, again, my baseline that I am using for this
19 circumstance is what would be acceptable to Plaintiffs. I
20 don't believe that Plaintiffs would find it unacceptable. I
21 think they would be happy if North Carolina implemented
22 Election Day registration. So I count them as the same thing.

23 Again, I also mentioned I tried to make judgment calls if
24 I really felt it was a judgment call in favor of Plaintiffs.
25 If I'd split them out, given what I know about the literature,

1 it probably would have diminished the significance of same-day
2 registration further.

3 In my initial deposition, I could be wrong, I don't recall
4 having any sort of stipulation distinguishing between same-day
5 registration and Election Day registration, so I believe during
6 that deposition I was using the terminology in place for my
7 report.

8 Q Are you aware of any literature which indicates that
9 same-day registration has a positive impact on turnout?

10 A There is the finding in Dr. Burden's report that it can
11 mitigate the effect of early voting, but, again, you can't have
12 same-day registration without early voting, and he finds that
13 the overall combined effect of the two is negative.

14 Q Are you aware of any other peer-reviewed articles that
15 reach the conclusion that same-day registration has increased
16 turnout?

17 A I can't remember off the top of my head what the Larocca
18 and Klemanski article concludes. That's the only --

19 Q All right. Mr. Trende, I have got one more topic I want
20 to talk to you about, and that is testimony in this case that
21 you responded to about lines that developed in Florida in the
22 2012 election.

23 Can you turn to page 74 of your report? Are you there?

24 A Yes.

25 Q So do you recall what the experts -- Plaintiffs' experts

1 have said about the decline in voting in Florida in 2012?

2 A Yes. The Plaintiffs' experts claim that reducing early
3 voting going into 2012 resulted in lines increasing that
4 resulted in a decrease in turnout.

5 Q Okay. Did you study the opinion of the Plaintiffs'
6 experts?

7 A I did.

8 Q And could you tell the Court -- unfortunately, we split
9 the chart between page 74 and 75. Could you explain to the
10 Court what that chart is?

11 A Yes. I apologize for not taking care of the widows and
12 orphans, which is the term used for this; but, ultimately, what
13 I find is that early voting in Florida from 2008 to 2012 was
14 down. Total voting was up and overall in the United States was
15 down. What I think is the real punchline here is in
16 paragraph 252, which is that overall, regardless of these
17 shifts, participation was down 3.3 percent among non-Hispanic
18 whites but only .9 percent among African-Americans.

19 But at the end of the day, again, what you really want to
20 do is a national comparison. You would want a regression
21 analysis relating to just early voting that looked at the time
22 period from 2008 to 2012 that would include this reduction in
23 the number of days of early voting to see if there was a
24 national effect going on here.

25 Q I want to make sure before we conclude that the Court

1 understands this chart that's on page 74 and 75. The title is
2 "Early Versus Total Voting in Florida in 2008 to 2012"?

3 A Yes.

4 Q All right. And then what are the columns that you had on
5 this chart? You have four columns. What are they?

6 A The first column is the year, the second column is the
7 number of days -- or the number of early votes cast, the third
8 column is the total number of votes cast, and the fourth column
9 is total voting nationally.

10 Q Okay. And so then on the right-hand side, you have
11 election year 2008 -- left-hand side on the chart, you got the
12 election year 2008; correct?

13 A Correct.

14 Q Then you got election year 2012?

15 A Correct.

16 Q And then you have absolute change?

17 A Right. The absolute number of votes and how they shifted.

18 Q And then the last item you have is percentage shift?

19 A Correct.

20 Q So let's look at early voting in Florida, the column. So
21 on page 74, you had the total number of early votes in Florida
22 in 2008?

23 A Correct.

24 Q If we flip to page to 75, you then have the total number
25 of early vote in Florida for 2012?

- 1 A Correct.
- 2 Q And then what is the absolute change?
- 3 A It is just a subtraction of the two rows above.
- 4 Q What is the percent shift?
- 5 A It is the percentage difference between the top rows.
- 6 Q Let's go to the next column heading to the right, which
- 7 says "Total Voting in Florida."
- 8 A Correct.
- 9 Q And so for 2008, you entered the total vote in the state
- 10 of Florida?
- 11 A That's right.
- 12 Q And that includes all types of voting?
- 13 A Yes.
- 14 Q And then if we flip the page, in 2012, you added the total
- 15 vote in Florida for 2012?
- 16 A That's right, yeah.
- 17 Q And what was the absolute change?
- 18 A 79,927 more votes cast in 2012 in Florida than 2008.
- 19 Q So in comparing the turnout in Florida from 2008 to 2012
- 20 for the total vote, did it go up or down?
- 21 A The total vote went up.
- 22 Q By how much?
- 23 A 80,000 votes.
- 24 Q And what was the percentage increase?
- 25 A 1 percent increase.

1 Q Let's go to the final columns, which is the total Vote in
2 United States. On page 74, you have the total vote in 2008
3 for -- what does that mean?

4 A That's the national number of votes cast, 131,473,705.

5 Q And then if we flip the page to 75, what did you enter for
6 the 2012 election?

7 A 129,232,106.

8 Q And so what was the absolute shift for total vote in the
9 United States?

10 A 2,241,599 fewer votes were cast nationally.

11 Q Okay. And so what was the percentage difference?

12 A It decreased 1.7 percent.

13 Q So nationally, the total vote decreased by 1.7 percent,
14 but in Florida, it increased by 1 percent?

15 A That's correct.

16 Q Okay.

17 **MR. FARR:** Your Honor, I have no further questions,
18 but could I request that we take our break a little earlier
19 this morning?

20 **THE COURT:** That would be fine. All right. We'll
21 take our 20-minute break, and we'll start with the cross.

22 (The Court recessed at 10:24 a.m.)

23 (The Court was called back to order at 10:51 a.m.)

24 **THE COURT:** Mr. Ho?

25 **MR. HO:** I believe Mr. Farr wanted to move some

1 exhibits into evidence.

2 **MR. FARR:** I will wait until you're done, if that's
3 okay. Thank you. I appreciate it.

4 CROSS-EXAMINATION

5 **BY MR. HO**

6 Q Good morning, Mr. Trende.

7 A Good morning.

8 Q Mr. Trende, one of the opinions you offer in your report
9 in this case is that H.B. 589 places North Carolina within the
10 mainstream regarding the voting practices at issue in this
11 case; is that correct?

12 A I think that's an accurate paraphrase.

13 Q Now, Mr. Trende, is "mainstream" a term of art in
14 political science?

15 A I don't believe so.

16 Q Is it a term of art in psephology?

17 A No, it is not a defined term to my knowledge.

18 Q Now, in coming to this opinion that North Carolina is in
19 the mainstream, is it correct to say that you looked at all 50
20 states and the District of Columbia to see how many of the
21 voting laws or practices at issue in this case each state had?
22 And specifically those are same-day registration,
23 out-of-precinct voting, 17 days of early voting,
24 preregistration, and no photo ID requirement.

25 A I didn't look at whether or not a state had early voting.

1 I looked at the number -- or the length of the early voting
2 period. As I stated, it was with respect to the standard that
3 Plaintiffs seek relief on, but that's a substantial paraphrase.

4 Q So other than the statement about the number of days of
5 the early voting period, I've accurately characterized what you
6 did in assessing whether or not North Carolina is in the
7 mainstream?

8 A Well, with all of them, as I explained with Mr. Farr,
9 there's distinctions. So preregistration is preregistration at
10 16. Out-of-precinct voting is countywide out-of-precinct
11 practices. Other than that, I think what you said is correct.

12 Q Thank you.

13 **MR. HO:** Could we bring up Defendants' Exhibit 270.

14 **BY MR. HO**

15 Q I would like to look at page 33 of your report, the figure
16 in paragraph 110. Now, with respect to the laws or practices
17 at issue in this case, Mr. Trende, what is the median number of
18 those laws or practices for states?

19 A As of today, it is two.

20 Q Now, you report here that five jurisdictions have four
21 laws or practices at issue in this case; correct?

22 A Correct.

23 Q And five jurisdictions have three of the laws or reforms
24 at issue in this case; correct?

25 A Correct.

1 Q And 19 states have two of these laws or practices;
2 correct?

3 A Correct.

4 Q So fair to say that a majority of states have two or more
5 of the laws or practices at issue in this case?

6 A As of today, yes.

7 Q And only eight states have none of the laws or practices
8 in question; is that correct?

9 A Eight states have none of the practices.

10 Q And North Carolina is one of those only eight states that
11 have none of the practices at issue in this case?

12 A North Carolina is one of the eight states.

13 Q Could we look at paragraph 117 in your report, which is on
14 page 34. This is the list of the eight states that do not have
15 any of the practices at issue in this case; correct,
16 Mr. Trende?

17 A Yes.

18 Q Could you read those eight states into the record, please?

19 A Alabama, Michigan, Mississippi, North Carolina, South
20 Carolina, Tennessee, Texas, and Virginia.

21 Q Now, according to your opinion in this case, these eight
22 states are in the mainstream; correct, Mr. Trende?

23 A With respect to the voting practices at issue in this
24 case, yes.

25 Q Now, it is true, is it not, Mr. Trende, that all eight of

1 these states, with the exception of Tennessee, were at one
2 point covered in whole or in part by Section 5 of the Voting
3 Rights Act?

4 A I do not know.

5 Q Now, Mr. Trende, how many states, if you know, had
6 out-of-precinct voting on a countywide basis at one point and
7 then eliminated it?

8 A I don't know the answer to that.

9 Q Fair to say that North Carolina is the only state that you
10 are aware of that has had out-of-precinct voting at the
11 countywide level and then eliminated it?

12 A I haven't investigated that. It is the only one I know of
13 as I sit here.

14 Q You carefully reviewed the laws of all 50 states and the
15 District of Columbia with respect to the practices at issue in
16 this case prior to completing your expert report; right,
17 Mr. Trende?

18 A I did my best.

19 Q And North Carolina is the only state you are aware of
20 that's eliminated out-of-precinct voting; correct?

21 A I didn't do an historical investigation, so --

22 Q How many states, if you know, had preregistration for 16-
23 and 17-year-olds and then eliminated it?

24 A I don't know.

25 Q So North Carolina is the only state you are aware of that

1 had preregistration for 16- or 17-year-olds and then eliminated
2 it?

3 A Well, Florida had it for 15-year-olds and then increased
4 it to 16-year-olds. They also had a photographic driver's
5 license requirement at one point that they eliminated, but I
6 guess if you are just going to say 16- and 17-year-olds and not
7 count 15-year-olds, then yes.

8 Q North Carolina is the only state to have eliminated it?

9 A Right.

10 Q How many states, if you know, Mr. Trende, have had 17 or
11 more days of early voting at some point and then eliminated it?

12 Or, I'm sorry, I --

13 A I am going to answer your question, if that's okay.

14 Q Sure.

15 A Wisconsin, I think, decreased it, and I'm not sure if
16 Georgia crossed the 17-day threshold for days.

17 Q So to the best of your recollection, North Carolina and
18 Wisconsin are the only states that have had more than -- have
19 had 17 days or more of early voting and then went below that
20 number of early voting; correct?

21 A Just to clarify, are we talking days or period?

22 Q Let's say the period.

23 A Okay. With respect to the period, I think North Carolina
24 and Wisconsin are the states that have crossed that median.

25 Q You can't think of any other states; right?

1 A With respect to the period, no, I cannot think of any
2 other states that crossed the median of 17 days.

3 Q Now, in offering your opinion that North Carolina laws or
4 practices are in the mainstream, you compared the states solely
5 in terms of the five laws or practices that are at issue in
6 this case; correct, Mr. Trende?

7 A That's correct.

8 Q In your report, you didn't look at any other laws in the
9 various states that may affect voter access; correct?

10 A No, I didn't think it would be relevant or objective.

11 Q And you didn't look at whether the various states were in
12 compliance with, for example, federal legal obligations to
13 provide voter registration services under the National Voter
14 Registration Act; correct?

15 A No.

16 Q And you were in court yesterday when Dr. Hood explained
17 that many demographic factors can affect voter turnout;
18 Mr. Trende?

19 A I don't know if Dr. Hood said that, but I will take your
20 word for it.

21 Q Now, in offering your opinion, you didn't consider any
22 demographic or socioeconomic differences among the states that
23 might affect the ability of voters in those states to register
24 or cast a ballot without these particular laws; correct,
25 Mr. Trende?

1 A With respect to Opinion 1, there is no demographic
2 analysis.

3 Q And in your report, you did not conduct a local appraisal
4 of each state, for example, to compare whether African-American
5 voters disproportionately rely on any of these laws in any
6 other states; correct?

7 A No. In this opinion, I didn't look at rates of reliance
8 or participation.

9 Q And in offering this opinion that North Carolina's laws
10 are in the mainstream, you didn't consider any factors as to
11 whether voters in different states may have different needs in
12 terms of access to registration and voting opportunities, did
13 you, Mr. Trende?

14 A No.

15 Q Can we look at page 20 of your report? Now, this depicts
16 the length of the early voting period in the 50 states and DC;
17 correct?

18 A Correct.

19 Q Now, you identified the median length of the early voting
20 period here; right?

21 A Correct.

22 Q And that's 14 days?

23 A As of today, it is 14 days.

24 Q Now, you testified earlier that the median number of
25 reforms for a state to have with respect to the reforms at

1 issue in this case is two; correct, Mr. Trende?

2 A Correct.

3 Q So to get to that median, North Carolina would have to
4 restore two of the eliminated practices at issue in this case;
5 correct?

6 A Correct.

7 Q And, in fact, that's what the Fourth Circuit ruling did in
8 re-establishing out-of-precinct voting and same-day
9 registration; correct?

10 A I don't know what the Fourth Circuit did.

11 Q Let's talk about the section of your report where you
12 discuss the 2014 data. I would like to turn to page 9.

13 A Page 9.

14 Q This graph compares white and African-American turnout in
15 the last four midterm elections; correct?

16 A Correct.

17 Q Now, this is just a comparison of overall aggregate
18 turnout in these four elections; correct?

19 A With respect to the distinct groups, yes.

20 Q And you did not in your report make any effort to control
21 for factors for campaign spending that may have differed
22 between these four elections; correct?

23 A No, that's not true.

24 Q Where in your report do you do that?

25 A Opinion 2, the regression analysis from my preliminary

1 injunction, plus the 48 new regression analyses that I
2 introduced in this report have controls for campaign effects.
3 And as Dr. Gronke notes, with the transition analysis, because
4 you are looking at a distinct group of voters who are all
5 subject to the same campaign effects from 2012 to 2014, there
6 is, in effect, a control there.

7 Q Well, Mr. Trende, I am going to ask you about those parts
8 of your report later. I am asking about your description of
9 this graph. In your description of this graph in your report,
10 you do not attempt to control for different factors like the
11 different levels of spending in these elections; correct,
12 Mr. Trende?

13 A Oh, no, no. For this graph, I don't. For the report, I
14 do.

15 Q Okay. We'll talk about that.

16 Can we turn to page 12 in your report? I would like to
17 ask you about this graph. Now, this graph shows
18 African-American turnout in various states in the 2012 election
19 and the 2014 midterm; correct?

20 A Correct.

21 Q Now, I believe you testified that African-American turnout
22 typically declines from the Presidential election to a midterm;
23 correct?

24 A Correct.

25 Q And you testified that the reason you provided this graph

1 was to provide some context for this phenomenon; correct,
2 Mr. Trende?

3 A For the national phenomenon, yes.

4 Q So in your view, it would not be sufficient to simply
5 observe that African-American turnout declined in North
6 Carolina from 2012 to 2014. You would want to see if that's
7 part of a broader pattern of what normally happens; correct,
8 Mr. Trende?

9 A Can you repeat that question?

10 Q I'll have the court reporter read it back.

11 A I just want to make sure I heard you right.

12 (Question read back as follows: So in your view, it would
13 not be sufficient to simply observe that African-American
14 turnout declined in North Carolina from 2012 to 2014. You
15 would want to see if that's part of a broader pattern of what
16 normally happens; correct, Mr. Trende?)

17 I think that's a little bit of a broad question. It would
18 depend on the specific context, whether you are offering an
19 affirmative statement or trying to rebut an affirmative
20 statement by someone else, in other words, whether you have
21 some sort of burden. Generally speaking, though, yeah, I think
22 you want to try to place changes in the national context.

23 Q Let's look at page 13. This is your transition analysis
24 in which you report that Election Day voters from 2010 were
25 more likely to drop out of the electorate in 2014 as compared

1 to early voters from 2010; right, Mr. Trende?

2 A Correct.

3 Q Okay. Now, in the report, did you examine the propensity
4 of Election Day voters in comparison to early voters to stay in
5 the electorate in subsequent elections other than the 2012 to
6 2014 cycle?

7 A No, I confined myself to the sort of analysis that
8 Dr. Gronke did because that's what I was responding to.

9 Q So your report doesn't address whether there are
10 differences between Election Day and early voters from 2010 in
11 terms of their voting behavior in 2014 that mirror broader
12 patterns in other election cycles; correct?

13 A No, I confined myself to what Dr. Gronke did.

14 Q As a general matter, you don't know whether or not
15 Election Day voters usually fall out of the electorate at
16 higher rates than early voters in subsequent elections; right,
17 Mr. Trende?

18 A No.

19 Q Now, you said that Election Day voters -- I believe you
20 said in your direct testimony that Election Day voters from
21 2010 --

22 **THE COURT:** I'm sorry. You said no. Are you
23 agreeing or disagreeing with him?

24 **THE WITNESS:** I'm sorry, Your Honor. Madame court
25 reporter, can you repeat the question? I'm sorry. Your Honor,

1 I already dropped the question from my mind.

2 **MR. HO:** Would you like me reask it, Your Honor?

3 **THE COURT:** That would be fine.

4 **BY MR. HO**

5 Q So you do not know, do you, Mr. Trende, as a general
6 matter whether Election Day voters usually tend to fall out of
7 electorate at higher rates than early voters in subsequent
8 elections?

9 A No. I didn't investigate prior elections beyond the ones
10 that Dr. Gronke had discussed, just 2012 and 2014.

11 Q Okay. Now, I believe you testified on direct that
12 Election Day voters from 2010, if they seek to vote in 2014,
13 would not be affected by the changes in election law at issue
14 in this case?

15 A I don't think I was that emphatic. I think I caveated it,
16 if that's a word.

17 Q Perhaps you said -- tell me if this is an accurate
18 characterization -- that Election Day voters from 2010, if they
19 attempted to vote in 2014, were unlikely to be affected by the
20 reduction in the early voting period or the elimination of
21 same-day registration?

22 A I believe my testimony was that they wouldn't be as
23 heavily impacted.

24 Q Now, it is certainly possible, you would agree,
25 Mr. Trende, that an Election Day -- a voter who voted on

1 Election Day in 2010 could show up at the wrong precinct in
2 2014 and thereby be affected by the elimination of
3 out-of-precinct voting, correct?

4 A Right, and that's why I said not as heavily; that's
5 correct. It's also true of early voters.

6 Q You would also agree that an Election Day voter from 2010
7 might not seek to vote on Election Day in 2014 because of, for
8 instance, a conflict at work and then would seek to use the
9 early voting period instead in 2014; correct?

10 A I did my analysis with respect to 2012. I think your
11 suggestion with respect to 2010 is equally valid.

12 Q And you would also agree that it is possible that someone
13 who voted on Election Day in a past election might move to
14 another county and then seek to take advantage of same-day
15 registration in a subsequent election; correct?

16 A As I sit here, I can't think of a reason why that wouldn't
17 be the case, but I haven't given it much thought before this.

18 Q Now, if early voting reductions at issue in this case
19 caused some early voters to shift to Election Day, all Election
20 Day voters could be affected by longer lines; correct?

21 A I mean, that's a testable hypothesis whether there were
22 more Election Day voters in 2012 than 2014. You can look at
23 the number, and if those numbers increased from 2012 to 2014,
24 that might be plausible; but if you do that, you've made this
25 hypothesis unfalsifiable because if the Election Day voters are

1 worse off, than it's the lines, and if the early voters are
2 worse off, it's habits. So no matter -- under that theory, no
3 matter what this analysis that Dr. Gronke did shows, it is
4 going to show there was a burden.

5 Q I wasn't asking about the theory, Mr. Trende. I just
6 asked if it were possible that Election Day voters would be
7 affected by greater congestion as a result of the reduction of
8 the early voting period. And you agree with that; right?

9 A Sure. This is all in the context of a theory, and if you
10 adopt that theory, then everything -- if you adopt the lines,
11 then the entire theory, hypothesis -- the entire theory becomes
12 unfalsifiable that you guys are offering.

13 Q Let's talk about the second opinion in your report. And
14 most of my questions are going to be about your regression
15 analysis, but I'm going to ask some questions about the other
16 forms of analysis that you offer in Part 2 of your report.

17 I would like to turn to page 62, the cross-state
18 comparison section starting at paragraph 217. Now, this
19 section of your report describes your effort to measure the
20 effect of the voting reforms at issue in this case on
21 African-American turnout, comparing turnout statistics from
22 over 30 states; right, Mr. Trende?

23 A I believe that's correct, yes.

24 Q And your testimony is that political scientists have
25 performed similar kinds of analyses about the effect of voting

1 laws on turnout; correct?

2 A Similar but not identical. The Minnite and Erikson piece
3 is the one that immediately comes to mind.

4 Q You also cited I believe in your testimony a book -- a
5 recent book by Jan Leighley and Jonathan Nagler, two political
6 scientists who wrote a book called *Who Votes Now?* Right?

7 A Correct. That analysis is more involved than mine, but it
8 does take the difference-in-differences form.

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

10 **THE COURT:** Yes.

11 **BY MR. HO**

12 Q So this is Chapter 4 of the Leighley book in which they
13 consider the effects of voting laws on turnout, Mr. Trende.
14 This is what you were referring to earlier in your testimony;
15 correct?

16 A Correct.

17 Q Could you turn to page 116. I want to read the first full
18 paragraph and just ask a few questions about this book that you
19 cited.

20 "Finally, we estimate that a ten-day decrease in the
21 length of the registration closing period itself would lead to
22 a 1.0 percentage point increase in turnout (for states without
23 EDR). Again, this is broadly consistent with previous work
24 going all the way back to Wolfinger and Rosenstone (1980) that
25 has suggested that the length of the registration period is

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 crucial to turnout. Registration is a prerequisite for voting,
2 and having to register further in advance of Election Day
3 predictably decreases turnout."

4 Did I read that correctly, Mr. Trende?

5 A I believe that's correct.

6 Q Okay. By eliminating same-day registration, North
7 Carolina has increased the registration closing period and
8 required voters to register farther in advance of Election Day;
9 correct?

