

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

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

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

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

21
22 TRANSCRIPT OF THE **TRIAL/DAY FOUR**
23 BEFORE THE HONORABLE THOMAS D. SCHROEDER
24 UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

1
2 **THE COURT:** Good morning, everyone.

3 **MS. GARRETT:** Good morning, Your Honor. We would
4 like to start just with a few housekeeping matters.

5 **THE COURT:** Okay.

6 **MS. GARRETT:** Yesterday, we referenced the ECF filing
7 308 in matter 861. We would like to move in Plaintiffs'
8 Exhibit 683, which is Docket 308-72. This is attachment 72 to
9 ECF-308 in matter 861.

10 **THE COURT:** Attachment 72 in what?

11 **MS. GARRETT:** ECF, 861.

12 **THE COURT:** And what document?

13 **MS. GARRETT:** 308.

14 **THE COURT:** Thank you. Any objection?

15 **MR. FARR:** No, Your Honor.

16 **MS. GARRETT:** Also --

17 **THE COURT:** Let me -- just for the record, this -- is
18 this what was played?

19 **MS. GARRETT:** This is the entire -- all of the
20 designations. So there was some that was not played.

21 **THE COURT:** And what is highlighted is what was
22 played in court?

23 **MS. GARRETT:** What is highlighted is what was
24 designated by both Plaintiffs and Defendants. For instance,
25 yesterday, there was the portion in the cross-examination that

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1 was not played. If you scroll to the back, you will see that's
2 a blue Plaintiff designation in the cross-examination of
3 Mr. Strach. So the script --

4 **THE COURT:** I am not sure I follow. I have blue and
5 I have red, and then I have some that's not highlighted.

6 **MS. GARRETT:** What's not highlighted was not
7 designated and was not played. Your Honor, I have to reference
8 which order you requested the full transcript for experts.

9 **THE COURT:** If I did that, I don't recall that.

10 **MS. GARRETT:** Okay.

11 **THE COURT:** I am not sure I intended that. I don't
12 need extra paper generally. So I'm okay with designated
13 portions on both sides, as long as it is all in one document.
14 That's really what I am interested in so that I don't have to
15 go look at two different documents to figure out what the
16 evidence is.

17 **MS. GARRETT:** In the future, should we just reference
18 the ECF number and the attachment for the complete
19 designations? Because we will play in court sometimes subsets
20 of the entire universe of designations for a particular
21 witness.

22 **THE COURT:** What I am going to be interested in is
23 just knowing what your evidence is, and so if it's played in
24 court, and that's all of it, you can simply tell me it's
25 document X and we played it. If it's played in court and you

1 only played part of it, then it would help me to have a
2 document that highlights what you played, and then the rest you
3 didn't play but you want in evidence.

4 I do not need the whole deposition because neither
5 side is offering the whole deposition in evidence. Then I
6 don't need to consider portions neither side relies on. That's
7 for a number of reasons, one of which, if you are not offering
8 that other evidence, then I don't want to have to read it and
9 have to speculate as to what your arguments are going to be
10 about it. You all know your case, so you can put into evidence
11 the portions you all want. Does that make sense?

12 **MS. GARRETT:** Yes. So, Your Honor, yesterday
13 Ms. O'Connor mentioned that we would, going forward, have in
14 the script all of the portions in there so you can see what was
15 played and what wasn't played.

16 **THE COURT:** That would be helpful.

17 **MS. GARRETT:** Then I also would like to move into
18 evidence exhibits that were attached yesterday in the original
19 playing of the deposition of Dr. Vernon-Feagans. These were
20 exhibits referenced throughout her deposition testimony, and
21 these are PX 509, 510, 511, 512 and 513.

22 **THE COURT:** Any objection to those?

23 **MR. STRACH:** No, Your Honor.

24 **THE COURT:** All of those, 683, 509, 510, 511, 512 and
25 513 may be admitted.

1 **MS. GARRETT:** Thank you, Your Honor.

2 **THE COURT:** Okay. Anything further, Mr. Donovan?

3 **MR. DONOVAN:** No, we are going to continue with the
4 testimony of Dr. Hillygus.

5 **THE COURT:** All right. She can retake the stand.

6 CROSS-EXAMINATION (continued.)

7 **MR. PETERS**

8 Q Good morning, Dr. Hillygus.

9 A Good morning.

10 Q As we start, yesterday, when we finished up, I was asking
11 you to take a look at Plaintiffs' Exhibit 235, which is your
12 report. Is that still up there?

13 A It's not.

14 Q Dr. Hillygus, could you look at page 25 of the exhibit.
15 Plaintiffs' Exhibit 235. And you see a heading "Why
16 Preregistration is Effective"?

17 A Yes.

18 Q And can you look at the second paragraph under that
19 heading and read it into the record, please.

20 A "Preregistration is effective at mobilizing young voters,
21 in part, because it can capitalize on increased political
22 interest associated with political campaigns."

23 Q The whole paragraph, please.

24 A "For a subset of the electorate, preregistration removes a
25 barrier to participation when an individual is more likely to

1 be attentive to politics--during a political campaign. That
2 is, 16- and 17-year-olds can join the political system in the
3 heightened political salience of an electoral campaign. Once a
4 person is part of a state's voter file, he or she is more
5 likely to be contacted by candidates, parties, and interest
6 groups and mobilization efforts."

7 Q Thank you, Dr. Hillygus. Do I understand that part of
8 what you are saying here is that preregistration may be more
9 effective if it occurs during a particularly high-profile
10 political campaign, such as a Presidential campaign?

11 A Yes, that people use preregistration in the context of
12 campaigns more often.

13 Q And that would be true of registration as well, wouldn't
14 it, that when there is a high-profile campaign going on, people
15 are more likely to become interested and want to register to
16 vote?

17 A Correct.

18 Q Now, in doing your report and your research, did you
19 actually look into whether or not campaigns or candidates or
20 parties or interest groups actually did contact young people
21 who had preregistered?

22 A In terms of preregistration, no. Certainly, I have had
23 research that has focused on campaign efforts to mobilize.

24 Q Has that research -- did it focus on the efforts to
25 mobilize registered voters?

1 A Correct.

2 Q So you haven't looked at whether or not in North Carolina
3 in 2012, for example, campaigns actually tried to mobilize
4 preregistered people?

5 A Correct.

6 Q It is correct, isn't it, that if a candidate or a campaign
7 were to go to the State Board of Elections and ask for a list
8 of registered voters, the registered voters in the 1st
9 Congressional District or the registered voters in the state,
10 it's correct, isn't it, that that list would not include young
11 people who are preregistered but haven't turned 18 yet?

12 A In North Carolina, yes. They can download, however, the
13 file of those individuals who preregistered.

14 Q Right. But those people are not going to be able to vote,
15 are they?

16 A Correct.

17 Q Okay. I believe you said -- you were talking about how a
18 lot of your research was based on Florida data because Florida
19 had had preregistration in place for a longer period of time;
20 is that right?

21 A Correct.

22 Q Am I correct that in Florida, you could preregister at 15?

23 A There was a time in which that was possible if you were
24 getting your driver's license, but that's a small percentage of
25 15-year-olds who were fulfilling the requirements to get their

1 driver's license. That law was changed just to make it
2 16-year-olds, I believe.

3 Q So that law was changed so that people who had been able
4 to preregister in the past were no longer able to preregister?

5 A So that it was not conditional on a driver's license.

6 Q But I want to make sure I am clear. Are you saying that
7 at one time, some 15-year-olds could preregister, but the law
8 was changed so they no longer could?

9 A So it was at one time preregistration was, in part,
10 conditional on driver's license, and that portion of the law
11 was removed.

12 Q But does that have the effect of no longer allowing those
13 15-year-olds to preregister?

14 A With driver's license, yes.

15 Q So now in Florida, you must be 16?

16 A Uh-huh.

17 Q Thank you. We talked some yesterday about young voters
18 who would preregister, but then they might have to reregister
19 if they moved to, say, a different county to attend college.

20 Based on your research and your experience, do you have a
21 sense of where the typical young person would preregister, the
22 typical 16- and 17-year-olds? When North Carolina offered
23 preregistration, do you have a sense of where that typically
24 happened?

25 A Their home address where they were registered? Or just

1 where they did it?

2 Q Where, for example, they might fill out the form or do
3 what they needed to do in order to preregister.

4 A Certainly, in the state of Florida, it was most common in
5 high schools. And my sense, although I don't have recollection
6 of specific percentages, is that that was also the case in the
7 state of North Carolina.

8 Q All right. So the student who has preregistered in high
9 school and then wants to change their address when they go to
10 college -- or change their registration when they go to college
11 in another county, for example, they are no longer in high
12 school, are they, if they are going to college?

13 A No.

14 Q So the place where they might have expected
15 preregistration or registration to happen is not available to
16 them anymore, is it?

17 A Well, so I guess this actually gets to some debate I have
18 seen in the legislature about whether it is appropriate for
19 college students to use their permanent address, their parents'
20 address, as the place in which they are registered and perhaps
21 cast an absentee ballot versus their college address.

22 So I am not sure, actually, for those subset of students
23 that are going to college in state, that it's that
24 consequential.

25 Now, students that go from high school, don't go to

1 college, move out of their parents' home and move to a
2 different county where they no longer can use their parents'
3 home as a permanent address, you are absolutely right, that
4 it's now a different location where they preregistered compared
5 to where they would now be eligible to vote.

6 Q I am sorry. I think maybe I didn't make my question clear
7 because I am not really not asking about the address that they
8 are using.

9 Do you recall in your deposition when we talked about
10 those students moving, you said, But they would have learned
11 how the system works now; they would have learned how to
12 register, so it would be easier for them to reregister that
13 second time? Do you recall that?

14 A I don't, but that sounds reasonable.

15 Q But the method by which they used to preregister would no
16 longer be available to them, would it, if they are not in high
17 school anymore?

18 A Correct, if they had turned 18. Although the form is,
19 right, identical with the exception of a little box where they
20 check that says you know you can't vote until you are 18.

21 Q Right. But while they were in high school, that form was
22 offered to them?

23 A Uh-huh.

24 Q And maybe through a voter drive. And when they are
25 somewhere other than high school, they do not have the high

1 school there to say this is available for you; correct?

2 A Correct.

3 Q Okay. Now, let me ask you: Your ultimate opinion here in
4 your report is that you would anticipate a decrease of
5 somewhere between 8,000 and 50,000 young voters in the
6 Presidential election; is that correct?

7 A Yes. That's the estimate on the basis of the statistical
8 models using the national estimates.

9 Q And I want to be clear here because, as I recall
10 yesterday, your testimony was that sometimes when you use
11 "young voter," you were talking about 18 to 24 and sometimes
12 you were talking about 18 to 29, depending on the context.
13 Which are you talking about here?

14 A I could review it to double-check, but I am pretty certain
15 it was 18 to 24.

16 Q Okay. But that opinion does not take into account how any
17 efforts to register qualified voters might mitigate your
18 predicted effects of no longer having preregistration, does it?

19 A Actually, it does, in the sense that that is absolutely
20 part of those nationwide estimates that are calculating the
21 average effect of adopting preregistration. So that's already
22 built into that effect that was estimated.

23 Now, you know, do I have specific numbers that would
24 suggest that North Carolina will be different from those
25 national averages? I don't. And if there is some difference,

1 right, that, of course, you know, would affect the estimates,
2 but it's already kind of built into the model.

3 Q At this point when you are making predictions, you don't
4 know whether there were differences in North Carolina, do you?

5 A Of course. Both estimates about what turnout would be in
6 2016 with the law in place and what turnout would be without
7 the law in place are both statistical projections on the basis
8 of, you know, the previous years' data.

9 Q And you would agree, wouldn't you, that any person in
10 North Carolina who is 18 or over and is otherwise qualified to
11 vote can register to vote?

12 A Of course.

13 Q And you would agree that any 17-year-old who is going to
14 be 18 by Election Day and is otherwise qualified to vote can
15 register to vote in North Carolina, wouldn't you?

16 A Yes, although, of course, the exact date depends on which
17 particular election year we are talking about.

18 Q Right. Thank you. I don't have any further questions.

19 **THE COURT:** Any redirect?

20 **MR. KAUL:** Just briefly.

21 REDIRECT EXAMINATION

22 **BY MR. KAUL**

23 Q Good morning, Dr. Hillygus.

24 A Good morning.

25 Q I just want to follow up on a few points that Mr. Peters

1 asked you about. First, he had you read into the record a
2 reference to registration being a barrier to participation.
3 Can you explain what you meant by that?

4 A Sure. You know, any of the steps that are required before
5 we're able to cast a ballot can be deemed a barrier, and so
6 registration in and of itself is a barrier, right. North
7 Dakota has slightly higher turnout among young people than
8 those states that don't have registration.

9 However, that difference between North Dakota and
10 Minnesota is smaller than the difference between Minnesota and
11 North Carolina. In other words, there are -- there is quite a
12 bit of variation in the particular laws, registration barriers
13 that are in place across different states, and there is also
14 variation in the effect of those registration laws on different
15 groups within the electorate in terms of it constituting a more
16 severe barrier or not.

17 Q Is there discussion in the political science literature
18 about this concept?

19 A Sure. I mean, it is well recognized in the political
20 science literature that registration, particularly for young
21 people, constitutes a significant barrier and, in particular,
22 that registration window of being required to register, you
23 know, 25 days or up to 30 days in advance constitutes an
24 especially large barrier for young people and other groups in
25 society as well.

1 Q And do you recall discussing with Mr. Peters yesterday
2 factors that might influence youth turnout?

3 A Yes.

4 Q Did your analysis control for factors that might influence
5 youth turnout?

6 A Yes, and I did so in a variety of different ways, although
7 I know it gets a little bit, you know, statistically jargony.
8 The difference-in-difference model accounted for both
9 individual factors that are potential confounders, things like
10 income and education and race, but also state-level factors,
11 variation in laws, variation in culture, variation in the
12 attention that campaigns invested in the state, as well as
13 temporal factors, differences across elections in the
14 competitiveness, and the rates of turnout across different
15 election years. And the model accounts for that.

16 Likewise, in the Florida analysis in which what I was
17 doing was not just predicting the impact of preregistration
18 laws on aggregate youth turnout in the state, but, instead,
19 evaluating what's the impact of an individual preregistering on
20 their turnout in subsequent election cycles, there, too, we
21 accounted for all those factors that Mr. Peters referenced.

22 Q And then the last topic I want to ask you about briefly
23 was you discussed with Mr. Peters an estimate, and I believe he
24 referred to it as being a range of 8,000 to 50,000 voters
25 impacted. Do you recall that?

1 A Correct.

2 Q What is the 50,000 number based on?

3 A The difference-in-difference estimate -- and sorry again
4 to use statistical jargon, but that was the analysis looking
5 across the nation to get an estimate of what's the effect of a
6 state implementing preregistration law on youth turnout in the
7 state and applying that to the numbers within North Carolina.

8 As I mentioned in my testimony yesterday, as part of the
9 academic publication process, we go through a series of
10 different robustness checks to make sure that under different
11 conditions and different samples and different modeling
12 assumptions that our conclusions do not change, and one of the
13 most conservative and -- efforts at kind of testing our
14 conclusions was the lagged model. And from that, that's where
15 the lower-bound estimate came from.

16 I would note, however, that -- a couple of different
17 things, is that those estimates came from a nationwide
18 estimate, right. So I'm calculating the effect of
19 preregistration across all the different states that have some
20 variation in what their actual rules were.

21 The registration law that was in place in North Carolina
22 was actually one that we would expect to be especially
23 effective, not only because it included both 17-year-olds and
24 16-year-olds, but also because there were requirements to have
25 voter registration drives within high schools; and as my AJPS

1 article noted, when you have those voter registration drives
2 within high schools, you further bolster the effect of
3 preregistration.

4 Q And so which statistical modeling approach was the 8,000
5 figure based on?

6 A So the 50,000 is with the difference-in-difference. The
7 8,000 was with the lagged model.

8 Q And which of those is the especially conservative approach
9 you described?

10 A The lagged model.

11 Q And that's the 8,000?

12 A Correct.

13 Q Which is the standard model for estimating effects in the
14 political science literature?

15 A The standard approach considered the most compelling
16 approach for evaluating policy effects is the
17 difference-in-difference model, so resulting in the 50,000
18 estimate.

19 **MR. KAUL:** Thank you.

20 **MR. PETERS:** Nothing further, Your Honor.

21 **THE COURT:** All right. The statistical analysis you
22 used for your estimates of 8,000 to 50,000, do those have any
23 kind of confidence -- are they the kind of analyses that have
24 confidence intervals and you're making estimates; and, if so,
25 can you explain to me what the confidence intervals on those

1 would have been?

2 **THE WITNESS:** Sure. So, again, because what I am
3 doing is applying the estimates from that nationwide
4 statistical model, there are confidence intervals associated
5 with that, you know, a 13-percent-point effect. It is a pretty
6 tight one because confidence intervals are very much a function
7 of how many cases you have. We have a lot of cases with the
8 current population survey. So it is fairly narrow.

9 I would say that this is a projection with a set of
10 assumptions, and so, you know, the confidence interval comes in
11 on the side of the model where, you know, we are most kind of
12 comfortable with the existing data; but I suspect what you are
13 asking is, okay, well, there is also uncertainty just about the
14 application of that to North Carolina, and, unfortunately,
15 beyond just giving that range, there is not a way to kind of
16 capture that in a statistical sense.

17 **THE COURT:** Okay. You say it is pretty tight. Do
18 you know what it is?

19 **THE WITNESS:** Sure. Let me --

20 **THE COURT:** Is that in your report?

21 **THE WITNESS:** It is.

22 **THE COURT:** Is that page 33?

23 **THE WITNESS:** No, that's in Florida. It's on
24 page 30. So apologies here. What that is showing you are the
25 multi-varied regression models. And the way to think about

1 that confidence interval is with what's in the parentheses
2 underneath the bolded coefficient estimate, the .13, and it
3 essentially rounds to zero. So it's -- again, that is really a
4 function -- we are dealing with 44,000 cases, and so we have a
5 very precise estimate.

6 In the AJPS article, I think we show it visually so
7 you can see it a little bit better, which I believe has also
8 been entered into evidence, although I don't have it in front
9 of me.

10 **THE COURT:** What I am trying to understand is
11 sometimes figures are given, but they are given within a
12 certain confidence interval. Sometimes the confidence interval
13 excludes the null hypothesis and sometimes it does not and
14 sometimes the interval is wide, sometimes it's narrow; and that
15 information sometimes informs the strength of the ultimate
16 point estimate that's given. I assume what you have given here
17 are point estimates; is that correct?

18 **THE WITNESS:** Yes. And the standard errors along
19 with it so that from that what we can have is the confidence
20 interval, but we are talking about a range of between, you
21 know, 12.999 percent and the 13, you know, 1.1 percent in terms
22 of that effect that's being estimated. And I am completely
23 guessing on exactly that because it rounded to zero, but what
24 we're talking about is a very narrow confidence interval for
25 that estimate.

1 **THE COURT:** Thank you. Any questions in light of my
2 questions?

3 **MR. PETERS:** No, Your Honor.

4 **MR. KAUL:** Just briefly, Your Honor, just to clarify
5 a point.

6 **BY MR. KAUL**

7 Q On page 30, the 13 percent and the 0.00, is the
8 implication of that that the 95 percent confidence interval is
9 between at least 12 and a half and 13 and a half?

10 A Sure. I mean, that would be a very, you know -- yes,
11 absolutely, it is between that range. So 12 and a half percent
12 to 13 and a half percent would very easily capture the point
13 estimate and the confidence interval that's been estimated.

14 Q What does that mean with respect to the null hypothesis?

15 A Well, it's clearly different from zero, number one, right,
16 but also that projection to apply to North Carolina, the
17 50,000, that if we applied that same confidence interval, that,
18 you know, we are talking about just a handful of differences in
19 that estimate as opposed to, as you've seen, confidence
20 intervals that make you worry.

21 Q Even with the conservative lagged model, the error -- the
22 confidence interval there is -- the 95 percent confidence
23 interval has an error of .1; is that right?

24 A Uh-huh.

25 Q And so the range there would be .1 to .3?

1 A And so, again, we never --

2 Q I'm sorry. The range within the 95 percent confidence
3 interval would be what? Please explain.

4 A We would never cover zero. So even with the 8,000, if we
5 wanted to apply that confidence interval, you know, we are
6 still talking about, off the top of my head, you know, a 7- to
7 9,000 type of estimate.

8 Q So you rejected the null hypothesis there as well?

9 A Correct.

10 **MR. KAUL:** Thank you.

11 **MR. PETERS:** No, Your Honor.

12 **THE COURT:** Thank you, Doctor. You may step down.

13 **MR. EPPSTEINER:** Good morning, Your Honor. George
14 Eppsteiner for the League of Women Voters Plaintiffs. The
15 Plaintiffs call Bob Phillips.

16 **ROBERT PHILLIPS, PLAINTIFFS' WITNESS, at 9:32 a.m., being first**
17 **duly sworn, testified as follows:**

18 DIRECT EXAMINATION

19 **BY MR. EPPSTEINER**

20 Q Good morning. Please state your name for the Court.

21 A Robert Phillips.

22 Q And, Mr. Phillips, where do you work and what is your
23 current position?

24 A I'm the executive director of Common Cause North Carolina.

25 Q And how long have you been -- can I use the term "Common

1 Cause" to describe Common Cause North Carolina?

2 A You may.

3 Q And how long have you been executive director for Common
4 Cause?

5 A Fifteen years approximately.

6 Q Can you briefly describe your responsibilities as the
7 executive director?

8 A Manage a staff of five people. The mission of Common
9 Cause is basically strengthening democracy. We support a
10 variety of reforms, advocates for more open, honest and
11 accountable governments. So the projects and activities that
12 we are doing to further that purpose, I'm managing.

13 Q And in addition to your 15 years as executive director of
14 Common Cause, how long have you worked in positions related to
15 North Carolina state politics?

16 A I guess probably about the last 25 years I've been
17 involved in that.

18 Q Are you here to testify on behalf of Common Cause in your
19 capacity as executive director?

20 A I am.

21 Q I know you talked about your role as an executive
22 director. Very briefly, what is the mission itself of Common
23 Cause?

24 A I mentioned that earlier. Basically, again, we are
25 promoting reforms, policies, laws that strengthen democracy.

1 We are a statewide organization, a public interest group, and
2 we are, again, trying to be advocates for more open, honest and
3 accountable government.

4 Q In what particular subject areas does Common Cause work
5 in?

6 A It's a variety. Campaign finance reform, lobbying ethics,
7 redistricting and voter rights.

8 Q And you mentioned lastly voter rights. What is the goal
9 of Common Cause's voting rights work?

10 A Anything that we can do to promote voting to help ensure
11 that it is easy and accessible for all citizens.

12 Q And is Common Cause a partisan or nonpartisan
13 organization?

14 A Nonpartisan.

15 Q Can you give an example of some of the type of nonpartisan
16 work that Common Cause has done in the past?

17 A We were one of the leaders in the 2008 comprehensive
18 lobbying ethics reform. We worked with a variety of
19 organizations. Certainly, we are doing the same thing
20 currently with redistricting reform.

21 Q Does Common Cause work with particular populations in
22 communities?

23 A We are a statewide organization. We do have a focus with
24 our -- historically black colleges and universities, and we
25 also have a focus with the underserved communities typically

1 around these campuses.

2 Q And when you say underserved communities, are those
3 underserved communities predominantly African-American
4 communities?

5 A They are.

6 Q And why do you have projects specifically related to
7 student voters at historically black colleges and universities
8 and then those outlying underserved communities of color?

9 A In many ways we feel like we are filling in the gaps. The
10 campuses, as I mentioned, historically black colleges and
11 universities, have not been served in the past even by
12 organizations such as ours. We are trying to provide them the
13 information that they may not have received and may not be
14 getting on these campuses.

15 These campuses don't have the resources that some of the
16 others, the Dukes and the Carolinas, might have. Same thing
17 with the underserved communities where these are areas that
18 there is a lot of moving in and out, citizens are not able to
19 perhaps get the information that is available to all the other
20 areas in the city, and so this is why we have that focus.

21 Q And can you describe briefly the types of voting right
22 work Common Cause specifically does?

23 A Sure. On the campus, the mission there is really boosting
24 civic engagement, and, obviously, principal to that focus is
25 voter registration, voter education, and voter participation.

1 Again, we are engaged in a variety of activities on those
2 campuses.

3 In the underserved community, we do similar work where we
4 are trying to provide nonpartisan information about elections,
5 how to register, where to vote, that type of work.

6 Q And you described voter registration efforts. Is that
7 also Get Out the Vote efforts as well?

8 A It is.

9 Q And is there a particular time period when your voting
10 rights work is most effective?

11 A During the run-up to the election, the last two, two and a
12 half weeks is when we are really finding that it's most
13 effective.

14 Q And in the past, has that been during the early voting
15 period?

16 A Yes.

17 Q Mr. Phillips, are you familiar with the enacted and signed
18 2013 bill referred to in this lawsuit as House Bill 589?

19 A I am.

20 Q And prior to the enactment and signing of House Bill 589,
21 in the early 2000s, did Common Cause lobby the legislature for
22 expanded early voting opportunities?

23 A We did.

24 Q And are you yourself a registered lobbyist in North
25 Carolina?

1 A I am.

2 Q For state legislative matters?

3 A State legislative matters, yes.

4 Q And why did Common Cause lobby the legislature for
5 expanded early voting opportunities in the early 2000s?

6 A This was, in our view, a great tool to boost voter
7 turnout, to give citizens more opportunities to be able to
8 exercise their right.

9 Q And during the expanded or early voting period prior to
10 House Bill 589, were there particular time periods that were
11 most useful or most used by voters in your experience?

12 A For us, the first weekend that was available for early
13 voting was very significant. We were able to mobilize students
14 on the campuses, obviously, at a time when they are not in
15 class, and in the communities we would canvas, knocking on
16 doors, trying to have face-to-face conversations again on these
17 weekends, Saturday and Sunday. That was a much better time to
18 be able to do that type of work.

19 Q Prior to the passage of House Bill 589, did Common Cause
20 lobby the legislature to pass same-day registration --

21 A We did.

22 Q -- in North Carolina?

23 A We did.

24 Q Why was that?

25 A Again, we felt that it was going to be something that

1 would offer an opportunity for the many people who, for
2 whatever reason, don't register to vote and then when the
3 campaign and election season begins to really get into
4 people's, I guess, attention span and then they find that they
5 cannot register, this was a great law to give them the
6 opportunity to be able to register and vote.

7 Q And were you, on behalf of Common Cause, at the General
8 Assembly during formal consideration of House Bill 589 by
9 legislators?

10 A I was.

11 Q For all of the time? Most of the time?

12 A Most of the time.

13 Q What was the extent of your involvement?

14 A I was present for most of the time.

15 Q And during deliberation of House Bill 589, did you provide
16 information or materials to legislators?

17 A I did.

18 Q And what materials were those?

19 A I was informing them about ways that same-day voter
20 registration, for instance, might have been kept, if you will,
21 and provided them some options regarding that. Certainly, we
22 talked with lawmakers just about the value of the provisions
23 that were being considered and the voters who were using those
24 tools, as I call them, to vote. So that information was shared
25 as well.

