

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 17, 2015
9:03 a.m.

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

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

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

3 **MR. DONOVAN:** Good morning, Your Honor. Your Honor,
4 what we referred to as the late-produced documents, we have
5 reached an agreement in that both sides have specific
6 documents, and we agree there's -- to waive any objections to
7 lateness, at least on that ground. We are going to do some
8 depositions over the weekend to address that. So at least on
9 motions in limine on those issues, the late-produced has been
10 resolved.

11 **THE COURT:** All right.

12 **MR. DONOVAN:** I think with that, we would proceed
13 with Professor Gronke's direct testimony.

14 **THE COURT:** All right.

15 **MR. FARR:** Yes, Your Honor, one moment. I think
16 Mr. Donovan and I agree there are going to be two witnesses for
17 the defense that are going to be deposed Saturday. One will be
18 Kim Strach and one will be Brian Neesby, and I think we've
19 agreed that Ms. Strach's deposition will be limited to an hour
20 and Mr. Neesby's deposition will be limited to 90 minutes.

21 **THE COURT:** Professor Gronke, you may step back up
22 here, please, sir.

23 Before you begin, because you are reaching some
24 accommodation on various things, I am going to ask you to
25 advise me if there is anything that's about to come up that has

1 not been resolved. You had various motions in limine and
2 *Daubert* motions. So as you work certain things out, you may
3 still have some disagreement. Just give me a heads-up like the
4 day before it's likely to come up, so I know that I need to be
5 prepared on that.

6 **MR. DONOVAN:** Will do.

7 **THE COURT:** Thank you.

8 I have several motions that are on the record that
9 nobody has wanted to hear and some you asked to defer from the
10 first day. I don't want somebody later to feel like I didn't
11 rule on something and they expected me to rule, because I am
12 under the impression, at least for now, everything is deferred
13 until the witness is coming up.

14 So I am going to put the burden on the party who
15 wants to be heard to reraise it and to let me know so that I
16 know I need to address it. Okay?

17 **MR. DONOVAN:** Understood.

18 **THE COURT:** All right. Mr. Ho.

19 **MR. HO:** Thank you, Your Honor.

20 DIRECT EXAMINATION (Continued)

21

22 **BY MR. HO**

23 Q Good morning again, Dr. Gronke.

24 A Good morning.

25 Q Can we turn to North Carolina specifically and early

1 voting in this state?

2 A Yes.

3 **MR. HO:** And can we turn the monitors on?

4 **BY MR. HO**

5 Q Dr. Gronke, could you turn to Tab 4 in your binder,
6 Plaintiffs' Exhibit 234, which is your report from 2015. And
7 can we put page 5 of the PDF on the screen?

8 Dr. Gronke, can you turn to page 4 of this report.

9 A Yes.

10 Q Dr. Gronke, what is represented in Figure 1 here?

11 A Figure 1 displays the percentage of early votes or
12 one-stop votes in North Carolina cast as a percentage of all
13 votes cast in North Carolina in the 2006 through 2014 general
14 elections.

15 Q And what is the source of the data presented here?

16 A The source of these data are files provided by the State
17 Board of Elections of North Carolina, the voting registration
18 and the voter history files.

19 Q Dr. Gronke, what patterns, if any, do you observe with
20 respect to early voting usage in North Carolina in the last
21 five general elections?

22 A Well, I would describe two general patterns. One is a
23 steady growth over this period of time in the usage of one-stop
24 voting, and the second, it was referred to yesterday by
25 Professor Stewart as a sawtooth pattern, that is, higher usage

1 rates in Presidential elections, lower usage rates in midterm
2 elections, though increases in both types of elections.

3 Q Let's just focus on Presidential years for now,
4 Dr. Gronke. What percentage of voters in North Carolina used
5 early voting in the last two Presidential elections?

6 A Well over half. So in the 2008 general election,
7 55 percent cast the one-stop ballot. In the 2012 election,
8 56 percent cast a one-stop ballot.

9 Q Do you notice any patterns with respect to early voting
10 usage in midterms?

11 A Midterm election's lower, as I said already, but
12 increasing at a dramatic rate. So just under 20 percent in the
13 2006 general, 33 percent in 2010, and 37 percent in the 2014
14 that was just completed.

15 Q Now, as an expert in early voting, Dr. Gronke, does this
16 data lead you to form any opinions about the role that early
17 voting plays in North Carolina specifically?

18 A Well, certainly in Presidential elections, one-stop voting
19 is the predominant method of casting a ballot. So any
20 candidate or campaign worth their salt is going to be focusing
21 on the one-stop voters. It is a growing and important part of
22 the midterms, obviously not as important as precinct place
23 voting, but now over a third, 40 percent. So it's a very
24 important enduring part of the system.

25 Q What does that tell you about voter reliance on early

1 voting in North Carolina, if anything?

2 A Well, voters rely on it quite heavily, more than half in
3 Presidential elections. They become used to it. We heard some
4 testimony yesterday about voters simply expecting this method
5 to be available to them.

6 Q Is that true in every state that has early voting,
7 Dr. Gronke?

8 A No. In some states, the level of early voting is quite
9 low. I have been asked many times if I have some sort of
10 formula I could come up with to explain why early in-person
11 voting grows quite dramatically in other states, why in other
12 states there is a heavy reliance on voting by mail even though
13 early in-person voting is available.

14 As I referred to yesterday, in Florida it is kind of
15 one-third, one-third, one-third: Precinct place, early
16 in-person, and voting by mail. So there is a lot of variation
17 between the states. There is actually even variation within
18 some states.

19 Q Now, Dr. Gronke, in your opinion as an expert on early
20 voting, is there any systematic evidence that this high rate of
21 usage of early voting in North Carolina has an effect on the
22 cost of political campaigns?

23 A Well, I've discussed this. I did do a study of this with
24 respect to voting by mail in Oregon, and I've spoken to a
25 number of campaign officials in conjunction with some of the

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1 work I've done for the Pew Center and the states.

2 There is mixed opinion. Some campaigners will tell you
3 that you have to undergo what we will describe as Groundhog Day
4 for two weeks, "Groundhog Day," the movie, that as you keep
5 mobilizing day after day, while others will point out that --
6 think of the list of potential voters as this long list and
7 you're checking off names, once you check off that name --

8 **THE COURT REPORTER:** Can I get you to slow down,
9 please.

10 **THE WITNESS:** I apologize. I love the Groundhog Day
11 metaphor.

12 So some campaigners will describe two weeks of steady
13 mobilization while others will tell you that when you -- if you
14 think of the list of potential voters as this long list, when
15 you've checked off a name, when someone has cast a one-stop
16 ballot, that information is made available to campaigns and
17 they stop mobilizing -- that information is made available to
18 campaigns, and they stop mobilizing that voter so they can
19 redirect their efforts, and so there is some efficiencies there
20 in place.

21 **BY MR. HO**

22 Q So does the evidence suggest that the cost of political
23 campaigns has gone up since early voting usage has increased?

24 A No, there's really no systematic evidence either way.

25 Q In your opinion as an expert on early voting, Dr. Gronke,

1 is there any evidence that this increased use of early voting
2 increases the propensity for voter fraud?

3 A Absolutely not. In fact, one-stop voting or early
4 in-person voting has the same protections in place as on the
5 precinct place voting. So, no, there's no vote fraud at all
6 associated with -- there is no apparent increase in vote fraud
7 associated with the use of one-stop voting.

8 Q In your opinion as an expert on early voting, Dr. Gronke,
9 is there any evidence that this increased use of early voting
10 increases the propensity of voters to make uninformed
11 decisions?

12 A We actually have evidence to the contrary. The evidence
13 that we have is that one-stop or early in-person voters would
14 be best described as decided voters. They've made their
15 decision; they have accumulated enough information.

16 We have survey evidence asking about voter regret, about
17 whether they would have changed their minds. We have very
18 little evidence of this. And there is some evidence recently
19 presented in a paper by Bob Stein of Rice University that
20 during the one-stop -- during -- with states with early voting,
21 there is heavier media coverage of the campaign during the
22 whole one-stop period.

23 So, no, there is no evidence that one-stop or early voting
24 creates some sort of level of uninformed ballot casting.

25 Q You referred to early voters as decided voters. Are early

1 voters -- how do early voters compare to Election Day voters in
2 that regard?

3 A Well, the evidence that we have is that early voters tend
4 to have made their decision, so they cast their ballots when
5 they have accumulated enough information to make the decision
6 to go to the ballot box. The data that we've collected over
7 ten years, early voters tend, on average, to be somewhat more
8 partisan, somewhat more ideological, on average a bit better
9 educated, higher income.

10 But, overall, I would say that they made their decision,
11 and that's why they go to cast the ballot.

12 Q Broadly speaking, Dr. Gronke, have there been any changes
13 in the conventional wisdom in academic research as to the
14 population of voters that rely on early voting?

15 A Yes. I would describe there being two waves of research,
16 and I have been a participant in both of these waves. So the
17 early research preceded the 2008 election. And the early voter
18 was characterized perhaps best in an article by Adam Berinsky
19 of MIT that is listed in my reports. So the early voter,
20 partisan, more ideological, tended to be white, tended to be
21 older, better educated, higher income.

22 The major change occurred after 2008 where nationally, and
23 particularly in the South, there was a dramatic increase and
24 reliance on early in-person voting by African-Americans. But
25 the still general characterization still works as decided

1 voters, higher educated, better income; it's just the early
2 voting population has become -- more minorities are in that
3 population.

4 Q Now, I would like to turn back to North Carolina
5 specifically. Yesterday, were you in court when Charles
6 Stewart testified that African-Americans used early voting at
7 higher rates than whites in each of the last four elections in
8 North Carolina?

9 A Yes, I was.

10 Q And did you conduct your own analysis of the rates at
11 which different racial groups rely on early voting in North
12 Carolina?

13 A Yes, I did.

14 Q And were the results of your analysis consistent with
15 Dr. Stewart's?

16 A Yes, they were.

17 Q We're not going to go over these figures, Dr. Gronke, but
18 those are documented in your report?

19 A Yes, they are.

20 Q And where?

21 A Figure 2, which is on page 6 of my document, essentially
22 replicates the figure that Professor Stewart presented in court
23 yesterday.

24 **MR. FARR:** Can we know which exhibit that was?

25 **MR. HO:** That's PX234.

1 **THE COURT:** That's Tab 4; is that right?

2 **THE WITNESS:** Tab 4, yes, sir.

3 **BY MR. HO**

4 Q So let's stay on this topic. Is it possible, Dr. Gronke,
5 that the racial differences that you find between white and
6 African-Americans voters in terms of early voting usage are the
7 result of other factors like partisanship?

8 A That's quite possible, yes.

9 Q Did you try to examine that question?

10 A I did. The normal way or the scientific method for
11 controlling for these kind of correlated or collinear effects
12 would be to run a multivariate analysis, a regression analysis.

13 Q You did that in your report?

14 A Yes, I did.

15 Q And at a very high level, what is that multivariate
16 analysis? How does that address this question?

17 A So we know, for example, on average in the United States,
18 African-Americans tend to affiliate more with the Democrat
19 Party compared to whites. We know, for example, that
20 African-Americans, as was mentioned yesterday, tend to be in
21 lower income categories.

22 So to the degree that people in lower income categories,
23 for example, may tend to vote for one party at a higher rate
24 than another party and people in lower income categories tend
25 to be in one racial category, you want to control for this

1 other variable; and so what that does is it simply isolates the
2 effect of each individual variable, holding the other variables
3 constant.

4 Q So could we go to page 9 of the PDF of this exhibit on the
5 screen? Could you turn to page 8 of this same report? We are
6 still on Tab 4, Dr. Gronke.

7 A Yes.

8 Q Is this your effort to control for these other variables,
9 as you just described it?

10 A Yes, it is.

11 Q And let's focus on the line graph in this figure. What
12 does this graph depict, Dr. Gronke?

13 A So this graph uses the information that's provided in the
14 regression analysis that's presented above, and it simply
15 translates the model above into predicted probabilities,
16 comparing the white predicted probability of casting a one-stop
17 ballot for an African-American in North Carolina compared to
18 white in North Carolina, controlling for all other
19 characteristics.

20 So just, for example, in the 2008 general election, an
21 African-American selected at random, we would predict
22 approximately a 70 percent probability of casting a one-stop
23 ballot compared to just over 50 percent for a white selected at
24 random.

25 Q And that's independent of partisanship?

1 A That's correct. When I say at random, what I mean is that
2 all other characteristics have been controlled for.

3 Q Now, are these differences statistically significant?

4 A Yes, they are statistically significant across the board.

5 Q So as an expert on early voting, Dr. Gronke, do these
6 facts lead you to any opinions as to the extent to which
7 African-Americans voters in North Carolina rely on early voting
8 as compared to white voters?

9 A Yes. After the 2006 general election, which was the one
10 election here where white voters relied on one-stop more than
11 African-Americans, but quite consistently from the 2008 general
12 election onwards, including, I might note, the 2010 and 2014
13 where Barack Obama was not on the ticket, African-Americans
14 continued to rely on the one-stop method at a significantly
15 higher rate than white voters in North Carolina.

16 Q Independently of partisanship?

17 A Independent of, in this case, partisanship and age.

18 Q I would like to ask you a few questions now about the
19 elimination of seven days of early voting, Dr. Gronke.

20 In your initial report in this case in Tab 1 of the
21 binder, did you try to conduct an analysis of the early voting
22 days that have been eliminated?

23 A Yes, I did.

24 **MR. HO:** And could we put PX40 on the screen and,
25 specifically, page 36 of the PDF?

1 **BY MR. HO**

2 Q This is page 32 of the report, Dr. Gronke. Could you
3 describe briefly what Exhibit 13 depicts?

4 A Yes. Exhibit 13, I followed the same format as in my
5 other exhibits. The raw numbers and percentages are presented
6 above, and then they're displayed graphically below.

7 So the green bar represents the percentage of all ballots
8 of -- of all one-stop ballots, the percentage of one-stop
9 ballots that were cast during the first seven days. The blue
10 bar represents the percentage of African-American one-stop
11 ballots that were cast during the first week of one-stop
12 voting. The red bar represents the percentage of white ballots
13 that were cast during the first week of one-stop voting.

14 Q Let's focus again on the Presidential elections.

15 A Certainly.

16 Q In the 2008 and 2012 Presidential elections, Dr. Gronke,
17 what percentage of the total North Carolina electorate voted on
18 the seven days of early voting that have now been eliminated?

19 A So in the 2008 general, there were just over 700,000
20 ballots, one-stop ballots cast during the first week. That
21 translated into 16.11 percent of all ballots -- all one-stop
22 ballots, excuse me.

23 In the 2012 general, nearly 900,000 ballots cast during
24 the first week. That translated into just under 20 percent of
25 all one-stop ballots.

1 Q Now, I'm sorry, Dr. Gronke, is that 20 percent of all
2 one-stop ballots or 20 percent of all ballots cast?

3 A I apologize. One-stop during the first week -- so in the
4 2008 general election, there were 700,000 ballots cast during
5 the first week of one-stop voting. That translates into
6 16 percent of all votes cast. In the 2012 general, there were
7 nearly 900,000 ballots cast during the first week of one-stop
8 voting. That translated into just under 20 percent of all
9 votes cast.

10 Q Now, as an expert in early voting, Dr. Gronke, do you have
11 an opinion as to what effect it would have in North Carolina to
12 eliminate early voting days on which 900,000 ballots or
13 20 percent of all ballots cast in the last Presidential
14 election?

15 A Well, my expectation would be that it would create a
16 burden on a substantial number of North Carolina voters. It
17 would increase congestion at the polls, at the one-stop voting
18 centers. And as we know from some recent research presented by
19 Lonna Atkeson of the University of New Mexico, some voters will
20 show up at these long lines and not be able to stay in the line
21 and depart.

22 Q Any reason to think those effects might be different in a
23 Presidential versus a midterm election?

24 A Under the assumption of other things being held equal,
25 yes, more voters are opting for the one-stop method during

1 Presidential elections. The congestion will be higher, the
2 interest in the election is always much higher in a
3 Presidential year, so the impact would be greater.

4 Q Dr. Gronke, some states like New York, for instance, do
5 not have any early voting at all; is that correct?

6 A New York still casts ballots, yes. They're a bit behind
7 but, yes, they have no one-stop voting. They only have what I
8 would call traditional absentee balloting.

9 Q Are voters in a state like New York, where there is no
10 early voting available, burdened in the same way that you just
11 described North Carolina voters will be from the elimination of
12 seven days of early voting?

13 A I wouldn't think so. I think the appropriate analogy in
14 New York is if you have a given number of traffic lanes on a
15 highway and everyone is used to driving on two lanes and so the
16 third lane is not there. In North Carolina, the third lane has
17 been there for many, many years, and if you've suddenly
18 eliminated it, it is difficult to adjust. In the first case,
19 that lane was never there, so people aren't driving on it.

20 Q Dr. Gronke, is your view that any early voting reductions
21 in any state that has early voting would cause a similar burden
22 on voters?

23 A No, it's not.

24 Q And why not?

25 A Well, as I stated -- I don't think I stated yesterday, but

1 I described in print the election administration system in the
2 United States and, particularly, the early and no-excuse
3 absentee laws as kind of a complex quilt, with lots of
4 variation among the states and I've said even within states.
5 Differences in laws, differences in administrative procedures,
6 differences in campaign competitiveness.

7 So it is not the case that a cutback -- early voting,
8 early in-person voting doesn't play the same role in every
9 state, so it is not the case that a removal of early voting
10 would create the same burden.

11 An example that comes is the state of Colorado. Colorado
12 has been described in -- you know, somewhat jokingly as having
13 a smorgasbord of options. I mean, every new voting option
14 that's available, Colorado will add it. They have vote
15 centers. They have early in-person voting. They have voting
16 by mail.

17 So the Colorado voters have spoken and they, in the last
18 Presidential -- I don't want to hazard a guess, but it was well
19 over 70 percent of the ballots came in by mail. Now Colorado
20 has decided to move fully vote by mail.

21 For whatever reason, the level of early in-person voting
22 in Colorado had always been quite low, and so the number of
23 voters who would be burdened by the elimination is much
24 smaller.

25 Q I would like to turn back to -- if we could bring it back

1 on the screen -- the Exhibit 13 from your first report and ask
2 you about the racial breakdowns in your graph.

3 In the last two Presidential elections, what percentage of
4 black voters cast their ballots on the seven days of early
5 voting that have now been eliminated?

6 A In the 2008 Presidential election, there were 224,000
7 ballots cast by African-Americans during the first week. That
8 translates into just under 23 percent of all African-American
9 votes.

10 In 2012 general, just under 300,000 African-American
11 ballots cast during the first week, just over 28 percent of all
12 African-American votes.

13 Q And without going into every specific number, how does
14 that compare to white early voting usage during those seven
15 eliminated days?

16 A It is substantially higher. It is more than 50 percent
17 higher in 2008, and in 2012, it continues to be more than
18 50 percent higher.

19 Q As an expert in early voting, do you have an opinion as to
20 the effect that eliminating these seven days of early voting
21 would have -- will have on African-American voters as compared
22 to white voters?

23 A Well, at the danger of repeating what I just said, it will
24 substantially burden a substantial portion of the
25 African-American electorate. Nearly 30 percent of the

1 African-American votes in North Carolina in 2012 general were
2 cast during that first week and that first week is no longer
3 available. So the same assumptions would be increased
4 congestion. Some voters won't have the flexibility to wait in
5 long lines or come on other day.

6 Q Is your opinion here, Dr. Gronke, informed by any examples
7 from a Presidential election where a state cut back on early
8 voting?

9 A I did do a previous -- I did conduct previous research in
10 the state of Florida.

11 Q Was that research conducted after an election in Florida?

12 A Yes, after the 2012 Presidential election.

13 Q Now, did you conduct that research for the purpose of
14 preparing your report in this case?

15 A No.

16 Q Is it described in your report in this case?

17 A Yes, it is.

18 Q And that's here in your first report Plaintiffs'
19 Exhibit 40, Tab 1 in the binder?

20 A Yes.

21 Q Now, can you just briefly -- because there was some
22 testimony about this at the preliminary injunction stage, but
23 you could briefly describe what the changes in early voting
24 were in Florida during the 2012 election?

25 A Certainly. So the State of Florida --

1 **THE COURT:** Excuse me for interrupting. You said
2 Exhibit 40?

3 **MR. HO:** Yes. That's Tab 1, Plaintiffs'
4 Exhibit 40 -- I'm sorry, it's not Exhibit 40 of the report,
5 Your Honor. It's Plaintiffs' Exhibit 40.

6 **THE COURT:** Which page of the tab?

7 **THE WITNESS:** The section begins on page 24 of my
8 document, sir.

9 **THE COURT:** Thank you.

10 **THE WITNESS:** It may be 25 or 24 of yours.

11 **MR. HO:** I think it is the same pagination.

12 **THE COURT:** Thank you.

13 **BY MR. HO**

14 Q Dr. Gronke, you are referring to paragraph 30?

15 A Yes. It begins on paragraph 30, yes.

16 Q Now, just in broad strokes and very briefly, what were the
17 reductions in early voting in Florida before the 2012 election?

18 A Florida previously had allowed 14 days of early voting.
19 There was a reduction of six days. They removed the first five
20 days of early voting that were two weeks, if have the weeks
21 correct, and they removed the last Sunday of early voting.

22 Q And you testified previously that you appeared as an
23 expert in litigation over this?

24 A I did, yes.

25 Q And how did the Court initially rule with respect to those

1 early voting reductions?

2 A If I recall correctly, the Court -- the Court did not
3 allow the law to proceed. I apologize not having the correct
4 legal language, but the law was not allowed to proceed in the
5 five covered counties that were currently covered under the
6 Voting Rights Act. Then I believe there was a settlement
7 reached to allow the reduction to occur but keep the same
8 number of cumulative hours.

9 Q And what happened when Florida reduced its early voting
10 period by six days and yet maintained roughly the same
11 aggregate hours of early voting?

12 A The comparison that we made was between two Presidential
13 elections, the 2008 and 2012, and so there was a fairly
14 dramatic reduction in the level of early in-person voting. If
15 memory serves, it was a 10 percent reduction in the rate of
16 early in-person voting with a larger reduction rate among
17 African-Americans.

18 Q And what, if anything, happened to waiting times to vote
19 in Florida in the 2012 election?

20 A Yes. So waiting times increased -- there was both press
21 coverage of higher waiting times as well as some survey data
22 that Professor Stewart referred to in his testimony. Wait
23 times increased between 50 and 100 percent and eventually
24 stimulated the creation of the Presidential Commission on
25 Election Administration.

1 Q Do you recall what, if anything, the Florida legislature
2 did in response to this problem after the 2012 election?

3 A I believe they returned to the old law and allowed the
4 additional days.

5 Q Why do you cite the Florida example in your report,
6 Dr. Gronke?

7 A Well, I think it's a good comparison in terms of the
8 amount of time that was removed at the beginning of the early
9 voting period. It is not the exact same state as North
10 Carolina, but it is another southern state, battleground state.
11 So it is an attempt to look at a relatively useful comparison.

12 Q Dr. Gronke, have you had an opportunity to review any data
13 from the 2014 election in North Carolina?

14 A Yes, I have.

15 Q And does any of the data from the 2014 midterm election
16 here lead you to change your opinion about the likely effect of
17 early voting cutbacks in the upcoming Presidential election in
18 North Carolina?

19 A No, it does not.

20 Q And why not?

21 A I don't think we can deny that there was a substantial
22 increase in turnout in 2010 -- excuse me, in 2014 when compared
23 to 2010. As I have shown and the Defendant experts have shown,
24 there was also an increase in the early voting, the one-stop
25 usage rate among African-Americans.

1 After all the models and data are examined, I am really
2 left with the bottom-line conclusion that African-Americans in
3 North Carolina continue to rely at a substantially higher rate
4 on the one-stop method, and they continue to rely on voting
5 during the first week that's been eliminated.

6 Q In your view, is the 2014 election a good measuring stick
7 for the effect of these early voting reductions?

8 A I think we have to be hesitant to conclude broadly from
9 any one single election. If we look at that -- it was one
10 election on top of a number of elections, but I think we want
11 to see if there is anything unusual about that election.

12 2014 in North Carolina had a number of unusual
13 characteristics. Most notably, it was an historic election in
14 terms of the amount of campaign spending in the Senate race.
15 Over \$110 million was spent. The first time a Senate race in
16 the United States ever exceeded \$100 million. Anyone who lived
17 in the state got awfully tired of the number of mailings and
18 phone calls and television ads that the two campaigns and also
19 national third-party groups were promoting around the state.

20 Q If I may stop you right there, Dr. Gronke, because we had
21 some testimony about this earlier. But, just briefly, how does
22 that compare to 2010, the 2010 midterm?

23 A The 2010 midterm was much less competitive at the Senate
24 level. If memory serves, Richard Burr spent -- sorry, I forget
25 the opponent's name -- the aggregate was less than half the

1 national average. I also document in my report that the --

2 Q What do you mean less than half the national average?

3 A If you look at the average amount spent in Senate
4 campaigns overall, that race -- I don't want to just guess at
5 the number, but I believe it was around 30 million, half the
6 average spent during that year by the average Senate race that
7 year.

8 Q And by comparison, 2014, had any Senate race ever reached
9 that level of spending?

10 A No. As I said, it was covered nationally as well as
11 locally. It was really an historic campaign. The race was one
12 of a small number that could potentially have determined the
13 control of the U.S. Senate. It may repeat, but I wanted to
14 point out that Congressman Mel Watt retired. So in that
15 primary in the 12th District, there were more than 60,000 votes
16 cast, I believe, on the Democrat side. There were no votes
17 cast because there hadn't been a competitive primary. I also
18 document the number of competitive primaries. There was more
19 competitive primaries on the Democrat side as well as a very
20 competitive state supreme court race.

21 Q Just to break that down a little bit, Dr. Gronke, because
22 I think it went pretty fast. In 2014, as compared to 2010, on
23 the Congressional elections, what was your observation?

24 A There were more competitive Democratic primaries in 2014
25 compared to the 2010 election.

1 Q Now, are these features of the 2014 elections described in
2 any of your reports?

3 A Yes, they are.

4 Q And in Tab 4 of your report -- of your binder, your
5 February 2015 report, Plaintiffs' Exhibit 234, paragraph 20, is
6 that where you described the North Carolina Senate race?

7 A Yes, it is.

8 Q Now, in your reports, Dr. Gronke, did you ever attempt to
9 predict turnout levels in the 2014 general election?

10 A I'm sorry. Could you repeat the question?

11 Q In your reports, Dr. Gronke, did you ever attempt to
12 predict turnout levels in the 2014 midterm election?

13 A First, looking at my own report, I would like to amend my
14 previous response. The spending was 10 million by Burr and
15 Marshall in the 2010 race.

16 So did I ever attempt to predict turnout? No, I did not.

17 Q Why not?

18 A Well, for two reasons. The first is that, in my
19 estimation and my expert opinion, the best way to evaluate a
20 change in the laws regarding early in-person voting is to
21 examine the rate of early in-person voting, not to look at
22 overall turnout.

23 Overall turnout, as was described yesterday, is a highly
24 complex, multicausal phenomenon. Early voting turnout is
25 obviously related to overall turnout. Early voting, when you

1 turn out, you turn out, but there is a lot of influences on
2 overall turnout that are separate from early voting turnout.

3 Q For the sake of argument, Dr. Gronke, in your opinion as
4 an expert on early voting, what does the balance of academic
5 research suggest about the relationship between early voting
6 and turnout?

7 A I am sorry. Could you repeat the question?

8 Q You just testified that you didn't think that turnout was
9 the best measure here; is that right?

10 A That's correct.

11 Q But just for the sake of argument, in your opinion as an
12 expert on early voting, what does the balance of academic
13 research say about the relationship between early voting and
14 turnout?

15 A I think the balance of research indicates that there is a
16 small but statistically significant relationship between early
17 in-person voting laws being on the books -- I think that the
18 balance of the research indicates that there is a small but
19 significant positive relationship between early in-person
20 voting laws being on the books and overall voting turnout.

21 There are two articles that indicate --

22 Q Let me just stop there. Now, you mentioned earlier today
23 a change in the academic literature on early voting around
24 2008. Does that inform your view in this regard?

25 A Yes, it does.

1 Q Now, have you, yourself, studied the relationship between
2 early voting and turnout?

3 A I have.

4 Q And did you conduct any such analysis in this case?

5 A Yes, I did.

6 Q And is that described in any of your reports?

7 A Yes.

8 Q Which one?

9 A I'm sure you can help me point to which one.

10 Q Can you turn to Tab 5 of your binder, Dr. Gronke,
11 Plaintiff's Exhibit 247. This is your March 24, 2015 report?

12 A Yes.

13 Q I would like to direct you to paragraph 14.

14 A Yes, thank you. Would you like me to elaborate?

15 Q So how did you study the relationship between early voting
16 and turnout, in very brief terms?

17 A I am a professor, after all. I conducted a cross-state
18 analysis of the relationship between early in-person voting
19 rates and overall turnout state by state using the Current
20 Population Survey from 1992 through 2012 and the Associated
21 Press election unit, advanced voting, and voting turnout data
22 from 2000 to 2012.

23 Q And to be clear, did you conduct separate analyses based
24 on each of these data sources?

25 A Yes, I did.

1 Q Now, you mentioned the Current Population Survey, and
2 there's been some testimony about that, Dr. Gronke. Are you
3 aware of any sources of error or bias in the Current Population
4 Survey data?

5 A Yes. There are two sources. One is often referred to as
6 an overreporting bias, and then the second source of bias is --
7 let me make sure I keep these details. There is overreporting
8 and then there is overreporting on the -- there is a
9 response -- excuse me. I am going to start over.

10 There is two sources of bias. One is there is a
11 nonresponse bias, and the second is overreporting specifically
12 on the voting item.

13 Q We heard testimony about the overreporting issue. Can you
14 just tell us a little bit about the nonresponse issue that you
15 identified?

16 A Certainly. The Current Population Survey is a survey. So
17 a very large number of questionnaires are sent out to
18 individuals, but not all individuals return them, and there is
19 an uneven return rate between different demographic groups in
20 the population.

21 Q And how does the Census Bureau treat people who do not
22 return the survey?

23 A Well, it is somewhat unique. The Census conducts, of
24 course, its decennial census, as required by the Constitution.
25 The CPS is conducted more regularly to try to monitor

1 characteristics of the U.S. population for things like welfare
2 spending, other governmental needs.

3 In the voting and registration supplement, they make, I
4 think, the unfortunate choice of deciding on the voting turnout
5 items specifically, that if someone does not respond to the
6 whole survey, they count that nonresponse as someone who did
7 not vote; and that's almost certainly inaccurate.

8 Q And is this nonresponse problem with the CPS identical
9 across different demographic groups?

10 A No. As I said already, the overall nonresponse rate
11 varies. That means that it is going to be uneven with the
12 treatment of that particular item.

