

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

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

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

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16 UNITED STATES OF AMERICA, ) CASE NO. 1:13CV861  
17 Plaintiff, )  
18 V. )  
19 STATE OF NORTH CAROLINA, et al., ) Winston-Salem, North Carolina  
20 Defendants. ) July 20, 2015  
9:31 a.m.

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

25 Proceedings recorded by mechanical stenotype reporter.  
Transcript produced by computer-aided transcription.

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

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

3 **MR. FISHER:** Good morning, Your Honor. The United  
4 States calls Dr. Steven F. Lawson to the stand.

5 **STEVEN F. LAWSON, PH.D., PLAINTIFFS' WITNESS,** at 9:32 a.m.,  
6 being first duly sworn, testified as follows:

## D I R E C T E X A M I N A T I O N

7  
8 **BY MR. FISHER**

9 Q Good morning, Dr. Lawson.

10 A Good morning.

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

12 A Steven, S-T-E-V-E-N, Lawson, L-A-W-S-O-N.

13 Q And where do you work?

14 A I am Professor Emeritus of history at Rutgers, the State  
15 University of New Jersey.

16 Q And how long did you teach at Rutgers?

17 A I taught at Rutgers for 10 years.

18 Q And have you taught anywhere else?

19 A Yes. I taught for 20 years and was head of the history  
20 department at the University of South Florida in Tampa, six  
21 years, and also head of the history department at the  
22 University of North Carolina, Greensboro, and then Rutgers.  
23 One year, 2009 and '10, I was visiting senior Mellon scholar at  
24 the University of Cambridge, England.

25 Q And what is your educational background?

1 A I have a BA in history from the City College of New York,  
2 an MA and Ph.D. in history from Columbia University.

3 Q And as a scholar, has any of your work specifically  
4 focused on North Carolina?

5 A Not my published work, but when I was at the University of  
6 North Carolina, Greensboro, I was codirector for a year of a  
7 southern oral history project that came out of the University  
8 of North Carolina, Chapel Hill, on interviewing lawmakers in  
9 the state legislature of North Carolina and also other  
10 politicians in the state.

11 Q Could you summarize the books and essays that you've  
12 published.

13 A Yes. I published *Black Ballots: Voting Rights in the*  
14 *South, 1944-1969; In Pursuit of Power: Southern Blacks and*  
15 *Electoral Politics, 1965-1982; Running for Freedom: Civil*  
16 *Rights and Black Politics in America Since 1941*, which has gone  
17 through four editions; and *Debating the Civil Rights Movement*,  
18 which has gone through two editions.

19 Q And what year was *Black Ballots* published?

20 A It was published in 1976.

21 Q And in *Black Ballots*, did you examine subtle and facially  
22 neutral ways in which states intentionally excluded black  
23 voters from the political process?

24 A I did.

25 Q And can you tell me about that, please.

1 A In *Black Ballots* and, actually, also in *In Pursuit of*  
2 *Power*, what I did was looked at really from the end of  
3 Reconstruction through 1965 the ways in which southern states  
4 passed, on their face, neutral laws, like literacy tests, poll  
5 taxes, grandfather clauses, which didn't specify race in any  
6 way, but I looked at the ways in which the legislative bodies  
7 that passed these and then enforced these, at the county and  
8 state levels, looked at it in ways that were racially  
9 discriminatory.

10 Q And as a historian and in your academic writing, have you  
11 often written about issues concerning the intent of political  
12 actors?

13 A Yes, I have.

14 Q Have you served as an expert in any voting rights cases?

15 A Yes, three voting rights cases: One in the 1970s  
16 involving Hillsborough county in Tampa, Florida; one in the  
17 1980s which involved Hardee County, Florida; and one in the  
18 1990s, which was a majority vote runoff case in Georgia.

19 Q And in those cases, did you testify as to whether the  
20 method of election at issue was adopted with the intent of  
21 discriminating against minority voters?

22 A Yes, sir, in the Hardee County and the Georgia cases, I  
23 did testify to that extent.

24 Q And in testifying as an expert witness in those cases,  
25 what methodology did you use?

1 A Well, I am a professional academic historian. I would  
2 call myself a qualitative historian as opposed to some of the  
3 quantitative historians that you've heard the last week, which  
4 means I don't emphasize -- I don't know, actually, multiple  
5 regression analyses and things of that nature. I look at  
6 archives, documents, published reports in order to make my  
7 determination, and what I do is I look at the long historical  
8 background to any particular event that I am studying. I look  
9 at the procedures that took place in order to reach the  
10 decisions that lawmakers and legislators reach, and I see if  
11 they were any deviations from previous procedures to see what  
12 that might mean for the final laws that passed.

13 Q And as a scholar researching the issue of legislative  
14 intent, for instance, if you were writing a book about  
15 H.B. 589, would you go about it the same way?

16 A Yes, I would go about it the same way. If I were writing  
17 the book in ten years, I might have more access to documents  
18 perhaps in archives than I was able to get now, but the basic  
19 technique would be the same way. I would look at government  
20 documents. I would look at the secondary sources that were  
21 published. I would look at reports that were issued, both  
22 publicly and privately, whatever I could find in the archives,  
23 and evidentiary records, and I would look at the newspapers.

24 Q Today, you mentioned historical background and the events  
25 leading up to the passage of a bill. Are contemporaneous

1 statements also important in your research?

2 A Absolutely. What you are looking at -- what you are  
3 trying to do as an historian is to see what the people at the  
4 particular time you are studying said, believed, argued. You  
5 want to get a sense of the mode of operation of that particular  
6 period. So, yes, very important.

7 Q And this methodology that you discussed here today, is  
8 that the methodology you employed in this case?

9 A I did.

10 **MR. FISHER:** Your Honor, the United States would like  
11 to proffer Dr. Lawson as an expert in the history of minority  
12 voting rights in the South since 1945 and the analysis of  
13 legislative intent.

14 **THE COURT:** Any objection?

15 **MR. STRACH:** I don't know what "analysis of  
16 legislative intent" means. We will be raising the same  
17 objection as to any ultimate testimony on the ultimate issue of  
18 intent. Other than to that extent, we don't object to his  
19 qualifications.

20 **THE COURT:** He may give his opinion.

21 **BY MR. FISHER**

22 Q Let's turn to your work in this case. What were you asked  
23 to do in this case?

24 A I was asked to examine and prepare a report to assist the  
25 Court in examining whether the passage of House Bill 589 had a

1 racial motivation.

2 Q And what types of source materials did you examine?

3 A I examined the legislative record as it was published in  
4 the journals. I was provided transcripts of the debates and  
5 hearings, certainly in 2013, and those transcripts are not  
6 routinely available. They are not published in any source like  
7 the Congressional Record does for national legislature or the  
8 kind of hearings that you would find if Congress was  
9 participating in it, but you were able to furnish me with those  
10 transcripts.

11 For some earlier measures, the 2011 session, there are  
12 audio recordings of the legislative debates and the hearings  
13 that are online. So you can get it that way, which I did.

14 I looked at secondary sources, histories of North Carolina  
15 written by historians, sociologists, journalists, to give me  
16 some background on this topic. I looked at reports of groups  
17 on both sides of this issue, nonpartisan groups on both sides  
18 of this issue. I looked at blogs, to the extent I could find  
19 them, of various people who -- or organizations that were  
20 arguing on both sides of the issue.

21 And I did an extensive survey of North Carolina newspapers  
22 that were available to me to check and make sure for their  
23 accuracy.

24 Q Did you also look at emails in this case?

25 A I did. I was provided with perhaps a dozen emails.

1 Q Now, you just mentioned the distinction with transcripts  
2 not normally being available to you. But are the sources that  
3 you've described the sources that an historian would normally  
4 examine when analyzing legislative intent?

5 A Yes. All the sources that I looked at and mentioned are  
6 all sources that you would have to look at from an historical  
7 point of view as opposed to a legal point of view. I didn't do  
8 any analysis, I have no opinion, about the legal notion of  
9 intent, but I do have -- I did look at very carefully using the  
10 standard of historical methodology of intent as it appears  
11 through historical interpretation.

12 Q In looking through *Black Ballots*, the book that you  
13 mentioned earlier, there are numerous citations to news  
14 articles. Do political historians often use news articles in  
15 their research?

16 A Absolutely. I would say not just political historians,  
17 but all historians in general, but certainly political  
18 historians.

19 Q If you saw something clearly out of context or otherwise  
20 unreliable in a news article, would you use it?

21 A Oh, absolutely not.

22 Q Now, I put in front of you a binder. Can you take a look  
23 at that. Does this binder contain your declaration from 2014  
24 prior to the preliminary injunction hearing as well as your  
25 supplement declaration from 2015 in this case?



1 A Yes.

2 Q And do these type of reports present the analysis you  
3 performed to reach your conclusions in this matter?

4 A Yes, they do.

5 Q Can you tell me just briefly about the different subject  
6 matters of those reports?

7 A When you say "subject matters"...

8 Q Yes. What did each report address?

9 A The first report -- in the first report, I addressed the  
10 passage of 589, the historical events that preceded it, both  
11 in, let's say, the 10, 11 years before and then a much longer  
12 period of time going back to the turn of the century.

13 I looked at the sequence of events with respect to the  
14 immediate passage, the passage in 2013, of the bill, and then I  
15 followed that in 2013, looking at that sequence for the entire  
16 year.

17 The second report, I looked more closely, not at the very  
18 long history of voter discrimination and racial campaigning in  
19 the South in North Carolina, I looked at the period after 1965,  
20 from 1965 to 2013. I looked at that period in North Carolina,  
21 specifically at racial campaigning, to see what happened after  
22 the Voting Rights Act was passed, and that was part of the  
23 report.

24 Then I looked at the other forms of discrimination that  
25 can be gauged by court cases and the involvement of the Voting

1 Rights Act enforcement. And then I concluded, finally, looking  
2 closely at whether the legislature had departed from customary  
3 procedures, as I could determine them, particularly in the 10  
4 years -- 13 years really, preceding the passage of 589. So I  
5 looked at that closely.

6 **MR. FISHER:** And, Your Honor, at this time the United  
7 States would like to move into the trial record Plaintiffs'  
8 Exhibit 47 as well as Plaintiffs' Exhibit 238, which are the  
9 expert report and supplemental expert report of Dr. Lawson.

10 **THE COURT:** Just so that I'm clear, which is which?  
11 I have in the binder Plaintiffs' Exhibit 47, which seems to  
12 include a surrebuttal declaration; is that right?

13 **MR. FISHER:** Yes, sir.

14 **THE COURT:** So what's in 47? Is it declaration --

15 **MR. FISHER:** Forty Seven --

16 **THE COURT:** -- and surrebuttal declaration?

17 **MR. FISHER:** Yes, Your Honor. Correct, Your Honor.  
18 That's from 2014 prior to the preliminary injunction hearing.  
19 And then Plaintiffs' Exhibit 238 is the supplemental report  
20 that Dr. Lawson just discussed from February of 2015.

21 **THE COURT:** All right. Any objection?

22 **MR. STRACH:** Your Honor, just the same objection that  
23 we had with Dr. Lichtman. To the extent that the report relies  
24 on news articles for the truth of the matter asserted or for  
25 legislative intent or opines on ultimate issues that are

1 reserved for the Court, if they intend to rely on those  
2 opinions, we would object to that; but we don't otherwise  
3 object to the report coming in.

4 **MR. FISHER:** If I may, Your Honor, we have some  
5 points on that that I would like to discuss.

6 **THE COURT:** I will admit them, and I am going to just  
7 reserve on the issue of any question. I will take it question  
8 by question as to any question as to ultimate intent opinion  
9 rather than to hash it out here in court. I am just going to  
10 reserve on that, and I'll make a ruling later on that.

11 **MR. FISHER:** If I could just make one more plea on  
12 that, Your Honor. I've got about ten minutes left with  
13 Dr. Lawson. I do not expect that I can get anywhere near close  
14 to uncovering all of his reliance on news articles and, for  
15 that matter, everything that's important for the case.

16 I think based on his explanation of his methodology  
17 today, you know, his report should be credited in its entirety,  
18 and that's what the United States' argument at this point would  
19 be with regard to news articles. We believe that he reasonably  
20 relied on them. The Defendants have not questioned his  
21 methodology. There is not a *Daubert* motion with regard to  
22 Dr. Lawson. We believe it is their burden to do so, question  
23 his methodology, which they have not done.

24 Under Rule 703, like any expert, he can rely on  
25 evidence, even inadmissible evidence, including hearsay, to

1 form his opinion. And we earlier cited to the Court some cases  
2 involving news articles. We would also, on the evidentiary  
3 point of reliance on hearsay, cite the Court to *Ward v. Dixie*,  
4 a Fourth Circuit case, and that's 595 F. 3d 164, and the  
5 pinpoint is 182.

6 Now, Your Honor, you have asked last week if there  
7 were some areas of specific concern, and we have at least two  
8 that I could discuss here today. One is mentioned on  
9 paragraph 54 of Dr. Lawson's 2014 report, and that's the  
10 article, and this has been discussed previously -- Senator  
11 Apodaca's quote concerning moving ahead with the full bill.

12 Now, that quote is contained in an article,  
13 Plaintiffs' Exhibit 81, that was part of the stipulation in  
14 this matter. So it also brings in that issue as well, the fact  
15 that the United States relied on that stipulation and for the  
16 contents of what ultimately would be the trial record.

17 Now, the second that I can point out today -- and I  
18 have these articles with me -- is paragraph 65 of Dr. Lawson's  
19 2014 report, where Representative Blust in a news article is  
20 quoted as indicating that the concurrence process in the House  
21 that was followed in July of 2013 was not good practice, and  
22 the quote is a little bit longer than that. That's Plaintiffs'  
23 Exhibit 91. I have both of those articles with me.

24 And each of those articles, as I mentioned, is listed  
25 on our trial exhibit list. Both would have been covered by the

1 stipulation that the United States relied on with the  
2 Defendants, and I am prepared to move both into the record  
3 today.

4 **THE COURT:** Well, if you want to move them into the  
5 record, you can move them into the record, and I will deal with  
6 that separately.

7 **BY MR. FISHER**

8 Q Dr. Lawson, in your reports, you discuss evidence related  
9 to what courts have called "the *Arlington Heights* factors"; is  
10 that correct?