1 Q And what did that information contain about the usage of
2 these particular items by voters in North Carolina?

3 A Well, again, the data was available, and we were sharing
4 it, that African-Americans were disproportionately using the
5 early voting and same-day voter registration and
6 out-of-precinct voting. That was, again, information that I
7 was sharing with lawmakers. I think it was also brought up,
8 obviously, in some of the limited debate, and as, again, we
9 passed out information about ways that same-day voter
10 registration could have been altered and, as I say, saved.

11 **MR. EPPSTEINER:** Your Honor, may I approach?

12 **THE COURT:** Yes.

13 **MR. EPPSTEINER:** Your Honor, for the record, this
14 document has already been admitted in evidence per the June 12
15 stipulation that hasn't been objected to by the Defendants.
16 That's Docket Number 259-4 in Case Number 861. This document
17 was Exhibit A to the declaration of Bob Phillips during the
18 preliminary injunction phase of the proceedings. This document
19 has been marked and has been admitted as PX 0012, pages 8
20 through 10.

21 **THE COURT:** Thank you.

22 **BY MR. EPPSTEINER**

23 Q Mr. Phillips, do you recognize this document?

24 A I do.

25 Q And what is it?

1 A This is the information that we were sharing regarding how
2 to modify same-day voting.

3 Q And what does the document propose?

4 A Essentially, we were listening to lawmakers regarding
5 their concerns about verifying voting, same-day voter
6 registration, and these were some ideas where the law could
7 have been modified, giving the Board of Elections more time.

8 As you can see, one would be where the first address, it
9 would not count if it's not verified, shortening the same-day
10 voter registration period and moving the canvas back six days.
11 Again, listening to the lawmakers who were telling us their
12 concerns, we were trying to address those.

13 Q Why did you suggest these alternatives to the elimination
14 of same-day registration to legislatures?

15 A You know, in my assessment, it certainly would have been
16 much better than losing the entire law. We really did see
17 firsthand that this was something that was utilized, again,
18 with the particularly younger voters. So this is again why we
19 proposed this.

20 Q And based upon your experience as both a lobbyist and
21 someone who has worked in state political matters for 25 years,
22 was the legislative process for House Bill 589 different versus
23 other election laws of similar scope?

24 **MR. BOWERS:** Objection, Your Honor. Is he asking for
25 an expert opinion?

1 **THE COURT:** Sustained at this time for lack of
2 foundation.

3 **BY MR. EPPSTEINER**

4 Q Mr. Phillips, you previously testified that you were at
5 the legislative session for House Bill 589; is that right?

6 A I was, yes.

7 Q And you previously testified that you are a registered
8 lobbyist in North Carolina?

9 A Right.

10 Q And you have worked in state legislative matters for
11 approximately 25 years?

12 A Correct.

13 Q And in previous years, you were at the General Assembly
14 meeting with legislators and reviewing the legislative sessions
15 regarding other election law bills?

16 A Yes.

17 Q And based upon your experience in -- of those prior
18 experience of election law bills of similar scope and based
19 upon your experience observing the legislative proceedings of
20 House Bill 589, do you believe that the legislative process for
21 House Bill 589 was different from other election law bills of
22 similar scope?

23 **MR. BOWERS:** Same objection, Your Honor. I don't
24 object to his testifying based on his experience, but I just
25 want to make sure for the record he is not testifying as an

1 expert witness.

2 **MR. EPPSTEINER:** Your Honor, I'm not asking
3 Mr. Phillips to testify as an expert, but pursuant to Rule of
4 Evidence 701, Mr. Phillips can testify based on matters
5 relevant to his experience in the past as to an issue of fact
6 in this case as to the legislative process of House Bill 589
7 and how it may be different than prior legislative processes.

8 And it's not based upon the scientific or technical
9 experience of Mr. Phillips, but based on his prior previous
10 experience as a legislative -- in legislative matters in the
11 past and what he observed during House Bill 589.

12 **THE COURT:** He can testify as to what he observed
13 that he thought was different from other things he may have
14 actually observed.

15 **THE WITNESS:** It was very different. I can say that
16 as a lobbyist for the same-day voter registration law, this was
17 a multiyear process to get it. There was public input,
18 countless conversations, thoughtful debate, a real campaign to
19 get this law passed.

20 In contrast, what was put into 589 and the way and
21 the manner it lacked public input, it did not have a lengthy
22 debate. It was what's called a committee substitute in one
23 chamber, and within 48 hours, it's literally adopted and passed
24 in the other, again, without a lot of debate.

25 So, yes, it was very, very unusual. Not the kind of

1 thing that I had seen in the past.

2 **BY MR. EPPSTEINER**

3 Q And let's talk about specifically the impacts of House
4 Bill 589, and I am specifically talking about House Bill 589's
5 shortening of the early voting period, the elimination of
6 same-day registration, and the elimination of out-of-precinct
7 balloting.

8 What impact has those changes had on the ability of Common
9 Cause to fulfill its goal of making voting as easy and
10 accessible as possible?

11 A Again, it makes our outreach all that much harder with the
12 early voting, shortening that, narrowing it down and the loss
13 of that weekend, as I had mentioned. That's a significant time
14 for us. It's an important time to connect with students. It
15 decreases the time that we would be canvassing these
16 underserved communities and knocking on doors and talking to
17 folks.

18 With regard to same-day voting, it does not allow us to
19 help particularly young people who come from other counties,
20 other states that get caught up in the election the last couple
21 of weeks. Frequently, registering to vote is available, but it
22 is not something that many of them are thinking about in those
23 first weeks of college. Without SDR, same-day registration, we
24 don't have that opportunity to help them get registered and
25 then vote.

1 The out-of-precinct voting, again, we're not able to
2 educate folks in the communities, the underserved communities,
3 where we are focused about that change. And, again, it's
4 something that we were at least able to help folks. If they
5 showed up incorrectly to the wrong precinct, we could help them
6 understand that they could vote a provisional ballot, and we're
7 no longer able to that.

8 Q And have these three changes affected the ability of
9 Common Cause to use its resources for its Get Out the Vote
10 efforts, for example, or registration efforts?

11 A It has. I mean, we don't have the resources to
12 particularly go into those communities as early as we would
13 like or to be able to provide the kind of education to young
14 people in making sure that they are registering to meet the
15 25-day deadline.

16 Q And did your organization observe whether the shortening
17 of the early voting period, elimination of same-day
18 registration, and the elimination of out-of-precinct balloting
19 affected lines on Election Day?

20 A We did --

21 Q And to clarify, in the November 4, 2014, election?

22 A We did. Personally, I was here in Forsyth County, and I
23 was at the Sedge Garden precinct, and I personally observed the
24 lines, that the last voter was processed well after 9:00. I
25 saw a lot of frustration in people's faces. I actually saw

1 people physically walk away, not voting, who were in the line.

2 We had other people with Common Cause at other precincts
3 around the state, and they also observed long lines, one of
4 them in Raleigh at the Chavis rec center, which is --

5 **MR. FARR:** Your Honor, I object on the grounds of
6 hearsay, as far as what he was told by other people.

7 **THE COURT:** Sustained.

8 **BY MR. EPPSTEINER**

9 Q Did Common Cause generate reports regarding long lines at
10 precincts on Election Day in North Carolina?

11 A We did. We had a multi-county poll monitoring, observing
12 campaign. Reports were generated at all these locations, yes.

13 Q All right. And did you see reports from Chavis?

14 A I did reports from Chavis, yes.

15 Q And were the reports at Chavis from voters who thought
16 they were at the correct precinct but were told they weren't?

17 A Yes.

18 **MR. BOWERS:** Objection, calls for hearsay.

19 **THE COURT:** Hold on just a minute. Overruled.

20 **THE WITNESS:** Yes. These were reports that came from
21 that precinct that were filled out by voters, and I did see
22 them, yes.

23 **BY MR. EPPSTEINER**

24 Q And were the reports generated throughout the day?

25 A They were.

1 Q Do you recall some of the times that voters went to go to
2 that precinct that day and were told it was the incorrect
3 precinct?

4 A 7:25 p.m.

5 **MR. EPPSTEINER:** Your Honor, I don't have any further
6 questions at this time.

7 **THE COURT:** Any cross-examination?

8 **MR. BOWERS:** Yes, Your Honor. Thank you.

9 CROSS-EXAMINATION

10 **BY MR. BOWERS**

11 Q Mr. Phillips, good to see you again. I've got a few
12 questions for you.

13 A Yes, sir.

14 Q Counsel asked you some questions about your background.
15 And you were communications director for Lieutenant Governor
16 Wicker for a period of time, were you not?

17 A Yes, sir, I was.

18 Q What was that time frame?

19 A 1993 to 2000, basically to the end of his term.

20 Q Okay. And what party was Lieutenant Governor Wicker?

21 A Democratic.

22 Q Counsel asked you several questions about the legislative
23 process for H.B. 589. I think you testified that you were
24 present for most, if not all, of the time during the
25 deliberations of that bill; correct?

1 A Yes, sir.

2 Q Okay. Are you aware how much time was left in the
3 legislative session when the amended bill was introduced?

4 A Within a week, as I recall. It was very close to the end
5 of session.

6 Q Okay. And with someone, as we've heard, with 25 years of
7 experience in the legislative process and a registered lobbyist
8 yourself, are you aware that neither the Senate nor the House
9 violated the rules of procedure during their consideration of
10 H.B. 589?

11 A In my mind, the rules were not violated, but --

12 Q Thank you. Would you agree with me that no Democratic
13 members made any points of order alleging violations of the
14 Senate or House rules during the deliberation of 589?

15 A I don't know that for a fact, but --

16 Q Would you dispute it if I told you it was a fact?

17 A I would not dispute it.

18 Q Are you aware that nothing in the Senate or House rules
19 requires public hearings?

20 A I am aware.

21 Q Do you agree with me that the Senate Rules Committee held
22 a committee hearing on July 23rd and permitted members of the
23 public to speak at that hearing?

24 A It was a limited time frame, and there were more people
25 who wanted to speak.

1 Q So it's a yes?

2 A I would agree, yes. That meeting did occur, yes, sir.

3 Q Would you agree that three amendments sponsored by three
4 different Democratic senators were adopted by the committee?

5 A There were three that were adopted, yes, sir.

6 Q And you would acknowledge that the chairman of the Senate
7 Rules Committee, Senator Apodaca, objected to a third meeting
8 of the bill so that the debate could be carried over another
9 day?

10 A Yes.

11 Q I think you also testified that this process that we just
12 discussed was something that -- not the kind of thing that
13 you've seen in the past, or words to that effect; is that
14 correct?

15 A For the type of proposals that we are talking about,
16 election law, that's what the context of that -- what I am
17 saying.

18 Q Were you around for the 2003 redistricting legislative
19 plan?

20 A Yes, sir.

21 Q Okay. And were you -- are you aware that no public
22 hearings were held on that plan?

23 A I was around. I can't say that for certain, but I may not
24 dispute it, I guess, if that would be your --

25 Q Okay. Would you agree that the Democratic speaker of the

1 House at that time did not allow amendments from Republican
2 House members?

3 A Again, I don't know that for a fact.

4 Q But you wouldn't dispute it, would you?

5 A I probably would not.

6 Q Okay. And you wouldn't dispute that the House plan in
7 2003, the redistricting House plan, was not referred to a
8 committee, would you?

9 A No, sir.

10 Q And the House passed their redistricting plan on the same
11 day it was introduced. You wouldn't dispute that either, would
12 you?

13 A No, sir.

14 Q And which party was in control of the state legislature in
15 2003?

16 A Democratic.

17 Q Okay. Thank you, sir.

18 You referenced some of your work in Common Cause with --
19 on college campuses; correct?

20 A Correct.

21 Q I think you've identified that it is your belief that
22 there is confusion on campuses across the state because of the
23 enactment of the bill; is that correct?

24 A There has been some confusion, I think, yes, sir.

25 Q Okay. But your belief that there's been confusion on

1 campuses, was that based on any studies or documentation or was
2 that mostly just anecdotal?

3 A Yes, what I witnessed, so, yes, anecdotal.

4 Q Mr. Phillips, are you aware that a majority of states do
5 not offer same-day registration?

6 A I am.

7 Q Mr. Phillips, does Common Cause have any names of actual
8 voters who were unable to vote in 2014 because of H.B. 589?

9 A These would be in the reports that we discussed that were
10 generated during our poll monitoring activities. So those
11 folks that we saw who arrived very late to the precinct that
12 was incorrect we feel certain did not vote, and we do have
13 those names.

14 Q You feel certain, but that's purely anecdotal, is it not?
15 You didn't do any studies or scientific research to determine
16 if anyone was actually unable to vote; correct?

17 A Well, we have the time that they arrived to the incorrect
18 precinct and physically saw them turned away at the time the
19 precinct was closing.

20 Q Do you have the names of those voters?

21 A We do. Those were in the reports that we generated.

22 Q Is it your belief, Mr. Phillips, that 589 makes voting
23 more difficult?

24 A I believe it does.

25 Q And is it your belief that it makes voting more difficult

1 for everyone regardless of race; correct?

2 A I do. I think it does make it difficult for everybody,
3 but particularly the constituencies we're working with. Young
4 people and residents in underserved communities, I think it
5 affects them even more.

6 Q But you would acknowledge that the legislation is race
7 neutral; correct?

8 A I would say that it has an impact more so on those
9 constituencies that I referred to. Everyone has to comply with
10 the law. They're all facing the same law, but I think it
11 impacts, again, those constituencies that we work with.

12 Q You would agree that it is your opinion that it makes
13 voting more difficult for everyone regardless of race; correct?

14 A I do think it makes voting more difficult for everybody.

15 Q And it's also true, Mr. Phillips, is it not, that you
16 don't believe that the North Carolina legislature intentionally
17 discriminated against African-Americans voters with the passage
18 of H.B. 589, do you?

19 **MR. EPPSTEINER:** Your Honor, objection, Rule of
20 Evidence 611(b). It is outside the scope of the direct. There
21 were no questions with regard to the intent of the legislators.

22 **THE COURT:** I will overrule the objection because
23 it's cross-examination. I will let you cross him on anything;
24 but if you are going to open the door to this, you have an
25 objection as to other witnesses as to whether they should be

1 testifying as to intent. So if you ask questions of witnesses
2 about intent, then I am going to declare the door open. So
3 proceed as you wish.

4 **MR. BOWERS:** I will withdraw the question. Thank
5 you, Your Honor.

6 Mr. Phillips, I don't have any further questions at
7 this time.

8 **THE COURT:** Any redirect?

9 **MR. EPPSTEINER:** Just very briefly, Your Honor.

10 REDIRECT EXAMINATION

11 **BY MR. EPPSTEINER**

12 Q Mr. Phillips, do you recall Mr. Bowers' questions
13 regarding the timing of House Bill 589 and how much time there
14 was left in the session when it was considered by the other
15 chamber?

16 A Yes.

17 Q Do you recall, in the beginning of the legislative
18 session, was House Bill 589 just a limited voter ID bill?

19 A It was.

20 Q And there wasn't -- the proposal to eliminate same-day
21 registration wasn't considered during that time frame; correct?

22 A Only the voter ID was then; that's correct.

23 Q Or the cuts to early voting?

24 A That was not in the original bill.

25 Q Or the elimination of out-of-precinct balloting?

1 A No, sir, it was not in the original bill.

2 Q And legislators could have considered it at the time;
3 correct?

4 A They could have, yes.

5 Q And they could have considered it at the time before the
6 *Shelby County* decision?

7 A Yes, they could have.

8 Q Do you recall Mr. Bowers' questions about the
9 redistricting legislation that was passed in 2003?

10 A Yes.

11 Q How do you think the scope of the law regarding
12 redistricting -- how redistricting is different than the types
13 of issues involved in House Bill 589?

14 A My organization is concerned about, as I mentioned
15 earlier, a variety of issues, and there is nothing about the
16 legislative process with redistricting that we like, regardless
17 of which party is doing it. Gerrymandering is a bad thing, but
18 I think disenfranchising voters or passing laws that
19 potentially disenfranchise voters is worse. That's, again, how
20 I would answer your question.

21 **MR. EPPSTEINER:** No further questions. Thank you,
22 Your Honor.

23 **THE COURT:** Anything further, Mr. Bowers?

24 **MR. BOWERS:** Yes, Your Honor, very briefly.

25 **RE-CROSS-EXAMINATION**

1 **BY MR. BOWERS**

2 Q Mr. Phillips, in your experience in and around the
3 legislature, are you aware that prior to 2013, bills had been
4 introduced to eliminate same-day registration?

5 A Probably I'm aware, yes.

6 Q 2013, that was the first time that that had arisen in the
7 General Assembly; correct?

8 A As I mentioned, it was a long process to get it passed,
9 and after it was passed, there were some proposals to eliminate
10 it, although I couldn't cite them, but I would say that that's
11 probably correct.

12 Q And, similarly, there had been, prior to 2013, bills
13 introduced to eliminate out-of-precinct voting as well;
14 correct?

15 A That's probably correct, yes, sir.

16 **MR. BOWERS:** Thank you, Your Honor. No further
17 questions.

18 **THE COURT:** Hold on just a minute. Can you explain
19 to me, when you said that the first weekend that was available
20 under the preHouse Bill 589 world was important to your efforts
21 with Common Cause, how does that differ from the ten-day period
22 that's now available?

23 **THE WITNESS:** Just not having those two extra days,
24 because those weekend days when we are doing our canvassing
25 work in the neighborhoods is just more opportunities to -- we

1 physically knock on doors, and we are talking to people.
2 Face-to-face contact is what we consider to be very important.
3 Granted, we do that during that Saturday and Sunday;
4 but when we have that extra Saturday and Sunday that's during
5 the early voting period, it makes our contact in that
6 neighborhood that much more meaningful because we are able to
7 tell folks the election is going on. You can vote today, that
8 type of communication.

9 On college campuses, it's a similar kind of, I guess,
10 answer, in that another weekend when you can get students
11 focused and encourage them to vote.

12 **THE COURT:** And then I thought I heard you say that
13 at one of the precincts, you observed people who arrived late
14 and were at the incorrect precinct and then were turned away.

15 My question is not really -- my question is -- you
16 said something about people being turned away when the precinct
17 was closing. Were there people who were not allowed to vote
18 who were in line?

19 **THE WITNESS:** No, sir. I guess -- I apologize. It
20 might have been confusing. What I personally witnessed here in
21 Forsyth County were the long lines where people were leaving.
22 They were obviously tired and frustrated, and they did not stay
23 until the end. Again, the last voter was processed well after
24 9:00. What the reports that I --

25 **THE COURT:** That was on Election Day?

1 **BY MS. RYAN**

2 Q Good morning, Dr. Stewart.

3 A Good morning.

4 Q Would you please state your name for the record.

5 A Charles Hains Stewart, III.

6 Q You testified at the preliminary injunction hearing in
7 this case; is that right?

8 A That's correct.

9 Q The parties have stipulated that the testimony given
10 during the PI hearing will be part of the trial record, so I
11 won't ask you to restate your qualifications and experience at
12 length.

13 I will note for the record that the portion of that
14 portion of Dr. Stewart's testimony is in ECF Number 165 in the
15 861 case at pages 184 to 186.

16 Dr. Stewart, could you just briefly remind the Court of
17 your professional background?

18 A Yes. I'm the Kenan Sahin and distinguished professor of
19 political science at MIT, where I've taught political science
20 since 1985, American politics generally, concentrations in
21 legislative politics, election administration and reform.

22 I have taught -- done teaching research in those areas.
23 I've taught at the graduate and undergraduate levels. I've
24 also been the codirector of the Caltech-MIT Voting Technology
25 Project, and I am a fellow in the American Academy of Arts and

1 Sciences.

2 Q Dr. Stewart, did you submit a CV in this case?

3 A Yes, I did. It was the first exhibit in my initial report
4 for the PI proceedings.

5 Q You've been accepted as an expert witness in other voting
6 rights cases; is that right?

7 A Yes, I have, a South Carolina case and a Florida case.

8 Q And you were allowed to offer your expert opinions during
9 the PI proceeding in this case; correct?

10 A Yes, I was.

11 **MS. RYAN:** Your Honor, the United States offers
12 Dr. Stewart as an expert in American politics, election
13 administration, and research methods in political science, and
14 as an expert in the effect of election reforms in the American
15 electorate.

16 **MR. FARR:** No objections, Your Honor.

17 **THE COURT:** He may give his opinions.

18 **BY MS. RYAN**

19 Q Dr. Stewart, what were you asked to look at in this case?

20 A I was asked to look at the effects that H.B. 589 would
21 have on the voters in North Carolina, particularly
22 African-American voters compared to whites. The four
23 provisions of the case I was asked to look at were same-day
24 registration, early voting, out-of-precinct voting, and
25 voting -- voter identification.

1 Q I am not going to ask you to repeat everything that you
2 covered during the preliminary injunction hearing, but you have
3 done some additional work since then; is that right?

4 A That's correct. I've -- my new report had a significant
5 amount of material about voter identification, and then for the
6 matters I covered last year, which were the first three, I
7 updated the data -- much of the data on -- to reflect the 2014
8 election.

9 Q Dr. Stewart, did you prepare any reports in this case?

10 A Yes, I did.

11 **MS. RYAN:** Your Honor, may I approach?

12 **THE COURT:** Yes.

13 **BY MS. RYAN**

14 Q Dr. Stewart, I've handed you a binder. If you could
15 please turn to the first tab, which is marked Plaintiffs'
16 Exhibit 42. Does Plaintiffs' Exhibit 42 contain the expert
17 report and surrebuttal reports that you prepared in 2014 for
18 the preliminary injunction proceedings in this case?

19 A Yes, they do.

20 Q And please turn to the document marked Plaintiffs'
21 Exhibit 168. Is this the supplemental declaration you prepared
22 for the preliminary injunction proceedings?

23 A Yes, it is.

24 Q Please now turn to Plaintiffs' Exhibit 242. Is
25 Exhibit 242 the expert report you prepared in 2015 for the

1 trial proceedings in this case?

2 A Yes, it is.

3 Q And, finally, if you would turn to the document marked
4 Plaintiffs' Exhibit 254. Is this the surrebuttal report that
5 you prepared in 2015 for the trial proceedings?

6 A Yes.

7 Q Dr. Stewart, do these reports set forth the analysis that
8 you undertook in reaching your conclusions in this case?

9 A Yes, they do.

10 **MS. RYAN:** Your Honor, the United States moves to
11 admit Dr. Stewart's reports into evidence.

12 **THE COURT:** Any objection?

13 **MR. BOWERS:** No objection.

14 **THE COURT:** All right. They are admitted.

15 **BY MS. RYAN**

16 Q So, Dr. Stewart, I would like you to set aside the work
17 you did on the voter ID provisions, since we are not talking
18 about that today.

19 I would like to talk about your findings with respect to
20 same-day registration, early voting, and out-of-precinct
21 provisional balloting. Before we dive into that, could you
22 briefly explain what sources of information you relied on in
23 reaching your conclusions.

24 A Yes. Two general type of resources. First of all, a set
25 of files received by the State Board of Elections concerning

1 the administration of elections, things like voter
2 registration, voter history, et cetera. I also relied on a
3 couple of public opinion surveys: The CPS, which has been
4 discussed in the courtroom already, and the Survey of the
5 Performance of American Elections, which I oversee as a
6 principal investigator.

7 Q Is this the type of information you would typically rely
8 on for the kind of analysis you did here?

9 A Yes, it is.

10 Q Was the data adequate for you to conduct your analysis?

11 A Yes, it was.

12 Q Is the methodology you used to conduct your analysis laid
13 out in your expert reports?

14 A Yes. It was laid out in the body of my expert report for
15 the PI report and then extensive details in Exhibit 2 following
16 in that report. For this report, what I have done is I have
17 summarized what I did, and then I've just basically written
18 about how that applies to the 2014 data.

19 Q And when you just mentioned "for this report," are you
20 referring to the 2015 report?

21 A I am sorry. Yes, for the 2015 -- particularly the 2015
22 original expert report, yes.

23 Q Okay. And then the methodology that you described in your
24 reports, is it commonly used in your field to conduct the type
25 of analysis you did here?

1 A Yes, it is.

2 **MS. RYAN:** Your Honor, I am happy to ask Dr. Stewart
3 to explain in more detail his methodology; but if the written
4 descriptions are sufficient, we could dive right into the
5 substance.

6 **THE COURT:** Well, I will leave it to you as to how
7 you want to proceed. I am going to be reading everything.

8 **BY MS. RYAN**

9 Q I think I will dive right into the substance then.

10 Dr. Stewart, incorporating the new data that you looked at
11 from 2014, what conclusions did you reach about the impact that
12 H.B. 589 would have on African-Americans in North Carolina?

13 A I would say two things. First of all, the addition of the
14 2014 data fits into the broad patterns that we saw before we
15 added the 2014 data, and those patterns were these: That
16 African-Americans availed themselves of the three tools that we
17 were talking about, same-day registration, early voting, and
18 out-of-precinct voting.

19 They availed themselves of these laws, features, at
20 greater rates than whites did, and, therefore, the passage of
21 H.B. 589 burdens African-Americans to a greater degree than
22 whites.

23 Q I would like to discuss the data you analyzed relating to
24 each of those provisions. Why don't we start with voter
25 registration and same-day registration.

1 With the 2014 data included, what does the data you
2 analyzed tell you about voter registration patterns among
3 African-Americans in North Carolina?

4 A A couple of patterns. The first one is that
5 African-Americans have been registering at greater rates than
6 whites have for about the past decade or so to the point that
7 registration rates for blacks have reached parity with that of
8 whites.

9 The second thing is that African-Americans are more likely
10 to register in the period preceding the Presidential election
11 than the period preceding the midterm election. And then,
12 finally, both during the period of same-day registration and
13 afterwards, African-Americans have also registered at greater
14 rates after the traditional book closing period than whites.

15 Q I would like to talk about each of those trends in more
16 detail. One quick question. You referenced the book closing
17 period.

18 A Yes.

19 Q What does that refer to?

20 A Traditionally, voter registration rolls close between 25,
21 30 days before a general election. In North Carolina, that's
22 25 days; and, traditionally, people who register after that
23 time are unable to vote in the upcoming election.

24 Q So when you refer to book closing, you mean the 25-day
25 deadline for registration in North Carolina?

1 A That's correct.

2 **MS. RYAN:** Your Honor, may I approach?

3 **THE COURT:** Yes.

4 **BY MS. RYAN**

5 Q Dr. Stewart, I've handed you what's been marked as
6 Plaintiffs' Exhibit 684 for identification. What is it?

7 A It is Table 15 updated from my report, which summarizes
8 the registration rates of black and white voters in North
9 Carolina for the years indicated and -- for the years
10 indicated.

11 **MR. FARR:** Excuse me, Counsel, what was the number on
12 that?

13 **MS. RYAN:** 684.

14 **MR. FARR:** Thank you.

15 **BY MS. RYAN**

16 Q And does that table illustrate the trend that you just
17 mentioned about African-Americans' recent increase in
18 registration rates?

19 A Yes, it does. The simplest way of seeing that is in 2000,
20 81 percent of African-Americans were registered to vote, and in
21 2014, 91 percent, which is 7.8 percentage points greater than
22 whites now.

23 Q And what is the significance of this trend?

24 A There is a political significance of this. It suggests
25 that the political voice of African-Americans through the

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1 electoral process has increased to the point that it's at
2 parity with whites in the state.

3 Q I would like to point out one thing for the record. This
4 table is slightly different from the version that appears as
5 Table 15 in your report; is that right?