13 Q And what does that do when you try to make comparisons
14 based on the CPS data across different racial groups?

15 A Overall, it means that the CPS is going to have an
16 inaccurate turnout rate. It means that those inaccuracies are
17 going to be larger and greater, depending on the nonresponse
18 rate by -- between the different demographic groups.

19 Q Are there any ways to address these sources of error in
20 the CPS, both the nonresponse problem and the overreporting
21 problem?

22 A There are. There recently has been some work by
23 Christopher Achen, a political scientist at Princeton
24 University, and coauthor with the last name Hur. This came out
25 in a 2013 article, and it -- in addition to the survey weight,

1 which I believe was referred to yesterday -- survey weights are
2 used in all kinds of surveys to try to adjust the sample
3 population to look like the overall population that we have
4 information from the Census, but this is an additional
5 adjustment looking at differential turnout rates to try to
6 adjust for the problems in this particular survey item. So
7 it's sometimes referred to as the Achen-Hur correction.

8 Q Did you employ that correction when you utilized the CPS
9 data in your correlation analysis that you described here in
10 your report?

11 A Yes, I did.

12 Q And after you applied that method, what did you find about
13 the relationship between early voting and turnout, Dr. Gronke?

14 A So I report two analyses here. One is a simple bivariate
15 correlation, a simple two-variable correlation, between the
16 early voting rates and turnout. And there is a small,
17 statistically significant, but relatively weak correlation,
18 .1059 with the CPS.

19 In the footnote, I also report a regression analysis also
20 by variant, and also shows a small but significant but weak
21 positive relationship.

22 Q Now, are you familiar, Dr. Gronke, with an article by
23 Barry Burden that was discussed previously here in court about
24 early voting and turnout?

25 A I was not here for the previous discussion of that

1 article, but I am familiar with the article, yes.

2 Q Now, does that paper influence your opinions in this case?

3 A No, it does not.

4 Q And could you explain why not?

5 A Well, for three reasons. I did serve as a peer reviewer
6 on a number of versions of the Burden, et al. paper. One issue
7 that I had with the paper was that they chose to code early
8 voting as a global method, similar to the reference that you
9 are making, and you will notice I continued to say early
10 in-person voting because that's the specific technique that's
11 used in North Carolina.

12 We know from over a decade's worth of research that
13 no-excuse absentee balloting or voting by mail is engaged in by
14 different individuals, by -- at different rates by different
15 groups in the population, and it's a really very different
16 election administrative procedure. So I prefer not to lump
17 those together. Burden, et al. lumped them together.

18 Q Given that they lumped mail-in voting and early in-person
19 voting together, did the conclusions of that paper tell you
20 something specific about early voting in person?

21 A I don't think so because they lumped the two methods
22 together, and I prefer to keep those two methods distinct,
23 excuse me, and the literature does as well. No other articles
24 do that, lump them together.

25 Q Do -- does the Burden article tell you anything about the

1 effects of early voting on individual racial groups?

2 A No, they do not examine differences between racial groups,
3 and that's the question that I was asked to investigate in my
4 expert reports here.

5 Q I want to turn back to North Carolina briefly for one more
6 topic, Dr. Gronke. You're familiar with the fact that North
7 Carolina's early voting period used to also include
8 simultaneous registration at early voting sites?

9 A Yes.

10 Q Is there a body of political science literature,
11 Dr. Gronke, concerning the practice of permitting people to
12 register to vote and cast a ballot simultaneously?

13 A Yes, there is quite extensive literature.

14 Q In your assessment, what is the state of academic research
15 concerning that practice?

16 A Academics don't agree on many things, but there is
17 consensus on this issue that Election Day registration leads to
18 a large and statistically significant increase in turnout;
19 estimates are generally between 8 and 10 percent.

20 Q Does it have that effect on any particular subgroups of
21 voters?

22 A It is -- yes, it's more helpful among mobile voters, young
23 people, college students, groups in lower socioeconomic
24 categories, that would include African-Americans, to the degree
25 they are in -- there is a larger proportion of

1 African-Americans in lower socioeconomic categories.

2 Q I noticed you said Election Day registration --

3 A I did, yes.

4 Q -- Dr. Gronke. How, if at all, is research on Election
5 Day registration relevant to the issue in this case, which is
6 about same-day registration during the early voting period?

7 A Same-day registration is unusual. In my mind, the
8 behavioral act of the voter, which is much of what I study,
9 it's very similar. I was struck by the testimony yesterday
10 by -- actually, one was on video and the second was a woman who
11 kind of expected that they would show up and be able to
12 register while they cast the one-stop ballot; and so for the
13 voter, it is a matter of going to a polling place and being
14 able to either register or make a change to registration at the
15 same time.

16 So my expectation would be that the impact would be
17 similar. I do need to acknowledge there's not been very much
18 political science research on this because the method is not
19 common.

20 Q Can we turn to Tab 1 in your binder, and that's
21 Plaintiffs' Exhibit 40. And can we put page 41 of the PDF on
22 the screen? This is page 37 of your report, Dr. Gronke, your
23 first report from 2014.

24 Is this your analysis of same-day registration usage in
25 North Carolina, Dr. Gronke?

1 A Yes, it is.

2 Q I don't want to go over these numbers in detail, but you
3 report the number and percentage of voters who use same-day
4 registration in each of the elections that was available?

5 A Yes, I did.

6 Q And how many people used same-day registration during the
7 early voting period in the last two Presidential elections?

8 A So I should note that these are just new registrations,
9 and I presented previously the changes which were also allowed.
10 So in the 2008 general election, there were 104,387 new
11 same-day registrations during the early voting period. In the
12 2012 general election, there were 94,656 same-day
13 registrations.

14 Q Now, based on your expertise in early voting and this
15 data, do you have an opinion as to how the elimination of the
16 opportunity to register to vote during the early voting period
17 will affect voters in North Carolina?

18 A I do. And, again, I don't want to be overly influenced by
19 the testimony yesterday, but these personal stories really
20 helped to support my own inferences, which is that -- we know
21 this from Election Day registration research -- people show up
22 and expect to be able to engage in these registration
23 activities at the same time. And that ability is going to be
24 taken away, and some number of these individuals will not be
25 able to cast a ballot because they will expect erroneously, but

1 expect, that they could engage in this registration change when
2 they go the ballot box, and they'll be unable to do so.

3 Q Now, you report same-day registration usage here broken
4 down by race; right, Dr. Gronke?

5 A I do, yes.

6 Q We are not going to go over those numbers in detail; but
7 based on that data and your expertise in early voting, do you
8 have an opinion as to the effect of eliminating same-day
9 registration on minority voters in particular in North Carolina
10 as opposed to white voters?

11 A African-American voters is all I report here, and I report
12 other, but I am not sure of the contents of that category.
13 Among African-Americans, the usage rate of same-day
14 registration is higher, and so my expectation would be the
15 burden is also greater for that group.

16 **MR. HO:** Thank you, Dr. Gronke. No further questions
17 at this time.

18 **THE COURT:** Any cross?

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

20 CROSS-EXAMINATION

21 **BY MR. FARR**

22 Q Dr. Gronke, I think I would like to start out looking at
23 your March 25th, 2015, report, which I think is Plaintiffs'
24 Exhibit 250 (sic). I believe it is Tab 5 in the notebook that
25 you were given by counsel.

1 Now, during the course of this case, you have reviewed a
2 report that was prepared by Sean Trende?

3 A Yes, I have.

4 Q And he is a former student of yours at Duke?

5 A I believe he may have taken a class of me. I heard such
6 a report. I apologize for not remembering specifically.

7 Q And Mr. Trende is a lawyer, and he has a master's in
8 political science; is that right?

9 A I was not aware that he had a law degree. I believe he
10 does have a master's degree. I have no reason to question
11 that.

12 Q So if we look at your report, your 3/24/15 report, which
13 is Plaintiffs' Exhibit 250 (sic), could you tell the judge
14 about Footnote 1? What is that article that you are citing
15 there on Footnote 1?

16 A I apologize. I believe -- Exhibit 247; correct? You said
17 250.

18 Q I had that wrong. It's 247. Do you see that, Footnote 1?

19 A Yes.

20 Q And you were citing that article in this report; correct?

21 A Yes, I was.

22 Q And there's three authors of that article?

23 A Yes, there are.

24 Q Is it true that none of those individuals have a master's
25 in political science?

1 A As far as I am aware. I don't know.

2 Q Didn't you testify in your deposition that you didn't
3 think they had a master's in political science?

4 A I may have testified to that, yes.

5 Q And you testified that they are all three lawyers?

6 A These are all very well-known election law specialists who
7 have been involved in election law for quite a long period of
8 time.

9 Q Okay. Now, I want you to turn to Footnote 12 on page 5.

10 A Yes.

11 Q Could you explain to the judge what your intentions were
12 for this particular footnote? Why is this footnote included in
13 your report?

14 A Certainly. So what I was trying to do here was capture
15 the effects of various changes in the law, and so the
16 information in the footnote is drawn from a multivariate
17 regression analysis. When such an analysis has been conducted,
18 you can then make a forecast, or a prediction, about the
19 effects of a particular change in the law based on those
20 results by simply simulating or essentially substituting in
21 particular values into an equation, calculating it, and
22 calculating a predicted rate of change.

23 Q So Leighley, is that the way you pronounce the
24 individual's name? Leighley and Nagler?

25 A Yes.

1 Q They did a study on how various election laws impact the
2 turnout?

3 A They were looking at -- the specifics of that article, I
4 would -- I would not want to recover that article specifically,
5 but they have examined demographics as well as the change in
6 laws, yes.

7 Q All right. And then you calculated a 10 percent figure of
8 the outside level at which election practices could increase
9 turnout?

10 A Yes.

11 Q And you calculated that by taking the information from
12 Ms. or Mr. Leighley's article as far as the impact that they
13 had found of the various election laws on turnout?

14 A Yes, I did.

15 Q And you added up all the ones that were the most positive
16 on turnout to get your 10 percent figure?

17 A I believe I added the impact of the laws, yes.

18 Q Okay. Well, didn't you testify in your deposition that
19 you got the 10 percent figure by adding the impact of the laws
20 that they found had a positive impact on turnout?

21 A Yes, I did.

22 Q And the laws that you looked at were Election Day
23 registration?

24 A Yes.

25 Q And that means people who register and vote on Election

1 Day?

2 A That's correct.

3 Q That's not same-day registration, is it?

4 A Same-day registration, as the term is used here; correct,
5 same day here is done during the early voting period.

6 Q All right. And then you also used election practices that
7 had a positive impact on turnout is a 30-day closing period.

8 What did you mean by that?

9 A So this was referenced during yesterday's testimony.
10 Different states have a different period of time that's called
11 the book closing where you need to register by that period of
12 time; and so if memory serves from this article, this was
13 the -- perhaps the shortest period of time that was available.

14 Again, I would have to have the specifics of the article
15 in front of me to be able to recover exactly what they have
16 done in their coding.

17 Q Right. But this was one of the practices, when you read
18 this article, that you concluded had a positive impact on
19 turnout?

20 A I did not conclude. This is what the authors reported.

21 Q This is what they reported?

22 A That's correct.

23 Q And they also reported that mail-in absentee voting had a
24 positive impact on turnout?

25 A That's correct.

1 Q Okay. And, now, Dr. Gronke, you did not include -- in
2 this calculation that you made of all the election practices
3 that they reported that had a positive impact on turnout, you
4 did not include early voting, did you?

5 A My intention in this --

6 Q Is that a yes or no? And then you can explain.

7 A No, I did not.

8 Q Is that because these people reported that early voting
9 did not have a positive impact on turnout?

10 A I don't recall specifically the details of the article.

11 Q But if it had had a positive impact on turnout, you would
12 have included it in your calculation?

13 A That's correct.

14 Q And your calculation also does not include what these
15 individuals reported on same-day registration and whether it
16 had a positive or negative impact on turnout?

17 A I don't recall if they included that in the article.

18 Q Right. But you didn't include same-day registration in
19 your calculation?

20 A I included all of the positive impacts that they reported
21 in their article.

22 Q So the answer is?

23 A I don't recall whether same-day registration was included
24 in the article or not. So I included all positive impacts in
25 that calculation.

1 Q Did you tell me in your deposition that you thought
2 same-day registration was included in the article?

3 **MR. HO:** Objection, Your Honor. If he wants to ask
4 the question, he can, but it is not a memory test.

5 **THE COURT:** If you want to cross-examine him, just
6 use his deposition to cross-examine him. Sustained.

7 The other reason for that rule is if a witness says
8 they remember what they said in their deposition, then it still
9 doesn't come in as substantive evidence necessarily unless the
10 witness says on the stand whatever the witness says.

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

12 **THE COURT:** Yes.

13 **BY MR. FARR**

14 Q Dr. Gronke, I would like for you to look at page 88 and
15 the question I asked you on line 11 and your answer. Does that
16 refresh your recollection, Dr. Gronke?

17 A Yes, it does.

18 Q So do you recall that you -- that the same-day
19 registration law was, in fact, included in the article that you
20 were looking at?

21 A I can read my testimony. On line 14, I say -- on page 88,
22 I say, "I don't recall. I am fairly confident it is in the
23 model in the book, but I don't recall the results."

24 Q Is that your answer today?

25 A Yes, it is. I don't recall.

1 Q Is your answer today also that you are fairly confident
2 that it was in the model?

3 A The model in the book, yes.

4 Q Okay. And if same-day registration had a positive impact
5 on turnout, you would have included it in your calculation?

6 A Could you repeat the question?

7 Q The calculation that you made of 10 percent where you
8 added up all the election laws that would have a positive
9 impact on turnout, if that book had indicated that the same-day
10 registration had a positive impact on turnout, you would have
11 included it in your calculation?

12 A Yes, that's correct.

13 Q And you didn't include it in your calculation?

14 A I did not include it. I calculated it as reported in the
15 footnote; correct.

16 Q All right. Let's turn to your report, your April 14,
17 2014, report, and I think it's marked as Plaintiffs'
18 Exhibit 40, and it is the -- under the first tab in the
19 notebook that your counsel gave you.

20 A Yes, sir.

21 Q All right. Now, could you turn to page 3, paragraph 8.

22 A Yes.

23 Q Could you read that into the record, please?

24 A Certainly. "'Early voting' is a term often used to
25 encompass at least three distinct forms of election

1 administration and balloting: Early in-person voting,
2 no-excuse absentee voting, and full vote by mail. While there
3 are differences in how these systems are administered, they are
4 often referred to generically as 'early voting' because they
5 all allow the citizen to cast a ballot prior to Election Day.
6 In the context of this report, however, I will follow the
7 practice of the scientific community and distinguish between
8 'early in-person' and 'absentee by-mail' voting because these
9 constitute two separate administrative regimes, and are popular
10 in different regions and among distinct segments of the
11 population."

12 Q All right, sir. So you think it is important in your
13 profession not to lump mail-in early voting together with early
14 voting that takes place during the -- excuse me.

15 You distinguish between early voting that takes place
16 during the early voting period from mail-in absentee early
17 voting?

18 A Yes, I think that's the appropriate way to treat that.

19 Q And you think it is important not to lump those two
20 together?

21 A In most circumstances, yes, I would say so.

22 Q All right. Now, could you turn to page 13 of that same
23 report. I am looking at paragraph 20, and there is a sentence
24 there that I am going to read, Dr. Gronke.

25 "It is notable, however, that Burden et al. found that

1 early voting plus same-day registration -- comparable to North
2 Carolina -- was associated with higher turnout."

3 Do you see that?

4 A Yes, I do.

5 Q All right. Now, were you present when Dr. Burden
6 testified?

7 A I was not, no.

8 Q You've read his article?

9 A Yes, I have.

10 Q And you've cited it here?

11 A Yes, I have.

12 Q Does Dr. Burden say in his article that early voting plus
13 same-day registration increases turnout?

14 A If memory serves, yes, that was what was reported in the
15 article.

16 Q Doesn't he, in fact, say that early voting plus Election
17 Day registration increases turnout?

18 A I would have no reason to question that, so I don't recall
19 with that level of specificity.

20 **MR. FARR:** Could I approach, Your Honor?

21 **THE COURT:** Yes.

22 **BY MR. FARR**

23 Q I am going to hand you what we have marked as Defendants'
24 Exhibit 348. Can you look at that and confirm that that's the
25 Dr. Burden article that you were citing in your report?

1 A Yes.

2 Q Okay. Dr. Gronke, if you would turn to pages 96 and 97,
3 and what I want you to focus your attention on is the first
4 paragraph where it says "Previous Research." Do you see where
5 he defines "Election Day registration which permits the
6 eligible voters to both register and vote on Election Day"?

7 A Yes, I see that.

8 Q Okay. And then if you go to the last paragraph in that
9 section, he talks about same-day registration.

10 A Yes, I see that as well.

11 Q And he distinguishes same-day registration from Election
12 Day registration, does he not?

13 A That's correct, he does.

14 Q And do you see where he says, "Despite its widespread use,
15 we know of no studies that have analyzed SDR's direct effect on
16 turnout"?

17 A Yes.

18 Q Okay. Now, could you turn to page 102 and look at
19 Figure 3?

20 A Yes.

21 Q Now, you've read this article before; right?

22 A I have, yes.

23 Q And you said that you were one of the persons who
24 peer-reviewed it?

25 A Yes.

1 Q And you cite it in your reports?

2 A I have, yes. I did, yes.

3 Q Do you know what Figure 3 is?

4 A Yes, I do.

5 Q Could you explain to the judge your understanding of
6 Figure 3?

7 A Certainly. Figure 3 is a plot of the estimated impact of
8 various laws on turnout. The dots or periods are the estimated
9 effect, and then the bars on both sides represent the
10 uncertainty around those predictions.

11 So, for example, early plus SDR 2004 does not have a
12 statistically significant impact on turnout because while the
13 dot is below zero, the error bars extend past the line in the
14 middle, which is the zero line.

15 Q So Dr. Burden, in this chart, is saying that in 2004,
16 early voting plus same-day registration did not have an effect
17 on turnout?

18 A I haven't read the article specifically enough to find
19 that statement, but that's what I would interpret from the
20 graph.

21 Q Now, wouldn't you also interpret from the graph that he is
22 saying the same thing for early voting plus same-day
23 registration for 2008?

24 A That's correct.

25 Q And if you look further down on the graph, is he not

1 reporting that early voting plus Election Day registration plus
2 same-day registration had a positive impact on turnout in 2004?

3 A Yes, it did.

4 Q And that it had a positive turnout on -- those three same
5 practices had a positive turnout in 2008?

6 A Probably, yes. That bar, the lower bar, just barely
7 crosses the zero threshold; but if you were consider 2004 and
8 2008 together, I would say our interpretation would be a
9 positive impact, yes.

10 Q So North Carolina never had Election Day registration;
11 right?

12 A As far as I know, that's correct.

13 Q Could you turn to page 33 of your April 2014 report?

14 A Yes.

15 Q Do you see the sentence that starts at the bottom of
16 page 33, paragraph 43 -- I am going to read it, Dr. Gronke.

17 "Finally, and perhaps most pertinent of all to this
18 report, the Burden et al. (2014) article described above that
19 found a negative impact of early voting on turnout, found a
20 positive effect when early voting was offered in conjunction
21 with Election Day registration, as was the case in North
22 Carolina prior to recent election changes."

23 Do you see that?

24 A Yes, I do.

25 Q So you are agreeing here that Dr. Burden, who you cited in

1 your article, has found that early voting had a negative effect
2 on turnout?

3 A Could you repeat the question?

4 Q Well, I am just looking at your report. You are reporting
5 here that Dr. Burden, in his article that you cited, has found
6 a negative impact of early voting on turnout?

7 A That's correct.

8 Q And then you say, But he found a positive effect when
9 early voting was offered in conjunction with Election Day
10 registration.

11 And that's true, that is in the article, correct? Didn't
12 Dr. Burden find that Election Day registration combined with
13 early voting could increase turnout?

14 A I don't think I will agree with that statement.

15 Q Okay. All right. But you said that that was what he
16 reported in your -- you described his report that way in your
17 April 2014 report?

18 A That's correct, I did state that.

19 Q And then you said, "as was the case in North Carolina
20 prior to recent election changes."

21 A Correct.

22 Q But North Carolina did not have Election Day registration?

23 A That's correct. That's inaccurate in my report.

24 Q Now I want you to turn to your May 2, 2014, report, which
25 I think is under Tab 2.

1 A Yes.

2 Q At paragraph 53 on page 18, Dr. Gronke. Are you there?

3 A Yes, sir.

4 Q Now, you examined the report of Mr. Trende?

5 A I did.

6 Q And in his report, Mr. Trende did a regression analysis
7 and concluded that same-day registration and early voting did
8 not have a positive impact on turnout. Do you remember that?

9 A I don't remember specifically. I have no reason to
10 question that.

11 Q Okay. But you criticized Mr. Trende's report in this
12 paragraph?

13 A Yes, I did.

14 Q And you say in paragraph 53, "First, Mr. Trende does not
15 cite a single article that disputes the long-standing academic
16 consensus that same-day registration has a positive effect on
17 turnout." Do you see that?

18 A I do, yes.

19 Q And you cited Dr. Burden's article in support of that
20 statement?

21 A Yes.

22 Q And you also cited an article by -- maybe it's a book, I
23 am not sure, from Larocca and Klemanski?

24 A Yes.

25 Q And that is a 2011 publication?

1 A Yes, it is.

2 **MR. FARR:** May I approach the bench, Your Honor?

3 **THE COURT:** Yes.

4 **BY MR. FARR**

5 Q Now, is this the article that you were citing in paragraph
6 53 of your report?

7 A Yes, it is.

8 Q All right. Let's look at this for a second. Can you turn
9 to page 8 of Exhibit 346?

10 **MR. HO:** Tom, do you have a copy?

11 **MR. FARR:** I'm sorry. I apologize.

12 **BY MR. FARR**

13 Q Well, first of all, Dr. Gronke, this is an article where
14 these authors are studying "U.S. State Election Reform and
15 Turnout in Presidential Elections." Is that what the title of
16 the article is?

17 A Yes, it is.

18 Q And one of the practices they are studying is early
19 voting; right?

20 A Yes.

21 Q And the other one is Election Day registration?

22 A Yes, it is.

23 Q Did they study same-day registration in this article?

24 A I am looking at page 80, and they do not report how they
25 treated North Carolina. So I have no knowledge about how they

1 coded that.

2 Q So on page 80, they talk about Election Day registration,
3 which is when you register on Election Day; right?

4 A They do, yes.

5 Q Okay. There is something in here about North Carolina
6 that I want to show you, Dr. Gronke, if I can find it. Turn to
7 page 93.

8 So do you see the paragraph about "In 2008, North Carolina
9 permitted voters to register"? It's the first full paragraph
10 on page 93.

11 A I do, yes.

12 Q Could you read that paragraph into the record?

13 A Certainly. "In 2008, North Carolina permitted voters to
14 register and vote early in person from nineteen to three days
15 before Election Day. In Table 1, we interact this same-day
16 registration with early in-person voting to assess whether the
17 effect of early in-person voting on turnout is affected by
18 ability to simultaneously register. However, only Washington
19 and North Carolina were classified as competitive gubernatorial
20 races, and Washington was removed from the 2008 data because of
21 county-level variation in the way universal mail was
22 implemented. As a result, the competitive gubernatorial race
23 variable drops out of the interactive model in 2008. Since
24 North Carolina is also the only state in the 2008 data that had
25 a competitive gubernatorial race and the only state that had

1 same-day registration, it is actually impossible to isolate
2 either the effect of same-day registration or of competitive
3 gubernatorial races in 2008. The variable measuring both
4 same-day registration and competitive gubernatorial races shows
5 no statistically significant influence on turnout."

6 Q So these authors on this page distinguish Election Day
7 registration from same-day registration during early voting?

8 A They did; that's correct.

9 Q And they concluded that they could not find any evidence
10 that same-day registration increased turnout in North Carolina
11 in 2008?

12 A They concluded that it was statistically impossible
13 because of the multicollinearity between a competitive
14 gubernatorial election and the existence of same-day
15 registration.

16 Q Okay. Turn to page 96, please. I am looking at the
17 second full paragraph.

18 A Yes.

19 Q I am going to read the first sentence of that paragraph
20 into the record, Dr. Gronke.

21 "Early in-person voting has been the most popular state
22 election reform over the past twenty years. However, based on
23 our trips and tasks model, we did not expect this reform to
24 lead to increased turnout because it does not necessarily
25 reduce the overall costs of voting."

1 Do you see that?

2 A Yes, I do.

3 Q So those authors who you cited in your report concluded
4 that they could find no evidence that early voting increased
5 turnout?

6 A Early in-person voting, yes, that's correct.

7 Q If you look at the last paragraph that starts on page 96,
8 could you read that paragraph into the record that starts, "Our
9 results"?

10 A Yes, I can. "Our results also suggest that both
11 polling-place and centralized Election Day registration are
12 generally associated with a consistently higher likelihood of
13 voting. We hypothesized that Election Day registration would
14 increase the likelihood of voting in particular for younger
15 voters, who may not have yet applied for a driver's license,
16 and for new residents, who may not be able to vote in states
17 that impose a residency or registration deadline three to four
18 weeks before Election Day. We find that polling-place Election
19 Day registration does increase the probability of voting by new
20 residents, across all age groups and elections. Centralized
21 Election Day registration seems to increase the probability of
22 voting only for respondents 26 to 64 years of age who have
23 lived in their residence for some time."

24 Q So it's fair to say, Dr. Gronke, from this article these
25 authors concluded that Election Day registration could increase

1 turnout?

2 A That's correct.

3 Q And they concluded there was no evidence that early voting
4 increased turnout?

5 A That's correct.

6 Q And they didn't have enough information to offer an
7 opinion as to whether or not same-day registration increased
8 turnout?

9 A That's exactly correct.

10 **MR. FARR:** Your Honor, could we take a break at this
11 point in time?

12 **THE COURT:** All right. We'll take our morning break
13 for 20 minutes.

14 (The Court recessed at 10:23 a.m.)

15 (The Court was called back to order at 10:45 a.m.)

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

17 **THE COURT:** Mr. Farr.

18 **BY MR. FARR**

19 Q Dr. Gronke, I now want to ask you some questions about
20 usage of early voting, so I am likely to turn to the first tab
21 in your expert report notebook. I believe it is Exhibit 240
22 (sic), and I would like you to turn to page 39 and look at
23 paragraph 52.

24 A Yes.

25 Q Could you read paragraph 52 into the record, please?

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

11 Q All right. Thank you, Dr. Gronke.

12 Now I want you to turn to your June 7th, 2014 report. I
13 believe it is Plaintiffs' Exhibit 167, and I believe it is
14 Tab 3 in your notebook.

15 A Yes.

16 Q I would like for you to look at paragraph 25.

17 A Yes.

18 Q Are you there?

19 A I am, yes.

20 Q Could you read paragraph 25 into the record?

21 A Yes. "Third, some portions of the Exhibit make
22 comparisons in overall voter turnout as a way to judge the
23 impact of changes to early voting laws. This is invalid.
24 Overall voter turnout is equal to the sum of Election Day,
25 early in-person voting, and by-mail turnout divided by the

1 number of eligible voters. The appropriate metric for
2 comparing the impact of changes in early in-person voting laws
3 is to compare early in-person voting rates. Only one of the
4 ten tables in the Exhibit is at all pertinent to my expert
5 report on early voting laws, the fourth table titled
6 'Comparison of Usage of Voting at Early Voting Sites between
7 the 2010 and 2014 Primary Elections among Those Who Voted
8 Within Each Demographic Category.'

9 Q So you are saying the appropriate metric for comparing the
10 changes in the days in early voting is how many people actually
11 participate in early voting?

12 A Yes, I would agree with that.

13 Q All right. Now, could you turn to -- I believe it's
14 Plaintiffs' Exhibit 234. It is. It is Exhibit 234. It is
15 under the fourth tab in your expert notebook.

16 A Yes.

17 Q I ask you to turn to Figure 2.

18 A Yes.

19 Q What's Figure 2?

20 A Figure 2 provides the raw data on top and then percentages
21 below in a barograph, and it compares the rate of one-stop
22 voting between African-Americans and white voters in North
23 Carolina from the 2006 through 2014 general elections.

24 Q Okay. And were you here for Dr. Stewart's testimony
25 yesterday?

1 A I was, yes.

2 Q And did you hear him testify that the increase for
3 African-Americans who participated in early voting from 2010 to
4 2014 was about 44 percent?

5 A Yes, I did.

6 Q And do you agree or dispute that?

7 A I don't believe my figures translate to 44 percent.

8 Q Do you want to get the calculator out and calculate --

9 A Certainly. I did it yesterday. I think my figures are
10 34 percent.

11 Q Let's get the calculator out.

12 A That's fine. I already have one.

13 Q Here you go. Do you have a pen?

14 A Thank you. I have one.

15 Q Okay. Let's -- at the top of Figure 2, you report the
16 number of African-Americans who did early voting in 2010 and
17 2014. So could you subtract the 2014 number, which is 282,256,
18 and subtract from that the number of African-Americans who used
19 early voting in 2010, which is 195,663?

20 A Yes.

21 Q And tell us what the figure is that you get.

22 A 86,593.

23 Q And then could you do the same thing for the white voters?

24 A The result I get is 882,636.

25 Q The same thing I get, Dr. Gronke. So if we are going to

1 decide the percentage of increase for black voters from 2010 to
2 2014, would we not divide the difference by the total number of
3 black early voters in 2010?

4 A You could calculate it that way, yes.

5 Q Let's do it that way to satisfy me, and tell me what
6 percentage you get.

7 A 44 percent.

8 Q Interesting. Now, how about --

9 A It just means I mistyped yesterday.

10 Q How about if you did the same calculation for white
11 voters, where you would divide the increase in white voters by
12 the total number of white early voters in 2010?

13 A 12.8 percent.

14 Q Okay. I get the same thing. So is it fair to say that
15 the increase of black voters who used early voting in 2014 was
16 over three times the amount of the increase for white voters?

17 A The same caveat needs to be placed that Professor Stewart
18 did, that there may be a changing base of overall voters
19 registered in the population; but it is also true that the
20 rates, as calculated here, 44 percent is more than three times
21 larger than 12.8 percent.

22 Q So turning back to your first report -- let's do this.
23 You said the proper metric for comparing how this law would
24 impact early voting would be the early voting turnout?

25 A Rates of early voting, yes.

1 Q And then if you turn back to your April 14 report, which
2 is Tab 1, paragraph 52.

3 A Yes.

4 Q And you see the sentence that says, "I know of no
5 empirical argument by which one could conclude that
6 African-American voters -- or any voters for that matter --
7 will successfully adjust to 40 percent fewer...voting days,
8 regardless of the possibility of longer hours on those days"?

9 A Correct.

10 Q Do you still stand by that given the results of the 2014
11 election?

12 A I acknowledge there is higher turnout rates -- higher use
13 of early voting rates among African-Americans in 2014 when
14 compared to 2010, higher early voting rates when compared to
15 whites.