11 A Yes.

12 Q You mentioned earlier -- you discussed in detail the  
13 political history of North Carolina, particularly after the  
14 Voting Rights Act of 1965?

15 A Yes.

16 Q In your report, you talk about evidence of the foreseeable  
17 impact of H.B. 589; is that correct?

18 A Correct.

19 Q I want to turn to an area that you examined in great  
20 detail in your reports and that you just talked about, and  
21 that's the subject matter of your February 2015 report, the  
22 legislative procedures used to pass H.B. 589.

23 A Yes.

24 Q We only have, as I mentioned just a minute ago, only a few  
25 minutes to hit the wave tops of this. What is the significance

1 of the procedures used to pass H.B. 589 to the question of  
2 legislative intent?

3 A Yes. My determination, after examining at least a decade  
4 of election reform legislation and other legislation, some of  
5 it contemporaneous with the passage of H.B. 589 in 2013, is  
6 that there were significant departures from customary  
7 practices.

8 Q Okay. And how did the legislature depart from its  
9 customary practices?

10 A Over the period of time that I examined, bills dealing  
11 with elections were sent to -- when they were sent to the  
12 Senate, went to a Senate committee that customarily had  
13 expertise with elections. That often was the Senate Judiciary  
14 Committee, but it could be another committee as well that had  
15 elections or something like that in its title.

16 In 2013 and, in fact, in 2011, the voter ID bill and a  
17 shortening of early voting, when the Republicans had control of  
18 the legislature, the bills went to various committees, like the  
19 Judiciary Committee. In 2013, the bill was sent to the Senate  
20 Rules Committee, whose traditional function is to deal with  
21 rules. So that was one case, one instance of procedure.

22 In a large number, a significant number of the bills that  
23 I examined from 1999 onward, when there was a significant  
24 difference between House and Senate versions, whichever the  
25 last body -- the original body that was asked to look at the

1 bill again after a significant change, that body voted no  
2 concurrence, and then the bill was sent to a conference  
3 committee to work out the details.

4 On other bills of importance, it turns out that there was  
5 significant discussion, debate, deliberation over it, and  
6 H.B. 589, although that was true in the April adoption of 589,  
7 in the July adoption of 589, there was almost no discussion in  
8 the House except for a couple-of-hour debate on a radically  
9 different version of 589.

10 Q So we've heard, and we heard last week, that the voter ID  
11 provisions of the House and Senate versions of the bill were  
12 different; is that correct?

13 A Correct.

14 Q And when House members first passed the bill, did they  
15 appear to approve of that version of the bill?

16 A Yes, they were very approving of it and believed -- and I  
17 think it was Representative Warren who said this, that they  
18 believed -- or maybe Representative Lewis, one or the other --  
19 they believed that this had met the integrity -- protecting the  
20 integrity of elections. They were quite satisfied.

21 The Democrats, although they opposed the measure, they  
22 were satisfied that full and open and transparent hearings had  
23 taken place.

24 Q If we could bring up Plaintiffs' Exhibit 397A, and I will  
25 submit that the A version is the same as Plaintiffs'

1 Exhibit 397 except for the redactions.

2 So, Dr. Lawson, can you take a look at this email -- I'll  
3 let you put on your glasses. Did you take a look at this email  
4 when you were doing your work on this case?

5 A Yes.

6 Q Can you describe this email for me?

7 A Yes. This is an email from someone in  
8 Representative David Lewis' office, representing David Lewis --  
9 his name is typed on the bottom of it, in which they are  
10 commenting that -- he's writing to someone who had asked him  
11 questions about the bill and had some concerns about the bill,  
12 that it wasn't to this gentleman's satisfaction, and what Lewis  
13 is responding is that they had crafted a, quote, very good  
14 bill. "It protects the integrity of the election system and  
15 guarantees every registered voter the opportunity to vote," and  
16 that those votes cumulatively determine the outcome of  
17 elections.

18 Q And the date on this email is?

19 A The date is May 3, 2013.

20 Q So this bill is referring to the House version --

21 A Yes.

22 Q -- of the voter identification bill; is that correct?

23 A Yes. The one passed in April.

24 Q So what happened after the House bill passed in April?

25 A It then went to the Senate, and it was submitted to the



1 Rules Committee. It remained in the Rules Committee until the  
2 end of July, I believe July 22. So it was there from the end  
3 of April to July 22.

4 Q Okay. What role, if any, did Section 5 play in that?

5 A Well, according to sources that I looked at, it was clear  
6 to both members --

7 **MR. STRACH:** Objection, Your Honor.

8 **MR. FISHER:** I am not sure what the basis is for the  
9 objection, Your Honor.

10 **MR. STRACH:** Personal knowledge, what his sources  
11 were. It sounds like he is relying on -- potentially on these  
12 news articles or hearsay.

13 **THE COURT:** Sustained. Can you lay some more  
14 foundation for his testimony?

15 **BY MR. FISHER**

16 Q So if we could bring up Plaintiffs' Exhibit 396A to  
17 indicate the redactions.

18 So, Dr. Lawson, could you -- is this an email that you  
19 looked at when you were writing your report?

20 A Yes.

21 Q Can you describe this for me?

22 A It's an email from Senator Thom Goolsby to someone here in  
23 North Carolina.

24 Q Okay. And with regard to the question that I asked you  
25 about, what role Section 5 played, what did this email tell

1 you?

2 A This is an email of June 17, 2013. It is about ten days  
3 before the *Shelby* decision, and what Goolsby -- Senator Goolsby  
4 says that the Senate -- "North Carolina Senate will take a  
5 fresh look at this voter bill, and there will likely be  
6 changes. I think that many of the soft policies are a result  
7 of squeamishness about the mandatory federal review. If the  
8 law is struck down, we'll have no voter ID," but he is  
9 confident that the State can defend stricter requirements, and  
10 they should do that.

11 So clearly *Shelby* is on the mind -- the outcome of *Shelby*  
12 is on the mind, and for those who favored stricter voter IDs  
13 and other measures, if *Shelby* worked against Section 5, they  
14 were prepared to go full speed ahead.

15 Q And what significance does that have to the purpose of the  
16 legislature?

17 A Well, clearly the case before the Court in *Shelby* was  
18 about race, and clearly they knew this, and clearly Section 5,  
19 which is what those electoral changes laws had to be examined  
20 under -- the State had the burden of proving that any change  
21 neither had a discriminatory intent, racial intent, nor  
22 discriminatory purpose, so clearly race.

23 Q So going back to when the bill is in the Senate, did any  
24 amendments to H.B. 589 pass in the Senate?

25 A Yes. In the -- now we are talking about the July

1 proceeding when it finally came up. There were several  
2 amendments offered and two significant amendments passed. One  
3 I would call insignificant amendment passed, but the two  
4 significant ones were an amendment by Senator Josh Stein,  
5 which, in effect, said that the hours in Presidential and  
6 Congressional years had to be the same as the equivalent hours  
7 in early voting during those periods, and so that had passed.

8 And then an amendment by Senator Rucho passed, which, in  
9 effect, said that counties by unanimous vote could get a  
10 reduction in the number of hours, that they didn't have to meet  
11 a uniform standard.

12 Q Now, we've heard the Defendants ask questions about  
13 whether amendments passed that were offered by those that  
14 opposed H.B. 589. Did you hear that last week?

15 A Yes.

16 Q Was there anything else that passed that was supportive?

17 A Yes. There was an amendment by Senator Blue that passed  
18 that changed the date about election hearing, but there were  
19 several other amendments that were offered dealing with making  
20 the voter ID less restrictive, and those amendments were  
21 either -- those amendments pretty much failed. They weren't  
22 tabled.

23 Q Last week we heard a lot about the short time that both  
24 the Senate and the House had to consider H.B. 589. But weren't  
25 there any other bills pending in the 2013 legislative session

1 concerning reducing the early voting period or same-day  
2 registration?

3 A Yeah, I believe there were four bills, three in the  
4 Senate, I think, and one in the House, that dealt with various  
5 ways of modifying early voting. They weren't all the same.  
6 They dealt with the elimination of same-day registration. I  
7 did not find in the Senate pending -- I did not find any bill  
8 about out-of-precinct elections, counting the ballots of  
9 out-of-precinct elections.

10 Q Had there been any hearings or debate on those bills?

11 A No.

12 Q Dr. Lawson, as an historian who has examined the evidence  
13 in this case and who has examined evidence of legislative  
14 purpose in other matters, would you briefly summarize your  
15 conclusion regarding legislative purpose for the Court.

16 A My conclusion, again, as an academic historian is that  
17 with respect to procedures that were used in the passage of  
18 589, that these procedures departed from the customary  
19 procedures that had been used to pass, in fact, some of the  
20 laws that they were now modifying or repealing.

21 I also conclude that the lawmakers, the legislative  
22 majority that passed 589, had information at the time that was  
23 presented to them in various forms, hearings or on the floor or  
24 through reports that existed -- they had information that was  
25 certain about the -- that the impact of 589, that it would have

1 a disparate impact.

2 And in those two respects, and, of course, the *Shelby*  
3 decision, waiting for the *Shelby* decision and then moving full  
4 speed ahead, the differences in the bill, particularly, from a  
5 bill that resembled Georgia's voter ID, very calculated to  
6 represent Georgia's ID because Georgia had been precleared and  
7 had been accepted in the courts, they followed that in April,  
8 were satisfied with that bill in April; but after *Shelby*, that  
9 bill was made more restrictive than the Georgia bill, as far as  
10 I could tell, and then they then added three major -- maybe a  
11 fourth -- I didn't really investigate the preregistration as  
12 much as some others have done, but that was also removed.

13 They then pushed those bills on to the act in a way that  
14 allowed almost no discussion, no real deliberations, either in  
15 that session or, as a matter of fact, the previous session.

16 Q Well, thank you, Dr. Lawson.

17 **MR. FISHER:** Your Honor, at this time, the United  
18 States would like to move into evidence the exhibits that were  
19 offered, and that would be Plaintiffs' Exhibits 396A and 397A.

20 **MR. STRACH:** No objection to those, Your Honor.

21 **THE COURT:** Admitted.

22 **MR. FISHER:** The Government would also renew our plea  
23 for the admission of Plaintiffs' Exhibit 81 and Plaintiffs'  
24 Exhibit 91 as well.

25 **MR. STRACH:** We object to those, Your Honor, for the

1 same reasons we've discussed.

2 **THE COURT:** I am going to reserve on those. All  
3 right. Any cross?

4 **MR. STRACH:** Thank you, Your Honor.

5 CROSS-EXAMINATION

6 **BY MR. STRACH**

7 Q Good morning, Dr. Lawson. Good to see you again. My name  
8 is Phil Strach. We met at your deposition a few months ago; is  
9 that correct?

10 A That's very correct.

11 Q Let me just ask you a few questions about your testimony  
12 here today. Particularly, let me just start off with the  
13 *Shelby* decision --

14 A Uh-huh.

15 Q -- that you mentioned. That was a decision regarding  
16 Section 5 of the Voting Rights Act; is that correct?

17 A Yes, and the formula.

18 Q Right. Technically, Section 4 had an impact on Section 5  
19 of the Voting Rights Act; correct?

20 A Yes.

21 Q And are you aware of the standard, the legal standard  
22 under Section 5 of the Voting Rights Act?

23 A When you say "legal standard," I am not quite sure what  
24 you mean.

25 Q Do you know what a State has to prove in order to

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1 receive -- in order for a law to pass muster under Section 5 of  
2 the Voting Rights Act?

3 **MR. FISHER:** Objection, Your Honor. It calls for a  
4 legal conclusion, and I think that that's been the evidence  
5 that the Defendants have been trying to keep out for the last  
6 week.

7 **THE COURT:** Overruled. He mentioned he took into  
8 account *Shelby County* and its effect on his opinions, so I  
9 think he is entitled to ask what he knows about that.

10 **THE WITNESS:** Yeah, that the selected jurisdiction  
11 would have to -- they have to show that there was neither a  
12 discriminatory purpose or a discriminatory intent.

13 **BY MR. STRACH**

14 Q And with respect to --

15 A Or discriminatory effect.

16 Q Okay. And with respect to the standard under Section 5,  
17 do you know who the burden of proof is on in an action under  
18 Section 5?

19 A Yeah, the burden of proof is on the jurisdiction, the  
20 covered jurisdiction.

21 Q All right. And isn't it true that the jurisdiction has to  
22 prove a lack of what the law calls retrogression of the old  
23 law -- the new law versus the old law?

24 A I believe in Section 5 cases that is the standard, yes.

25 Q Do you know what the legal standard is for a case under

1 Section 2 of the Voting Rights Act?

2 A It is my understanding that retrogression has not yet been  
3 fully adjudicated. In other words, I guess I'm saying that  
4 retrogression hasn't been a standard for the most part in voter  
5 dilution cases in Section 2.

6 Q All right. Do you know who the burden of proof is on in  
7 Section 2 --

8 **MR. FISHER:** Again, Your Honor, objection. We are  
9 really going far down the road here on legal conclusions. I  
10 think Dr. Lawson didn't get into burdens or burden shifting.  
11 He talked about Section 5 generally and the *Shelby* case  
12 generally, but I don't think that he's here to testify about  
13 which burdens or who carries which burden.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** I think you asked me who's responsible  
16 under Section 2 of the burden, and I think that's the  
17 Plaintiff.

18 **BY MR. STRACH**

19 Q All right. So you would agree that those are two very  
20 different legal standards?

21 A If you are asking about whether one burden is on the State  
22 and the other is on the party, yes.

23 **MR. FISHER:** Objection, Your Honor. He is asking for  
24 him to come to a legal conclusion about the difference between  
25 Section 2 and Section 5. This is not testimony that Dr. Lawson



1 got into on direct.

2 **THE COURT:** Overruled.

3 **BY MR. STRACH**

4 Q Dr. Lawson, could you repeat your answer to that question?

5 And let me repeat the question.

6 Do you agree with me that the difference between the legal  
7 standard under Section 2 of the Voting Rights Act is  
8 significantly different from the legal standard under Section 5  
9 of the Voting Rights Act?

10 A I am going to answer that as an historian, not as a  
11 lawyer, not even as a legal historian but as a political  
12 historian. From my readings of it, yes, I have no direct  
13 knowledge of it haven't participated in any of this, but my  
14 historical understanding is yes.