6 A That's correct.

7 Q How is it different?

8 A A couple of -- well, in the original table of my report, I
9 had to rely on the population estimates from last year for 2013
10 for the voting-age population estimate. The 2014 estimates
11 from the Census Bureau were actually released a couple of weeks
12 ago, and I have inserted those VAP numbers in this table to
13 provide for the most accurate information that we currently
14 have about VAP in 2014.

15 **THE COURT:** Let me ask you a question real quick.
16 Which page of this notebook does Table 15 now update?

17 **MR. FARR:** It's page 70, Your Honor. I'm sorry, Your
18 Honor. I believe it's page 70.

19 **THE COURT:** Hold on just a minute. Is that of the
20 first report?

21 **MR. FARR:** No, Your Honor. It is the report that
22 he -- it looks like it is Exhibit 242, which would be his first
23 report he filed in 2015.

24 **MS. RYAN:** That's right. Thank you.

25 **MR. FARR:** My pleasure.

1 **THE COURT:** Thank you. Sorry to interrupt you.

2 **MS. RYAN:** Your Honor, the United States would move
3 to admit Plaintiffs' Exhibit 684 into evidence.

4 **MR. FARR:** I have no objection, Your Honor.

5 **THE COURT:** Admitted.

6 **BY MS. RYAN**

7 Q Dr. Stewart, you also mentioned that the data you reviewed
8 showed that African-Americans were more likely to register
9 during the same-day registration period when it was available.
10 I would like to direct your attention to a figure from your
11 report --

12 A Yes.

13 Q -- which is at Appendix Y in your 2015 declaration.

14 **MS. RYAN:** Your Honor, Appendix Y is at page 165 of
15 Exhibit 242.

16 **BY MS. RYAN**

17 Q It should also be on your screen now.

18 A Yes.

19 Q Dr. Stewart, could you please explain what the figures in
20 Appendix Y show.

21 A The figures in Appendix Y illustrate graphically numbers
22 that I also report in the declaration. I am summarizing the
23 number of whites and blacks who registered on every day during
24 the period of post-book closing. I am starting the 2002
25 election and coming up to 2014.

1 And there are vertical lines on all of the graphs
2 indicating the beginning and the ending of the seven-day period
3 that used to be available for same-day registration before
4 H.B. 589.

5 So if we look, for instance, at the 2008 figure, just to
6 see how this works, there are two lines. The blue line
7 reflects the number of blacks who registered during each of
8 these days. The red-dashed line indicates the number of whites
9 who registered during these days.

10 The figures have been transformed into percentages, and so
11 this is the percentage of blacks and whites respectively who
12 registered on each day during this period.

13 So, for instance, we see there is a big spike in this
14 graph at the very end on the blue line. So that's for black
15 registrants, and that indicates that on that day in 2008, which
16 was the last day of same-day registration, more than one and a
17 half percent of all blacks to register in that two-year period
18 registered on that day.

19 Q Thank you, Dr. Stewart. Just to be clear, I think a
20 minute ago you referred to the -- what had been the seven-day
21 period for same-day registration. Did you mean the 17-day
22 period?

23 A Yes, I meant 17 days. I'm sorry.

24 Q Turning to 2014, when same-day registration was not
25 available, were African-Americans still more likely than whites

1 to register during the early voting period?

2 A Yeah. So, I mean, this is one of the cases where the
3 figure is not necessarily as helpful as actually looking at the
4 table, but it is the case that if you looked across the entire
5 period, African-Americans still were registering during this
6 period to a greater degree than whites, although they could not
7 subsequently vote in the 2014 election.

8 Q Were the differences between the rates at which black and
9 whites citizens were registering during the same-day
10 registration period statistically significant?

11 A Yes.

12 Q And is that true in 2014 as well, although same-day
13 registration was not available?

14 A Yes.

15 Q What does this pattern of later registration among
16 African-Americans tell you about African-Americans' ability to
17 participate in the political process?

18 A Well, it's one way that suggests to me that
19 African-Americans, at least some fraction of African-Americans,
20 fall into the category of voters who become sufficiently aware
21 of the election process late in the process to come and be
22 registered.

23 We heard testimony about this already, about how many
24 voters become -- or many unregistered people become
25 sufficiently interested in politics and the election to

1 register. They only become interested toward the end of the
2 process. This tells me that that class of voters tends to
3 be -- more likely to be African-American than white in the
4 state of North Carolina.

5 Q People might look at Table 15, which we were looking at
6 just a minute ago, which was Plaintiffs' Exhibit 684, and see
7 that most African-Americans in North Carolina are already
8 registered to vote and think we don't need really to worry that
9 much about whether same-day registration exists in the future.
10 Do you agree with that?

11 A No, I don't.

12 Q Why not?

13 A The main reason is that voter registration rolls are fluid
14 and the effect really is to be had on the flow of new voters,
15 rather than the stock of existing voters.

16 **MR. FARR:** Your Honor, I want to state an objection
17 to this testimony, if I may.

18 Your Honor, I really truthfully don't object to this
19 testimony except for one reason. Dr. Stewart did not testify
20 about what he's going to describe as voter roll churn in either
21 one of his reports. At least I have an exhibit here that's
22 been given to me that's going to be used for demonstrative
23 purposes to explain this. This exhibit does not footnote any
24 prior report in this case.

25 Truthfully, I don't mind if Dr. Stewart testifies to

1 this, but this is the goose and the gander issue, because this
2 testimony did not come out before we got this exhibit today,
3 and, yet, the Plaintiffs have objected to exhibits and reports
4 that the State has produced in this case, all of which are
5 based upon data that was available to the Defendants during the
6 discovery period, and they have objected on grounds of
7 lateness.

8 So if our exhibits are going to be excluded on
9 grounds of lateness, then I believe Dr. Stewart's testimony on
10 this issue should be excluded on grounds of lateness, and
11 Mr. Peters prepared our motion -- our response to the motions
12 in limine on these issues. If we are going to have a more
13 extensive argument on this right now, then I am going to call
14 upon Mr. Peters to assist me, but I do want to state that
15 objection.

16 I really don't object to Dr. Stewart testifying on
17 this; but if he is going to be allowed to testify on this
18 information, which was produced to us very late in the game,
19 then the same rule should apply to allow the similar type
20 reports that the Defendants have produced come into evidence.

21 **MS. RYAN:** Your Honor, if I may respond?

22 **THE COURT:** I take it that's one way of saying you
23 all didn't work this part of it out?

24 **MR. DONOVAN:** Well, if I may, I think this is maybe
25 opportunistic, but I think we did since they offered

1 Ms. Strach, and so we haven't assigned it, but I think we have
2 worked that out, Your Honor.

3 **THE COURT:** Would a 20-minute break let you work this
4 all out?

5 **MR. DONOVAN:** I think it would.

6 **THE COURT:** All right. Why don't we take our morning
7 break. Maybe you can have a discussion. I am going to apply
8 the rule equally to everybody, but it will depend on the facts,
9 of course, and I don't know the facts of each individual
10 situation and whether they might distinguish each other. You
11 all know better than I.

12 **MR. DONOVAN:** This is different. It is in his
13 report, and I'm not going to -- but I think he is trying to mix
14 things together.

15 **MS. RYAN:** This is very different.

16 **THE COURT:** Why don't we take a break. Then you all
17 have your discussion, and then I'll come back; and if it's
18 still on the table, I will be glad to hear from you and then I
19 will make a ruling from that. All right. We'll take a break
20 for 20 minutes.

21 (The Court recessed at 10:30 a.m.)

22 (The Court was called back to order at 10:52 a.m.)

23 **MR. FARR:** Your Honor, after discussion with the
24 United States during the break, it seems as though my memory
25 was failing me and there was some discussion by Dr. Stewart on

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1 this issue about the churning of the voters back in his first
2 report that he filed. So while I think the goose/gander issue
3 remains alive, it is not ripe to be ruled upon at this point in
4 time, and we will not object to Dr. Stewart's testimony on this
5 point.

6 **THE COURT:** All right. Please proceed.

7 **BY MS. RYAN**

8 Q Dr. Stewart, before we took a break, you had mentioned
9 fluidity in the voter rolls. Did you prepare a diagram
10 relating to this concept?

11 A Yes, I did.

12 Q Would it be helpful if you had that diagram in front of
13 you?

14 A Yes, it would.

15 Q Dr. Stewart, directing your attention to the diagram
16 that's now on your slide, which has been marked as Plaintiffs'
17 Exhibit 686, could you please describe what this exhibit shows?

18 A Yes. This exhibit shows fluidity, or actually churn,
19 which is a term I use in my PI report, in the voter
20 registration rolls just to illustrate the churning in the rolls
21 below the aggregate numbers.

22 And just to show how the figure is constructed, the top
23 figure shows registration -- the size of the registration lists
24 in November 2010 and then November 2012 and then graphically
25 shows then how numbers move from one time to the other. So in

1 the intervening two years, we have over 660,000 voters who were
2 removed from the rolls for a variety of reasons, had over a
3 million, a million and one voters added to the rolls in the
4 intervening time, and there were about five-and-a-half million
5 voters who stayed on the rolls between the two times. So
6 here's the crosswalk between the two lists.

7 Similar logic to the second figure in this case as
8 between -- from 2012 into 2014.

9 A couple of things, I think, come from this figure, this
10 illustrates. One is just that there is kind of a constant
11 removal rate from -- within two-year periods, as people die and
12 move at roughly the same rates, regardless of whether there's
13 an election, let's hope.

14 And then on new registrations, they would come in at
15 greater rates during the time preceding the Presidential years
16 compared to the midterm year, and, in fact, the new
17 registration's at roughly twice the rate preceding Presidential
18 rate -- years compared to midterm years.

19 So, you know, when you look at aggregate numbers of
20 registrants, those numbers appear to move glacially. This
21 figure helps us to understand that there is actually a fair
22 amount of churning, to use the mutually fun term, underneath
23 those glacial changes in the registration rolls.

24 **MR. FARR:** Excuse me. Counsel, is that marked as an
25 exhibit?

1 **MS. RYAN:** Plaintiffs' Exhibit 686.

2 **BY MS. RYAN**

3 Q Dr. Stewart, we were talking about the concept of churn in
4 relation to same-day registration. How do you know that people
5 won't just transition to using a different mode of registering
6 once same-day registration is unavailable?

7 A Well, it certainly is the case that we can expect some
8 people who would have used same-day registration would not --
9 would be able to register in the time preceding the book
10 closing, but the thing to remember is that the logic of
11 same-day registration is that it is designed for people who
12 become sufficiently motivated to register in the post-closing
13 period.

14 And so while some folks will recognize the proposed
15 closing period and register before, by and large, there is a
16 large fraction of people who end up registering post-closing
17 who didn't even think about registering preclosing, and these
18 people will be precluded from registering and voting without
19 same-day registration.

20 I will also add their motivation is the impending
21 election. So while it's the case that they can register after
22 the book closing, they can't vote in the upcoming election and,
23 therefore, the motivation to register is not what it would have
24 been otherwise.

25 Q I would like to transition to talking about early voting.

1 A Yes.

2 Q Dr. Burden talked about this some yesterday, and I don't
3 want to repeat his testimony, but I will ask you a few
4 questions about the data.

5 Dr. Burden described what he called a seesaw pattern in
6 early voting usage in North Carolina. Is that consistent with
7 your findings?

8 A Yes, it is. Although I prefer sawtooth myself as the
9 term.

10 Q Let me direct your attention to Figure 9 from your 2015
11 expert report. Figure 9 is at page 72 of Plaintiffs'
12 Exhibit 242.

13 Dr. Stewart, what does this figure show?

14 A Well, this figure just aggregates that sawtooth or
15 teeter-totter pattern. It looks more like a sawtooth to me.
16 It just aggregates that pattern by blacks and whites from 2006
17 updated to 2014.

18 So we see the overall sawtooth pattern. Again, the blue
19 solid line is for African-Americans, and the red-dashed line is
20 for whites, and so we see several patterns. In addition to the
21 sawtooth, we see a general, what's called a secular, increase
22 across time in the use of early voting by both races.

23 We see a gap throughout, except for 2006, between whites
24 and blacks, and we see a gap that is larger in the Presidential
25 years than in the midterm years, although the gap in 2014 is

1 greater than the gap in 2010.

2 Q And just briefly, what does Figure 9 tell you about
3 African-American voters' use of early voting relative to
4 whites?

5 A It is higher than whites.

6 Q Let's talk about the 2014 data specifically for a minute.
7 How did the number of early voters in 2014 compare to the
8 number of early voters in 2010?

9 A There's 190,000 more early voters in 2013 than in 2010.
10 That's about a 20 percent increase.

11 Q How did the overall number of hours available for early
12 voting in 2014 compare to the number of hours available for
13 early voting in 2010?

14 A The number fell by roughly 3 percent.

15 Q Dr. Stewart, I would like to direct your attention to
16 another slide, which should come up on your screen. This slide
17 shows two figures from your 2015 report, Figure 12A, which is
18 at page 80 of Plaintiffs' Exhibit 242, and Figure 13A, which is
19 at page 83.

20 Dr. Stewart, can you please explain what this slide shows?

21 A Yes. This slide helps to summarize some of the numbers
22 that are also in the report, both the raw numbers and
23 differences. I illustrate here the change in -- the change in
24 the number of hours and the change -- I'm sorry, the change in
25 the number of hours available for early voting across the

1 state, comparing 2010 and 2014. That's the first graph.

2 And I used the state records to record the hours of the
3 day when early voting centers were open in 2010, 2014. I have
4 the raw numbers in the report. This reflects the difference
5 between 2014 and 2010.

6 So when a bar is to the right of the zero line, it
7 indicates that there is more early voting available by hours in
8 2014 than in 2010. So, for instance, there was on aggregate
9 more than 500 more hours during the 5:00 hour in 2014 during
10 weekdays.

11 When the bar is to the left of zero, that means there were
12 fewer hours available during these times of day. So, for
13 instance, there were more than 500 fewer hours on aggregate
14 during the 4:00 p.m. hour during the weekdays. So that's on
15 the side of what's available to voters, to early voters during
16 weekdays.

17 We can talk about then the other figure to the right.

18 **THE COURT:** Before you move on, can I get some
19 clarification?

20 **THE WITNESS:** Yes.

21 **THE COURT:** So if there was an additional site
22 offered during the morning, for example, how would that show up
23 in your numbers here?

24 **THE WITNESS:** Right. So if that site is open at,
25 say, between 7:00 a.m. and 8:00 a.m., that would be one more

1 hour for that site on every day that it was opened during the
2 time. So we can think about the raw number, before I do the
3 differences, as being a facility hour. So if that -- so then
4 if the facility, let's say, was open between 7:00 and 8:00,
5 contrary to fact for the entire -- for an entire ten-day
6 period, that would be ten additional hours for that new site.

7 So this reflects both existing sites that might have
8 had expanded hours and then the new sites that came online in
9 2014.

10 **THE COURT:** Is every hour an hour at a single
11 facility?

12 **THE WITNESS:** Yes, sir.

13 **THE COURT:** All right. Thank you.

14 **BY MS. RYAN**

15 Q And so, just to be clear, the hours you recorded in
16 Figure 12A, they reflect all the hours available at all of the
17 sites in North Carolina?

18 A That's correct.

19 Q And I think you were going to talk about figure 13A.

20 A Yes. So Figure 13A then does a similar exercise with the
21 early voters. The early voting or the one-stop voting file
22 records the time at which the early voter checked in, and so
23 I've done a similar exercise in which I've categorized the time
24 of day when early voters arrive to vote early.

25 So the table that underlies this figure reports for 2010

1 and 2014 the number of voters who arrived during each of those
2 hours. This figure illustrates the difference between 2014 and
3 2010.

4 So, for instance, if we look at the largest, most
5 conspicuous bar for 5:00 p.m., we see that a bit more than
6 30,000 more people voted during that hour in 2014 across the
7 state than they did in 2010.

8 In general, we see that all of the bars are to the right
9 of the zero line, which indicates that for every hour of a
10 weekday, there were more voters in 2014 than there were in
11 2010.

12 Q You did a similar analysis of early voting on weekends;
13 right?

14 A Yes, I did. I have the numbers in my report and the
15 sub-figures are also on those same pages. What I can report is
16 that there is an increase in hours available and an increase in
17 voters voting during all of the hours for the weekend. There
18 are many fewer weekend-available hours, so all those bars are
19 much, much shorter.

20 Q Dr. Stewart, when you consider these two graphs together,
21 Figure 12A and 13A, what do they tell you?

22 A Well, they very simply help to illustrate the fact that
23 there was -- how there was an increase in demand for voting
24 across all hours of the day, and for a small snippet of the
25 day, there was an increase in hours but -- available to fulfill

1 that demand. But, by and large, during most hours of the day
2 during the weekdays, there was not a concomitant increase in
3 hours available to voters to vote earlier.

4 Q I want to come back to that topic in a minute. But,
5 first, let's just finish walking through the 2014 data, and I
6 would like to transition to talking about out-of-precinct
7 provisional ballots.

8 A Yes.

9 Q You included some tables on provisional ballots in your
10 reports; is that right?

11 A Yes.

12 Q Okay. If I could direct your attention to the next slide,
13 which contains data in two -- two tables of data from your
14 reports. Let's look at the table on the top of the slide
15 first, which is Table 17 from your 2015 report. Could you
16 please explain what does the data tell you about North Carolina
17 voters' usage of provisional ballots?

18 A So, very simply, this table provides -- shows us how many
19 provisional ballots were distributed in each of the indicated
20 election years; and in order to give some sense of relative
21 scale, I've included the total number of voters in the Election
22 Day voters so we can express those numbers in percentages as
23 well.

24 The main takeaway is pretty obvious, that is, the number
25 of provisional ballots is greater in Presidential years than in

1 midterm years. That's true not only in terms of aggregate
2 numbers -- that's not surprising because, after all, there are
3 more voters in Presidential years -- but it's also true in
4 percentage terms in Presidential years as well.

5 Q Why would more provisional ballots be cast in a
6 Presidential election year?

7 A Well, as a general matter, the provisional ballot
8 mechanism was designed as a fail-safe against problems with
9 registration and related to getting people to the right to
10 place to vote. And in Presidential years, as we've talked
11 about, there are more new voters, there are more people who
12 have low experience voting previously, and so it's likely that
13 more voters will be making mistakes about what the rules and
14 expectations are about voting in Presidential years than in
15 midterm years.

16 Midterm voters are almost entirely voters who have voted
17 before, and almost half of Presidential voters have not voted
18 before.

19 Q Now, turning your attention to the second table on the
20 slide, Table 14B, what does the data that you analyzed tell you
21 about North Carolina voters' usage of out-of-precinct
22 provisional ballots?

23 A So this table shows the number of out-of-precinct
24 provisional ballots given out in the indicated years. I have
25 shown the numbers for blacks and for whites.

1 **THE COURT:** If you could pause for just a minute.
2 Let me catch up with you. What page are we on?

3 **MS. RYAN:** Your Honor, Table 14B appears in
4 Dr. Stewart's -- in Exhibit 42, the preliminary injunction
5 report, and he has just added the row of 2014 data, which he
6 reported in his 2015 report. So it is actually a compilation
7 of two sources.

8 **THE COURT:** So do I have a copy of this yet that's on
9 the screen?

10 **MS. RYAN:** No, but I can hand one up to you, if you
11 would like.

12 **THE COURT:** If you would, please.

13 **MS. RYAN:** Certainly.

14 **MR. FARR:** Can we have one, too, please?

15 **MS. RYAN:** Sure.

16 **MR. FARR:** Can we have it marked as an exhibit?

17 **MS. RYAN:** Sure.

18 **BY MS. RYAN**

19 Q So, Dr. Stewart, you were starting to talk about table --
20 the second table on the slide, which the slide is now marked
21 Plaintiffs' Exhibit 687.

22 A Yes. And as indicated, this is a version of Table 14B
23 from my PI report supplemented with numbers taken from a
24 footnote from my trial report, and it simply shows the number
25 of provisional ballots distributed to black and white voters

1 for the indicated years and then percentages as well.

2 Q And what does this table tell you about African-American
3 voters' usage of out-of-precinct provisional ballots
4 specifically?

5 A African-Americans have received proportionately more
6 out-of-precinct provisional ballots both in the period when the
7 ballots would have been counted and in the 2014 election when
8 the ballots were not counted.

9 Q In 2014, the number of out-of-precinct provisional ballots
10 was down significantly compared to the prior elections. What
11 do you make of this change?

12 A Well, it's clearly a consequence of H.B. 589, and so it
13 going down is certainly a consequence of that; but it also
14 tells me that, nonetheless, some voters continued to go to
15 their nonresidential precinct, and those voters
16 disproportionately are African-American.

17 Q From your experience working in election administration,
18 what are some of the reasons that a voter might show up at the
19 wrong precinct?

20 A There are many reasons that arise in the field of election
21 administration, and they range from inertia -- people have
22 always -- as we've heard in this courtroom, I believe, and as
23 we know, that sometimes you will be voting at the elementary
24 school down the street. Precinct boundaries are changed.
25 You're used to going to the elementary school down the street,

1 although it is no longer the place that's been assigned to you.

2 So there is that.

3 There are people who don't know that they are required to
4 go or expected to go to an assigned precinct, more often young
5 people than not, but still older people labor under that
6 belief.

7 And then, finally, there are people who show up at the
8 incorrect precinct and because of the lack of time or
9 resources, once informed that they are at the wrong precinct,
10 are unable to get to the wrong precinct -- I'm sorry, I mean to
11 the correct precinct.

12 Q What data did you use to produce this section of your
13 report?

14 A I relied on the file that records provisional ballots
15 provided by the State.

16 Q Is there any data in that file that records the number of
17 people who showed up at the wrong polling place on Election
18 Day?

19 A It only records those people if they were handed a
20 provisional ballot for that reason.

21 Q So is there any way to know from the data you received
22 from the State how many people showed up at the wrong precinct
23 in November 2014 and did not cast a ballot in that election?

24 A Correct, because we do not have an official record of
25 people who showed up at the wrong precinct if they were not

1 handed a provisional ballot.

2 Q Just so the record is clear, so are you saying that there
3 is no way to know that from the data available?

4 A That's correct, yes.

5 Q Dr. Stewart, we've walked through the highlights of your
6 analysis of the North Carolina voter data. You obviously cover
7 all of this and much more in your written reports. I would
8 like to talk a little more about the conclusions you reached
9 based on this data.

10 Can you please explain how the data informed your
11 conclusion that African-Americans will be disproportionately
12 burdened by the electoral structure in place in North Carolina
13 post-H.B. 589?

14 A Yes. Well, the most striking finding or the place to
15 start is just simply the fact that African-Americans avail
16 themselves of same-day registration, early voting, and
17 out-of-precinct voting at much greater rates than whites did
18 when these provisions were either available or more expansive.

19 There are many reasons for availing oneself of these
20 methods or tools. To some degree, to a large degree, these
21 reflect the choices made by voters such that voting fits in
22 best with the various busy circumstances of their lives. So
23 any voter who can no longer avail themselves of these
24 techniques is burdened by the changes, and the data clearly
25 show that those voters are disproportionately black.

1 Q How do socioeconomic conditions influence how individuals
2 experience these burdens?

3 A Well, you know, the three techniques that we are talking
4 about, as I've mentioned, were really -- have really been
5 thought about as fail-safes for recovering against errors made
6 during the election process, filling out a registration form
7 and casting a ballot and getting to the right precinct,
8 et cetera. And we know that people with low socioeconomic
9 status, SES, are more likely to make the sorts of mistakes that
10 can be recovered from by these provisions.

11 And so we also know, in general, that African-Americans in
12 North Carolina possess on average lower SES than whites do. So
13 to the degree that the path runs through SES, then we can see
14 that one of the reasons why African-Americans are
15 disproportionately burdened has to do with average levels of
16 SES in North Carolina.

17 Q And what are some of the SES factors that would be
18 relevant here?

19 A Well, education, literacy, transportation, health,
20 particularly income to some degree. And on all those measures,
21 African-Americans are disadvantaged in North Carolina compared
22 to whites.

23 Q Have political scientists studied the relationship between
24 racial disparities in socioeconomic status and political
25 participation?

1 A This question, the relationship between one's resources
2 and political participation, is -- has to be one of the oldest
3 subjects in the quantitative history of voting and
4 participation. It goes back to the 1950s. It continues today.
5 It's recorded both the robust relationship between things like
6 income and education and participation and also the systematic
7 disadvantages that minorities, particularly African-Americans,
8 possess in those resources.

9 Q Dr. Stewart, did you hear Dr. Summers' testimony in the
10 courtroom yesterday?

11 A Yes, I did.

12 Q Does the research she described have any relationship to
13 the work you have done in election administration?

14 A Well, yes, in the following sense. You know, I am a
15 number cruncher. I pursue my research through one method. She
16 has a very different method than I do, but what she describes
17 in a bit more of a systematic way than the anecdotes that I
18 have been experienced to by election administrators, by my own
19 observation -- she has shown many of the mechanisms through
20 which disadvantaged voters can make the sorts of mistakes that
21 are commonly talked about in election administration and what's
22 the mechanism.

23 And she confirms that at one end of the socioeconomic
24 status spectrum, when people are trying to do the right thing
25 and trying really hard and probably even trying even harder to

1 please an experimenter, they can't always follow through.

2 And so it provides, I think, compelling illustrations of
3 the sorts of correlations that we talk about when we do the
4 more general quantitative analysis, and it confirms that some
5 of the problems that these techniques are fail-safe against are
6 not due to voters being inattentive or being just kind of lazy
7 and sloppy with the electoral process. There are voters who
8 are really trying to do the right thing, and because of low
9 levels of various types of illiteracy, try as they might, they
10 are unable to fulfill the expectations to vote in the more
11 traditional ways that most of us have had to comply with,
12 especially for those of us who are older.

13 Q Dr. Stewart, are you familiar with academic literature on
14 people's tendencies to overreport their voting activities?

15 A Yes, I am.

16 Q What does that literature tell us?

17 A Again, this is an old and robust literature in political
18 science. There is a couple of general findings throughout the
19 literature. The first is that there is a tendency to
20 overreport whether or not one voted so that whenever one looks
21 at a public opinion survey about voting, regardless of the
22 source, we have to -- we inevitably find, if we can do
23 independent verification, that voters overreport. That's the
24 first thing.

25 The second thing is that the type of voter who overreports

1 or the type of respondent to a survey who overreports in
2 general -- first of all, African-Americans are more likely to
3 overreport. Secondly, people who report high levels of civic
4 engagement or belief in kind of civic duty also overreport.

5 So the standard narrative that's associated with this
6 literature is that if you are the type of person who really
7 believes they should have voted, when a stranger asks you did
8 you vote and you didn't, then you are more likely to say, yes,
9 I did vote.

10 Q Is there any reason to think that Dr. Summers'
11 participants may have been particularly likely to overreport
12 their voting activities?

13 A Yes. From my understanding of the design of her method
14 and her description, she gave a questionnaire -- she gave a
15 questionnaire to her subjects after this -- her experimental
16 exercise, although it is not quite an experiment, but the
17 exercise she described.

18 That was an exercise, it seems to me, that's a perfect
19 example of priming people to the value of voting. And so it
20 wouldn't surprise me that after that experience that people who
21 were not registered, people who had not regularly voted, when
22 asked by the people that they had just worked with for an hour
23 and a half around the voting process, there would have been
24 overreporting and misreporting about whether one was registered
25 and/or had voted.