16 Q The rates went up for both groups?

17 A They did, yes.

18 Q And the black usage went up over three times higher than
19 the white usage for early voting?

20 A That's correct.

21 Q Now, I want to ask you a question on page 39 of your first
22 report. I have gotten confused throughout this case about
23 who's the person that came up with the word "habituated." And
24 I found out that you were the person; isn't that right,
25 Dr. Gronke?

1 A I believe that's correct.

2 Q You are the habituated person?

3 A I blame Bob Stein at Rice University, but I may have come
4 up with it.

5 Q In paragraph 51, could you read into the record that
6 paragraph starting with the sentence "African-Americans show a
7 higher preference."

8 A Yes, sir. "African-Americans show a higher preference for
9 one-stop absentee voting, and show a higher preference for
10 voting during the first week of early voting, when compared to
11 White voters. They have habituated to this mode of balloting.
12 There is no reason not to expect these patterns to continue
13 into the future."

14 Q Okay. Now, does habituated apply to a group or does it
15 apply to people?

16 A Habituation applies to an individual.

17 Q Okay, it applies to an individual. It doesn't apply to
18 the group?

19 A Individuals are members of groups, so some groups may show
20 higher rates of habituation than other groups.

21 Q But to study habituation, you have to look at a particular
22 individual to see if they were habituated?

23 A You could get evidence from looking at group behavior as
24 well, but, ultimately, I would like to look at individual
25 behavior; that's correct.

1 Q Now, Dr. Gronke, from the data available to you for the
2 2006 election all the way through 2014, did you ever try to
3 study any specific individuals to see if they were habituated
4 to early voting?

5 A Yes, I did.

6 Q Specific individuals?

7 A I would say yes.

8 Q So you found someone in the SEIMS database and checked
9 their voting history to see if they had done early voting?

10 A From 2006, no.

11 Q Well, from any point in time that you studied over the
12 course of two, three, four elections, whether a person was -- a
13 particular person was habituated to doing early voting?

14 A In my final report, I studied whether individuals who cast
15 a one-stop ballot in 2012 cast a one-stop ballot in 2014, cast
16 a ballot on Election Day, cast an absentee ballot, or dropped
17 out of the electorate for that election.

18 Q Okay. But you looked at just one election for that?

19 A That's correct.

20 Q But you didn't look to see whether any specific person was
21 so habituated that they did early voting in 2006 and 2008 and
22 2010 and 2012 and 2014?

23 A No, I did not.

24 Q Or you didn't see if they were habituated between 2008,
25 2010, 2012 and 2014?

1 A No.

2 Q All right. Now, I want to turn Plaintiffs' Exhibit 234,
3 which is your report for February 12, 2015.

4 A Yes.

5 Q I think it is Plaintiffs' Exhibit 234; is that correct?

6 A Twelfth of February, 2015?

7 Q Right.

8 A Yes.

9 Q Okay. Now, is Figure 4 the analysis that you were just
10 talking about? It says, "Transition from One Stop Voting in
11 2012 to Any Mode in 2004."

12 A On page 12 of my printout, yes, that's correct.

13 Q Tell His Honor what this chart tries to show.

14 A Certainly. So in this chart, I've plotted the base
15 percentage that we are comparing here, individuals who cast a
16 one-stop ballot in 2012. And then using the voter history
17 file, I plotted their behavior in the 2014 election. For
18 instance, of all voters who cast one-stop ballots using the
19 one-stop method in 2012, 35 percent of those cast a one-stop
20 ballot again in 2014. That's the blue bars. And I compare the
21 African-American voters in the second set of bars and white
22 voters in the third set.

23 Q Let's make sure we understand this chart. Let's look at
24 the section for all voters. What does the blue line represent?

25 A So the blue line reports that of those voters who cast a

1 one-stop ballot in the 2012 general election, 35 percent of
2 those voters cast a one-stop ballot again in the 2014 general
3 election.

4 Q And what does the red line mean?

5 A The red line indicates that of those voters who cast a
6 one-stop ballot in 2012, 28.77 percent cast a ballot on
7 Election Day in 2014. The green bar indicates that .91 percent
8 of the one-stop voters in 2012 cast an absentee ballot and of
9 the voters who cast a one-stop ballot in 2012, 35.27 percent
10 did not cast a ballot at all in 2014.

11 Q And the people that didn't cast a ballot, that's the
12 purple bar?

13 A Yes it is.

14 Q And then you did the same analysis for black voters and
15 black voters?

16 A Yes, I did.

17 Q So, for example, let's look at the black voters. The blue
18 line, what does that mean?

19 A So 33 percent -- 34 percent approximately of
20 African-American voters who cast a one-stop ballot in the 2012
21 election cast a one-stop ballot again in the 2014 election,
22 26.5 percent of the African-Americans who cast a one-stop
23 ballot in 2012 cast an Election Day ballot in 2014, and
24 40 percent approximately of African-Americans who cast a
25 one-stop ballot in 2012 did not participate in 2014.

1 **THE COURT:** Let me interrupt you. What is a one-stop
2 ballot? Other than early voting?

3 **THE WITNESS:** I'm sorry, Your Honor. So "one-stop"
4 is the term that North Carolina uses to -- it's early voting.
5 It's the same thing, and they call it one-stop absentee.
6 That's how the phrase first emerged, but it's early voting.

7 **THE COURT:** Thank you.

8 **BY MR. FARR**

9 Q All right. So 26 -- by the way, the percentage of people
10 who did not -- the percentage of early voters in 2012 who
11 didn't vote in 2014 was 39.41 percent?

12 A Among African-Americans, yes.

13 Q Right. Thank you. And you are showing that 26.5 percent
14 of African-Americans who did early voting in 2012 voted on
15 Election Day in 2014?

16 A That's correct.

17 Q So that would be some evidence that those people were not
18 habituated to voting during early voting; right?

19 A It would be evidence, yes. I would agree with that.

20 Q Okay. And could that not be evidence that individuals who
21 might have voted during the first seven days of early voting in
22 2012 understood and adjusted to the rules and decided to vote
23 on Election Day than during early voting?

24 A It's possible. My preference would be to look at the --
25 by the days, but I did not perform that analysis.

1 Q Okay. Now, you just studied the dropoff of early voters
2 who voted in 2012 that didn't vote in 2014; is that right?

3 A Correct.

4 Q You didn't study that same phenomenon for the voters who
5 voted early in 2008 and did not vote in 2010?

6 A That's correct.

7 Q Why didn't you do that, Dr. Gronke?

8 A I was primarily interested in trying to isolate the impact
9 of the legal changes in H.B. 589, so I didn't choose to do the
10 2008 to 2010 comparison.

11 Q Wouldn't that be a good way to test if the legal changes
12 had any impact, by comparing the dropoff rate from 2008 to 2010
13 to see if it was any different?

14 A I don't think so because, as I stated previously, the 2014
15 and 2010 election were so dramatically different, not that
16 different from the Larocca and Klemanski article we just
17 referred to. It would be very difficult to take apart those
18 two effects.

19 Q Did you review Dr. Thornton's report in this case?

20 A Yes, I did.

21 Q Do you recall that she did that analysis of dropoff from
22 2008 to 2010?

23 A My recollection is that, yes, she did.

24 Q And do you recall that she reported there was a higher
25 dropoff of black voters who didn't vote in 2010 as compared to

1 2014?

2 A Yes, that was my memory.

3 Q Now, another thing, Dr. Gronke, you didn't study how many
4 Election Day voters who voted in 2012 didn't vote in 2014, did
5 you?

6 A I did not.

7 Q Do you recall reading Mr. Trende's report?

8 A I do.

9 Q And do you recall that he reported that there was a higher
10 dropoff of African-American voters who voted on Election Day in
11 2012 who didn't vote in 2014 as compared to the early voters?

12 A If memory serves, there was a dropoff -- higher dropoff
13 among all Election Day voters, as would be expected. It's a
14 different population.

15 Q Right. And there was a higher dropoff of black Election
16 Day voters?

17 A If memory serves, that's correct.

18 Q And those individuals who voted on Election Day would not
19 have been affected -- people who voted on Election Day in 2012
20 would not have been affected by the changes in number of days
21 of early voting?

22 A People who voted on Election Day in 2012?

23 Q Right.

24 A I would agree with that, yes.

25 Q Okay. All right. Let's go back to your first report,

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1 which is Exhibit 279 (sic). I want you to look at the
2 conclusions again. Are you there?

3 A Yes, I am.

4 Q Could you read into the record your conclusion that's
5 reflected in paragraph 54?

6 A Yes. "I conclude from the analysis in this report that,
7 because same-day registration has been shown to be a strong and
8 consistent predictor of higher turnout, the elimination of
9 same-day registration during the election process, whether
10 during one-stop voting or on Election Day, will lower turnout
11 overall. In particular, I conclude that eliminating same-day
12 registration will have a disparate impact on African-American
13 voters because they take advantage of same-day registration at
14 a significantly higher rate."

15 Q First of all, Dr. Gronke, you haven't evaluated whether
16 the registration rates for African-Americans have dropped off
17 in 2014 as compared to 2012?

18 A That's correct; I did not examine registration rates.

19 Q When you said -- here, in paragraph 44, you predicted that
20 the turnout would drop for African-Americans.

21 A Yes, I did; that's correct.

22 Q And you didn't qualify it by saying unless there is a
23 really expensive and competitive election?

24 A No, I did not.

25 Q I want to talk to you about some comparisons you made

1 about Florida, North Carolina and congestion. You said that
2 you think there will be more congestion at the early voting
3 centers or the polls in 2016. What evidence did you look at to
4 reach that conclusion?

5 A The evidence that I examined -- that Professor Stewart and
6 I examined -- we examined in our co-authored paper were the
7 reported lines in Florida after the reduction in the number of
8 early voting -- the number of days of early voting in that
9 state.

10 Q Okay. Let me ask you a few questions about that. Do you
11 know how many early voting centers there are in North Carolina?

12 A Total?

13 Q Yes.

14 A No, I do not.

15 Q Did you ever study how many early voting centers there are
16 per county?

17 A I did not.

18 Q Did you study the number of hours that were available for
19 early voting in 2014?

20 A No.

21 Q Did you study the number of early voting hours that were
22 available in 2012?

23 A I did not.

24 Q Did you study the number of early voting hours available
25 in North Carolina in 2012 versus the number of early voting

1 hours available in Florida in the election that you looked at?

2 A Could you repeat the question, please?

3 Q Did you ever compare the total number of early voting
4 hours that were available to voters in 2012 in North Carolina
5 against the total number of early voting hours that were
6 available to voters in Florida in the election that you
7 studied?

8 A The one piece of information we did report was that the
9 number of hours available in Florida was held at 96 hours in
10 counties with the population -- counties that covered
11 approximately 80 percent -- more than 80 percent of the Florida
12 population. Beyond that, no specific comparisons between North
13 Carolina and Florida in 2012.

14 Q So you don't know how many total early voting hours there
15 were in Florida in the election that you studied as compared to
16 the statewide total early voting hours in North Carolina in
17 2012?

18 A I do not. I don't think that particular figure would be
19 pertinent. It would be the number of hours available county by
20 county. But, correct, I did not make comparisons of the length
21 of time, the hours day by day available between the two states.

22 Q Did you compare the hours available in any county in
23 Florida in 2000 -- in the election you studied against any
24 county in North Carolina in 2012?

25 A No, I did not.

1 Q And you didn't compare how many early voting centers there
2 were in any county in North Carolina in 2012 as compared to the
3 number of early voting centers in Florida in 2012?

4 A No, I did not do any county-by-county comparison of the
5 number of early voting sites available in each county; that's
6 correct.

7 Q Did you compare the voting equipment that was used in
8 Florida counties versus North Carolina?

9 A No, I did not.

10 Q Did you do any comparison of the facilities for early
11 voting in Florida versus North Carolina?

12 A By that, you mean the location?

13 Q How big they were. How big the facilities were.

14 A No, I did not.

15 Q Did you compare parking in early voting centers in North
16 Carolina versus Florida?

17 A I didn't want to jump ahead, but the characteristics of
18 facilities, including parking, accessibility, no, I did not
19 compare those.

20 Q You didn't compare the number of voting machines in the
21 North Carolina early voting centers versus the number in
22 Florida centers?

23 A I am not aware where that's available; so, no, I did not
24 compare that.

25 Q You didn't compare the size of the ballot in Florida and

1 the fact that it's published in multiple languages versus the
2 size of the ballot in North Carolina and how that might impact
3 lines?

4 **MR. HO:** Objection, foundation on the characteristics
5 of a Florida ballot.

6 **MR. FARR:** I think it is in evidence, Your Honor.

7 **THE COURT:** Overruled.

8 **THE WITNESS:** I did not compare the characteristics
9 of the length of the choice process involved and navigating
10 through the ballot. I did not make these kinds of comparisons.

11 **BY MR. FARR**

12 Q Okay. And you didn't compare the number of poll workers
13 available in North Carolina early voting centers versus the
14 number in Florida early voting centers?

15 A No. I am not aware of any comparison of the number of
16 poll workers. No, I did not do that.

17 Q And have you compared the number of -- or the number of
18 hours that will be available to voters in 2016 in North
19 Carolina versus the number of hours that were available in 2014
20 for early voting?

21 A I was not aware that that had been announced. So, no, I
22 have not made that comparison.

23 Q You are aware that the law requires that the counties have
24 to maintain the same number of hours for early voting in the
25 2016 Presidential election as were in place in 2012; right?

1 A I don't want to misstate the law. My understanding is
2 that it's cumulated across the number of locations and hours.

3 Q In each county?

4 A I thought I understood that to be the law. I could be
5 misstating the law. So I will retract that if it's incorrect.

6 Q In any case, you have not looked at that?

7 A No, I have not.

8 Q Have you looked at issues such as the capacity that's
9 available in North Carolina precincts on Election Day?

10 A I haven't examined any changes or capacity of precinct
11 place voting in North Carolina.

12 **MR. FARR:** Your Honor, that's all my questions for
13 now.

14 **THE COURT:** Any redirect?

15 **MR. HO:** Yes, Your Honor.

16 REDIRECT EXAMINATION

17 **BY MR. HO**

18 Q Dr. Gronke, did you testify earlier that your views on the
19 relationship -- I'm sorry -- that your current views on the
20 relationship between early voting and turnout has been informed
21 by data since 2008?

22 A Yes.

23 Q I want to talk about some of the Defendants' exhibits that
24 they discussed with you. Could you look at Defendants'
25 Exhibit 346, the Larocca and Klemanski article.

1 A Yes, sir.

2 Q Could you turn to page 84, please.

3 A Yes.

4 Q Do you see the section listed -- or with the header "Data
5 and Control Variables"?

6 A Yes.

7 Q What years of data does the Larocca and Klemanski article
8 analyze?

9 A Is it all right if I read the sentence?

10 Q Sure.

11 A "We analyze the effect of universal mail voting, permanent
12 no-excuse absentee voting, no-excuse absentee voting, early
13 in-person voting, Election Day registration, and voter
14 identification regulations on turnout in presidential elections
15 using the Voting and Registration Supplement to the 2000, 2004,
16 and 2008 CPS...."

17 Q Does it appear that they used any data since 2008?

18 A No, they did not.

19 Q Now, Mr. Farr had you read a sentence from Larocca and
20 Klemanski about early voting and the costs of voting. Do you
21 agree with their assessment that early voting does not decrease
22 the cost of voting?

23 A They have a theory about the number of tasks and trips.
24 As far as I know, they've not done any investigation of the
25 tasks and trips. And, in fact, I am familiar with other work

1 by James Gimpel of the University of Maryland that provides
2 different and more detailed analyses of the expectation about
3 how people will cast a ballot depending on how far away they
4 are, whether they're close or far away from a commuting
5 location. There are many things that enter into whether or not
6 a location is well situated for voters.

7 Q Can I ask you now to turn to Defendants' Exhibit 348.
8 This is the Burden article. And Figure 3, Mr. Farr asked you
9 some questions about that. That's on page 102.

10 A Yes.

11 Q And looking at Figure 3, does it appear that the Burden
12 article analyzes any data that postdates the 2008 election?

13 A No, it does not.

14 Q Let me ask you, Dr. Gronke, looking at the plots in
15 Figure 3, what does Dr. Burden -- what do Dr. Burden and his
16 coauthors find for the point estimate as to the effect of early
17 voting and same-day registration in the 2008 election?

18 A I believe that that's the fourth point estimate on that
19 plot, early plus SDR 2008. The point estimate is just above
20 zero.

21 Q Positive?

22 A Yes, it is positive.

23 Q Looking at the plots here, are the point estimates that
24 Burden and his coauthors here plot higher for early voting
25 alone or for early voting and same-day registration?

1 A So the comparisons that are being made here are to the
2 first two point estimates on the graph at the top, and then the
3 next two point estimates for same-day registration. So the
4 appropriate comparison here would be the first and third point
5 estimate. That's for 2004. And the second and fourth for
6 2008. And in both cases, the point estimates for early voting
7 plus SDR is higher than the point estimate for -- the point
8 estimate for -- I will have to repeat myself. I apologize,
9 Your Honor.

10 The point estimate for early plus SDR in 2004 is larger
11 than the point estimate for early voting alone in 2004. The
12 point estimate for early voting plus SDR in 2008 is larger than
13 the point estimate for early voting alone in 2008.

14 Q And due to the enactment of H.B. 589, North Carolina is
15 moving from a state with early voting and same-day registration
16 to early voting alone; correct, Dr. Gronke?

17 A That's correct.

18 Q Now, in your analysis that you report about the
19 relationship between early voting and turnout in Tab 5 in your
20 binder, what years of data do you rely on?

21 A I relied on the current population survey from 1992 to
22 2012.

23 Q Could I ask you actually to consult your report,
24 Dr. Gronke, before trying to recollect.

25 A Yes. It's paragraph 14, I believe. That's right. The

1 '92 data is of poor quality. I relied on the Current
2 Population Survey from 1996 to 2012 and the AP election units
3 data from 2000 to 2012.

4 Q So you relied on two independent data sources?

5 A That's correct.

6 Q And you relied on a broader range of years of data than
7 either the Burden article or the Larocca and Klemanski article?

8 A That's correct.

9 Q And you relied on more recent data than either of those
10 two articles?

11 A I did, yes.

12 Q Now, your analysis -- neither your analysis nor
13 Dr. Burden's analysis nor the Larocca and Klemanski analysis
14 looked at data from midterm elections; is that right,
15 Dr. Gronke?

16 A Are we discussing the analysis that I just referred to?

17 Q Uh-huh.

18 A No, I believe my analysis did look at midterm elections.
19 No, my memory is that my analysis referred to in paragraph 14
20 did look at midterm elections. Larocca and Klemanski and
21 Burden did not look at midterm elections.

22 Q So you incorporate more data in your analysis as well?

23 A More election years, yes.

24 Q I want to ask you some questions about the habituation
25 point that you were discussing with Mr. Farr.

1 A Yes.

2 Q What does the research show about the mode of voting that
3 early voters use -- let me try that question again, Dr. Gronke.

4 When you look at early voters, what types of voting did
5 they use more frequently in subsequent elections?

6 A Early voters in previous elections tend to rely more
7 regularly on early voting in subsequent elections.

8 Q That's consistent with the findings of your report with
9 respect to North Carolina early voters specifically?

10 A Yes, it is.

11 Q Is absentee voting relied on heavily in North Carolina?

12 A No, very low rates of absentee voting.

13 Q I want to ask you a few questions about voter transitions
14 between elections.

15 A Yes.

16 Q You discussed this briefly with Mr. Farr. Would you
17 describe the 2008 electoral environment as similar to the 2012
18 electoral environment?

19 A Both were Presidential elections. Are we referring
20 specifically to North Carolina or nationally?

21 Q Yes.

22 A North Carolina was a battleground state targeted by both
23 national campaigns. It was competitive for Barack Obama. He
24 eventually won in North Carolina, which was quite important,
25 because I don't remember the last time -- probably Jimmy

1 Carter -- again, I am speculating or dragging it up from my
2 memory --

3 **THE COURT:** I don't mind you dragging from memory,
4 but I don't want you to speculate.

5 **THE WITNESS:** So if memory serves, Jimmy Carter was
6 the last, perhaps Bill Clinton, but both were competitive
7 Presidential elections.

8 **BY MR. HO**

9 Q And would you describe that -- the 2010 electoral
10 environment as similar to the 2014 electoral environment in
11 North Carolina?

12 A Both were midterm elections, and so that's pertinent. But
13 as I said before, the 2014 election was historically
14 competitive at the Senate race and overall a quite competitive
15 election in North Carolina. 2010 was not very competitive, no
16 matter how you look at it.

17 Q What, if anything, does that tell you about efforts to
18 compare voter transitions from 2008 to 2010, on the one hand,
19 and 2012 to 2014 on the other?

20 A It's difficult to do because, to refer for a third time to
21 the Larocca and Klemanski, you have to try to -- it is very
22 difficult to separate the difference in the campaign
23 environments, which we know is enormous, and we also know the
24 campaign and mobilization effects are the largest single impact
25 on turnout -- to separate those from the impact of the law,

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1 which, while not insignificant in the overall -- you know, for
2 rating the number of impacts on turnout, it rates relative --
3 comparatively -- lower certainly than campaign effects.

4 Q Mr. Farr asked you about voter transitions with respect to
5 people who used Election Day voting in 2012. You didn't
6 analyze that in your report; right, Dr. Gronke?

7 A I did not.

8 Q Why not?

9 A I found it a very interesting analysis, but it is
10 difficult for me to compare directly because I don't think it
11 is pertinent. The audience -- the individuals that we know in
12 the populations that use Election Day voting are very different
13 than early voters.

14 As noted in a paper that Professor Stewart and I did in
15 Florida, Election Day voters tend to move in and out of the
16 system much more frequently, for example, much more -- much
17 more likely to come into the election in a Presidential year,
18 leave during a midterm year. Early voters tend to be more
19 habitual, regular voters.

20 Q Dr. Gronke, I believe you testified on cross-examination
21 that voters who voted on Election Day in 2012 would not be
22 affected by the voting changes implemented by H.B. 589. Do you
23 remember saying that?

24 A I hesitated in that response because someone who voted on
25 Election Day in 2012 was impacted, as every individual in North

1 Carolina was impacted by that law. An individual may have
2 wanted to vote hypothetically during the first seven days and
3 was unable to do so. So I allowed it as a possibility.

4 Q They wouldn't have been affected in 2012 when the changes
5 weren't in effect?

6 A Correct.

7 Q But they could have been affected in 2014?

8 A Obviously, yes.

9 Q Mr. Farr asked you about your conclusions that the
10 elimination of same-day registration would cause a depression
11 in turnout. Were you, in making that conclusion, trying to
12 make a conclusion about relative turnout between elections?

13 A What I was drawing on there was the bulk of the research
14 that is primarily based on Election Day registration and what
15 the potential impact would be of the removal of same-day
16 registration in North Carolina.

17 Q Were you trying to make an assessment of turnout declining
18 from one election to another?

19 A It was my expectation that it would potentially burden
20 African-Americans and some who would have shown up and anyone
21 who uses same-day registration, and someone who showed up and
22 wanted to cast a ballot and needed to make a registration
23 change would be unable to do so.

24 Q I want to ask you a question about same-day registration.
25 Is the practice of allowing simultaneous registration and

1 voting growing or declining nationally?

2 A It is growing slowly, but it is growing.

3 Q And -- I'm sorry. Let me ask a different question. Now,
4 you've been asked a lot of questions about the effect of adding
5 early voting or voting opportunities on turnout, Dr. Gronke.

6 In your view, is it methodologically sound to draw
7 conclusions based on that literature about the effect of
8 removing early voting or other voting opportunities?

9 A Well, quite frankly, other than a number of articles that
10 I have written, there is not a lot of articles that look
11 specifically at the addition. The Burden, et al. article, for
12 example, looks at the existence of a number of legal
13 situations, but doesn't specifically examine the addition. So
14 that's one point that I think is important to make.

15 And there is also very few studies that I know of -- you
16 have to struggle to come up with any that actually look
17 specifically at the removal of a particular option.

18 So I think the analogy I referred to before and -- you
19 know, it hits close to home because of the kind of debates we
20 have in Portland about our growth. Adding a highway lane is
21 different from removing one. I am not a traffic engineer, but
22 that's what I understand. So I would hesitate to conclude
23 something from the existence of a law and automatically make
24 the same assumption about the same impact on the removal of a
25 law.

1 Q We've heard a lot of data -- I'm sorry. We've heard a lot
2 about data in other states, Dr. Gronke, and about turnout. In
3 your view as an expert on voting behavior, what is the most
4 useful set of data in understanding the effect of these voting
5 changes in North Carolina?

6 A Well, I will speak more broadly, as unhappy as it may make
7 you. I think that the literature is actually moving toward
8 individual state studies because that controls for the
9 variability of practices across states.

10 So within North Carolina, I would want to look at data
11 over time in the state of North Carolina. I really think
12 that's the best that we can do to try to examine the legal
13 changes in North Carolina, as I have done in the state of
14 Oregon, and as I have done and others have done in the state of
15 Washington, as scholars have done in the state of Carolina,
16 sticking within a single state.

17 Q What does the data in the state of North Carolina about
18 same-day registration and early voting suggest to you, if
19 anything, Dr. Gronke, about the removal of seven days of early
20 voting and same-day registration in the state of North
21 Carolina?

22 A So at the end of the day, I am left with two observations.
23 One is that African-Americans have and continue to rely on
24 one-stop or early voting at a higher rate than whites, and
25 African-Americans are more likely than whites to cast a ballot

1 during the first seven days of early voting that have been
2 removed.

3 **MR. HO:** Thank you, Dr. Gronke. That's all I have
4 right now.

5 **MR. FARR:** Your Honor, I just have very few
6 questions.

7 **THE COURT:** All right.

8 **RECROSS-EXAMINATION**

9 **BY MR. FARR**

10 Q Dr. Gronke, you just said that it would be more
11 appropriate to look at a state-by-state basis in evaluating the
12 impact of these laws on turnout?

13 A I believe that's correct, yes, or more appropriate. I
14 apologize. Yes, I think that's the better way to understand
15 the effects.

16 Q And, yet, your entire testimony about your prediction
17 about congestion in voting lines in the future in North
18 Carolina is based upon a study that you made of Florida?

19 A That's correct.

20 Q And looking at Plaintiffs' Exhibit 234, I am looking at
21 your Figure 3, which is on page 8.

22 **THE COURT:** Which tab are we?

23 **MR. FARR:** It is Tab 4, I think, Your Honor.

24 **THE COURT:** Thank you.

25 **THE WITNESS:** Page 8.

1 **BY MR. FARR**

2 Q Page 8.

3 A Yes, sir.

4 Q This is your analysis of the North Carolina data?

5 A Yes, it is.

6 Q And has this been peer reviewed?

7 A No, it has not.

8 Q And you did this after you were hired to be an expert in
9 this case?

10 A Yes, I did.

11 Q And you did this after you predicted in your initial
12 report that removing -- or reducing seven days of early voting
13 and getting rid of SDR was going to cause turnout to drop,
14 which is what you said in your first report? It is page 54 --
15 or paragraph 54 of your first report, which is your April 14,
16 2014, report, Plaintiffs' Exhibit 40, the first --

17 A So 54 refers specifically to same-day registration. It
18 doesn't make a prediction with respect to early voting.

19 Q Okay. But then in 52, you say -- you say, "I know of no
20 empirical argument by which one could conclude that
21 African-American voters -- or any voters for that matter --
22 will successfully adjust to 40 percent fewer early voting days,
23 regardless of the possibility of longer hours on those days."

24 A That's correct.

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

1 **THE COURT:** Doctor, does your data -- do your data
2 take a look at the persons who voted during the seven days of
3 early voting that have been eliminated, that would be prior to
4 H.B. 589, and examine whether those same persons actually voted
5 during the current ten-day period?

6 **THE WITNESS:** No, I did not look at that.

7 **THE COURT:** Is there any way to determine whether the
8 persons who used to choose the first seven days of the
9 seventeen-day period either do or do not now choose the first
10 seven days of the ten-day period?

11 **THE WITNESS:** Yes. You could perform a similar kind
12 of analysis. I referred to it as a transition analysis, but it
13 would involve tracking the individual voters as -- the
14 individual voters can be tracked by then North Carolina ID, and
15 so you can -- and the date that they cast the ballot is
16 captured in the file. So you could track those individuals
17 across a number of elections. So, yes, that's possible.

18 **THE COURT:** Do you know of any anybody who has done
19 that?

20 **THE WITNESS:** I don't believe that it's contained in
21 any of the expert reports.

22 **THE COURT:** Thank you. Any further questions in
23 light of my questions?

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

25 **MR. HO:** No, Your Honor.

1 **THE COURT:** You may step down, please. Just leave
2 everything. Somebody will take care of it. Except for the
3 calculator. I think that belongs to somebody.

4 Mr. Donovan?

5 **MR. DONOVAN:** Yes, Your Honor. Our next witness will
6 be Professor Lichtman.

7 **MR. GLICK:** Michael Glick on behalf of the NAACP
8 Plaintiffs. If I may I approach, Your Honor?

9 **THE COURT:** Yes.

10 **MR. FARR:** Your Honor, there may be an issue with
11 this expert about newspaper articles.

12 **MR. DONOVAN:** Your Honor, I don't think there is, and
13 I think we should proceed, and you will see that there is not;
14 and to the extent that there is, we would have to make a
15 proffer anyhow. I think it would be same. His testimony here
16 live is not dependent on any newspaper articles.

17 **THE COURT:** Okay.

18 **MR. DONOVAN:** We could address it at the end.

19 **THE COURT:** Why don't we proceed, and object if you
20 get to the point.

21 **MR. FARR:** Okay, Your Honor.

22 **THE COURT:** Does that work for you?

23 **MR. FARR:** We'll try to do that, Your Honor. I want
24 to also mention, Your Honor, one of the problems from the
25 Defendants' standpoint with this newspaper article issue is

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1 that, unless I am mistaken, the newspaper articles were never
2 produced. They are footnoted in the reports. So we don't
3 really know for sure what is in the newspaper reports. We'll
4 attempt to move forward along the lines that you suggested.

5 **THE COURT:** Well, was there any request during
6 discovery for those or during the experts' depositions? I
7 presume these people were deposed at least once. I presume
8 they were deposed one or more times. Was there any -- did they
9 produce their file?

10 **MR. FARR:** Yes. They produced their file, but we
11 didn't get newspaper stories. And they were footnoted. They
12 were not attached to the reports.

13 **THE COURT:** Did you ask for a copy of them?

14 **MR. FARR:** Your Honor, I did not specifically ask for
15 the newspaper story, but I am sure that we requested that
16 anything they relied upon be produced.

17 **THE COURT:** Okay. Well, let's just proceed question
18 by question. The discovery phase of the trial is for issues
19 like that to be resolved. I will take it question by question.

20 **ALLAN LICHTMAN**, PLAINTIFFS' WITNESS, at 11:37 a.m., being first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 **BY MR. GLICK**

24 Q Would you please introduce yourself to the Court.

25 A Yes. I'm Professor Allan Lichtman from American

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1 University in Washington, D.C., Your Honor.