10 A I don't think that's right.

11 Q So before the elimination of same-day registration, a
12 person could register in North Carolina during the early voting
13 period; correct?

14 A Yes. But I don't know if that's how they operationalized
15 this for their data. I think you are talking apples and
16 oranges here. You are trying to conflate same-day registration
17 in the registration period with what they did.

18 Q I just asked a simple question, Mr. Trende. Prior to
19 H.B. 589, a person could register to vote during the early
20 voting period; correct?

21 A Yes.

22 Q And now a person has to register more than 20 days before
23 Election Day; correct?

24 A Well, that's true.

25 Q Now -- okay. Now, Mr. Trende, I would like to turn to

1 your regression analysis. Your regression analysis looks at
2 whether having the various voting reforms at issue in this case
3 in place is correlated with an increase in African-American
4 turnout broadly speaking; is that right?

5 A The first regression analysis, that's true.

6 Q Okay. I will confine my questions for now to the first
7 regression analysis, and we'll talk about the second one later.
8 Well, actually, with this question, I am going to ask about all
9 of your regression analyses. They look at all situations where
10 voting reforms are in place; right, Mr. Trende? They don't
11 look at situations where voting reforms have been removed to
12 see if the removal of reforms has an effect on African-American
13 turnout; correct?

14 A No, that's not true.

15 Q Where in your regression analyses did you examine a state
16 that removes a voting reform, Mr. Trende?

17 A So in -- on paragraphs -- on pages 72 and 73, the 48
18 regression analyses I did to respond to your experts' various
19 critiques of the first phase, any of the years that are covered
20 that go up to 2012 would include Ohio, which had a reduction in
21 early voting, it would include Georgia, which had a reduction
22 in early voting, it would include Wisconsin, which had a
23 reduction of early voting, and I believe there is at least one
24 other state that I can't think of off the top of my head.

25 Q Wisconsin is the only state that had a reduction of early

1 voting that's analogous to the one here that went from above 17
2 days to below 17 days; right, Mr. Trende?

3 A In this regression analysis at the end, I am looking at
4 the overall length of the early voting period, which is what I
5 was asked to look at by Plaintiffs' experts. So I am using all
6 of the reductions. Ohio had a reduction, I believe, of the
7 period -- I believe that, for days, Ohio went from 35 days to
8 26 days. So that's actually more of a reduction than North
9 Carolina had. I believe Georgia had a substantial reduction in
10 the number of days. So, no, I won't agree with your
11 characterization.

12 Q But none of those states went from above 17 days to below
13 17 days?

14 A That's not the standard I am using in this opinion. That
15 was the standard for Opinion 1.

16 Q Let's talk about your first regression analysis. That
17 analysis looks at the presence of voting reforms and whether or
18 not the presence of those reforms has an affect on
19 African-American turnout. It does not look at whether the
20 removal of reforms has an effect of African-American turnout;
21 correct?

22 A That's correct.

23 Q And this analysis looks at aggregate turnout levels for
24 African-Americans in each state; correct?

25 A That's correct.

1 Q And you didn't consider the propensity of individual
2 voters to vote or not under different legal regimes at an
3 individual level?

4 A No, no. The Minnite and Erikson article at Tab 14 of my
5 initial report is critical of the individual-level approach. I
6 used the aggregate approach.

7 Q I didn't ask you if someone was critical. I just asked
8 what you did.

9 A And I was explaining why I did it.

10 Q Now, apart from examining turnout, you did not consider
11 whether these laws affect the burdens faced by voters such as
12 lost time from work, did you, Mr. Trende?

13 A I don't know if there is a reasonable distinction to be
14 made there given the testimony that we heard subsequently that
15 any burden makes it less likely for someone to vote. It
16 logically follows from that statement if you don't have a
17 decrease in voting, there's no burden. So if you are measuring
18 turnout, using Dr. Burden's analysis and Dr. Hood's analysis,
19 you are inherently measuring burdens.

20 Q So you measure burden through the lens of turnout. You do
21 not attempt to measure burdens through any other measure;
22 correct?

23 A Given the testimony we heard, I am not sure there is a
24 difference.

25 Q Let's bring up your report and the table from your

1 cross-state comparison on page 62. Now, in your table here,
2 you report that North Carolina experienced a 32 percent
3 increase in African-American participation since 2000; correct?

4 A Correct.

5 Q And when you compare all of the states listed in your
6 table, North Carolina had the largest increase in
7 African-American participation between 2000 and 2012; correct?

8 A That's correct.

9 Q And of all the states listed in your table here, North
10 Carolina is the only state that added all of the four reforms
11 currently at issue in these proceedings during the period in
12 question; correct?

13 A That's right.

14 Q Now, let's turn to your regression analysis and your
15 description of it after the table. Now, when you ran this
16 regression analysis, you didn't, in fact, find the positive
17 correlation between the reforms at issue in the case and the
18 increase in African-American turnout; correct?

19 A I don't want to get too technical. The coefficient is
20 positive. The problem is when you are outside -- when your P
21 doesn't get -- doesn't drop below .05, you are not sufficiently
22 confident that it is nonzero or negative to make a claim about
23 the actual nature of the constant.

24 Q So let's talk about the different things that you said
25 there. First, just so the record is clear, you found a

1 positive correlation between the presence of these voting laws
2 and an increase in African-American turnout between 2000 and
3 2012; correct?

4 A The way I would answer that, which I think is more
5 precise, is that the coefficient is positive.

6 Q Now, you talked about the confidence level. Now,
7 typically you would want a confidence level of 95; is that
8 right?

9 A You would want your -- yeah, you would want to be no less
10 than 5 percent -- yep. We'll call it that, sure.

11 Q Another way of saying that is you want your P number to be
12 .05 or lower; is that right?

13 A Correct.

14 Q So the first time that you ran this regression analysis
15 for your report in 2014, your statistical significance
16 calculation was P equals .18; is that right?

17 A Correct.

18 Q And that means the confidence level was 82; correct?

19 A No.

20 Q Well, the inverse of .18 is 82; correct?

21 A But that's a fallacy. Just like A, then B, you can't say
22 not A, then not B. You can't go from -- you can't flip it that
23 way. It is actually a statistical fallacy that I didn't know
24 before this case.

25 Q You would agree, though, that it was statistically

1 confident -- the results were statistically significant at the
2 80 percent confidence level; correct, Mr. Trende?

3 A If you wanted to move the P value that you needed up to
4 .18, 18 percent, it would meet that threshold. I don't know of
5 anyone that's done peer-reviewed literature moving it up that
6 high because it's not reliable for knowledge. So that's my
7 answer.

8 Q But in layperson's terms, what that would mean is that in
9 your cross-state analysis here, your regression found there was
10 an 82 percent chance that the laws at issue in this case had a
11 positive impact on African-American participation rather than
12 that positive correlation being purely the result of chance;
13 correct?

14 A No, because that commits the inverse proportional -- or
15 the proportional inverse fallacy going from the P of .05, which
16 is our measurement of whether we reject the null hypothesis, to
17 a positive statement about what the relationship is. You can't
18 do it. I was surprised to learn that.

19 Q Mr. Trende, do you have your deposition transcript in
20 front of you?

21 A I don't. Well, maybe I do.

22 **MR. HO:** Permission to approach?

23 **THE WITNESS:** I have it.

24 **BY MR. HO**

25 Q I am looking at the June 6, 2014, deposition transcript.

1 Could you turn to page 308, please. Are you there?

2 A Yes.

3 Q I am looking at line 5:

4 "Q Okay. So -- and what that means in
5 lay terms there is an 82 percent chance that
6 the laws passed has a positive impact on
7 African-American participation; is that right?

8 "A That's a way you can interpret it.

9 "Q How else can you interpret it?

10 "A That is a way that you can explain
11 it. You can explain it in statistical terms,
12 but in lay terms, yeah, I think that is a way
13 to explain it."

14 Were those the questions asked of you and were those your
15 answers?

16 A Yes, and I was wrong.

17 Q You're an expert in statistical methods; right,
18 Mr. Trende?

19 A Yes.

20 Q Okay. Let me ask you some questions about your regression
21 analysis again. Now --

22 A Actually, I don't know if I was tendered as an expert in
23 statistical methods.

24 Q Do you consider yourself one?

25 A What do you mean by "expert"?

1 Q Well, do you consider yourself one as you understand the
2 term?

3 A I know, but we're in a court of law. There is a legal
4 sense and then there is just your day-to-day sense. I think in
5 the day-to-day sense, yes, I am an expert in statistical
6 analysis. For the court of law, I mean, I haven't been
7 tendered or anything along those lines.

8 Q So you don't know whether, one way or another, you would
9 qualify legally as an expert on statistical analysis?

10 A I think there are certainly statistical analyses that
11 are -- that I use in my day-to-day work, like regression
12 analysis, that I have sufficient expertise in. But my official
13 tender, as far as I know it, is not on statistics and
14 statistical methods. There are certain, certainly, statistical
15 methods that are important for my job that I have been tendered
16 on.

17 **MR. HO:** Could we bring the table back up on the
18 screen, please?

19 **BY MR. HO**

20 Q Now, Mr. Trende, is it fair to say that for each of the
21 states that you considered in your analysis, you looked at each
22 state and you assigned it a number from zero to four based on
23 how many of the voting reforms at issue in this case a state
24 had adopted; is that right?

25 A That's correct.

1 Q And after you assigned those points to each state, you
2 then tried to measure if there was a relationship between the
3 number of points that a state has on the one hand and any
4 increase in African-American turnout between 2000 and 2012 on
5 the other; correct?

6 A Right. Yeah. Similar to the Minnite and Erikson article,
7 I used an ordinal ranking system.

8 Q So this ordinal system that you utilized, Mr. Trende,
9 assumes that each individual reform at issue in this case
10 affects turnout in the same way; correct?

11 A Yes.

12 Q So you are aware that in recent Presidential elections in
13 North Carolina, several hundred thousand voters have -- sorry,
14 excuse me -- several thousand voters have taken advantage of
15 out-of-precinct voting; correct?

16 A I believe that's correct.

17 Q And you're aware that in recent Presidential elections,
18 over 90,000 voters have taken advantage of same-day
19 registration; correct?

20 A I will accept your characterization.

21 Q And you are aware that in recent -- in the most recent
22 Presidential election, almost 900,000 voters used the seven
23 days of early voting that have been eliminated in this case;
24 correct?

25 A Again, I will accept your characterization.

1 Q So these different reforms are utilized by very different
2 numbers of voters; correct?

3 A I think that's a fair characterization.

4 Q Now, your regression from which you conclude that these
5 reforms have no effect on turnout operates under the assumption
6 that every one of these -- these different reforms has an
7 identical effect on turnout; correct?

8 A I don't think we have a sufficient basis to say that there
9 is a correlation. It's a slight different -- it gets back to
10 that inverse proportional fallacy we were talking about, but I
11 believe we are on the same page there. We don't find a
12 statistically significant relationship.

13 Q Okay. So the second part of my question was: In arriving
14 at your conclusion that there was no statistically significant
15 relationship between these reforms and turnout, your regression
16 analysis assumes that these very different reforms that affect
17 very different numbers of voters have an identical effect;
18 correct?

19 A It's a shortcoming of ordinal rating systems, that that --
20 that an assumption that they are the same is embedded. So
21 there is an assumption embedded in this in reaching the
22 conclusion that these reforms have similar rates of -- similar
23 effects.

24 Q Because a state that has out-of-precinct voting and only
25 out-of-precinct voting gets a one in your system; right,

1 Mr. Trende?

2 A That's correct.

3 Q And a state that has same-day registration and only
4 same-day registration is treated identically and also gets a
5 one; right, Mr. Trende?

6 A Correct.

7 Q Even though in North Carolina almost 100,000 people use
8 same-day registration as opposed to out-of-precinct voting were
9 only a few thousand; right?

10 A That's correct.

11 Q Now, you said that there are other political scientists
12 who use similar ordinal systems; right?

13 A There are other political scientists that have used
14 ordinal systems.

15 Q I'm sorry. I said other. I mean, there are political
16 scientists who use ordinal systems; right?

17 A Yes, that's right.

18 Q And the example you cite is a paper by Erikson and Minnite
19 about voter identification laws; correct?

20 A Correct.

21 Q Now, that paper ranks voter identification laws in an
22 ordinal system based on how strict they are; correct?

23 A That's correct. It is a seven -- well, it's an eight-tier
24 system, and so it, likewise, assumes that every step in that
25 tier has the same effect.

1 Q Their paper does not, as you do in this report,
2 Mr. Trende, mix different kinds of laws in a single ordinal
3 system; correct?

4 A I am not sure what the importance of that is, but that's
5 correct. Well, I mean, if you want to claim that all voter ID
6 laws are effectively the same, all identification laws are
7 effectively the same, then that's true; but they do distinguish
8 among different forms of voter ID laws, which are different
9 laws.

10 Q But it is limited to voter ID laws; correct, Mr. Trende?

11 A Yes.

12 Q Now, are you aware of a single peer-reviewed study by a
13 political scientist that mixes different kinds of voting laws
14 into a single ordinal system in the way that you do in your
15 regression analysis here?

16 A I think the Minnite and Erikson ordinal system is
17 comparable, has the same shortcomings; but if you want to make
18 the cut point different sorts of voter laws, I don't know of
19 anyone who has done that.

20 Q You would be the first person if you tried to publish
21 those; right, Mr. Trende?

22 A To my knowledge.

23 Q Now, let's shift for a moment, if you don't mind, to your
24 2014 report, the report that you prepared for the preliminary
25 injunction stage of this case. I believe this is Defendants'

1 Exhibit 250.

2 Could we look at page 33 of this report, paragraph 125,
3 and bring it up?

4 A I'm sorry. What was that?

5 Q Page 33, paragraph 125.

6 A Uh-huh. Okay.

7 Q Now, in your 2014 report, in addition to doing your
8 regression with all the laws mixed in a single ordinal system,
9 you also conducted a regression of the laws individually;
10 right, Mr. Trende?

11 A That's correct.

12 Q Okay. So in your 2014 report, for instance, you conducted
13 a regression analysis of same-day registration alone to just
14 test if same-day registration had a statistically significant
15 effect on African-American turnout; right?

16 A That's right.

17 Q Now, in analyzing the effect of same-day registration, you
18 coded six states as having same-day registration; correct?

19 A There was a cut-and-paste error that resulted in that
20 code; correct.

21 Q Okay. But there were six states when you ran this
22 analysis that you characterized as having same-day
23 registration; right?

24 A Yes.

25 Q And California should not have been included in that

1 analysis; correct?

2 A Correct.

3 Q And Colorado should not have been concluded in that
4 analysis; correct?

5 A That's correct.

6 Q And Connecticut should not have been concluded in that
7 analysis; correct?

8 A I think we had a disagreement about Connecticut, but I
9 will accept for our purposes your stipulation.

10 Q So Connecticut should not have been included as a same-day
11 registration state as of 2012?

12 A I will accept it for here.

13 Q So of the six states that you characterized as having
14 same-day registration, when you performed your regression
15 analysis of whether same-day registration affects turnout, half
16 of those states should not have been included; correct?

17 A That's right. It was extremely embarrassing.

18 Q And you didn't include North Carolina in your regression
19 analysis of same-day registration even though North Carolina
20 had same-day registration in 2012; correct?

21 A Again, from the same cut-and-paste error, that was the
22 upshot of it.

23 Q And to be clear, North Carolina is the state at issue in
24 this case and experienced the largest increase in
25 African-American turnout of all the states that you looked at

1 between 2000 and 2012; correct?

2 A Correct.

3 Q Now, these errors were pointed out to you, I believe you
4 mentioned?

5 A Yes.

6 Q And you provided the corrections for these errors?

7 A Correct.

8 Q You did so the morning of your deposition in 2014;
9 correct?

10 A That's when -- what was the question?

11 Q You provided these corrections to the Plaintiffs' counsel
12 the morning of your deposition, minutes before your deposition
13 started; correct?

14 A That was provided -- that's when that was provided to
15 Plaintiffs' counsel; correct.

16 Q Now, you did not include an individual regression analysis
17 of same-day registration alone in your 2015 report, did you,
18 Mr. Trende?

19 A I was actually surprised that that came out. It was in an
20 earlier draft, but, yes, it was cut.

21 Q And you also omitted your individual analysis of
22 out-of-precinct voting in your 2015 report; right, Mr. Trende?

23 A Yes.

24 Q And you also omitted your individual analysis of
25 preregistration in your 2015 report; correct, Mr. Trende?

1 A I believe it was because we instituted the -- or I
2 instituted the large cross-state -- the large 48 regression of
3 early voting, and that probably deleted this. It was not
4 something intentional. And I'll also say that Dr. Gronke, I
5 believe, in his report criticized running a regression analysis
6 off of three observations like you would have had with same-day
7 registration. He's got a point there.

8 Q It would have been four observations of same-day
9 registration if you properly included North Carolina; right,
10 Mr. Trende?

11 A I will, for purposes of discussion, accept your
12 stipulation.

13 Q Okay. So the only voting reform at issue in this case
14 that you ran a regression analysis of individually for your
15 2015 report was 17 days of early voting; right, Mr. Trende?

16 A No, that's not right.

17 Q Can we turn to your report?

18 A Sure.

19 **THE COURT:** Which one?

20 **MR. HO:** I'm sorry, your Honor.

21 **BY MR. HO**

22 Q Your second report from 2012. Let's look at page 71,
23 paragraph 242.

24 A Which paragraph?

25 Q 242. Are you ready?

1 A Yes.

2 Q So just so we are clear, four reforms at issue in this
3 case. Same-day registration, you did not include in your 2015
4 report an individual regression of same-day; right?

5 A Right. Because if you had run same-day registration using
6 the implementation of laws like Plaintiffs suggested, I think
7 North Carolina would have been the only observation for a
8 regression run in the 2004 to 2008 time period. Also, Iowa and
9 Montana implemented it, but they don't have sufficient numbers
10 of African-American voters to appear in the census report, so I
11 wouldn't have counted them.

12 Q Mr. Trende, I'm just trying to establish what you did and
13 what you didn't. We can get into why you did later. I am
14 happy to talk about that, but let's just establish the universe
15 of what you did and what you didn't.

16 No regression of same-day registration individually, no
17 regression of out-of-precinct voting individually, and no
18 regression of preregistration individually; correct?

19 A That's true, and for the same reasons that I gave.

20 Q Okay. You do have a regression individually here of early
21 voting; correct?

22 A Correct.

23 Q Now, in your regression of early voting --

24 A I'm sorry. I need to clarify. Forty-eight regressions of
25 early voting.

1 Q Okay. So in your 48 regressions of early voting,
2 Mr. Trende, your regression looks at, I believe, the length of
3 the early voting period and the number of early voting days a
4 state had and whether there's a relationship between that and
5 African-American turnout during the time period in question;
6 correct?

7 A Sometimes -- because I'm responding to all the criticisms
8 that Plaintiffs' experts levied in the first round, in the
9 preliminary injunction phase, one of the criticisms was looking
10 only at change in African-American turnout, so I am looking
11 here -- when it's the column on page 72, when it says -- so the
12 first one is reweighted, whether it's the reweighted census
13 data used or not. The second column it says BL or BL/W. So
14 sometimes when it says BL, I am looking at change in
15 African-American participation. When it says BL/W, I am
16 looking at change in African-American participation in terms of
17 white.

18 So the answer is, no, sometimes I am looking at
19 African-American turnout in terms of white turnout.

20 Q So I apologize for misunderstanding. Broadly speaking, on
21 the one hand, you have the length of the early voting period or
22 the number of early voting days, and on the other hand, you
23 have some measure of turnout during the time period in
24 question. That's the correlation that you are looking at in
25 these 48 regressions; right, Mr. Trende?

1 A Yes.

2 Q Okay. Now, let's say that you have two states. One state
3 has one -- they both have one day of early voting. One of them
4 has hundreds of early voting locations, including dozens in
5 each county. The other state has only one early voting
6 location per county, like Ohio. Your regression would treat
7 these two states as identical; correct?

8 A Yes, the only thing it looks at is the number of days.

9 Q And you are aware of the fact that many states -- I'm
10 sorry. You are aware of the fact that states have significant
11 differences in terms of the number of early voting locations
12 that they offer per county; correct?

13 A Yes, but I believe if I included that, I would be the
14 first person to ever try to do that.

15 Q As far as you know?

16 A As far as I know.

17 Q And so just to take these examples that you discussed
18 earlier, Ohio, one early voting location per county; correct?

19 A Correct.

20 Q Even if there are half a million people in that county;
21 right?

22 A Yes, that's correct.

23 Q North Carolina can sometimes have more than a dozen early
24 voting locations in a county?

25 A Correct.

1 Q Your regression analysis treats Ohio as having more early
2 voting than North Carolina; correct?

3 A Sure, I think that's how it's always done in political
4 science analyses.

5 Q As far as you know?

6 A As far as I know.

7 Q Now, Mr. Trende, you ran your first regression analysis
8 for all of the voting laws with two controls at some point;
9 correct?

10 A That's right.

11 Q Now, the two controls that you used were how competitive
12 the election was and also the state's baseline level of
13 African-American turnout in 2000; correct?

14 A Correct.

15 Q So let's talk about the competitiveness one for a minute.
16 You classified states as competitive or not competitive in the
17 2000 and 2012 elections, the end points of your analysis in
18 your first regression; correct?

19 A For the first regression, that's right.

20 Q Okay. And if we could look at paragraph 222 in your
21 report. This is what -- this is the paragraph where you
22 explain your competitiveness controls; correct?

23 A Correct.

24 Q Now, you made your classification of states as contested
25 or not contested based on your experience as a psephologist;

1 correct?

2 A And knowledge of U.S. elections. As I explain in my
3 deposition, there were other source materials that I relied on,
4 and this is part of my experience as a psephologist and my
5 knowledge. I probably should have said in building my
6 knowledge.

7 Q Now, you didn't use a single objective criterion to
8 determine whether or not an election was competitive or not,
9 such as the amount of spending per capita in an election, did
10 you, Mr. Trende?

11 A I don't think that's -- well, spending per capita I didn't
12 use. I did use spending.

13 Q But you didn't use a single objective criterion. You
14 brought to bear your experience as a psephologist and your
15 knowledge of elections; right?

16 A No, I said I used spending. I believe I said it in my
17 deposition, and that's objective.

18 Q Was there a particular spending threshold that you used
19 that definitively enabled you to categorize an election as
20 contested or not contested?