15 Q Okay. And as an historian, would it surprise you if a  
16 legislator considering a law took into account the legal burden  
17 it had to prove for the law to pass muster when enacting the  
18 law?

19 A In and of itself, no. If you are asking me about one  
20 factor, I would say, no, but as a conglomeration of factors,  
21 there are many others as well.

22 Q All right. One of those factors might be the legal  
23 standard that the law is going to have to pass if it's  
24 challenged?

25 A In and of itself, as far as you have said, yes.

1 Q All right. You also mentioned just a moment ago, and I  
2 want to make sure this is clear, there was no discussion in the  
3 Senate debate on H.B. 589 regarding out-of-precinct voting;  
4 isn't that correct?

5 A No. What I said, there had been no pending bill on  
6 out-of-precinct voting. In terms of discussion, I would have  
7 to go back and look to see how much of that discussion, if any,  
8 dealt with it; but I was referring in my testimony to the  
9 pendency of that bill.

10 Q All right. And you did say, didn't you, that you didn't  
11 see any evidence of an alleged disparate impact resulting from  
12 out-of-precinct voting that was presented to the legislature?

13 **MR. FISHER:** Objection, Your Honor. I think he's  
14 mischaracterizing Dr. Lawson's testimony.

15 **THE COURT:** Overruled.

16 **THE WITNESS:** All I said with out-of-precinct voting  
17 was that there was no pending bill. That's all I said.

18 **BY MR. STRACH**

19 Q Okay. Are you aware of what debate, if any, in the Senate  
20 on House Bill 589 took place regarding out-of-precinct voting?

21 A My memory right now is doesn't recall. That's about the  
22 best I could say. I can tell you that most of it did deal with  
23 voter ID and early voting, but I do have vague recollections of  
24 certainly same-day registration, but I really can't recall at  
25 the moment.

1 Q Okay. So as to out-of-precinct voting, nothing better  
2 than a vague recollection sitting here today?

3 A Nothing better than that, yes.

4 Q I think you said this, and I want to make sure that I  
5 understand it. It is -- as an historian, it is important for  
6 you to be thorough in your work; correct?

7 A I try to be.

8 Q And I think you mentioned earlier that you take a -- you  
9 try to look at the long historical background; is that correct?

10 A Yes.

11 Q So you try to go back, at least as far as you can, to make  
12 sure you are collecting all the context you need to render  
13 your -- to make your analysis?

14 A Generally, yes.

15 Q And it is true, correct, that you've never actually served  
16 in a state legislature?

17 A That's correct.

18 Q And you've never been a staff member in a legislature?

19 A No, I have not.

20 Q All right. And we discussed this: You've never served on  
21 a city council or county commission?

22 A No, I have not.

23 Q Now, Dr. Lawson, were you aware of a voter ID bill that  
24 was introduced in the North Carolina legislature in 1999?

25 A Not 1999. I am aware of one in 2006. It is the first one

1 that I encountered, but not 1999.

2 Q All right. So does the Senate Bill 568 ring a bell for  
3 you at all?

4 A What year would that be?

5 Q 1999.

6 A I don't think so.

7 Q And you are aware, Dr. Lawson -- I imagine in your  
8 research you spent a lot of time on the North Carolina General  
9 Assembly's website?

10 A I did look at the website, yes.

11 Q And the website contains the legislative history --

12 A Yes.

13 Q -- of the bills; correct?

14 A Absolutely, yes.

15 Q And then you can often review different versions of the  
16 bills on the website?

17 A Yes. All the versions, I think.

18 Q Okay. And it also contains voting history?

19 A Yes.

20 Q For the most part?

21 A For the most part.

22 Q All right. So anyone here, you or I, could look up Senate  
23 Bill 568 from the 1999 session and see what it dealt with; is  
24 that correct?

25 A Yes.

1 Q Okay. And you're clear today that the first voter ID bill  
2 that you recall being introduced in the legislature was in  
3 2006?

4 **MR. FISHER:** Objection, asked and answered.

5 **THE COURT:** Overruled.

6 **THE WITNESS:** Yes.

7 **BY MR. STRACH**

8 Q Dr. Lawson, if you could look at your 2014 declaration,  
9 and I am specifically going to look at -- I believe it's  
10 page 8, paragraph 11. Are you there?

11 A I am.

12 Q In this paragraph, towards the end of the paragraph, you  
13 are discussing the options that the House had once the Senate  
14 sent 589 back over to the House; is that correct?

15 A Yes.

16 Q All right. And it says here -- I believe you've outlined  
17 three different options that the House had. You say, "It could  
18 have voted on concurrence with the Senate version"; correct?

19 A Yes, or no concurrence, I would add.

20 Q All right. But you said here, "It could have voted on  
21 concurrence with the Senate version." That's option Number 1;  
22 correct?

23 A Correct.

24 Q And then you said it could have -- or it could have  
25 proposed a -- I'm sorry. "It could have sent the bill to the

1 House Elections Committee." That's Number 2; correct?

2 A Correct.

3 Q And then you say, "or it could have proposed a conference  
4 committee for further consideration." That's option Number 3;  
5 is that correct?

6 A Yeah.

7 Q Okay. Isn't it true, Dr. Lawson, that the House would  
8 have to vote on concurrence before it can go to a conference  
9 committee?

10 A Yes.

11 Q So the -- when the bill comes from the Senate or the  
12 House, the House can't just automatically send the bill to a  
13 conference committee?

14 A That's correct.

15 Q Only if the House votes not to concur, then it could go to  
16 a conference committee; correct?

17 A That's correct.

18 Q And even then it might or might not go to a conference  
19 committee?

20 A That's correct, yes. Voting on concurrence does take  
21 place first.

22 Q So the legislative norm here is a concurrence vote either  
23 up or down before it even has the possibility of going to a  
24 conference committee; correct?

25 A Yes. And in my study of the other bills that relate to

1 this, there had been no concurrence votes in a number of key  
2 instances. So I am not sure when you say norm -- the  
3 legislative rule is to have a vote. The legislative norm is a  
4 bit more complicated than that.

5 Q All right. But when the Senate bill comes over to the  
6 House for a vote on concurrence, then the -- each member of the  
7 legislative body can make up their mind as to how they want to  
8 vote; correct?

9 A Yes.

10 Q So there is no predicting what that vote might be;  
11 correct?

12 A In the abstract, yes.

13 Q So the House might vote not to concur and send it to a  
14 conference committee; correct?

15 A Yeah. The formal rule -- I think we agree on the formal  
16 rule. The formal rule is they vote. What I was looking at is  
17 the history of the other bills and particularly bills that  
18 dealt with elections and some of the very same issues that 589  
19 brought up; and in those measures, yes, they took a concurrence  
20 vote, but a number of key bills they voted no concurrence, and  
21 then it went to a conference committee. That's what I think is  
22 a key difference. And this bill's versions were so  
23 significant, perhaps in differences, perhaps even more  
24 significant than a number of these bills that went to  
25 conference committee.

1 Q But you agree when it comes over for a concurrence vote,  
2 that's up to each individual legislator to make up their mind  
3 on that; correct?

4 A Theoretically, yes.

5 Q And, of course, you are not aware of any bill in what you  
6 looked at that went to a conference committee without a  
7 concurrence vote?

8 A No, absolutely not.

9 Q Dr. Lawson, do you recall -- let's look at -- let me try  
10 to find the correct page here.

11 Paragraph 18 of your report, of the 2014 report,  
12 Dr. Lawson, and it carries over on to page 16.

13 A Yes, I have it.

14 Q And you are citing here House Bill 831 from the 2001  
15 session; is that correct?

16 A Yes.

17 Q And you mentioned in that paragraph that "the legislature  
18 enacted" this bill, "which set the dates for one-stop early  
19 voting, as it was called, for the third Thursday before  
20 Election Day until the last Saturday before Election Day" --

21 A That's correct.

22 Q -- correct?

23 A Uh-huh.

24 Q Now, are you aware that this bill actually cut off the  
25 first three days of early voting that had been previously



1 allowed?

2 A Yes, it cut off the first few days. I think the previous  
3 rule was that it would start -- the first business day after  
4 the 25th day is the last day you could register, and then it  
5 would end the Friday before the election. So I don't know how  
6 many days that wound up meaning.

7 Q Did you come across in your historical review any  
8 newspaper articles in which this delaying of early voting was  
9 criticized?

10 **MR. FISHER:** Objection, Your Honor. The Defendants  
11 have continually tried to keep any testimony about newspaper  
12 articles out. Now he is asking about them.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** I don't recall seeing any criticism of  
15 this bill. My sense of the bill was that this was -- because  
16 1999, they first used no excuse, and the previous deadlines  
17 were in effect. This was a first attempt, I think, to sort of  
18 codify what the procedure should be in terms of setting up  
19 dates and so forth. So I don't think it was, you know,  
20 controversial in that matter. So I can't remember seeing any  
21 criticism.

22 **BY MR. STRACH**

23 Q Did you find any evidence in your historical review of any  
24 lawsuits that were filed over the pushing back of this early  
25 voting time?

1 A No, I did not.

2 Q You also mentioned in this paragraph, Dr. Lawson,  
3 House Bill 977, which removed the excuse clause from all  
4 in-person early voting; is that correct?

5 A That's correct. That was for the primaries.

6 Q All right. What legislative history for House Bill 977  
7 did you review in preparing this report?

8 A I believe I looked at the bill and then ultimately looked  
9 at the legislative history as it existed in the General  
10 Assembly website and looked at any newspaper reports that might  
11 have pertained to it.

12 Q Did you contact the legislative library to obtain any  
13 additional information about the legislative history for this  
14 bill?

15 A No, I did not.

16 Q In preparing this report, did you physically visit the  
17 legislative library at all?

18 A No.

19 Q Did you ever contact any legislative library in preparing  
20 this report?

21 A No, I did not.

22 Q You mentioned audio that's available on the General  
23 Assembly website; correct?

24 A Yes.

25 Q Are you aware of audiotapes that exist in the legislative

1 library with recordings of committee hearings?

2 A No, I am not.

3 Q You did not obtain or review any of those?

4 A No.

5 Q Do you have any evidence, Dr. Lawson, that House Bill 977  
6 was passed for the purpose of increasing black turnout?

7 A I have no evidence that says that, no.

8 Q You also mentioned in your report the bill in which  
9 same-day registration was passed in 2007. Do you recall that?

10 A Yes.

11 Q And I believe that was House Bill 91. Does that sound  
12 familiar to you?

13 A Yes, it does.

14 Q And did you limit your review of the legislative history  
15 on House bill 91 also to what you could obtain from the General  
16 Assembly website?

17 A I used the General Assembly website, but I also used other  
18 sources. I spoke more about House Bill 91 in my second report;  
19 and in the second report, I did use other sources that  
20 described House Bill 91, if I recall correctly.

21 Q All right. Did your review of the legislative record --  
22 was that limited to what was on the website?

23 A The actual history of bills and so forth, yes.

24 Q Did you become aware of any evidence in the legislative  
25 record that House Bill 91 was adopted to increase black

1 turnout?

2 A Not specifically, no. I think these bills were adopted  
3 with the purpose of making it easier for people to vote in the  
4 state of North Carolina.

5 Q That's what you think?

6 A No, I conclude that from looking at the legislative  
7 histories, looking at the historical accounts of the events.

8 Q Dr. Lawson, in your 2015 declaration, you report regarding  
9 the campaigns of the late Senator Helms; is that correct?

10 A Yes.

11 Q In preparing the report, did you actually speak with any  
12 of Senator Helms' former staff?

13 A No.

14 Q And have you ever -- did you ever speak to Senator Helms  
15 when he was alive?

16 A I don't recall having done so, no.

17 Q Did you also review objection letters from the Department  
18 of Justice that related to North Carolina in your review?

19 A Yes. They appear on the Department's website, I believe.  
20 And I think I look -- I know I looked at them there.

21 Q All right. And do you recall during your deposition we --  
22 I think we reviewed those, and there were 65. Does that sound  
23 right?

24 A I believe that's what we concluded, yes.

25 Q Do you recall, of those 65 objection letters, how many of

1 those objection letters were in vote denial cases or  
2 situations?

3 A I am not entirely sure. I can tell you that almost all of  
4 them were not vote denial cases.

5 Q They were mostly vote dilution?

6 A Yes.

7 **MR. STRACH:** Your Honor, may I approach?

8 **THE COURT:** Yes.

9 **BY MR. STRACH**

10 Q Dr. Lawson, I've handed you what's been marked as  
11 Defendant's Exhibit 292, which is a bill history for Senate  
12 Bill 767 from the 2000 session. Does this look familiar to  
13 you?

14 A Let me just check. I don't recall if this was one of the  
15 bills that I looked at. I don't think this was one I looked  
16 at. If you know I looked at it, would you please tell me?

17 Q Yes, I will. I think -- I believe it is on ...

18 A From my looking at it, I don't think -- I didn't discuss  
19 this bill.

20 Q All right. Is this -- the printout on page 1, is this  
21 what the printouts look like for bill history on the North  
22 Carolina General Assembly website?

23 A They do, or it does.

24 Q All right. And then if you will turn to the third page of  
25 this exhibit, does this appear to be the bill text of the final

1 Session Law 2000-136?

2 A Yes. It also says that the governor approved this in July  
3 of 2000. So it must be the final version of it.

4 **MR. STRACH:** Your Honor, we move the admission of  
5 Defendant's Exhibit 292. I don't believe there was an  
6 objection raised.

7 **THE COURT:** The only objection is it's Plaintiff  
8 evidence, whether they have any objection to you moving the  
9 admission of exhibits during the Plaintiffs' case. I think it  
10 has already been done, but it is up to the Plaintiffs whether  
11 they want to waive and have you do that during your case.

12 **MR. STRACH:** That's fine, Your Honor.

13 **MR. FISHER:** Yeah, they can just do it in their case,  
14 Your Honor.

15 **MR. STRACH:** That's fine. I will be happy to do it.

16 **BY MR. STRACH**

17 Q Dr. Lawson, if you will look at the first page of this  
18 bill history for Senate Bill 767. Does this appear to be an  
19 election-related bill?

20 A Yeah, something to do with lobbyists. It says "to  
21 strengthen the act and comply with a Court decision...one-stop  
22 voting sites," yes.