2 Q Can you briefly describe your background.

3 A Yes. I received my BA from Brandeis University in 1967.

4 I was a science major for three years, and then I guess I saw
5 the light and switched to history my senior year.

6 I received my Ph.D. from Harvard University in 1973,
7 reflecting my science background. My specialties were American
8 political history and quantitative methodologies. I have been
9 teaching at American University since 1973, and I have been a
10 distinguished professor there since 2011.

11 Q And could you briefly describe some of your academic work
12 that is relevant to the work that you performed in this case?

13 A Yes. First of all, there is academic work utilizing
14 historical and quantitative methodologies and evidence to
15 examine American politics and American political history. This
16 approach guides many of my nine books, including my book now in
17 its fifth edition, *The Keys to the White House*, a system for
18 explaining and predicting Presidential elections, and my two
19 most recent books on the rise of the American conservative
20 movement and on FDR and the Jews and also guides many of my
21 scholarly articles.

22 In addition, there is my scholarship on historical and
23 quantitative methodology expressed, for example, in my book on
24 quantitative methodology, *Ecological Inference*, my book on
25 historical --

1 **THE COURT REPORTER:** I'm sorry, Your Honor.

2 **THE COURT:** Excuse me. I am going to have to ask you
3 to just slow down just a little bit, please. It is a
4 combination of the technical or other language and then the
5 speed.

6 **THE WITNESS:** I am from Brooklyn. I'll try to slow
7 down.

8 As I was indicating, this is reflected in two of my
9 books, *Ecological Inference*, part of the SAGE series on
10 quantitative methods, and my book *Historians in the Living*
11 *Past*, as well as scholarly articles.

12 Finally, there is my work on the application of
13 historical and quantitative methods to legal issues expressed
14 in such journals as the *Journal of Legal History*, *Evaluation*
15 *Review* and the *Journal of Legal Studies*.

16 **BY MR. GLICK**

17 Q And in addition to your academic work, Dr. Lichtman, have
18 you previously served as an expert in litigation?

19 A I have.

20 Q Can you briefly describe your experience?

21 A Yes. I've served as an expert in scores of voting rights
22 cases. I've worked for Plaintiffs and Defendants. I've worked
23 for state and local governments, the U.S. Department of
24 Justice, and civil rights organizations and private plaintiffs.

25 Q And have you submitted a CV in this matter?

1 A I have.

2 Q And is it attached to one of your reports?

3 **MR. GLICK:** Your Honor, at this time I would tender
4 Dr. Lichtman as an expert in American political history,
5 electoral analysis, and historical and quantitative
6 methodology.

7 **MR. STRACH:** No objection.

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

9 **BY MR. GLICK**

10 Q Dr. Lichtman, focusing on the work that you did in this
11 case, you submitted three reports for this stage of the case?

12 A I did.

13 Q And that was an initial report in February, a surrebuttal
14 in March responding to Defendants' expert reports, and a
15 supplement report in June; correct?

16 A That is correct.

17 Q And we will talk about it later, but what was the subject
18 of your supplemental report that you --

19 A It looked at public assistance registrations over a span
20 of time in recent years, covering both the pre-2013 and the
21 post-2013 period.

22 **MR. GLICK:** Your Honor, I would note for the record,
23 in the binder in front of you, Dr. Lichtman's reports are
24 PX231, PX245, and PX257.

25

1 **BY MR. GLICK**

2 Q Dr. Lichtman, you said earlier that you are a professional
3 historian. What do you do as a professional historian?

4 A As a professional historian, I collect, analyze, assess,
5 and weigh quantitative and qualitative evidence to reach
6 conclusions about events, trends, and patterns in the past.

7 Q And what have you been asked to do as a professional
8 historian in this case?

9 A What I have been asked to do is examine evidence that I
10 collect, weigh, analyze, and assess relative to the intent of
11 the legislature and the governor regarding the enactment and
12 signing of H.B. 589, particularly with respect to whether or
13 not there was an intent to impose a disparate burden on
14 African-Americans and Hispanics relative to whites with respect
15 to the opportunities to register and vote in North Carolina,
16 Your Honor.

17 Q Dr. Lichtman, are you offering your opinions this morning
18 as a professional historian?

19 A Yes.

20 Q Are you offering any legal opinion with regard to intent?

21 A I am not.

22 Q And earlier you referenced your prior litigation work.
23 Have you performed analysis in prior cases that is similar to
24 the work that you performed in this case?

25 A I have.

1 Q Can you provide some samples?

2 A There are three recent examples. One is I testified about
3 intent in the post-2010 litigation involving the Illinois
4 Congressional redistricting plan.

5 Secondly, I testified before the three-judge court in the
6 District of Columbia regarding the State of Texas state Senate
7 plan.

8 And, most recently, I testified in the trial in Corpus
9 Christi regarding the State of Texas voter ID plan, and I
10 believe that case is on appeal to the Fifth Circuit.

11 Q And in each of those cases, Dr. Lichtman, were you
12 retained as a professional historian?

13 A I was, same as here.

14 Q Dr. Lichtman, turning to your work on this case, what are
15 the primary pieces of evidence that you considered in your work
16 on this case?

17 A Following both my practice as a historian and guidance
18 provided by the United States Supreme Court in the *Arlington*
19 *Heights* decision, two of which come together, I have looked at
20 evidence relating to three major topics of inquiry: The
21 sequence of events leading up to the enactment and signing of
22 H.B. 589, substantive changes made to the bill and the impact,
23 particularly the racial impact of those changes, and
24 contemporary and immediate post hoc justifications,
25 particularly contemporary statements by decision-makers.

1 Q And let's focus on the first set of evidence, the sequence
2 of events leading to H.B. 589.

3 Dr. Lichtman, what is the key evidence for you in the
4 sequence of events leading up to 2013?

5 A Well, in my view, there were two critical pivot points
6 leading up to H.B. 589. The first is a fundamental shift in
7 voting strength within the state of North Carolina with respect
8 to minorities and whites.

9 Q Is that reflected in the slide on the screen now labeled
10 as AL-3?

11 A That is.

12 Q And can you describe the rise in African-American voting
13 strength that is depicted here?

14 A This chart depicts the percentage of African-Americans and
15 whites with respect to registered voters. So it measures the
16 relative what I call voting strength of African-Americans and
17 whites as gauged by registered voters, those who are eligible
18 to vote, and we see opposite trends from 2004 to early 2013 in
19 these percentages.

20 The African-American share of registered voters during
21 this period rises by about 3 percentage points. The white
22 share drops by about 7 percentage points, which means that
23 there is a 10-point swing in voter strength from whites to
24 African-Americans from January '04 to January '13.

25 Q And what is the significance of such a change in relative

1 voting strength of African-Americans against whites?

2 A Well, relative voting strength is directly related, of
3 course, to political power and the outcome of elections, and
4 this shift is particularly important in the state of North
5 Carolina because there is such a wide gap in the voting of
6 African-Americans and whites.

7 Q Dr. Lichtman, if I could remind you, and I'm sure I'll
8 need some reminding myself, but to please just slow down to the
9 extent you can.

10 Can you describe for the Court what you mean by a change
11 in -- by a polarized voting that you just identified?

12 A Yes. African-Americans, as compared to whites, are far
13 more likely to vote for Democrats in general elections, and I
14 establish this by looking at statewide exit polls in North
15 Carolina from 2004 to 2012. These exit polls covered a couple
16 of elections involving an African-American candidate, of
17 course, Barack Obama, in 2008 and 2012, and a couple of
18 elections involving only white candidates, the Kerry versus
19 Bush election in 2004, and the Hagan versus Dole election.

20 And what I did was I took the average Democratic vote from
21 these exit polls for African-Americans and for whites and for
22 other demographic groups.

23 Q And we see here on the slide AL-4 that race is a -- is at
24 60. How did you make that calculation?

25 A What I found was that on average, African-Americans voted

1 93 percent Democratic as compared to 33 percent Democratic for
2 whites. It's that difference that matters in politics. It is
3 the swing that counts, and, thus, African-Americans are
4 60 percent more Democratic than whites in terms of their voting
5 behavior.

6 To kind of translate this into real terms, this means,
7 presuming equal turnout, if the composition shifts between
8 African-Americans and whites by 1 percentage point, that's a .6
9 percentage point advantage for Democrats. If it shifts by
10 5 points, that's a 3 percentage point advantage for Democrats.
11 If it shifts by 10 points, that's a 6 percentage point
12 advantage for Democrats. Very significant in the state of
13 North Carolina where elections do tend to be close.

14 The other thing you can see from this chart is, far and
15 away, race is the most important demographic correlate of
16 Democratic voting. The gap between African-Americans and
17 whites is well more than double the gap between any of the
18 other groups examined based on sex, age, education, and income.

19 Q Dr. Lichtman, did you observe the same disparity in voting
20 with respect to Hispanic voters?

21 A I did, but it's smaller, and it is based on a more limited
22 sample. The exit polls for Hispanics are only from 2012. They
23 didn't have exit polls in North Carolina for Hispanics prior to
24 that, and they show about a 37 percentage point gap. Still
25 wider than any of these other demographics and very much in

1 line with what pollsters have found for national results.

2 And like African-Americans and unlike whites, Your Honor,
3 Hispanic voting strength was growing. Obviously, the
4 percentages are much smaller because we are dealing with a much
5 smaller segment of the voting-age population and registered
6 voters; but, nonetheless, like African-Americans, although much
7 less significantly, the Hispanic share of registered voters is
8 also rising at the same time the white share is declining.

9 Q Dr. Lichtman, other than changes in relative voting
10 strength for minorities, what else did you consider important
11 in the sequence of events leading up to H.B. 589?

12 A Yes. I think I mentioned there was a second important
13 element in looking at the sequence of events, and that is
14 legislative changes with respect to registration and voting in
15 North Carolina to create additional opportunities in these
16 areas and legislation that occurred either slightly before or
17 during the period that we've been examining here.

18 Q And specifically, Dr. Lichtman, what changes and
19 expansions were those?

20 A Well, we had 17 days of early voting in 2001. We had the
21 partial counting of out-of-precinct ballots in 2005. We had
22 added to early voting same-day registration in 2007 and,
23 lastly, the preregistration of 16- and 17-year-olds in North
24 Carolina.

25 Q Dr. Lichtman, what is the importance of the introduction

1 of these voting mechanisms when combined with that change and
2 shift in relative voter strength that you discussed earlier?

3 A This is what the legislature is looking at in 2013. It is
4 looking at a major shift in voting strength with respect to
5 rising minority and falling white voting strength, and
6 simultaneously, either right before or during that period, it
7 is also looking at a series of legislative enactments to expand
8 registration and voting. That is the combination, of course,
9 that is important for the legislature.

10 Q Okay. Dr. Lichtman, now we are up to 2013. And I want to
11 change to the second set of evidence that you identified
12 earlier, which is the changes to H.B. 589 and their impact.

13 Before we get to the changes themselves, Dr. Lichtman, I
14 want to ask very briefly about the process through which these
15 changes were enacted. This analysis is reflected in pages 31
16 to 33 of your report. And I know that Professor Lawson is
17 going to cover this in detail later today. So I want to be
18 brief and not duplicate.

19 But what opinions have you formed with regard to the
20 process of enacting H.B. 589?

21 A Just as I discussed two pivot points in the sequence of
22 events, there were two pivots here in the process. Pivot Point
23 1 is the passage of H.B. 589 in the House in April of 2013.

24 Q What did you observe about that process or that pivot
25 point?

1 A First of all, it was legislation only pertaining to photo
2 identification. It did not reference any of the changes in
3 voting and registration.

4 In addition, legislative backers put on the legislative
5 record the importance, because this involved the fundamental
6 right to vote, of an extended, open, detailed, exacting process
7 before they enacted this bill. Legislative backers also
8 indicated that this bill met their goals. It met both the
9 goals of ensuring election integrity while at the same time,
10 because it had a variety of different government-issued IDs,
11 wouldn't disenfranchise anyone.

12 Q What was the second pivot point that you identified in
13 this process?

14 A The second pivot point occurred after the Supreme Court
15 struck down essentially Section 5, the preclearance section, of
16 the Voting Rights Act in the *Shelby* decision in June of 2013,
17 during the legislative process.

18 Q And, Dr. Lichtman, did you observe how the process changed
19 after this second pivot point?

20 A Yes. The process changed fundamentally. Even though the
21 new bill that emerged post *Shelby* substantially modified the
22 previous photo ID bill and added numerous provisions relating
23 to registration and voting, the legislature did not go through
24 the same extended, open, detailed, analytical process that
25 legislative backers had said was so important in that first

1 pivot point, the passage of H.B. 589.

2 **MR. FARR:** Objection, Your Honor, legislative
3 backers, I don't know what the source is for that statement.

4 **THE COURT:** I will allow you to testify to what any
5 backer may have said publicly on the floor or in any official
6 proceeding. If you are relying on anything beyond that, then
7 you need to identify that.

8 **THE WITNESS:** Okay. I am relying on them both. Some
9 of it is official proceedings, some of it is websites, some of
10 it is newspaper articles, but it is not exclusively newspaper
11 articles.

12 **THE COURT:** Can you give your opinion relying simply
13 on what's in the official legislative record?

14 **THE WITNESS:** It's not just what's in the legislative
15 record, although my opinion would not change if I based it
16 solely on what's in the legislative record, what legislative
17 backers put on their websites, and what they said in recorded
18 or videotaped statements.

19 **THE COURT:** Do you want to be heard any more on that?

20 **MR. FARR:** Your Honor, legislative backers, I have no
21 idea who he is referring to.

22 **MR. GLICK:** Your Honor, if I may?

23 **THE COURT:** Yes.

24 **BY MR. GLICK**

25 Q Dr. Lichtman, can you please turn to page 31 of your

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1 report, which is Plaintiffs' 230 --

2 A I have it.

3 Q At the bottom of page 31 of your report, you quote from a
4 transcript of the proceedings of the North Carolina House
5 Elections Committee; correct?

6 A That's correct.

7 Q And, specifically, who do you quote, Dr. Lichtman?

8 A Representative Harry Warren. I quote him at some length
9 here.

10 Q And who is Mr. Warren?

11 A He was one of the primary sponsors of H.B. 589, Your
12 Honor, and I believe at the time vice-chair of the House
13 Elections Committee.

14 Q And Mr. Warren discusses many months of research and of
15 listening to the people of North Carolina in his statement?

16 A I can just read it perhaps.

17 "The Voter Information Verification Act, or VIVA, is the
18 result of many months of research and of listening to the
19 people of North Carolina, more than 65 percent of whom have
20 voiced a strong desire for improving the security of the voting
21 process, and by giving careful and thoughtful consideration to
22 the concerns expressed by those opposed to securing the vote."

23 Q I'll cut you off there just for time purposes.

24 Dr. Lichtman, in your review of the legislative record after
25 the *Shelby* decision, did you see any statements or a process

1 that was reflective of the description that Representative
2 Warren gave here in April of 2013?

3 A Not at all, nothing close.

4 Q And this was after the *Shelby* decision?

5 A The H.B. 589 was substantially changed after the *Shelby*
6 decision, and it was changed in two fundamental ways, what I
7 call subtractions and additions, subtractions from the original
8 form of the photo ID bill passed in April and additions, which
9 we'll discuss, relating to voting and registration.

10 The timing is of crucial significance here. Because the
11 *Shelby* decision relates only to race, and if, in fact, these
12 subtractions and additions had nothing to do with race and were
13 clearly nondiscriminatory, then the timing would not have to
14 wait until the issuance of the *Shelby* decision to make these
15 fundamental changes in H.B. 589 and, of course, without going
16 through the same extended, exacting process.

17 Q Let's dive into some of those changes. I want to start
18 with the subtractions that you identified to the photo ID
19 portion of the bill.

20 Dr. Lichtman, you understand that the Plaintiffs'
21 challenges to the merits of the photo ID requirement are not
22 being tried as part of this trial; correct?

23 A I understand that.

24 Q If that requirement is not being challenged here during
25 this trial, why are the changes that were made to those

1 provisions back in 2013 relevant to your analysis as a
2 historian?

3 A Yes. In my role as a historian, I am looking at the bill,
4 the post-*Shelby* bill, I will call it, as a whole. They called
5 it, I believe, the omnibus or the full bill; and the full bill
6 included photo identification, along with all of these other
7 provisions. So in assessing evidence on intent, you've got to
8 look at the whole bill.

9 It's like looking at a hand. You just can't take out one
10 finger of the hand; you've got to look at all the fingers, and
11 photo ID was one of the fingers of the post-*Shelby* H.B. 589.

12 Q Let's take a look at some of the changes. In your report
13 on Table 32 on page 99, you include a listing and analysis of
14 some of the eliminated and retained forms. We have recreated
15 that here on AL-6. And can you briefly describe what that
16 shows?

17 A Yes. Recall I indicated that one of the important changes
18 made post *Shelby* was subtractions from the previous
19 House-passed H.B. 589, and there were four very important
20 subtractions involving large numbers that involved IDs,
21 disproportionately held by African-Americans. There were no
22 subtractions of IDs disproportionately held by whites, and the
23 retained forms of IDs in the post-*Shelby* version were all
24 disproportionately held by whites.

25 Q Dr. Lichtman, let's explore some of the choices and start

1 with the eliminated forms. I want to start with student IDs
2 and Government employee IDs.

3 Why do you conclude that those forms of IDs were
4 disproportionately held by African-Americans?

5 A Because I examined the percentage of the African-American
6 voting-age population that were public university students and
7 compared that to the percentage of the white voting-age
8 population that were public university students and did the
9 same thing for Government employees.

10 Q And what does your research reflect?

11 A My research reflects, first of all, that with respect to
12 public university students, African-Americans were represented
13 at a rate 28 percent higher than whites; and while these
14 percentages may look low, remember, these are percentages of
15 the voting-age population. So we are talking about very large
16 numbers here. And I found a very similar result for Government
17 employees, that the African-American percentage of the
18 voting-age population that were Government employees was
19 21 percent higher than the white population.

20 So my conclusion was African-Americans as compared to
21 whites had greater access to these two forms of subtracted
22 photo IDs.

23 Q Dr. Lichtman, are these eliminated forms of ID accepted in
24 other states that have photo ID requirements for voting?

25 A Yes, in many states. I have a table on that, and they are

1 accepted in the state of Georgia on which, on the legislative
2 record, backers of H.B. 589 said their bill was modeled.

3 Q Dr. Lichtman, looking at the bottom of your slide here,
4 you reference data from 2009, 2010, and 2011. Why were you
5 focused on those years in your analysis rather than more recent
6 data from, say, 2014 and 2015?

7 A Because as a historian examining issues of intent, you are
8 looking at material available to the decision-makers at the
9 time. You are not going to be looking at material that was
10 only produced later.

11 Q Dr. Lichtman, if we look back at your chart on AL-6, you
12 also note public assistance IDs as a form of eliminated ID.
13 How did you come to the conclusion that the public IDs are
14 disproportionately held by African-Americans?

15 A Well, we heard a lot of testimony about the socioeconomic
16 gaps between African-American and whites. I am not going to
17 repeat that. But African-Americans are, in much greater
18 proportion than whites in North Carolina, in fact, more than
19 double, recipients of cash and in-kind assistance from the
20 states.

21 Q The last entry on your chart is expired IDs, and I am
22 going to set that aside for a moment. Let's go to the other
23 side of the ledger and talk about the DMV IDs. What
24 conclusions did you draw with respect to the respective
25 possession of DMV IDs among whites and African-Americans?

1 A Yes. There are two issues with respect to the DMV IDs.
2 One is does an individual have them at all and what is the
3 racial breakdown of those who don't, and then, of course, for
4 those who are said to have DMV IDs, are those useable for
5 voting.

6 And, Your Honor, when I talk about DMV IDs, I don't mean
7 just driver's licenses. I also mean nonoperator IDs that fall
8 into this category.

9 Q And with respect to DMV's IDs, Dr. Lichtman, what data
10 were you focused on that was available to the legislature in
11 2013?

12 A Well, there were two matching exercises conducted by the
13 legislature in -- not conducted by the legislature but by the
14 State Board of Elections at the request of legislators in 2013,
15 one in January and then one just a few months later in April of
16 2014.

17 **MR. GLICK:** Your Honor, if I may approach?

18 **THE COURT:** Yes.

19 **BY MR. GLICK**

20 Q Dr. Lichtman, I've handed you what we have marked as PX535
21 and PX534. What are those two documents?

22 A Those are the two reports, the January and April reports,
23 that I just referenced.

24 Q And did you review those two reports with respect to the
25 possession of DMV IDs and reach any conclusions?

1 A I did.

2 Q Can you describe those to the Court?

3 A Yeah. The conclusions I reached were that both of those
4 reports showed that African-Americans as compared to whites had
5 substantially lower possession of DMV IDs, according to the
6 results of the State Board of Elections exercise.

7 If you look at the January 2013, you see they found a
8 little over 600,000, we call them unmatched registered voters,
9 those who could not be matched to any kind of DMV ID. And we
10 can see that the percentage of whites among unmatched
11 registered voters is 22 percent lower than the percentage of
12 whites among matched registered voters, and an opposite pattern
13 for African-Americans. Their percentage among the unmatched is
14 44 percent higher for a 66 percent gap.

15 And when we look at the April 2013 report, we see that
16 report reduced by nearly 300,000, the number of registered
17 voters who could not be found matched to a DMV ID, but the
18 racial disparities among those unmatched voters actually
19 expanded from 22 percent to 25 percent lower for whites and
20 from 44 to 54 percent higher for African-Americans, about a
21 13-point difference.

22 Q So the number of unmatched voters went down, but the
23 racial disparity of matched to unmatched voters went up?

24 A No. You got the first part right. The numbers went down,
25 but the racial disparities between whites and African-Americans

1 among unmatched versus matched voters went up.

2 Q Thank you for that clarification.

3 Dr. Lichtman, to your knowledge, was the April 2013
4 matching analysis the last one produced by the State Board of
5 Elections prior to the enactment of H.B. 589?

6 A That is correct.

7 Q And what percentage of African-American voters were
8 unmatched to a DMV at that time?

9 A Yeah, this is just a different way of looking at the same
10 data. It takes African-American registered voters as your base
11 and then looks at what percentage of those are unmatched. It
12 was about 7.4 percent.

13 Q So roughly one in every 13 African-Americans voters were
14 unmatched?

15 A That's about right.

16 Q And we will talk about expired IDs in just a second. But
17 the State's April 2013 analysis, Dr. Lichtman, did it include
18 expired IDs?

19 A The State's matching analysis that produced these results
20 matched to expired IDs, canceled, revoked, inactive IDs. It
21 did not draw any distinctions among the IDs. If you matched to
22 a DMV ID, you matched to a DMV ID whether it was expired,
23 canceled, or revoked.

24 Q What percentage of white registered voters in April of
25 2013 were matched -- were in the unmatched camp?

1 A Same methodology. 3.8 percent of registered whites were
2 unmatched, a little more than half of the percentage of
3 unmatched registered African-Americans.

4 Q Dr. Lichtman, if we go back to your chart on AL-6, you
5 have two references to expired IDs, one in the eliminated
6 category and then a reference to expired IDs for those over 70
7 in the retained category. Can you describe to the Court your
8 analysis of that issue and why you came to the conclusions that
9 you did?

10 A Yes. As we already noted, there is another category of
11 registered voters in addition to the unmatched. They are those
12 matched, for example, to expired IDs.

13 Q Let me just pause you for one moment. In the April 2013
14 bill that was passed by the House, were expired IDs approved
15 forms of ID for voting?

16 A Forms of expired IDs were approved. That was changed in
17 the post-*Shelby* version. So expired IDs could not be used.

18 And so in addition to registered voters who are unmatched,
19 there are registered voters, as I mentioned, matched to expired
20 IDs. And, generally, in the post-*Shelby* version of H.B. 589,
21 you could not use these expired IDs to vote, but there is an
22 exception.

23 Q What exception was that?

24 A That is what I call the 70-and-older exception.

25 Q Dr. Lichtman, did you perform any analysis of the impact

1 that -- the relative impact of that 70-plus exemption on
2 African-American voters versus white voters?

3 A Yes. The 70 percent (sic) exemption applies if you had an
4 unexpired ID on your 70th birthday, you could use that expired
5 ID later on to vote. So, in effect, it carved out a class of
6 registered voters who could use expired IDs, what I call the
7 exception.

8 And so what I did was an analysis of whether or not there
9 are racial disparities between African-Americans and whites
10 among those who are matched to expired IDs but who qualified
11 for the 70-plus exemption and, thus, can use those expired IDs,
12 unlike everybody else.

13 Q What was the result of that analysis?

14 A The result was a very wide disparity between
15 African-Americans and whites such that about 25 percent of
16 whites who were matched to expired IDs qualified for the
17 70-plus exemption and about 17 percent of African-Americans.

18 And, by the way, in all of these analyses, I didn't just
19 do overall registered voters. I also checked for active
20 registered voters and for actual 2012 registered voters, and,
21 generally, the disparities expand as you get to these more
22 politically salient pools of voters -- of registered voters.

23 Q Dr. Lichtman, briefly, you referenced two or three other
24 forms of ID that stayed in the retained category: U.S.
25 passports, military IDs and veterans' IDs. Can you briefly

1 describe to the Court how you concluded that those forms of ID
2 were disproportionately held by whites?

3 A For veterans and those in the active military, we have
4 Census data and, thus, can compare the percentage of
5 African-Americans and whites among the voting-age population
6 that fit those categories.

7 Q Similar to what you did with student IDs and Government
8 employee IDs?

9 A Different data, same methodology; that's right.

10 Q What about for passports?

11 A Well, we found that whites were disproportionately
12 represented among veteran and military veterans and active
13 military personnel. For passports, there is not Census data,
14 but we have a wealth of survey data that I point to in my
15 report, national survey data that shows very wide gaps in the
16 possession of U.S. passports between whites and
17 African-Americans and between the more affluent and the less
18 affluent.

19 Q Dr. Lichtman, before we move to the -- what you call the
20 additions of the nonphoto ID provisions, I wanted to ask -- you
21 understand that the legislature has recently amended the photo
22 ID requirement?

23 A I do.

24 Q And that modification allows for some expired licenses as
25 an accepted form of identification and also includes a

1 reasonable impediment declaration, in addition to some other
2 things. You are aware of that?

3 A Yes, I am.

4 Q For you, as an historian, assessing the decisions of state
5 officials back in 2013, what is the significance of the
6 modification to the photo ID requirement in 2015?

7 **MR. FARR:** Objection.

8 **THE COURT:** Sustained.

9 **BY MR. GLICK**

10 Q Let's move on to the nonphoto ID portions of the bill;
11 like I said, the additions that you referred to earlier. I
12 want to focus on the four provisions on the screen right now.

13 Dr. Lichtman, have you reached any conclusions with regard
14 to the addition of these nonphoto ID provisions and the impact
15 that they have relative for African-Americans and for whites?

16 A Yes, and as an historian, I think there is something very
17 significant here, because the additions cut in the same
18 direction as the subtractions; that is, if you look at all of
19 the subtractions and all the additions based on information
20 available to the legislature at the time, they all acted to
21 impose disparate burdens on minorities relative to whites when
22 it came to registration and voting in North Carolina. It is
23 not like there was some mix of differential effects.

24 Q And what data did you consider in performing your analysis
25 here?

1 A I again considered data, and this was data from the State,
2 on elections that was available to the legislature at the time
3 of the enactment and signing of H.B. 589.

4 Q Let's take a look at some of the data of that you
5 reviewed. Let's start with same-day registration. What
6 conclusions have you reached based on your review of the data
7 available in 2013 with regard to same-day registration?

8 A What I looked at was, again, information that the
9 legislature had available in 2012, all information from the
10 State, publicly available. And my conclusion was that when you
11 looked at the percentage of those using same-day registration
12 as compared to the baseline of those among prior registered
13 voters, that you had African-Americans utilizing same-day
14 registration in substantially greater proportion than their
15 baseline among prior registered voters.

16 And that is reflected in this chart on the blue bars and
17 the orange bars. The blue bars represent the percentage of
18 African-Americans among all of those registering same day for
19 the three general elections following the adoption of this
20 provision, '08, '10 and '12. The orange bar represents the
21 base among all prior registered voters. And you can see on
22 this chart, in every case, the blue bar is above the orange
23 bar; and particularly in the high-turnout general elections,
24 the blue bar is very much higher than the orange bar.

25 We see precisely the opposite effect for whites. In every

1 case we see for whites, the orange bar is above the blue bar;
2 that is, whites are represented among those utilizing same-day
3 registration in each of these three general elections in a
4 smaller percentage than they are represented in the baseline
5 among prior registered voters.

6 Thus, legislators, based on information available to them
7 from the State, could see just how disparately racial the use
8 of same-day registration was.

9 Q And, Dr. Lichtman, have you also reviewed similar data
10 with regard to Hispanic voters?

11 A I have.

12 Q And can you describe the results of that research for the
13 Court?

14 A Yes. You get the same pattern that I explained before.
15 You get lower percentages for Hispanics because there are only
16 a couple of percent of registered voters; whereas,
17 African-Americans are more than ten times that.

18 But in terms of the pattern, the proportion, which is what
19 matters here in terms of disparate impact, you can see the same
20 pattern. In every case for Hispanics, the blue bar is above
21 the orange bar, indicating that there are greater proportion
22 among same-day registrants than among the base of prior
23 registered voters, and, of course, the white chart is exactly
24 the same, showing the opposite pattern.

25 Q Now, Dr. Lichtman, before we move on to the next change

1 made by H.B. 589, I want to ask you -- and we'll go back to the
2 African-American versus white slide in AL-10 -- you would
3 agree, Dr. Lichtman, that in absolute numbers, there are a lot
4 more white voters who used same-day registration in these three
5 elections than African-American voters; correct?

6 A Yes. That follows from the fact that whites are the
7 overwhelming majority among registered voters and in the
8 voting-age population.

9 Q Dr. Lichtman, how can there be discriminatory intent or
10 discriminatory results from these law -- if these laws affect
11 more white voters than African-American voters?

12 A Because the key in measuring discriminatory intent and
13 effect is proportionate -- or disproportionate; that is, what
14 we are looking at is not the absolute numbers because whites
15 are always going to be higher, but whether or not the removal
16 of a certain mechanism has a disproportionate impact upon
17 minorities based on data available at the time.

18 It is also not the absolute number but the relative
19 proportional voting strength of minorities and whites that
20 matter politically. As we saw, there was this ten-point swing
21 in the proportion of African-Americans versus whites in the
22 group of registered voters. That was very significant
23 politically, even though whites, of course, were still the very
24 overwhelming majority of registered voters.

25 Q Thank you, Dr. Lichtman. Let's move on to the next change

1 --

2 A Excuse me, can I get a little more water?

3 Q Let's move on to the next change, Dr. Lichtman, the
4 noncounting of out-of-precinct provisional ballots. Have you
5 reviewed data regarding the casting of out-of-precinct
6 provisional ballots in those same three elections leading up to
7 H.B. 589?