21 A I can't remember from my deposition. I would have
22 explained it. I know I used the Magleby book on campaign
23 spending in the United States in these elections, and that
24 substantially informed my judgment.

25 Q Ultimately you had to make some judgment calls; right?

1 A Yes.

2 Q There wasn't a sort of decision rule that you could give
3 to me as a non-psephologist where I could replicate your work
4 and determine whether or not elections were contested or not
5 contested in your judgment; right, Mr. Trende?

6 A I think it is the only way that you can do this
7 accurately. The alternatives are insufficient.

8 Q But I couldn't replicate your work; right?

9 A It is the best way to do it.

10 Q Now, the two controls that you used, you introduced them
11 one at a time, correct, not simultaneously?

12 A Correct.

13 Q And you testified, I believe on direct with Mr. Farr, that
14 that's not the typical practice in political science, which is
15 to introduce controls simultaneously; correct?

16 A If I were publishing peer-reviewed literature, I almost
17 certainly would have published it all at once, but that's not
18 what we're doing here.

19 Q So this wouldn't have met the standards of peer-reviewed
20 literature?

21 A I'm not trying -- I'm trying to inform the Court of what's
22 going on, and so I thought explaining the process and what
23 these controls are doing would be useful. I would not try to
24 publish paragraphs 222 to 226 as they are as peer-reviewed
25 literature.

1 Q But in addition to providing that explanation that you
2 think would be useful to the Court, you could also have, in
3 another paragraph, run the controls simultaneously, consistent
4 with peer-reviewed standards in political science, and you
5 didn't do that; right, Mr. Trende?

6 A I did run the controls simultaneously.

7 Q You introduced one at a time, I believe was your
8 testimony?

9 A Correct, the last one -- the last regression has both
10 controls in it.

11 Q You mean the early voting regression, Mr. Trende?

12 A No. No, this regression right here. I run just a
13 bivariate analysis. Then I add the competitiveness variable,
14 and then I add the baseline variable. So the last of those
15 ones that I listed has both variables included.

16 Q Now, you didn't control it for any other factors other
17 than your competition assessment and the baseline level of
18 African-American turnout; right?

19 A That's correct.

20 Q I would like to ask you a few questions about the Leighley
21 and Nagler book, a copy of which is in front of you. Could you
22 turn to page 102 in the book, and, specifically, I am looking
23 at Table 4.3. This is their difference-in-differences
24 analysis, as I believe you called it, for Election Day
25 registration and its affect on turnout. Do you see that,

1 Mr. Trende?

2 A I do see it, yes.

3 Q And in this difference-in-differences regression that they
4 run, they control for various sociodemographic factors;
5 correct?

6 A I don't know if that's right.

7 Q They subset the effects of Election Day registration along
8 various socioeconomic characteristics; correct?

9 A Correct.

10 Q You were here yesterday when Dr. Hood testified that when
11 he subsetted data by demographics, for instance, by race, that
12 constituted a control for race? Do you remember hearing that?

13 A In the context of what he was doing, yes.

14 Q So I am going to use the word "control" the same way
15 Dr. Hood used it, if that's okay.

16 A Fair enough.

17 Q So in Leighley and Nagler's regression analysis, they
18 control for income; correct?

19 A If you are going to ask me about this, I would like to
20 take some time to read the chapter so I am sure we are on the
21 same page, if we are going to go into detail on this.

22 Q You cite this in this report.

23 A Yes. I don't cite this table in my book.

24 Q But you cite this book in your report; right?

25 A Yes.

1 **MR. FARR:** Your Honor, may he have time to look at
2 the table?

3 **THE COURT:** Well, he can ask the questions. If he
4 can't answer the questions based on the time that he has, then
5 we'll just move along. You've had an opportunity to depose
6 him, I take it. How many depositions have you all taken?

7 **MR. HO:** We haven't had an -- this book was -- pretty
8 recently came out, Your Honor.

9 **THE WITNESS:** It came out in 2013.

10 **BY MR. HO**

11 Q But that was not cited in your first report, though;
12 right, Mr. Trende?

13 A Dr. Gronke cites it in his.

14 **THE COURT:** Well, let's move along.

15 **BY MR. HO**

16 Q I just want to ask you some questions about the table, not
17 the chapter.

18 A I will do my best. But they run a number of different
19 regression analyses in this chapter utilizing different
20 techniques. They do all sorts of interpretations of these
21 different tables. I will do my best to answer your questions.

22 **MR. HO:** Your Honor, could I have just a moment?

23 **THE COURT:** Yes.

24 **BY MR. HO**

25 Q So you cited this book in your report?

1 A Yes.

2 Q Okay. Let me just ask you about this table. You've had
3 moments to review this table?

4 A Without context of the chapter, I have looked at the
5 table, yes.

6 Q Now, this table subsets the data based on income; correct?

7 A Yes.

8 Q Okay. You heard Dr. Hood testify yesterday that income
9 affects turnout, didn't you?

10 A Yes.

11 Q And in your regression analysis, you did not subset or
12 control by income, did you, Mr. Trende?

13 A No, I don't know how you would do it. Again, that's why
14 it would be good to read the chapter. No, I didn't do it.

15 Q They did it, though; right?

16 A In their analysis, they did it.

17 Q Now, they control for education as well; correct,
18 Mr. Trende?

19 A They subset it by --

20 Q My question was just about the table. The table presents
21 subsetting data by education levels; correct?

22 A I heard your question.

23 Q Well, Mr. Trende, if you don't remember the chapter you
24 cite in your book, we can move along -- if you don't remember
25 the chapter that you cite in your report, we can move along.

1 A Oh, I remember the chapter.

2 Q If you don't remember it well enough to answer that
3 question, we can move along. You don't remember this well
4 enough to answer my question?

5 A At the level of specificity you are asking me, no, I don't
6 know that you are representing what these tables are or what
7 they are doing correctly.

8 Q Now, you heard Dr. Hood testify that educational levels
9 can affect turnout?

10 A Yes.

11 Q And you didn't control for that in your regression;
12 correct?

13 A No.

14 Q Okay. You also heard him testify --

15 **THE COURT:** I'm sorry. No, you didn't or --

16 **THE WITNESS:** No, I did not control for it.

17 **BY MR. HO**

18 Q You also heard Dr. Hood testify yesterday that age can
19 affect turnout; right?

20 A That's correct.

21 Q And you didn't control for that in your regression;
22 correct?

23 A No.

24 Q Age is listed on this table; correct?

25 A That's correct.

1 Q And education is listed on this table; correct?

2 A Correct.

3 Q And marital status is listed on this table; correct?

4 A Correct.

5 Q And in your regression analysis, you did not control for
6 marital status; correct?

7 A No.

8 **THE COURT:** I'm sorry?

9 **THE WITNESS:** No, I did not control for it.

10 **BY MR. HO**

11 Q Now, Leighley and Nagler had a lot of controls that you
12 didn't, and they found that lengthening the registration cutoff
13 will decrease turnout; correct?

14 A Again, I am not sure that they are drawing the conclusions
15 similar to what I am drawing at this point. I am not sure that
16 they are doing the same sort of analysis at this point in the
17 chapter that I am doing, but this table has broken the data out
18 in different ways than I broke it out, and we stipulated we'll
19 call that a control.

20 Q Okay. Let's move on, Mr. Trende. You present various
21 cross-state comparisons in your report that rely on the Current
22 Population Survey, or CPS; correct?

23 A Correct.

24 Q You use the CPS data in a number of places. I just want
25 to run through some of those places. Can we bring up page 44?

1 You use CPS data to compare North Carolina and
2 Mississippi; right, Mr. Trende?

3 A That's correct.

4 Q You also use CPS later in your report to compare North
5 Carolina to national turnout trends; correct?

6 A Correct.

7 Q You also use CPS data for your regression analyses;
8 correct?

9 A Correct.

10 Q So with respect to Mississippi, your testimony was that
11 you use CPS data for the North Carolina and Mississippi
12 comparison because Mississippi does not have validated data for
13 African-American turnout; correct?

14 A For actual voting, it does not.

15 Q Now, you could have picked a state to compare North
16 Carolina to that did have validated data, like South Carolina;
17 right, Mr. Trende?

18 A Yes.

19 Q Okay. Now, let's look at the trend lines here for North
20 Carolina and Mississippi. The dotted line on this chart is
21 North Carolina, and the solid line is Mississippi; is that
22 correct?

23 A Which chart are we looking at?

24 Q The one that's --

25 A The one that's on the screen still?

1 Q Yes. Is that right?

2 A Yes. The data --

3 Q The bottom line --

4 **THE COURT:** Please don't speak over each other.

5 **MR. HO:** My apologies.

6 **THE WITNESS:** I want to make sure I had the question
7 right, because I was thinking of something different. The
8 dashed line is North Carolina; the solid line is Mississippi.

9 **BY MR. HO**

10 Q Actually, I think there is a graph that has those labeled.
11 Maybe we could turn to the next few pages. Actually, could we
12 go to the next page? I would like to look at the turnout
13 graph. Page 46.

14 So this is the African-American turnout rates in North
15 Carolina as compared to Mississippi from 1980 to 2012; correct?

16 A Correct.

17 Q Now, as of 1980, North Carolina is at 40 percent
18 African-American turnout; correct?

19 A Correct.

20 Q Mississippi is at 60 percent African-American turnout;
21 correct?

22 A Correct.

23 Q Now, as of 2012, both states are above 80 percent
24 African-American turnout; correct?

25 A Correct.

1 Q So North Carolina has improved 14 percentage points during
2 that time period; correct?

3 A Correct.

4 Q Mississippi has improved 20 percentage points during that
5 time period; correct?

6 A Correct.

7 Q So during this time period when North Carolina adopted the
8 laws at issue in this case, and Mississippi did not, the
9 absolute increase in African-American turnout in terms of
10 percentage points was twice as high in North Carolina as
11 compared to Mississippi?

12 **MR. FARR:** Objection, Your Honor. The laws were not
13 adopted during the time period that's reflected on this chart.

14 **THE COURT:** Sustained. I think you just need to
15 rephrase your question.

16 **BY MR. HO**

17 Q So the voting reforms at issue in this case were adopted
18 prior to 2012; right, Mr. Trende?

19 A Correct.

20 Q Now, between 1980 and 2012, the increase in
21 African-American turnout in North Carolina in terms of
22 percentage points was twice the size of the increase in
23 African-American turnout in Mississippi?

24 **MR. FARR:** Objection, Your Honor. He has not laid
25 the foundation for when the election laws were enacted in North

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 Carolina.

2 **THE COURT:** He didn't ask about the election laws, I
3 don't believe. So overruled.

4 **THE WITNESS:** Can you repeat the question?

5 **BY MR. HO**

6 Q In the time period depicted in this graph, the increase in
7 African-American turnout in North Carolina in terms of
8 percentage points increased twice the increase in Mississippi;
9 correct?

10 A Roughly twice, yes.

11 Q Okay. Now, for the national statistics that you have, on
12 page 54, African-American turnout nationally starts at
13 50 percent; correct?

14 A Roughly.

15 Q And at the end of the period, it's just below 70 percent;
16 correct?

17 A Yes.

18 Q For North Carolina, it starts at 40 percent; correct?

19 A Correct.

20 Q And at the end of the period, it ends above 80 percent;
21 correct?

22 A Correct.

23 Q So the increase in North Carolina in terms of
24 African-American participation was larger than the national
25 increase; correct?

1 A Yes.

2 Q Now, I believe your testimony at one point during direct,
3 Mr. Trende, was that we need to do a cross-state comparison in
4 order to understand the effect of these laws; correct?

5 A Correct.

6 Q Okay. So Dr. Hood testified yesterday that he wrote an
7 article that attempted to assess the effect of Georgia's voter
8 ID law on voters in terms of turnout, and that paper did not
9 include a cross-state comparison; correct?

10 A That's correct.

11 Q So he thought he could analyze that question with data
12 solely from Georgia; correct?

13 A Because it is a completely different question.

14 Q Now, you say that Plaintiffs' experts in this case did not
15 conduct a cross-state comparison of the effect of any of these
16 voting laws on turnout; correct?

17 A To my knowledge -- no, I said the Intervenor Plaintiffs'
18 experts may have. The other experts, to my knowledge, did not.

19 Q Okay. You do not recall that Professor Gronke, in his
20 last report in this case, did a cross-state comparison in which
21 he found a correlation between early voting and turnout?

22 A No.

23 Q Let's talk about the CPS data. It is based on a sample of
24 the population, about 2 percent; is that right?

25 A Yes.

1 Q And because it is a sample, it has error margins
2 associated with it. It is not -- I will just stop there. It
3 has error margins associated with it?

4 A Yes.

5 Q And those error margins tend to be larger when you look at
6 smaller slices of the population; correct?

7 A Yes, when the population gets smaller, the error margin
8 gets larger.

9 Q So let me give you one example. The CPS estimated that
10 black turnout in Arizona in 2012 was 46 percent.

11 A Correct.

12 Q Okay. But it had an error margin of 12.6 percentage
13 points.

14 A Correct.

15 Q So that means that the range could be anywhere from about
16 33 percent to 58 percent African-American turnout in Arizona;
17 right?

18 A The range could be anywhere between, you know,
19 .001 percent and 99.9 percent within the confidence interval
20 specified, yes.

21 Q Now, the 2000 estimate for African-American turnout in
22 Arizona, according to the CPS, is 32.7 percent?

23 A Correct.

24 Q Okay. So CPS estimates an increase in turnout in Arizona
25 between 2000 and 2012 for African-Americans; right?

1 A Correct.

2 Q Okay. The 2000 estimate of 32 percent has a margin of
3 error --

4 **THE COURT:** I'm sorry. What was your answer?

5 **THE WITNESS:** I think I said that's correct, Your
6 Honor.

7 **THE COURT:** Thank you.

8 **BY MR. HO**

9 Q So the 2000 estimate for Arizona estimates a margin of
10 error of 16.2 percentage points up or down?

11 A Correct.

12 Q Okay. So those confidence intervals, they overlap; right,
13 Mr. Trende?

14 A Correct.

15 Q So even though the CPS reports that African-American
16 turnout in Arizona increased from 2000 to 2012, we don't know,
17 as a statistical matter, whether or not that's, in fact, true;
18 correct?

19 A Yes, that's correct.

20 Q Okay. Now, can we bring up your table for your regression
21 analysis, page 64, I think it is? Let's go forward a page.

22 **MR. HO:** My apologies, Your Honor.

23 **THE COURT:** That's fine.

24 **BY MR. HO**

25 Q If we can look at page 62. So this reports your results

1 of your regression analysis. We looked at this table a few
2 times. Your regression analysis reports that using the CPS,
3 African-American turnout increased in Arizona by 12 percent;
4 correct?

5 A Correct.

6 Q And we established, as a statistical matter, we don't, in
7 fact, know that that's the case based on the CPS data; right?

8 A Sure. Just like Drs. Minnite and Erikson are using
9 top-line CPS data and recording the difference, I used top-line
10 CPS data and record the difference. Both have error margins.

11 Q Now, this CPS data, I believe you testified on direct, has
12 a nonresponse problem and an overreporting problem; right?

13 A I don't know if I broke them out like that, but we can
14 break them down for our discussion.

15 Q It has biases associated with it with the fact that people
16 some don't return the CPS form, and the CPS counts them as
17 nonvoters?

18 A Correct.

19 Q And some people overreport voting; they say they voted,
20 when they didn't?

21 A Yes.

22 Q And those biases vary on the basis of race?

23 A That's correct.

24 Q And they vary on the basis of year; they are not constant
25 year to year?

1 A That's correct.

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

3 **THE COURT:** Yes.

4 **BY MR. HO**

5 Q This was Deposition Exhibit 110 and has been premarked as
6 Plaintiffs' Exhibit 738. Mr. Trende, is this a post you wrote
7 for your website RealClearPolitics?

8 A It is an article that I wrote, yes.

9 Q And it addresses the Census biases that we discussed?

10 A That's correct.

11 Q And the title of your article is "Sweeping Conclusions
12 from Census Data are a Mistake"; is that right?

13 A That is the title the website put on it.

14 Q Can we turn to the third page.

15 A To clarify, I didn't write it.

16 Q You wrote the article; right?

17 A I didn't write the title.

18 Q Okay. I want to look at the last two sentences in your
19 article. "But because of this known issue, analysts and
20 reporters should avoid make sweeping pronouncements on the
21 basis of these data. There is just too much that we don't
22 know."

23 A Right.

24 Q You wrote that; right?

25 A Right, in a specific context, yes.

1 Q So I just want to ask you about some of the things you are
2 referring to here. When you say "these data," you mean the CPS
3 data?

4 A Correct.

5 Q When you refer to "this known issue," you mean the
6 overreporting problem; right?

7 A Correct.

8 Q Okay. And you explained, I believe on direct examination
9 with Mr. Farr, that in your 2014 report, you did not attempt to
10 correct for this known issue when conducting your regression
11 analysis; correct?

12 A In the 2014 report, that's correct, yes.

13 Q Now, you did offer some regression analyses in your 2015
14 report that sought to correct for this known issue; right?

15 A Correct.

16 Q And prior to your work in this case, you had never
17 performed a regression analysis after trying to correct for
18 this known issue in the CPS; correct?

19 A I don't know why there would be a difference, and the
20 article only came out three months before my report. So, no.

21 Q This was your first time trying to do that in the report,
22 right, to correct for that known issue in the CPS data while
23 running a regression?

24 A Yes, it is a new technique, and that's one of the reasons
25 that I didn't use it in my first regression analysis. Now I am

1 being criticized -- then Plaintiffs' experts criticized me for
2 not having adjusted for it. So I adjusted for it. It sounds
3 like lose-lose.

4 Q When you adjusted for it, as you put it, did you have any
5 political scientists who were familiar with the method of
6 adjusting for it, such as Dr. Michael McDonald, whom you
7 reference, review the accuracy of your work to determine
8 whether or not you had adjusted for this issue properly?

9 A No.

10 Q Now, Mr. Trende, validated turnout data, actual turnout
11 statistics from the State of North Carolina was available to
12 you; correct?

13 A That's right.

14 Q And when considering turnout in North Carolina, you did
15 not use that validated data; correct?

16 A In the first report.

17 Q You didn't use it for your regression analyses in your
18 second report, did you?

19 A I don't think you could have. So, no.

20 Q When examining turnout data from other states, you didn't
21 use any validated data from those other states; correct?

22 A No.

23 **THE COURT:** I'm sorry. No?

24 **THE WITNESS:** No, I did not use those data.

25 **BY MR. HO**

1 Q I just want to ask you a few more questions, Mr. Trende,
2 and then I think we are finished.

3 Your report addresses national trends in turnout and,
4 specifically, the national trend of African-American turnout
5 increasing; is that right?

6 A That is one of the trends, yes.

7 Q And another trend that you discuss in your report
8 nationally that coincides with the increase in African-American
9 turnout is that change in the Partisan Index of North Carolina,
10 as you put it; is that right?

11 A That's right.

12 Q Okay. I want to --

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

14 **THE COURT:** Yes.

15 **BY MR. HO**

16 Q I am handing the witness what was Deposition Exhibit 113.

17 A I don't think this was in my deposition. You crossed me
18 on "The Case of the Missing White Voters, Revisited."

19 Q I may be wrong. It actually -- the version on your screen
20 has a deposition exhibit sticker on it.

21 A I may be wrong.

22 Q So I just want to ask you about the last paragraph on
23 first page here, Mr. Trende. Now, just to establish something,
24 this is an article that you wrote for your website
25 RealClearPolitics; right?

1 A Yes.

2 Q And it is called "The Case of the Missing White Voters"?

3 A Correct.

4 Q And the last paragraph on the first page is -- reads,
5 "Obviously, this surge in" non-white -- "in the non-white vote
6 is troubling to Republicans, who are increasingly almost as
7 reliant upon the white vote to win as Democrats are on the
8 non-white vote. With the white vote decreasing as a share of
9 the electorate over time, it becomes harder and harder for
10 Republicans to prevail."

11 You wrote that; right?

12 A Yes.

13 Q And you're referring to the increase in the non-white
14 share of the electorate in 2012 as compared to 2008; correct?

15 A Correct.

16 Q And to the best of your knowledge, H.B. 589 was passed the
17 next year in 2013; correct?

18 A Correct.

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

20 **THE COURT:** Yes. Can we give a number? For the
21 purposes of the record, I would like to --

22 **MR. HO:** Yes, Your Honor.

23 **THE COURT:** -- have some way to identify.

24 **MR. HO:** So the last exhibit was -- we'll mark -- the
25 one that I gave Mr. Trende a moment ago, "The Case of the

1 Missing White Voters," we'll mark as PX739. And this most
2 recent one we'll mark as PX740. And the Leighley and Nagler
3 book *Who Votes Now?* we'll mark as PX741. I apologize.

4 **THE COURT:** It is just easier to keep track of here
5 and elsewhere.

6 **MR. HO:** Yes, you are absolutely right.

7 **BY MR. HO**

8 Q This is another article that you wrote for
9 RealClearPolitics?

10 **THE COURT:** Which one are we on now?

11 **MR. HO:** PX740.

12 **BY MR. HO**

13 Q This is part two of a four-part series that you wrote for
14 RealClearPolitics?

15 A It is an article broken in four parts. You've given
16 Part 2.

17 Q And this is Part 2. And it is titled "Does GOP have to
18 Pass Immigration Reform?" Correct?

19 A Correct.

20 Q I would like to turn to the last page. For the record,
21 this was Deposition Exhibit 115.

22 A The last full page?

23 Q Yes.

24 A Okay.

25 **THE COURT:** This is page 7 or page 8?

1 **MR. HO:** I'm sorry. The one on the screen does not
2 appear -- I'm sorry. It is the second to last page. Your
3 Honor, the one on the screen is, I believe, paginated
4 differently from the hard copies.

5 **BY MR. HO**

6 Q The bottom of the second to last page starts with a
7 sentence "This really."

8 A Uh-huh.

9 Q "This really just illustrates an overlooked point.
10 Democrats like to mock GOP as the 'party of White People' after
11 the 2012 elections. But from a purely electoral perspective,
12 that's not a terrible thing to be."

13 A Yeah, from a purely electoral perspective, that's true.
14 But as I say on the next page, it's a good thing that we're
15 probably not going to that hyperpolarized future.

16 Q From an electoral perspective, it wouldn't be a bad thing
17 for politicians to rely entirely or largely on the white vote
18 if they could enact laws that might reduce the minority share
19 of the electorate?

20 **MR. FARR:** Objection, Your Honor.

21 **THE WITNESS:** No, no, no.

22 **BY MR. HO**

23 Q I'm not --

24 **THE COURT:** Hold on just a minute. I have an
25 objection, and so you need to stop.