1 Q I want to come back to the issue of congestion that you
2 mentioned earlier -- or, excuse me, you mentioned earlier that
3 in 2014, when early voting was reduced to 10 days from 17,
4 there were fewer hours available for early voting overall
5 compared to 2010 and more voters using those hours. What is
6 the likely impact of that dynamic on election administration?

7 A I think it is almost guaranteed that there was greater
8 congestion and longer lines in 2014 than in 2010 simply because
9 there was an increase in utilization by roughly 20 percent, and
10 there was a drop in opportunities measured by the number of
11 hours of the day by 3 percent.

12 Q Dr. Stewart, what research have you done that relates to
13 congestion at polling places?

14 A Two things. First of all, the SPAE, Survey of the
15 Performance of American Elections, has a question about lines
16 at the polls and is regularly the only nationwide evidence
17 about -- that allows us to compare lines at the polls. I've
18 talked about that ever since I started conducting the survey.

19 I think more narrowly in the last year I have been engaged
20 in a project funded by the Democracy Fund, called the Polling
21 Place of the Future Project. That project is -- has several
22 features, one of which is developing tools for local election
23 administrators to use to try to allocate their resources so
24 that they can reduce lines.

25 It also funded my ability to put together research teams

1 in the 2014 election who were able to observe voters in five
2 communities around the country. We gave them clipboards and
3 stopwatches and sent them out to randomly chosen precincts, and
4 they counted lines and the line lengths, arrival rates, and how
5 long it took to do things like check in and vote.

6 Q Based on your research in this area, what have you found
7 contributes to congestion in polling places?

8 A Well, the literature on congestion in general, which
9 applies not only to polling places but to retail outlets and
10 call centers, identifies three basic factors. First of all,
11 arrival rates, how quickly do voters arrive at the polls to
12 apply the theory to voting, so how quickly do voters arrive.
13 How long does it take to serve voters at the bottlenecks, like
14 a check-in or at a scanner. And then, third, how many service
15 stations -- that's kind of a generic term -- are available for
16 voters, how many poll books, how many voting booths, et cetera.

17 Those three factors work together in very predictable ways
18 that are described in that literature. One of the things that
19 we have been able to do from the five communities that we
20 visited was to confirm that the standard models seem to fit
21 polling places.

22 Q Is there a linear relationship between the arrival rate
23 that you mentioned and congestion?

24 A No. Another one of the fundamental findings in general,
25 which certainly applies to voting, is that there is a highly

1 nonlinear relationship between arrival rates and lines. Let's
2 use that as the metric. So you can go along for quite a while
3 at even intermediate levels of turnout, and then there comes a
4 point where the line begins to grow and begins to grow
5 exponentially. So there is kind of a tipping point given
6 arrival rates and these other factors that I mentioned. So you
7 can just be fine, and then things just go really, really bad.

8 Q And what kind of impacts does polling place congestion
9 cause?

10 A Well, I have identified several. One is the economic cost
11 of waiting. The other is that there is a negative correlation
12 between voters encountering long lines and other problems that
13 they report having in polling places, which is an indication
14 that there is greater chaos and administrative burden in
15 precincts or voting locations that have long lines.

16 And, finally, there is evidence that voters who experience
17 long lines are less confident in the voting process, and voters
18 that hear about long lines in their neighborhoods are also less
19 likely to report confidence.

20 Q Is there any evidence that long lines themselves can
21 increase poll worker error?

22 A Well, there is evidence that long lines increase -- or,
23 rather, decrease reported poll worker performance, yes.

24 Q On this question of long lines, how long is too long for a
25 line at a polling place?

1 A Well, it is a great question. And it is a question that
2 came up after the 2012 election when President Obama appointed
3 the -- his bipartisan Presidential Commission on Election
4 Administration. The precipitating event of that commission
5 were the long lines from 2012, although the commission studied
6 a wide variety of administrative problems with voting.

7 And the commission talked about this issue. I was at all
8 their hearings, and they frequently asked questions of
9 witnesses about not only the lines they experienced, but
10 oftentimes of administrators, how long do you think is too long
11 of a line. That report has a clear statement about their
12 judgment.

13 Now, keep in mind, that the President -- that the
14 commission was composed of Democrats and Republicans. Half
15 were members of the general public, half were election
16 administrators, local and state; and their clear declaration is
17 that no voter should be required to wait more than 30 minutes
18 in order to cast a ballot.

19 Q Now, to the extent there may be long wait times at early
20 voting centers in North Carolina -- and the effects of the
21 longer wait times would be affected by all of the voters at
22 those early voting sites; isn't that right?

23 A That's correct.

24 Q How does this issue affect African-Americans
25 disproportionately?

1 A Well, the reason is that because African-Americans are
2 more likely to be using early voting than whites. The voter
3 waiting in the line is more likely to be a black voter
4 proportionately than a white voter.

5 **MS. RYAN:** Your Honor, may I approach?

6 **THE COURT:** Yes.

7 **BY MS. RYAN**

8 Q And this should come up on your screen as well. I did not
9 hand you a copy of it. Can you see it there?

10 A I can.

11 Q So this has been marked as Plaintiffs' Exhibit 685. Have
12 you seen this before?

13 A Yes, I have.

14 Q Could you please tell me what it is.

15 A It's a report of turnout in North Carolina for the
16 indicated years for blacks and whites and overall with not only
17 the turnout numbers, but also VAP figures for each of those
18 years.

19 Q Is this based on a table that appears in your 2015 report?

20 A Yes. It's from Appendix U. It's been updated, as we
21 mentioned before, with registration rates. The VAP figures for
22 2014 have been updated to reflect the data released by the
23 Census Bureau a couple of weeks ago.

24 **MS. RYAN:** Your Honor, the United States would move
25 to admit Plaintiffs' Exhibit 685.

1 **MR. FARR:** No objections.

2 **THE COURT:** It's admitted.

3 **BY MS. RYAN**

4 Q And we are done with that slide for now.

5 Dr. Stewart, were you in the courtroom for opening
6 statements on Monday?

7 A Yes, I was.

8 Q Did you hear Mr. Bowers say that the effect of a burden is
9 measured by turnout?

10 A Yes, I did.

11 Q Do you agree with that?

12 A No, and certainly not entirely. It is certainly the case
13 that there will be -- and to be very clear about what I mean,
14 as I understand the statement, a burden cannot be solely
15 measured by changes in turnout or aggregate turnout for the
16 following reasons.

17 First of all, we know that there are some voters -- you
18 know, let's take the specific case that we are discussing here.
19 Election laws are changed to make it more difficult for voters
20 to vote. Even if there are other factors in the electorate
21 that cause turnout to go up in the short term, if there are
22 voters who availed themselves of those procedures, then those
23 voters would be burdened even if other voters were able to get
24 to the polls, presumably other voters who did not need to avail
25 themselves of those tools.

1 So that's one general thought, but specific to -- getting
2 more specific to the case, I think we have to remember the
3 logic of how each of these mechanisms operate. So with, for
4 instance, same-day registration, the logic of same-day
5 registration is to serve voters who, to a large degree, have
6 become sufficiently attuned to the election as to desire to
7 vote in the impending election, and they have become interested
8 after the close of books.

9 So, again, even if there is an aggregate increase in
10 turnout, those are voters who cannot vote. And I have
11 identified through my general -- my general analysis an order
12 of thousands of people who, no doubt, would have registered and
13 voted in 2014. We've heard testimony from individual voters
14 who attempted to -- who would have registered, by their
15 testimony, during that period.

16 So that's an example. Early voting is kind of an
17 interesting case, because while we could talk about -- you
18 know, speculate about people being burdened by additional
19 congestion, talk about that, there is also this ironic --
20 there's been an irony here to an increase in the number of
21 people voting early.

22 So we have an increase in the number of people voting
23 early, but the operation of the law does not require a tracking
24 of demand for early voting and resources for early voting. So
25 the irony, it seems to me, given what I know about queueing

1 models, is that the increase in demand for early voting or even
2 people just taking advantage of it is going to increase the
3 burden for those who are early voting and for everybody who is
4 early voting, regardless of whether they would have voted in
5 the repealed time or not.

6 Finally, for out-of-precinct voting, again, these are
7 voters who, regardless of the other trends in aggregate
8 turnout, showed up at the wrong precinct and, in the past,
9 would have been given a provisional ballot that could be
10 counted. We see in the numbers that I presented that even in
11 2014, people continued to show up at the wrong precincts.
12 Before H.B. 589, they would have been allowed to vote. Now
13 they cannot vote.

14 Q Is there any reason to be hesitant about drawing
15 conclusions about the effect of H.B. 589 based on aggregate
16 turnout statistics from a single election?

17 A Yes. And the primary reason that I have written about in
18 my reports has to do with statistical power. If we think
19 about, again, kind of -- you think back to the churning model,
20 and we see that in the short term, you know, most registrants
21 were already registered and, therefore, they don't interact
22 with things like same-day registration, et cetera.

23 So in order to do statistical analysis of the effect of
24 something like same-day registration, we need something called
25 a lot of statistical power, which just is another way of saying

1 we need a lot of observations. We either need a lot of years
2 or a lot of people or a lot of geographic units.

3 And I would be very hesitant to draw conclusions for
4 these -- on the effect of these provisions -- about their
5 effect on aggregate turnout using data from one state and one
6 year.

7 Q Is it relevant at all here that 2014 was a midterm
8 election rather than a Presidential election?

9 A Well, then it is sort of kind of piling on in the sense
10 that midterm elections, we expect the -- if H.B. 589 had not
11 passed, so the counterfactual, under that counterfactual, there
12 would have been fewer people to avail themselves of these
13 techniques for the reasons that I testified before, and so
14 those effects would be even smaller that we would be trying to
15 estimate, and this problem of statistical power would be even
16 greater.

17 Q You talk a little bit in your report about the
18 different -- the composition of the different electorates. Is
19 that a relevant consideration when thinking about the extent to
20 which we can rely on aggregate turnout from a midterm election?

21 A Well, as I believe I mentioned before, the electorate in
22 the midterm primarily consists of experienced voters. The
23 Presidential election consists of a much larger number of new
24 or relatively inexperienced voters.

25 Q Dr. Stewart, we've talked about same-day registration,

1 early voting, and out-of-precinct provisional balloting now
2 each independently. You also mentioned in your expert report
3 that it is your opinion that these practices -- the changes to
4 these practices will have a cumulative negative impact on
5 African-American voters. Can you explain what you mean by
6 that?

7 A Yes. My thinking about this has been really influenced by
8 my involvement in the Caltech-MIT Voting Technology Project,
9 which was appointed right after the 2000 election. It was a
10 very interesting -- has been a very interesting
11 interdisciplinary project involving, not just political
12 scientists who are naturally interested in things like this,
13 but also engineers.

14 One of the things that I learned when this team was put
15 together, and especially the engineers draw their attention to,
16 is that voting is a system. It is not just a single act. So,
17 for instance, if you are concerned about changing voting
18 machines and concerned about hanging chad, you need to think
19 about the entire system. So I have been thinking about voting
20 since 2000, 2001 in terms of a system.

21 So we talk of it in terms of the hypothetical voter who
22 wakes up on Election Day and intends to vote. What does it
23 take in order for that intent to be turned into a vote that's
24 counted as cast?

25 That person needs to have previously registered. They

1 need to find their polling place. They need to be given the
2 right ballot. They need to understand the ballot so they can
3 mark their choices appropriately, and the voting machine has to
4 count the ballots appropriately. If one of those steps
5 malfunctions, the intention doesn't lead to a vote.

6 So there is a number of metaphors that one can draw. My
7 favorite that we've come up with is that of a chain. There are
8 links in a chain. There are election administration procedures
9 that I view as being particularly apt at strengthening those
10 links, and the ones we are talking about here are exactly those
11 sorts of mechanisms which make it more likely if someone -- if
12 there is a problem with registration, it can be fixed. If
13 there is a problem with finding the precinct that you need to
14 go to, it can be fixed.

15 So North Carolina, even in 2000, was known, because of the
16 provisional ballots, as pioneering in fail-safe methods to
17 guard this voting chain. And H.B. 589 doesn't just take away
18 one safeguard against the chain being broken, but it removes
19 three safeguards against the chain being broken, and that chain
20 is more likely to be broken among African-American voters in
21 North Carolina than among whites.

22 Q Thank you, Dr. Stewart.

23 **MS. RYAN:** That's all the questions I have at this
24 time.

25 **THE COURT:** Any cross?

1 got the election year, Election Day. What does "Election Day"
2 mean?

3 A These are people who voted traditionally on Election Day
4 in a precinct.

5 Q What does the column "Early" mean?

6 A This is the number of voters who voted at an early voting
7 site during one-stop voting.

8 Q What does the column "Mail" mean?

9 A These are mail absentee voters.

10 Q And "Total"?

11 A This is the total number of voters.

12 Q And then you've got percentages. Can you tell me what
13 each one of those columns mean?

14 A Yes. This should be the percentage of voters who used
15 each of those modes in the left. So, for instance,
16 64.5 percent of white voters in 2010 voted on Election Day.

17 Q Okay. Great. Could you calculate the increase of white
18 voters who are early voting from 2010 to 2014?

19 A Sure.

20 Q And write it on that document, please.

21 A Is it okay if I write the raw difference, too?

22 Q Why don't we do the early voter difference first and tell
23 me what that is.

24 A I'm sorry. You wanted me to do the early voting?

25 Q Yes.

1 A I apologize. Let me start over. I get an increase of
2 13.0 percent.

3 Q That's not what I was asking. I want the gross numbers.

4 A I'm sorry. Let me get back to it.

5 Q So you know what I am looking for, I calculated the
6 increase for whites who did early voting from 2010 to 2014, and
7 my number was 89,553.

8 A That's what I got.

9 Q Can you give me the same increase for total white voters
10 in 2014?

11 A Oh, for total white voters in 2014?

12 Q Yes. I am subtracting the 2,186,823 from 2,075,990 --

13 **THE COURT:** You will need to slow down with the
14 numbers so we can record them.

15 **MR. FARR:** I will repeat it again.

16 **BY MR. FARR**

17 Q I am subtracting the total white vote in 2014, which is
18 2,186,823, from the total white vote in 2010, which is
19 2,075,990.

20 A I got 110,833.

21 Q Yes, I do, too. That makes me feel good, Dr. Stewart.

22 A It is always good to check your work; right?

23 Q And then you got over there on percentages, for early
24 voting for 2010, you calculated, if I understand this, all of
25 the white voters who voted in 2010, 31.1 percent voted early?

1 A Yes.

2 Q And in 2014 --

3 **THE COURT:** I'm sorry. 33.1 percent.

4 **MR. FARR:** 33.1 percent. Thanks, Your Honor.

5 **BY MR. FARR**

6 Q In 2014, 35.5 percent voted early?

7 A Yes.

8 Q So that was an increase of 2.4 percent?

9 A That was an increase of 2.4 percentage points, yes.

10 Q Now, let's do the same thing for the chart below for
11 African-American voters. What was the gross increase in the
12 number of African-American voters who voted early in 2014 as
13 compared to 2010?

14 A I got 87,506.

15 Q And then can you do the same for me, Dr. Stewart, and
16 calculate the increase in the total number of African-American
17 voters in 2014 as compared to 2010?

18 A 84,826.

19 Q Thank you very much. And what was the increase in the
20 percentage of African-American voters who voted early in 2014
21 as compared to 2010?

22 A It was an increase from 36 percent to 45 percent. So
23 that's a 9 percentage point increase.

24 Q Okay. So the first question I have is is it fair to say
25 that the percentage of -- the increase in the percentage of

1 African-American voters who voted early in 2014 as compared to
2 2010 was three times -- over three times the rate of the
3 increase for white voters?

4 A Can you repeat the question again?

5 Q I am comparing 2.4 to 9.0. You said the number of white
6 voters who used early voting in 2014 increased by 2.4 percent
7 and the number of African-American voters who used early voting
8 increased by 9.0 percent.

9 A Correct.

10 Q So that meant that the number -- or the percentage of
11 African-American voters who used early voting in 2014 increased
12 at more than three times the rate of the percentage of white
13 voters who did early voting?

14 A The only -- I don't -- I don't dispute that 9 divided by
15 2.4 is greater than 3. What I am disputing is that that tells
16 us about a change in rates simply because we are talking about
17 percentage point differences, and what I would need to do is
18 look at, you know, the percentage change in white voters
19 between 2010 and 2014 and then the percentage change in black
20 voters between 2010 and 2014 and then look at that ratio, which
21 is not exactly what you are talking about; but I will grant
22 that the ratio you were talking about is greater than 3.

23 Q Okay. Thanks. Since I don't really understand the rest
24 of your answer, I won't ask you to follow up.

25 **THE COURT:** Are you saying you can't examine a

1 proportion of the population?

2 **THE WITNESS:** I am saying you could.

3 **THE COURT:** But you are saying that doesn't tell you
4 that?

5 **THE WITNESS:** I am saying that his method doesn't
6 tell me that.

7 **THE COURT:** I understand. I'm sorry.

8 **BY MR. FARR**

9 Q Now, could we -- could you determine the percentage of the
10 increase for the total vote by white voters from 2014 -- for
11 2014 as compared to 2010 by dividing the total number of
12 white -- or, excuse me, by dividing the increase of the number
13 of white voters who voted in 2014 by the total white vote in
14 2010?

15 A Right. So I am dividing the 110,833 number by the
16 2,075,990 number?

17 Q Yes, that's exactly right. You said it better than I did,
18 Dr. Stewart, thank you.

19 A I am getting an increase of 5.3 percent.

20 Q Can you do the same thing for black voters, please? This
21 was the percentage of increase of the total turnout?

22 A Yes. I am getting an increase of 15.6 percent.

23 Q And you did that by dividing 84,826 by 544,335?

24 A That's correct.

25 Q All right. And now can we do the same thing to compare

1 the percentage increase in early voting?

2 A Sure.

3 Q Do white voters first.

4 A So we have the raw difference of 89,553, and I am dividing
5 that by 687,510, and I am getting a 13 percent increase.

6 Q Me, too. And then, sir, can you do the same thing for the
7 increase for African-Americans voters in 2014 as compared to
8 2010 for early voting?

9 A So I am dividing 87,506 by 195,879, and I get
10 44.7 percent.

11 Q Okay. So do you agree with me that the increase of the
12 total vote by African-Americans in 2014 as compared to 2010 was
13 about three times the increase of white voters from 2010 to
14 2014?

15 A Yes.

16 Q And would you also agree that the increase in
17 African-Americans who used early voting in 2014 as compared to
18 2010 is something above three times?

19 A Yes.

20 Q All right. Thanks.

21 **MR. FARR:** May I approach, Your Honor?

22 **THE COURT:** Yes.

23 **BY MR. FARR**

24 Q I've handed you Defendant's Exhibit 356, Dr. Stewart. Is
25 that Table 18 from your February 2015 report?

1 A Yes, it is.

2 Q Could you tell His Honor what this is?

3 A Yes. This is a table that shows -- that reports the
4 number of provisional ballots distributed for the indicated
5 years, 2006 to 2014, and I've broken down the numbers according
6 to the reasons that are given in the provisional ballot file
7 provided by the State Board of Elections.

8 Q Okay. I may have misunderstood you. But during the
9 direct examination, did you say you couldn't determine the
10 reasons why people voted provisionally? Did I misunderstand
11 that?

12 A You must have.

13 Q Let's take a look at this for a second. On the left-hand
14 side, you've got the reason for the provisional ballot?

15 A Yes.

16 Q And then you have, in the middle, the election year?

17 A Correct.

18 Q For 2006 to 2014?

19 A Correct.

20 Q And what is the last column that says "Difference 2010 to
21 2014"? Explain that, please.

22 A The number would be the difference -- the raw difference
23 between the number in 2014 and 2010, and so the difference,
24 say, on the very first line, 10,112 and 7,706, that should be a
25 decrease of 2,406. And then the percentage, I believe, is the

1 percentage difference between 2010, and there is a typo there.

2 That should be 2014.

3 Q Okay. All right. Now, at the bottom of the page, do you
4 list the total of provisional ballots in each of these years?

5 A Yes, I do.

6 Q And is it fair to say that the lowest number of
7 provisional ballots cast in a particular election occurred in
8 2014?

9 A Yes.

10 Q And you testified about -- you tell me what you said,
11 because I sometimes get it wrong. But you said something about
12 in off-year elections, you would expect fewer provisional
13 ballots because you've got more experienced voters.

14 A In off-year elections, we should expect fewer provisional
15 ballots proportionately because we have more voters who have
16 voted before, yes.

17 Q Can you see -- what was the number of provisional ballots
18 for 2010?

19 A Total number of 26,257.

20 Q That's higher than 2014?

21 A Yes, it is.

22 Q And that was an off-year election?

23 A That was an off-year election.

24 Q What about 2006?

25 A 2006 was 22,775.

1 Q And that was an off-year election?

2 A Yes.

3 Q And did that not take place before same-day registration
4 was in effect in North Carolina?

5 A Yes.

6 Q And is it not true that same-day registration was in
7 effect in 2010?

8 A Yes, it was.

9 Q I think I want to go your Table 17, which is on page 87 of
10 your report.

11 A Hold on just a second. I have a little paper management
12 issue here. I am there.

13 Q And counsel for the United States gave you an updated
14 version of that exhibit, which I think is marked as Plaintiffs'
15 Exhibit 667. Maybe she didn't hand it up to you.

16 A I don't think I have a hard copy of that.

17 **MR. FARR:** I stand corrected, Your Honor. This is
18 Plaintiffs' Exhibit 687, not 667.

19 **MS. RYAN:** I'm not sure that we have any other copies
20 of that. It could be pulled up on the screen.

21 **MR. FARR:** Can someone do that for us, please? May I
22 approach the witness, Your Honor?

23 **THE COURT:** Yes, you may.

24 **MR. FARR:** We'll pull it up on the screen.

25 **THE COURT:** All right.

1 **BY MR. FARR**

2 Q So, Dr. Stewart, what is Exhibit 687 again?

3 A 687 had the two tables, Table 17, which is the same as the
4 Table 17 on page 87, and then Table 14B, which is the updated
5 version of that table from my original PI report.

6 Q Okay. Let's look at the top of Table 17. That number of
7 provisional ballots distributed to 2006 to 2014.

8 A Yes.

9 **THE COURT:** Give me just one second, please.

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

11 **THE COURT:** Okay. I'm sorry. Go ahead.

12 **BY MR. FARR**

13 Q Actually, Dr. Stewart, I think I want to look at the
14 bottom table, Table 14B.

15 A Yes.

16 Q Tell me what this is again.

17 A So this is -- this is an updated -- as I just mentioned,
18 this is the updated version of Table 14B from my PI report,
19 where I have taken the numbers from 2014 that are in
20 Footnote 16 of paragraph 197, and I have just inserted them in
21 the table so that we can compare across years.

22 Q Okay. And on this particular table, you've broke
23 out-of-precinct provisional ballots into those cast by black
24 voters and white voters?

25 A Yes.

1 Q And you calculate a percentage of out-of-precinct voters
2 against Election Day voters; is that right?

3 A Correct.

4 Q But you didn't calculate the percentage of out-of-precinct
5 voters as it related to the total number of voters, did you?

6 A That's correct.

7 Q Could we do that and see what we come up with?

8 A I have a calculator.

9 Q Yes, and you've got Appendix S where you got the total
10 number of voters.

11 A Okay.

12 Q So you are showing 652 African-Americans who voted out of
13 precinct in 2014, and I recall that the total African-American
14 vote in 2014 was 629,161; is that correct?

15 A Yes.

16 Q So could you divide that, please.

17 A Yes.

18 Q And what did you get?

19 A I have .10 percent.

20 Q Okay. So 99.9 percent of African-Americans voted some way
21 other than out-of-precinct voting in 2014?

22 A Including those who voted by mail and those who voted
23 early and people who voted on Election Day, yes.

24 Q Okay. So just to make sure I understand that,

25 99.99 percent of African-American voters voted some way other

1 than out of precinct.

2 A Well, actually, properly stated, in 2014, since these
3 individuals were not allowed to vote, I think it is more
4 accurate to say that the number of provisional ballots -- you
5 know, the number of provisional ballots is one-tenth of
6 1 percent. As far as I know, no African-American votes were
7 counted because they were out of precinct.

8 Q You haven't checked that?

9 A I do know that there are some recorded as being counted in
10 the database, but I assume that those are clerical errors.

11 Q Okay. So just to make sure I understand this, because I
12 get confused with these numbers, 99.99 percent of
13 African-Americans voted in a way other than casting an
14 out-of-precinct ballot?

15 A My response is that there were no out-of-precinct ballots,
16 as far as I know, that were, in fact, counted. And that's why
17 I am saying that all of the ballots were -- none of the ballots
18 were counted out of precinct.

19 Q Let me try again. How about cast? 99.99 percent of the
20 African-Americans cast a ballot other than out of precinct?

21 A I wouldn't agree with that either because, again, the
22 casting of the ballot involves having a provisional ballot that
23 could, in fact, be cast, and none of these provisional ballots
24 could even be cast in 2014.

25 Q Okay. So let me try it your way. What percentage of the

1 total number of voters in 2014 for African-Americans are
2 represented by ballots cast by African-American voters for out
3 of precinct?

4 A The number of out-of-precinct ballots given to
5 African-Americans in 2014 represents one-tenth of 1 percent of
6 all African-American votes in that year.

7 Q Okay. Now, let's do the same thing for the white voters,
8 just for completeness, and again looking at Exhibit 687.

9 A Okay. So what would you like me to do?

10 Q Just do the same calculation for the white out-of-precinct
11 voters as you just did for the African-Americans.

12 A Okay. So my understanding is I am dividing 748 by
13 2,186,823.

14 **THE COURT:** What is that number again?

15 **THE WITNESS:** 2,186,823. And I get 3/100ths of
16 1 percent.

17 **BY MR. FARR**

18 Q Thank you, Dr. Stewart. Can we turn back to Table 18 for
19 a second.

20 **THE COURT:** Is that .0003?

21 **THE WITNESS:** Yes. Three zeros and a three, yes,
22 sir.

23 **THE COURT:** Thank you.

24 **BY MR. FARR**

25 Q Now, looking at Table 18, Dr. Stewart, what is the

1 category, as far as you know, for no record of registration?

2 A Are you asking me to define it or --

3 Q Yeah. What did you understand that to mean?

4 A I understand it to mean that these are voters who present
5 themselves at the polls and there is no record that they had
6 registered to vote.

7 Q Okay. And you were able to calculate the number of voters
8 who voted during early voting?

9 A Yes.

10 Q Okay. Did you attempt to calculate the number of voters
11 who voted during early voting who were given a provisional
12 ballot because there was no record of their registration?

13 A No, I did not.

14 Q And wouldn't you agree that the number of ballots cast for
15 no record of registration dropped in 2014 as compared to 2010?

16 A '14 to '10, yes.

17 Q And looking at incorrect precinct?

18 A Yes.

19 Q That's the category we just talked about?

20 A We have been talking about it, yes.

21 Q Does your Table 18 show that the number of out-of-precinct
22 ballots cast in 2014 dropped as compared to 2010?

23 A That's what that shows, yes.

24 Q By about 4,500?

25 A By about 4,400, yes.

1 Q Okay. The number of out-of-precinct ballots cast in 2014
2 were about half the number cast in 2006?

3 A A bit more than half, but about half, yes.

4 Q All right. I now would like for you to move to Table 2,
5 please -- Table T in your report. You might use the copy that
6 I gave you, Dr. Stewart.