8 A I have. And, specifically, what my analysis focused on
9 was partially counted out-of-precinct voters because that was
10 the change made by the legislature about ten years ago, such
11 that if you showed up at the wrong precinct, some of your votes
12 could still be voted, even though other of your votes would not
13 be counted.

14 Q Can you briefly describe the results of your research on
15 this topic?

16 A Yes. Here the panel for simplicity puts
17 African-Americans, Hispanics, and whites together. It is
18 different data, but, again, it is a very similar methodology.
19 This shows, given the blue bars above the orange bars, that
20 African-Americans are overrepresented among partially counted
21 out-of-precinct voters as compared to the representation of
22 African-Americans among all other voters. And although
23 obviously percentages are lower, the same pattern holds for
24 Hispanics; whereas, the opposite pattern holds for whites.
25 Whites are overrepresented among all other voters and

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1 underrepresented among out-of-precinct voters who have their
2 ballots partially counted.

3 Q Let's move on to early voting. Have you reviewed publicly
4 available information relating to early voting in those same
5 three elections?

6 A I have.

7 Q Is it fair to say that the results are similar to the last
8 two provisions?

9 A They are. Again, the methodology and the depiction is the
10 same. This panel looks at African-Americans and whites, and it
11 shows that as compared to all other voters, African-Americans
12 are overrepresented among early voters, and that's particularly
13 true again in the high-turnout general elections, less so in
14 the lower-turnout midterm elections.

15 And you get the opposite pattern among whites. Whites,
16 underrepresented among early voters as compared to all other
17 voters, and this is early in-person voting. We are not
18 counting absentee mail-in ballots here.

19 Q Finally, Dr. Lichtman, have you looked at data related to
20 the State's prior program related to the preregistration of 16-
21 and 17-year-old voters?

22 A I have, following the same methodology.

23 Q Can you describe your findings to the Court?

24 A That's depicted on the slide, and you can see both
25 African-Americans and Hispanics are overrepresented among

1 preregistered voters when you compare their percentage among
2 preregistered voters to their percentage among all registered
3 voters. The blue bars are higher than the orange bars, and the
4 opposite is true of whites. So we see the same pattern here as
5 we've seen for the three other provisions that we've been
6 examining.

7 Q Dr. Lichtman, just for the record, when was this
8 information updated as of?

9 A March 2013.

10 Q Dr. Lichtman, we've just looked at each of the four
11 provisions: Elimination of same-day registration, noncounting
12 of out-of-precinct provisional ballots, reduction in early
13 voting, and the elimination of preregistration. We've just
14 looked at those independently.

15 A That's correct.

16 Q Have you reviewed -- or have you formed any opinions with
17 regard to the relative impact of these provisions together as
18 part of the omnibus H.B. 589 bill?

19 A Yes.

20 Q And can you describe your findings to the Court on that
21 question?

22 A Yes. As I indicated, the bill is of a piece, and all of
23 these provisions were instituted simultaneously with the
24 adoption of the post-*Shelby* version of 589. And given that
25 they all cut in the same direction of disproportionately

1 affecting African-Americans and Hispanics as compared to
2 whites, there is a cumulative effect of each one of these
3 changes having an independent effect and then, taken together,
4 having a total effect upon minorities versus whites in the
5 state of North Carolina.

6 Q Thank you, Dr. Lichtman.

7 **MR. GLICK:** Your Honor, I do have a few more topics,
8 but I think this might be a natural breaking point if we are
9 open to taking lunch at this point.

10 **THE COURT:** Okay. We'll do that. Mr. Donovan?

11 **MR. DONOVAN:** Your Honor, kind of a planning for
12 today and one request, we have -- following Dr. Lichtman is
13 Dr. Lawson from the Department of Justice. We have coordinated
14 so they don't duplicate, but they are related; and I know
15 Dr. Lawson has to be in New Jersey on Monday. So we would
16 really like to complete him today. I think we can, but I would
17 request, if it's doable, if maybe we can take a shorter lunch
18 break today. I know it's Friday, but -- if you are open to
19 that. I just want to make sure we get Dr. Lawson done.

20 **THE COURT:** Do you know how much longer you have with
21 Dr. Lichtman?

22 **MR. DONOVAN:** Maybe 15, 20 minutes.

23 **THE COURT:** Do you know how long your cross will be?

24 **MR. FARR:** Your Honor, with Dr. Lichtman, I've
25 discovered the shorter, the better, but I can't say for sure.

1 It may be an hour.

2 **THE COURT:** How long will your direct of Dr. Lawson
3 be?

4 **MR. FISHER:** Your Honor, about 45 minutes.

5 **MR. DONOVAN:** I think we are going to be okay. I
6 just hate to get to the end of Dr. Lawson at 5:00, and then
7 people are hating me worse if I ask to stay late at that point.

8 **THE COURT:** The only reason I hesitate -- I am happy
9 to sit here until midnight, but the court reporter needs a
10 break because it is a difficult job to do this. Yes, Mr. Farr?

11 **MR. FARR:** I was just going to say it is very hard to
12 get out of the building and go eat and come back and do that in
13 an hour. We would rather stay later, if that's possible.

14 **THE COURT:** Does he have a plane tonight?

15 **MR. DONOVAN:** No, I don't think so. He can stay
16 late. It's just he has a commitment, I think academic, in New
17 Jersey on Monday. So I don't want it to break up. So I'd like
18 to make sure we finish.

19 **THE COURT:** Why don't we do this, why don't we come
20 back at 2:00; and then if we need to go a little longer, we'll
21 consider doing that. It will be a combination of how many
22 questions you ask and how quickly you ask them. I understand
23 the problem. We'll do what we can to accommodate.

24 We'll be in recess until 2:00.

25 (The Court recessed at 12:28 p.m.)

1 (The Court was called back to order at 2:03 p.m.)

2 **THE COURT:** All right. You may continue, please.

3 **BY MR. GLICK**

4 Q Dr. Lichtman, before we broke, we looked at data related
5 to the photo ID and nonphoto ID provisions of H.B. 589;
6 correct?

7 A Yes.

8 Q Where did you obtain the data underlying the charts?

9 A Primarily from the State. It was all state election data
10 and to a limited extent from census data.

11 Q And, Dr. Lichtman, have you seen evidence in your work in
12 this case that this state data was sought by legislators early
13 in 2013?

14 A I've certainly seen evidence that state data was sought by
15 legislators and their staff members at the time they were
16 considering H.B. 589 and its various forms in 2013. For
17 example, I cite in my report a deposition from Mr. Burris, the
18 IT director of the State Board of Elections, in which he talks
19 about a Mr. Ray Starling, counsel to Speaker Thom Tillis,
20 participating in meetings for the formulation of the procedures
21 for that second matching exercise that we talked about with DMV
22 IDs, the April 2013.

23 Q And we'll talk about that process in a few moments.

24 **MR. GLICK:** But, Your Honor, if I could approach?

25 **THE COURT:** Yes.

1 **BY MR. GLICK**

2 Q Dr. Lichtman, I handed you a stack of exhibits, and if we
3 could start by having you turn to PX72.

4 A Yes.

5 Q And I want to turn your attention on PX72 to the third
6 page.

7 A I'm there.

8 Q At the bottom we have an email sent by Shara Graham on
9 behalf of Representative Harry Warren.

10 A That is correct.

11 Q And we spoke about Mr. Warren earlier. Who was he?

12 A He was a sponsor of H.B. 589, I believe at the time the
13 vice-chair of the Elections Committee in the House.

14 Q And Representative Warren's email was sent to Mr. Gary
15 Bartlett. Who is he?

16 A The director of the State Board of Elections at the time.

17 Q And there are other representatives copied on the email;
18 correct?

19 A Yes, including the chair of the Elections Committee,
20 Mr. David Lewis, and other sponsors of H.B. 589.

21 Q Dr. Lichtman, if you look on page 4 of PX72, can you
22 describe the nature of the email sent on behalf of
23 Representative Warren to Secretary Bartlett?

24 A Yes. This section of the email details some very specific
25 requests from Representative Warren to the State Board of

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1 Elections with respect to data pertaining both to photo ID and
2 to aspects of the election process in North Carolina that are
3 separate from photo ID.

4 She asks, on behalf of Representative Warren, specifically
5 for a crossmatching of registered voters with Department of
6 Motor Vehicle identification. She wants it listed by counties
7 and broken down into various categories, including ethnicity.

8 In addition, she indicates, quote, It would be necessary
9 to know the number of one-stop voters and provisional voters
10 within these groupings as well, which would include ethnicity,
11 and obviously one-stop voting and provisional voting would
12 become one of or two of the aspects of the revised expanded
13 H.B. 589 post *Shelby*.

14 Q Dr. Lichtman, if you could turn to PX188, which is likely
15 the next document in your stack.

16 A Yes.

17 Q And PX188 is an email from Veronica Degraffenreid?

18 A Yes.

19 Q And you understood Ms. Degraffenreid was an officer for
20 the State Board of Elections?

21 A Correct.

22 Q And this was sent on March 18th, 2013?

23 A That's right.

24 Q So about two weeks after the email that we looked in PX72;
25 correct?

1 A Correct.

2 Q And does the email at PX188 have an attachment?

3 A It does.

4 Q What does the attachment detail?

5 A The attachment details a rather extensive list of
6 materials for Representative Warren, who we just identified.
7 This is a wide range of documents and statistical data
8 pertaining both to photo identification issues and nonphoto
9 identification issues. It also includes some State Board of
10 Election reports and a voter fraud report.

11 Q Dr. Lichtman, how does an email like the one in PX72 and
12 the attachment in PX188 affect the analysis that you performed
13 in this case?

14 A Well, it shows that in crafting these provisions that
15 we've talked about, all of which point in the same direction of
16 imposing disparate burdens on minorities relative to whites, it
17 confirms what common sense tells you. The legislature was not
18 flying blind here, but legislative leaders and backers of
19 H.B. 589, like Representative Warren, were very much involved
20 in seeking quite specific and quite detailed data pertaining to
21 photo identification and pertaining to nonphoto identification
22 processes in the state of North Carolina.

23 Q Now, Dr. Lichtman, two of the items referenced here on the
24 attachment to PX188 are DMV and SBOE ID analyses from 2011 and
25 2013; correct?

1 A That is correct.

2 Q And we've looked at the DMV analysis from January of 2013
3 earlier. That was PX534, I believe.

4 A Correct.

5 Q We'll talk about the substance of that report later, but I
6 want to talk a little bit about the process.

7 Based on your review of the record, Dr. Lichtman, what is
8 your understanding of how the State Board of Elections came up
9 with this DMV analysis?

10 A Yes. It came up with this DMV analysis, according to what
11 it said in the report, by following its standard procedure for
12 matching registered voters or others with DMV IDs, which
13 involve four fairly stringent matching criteria.

14 Q And just to be clear for the record, the report with the
15 four matching criteria, which report was that?

16 A The January 2013. And I just wanted to note here that
17 there are items listed that seem to go beyond the report. It
18 lists report and then separately lists analysis, separately
19 lists supplement and charts; and so this suggests to me, as an
20 historian, that Representative Warren was probing even more
21 deeply than what was on the surface of the report.

22 Q Now, Dr. Lichtman, you're aware there was a subsequent
23 report to the January 2013 report. We saw that document
24 earlier as well; correct?

25 A It was an April 2013 report.

1 Q And what is your understanding of how the April 2013
2 report came to be?

3 A My understanding is that there were a series of
4 conversations and meetings involving members of the State Board
5 of Elections, representatives of the Attorney General's office,
6 representatives of legislators, quite likely legislators
7 themselves, and quite likely outside counsel, Mr. Farr.

8 Q Let's turn to the exhibit that's marked PX187 in your
9 stack. On PX187, I would like to start with an email --

10 A I got it.

11 Q -- on the fourth page labeled JA3123.

12 A I am there.

13 Q Dr. Lichtman, you referenced Ray Starling earlier, and we
14 see an email from him at the bottom of the page. And
15 Mr. Starling was writing to Susan Nichols. Who is Susan
16 Nichols?

17 A I believe she was an attorney in the Office of the
18 Attorney General.

19 Q And can you summarize Mr. Starling's request in his
20 March 13, 2013, email to Ms. Nichols?

21 A Yes. He is indicating to her that he is helping to
22 coordinate the House's consideration of their legislation on
23 voter photo identification. He is referencing the January 2013
24 report produced by the DMV, and he indicates that their outside
25 counsel, Mr. Farr, and a couple of House members wanted to

1 interview Director Bartlett and Ms. -- I hope I get her name
2 correct -- Degraffenreid, an official of the State Board of
3 Elections, to get details about how precisely this report was
4 prepared, and he's working to arrange such a meeting.

5 **MR. FARR:** Counsel, excuse me. I am having a hard
6 finding these pages in this exhibit. Can you tell what the
7 Bates stamp number is?

8 **MR. GLICK:** If I may mention for the record, that one
9 was on 3123, but I was just about to move.

10 **BY MR. GLICK**

11 Q Dr. Lichtman -- if we turn, Dr. Lichtman, to the page
12 that's labeled JA3122, we see another email from Mr. Starling
13 referencing a meeting.

14 A Correct.

15 Q And who are the attendees that are referenced in
16 Mr. Starling's email of March 18, 2013?

17 A Well, he says whose attendance is expected at this
18 meeting, and he references a number of members of the General
19 Assembly, including two we've already referenced,
20 Representative Lewis and Representative Warren, as well as
21 three other sponsors of H.B. 589. He references the outside
22 counsel, Tom Farr, Ray Starling himself, counsel to Speaker
23 Thom Tillis, and other state officials listed from the State
24 Board of Elections.

25 Q And, finally, Dr. Lichtman, if we could turn to the front

1 page of this exhibit, JA3120.

2 A Okay.

3 Q And there is an email on the bottom of the page from
4 Mr. Starling from March 20, 2013. Do you see that?

5 A Yes.

6 Q Dr. Lichtman, what do you take away from that email?

7 A Yeah. First of all, the meeting was not the sole
8 repository of their discussions. They had already had
9 discussion and at least discussed topics, but I think the key
10 takeaway from this meeting is they are working to develop
11 another iteration of the comparison report; and by the
12 comparison report, they mean the January 2013 report.

13 And this helps explain something that I had noted before,
14 that you had two reports within very brief proximity of one
15 another, and this email and the others indicated that this
16 second report was being prompted by staff members and members
17 of the state legislature who were sponsors of H.B. 589 and
18 important leaders on election matters in the State House.

19 Q Dr. Lichtman, have you reviewed emails from after this
20 March 20th email to assess the participation of legislators and
21 staff in SBOE's DMV ID matching process?

22 A Yes.

23 Q If you could turn to the next document in your stack,
24 PX425.

25 A Yes.

1 Q Dr. Lichtman, what does the email exchange in PX425
2 reflect?

3 A Yeah. This is a much later set of emails starting
4 March 26 going up to April 5th, and it discusses details of
5 this new DMV registered voters matching exercise; and it
6 indicates that suggestions and recommendations are coming from
7 the legislative staff and are being accepted by Marc Burris,
8 the IT director of the State Board of Elections.

9 Q And together, Dr. Lichtman, how did emails regarding the
10 meeting and the subsequent emails regarding the matching
11 process for DMV's affect your analysis as an historian in this
12 case?

13 A Well, this is important information for an historian
14 because it shows the deep involvement of members of the
15 legislature, the many key backers that I have identified of
16 H.B. 589 in both the process for creating data as well as the
17 receipt of data. So they are not just recipients of
18 information, they are participants in the way in which that
19 information is created, a very deep level of involvement of
20 legislators in this data-generating process.

21 Q Finally, Dr. Lichtman, as one more example, if you could
22 turn to PX334 in your stack.

23 A Okay.

24 Q Dr. Lichtman, what is PX334?

25 A PX334 is a series of emails primarily among officials of

1 the University of North Carolina system of public higher
2 education, including the vice president of state government
3 relations at the University of North Carolina. And these are
4 emails in response to a request from Representative David
5 Lewis, who we've already identified, for the African-American
6 percentage of public higher education students in the State of
7 North Carolina.

8 Q And how do you know that from reviewing PX334?

9 A Because PX334 has a set of exchanges among public
10 education officials and then an email from Mr. Moretz, who is
11 the vice president for government relations, to Representative
12 David Lewis. Other emails represent a member of the
13 legislature. This one specifically references Mr. Lewis.

14 Q Dr. Lichtman, if I could just have you read the first
15 paragraph of the earliest email into the record.

16 A "I was asked by a State Representative" -- this is from
17 Mr. Moretz -- "about the" -- "I was asked by a State
18 Representative about the number of Student ID cards that are
19 created and the percent of those who are African-American. He
20 needs it in 2 hours or less."

21 Q Thank you, Dr. Lichtman. Let's turn our attention to
22 2013. The analysis that you referenced earlier on the charts
23 that we saw earlier, those were with regard to the 2008, 2010,
24 and 2012 elections; fair?

25 A Yes, the elections available at the time of the enactment

1 and signing of H.B. 589.

2 Q Have you also studied the 2014 election as part of your
3 work in this case?

4 A To an extent, yes.

5 Q And we've heard a lot about that from a lot of different
6 experts. So I'll try and be brief and not duplicate.

7 But first, let me ask you: Are the turnout figures for
8 the 2014 election relevant to your work in determining the
9 actions of state officials in 2013 when the bill was enacted?

10 A No, because this information was not available to the
11 legislature or the governor at the time of the enactment and
12 signing of H.B. 589.

13 Q Dr. Lichtman, as we heard, African-American turnout in
14 2014 increased as compared to the 2010 election. As an expert
15 in quantitative methodology and political history, have you
16 formed any opinions as to how that bears on the effects of
17 H.B. 589?

18 A I formed a number of opinions about that.

19 Q And can you present at least the first opinion to the
20 Court?

21 A Yeah. The first opinion is that you cannot make
22 inferences about particular --

23 **THE COURT:** Excuse me. He is going to give opinions
24 about inferences from the 2014?

25 **MR. GLICK:** Yes.

1 **THE COURT:** Is that what's being asked?

2 **MR. GLICK:** Yes. Not --

3 **BY MR. GLICK**

4 Q Would you say these are inferences or observations based
5 on your analysis of the turnout figures in --

6 A These are clearly observations based on my analysis of the
7 turnout figures and my expertise in political history and
8 quantitative and historical methodology.

9 **THE COURT:** What does "quantitative methodology"
10 mean?

11 **THE WITNESS:** It means the statistical analysis of
12 information, in this case particularly social science
13 information. And that's been what I've utilized throughout my
14 analyses of the statistical information that I have presented
15 thus far. And my intent, as I did in my surrebuttal report, is
16 to apply that expertise to the data from the 2014 election.

17 **THE COURT:** I guess my concern is I don't know what
18 opinion he is being asked to give because he was just asked
19 whether he had any opinions. So if you could ask him whether
20 he has an opinion and whether or not, whatever the issue is,
21 and I can determine whether it's within his area of expertise.

22 **MR. GLICK:** Fair enough, Your Honor.

23 **BY MR. GLICK**

24 Q Dr. Lichtman, did you study the turnout for both
25 African-Americans, whites, and the overall turnout in the 2014

1 election?

2 A I did.

3 Q You are aware that African-American turnout increased?

4 A I am, as did white turnout.

5 Q And it has been argued in this case that given that the
6 African-American turnout rose in the 2014 election, that
7 H.B. 589 did not have a disparate effect on African-Americans.
8 Are you aware of that?

9 A Yes.

10 Q Do you agree that looking at the turnout alone, one can
11 come to that conclusion?

12 A I do not believe that one can come to that conclusion by
13 looking at the global turnout. As I explained in my
14 surrebuttal report, there are many, many factors that influence
15 overall turnout, and you cannot reason, by looking at overall
16 turnout alone, what the effects were of particular provisions
17 within the electoral system that changed.

18 This is called the fallacy of division, reasoning from the
19 whole to individual parts. So the overall turnout cannot tell
20 you by itself the effects of the changes made under H.B. 589.

21 Q In your report, Dr. Lichtman, you referenced something
22 known as the novelty effect?

23 A Yes.

24 Q Can you explain what that is?

25 A Yes. The novelty effect is an effect that takes place

1 when individuals or groups are either under significant stress
2 or significant levels of excitement. The result is that
3 behavior changes, but those changes in behavior don't
4 necessarily last over time but fade as more normal conditions
5 return. For example, an individual may be told that they are
6 overweight and that seriously threatens their health and they
7 embark upon an exercise program, but that exercise program may
8 well fade, even disappear over time.

9 Q Dr. Lichtman, have you observed a novelty effect in
10 practice in recent political history?

11 A Yes. It's quite common in recent political history.

12 Q Can you provide any examples?

13 A For example, in the state of Oregon, they adopted mail
14 voting in the mid-1990s and there was a surge in turnout of
15 about 10 percentage points, but that surge did not last over
16 time, according to a 2012 study coauthored by a Professor
17 Gronke, in fact, who we heard from previously.

18 Another example that I've worked up on my own is from the
19 2012 senatorial election in Missouri. The Republican candidate
20 there, Todd Akin, was widely favored to win the election
21 against Claire McCaskill. He then made a comment about, quote,
22 unquote, legitimate rape, which caused a great deal of stress,
23 a great deal of consternation among Missouri voters,
24 particularly women. The result was that there was a surge in
25 turnout, particularly among women, and by a wide margin women

1 voted against Mr. Akin and in an upset he lost handed.

2 Now, looking at that election alone, you would draw all
3 the wrong conclusions about what was going on in Missouri
4 politics because of the novelty effect at work in that
5 election. Fortunately, there are other elections that same
6 year which you can use as a control to give you a different
7 picture.

8 Now, you also have the novelty effect operating here in
9 the 2014 election in North Carolina, but you don't have the
10 checks because it's one 2014 election. We don't have
11 subsequent elections to compare it to. And the novelty effect
12 is very similar. Rightly or wrongly, African-American
13 leaders -- and we heard Mr. Barber testify about this -- felt
14 quite outraged at the passage of H.B. 589. I believe they even
15 called it "our Selma."

16 So there was that same kind of outrage and stress, which
17 could well be associated with a surge in African-American
18 turnout, which may fade and not last over time, which is why
19 you can't draw conclusions from this particular one election.

20 Q Dr. Lichtman, we heard a lot of about the comparative
21 turnout from the 2014 election to the last midterm election in
22 2010. Did you draw any -- have you done any analysis of
23 turnout to prior midterm elections here in North Carolina?

24 A I have.

25 Q And is that reflected here on the slide I've marked AL-15?

1 A It is.

2 Q Can you describe what you found here?

3 A Yeah. Since we only had one data point, it is important
4 that we take a broader look. And when you just focus, as I've
5 heard so far, on 2010 to 2014, you get one picture; but you get
6 a very different picture when you broaden it out to 2006, the
7 last election before the institution of same-day registration.
8 And what you see is quite a different pattern, which would
9 suggest quite a different conclusion.

10 If you look at 2006 to 2010, the green line is
11 African-American turnout, and you can see a very sharp spike in
12 African-American turnout for those two midterm elections,
13 12 percentage points. You also see a spike in white turnout,
14 but it is less than that for African-Americans, much less than
15 that. Even though it started from a higher base, 39 percent
16 versus 28.4 percent, the increase in white turnout is only
17 6.7 percentage points, only slightly more than half of that of
18 the African-American.

19 So what's happening from 2006 to 2010, because the rate of
20 turnout increase among African-Americans is so much greater
21 than that among whites, the gap between the two, if you look at
22 the gap between the blue line and the green line in 2006 and
23 2010, you can see it sharply narrowed.

24 Now, when you flash forward from 2010 to 2014, once again,
25 African-American turnout is increasing but at a far smaller

1 rate than over the previous four years. Likewise, white
2 turnout is increasing but at a far smaller rate as well.

3 Now, the rate of African-American increase in 2010 to 2014
4 is slightly higher than the rate of white increase, but nowhere
5 close to the differentials we saw from 2006 to 2010; so,
6 whereas, African-Americans had been sharply closing the turnout
7 gap, it only ever so slightly closes the turnout gap in 2014.
8 So this suggests something very different from the more limited
9 snapshot of 2010 to 2014.

10 While you can't draw any definitive conclusions about
11 H.B. 589, as I've explained previously, it does suggest that a
12 more plausible effect is that it slows down the relative
13 improvement of African-American turnout in relation to white
14 turnout. For you to draw any conclusions, I think we have to
15 be very careful. This gives us a better base.

16 **THE COURT:** Excuse me just a moment. Is this AL-15
17 measuring the rate?

18 **THE WITNESS:** Each of the numbers --

19 **THE COURT:** Is it an absolute measure or a rate
20 measure?

21 **THE WITNESS:** It is a little bit of both; that is,
22 the numbers on the screen are the percentage of whites and
23 blacks turning out as a percentage of registered voters. The
24 numbers in paren are the percentage point increase. So it goes
25 up from 28.4 to 40. The percentage increase would be much

1 higher than that. If I were to divide 12 percent by 28.4, it
2 would be 42 percent higher than it was in 2006. And, likewise,
3 the white rate, while increasing the percentage increase, just
4 like the percentage point increase, is much, much lower,
5 17.1 percent as opposed to 6.7 percentage points and very small
6 percentage increases between 2010 and 2014.

7 So whether you look at percentage point increase,
8 which actually measures the increase in relative voting
9 strength, or percentage increases, the pattern is exactly the
10 same, Your Honor.

11 **THE COURT:** I guess my question is: What is the unit
12 being measured from the 20 to 50 on the left column? What does
13 that represent?

14 **THE WITNESS:** The percentage of the group -- the
15 percentage of the registered voters that are turning out in the
16 election.

17 **THE COURT:** Thank you.

18 **THE WITNESS:** And that's divided into the two lines
19 for white and African-American.

20 **BY MR. GLICK**

21 Q Just to be clear, Dr. Lichtman, the 2006 election,
22 28.4 percent of African-Americans -- registered
23 African-Americans turned out to vote?

24 A That's right.

25 Q Finally, Dr. Lichtman, was there anything else about the

1 2014 election in North Carolina that affected your analysis of
2 the turnout?

3 A Yes. You had a unique situation in one Congressional
4 district that's pretty familiar now, and that is Congressional
5 District 12, which was a district that African-Americans have
6 an excellent opportunity to elect candidates of their choice in
7 its various iterations because the district changes after each
8 redistricting. That district had been held by Representative
9 Mel Watt for about two decades. He retired to go into the
10 Federal Government. And for the first time in CD-12, there is
11 an open seat election with a real primary and an opportunity
12 for the African-American voters there to elect a new
13 representative.

14 Q And have you studied the impact of the Congressional
15 District 12 election on the increase in black turnout that we
16 see here?

17 A Yes. Not surprisingly, that's a major contributor because
18 of that special factor to this plus 1.8 percentage point
19 increase that we see between 2010 and 2014. If you take that
20 special circumstance into account, the increase in
21 African-American turnout goes down to plus 1.1 percentage
22 points, about the same as the increase in the white turnout.

23 Q Let's move on to 2014 election. I just have a couple more
24 topics, Dr. Lichtman. First I wanted to talk about another
25 aspect of voter registration here in North Carolina, and that

1 is voter registration at public assistance locations.

2 A Okay.

3 Q And that, as you said earlier, was the subject of the June
4 supplemental report that's available in your binder at PX257?

5 A That's right.

6 **MR. FARR:** Your Honor, we would like to just state on
7 the record some objections to this report. We do not object on
8 the grounds of lateness. We don't object to Dr. Lichtman
9 testifying about this. We do object if the Plaintiffs intend
10 to use this testimony to amend their complaint to assert a
11 claim under the National Voter Registration Act. I am told
12 they don't intend to do that.

13 And we also object on the grounds of relevance, which
14 we would let the Court hear the testimony and then make a
15 ruling on that afterwards. I just wanted to state that for the
16 record.

17 **THE COURT:** All right. Is there going to be an
18 attempt to amend pleadings?

19 **MR. DONOVAN:** There is no attempt at this point. I
20 think we're busy enough asserting these claims at this point in
21 this case.

22 What was your last point, Mr. Farr?

23 **THE COURT:** You said "at this point." I take that as
24 a no?

25 **MR. DONOVAN:** Yeah, as a no.

1 **MR. FARR:** The other point was we don't think it is
2 relevant to the claims, but we are happy to let him testify and
3 let the Court make its own ruling on that.

4 **THE COURT:** All right. I will reserve on the ruling
5 on relevancy then.

6 **BY MR. GLICK**

7 Q Dr. Lichtman, you understand that under federal law, North
8 Carolina is required to provide voter registration application
9 opportunities at public assistance offices?

10 A Yes.

11 Q And have you formed any opinion with respect to Carolina's
12 voter registration programs?

13 A Yes. I did an analysis of changes in registrations at
14 public assistance offices.

15 Q Is that an analysis reflected in the slide AL-16 that we
16 see on the screen right now?

17 A Yes.

18 Q And what does that analysis reflect?

19 A I think it's fairly clear. It shows that up until 2012,
20 that average monthly voter registrations at public assistance
21 offices are relatively constant. They are not the same, but
22 they are around 2,000 per month. Then starting at the very
23 onset of 2013, those average monthly voter registrations at
24 public assistance offices plunged and plunged dramatically,
25 dropping by well more than half in one year and dropping again

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1 in the second year and really sustaining a vastly lower level
2 of public assistance registrations for 2013, 2014, and the
3 beginning of 2015 that had been true in the previous three
4 years.

5 Q Dr. Lichtman, how do you know that the decline in public
6 assistance voter registrations isn't simply a result of a
7 decline in public assistance applications generally?

8 A Because in my report, I included an analysis in which I
9 took the monthly voter registrations as a percentage of public
10 assistance applications and found when you controlled for
11 public assistance applications, exactly the same pattern of an
12 abrupt significant and sustained decline occurred.

13 Q And, Dr. Lichtman, have you assessed the impact of this
14 decline in voter registrations at public assistance locations
15 on whites as opposed to African-Americans and Hispanics?

16 A I did.

17 Q And what did you find?

18 A It is not surprising, given all the testimony about
19 socioeconomic gaps and the information presented in my report,
20 that Hispanics and African-Americans have rates of public
21 assistance in Maryland -- in North Carolina far above that of
22 whites.

23 It is not surprising that the impact of this decline in
24 public assistance registrations falls far more heavily on
25 Hispanics and African-Americans than it does on whites. In

1 other words, this is another example of a disproportionate
2 effect on African-Americans relative to whites.

3 Q Dr. Lichtman, the last thing I wanted to circle back to
4 was the last set of evidence that you had identified at the
5 outset that you analyzed here, and that was contemporary and
6 post hoc justifications. So, first, why did you look at
7 contemporary justifications in doing your work in this case?

8 A That is what historians do. We routinely look at what
9 decision-makers are saying at the time as an explanation or
10 justification of their decisions, and we are also guided to do
11 so by the Supreme Court in the *Arlington Heights* decision that
12 I mentioned previously.

13 Q Dr. Lichtman, your report, PX231 and specifically pages
14 133 to 156 of that report, on those pages you identify and
15 evaluate a number of the purported justifications for the bill;
16 correct?