1 **MR. HO:** I'm sorry, Your Honor.

2 **THE COURT:** All right. I am going to sustain.

3 Please re-ask your question.

4 **MR. HO:** No further questions, Your Honor.

5 **THE COURT:** Any other questions?

6 **MR. DONOVAN:** No others from the Plaintiffs.

7 **THE COURT:** Any redirect?

8 **MR. FARR:** Just a few, Your Honor.

9 REDIRECT EXAMINATION

10 **BY MR. FARR**

11 Q Mr. Trende, could you pull up what was just marked as
12 Plaintiffs' Exhibit 741.

13 A I'm sorry. Can you tell me which one --

14 Q It's the Leighley and Nagler piece, the chapter from their
15 book, I believe.

16 A Okay.

17 Q Now, could you turn to page 116.

18 A Yes.

19 Q Do you have that with you?

20 A Yes.

21 Q All right. Do you remember counsel asked you about -- a
22 question about the statement that's in the first full paragraph
23 on that page where it says, "Finally, we estimate a ten-day
24 decrease in the length of the registration closing
25 period...would lead to a 1.0 percent percentage point increase

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 in turnout (for states without EDR)"?

2 A I do see that, yes.

3 Q Let's look up at the table that's right above that. Do
4 you see that?

5 A Yes.

6 Q And do you see where it talks about the change in law?

7 A Yes.

8 Q And do you see the various changes in law that are listed
9 in that table?

10 A Yes.

11 Q And could you read those into the record?

12 A So just column one that you --

13 Q Yes, sir.

14 A The changes in law are absentee voting, early voting with
15 a 45 day-period, the registration closing period, a ten-day
16 decrease -- and this is all part of Number 3, a ten-day
17 decrease with no EDR or Election Day registration. The fourth
18 variable is Election Day registration with a registration
19 closing period of 15 days. And the fifth one is Election Day
20 registration with a registration closing period of 29 days.

21 Q Now, is -- in that chart that's right above the paragraph
22 that counsel directed you to, is there anything in there about
23 same-day registration?

24 A No.

25 Q And so what do you take "registration closing period" to

1 mean?

2 A That is the length of -- that is the date -- how many days
3 back you count from Election Day to when the official
4 registration day closes. To my understanding, that's how they
5 coded it. They didn't take account of same-day registration.

6 Q So there is nothing in this chapter to indicate that those
7 two authors were evaluating same-day registration and whether
8 eliminating that would have an impact on turnout?

9 A That's my understanding. From this table, they look at
10 absentee voting and find a statistically significant increase.
11 They look at early voting, 45-day period, and do not find a
12 statistically significant increase. The registration closing
13 period is statistically significant without EDR, and then they
14 have the last two, one is significant and one is not, but those
15 are both Election Day registration.

16 Q Thank you. I want to move on to another topic. Could you
17 turn to your second report, which is Exhibit 270. Can we bring
18 that up on the screen, please?

19 When you are there, let me know, Mr. Trende.

20 A Yes.

21 Q All right. So the dotted line on this chart represents
22 North Carolina, and the solid line represents Mississippi; is
23 that right?

24 A Correct.

25 Q And you are tracking percent African-Americans. Is this

1 turnout or registration? I forget.

2 A This is turnout.

3 Q Okay. So in 1980, where did North Carolina start on your
4 line?

5 A At 40 percent in 1980.

6 Q Okay. 40 percent.

7 A Somewhere around there.

8 Q Could be 39 percent, 40 percent?

9 A Yeah.

10 Q Okay. And where is North Carolina on your chart in 2000?

11 A It looks to be around 50 percent.

12 Q Okay. And then where is North Carolina in 2004?

13 A It looks to be around 60 percent.

14 Q Isn't it above the 60 percent line?

15 A It might be a touch above that.

16 Q Okay. I am looking at it. Is it halfway above the
17 60 percent line? Can you tell? Can you look at it, please,
18 and let me know.

19 A I don't know about halfway above 60 percent, from my
20 perspective, but it is somewhere greater than 60 -- or greater
21 than and including 60, less than 70.

22 Q Okay. You pick a number, because I want to have you do
23 some math, and you tell me what you think it is.

24 A I will call it 60 percent, give or take.

25 Q Okay. All right. So do you know when early voting came

1 into play in North Carolina, Mr. Trende?

2 A I believe -- well, no excuse -- as we are referring to
3 early voting in this case, I believe it was 1999.

4 Q And do you know how the early voting changed between 1999
5 and, say, later in the decade?

6 A I believe it increased from 10 days to 17 days.

7 Q Okay. Well, I was more interested in knowing if they
8 added sites, more early voting locations. Did you study that?

9 A I didn't study that.

10 Q So from -- we started at 40 percent in 1980, and then by
11 2004, the participation rate you are saying is 60 percent?

12 A Give or take, yes.

13 Q So what is the difference between that?

14 A 20 percent, give or take. A little more than that,
15 because it is probably a little below 40 and a little above 60.

16 Q So when was the first year, as far as you know, that
17 same-day registration was employed in North Carolina?

18 A As I sit here, my recollection is that same-day
19 registration was 2007.

20 Q And what Presidential election did it first come into
21 play?

22 A I believe 2008.

23 Q Where is the North Carolina African-American turnout in
24 2008?

25 A It's roughly -- it is a little bit higher than 2004.

1 Q Okay. So how much of an increase was there in
2 African-American turnout from 2004 to 2008?

3 A 3 to 4 percent, according to CPS data.

4 Q Okay. And then from 2008 to 2012, what was the -- on this
5 chart, the participation rate for African-Americans by 2012?

6 A It is somewhere north of 70 percent.

7 Q And so that was an increase of how much from 2008?

8 A Almost 10 points.

9 Q Okay. So from 2008 when same-day registration was first
10 used in the Presidential elections to 2012, what was the total
11 amount of increase for the African-American participation?

12 A I'm sorry. From when?

13 Q From 2008 to 2012.

14 A We are looking at about a 10-point increase on this chart,
15 maybe a little more. It looks different on the screen than in
16 the book.

17 Q And from 1980 to 2004, what was the increase in the
18 African-American participation rate?

19 A Somewhere in the 30 to 40 percent range.

20 Q Could you turn to page 54. Are you there?

21 A I am, yes.

22 Q What is that chart again?

23 A This is the -- this is the African-American participation
24 in North Carolina laid over the national participation.

25 Q From 1980 to 2004, what was the increase in

1 African-American participation?

2 A Nationally?

3 Q In North Carolina.

4 A In North Carolina, it looks somewhere on the order of 20
5 to 30 points, depending on how you characterize those lines.

6 Q Okay. And from 2008 to 2012, how much of an increase was
7 there in African-American participation?

8 A Looks like again about 10 points, maybe a little more,
9 depending on how you characterize those lines.

10 Q So on both of those charts, the greatest percentage
11 increase in African-American participation occurred prior to
12 the implementation of same-day registration; is that a fair
13 statement?

14 A Yes.

15 Q Now, counsel talked to you about your regression analysis,
16 and he spent a lot of time talking -- asking you why you didn't
17 use validated data for your regression analysis.

18 A Yes.

19 Q Can you explain why you didn't use validated data?

20 A Because for turnout, we only have validated data for five
21 states, so you wouldn't be able to conduct a robust regression
22 analysis. I don't think anyone would do that.

23 Q You looked at, I think, 36 states?

24 A Thirty-four, I believe.

25 Q And how many of those had validated racial data on voting

1 and registration?

2 A I think all five states that have validated voting data
3 are on this list. So five.

4 Q Okay. So why didn't you use the validated data for the
5 states that had it and the CPS data for the other states?

6 A You would be mixing and matching two different datasets.

7 Q Do you know any expert in any article, similar to what you
8 have done, where an expert has done validated data for only a
9 few of the states and CPS data for the majority of the states?

10 A No, not in a single regression analysis, no.

11 Q And, Mr. Trende, after your examination by counsel for the
12 Plaintiffs, have you been led to change any of the conclusions
13 that you've made in this case?

14 A Not at all.

15 **MR. FARR:** That's all, Your Honor.

16 **THE COURT:** Anything further, Mr. Ho?

17 **MR. HO:** No, Your Honor.

18 **THE COURT:** You may step down.

19 **MR. FARR:** I would like to move some documents into
20 evidence.

21 **THE COURT:** Okay.

22 **MR. FARR:** Your Honor, we would like to move into
23 evidence Defendants' Exhibit 2, which is Mr. Trende's report
24 with attached exhibits of April 25, 2014. We would like to
25 move into evidence Exhibit 270, which is Mr. Trende's report

1 of -- I think it is March 16, 2015, with the attached exhibits.
2 And then we would also like to move into evidence the analysis
3 that Mr. Trende did of Virginia turnout from 2002 to 2012,
4 which is Defendants' Exhibit 7.

5 **THE COURT:** Objections?

6 **MR. DONOVAN:** No objection, Your Honor. Just --

7 **THE COURT:** Somebody has a phone. Please don't use
8 your phone in the courtroom. I will take it away.

9 **MR. DONOVAN:** No objection, Your Honor. Just noting
10 kind of the same rule you've applied. Some of these are just
11 articles and some are newspapers. We don't object to them
12 coming in. Just want to note that for the record. You will
13 give it the weight that it's due.

14 **THE COURT:** All right. They are admitted.

15 **MR. FARR:** Your Honor, it's 12:25. We have an expert
16 witness, and we think it might be better to start after lunch.

17 **THE COURT:** Let me just get a scheduling issue. Did
18 you want to deal with your exhibits now?

19 **MR. HO:** If you wouldn't mind, Your Honor, if I may?

20 **THE COURT:** If they don't object. It's their case.

21 **MR. FARR:** We have no objection to the Plaintiffs
22 moving their exhibits into evidence now.

23 **THE COURT:** I would be glad to cover those now.

24 **MR. HO:** I would like to move into evidence the
25 exhibits during used during Mr. Trende's testimony: PX738, Mr.

1 Trende's article entitled "Sweeping Conclusions from Census
2 Data"; PX739, the "Case of the Missing White Voters" by
3 Mr. Trende; PX740, another article by Mr. Trende; and PX741,
4 Chapter 4 from the book *Who Votes Now?* cited by Mr. Trende in
5 the report.

6 **THE COURT:** Any objection?

7 **MR. FARR:** No, Your Honor.

8 **THE COURT:** All right. Those are admitted. Where do
9 you stand, Mr. Donovan, on your time? I know you have been
10 keeping track of that. What is your request going to be?

11 **MR. DONOVAN:** The request is going to be, if
12 necessary -- I'm not sure we're going to need it before
13 closing -- it would be an additional five hours. I can confer
14 with Mr. Farr. They added two witnesses they may call. They
15 may not. So my only concern -- and I don't think we are going
16 to run into it, but I don't want to run out of time and then --

17 **THE COURT:** To argue?

18 **MR. DONOVAN:** Yeah.

19 **THE COURT:** I don't want you to do that either.

20 **MR. DONOVAN:** I just want to put that on your radar.

21 **THE COURT:** All right.

22 **MR. DONOVAN:** And depending on -- I will confer with
23 Mr. Farr over break, depending on their witnesses left, it may
24 not come up.

25 **THE COURT:** Let me ask Mr. Farr. Do you know how

1 many more witnesses you believe you have at this point?

2 **MR. FARR:** Your Honor, I am going to say probably
3 two, but potentially four.

4 **THE COURT:** All right. Do you know --

5 **MR. FARR:** And the witnesses that we listed were all
6 on our witness list that we submitted, the four that are left.

7 **THE COURT:** Do you know how much longer you think
8 your examination -- your directs of those would be total?

9 **MR. FARR:** Your Honor, I don't know how long we are
10 going to go with our next expert. I think it is going to be
11 relatively short. So we should start our first witness this
12 afternoon, I think. Maybe at 3:30, if not earlier. I would
13 say there would be a chance that --

14 **MR. DONOVAN:** You mean start at 2:00?

15 **MR. BOWERS:** He means for the nonexpert witness.

16 **MR. FARR:** Your Honor, let's hope that we can finish
17 tomorrow.

18 **THE COURT:** Okay.

19 **MR. FARR:** But it depends upon the cross-examination.
20 And then we do have two witnesses that -- we are going to see
21 how the testimony goes and make a decision on whether we are
22 going to call them or not.

23 **THE COURT:** Are you anticipating some rebuttal
24 evidence or not?

25 **MR. DONOVAN:** I think briefly. But as I understand

1 it, we have Mr. Hofeller, and then they are calling Ms. Strach,
2 who has already testified, but they're calling her in their
3 case, and then Mr. Neesby. So I do think our rebuttal is going
4 to be brief, at least at this point. The way I am viewing this
5 is, if we close evidence tomorrow, do closings Thursday
6 morning.

7 **THE COURT:** Probably, if we close tomorrow. Okay.
8 Well, as long as we are moving apace, then I would not worry
9 about your time allotment. That's not an open-ended extension.

10 **MR. DONOVAN:** I know.

11 **THE COURT:** I have done that before, but as long as
12 we are moving along. Okay.

13 **MR. DONOVAN:** And we were just conferring. You can
14 tell us after lunch, or whenever you're comfortable, any
15 guidance you have on closing?

16 **THE COURT:** I'm going to do that, but I think I am
17 going to wait until the evidence is in so that nobody feels
18 like they've got some kind of unfair advantage with my saying
19 something before the evidence is through.

20 **MR. DONOVAN:** Fair enough. Can I give you one more
21 note, Your Honor? Yesterday, I made an objection to a question
22 about what was alleged to have been said Dr. Lichtman. It was
23 alleged that he said North Carolina 12th was a competitive
24 race, and I objected saying that wasn't what he said. In my
25 view, it wasn't, but I want to give you those cites. You said

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 you would review it.

2 And in the Lichtman direct testimony, that's pages 19
3 to 20, and on pages -- Lichtman -- Mr. Farr's cross, pages 65
4 to 67. Those are both at the rough transcripts. He discusses
5 that race, and you can read it for yourself.

6 **THE COURT:** That's the 12th District race?

7 **MR. DONOVAN:** Yeah. He just says it's stimulative,
8 and it was an open seat. He doesn't say it was competitive.

9 **THE COURT:** Thank you for doing that. I appreciate
10 that.

11 We'll take a break until 2:00. I will give you some
12 guidance -- I do have some guidance I plan to give you and some
13 indications of things that are on my mind. I will wait and do
14 that when we are done with all the evidence.

15 Okay. All right. You all have a good lunch. We'll
16 see you at 2:00.

17 (The Court recessed at 12:29 p.m.)

18 (The Court was called back to order at 2:08 p.m.)

19 **THE COURT:** Mr. Farr.

20 **MR. FARR:** Thank you, Your Honor. We would like to
21 call Dr. Thomas Hofeller.

22 **THOMAS B. HOFELLER, PH.D.,** DEFENDANTS' WITNESS, at 2:08 p.m.,
23 being first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 **BY MR. FARR**

2 Q Could you please state your name for the record.

3 A My name is Thomas Brooks Hofeller, H-O-F-E-L-L-E-R.

4 Q And could you please give the court reporter your address?

5 A 6701 Pointe Vista Circle, Raleigh, North Carolina 27615.

6 Q To begin your examination, Mr. Hofeller, could you please
7 tell the Court about your educational background?

8 A I have an undergraduate with a BA from Claremont McKenna
9 College and a master's and Ph.D. from Claremont University
10 Center.

11 Q And do you have any degrees beyond a master's degree? I
12 didn't catch that one.

13 A Ph.D.

14 Q So it's okay if I call you Dr. Hofeller?

15 A If you wish.

16 Q All right. Thank you. Now, Dr. Hofeller, did you do some
17 reports for the Defendants in this case?

18 A I did.

19 **MR. FARR:** Your Honor, may I approach?

20 **THE COURT:** Yes.

21 **BY MR. FARR**

22 Q Dr. Hofeller, I have just given you a notebook; and is it
23 accurate to say that this notebook contains portions of a
24 report you did in this case that's -- that was done on
25 April 25, 2014?

1 A It is.

2 Q And just for the record, would you confirm that's been
3 marked as Defendants' Exhibit 212A? It would be on the front
4 page of the report.

5 A It is on the report, too, yes.

6 Q All right. Is this your complete report that we included
7 in this notebook, Dr. Hofeller?

8 A No, it isn't.

9 Q Portions of it have been redacted?

10 A Yes.

11 Q All right. So just to start my questions about your
12 qualifications, could you turn to Tab 2, please. And is that a
13 copy of your résumé, Dr. Hofeller?

14 A Yes.

15 Q And in paragraphs -- starting on page 2, paragraphs 1
16 through 15, are those paragraphs your description of your
17 qualifications?

18 A I'm sorry. Are we back to the report again?

19 Q Yes.

20 A I'm sorry.

21 Q You describe your qualifications on pages 2, 3 and 4; is
22 that correct?

23 A I did.

24 Q All right. So could you give the Court a brief summary of
25 your work experience as it relates to the subject matters about

1 what you are testifying today?

2 A First of all, I have been engaged in redistricting. This
3 is now my 50th year. So I started that in 1965 and have done
4 almost a career in redistricting.

5 Q Could you explain to the Court what that means? When you
6 say you're involved in redistricting, what exactly do you do?

7 A Well, redistricting is really a multifaceted discipline.
8 It involves the construction and analysis of databases, some of
9 which are fairly complex because they involve the merging of
10 election and registration data with data from decennial
11 censuses. Sometimes data is brought in from the American
12 Community Survey.

13 All of this has to be formatted in such a way that it can
14 be loaded into a computer which operates in a geographic
15 information system, which is a fancy word for a map on which
16 you can display data of all types. You have to be familiar
17 with census data and its usage and also with the election and
18 registration data, some of which comes from registration files.

19 In many states, the registration precincts don't match the
20 voter precincts. That all has to be done and precincts change
21 between years, so you have to correct for the shifts in those
22 boundaries. They then have to be loaded, at least in the last
23 three redistricting cycles, with the census geography. The
24 census has a unit of geography called a VTD, a voting district.

25 Q VTD?

1 A VTD.

2 Q What does that stand for?

3 A Voting district.

4 Q What does the T stand for?

5 A VT for vote. Most people call it a vote tabulation
6 district, but it's an incorrect term for the Census Bureau. I
7 have been corrected by their employees several times on this.

8 Q So if somebody says a vote tabulation district is a matter
9 of census geography, that's the same as a voting district?

10 A It is.

11 Q Okay.

12 A It's just a mischaracterization, but I think everybody
13 would know what they are talking about.

14 Q What sort of information do you evaluate when you are
15 examining a vote tabulation district in redistricting?

16 A Well, you have an array of data available to you if
17 your -- if you have a good redistricting system, and it
18 includes results from past elections, various candidates. It
19 involves registration data, sometimes turnout. There is a file
20 also which comes from the Census Bureau usually from February
21 to March of the year after the decennial census which contains
22 a special file for use in redistricting under PL94-171, which
23 has the racial and ethnic data from the census questionnaire
24 tabulated by the total population and the adult population,
25 persons over 18.

1 Q And does that information include information on racial
2 demographics?

3 A It is both race and ethnicity in the form of the second
4 question, which is on the questionnaires whether or not you're
5 Hispanic or Latino.

6 Q Okay.

7 A You can answer multi-race or single race and then you can
8 answer whether or not you're Hispanic.

9 Q Okay. Just to clear something up for the Court, what is
10 the relationship in North Carolina between a voting district,
11 as the Census people use that, and a precinct?

12 A A couple of years before the census, the states, if they
13 wish, can send the Census Bureau their precinct lines or in
14 some states they call them election districts like New York,
15 send those boundaries to the Census Bureau for inclusion in the
16 census geography file called the TIGER file. The census will
17 then report out the boundaries of those districts and the data
18 for them to corresponding districts.

19 Q Thank you. That's very helpful. How do the voting
20 districts, as the Census people use that, correlate to
21 precincts in North Carolina?

22 A North Carolina, the voting districts actually correspond
23 very well to the election precincts because North Carolina has
24 made a really good effort to make those lines be, for the most
25 part, coterminous so that they represent the same piece of

1 geography.

2 Q All right. And can you -- in your work have, you looked
3 at vote tabulation districts to make determinations on the
4 racial characteristics of the people in a voting district?

5 A Yes.

6 Q Have you looked at issues for voting districts, such as
7 partisan registration or how the people in the vote tabulation
8 district voted in certain elections?

9 A Actually, we usually use the election voting history more
10 than the registration history.

11 Q Okay. Now, aside from that, can you explain to the Court
12 the experience you've had in database construction and
13 analyzing databases?

14 A I have had quite a little bit of experience with voter
15 files. I actually started doing this in the early '70s, and
16 the matching of voting files to other information, when you are
17 going to match files to other information, you have to
18 standardize the addresses so that they can be matched to other
19 files.

20 A lot of times in politics, you run the voter file through
21 a national change of address file to figure out which people
22 have moved. There is also a file which contains people who
23 have died. Those are the types of files, too, that the State
24 Board of Elections uses in its work with voter lists.

25 Also, now voter lists are compared to other demographics

1 from both surveys and from the American Community Survey to do
2 what they call micro-targeting, which is used a lot in election
3 work. So I am familiar with the voting of this -- the form of
4 these voter files and list matching in general. In my younger
5 days, I actually wrote software to do that. Fortunately, now I
6 can usually convince somebody else to do it, but it's a tedious
7 process, and it's used a lot in politics.

8 I was employed for a while by a list company in Virginia.
9 I also ran the computer center for the Republican National
10 Committee in Washington, D.C., which did a lot of list work in
11 election analysis.

12 Q Now, can you tell the Court what is meant by the term
13 "geographic information system"?

14 A Again, it is a system which contains units of geography
15 for redistricting. It is all the census geography, which is
16 the boundaries of states, counties, census tracts, census
17 blocks, voting districts and actual -- and sometimes other
18 layers, such as cities, census-designated places, Indian
19 reservations, whatever geography the Census needs to use to
20 compile the information that they need for the government and
21 for their users.

22 Q All right. sir.

23 A I am not sure I answered that completely. The GIS system
24 is essentially a map system. It contains a map of a lot of
25 detail, rivers and streets and all sorts of designations. And

1 the GIS system marries data with the maps so that it can be
2 displayed in units of geography, either by centroids of census
3 units, which can display a symbol or a number, and they can
4 also be shaded, according to some theme that one wants to
5 display when one is building districts in this case.