7 **THE COURT:** That's part of Exhibit 355?

8 **MR. FARR:** I believe so, Your Honor.

9 **BY MR. FARR**

10 Q What is Appendix T, Dr. Stewart?

11 A It records the number of curbside voters in 2014 broken
12 down by race.

13 Q Okay. And could you calculate from your Appendix T the
14 total number of African-Americans who cast curbside ballots
15 both on Election Day and during early voting?

16 A The total -- so to be clear, there's the column that says
17 "Curbside Election Day" and the "Curbside Early," and you would
18 like me to add up the two numbers related to black voters?

19 Q Yes.

20 A The 5,229 plus 12,186?

21 Q Yes, sir.

22 A And I have 17,415.

23 Q Okay. Could you do the same thing, please, for the number
24 of white voters who cast curbside ballots?

25 A I am adding 8,131 plus 11,850, and I am getting 19,981.

1 Q Okay. And your first number for African-Americans was
2 what? 17,415?

3 A Yes, sir.

4 Q And if -- could you add these two numbers to see what the
5 total number of curbside voters was in 2014?

6 A The answer I am getting is 37,396.

7 Q Could you tell what percentage of the total number of
8 curbside voters were African-American?

9 A What percentage of all curbside voters were
10 African-American. So that would involve dividing the 17,415
11 number -- well, actually, to be responsive to the question, I
12 have not included voters of other races who also would have
13 been -- voted curbside, et cetera. So I don't have the
14 information here to calculate that percentage.

15 Q Well, let's see what percentage the African-Americans are
16 of the total between whites and African-Americans.

17 A Okay. So I am dividing 17,415 divided by 37,396, and I am
18 getting 46.6 percent.

19 Q So is it fair to say that African-Americans were
20 disproportionately represented in the number of people who cast
21 curbside ballots?

22 A Well, 46.6 percent is significantly above the fraction of
23 registered voters and voters who are African-American, yes.

24 Q Okay.

25 **THE COURT:** Can I ask one question? Can you explain

1 a curbside ballot for purposes of Exhibit T?

2 **THE WITNESS:** You would like to know what a curbside
3 ballot is?

4 **THE COURT:** As you are defining it here for Exhibit
5 T.

6 **THE WITNESS:** Yes. These are voters who show up in
7 the voter history file as having voted curbside. I am aware
8 that curbside in general refers to a method of voting that
9 allows a voter who can't actually physically come into the
10 polling place, having gone to the polling place, to have the
11 voting equipment brought to them. I have not observed this in
12 North Carolina, but I have in Virginia. But that's my general
13 understanding of the procedure.

14 **THE COURT:** Thank you.

15 **MR. FARR:** I am sorry, Your Honor. I didn't make
16 that clear. I apologize.

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

18 **BY MR. FARR**

19 Q And by the way, Dr. Stewart, the photo ID bill, we are not
20 trying that right now, but didn't the legislature give an
21 exemption for photo ID for people who voted curbside?

22 A You know, because we weren't going to be talking about the
23 photo ID, I haven't renewed my acquaintance with the law.

24 Q Fair enough. I want to look at your updated Appendix U,
25 which I think is Plaintiffs' Exhibit 685.

1 **MR. FARR:** Does he have a copy of that?

2 **MS. RYAN:** I don't think Dr. Stewart got a copy of
3 it. It was pulled up on the screen.

4 **MR. FARR:** Can you put that on the screen? Do you
5 have a copy that I can hand to Dr. Stewart?

6 May I approach, Your Honor?

7 **THE COURT:** Yes, you may.

8 **BY MR. FARR**

9 Q Please explain to us again, Dr. Stewart, what this is.

10 A Generally, it reports voter turnout in North Carolina as a
11 percentage of VAP, of voting-age population, for blacks and for
12 whites and for all voters combined for the federal elections
13 from 2006 to 2014.

14 Q Okay. So if we look at the first column, the first column
15 is the election year?

16 A Yes.

17 Q The second column is the voting-age population, which you
18 calculated how?

19 A I've indicated the data sources for voting-age population
20 down below, but I've gotten all those from Census Bureau
21 estimates of the age distribution in North Carolina.

22 Q And then white turnout number?

23 A Yes, I got that from the source above, which would -- I
24 had to use the voter history file to record and the snapshot
25 files.

1 Q Are those the same figures that we looked at in
2 Appendix S?

3 A I believe they are. Well, the VAPs should be the same.

4 Q I am just talking about the turnout numbers.

5 A The turnout numbers, excuse me. The total numbers should
6 be the same and -- yes, total numbers should be the same.

7 Q Okay. And then the turnout percentage, what is that?

8 A The turnout percentage is turnout as a percentage of VAP.

9 Q And then the next kind of section of that chart has the
10 same information for white voters?

11 A Yes, it does.

12 Q And what -- on the far right-hand side of the chart, if
13 you can tell the judge what that is.

14 A That's labeled "turnout percentage" -- that's labeled
15 "turnout percentage" under the total columns. That would be
16 the percentage of -- the voting-age population turnout
17 percentage for those particular years.

18 Q Okay. Now, can you calculate the increase in the turnout
19 percentage for African-Americans from 2010 to 2014? And the
20 way I would do it, Dr. Stewart, is I would subtract -- in 2010
21 you report a turnout percentage of 36.2. So I subtract that
22 from the turnout percentage that you report for 2014, which is
23 38.5 percent.

24 A Right. That gives us a 2.3 percentage point increase. We
25 are about to run up against the same issue that we ran up

1 against before. So this is 2.3 percentage points, yes.

2 Q Okay. It is your chart. I just want to understand it.

3 And could you do the same thing for the difference in the
4 percentage of VAP turnout for white voters from 2010 to 2014?

5 A We don't need the calculator there. It dropped by
6 six-tenths of 1 percent.

7 Q Okay. So measure again the voting-age population.
8 There's almost a 3 percentage point difference between the
9 growth of African-American turnout versus a decline in white
10 turnout; is that correct?

11 A Well, the differences between those percentage point
12 changes is 2.9 percentage points, yes, almost 3.

13 **MR. FARR:** And I think that's all I have on that
14 exhibit, Your Honor. Now I want to look at Table 15. I think
15 this was Plaintiffs' Exhibit 684.

16 **MS. RYAN:** You are referring to updated Table 15?

17 **MR. FARR:** Yes, excuse me, I meant to say Table 15.
18 If I said 16, it's Table 15.

19 **MS. RYAN:** Plaintiffs' Exhibit 684?

20 **MR. FARR:** Yes.

21 **THE WITNESS:** I believe I don't have a hard copy of
22 the updated table.

23 **BY MR. FARR**

24 Q How about if I hand you one.

25 **THE COURT:** Is this it on the screen?

1 **MR. FARR:** It is, but let me hand him a hard copy,
2 Your Honor.

3 **BY MR. FARR**

4 Q Thank you.

5 A Thank you.

6 Q And, Dr. Stewart, tell us again what this is.

7 A This is the updated registration percentage for black and
8 white voters for the given election years. It's been updated
9 to reflect the new Census Bureau population estimates.

10 Q Okay. So let's go through the chart again. You got --
11 the year is the various election years?

12 A Yes.

13 Q And the voting-age population is the voting-age population
14 for blacks?

15 A Yes.

16 Q The number of registered, what is that?

17 A That's taken from the registration files from the state,
18 the number of registered voters by race, in this case blacks,
19 for those years.

20 Q Okay. And then the next part of this chart has got the
21 same information for white voters?

22 A Correct.

23 Q And the last column in this chart says "Black Percentage
24 minus White Percentage."

25 A Yes, sir.

1 Q And how did you arrive at that?

2 A Well, we can see that I calculated the registration
3 percentage for black voters, then the registration percentage
4 for white voters, and then I just simply subtracted the two
5 numbers.

6 Q Okay. So you testified about how there are more people
7 that register going into a Presidential year than those that
8 register going to an off-year election.

9 A Yes.

10 Q Okay. Now, did the percent of black registered voting-age
11 population drop from 2010 to 2014?

12 A It rose.

13 Q I asked the wrong question. I wanted to ask: Did the
14 percentage of black registered voting-age population drop from
15 2012 to 2014?

16 A Yes, it did.

17 Q And how much did that drop by?

18 A It dropped by 4.1 percentage points.

19 Q Did the white registered -- the percentage of the VAP for
20 white voters drop from 2012 to 2014?

21 A Yes.

22 Q How much did that drop by?

23 A It dropped by -- from 87.8 percent to 83.4 percent. That
24 would be a drop of 4.4 percentage points.

25 Q So the percentage of white voting-age population dropped

1 at a higher rate than the drop in the black voting-age
2 population?

3 A To a slight -- the percentage point decrease is greater
4 for whites than for blacks by a small amount, yes.

5 Q Now, let's look at 2008, the black registered -- the black
6 voting-age population that was registered in 2008, 2010. Did
7 that drop during that time frame?

8 A Yes, it did.

9 Q And how much did it drop by?

10 A It looks like it dropped by 5.8 percentage points.

11 Q Okay. And in 2008, we had 17 days of early voting and
12 same-day registration and out-of-precinct voting?

13 A I'm sorry? What year did you reference?

14 Q In 2008.

15 A Yes, we did.

16 Q And we had all those practices in 2010?

17 A Yes.

18 Q But the drop in percentage of black voting-age population
19 that was registered was higher from 2008 to 2010 than it was
20 from 2012 to 2014?

21 A True enough.

22 Q And now I want to go over to the last column, black
23 percent minus white percent. Could you please again state what
24 that is?

25 A That's simply the difference between the black percent and

1 the white percent. So, yeah, for 2008, 94.9 minus 90.7 is
2 equal to 4.2.

3 Q Right. So starting in 2008, there was a higher percentage
4 of the black voting-age population that was registered than
5 whites?

6 A Correct, by 4.2 percentage points.

7 Q And then in 2010, that remained the same; correct? It
8 dropped a little bit?

9 A Well, yes, the difference dropped by 1.6 percentage
10 points.

11 Q Okay. And then so between 2008 and 2010, the difference
12 between registered blacks and voting-age population versus
13 whites dropped?

14 A Correct, it narrowed, yes.

15 Q And in 2008 to 2010, they had same-day registration and 17
16 days of early voting; right?

17 A Yes.

18 Q Okay. Then in 2012, the difference between registered
19 blacks and voting-age population increased to 7.5 percent?

20 A Yes, the difference increased to 7.5 percent; correct.

21 Q Okay. And then in 2014, the difference between registered
22 blacks and voting-age population versus registered whites and
23 the voting-age population increased?

24 A Yes. By three-tenths of a percentage point, yes.

25 Q So between 2008 and 2010, the advantage that

1 African-Americans had in registered voting-age population
2 dropped less than two points?

3 A I don't think your math is right.

4 Q Okay. Well, the point I'm making -- Dr. Stewart, I will
5 make it simple because the chart speaks for itself. From 2008
6 to 2010, two election years where there was same-day
7 registration and 17 days of early voting, the difference
8 between the percentage of blacks and whites in the voting-age
9 population who registered dropped?

10 A Yes, they did, and I apologize. I believe your
11 characterization -- it dropped by 1.6 percentage points, yes,
12 sir.

13 Q And then from 2012 to 2014, it actually increased, did it
14 not, from 7.5 percent to 7.8 percent?

15 A Yes.

16 **MR. FARR:** Your Honor, would this be a good time to
17 take a lunch break?

18 **THE COURT:** Are you ready to go to a different topic?

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

20 **THE COURT:** All right. We can do that.

21 Do you have any issue you need to address? All
22 right. We'll see you-all at 2:00.

23 (The Court recessed at 12:29 p.m.)

24 (The Court was called back to order at 2:01 p.m.)

25 **THE COURT:** Mr. Farr?

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

2 **BY MR. FARR**

3 Q Dr. Stewart, I want to take a look at your Appendix W and
4 X, which is in my document that's Defendants' Exhibit 355.

5 A 355?

6 Q I think it is. You can look in your report, too.

7 A Oh, I see. Could you repeat the appendix, please?

8 Q Yeah. I want to talk about Appendix W and Appendix X.

9 A Okay.

10 Q Tell us again, are these two appendixes related?

11 A Yes, they are.

12 Q Can you tell us again what Appendix W is?

13 A Yes. These are the number of people who registered on
14 every day after the book closing period for the 2014 general
15 election. And then that's Appendix W.

16 And then Appendix X breaks those numbers down by race and
17 then reports that in terms of the percentage of all registrants
18 who were black and white for the two-year period preceding the
19 election.

20 Q Okay. Now, let's talk about Appendix W for a second.

21 What did the -- there is a column there up at the top for date,
22 number, and percentage. Do you see that?

23 A Yes.

24 Q Where did you get the date? What does that represent?

25 A That represents the date in the voter registration file

1 when the registration was recorded.

2 Q Did you know if that's the date that the application was
3 processed by the Board of Elections officials, or does it
4 represent the date that the application was signed by the
5 registrant?

6 A Sitting here, I don't recall. I would have to go back and
7 review the computer code. I would have to review the computer
8 code. I don't recall.

9 Q Okay. And then you've got a column for number?

10 A Yes.

11 Q And what is that?

12 A That's the number of registrants recorded on that date.

13 Q Okay. And then what's the percentage column?

14 A That's the percentage of all registrants across the
15 two-year cycle. That number is given down at the bottom as
16 640,417.

17 Q Okay. So this chart looks at registration applications
18 that you believe were either processed or submitted during what
19 we could call the old early voting period?

20 A Well, it includes that. It's for -- it is the period
21 after the registration day deadline, so it does include the old
22 early voting period or -- yes, the old early voting period, but
23 it also includes the couple of days between the close of books
24 and early voting and then a couple of days after the end of
25 early voting.

1 Q Could you explain to His Honor on this column what days
2 are the old early voting period so we know?

3 A Yes. So as reflected on the table, it might be a little
4 confusing, but there is a first subset of numbers from
5 October 12th to 15th, which are before the early voting period.
6 And then starting 10/16 is the period of early voting that got
7 eliminated under H.B. 589. And then the next block down is the
8 post-H.B. 589 early voting period.

9 Q Now, do you know how these individuals registered?

10 A It is recorded -- it is recorded in the registration file;
11 but sitting here, I don't know how they registered.

12 Q Well, do you know -- like, for example, did any of these
13 people go to early voting in 2014 and try to register at early
14 voting?

15 A These are all registrants during the period.

16 Q That's not my question. My question is: Do you know how
17 many of these people actually showed up at an early voting
18 center and tried to register at the early voting center?

19 A I don't know that.

20 Q Okay. And you didn't -- when you looked at your
21 provisional ballot chart that we looked at earlier today, you
22 didn't break that out to determine the number of early voters
23 who cast a provisional ballot because there was no record of
24 their registration?

25 A That's correct.

1 Q Okay. And when you were examining this, you did not --
2 you knew -- did you know the rates of these individuals who
3 submitted these applications?

4 A Yes, I did.

5 Q And why didn't you record the gross number of blacks and
6 whites who registered during the time frame represented by
7 Appendix W?

8 A I believe -- and I might need to update my recollection,
9 but I was basically updating previous exhibits from my PI
10 report, and I followed whatever practice -- I tried to follow
11 whatever practice I used back then.

12 Q So if we turn to Appendix X, explain that to His Honor,
13 please.

14 A So then what I did was I took the number of -- I divided
15 the new registrants by race, black and white, and then I've
16 expressed day to day those numbers as a percentage of all the
17 registrants in the two years preceding the -- in this case, the
18 2014 election and those numbers are shown down at the bottom of
19 the appendix.

20 Q Okay. So let me see if I'm right about this. So you are
21 saying at the bottom of Appendix X, that people who attempted
22 to register during this time frame that's reflected by
23 Appendix X represented 2.067 percent of the total black
24 registrants during the two-year time frame?

25 A Yes.

1 Q And if you multiply -- and the total number of registrants
2 was 136 -- the total number of black registrants was 136,113?

3 A Yes.

4 Q So you could multiply that number by 2.06 to get the
5 number of blacks who had registered during this time frame?

6 A Yes.

7 Q Could you do that for me, please?

8 A Yes.

9 Rounding, I have 3,634.

10 Q That's not what I got.

11 A I can do it again. I did get a different number. Let me
12 do it one more time.

13 **THE COURT:** Measure it twice, cut once, isn't that
14 what builders say?

15 **THE WITNESS:** For good reason. Maybe three times.

16 I am taking 136,113 and then multiplying it by .02067
17 and I am getting 2,813.

18 **BY MR. FARR**

19 Q Yeah, that's what I got.

20 A Okay.

21 Q All right. So then on -- in Appendix W, you report that
22 the total number of individuals who registered during this time
23 frame was 12,983?

24 A Yes.

25 Q So could we find out -- could we divide 28,103 (sic) by

1 12,983 to find out how many blacks actually attempted to
2 register?

3 A Okay. So that's 2,813 -- I'm sorry. What would you like
4 me to calculate again? I apologize.

5 Q Okay. Well, you came up with the number of
6 African-Americans who attempted to register during this time
7 frame. You calculated 2,813?

8 A Yes.

9 Q And then on Exhibit W, you say that during the time frame,
10 there was a total of 12,983 people who tried to register during
11 this time frame.

12 A Who did register during the time frame, yes.

13 Q Okay. So could you divide 2,813 by 12,983?

14 A So to be clear, I am dividing 2,813 by 12,983, and I am
15 getting 21.7 percent.

16 Q Okay. So during this time frame, 21.79 percent of the
17 people who registered were African-American?

18 A Yes, sir.

19 Q And that's below their percentage of the -- the percentage
20 by which blacks are registered to vote? Isn't that around
21 22 percent?

22 A I would need to look at my -- refresh from the tables. It
23 was 22.5 percent in '14, yes.

24 Q So the number of African-Americans who tried to register
25 during the time frame that you've reflected on Exhibits W and X

1 is lower than the percentage of blacks in the registered voter
2 population?

3 A Yes.

4 Q All right. Now I want to turn to Exhibit AA -- or
5 Appendix AA.

6 **THE COURT:** I'm sorry. Can you explain what that
7 means?

8 **THE WITNESS:** I haven't done the complete
9 calculations, but my guess is that we see that the -- that,
10 actually, the fraction of -- if you look at Table 14, we can
11 see that the all-other-races number is actually the fastest
12 growing number. So my guess would be, without doing the other
13 calculations, that that could be true because the
14 all-other-races number is probably -- is kind of higher. So it
15 is quite possible for that number to be lower for blacks and
16 for whites compared to their overall percentage because the
17 other-races number is making up the difference. That would be
18 my guess.

19 **THE COURT:** Okay.

20 **BY MR. FARR**

21 Q Well, I will just ask you this question, Dr. Stewart.
22 Based upon those calculations, African-Americans were not
23 disproportionately represented in the group of people who
24 attempted to register during the time frames that are reflected
25 by your Appendix W and X; isn't that correct?

1 A Well, by my calculation, that a larger fraction of
2 African-Americans -- among all African-Americans who registered
3 during the two years preceding the election, more
4 African-Americans registered proportionately than whites did by
5 the calculation in Appendix X.

6 So the comparison there is the fraction of all new
7 registrants who were black, what percentage registered during
8 this period, percentage of all new registrants who are white,
9 what percentage registered during this period. That's the
10 calculation that I am doing.

11 Q Yeah, that's the calculation you did; but if you just look
12 at the number of people that actually registered during this
13 time frame, just looking at that group, blacks were not
14 disproportionately represented in that group, were they?

15 A Well, they were represented less than the overall
16 fraction, but to do the proportionality test, we would have to
17 compare it to whites, and we would have to compare it to all
18 other races, too.

19 Q But if there's a difference there, it's very minor, isn't
20 it, Dr. Stewart?

21 A It's the smallest -- I would say it's smaller than the
22 other ones that we've observed in the other elections.

23 Q All right. Let's turn to Exhibit -- or Appendix AA, which
24 I think you can find in Defendants' Exhibit 355.

25 A Yes, sir.

1 Q Now, you testified about early voting and burdens in this
2 case?

3 A Yes, sir.

4 Q Do you think to determine the burden on voters for early
5 voting that you've got to look at other things besides the
6 number of days available for early voting?

7 A It's true there's many factors that go into burden and
8 part of it depends on how you measure burden, yes.

9 Q Okay. So, for example, in your testimony in this case --
10 and correct me if I'm wrong, Dr. Stewart, because I forgot
11 something that was in your preliminary injunction report
12 earlier. So if I make a mistake here, I stand to be corrected.

13 But it's my understanding you've never looked at the
14 number of early voting centers that are in North Carolina in
15 2014 versus 2010?

16 A I did not include that in my report, yes. I did -- at
17 some point in doing the runs, did produce the number, but I did
18 not include that in any report.

19 Q Then also in your preliminary injunction report, you
20 listed the number of days for early voting in various states.
21 Did you check to see how many early voting centers were located
22 in all the states that have early voting and compare that to
23 North Carolina?

24 A Not in that report, no.

25 Q Okay. Did you attempt to determine the number of hours of

1 early voting that are available to voters in North Carolina
2 compared to the other states that you looked at who you
3 reported have more days of early voting?

4 A My only report was the number of days in which it was
5 available.

6 Q Right.

7 A Right.

8 Q So wouldn't you agree that in measuring the burden on
9 voters of early voting, you would have to not only look at the
10 days, you'd also have to look at the number of early voting
11 centers and the number of hours available for early voting?

12 A I agree. In fact, I've done it here, looked at the number
13 of hours available, yes, sir.

14 Q But you didn't compare North Carolina against any other
15 state in that regard?

16 A No, I didn't. And I don't know where one would get the
17 data to do that.

18 Q Okay. Couldn't you have determined, for example, how many
19 states only have one early voting center per county? Isn't
20 that something that you could have determined by researching
21 the law?

22 A It is possible, although I've discovered that
23 discovering -- that discovering these things is not always that
24 straightforward, but it is discoverable, yes.

25 Q Okay. So in measuring the burden on the reduction of the

1 days of early voting in North Carolina against other states
2 that have more early voting days, you have not been able to
3 measure the number of early voting centers in all these states
4 or the number of hours that are available for early voting in
5 all these states?

6 A I would say that's fair, yes.

7 Q Okay. Now, looking at Appendix AA.

8 A Yes, sir.

9 Q Do you understand that after they changed -- or before
10 they changed the rules on early voting -- before the General
11 Assembly in 2013 changed the rules on early voting, do you
12 recall that the number of days and the centers for early voting
13 in each county could be determined by a majority vote of the
14 members on the county board of elections?

15 A I believe that's correct.

16 Q And do you recall that if there was an appeal to the state
17 board, a majority of the state board could determine the number
18 of centers and hours for early voting and days for early
19 voting?

20 A I don't recall that aspect of the law.

21 Q Now, do you know that after the legislature changed the
22 early voting rules in the VIVA act -- isn't it true that today
23 there has to be a unanimous vote by the county board of
24 elections to reduce the number of hours for early voting?

25 A It is my understanding that it needs to be unanimous, but

1 there is an appeal process involving non-unanimous votes.

2 Q And then when the case is appealed to the State Board of
3 Elections, isn't it true there can't be a reduction in the
4 number of early voting hours unless the State Board of
5 Elections agrees unanimously to reduce the hours?

6 A Sitting here, I wasn't aware of the unanimity requirement;
7 but if you say that's true, I would believe it.

8 Q And then you talk about the number of -- in this
9 Appendix AA, you calculate the number of hours that were
10 available for early voting in North Carolina in 2014 and you
11 compare that to 2010?

12 A Yes, sir.

13 Q And so, for example, let's look at this chart so His Honor
14 understands what this is.

15 You've got three columns up at the top for 2010. Is that
16 the number of hours in 2010?

17 A Yes, sir.

18 Q And then you've got the same column for 2014?

19 A Yes.

20 Q And then you've got the last column as 2014 minus 2010?

21 A Yes.

22 Q And then explain the first column that says hour, 24-hour
23 clock.

24 A Yes. I've -- the binning that I have done or the
25 classification has been on the 24-hour or the military clock.

1 So, you know, 14 indicates 2:00 in the afternoon, that hour.

2 Q Okay. Since I never served in the military, what's 20?

3 A Twenty would be 8:00.

4 Q And then you got a column for the number of hours for
5 weekdays?

6 A Yes.

7 Q You got a column for the number of hours for weekends?

8 A Yes.

9 Q And then you got the totals?

10 A Yes.

11 Q And you've got the same thing for 2014?

12 A Yes.

13 Q Okay. So if you go to the bottom right-hand corner of
14 Appendix AA, you calculated there was a reduction of 636 hours
15 of early voting in the state of North Carolina in 2014 as
16 compared to 2010.

17 A Yes, sir.

18 Q Do you know what counties those hours were reduced in?

19 A Sitting here, I don't, but I have seen the records of
20 those.

21 Q But you didn't include that in your report?

22 A No, I did not.

23 Q Okay. Do you know if any of those hours of reductions
24 were in Mecklenburg, Wake, Forsyth, Durham, or Guilford County?

25 A I know for sure that Mecklenburg increased its numbers of

1 hours. Sitting here, I don't know for sure about the other
2 counties that you mentioned.

3 Q So you didn't report if any of these hours -- or many of
4 these hours of reductions took place in any of the urban
5 counties in North Carolina?

6 A There is nothing here by county, no, sir.

7 Q And then you report that the number of hours during the
8 weekdays was reduced; is that right?

9 A Yes.

10 Q And that was reduced by 1,838 hours?

11 A Yes.

12 Q And then do you not also report that the number of hours
13 for weekends was increased in 2014?

14 A Yes.

15 Q So 2014 had more hours available on the weekends for
16 people to vote than 2010?

17 A Yes. That's what the appendix says, yes.

18 Q Now, turning to the Appendix BB, can you tell His Honor
19 what that is?

20 A Yes. This is -- and these are the -- by the way, the
21 underlying tables for the figures I reviewed in my direct
22 examination.

23 So this is the -- kind of the analogue to the previous
24 table which shows the number of people who voted early at the
25 corresponding times of the day, weekday, weekend, 2010 and

1 2014.

2 Q Okay. So, for example, you -- I may get this wrong,
3 Dr. Stewart, but from 6:00 to 7:00, for example, where on that
4 chart is the -- are the number of people that voted from
5 6:00 to 7:00?

6 A A.m. or p.m.?

7 Q A.m.

8 A It's the very first line, yes.

9 Q Okay. So Number 20 would be the number of people who
10 voted from 8:00 p.m. to 9:00 p.m.?

11 A Yes.

12 Q Now, isn't it true, Dr. Stewart, for every one of these
13 time frames, a greater number of voters voted in 2004 as
14 compared to 2010?

15 A Yes, sir.

16 Q And then at the end of the --

17 **THE COURT:** You said 2004.

18 **MR. FARR:** I meant -- Your Honor, I'm sorry.

19 **BY MR. FARR**

20 Q The question was: For every time frame you report on
21 Appendix BB, for every one of these time frames, a larger
22 number of people voted in 2014 as compared to 2010?

23 A Yes, the comparison is between 2014 and 2010.

24 **MR. FARR:** I apologize, Your Honor, for getting 2004
25 confused with 2014.

1 **BY MR. FARR**

2 Q And then on the right-hand side of this chart,
3 Dr. Stewart, you do a summary for the number of the people who
4 voted on weekdays and weekends?