17 A Yeah, something like eight or nine.

18 Q I want to focus on just a subset of those today. I listed
19 some of the primary rationales that you discuss in your report.
20 Let's start with conformity with other states and the Georgia
21 model. First, what did you mean by that?

22 A What I mean by that is legislators who supported H.B. 589
23 indicated that in pushing this legislation, they were
24 conforming the state of North Carolina with practices in other
25 states, and particularly with respect to photo ID, they

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1 indicated they were conforming to the model of Georgia, which I
2 believe was precleared by the U.S. Department of Justice.

3 **MR. FARR:** Your Honor, I object to this testimony to
4 the extent he's relying upon newspaper articles and Footnote 54
5 on page 133 of his report.

6 **THE COURT:** Hold on, please.

7 **MR. GLICK:** Your Honor, if I may respond?

8 **THE COURT:** Yes.

9 **MR. GLICK:** First, I think these statements go to
10 motive, so they are not being sought to be introduced for the
11 truth of any matter that's asserted. I would also note that
12 Footnote 54 references a Senate debate. It references a
13 statement made by the Office of the Governor, who is a
14 Defendant in at least one of these cases.

15 And I would also note that Dr. Lichtman, as an
16 expert, is allowed to rely on hearsay statements, whether or
17 not they are in newspaper articles or not. So I think for all
18 of those reasons, he should be permitted to testify with regard
19 to the analysis that he's done.

20 **THE COURT:** Okay. Well, he can rely on hearsay
21 statements. It depends on what he is relying on and for what
22 purpose.

23 The ultimate question of intent is, while ordinarily
24 exception to the hearsay rules, it is the ultimate question in
25 the case. So I am doubtful that an expert can rely on hearsay

1 to prove an ultimate question in the case in that fashion.

2 Now, you raise a different question with respect to
3 something that may have been a statement made by the Governor,
4 because the Governor is a party to the case, and that might be
5 a different situation. So I don't know what's in the newspaper
6 article. I don't know if there is a quote. I don't know if
7 it's a summary. I don't know if it's a third-party statement
8 as what they think somebody said.

9 So for the purpose being offered, at least at this
10 point, I am going to sustain the objection to any newspaper
11 article unless you can show me a little more information as to
12 why that would be reliable information. Now, the information
13 as to the Governor, I might treat separately.

14 **MR. FARR:** Your Honor, I think I am going to speak on
15 behalf of the Governor's counsel. He may want to jump up and
16 make this objection, but I am pretty sure he would object, and
17 I will object for him to any statements from the Governor
18 coming into evidence because the Governor did not have a vote
19 on whether this bill was enacted or not.

20 **MR. GLICK:** The Governor had a vote in whether or not
21 the bill would be signed by the Governor.

22 **THE COURT:** But that's not legislative intent.

23 **MR. BOWERS:** That's not legislative intent.

24 **THE COURT:** That's not legislative intent.

25 **MR. GLICK:** I would also note from Dr. Lichtman's

1 report that he quotes a statement from the Governor in which he
2 says that North Carolina is "keeping North Carolina in the
3 mainstream of election law, not the fringes."

4 **THE COURT:** Where are you looking?

5 **MR. GLICK:** I am looking at the middle paragraph, the
6 first paragraph under 8A on page 133 of the report.

7 **THE COURT:** Is the Governor being sued only in his
8 official capacity?

9 **MR. BOWERS:** Yes, Your Honor.

10 **THE COURT:** What is the claim against Governor
11 McCrory?

12 **MR. GLICK:** I guess --

13 **THE COURT:** And how does it relate to the legislative
14 intent question? Because the Governor -- it is not like the
15 Vice President of United States was called in to cast the
16 deciding vote enacted as a legislator.

17 **MR. GLICK:** I guess I'd take a step back, Your Honor.
18 We've heard throughout this case from Mr. Farr and others that
19 one of the things that North Carolina has done here is conform
20 to the majority rule in other states. Now, if the State wants
21 to say that wasn't a rationale, conformity with other states,
22 then they are perfectly fine to do that. I would note that the
23 Georgia point is referenced in the public record. Dr. Lichtman
24 had talked about what Georgia allowed earlier. And --

25 **THE COURT:** Well, let me stop there. Any dispute

1 about the Georgia point being in the public record?

2 **MR. FARR:** Your Honor, if there are statements in the
3 transcribed proceedings before the General Assembly that they
4 would cite, even though I think that's still hearsay, we would
5 not object to that coming in, in the published transcribed
6 proceedings.

7 My memory is that there may be some reference to
8 Georgia in the transcribed proceedings, but I don't recall
9 right now. So if they are footnoting something to the
10 transcribed proceedings, we are not going to object to that.

11 **MR. DONOVAN:** Your Honor, just as a point, and this
12 goes to goose-gander is, as you know from our preliminary
13 injunction argument, is there is not really a lot of state
14 rationales. So we've been kind of playing Whack-a-Mole as the
15 defense raised these. I think this becomes a little
16 prejudicial, is if they want to stipulate this is a rationale
17 you can rely on that the legislature presented, then fine; but
18 if it was in the public record and we hear about it, it can't
19 be precluded from testimony. I think they need to pick under
20 that, because we've heard that this is a rationale. If it's
21 not -- because I think since we know they've claimed
22 legislative privilege, so they can't kind of give you any more,
23 that's kind of what we're betwixt and between.

24 So I don't think Mr. Farr can make this objection.
25 Either he needs to say this is a rationale they are not going

1 to argue, and then maybe we have a different decision, or if it
2 is, then it's open because the only way they can do it is if it
3 was in the public record. So that's something I think that --

4 **THE COURT:** Yes, sir.

5 **MR. FARR:** Your Honor, with all due respect to my
6 colleague and friend, I don't think we have to show that the
7 justification is in the public record for it to be a
8 justification in these cases. I think there is lots of Supreme
9 Court cases that say that.

10 It is my memory that there probably is some
11 discussion about Georgia and other states in the transcribed
12 proceedings, both in front of the House and I am sure, I think,
13 in front of the Senate. We are not objecting to that type of
14 evidence coming in, but what we are objecting to is newspaper
15 stories because these are written by newspaper people, and we
16 don't know exactly what the person said or didn't say. It is
17 classic hearsay.

18 If they are being transcribed in the proceedings,
19 well, then, we are willing to waive that, and we have not
20 objected to any citations to the transcribed proceedings; but
21 we are objecting to newspaper articles.

22 I really disagree with my colleague that even though
23 I think there is some reference to Georgia in the transcribed
24 proceedings, we don't have to have a rationale for this statute
25 to be stated during the public transcribed proceedings to be

1 able to argue that as a justification for the statute.

2 **THE COURT:** I don't know if that's exactly the
3 argument that's being made. Mr. Donovan can correct me, but I
4 think the argument is that if the Defendants are going to offer
5 up a justification for the laws, they can't preclude the
6 Plaintiff from putting in evidence of that if the Defendants
7 later are going to say, but we told the people at the time that
8 this is our justification, because that's what they want in
9 evidence now.

10 So I am contemplating that the rule is that the --
11 the double hearsay, which is what this is, it's in a newspaper
12 article and it is hearsay, which is double hearsay, going to
13 the ultimate question of intent is a concern for me. I know
14 that there's legislative privilege, but the privilege doesn't
15 apply if somebody is making a public statement that they
16 voluntarily make themselves available for to a newspaper
17 reporter, but I do have the double hearsay problem.

18 If the materials -- if the information occurred
19 during the legislative process, you've already said you are not
20 objecting to that. So I don't have an issue as to that.

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

22 **THE COURT:** If it's outside the legislative process
23 and is otherwise somehow in a media report, I have concerns
24 about that, but it may leave the Defendants, if I exclude it,
25 in a position where the Plaintiffs are going to say, well, they

1 didn't say anything about this at the time because they are
2 objecting to the Defendants putting in any evidence about this.

3 So you are then left with an argument that our
4 justification for the legislation is our post hoc
5 justification, and it wasn't made contemporaneously at the time
6 because you have no evidence of that.

7 **MR. FARR:** Your Honor, I think there are a lot of
8 things in the transcribed record from various representatives
9 giving rationales for various portions of the statute.

10 **THE COURT:** I didn't mean to say there wasn't
11 anything. I am just saying if there is stuff outside the
12 record, then you obviously can't rely on it because I won't let
13 you use it as a sword if right now you are trying to use it as
14 a shield and keep it out.

15 **MR. FARR:** Your Honor, the only thing -- and maybe I
16 misunderstood your point, but I think there are numerous
17 Supreme Court cases that say that a legislature -- that the
18 rationale to support a piece of legislation does not have to be
19 stated during the official public transcribed proceedings; that
20 the State is allowed to argue other rationales for a statute,
21 even if they were not mentioned during the published
22 transcribed proceedings.

23 **THE COURT:** Okay. It is a little difficult here
24 because I don't have any of the underlying materials, and it is
25 hard for me to make a decision; but any newspaper article that

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1 offers information about legislative intent is double hearsay,
2 and because it is so close to the issue I have to decide, I am
3 going to sustain the objection to that extent.

4 The Defendants are waiving any objection as to any
5 material that's in the legislative process and hearing process.

6 There is a separate question of any video recorded
7 that you brought up earlier, and so that I'm willing to
8 consider as being sufficiently reliable to -- for you to rely
9 on.

10 **MR. DONOVAN:** Yeah, and I think we can move ahead. I
11 just want to make this record on this point. I think there is
12 some confusion is -- as was explained to me by Dr. Lichtman,
13 what a professional historian does is might look at the record
14 and then say, well, is it talked about anywhere else. So he
15 cites these articles. It is corroborating. We are not moving
16 those in as different exhibits. But Professor Lichtman, as he
17 explained to me, can explain to the Court, it is part of what
18 he does.

19 So I think when they object to all these newspaper
20 articles, we are missing the point. For example --

21 **THE COURT:** I guess my point is if there is already
22 the point made during the legislative proceeding and it is
23 admissible --

24 **MR. DONOVAN:** Yeah.

25 **THE COURT:** -- I don't think I understood the

1 Plaintiffs to be arguing the strength of the point. They are
2 just arguing the existence of it, in which case, you have your
3 evidence. You don't necessarily perhaps need corroboration
4 from hearsay sources. That's where I'm confused.

5 **MR. DONOVAN:** I agree. This is a little odd, right.
6 Experts reports don't usually come into evidence. This is a
7 bench trial. The parties agree that they will. So this is
8 becoming an odd issue because normally this -- experts do this
9 all the time. They cite sources, but that doesn't come into
10 evidence. They take the stand.

11 **THE COURT:** I understand.

12 **MR. DONOVAN:** Mr. Glick has the cite.

13 **THE COURT:** That's my ruling. If it's a newspaper
14 offered for the intent issue, it is double hearsay. Absent
15 some other showing, for now, it's not only not coming into
16 evidence, but it is not the kind of hearsay on which I think he
17 should rely for purposes of testifying.

18 It is also my understanding that you have other
19 sources for this same information from the legislative record,
20 and I urge you to use those.

21 **MR. GLICK:** Thank you.

22 **MR. KAUL:** Your Honor, if I may, just briefly? We
23 intend to attempt to introduce articles later in the case. I
24 just want to make sure that nothing is preclusive on future
25 specific factual scenarios.

1 **THE COURT:** Well, it is all going to depend on each
2 piece. The difficulty I am having here is nobody is showing me
3 any of these articles, and in the absence of some proof that
4 that's the kind of information that's reliable -- reliably used
5 by the witness, I have some serious concern about what it is
6 and how he is drawing the conclusion he is drawing from it.

7 **MR. DONOVAN:** Just for process, I know we want to
8 keep going, we had planned to do that this morning, but because
9 of time, I think we should set some time Monday because we do
10 have some videos. We do want to show them. It's just kind of
11 the press of time, but we will do that on probably Monday.

12 **THE COURT:** I have all weekend.

13 **MR. FARR:** On the videos, we have seen two of the
14 videos, and one of the videos has got some commentary by a
15 reporter before the person is interviewed. We would object to
16 the commentary coming in.

17 **MR. DONOVAN:** We are not offering it for the
18 commentary.

19 **THE COURT:** Okay.

20 **MR. FARR:** The other thing is, we haven't seen but
21 only two videos. I don't know how many they've got that they
22 want to show.

23 **THE COURT:** If you want videos you want either in
24 evidence or relied upon by the expert, then share them and then
25 I will be glad to take a look at them if you disagree. I am

1 inclined to let the videos in because I think they have
2 sufficient evidence of reliability. They were voluntarily
3 given in most cases by the legislator. They are public
4 statements obviously made where they would intend others to
5 rely upon them. There are a number of reasons why they might
6 be treated differently, and it's information that can be
7 independently assessed by watching the video as opposed to a
8 newspaper article. You are not bringing in the reporter, so I
9 have two layers of hearsay I've got to get through.

10 **MR. DONOVAN:** Your Honor, just for the record, I do
11 want to note our objection. I understand you sustained the
12 objection for the record. Thank you.

13 **THE COURT:** All right. I sustained it. I don't know
14 that there is any harm in that because, from what I understand,
15 you have the evidence already in the record from the
16 legislative process.

17 **MR. DONOVAN:** That's a fair point. I am worried
18 about the snowball effect of others. So I just want to make
19 that for the record.

20 **THE COURT:** We will deal with that if and when it
21 comes up.

22 **BY MR. GLICK**

23 Q Dr. Lichtman, resuming, one of the items that you've
24 identified is the Georgia model; is that correct?

25 A Yes, conformity of the states and the Georgia model.

1 Q If I could direct you to page 137 of your report, which is
2 PX237 (sic).

3 A Yes.

4 Q In the second paragraph of the page, you referenced a
5 House debate and statements in the House debate from
6 Representative John Blust?

7 A Yes.

8 Q Can you read Mr. Blust's statement into the record?

9 A Certainly. But the voter suppression charges -- the same
10 type charges, the same predictions, the same type rhetoric was
11 used in Georgia. And in Georgia, the actual participation --
12 and this is the problem opponents of this law have. You have
13 an observable situation in Georgia and Indiana where the voting
14 participation rates went up. I don't see how you can maintain
15 still the same arguments you have been maintaining when you've
16 seen it in reality on the ground."

17 Q Fair to say, Dr. Lichtman, that within the legislative
18 record, representatives in North Carolina were comparing the
19 law that they were looking to pass with the Georgia law?

20 A Yes. In fact, all my citations on the Georgia model are
21 from the legislative transcript and some of my citations as
22 well on more general conformity with other states are also
23 either from the legislative record or from the websites of
24 members of the legislature that they put up themselves.

25 Q Dr. Lichtman, after your analysis in this case, did North

1 Carolina's law -- let's start with photo ID only. Did it
2 comport with the laws of other states, including Georgia?

3 A I have a table on that which shows it did not, that the
4 pre-*Shelby* bill might have, but the post-*Shelby* bill, because
5 of the departures we have discussed, sharply departs from other
6 states.

7 In fact, North Carolina in the post-*Shelby* version created
8 the most restrictive voter ID law in the nation and departed
9 from the Georgia model in fundamental ways, including many of
10 the exclusions we've talked about: Student public school
11 identifications, Government employee identifications, expired
12 identifications, all of which are obviously of fundamental
13 importance and bear upon as well the impact of the law on
14 African-Americans and Hispanics.

15 Q And for the record, Dr. Lichtman, is the chart that you
16 referred to, Table 47, in your report?

17 A Yes.

18 Q And what about on the nonphoto ID provisions -- or, I
19 guess, put differently, the combination of the photo ID
20 provisions in 589 and the nonphoto ID provisions, how does that
21 compare to laws of other states?

22 A When we are looking at the full bill, the whole set of
23 measures that were labeled H.B. 589, it creates an entirely new
24 electoral system in North Carolina, both with respect to photo
25 identification and with respect to registration and voting.

1 And as I point out, I believe it was in my surrebuttal
2 report, only two other states match that system of having a
3 strict voter identification law and all the other changes
4 instituted under H.B. 589, and those two states were Virginia
5 and Mississippi, and my understanding is the Virginia photo ID
6 law is under challenge.

7 Q Dr. Lichtman, why did you look at all of the components to
8 assess conformity?

9 A Because the bill is a piece of legislation as a whole and
10 creates a new system in North Carolina as a whole; and as I
11 have already pointed out, the effects of this system are both
12 independent and cumulative and, therefore, you've got to look
13 at the bill as it was enacted and as it affects both
14 identification requirements and other aspects of voting and
15 registration in the state.

16 Q Next item on your slide here is public support. Did you
17 see evidence in the record that proponents of H.B. 589 cited
18 public support for the provisions of the bill?

19 A Yes. I have a quote on page 138 from the public record,
20 the transcript of the Senate debate from Senator Goolsby, who
21 said, "We've seen polls done by Elon College recently on how
22 many North Carolinians think it's reasonable to have to show an
23 ID when you go into the election booth," and then he goes on to
24 cite some statistics from that.

25 Q And did you also view public comments by Speaker Tillis

1 captured on video to the same public support rationale?

2 A Yes, making the same point. Several of the backers and
3 the Governor make the same point.

4 **MR. FARR:** Your Honor, we would at this point object
5 to the videos until we have a chance to review them.

6 **MR. GLICK:** Your Honor, Mr. Farr has seen that video.
7 That's one of the ones he just referred to. I am happy to play
8 it, and this is the one he was talking about with the reporter
9 earlier.

10 **THE COURT:** I will reserve ruling on it. You have a
11 witness you want to try to get done today. If you want me to
12 sit and watch your video, I will.

13 **MR. GLICK:** It's 10 seconds.

14 **MR. DONOVAN:** It's a clip. It is more -- if Mr. Farr
15 is going to object, we'll play it. Otherwise --

16 **THE COURT:** All right. Let's see it.

17 (Plaintiffs' Exhibit No. 533 was played.)

18 **MR. FARR:** No objection to that, Your Honor.

19 **THE COURT:** Okay.

20 **MR. GLICK:** For the record, that's PX 533.

21 **BY MR. GLICK**

22 Q Dr. Lichtman, did you assess what the public support was
23 for H.B. 589?

24 A Yes, I assessed it in two regards, first with regard to
25 support for the photo ID aspect that Senator Goolsby spoke

1 about and Mr. Tillis made reference to. And I have three
2 issues with the way in which those Elon University polls were
3 presented. First --

4 Q What are those?

5 A First, the polls do not refer to the particular kind of
6 photo identification law passed post *Shelby*. It is true that
7 respondents do favor by a great majority what the poll says is
8 some sort of government-approved photo identification. That
9 might well have fit the pre-*Shelby* version of 589. It doesn't
10 justify the post-*Shelby* version of 589 when important
11 government-issued IDs are eliminated.

12 Q What about with polling with respect to the nonphoto ID
13 provisions?

14 A I've got a couple more points on the photo ID. Sorry. I
15 don't want to take too much time, but they are in my report.
16 Also most -- 66 percent say they would allow persons to vote if
17 they signed an affidavit of identity, even if they didn't have
18 a photo ID. And almost three-quarters said the legislature had
19 to show significant problems, such as real voter fraud, before
20 they passed any laws making voting more difficult.

21 Q And what about with regard to the nonphoto ID provisions?

22 A Polls taken right after the passage of H.B. 589 show that
23 only 39 percent of respondents supported the legislation and
24 only 33 percent supported cutting early voting, and even
25 earlier polls from April 2013 from Elon University show that

1 almost 60 percent of North Carolinians opposed any reduction in
2 early voting.

3 Q Thank you, Dr. Lichtman. The next thing that you list
4 here is partisanship. It has been argued in this case,
5 Dr. Lichtman, that H.B. 589 was merely the result of a new
6 political majority passing laws to help their own supporters.

7 Did you do any analysis as to whether the impact of
8 H.B. 589 is based on party difference as opposed to racial
9 difference?

10 A I did.

11 Q And can you describe -- have you prepared any analysis of
12 that?

13 A Yes, I have.

14 Q Can you describe your analysis to the Court.

15 A Yes. What I did was look at the issue of race holding
16 party constant. In essence, I was testing whether this
17 generically affected Democrats and only affected minorities
18 collaterally or that the affect was directly upon minorities
19 rather than upon party.

20 So what this analysis does that's portrayed here, and it
21 is also in my report, it looks at the photo ID portion of
22 H.B. 589, and it looks at African-Americans and whites who are
23 matched and unmatched to DMV ID; and we talked at great length
24 about that matching exercise.

25 And the point here is is there some major difference

1 between African-American Democrats and white Democrats, or is
2 the affect across the board pretty much equal for the two
3 races, so long as they are Democrats? And the results are very
4 clear.

5 If we look at the percentage of matched Democratic
6 registrants, that is, those who actually possess DMV ID, the
7 white percentage -- excuse me, the African-American percentage
8 is 7 percent lower than the white percentage. In other words,
9 fewer African-Americans as a percentage are matched to DMV IDs.

10 But then we get a very different picture when we look at
11 the percent unmatched Democratic registrants. If there was
12 just a party effect and no racial effect, the second column
13 should look much like the first column. In fact, it looks
14 nothing like it.

15 In this case, that -- African-Americans are a substantial
16 majority of those Democratic registrants who are unmatched to
17 DMV ID. In fact, they are -- the unmatched African-American
18 Democrats, their percentage is 48 percent higher than the white
19 percentage of Democrats unmatched to DMV IDs. Then I took the
20 analysis a step further --

21 Q Dr. Lichtman, I hate to cut you off. The numbers are on
22 your slide, and I want to keep moving. Okay?

23 A You can see the effects are even greater for those matched
24 to expired IDs.

25 Q I want to go back to the last rationale listed on your

1 slide, and that is election integrity and fraud. Can you turn
2 to page 140 of your report?

3 A Yes.

4 Q In the middle of the large paragraph at the bottom of the
5 page, there is a clause that says, "In introducing the
6 pre-*Shelby* version of H.B. 589, Speaker Tillis said," do you
7 see that?

8 A No.

9 **MR. FARR:** I want to see that, too.

10 **MR. GLICK:** Middle of 140.

11 **THE WITNESS:** I see it now. It is in the middle of
12 the second paragraph.

13 **BY MR. GLICK**

14 Q In Footnote 67, Dr. Lichtman, you cite a July 24, 2013,
15 transcript of Senate debate on H.B. 589?

16 A Yes.

17 **MR. FARR:** Let me ask counsel a question. I see in
18 Footnote 67, you are citing the Senate debate, and Speaker
19 Tillis was not in the Senate. And then you are citing Exhibit
20 16, which is an attachment to Kim Strach's deposition. Was
21 that a newspaper article?

22 **THE WITNESS:** I don't recall. There may be a typo in
23 that citation.

24 **BY MR. GLICK**

25 Q Let me ask it this way: Dr. Lichtman, within the

1 legislative record, did you see evidence of proponents of
2 H.B. 589 citing a desire for election integrity as a reason for
3 moving forward with the bill?

4 A Yes. And we just saw that in the video, very explicitly
5 stated by Senator Tillis pretty much the same way I've quoted
6 it here.

7 Q Have you reviewed evidence from this case that evaluates
8 that rationale?

9 A Yes.

10 Q I want to start with the question of fraud. I know that
11 Plaintiffs will have an expert, Lori Minnite, here next week to
12 talk about fraud. What evidence have you identified about
13 fraud in North Carolina elections?

14 A Well, you recall way back, it seems like a long time ago,
15 in the materials provided to Representative Warren, there was
16 an SBOE report on voter fraud. I believe it covered about a
17 dozen-year period through 2012 and was requested by
18 Representative Warren, and it indicated that during that
19 period, voter impersonation fraud, which the voter photo ID
20 bill was designed to deter, was virtually nonexistent. There
21 were only two cases even credible enough or referable. The
22 more prevalent form of voter -- at least alleged voter fraud in
23 that compilation was absentee ballot fraud, 47 cases.

24 Q And have you identified for mail-in absentee ballots the
25 usage among African-Americans and whites with respect to that

1 form of voting?

2 A That form of voting is overwhelming disproportionately
3 used by whites and quite disproportionately unused by
4 African-Americans.

5 Q And, Dr. Lichtman, in crafting a photo ID bill, the photo
6 provisions of H.B. 589, did the proponents of H.B. 589 require
7 photo identification for mail-in absentee ballots?

8 A They did not.

9 Q Your report also discusses the rules with respect to
10 same-day registration.

11 A Yes.

12 Q And specifically a couple of mail verifications reports.
13 Do you recall that?

14 A Yes, I do.

15 **MR. GLICK:** If I may I approach, Your Honor?

16 **THE COURT:** Yes.

17 **BY MR. GLICK**

18 Q Dr. Lichtman, I handed you PX56, PX68, and something that
19 we have marked as PX68A, which I will represent to the Court is
20 simply a color version of PX68.

21 Let's start with PX56, which you discuss in your report,
22 Dr. Lichtman. What is PX56?

23 A This is a State Board of Elections report. It was among
24 the documents provided Representative Warren about the
25 experiences with same-day registration in the 2008 elections

1 the first time it was used.

2 Q And, again, we are little pressed for time; but,
3 Dr. Lichtman, could you summarize the findings that you
4 identified from within that report with regard to same-day
5 registration in the 2008 election?

6 A Yes. That it worked extremely well. There was no
7 evidence of voter fraud. There weren't even any voter
8 challenges, that it worked so well that North Carolina was seen
9 as a model for the conduct of elections.

10 Q Let's turn to PX68A. What is PX68A?

11 A This is a later report on mail verification analysis from
12 the 2012 elections.

13 Q Can you read the bottom of the page and identify the date
14 of this report?

15 A February 11, 2013, and I believe this was another one of
16 the documents provided Representative Warren.

17 Q Dr. Lichtman, to your knowledge, is this report from the
18 2012 elections the last same-day registration mail verification
19 analysis that would have been available to the legislators in
20 2013 when they were considering H.B. 589?

21 A That is correct.

22 Q Let's take a look at the chart here in the middle of the
23 page. What does that reflect?

24 A This reflects the undeliverable rate, those to whom
25 confirmation mailing was sent and it was returned as

1 undeliverable.

2 Q There are two rows in this table that are a little bit
3 darker than the others, one from April 19th, 2012, to May 5th,
4 2012, and one from October 18th, 2012, to November 3rd, 2012.
5 They are right there on the first page.

6 A Yes. The two ones that are shaded refer to new
7 registrations and the undeliverable rate for same-day
8 registration; whereas, the other three refer to new
9 registrations and the undeliverable rate for non-same-day
10 registration.

11 Q And, Dr. Lichtman, comparing the undeliverable rate for
12 the two blue categories, which reflect the same-day
13 registration periods, with the data available to the
14 legislature in 2013, what did this reflect?

15 A It showed that the undeliverable rate was much higher for
16 those who registered non-same-day registration in 2012 than it
17 was for those who registered same-day registration.

18 Q And, Dr. Lichtman, for your work as an historian, what is
19 the significance of the fact that this report was issued before
20 H.B. 589?

21 A Because this was available to the legislature. It was
22 requested by one of their leaders, and it shows that there is a
23 pretext in their rationale that we need to eliminate same-day
24 registration because of verification problems. It shows that
25 the undeliverable rate is much higher for other types of

1 registration.

2 Q Dr. Lichtman, if we could just go back to your slides very
3 briefly. Considering the three sets of evidence that we
4 discussed today that you collected, reviewed, and assessed as
5 part of your work in this case, what conclusion have you
6 reached as an historian?

7 A I reached the conclusion that --

8 **THE COURT:** Well, I am going to offer my own
9 objection to that because I have no idea what you are asking
10 him. What conclusion? He may tell me that he likes to go
11 fishing on Saturday as a result of this. I think you need to
12 focus the question on his area of expertise.

13 **BY MR. GLICK**

14 Q Dr. Lichtman, we discussed three sets of evidence that you
15 reviewed as part of your historic analysis in this case. Can
16 you briefly describe how these three sets of evidence fit
17 together in your analysis?

18 A Yes. These three sets of evidence all point in the same
19 direction. They fit together in my analysis showing that there
20 was a motive for legislation that placed a disparate burden
21 upon African-Americans and Hispanics in registration and voting
22 in the state of North Carolina. It shows that there was an
23 opportunity to do so with the unified control of the
24 legislature, as we have seen in the 2013 deliberations.

25 It shows that the major changes and additions that led to

1 these disparate impacts occurred only after the *Shelby*
2 decision, which only had to do with race, and it indicates that
3 both contemporary and post hoc justifications that are
4 nonracial do not withstand scrutiny but tend to be pretextual
5 or contradictory or misleading.

6 So when you put it together, it leads me, as a
7 professional historian, and I do this all the time, to the
8 conclusion that the post-*Shelby* version of H.B. 589 was
9 knowingly and deliberately adopted and then signed to place a
10 disparate burden on minorities in the state of North Carolina
11 with respect to registration and voting.

12 **MR. FARR:** Your Honor, we object to the knowing and
13 deliberately part of that answer.

14 **THE COURT:** All right. That's a decision for me to
15 make. So I am going to -- I will make that decision on my own.
16 All right.

17 **BY MR. GLICK**

18 Q Were you done, Dr. Lichtman?

19 **THE COURT:** I am going to sustain it as to that
20 portion of it.

21 **MR. GLICK:** For the record, I would just make a
22 proffer to Dr. Lichtman's opinion that he's expressed on the
23 record; and with that, I have no further questions, but I would
24 for the record identify Dr. Lichtman's slides today for
25 demonstrative purposes only, AL-1 through AL-18.

1 **THE COURT:** All right. Any cross-examination?

2 **THE WITNESS:** Your Honor, may I have a quick break?

3 **THE COURT:** You need a comfort break?

4 **THE WITNESS:** Yeah.

5 **THE COURT:** Okay. All right. Why don't we do that.

6 We'll take a quick break, and then why don't we do 15 minutes,

7 and then we'll come back. Is that all right?

8 (The Court recessed at 3:17 p.m.)

9 (The Court was called back to order at 3:35 p.m.)

10 **THE COURT:** All right. Mr. Farr.

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

12 CROSS-EXAMINATION

13 **BY MR. FARR**

14 Q Good afternoon, Dr. Lichtman.

15 A Good afternoon.

16 Q How are you today?

17 A I am good. And you? If you could speak up as best you

18 can. We are getting a little old.

19 Q I'll do the best I can, Dr. Lichtman.

20 Dr. Lichtman, I wanted to ask you a few questions about

21 your background. Are you a former candidate for Senate?

22 A Yes, a very unsuccessful one.

23 Q And which party did you affiliate with when you ran for

24 Senate?

25 A I ran in the Democratic primary in 2006 in Maryland.

1 Q All right. Now, have you worked as a member of a state
2 board of elections or a county board of elections or as a poll
3 worker?

4 A No.

5 Q Do you know the process used in North Carolina for
6 checking voters in when they come to vote?

7 A Not precisely. I do know that they don't have to present
8 photo ID. That first-time voters who are not DMV registered
9 have to present a HAVA-type ID. Beyond that, I couldn't tell
10 you.

11 Q So you don't know the tools that are available to North
12 Carolina poll workers for verifying whether the person says
13 that they are the person who they say they are?