6 Q All right. And how many maps do you think you've drawn in
7 your career, Dr. Hofeller?

8 A I don't know. I think probably thousands at this point.

9 Q All right. Can you explain in further detail your
10 experience or expertise with census data?

11 A Well, I have been using census data since the '70s. So
12 this last go-around was my fifth decennial census that I worked
13 in. So I am familiar with pretty much all aspects of census
14 data and geography.

15 I also spent some time as the staff director of the U.S.
16 House Subcommittee on the Census. So I became even more
17 familiar with how the census runs really from the ground up,
18 how it's processed, some of the problems that they have in
19 collecting the data. I was there when they were proposing the
20 switch from what they called the long-form census form to the
21 American Community Survey so that they could use one short form
22 for taking decennial censuses.

23 Q Are you currently employed or do you have --

24 A Part time, I guess. I'm sort of semiretired, although I
25 am having difficulty pulling that off right now. I am part of

1 a partnership called Geographic Strategies, LLC, and we do
2 legal support, redistricting consulting work. I am also a
3 part-time consultant on redistricting for the Republican
4 National Committee in Washington, D.C.

5 Q Could you go over some of the entities that you worked for
6 in the area of redistricting?

7 A Types or actual entities?

8 Q Entities, who you worked for.

9 A Well, in terms of the national context, I've worked for
10 the National Republican Congressional Committee and the
11 Republican National Committee, which are two separate entities.
12 I've worked for various states, which is Mississippi, North
13 Carolina. I've worked for cities. I worked in a case in
14 Chicago on city council redistricting. I worked in Illinois.
15 I've worked in counties, Nueces County and Galveston County.
16 It is really all in my résumé.

17 Q Let's turn to your résumé briefly, which is Tab 2. I
18 wanted to ask you, Dr. Hofeller: This document goes over some
19 of the entities that you've been employed by over the years; is
20 that right?

21 A Yes.

22 Q Does it list some of the cases that you participated in?

23 A It does.

24 Q And how many times have you given expert testimony over
25 the course of your career?

1 A I counted it up, and I think it's about 15 different
2 cases. I have also submitted extra analyses and reports in
3 about 13 or 14 cases.

4 Q Have you ever been disqualified as an expert?

5 A No.

6 Q And is there any case that you have given expert testimony
7 in that is not listed on your résumé?

8 A Yes.

9 Q And what is that?

10 A I just got through writing a report and giving testimony
11 in a redistricting case in the state of Virginia, *Bethune-Hill*
12 *v. the State Board of Elections*. That was this month, I
13 believe, that I gave the testimony. It involved the
14 redistricting of the districts of the House of Delegates, the
15 lower House of the legislature in Virginia.

16 **MR. FARR:** All right. Your Honor, the Defendants
17 would like to offer Dr. Hofeller as an expert in demography,
18 census geography, and database building involving voter
19 registration and turnout information, voting and registration
20 patterns and also the same patterns based upon race and
21 partisan affiliation.

22 **THE COURT:** Any objection?

23 **MR. KAUL:** Your Honor, we had filed a *Daubert* motion
24 with respect to Dr. Hofeller. We've reviewed the redactions
25 and changes that the Defendants have made to the declarations.

1 In light of those changes, and so long as Dr. Hofeller's
2 testimony remains within the scope of what's in the current
3 report, we will withdraw the motion.

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

5 **BY MR. FARR**

6 Q Dr. Hofeller, I think let's start with page 14 of your
7 report. This part of your testimony runs through pages 15 and
8 16; is that correct?

9 A Just a minute. I need to find it.

10 Q Okay.

11 A It starts on page 14?

12 Q Yes, sir.

13 A For however many paragraphs you wish to go. This
14 particular section ends on page 16.

15 Q Yes, sir. And that would be paragraph 68 through 74; is
16 that right?

17 A That's correct.

18 Q All right. Can you summarize for the Court what you were
19 asked to do in this part of your report?

20 A I was asked to look at the counties which offered Sunday
21 voting in the 2012 election and to summarize the demographic
22 and political differences between the two sets of counties, the
23 counties that did offer Sunday voting and the counties that did
24 not offer Sunday voting.

25 Q All right. And so let's start off by asking -- if you

1 could turn to Tab 3. And could you tell the Court what this
2 is?

3 A This is actually a map shaded in red of the counties which
4 offered at least one Sunday of voting. I have to apologize. I
5 should have said counties with Sunday one-stop voting centers
6 shaded in red, but that's what those counties represent. There
7 are, I believe, 21 of them.

8 Q So the title of Map 14 doesn't say Sunday voting, but
9 that's what it is?

10 A That's what it is.

11 Q All right. And the counties -- how did you designate the
12 counties that had one day of Sunday voting?

13 A I guess shaded in red.

14 Q And in what year was this for, Dr. Hofeller?

15 A 2012.

16 Q All right. And if you turn back to page 14 of your report
17 under Tab 1.

18 **THE COURT:** Is this one day or just one day?

19 **THE WITNESS:** At least one day, Your Honor.

20 Paragraph 68?

21 **BY MR. FARR**

22 Q Yes, sir. I'm on paragraph 68. Did you list the number
23 of counties which opened Sunday one-stop centers for at least
24 one day?

25 A Yes.

1 Q And could you read those into the record, please?

2 A Anson, Buncombe, Catawba, Craven, Cumberland, Durham,
3 Forsyth, Guilford, Hoke, Lenoir, Mecklenburg, Pamlico, Pitt,
4 Richmond, Robeson, Sampson, Union, Vance, Wake, Wayne, and
5 Wilson.

6 Q All right. And in paragraph 69, you reference the
7 demonstrative and political characteristics for counties which
8 had Sunday one-stop voting and those that did not; is that
9 right?

10 A That's part of it, yes.

11 Q And could you tell the Court what Table 14 is?

12 A Table 14 is the table of the computations I made to come
13 up with the data that is in the paragraphs that we're looking
14 at in my report.

15 Q All right. So let's explain the first table, and I will
16 assume that the rest of the tables follow the same principle.
17 So the top table on Table 14, the top graph, there is a column
18 that says "area." Do you see that?

19 A Yes. It's Subchart 14A as its designated on the report.

20 Q Okay. And so what does area mean?

21 A Area designates that group of counties in the first line
22 that had non-Sunday voting, or didn't have Sunday voting I
23 guess would be the better way to say it, and those that did
24 have Sunday voting, and it lists -- well, that's the question.

25 Q Well, what's the next column in that report?

1 A It's the population for -- the total population for the
2 two areas and the adult population.

3 Q Okay.

4 A And do you want me to go through the columns?

5 Q I want to make sure that we understand what this means.

6 So for the counties that had -- that did not have at least
7 one day of the Sunday voting, the total population of those
8 counties was four million, seven-eight-three-oh-nine; is that
9 correct?

10 A 091.

11 Q Okay. And for counties that had at least one day of
12 Sunday voting, the population was 4,752,392; is that right?

13 A That's correct.

14 Q And then the next column you have is the adult population.
15 What do you mean by that?

16 A Those persons who are over 18 years of age. We commonly
17 refer to it in the redistricting field as voting-age population
18 or, for short, VAP. You will hear that a lot.

19 **THE COURT:** You say over 18. Is it 18 or over?

20 **THE WITNESS:** It is 18 and over, Your Honor.

21 **BY MR. FARR**

22 Q Okay. Is that because that's the group that's eligible to
23 vote, 18 and over?

24 A That's the group and that's what Congress directed the
25 Census to use as a compilation for this data. Sometimes they

1 are referred to 18-plus, too, which is a shorthand that I use
2 in the table because it fits.

3 Q All right. So then moving along the table, you've got a
4 column that says NH18 plus WIT. What does that mean?

5 A That's non-Hispanic adult white or 18-plus white. That's
6 the correct term for -- in the census for those persons who
7 indicated their race as white or Caucasian and did not
8 designate themselves as Hispanic or Latino.

9 Q Okay. So for those counties that did not have Sunday
10 voting, what was your entry for non-Hispanic 18-plus white?

11 A Non-Sunday voting counties, 2,821,170.

12 Q And what was -- then you have next to that "percent."
13 What does that mean?

14 A That percent is the percentage of the adult voting-age
15 population, the number under adult and population.

16 Q So in the non-Sunday counties, the non-Hispanic 18-plus
17 white had 76.53 percent of the population in those counties?

18 A That's correct, the adult population.

19 Q Okay. And then beneath that, you've got the same figures
20 for the counties that had Sunday voting. Could you tell the
21 Court what those figures are for the --

22 A Again, the number was 2,143,155, which was 60.07 percent
23 of the adult or voting-age population in that group.

24 Q Okay.

25 A And then under those two percentages is the difference

1 between the two percentages --

2 Q Yep.

3 A -- in the row below the encircled part of that table.

4 Q So that means that in the non-Sunday voting counties, the
5 white population was 16.46 percent higher than the Sunday
6 voting counties?

7 A The non-Hispanic whites in the non-Sunday counties,
8 76 percent of the persons in those counties -- the adults in
9 those counties were white. 60.07 percent of the adults in the
10 Sunday counties were white. So, actually, the non-Sunday
11 counties were 16 percent more white than were the Sunday
12 counties.

13 Q All right. And then continuing to the right, did you do
14 the same calculations for the 18-plus AP black? And please
15 explain to the Court what that means.

16 A Eighteen-plus AP black is a term that's really used in
17 North Carolina redistricting as total black, and it represents
18 all those persons who either reported their race as black alone
19 or black and any other race. So it's any part black.

20 Q All right. So then what were the other entries that you
21 entered in that part of this chart?

22 A Well, again, it was the number of people that fell under
23 that category in the non-Sunday and Sunday counties and the
24 percent -- those black numbers were of the total adult
25 population in those counties.

1 Q So I want to make sure we understand that. In the North
2 Carolina counties that did not have Sunday voting, the black
3 population in that area was 15.81 percent?

4 A 15.81 percent of the adult population.

5 Q All right. And then for the areas that had Sunday
6 counties, what was the percentage of the black population?

7 A 26.72.

8 Q Okay.

9 A So the --

10 Q Yes.

11 A So the black percentage in the Sunday counties was
12 10.91 percent higher than the white percentage.

13 Q All right. Now, continuing on that chart, what is the
14 next entry where you have Obama '08?

15 A That's obviously election data, and that represents the
16 votes in the Sunday and non-Sunday counties for Obama in the
17 2008 general election, and that figure is divided by the figure
18 on the end that's total '08 vote. So the non-Sunday counties
19 voted 42.57 percent for Obama and the Sunday counties voted
20 56.60 percent for Obama, which meant that the Sunday counties
21 voted 14.03 percent higher for Obama than the non-Sunday
22 counties.

23 Q All right. And then what's the next -- continuing to the
24 right, what's the next column?

25 A Well, the next column does essentially the same thing for

1 McCain in '08, and it shows that -- it is really kind of the
2 converse except there is a -- there are some other votes
3 involved, minor candidates. So that the non-Sunday counties --
4 the voters in the non-Sunday counties voted 56.41 for McCain,
5 and in the Sunday counties, 42.57 percent for Obama, which was
6 a 13.84 percent difference in favor of McCain, which is shown
7 on the bottom beneath the solid line.

8 Q Let's move down. What is the second chart on Table 14?
9 What does that represent?

10 A Before we go there, I would just like to explain that the
11 second line of Subchart 1A gives some of the other racial
12 breakdowns.

13 Q Okay.

14 A So it adds up mostly except for AP black. The Subchart A
15 looks at it a little differently. It is more -- well, I have
16 to explain what it is. First of all, you will find that the
17 numbers in the charts are the same as Subchart B, but the
18 calculations that have the percentages in this chart are
19 calculated on a different divisor.

20 So if I could explain non-Hispanic 18-plus white, which is
21 the second category on that chart?

22 Q Okay.

23 **THE COURT:** On which chart?

24 **THE WITNESS:** This is Subchart A, Your Honor, which
25 would be kind of the third big block there on the page.

1 So if you will notice, the number 2,821,170 for
2 non-Sunday counties is exactly the same as it was above in
3 Subchart A. The number is the same. But in this particular
4 chart, I was interested in seeing what percent of the
5 non-Hispanic whites were in the non-Sunday counties and the
6 Sunday counties, so I added together the two numbers, 2,821,170
7 and 2,143,155, and summed them -- am I going too fast for the
8 reporter?

9 **BY MR. FARR**

10 Q I don't think so.

11 A Okay. 4,964,324 non-Hispanic whites. Of those, 56.83
12 were in the non-Sunday counties and 43.17 were in the Sunday
13 counties.

14 Q So I want to make sure I understand that. So in
15 Subchart 14B, you are saying that of the entire non-Hispanic
16 18-plus white population for the state, 56.83 percent lived in
17 the non-Sunday counties; is that right?

18 A That's correct.

19 Q And 43.17 percent of the entire non-Hispanic white
20 population of North Carolina lived in the Sunday counties?

21 A Right.

22 Q All right. Now, did you do a similar calculation for the
23 18-plus AP black?

24 A Again, the numbers for those two are the same as
25 Subchart A; but, once again, the divisor is different. So I

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 added up the 583,934 adult AP blacks who were in that category
2 to the -- the non-Sunday category to the 953,299 adult AP
3 blacks that were in the Sunday counties and summed it as
4 1,536,233.

5 So then dividing that 1,536,233 into each of those numbers
6 above, I determined that 37.95 percent of the any-part-black
7 adult population was located in the non-Sunday counties and
8 that 62.05 percent of the blacks in the state were in the
9 Sunday counties, which is a pretty big difference.

10 Q All right. So can you tell us -- you also have -- in
11 Subpart 14B, you've got calculations on the Obama and McCain
12 vote. Could you explain those briefly, please?

13 A Yes. The Obama vote in the '08 general election was
14 906,645 votes for Obama in the non-Sunday counties and
15 1,227,421 votes in the Sunday counties, for a total of
16 4,134,066 of the Obama votes. This means when you go across to
17 the percentage that --

18 **THE COURT:** You said 4 million?

19 **THE WITNESS:** I'm sorry, Your Honor. 2,134,066 was
20 the total. It is right below the line there. It is a little
21 closer together because I was trying to fit the exhibit all on
22 one page.

23 So 42.48 percent of the Obama vote came from the
24 non-Sunday counties and 57.52 percent of the Obama vote came
25 from the Sunday counties.

1 **BY MR. FARR**

2 Q All right. Did you do the same calculation for the McCain
3 vote?

4 A I did, but it's pretty much the converse of that.

5 Q Could you just -- for the purposes of the record, could
6 you explain that?

7 A Certainly. McCain received 1,201,299 votes in the
8 non-Sunday counties, 9 million -- I'm sorry -- 923,108 votes in
9 the Sunday counties, for a total of 2,124,407 votes. So
10 56.55 percent of the McCain vote was cast in the non-Sunday
11 counties and 43.45 percent of the McCain vote was cast in the
12 Sunday counties.

13 Q So based upon that data we've just gone over, did you
14 reach any conclusions about where the Sunday voting centers
15 were located?

16 A Well, I mean, the figures actually speak for themselves.
17 The Sunday voting counties were much better placed for both the
18 Obama or the Democratic candidate and for votes by
19 African-Americans in the state.

20 Q Now, Dr. Hofeller, did you examine the placement of the
21 one-stop centers in Wake County in 2012?

22 A Yes.

23 Q And turning back to your report on page 15, is that where
24 you begin your explanation of the placement of the Wake County
25 early voting centers in 2012?

1 A Yes, paragraph 71.

2 Q All right. If we turn to Map 15, which is under Tab 5,
3 could you tell the Court what that is?

4 A Okay. This is a map of the area of Wake County and the
5 surrounding areas, but I was only interested in Wake County.
6 My mapping system doesn't allow me to cut off the surrounding
7 counties, so they are there, too. But the Wake County boundary
8 is the red line around the county, and there is a star for the
9 placement of an early voting center.

10 Q Okay.

11 A The voting centers are coded with the number of hours of
12 operation that the voting center had for that election, and
13 I've drawn, to the nearest census block, a 3-mile circle around
14 each of those stars. Unfortunately, the blocks aren't
15 circular, so it doesn't come out as an exact circle, which was
16 my way of measuring the political and demographic
17 characteristics of those areas within a 3-mile radius.

18 I would also like to explain that the coloring of the
19 cities has no other characterization except for each city that
20 adjoins another city has to be a different color. So if you
21 see two cities that are green in close proximity, they didn't
22 specifically touch one another. So it just gives the city
23 limits, which helps one to orient oneself on the map.

24 When we are doing redistricting, we do not often, but
25 sometimes, use corporate boundaries. And you can see one of

1 the reasons we don't is because they are pretty strange, but
2 I'm kind of used to seeing Wake County and VTDs, but this is
3 good for this particular demonstration.

4 Q So looking at Map 15, again, explain -- you've got numbers
5 there, 82, 126, and 120, listed next to the various stars.
6 Could you again explain why they are significant?

7 A Again, this represented the total number of hours that the
8 voting center -- or vote center was open during the early
9 voting period. You can see seven of them are 126 hours and one
10 of them was 120 hours. I have no idea why it had six less
11 hours, but that's the way it was.

12 Those are mainly in what I would characterize as central
13 Raleigh and Cary mostly, and then out farther into I guess you
14 would call them the suburbs -- since I now live in Raleigh, I
15 see that a lot more -- were the 82-hour centers in Apex, Holly
16 Springs, Fuquay-Varina, one kind of in between that and Garner,
17 one in Garner, one in Knightdale, one in Wake Forest, and one
18 in kind of northwest Raleigh out by the airport.

19 Q Okay. Did you study any other counties besides Wake
20 County?

21 A I looked at the placement of the vote centers, and I
22 looked at the hours. I was provided a list by the State Board
23 of Elections, I believe, of the locations of the centers. We
24 had to get the exact locations of the centers so that they
25 could be centroided, which is the process of identifying a

1 latitude and longitude for where the centers were, so that we
2 could place the stars.

3 Q Okay. I think I didn't ask my question very well,
4 Dr. Hofeller. My question was: Map 15, the study of Wake
5 County, did you do the same detail study for any other
6 counties?

7 A No, I didn't.

8 Q Why did you just pick Wake County?

9 A Well, this was the county in which there was some
10 controversy over where the centers would be placed, and I
11 thought it would be a good demonstration.

12 Q All right. Why did you pick the 3-mile circle that you
13 used to draw under each of the early voting centers?

14 A Well, first of all, a large percentage of the persons who
15 are in the vicinity live within 3 miles of a vote center and
16 also because, as I extended it out to 3 miles, I was already
17 starting to get circle overlap of the areas. So I actually had
18 to go through the map and draw a perpendicular line to align
19 between the two voting centers and truncate the circles so that
20 I wouldn't double count any of the demographic and election
21 characteristics. So you see some of the circles look like they
22 are a little cut off, and that's because they overlapped.

23 Q Okay. Let's turn to Tab 6 of your report, Table 15.

24 A Do you mind if I take it out of the book and turn it?

25 Q If that's all right with the Court.

1 **THE WITNESS:** Your Honor?

2 **THE COURT:** That's fine.

3 **THE WITNESS:** I will put it back.

4 **BY MR. FARR**

5 Q Are you ready?

6 A I am ready.

7 Q All right. So at Table 15 in your report, what is the
8 title of this?

9 A Table 15, "Wake County North Carolina Analysis of
10 Characteristics of 3-mile Circles Around One-Stop Centers Using
11 2010 Census Data for Blocks Within Centroids Falling Within
12 3 Miles and Results of the 2008 General Election."

13 Q All right. What is the difference between Subtable A and
14 Subtable B?

15 A It is really much the same as the table that we just
16 looked at for the Sunday and non-Sunday counties except it
17 summarizes data for three different groups: Those people who
18 lay within the 3-mile radii of the 82-hour circles, and those
19 who lived within 3 miles of the 120-plus-hour circles, and then
20 the remainder of the county.

21 Q Okay. So let's look at Subtable A, and let's try to walk
22 through that and explain this to the Court. So the first
23 column there is titled "Area." And could you explain your
24 entries there and what those meant?

25 A Again, 82 hours are those areas which are within 3 miles

1 of the vote centers that were open 82 hours. The second line
2 is those persons who were within 3 miles of the centers that
3 were open 120 or more hours. And the third is those people who
4 were not inside any circle in the county, in Wake County.

5 Q And then your next column in Subtable A talks about
6 population. Explain to the Court what that means.

7 A Again, this is the same data that I did for the Sunday and
8 non-Sunday counties. So that in the 82-hour counties, there
9 were 222,473 persons. In the 120-hour circles, there were
10 373,968 people. And outside of any circle, there were
11 304,552 --

12 Q All right.

13 A -- persons. And then the second column, if you want me to
14 go there --

15 Q I do.

16 A -- is the same figures for the adult voting-age
17 population.

18 Q All right. And then the next column says "Non-Hispanic
19 White." Could you explain to the Court what that means?

20 A Again, those are those people who designated white as a
21 single race designation but did not indicate that they were of
22 Hispanic or Latino origin.

23 Q And so the first column is the number of non-Hispanic
24 whites who lived within 3 miles of the 82-hour early voting
25 centers?

1 A That's correct.

2 Q And, again, the 113,050 entry that you have there, what
3 does that mean again?

4 A I think if I understand your question -- I will just go
5 through the whole column.

6 Q Would you, please, and explain it.

7 A Yes. 113,050 non-Hispanic whites lived within 3 miles of
8 an 82-hour vote center.

9 Q And that means all the non-Hispanic whites in Wake County?

10 A No, just the ones that were within three -- 83 hours
11 (sic).

12 Q All right.

13 A The second line is 166,812 within 3 miles of a vote center
14 that was open 120 or more hours, and then 154,146 that were in
15 the remainder of the county.

16 Q So the remainder are people who didn't live within 3 miles
17 of either type of center?

18 A That's correct.

19 Q All right. Explain the percentages, please, that is
20 immediately next to the numbers column in the non-Hispanic
21 white section.

22 A In terms of the data, it meant that the percentage of
23 non-Hispanic white adults in the county that were within
24 3 miles of an 82-hour center was 76.54 percent for whites.

25 Q 70.54?

1 A 70.54.

2 Q Keep going.

3 A The percentage of whites in the 120-hour-plus centers
4 within 3 miles was 58.24. And the percentage of whites -- the
5 white percentage actually in the remainder of the county was
6 70.16 percent. Very similar to the 82-hour, I might add. And
7 that was a 12.30 percent difference.

8 Q Between what?

9 A Between the white percentage in the 82-hour center circle
10 and the 120-plus-hour circle.

11 Q Okay. Now, did you -- in the next column, did you do the
12 same calculation for African-Americans?

13 A Yes. Once again, for the first line, 29,192 total blacks.
14 That's AP black again out of the -- well, let me restate that.