23 Q If you look at the very last -- or the second to last page  
24 of the exhibit, is this -- did you look at some underlying  
25 language there?

1 A What kind of language?

2 Q The underlying language?

3 A Okay.

4 Q Is this not the bill that allowed the State Board of  
5 Elections to override a minority party member's refusal to go  
6 along with certain early voting sites?

7 A It looks to me that if the county board can't reach  
8 unanimity, they can appeal to the State Board of Elections to  
9 adopt the plan, so --

10 Q All right. And is it true, Dr. Lawson, that when this  
11 bill was received from the Senate into the House, it was  
12 referred to the Rules Committee?

13 A Let me see. In the House, yes.

14 Q Right. On April 23, 1999; is that correct?

15 A Yes.

16 Q And it is also true, is it not, that this went to a  
17 conference committee but only after a concurrence vote; is that  
18 correct?

19 A Correct, uh-huh, yes.

20 Q And this bill dealt with early voting one-stop sites; is  
21 that right?

22 A It looks like it.

23 Q And, yet, this is a bill that you did not study as part of  
24 your analysis in this case; is that correct?

25 A It seems to be correct, yes. In looking at it now, it

1 would -- I have no reason to change. In fact, just from a  
2 cursory look, it looks like it reinforces what I have been  
3 arguing, but I haven't studied the bill.

4 Q It reinforces what you have been arguing, even though this  
5 went to the Rules Committee?

6 A No. I was talking about the Senate, remember, the Senate  
7 Rules Committee. In fact, in this case, it went to the Senate  
8 Judiciary Committee. Honestly, I don't know why it went to the  
9 House Rules Committee because every other election bill that I  
10 studied in the House did not go to the Rules Committee. So I  
11 don't know if there is something else that this bill started or  
12 whatever that made it go to the Rules Committee.

13 This seems to follow the pattern of other election bills  
14 that went to the originating body without concurrence, the  
15 formation of a committee, of a conference committee. So not  
16 knowing anything else about the substance, I would say that  
17 this conforms pretty much with the other bills that I studied.

18 Q So it only went to a conference committee after there was  
19 a failure of a concurrence vote --

20 A Yes.

21 Q -- correct?

22 A Yes. I've admitted that any bill that goes to a  
23 conference committee has to have a no concurrence before it  
24 does that.

25 **MR. STRACH:** Your Honor, may I approach?



1                   **THE COURT:** Yes.

2 **BY MR. STRACH**

3 Q     Dr. Lawson, does this appear to be the bill history for  
4 Senate Bill 1054 that was enacted as Session Law 2002-158?

5 A     Yes.

6 Q     All right. And did you -- you did address this bill in  
7 your report; is that correct?

8 A     Yes.

9 Q     All right. And the bill is entitled "Judicial Campaign  
10 Reform Act"; is that right?

11 A     Correct.

12 Q     Isn't it true, Dr. Lawson, that the bill history shows  
13 that the Senate concurred in the House changes without a  
14 conference committee?

15 A     Correct.

16 Q     Do you recall what the -- whether there was a party line  
17 vote in either the House or the Senate on this bill?

18 A     I don't indicate it, I don't believe, and the only vote  
19 history that it gives -- let me see.

20 Q     Do you see the vote on third reading in the middle of the  
21 page on page 1?

22 A     Yeah.

23 Q     That's the third reading in the House; is that correct?

24 A     That's correct.

25 Q     And that would have been the final vote in the House

1 before it went to the Senate --

2 A Correct.

3 Q And it shows there that there were 57 yeses and 54 nos;  
4 correct?

5 A Correct.

6 Q So that was a close vote?

7 A The vote is close. I just don't know the party breakdown,  
8 but the vote is close. Not so close in the Senate.

9 Q Do you know -- in conducting your analysis for this case,  
10 did you review the partisan makeup of the North Carolina Senate  
11 at this particular time?

12 A I believe the majority was Democratic.

13 Q Do you recall what the extent of that majority was?

14 A Frankly, I don't.

15 **MR. STRACH:** May I approach, Your Honor?

16 **THE COURT:** Yes.

17 **BY MR. STRACH**

18 Q Dr. Lawson, this is a document that's been marked as  
19 Defense Exhibit 295. And would you agree with me that it  
20 appears to be a transcript of a session of the House of  
21 Representatives, November 24, 2003?

22 A Yes. I believe you showed this to me at our deposition.

23 Q Right. And you did address the House bill at issue in  
24 this transcript, House Bill 3 in your report; is that correct?

25 A I did, yes.

1 Q All right. And in preparing your report, did you rely at  
2 all -- let me ask it to you this way: Did you review this  
3 transcript in preparing your report?

4 **MR. FISHER:** Objection, Your Honor. I am not sure  
5 where this transcript came from. It says "Capital Reporting."  
6 I am not even aware that this is something that would be  
7 available to Dr. Lawson.

8 **THE COURT:** Well, the question is whether he reviewed  
9 it, and I don't know what his answer is.

10 **THE WITNESS:** I did not review it. I did not review  
11 it to prepare the report. I read parts of it when you showed  
12 it to me at the deposition.

13 **THE COURT:** All right. The objection is overruled  
14 then.

15 **BY MR. STRACH**

16 Q In preparing your report, and specifically the section  
17 about House Bill 3, did you inquire with the North Carolina  
18 General Assembly's legislative library as to any additional  
19 legislative history that might be available?

20 A No, I did not.

21 Q All right. So you didn't rely on this transcript because  
22 it was not on the General Assembly's website; is that right?

23 A Not on the website or any other sources that I was using.

24 Q Were you aware that this transcript had been made an  
25 exhibit in prior depositions in this case last year?

1 A No. The first time I saw it was when you showed it to me.

2 Q And that was a couple of months ago this year?

3 A I believe it was in -- whenever it was. April or May or  
4 something. April, definitely end of April.

5 Q If you are studying the process of election bills in the  
6 North Carolina legislature, would it be useful to you to have a  
7 transcript such as this of a session of the legislature on an  
8 election bill?

9 A Yes, I would tend to look at it to see if there was  
10 anything in it that pertained to my analysis.

11 Q All right. A transcript such as this would provide a more  
12 complete record for you to review in drawing your conclusions,  
13 would it not?

14 A It could. But this looks -- honestly, as I say, I haven't  
15 studied it, but it looks like it can't be the complete record  
16 of the House deliberations over two days. It is only 47 pages.  
17 I am not really sure what it is, what part of the whole process  
18 it was.

19 Q Do you recall how many days it took for the North Carolina  
20 legislature to pass House Bill 3 into law in 2003?

21 A I believe two days. This was a special session.

22 Q Do you recall, Dr. Lawson, the 2005 bill in which the  
23 North Carolina legislature reconfirmed provisional voting for  
24 out of precinct?

25 A I do.

1 Q All right. And you agree with me, don't you, that the  
2 vote on that bill was highly partisan?

3 A I believe I said that in my report. So if I did say it  
4 exactly that way, I would agree, yep. The bill was highly  
5 partisan, which is what I said. The measure passed in the  
6 House 61 to 54; the Senate 29 to 21. No Democrat voted in the  
7 negative; no Republican in the affirmative. So it was strict  
8 party line.

9 **THE COURT:** What page were you reading?

10 **THE WITNESS:** That was page 35 on to 36, and that's  
11 in my 2015 declaration.

12 **BY MR. STRACH**

13 Q Dr. Lawson, are you aware of the case from the North  
14 Carolina Supreme Court that prompted the legislature to take  
15 that action?

16 A Yes, from a historical view, not a legal view.

17 Q Of course. Did you read that case?

18 A I am not sure any longer. I read about the case. Whether  
19 I actually read the case in its entirety, I just don't recall,  
20 but I certainly read about it.

21 Q All right. Now, are you familiar with a bill from the --

22 **THE COURT:** Hold on, please.

23 (Pause in the proceedings.)

24 I am going to need to take a break. I am having an  
25 issue with the computers that needs to be fixed. We'll just go

1 ahead and take our morning break. We'll take a 20-minute  
2 break, and then we'll come back.

3 (The Court recessed at 10:49 a.m. ).

4 (The Court was called back to order at 11:12 a.m.)

5 **THE COURT:** All right. Mr. Strach, you may continue.

6 **MR. STRACH:** Thank you, Your Honor.

7 **BY MR. STRACH**

8 Q Dr. Lawson, on page 50 of your 2015 report, paragraph 77,  
9 you mentioned a Senate Bill 666; is that correct?

10 A Yes.

11 Q And that was a bill entitled "Election Law Changes";  
12 correct?

13 A Correct.

14 Q And that bill was referred to the Senate Rules Committee;  
15 is that correct?

16 A That's correct.

17 Q And would you agree with me that during this session of  
18 the General Assembly that we are currently in, there are other  
19 elections bills in the Senate Rules Committee?

20 A Yes.

21 Q And now you also agree that in the passage of  
22 House Bill 589, there was no violation of formal rules of the  
23 legislature; is that correct?

24 A Yes, the formal rules; correct.

25 Q You also agree that there is no requirement for the House

1 to enter into a committee of the whole to consider a bill;  
2 correct?

3 A No requirement.

4 Q And when Senate Bill 589 was considered in the Senate,  
5 there were several committee meetings; is that correct?

6 A Yes.

7 Q Don't you agree that members of the public were allowed to  
8 speak at those Senate committee meetings?

9 A Yes, there was one short committee meeting where I believe  
10 there were nine or ten members of the public who appeared.

11 **MR. STRACH:** All right. Thank you, Your Honor.  
12 That's all I have.

13 **THE COURT:** Any redirect?

14 REDIRECT EXAMINATION

15 **BY MR. FISHER**

16 Q Now, Dr. Lawson, the Defendants have asked you some  
17 questions about rules violations.

18 A Right.

19 Q I think in your testimony, you talked about violations of  
20 customary procedures; is that right?

21 A That's correct. There is a distinction.

22 Q Does anything the Defendants have brought up with you  
23 today change any of your conclusions regarding the  
24 discriminatory purpose of the North Carolina General Assembly?

25 A No.





1 A Harnett County.

2 Q I understand you've recently completed your senior year of  
3 college.

4 A That's correct.

5 Q Congratulations. Where were you in school?

6 A Campbell University.

7 Q And were you there all four years of school?

8 A Yes.

9 Q And how old are you, Mr. Duke?

10 A Twenty-two.

11 Q Have you started a permanent position?

12 A I have, yes. I am doing communications for a nonprofit.

13 Q And where are you from?

14 A Reidsville, North Carolina.

15 Q What county is that in?

16 A Rockingham County.

17 Q Do you recall when you first registered to vote, Mr. Duke?

18 A In 2012, leading up to the primary election.

19 Q Where did you register to vote that first time?

20 A I registered in my home county of Rockingham, using my  
21 parents' address because I knew that I would be living at home  
22 for the summer at the time of the primary following my freshman  
23 year.

24 Q Okay. Let me just ask you to speak up a little bit. And  
25 so that was your freshman year of college when you first

1 registered?

2 A Yes.

3 Q Okay. And when did you first vote?

4 A I first voted in the primary election in 2012.

5 Q And you voted in Rockingham County?

6 A Yes.

7 Q Now, at the end of that summer of 2012, I take it you  
8 headed back to school?

9 A Yes.

10 Q And that -- did that entail a move of locations on or off  
11 campus?

12 A Yes. I moved to an on-campus apartment, and I moved every  
13 year that I was in college.

14 Q I'm sorry?

15 A I moved every year that I was in college.

16 Q And did you reregister to vote at that point?

17 A Yes.

18 Q How did you do that?

19 A We were holding a registration drive on campus. Part of  
20 my role as president of the College Democrats at Campbell was  
21 we organized a group of student organizations in a welcome week  
22 event that we had on campus. So I registered, along with a  
23 group of my friends there, to kind of set an example through a  
24 variety of different groups of student leaders, welcoming  
25 everyone back to campus and trying to get folks engaged in the

1 2012 election.

2 Q Did you actually fill out a registration card and submit  
3 it?

4 A Yes, I physically filled out a form on my registration  
5 drive and got it into the Board of Elections.

6 Q And what address, if you recall -- I am not asking for the  
7 specific street address, but I am asking, did you put your dorm  
8 room address down on the registration card?

9 A The on-campus apartment that I was living in, yes.

10 Q So this was an on-campus apartment in your sophomore year?

11 A Yes.

12 Q And tell me about the registration efforts that you  
13 engaged in in the fall of 2012.

14 A Yeah. Throughout the election season, from the time that  
15 students returned to campus up until the end of the closing  
16 period of the election, we were consistently registering  
17 voters, getting students engaged in the election, making sure  
18 that young people realized there was an election and knew who  
19 the candidates were and met their local candidates, the whole  
20 nine yards. There were a variety of organizations doing this  
21 work on campus, and it included a lot of different work; but  
22 part of our centerpiece was registering students to vote,  
23 making sure they knew how to vote, and then getting them to  
24 vote.

25 Q All right. And you referred to "we" a couple of times. I

1 take it that this time in the fall of 2012, you were the  
2 president of the Campbell College Democrats; is that correct?

3 A Yes.

4 Q Now, tell me a little bit about your experience voting --  
5 actually voting in the 2012 fall Presidential election.

6 A Yeah. I utilized early voting in the 2012 general  
7 election. I went to my early vote location, which happens to  
8 be the Harnett County Board of Elections Office in Lillington.  
9 And I did so during the last week of early vote, and I  
10 attempted to vote at one point and was informed by the  
11 volunteer poll worker that I was not registered.

12 And then following that incident, I got to meet with -- at  
13 least informally meet with the county director or some staff  
14 member -- I believe he was the county director of the board of  
15 elections. He was very understanding, very nice. He brought  
16 me into his office, pulled up on the computer the form that --  
17 my registration form to show me that I had been rejected  
18 essentially, for lack of a better word.

19 Q When you say you were rejected, you mean your registration  
20 form had been rejected?

21 A Yes, my registration form had been rejected, and he  
22 explained to me that because the address I used to register to  
23 vote does not receive mail on campus, part of the way --

24 **MS. MURPHY:** Objection, hearsay.

25 **THE COURT:** Sustained as to the truth of it, but I

1 will allow it to explain what he was doing.

2           **MR. SPIVA:** Thank you, Your Honor. That's all I am  
3 offering it for.