5 A Yes.

6 Q And is it also fair to say that in 2014 as compared to
7 2010, more people voted on the weekdays?

8 A Yes.

9 Q And the number of people that voted on the weekdays in
10 greater numbers in 2014 was 142,784?

11 A Yes.

12 Q And on the weekends, is it also true that in 2014, the
13 number of people who voted on the weekends increased from 2010?

14 A Yes. It increased from '10 to '14 by 49,105.

15 Q And then also the total number of individuals who voted
16 early in 2014 increased by 191,889; is that correct?

17 A Yes.

18 Q Okay. Dr. Stewart, do you have exhibit -- I think it is
19 Plaintiffs' Exhibit 686, which is your voter chart?

20 A Let's see if I do. I do not have a hard copy of it.

21 **MR. FARR:** May I approach, Your Honor?

22 **THE COURT:** Yes.

23 **BY MR. FARR**

24 Q Dr. Stewart, you looked at the churn, as you call it, in
25 registered voters comparing 2010 to 2012 and comparing 2012 to

1 2014; is that right?

2 A Yes.

3 Q Did you look at the churn comparing registered voters from
4 2008 to 2010?

5 A From '8 to '10. I didn't prepare a chart that looked for
6 '8 to '10, no, sir.

7 Q You didn't look at that?

8 A Well, I didn't prepare a chart. I have -- since all these
9 statistics come from my reports, I did calculate all the
10 statistics necessary to generate such a chart. This chart was
11 for illustrative purposes, and I did not prepare such a chart.

12 Q Okay. And you would agree that historically more people
13 register to vote in Presidential years than in off years?

14 A Yes.

15 Q Now, Dr. Stewart, I may have asked you about the
16 preliminary injunction hearing, so bear with me. But you've
17 never worked as a board of elections official?

18 A Correct.

19 Q So you've never, for example, reviewed provisional ballots
20 or absentee ballots?

21 A Not in an official capacity, but I have looked over the
22 shoulder of at least one election officer as she prepared
23 provisional ballots for her board of elections in the state of
24 Virginia.

25 Q Okay. But you've never been responsible for evaluating

1 absentee ballot applications or container forms for potential
2 fraud?

3 A No.

4 Q And you've never been involved in officially counting
5 provisional ballots?

6 A Not in an official capacity, no.

7 Q And do you know the steps that county boards of elections
8 take in North Carolina to research and count provisional
9 ballots? Have you ever done that?

10 A Not in North Carolina, no.

11 Q Okay. You've never worked as a precinct official?

12 A Not in an official capacity; but as I said, last year I
13 observed in several precincts myself as a researcher.

14 Q Were any of those precincts in North Carolina?

15 A None of those were in North Carolina.

16 Q So do you know -- do you have any firsthand knowledge of
17 how precinct workers check in voters in North Carolina?

18 A Firsthand, I do not.

19 Q Dr. Stewart, I want to ask you some questions about your
20 wait time analysis. I think it's on Page 84 and 85 of your
21 report. I am looking at Table 16 in particular.

22 A On Page 85?

23 Q I think so.

24 A Yes.

25 Q Now, Dr. Stewart, I think we agreed last time we were in

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1 court that you were the person who is responsible for this
2 survey in deciding the questions that were asked of voters?

3 A Yes.

4 Q And people who responded to the survey, did they receive
5 any compensation?

6 A The survey is conducted by Polimetrix, one of two large
7 national Internet polling firms; and as part of being in their
8 so-called panel, you receive points that you can redeem at some
9 point for things like t-shirts and tote bags.

10 Q And do you get more points if you complete a larger part
11 of the survey?

12 A I don't know what the algorithm is for getting points. I
13 believe, having been on the panel myself at one point, you get
14 points every time you complete a survey.

15 Q Do some people get more points than others for completing
16 the survey because they answer more questions?

17 A I don't believe that's true, but I don't know that that's
18 true.

19 Q Okay. Now, this survey, was it supposed to be
20 representative of the North Carolina electorate?

21 A The survey, to the degree that there are samples in North
22 Carolina, are derived, first of all, trying to get the sample
23 itself as close to the underlying demographics in North
24 Carolina.

25 There is always, with any sort of sampling like this, some

1 sort of mismatch between the people actually brought in and the
2 actual population in North Carolina. So then there are things
3 called survey weights that can be applied to the data to kind
4 of bring those closer in line.

5 And I should note that the nationwide survey, the
6 so-called 50-states survey plus the District of Columbia, there
7 are separate samples in every state. And so when the sample
8 was drawn -- when I say North Carolina, that sample was drawn
9 specifically for North Carolina and weighted to the
10 demographics in North Carolina.

11 Q Okay. So explain how are these people found and how do
12 they respond to the survey.

13 A Yes. So it's an Internet panel, and -- which is a new
14 technology in survey research, but it's growing and quite
15 reputable. People are recruited into the panel in a variety of
16 ways. Some of them are through pop-up ads and the other things
17 that we see on the Web.

18 As I understand the literature provided by Polimetrix, in
19 addition to ads on the Web, et cetera, that are trying to
20 recruit people into the panel, there are efforts made to try to
21 especially recruit underrepresented populations, such as
22 minorities and the poor, to bring it into the sample so they
23 don't have or I don't have to deal with problems of
24 misrepresentation within the sample.

25 So, in general, the recruitment is done online, either

1 through ads. As I understand it, there are also sometimes
2 emails blasts that go out to try to bring people into the
3 overall Polimetrix sample.

4 I should note that that recruitment effort is done by
5 Polimetrix because they have a huge polling operation. Like I
6 said, it is one of the most prolific in America. And so they
7 are trying to get people into their sample for all their
8 polling operations, and I am able to pay to grab a sample of
9 their larger sample to do my survey, which is to say that the
10 people who are in this sample were not recruited specifically
11 for this survey. They were recruited to participate in
12 Polimetrix surveys in general.

13 Q How is the survey -- in what ways is it supposed to be
14 representative of the North Carolina electorate?

15 A The attempt is to represent the North Carolina electorate
16 on a wide variety of demographics, basically the set of
17 demographics that are contained in Census Bureau reports, so by
18 race and sex and income, education. There are probably a few
19 other demographics.

20 Not only that, the attempt is to get as close not only,
21 say, to people to match the -- the educational attainment to
22 the state, but to, say, match the education attainment of
23 women, the educational attainment of men, the educational
24 attainment of blacks, the educational attainment of whites. It
25 is a very precise attempt to match on not only the

1 demographics, but kind of the interactions of the demographics.

2 Q Would you call this a random survey?

3 A This is not a random sample. Internet samples are not
4 random samples.

5 Q Does the fact that it is not random, does that have any
6 impact on the reliability of the survey?

7 A I don't believe it does. There's been significant work in
8 this area on Internet surveys. I myself, in the report that I
9 write every time I make the report to Pew and to the public
10 about my survey, I conduct a number of tests to test the --
11 basically the representativeness of the sample against things
12 we know.

13 One common test that I perform is to -- say in a
14 Presidential year, to look at the reported Presidential vote
15 within my survey and what we know from a press report or from
16 election returns what the Presidential returns in the state
17 were.

18 And so I myself conduct some confirmations about
19 reliability, but the polling operation itself has worked very
20 hard to try to produce a sample that is as reliable as the
21 phone and in-person samples used to be back when we could
22 conduct those sorts of studies, which is becoming almost
23 impossible to conduct.

24 Q You testified earlier today that there -- surveys were
25 done where African-Americans overreport. Do you remember that

1 testimony?

2 A Yes. That African-Americans generally overreport having
3 voted, yes.

4 Q And what steps were taken by you or this organization to
5 independently confirm that the information you were getting
6 from the respondents was accurate?

7 A Like I said, the efforts that I conducted were at an
8 aggregate level looking at aggregates. I did not undertake a
9 voter verification study, which would have looked at the
10 individuals responding and to see whether they had, in fact,
11 voted. That's rarely done, and I did not do that in this
12 survey.

13 Q When you say you looked at aggregate data, is there data
14 about how long lines are in North Carolina?

15 A Is there --

16 Q Other than what you are reporting here. Is there some
17 other data set that you looked at that shows how long lines are
18 in North Carolina that you looked to confirm the results of
19 this survey?

20 A As far as I know, there is no -- what -- to be clear about
21 what I did was that I compared -- to the degree there were
22 knowns, I compared those to my data. As far as I know, there
23 is no initial recording of actual wait times in the state of
24 North Carolina. That's why I am doing the survey.

25 Q But you didn't confirm whether or not the people who

1 reported on this Internet survey actually voted or not?

2 A I did not, no.

3 Q And this group, Polimetrix, did not do that either, did
4 they?

5 A No, they did not.

6 Q All right. I want to ask you about the sample that you
7 took. There is a sample and an oversample?

8 A Yes, sir.

9 Q So looking at Table 16, you've got a "Nationwide" column,
10 you've got a "North Carolina" column and then you've got an
11 oversample study in North Carolina?

12 A Yes, sir.

13 Q I want to ask you about -- I think you -- I recall you
14 telling me that in each state, there were 200 responses.

15 A For the nationwide study, there were 200 respondents for
16 every state, yes, sir.

17 Q So, for example, in North Carolina, am I reading this
18 chart right, that 72 out of the 200 said they voted on Election
19 Day, and 72 said they voted during early voting?

20 A Yes.

21 Q So that's a total of 144 out of 200?

22 A Yes.

23 Q And so what percentage would that be of 200?

24 A 144 -- get my calculator here.

25 Q Sure.

1 A 72 percent, I think.

2 Q What was the turnout rate in North Carolina in 2014 of
3 registered voters?

4 A Registered voters, I don't know. I could refresh my
5 memory from my table.

6 Q I think it was around 39 or 40 percent. Why don't you
7 refresh your memory with the exhibits up there.

8 A As reported, it was 38.4 percent of voting-age population.
9 The sample is of registered voters. So it would have to be the
10 percentage of registered voters would be the proper percentage.
11 So the -- so the percentage of registered voters would be
12 higher than 38 percent, but it would be less than the 70 or so
13 percent that I reported earlier.

14 Q It would be substantially less than that, wouldn't it?

15 A It would be less, yes, sir.

16 Q And then how many states were oversampled?

17 A There were ten oversampled states.

18 Q What were those?

19 A I don't recall them off the top of my head. I believe I
20 recorded -- I reported -- I certainly reported them in the SPAE
21 report, and I believe I reported them in my trial report here.

22 Q Why did you pick North Carolina to oversample?

23 A So the oversample study, the SPAE, every time it's been
24 administered, we have done the 200 registered voters in every
25 state. There is interest among -- with Pew in trying to drill

1 down in a set of states that had, from their perspective, some
2 interesting developments going on, and so this was a feature
3 where what we agreed to do is that I would do a back and forth
4 with them about the ten states to be identified to be
5 oversampled. It would be my questionnaire. They would make
6 the decision about the oversampled states, and North Carolina
7 was one of the states that they chose.

8 Given the other states, which are states like Florida,
9 Ohio, there were some that kind of were in the news a lot.
10 There were a couple of states like Washington and Oregon which
11 are all mail ballots, and we are trying to understand more
12 about all mail ballots. It was kind of a hodgepodge of states,
13 but in general, they were states in which there were
14 interesting things going on, and that was -- you know, those
15 are -- that's why those states were chosen.

16 Q When you say "interesting things going on," was North
17 Carolina included because we were in this lawsuit?

18 A No, sir.

19 Q Okay. On the oversampled study, am I correct that there
20 were a thousand people sampled?

21 A Let's see. Yes.

22 Q Okay. On Table 16, you're reporting that 388 respondents
23 claim they voted on Election Day and 353 claimed they voted
24 during the early voting period?

25 A Yes, sir.

1 Q And if you add that up, Dr. Stewart, that would indicate
2 that you had 741 respondents out of a thousand?

3 A Yes, sir.

4 Q That's about 74 percent of the people who responded
5 claimed they voted during early voting or on Election Day in
6 2014?

7 A Yes. So there was an overreport of voting, yes, sir.

8 Q Okay. Now, did you ever determine the counties that these
9 individuals voted in?

10 A The data set has the county names. I did not do analysis
11 on the -- I did not do analysis on the counties.

12 Q So you don't know which location for which these
13 individuals were reporting on, how long they waited in line?

14 A I did not report that in the report. I mean, I am saying,
15 though, that the data set itself has county of residence of the
16 respondents.

17 Q But some of these counties have multiple early voting
18 centers, do they not?

19 A That's correct.

20 Q And the data you have did not report the early voting
21 center at which the individual was reporting a wait time?

22 A No, sir; correct.

23 Q And did the -- did your survey ask the respondents to
24 describe the type of voting equipment they were using?

25 A No, they didn't. We don't ask the question, in part

1 because we can infer the voting equipment from the county of
2 residence, if we were to do that analysis.

3 Q Did you report on which counties had lines and which type
4 of voting equipment existed in the counties that had lines in
5 this report?

6 A Not in this report, no, sir.

7 Q And isn't it true, Dr. Stewart, that the type of voting
8 equipment used can be a factor of how long it takes to do -- to
9 go through the process?

10 A I've published on that before, and I think we talked about
11 this last year, yes, sir.

12 Q I think we did at your deposition. But, yes, the voting
13 equipment can have an impact on how long you wait?

14 A Yes, sir.

15 Q Isn't it true that the DRE machines are one type of
16 equipment that can result in longer lines?

17 A That's been my finding.

18 Q Okay.

19 **THE COURT:** What is the DRE?

20 **MR. FARR:** I'm sorry, Your Honor.

21 **THE WITNESS:** DRE stands for direct recording
22 electronic. So it is the electronic touchscreens.

23 **BY MR. FARR**

24 Q So let's make sure His Honor understands that. In North
25 Carolina, we have the DRE machines, which are the touchscreen

1 machines; correct?

2 A Correct.

3 Q And those are the type of machines that have been found to
4 cause longer lines?

5 A By my statistical studies, and I believe some others, yes.

6 Q And isn't -- don't most of the other counties in North
7 Carolina use paper ballots with an optical reader?

8 A That's my understanding, yes.

9 Q Now, Dr. Stewart, in industrial engineering, are there not
10 people whose profession is to study long lines?

11 A There are people whose profession is to study lines;
12 sometimes long and sometimes short.

13 Q They study lines?

14 A They study lines.

15 Q And often those are industrial engineers?

16 A Oftentimes, they are industrial engineers. Oftentimes,
17 they are operations researchers.

18 Q Was there an industrial engineer that was involved in
19 writing the questions that you asked the people who responded
20 to your survey?

21 A As we've talked about before, the questionnaire was
22 developed by a team of political scientists.

23 Q Which didn't include an industrial engineer?

24 A I didn't believe that having an industrial engineer
25 involved was necessary for asking people how long they waited.

1 So that is correct.

2 Q Now, when people go to vote, Dr. Stewart, do you think
3 that they are ever distracted by things that are taking place
4 while they're waiting in line?

5 A I am sure that happens.

6 Q Did the people that responded to this survey, did they
7 know before they went to vote that they were going to be asked
8 how long they waited in line?

9 A No.

10 Q Okay. And do you know how long after these individuals
11 voted -- or let me rephrase that.

12 How much time elapsed between the time these individuals
13 voted and when they were asked to respond to the survey?

14 A The survey went into the field; that is, we began asking
15 people to respond, I believe, on Election Day. It may have
16 been the day after, and it was in the field for a couple of
17 weeks afterwards. I don't know exactly when the last North
18 Carolina respondent was finished responding, but I would say
19 probably within a week of the election.

20 Q Well, do you think the length of time between an event
21 like standing in line and when you were asked to recall how
22 long you waited -- can that affect the accuracy of the person's
23 report?

24 A It could. It is unclear that it would bias it toward a
25 longer or shorter period, but it would probably make it less

1 accurate over time.

2 Q Did you ever confirm for the respondents in North Carolina
3 how much time elapsed from the time they voted until they
4 answered the questions?

5 A I have not looked at that, no, sir.

6 Q Now, I think in your survey, is it fair to say that you
7 are reporting in general that the lines were longer during
8 early voting than on Election Day?

9 A Yes, in North Carolina, yes.

10 Q All right. And despite that, the number of
11 African-Americans who participated in early voting in 2014 went
12 up by 44 percent. Did you say that earlier?

13 A I believe I said it went up -- oh, the number of
14 African-Americans.

15 Q Increased?

16 A If that is the number, I will take your word for it.

17 Q Why don't you look at that on the exhibit, because I could
18 have got it wrong.

19 A I apologize. I have a bad short-term memory for numbers
20 like this. Went up by 44.7 percent.

21 Q Dr. Stewart, you have not conducted any statistical
22 analysis to determine whether same-day registration had an
23 effect on turnout in North Carolina, have you?

24 A No, I have not.

25 Q And you have not -- you haven't conducted a statistical

1 analysis to determine if it had an impact on registration going
2 up?

3 A I have not performed a statistical analysis of that sort.

4 **MR. FARR:** Your Honor, I think that's all I have for
5 now.

6 **THE COURT:** All right. Any redirect?

7 **MS. RYAN:** Yes, Your Honor.

8 REDIRECT EXAMINATION

9 **BY MS. RYAN**

10 Q Dr. Stewart --

11 A Yes.

12 Q -- I am just going to ask you a few questions. To start
13 with, you had a lot of data in front of you in this case; is
14 that right?

15 A That's correct.

16 Q And you analyzed that data and reported it, applying a
17 particular methodology; right?

18 A Yes.

19 Q So today Mr. Farr has had you recombine some of the data
20 in various ways with the exhibits that he showed you. Do any
21 of the calculations that you did with Mr. Farr change any of
22 your conclusions in this case?

23 A No.

24 Q Why not?

25 A Because my conclusions were based on comparing the use of

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1 these -- the three techniques, blacks and whites, and none of
2 this changes the fact that African-Americans utilized the
3 changed procedures more than whites did.

4 Q You talked some with Mr. Farr about the changes in turnout
5 in North Carolina between 2010 and 2014. Are there various
6 factors that influence aggregate turnout in an election?

7 A Yes, there are.

8 Q What are some of those factors?

9 A Well, the big one is are political factors related to,
10 first of all, what is on the ballot. And then, secondly, the
11 effort that's put into mobilizing voters and informing them of
12 what's going on in the election. There is a number of specific
13 examples of that, but that's generally what's on the ballot,
14 and the effort of the candidates and their supporters to get
15 people to the polls. That's, by far, the strongest set of
16 influences.

17 Q In your experience, do the effects of these other factors
18 on aggregate turnout tend to be greater than the effect of any
19 change in election law?

20 A Yes. In general, when one looks at the studies of the
21 effect of election laws, which sometimes do have effects on
22 turnout, the size of those effects -- I oftentimes joke about
23 the universal 2 percent effect in these studies. That seems to
24 be about the number. Whereas, the effects that show up like on
25 campaign effort, et cetera, having offices on the ballot, say

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1 the difference between a midterm and a Presidential election,
2 that can have -- those oftentimes have effects of 10, 20, 30
3 percentage points.

4 Q Is that one of the reasons that you believe aggregate
5 turnout is not a particularly good way to measure burden in
6 this case?

7 A That's a particularly important reason why, yes.

8 Q I want to ask you about just a few of the specific -- the
9 tables that you were looking at with Mr. Farr.

10 Let's start with Table 14B on Plaintiffs' Exhibit 687.
11 That's the two provisional ballot tables.

12 A Right.

13 Q You have it?

14 A I got it.

15 Q And it is also on your screen.

16 A Yes.

17 Q So looking at Table 14B on Exhibit -- Plaintiffs'
18 Exhibit 687, the "Percent" columns in this table --

19 A Uh-huh.

20 Q -- they show the number of out-of-precinct provisional
21 ballots cast as a percent of Election Day voters; is that
22 right?

23 A That's correct.

24 Q And I see that on this table, you did not calculate the
25 number of out-of-precinct provisional ballots cast as a percent

1 of early votes cast. Is that because out-of-precinct
2 provisional ballots aren't used during early voting?

3 A That's correct.

4 Q These tables -- Table 17 on Plaintiffs' Exhibit 687, we
5 talked about this a little bit before. It shows that the total
6 number of provisional ballots cast in 2014 was down compared to
7 recent elections.

8 A Yes.

9 Q Would the total number of provisional ballots cast go down
10 if more voters arrived at the wrong polling place, but then
11 left to attempt to go to another polling place?

12 **MR. FARR:** Objection, Your Honor. There is no
13 foundation for that.

14 **THE COURT:** I will sustain. I think you can rephrase
15 your question. I think I know what you are asking. So why
16 don't you rephrase your question.

17 **BY MS. RYAN**

18 Q So if somebody arrived at a polling place and ended up not
19 casting a provisional ballot at that polling place --

20 A Yes.

21 Q -- would that be one reason why the number of provisional
22 ballots would go down?

23 A That could be a reason, yes.

24 Q And we talked about this before, I think. The data
25 available on provisional ballots does not record those people

1 who simply left without casting a provisional ballot?

2 A Correct, yes.

3 Q I am going to direct your attention back to Appendix S --

4 A Okay.

5 Q -- of your 2015 declaration, which is on page 159 of your
6 report.

7 A Yes.

8 Q I didn't keep track of all the notations that you were
9 making with Mr. Farr, but I think you talked some about how the
10 black voters increased their use of early voting at a -- to a
11 greater degree than white voters between 2010 and 2014. Am I
12 getting that right?

13 A Yes.

14 Q Does this suggest that the burdens resulting from any
15 increase in congestion of early voting sites would be felt more
16 by black voters?

17 A I would think so, yes.

18 Q Would you please turn to Appendix W of your trial
19 declaration, just a few pages later on page 163.

20 A I'm there.

21 Q You talked about this appendix with Mr. Farr a little bit,
22 too. And I want to draw your attention to the -- well, I
23 guess, first, let's look at the first two groups of dates --

24 A Yes.

25 Q -- which I think you described the first four days are the

1 few days after the close of books.

2 A Yes.

3 Q The second group of dates includes what used to be part of
4 the early voting period, but was no longer in 2014?

5 A Correct.

6 Q And then the third group of dates was the early voting
7 period during 2014; is that right?

8 A That's correct.

9 Q And I think you testified that you didn't know off the top
10 of your head how many of these voters registered at an early
11 voting site as opposed to somewhere else?

12 A Correct.

13 Q I noticed that the number of registrations increases
14 pretty significantly once we get to that early voting period.
15 Do you see that?

16 A I see that.

17 Q What do you make of that?

18 A I make -- what I make of it is that voters -- some set of
19 voters are becoming interested in the election and would like
20 to register to vote and are primed to vote by the heat of the
21 political campaign.

22 Q Does it suggest that the availability for early voting --
23 that some of those people may have registered at early voting
24 sites?

25 **MR. FARR:** Objection.

1 we want to disentangle the Obama effect and the election law
2 change effect, and we can't do that given the data that we
3 have.

4 Q But no one's been able to testify so far that I've heard,
5 including Dr. Burden, who was here, that there is any evidence
6 that the same-day registration increases turnout?

7 A No evidence at all that it increases turnout?

8 Q Were you here for Dr. Burden's testimony?

9 A I was here for Dr. Burden's testimony, yes.

10 Q Didn't he say that he could not find any source of
11 statistically significant evidence that it either decreased our
12 increased turnout?

13 A What I am recalling is his discussion about a paper he had
14 written, and I take -- by my recollection, I don't recall him
15 saying that that was a general finding of the literature, but I
16 could be misremembering his testimony.

17 Q You haven't done a study showing that the same-day
18 registration resulted in increase in turnout in North Carolina?

19 A I have not done that sort of study.

20 Q You haven't done a study --

21 A I haven't.

22 Q And you haven't done a study that same-day registration
23 increased turnout by African-Americans?

24 A I haven't done a statistical study, no.

25 Q Counsel asked you some questions about whether provisional

1 ballots could have gone down because people showed up and left
2 the polls?

3 A Yes.

4 Q Do you have any hard evidence to indicate that that
5 happened?

6 A I have no hard evidence. Logic would tell me that's
7 likely the case. I don't have the evidence.

8 Q Did you recall -- I asked you this last time, and I don't
9 know if you checked it out, but do you recall that there was
10 testimony that there were groups in 2012 and earlier that
11 actually took people to the wrong precincts because they knew
12 they would vote out-of-precinct ballots?

13 A I remember talking about that, but I haven't refreshed my
14 memory to know how I answered that. It's been a while.

15 Q Did you become aware that Mr. Montford testified at the
16 preliminary injunction hearing that his group used to take
17 people to the wrong precinct on purpose?

18 **MS. RIGGS:** Objection. Mischaracterizes testimony
19 from the PI hearing.

20 **THE COURT:** I will remember what was testified to.
21 You can answer the question.

22 **THE WITNESS:** I have no memory of that testimony.

23 **BY MR. FARR**

24 Q You talked about the congestion at the early voting
25 centers and that it would impact African-Americans. Do you

1 have any evidence that African-Americans left the early voting
2 centers because of lines in particular counties?

3 A I don't have direct evidence of that.

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

5 **THE COURT:** Does your analysis examine the
6 socioeconomic status of the persons by race who voted at any
7 particular time or used same-day registration?

8 **THE WITNESS:** Not my analysis, no, sir.

9 **THE COURT:** Are you aware of any analysis or studies
10 that looks at the socioeconomic status of the persons who, for
11 example, tried to vote out of precinct and cast a provisional
12 ballot and, therefore, did have their ballot counted after
13 H.B. 589 was put into effect?

14 **THE WITNESS:** I am not aware of that, I'm afraid.

15 **THE COURT:** All right. Anybody have any further
16 questions?

17 **MR. FARR:** No, Your Honor.

18 **MS. RYAN:** I have just one question, because I think
19 we might have some uncertainty about what we heard over here.

20 **BY MS. RYAN**

21 Q When you made reference to colinearity and you referenced
22 one of the witnesses who testified earlier --

23 A Yes.

24 Q -- and could you just repeat the name of the witness
25 who -- I'm sorry, who you were referring to?

1 A I was referring to -- and I am terrible with names, but
2 the economist who was -- talked about educational attainment in
3 North Carolina.

4 Q Dr. Clotfelter?

5 A Dr. Clotfelter, yes.

6 **MS. RYAN:** Thank you.

7 **THE COURT:** What I am trying to determine is if there
8 is any analysis that would indicate that the persons who tend
9 to vote during, for example, the seven days that have been cut
10 off of the early voting, whether those are persons who are in
11 the lower socioeconomic status or whether, for example, they
12 are persons who work at IBM and are executive vice presidents,
13 and it just happens that they got cut off. Is there anywhere
14 that I can look to find out an analysis of who those people
15 are?

16 **THE WITNESS:** I know of no analysis that's been done.
17 It would be easy enough to do that analysis, but I don't know
18 that it has been done. It could be easily performed.

19 **THE COURT:** How would you do that?

20 **THE WITNESS:** Well, we don't know the actual -- well,
21 there is a couple of ways of doing it. The fastest way of
22 doing it would be we know the addresses largely of the people
23 who cast the ballots, and so what we could do is know -- we
24 know the average SES factors from, say, their ZIP codes, and so
25 we could impute those values onto those individuals and compare

1 them. I think that would be the fastest and most direct way of
2 doing it. Some people might suggest of doing a survey of those
3 people. Like I said, I think the fastest, the most direct way
4 and just as -- well, I would say a valid way of doing it would
5 be to look at the SES measures from their home ZIP codes.