15 The 29,192 blacks were 82 percent of the adult population
16 in the 82-hour plus circles. So the divisor there is the adult
17 population. The 73,370 blacks were 25.62 percent of the adult
18 population within the 3-mile circle of 120-plus-hour centers.

19 Q I want to make sure I heard you correctly. For the
20 82-hour centers, your chart says that the African-American
21 population of Wake County who lived within 3 miles of the
22 82-hour centers was 18.22 percent?

23 A It is not the percentage -- it was --

24 Q What does 18.22 mean?

25 A -- 18.22 percent black.

1 Q Okay.

2 A Similarly, in the 120-plus-hour circles, it was
3 25.62 percent black. And if you go down to the next line, in
4 the remainder of the county, it was 16.01 percent black.

5 Q So what was the difference, as you calculate it there?

6 A 7.40 percent.

7 Q And under the black column, it's a negative, and under the
8 white column, it is not. Could you explain that, please?

9 A Yes, because the black percentage was subtracted from --
10 the black 120-hour percentage was subtracted from the 18.22, or
11 the 82-hour percentage. So the 120-hour circles were 7.2 --
12 7.40 percent more black than the 82-hour circles.

13 Q All right. And then did you continue to calculate how the
14 Obama and McCain vote worked out in these -- within 3 miles of
15 the different centers?

16 A I did.

17 Q And could you explain that, please?

18 A If you look over to the far right of the chart, you see
19 the total votes cast --

20 Q Yep.

21 A -- for each of the three areas.

22 Q Uh-huh.

23 A And so under Obama, you see that 58.78 -- I'm sorry,
24 58,787 votes for Obama in the 82-hour circle, which represents
25 a 51.92 percent Obama vote. Inside the centers 3-mile circle

1 for 120 hours plus, 117,337 out of 180,045, which is on the
2 right so that the 120-plus-hour 3-mile circles voted
3 65.17 percent for Obama, and outside of any of the circles,
4 74,767 out of 148,963 on the far right voted for -- I'm sorry.
5 I got that wrong. It is 74,000 -- did I say 74,767? -- out of
6 148,963. So the Obama vote in the outside the 3-mile circles
7 was 50.19 percent.

8 Q And then you have a difference calculated there of minus
9 13.26 percent. What does that mean?

10 A That means that the 120-hour circle percentage was
11 13.26 percent higher for Obama than the 82-hour circles.

12 Q All right. And then did you do the same study for the
13 McCain vote?

14 A Yes. Again, it's 53,216 votes for McCain out of 113,237
15 for the 82-hour circles, which meant the McCain vote there was
16 47.00. For the 120-hour-plus, 61,060 out of 180,045, or
17 33.91 percent, for McCain inside the circles around the
18 120-hour centers. And for those outside of any circle was
19 72,725 out of 148,963, or 48.87 percent, for McCain in the area
20 outside. You will notice the characteristics of the area
21 outside the circle, and the 82-hour circles are running pretty
22 much the same.

23 Q All right. Now, Dr. Hofeller, for the percent for the
24 remainder for McCain, I think you might have read that
25 incorrectly. Isn't that 48.82 percent?

1 A Yes. I'm sorry.

2 Q And you calculated a difference of 13.06 percent. What
3 does that mean?

4 A It meant that the 82-hour circles voted 13.6 percent
5 higher for McCain than did the 120-hour circles.

6 Q I think you again misread your calculation. Isn't the
7 difference 13.08 percent?

8 A I'm sorry. My eyes aren't as good as they used to be.

9 Q That's all right, Dr. Hofeller. Did this data lead you to
10 draw any conclusions about the location of early voting centers
11 in Wake County?

12 A Yes, although part of it also has to do with Subtable B,
13 but I think that they were much more favorably placed for
14 Democratic voters and for African-American voters.

15 Q All right. Dr. Hofeller, let's now turn to page 18 of
16 your report, which is under Tab 1. In this part of your
17 report, Dr. Hofeller, can you tell the Court what you were
18 asked to do?

19 A I was asked to measure the proximity of the home precincts
20 in which a voter voted to the actual precinct in which they
21 were registered. Let me check the table for a minute here.
22 Yes.

23 Q Dr. Hofeller, could -- to refresh your memory, could you
24 read the first sentence in paragraph 81.

25 A Yes. I have a correction, actually, to it.

1 Q Okay.

2 A "Table 23 enumerates the numbers of persons casting
3 out-of-precinct ballots in the 2012 general election by
4 political party and race measured in one-mile distant intervals
5 between the center of the precinct in which a voter is
6 registered and the precinct in which he or she voted."

7 Q Okay. And then did you have any other corrections in that
8 paragraph?

9 A Yes. The first percentage in the second sentence for a
10 distance of zero to 5 miles or less, 56.8 percent of the 2,461
11 out-of-precinct ballots cast by registered Democrats were
12 within the zero to 5-mile distance class. Do you want me to
13 keep going?

14 Q Please.

15 A For a distance of zero to 5 miles or less, 48.2 percent of
16 the 1,368 out-of-precinct ballots cast by registered
17 Republicans were within a zero to 5-mile difference.

18 Q All right. And before I ask you your conclusion about
19 that, could you turn to Tab 9 and tell the Court what this is?
20 It is Table 23.

21 A Yes. This is an -- actually two pages which show the
22 one-mile intervals and the percentage of the out-of-precinct
23 ballots that were cast for Democrats, Republicans,
24 Libertarians, and unaffiliated. So as an example, in the zero
25 to one-mile interval, there were 111 out-of-precinct

1 provisional ballots cast by Democrats, which was 4.5 percent of
2 their out-of-precinct votes. Republicans cast 30 votes in the
3 zero to one-mile range, which was 2.2 percent of their
4 out-of-precinct vote. Libertarians is zero. And unaffiliated
5 is 40 votes, which is 2.5 percent of their out-of-precinct
6 ballots.

7 Q Explain again what you meant by zero to one-mile range.

8 A Again, it was a distance from -- between zero and one
9 mile, the distance between the precinct in which they voted and
10 the precinct in which they were registered.

11 Q All right. And does Table 23 have another two-page
12 document that does the same analysis based upon race?

13 A Yes.

14 Q And is that starting at the third page of Table 23?

15 A It is.

16 Q Okay. So could you just explain -- let's go through the
17 top line again, zero to one-mile range. Can you explain to the
18 Court what you did here?

19 A Yes, sir. Within that zero to one-mile interval, 64
20 provisional out-of-precinct ballots were cast by whites, which
21 was 2.1 percent of their provisional out-of-precinct votes.
22 For those registered as black, it was 102 persons -- or voters,
23 actually, and 5.8 percent of their out-of-precinct ballots.
24 For American Indian, it was zero. For Asian, it was zero. And
25 for other races, it was 7, or 3.7 percent. For undesignated,

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 it was 6 voters, or 2.6 percent. And for multiple
2 designations, it was 2, or 2.7 percent.

3 Q What does "percentage MR" mean?

4 A I believe it's multiple designation, multi-race, and then
5 the total is over on the other column.

6 Q So that's -- so 181 would be the total number of people
7 who voted an out-of-precinct ballot within the zero to one-mile
8 range?

9 A Yes. That was 3.3 percent of that total.

10 Q All right. So let's turn back to page 18 of your report,
11 and first I am going to ask you about paragraph 81. Did you
12 reach any conclusions about the partisan affiliation of
13 individuals who cast out-of-precinct ballots and the distance
14 between their assigned precinct and where they actually voted?

15 A Yes. Within a 5-mile distance, a greater percentage of
16 the Democrat out-of-precinct ballots were cast than the --
17 those by Republicans. So that Democrats who were casting
18 out-of-precinct ballots tended to cast them significantly
19 closer to their home precinct than did whites.

20 Q And did you reach a conclusion on that same issue as
21 related to African-Americans versus Caucasians?

22 A Yes. That's in paragraph 82, and African-Americans within
23 the zero to five range cast 63.3 percent of their
24 out-of-precinct ballots, and non-Hispanic -- well, actually,
25 white voters, because it's a registration thing, was

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 49.1 percent of the whites cast out-of-precinct ballots within
2 zero to 5 miles of their home precinct.

3 Q And so what was the significance of that, Dr. Hofeller?

4 A Again, that the African-American registered voters tended
5 to cast a significantly higher number of their out-of-precinct
6 ballots within the zero to 5-mile range than did the
7 non-Hispanic whites.

8 Q All right.

9 **MR. FARR:** Your Honor, I have one more exhibit I
10 would like to ask him about. May I approach?

11 **THE COURT:** Yes.

12 **BY MR. FARR**

13 Q Dr. Hofeller, I will hand you Exhibit 364.

14 A Thank you.

15 Q Can you tell the Court what this is, please.

16 A This is a printout of the official November 4, 2014,
17 general elections for North Carolina obtained from the database
18 or the website of the State Board of Elections, showing federal
19 election returns for the state.

20 Q All right. And did I ask you to get a copy of this last
21 night?

22 A Yes.

23 Q All right. Could you turn to -- and you took it -- where
24 did you get it?

25 A I signed on to the State Board of Elections website and

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 brought up the statistics and hit print.

2 Q Can you turn to the last page, please.

3 A Yes, sir.

4 Q Do you see where this report reports the election results
5 in the 12th Congressional District for 2014?

6 A Yes. There were votes both for the normal election and
7 for the unexpired term.

8 Q Okay. And who was the victorious candidate in both of
9 those elections?

10 A The Democrat Alma Adams was the winner with over
11 75 percent of the vote on both designations.

12 Q All right. Just so it's clear, Dr. Hofeller, do you know
13 why there were two elections for the 12th District in the 2014
14 general election?

15 A My understanding is that Mel Watt left office early in his
16 term to become a cabinet member, and I am not sure if it's
17 cabinet member, but he went into the Obama Administration and
18 left office. So they had to fill the unexpired term.

19 Q So one of the elections was to fill Congressman Watt's
20 unexpired term?

21 A Yes, sir.

22 Q And then the other election was for what?

23 A It is just for the regular Congressional term beginning
24 in, I believe, January of 2013.

25 Q And Ms. Adams, or Congressman Adams, which party was she a

1 candidate for?

2 A Democratic.

3 Q And who was the Republican candidate?

4 A Vince Coakley.

5 Q In both of these elections, Ms. Adams received over 75
6 percent of the vote; is that correct?

7 A That's correct.

8 **MR. FARR:** No further questions at this time, Your
9 Honor.

10 **THE COURT:** Cross?

11 CROSS-EXAMINATION

12 **BY MR. DONOVAN**

13 Q Dr. Hofeller, thank you for your testimony.

14 A Yes, sir, that's Hofeller.

15 Q Can you go to your report, the last page, I think it is
16 Table 23 you covered with Mr. Farr. It's where you calculated
17 the percentage of African-Americans and whites for
18 out-of-precincts. Do you see that?

19 A Table 23?

20 Q Yes, sir.

21 A Yes, sir.

22 Q The last page, do you have that?

23 A Yes.

24 Q Do you have a calculator up there?

25 A Well, I guess so.

1 Q There you go. Good. Looking at the last page, can you
2 tell me the percentage of out-of-precinct votes by white voters
3 as a percentage of the total?

4 A For the total line?

5 Q Yes, sir. Your total is 5,456; is that right?

6 A Yes.

7 Q Okay.

8 A I'm sorry. It was, for the whites, 2,461.

9 Q I have 3,000 --

10 A Well, wait a minute. I'm sorry. I'm on the wrong page.

11 Q It is the last page of your tab that you went through with
12 Mr. Farr.

13 **MR. DONOVAN:** May I approach, Your Honor?

14 **THE COURT:** Yes.

15 **BY MR. DONOVAN**

16 Q So these are the out-of-precinct provisional ballots for
17 the 2012 election; is that right?

18 A That's my understanding.

19 Q Okay. So let's divide the white that you tabulated, 3,033
20 divided by 5,456. Do you see that?

21 A Sure. I'm sorry. I need to get this thing on. There.
22 I'm sorry. This isn't the calculator that I am used to using.
23 I believe that's 55.59 percent.

24 Q Okay.

25 A Is that what you got?

1 Q That's what I got, too. Let's calculate the percentage of
2 black, or African-American, out-of-precinct provisional ballots
3 as a percentage of the total. So it would be 1,751 --

4 A Yes, I see. That would be 32.10 -- no, 09 percent.

5 Q Do you know what the African-American, I think you
6 referred to it as VAP earlier, was in 2012?

7 A Not specifically, no. I mean, I can't bring that figure
8 to my head. It was in the low 20s, I believe.

9 Q And then the lower right, you have a designation here
10 NCGA-ISD. What does that stand for?

11 A I'm sorry. Where is that?

12 **MR. DONOVAN:** May I approach, Your Honor?

13 **THE COURT:** Yes.

14 **THE WITNESS:** Sorry.

15 **BY MR. DONOVAN**

16 Q Right there.

17 A North Carolina General Assembly.

18 Q And what is the date of that?

19 A 4/17/2014.

20 Q So that would be North Carolina General Assembly in 2014
21 April?

22 A Information Services Division, I believe.

23 Q Right. Thank you, sir.

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

25 **MR. FARR:** No questions, Your Honor.

1 **THE COURT:** Does anybody else have any? Ms. Earls?

2 **MR. FARR:** I'm sorry. Pardon me.

3 CROSS-EXAMINATION

4 **BY MS. EARLS**

5 Q Thank you, Your Honor. I have just a couple of questions.

6 Dr. Hofeller, in your analysis of the proximity to early
7 voting sites, you concluded that a 5-mile range is a reasonable
8 distance; is that correct?

9 A I'm sorry. I think it was 3 miles, was it not?

10 Q If it's a 3-mile range, are you assuming that people will
11 have access to a car or a motor vehicle, or are you assuming
12 that they would walk 3 miles?

13 A Well, I mean, some will have a motor vehicle and some
14 won't have a motor vehicle.

15 Q So --

16 A I know you could probably walk 3 miles. I walk 2 miles a
17 day, and it doesn't wear me out very much.

18 Q So you didn't make any assumption either way as to whether
19 or not people have access to motor vehicles?

20 A You are correct; I did not make an assumption.

21 Q Did you not make an assumption either way about whether
22 people are voting closer to their homes or voting closer to
23 where they work in your analysis of proximity to the early
24 voting sites?

25 A I don't know how you'd ever know that information, but,

1 no, I didn't.

2 Q So I thought you measured the proximity to early voting
3 sites based on people's residences?

4 A Actually, within the 3-mile circle?

5 Q That's correct.

6 A It was the block groups, the census block groups were
7 within the 3-mile range.

8 Q And the Census is measuring where people live?

9 A Hopefully, yes.

10 Q So if people prefer to vote closer to where they work, you
11 didn't have any data on that?

12 A No, I don't know how one would have that data
13 individually.

14 Q From your résumé, I take it, Dr. Hofeller, that you were
15 an expert in the *Gingles* case in 1984 that dealt with North
16 Carolina's legislative redistricting; is that correct?

17 A I was.

18 Q And you were expert then -- or at least you provided an
19 affidavit in *Pope v. Blue* in 1992, which was a case about North
20 Carolina's Congressional redistricting?

21 A Sort of the precursor to *Shaw*.

22 Q And you were an expert witness in that case in 1993 to
23 '94?

24 A Sorry, "that case"?

25 Q The *Shaw v. Hunt* litigation.

1 A Yes.

2 Q And you also then served as an expert in the *Dickson v.*
3 *Rucho* litigation in 2011 over North Carolina's legislative
4 districts; is that correct?

5 A I think legislative and Congressional.

6 Q Thank you. In *Harris v. McCrory*, you were an expert in
7 that litigation in federal court, which is about North
8 Carolina's Congressional districts; correct?

9 A I am.

10 Q So you've got a long experience analyzing election data,
11 election returns, and population data for North Carolina?

12 A I would say that's true, yes.

13 Q So would you also say that in North Carolina, party
14 registration and party preference do not always correspond?

15 A I'm sorry. If you could restate that question a little
16 differently, because if you are registered Democratic, your
17 party preference is Democratic.

18 Q Well, then I mean your party registration and your
19 voting -- how you vote on Election Day do not always
20 correspond.

21 A Well, that's true for all voters, but, yes, that's why
22 many times when we're drawing districts in redistricting, we're
23 using how people vote rather than how they're registered. Also
24 because they have a lot of people who are undesignated,
25 independents, or what have you.

1 Q And so you would agree that in 2013, in North Carolina,
2 registration figures do not accurately predict preference or
3 voting at the polls?

4 A I'm sorry. In 2013?

5 Q Right. Currently in North Carolina, registration --

6 A That would be 2015, wouldn't it?

7 Q 2013, 2015. At this point in time in North Carolina,
8 then --

9 A Okay. Well, I'm sorry.

10 Q -- registration figures do not accurately predict --

11 A Actually --

12 Q -- performance? I'm sorry.

13 A I interrupted you.

14 Q My question is, do you agree that currently in North
15 Carolina registration figures do not accurately predict
16 preference at the polls?

17 A I would have to answer that yes or no. They do not
18 accurately predict it, but I think they are the best predictor.
19 Once again, in redistricting, we always figure as a general
20 rule of thumb, the way people have voted in the past is the way
21 they are going to vote in the future, but party affiliation is
22 a major component of how people vote.

23 Q Well, would you agree that because white voters in North
24 Carolina registered as Democrats crossover to vote for a
25 Republican candidate more often than do African-Americans who

1 register and vote Democratic between 95 and 97 percent of the
2 time, that actually African-American race -- African-American
3 race better predicts performance than partisan registration?

4 A I'm sorry. I don't have any document or study before me
5 that summarizes that predicate to that question you're asking
6 me, so I can't really answer it yes or no, or whether I agree
7 or don't agree.

8 Q So based on your longtime experience reviewing election
9 returns, partisan data, registration data, and racial data in
10 North Carolina, you actually don't know the answer to that
11 question?

12 A Not as you posed it. If you posed it a little bit
13 differently, I believe you'd probably get the answer you want.

14 Q Well, Dr. Hofeller, I am just asking you whether you
15 believe it is true that in North Carolina, African-American
16 race is a better predictor for voting Democratic than party
17 registration?

18 A I think generally that's true, yes.

19 Q Now, in the 2011 redistricting process in North
20 Carolina -- I want to turn to your résumé, which is Tab 2 to
21 Defendants' Exhibit 212A. And just make sure I am clear, on
22 page 3 of your résumé, you talk about work that you did between
23 April 2011 and April 2012; is that correct?

24 A I need to find it.

25 Q Yes. Again, it is tab -- I believe that it is Tab 2.

1 A Yes, I know. I just need time to find it. What page are
2 you looking at?

3 Q I am looking at page 3.

4 A Okay. Thank you.

5 Q And I am looking at the position you described in the
6 State Government Leadership Foundation --

7 A Yes.

8 Q -- as a redistricting consultant.

9 A Yes.

10 Q And you held that position from April 2011 to April 2012?

11 A Yes.

12 Q And in that position, you developed strategic and tactical
13 plans for legislatures and statewide elected officials to
14 develop and defend redistricting plans for legislative and
15 Congressional districts; is that correct?

16 A Yes.

17 Q And you provided assistance in actual redistricting plan
18 drafting and analysis?

19 A Yes.

20 Q And you provided that assistance in North Carolina?

21 A Yes, but not in my capacity as a redistricting consultant
22 to the SGLF, the leadership foundation.

23 Q So you provided that assistance in some other capacity?

24 A Yes.

25 Q In North Carolina, did you also have -- consult with the

1 State of North Carolina to provide a linkage between complex
2 legal standards and their practical application to plan
3 drafting in difficult political and technical environments?

4 A Actually, in the case of North Carolina, we had a team of
5 attorneys who consulted with the leadership of the House and
6 Senate to develop their legal strategies. The strategic and
7 technical part was also developed as a consultant to the legal
8 team.

9 Q So I want to ask you then, in your role in drawing
10 redistricting plans in North Carolina 2011, are you familiar
11 with the fact that all African-American candidates elected to
12 the General Assembly or Congress in 2010 were elected in
13 majority black or majority minority coalition districts? Were
14 you aware of that?

15 A I mean, I would have to have you define what, in your
16 mind, is a coalition district.

17 Q A majority --

18 A That's a term -- I'm sorry. I am trying to answer to the
19 question. That's a term about which there is some ambiguity
20 among people who do redistricting.

21 Q A majority minority district.

22 A Yes, some.

23 Q And then that means that no African-American candidate
24 elected in 2012 was elected from a majority white district?

25 A Again, I am not in a position to give you an exact answer

1 on that because I am not sure that that's true. Of course,
2 some districts are not majority -- they may be majority
3 minority, but not certainly majority black. So I am not in a
4 position here and now to make a definitive statement on your
5 assumption for that question.

6 Q Well, were you aware that two African-American incumbent
7 state senators were defeated in the 2010 general election
8 running in majority white legislative districts?

9 A Again, I would have to review the election results and the
10 statistics before I could answer that question. I would be
11 glad to answer it if I looked at the results and went back and
12 reviewed it, but that's not what I am here to testify about
13 today.

14 Q Let me ask a more general question that you might be
15 familiar with. Do you know that Ralph Campbell was the first
16 and only African-American to be elected to statewide office in
17 a partisan election in North Carolina?

18 **MR. FARR:** Your Honor, I am going to object at this
19 point in time because I don't see what this has to do with his
20 direct examination.

21 **MS. EARLS:** Your Honor, this goes to the Senate
22 Factor, the extent to which African-Americans are elected to
23 office. Dr. Hofeller has explained his longtime involvement in
24 analyzing election data, election returns in North Carolina
25 since 1984 to the present. And other witnesses have been asked

1 about this history.

2 **MR. FARR:** They didn't call Dr. Hofeller in their
3 case-in-chief. He is not prepared to testify on these issues,
4 and he wasn't asked about these issues on his direct
5 examination.

6 **THE COURT:** You can ask your questions. I don't know
7 what he's prepared and what he knows.

8 **BY MS. EARLS**

9 Q Just one more question along these lines, Dr. Hofeller.
10 Are you aware that the year 2000 was the last time that an
11 African-American candidate has been elected to state office in
12 North Carolina in a partisan election?

13 A Again, in the several cases I have had this month, I have
14 had to be prepared to testify on different subjects, and I am
15 not sure I can answer that question right now yes or no.

16 Q Let me ask about the redistricting plans that you drew in
17 2011. In 2011, isn't it true that you determined that even
18 though there were 18 African-Americans elected to the State
19 House of Representatives, in order to avoid liability under
20 Section 2 of the Voting Rights Act, you needed to draw a
21 sufficient number of majority black State House districts to
22 achieve proportionality, or a total of 24 majority black House
23 districts?