4           **THE WITNESS:** I was informed that it was rejected due  
5 to my physical address, what they call a 911 address on  
6 university campuses, not receiving mail because the way that  
7 Campbell, which is a private institution, handles mails, they  
8 don't have Post Office boxes for individual students for dorms  
9 or on-campus apartments, and so I did not have a mailbox on  
10 campus.

11           So, apparently, there is a confirmation card -- your  
12 voter registration card is mailed to the address you provide.  
13 So mine was obviously undeliverable because I did not get mail  
14 at that physical 911 address, so it was undelivered.

15 **BY MR. SPIVA**

16 Q       So you couldn't receive mail at your campus -- on-campus  
17 apartment, is that what you are saying?

18 A       Correct.

19 Q       And why didn't you have a Post Office box?

20 A       I just didn't get one. I saw it as an unnecessary luxury.  
21 I think a lot of my peers did not get one. That was my  
22 experience. This is not an era where we rely on physical snail  
23 mail a lot. We are the Snapchat Generation. We don't really  
24 use mail. All my bills and banking are online on my phone.

25 Q       So what did you do when they told you that you were not

1 registered?

2 A I -- after I finished being shocked, I asked, like, what I  
3 can do. I told him I really wanted to vote and make sure my  
4 vote counted. I was told that the best way to handle this, by  
5 the staff member I was speaking with, would be to utilize  
6 same-day voting during the early vote. He said, you know, you  
7 need to do back to campus. You need to get proof of residency  
8 and return and just utilize same-day registration. And so  
9 that's what I did, and that's what a lot of my friends and  
10 peers did once we got the word out on the issues that students  
11 could face at the polls, who a lot of us were very freaked out  
12 by this from authority figures.

13 Q Did you come to learn whether others had been impacted by  
14 this similar issue in terms of the mail was being returned?

15 A Yes.

16 **MS. MURPHY:** Objection to the extent that it calls  
17 for hearsay.

18 **THE COURT:** Overruled.

19 **BY MR. SPIVA**

20 Q Tell me about when you went back to actually cast your  
21 ballot in this fall 2012 election. What was -- what were the  
22 lines like? What was the experience like?

23 A I returned to vote within that final week. I actually  
24 went on the last day of early voting, right -- very close to  
25 when the polls closed. There was a very long line. I think

1 that's -- it was apparently due in part to the amount of  
2 students from the university there. It got to the point where  
3 when we physically got in the board of elections office, they  
4 had partitioned off the line, and so all of the students who  
5 had to utilize one-stop went down the hallway and utilized  
6 one-stop because there were just dozens and dozens of us, and  
7 it was just everyone, you know. It wasn't just the College  
8 Democrats. We were -- I was standing in line with the chaplain  
9 of the college, and we had to utilize one-stop and then vote  
10 doing that, and it took a couple of hours, but everyone did  
11 stand in line and see it through.

12 Q In your role as president of the College Democrats at the  
13 time, did you ever learn of anyone who wasn't -- did not vote  
14 because of this issue?

15 A Yeah. Unfortunately, following the election, within a few  
16 weeks afterwards, I was approached by a student on campus who  
17 had been involved in our efforts and our organization, and she  
18 did convey to me that she had run into the same experience that  
19 we did, but didn't --

20 **MS. MURPHY:** Objection to hearsay.

21 **THE COURT:** Sustained.

22 **MR. SPIVA:** It's going to go to motive, Your Honor,  
23 her motive for not voting, not for the truth of the matter.

24 **MS. MURPHY:** I think her motive for not voting is  
25 hearsay.

1           **THE COURT:** Sustained.

2 **BY MR. SPIVA**

3 Q     Let me turn your attention to the spring of 2013,  
4 Mr. Duke. Did you take on a new position with the State  
5 College Democrats in March of 2013?

6 A     Yes. I was elected state president.

7 Q     And can you tell me about the -- what you did the summer  
8 of 2013?

9 A     The summer, I -- it was the summer after my sophomore  
10 year, and I did my first in a series of internships with  
11 Democracy North Carolina, which is a voting rights group based  
12 out of Durham, and I was their communications intern. So I was  
13 really kind of integrally involved in a lot of the efforts  
14 happening that summer surrendering voting rights as a student  
15 intern and an activist.

16       There was a really great team of interns they had  
17 assembled, and we were involved in the coalition concerning the  
18 Moral Monday movement and all of the efforts in the area at the  
19 time, doing everything from voter registration, I organized a  
20 movie screening, all sorts of different efforts to engage and  
21 empower different folks in the election process as the laws  
22 were kind of being changed.

23 Q     You refer to the laws being changed. Did you become aware  
24 of the VIVA law, either before or as it was becoming law?

25 A     Yes. We were avidly watching the situation as it



1 unfolded.

2 Q And when you started your junior year in the fall of 2013,  
3 did you move again?

4 A Yes.

5 Q Move to another on-campus apartment? Off-campus  
6 apartment?

7 A I moved off campus.

8 Q Did you have to reregister again?

9 A Yes.

10 Q And did you -- were you involved in any registration or  
11 Get Out the Vote efforts in 2013 in your role as the president  
12 of the College Democrats of North Carolina?

13 A Yes, pretty extensively. This was the start of my first  
14 term, so I really wanted to hit the ground running. And we,  
15 you know, strategically selected a group of municipal elections  
16 that we felt that students had a vested interest in, would care  
17 about, be passionate about that impacted college communities,  
18 and so we targeted cities like, you know, Boone and Greensboro,  
19 where there was a campus presence, where we could talk to young  
20 voters, young-voter-to-young-voter contact. And I -- we went  
21 to those communities and got involved. I personally did work  
22 on campus in Boone and Greensboro for candidates and campaigns,  
23 working there. And it was a really pretty comprehensive effort  
24 in the 2013 cycle.

25 Q What impact, if any, did VIVA have on these voter

1 registration and Get Out the Vote efforts in 2013?

2 A I think throughout the cycle in 2013, it was involved in  
3 pretty much every conversation and every effort we had there.  
4 It was a pretty constant narrative in campus communities, what  
5 was happening, especially talking about areas like Boone, which  
6 is home to App State. It was pretty constant. And there were  
7 a lot of really real-world scenarios that we had to deal with  
8 with students not understanding the laws as they were changing,  
9 misinformation just really being widely taken in by students,  
10 and just a general lack of understanding of what had changed,  
11 what was changing, bills that didn't actually become law that  
12 people believed were law. It was a pretty big problem that we  
13 had to deal with as far as education and mobilization.

14 Q Let me move forward to the fall of 2014. I take it you  
15 probably moved again that year?

16 A Yes.

17 Q Did you have to reregister again?

18 A Yes, all over again.

19 Q Were you involved in registration and Get Out the Vote  
20 efforts in connection with the fall of 2014 campaign in North  
21 Carolina?

22 A Yes. My focus shifted somewhat as compared to 2012. I  
23 was less focused on Campbell University as a community. I kind  
24 of turned the reins over to students who were younger and more  
25 plugged in. The senior year, I was a little off; but I was

1 really involved statewide as State College Democrats president,  
2 working with all of the campaigns. It was a really blockbuster  
3 election year, and both sides of the aisle, all kind of  
4 different organizations were doing work on campuses trying to  
5 empower and engage students. We held all kinds of different  
6 Get Out the Vote rallies. I personally, megaphone in hand,  
7 marched students to the polls. We brought in surrogates. It  
8 was a pretty extensive operation. All kinds of different  
9 candidates were running.

10 Q How would you describe the focus and intensity on the  
11 campaigns in terms of engaging the young voter during the fall  
12 of 2014?

13 A What I personally saw was it is sort of -- the level sort  
14 of stayed from 2012 to 2014, which I don't think is kind of the  
15 institutional norm for midterm elections. I think it is known  
16 that it is pretty hard to get young people engaged civically to  
17 begin with. So there was just a vested interest in 2014 in  
18 engaging young people and students across the state, and we saw  
19 that which just increased everything: Attention, manpower,  
20 resources, candidates talking about student issues. They  
21 talked about a lot of young persons' issues that year. So it  
22 was a pretty blockbuster year.

23 Q How did VIVA impact your registration and Get Out the Vote  
24 efforts leading up to the 2014 general election?

25 A Yea. It was just a shadow over everything we were doing

1 that year. It was another hurdle that we had to deal with.  
2 This was the first really big election since 2012, and  
3 everything had changed for students. So we were dealing with a  
4 class of students who had voted in 2012 and who were going to  
5 be repeat voters in 2014 who had to be educated on the changes  
6 of laws, and then the new voters who had never voted before had  
7 to understand the laws with, you know, typically quite limited  
8 knowledge of -- you know, they never participated in before.

9 So just that level of education was an entire process that  
10 we go through in addition to registration and Get Out the Vote  
11 and everything else that we had to do from the time the  
12 students get on campus in late August until the period closes,  
13 which you are talking about weeks, and a major transition  
14 period in their lives.

15 Q What effect, if any, did the elimination of the same-day  
16 registration mechanism have on your Get Out the Vote and  
17 registration efforts?

18 A It just really closed the window on us. It made it so  
19 that we were dealing with a very confined time period with  
20 which to engage, on many campuses, literally tens of thousands  
21 of students. And so inevitably people got left behind. In  
22 years past, same-day registration had been a fantastic tool  
23 with which, if one of those students who did get left behind  
24 wanted to engage closer to the election when they are more  
25 aware of what's happening, you know, with what is on their TV

1 constantly, they were able to do that.

2 Q As president of the College Democrats of North Carolina,  
3 was this something that you saw across the state on college  
4 campuses?

5 A Yes.

6 Q And what effect, if any, did the elimination -- or the  
7 shortening of the early vote period have on your registration  
8 and Get Out the Vote efforts?

9 A Again, it is just another means by which that window was  
10 closed. You know, students and young people, but students  
11 especially, I think, are unique in that it is a little more  
12 difficult to rearrange a student's schedule. We cannot move a  
13 class, but someone can move a doctor's appointment. And so  
14 working around everything that is going on in the student's  
15 life with class and work and other obligations, it was a  
16 massive undertaking, and it, I think, really adversely hit our  
17 campus communities in the state.

18 Q I realize you were in college at this point, but did the  
19 elimination of the preregistration option have any effect at  
20 all on your Get Out the Vote and registration efforts?

21 A It did. Previously, we had always offered the option,  
22 like everyone did, of registering folks under 18. When I first  
23 got on campus, I was surprised to find college students under  
24 18, to be frank. And so, you know, we did register students --  
25 I personally registered students who were under 18 who were on

1 college campuses. So no longer having that as an option did  
2 also place another wall there.

3 Q What about the voter ID provision; what impact, if any,  
4 did that have on your efforts in 2014?

5 A I think the voter ID provision is sort of counterintuitive  
6 how it affected students and young people because, you know, we  
7 all know it hadn't fully taken effect yet. So I think the  
8 problem was just misinformation when it came to the voter ID  
9 provision because we did -- I personally encountered many  
10 students -- we had a pretty widespread problem with students  
11 thinking that it had taken effect and just a lack of  
12 understanding of whether they could use their student ID,  
13 whether they could use an out-of-state ID, if the home address  
14 had to match their campus address or their parents' address.  
15 There was just a general level of confusion.

16 And so, again, getting the word out on, A, that you don't  
17 need an ID to vote in 2014, while also not saying that you  
18 don't need to have, like, some proof, it was just a level of  
19 confusion that was really impacting what we were doing.

20 Q As a student, were you aware of a Senate Bill 666 around  
21 this time?

22 A Yeah, I was a very, very aware.

23 Q What was that, and how did that impact your registration  
24 and Get Out the Vote efforts, if at all?

25 A My understanding of the bill was that it was a bill

1 proposed by a number of state senators, including my state  
2 senator, that essentially would make it so that if a student  
3 voted using a campus residence, voted in their campus  
4 community, it would, I guess for lack of a better term, take  
5 away the ability their parents have to count them as a tax  
6 deduction. So for a lot of students, there is lot of attention  
7 on that bill. A lot of people, I think, were shocked that that  
8 was proposed. So for a lot of the folks, the brass tacks of it  
9 for new voters, 18-, 19- or 20-year-olds, was that if they  
10 voted on campus, it would tax their parents. And so that was  
11 just another issue of really mass confusion, again kind of  
12 counterintuitive, because what I found directly personally is  
13 that a lot of students thought that was the law and didn't  
14 realize that wasn't law.

15 So that was another layer of just not knowing what was  
16 changed because there were so many shifting, moving parts; and  
17 for a student in a massive transition period in life to keep up  
18 with, it was a challenge.

19 Q And what impact has VIVA had on student interest in  
20 voting?

21 A I think what I personally experienced, especially in 2013  
22 and 2014, is it just -- it almost created this, like, culture  
23 of fear and intimidation. I think for young people who have  
24 never voted before, who have never taken that step, who aren't  
25 fully aware of all their rights and are hopefully learning it

1 in school, you know, there is a lack of civic engagement there,  
2 something, like, my myself and many others are working very  
3 hard to reverse, but there is a lack of understanding there.

4 So when you add a layer of feelings of just fear and  
5 intimidation, it does, I think, create an environment where  
6 young people feel not only unwanted in the electoral process,  
7 but not allowed and not welcome and like the other, and it has  
8 created really systematic problems for any campus leadership  
9 organization, student government, what have you, trying to get  
10 their campus community mobilized.

11 Q Last question, Mr. Duke. I know you've graduated now.  
12 And do you intend to do voter education registration and Get  
13 Out the Vote efforts in the future?

14 A We are kind of in the off season right now, but I think as  
15 we gear up for 2016, I will get back into it somewhat.

16 **MR. SPIVA:** Thank you very much, Mr. Duke.

17 **THE COURT:** Any cross?

18 CROSS-EXAMINATION

19 **BY MS. MURPHY**

20 Q Mr. Duke, it is good to see you again. Mr. Duke, your  
21 registration was denied when you applied in 2012 because you  
22 failed mail verification; is that correct?

23 A Yes.

24 Q And that was because you left the mailing address part of  
25 the application blank; is that correct?



1 A Well, the mailing address part of the application is not  
2 stipulated as a requirement. It is pretty clearly optional.  
3 So I did leave it blank because I didn't have a mailing  
4 address.