6 **THE COURT:** All right. Anybody have anything
7 further?

8 **MR. FARR:** No, Your Honor.

9 **MS. RYAN:** No, Your Honor.

10 **THE COURT:** Okay. Thank you very much. Doctor, you
11 may step down.

12 **MS. RYAN:** Your Honor, one administrative thing. The
13 United States would move to admit Plaintiffs' Exhibits 686 and
14 687 into evidence.

15 **THE COURT:** Any objection?

16 **MR. FARR:** No, sir.

17 **MS. RYAN:** Thank you.

18 **MS. RIGGS:** Good afternoon, Your Honor. The League
19 of Women Voters Plaintiffs would like to play a video
20 deposition -- designations from a video deposition at this
21 time. This is the video deposition of Lynnette Garth. The
22 Plaintiffs' designations are 7 minutes, 4 seconds. The
23 Defendants' counter-designations are 2 minutes and 7 seconds.
24 May I approach?

25 **THE COURT:** Yes.

1 (Designated portions from the video deposition of Lynnette
2 Garth were played.)

3 **MR. DONOVAN:** Good afternoon, Your Honor. We can go
4 to the next witness. We are almost at break. You want to take
5 the break?

6 **THE COURT:** I think we are going to take a break.
7 Who is the next witness going to be?

8 **MR. DONOVAN:** It is going to be Ms. Alsobrooks.

9 **THE COURT:** All right. Thank you very much. We'll
10 take a break for 20 minutes.

11 (The Court recessed at 3:24 p.m.)

12 (The Court was called back to order at 3:48 p.m.)

13 **THE COURT:** Ms. Earls?

14 **MS. EARLS:** Good afternoon, Your Honor. Anita Earls
15 for the League of Women Voter Plaintiffs.

16 First, a housekeeping matter, if I may. I would like
17 to move the admission of Plaintiffs' Exhibit 688. This is the
18 transcript of the deposition designations of Lynnette Garth
19 that we just saw before the break.

20 **MR. BOWERS:** No objection.

21 **THE COURT:** Admitted.

22 **MS. EARLS:** Thank you, Your Honor. The League of
23 Women Voters Plaintiffs call Amber Alsobrooks.

24 **AMBER ALSOBROOKS,** PLAINTIFFS' WITNESS, at 3:48 p.m., being
25 first duly sworn, testified as follows:

NAACP, et al. v. NC, et al. - Trial Day 4 - 7/16/15

1 DIRECT EXAMINATION

2 **BY MS. EARLS**

3 Q Would you please state your name for the record.

4 A Amber Kathleen Alsobrooks.

5 Q And where do you live right now?

6 A Carrboro, North Carolina.

7 Q And where are you from originally?

8 A I'm from Person County, North Carolina.

9 Q And Carrboro is in Orange County?

10 A It is.

11 Q How long have you lived in North Carolina?

12 A My entire life, 43 years.

13 Q And in all that time, how many different counties have you
14 lived in?

15 A About nine. Some of them more than once.

16 Q Can you briefly tell the Court your educational
17 background?18 A Yes. I have a bachelor of science in management with a
19 concentration in marketing from UNC Greensboro. I have a
20 master of science in recreation administration with a
21 concentration in therapeutic recreation from UNC Chapel Hill.
22 I have a master of arts in clinical health psychology from
23 Appalachian State University.24 Q Thank you. And would you summarize your employment
25 history?

1 A After I finished undergrad, I moved to Charlotte, North
2 Carolina. While I was there, I mostly worked as a national
3 account executive providing consultation for businesses --
4 providing primarily consultation services to businesses
5 regarding ethics and compliance and human resource issues.

6 Then I left there to go to grad school at UNC Chapel Hill.
7 After that, I worked as a day treatment coordinator and
8 recreational therapist at an outpatient neuropsychiatry
9 practice.

10 And then I moved to Boone, where I worked on a contract
11 basis as a social research assistant for UNC Chapel Hill. Then
12 I returned to Chapel Hill where I worked as an intervention
13 coordinator for the Department of Health Promotion and Disease
14 Prevention, also at UNC. Then I worked for Lineberger
15 Comprehensive Cancer Center, also at UNC.

16 Then I went to grad school. I completed my clinical
17 health psychology internship here in Winston-Salem at Wake
18 Forest Baptist Cancer Center and then moved -- then I was doing
19 what I am doing, which is a social research assistant on a
20 contract basis for UNC Chapel Hill.

21 Q And that's your current employment?

22 A It is.

23 Q When did you first register to vote?

24 A When I was 18 years old. That would be 1990.

25 Q And where were you living when you first registered to

1 vote?

2 A In Alamance County. I was attending Elon College, Elon
3 University.

4 Q Did you vote in the 1990 election?

5 A Yes.

6 Q And let's go chronologically. After the 1990 election,
7 did you vote again in Alamance County?

8 A No.

9 Q Where did you vote next?

10 A Next I voted in Mecklenburg County. I believe that was
11 '96, and then again in '98. And then I voted in Orange County,
12 I believe, twice and then --

13 Q Then did you move again from Orange County?

14 A Yes, to Durham County, then Watauga County, then Orange
15 County, Watauga County, back to Orange.

16 Q So between 2002 and 2012, roughly how many times did you
17 vote -- or in how many elections did you vote and in how many
18 counties?

19 A I think -- so I voted 13 times total in my life, and so I
20 think between 2002 and 2012, six different times in three
21 different counties.

22 Q Now, between 1990 when you first registered and voted in
23 Alamance County and 2012 when you voted in Watauga County, how
24 did you change your voter registration to be eligible to vote
25 in the various counties?

1 A Lots of these times, I was a student, so, typically, I
2 registered on campus and also registered with early voting a
3 couple of times and the DMV.

4 Q And when and where is the last place you voted when your
5 vote actually counted?

6 A Watauga County, 2012, on campus at Appalachian State.

7 Q Now, did you move again after that?

8 A Yes.

9 Q Where did you move after being in Watauga County?

10 A I moved to Orange County.

11 Q And when was that?

12 A That was in May of 2012, so after I graduated. So that
13 would have been May of 2015.

14 Q Did you try to vote in the November 2014 election?

15 A I did.

16 Q And where did you go to vote?

17 A The Orange County early voting place was in Hillsborough,
18 North Carolina.

19 Q So when did you go to vote in the November 2014 --

20 A I went to the first Saturday of early voting,
21 October 25th.

22 Q And why did you go to early voting?

23 A I was concerned. I had seen some things about all the
24 laws changing, and so I wanted to make sure that I could -- if
25 I wasn't registered, that I could do whatever was necessary to

1 make sure I could get registered before the Election Day.

2 Q So what happened when you went to vote?

3 A I went with my husband, and when we checked in, he was
4 given his ballot, and they said that I wasn't registered. They
5 looked up my name and saw that I had last registered in Watauga
6 County and told me I wasn't registered there and I couldn't
7 register there.

8 So when they said I wasn't registered there, I said, well,
9 let's get that changed. Let's go ahead and change the
10 registration because I've used early voting before.

11 And she said, you would have done that several weeks ago,
12 which I completely was not aware of; and I asked if there was
13 anything I could do to cast my vote there. She said no.

14 And so we actually talked about me driving to Boone so
15 that I could vote. It's about three and a half hours away, but
16 I really wanted to vote. And --

17 Q Did you drive to Boone?

18 A No. The woman there overheard us discussing that and said
19 that I would -- that would be illegal because I had moved more
20 than 30 days ago. And so I asked if I had any recourse
21 whatsoever, is there any way I could vote. And she said no,
22 just --

23 Q So what did you do at that point?

24 A I left. I was stunned. Clearly I've moved around a lot,
25 and I voted many times in 23 years, and I've never had that

1 happened. When I left, I was upset. And one of the volunteers
2 outside of the polling place said in a very friendly manner,
3 thank you for voting. And I said, I couldn't. I wasn't
4 allowed to vote. And she said that I should call a hotline to
5 see if there was anything that I could do about that.

6 So I went home. I called the hotline, and then they
7 encouraged me to ask for a provisional ballot. I didn't really
8 know what that was. So I returned to the polling place, and I
9 asked the same woman, who seemed to be managing the polling
10 place, if I could have a provisional ballot, to which she
11 replied, you know your vote is not going to count anyway;
12 right? And I said, well, I still want a provisional ballot.
13 So she gave it to me and stood beside me while I completed the
14 ballot and then took it.

15 Q Do you know if your provisional ballot counted in the
16 November 2014 election?

17 A It did not.

18 Q And how do you know that?

19 A In addition to trusting the word of the woman that told me
20 that when I asked for the provisional ballot, when I was
21 informed that I could look up my voter history, it's not on
22 there. And then also another attorney confirmed that with the
23 Coalition for Social Justice.

24 Q Are you registered to vote now?

25 A I am.

1 Q Now, have you moved recently?

2 A I have.

3 Q How did you register to vote after your most recent move?

4 A I went to the DMV to change my driver's license; and even
5 though that was within the same county, I just wanted to make
6 doubly sure that all my T's were crossed. And even though I am
7 moving again in six months when my house is ready, I changed my
8 voter registration and they filled -- when they gave me the
9 form and it had my county of residence -- she had asked me my
10 county of residence, which I thought was odd because I was in
11 Carrboro and I live in Carrboro and she knows that's Orange
12 County. She said, I just have to ask you that.

13 So I told her Orange County. She printed out a sheet for
14 me to sign. I signed it. I checked my address was correct;
15 and then after I gave it back to her, I saw that word "Durham"
16 in a small square on the paper, and I asked for it back. And
17 then I saw that even though she had typed in Orange County, it
18 had me listed as county of residence, Durham.

19 Q So what happened at that point?

20 A So I said, well, I don't live in Durham. And she said,
21 well, this is a problem. She called the manager of the DMV
22 over, and they decided they needed to call the DMV helpline
23 from their station. We were on hold somewhere between 26 and
24 30 minutes before someone actually picked up. They had to
25 correct it at that level of the DMV.

1 I asked if they could just unregister me, let me go take
2 care of it somewhere else later. And they said, no, if I left,
3 I would remain registered in Durham County.

4 Q Even though at that point you weren't living in Durham
5 County?

6 A I don't live in Durham County.

7 Q Right. Since 1990, you've been a registered voter in
8 counties around the state. Was there anything different about
9 your experience of registration and voting after your move back
10 to Orange County in 2014?

11 A Everything was different. I have never had a problem
12 registering. I have never had to go to a board of elections
13 and walk in the door. I have never thought that this would
14 happen to me, given the fact that I moved around a lot. I am a
15 taxpayer. I own property here. I've volunteered thousands of
16 hours in all these places and, yeah, everything was different.
17 I wasn't allowed to vote. I wasn't allowed the right that
18 I thought was a right of the citizens of this state and
19 country.

20 **MS. EARLS:** No further questions.

21 **THE COURT:** Any cross-examination?

22 **MR. BOWERS:** Yes, Your Honor. Thank you.

23 CROSS-EXAMINATION

24 **BY MR. BOWERS**

25 Q Good afternoon, Ms. Alsobrooks.

1 A Good afternoon, Mr. Bowers.

2 Q It's good to see you again. Ms. Alsobrooks, what is your
3 race?

4 A White or Caucasian. I'm not sure what the --

5 Q Okay. When you were going over your residence and
6 registration history with counsel, I was trying to keep up.
7 Did you leave out Guilford County?

8 A I did live in Guilford County, yes.

9 Q Okay.

10 A I did not vote in Guilford County.

11 Q Were you registered to vote in Guilford County?

12 A No.

13 Q Okay. And that was right after you moved from Alamance to
14 Guilford; is that correct?

15 A Yes.

16 Q But you never registered to vote in Guilford?

17 A I did not.

18 Q And, Ms. Alsobrooks, isn't it true that you knew that
19 whenever you moved to a new county, you needed to change your
20 voter registration to reflect that new county; correct?

21 A That's what I have always done.

22 Q I think I heard testify, and I want to make sure my notes
23 are correct and the record is correct, that you moved to Orange
24 County in 2007 or '8; is that correct?

25 A I first moved to Orange County in -- after -- it was like

1 2000, 2000 and 2002, and then I moved back to Orange County a
2 second time.

3 Q That second time, was that around '07 or '08?

4 A Yes.

5 Q Okay. And you registered to vote there?

6 A Yes.

7 Q Okay. You may have testified to this, and if I missed it,
8 I apologize. Did you register to vote at the DMV?

9 A I don't recall if that year I registered to vote at the
10 DMV or during early voting at the polling place. I can't
11 remember which one for that particular year.

12 Q If I told you that same-day registration started in 2007,
13 2008 in North Carolina, would you dispute that?

14 A That would surprise me. I mean, I have always been able
15 to vote, and I thought that I had voted the second time I moved
16 to Orange County when I went to early vote.

17 Q And you may have, if that was '08, but the times prior to
18 that, you've always registered to vote at least 25 days prior
19 to Election Day; correct?

20 A I am not sure about that. I really don't know.

21 Q Well, if same-day registration didn't exist before that,
22 then by process of elimination, that has to be the case; right?

23 A You gave me a specific day count, and I am really not
24 familiar with how many days prior to that.

25 Q Okay. So you moved to Orange County in 2007 or 2008;

1 right?

2 A Yes.

3 Q And then back to Watauga in 2012?

4 A Yes.

5 Q And then back to Orange in 2014?

6 A Yes.

7 Q Okay. During that time when you had moved back to Watauga
8 in between your last two Orange County stints, did you change
9 your driver's license to reflect Watauga?

10 A No.

11 Q So it still reflected Orange County; correct?

12 A Yes.

13 Q Even though you were registered to vote in Watauga?

14 A Yes.

15 Q And did I understand correctly that since your deposition
16 on June 4, that you moved again?

17 A I have. We sold our house.

18 Q Congratulations.

19 A And the house isn't ready where we are going to move. We
20 have to move to a place in between.

21 Q You went to the DMV, I think you testified, to update your
22 driver's license and your voter registration; correct?

23 A Yes.

24 Q So isn't it true that if you had changed your driver's
25 license to reflect your county of residence in Watauga in 2012,

1 that when you moved to Orange and changed back to Orange
2 County, you would have had an opportunity to register to vote
3 at the DMV in May of 2014; correct?

4 A Yes.

5 Q Okay. I think you testified that before you went to vote,
6 that you had heard that there had been some changes in the law;
7 is that correct?

8 A Yes.

9 Q And you were aware that same-day registration had been
10 eliminated?

11 A I thought same-day registration meant same day as Election
12 Day.

13 Q Okay. So --

14 A So I went to early voting in order to do it then.

15 Q Okay. So you had heard that same-day registration had
16 been eliminated; you just misunderstood what that meant. Is
17 that fair to say?

18 A Yes.

19 Q How did you know where to go to early vote?

20 A I can't recall exactly. My husband and I, when we're in
21 the same county together, usually do that together. So he
22 could have looked that up or I looked that up. I can't
23 remember.

24 Q Okay. What month was it when you moved back to Orange
25 County in 2014?

1 A May.

2 Q Okay. Between May and October, did you ever try to change
3 your voter registration?

4 A No.

5 Q Was there anything that prevented you from trying to
6 change your voter registration between May and October of 2014?

7 A I wasn't trying to solve a problem I didn't know I had.
8 So I -- I mean, I had been able to change my registration to
9 early voting before. So nothing prevented, but it's like
10 paying your taxes several months in advance. If you don't
11 think you have to do it right away, it's just -- I didn't do it
12 then.

13 Q And much like paying your taxes, and you know you have to
14 pay your taxes at some point, you knew that you had to change
15 your voter registration to reflect Orange County if you wanted
16 to vote in Orange County; right?

17 A Correct, which that's why I went to early voting.

18 Q Ms. Alsobrooks, I don't have any further questions at this
19 time, but I think my --

20 **MR. BOWERS:** I beg your indulgence, Your Honor. One
21 moment.

22 (Counsel Conferred.)

23 **MR. BOWERS:** No further questions. Thank you.

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

25 **MS. EARLS:** No, thank you, Your Honor.

1 Baptist Theological Seminary of Wake Forest in Wake Forest,
2 North Carolina.

3 And I hold a doctorate of ministry from the -- I hold a
4 doctorate of ministry from the McCormick Theological Seminary
5 of Chicago, Illinois.

6 Q And, Pastor Moss, what -- briefly, if you could detail,
7 what organizations have you helped lead?

8 A Okay. I'm -- I have been a member and a former president
9 of the General Baptist State Convention of North Carolina. I
10 am also seated president of the Lott Carey Baptist Foreign
11 Missionary Convention, which is based in D.C.

12 I'm a former vice president of the local branch of the
13 NAACP in Concord, North Carolina, in the Charlotte-Mecklenburg
14 branch, and also I am a former cochair of an organization
15 entitled Helping Empower Local People, better known as HELP.

16 Q And, Pastor Moss, perhaps you can tell us a little bit
17 more about those first two organizations, the Lott Carey
18 organization and the Baptist Convention.

19 A The General Baptist State Convention is made up of 1,600
20 predominantly African-American missionary Baptist churches here
21 in the State of North Carolina with over 500,000 constituents,
22 and I currently serve on the executive committee and general
23 board.

24 Q Okay. And --

25 A And Lott Carey is a global missions community of Baptist

1 Heritage, and we have churches all over the United States, and
2 we work doing missions in over 20 countries around the globe.

3 Q And you mentioned HELP, Helping Empower Local People. Can
4 you tell us what that organization is?

5 A Yes. HELP is basically a grassroots organizing entity
6 that's designed to help local people get power.

7 Q And, Pastor Moss, your church, which is in Charlotte,
8 where in Charlotte is it located precisely?

9 A We are located just off of downtown in what is called
10 North Charlotte, but the community is better known as Belmont,
11 not to be confused with the city.

12 Q Okay. And what kind of area is Belmont?

13 A Belmont is a predominantly African-American community,
14 very challenged community -- challenged in crime rate
15 community, but we are beginning to see some signs of
16 gentrification.

17 Q What are the economic conditions of the African-American
18 population in that community?

19 A Low socioeconomic conditions there in Belmont.

20 Q How about your congregation? How financially well off are
21 your congregants?

22 A Well, we have a mixed congregation. We have people who
23 hold two degrees. We have judges, we have lawyers. We have a
24 mix of professionals, but probably more than 50 percent are at
25 the poverty level or below.

1 Q How about the educational backgrounds of your congregants?

2 A There are some that hold two degrees, but most do not have
3 post-high school and some are -- even struggle with literacy.

4 Q And what types of services beyond the Sunday service does
5 your church provide to its congregants and the wider Belmont
6 community?

7 A We take pride in serving the community. We open our
8 facilities to any group -- most groups that would like to have
9 a meeting there without charge. We hold health fairs. We feed
10 the hungry. We have a food ministry, a clothing ministry. We
11 house NA and AA. We have tutoring within our congregation. We
12 have youth programs.

13 We have a gym and the city of Charlotte does not have a
14 recreation facility in the Belmont community. So we often use
15 our gym to house programs for young people, keep them off the
16 streets as much as possible.

17 Q So your church is sort of a one-stop shop for services in
18 your community; is that fair?

19 A It is.

20 Q And how does that one-stop shop model relate to the
21 traditions of the African-American church in North Carolina and
22 other parts of the south?

23 A The African-American church has always served to provide
24 holistic ministry, and that's largely due to a trust factor.
25 Many of our people do not trust some of the systems that the

1 majority of the community participate in.

2 For instance, the medical profession goes back to the days
3 of Tuskegee experiments, and, particularly, a lot of black
4 males do not trust the medical profession. So they will come
5 to the church for medical purposes because they trust the
6 leadership and they trust the community.

7 **MR. FARR:** Sorry, Your Honor. I am trying to turn my
8 phone off.

9 **BY MR. SHAPIRO**

10 Q Pastor Moss, you stated you were a cochair of HELP, I
11 believe you said, and the vice president of NAACP over the
12 years. And while you were helping to lead those organizations,
13 did the issue of voting come up as a concern?

14 A Yes, it did. Around 2002, 2003, leading up to a
15 Presidential election and in my experience, because I've been
16 doing this for a long time, we noticed that there were low
17 voter turnout among our people. So we were basically trying to
18 address the situation by even looking at post-election results,
19 and found out that what we suspected was true.

20 Q When you say "among our people," what do you mean? Where
21 were you seeing this type of low --

22 A In our churches, among our churches, and in the community
23 that the churches serve.

24 Q And I think you mentioned earlier the community you serve.
25 Your church is serving a low-income African-American community

1 --

2 A Yes, the Belmont community.

3 Q -- is that right?

4 A That's correct.

5 Q And when you and your colleagues in HELP and NAACP saw
6 this problem, what was your perception of causes or reasons for
7 why this low African-American political participation was
8 occurring in your community?

9 A If I had to, I think I would list them in -- if you'll
10 allow me to list three categories. One would be
11 transportation, one would be perhaps an inflexible schedule,
12 and another would be mindset.

13 Q Let's take those one by one. When you say transportation,
14 what do you mean?

15 A Well, a lot of people are working-class people who are
16 hourly workers, and oftentimes they don't even own an
17 automobile. So many of them rely on public transportation
18 within Charlotte in order to get to work, and oftentimes, they
19 can't even afford to ride the bus. So our church is
20 instrumental in providing bus passes.

21 Q How about the inflexible schedule? What do you mean by
22 that?

23 A Well, because most of them are hourly workers, those are
24 the ones that I employ, they don't have the flexibility to be
25 able to leave their jobs to go and vote. To stand in long

1 lines and try to make it back to work, they just don't have
2 that flexibility. And then once they get home, like most
3 people, they have children. Already challenged by maybe not
4 having their own personal transportation, they have to feed the
5 family and then try to make it back to a polling place, but
6 public transportation is very difficult.

7 Q So you mentioned the transportation again and the
8 inflexibility. Do those two issues combine together?

9 A Yes, they overlap. One affects the other.

10 Q How about the third barrier that you mentioned, mindset?
11 How does that play into this?

12 A Well, mindset, I think most of us remember what the
13 African-American community went through in terms of the Voting
14 Rights Act, trying to vote and the barriers that they had to go
15 through. A lot of it is still in the minds of people, and
16 oftentimes, particularly during early voting times, they are
17 not comfortable in a majority of situations when it comes to
18 polling places. Some people aren't.

19 Also, there is a lot of misinformation out there, that
20 people are told certain things that might inhibit them.

21 Q What do you mean?

22 A For instance, we had some people told that they had to pay
23 their taxes before they were able to vote. A lot of dirty
24 tricks are played during the elections. Parking tickets aren't
25 paid, you can't vote, those kinds of things.

1 There is also an educational factor, too. There is some
2 people who don't really read well. So they are intimidated
3 when they go to the polls, particularly now. You can't pull a
4 straight ticket. So now they have to read through the entire
5 ballot, which sometimes is difficult for some people.

6 Q So you have given us a nice description of the challenges
7 that your congregants face when voting. What ideas and
8 strategies did you and your colleagues develop to address these
9 problems that you perceived that resulted in low turnout?

10 A Okay. We heard about the opportunity that would come with
11 early voting to be able to vote on Sundays in Mecklenburg
12 County, and so we went -- we came together with the idea of
13 coming together to share ideas about how we could take
14 advantage of that Sunday and get people to the polls, which
15 answers -- well, to get the people to polls, but also to take
16 advantage of the entire early voting period. And we developed
17 what eventually became known as Souls to the Polls.

18 Q And if I understand your answer, are you saying that the
19 churches were part of this solution?

20 A Yes. Help Empower Local People is made up of local
21 churches and headed by clergy, and those are clergy around the
22 table.

23 Q So having come up with this strategy, what did you do
24 then?

25 A Once we came up with the strategy, we organized and put

1 the structure in place.

2 Q Let me stop. In terms of deciding to get Sunday voting,
3 what did you do?

4 A I'm sorry. I misunderstood you. By being a part of the
5 NAACP, but also part of HELP, we participated in meetings with
6 the board of elections, who were approached, so that -- I am
7 used to speaking into the mic at the church. I am sorry.

8 But we were part of a group that approached the board of
9 elections in Mecklenburg County about Sunday voting; and as
10 part of that, board of elections was ecstatic about it, I would
11 say. They were very supportive and went to work to see that it
12 would get done, but then there was some pushback from our local
13 board of commissioners, who eventually threatened to slash the
14 budget of the board of elections so it would not take place.

15 Q And what happened then when they threatened to slash the
16 funding?

17 A Well, eventually the board of commissioners realized that
18 they had made a mistake, and the attorney told them that they
19 were wrong, and they had to back off. And Sunday voting went
20 forward.

21 Q And when did it first go forward?

22 A This was in 2004.

23 Q And what rationale was provided by the commissioners when
24 they initially threatened to slash the funding of the county
25 board of elections if they went forward with Sunday voting?

1 **MR. BOWERS:** Objection, Your Honor, hearsay.

2 **THE COURT:** Overruled.

3 **THE WITNESS:** They said that the State Board of
4 Elections had overstepped its bounds. They said it was -- that
5 they could not pay for it, and they also said it was due to
6 partisan politics.

7 **BY MR. SHAPIRO**

8 Q How credible did you find those explanations?

9 A I did not find them credible at all because we had a board
10 at that time who were consistent in not helping the
11 African-American community at all, and to say that the money
12 was not available was not true.

13 Q Why wasn't it true?

14 A Because the State Board of Elections had received a
15 federal grant, and the State Board of Elections would help with
16 different boards of elections across the state with different
17 projects, and they would forward the money to our local board
18 of elections to pay for Sunday voting.

19 Q How about the assertion that this was sort of beyond what
20 the county board of elections could do?

21 A Their attorney said that that was not true, and it was
22 within their spirit to do it because they can do special projects
23 with different local boards.

24 Q How about that last rationale, that this was just
25 partisanship?

1 A Well, Souls to the Poll basically was geared toward the
2 African-American church. It was not based on a particular
3 party. It was not based on, if I can say this, the liberal
4 white communities of Charlotte. It was targeted toward
5 African-American churches. We saw it as a way to increase
6 voter turnout. So it seemed very racial to us at the time.

7 Q And how did you think that your solution of Souls to the
8 Polls in particular would address those three barriers that you
9 mentioned earlier of transportation and flexibility and
10 mindset?

11 A By all means, transportation-wise, because most of our
12 churches have buses and/or vans, and also people who are
13 willing to share their vehicles when it comes time to do those
14 kinds of things.

15 In terms of scheduling, most people have already scheduled
16 to be at church anyway. So you are right there. And if -- on
17 Souls to the Polls, if you are going to leave church and go
18 vote, it doesn't interrupt with your schedule. And we even try
19 to make sure that we adjust the schedule and worship for that
20 to take place.

21 But also the mindset part, you are voting with friends.
22 You are voting with family, and our church is our family. So
23 you are going to a polling place where there is one that you
24 are used to and you are with people that you know. So it makes
25 it more comfortable to do so.

1 Q And were you involved in implementing this plan as it went
2 forward?

3 A Yes, I was.

4 Q Implementing the Souls to the Polls strategy?

5 A Yes, I was.

6 Q And could you describe how you and others had helped and
7 NAACP went about implementing Souls to the Polls in Mecklenburg
8 County?

9 A Well, basically, we developed the structure wherein clergy
10 would come together and share ideas because we respect each
11 other's houses of worship. So everybody wouldn't necessarily
12 do it the same way, but we had some basic tenets in place that
13 we did agree on that certain churches in certain communities
14 would serve as a hub and there would be, in essence, a calling
15 center where the people could call in that needed
16 transportation. So those things we all agreed on and agreed to
17 do, and the churches were chosen strategically so that it
18 wouldn't be a burden to have to go from one side of the county
19 or city to the other.