24 **MR. FARR:** Your Honor, I am going to object again
25 because this is completely outside the scope of the direct

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 examination, and Ms. Earls is asking these questions for
2 purposes of obtaining discovery in another case.

3 **MS. EARLS:** Your Honor, I am not seeking to obtain
4 discovery. I am seeking to establish a record regarding both
5 the Senate Factors and the element that the State of North
6 Carolina in 2011 considered Section 2 liability to be such a
7 threat that they increased the number of majority black
8 districts, and I think that's relevant to what the conditions
9 were in 2013.

10 **THE COURT:** How many questions do you have on this
11 line of questions?

12 **MS. EARLS:** I have two or three more questions.

13 **MR. FARR:** Your Honor, just for the record, may I
14 state one other objection?

15 **THE COURT:** Yes.

16 **MR. FARR:** Counsel asked Dr. Hofeller if he
17 determined various things; but as far as I know, Dr. Hofeller
18 is not a member of the General Assembly and had no vote on
19 whatever the plans were that were adopted or the reasons why
20 the plans were adopted.

21 **MS. EARLS:** Your Honor --

22 **THE COURT:** Hold on just a minute, please.

23 Ms. Earls, what's your --

24 **MS. EARLS:** My response to that, Your Honor, is that
25 Dr. Hofeller, in his résumé, indicates that he provides legal

1 and other consultation to jurisdictions to help them defend the
2 redistricting plans that they draw. In order to do that, he
3 must understand the basics of Voting Rights Act law if he is
4 going to draw districts that are compliant with the Voting
5 Rights Act.

6 **THE COURT:** Hold on. I will sustain the objection as
7 to the form of the question.

8 **BY MS. EARLS**

9 Q Then let me ask it this way, Dr. Hofeller: In 2011, when
10 you drew redistricting plans for the state legislature in North
11 Carolina, you drew a sufficient number of majority black state
12 House districts to achieve rough proportionality in North
13 Carolina, didn't you?

14 **MS. EARLS:** I am just asking him about the districts
15 that he drew, Your Honor.

16 **THE WITNESS:** There were, again, as I remember it, 24
17 such districts that were drawn.

18 **BY MS. EARLS**

19 Q And there had never been 24 majority black state House
20 districts in North Carolina?

21 A That's exactly correct.

22 Q And isn't it true that you drew majority black state House
23 districts in Durham County?

24 **MR. FARR:** Your Honor, what does this have to do with
25 anything that's he testified about in this case? I will state

1 for the record that I am going to count them up. We've got
2 one, two, three redistricting cases pending where these issues
3 are relevant, and these questions pertain to those cases, and
4 this is an attempt to obtain discovery in those cases. It has
5 nothing to do with what Dr. Hofeller testified about in direct
6 examination.

7 **MS. EARLS:** Your Honor, again, my point is that in
8 2011, Dr. Hofeller, using his expertise as a redistricting
9 consultant who provides legal and other advice to jurisdictions
10 to defend redistricting plans that they draw, concluded that in
11 2011 conditions were such in North Carolina that the State
12 faced liability under Section 2 of the Voting Rights Act if
13 they didn't vastly increase the number of majority black state
14 legislative districts in the state, and that is relevant to
15 what the conditions were in 2013.

16 **MR. FARR:** Your Honor, she hasn't even asked him if
17 he gave legal advice or if he's qualified to give legal advice,
18 and, again, I have got no idea what drawing districts in Durham
19 County has anything whatsoever to do with the issues in this
20 case or if this is within any reasonable scope of direct
21 examination that's been given by Dr. Hofeller.

22 **THE COURT:** How many more questions do you have?

23 **MS. EARLS:** Those are all my questions for this
24 witness, Your Honor. Thank you.

25 **THE COURT:** Thank you.

1 **MR. FARR:** Anyone else?

2 **THE COURT:** Any other Plaintiff have any questions?

3 **MS. MEZA:** No further questions.

4 **MR. FARR:** I have no further questions, Your Honor,
5 but I would like to move some exhibits into evidence.

6 **THE COURT:** All right.

7 **MR. FARR:** May Dr. Hofeller step down?

8 **THE COURT:** Yes, you may step down.

9 **MR. FARR:** Your Honor, Defendants would like to move
10 into evidence Defendants' Exhibit 212A. It is attachments
11 which are -- which is a copy -- a redacted copy of
12 Dr. Hofeller's report of April 25, 2014. And also, Your Honor,
13 Exhibit 364, which is the official general election results for
14 2014 for federal elections in North Carolina.

15 **THE COURT:** Any objection?

16 **MR. DONOVAN:** No objection, Your Honor.

17 **THE COURT:** All right. Those are admitted. All
18 right. We'll take a 20-minute break, and then we'll come back
19 with the next witness.

20 (The Court recessed at 3:43 p.m.)

21 (The Court was called back to order at 4:07 p.m.)

22 **THE COURT:** Mr. Peters.

23 **MR. PETERS:** Thank you, Your Honor. We call Kim
24 Strach back to the stand.

25 **KIM W. STRACH,** DEFENDANTS' WITNESS, at 4:07 pm., being first

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 **BY MR. PETERS**

4 Q Good afternoon, Ms. Strach.

5 A Good afternoon.

6 Q You may need to --

7 A Probably move this.

8 Q I knew I couldn't hear you well.

9 A Good afternoon.

10 Q Ms. Strach, you testified last week; correct?

11 A I did.

12 Q And I would like to ask you some questions right now
13 generally about the State Board and about your role with the
14 State Board. And just as a reminder, you came to work at the
15 State Board when?

16 A In March of 2000.

17 Q All right. And you became executive director of the State
18 Board when?

19 A In May of 2013.

20 Q What do you understand your role as executive director of
21 the State Board of Elections to be?

22 A Well, there are many roles, but I would say that probably
23 the primary role I see is having -- ensuring the fair
24 administration of election and campaign finance laws that have
25 been enacted by the General Assembly.

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 Q Okay. You said there are a number. What would be some
2 others?

3 A Sure. I think we have -- I have an obligation to also
4 ensure that these laws -- compliance with these laws and other
5 federal requirements, to make sure that we educate the public
6 on voting, that we assist the 100 county boards of elections in
7 their administration of elections, and that we -- within the
8 confines of state and federal requirements, that we promote
9 voter participation.

10 Q When you refer to the federal requirements, ensuring
11 compliance with federal requirements, what sorts of things are
12 you talking about?

13 A I would be talking about HAVA requirements. There are
14 certain things within HAVA. There are lots of different
15 federal requirements, NVRA, all of those things.

16 Q So let's back up. HAVA is?

17 A The Help America Vote Act.

18 Q All right. UOCAVA is what?

19 A That's for uniformed and overseas -- for our military.

20 Q What is it for military?

21 A It's voting for military -- registration and voting for
22 our military.

23 Q Okay. For the military who are stationed overseas?

24 A Yes, and our overseas citizens as well.

25 Q And you also mentioned NVRA?

1 A Right. Well, that's the National Voter Registration Act
2 as well.

3 Q You mentioned educating the public?

4 A Sure.

5 Q What sort of things do you do in that regard?

6 A Well, we actually have a team that's dedicated to do that.
7 All of our staff do that, whether it be with election
8 administration or campaign finance, but we have a specific
9 outreach team that that is their primary responsibility is to
10 educate the public about voting, voter registration, changes in
11 election laws, all of those things, getting out into the
12 public, going to all kinds of different events, and making sure
13 that we're getting that message out.

14 Q When you say that message --

15 A A message meaning rules about voter registration, what the
16 rules are, what changes there may be in election laws, all of
17 those things that the public needs to know in order to be able
18 to vote and to know what those time periods are for
19 registering.

20 Q You mentioned administration of the laws as enacted by the
21 General Assembly. Do you see yourself having any other role
22 with regard to the General Assembly?

23 A Well, quite often, the General Assembly will ask for
24 information from our agency, for data or for information about
25 how elections are being conducted, and I think it is our role

1 to make sure that we provide the very best information to them
2 so that they can use it to make the very best decisions
3 regarding elections.

4 Q All right. How big is the State Board staff?

5 A Currently, it's probably -- we probably have over 60
6 employees that work in the agency.

7 Q I just want to be clear. Did you say 16 or 60?

8 A Sixty.

9 Q How many employees, do you recall, did the State Board
10 have when you came in 2000?

11 A It's a quite -- it looked quite different. When I came in
12 2000, I think we probably had less than 20 employees at that
13 time.

14 Q Okay. What general areas does your staff work in?

15 A We have teams, as I call them. We have election support,
16 administration, which really works on election preparation,
17 that includes voting systems. We have a campaign finance
18 section, which it covers disclosure and compliance by
19 candidates. We have a voter outreach team, as I just spoke
20 about, that's educating the public.

21 We have an investigations team that their job is to
22 investigate any complaint or any violation that we discover
23 ourselves with any election or campaign finance violation.
24 And, of course, we have an IT section that supports all of
25 these functions.

1 Q When you talk about the election, did you say
2 administration team?

3 A Yes.

4 Q And that includes voting systems?

5 A Correct.

6 Q What do you mean by that?

7 A I mean the voting equipment that you see on Election Day,
8 all the voting equipment. We have a team that makes sure that
9 ballots have been coded correctly, that the counties are
10 maintaining their equipment -- that's their primary
11 responsibility -- and that results that come in from elections,
12 that's all through voting equipment, that they are -- be able
13 to be displayed and tabulated and aggregated accurately.

14 Q When you talk about ballots being coded correctly, what do
15 you mean?

16 A What I mean is that for every election, the machines have
17 to be coded -- the ballots have to be coded so that the
18 machines can read them. We actually have our staff assist in
19 that process because the information that goes on those ballots
20 comes from our statewide election management system.

21 Q And when it comes to voting systems, what kind of voting
22 systems are used in North Carolina?

23 A Well, we currently have -- we have one vendor right now,
24 and we have two types of equipment. We have what we call
25 optical scan, which the majority of our counties use, and

1 that's sort of the paper ballot that you complete yourself and
2 you stick it through a machine. And then what we have -- we
3 call DREs, or direct record, where that's a touchscreen that
4 you go in and actually the ballot will come up on a screen and
5 then you vote by touching the candidates that you want to vote
6 for.

7 Q Do you recall how many counties use each type of
8 equipment?

9 A I believe that we have -- as I said, the majority, around
10 70, probably use the optical scan, which is the paper ballot,
11 and a little more than 30 use the direct record and a couple of
12 counties use both. They use direct record during early voting,
13 and paper, the optical scan, on Election Day or vice versa.

14 Q Now, you mentioned your voter outreach team.

15 A Yes.

16 Q Can you describe in a little more detail what that team
17 does?

18 A Well, this is a new team that -- this team came on in --
19 we were -- appropriated this through House Bill 589 and so that
20 team, we were given authorization to hire in late 2013. So we
21 finally had our team in place around the primary of 2014. So
22 at that time we had significant election changes that we had to
23 ensure that the public was being notified about. So a lot of
24 what they do is reach out to groups.

25 We also -- always have had groups, since I've been there,

1 that reach out to us and want people to go out and educate them
2 or speak to their groups. We now have a team that actually
3 does that. They are also in charge of developing materials,
4 handouts, things that we can -- keeping our website up to date
5 with current information and providing materials to people that
6 want to educate their own communities or their own groups.

7 Q Did I understand you to say that the appropriation -- the
8 initial appropriation for the people in this team came from
9 House Bill 589?

10 A You did.

11 Q Do you recall what the amount of that appropriation was?

12 A I believe it was a million-dollar appropriation, and it
13 was for basically two -- I think for two years. Yeah, right.

14 Q And how many members -- how many staff members are on that
15 team?

16 A There are four staff members on that team. There is a
17 lead, and then there are three other outreach specialists that
18 work under his direction.

19 Q You mentioned that sometimes there are groups that reach
20 out to the outreach team?

21 A That's correct.

22 Q What kind of groups are you talking about?

23 A It can be a variety of different groups. It could be
24 party -- sometimes it's party organizations, but it's not
25 usually party organizations. It could be community groups.

1 Sometimes it's churches. There are really -- there's not one
2 type of group that reaches out. It is really anybody that has
3 the interest in voting and sharing that message with their
4 members, we get calls from them, and we go to any group that
5 asks us to go.

6 Q Did you get calls or does the outreach team get calls just
7 from members of the public?

8 A Just from members of the public?

9 Q From people who are just members of the public --

10 A Sure.

11 Q -- as opposed to representatives of a group?

12 A Absolutely. Absolutely.

13 Q And do you have a sense of what kind of calls -- examples
14 of the kind of calls that come in?

15 A Sure. And this is something that -- on a daily basis,
16 they get calls from the community about what the laws are,
17 what -- the changes that they are hearing, photo ID, how can I
18 get a free photo ID? When will I have to show a photo ID?
19 What are the registration deadlines? All of those types of
20 questions the outreach team gets. And they get a lot of these
21 from -- just as you said, from the general public on a daily
22 basis.

23 Q Okay. Do you have, in your role as executive director, a
24 belief about whether this kind of voter education and outreach
25 is important?

1 A I think it is critical. I think education is a critical
2 role of our agency because I think people that are interested
3 and want to vote want their vote to count; and so in order to
4 know how to make that happen, they need to be educated about
5 whatever the laws are concerning that. So I think it is a
6 critical role for our agency.

7 Q Do you think it is particularly critical, to use your
8 word, when the law changes?

9 A Absolutely. Absolutely.

10 Q Why is that?

11 A Because the public might not have the right information.
12 Sometimes the -- the media is a very big help to us, but
13 sometimes the media doesn't always get it right. And so we
14 have to make sure that we're making every effort to inform
15 everyone of what those changes are.

16 Q Okay. Do you think it is important to educate the voters
17 so that they know what those changes are and how to react to
18 the changes?

19 A Sure. Sure. I think that's another -- a big part of it
20 is that -- especially if it's something that they might have
21 done in a prior election, we need to be letting them know what
22 has changed, what they need to do in order to vote again the
23 next time.

24 Q Okay. Do you have any sense of whether this education
25 works?

1 A I -- actually, I do. I feel very positive about the
2 efforts that our team has made, the agency as a whole,
3 specifically the outreach team has made over the last election.
4 We -- certainly there are lots of different ways that we
5 monitor that, but it looks -- from some of the things -- the
6 data that we've looked at, we believe that our education
7 efforts have been working.

8 Q Okay. Now, let's talk a little bit more specifically
9 about your history at the State Board of Elections. In what
10 capacity were you originally hired?

11 A I was originally hired in 2000 as an elections
12 investigator, one of two.

13 Q And what did that job entail?

14 A That job entailed looking into or investigating potential
15 or alleged violations of election or campaign finance laws.

16 Q Okay. Was it -- did it involve any form of election -- a
17 potential violation of election or campaign finance law?

18 A Absolutely. We -- because there were only two
19 investigators -- and really that's a role of the State Board of
20 Elections is to investigate allegations of violations of
21 Chapter 163. With only two investigators, yes, we were
22 certainly -- any violation of that chapter was our
23 responsibility to investigate.

24 Q All right. When you talk about violations of the campaign
25 finance laws, what does that entail?

1 A That's another whole chapter in Chapter 163, and that
2 would be -- there are a variety of violations that can be
3 alleged in campaign finance, whether it be from lack of
4 disclosure -- there are several laws as far as raising money
5 that we could be investigating. There are violations with TV,
6 radio, ads. All of those things fit under the umbrella of
7 campaign finance. All of those are violations that we get
8 complaints on from the public, and sometimes from our own
9 audits of committees do we see violations that we need to
10 investigate.

11 Q Okay. Did there come a time when you moved into a
12 position where your primary role was to investigate campaign
13 finance violations -- alleged campaign finance violations?

14 A Yes. Sort -- I would answer that by saying that in --
15 about a year later, I became the deputy director for the State
16 Board of Elections for campaign finance, and so I had a very
17 small division. Because we still didn't have additional
18 investigative staff, I sort of retained those responsibilities
19 as the deputy director to investigate as well.

20 Q When you say "retained those responsibilities" --

21 A Investigative responsibilities.

22 Q For?

23 A For looking into campaign finance violations.

24 Q Okay. Did you continue to take part in any investigations
25 for election law violations, not campaign finance?

1 A I certainly would have in the earlier years of my time at
2 the State Board because there was just -- there were just two
3 investigators. And then when I went into that role, there was
4 a time when those positions weren't filled that I certainly
5 helped out in any way I could, and sometimes helping out was
6 with the election administration investigations.

7 Q Did you have any role -- you said you were deputy
8 director?

9 A Yes.

10 Q So did you have any role in assisting the executive
11 director at the time with administration of the election laws?

12 A Absolutely. Because, as I said, we were a very small
13 staff and a small staff that still had 100 counties, that still
14 had -- he had still the obligation of making sure that the 100
15 counties were fairly administering elections. And so there
16 would be many times that I would go out during an election and
17 assist a county, if we had a county in need, a county that
18 needed some extra assistance, or we had a problem in the
19 county, I would be one -- somebody that would be sent to
20 address those issues.

21 Q So am I understanding that you might go on Election Day
22 and help a county board of elections with the various mechanics
23 of an election?

24 A Sure. I would be sent maybe on Election Day, maybe during
25 the early voting time, maybe through canvas for that particular

1 election doing various things.

2 Q Did you ever actually run any county elections for the
3 county board?

4 A Certainly assisted in running. If we had -- sometimes we
5 will be in a position where maybe the director is no longer
6 there or something happens there. So there were a couple of
7 times early in my career that I actually had to go down and
8 assist running an election.

9 Q Did you ever have any role with recounts in the counties?

10 A Yes, I've actually overseen a legislative recount.

11 Q Okay. What about wellness checks or audits? Did you ever
12 have any role with those with counties?

13 A Yes. As an election investigator -- and that role sort
14 of, as I said, continued for me. One of the things that was
15 started early on when I started at the State Board is what we
16 called a wellness check or an audit, and this was for the
17 county boards of elections. And this was sort of a checkup of
18 all of the things that they were responsible for doing, be it
19 election administration or campaign finance, being it -- are
20 they maintaining their voting equipment? Are they doing the
21 work they need to do in our statewide election management
22 system? All of those things were -- it was a responsibility of
23 the election investigators to go to the 100 counties and
24 conduct these wellness checks or audits.

25 Q And I believe this has been talked about, but when you say

1 the statewide elections management system, what are you
2 referring to?

3 A We call it SEIMS. It is our statewide -- it's sort of the
4 voter registration database, but it's much, much more than just
5 a voter registration database. It is how we manage elections.
6 It has how we set up an election. It's how candidates file for
7 election, how the ballots are coded, down to how results are
8 aggregated and displayed on election night. All of that
9 information, including provisional voting and early voting, all
10 of those tools are contained in this management system.

11 Q All right. Between work you may have done with possible
12 investigation of election laws generally and investigations you
13 may have done with campaign finance, alleged violations, do you
14 have a sense of how many investigations you have participated
15 in since coming to the State Board in 2000?

16 A A lot. I would say certainly in the hundreds or more.

17 Q All right. I would like to turn your attention to what we
18 sometimes call early voting.

19 A Yes.

20 Q And let me start by, since both terms get used sometimes,
21 asking you if you can describe what one-stop absentee voting
22 is, and why it's called that.

23 A When I started, you had to call it one-stop voting. You
24 didn't call it early voting because one-stop voting is absentee
25 voting. It is still absentee voting. One-stop means that you

1 can fill out your application, apply for that absentee ballot,
2 and vote at the same time in person.

3 Q But is that what is sometimes called early voting?

4 A That's what's called early voting.

5 Q Now, are you familiar with how early voting worked in
6 North Carolina prior to the enactment of -- I am going say
7 VIVA. Some people are calling it House Bill 589.

8 Let me start by saying: Do you know what I mean if I say
9 VIVA or House Bill --

10 A I know both terms, yes.

11 Q Are you familiar with how early voting worked prior to the
12 enactment of VIVA?

13 A I am.

14 Q How was that?

15 A Well, there were 17 days of early voting or absentee
16 voting, and the county board of elections -- the three-member
17 county board of elections, they determined where those sites
18 would be and what the hours would be. The only requirement,
19 though, was that the county board of elections be open during
20 those 17 days. There were counties that did have additional
21 sites. There were some counties that didn't.

22 Q When you count 17 days, do you recall whether those
23 17 days includes weekends?

24 A Yes.

25 Q Did the county board of elections office -- if I

1 understood you correctly, you were saying the main office of
2 the county board of elections had to offer early voting during
3 those 17 days?

4 A It's only the last Saturday. They did not have to offer
5 it the first Saturday.

6 Q All right. What about Sundays?

7 A No.

8 Q So am I correct then that they had to offer it during
9 business hours during those 17 days plus the last Saturday
10 morning?

11 A You are correct.

12 Q Okay. And was that decision one that was made by the
13 county board?

14 A That is a decision that's made by the three-member county
15 board. They would vote on a plan of what the hours and what
16 the locations would be, and they didn't have to be uniform in
17 any way either.

18 Q All right. Was it also the county board's decision
19 whether to have -- I am going to use the term -- if I use to
20 term "satellite early voting centers," do you know what I mean?

21 A Yes.

22 Q What would you understand me to mean?

23 A It would be an additional location within the county in
24 which they would offer early voting.

25 Q And was it within the county board's decision-making

1 authority to decide whether there would be any satellite early
2 voting centers?

3 A Yes. It required a vote by the county board to -- they
4 had to submit a plan that had what additional locations -- if
5 they wanted to do something in addition to the county board of
6 elections, they had to submit a plan to the State Board for
7 approval.

8 Q All right. And how did that plan get approved at the
9 State Board?

10 A As long as -- at that time, as long as the plan included
11 information about the facilities or the polling -- the one-stop
12 locations that would be used, as long as those places were
13 accessible, then generally those plans would be approved.

14 Q All right. Was a county required to offer satellite early
15 voting centers?

16 A No.

17 Q Were there counties, to your knowledge, that only offered
18 early voting at the county board of elections?

19 A There were several that just offered it at the county
20 board of elections.

21 Q All right. Could a county have more than one satellite
22 location? And, again, we are talking prior to VIVA.

23 A Sure.

24 Q All right. Was there a requirement about whether there
25 had to be consistency as to when those centers were open?

1 A No. That was -- again, that was a county board decision,
2 that they could set the schedule if they -- the number of sites
3 that they had. The county board would be open during normal
4 business hours, but the satellite locations -- they could
5 determine which days -- sometimes they only had certain
6 locations open on one or two days during the week. Some that
7 they had different hours. So they didn't have to have any
8 consistency with that. They could have different hours and
9 different days for the different sites.