5 Q Why do you say it is clearly optional?

6 A The form, actually, if you look at a voter registration  
7 form, it puts which parts are required in a red parentheses  
8 following, like, first name and last name, so you know which  
9 parts you have to fill out in order to register.

10 Q And it's your testimony that it is not necessary to  
11 include a mailing address on the registration application form,  
12 or is that only if you can receive mail at the physical  
13 address?

14 A That's my understanding, yes, and I didn't have a mailing  
15 address.

16 Q Okay. When you used same-day registration, did you fill  
17 out a registration application form at that time?

18 A Yes, I believe I did whatever was necessary in order to  
19 same-day register. I don't remember the exact form.

20 Q You don't recall that it was the identical form to the one  
21 that you had filled out earlier?

22 A I vaguely remember it looking something along the lines of  
23 it.

24 Q Do you recall using a mailing address or providing a  
25 mailing address at the time that you filled out your

1 registration application form at same-day registration?

2 A I don't recall, but I actually -- I don't know if I did,  
3 because when I spoke to the staff member, he had requested that  
4 we bring proof of residency forms from the university. So we  
5 went to the residence life office and got official forms  
6 stating that the university certifies we live there, and my  
7 understanding is that that would be what did it for us. So, I  
8 mean, I didn't have a mailing address.

9 Q You don't recall being told that federal law requires that  
10 mail verification take place, which involves mailing a card to  
11 your mailing address?

12 A I was never told that, no. I asked him extensively,  
13 because I was very confused, and I asked him, like, how  
14 homeless people vote, because I am assuming homeless folks are  
15 allowed to vote, and he told me to take it up with my  
16 legislator.

17 Q So you don't recall ever learning that homeless people do  
18 need to provide a mailing address when they register to vote?

19 A No. I know now.

20 Q Okay. So you don't recall ever providing a mailing  
21 address when you registered using same-day registration?

22 A Not in the 2012 period, no.

23 Q You personally had no problems voting in the primary and  
24 general election of November of -- in 2014; correct?

25 A I didn't personally experience any problems, no.

1 Q You don't know of anyone who was unable to register and  
2 vote in 2014; is that correct?

3 A Not directly.

4 **MS. MURPHY:** No further questions. Thank you.

5 **THE COURT:** Any redirect?

6 **MR. SPIVA:** No redirect, Your Honor.

7 **THE COURT:** Thank you. You may step down, sir.

8 **MR. SPIVA:** Your Honor, the Plaintiffs call Josue  
9 Berduo, Your Honor.

10 **JOSUE E. BERDUO**, PLAINTIFFS' WITNESS, at 11:45 a.m., being  
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 **BY MR. SPIVA**

14 Q Good morning. Mr. Berduo, can you please state your full  
15 name for the record.

16 A Josue Elias Berduo.

17 Q How old are you, Mr. Berduo?

18 A Twenty-one.

19 Q And what is your ethnicity?

20 A Hispanic.

21 Q Where do you live?

22 A Currently in Raleigh, North Carolina.

23 Q How long have you lived there?

24 A Two years now.

25 Q Are you in college?

1 A I am.

2 Q Where are you in college?

3 A I'm in college at North Carolina State University.

4 Q Where did you grow up?

5 A I grew in Asheville, North Carolina.

6 Q Let me ask you to think back to the first time that you  
7 registered vote. Can you tell me when that was?

8 A I was 17 years old, and I registered in Buncombe County.  
9 I used preregistration at a DMV.

10 Q And was that in 2011?

11 A Yes.

12 Q Did you participate in any registration efforts in 2011,  
13 2012?

14 A I did in 2012. I was in the spring semester my senior  
15 year in high school. I worked with the Presidential reelection  
16 campaign. So I was doing voter registration drives at my high  
17 school.

18 Q And did that entail preregistering some students?

19 A Yes, they were 16- and 17-year-olds.

20 Q When did you first vote?

21 A I first voted in the 2012 primary.

22 Q And how did you vote in the primary?

23 A I voted early in Buncombe County.

24 Q And, now, you graduated from high school in June of 2012?

25 A Yes.

1 Q What did you do that summer?

2 A I was an intern for the Obama for America campaign, and I  
3 did a lot of voter registration efforts through that that  
4 summer.

5 Q And you started college in the fall of 2012?

6 A Yes.

7 Q Where did you start your college career?

8 A I went to UNC Charlotte my freshman year.

9 Q Where do you live?

10 A I lived on campus.

11 Q That's -- UNC Charlotte is in Mecklenburg County?

12 A Yes.

13 Q Did you have to reregister to vote after you moved?

14 A I did.

15 Q And how did you do that?

16 A There was a group registering voters as we were moving in,  
17 and that's when I registered.

18 Q Did you vote in the 2012 general election?

19 A I did.

20 Q And how did you do that?

21 A I voted early on the on-campus voting location on the way  
22 to class.

23 Q And you said the early voting site was located on campus  
24 at UNC --

25 A It was.

1 Q -- UNC Charlotte. I take it you transferred colleges  
2 after your freshman career of college?

3 A My sophomore year, I started at NC State.

4 Q What county is that in?

5 A That's in Wake County.

6 Q I take it that entailed a move?

7 A Yes.

8 Q Did you live on campus after your transfer?

9 A I did.

10 Q Did you need to reregister?

11 A I did.

12 Q And how did you do that?

13 A I actually registered the day that I voted in the  
14 municipal elections at the Wake County Board of Elections.

15 Q And these were municipal elections in the fall of 2013?

16 A Yes.

17 Q When was the next time that you voted?

18 A In the 2014 primary.

19 Q And how did you do that?

20 A I voted early at the Wake County Board of Elections.

21 Q At the end of your sophomore year, did you move again?

22 A Into my junior, I was still on campus but a different  
23 dorm.

24 Q Did that require you to reregister?

25 A I just updated my address.

1 Q How did you do that?

2 A There was an on-campus voter registration drive.

3 Q In the fall of 2014, did you become involved in student  
4 government?

5 A Yes. I was appointed the director of government  
6 relations.

7 Q Tell me about that. What did that entail?

8 A One of our initiatives was to get students involved in the  
9 2014 elections. We wanted to empower students to get involved,  
10 get registered, and to Get Out the Vote. We tried to engage  
11 them in telling them that North Carolina could determine the  
12 balance of power in the U.S. Senate. So we tried to get  
13 everyone out to vote.

14 Q Were you aware at this point in the fall of 2014 of the  
15 VIVA law?

16 A Yes.

17 Q And what impact, if any, did that have on your voter  
18 registration and Get Out the Vote efforts?

19 A The biggest impact was we had the timing constraint. We  
20 had until the beginning of October to get students registered.  
21 So we tried to really emphasize that you need to register by a  
22 certain date.

23 Q And how did you do that? What were some of activities  
24 that you engaged in to try to get students registered in time?

25 A So student government, we hosted a voter registration

1 drive once a week every Wednesday. We set up in a very  
2 centralized location on campus, which is called The Brickyard.  
3 There are thousands of students there on any given day during  
4 the academic year. So we try to inform students that you have  
5 until this time to register to vote or update your address.  
6 And we also -- the student body president would send out emails  
7 reminding them that we're hosting a drive and you need to get  
8 registered if you want to vote.

9 Q And I take it this was a nonpartisan voter registration?

10 A This was strictly nonpartisan.

11 Q In terms of getting out the vote, did you need to do  
12 anything to arrange transportation for students?

13 A The student government wanted to provide transportation to  
14 students, if you lived on campus and didn't have a car, to the  
15 voting location. Since we didn't have an on-campus voting  
16 location this year, we saw the need to get students out to vote  
17 on the bus. So we won a transportation contest through  
18 *Cosmopolitan* magazine, so they gave us a bus on Election Day.

19 Q And you mentioned that there was no on-campus polling  
20 location or early voting location. Had there been one  
21 previously?

22 A There was one in 2012.

23 Q But it was longer there?

24 A I wasn't there in 2014.

25 Q I see. So, were you -- did you encounter any challenges



1 in terms of being able to take people to the polls with the bus  
2 or in terms of your Get Out the Vote effort?

3 A Every now and then on Election Day, we had to turn  
4 students away because either they weren't registered and they  
5 couldn't register any longer, and we also had folks who wanted  
6 to take the bus, but they weren't registered at that specific  
7 precinct.

8 Q And given your experience with registration efforts, would  
9 that have been different prior to the enactment VIVA?

10 A Prior to the enactment of VIVA, we could have taken  
11 students to vote even if they weren't registered. So they  
12 could have registered on the voting location.

13 Q Let me ask you: Were you involved in any other Get Out  
14 the Vote or registration efforts in the fall of 2014?

15 A At the time I was also the communication directors for the  
16 College Democrats of North Carolina, and I was in charge of all  
17 of the social media content. So I wasn't really physically  
18 involved since I wanted to stay nonpartisan on campus. So what  
19 I did through Facebook and Twitter is just try to emphasize the  
20 importance of getting registered to vote on time, and then ten  
21 days prior to the voter registration deadline, we had a  
22 countdown of how many days students had left to register to  
23 vote.

24 Q And was that something that you needed to do because of  
25 the change to same-day registration brought about by VIVA?

1 A Yes. Since we wanted to -- we wanted to get as many  
2 students involved in the election process.

3 Q How has VIVA affected you personally, Mr. Berduo?

4 A It's affected my efforts in getting out the vote and  
5 getting students registered. We -- it's put a constraint on us  
6 as student government. We had a deadline as to when we had to  
7 register students to vote, and we had to turn people away as  
8 well.

9 Q Do you intend to do voter registration and Get Out the  
10 Vote activities in the future?

11 A Of course. I believe voting is important. I always  
12 encourage people around me to get registered and to participate  
13 in the election process.

14 Q How do you think VIVA will impact those efforts?

15 A I think the major one is the timing -- the deadline that's  
16 been put in place that you can no longer register 25 days prior  
17 the Election Day.

18 Q And, Mr. Berduo, why are you a Plaintiff in this lawsuit?

19 A Mainly because I strongly believe in trying to make voting  
20 easier for North Carolinians no matter which side of the aisle  
21 you're at. And to me personally, there's about 35,000 students  
22 that I represented in North Carolina State University this past  
23 year, and this is about the students that I had to turn away  
24 because they weren't registered on Election Day in 2014 and  
25 because they couldn't vote in that specific precinct.



1 Q But you don't have any immediate plans to do that?

2 A No, not right now.

3 Q And, Mr. Berduo, you can't name anyone who was unable to  
4 vote in the 2014 election cycle because of VIVA, can you?

5 A No.

6 Q And you mentioned that you had to turn people away  
7 sometimes from voting. You don't know if any of those folks  
8 that you say were turned away later voted, do you?

9 A No.

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

11 **THE COURT:** Any redirect?

12 **MR. SPIVA:** No redirect, Your Honor.

13 **THE COURT:** You may step down, sir.

14 **MR. DONOVAN:** Good afternoon, Your Honor. We have --  
15 the next witness is by video. It's about 45 minutes. So we  
16 felt this would be a good time to spend a few minutes moving in  
17 some of exhibits that we need to move, if that's acceptable.

18 **THE COURT:** That will be fine.

19 **MS. O'CONNOR:** Good morning, Bridget O'Connor on  
20 behalf of the NAACP plaintiffs.

21 The first set of exhibits that we would like to move  
22 into evidence are the unobjected-to exhibits that are listed on  
23 the preliminary injunction stipulation that was entered on the  
24 docket. And if it suits the Court, I will go ahead and read  
25 those in by exhibit number.

1           **THE COURT:** Have you already reviewed these with your  
2 opponents?

3           **MS. O'CONNOR:** We have exchanged them. They  
4 provided -- we had entered into the stipulation for all of  
5 them; and then once the pretrial disclosures were submitted,  
6 there were a handful that they then submitted a few objections  
7 to, and so we have excluded those from this set.

8           **THE COURT:** Okay. All right.

9           **MS. O'CONNOR:** And per our discussion with Ms. Engle,  
10 we have divided them -- we were going to mark them as new  
11 Plaintiffs' exhibits by binder, but within those binders are  
12 the individual exhibit ranges that I will read in now.

13           **THE COURT:** Okay.

14           **MS. O'CONNOR:** First will be marked as Plaintiffs'  
15 Exhibit 700, and in that binder, for the Court, will be  
16 Plaintiffs' Exhibit 1 through Plaintiffs' Exhibit 11 and  
17 Plaintiffs' Exhibit 13 through Plaintiffs' Exhibit 36.

18           That set that are in Plaintiffs' Exhibit 700, those  
19 are all Plaintiffs' declarations, just for reference.

20           The next binder is being marked as Plaintiffs'  
21 Exhibit 701, and that consists of Plaintiffs' Exhibit 51  
22 through Plaintiffs' Exhibit 75, Plaintiffs' Exhibit 78,  
23 Plaintiffs' Exhibit 80, Plaintiffs' Exhibit 82 through 85,  
24 Plaintiffs' Exhibit 88 through Plaintiffs' Exhibit 90, and  
25 Plaintiffs' Exhibit 92 through Plaintiffs' Exhibit 99.

1           And there will be three more of these. So the next  
2 one is Plaintiffs' Exhibit 702. That is Plaintiffs'  
3 Exhibit 100 to Plaintiffs' Exhibit 103, and Plaintiffs'  
4 Exhibit 105 to Plaintiffs' Exhibit 130.

5           The next one is Plaintiffs' Exhibit 703, which is  
6 Plaintiffs' Exhibit 131 through Plaintiffs' Exhibit 166.  
7 Plaintiffs' Exhibit 173 through Plaintiffs' Exhibit 185.

8           (There is no Plaintiffs' Exhibit 139.)

9           **THE COURT:** I am afraid I won't be able to see you  
10 here shortly.

11           **MS. O'CONNOR:** You noticed I put it under because I  
12 thought we were going to get there.

13           And the last one for this set is Plaintiffs'  
14 Exhibit 704, which consists of Plaintiffs' Exhibit 186 through  
15 Plaintiffs' Exhibit 217, and Plaintiffs' Exhibit 220 through  
16 Plaintiffs' Exhibit 228. And that's the last of this set of  
17 unobjected-to preliminary injunction exhibits.