14 A No, I don't know all the tools available.

15 Q All right. And have you studied the size of North
16 Carolina precincts, how many people are in North Carolina
17 precincts?

18 A I don't know the number in the individual North Carolina
19 precincts. I am familiar with precincts. I have done some
20 electoral analysis in North Carolina, and I believe the size of
21 precincts varies.

22 Q Okay. And have you -- are you aware of the fact that in
23 North Carolina that during early voting, a voter can vote in
24 any early voting center within the county?

25 A I believe that's correct.

1 Q And would you agree that it may be impossible for a poll
2 worker at a precinct or at an early voting center to be able to
3 verify whether the person presenting the vote is who they say
4 they are?

5 A I don't understand that question.

6 Q Let me try another way. Do you think that the poll
7 workers at early voting centers or at precincts know everyone
8 that comes in to vote?

9 A No, but that's not the point. The point is if you are
10 going to risk impersonating someone and risk a serious felony,
11 you don't know whether any of the poll workers do or do not
12 know that person, and that's the critical deterrence.

13 Q Have you ever studied that issue?

14 A I have.

15 Q Have you studied that issue in North Carolina?

16 A No, but I studied it in Maryland where there is no formal
17 verification. You just walk in and say, I'm Allan J. Lichtman,
18 and you vote. And I studied it in great depth working for the
19 Attorney General of Maryland in light of allegations back in
20 the '90s by a gubernatorial candidate of widespread voter
21 fraud, and we found not a single instance of voter
22 impersonation, and the suit was dismissed. So I probably
23 investigated that issue as thoroughly as anyone.

24 Q That was how long ago?

25 A It was in the early '90s.

1 Q So you are saying that today in this day and age, someone
2 wouldn't try to impersonate another voter in a North Carolina
3 precinct or early voting center simply because of the threat
4 that they might be caught?

5 A I didn't say that. Your question was, have I investigated
6 this issue of whether folks go into the polling booth and
7 impersonate others. There are many reasons, other than the
8 fact that there is always a risk of identification, why you
9 would not do that.

10 Q Okay. Let me move on to a different subject,
11 Dr. Lichtman.

12 A Okay.

13 Q Have you any experience counting provisional ballots?

14 A No.

15 Q Have you ever administered preregistration?

16 A No.

17 Q Have you ever been involved in verifying registration
18 applications?

19 A No. Although with respect to all these issues, they all
20 came up in the investigation in Maryland, but they were -- it
21 was an investigation after the election.

22 Q Right. And how many years ago was that?

23 A Twenty some odd.

24 Q Okay. But you've never been responsible for administering
25 an election system and verifying whether or not the information

1 in the registration application is correct?

2 A No, I have not been an election official.

3 Q And do you know how long -- or do you know how North
4 Carolina verifies registration applications?

5 A Yes, I have some idea. I'm not sure I know all the legal
6 intricacies, but I do have some knowledge of that.

7 Q Could you explain to His Honor what your knowledge is?

8 A Yes. That registrants are sent out mailings; and if those
9 mailings are returned undeliverable, a second mailing is sent
10 out. If that second mailing is sent out as undeliverable,
11 voters are put on an inactive list, those who have voted.

12 Q What happens to those who haven't voted if the second
13 letter comes back?

14 A Then your voting registration is going to be denied.

15 Q And, Dr. Lichtman --

16 A There are appeals, of course.

17 Q Have you ever studied how long that process takes in North
18 Carolina?

19 A I have not studied the details, but I have seen reports
20 from the State Board of Elections which indicates that it can
21 vary a lot depending on the particular county. Some counties
22 do it promptly; some counties have not done it so promptly.

23 Q Okay. Did you review the testimony by Gary Bartlett at
24 the preliminary injunction hearing in this case?

25 A If I did, I surely don't remember it way back then.

1 Q Okay. Have you ever studied the rates at which people who
2 did same-day registration failed mail verification after they
3 voted and had their voted counted?

4 A I haven't studied it, but there is a report from 2015 from
5 the State Board of Elections that purports to study it; but my
6 review of that report indicated it was filled with inaccuracies
7 and did not provide adequate indications of its methodologies.

8 Q Could you tell me what its inaccuracies were,
9 Dr. Lichtman?

10 A Yeah. I found a lot of the numbers didn't add up
11 properly, that there were numerical contradictions within it;
12 and unlike some of the other earlier reports from the SBOE, it
13 did not lay out its methodology and did not lay out all the
14 various categories in which registrants can fall. It simply
15 presented numbers, which, as I said, did not necessarily add
16 up.

17 Q Okay. Have you ever compared the rate at which
18 individuals who register 25 days before the election fail mail
19 verification after they voted?

20 A I have not measured that, no.

21 Q And have you ever compared the failure rate after voting
22 by normal registrants who register 25 days before the election
23 versus those who did same-day registration?

24 A With the caveat I wouldn't call the non-same-day
25 registrants normal registrants, they are all registrants, but I

1 have not done any such study.

2 Q All right. Thank you. And, Dr. Lichtman, if you look at
3 Exhibit 42, which was handed up to you by Plaintiffs' counsel.

4 A I'm not sure which exhibit 42 is.

5 Q It is a report from the North Carolina State Board of
6 Elections.

7 A I have many of those.

8 Q Dated 3/31/2009.

9 A 3/31/2009, right. I see. The exhibit is that thing
10 that's very hard to read because it's kind of blotted out. Got
11 it.

12 Q Does this report study the failure rate of same-day
13 registration voters who failed mail verification after they
14 voted?

15 A I believe it does somewhere in here.

16 Q Could you find it for me? Because I don't think it's in
17 there.

18 **THE COURT:** Which exhibit is this?

19 **MR. FARR:** It's exhibit --

20 **THE COURT:** Is it Plaintiffs' Exhibit 56?

21 **MR. FARR:** I'm sorry, Your Honor. I'm looking at the
22 deposition exhibits. It's marked at the bottom in black ink
23 PX56. I was looking at the deposition exhibit number. I
24 apologize.

25 **THE WITNESS:** Yes, it is on page 5 and it goes on to

1 page 6, and there was a lengthy discussion of those who failed
2 mail verification, indicating that it does not mean that the --
3 those who fail mail verification were not qualified to vote.
4 It talks about a whole series of issues that can lead to the
5 mail verification failure.

6 And as we already indicated, the report also notes no
7 one was challenged and there were no indications of voter
8 fraud. Indeed, since same-day registration was instituted,
9 according to the SBOE compilation of voter fraud that was
10 provided to Representative Warren, there was only one case of
11 registration fraud and two cases before same-day registration.

12 **BY MR. FARR**

13 Q But, Dr. Lichtman, this exhibit does not compare the
14 number of same-day registration voters who failed mail
15 verification after they voted versus the number of individuals
16 who registered 25 days before the election who failed mail
17 verification after they voted?

18 A That's right. To the best of my knowledge, that
19 information was not available to the legislature before
20 adoption of H.B. 589.

21 Q Did I ask you if it was available to the legislature, or
22 was that just something that you wanted to throw in?

23 A I thought that was relevant to your question since we are
24 talking about when things are available.

25 Q Now, looking at Exhibit PX68A --

1 A Again, you've got to tell me what it is, because these
2 exhibit numbers -- I got it.

3 Q This is a report that you testified to about -- issued by
4 the State Board of Elections in February of 2013.

5 A Correct.

6 Q Now, do you know if this report indicates that individuals
7 who did same-day registration were more likely to fail mail
8 verification after they voted than people who registered
9 25 days before the election?

10 A I don't see any such information on this report. I simply
11 see an undeliverable rate at the very front of it which shows
12 quite the opposite, that the undeliverable was much higher for
13 people who did not register same-day registration as compared
14 to those who did register same-day registration, and the
15 differences are quite extreme.

16 Q All right. Now, Dr. Lichtman, I believe you said that the
17 results of the 2014 election were not relevant because that
18 happened after the legislation was passed?

19 A I didn't say were not relevant in the generic sense. I
20 said were not relevant to my intent analysis.

21 Q Okay. So the --

22 A Or would not change any intent analysis, perhaps more
23 pointed.

24 Q The results of the election were not relevant to your
25 intent analysis because the election was held after the --

1 A This was not information that the legislature had
2 available to it.

3 Q Okay. And the study that you've done in your report was
4 not available to the legislature when they enacted H.B. 589,
5 was it?

6 A My study was based upon information available to the
7 legislature at the time they enacted H.B. 589, and I was able
8 to document that much of this information was specifically
9 requested and provided to sponsors of H.B. 589.

10 Q But your report wasn't in front of the legislature, was
11 it?

12 A Oh, of course not.

13 Q And, also, you made certain calculations in your report
14 about expired driver's license; is that right?

15 A Yes, and, in particular, with respect to the implications
16 of the 70-plus exemption.

17 Q Okay. And that information wasn't presented to the
18 legislature during the time it was considering the VIVA law,
19 was it?

20 A Two points on that. It may or may not --

21 Q Answer my question and then --

22 A I am going to answer your question.

23 Q But could you say yes or no and then explain it?

24 A It's not -- okay. You can't tell because, as we saw in
25 these emails, there are lots of discussions between State Board

1 of Elections officials and members of the legislature and
2 legislative staffers and meetings, and we don't know what went
3 on in these discussions and in these meetings. We don't know
4 what was beyond in the emails, which may scratch the surface.
5 We don't know what other information was, in fact, supplied to
6 staffers or to members of the state legislature, and we can't
7 ask them because of the privilege.

8 So we don't know, but it could well have been.

9 Q Okay. But you don't have any evidence that you cited that
10 your analysis of expired driver's license was before the
11 legislature at the time it enacted the VIVA statute?

12 A I can't prove that, but I did, I think, indicate that it
13 was quite predictable what the results would be because of the
14 70-plus exemption, because of the well-known age distribution
15 of minorities and whites. It is well known that the age
16 distribution of whites as compared to minorities does tend much
17 more to the elderly. That's readily available public
18 information and pretty common knowledge, particularly among
19 politicians who will live and die with demographics.

20 Q Right. But you haven't cited any evidence that that was
21 before the legislature. You are speculating that it might have
22 been?

23 A I am doing more than speculating. I think it is for -- I
24 am pretty familiar with legislators and politicians, and as I
25 said, legislators live and die with demographics. In fact, we

1 saw on our chart of voting based on the exit polls that there's
2 a big voting gap with young people much more likely to vote
3 Democratic and the elderly much less likely to vote Democratic.

4 So it strikes me, given the political salience of age,
5 political leaders, who depend upon election demographics, would
6 be well aware of the age distribution of various groups in the
7 state of North Carolina. I think -- I can't prove that
8 100 percent, but I think it is far more likely than not.

9 Q Dr. Lichtman, in your report, did you calculate the racial
10 demographics for individuals who vote curbside ballots?

11 A I don't believe I did because that was such a small group,
12 and there is no way of knowing -- that would only pertain to
13 photo ID. And there's no way of knowing in such a small and
14 specialized group, by race or any other measure, who did or did
15 not have photo identification.

16 Q But there is an exemption for people who vote curbside for
17 the photo ID requirement in the -- in the law that was enacted;
18 correct?

19 A That's correct. That's one of a few exemptions, yes.

20 Q And you didn't look at that to see what the racial
21 demographics were for that exemption?

22 A No, for the two reasons I've told you.

23 Q All right. Now, you thought it was important to look at
24 all of the different ID laws in all the other states in making
25 your report and comparing it to North Carolina?

1 A Yes, because, as we already documented, particularly
2 Georgia; but, generally, members of the legislature who were
3 backing H.B. 589 did make reference to a justification that had
4 to do with bringing North Carolina, in its identification laws,
5 in line with that of other states.

6 Q Okay. Did you compare North Carolina's new practices
7 against all the other states in the Union on the practice of
8 same-day registration?

9 A I did in a sense. Not individually, but I looked at the
10 whole bill and how the system set up by the whole bill would
11 place North Carolina relative to other states. I don't think I
12 isolated same-day registration per se.

13 Q So you didn't put in your report that most states don't
14 have same-day registration?

15 A It depends on how you define it. Because a growing and
16 large number of states have something called not same-day
17 registration, but Election Day registration, where you not only
18 can register and vote sometime prior to the election, but you
19 can register and vote right on Election Day. So if you include
20 that in the count, the numbers change dramatically.

21 Q Do you know whether or not -- if you include same-day
22 registration with Election Day registration, does that
23 represent a majority of the states?

24 A Again, it is complicated because three states have mail
25 voting, so that issue --

1 Q Let's throw the mail people in, too, Dr. Lichtman. Is
2 that -- if you include mail and same-day registration and
3 Election Day registration, does that equate to a majority of
4 the states?

5 A It's very close. It's about 23 to 24 out of 47. It is
6 right on parity.

7 Q But you didn't make that comparison in your report?

8 A No.

9 Q And did you compare the number of states that have
10 preregistration in your report?

11 A As I said, I did not go through each of those individuals,
12 but we can talk about it. I know the number of states that
13 have preregistration.

14 Q And that's a minority of the states, is it not?

15 A Yeah, but it's not a substantial minority. It's about 21
16 states.

17 Q But a majority of states don't have preregistration?

18 A That's correct.

19 Q And you didn't note that in your report?

20 A No, because, again, with respect to these electoral
21 provisions, I was looking at the whole system that was set up.

22 Q All right. And then you didn't put in your report a
23 comparison between North Carolina and all the rest of the
24 states on the issue of out-of-precinct voting, did you?

25 A No.

1 Q Okay.

2 **THE COURT:** Can I interrupt you? When you asked
3 about preregistration --

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

5 **THE COURT:** -- is that defined in a certain way?
6 Presumably, if you are going to be 18 in every state, you are
7 entitled to be registered before you turn 18, but I don't know
8 how it works. So I don't know what you're referring to when
9 you said preregistration.

10 **MR. FARR:** Well, let me do it this way.

11 **BY MR. FARR**

12 Q Dr. Lichtman, do you know how many states allow
13 16-year-olds to preregister?

14 A I don't know how many states allow 16-year-olds, per se,
15 but I think we are talking about 16-, 17-year-olds, and it is
16 about 21 states.

17 Q 16- and 17-year-olds who are not going to be eligible to
18 vote in the next election; right?

19 A I'm not sure. Again, these laws are tricky. I'm not sure
20 it is quite that refined. I would have to check, but it is
21 something around there; that's right.

22 Q Can't 17-year-olds register in North Carolina today if
23 they are going to be 18 at the time of the next election?

24 A I believe that's right.

25 Q So that's kind of like preregistration; right?

1 A No, that's normal kind of registration as opposed to
2 registering those who are 16 and 17 and not going to be
3 eligible at the next upcoming election.

4 Q All right.

5 A A lot of elections in North Carolina.

6 Q Okay. Now, you talked about the election in District 12?

7 A CD12.

8 Q Right. Is it your testimony that those people in
9 Congressional District 12 only voted because of the
10 Congressional race?

11 A Oh, no, they wouldn't only have voted because of the
12 Congressional race, but the Congressional race had a
13 stimulative effect on their behavior such that when you look at
14 those who are currently in CD12 compared to those who had
15 previously been in CD12, or previously in some other district,
16 you see the rate of increase between 2010 and 2014 for
17 African-Americans is higher than the rate of increase across
18 the rest of the state.

19 And that's what makes CD12 unique, not that not everybody
20 was voting only because of this open-seat unique situation, but
21 it had the stimulative effect on the vote, which is exactly
22 what we would expect.

23 Q One second, Dr. Lichtman. When you said the rate was
24 higher, for who in Congressional District 12?

25 A For African-Americans, but not for whites.

1 Q Okay. And you are saying it was higher in Congressional
2 District 12 for African-Americans as compared to --

3 A 2010. The rate of change for African-Americans from 2010
4 to 2014, when we isolate the African-Americans currently in
5 CD12, was a higher rate than for African-Americans elsewhere in
6 the state. That's why when you control for the special
7 circumstances of CD12, the overall rate of increase in
8 African-American turnout goes down.

9 Q Okay. Were African-Americans a majority of the voting age
10 population in Congressional District 12?

11 A I am not certain whether they are a majority, but they
12 have been able in every election, including this one, to elect
13 an African-American candidate of their choice.

14 Q Do you know where the majority of the population -- what
15 counties the majority of the population is located in
16 Congressional District 12?

17 A No, I have not parsed out the counties. I just looked at
18 the overall turnout.

19 Q Do you know that Congressional District 12 is located in
20 Mecklenburg and Guilford and Forsyth Counties?

21 A As I said, I haven't parsed out the counties for
22 Congressional District 12 --

23 Q So you haven't checked to see what counties the majority
24 of the African-American population is located in?

25 A Knowing the counties wouldn't change the turnout results.

1 The turnout results are what they are.

2 Q Could the turnout results have any -- could they be
3 affected in any way by the efforts that were put forth for
4 Senator Hagan in the 2016 election?

5 A See, that's what makes this election significant. Senator
6 Hagan's turn-out-the-vote election is statewide. That would
7 affect voters across the state, but we see something different
8 going on in CD12. Not that every voter is changing, but we
9 see, because of an additional stimulus, particularly for
10 African-Americans in CD12, that their turnout behavior in 2014
11 compared to 2010 creates a greater rate of increase than
12 elsewhere in the state. The Hagan versus Tillis election is
13 statewide and would have effects everywhere.

14 Q Do you know how much resources the Hagan campaign put into
15 their turnout effort in Mecklenburg County and Guilford County
16 and Forsyth County compared to other counties in the state?
17 Did you look at that?

18 A I don't; but if you are implying that that might have
19 stimulated additional turnout in CD12, so be it.

20 Q Okay. Now, I want to talk to you about all these emails
21 that are in Exhibit 72.

22 A I have trouble seeing exhibits numbers. If you can just
23 guide me to the PX numbers, that would be helpful.

24 Q It is PX72.

25 A PX72?

1 Q Right.

2 A I have it.

3 Q Okay. Now, the emails that we looked at -- correct me if
4 I'm wrong, but anybody who receives an email that's in this
5 exhibit was -- any legislator that received an email was a
6 House member; is that correct?

7 A I didn't review every single one, but to the best of my
8 knowledge, that is correct.

9 Q So there are no senators copied on any of these emails?

10 A To the best of my knowledge, no.

11 Q All right. And when H.B. 589 was passed by the House, did
12 it have -- did it allow student IDs?

13 A It did.

14 Q Did it allow any other types of IDs that did not make it
15 to the final bill?

16 A It did.

17 Q What did those include?

18 A Expired IDs. I don't know if you mentioned government
19 employee IDs, and although I didn't reference it on my chart
20 because it is small, firemen, police, EMS IDs.

21 Q Okay. Now, Dr. Lichtman, did you analyze when the VIVA
22 law was enacted versus the effective date of the photo ID
23 requirement?

24 A I'm not sure by what you mean by analyze it. I know it.

25 Q So it's about two and a half years after enactment for the

1 photo ID to come into effect?

2 A General election, I believe, in 2016; that's right.

3 Q And when was the law passed?

4 A I think it was July of 2013.

5 Q So you thought it was important to compare the terms of
6 the final statute, the types of IDs, against all the other
7 states? Did you compare when other states made their photo ID
8 law effective in relationship to when it was enacted?

9 A I didn't do a state-by-state comparison on that.

10 Q Do you know of any other state that allowed for about a
11 two-and-a-half-year rollout period before the law became
12 effective?

13 A I don't know of any, but I didn't do that analysis. So
14 there could well be.

15 Q I want to ask you some questions about this chart, if
16 someone can put that up, please. Let's start with page --

17 A When you say "this chart," I don't know what chart you're
18 referring to.

19 Q It's the one with your nice picture on it.

20 A That's eye of the beholder, I think.

21 Q It is a PowerPoint I would like the Plaintiffs to please
22 put up. Let's start with AL-18.

23 A Okay.

24 Q So what's that slide again, Dr. Lichtman?

25 A This is holding party constant looking only at Democratic

1 registrants to see whether or not the aspects of the photo ID
2 law generically simply affects Democrats or uniquely impacts
3 African-American Democrats.

4 Q Okay. Dr. Lichtman, are you familiar with the two
5 *Cromartie* decisions by the U.S. Supreme Court?

6 A Are you asking me a legal question?

7 Q I just want to know if you are familiar with the facts.

8 A I kind of remember it, but you probably need to refresh me
9 a little bit. It's been a while since I've looked at it. I
10 kind of do remember it.

11 Q Did the Court say in *Cromartie* -- and I think my cocounsel
12 is going to correct me. It's *Cromartie* actually. I have been
13 having that problem for a number of years. Did the Court say
14 that there was a lot of white Democrats that actually vote
15 Republican in North Carolina?

16 A I think there are some white Democrats who vote Republican
17 in North Carolina; that's correct.

18 Q When you analyzed white Democrats, did you check their
19 voting records to see how many of them voted for Republican
20 candidates?

21 A Now, you know as well as I do, you can't know who someone
22 voted for.

23 Q But you can do a study based upon -- well, a number of
24 things. You can look at how -- election results by vote
25 tabulation districts; correct?

1 A It would be very difficult to do that for unmatched and
2 matched Democratic registrants.

3 Q I am not asking about unmatched or matched. Did you make
4 any effort to look at vote tabulation history to see what
5 percentage of white Democrats vote for Republicans?

6 A I did not.

7 Q Okay. And you will agree, Dr. Lichtman, that the early
8 voting law was enacted by a Democratic-controlled General
9 Assembly?

10 A Which law -- are we talking the 17-day early voting?

11 Q Yes.

12 A I believe that's right.

13 Q And the same-day registration law was enacted by a
14 Democrat-controlled General Assembly?

15 A I believe that's correct, but some of these laws, of
16 course, had bipartisan support even though the General Assembly
17 was Democratic. So it doesn't just mean that these were
18 partisan-driven laws.

19 Q Do you know how much bipartisan support there was for
20 same-day registration?

21 A I don't think there was much for same-day registration,
22 but I think both early voting and preregistration had, across
23 the party lines, bipartisan support. So these four measures I
24 looked at were not simply party-line measures.

25 Q But the preregistration was enacted by a

1 Democrat-controlled General Assembly; right?

2 A I believe that's right.

3 Q And the out-of-precinct law was enacted by a
4 Democrat-controlled General Assembly?

5 A I believe that's right, but as I said, some of these laws
6 had very substantial support from both parties.

7 Q Do you know the background about what prompted a law to
8 allow out-of-precinct voting?

9 A I don't know the prehistory of that law, no.

10 Q Okay. Can you turn to AL-15? Dr. Lichtman, would you
11 agree that having a statewide race like a governor's race or a
12 Presidential race or a Senate race would tend to increase
13 turnout?

14 A It would tend to.

15 Q And do you know in 2006 -- here you show what the turnout
16 was. Do you know whether or not there was a statewide Senate
17 race in 2006?

18 A I don't believe there was.

19 Q And there was no governor's race, was there?

20 A I think the governor's races in North Carolina are on the
21 Presidential years.

22 Q And, of course, there was no Presidential race?

23 A Of course not.

24 Q So you would expect the turnout in 2006 to be lower than
25 in other years?

1 A Yes, but that's not what I am looking at.

2 Q All right. Now, could you turn to AL-6.

3 A AL-6?

4 Q Yes, that's for the person -- or the lady handling the
5 screen.

6 A I see it.

7 Q And what is this again?

8 A These are the subtractions made by the state legislature
9 in H.B. 589, its photo identification provisions, with respect
10 to what kinds of government-issued IDs were allowed in the
11 House-passed bill but disallowed in the post-*Shelby* bill and
12 then, correspondingly, those IDs that were allowed in both
13 forms of the legislation.

14 Q Okay. Now, Dr. Lichtman, do you know, are student IDs --
15 can you use those to get on an airplane?

16 A I think you can get an airplane without any ID. I
17 document that in my report, and I have seen it happen. My wife
18 forgot her pocketbook, and she went through a process, but she
19 got on a plane without a single ID; and I document that with
20 official government statements in my report. I can read them
21 to you, if you like.

22 Q Was that a burdensome process?

23 A It was a bit of a burden, but she got through with no ID
24 whatsoever.

25 Q But the folks that just walk on through the line, can you

1 do that with a student ID?

2 A Can you what?

3 Q Can you just walk through the line with a student ID
4 without going through extra procedures?

5 A I will read you what the TSA says: "Passengers who do not
6 have a valid photo ID, such as State-issued driver's license,
7 should bring any ID or documents they have available to assist
8 in verification of identity."

9 Now, a student ID, that would be qualified here as
10 state-issued student ID. So they would have a state-issued
11 photo ID, but it's not essential. Two other forms of
12 identification will get you on the plane even without your
13 photo. That's not true under H.B. 589 as passed in the
14 post-*Shelby* era.

15 Q Okay. Dr. Lichtman, is there any rationale for reducing
16 the number of IDs acceptable for voting purposes to reduce
17 confusion among poll workers?

18 A Well, you know, they -- as we documented, not with
19 newspaper articles, but with statements on the record, Georgia
20 is their model. They extensively analyzed Georgia. They
21 indicated things were working really well in Georgia, and
22 Georgia allows all of these IDs, and there doesn't seem to be
23 any confusion, any administrative problems. Nor were there any
24 expert analyses or hearings that would have brought out, post
25 *Shelby*, any problems with confusion with respect to any of

1 these IDs. So the answer is no.

2 Q You don't think it would be reasonable for someone to
3 think that reducing the number of IDs might reduce confusion?

4 A No, not with the experience of other states at hand and
5 experience they analyzed, and not in the absence of any
6 subsequent or additional analysis, no.

7 Q What studies have you made about whether there is
8 confusion at the polls in Georgia?

9 A I haven't made the studies. I am simply citing what
10 members of the legislature who are backing 589 themselves have
11 said, and they analyzed what was going on in Georgia, and I
12 believe certainly no problems with respect to these IDs were
13 raised. Quite the contrary.

14 Members of the legislature, as I've already testified and
15 documented in my report, lauded the earlier version of the bill
16 that included all of these IDs for balancing the two values of
17 securing election integrity, while at the same time having
18 enough IDs available so you are not risking disenfranchising
19 anyone.

20 Q Dr. Lichtman, could you turn to Plaintiffs' Exhibit 534,
21 which is the April 2013 SBE report.

22 A This is -- I've got 534.

23 Q Is that the April 2013 State Board of Elections DMV ID
24 analysis?

25 A It is.

1 Q And you agree this is the only matching analysis that was
2 before the General Assembly at the time VIVA was enacted?

3 A I don't agree.

4 Q Oh, okay. You are saying this other one that we looked
5 at, too?

6 A The January 2013 was certainly before the legislature, and
7 they commented upon it in the emails that I've already cited.
8 So they were well aware of it.

9 Q So the other one is Exhibit 535?

10 A That's correct.

11 Q So those are the two reports that were before the General
12 Assembly when VIVA was enacted?

13 A These are the two published reports. But you recall,
14 Representative Warren was supplied things beyond the public
15 published reports, supplements and charts and graphs and
16 additions. We don't know what they were, but it certainly
17 would indicate other information beyond what was available to
18 the public was available to the vice-chair of the Elections
19 Committee and a sponsor of H.B. 589.

20 Q Were there any other matching reports available to the
21 General Assembly when it enacted VIVA?

22 A No, not that I know of from 2013, no.

23 Q Okay. Could you read -- who is this from, this report?

24 A Pardon me?

25 Q This report is from whom?

1 A The State Board of Elections.

2 Q And does it say who the executive director is?

3 A Yes. I think we already identified him. Gary Bartlett.

4 Q Do you know how Mr. Bartlett came to be the executive
5 director of the State Board of Elections?

6 A I don't know exactly, but probably by appointment. I
7 doubt that he was an elected official.

8 Q Do you know if he was appointed by a Democratic governor?

9 A Probably given -- I don't know. I don't know because I
10 don't know when he was appointed.

11 Q All right. So would you please read into the record the
12 second paragraph on that first page.

13 A Yes. It is a long one.

14 Q That's all right.

15 A "This April 2013 DMV ID analysis supplants our January 7,
16 2013 analysis and its March 5, 2013 supplemental report. The
17 SBOE prepared these analyses as a result of various legislative
18 and media inquiries concerning the possible number of
19 registered voters who may not have NCDMV-issued photo
20 identification. As the title of our reports show, these
21 analyses were only intended to compare the voter registration
22 database against the NCDMV's full customer database and were
23 never intended to be a comprehensive study on the number of
24 voters who may not have any photo ID, regardless of source. At
25 the recent request of legislative leaders and staff, this

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1 agency is updating our earlier analysis to: (1) reflect the
2 reduction of the total number of registered voters through its
3 list maintenance procedures in the statewide voter registration
4 database since January 1, 2013 and (2) apply additional
5 matching criteria to the analysis in order to determine the
6 most accurate estimate on the number of voters for whom we
7 cannot determine to have a photo ID issued by the North
8 Carolina Department of Motor Vehicles."

9 Q Okay. A couple of questions, Dr. Lichtman.

10 A Sure.

11 Q Is this report stating that this report and prior reports
12 by the State Board of Elections were not intended to reach any
13 conclusions about people who lacked photo ID?

14 A I would say that in a double sense. These reports did not
15 say that people could have other photo IDs; certainly they
16 could, but nor did this report, when you go into it, say that
17 those who are matched to a DMV ID were matched to a useable DMV
18 ID for voting because they matched to revoked, canceled, and
19 expired and inactive DMV IDs as well.

20 Q But at the time this report was made -- after this report
21 was made, the House passed a bill that allowed for expired IDs
22 to be used?

23 A That's right. Before *Shelby*, and then they changed it.

24 Q Well, it was changed not by the House, was it?

25 A It was ratified by the House very quickly with three hours

1 of debate. So there was certainly no objections raised to the
2 major changes that were made by the Senate. They were quickly
3 ratified by the House with --

4 Q But this report does not discuss the number of photo IDs
5 that were expired or canceled?

6 A That's correct.

7 Q And then also it does not -- in this report, doesn't it
8 state where Elections say that they were issuing this report to
9 determine the most accurate estimate on the number of voters
10 for whom we cannot determine to have a photo ID?

11 A They say that.

12 Q And this is from the State Board of Elections?

13 A That is correct.

14 Q And it is not from Ray Starling, is it?

15 A No, but they have incentive to say that. They are not
16 going to say, we are doing this because we think it is going to
17 produce an inaccurate or misleading list. Of course, they are
18 going to say that they are doing this for the most accurate
19 possible list.

20 Q Do you have evidence that Ray Starling, or anyone else,
21 encouraged the State Board of Elections to publish a misleading
22 matching report?

23 A Oh, no, of course not. All I am saying is when you expand
24 your number of matching criteria from 4 to almost 30, you
25 inevitably are going to reduce the total number of unmatched.

1 That automatically follows, but you may also produce large
2 numbers of what we call false positives, those who shouldn't be
3 matched but were. So whether it is more accurate or not would
4 require much more analysis than just this statement.

5 Q But the State Board of Elections is saying that this
6 report's more accurate than prior reports?

7 A They are saying that because they are doing it. They are
8 not going to produce a report which they say is less accurate.