10 Q All right. You were here -- or were you here earlier this
11 afternoon when Dr. Hofeller testified?

12 A I was.

13 Q And did you see the map about which he testified where he
14 noted that some early voting centers in Wake County were
15 126 hours and some were 82 hours and some were others?

16 A I heard his testimony. I couldn't see the map.

17 Q Okay. Would that be what you are talking about with
18 county boards of elections being able to decide that some --
19 that the schedules at the different voting centers would be
20 different?

21 A That's exactly what I'm talking about.

22 Q Now, what about -- what were the rules regarding the
23 ability of a voting center to be opened after 1:00 on the last
24 Saturday of early voting?

25 A Prior to House Bill 589, county boards could extend that

1 time to 5:00.

2 Q Okay. And how did the county board go about doing that?

3 A I believe that they had to put that in their plan, their
4 one-stop plan, for submission.

5 Q The plan that had to be submitted to the State --

6 A To the State Board and approved by the State Board and the
7 staff at the State Board.

8 Q And did it have to be submitted and approved prior to the
9 commencement of early voting?

10 A Yes.

11 Q Now, let's talk for a minute after the enactment of VIVA.
12 What is different about the way early voting works after the
13 enactment of VIVA?

14 A After the enactment of VIVA, county boards of elections
15 still -- county boards can still choose where those -- if they
16 want to have satellite sites and many of them have to have
17 satellite sites, but they have to be open a certain number of
18 hours; and that number of hours is based on a previous
19 election, the number of hours that they were open in a previous
20 election. So for '14, it was based on 2010. The number of
21 hours they were open during the 17 days, they had to be opened
22 at least that many hours in 2014; and in addition to just the
23 hours, if they had additional or satellite locations open, they
24 had to have consistency. Those sites had to be opened the same
25 number of hours and same number of days.

NAACP, et al. v. NC, et al. - Trial Day 12 - 7/28/15

1 Q So to make sure I am clear, if a county had two
2 election -- two satellite centers in addition to the county
3 board of elections, am I understanding that both of those
4 centers had to be open at the same times?

5 A They had -- right, they had to have the same number of
6 hours and the same number of days.

7 Q Okay.

8 A That could differ from the county board of elections, but
9 it applies to all the satellite sites.

10 Q Okay. Now, you said they had to match the same number of
11 hours as in a previous election. How is it determined what
12 previous election is used for that matching purpose?

13 A That's by statute. The 2010 primary was matched to the
14 2014 primary and then the 2014 general was matched to the 2010
15 general. I believe that that's correct.

16 Q Why would 2014 have been matched to 2010?

17 A They were choosing similar types of elections. Since 2010
18 was not a Presidential election year and 2014 is not a
19 Presidential election year, that's why the cumulative-hours
20 match were based on what they consider like elections, I
21 believe.

22 Q But 2010 and 2014, am I correct, would both be years when
23 members of the United States House of Representatives are
24 elected and members of the North Carolina General Assembly are
25 elected?

1 A Correct.

2 Q Okay. What about in 2016? What year will be used for
3 matching then?

4 A Well, in 2016, we've got a couple of different scenarios.
5 The 2016 general election will be tied to the hours of the 2012
6 general election, and in 2016, we may have two primaries. We
7 may have a Presidential Preference Primary. It looks like
8 we're having a Presidential Preference Primary likely in March
9 and then our usual May primary. And then the Presidential
10 Preference Primary will match the 2012 primary hours, and then
11 the 2016 May primary will match the 2010 general election.

12 Q And is that because --

13 A That's by statute.

14 Q Okay. Now, did you make any observations about how the
15 matching requirement affected the way that counties offered
16 early voting in 2014?

17 A We worked very closely with our counties in complying with
18 the matching hours and ensuring that they were meeting those
19 requirements, and many counties opened additional satellite
20 sites. Some counties that we were talking about earlier that
21 had -- only had their county board of elections, and so if
22 they -- because of that, they either would open an additional
23 site -- most of the time that's what they did -- or, in
24 addition, offer evening hours, which might have been something
25 they had not done in the last elections.

1 Q And I'm realizing I skipped asking you what your role as
2 executive director is with regard to early voting and early
3 voting sites.

4 A If the county board has a unanimous plan, the three
5 members agree on the locations and the times, they will submit
6 a plan that I ultimately approve.

7 Q All right. And what do you see when -- when they submit
8 the plan to you, what is the information that is sent to you?

9 A We have an actual -- a document that they have to give
10 information about each site and then the hours that each site
11 will be open, and it is my responsibility to ensure that no
12 plan is approved that does not conform to statute, meaning that
13 they have the number of hours and that the days -- that they
14 have the same number of hours at each location on the same
15 number of days. And it has always been the case that the
16 locations that they choose are accessible, handicap accessible.

17 Q Do you actually approve the sites that the county board of
18 elections has listed?

19 A No. No. The sites themselves, the locations, that is
20 strictly a county board decision.

21 Q All right. Now, is there a way that a county can seek an
22 exception from the matching-hours requirement?

23 A They can. There is a provision that was in 589 that says
24 if a county believes that they have a reason why they don't
25 believe they should have to match those hours, they can ask the

1 State Board to reduce the number of hours that they have to be
2 open. And the State Board, though, has to be -- first of all,
3 in order to do that, the county board has to be unanimous in
4 making that request; all three members have to agree. And then
5 the State Board cannot reduce hours unless they are unanimous
6 in their decision to reduce. It has to be 5-0.

7 Q And just for the sake of clarity, every county board of
8 elections is made up of three members; right?

9 A Correct.

10 Q And do you recall how many of the 100 counties did
11 actually seek a reduction hours in 2014?

12 A I'm not sure I know the exact number, but I think it was
13 around 30 -- 35. It might have been a little more or less than
14 that.

15 Q Okay. Do you have any sense whether early voting in 2014
16 compared to 2010 -- whether there were more early voting sites
17 or fewer voting sites?

18 A There were definitely more early voting sites in 2014 to
19 2010, and there were more evening hours -- we looked at that as
20 well -- from 2014 to 2010.

21 Q Have you looked at how the early voting sites in 2014
22 compared to 2012, which was a Presidential election year?

23 A We actually did look at that, and we actually had -- in
24 2014, there were more sites that were open for the 2014 general
25 election than were open for the 2012 general election.

1 Q Now, have counties begun to make their plans for early
2 voting sites for the 2016 election cycle?

3 A Yes. They should already be making plans for -- right now
4 they have a deadline for early voting plans for municipal
5 elections, which is due on July 31st; but at the same time that
6 they are making the plans for their municipal elections, they
7 are also going to be making plans with their county boards to
8 look at 16 locations, especially with a potential March
9 Presidential Preference Primary.

10 Q All right. Have they gotten to the point of submitting
11 anything to you at this point?

12 A Not yet.

13 Q Based on your experience as executive director of the
14 State Board, do you have any kind of sense yet of how the
15 cumulative matching hours may affect the sites that are offered
16 for early voting in 2016?

17 A Well, the numbers -- it looks as though that we were going
18 to have -- in addition to the hours from 2014, there are going
19 to be an additional 10,000 hours statewide that counties are
20 going to have to be open. That's broken down different for
21 each county; but because of that, I mean, I believe that we
22 will have additional sites than what we had even in 2014 and
23 probably additional evening hours as well to meet those hours
24 match.

25 Q Let me shift your attention to mail verification and list

1 maintenance. I believe you talked about both of these concepts
2 while you were being examined by the Plaintiffs as part of
3 their case last week. Do you recall that?

4 A I do recall that.

5 Q Can you describe briefly the difference between mail
6 verification and list maintenance?

7 A Well, mail verification, at least the initial mail
8 verification, is an eligibility requirement for being a
9 registered voter. Someone can fill out a voter registration
10 application, and if they are qualified, a tentative
11 determination will be made of their qualifications.

12 If that tentative determination is that that person is, in
13 fact, qualified, the North Carolina statutes require us to
14 verify the residence of that applicant, and the way that we
15 verify residency is through the mail verification process. And
16 the mail verification process is -- is -- what we do is we send
17 a mailing or a voter registration card. We send that to the
18 address of the applicant, and if that card does not come back
19 as undeliverable, then it is -- a determination is made within
20 our statewide information system that that is, in fact, an
21 eligible registered voter, and they became an active voter.

22 Q Have you ever heard mail verification described as having
23 a gatekeeper function?

24 A Yes, absolutely. That's really a good way to describe the
25 initial mail verification function, because it is. It is --

1 for determining eligibility, it is what has to happen before a
2 person is actually considered registered.

3 Q And just for -- to make sure it is clear, there's been
4 some talk, I know, previously about the SEIMS system
5 automatically considering someone as verified if that mail
6 verification card does not come back within 15 days.

7 A Yes, right. And the 15 days is not a statutory time
8 period. It is the time period set in SEIMS. So that if the
9 card has not been scanned back in as undeliverable, the system
10 makes that determination.

11 Q But am I correct that it's a determination that can be
12 changed if the card comes back subsequently?

13 A It is. And that, in fact, does happen when a card may
14 come back after the 15 days. And if it does, then that will
15 also change that to a different -- an unverified state, which
16 will then trigger a second mailing.

17 The mail verification process is a two-mailing process,
18 this initial gatekeeper function. So if the first piece of
19 mail doesn't come -- comes back undeliverable, we will then
20 send a second piece of mail to that applicant at that address.
21 If that piece of mail does not come back as undeliverable, the
22 applicant is considered registered. If the second piece of
23 mailing comes back as undeliverable, then that applicant is
24 denied.

25 Q And is that the end of the mail verification process?

1 A That's the end for -- unless someone has voted in the
2 interim during that process. If the person has not voted, then
3 that would be the end of the mail verification process.

4 Q If the person has voted, then --

5 A If the person has voted while mail verification is going
6 on, then even if both mailings are returned undeliverable, that
7 voter cannot be denied. That voter would be deemed inactive.

8 Q What happens at that point?

9 A If a person has voted and their status is inactive, the
10 statute talks -- speaks to the fact that we then sort of begin
11 the list maintenance process. We send what we call a
12 confirmation mailing, which is unlike the mail verification.
13 The mail verification mailing is a nonforwardable piece of
14 mail.

15 If someone that has voted fails both mail verifications,
16 both nonforwardable pieces of mail, then we send them a
17 confirmation mailing, which is a forwardable piece of mail. So if
18 there is another address, that voter would -- that confirmation
19 mailing would go to the new address.

20 Q Right. Now, is that confirmation mailing -- is that part
21 of mail verification or is that part of list maintenance?

22 A That is a list maintenance mailing, and that mailing is
23 not treated the same way either because the confirmation
24 mailing must be returned by the voter. So even if they receive
25 it, they have to return it back to the Board of Elections.

1 Q Okay. So I know you talked about mail verification, and
2 we mentioned the gatekeeper function. What is the purpose of
3 list maintenance? How it does differ from mail verification?

4 A With the initial gatekeeper function of mail verification,
5 that is determining the eligibility of a voter that is seeking
6 to register in a county. List maintenance is the process or
7 the mailings that we go through in order to ensure that
8 everyone that is on our voter roles is still eligible to vote.
9 So they are very -- two different -- they serve two very
10 different functions.

11 Q If I were to use the term "voter fraud," do you have an
12 understanding of what is meant by that?

13 A Yes.

14 Q What is your understanding of what voter fraud means?

15 A Well, I guess the way -- I look at voter fraud in a little
16 bit broader sense. Voter fraud is sort of a subset to me of
17 voter or election irregularities. Because any violation of the
18 election laws committed by either a voter or election official
19 or basically anyone that could affect the outcome of the
20 election, that's sort of a voter irregularity.

21 If there is an intentional violation of that that could
22 affect an election, that -- a finding of that, I would consider
23 to be voter fraud.

24 Q But am I correct; you're looking at that idea of voter
25 fraud in a broader category of voter -- or I'm sorry. Did you

1 say election irregularity?

2 A Well, voting or election irregularity, anything that could
3 affect the outcome of an election. If there is any type of
4 irregularity, whether or not it's voter fraud, we look at all
5 of those.

6 Q All right. Do you have, as executive director, a sense of
7 how mail verification relates to voting irregularity or voter
8 fraud?

9 A I guess how I would answer that is that it's certainly --
10 one of the forms of voter fraud is someone registering at an
11 address for which they don't reside or it is a false address.
12 So if someone in the registration process has provided a false
13 address or they, in fact, just don't live at that address, the
14 mail verification is our way of verifying that residency.

15 So in some ways, it is possible that someone who fails
16 mail verification may have provided a false address or not
17 just -- maybe not filed a false -- just may not live at that
18 address. And if that is, in fact, the case, then that
19 certainly would be considered voter fraud.

20 Q And I know you were asked by the Plaintiffs the other day
21 that it's also possible that someone did provide an accurate
22 address.

23 A That's correct.

24 Q But the card came back anyway for some other reason?

25 A That's correct.

1 Q How do you see that as fitting into mail verification, the
2 possibility that the voter did give a correct address and the
3 possibility that they did not give a correct address?

4 A Well, like I said, if -- the only way that we would
5 consider someone who failed mail verification to be voter fraud
6 is if we investigated it and found out that, in fact, the
7 information they provided is false or that they provided an
8 address in which they did not live. And so that would be a
9 place where we had information from the failure of mail
10 verification that would, in fact, be evidence of voter fraud.

11 Q Would it be fair to say that regardless of whether the
12 person gave an accurate address or an inaccurate address, the
13 result on the end of the State Board of Elections is an
14 inability to verify whether it's an accurate address or not?

15 A Right. The mail verification is the best process that we
16 have. It's the statutory process we have, and that's really
17 the only way we have to verify -- and by law, we are required
18 to verify that a person resides at the address that they
19 state -- they state on their voter registration. And that's
20 why if you haven't voted and you provide an address that --
21 where you do not verify, you fail mail verification, your
22 registration is denied.

23 Q And what about list maintenance? Do you have an
24 understanding as executive director of how that relates to
25 voting irregularity or voter fraud?

1 A Well, list maintenance is a process -- because that is how
2 we ensure that people that are on our voter rolls are eligible.
3 And so list maintenance is the process of how we remove people
4 that shouldn't be on the voter rolls so that we do not have the
5 vulnerabilities for potential voter fraud.

6 Q What are the consequences of having someone on the voter
7 rolls who are not eligible or no longer eligible to be
8 registered in, say, a particular precinct?

9 A Like I said, I think it's the vulnerabilities of having
10 people on a voter roll that are no longer eligible, people's
11 names that are appearing on a poll book in a precinct where
12 that person no longer lives there. It's something that we
13 don't want -- we want to make sure that no one can come in and
14 vote for that person because they know that person no longer
15 lives there. They may know that they live out of state
16 somewhere.

17 So that's why it's very important that we keep our voter
18 rolls as clean as possible and that they only contain people
19 that are actually eligible to vote in the county and in the
20 precinct from which they live.

21 Q Is it a requirement under the election laws of North
22 Carolina that a person is supposed to be registered where they
23 actually reside?

24 A Yes.

25 Q And do you have an understanding of why that is a

1 requirement?

2 A Yes. Because that's how we determine what ballot you are
3 eligible to vote -- which races you are eligible to vote in.
4 Your ballot is all based on your residency, and so that's why
5 it is critical that we verify where you live.

6 Q So is it possible that if someone's still on the books and
7 able to vote where they don't reside or someone else votes in
8 their name -- is it possible that that could affect the outcome
9 of an election?

10 A Sure, absolutely. Absolutely.

11 Q Do you have a sense of whether just a small number of
12 votes can affect the outcome of an election?

13 A Yes, and I would say that -- especially in municipal
14 elections. We're in municipal election season. When we have
15 municipalities that have a very, very small number of
16 registered voters, candidates often -- we even have lots of
17 ties during elections, small municipal elections. We have that
18 in some of our larger elections, too, but municipal elections I
19 think are really a key place where we see where just one or two
20 ineligible voters could sway an election or change the outcome
21 or impact the outcome of that election.

22 Q And since you've mentioned municipal elections a couple of
23 times, it may be good to have this on the record for whatever
24 implications it may have as this case goes forward. You've
25 said we're in municipal election season.

1 A That's what we call it.

2 Q And could you briefly describe what that means practically
3 for elections in North Carolina?

4 A Municipal elections are generally held in odd-numbered
5 years, and our municipalities across the state, they will hold
6 elections this year. There are four different types of
7 municipal elections, and so all municipal elections are not
8 held on the same day.

9 In these odd-numbered years, we start in September with
10 our counties that have partisan primaries. We have just a few
11 counties; I think four maybe, four or five, that have partisan
12 municipal elections. And then we will -- that will be a
13 primary. We will have elections in October and in November.

14 The municipality itself chooses their municipal -- their
15 boards -- their town boards determine what kinds of elections
16 they have, and we assist in conducting those. In fact, we
17 just -- the filing period for those elections just ended a
18 couple weeks ago.

19 Q Okay. And are those elections run by the county board of
20 elections?

21 A They are. At one time, the municipalities would run those
22 elections. Now the -- no municipality runs municipal
23 elections. They are all run by the county boards of elections.

24 Q Does the State Board of Elections have a role in the
25 running of those elections?

1 A Our role is more of an assistance to the counties. As I
2 was speaking about earlier, we assist with ballot proofing --
3 not only with ballot proofing, but ensuring that ballot coding
4 is correct for all of these municipalities. And, in fact, each
5 county will submit to us for proofing the ballots for every
6 single election that they have, and our staff will approve and
7 proof those ballots for them.

8 **MR. PETERS:** Your Honor, I'm seeing it is almost
9 5:00, and I am about to move to a new topic that would probably
10 take a little while.

11 **THE COURT:** All right. You may step down.
12 Can you tell me what your schedule looks like for
13 tomorrow?

14 **MR. PETERS:** Your Honor, I think I would
15 anticipate -- my guess is going to be maybe about 45 more
16 minutes with Ms. Strach, and I don't know how much the
17 Plaintiffs would have with that. We have Mr. Neesby after that
18 and --

19 **MR. FARR:** We have two other witnesses on standby,
20 Your Honor, and we are not going to decide whether we will call
21 them or not until we see how the testimony comes out.

22 **THE COURT:** So you think you may done by lunch or
23 after lunch? What do you think?

24 **MR. PETERS:** I think after lunch is probably a
25 safe --

1 **THE COURT:** But before the end of the day?

2 **MR. PETERS:** Yes, a safer prediction.

3 **THE COURT:** So if you're thinking of any rebuttal
4 evidence, you should be planning for tomorrow.

5 **MR. DONOVAN:** We will.

6 **THE COURT:** Do you have any idea, if you do a
7 rebuttal case, how long do you think you will need?

8 **MR. DONOVAN:** We were talking. It kind of depends
9 how we do, but I think a couple hours would be the most.

10 **THE COURT:** All right. So do you think we can likely
11 finish tomorrow?

12 **MR. DONOVAN:** I guess the one thing -- and I'm sure
13 they will, but if the Defendants can let us know by 6:00 or
14 7:00 if they're going to call these other two, because that
15 will depend on whether we need to have witnesses here. I know
16 Ms. Strach and Mr. Neesby, but if we could get that by tonight,
17 I can know whether I need to have my witnesses here by lunch or
18 later.

19 **THE COURT:** Do you know when you will be in a
20 position to make that decision?

21 **MR. FARR:** Your Honor, I would say, as I just stated,
22 we need to see how the evidence comes out before we --

23 **THE COURT:** Tomorrow?

24 **MR. FARR:** -- whether we call these other two
25 witnesses.

1 **THE COURT:** So I guess you just need to be on standby
2 for potentially no earlier than lunch is what I'm hearing.

3 **MR. PETERS:** I think that's certainly safe.

4 **THE COURT:** Does that work?

5 **MR. DONOVAN:** Yes, we'll have them here.

6 **THE COURT:** All right. Ms. Earls, I wanted to make
7 sure you knew when I asked you how many more questions you had
8 left, I was simply asking how many more you had left. I was
9 not making a judgment on your examination.

10 **MS. EARLS:** I appreciate that, Your Honor.

11 **THE COURT:** I didn't know if you -- I wanted to make
12 sure you understood that was simply a question and nothing more
13 than that.

14 **MS. EARLS:** I didn't want to try the Court's
15 patience.

16 **THE COURT:** That's fine. I just wanted to make sure.

17 **MR. DONOVAN:** 9:00?

18 **THE COURT:** See you tomorrow at 9:00. And then we
19 will not -- no matter when you finish tomorrow, I don't plan on
20 hearing the closing arguments tomorrow. I want to give you a
21 little bit of an opportunity to get your thoughts together. So
22 the earliest they would be then would be Thursday morning.

23 **MR. DONOVAN:** That would be great.

24 **THE COURT:** Now, let me just ask if you all had some
25 sense of how much time you think you want to spend on closing

1 arguments per side?

2 **MR. PETERS:** I think at least on our side, we've
3 talked, and we feel like we can make whatever arguments need to
4 be made in an hour or less.

5 **MR. DONOVAN:** We think we need a little more time. I
6 need to coordinate, but I think one of the issues I really was
7 asking -- and I know you want to wait until the evidence is --
8 you have trial briefs. You're going to get findings of fact.
9 I do think some summation would be helpful, but you have a lot,
10 and I would rather get your guidance on what would be most
11 helpful.

12 **THE COURT:** Well, I can tell you right now that what
13 would be most helpful to me is going to be related to what the
14 law is in this area, because it almost appears to me that a lot
15 of the facts could have been stipulated to between the parties.

16 **MR. DONOVAN:** I agree with that.

17 **THE COURT:** The question is how does the law apply to
18 that. That seems to be perhaps unsettled, at least in certain
19 areas. So my questions will be along those lines, I think.

20 So I have no doubt you will argue the evidence and
21 what you think it shows, and there certainly are some
22 evidentiary questions; but I will have some guidance for you
23 tomorrow at the end of the day about the things that are on my
24 mind from a legal perspective.

25 **MR. DONOVAN:** We'll be prepared.

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THE COURT: Thank you all. You all have a good evening. We'll see you tomorrow.

(The Court recessed at 5:03 p.m.)

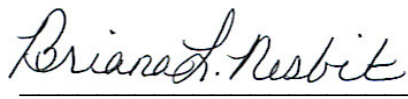
END OF TRIAL DAY TWELVE

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER

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I, Briana L. Nesbit, Official Court Reporter,
certify that the foregoing transcript is a true and correct
transcript of the proceedings in the above-entitled matter.

Dated this 10th day of August 2015.



Briana L. Nesbit, RPR
Official Court Reporter