18           **MR. STRACH:** Your Honor, I have a question.  
19 Regarding the exhibits in the PI stipulation that deal with the  
20 legislative record, I thought I noticed that the PX exhibits  
21 that were provided to us were excerpts from the record as  
22 opposed to the entire -- all of the JA pages that were given to  
23 the Court. Is this including the entire legislative record and  
24 including all the JA pages that were provided at the PI hearing  
25 or just excerpts?

1           **MS. O'CONNOR:** It should be the same as in the PI.

2           **MR. DONOVAN:** If it's not, we will adjust it.

3 Whatever was in the preliminary injunction hearing, these are  
4 those exhibits.

5           **MR. STRACH:** I just want to make clear that we want  
6 to make sure that the entire legislative record is in the  
7 record, the trial record.

8           **MS. O'CONNOR:** Okay. We can coordinate that. I know  
9 some of the newer trial marked exhibits have full versions of  
10 some of these transcripts, and we can coordinate just to make  
11 sure the full versions get in there either through this set or  
12 a subsequent admission. So we could work offline on that.

13           **THE COURT:** Okay. Any objection to these as they are  
14 now?

15           **MR. STRACH:** No, Your Honor, assuming that to the  
16 extent that these include legislative record, that they will  
17 be -- they are the full or will be the full at some point.

18           **MS. O'CONNOR:** Okay.

19           **THE COURT:** All right. They are -- okay.

20           **MS. O'CONNOR:** So we would move to admit these as-is,  
21 which I believe are excerpts of certain of the legislative  
22 record, and then we can work separately to get the full  
23 versions in as separate exhibits, but I think we should move  
24 them in as they were for the PI in this form, and then we can  
25 deal with the others separately.

1           **MR. FARR:** Your Honor, I just have a question. Does  
2 this include expert reports?

3           **MS. O'CONNOR:** It does not. We've excluded the  
4 expert reports.

5           **MR. STRACH:** We are fine with these.

6           **THE COURT:** All right. These are admitted. If you  
7 decide later there are other parts of the legislative record  
8 you want into evidence, you can either introduce them in your  
9 case; or if the Plaintiffs agree, you can amend those exhibits.  
10 All right?

11           **MR. DONOVAN:** One footnote on this. So from the PI  
12 stipulation, what isn't included is we still have a handful of  
13 documents that I know would still be these legislative  
14 statements. I don't want to argue it now. I know you have it,  
15 but I do want to hand up -- the Defendants last time argued  
16 that they didn't expect that this -- the exhibits that were  
17 marked and submitted to the Court would actually be exhibits.

18           I want to hand you up the email between me and  
19 Mr. Farr that started -- where Mr. Farr emailed to me saying  
20 the parties are silent --

21           **THE COURT:** Let me --

22           **MR. DONOVAN:** Do you want me to just hand it up?

23           **THE COURT:** No. I don't want to interpret you, but I  
24 guess I do. What is this going to be relevant to? The ones  
25 that there is no agreement over?



1           **MR. DONOVAN:** Yes. So we have the PI stipulation.  
2 It was filed. I think there's, like, five or ten --

3           **THE COURT:** Is this to the issue of whether that  
4 stipulation was meant to include everything from the  
5 preliminary injunction hearing regardless of whether there is  
6 hearsay or what have you?

7           **MR. DONOVAN:** Yes, sir.

8           **MR. FARR:** Can I see it?

9           **MR. DONOVAN:** Absolutely.

10          **MR. FARR:** Do you have a copy?

11          **MR. DONOVAN:** So just for process, we moved in all of  
12 it except for what they objected to.

13          **THE COURT:** I understand. Have you and the  
14 Defendants talked about this email?

15          **MR. DONOVAN:** We have for a while, Your Honor. We  
16 haven't been able to reach agreement.

17          **MR. FARR:** I don't remember talking about this one.

18                 (Off-the-record discussion.)

19          **MR. DONOVAN:** We can do it after lunch.

20          **THE COURT:** If there's a change of heart or a  
21 misunderstanding, see if you can work it out and then --

22          **MR. DONOVAN:** Very good. We will.

23          **THE COURT:** And I will be glad to decide the issue  
24 when it's final and ripe, if you will.

25          **MR. DONOVAN:** I understand. We just feel like we are

1 getting late in our case. That's the only reason. I will try  
2 to work it out over lunch.

3 **THE COURT:** All right. Just let me know and raise it  
4 if you can.

5 Are there more exhibits, or are we going to a  
6 witness?

7 **MR. SPIVA:** Going to a witness, Your Honor.

8 Your Honor, the Duke Intervenor Plaintiffs call  
9 Dr. Peter Levine.

10 **PETER L. LEVINE, PH.D.,** PLAINTIFFS' WITNESS, at 12:06 p.m.,  
11 being first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 **BY MR. SPIVA**

14 Q Good morning, Dr. Levine. Can you please state your name  
15 for the record.

16 A I am Peter Lawrence Levine.

17 Q And can you describe your educational background?

18 A Yes. I have a bachelor's degree from Yale in philosophy  
19 and a doctoral degree from Oxford University in England also in  
20 philosophy.

21 Q Were you a Rhodes Scholar, Dr. Levine?

22 A Yes, at Oxford I was.

23 Q Where do you work?

24 A I currently work at Tufts University in Medford,  
25 Massachusetts.

1 Q What is your position there?

2 A I am associate dean for research in the Jonathan Tisch  
3 College of Citizenship and Public Service. I am also the  
4 Lincoln Filene Professor of Citizenship and Public Service.  
5 And until very recently, about two months ago, I was the  
6 director of CIRCLE, which is the Center for Information and  
7 Research on Civic Learning and Engagement.

8 Q And do you have any oversight over -- I will use the  
9 acronym CIRCLE, if that's okay, for the organization you just  
10 identified. First of all, does CIRCLE have a relationship with  
11 Tufts University?

12 A CIRCLE is part and, in fact, it's a research center within  
13 the Tisch College, which is within Tufts University, and as the  
14 associate dean for research of the Tisch College, I closely  
15 oversee several and I participant in its research.

16 Q So even though you are no longer the director of CIRCLE,  
17 you still have oversight responsibility over CIRCLE?

18 A The director reports to me and also tends to collaborate  
19 with me.

20 Q Let me ask you to turn in your exhibit binder to what's  
21 previously marked as Plaintiffs' Exhibit 236, and if you can  
22 just turn to the back. I'm sorry, I don't have a page number  
23 for you, but I will get it. To page 40. I'm sorry, to  
24 page 42.

25 Is this an accurate list of publications that you have

1 authored or coauthored in the past ten years?

2 A The beginning on page 42 is actually -- in my version is  
3 actually the articles published by my coauthor, Dr. Kei  
4 Kawashima-Ginsberg. Mine begins on page 44 in the --

5 Q Yes, sorry. I'm sorry.

6 A Are we on the same page?

7 Q Yes. Thank you.

8 A Literally.

9 Q And is that an accurate list beginning on page 44 of your  
10 publications?

11 A Yes.

12 Q Can you tell me about the mission of CIRCLE?

13 A Yes. CIRCLE is a research center. We study the civic  
14 engagement of young Americans, focusing on young Americans.  
15 And civic engagement means things like registering and actually  
16 voting, although it extends beyond that to other civic forms of  
17 civic participation.

18 Q And you mentioned that your graduate your work, your Ph.D,  
19 and your undergraduate degree were in philosophy. Can you  
20 describe what experience or training you've had in statistical  
21 analysis regarding civic participation?

22 A Yes. Right at the time that I was leaving Oxford to  
23 complete my doctorate, I started working as a research  
24 associate for Common Cause in Washington, DC; and after two  
25 years there, I moved to the School of Public Policy as the

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1 research scholar -- excuse me, the School of Public Policy at  
2 the University of Maryland as a research scholar, where I  
3 remained for 15 years. CIRCLE was founded there.

4 And then -- I was initially deputy director, and then we  
5 moved CIRCLE, once I was director, to Tufts producing -- so  
6 that means from -- in a period from 1992 or so until the  
7 present, I have been consistently involved in empirical,  
8 generally quantitative, research on American politics,  
9 especially civic engagement.

10 Q What experience have you had looking at young -- civic  
11 engagement by young people?

12 A That was the reason that CIRCLE was funded -- CIRCLE, was  
13 funded in 2001, was to focus on that, to address, actually, a  
14 gap in -- what was seen as a gap in the research literature on  
15 young people, or a relative gap. Too little research had been  
16 done, and so we were funded to do that. So that's our  
17 specialty. And so we have, in those subsequent years, produced  
18 a very steady stream of, generally speaking, the most prominent  
19 and ambitious work on that topic of young people's civic  
20 engagement in the U.S.

21 Q Is CIRCLE's work cited by other publications or other  
22 types of publications?

23 A Yes. We're the largest and most focused and most  
24 ambitious academic institution that focuses on the civic  
25 engagement of young Americans, so our work is extremely widely

1 cited in the literature on that topic.

2 Q And in terms of your publications, are there any of those  
3 that deal with the subject of youth civic engagement?

4 A Yes. The list before us both shows seven sole-authored  
5 books and more than a hundred articles or book chapters or  
6 other scholarly publications by me and by -- certainly not all  
7 of them are about civic engagement. There are some other -- I  
8 have some other interests, but quite a few of them are,  
9 including books like *The Future of Democracy: Developing the*  
10 *Next Generation of American Citizens*, for example, 2007, is a  
11 sole-authored book by me simply on the question of young  
12 Americans' civic engagement.

13 **MR. SPIVA:** Your Honor, at this time I would like to  
14 move to qualify Dr. Levine as an expert in civic engagement,  
15 which includes the effects of voting laws on youth voting.

16 **MR. PETERS:** No objection, Your Honor.

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

18 **BY MR. SPIVA**

19 Q Dr. Levine, what did we ask you to do in this case?

20 A I was asked to perform an analysis of the likely effects  
21 of H.B. 589 on youth voting in the state of North Carolina.

22 Q And what methodology did you use to approach that  
23 question?

24 A Briefly, really three different methodologies to put  
25 together a comprehensive study of that question, the first

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1 being an extensive review of the research that already exists  
2 pertinent to those questions, what we would call a literature  
3 review, a critical comprehensive look at the literature.

4 Second, considerable analysis of national data, so taking  
5 into account all the 50 states and large samples of young  
6 Americans, in order to try to estimate the effects of various  
7 kinds of provisions generically across the country. So, for  
8 example, the effects of same-day registration or Election Day  
9 registration on any state.

10 And then, thirdly, we had access to North Carolina voter  
11 files and were able to look closely at patterns within those  
12 files regarding youth.

13 Q And how do you define a youth voter or young voter?

14 A For the purpose of the materials that we provided for this  
15 case, a young voter would be 18 to 24. Of course, we did also  
16 look to some extent at preregistration. So there are some  
17 places where we are talking about 17- and 18-year-old youth,  
18 but they are not calling them -- clearly not calling them  
19 voters. So 18 to 24 for the purpose of this report.

20 Q Have you looked at the historical registration and turnout  
21 data for North Carolina?

22 A Yes, as provided by -- well, yes, from several sources.

23 Q Okay. Can I ask you to turn to Plaintiffs' Exhibit 696 in  
24 your book.

25 **MR. SPIVA:** And just for the record, this is a table

1 that we took from Dr. Levine's 2/12/15 report.

2 **MR. PETERS:** Which tab?

3 **MR. SPIVA:** It is Table 1 and it was -- the source is  
4 here. It's from page 10 of the February 12, 2015, report.

5 **BY MR. SPIVA**

6 Q So, Dr. Levine, can you explain what your findings were  
7 regarding the historical registration and turnout trends in  
8 North Carolina and what Plaintiffs' Exhibit 696 shows in that  
9 regard?

10 A Yes. We thought it was more illuminating in telling the  
11 story about the history since 2000 to look at North Carolina's  
12 rank relative to other states, because many things affect the  
13 turnout of any given election in any given state, including  
14 who's on ballot and how the media's covering the election and  
15 so on. So the turnout rate for a given state can be  
16 misleading, but it is interesting to look at a pattern of the  
17 rank -- of the relative rank of North Carolina versus other  
18 states.

19 So in 2000, and indeed still in 2002, you will see that  
20 North Carolina ranked very poorly in youth voter registration  
21 rates and turnout rates. It was 43rd in the country and then  
22 46th in the county. In registration rate, it was 31st and then  
23 49th, second to the bottom, in voting turnout in 2002.

24 To simplify the story, the State then added a number of  
25 provisions to its voting laws, which we would regard from other

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1 research as being generally favorable to youth voting, making  
2 it more convenient and easier to vote. And North Carolina's  
3 rank rose, reaching 11th by 2008, not -- a much better showing.  
4 Well, and then -- I'm sorry, reaching 8th by 2012. That would  
5 be the highest it reached, and 10th in voter turnout.

6 So this is a story we think of -- this is partial evidence  
7 towards the case that bringing in those various provisions  
8 assisted with young people voting in the state of North  
9 Carolina.

10 But the story for 2014 is going to be less positive.

11 Q And what have you concluded about the likely effects of  
12 H.B. 589 on young voter turnout and registration?

13 A Since it's -- H.B. 589 counteracted each and every one of  
14 the new provisions that were brought in over the course of this  
15 period, we would expect it to reverse the gains that North  
16 Carolina made.

17 Q Okay.

18 A Or at least some of the gains.

19 Q Now, I am going to ask you more about that in a minute,  
20 but I wanted to first ask you to turn again to Plaintiffs'  
21 Exhibit 236. And looking at the first page here, is this your  
22 February 12, 2015, report submitted in this case?

23 A It is.

24 Q Okay. And you co-authored it with Dr. Kawashima-Ginsberg?

25 A Correct.

1 Q And is that the primary report that you drafted in this  
2 case?

3 A Yes.

4 Q What was Dr. Kawashima-Ginsberg's role in the drafting of  
5 that report?

6 A We were collaborators.

7 Q And can you take a quick look at --

8 **MR. SPIVA:** Your Honor, I am just going to read off a  
9 series of numbers that relate to his various reports just to  
10 confirm that he wrote them, and then I am going to move -- seek  
11 to move them into evidence.

12 Plaintiffs' Exhibit 50A, and I will represent to the  
13 Court and opposing counsel that this is just a color version of  
14 Plaintiffs' Exhibit 50, which is the April 11, 2014, report.

15 **BY MR. SPIVA**

16 Q Is that the April 11, 2014, report that you and  
17 Dr. Kawashima-Ginsberg submitted in the preliminary injunction  
18 matter?