9 Q And that's -- this is the document that was before the
10 House before it passed H.B. 589?

11 A Both these documents were before the House when it passed
12 H.B. 589, and both these documents, and particularly the
13 April 2013 report, also had racial breakdowns that showed
14 disparities.

15 Q Got that. But they are saying that this report is more
16 accurate than the previous reports they issued?

17 A Let me see exactly what they are saying about that. Well,
18 not exactly. They are saying something subtly different from
19 that.

20 Q Well, they are. Okay. So you're saying -- the Census
21 says the most accurate estimate on the number of voters for
22 whom we cannot determine have a photo ID. What is so subtly --

23 A It doesn't say it is more accurate with respect to those
24 voters who are matched to a DMV ID. In fact, when you expand
25 the criteria, you are likely to get, as I said, more false

1 matches. And I don't see an analysis balancing the two.

2 Q Okay. Now, I want you to turn to page 5.

3 A Of this same report?

4 Q Yes.

5 A Okay.

6 Q And you see the paragraph that says, "Consistency with
7 Prior Analyses"?

8 A I do.

9 Q Could you read that into the record, please.

10 A If you ask. It is a long one.

11 "In February of 2011 and January 2013, the SBOE conducted
12 similar comparative analyses of the voter registration and
13 NCDMV customer databases. These earlier analyses were prepared
14 as a result of various inquiries that the SBOE received from
15 legislative leaders, legislative staff, and members of the
16 media. In these earlier analyses, this agency used the usual
17 and customary procedures that we have adopted in our list
18 maintenance efforts. In order to identify voters who may need
19 to be removed from the voter lists because they are no longer
20 qualified (due to removal out of the county, death, felony
21 conviction, etc.), it has been our usual practice to only
22 identify exact name matches for the county boards thus in 2011
23 and early 2013, the only matching criteria used was: (1) exact
24 first name, last name and NCDMV customer number; (2) exact
25 first name, last name and the last four digits of a SSN; (3)

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1 exact first name, last name and date of birth; and (4) NCDMV
2 customer number and date of birth. With this April 2013
3 analysis, the SBOE is expanded its matching criteria to allow
4 for additional variation in voters' names and data entry errors
5 on driver's license number, Social Security number or date of
6 birth in either of the databases."

7 Q Dr. Lichtman, isn't it true that in these -- this report
8 is comparing the State Board of Elections voter registration
9 database against a snapshot of the DMV database; is that right?

10 A That's what it's done in all these reports.

11 Q Right. Isn't there a lot of clerical error in these
12 databases?

13 A There is clerical error in all databases.

14 Q And don't people use different names with the SBOE as
15 compared to DMV?

16 A That could happen.

17 Q They might use a different first name and some of them
18 might use a different last name?

19 A That could happen.

20 Q For example, women who get married and change their name
21 might have one last name with the Board of Elections and a
22 different last name with the DMV?

23 A That can happen.

24 Q All right. Now, I want you to turn to the next page about
25 matching results.

1 A Yep.

2 Q Could you read that top paragraph into the record, please?

3 A Okay. "After 29 separate relational queries, the SBOE was
4 able to match over 95 percent of the voters in the voter
5 registration database as of March 25, 2013 and almost
6 97 percent of those voters who participated in the 2012 general
7 election with customers in the NCDMV database. A total of
8 5,185,085 voters, or 81 percent of registered voters could be
9 matched on an exact match of the voters' first name, last name
10 and NCDMV customer number. Comparably, 83 percent of those who
11 participated in the 2012 general election were matched with
12 NCDMV customers based on this exact matching criteria.
13 Subsequent queries using other criteria permitted the SBOE to
14 further" produce -- "reduce the number of voters who could not
15 be matched with customers in the NCDMV database. The total
16 number of registered voters for whom the SBOE could not match
17 with the NCDMV database is 318,643 and the total number of
18 voters with voter history in the 2012 general election for whom
19 the SBOE could not match is 138,425."

20 Q All right. So I got a couple of questions to ask you
21 about that, Dr. Lichtman.

22 In this report that was available to the General Assembly,
23 the State Board of Elections was reporting that 95 percent of
24 registered voters had been matched?

25 A That's right.

1 Q And they were reporting that 97 percent of people who
2 voted in the 2012 general election had been matched?

3 A That's correct.

4 Q And 2012 was a pretty high turnout election?

5 A It was.

6 Q And so if you look at the bottom of that page, they are
7 reporting --

8 A Which page are we on again?

9 Q The same page, page 6.

10 A Hang on. I see it.

11 Q And so they are reporting that of the people who voted in
12 the 2012 general election, they were unable to match 138,425
13 people?

14 A That is correct.

15 Q Okay. Dr. Lichtman, could you -- do you have a calculator
16 up there?

17 A I do.

18 Q I knew you would.

19 A It is a small one, but I have a small fingers.

20 Q Could you tell me, the people who were unmatched for 2012,
21 138,425, what percentage is that of the total registered voters
22 at the top, which is listed as 6,425,820?

23 A I will do that for you.

24 Q I know you're going to disagree with me, but I --

25 A It's apples to oranges, but if you just want me to do the

1 math, I will do the math.

2 Q Yes. I would appreciate it.

3 A It looks like it is 2.2 percent.

4 Q So, Dr. Lichtman, let's turn to the next page, page 7.

5 And this, again, was something that was being reported to the
6 General Assembly in April of 2013?

7 A This was publicly available.

8 Q Right. And the General Assembly had it. We don't dispute
9 that?

10 A No.

11 Q Do you see the section that says, "Factors Which Affected
12 Ability to Match Records"? Do you see that section?

13 A Yes, of course.

14 Q Do you see they are reporting that over a million voters
15 do not have a North Carolina DMV number recorded in their voter
16 record?

17 A Yes.

18 Q And do you see they report that 64 percent of those voters
19 registered prior to 2004?

20 A I see that.

21 Q Do you see they report that was prior to the time that
22 federal law first required states to request an ID number?

23 A I see that.

24 Q And, Dr. Lichtman, do you know if North Carolina requires
25 people to submit their complete Social Security number when

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1 they register?

2 A I haven't studied that.

3 Q Okay. You didn't study that in making your matching
4 report?

5 A I did not do a matching report.

6 Q In making your analysis of the matching report, did you
7 check it to see if North Carolina required voters to submit
8 their full Social Security number?

9 A I didn't check that, no. I didn't do any matching myself.

10 Q Do you see in the second paragraph where the State Board
11 reports that name variations in both databases affect the
12 ability to match records?

13 A Yes.

14 Q And they also say that problems arise when voters
15 incorrectly fill out their form or -- their registration forms
16 so there's data entry errors by the county boards when they
17 process the registration forms?

18 A Yes.

19 Q And this can also -- data errors can also happen when
20 North Carolina DMV examiners are registering people or updating
21 their registration?

22 A Yes.

23 Q And do you see in the report the name variances are also a
24 problem?

25 A Yes.

1 Q And then in the final paragraph, do you see where they say
2 that --

3 A When you say "the final paragraph," do you mean on this
4 page --

5 Q Yes.

6 A -- or the very last paragraph?

7 Q Yes, sir. And actually, it says "Final" --

8 A I see it.

9 Q Do you see where they say that a lot of these unmatched
10 voters may not even live in North Carolina anymore?

11 A I don't know about a lot. It says also possible that
12 voters in the database could not be matched because the voter
13 is no longer qualified to vote. These voters may have died or
14 moved.

15 Q Okay. And then they say that 63,483 of the unmatched
16 voters, almost 20 percent, are in the -- what's called the
17 inactive status?

18 A Yes. I'm very familiar with the inactive status.

19 Q And that means they haven't had any contact with the
20 county board of elections for at least two federal elections?

21 A That's right.

22 Q So four years?

23 A Or, you know, it could be a lot less on that, but after
24 two, they get removed. So it would be less than two.

25 Q And do you see that they also report that -- Dr. Lichtman,

1 do you see where the State Board of Elections reports that
2 10,853 unmatched voters, or 3.4 percent, have a legacy
3 birthdate on their voter registration record?

4 A Yes.

5 Q And do you see further that the legacy birthdate they are
6 given is 01/01/1900?

7 A I do.

8 Q And the State Board represents, do they not, that those
9 voters may not be around anymore?

10 A Well, they may or may not, but they are not really born on
11 1900, as you say. That's a legacy birthdate. They could have
12 been born far, far later than that and still very much around.

13 Q Well, if they had a legacy birthdate in the SEIMS, State
14 Board of Elections voter rolls, that would create problems with
15 trying to match them with whatever birthdate they gave the DMV?

16 A But the matching criteria involve lots of things other
17 than just birthdates.

18 Q Turning the page, Dr. Lichtman, do you see where the State
19 Board indicates that -- a concern that a lot of the unmatched
20 voters may no longer be qualified to vote?

21 A I see that.

22 Q And do you see the table where they report unmatched
23 registered voters and how many federal elections they haven't
24 voted in?

25 A I do.

1 Q So, for example, 182,121 of the unmatched voters did not
2 vote in 2012? The last --

3 A I'm not sure your math is right, but something along those
4 lines. I don't know where you got the 121,000 number, though.
5 I don't see it on that table.

6 Q I meant to say 182,121.

7 A Okay. That's better.

8 Q Okay. And there is 171,736 which didn't vote in the last
9 two general elections?

10 A The table speaks for itself.

11 Q Okay. Now -- and after the General Assembly had this
12 report, we've already discussed that they adopted a
13 two-and-a-half-year rollout period for the effective date of
14 the law?

15 A Correct.

16 Q And they also mandated that there be an educational
17 campaign?

18 A Although a reduced one after H.B. 589 in the post-*Shelby*
19 version.

20 Q Okay. What you like to call a reduced version, do you
21 know how many staff members they hired under the reduced
22 version?

23 A I don't, but I do know it's produced precious few free
24 voter ID cards.

25 Q Okay. How many free voter ID cards have been issued in

1 Georgia, Dr. Lichtman? Have you studied that?

2 A No. But I did study Pennsylvania, and they had over
3 16,000 issued in less time, I believe, than has elapsed since
4 the adoption of H.B. 589. That's some 16 times the number that
5 has been issued in the state of North Carolina.

6 Q But you don't know how many were issued in Georgia?

7 A I'm sorry, what?

8 Q You didn't study how many free ID cards were issued in
9 Georgia?

10 A No, I didn't see how many were issued in Georgia where the
11 law is, of course, quite different from that of ...

12 Q And have you studied how many were issued in South
13 Carolina?

14 A I did not, but, again, South Carolina is not a strict
15 state, doesn't have a strict voter ID law.

16 Q Why doesn't it have a strict law?

17 A Pardon me?

18 Q Why isn't the South Carolina law strict?

19 A Because there are ways in which you can vote without a
20 photo ID by certain affidavits of exception.

21 Q So you studied how the photo ID requirement in North
22 Carolina has been amended?

23 A I have.

24 Q Would you agree that it's no longer a strict law?

25 A That is correct, and I think that sustains the point I was

1 making about the original intent of the legislature in
2 initially adopting H.B. 589, which they affirmed
3 disenfranchises nobody, was perfectly adequate,
4 nondiscriminatory. And then on the -- virtually the eve of
5 this litigation, when they risked losing the entire law or even
6 getting bailed in under the Voting Rights Act, the law is then
7 changed to conform more closely to a nonstrict law and to
8 permit certain kinds of expired IDs with no new information
9 developed and, in fact, rationales that they surely would have
10 known about two years earlier, like leaving your wallet at the
11 Sizzler or having an ID that expired the day before.

12 So I think that change sustains and confirms the testimony
13 I have been giving now for God knows how many hours.

14 Q Unfortunately, Dr. Lichtman, you are going to be here a
15 little bit longer.

16 A Can I get a break then? I have a medical condition.

17 **THE COURT:** Okay. All right. We'll take a break.
18 How much more do you have?

19 **MR. FARR:** A bit.

20 **THE COURT:** Okay. All right. Will ten minutes do
21 it?

22 **THE WITNESS:** That will be fine.

23 (The Court recessed at 4:38 p.m.)

24 (The Court was called back to order at 4:47 p.m.)

25 **THE COURT:** All right. Do you know how much more you

1 have?

2 **MR. FARR:** Your Honor, I am going to think it is
3 going to go beyond 5:00.

4 **THE COURT:** Do you know how much more beyond that you
5 would be?

6 **MR. FARR:** Thirty minutes to forty-five minutes.

7 **THE COURT:** All right. I'm not inclined to stay that
8 long past 5:00. Normally I would, but I can't do that today.

9 **MR. FARR:** All right.

10 **THE COURT:** So it is what it is; but if you think you
11 are going to be done earlier than that, I could stay 10 or 15
12 minutes.

13 **MR. DONOVAN:** We have no redirect, Your Honor, at
14 this time.

15 **THE COURT:** Okay.

16 **MR. FARR:** Your Honor, if I surprise myself --

17 **THE COURT:** Okay. Let's move forward, and we'll see.
18 I'll stop you close to 5:00 and make an inquiry.

19 You may proceed.

20 **BY MR. FARR**

21 Q All right. Dr. Lichtman, when you studied the legislative
22 process in North Carolina related to H.B. 589 for the VIVA law,
23 how many bills did you study -- North Carolina bills did you
24 study for how they were handled out of legislature?

25 A Well, I didn't study any bills. My report was not based

1 on legislative procedure per se. I believe Mr. Lawson's
2 declaration and testimony is going to deal with that.

3 Q Okay. So you didn't look to see if any parts of the VIVA
4 law that were added by the Senate had been previously
5 introduced by other members?

6 A I knew some pieces of it had been previously introduced
7 but not pushed forward to passage; and even though a voter ID
8 bill had been pushed forward to passage, that one part of it,
9 sponsors of H.B. 589 still affirmed they needed a year-long,
10 nearly year-long extensive process of analysis with respect to
11 the photo ID portion of the bill, and, certainly, there was
12 nothing like that even close on the nonphoto ID portions of the
13 bill.

14 Q But all the portions of the bill that were added by the
15 Senate are election practices that are followed by a majority
16 of the states in the United States?

17 A I don't understand the question. And I don't think that's
18 true.

19 Q I thought we went over that.

20 A We didn't go over all of them. We went over some but --

21 Q The ones that are involved in this lawsuit, Dr. Lichtman.
22 Like most states don't have same-day registration?

23 A Well, we went over that. When you count Election Day
24 registration, it's pretty -- it's just about half.

25 Q Okay. Now, you didn't study how -- the process for how

1 bills are handled by either the House or the Senate after they
2 are sent to that body by the other body?

3 A No, I didn't make a point of that in my report. That's
4 not what I am analyzing. As I said, others are doing that.

5 Q Right. And you didn't study how bills were handled when
6 they are sent to the opposite chamber towards the end of the
7 legislative session?

8 A I am going to have to answer that a little bit
9 differently.

10 Q Okay.

11 A My understanding is there's there normal end of the
12 legislative session, that legislative sessions in North
13 Carolina, like in other states, can, in fact, be extended.

14 Q Well, was there an adjournment resolution in 2013 that was
15 enforced?

16 A There probably was, but that's the same majority that
17 could have unenforced it.

18 Q Okay. In the summertime when people are ready to take
19 their vacation?

20 A If it's important enough, vacations can be sacrificed.

21 Q All right. Do you recall that there was a Senate
22 committee hearing where individuals from the public were
23 allowed to speak?

24 A I believe there was a brief hearing, not in a substantive
25 committee but in the Senate Rules Committee, and nothing

1 approaching the wide-open public hearings on the pre-*Shelby*
2 version.

3 Q Did the Senate or the House break any rules of procedure?

4 A As I said, I didn't study that issue; but as far as I
5 know, they did not.

6 Q Did any Democratic member contend that the Republican
7 majority had broken a rule of procedure?

8 A I can't answer that because -- since I didn't study that.

9 Q Did members of the minority party offer amendments?

10 A They did.

11 Q Were some of those amendments accepted?

12 A Some, but not amendments that changed the fundamentals of
13 the law.

14 Q Dr. Lichtman, would you agree that, unfortunately, there
15 are disparities between whites and blacks in the areas of
16 educational attainment and poverty in all states in the United
17 States?

18 A Certainly in the vast majority. I wouldn't say I have
19 studied every single state, but in the vast overwhelming
20 majority.

21 Q Are there not states where those disparities are higher
22 than they are in North Carolina?

23 A I haven't studied that, but disparities vary all over the
24 country.

25 Q You've never studied the disparities -- in all your work

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1 as an expert witness, you've never looked at disparities in
2 education or poverty in other states?

3 A I have, but I haven't ranked the states in terms of their
4 disparities; and my experience is there is a lot of different
5 measures, and it is not all linear. Some states could have
6 greater disparities on some but lesser disparities on others.
7 And, of course, regardless of what other disparities may exist
8 in other states, they are here in North Carolina,
9 unfortunately.

10 Q Are there disparities in these areas in the state of
11 Maryland where you live?

12 A Certainly.

13 Q Now, Dr. Lichtman, you would agree that if you look just
14 at the turnout statistics in 2014 compared to 2010, the turnout
15 statistics do not indicate a disparate impact in turnout?

16 A I don't understand that question. What do you mean by
17 disparity in turnout? There is a disparity in turnout in 2014.
18 We can put the chart back up, if you want to look at it; but,
19 in fact, white turnout as a percentage of registered voters in
20 2014 is higher than African-American turnout as a percentage of
21 registered voters.

22 Q Did African-American turnout increase at a higher rate
23 than white turnout?

24 A That is correct.

25 Q Have you done a study on what the black turnout would have

1 been in 2014 if the VIVA law had not been enacted and enforced
2 in the 2014 election?

3 A That's kind of an impossible study, but I did drill into,
4 in my report, I believe it's my surrebuttal report, two aspects
5 of VIVA that you could analyze because they were essentially
6 abolished, and, that is, same-day registration and the partial
7 counting of out-of-precinct ballots. And I found that there
8 were a significant number of votes lost as a result of the
9 abolition of same-day registration and that those votes were
10 disproportionately African-American; and I also found that in
11 terms of out-of-precinct voting that was not counted, another
12 way in which votes were lost, those were also
13 disproportionately African-American.

14 Now, there are lots of other influences on turnout, but
15 those are two things that you could look at specifically and
16 see, yes, there are lost votes and, yes, those lost votes are
17 disproportionately African-American.

18 Q Dr. Lichtman, your testimony about SDR being eliminated,
19 was that in the report you talked about that there were 10,936
20 registration applications that were made after the books were
21 closed?

22 A That's part of my analysis, yes. That's a section of my
23 report.

24 Q Is that the part that you are relying on to say that there
25 are lost votes because of same-day registration --

1 A That whole section, yes.

2 Q Okay. Of those registration applications, do you know --
3 did you compare that number in 2014 to the same time frame in
4 2010 for people who did not use same-day registration?

5 A I did not have the data on people in 2010 who did not use
6 same-day registration.

7 Q Right. But you could have gotten that because you have
8 the SEIMS database?

9 A Yes, it was possible to get that.

10 Q But you didn't look at 2010 and compare the number of
11 people who registered in 2010 during the early voting period in
12 ways other than same-day registration and compare that to the
13 numbers you found for 2014?

14 A No. What I did compare was those who same-day registered
15 and voted, which were 21,432, and looked at the dropoff, A, and
16 B, what the racial composition of those same-day registrants
17 were, and I indicated that those were a much larger number of
18 lost votes than the 10,000 plus who registered but did not get
19 authorized to vote in 2014.

20 Q Okay. But the people who -- did you study whether or
21 not -- for people who use same-day registration in 2010, did
22 you determine whether they voted or not in 2014?

23 A I did not study that.

24 Q Okay. And the registration applications you looked at for
25 2014, do you know how those people submitted their registration

1 applications?

2 A The data did not show how they submitted their
3 applications. They could have been in various forms. They
4 could have been at a same-day registration center. They could
5 have been through the mail. They could have been at a DMV
6 office.

7 Q Okay. And in your report, didn't you say that you relied
8 upon information that Dr. Stewart had on this issue?

9 A In part, yes.

10 Q Okay. And did you check to see how many provisional
11 ballots were cast during early voting for the reason of no
12 record of registration?

13 A I did not.

14 Q Of the 10,936 individuals that you looked at who you
15 believe registered during the -- after the books closed, do you
16 know when those individuals submitted their registration?

17 A I just know it was during what previously had been the
18 one-stop same-day registration period.

19 Q Okay. Do you know whether or not the date that you were
20 looking at was the date they actually submitted their
21 registration or was it the date that the county board of
22 elections processed it?

23 A I am not certain, but it was probably processed.

24 Q Okay. So that means they might have submitted it before
25 the early voting period?

1 A If you are talking only about the 10,000 plus, no, because
2 I subtracted from the analysis 1,057 who had submitted
3 registrations but were, in fact, processed for voting, but of
4 those, only 219 actually voted. This is why same-day
5 registration is different from every other kind of
6 registration, because when you register at another time, there
7 is a substantial likelihood, particularly in a midterm
8 election, that you're not going to vote. As we saw, only about
9 20 percent of this 1,057 voting; but when you register same
10 day, about 97, 98 percent of those who register same day also
11 vote. That's why same-day registration is not transferable in
12 any other kind of registration.

13 **THE COURT:** Do you know how much more you have?

14 **MR. FARR:** Probably about 15 minutes.

15 **THE COURT:** Fifteen?

16 **MR. FARR:** Fifteen to twenty.

17 **MR. DONOVAN:** Still no redirect, Your Honor.

18 **THE COURT:** All right. I will go to 5:15 if you
19 think you are going to finish, but what I don't want to do is
20 keep going and keep going and find out we're not going to
21 finish. I am not -- it's your time, but if you all think you
22 can get done, I will have everybody --

23 **MR. FARR:** Well, Your Honor, I don't want you to be
24 mad at me if it goes past 5:15.

25 **THE COURT:** All right. Why don't you give it your

1 best shot. Let's see what we do.

2 **MR. FARR:** I will try my best, Your Honor.

3 **THE COURT:** I am not going to be mad at anybody.

4 **MR. FARR:** Well, that's reassuring.

5 **BY MR. FARR**

6 Q Dr. Lichtman, I want to ask you about your supplemental
7 report regarding public assistance voter registration.

8 A Okay. Let me get that before me. I got it.

9 **MR. FARR:** And, Your Honor, we still believe this
10 testimony is not relevant, and we don't intend to waive that
11 objection by questioning Dr. Lichtman on this topic. We feel
12 like we have to since you've reserved your ruling on that.

13 **THE COURT:** All right.

14 **MR. FARR:** Can we call up AL-16?

15 **BY MR. FARR**

16 Q So, Dr. Lichtman, there are some things I don't quite
17 understand about your report, and I am sure you will fill me
18 in. And my first question was: The report that you had
19 prepared here, is this based upon people who actually
20 registered?

21 A These are those non-applications. These are listed in the
22 voter files as new registrants, as submitted by the State to
23 the NVRA.

24 Q So your report doesn't include people who decline to
25 register?

1 A No, these are new registrants.

2 Q Your report doesn't include people who may have received a
3 registration application who didn't turn it back in?

4 A That is correct.

5 Q How did you determine --

6 A However, I have seen data on registration applications
7 because the NVRA just published its biannual -- every two years
8 it publishes a report that lists public assistance applications
9 by state, and North Carolina fell from 50,000 in the cycle 2011
10 to 2012 to 18,000 in the cycle 2013, 2014. So there is data on
11 that, and it shows the same pattern.

12 Q Okay. So how did you determine the number of people who
13 registered?

14 A From the NVRA reports that the State is required to submit
15 to the Federal Government.

16 Q Did you get that from the North Carolina Board of
17 Elections database?

18 A Yes.

19 Q Did you look at certain sources?

20 A Did I look at what?

21 Q The source codes?

22 A No. I didn't, you know, do this matching myself, of
23 course. David Ely of COMPASS Demographics is an expert in
24 doing this, but I checked all of the data.

25 What happened since 2013 is the State no longer produces

1 clear reports on this accessible to the public; rather, they
2 have monthly reports that are complicated in CSV that need to
3 be translated by experts like David Ely.

4 Q Okay. So you didn't actually calculate the numbers
5 yourself?

6 A I calculated the numbers. David Ely just decoded the
7 reports for me.

8 Q Okay. Do you know what source codes he looked at?

9 A I do not know anything about source codes.

10 Q Who is David Ely?

11 A He is the president of COMPASS Demographics. He is
12 referenced in my February 12, 2015, report as someone who does
13 database management.

14 Q Okay. Now, Dr. Lichtman, have you ever worked in a Social
15 Services agency where people come to apply for benefits?

16 A I have not.

17 Q Have you ever observed how that's -- how people do that in
18 North Carolina?

19 A I have not.

20 Q Do you know if the process for in-person applications for
21 Social Service benefits is different today than it was back in
22 2011 or 2012?

23 A It is certainly possible; but I checked this analysis, you
24 recall in my direct testimony, by dividing the number of public
25 service -- public assistance registrations by the number of

1 public assistance applications, and so you got the very same
2 pattern. So it is not due to some shift in how public
3 assistance applications are dealt with in North Carolina.

4 Q Well, that's your opinion; right?

5 A It is not my opinion. It's based on an analysis.

6 Q Okay. It is based upon your analysis?

7 A Of course.

8 Q Okay. And -- but you don't know if the way the folks who
9 work in these agencies help people apply for benefits today in
10 2014 is any different than it was in 2011 or 2012? That's a
11 yes-or-no question, Dr. Lichtman.

12 A Of course I don't know that, but the only way this -- such
13 a change would explain this is if they stopped providing
14 assistance because the change is abrupt and dramatic and
15 substantial and sustained.

16 Q Okay. Have you checked on the volume of in-person traffic
17 at Social Service agencies in North Carolina in 2013 or 2014?

18 A Yes. Well, not necessarily in-person traffic, but as we
19 just went through, I checked on the number of public assistance
20 applications to make sure that this pattern did not reflect a
21 decline in public assistance applications.

22 Q You checked --

23 A It does not.

24 Q Okay. But you -- as far as the registration information,
25 you looked at information gathered by -- is it Mr. Ely?

1 A No, Mr. Ely did not gather any information.

2 Q Did I get his name right?

3 A David Ely. He did not gather the information. The State
4 is required to submit NVRA reports under the federal
5 legislation. That's why I was also able to cite statistics
6 from the biannual NVRA publications, and so this was taken from
7 data supplied to the NVRA, the National Voting Registration
8 Assistance Administration, directly from the State. These were
9 not calculated by me. They were not calculated by Mr. Ely
10 except in the sense that we added them up.

11 Q So you've confused me a little bit. Did you look at the
12 State Board of Elections database or did Mr. Ely look at the
13 database, or are you saying that you looked at some written
14 report that was filed by North Carolina?

15 A These were reports filed by North Carolina. I think they
16 were on the SBOE website, but I am not 100 percent sure. I am
17 pretty sure they were.

18 Q Okay.

19 A But they are directly from the State, and they reflect
20 what the NVRA reports in its own publications.

21 **MR. FARR:** Your Honor, I think we are not going to be
22 done by 5:15. So I would suggest we just adjourn for the day.

23 **THE COURT:** Do you think you are going to go
24 substantially beyond that?

25 **MR. FARR:** I would say at least to 5:30.

1 **THE COURT:** We'll stop right there. You may step
2 down, sir.

3 **MR. RUSS:** If I may be heard on one point?
4 Dr. Lawson is trying to adjust his schedule to be available
5 first thing Monday morning. With the Court's indulgence, we
6 might ask that this examination of this witness be suspended so
7 we can do a very short direct and allow for cross-examination
8 of Dr. Lawson first thing on Monday morning.

9 **THE COURT:** Any objection?

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

11 **THE COURT:** Let me tell you a scheduling matter. I
12 have a fairness hearing that's previously scheduled in another
13 case at 9:00 on Monday. So we won't start until probably 9:30
14 anyway. I am hopeful that that won't take very long, based on
15 the materials. One never knows. So I would plan on starting
16 as soon as we can after that, but it won't be right at 9:00.

17 **MR. RUSS:** That's fine, Your Honor, as long as Dr.
18 Lawson can go --

19 **THE COURT:** I understand you have no objection to
20 them taking Dr. Lawson out of turn.

21 **MR. FARR:** We would be happy to accommodate the
22 Plaintiffs.

23 **THE COURT:** Okay.

24 **MR. RUSS:** Thank you, Your Honor.

25 **MR. DONOVAN:** Your Honor, I assume the open

1 weekend -- we'll still limit cross to nonduplicative matters.

2 I hope that --

3 **THE COURT:** We can do Sunday court, if you want to do
4 Sunday court.

5 **MR. DONOVAN:** I'm here, so whenever you want.

6 **THE COURT:** I am just joking.

7 **MR. DONOVAN:** I understand. I was getting looks. I
8 am pretty sure you were joking.

9 **THE COURT:** Yeah. Okay. So you are still working on
10 that? You say you're working with the Defendants still on some
11 issues?

12 **MR. DONOVAN:** We are still working. We have the
13 depositions tomorrow. We still have some other issues. We're
14 going to have to find time on Monday for some of these other
15 issues.

16 **THE COURT:** If you have something for me to review,
17 if you can get it to me first thing Monday morning when you're
18 back in the courtroom, give it to Ms. Engle, and I will take a
19 look at it hopefully before we get started or at a break. I
20 would like to be able to do that to keep things moving. How
21 are we doing generally in your case in terms of --

22 **MR. DONOVAN:** We are doing pretty well. Not as
23 quickly as we hoped, but I think we are doing okay. I
24 estimated before that I thought we would probably rest Tuesday,
25 early Wednesday. It's probably now Wednesday, maybe early

1 Thursday. So I think we are moving on pace. We have some of
2 these issues that we can't work out again, but it is moving at
3 pace.

4 **THE COURT:** Thank you for that.

5 **MR. SPIVA:** My name is Bruce Spiva. I haven't had a
6 chance to speak yet. I represent the Duke Intervenor
7 Plaintiffs. Our lead Plaintiff, Lewis Duke, is only available
8 Monday morning. He's got a job issue that won't allow him to
9 go at another time. So we would just request that he be
10 allowed to go first thing on Monday morning.

11 **THE COURT:** Any objection? Well, you are going to
12 have to work with Mr. Russ.

13 **MR. SPIVA:** We'll talk with our Co-Plaintiffs, but I
14 just wanted to note that he does have an issue. So given that
15 it is going to be something -- the cross X is going to be a
16 little out of order, I didn't want to say nothing before
17 Monday.

18 **THE COURT:** All right. So you are saying you might
19 want to put him on before we finish with Dr. Lichtman?

20 **MR. SPIVA:** Yes.

21 **THE COURT:** I'm fine with that, as long as you work
22 with the lawyers.

23 Okay. Anybody have anything else? All right. Have
24 a good weekend. We'll see you Monday. It will probably be
25 close to 9:30.

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(The Court recessed at 5:12 p.m.)

END OF TRIAL DAY FIVE

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 30th day of July 2015.
11

12 
13

14 Briana L. Nesbit, RPR
15 Official Court Reporter
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