20 Q And how about helping the voters themselves at the polls?
21 Was that --

22 A Sure.

23 Q -- something you coordinated?

24 A Because some people are vulnerable, we created what we
25 like to call an army of volunteers who are willing to go to the

1 polls to just be available to kind of help shepherd people
2 through the process and to help cut down on the misinformation
3 and of the, quote, dirty tricks that would take place.

4 Q And how many clergy leaders are we talking about here?

5 A I'm sorry?

6 Q How many clergy leaders? You said there were clergy
7 members leading --

8 A Anywhere from 35 to 40, and the majority of those are
9 African-American.

10 Q Okay. I think you stated earlier they were meeting to
11 coordinate this effort?

12 A Yes.

13 Q Were you involved in leading those efforts?

14 A Yes.

15 Q Okay. Now, how about at your church, Pastor Moss, when
16 there is a voting Sunday, typical voting Sunday, does the issue
17 of voting ever come up in your sermon?

18 A Yes, it does. I take the time to give a history lesson
19 about how important it is for our community to take advantage
20 of the opportunity to vote. We talk about how our foreparents
21 had water hoses turned on them, and they were bitten by dogs,
22 they were beaten, and some were even killed for us to have the
23 right to do it, and that it would be terrible for us to spit on
24 the graves of our foreparents and not take advantage of it.

25 Q And on voting Sundays, when does your service end?

1 A We always take time to adjust the worship so that we
2 are -- I believe truly that the most precious thing we have is
3 time that God gives us. So we adjust worship around the fact
4 that we are going to go vote. So we shorten worship so that
5 people won't have to stay all day.

6 Q And is your church -- on voting Sundays when service ends,
7 what do you do then?

8 A I'm sorry?

9 Q When service ends on a voting Sunday, what did you do
10 then? What do you do?

11 A What I do in St. Paul is I have a wonderful friend in the
12 church, an older gentleman who has a huge motorcycle, and so we
13 ride a motorcycle. We mount the motorcycle and lead a caravan
14 of people to the polls. In fact, he has a radio on the
15 motorcycle, so we listen to the Panthers games. And he has --
16 he stocks the saddlebags with chicken and biscuits and water.
17 So we ride to the polls. It's basically done to be creating --
18 to drum up support and create excitement about that
19 opportunity.

20 Q And when you get to the polls with your caravan -- strike
21 that.

22 When you say "caravan," are you referring to other
23 vehicles that are following you to the polls?

24 A Yes. Buses, vans, cars, and trucks, you name it.

25 Q When you get to the polls with your caravan of congregants

1 who are following you, what happens then?

2 A And then we make sure that everybody gets settled in, get
3 in line and so on and so forth, and then Mr. Bullock and I
4 would leave that particular polling place and visit others just
5 to encourage the troops and the volunteers and the people in
6 line because oftentimes the lines are long, and when they see
7 the pastor riding up on a motorcycle, it sort of gives them
8 encouragement.

9 Q Got it. When you said "volunteers," are you referring to
10 that army of volunteers that you helped organize to go to the
11 polls and help people?

12 A Yes, that same group.

13 Q So what effect do you think your Souls to the Polls effort
14 and your effort to use the churches to make the most out of
15 early voting has had in Mecklenburg County?

16 A I think we have had a very positive impact. Particularly
17 in, to give an example, in 2004. We had a huge number of
18 people in our caravan, and because in Charlotte-Mecklenburg you
19 only can vote at about five places, so we chose the board of
20 elections, which is close to our church, and we ended up
21 wrapping around the building. The hours from were from 1:00 to
22 5:00, but the polling place was forced to stay open longer
23 simply because of the number of people. And it was
24 overwhelming, but it was a wonderful opportunity.

25 Q And are you familiar with same-day registration, which was

1 adopted in 2007?

2 A Yes. Can I go back to something also?

3 Q Sure.

4 A The impact also was borne out in, if I'm not mistaken, I
5 think the -- in '04, they had at least a 6 percent increase
6 during that time in early voting, and we felt like we had
7 something to do with that.

8 Q Okay. I want to move on now to the issue of same-day
9 registration. Are you familiar with same-day registration and
10 adoption of same-day registration in 2007?

11 A Yes, I am.

12 Q And what effect did that have, the adoption of same-day
13 registration, on your Souls to the Polls program and your early
14 voting program generally?

15 A It had -- if I could use this term, it was like a force
16 multiplier. It just really grew the numbers of people that
17 participated.

18 Q Explain why it is a force multiplier. How did that work?

19 A Well, basically, particularly, for instance, on Sunday, it
20 goes back to those things we talked about before --
21 transportation, flexibility of schedule, and also mindset --
22 because now you get a chance to register people. That's one
23 thing, but they can also vote; that's another thing.

24 And, oftentimes, since they are first-time voters, most of
25 the time you get a chance to help allay any kind of fears and

1 nervousness that they might have participating in the process
2 for the first time.

3 Q Pastor Moss, are you familiar with H.B. 589 and the recent
4 changes to North Carolina's voting rights?

5 A I am.

6 Q And which features of that law do you feel most impacted
7 your Souls to the Polls program?

8 A Let me speak to two of them. The first one, when the days
9 were taken away, it really caused us to have to scramble and to
10 condense what we do, how we approach it, particularly in terms
11 of people who work, the volunteers as well as the drivers. If
12 I could speak about the drivers.

13 They are working people also, and they can't always just
14 up and get vacation time on the fly. And also with our bus --
15 I'm sorry.

16 Q Maybe you were going to -- I'm sorry. Please continue. I
17 wanted to know when you say your drivers, what do you mean by
18 that?

19 A The drivers that we have who drive the buses and the vans
20 for the church, and I believe -- I know it's this way in our
21 church. There are certain people who can drive the buses and
22 drive the vans, and they have to be okayed by the insurance
23 company. So you just can't let anybody drive. So it may very
24 well negatively affect their availability.

25 Q And in what other ways did this elimination of some of the

1 early voting days affect your program?

2 A Well, talk about army of volunteers who work, it is the
3 same thing. They were negatively affected because they
4 can't -- they don't have the same flexibility in days to be
5 off, but it also creates a hardship that way.

6 Q Now, Pastor Moss, could you tell us what the circuit
7 church is?

8 A I wanted to speak to that, too. In my particular church
9 and in the African-American church at large, there is a real
10 interesting thing, particularly in the rural churches. Since
11 we are so close, North and South Carolina, and maybe Virginia,
12 they have what's called circuit churches, where church is only
13 held -- been held only once a month, twice a month. And so
14 when people gravitate to churches in the city, it is in their
15 DNA to continue along those lines. So I essentially have four
16 different congregations in my church. You have some who come
17 one Sunday, or the second Sunday, or the third Sunday, but not
18 all the Sundays at the same time. And so --

19 Q How --

20 A So it creates a hardship because when a Sunday is removed,
21 and that's that person's Sunday, they may very well miss that
22 opportunity.

23 Q When you say a Sunday is removed, you mean a Sunday
24 opportunity for voting is removed?

25 A If I am not mistaken, there was seven days removed out of

1 early voting.

2 Q Got it. And how about the elimination of same-day
3 registration? How has that affected your program?

4 A Well, as I said before, one, the whole idea of the
5 registration piece and the whole idea of the voting piece. So
6 it caused us to have to scramble quite a bit this last time
7 because we were unable to do it on the same day when people
8 registered and then go ahead and vote.

9 So in my particular congregation, we tried to find a way
10 to come up and continue the registration piece. Do you mind if
11 I speak about that?

12 Q Yes, please do.

13 A In the -- we have what is called, in most African-American
14 churches, homecoming. That's where a lot of people will come
15 back on a certain weekend and certain day, and you have lots of
16 food and fellowship and worship.

17 We took it to a different turn on it, and prior to our
18 homecoming, which is always held in August, we have what is
19 called Mission Blitz; and during Mission Blitz, we do lots of
20 different things. We target a certain particular issue that we
21 are going to deal with, and the congregants will come together
22 on that Saturday prior to homecoming and work. We do
23 everything from building ramps for disabled people to cutting
24 grass, painting houses, working with victims of HIV, along
25 those lines.

1 So this last election cycle, because same-day registration
2 was struck down and we are not allowed to do it, we decided to
3 fashion Mission Blitz around registering people. So we had
4 about 150 people who went out and touched doors to help get
5 people registered.

6 Q And do you think you will be able to devote Mission Blitz
7 to this effort going forward?

8 A No, we will not be able to because there are other issues
9 that we have to deal with. So that was a one-shot deal on
10 Mission Blitz.

11 Q So do you feel that in the absence of same-day
12 registration, you will be able to register people in the same
13 way? Do you feel you can make up for the loss of same-day
14 registration?

15 A I don't think we will be able to do it in the fashion that
16 it was done on same-day registration -- same-day registration
17 was very successful.

18 Q Pastor Moss, you've told us a lot about your experiences
19 building this program and the effects that this new law has
20 had. In your view, how do you feel about whether this law is
21 improving the fairness and integrity of the election system in
22 the state?

23 **MR. BOWERS:** Objection, Your Honor. That sounds more
24 like an expert question than a fact witness.

25 **MR. SHAPIRO:** Your Honor, I feel it is very tied to

1 his perceptions and his experiences that he shared with this
2 Court. He has views about whether it is fair or not based on
3 his experiences.

4 **THE COURT:** I will overrule.

5 **BY MR. SHAPIRO**

6 Q Please continue.

7 A I have been involved in this whole process my whole
8 ministerial life, and that's been pastoring for 36 years. And
9 when I think about this bill, it really seems to fly in the
10 face of integrity and fairness.

11 There was a conversation between Martin King and Ralph
12 Abernathy after the Civil Rights Act was passed and Voting
13 Rights Act was passed, and I believe it was Martin who said to
14 Ralph that -- Dr. King said to Ralph Abernathy that, Ralph, we
15 have about 40 years of this, and then eventually there are
16 going to be forces that are going to try to turn it around. I
17 find it quite prophetic that that's what we see now. It
18 appears that this bill was really borne out of a flawed process
19 that does not strike of integrity and does not strike of
20 fairness, particularly for the community that I serve, and that
21 comes from my experience and what I have seen over the years.

22 I would like to say that in so doing, it appears that
23 nobody has any substantial elegance where there has been any
24 fraud of any significance, and to pass a bill like this has
25 really, you know, damaged a group of people's ability to really

1 **BY MR. BOWERS**

2 Q Dr. Moss, good afternoon. My name is Butch Bowers. I'm
3 an attorney here representing the Governor. I've just got a
4 couple of questions for you, please, sir.

5 A Sure.

6 Q I think you testified that as part of your outreach, that
7 you provide voter education and registration services, is that
8 accurate, or at least voter education programs?

9 A Yes.

10 Q And isn't it true that there is nothing in the new law
11 that prevents you from providing voter education regarding the
12 new law, is there?

13 A Not that I know. I do not -- not that I know.

14 Q Dr. Moss, isn't it true that during your Souls to the
15 Polls outreach efforts that you instructed people to go to
16 different polling places that were closer to the area
17 regardless of whether they were actually registered to vote
18 there; isn't that true?

19 A The experience was -- what I did was instructed people to
20 go vote. It was not dependent upon whether or not they were
21 registered for that particular precinct or not. It was to take
22 advantage of the early voting, and that's what -- that's the
23 way it was structured. And the reason for it was is so that we
24 would not overwhelm a particular polling place, which my
25 understanding is that that was no problem during early voting.

1 Q Dr. Moss, thank you. I have no further questions.

2 A Thank you, Mr. Bowers.

3 **THE COURT:** Anything further?

4 **MR. SHAPIRO:** Nothing further.

5 **THE COURT:** Dr. Moss, you may step down, sir. Thank
6 you.

7 **MR. DONOVAN:** Good afternoon, Your Honor. We are
8 ready to proceed. Our next witness is an expert witness. We
9 just want to get your direction. We can kind of start. I know
10 it would be 12 minutes, or we can wait until in the morning.
11 It is your call.

12 **THE COURT:** Who is the witness?

13 **MR. DONOVAN:** It is Professor Gronke.

14 **THE COURT:** Why don't we go ahead and get 12 minutes
15 done.

16 **MR. HO:** Good afternoon, Your Honor. My name is Dale
17 Ho on behalf of the League of Women Voters Plaintiffs. The
18 League of Women Voters Plaintiffs call Dr. Paul Gronke.

19 **PAUL GRONKE, PH.D., PLAINTIFFS' WITNESS,** at 4:48 p.m., being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 **BY MR. HO**

23 Q Good afternoon, Dr. Gronke. Can you please state your
24 full name for the record.

25 A Certainly. My name is Paul Gronke. My last name is

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1 spelled G-R-O-N-K-E.

2 Q Can you briefly describe your professional and educational
3 background for the Court.

4 A Yes. I received my bachelor's degree at the University of
5 Chicago in political science, I received a master's degree in
6 western European politics at the University of Essex, and I
7 received a doctorate in political science from the University
8 of Michigan.

9 I currently am a full professor of political science at
10 Reed College in Portland, Oregon. I am also the Daniel German
11 visiting professor at Appalachian State University for last
12 academic year and the upcoming year.

13 Q And Appalachian State University, that's here in North
14 Carolina?

15 A Yes, it's in North Carolina.

16 Q And you are a tenured professor at Reed?

17 A Yes, I am.

18 Q Could you say a little bit about your experience
19 publishing academic research?

20 A Certainly. I have two to three dozen published articles,
21 peer-reviewed articles, in a variety of academic journals, an
22 academic press book, a number of book chapters, and policy
23 reports.

24 Q Do you serve as an editor or peer reviewer for any
25 peer-reviewed political science journals?

1 A I couldn't even hazard a count of the number of journals
2 that I have provided peer review for. I have also been a peer
3 reviewer for National Science Foundation research proposals. I
4 currently serve as the editor of the *Election Law Journal*, the
5 only interdisciplinary journal of election law, election
6 policy, and election sciences. I am also the coeditor of *PS:
7 Political Science & Politics*, which is one of three flagship
8 journals of the American Political Science Association, which
9 is the largest and primary professional association for
10 political scientists in the United States and actually
11 internationally.

12 Q What is the primary focus of your research, Dr. Gronke?

13 A I would be described as an American politics specialist
14 and a methodology specialist. I study elections. I have done
15 some work in legislative politics as well.

16 For the last decade, I've primarily been looking at early
17 voting, an umbrella term, including early in-person voting and
18 no-excuse absentee voting and what I'll refer to as full vote
19 by mail for those three states that have full-vote-by-mail
20 systems.

21 Q Have you received any grants to support your research in
22 early voting?

23 A I have. I've received grants from the Carnegie Foundation
24 of New York. I've received grants from the Pew Center on the
25 states of the Pew Charitable Trusts. I have also worked with

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1 the Democracy Fund.

2 Q Do you conduct your research on early voting as a part of
3 any particular research center?

4 A Yes. In 2006 approximately, I established the Early
5 Voting Information Center at Reed. This is a center that tries
6 to aggregate and collect best practices of procedures and
7 information about early voting. We respond to inquiries from
8 public officials, other groups, press, about early voting.

9 Q As the director of the Early Voting Information Center,
10 Dr. Gronke, are you an advocate for early voting?

11 A No, we don't advocate. We primarily respond to inquiries
12 about information, try to develop common-sense solutions that
13 are tailored to the particular jurisdiction or a time period.
14 So -- and, again, make sure that data and information that's
15 out there about early voting is high quality and can be relied
16 on by others.

17 Q Have you ever worked with any election administrators on
18 early voting, Dr. Gronke?

19 A Many. I've served as a consultant -- I've served on a
20 number of post-election committees, one in Kansas, one in
21 Maryland, one in Ohio, to review their procedures post
22 election. My role in that was primarily to discuss early
23 voting.

24 I have spoken in front of a number of meetings of state
25 election officials. I have spoken in front of the National

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1 Association of Secretary of States and the National Association
2 of State Election Directors and the national council of
3 state -- the NCSL.

4 I've also worked with the Federal Election Assistance
5 Commission. Twice I was a consultant on their election
6 administration and voting survey. I, in fact, worked with them
7 and crafted the portion of that survey that currently inquires
8 from states about the level of early and absentee voting.

9 Q In your work with state and local government officials,
10 Dr. Gronke, do you work with members of any one particular
11 party?

12 A No. We don't make any inquiries about the partisanship of
13 anyone who asks us for information. We simply respond and try
14 to work with them, again, to craft common-sense solutions
15 depending on the -- you know, respond to the questions that
16 they provide to us.

17 Q Dr. Gronke, have you served as an expert witness before?

18 A I have. I have served in a case involving the State of
19 Florida. That was in 2012, if memory serves. I wrote an
20 expert report for a state involving the State of Ohio. And
21 then, of course, I am an expert witness in this case.

22 Q And the Florida case, was that about early voting?

23 A The case was about the number of issues that were in
24 place, legal changes that were made prior to 2012. I was asked
25 to provide my scientific expertise regarding early voting.

1 Q And if you know, in the Florida case, did the Court rely
2 upon your opinion?

3 A If memory serves, the Court quoted my opinion, I think
4 approvingly would be accurate, in the final decision.

5 **MR. HO:** Your Honor, at this time the Plaintiffs
6 offer Dr. Gronke as an expert in early voting, election
7 administration, political science and research methods, voter
8 behavior and the effect of election reforms on voters.

9 **THE COURT:** Any objection?

10 **MR. FARR:** No, Your Honor.

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

12 **BY MR. HO**

13 Q Dr. Gronke, did you prepare any expert reports in this
14 case?

15 A Yes, I did.

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

17 **THE COURT:** Yes.

18 **MR. HO:** And just for the record, I handed the
19 witness a binder.

20 **BY MR. HO**

21 Q Dr. Gronke, does this binder contain your expert reports
22 in this case?

23 A Yes, it appears that it does.

24 Q Let's just quickly look at each one. Under Tab 1,
25 Dr. Gronke, is that your report dated April 2014?

1 A Yes, it is.

2 Q And that's been marked as Plaintiffs' Exhibit 40. At Tab
3 2, Dr. Gronke, is that your report dated May 2nd, 2014?

4 A Yes, it is.

5 Q And that's also part of Plaintiffs' Exhibit 40. At Tab 3,
6 Dr. Gronke, is that your surreply -- second surreply report
7 from 2014 dated June 27, 2014?

8 A Yes.

9 Q And that's been marked as Plaintiffs' Exhibit 167.

10 At Tab 4, Dr. Gronke, is that your report for the trial
11 stage of this case, dated February 12, 2015, marked as
12 Plaintiffs' Exhibit 234?

13 A Yes.

14 Q And finally at Tab 5, Dr. Gronke, is that your rebuttal
15 report for this trial stage of this case dated March 24, 2015,
16 marked Plaintiffs' Exhibit 247?

17 A Yes.

18 Q Do these reports accurately represent your analysis in
19 this case?

20 A Yes, they do.

21 Q Did you sign each of these reports under oath, Dr. Gronke?

22 A I did, yes.

23 **MR. HO:** Your Honor, at this time I would like offer
24 Plaintiffs' Exhibits 40, 167, 234, and 247 into evidence.

25 **MR. FARR:** No objections, Your Honor.

1 **THE COURT:** Admitted.

2 **BY MR. HO**

3 Q Dr. Gronke, I want to ask you some basic background
4 questions for early voting. And for the record, I want to
5 clarify, when I use that term "early voting," I'm going to
6 refer to early in-person voting as opposed to other forms of
7 voting before Election Day, if that's okay.

8 As an expert on early voting, Dr. Gronke, can you tell us
9 about what, if any, trends you've observed nationally with
10 respect to early voting?

11 A Certainly. Early in-person voting first appeared as part
12 of the election system in the United States in the early 1980s.
13 It has grown in terms of the number of states that have adopted
14 this method pretty steadily over the last 25 years.

15 In print, I've referred to the advance -- or the
16 increasing number of states that allow for early in-person and
17 no-excuse absentee voting as the quiet revolution, because in
18 many states that we have studied, these laws were changed with
19 surprising little discussion and debate, to a point where today
20 33 states plus the District of Columbia allow for early
21 in-person voting.

22 Q Does early voting play the same role in every state that
23 has early voting, Dr. Gronke?

24 A It does not. So, nationally, early voting and in-person
25 voting constitutes approximately a third of ballots cast in

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1 Presidential elections, but there is quite substantial
2 variation between the states.

3 North Carolina, for instance, it's over half the ballots
4 in a Presidential election. In other states, it's what I will
5 sometimes refer to as a one-third, one-third, one-third system
6 where one-third of the ballots will come in early in person,
7 and one-third will be cast no-excuse absentee, and one-third
8 will come in on the polling place on Election Day.

9 In other states, the by-mail ballots will constitute
10 70 percent of the ballots and early in-person voting, even
11 though it's available, might be 10 to 15 percent.

12 So there's lots and lots of variations between the states,
13 and even within states, there's lots of variation.

14 **THE COURT:** Mr. Ho, is that a good place where we can
15 stop for the afternoon?

16 **MR. HO:** Can I ask one more question?

17 **BY MR. HO**

18 Q Fair to say that voters in different states that offer
19 early in-person voting do not, in all of those states, rely on
20 early in-person voting to the same degree?

21 A It is accurate to say that, yes.

22 **MR. HO:** I think this is a fair place to stop.

23 **THE COURT:** All right. You may step down.

24 All right. Do you all have any update on where you
25 stand with your ongoing effort to resolve any differences you

1 may still have?

2 **MR. DONOVAN:** We still have differences, and we're
3 still working on it.

4 **THE COURT:** And they don't need to be limited to
5 differences about hearsay.

6 **MR. DONOVAN:** The differences hopefully are not
7 increasing, at least not procedure. I think we'll know by
8 tomorrow whether we need to argue or we need rulings. We have
9 some resolution because I think some issues are coming to a
10 head. I think there is progress, but there's no final
11 agreement. So we may need rulings. We'll keep you updated.

12 **THE COURT:** All right. Just let me know. Do give me
13 a little bit of a heads-up before you intend to have a witness.
14 If it turns out you still have some dispute in some respect, I
15 would like just a little bit of time to --

16 **MR. DONOVAN:** Let me just tell you what they are. So
17 we do have witnesses -- Professor Lichtman and Professor Lawson
18 both speak to issues of discriminatory purpose and intent.
19 They do it as historians. That is going to raise the issue --
20 the reports have already been stipulated, they come in.

21 The issue that we discussed before is whether certain
22 of these -- not really the articles but whether certain
23 legislators' statements come in for the truth. Again, no
24 agreement. I think there is progress on some, but not all, and
25 so that's going to come up tomorrow.

1 But I -- we would -- my suggestion would be we finish
2 Professor Gronke. We can give you an update in the morning.
3 My guess, Your Honor, is the areas will be narrowed but not
4 resolved. So, again, it doesn't go to their reports. It goes
5 to some that we are trying to move in for further -- the
6 truth -- the truth that they have said it. And I think some of
7 those we have videos we may need to play for you, and some we
8 may resolve, or not.

9 **THE COURT:** If there turns out to be a remaining
10 dispute, I will need to have you identify with some
11 particularity what it is you are talking about because right
12 now everything seems to be very much in the abstract, and I am
13 not going to rule in the abstract.

14 **MR. DONOVAN:** No, and that's what we don't want you
15 -- let me just real brief give you the categories. I think
16 some are just newspaper articles. I think there might be some
17 ambiguity that experts in the normal course rely on them for
18 context. This is what was being said in the press. So it is
19 not necessarily being offered for the truth.

20 We have videos, for example, of the Speaker, now
21 Senator Tillis, on MSNBC. I think that's going to come into
22 evidence. We have the video. For there, we want to enter it
23 for what he said. We have other videos of politicians or
24 legislators saying things that we want into evidence.

25 So I think -- and then -- so I think it is very

1 important that we walk you through. I hope to resolve it,
2 because I think it would take some time, but to show you each
3 one. And I believe under the law, some of them are
4 reinforcing, that is, if one of the legislators made one
5 statement, the fact that they have a quote very similar in
6 another one corroborates that.

7 But I agree with you; I think there is more dispute
8 in the air on these newspaper articles because those are for a
9 different purpose than the legislator statements. So I have a
10 chart -- I hope to get it all in and resolved. If I don't, we
11 will have a chart that we can walk you through, but I would
12 suggest we finish with Professor Gronke; and if we don't have
13 resolution, we probably should address that issue.

14 **THE COURT:** That's separate from whether the expert
15 can give their own opinion as to whether, in their opinion,
16 they think there was discriminatory intent.

17 **MR. DONOVAN:** Correct.

18 **THE COURT:** Are you all still debating that, or where
19 does that stand?

20 **MR. DONOVAN:** We are not. We haven't really been
21 debating that. Maybe we should talk about that.

22 **THE COURT:** I found several cases that tend to
23 suggest that that ought not to come in, from my point of view.
24 It may largely be an academic point because it is the facts
25 that are going to matter, and I have to make that decision.

1 And in my view, if an expert opines that he or she thinks there
2 was discriminatory intent, they are basically telling me what
3 it is I should think from that evidence; and there are several
4 cases I've found that suggests that intent used in that fashion
5 should not be given in an expert opinion.

6 So I am inclined to exclude that. I made the comment
7 earlier, I think it was today, about whether the door is open,
8 because I still regard the door to be closed. I think one
9 expert may have given an opinion. Whether I rely on it or
10 disregard it, I can decide later; but right now, I am inclined
11 to say I don't think that's proper for me to allow the ultimate
12 question to be answered by an expert.

13 Now, having said that, again, it may be somewhat
14 academic because it is the facts that matter, and the experts
15 are permitted to testify to the facts that they've marshaled
16 up.

17 **MR. DONOVAN:** I think each expert -- first of all, we
18 have cases we want to provide, but I think it might be a bit
19 academic. What you need to find as the judge and what a
20 historian would find based on the research, that could inform
21 your opinion based on evidence. So I don't think any expert is
22 saying, as a matter of law, they are telling you they had
23 intent; but I do think since you are the jury here, it is what
24 a jury would hear, that this is what a historian would do,
25 which is one piece of what would inform the record for Your

1 Honor. So we'll talk about it, but I think there may be a
2 little of bit of semantics.

3 **THE COURT:** That's where I -- in my mind, that's
4 where I seem to be settled for the time being. So just be
5 aware of that as you present your experts, and have them ready.
6 You are welcome to, of course, offer anything you think is
7 appropriate, as long as it is not in violation of a ruling, but
8 I may rule contrary to that, and you preserve your point for
9 the record.

10 **MR. DONOVAN:** Understood. 9:00?

11 **THE COURT:** 9:00, yes. Tomorrow is Friday; right?
12 Yes. You all have a good evening. See you tomorrow.

13 (The Court recessed at 5:07 p.m.)

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15 END OF TRIAL DAY FOUR

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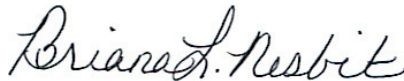
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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

6 I, Briana L. Nesbit, Official Court Reporter,
7 certify that the foregoing transcript is a true and correct
8 transcript of the proceedings in the above-entitled matter.
9

10 Dated this 28th day July of 2015.
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14 Briana L. Nesbit, RPR
15 Official Court Reporter
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