19 A That's correct.

20 Q Okay. And if you can turn to Plaintiffs' Exhibit 243. Is  
21 that the March 9, 2015, supplemental expert report submitted on  
22 behalf of the Duke Intervenor's Plaintiffs by you and  
23 Dr. Kawashima-Ginsberg?

24 A Correct.

25 Q And Plaintiffs' Exhibit -- if you could turn to

1 Plaintiffs' Exhibit 248, and can you confirm that that is the  
2 surrebuttal report submitted by you and Dr. Kawashima-Ginsberg  
3 on March 24th, 2015?

4 A Correct.

5 **MR. SPIVA:** Okay. At this point, Your Honor, I move  
6 to admit the exhibits that I just read -- Plaintiffs'  
7 Exhibit 236, Plaintiffs' Exhibit 50A, Plaintiffs' Exhibit 243,  
8 Plaintiffs' Exhibit 248 -- into evidence.

9 **MR. PETERS:** No objection.

10 **THE COURT:** Admitted.

11 **MR. SPIVA:** Thank you.

12 **BY MR. SPIVA**

13 Q So let me ask you, Dr. Levine, to turn again to  
14 Plaintiffs' Exhibit 236, your February 12, 2014, report and  
15 specifically to page 13 of your report.

16 A Yes.

17 Q Do you have it, Dr. Levine?

18 A I have it.

19 Q Can you explain the significance of these graphs to the  
20 Court?

21 A Yes. What we have done here is to compare two types of  
22 states going across -- so aggregating them across the United  
23 States. In one group, the states had brought in no new  
24 restrictions on voting since the previous election. In this  
25 second batch, the states had brought in at least one

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1 restriction and sometimes many. And if one compares the blue  
2 bars, you can compare the youth turnout in those two groups of  
3 states. Just we're, at the moment, looking at figure 3, and  
4 the difference is statistically significant, and it's just  
5 significant.

6 It is, in common sense terms, significant. That is, youth  
7 people voted at a lower rate, 32.3 percent, in those states  
8 which had imposed any new restriction, compared to 42.6 percent  
9 for those who -- in states where they had no restrictions. The  
10 change for older voters, for 25 and up, is very small. And the  
11 second -- it's also a slight decline, but it is very small.

12 The second graph shows the same -- it is designed in the  
13 same way, but now we're talking about registration rates rather  
14 than turnout rates, and, again, there's a significant change.  
15 The states which had imposed new registration restrictions saw  
16 a lower youth voter turnout than those that had not imposed new  
17 restrictions.

18 Q And so what is your conclusion regarding the effect of  
19 imposing new voting restrictions generally?

20 A Imposing new voter restrictions, per se -- so this is a  
21 measure of the new -- the arrival of a new restriction appears  
22 to lower youth turnout probably both because of the actual  
23 content of the restriction, which is somehow causing things to  
24 be more difficult, but also possibly because of confusion  
25 created by a new law and also because of some kind of messages

1 that are being sent, which the previous witness testified to,  
2 about how the state either doesn't want young people to vote or  
3 how it is going to be difficult to vote finding that we  
4 generally -- we find across the country quite commonly that  
5 young people believe voting to be quite difficult.

6 Q What implications do you draw from this analysis for  
7 H.B. 589?

8 A Well, since H.B. 589 would qualify as a state that had  
9 passed one or more restrictions on registration, because, in  
10 fact, it passed about five, we would anticipate that it would  
11 lower turnout in the state, youth turnout specifically, and  
12 have less effect on older people.

13 Q Let me ask you to turn to Plaintiffs' Exhibit 698 in your  
14 binder. And for the record, this comes from tables that are on  
15 pages 14 and 15 of Dr. Levine's February 12, 2015, report.

16 Have you got Plaintiffs' Exhibit 698 in front of you,  
17 Dr. Levine?

18 A I do.

19 Q What effect, if any, did you find on young voter turnout  
20 and registration in the 2014 midterm elections?

21 A I previously showed what we discussed right now, a story  
22 that went from 2000 to 2012, but now we are asking what  
23 happened after the passage of H.B. 589.

24 So to begin looking at that, we compare 2010 to 2014. We  
25 do that 2010 to 2014, leaving out 2012, because of the pattern

1 that midterm elections are very similar to each other in  
2 turnout and Presidential elections are very different. So we  
3 considered that the most relevant comparison is between 2014  
4 and 2010.

5 I will draw the Court's attention to a couple of relevant  
6 facts here from this, if I may, from this table. The first row  
7 here named "Youth Population in North Carolina" shows an  
8 important fact that youth population has been growing in North  
9 Carolina. In fact, it's grown by about 4.6 percent. So just  
10 in order to keep the same level of turnout in the state of  
11 North Carolina, you need to have more young vote. You need to  
12 see more young people voting because there are, in fact, more  
13 young people.

14 Youth have also grown to be a bit bigger as a population  
15 share. This isn't a period of just four years. Youth have  
16 become a slightly bigger population share. That's the second  
17 row in this table. So the state in this sense is becoming  
18 slightly younger. And yet, third line, youth represent a  
19 smaller share of all votes cast in North Carolina. Their share  
20 has fallen. Likewise, their registration share, which is the  
21 fourth row -- the number of registered voters actually ticked  
22 up a little. Meanwhile, the population was going up faster.

23 So that -- so in the next row, which is labeled "Estimated  
24 VAP Registration Rate," you see what one would assume, which is  
25 a decline in the registration rate because there are slightly

1 more registrants but much more population.

2 We also find a decline in the number of votes cast by  
3 young people from -- by about 2,000 fewer votes, and that  
4 translates into a lower voter registration rate, not  
5 dramatically lower, just a tick down, seven-tenths of a  
6 percentage point.

7 And, by the way, that's the measure of turnout that we use  
8 and that everyone should use, if I may say so; namely, the  
9 number of votes cast per the number of citizens in the  
10 community -- or the number of people who should be eligible to  
11 vote in the community.

12 Q Is that the voting-age population? Is that what you're  
13 referring to?

14 A Yes, that's what I am referring to.

15 Q Were you finished?

16 A No, I think that's actually -- exactly when I finish -- I  
17 would finish, yep.

18 Q Are you aware that some of these numbers differ from the  
19 numbers in Dr. Thornton's report? And can you address that?

20 A Yes. The key difference, to the best of my knowledge --  
21 the best of my recollection, the only real difference that's  
22 driving anything here is the number of votes cast by young  
23 people, and she has submitted documentation that it's somewhat  
24 higher, about 20,000 votes higher among young people.

25 So, now, she does not anywhere say what the turnout was in

1 2014, the way that I would do it. She may refer -- I think she  
2 refers to turnout as votes per registered voters, and that's a  
3 misleading statistic. We never use it.

4 Q Why is that, Dr. Levine?

5 A I think partly -- let me give two quick answers. One is  
6 just commonsensically. If one wants to know whether the  
7 turnout in a community is high, you're really asking what  
8 portion of the people in the community or the citizens in the  
9 community voted. So your denominator -- in the people of the  
10 community, your denominator is not the registrants, but another  
11 way to put it is you could get turnout -- if turnout were --  
12 and I just -- I don't do it this way, but if turnout were the  
13 number of votes per registrants, you could get turnout to go up  
14 by reducing the number of registrants, and that seems  
15 counterintuitive or inappropriate. So consistently in  
16 everything we've ever done, we do turnout as the number of  
17 votes per -- the denominator being the voting eligible  
18 population.

19 **THE COURT:** Why don't we stop there, if we can. It's  
20 12:30. We had some witnesses on Friday. Are they coming back  
21 later?

22 **MR. DONOVAN:** Dr. Lichtman is -- we are emailing, but  
23 I think he will be back tomorrow, if not Wednesday, but we  
24 still have a full slate. We are ready to keep going.

25 **THE COURT:** All right. We'll take a break then, and



1 we'll see you back at 2:00.

2 (The Court recessed at 12:32 p.m.)

3 (The Court was called back to order at 2:03 p.m.)

4 **THE COURT:** All right. You may continue.

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

6 **BY MR. SPIVA**

7 Q Dr. Levine, good afternoon. When we broke, you were  
8 discussing Plaintiffs' Exhibit 698, which is Table 2b to your  
9 February 12, 2015, report. Do you recall that?

10 A I do.

11 Q Okay. And I think before we broke, you were discussing  
12 this table and its significance for youth turnout in North  
13 Carolina in 2014. Do you remember that?

14 A Yes.

15 Q And I believe you were beginning to discuss some of the  
16 reasons that Dr. Thornton's numbers differed with your numbers,  
17 and you had explained already the issue of the different  
18 denominator of the voting-age population. Did you want to  
19 continue your answer from there?

20 A Yes. So the only real number that's different is the  
21 count of young voters in 2014, which is 102,775 in our analysis  
22 and higher in hers. So I think, first of all, let me say the  
23 important big picture is here we find a very small,  
24 1.4-percentage-point decline in youth turnout between 2010 and  
25 2014, when we would have predicted, absent changes in voting

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1 law, a substantial increase in youth turnout in 2014 because of  
2 the nature of election. And I am can come back to that, but  
3 she has a larger number of young -- of votes cast by young  
4 people.

5 Q Is that a negative 1.4 percent decrease in turnout or was  
6 that in votes cast?

7 A It was -- right. Thank you for the correction. I just  
8 completely misspoke. It is a minus 1.4 percent decrease in the  
9 votes cast. It's not percentage points. We're talking about  
10 the votes cast. It's minus 1.4 percent decline in the votes  
11 cast.

12 Q What was your finding with respect to turnout?

13 A That's right. So our finding is a decline of seven-tenths  
14 of a percentage point on the next line. That's completely a  
15 mistake in what I said.

16 So she doesn't actually calculate youth turnout for 2014  
17 or for any year and by taking her count of the number of young  
18 votes and dividing by the youth population. She doesn't do  
19 that; but we can do that using her numerator, her estimate of  
20 the number of votes cast, and that would yield actually an  
21 increase in youth turnout of 1.35 percent -- percentage points,  
22 an increase of youth turnout of 1.35 percentage points. So the  
23 discrepancy comes down to a decline in our analysis of  
24 seven-tenths of a percentage point and an increase in her  
25 analysis of 1.35 percentage points.

1 I have no reason to believe that her numbers are correct.  
2 Our numbers were very carefully calculated, and they are the  
3 best we can do; but if her numbers were correct, the difference  
4 would be quite small. The difference -- the real story is that  
5 the 2010 and 2014 youth turnout are -- were quite similar.  
6 There is no sign of -- certainly we've never said there was a  
7 sign of any very big decrease, but there also is no sign of any  
8 increase, and we would have expected a quite healthy increase  
9 in 2014 because of the nature of the 2014 election versus the  
10 2010 election.

11 Q Okay. Can you tell me what you mean by the difference in  
12 the nature of the election in 2014?

13 A Well, the word that the witness used this morning was  
14 "blockbuster" for the 2014 election. So our research,  
15 extensive research over a number of years has shown that in  
16 competitive elections and also well-financed elections, youth  
17 turnout is much higher than it is in sleeper elections because  
18 there is much more attention to the election, more much  
19 excitement. There is much more paid communication by the  
20 campaigns. There is also much more free media by the press,  
21 and there is an excitement that comes from thinking that one of  
22 the candidates -- either of the candidates could win, so your  
23 vote really matters.

24 And those factors all apply in 2014 when there was a  
25 competitive North Carolina Senate election. One of the

1 witnesses testified that it felt like 2012, i.e., like a  
2 Presidential year actually in North Carolina. It's also the  
3 first year in which \$100 million was spent on a statewide race.  
4 So lots of resources being plowed into attention, and so we  
5 would have expected a really healthy turnout increase; and we  
6 are hypothesizing that the reason we don't see the increase is  
7 that the blockbuster year encouraged turnout and H.B. 589  
8 discouraged it, and we get a net of, according to us, a slight  
9 decrease and according to Thornton's numbers, a very slight  
10 increase.

11 Q If Dr. Thornton's number proved to be correct, would that  
12 change your conclusions in any way?

13 A No. We would say that there was a very small increase  
14 when there should have -- an increase of 1.35 percentage points  
15 when there should have been a much healthier increase.

16 Q Let me ask you to turn to Plaintiffs' Exhibit 236, which  
17 is your February 12, 2015, report, and specifically to page 15.  
18 And I would like to direct your attention to the last paragraph  
19 on the page under same-day registration where you wrote, "In  
20 the 2012 Presidential election in North Carolina, young voters  
21 comprised 8.99 percent of all voters, but 20.58 percent of  
22 those who utilized SDR at one-stop locations."

23 Can you explain the significance of that finding?

24 A Yes. I think in general we are now starting to talk about  
25 the effects of same-day registration on young voters, and so

1 the first thing that jumps out at us as a finding -- and this  
2 is based on our analysis of the North Carolina election data --  
3 is that young voters were very heavy and disproportionate users  
4 of same-day registration in 2012. So they were, as it says in  
5 the next sentence, almost -- well, 2.6 times as likely to use  
6 that as older voters were.

7 Q Can you turn to Plaintiffs' Exhibit 697 in your binder,  
8 which is -- well, let me ask you once you get there. Tell me  
9 when you've got it. It is Plaintiffs' Exhibit 697.

10 A Right.

11 Q Is this drawn from information and numbers that can be  
12 found in text on pages 18 and 19 of your expert report?

13 A Yes. They are in the paragraphs there, and we put them in  
14 a table, yes.

15 Q And what does this table show concerning the effect of the  
16 availability of same-day registration on the behavior of young  
17 voters?

18 A In essence, it shows that having same-day registration in  
19 a state really changes the way young people behave sort of  
20 through the registration and voting process. So the comparison  
21 is between all the states that have same-day registration and  
22 all the states that don't have it. And let me parenthetically  
23 say that for the purpose of this analysis, we are counting  
24 Election Day registration as a form of same-day registration  
25 because in Election Day registration states, you can vote on

1 the same day that you register, but it happens to be Election  
2 Day.

3 So we are categorizing the states as same-day registration  
4 or states that aren't same-day registration into two broad  
5 categories, and young people report very different behaviors in  
6 those states. So the first row is -- comes from the  
7 U.S. Census November question asked of people who don't vote,  
8 who say they don't vote, why didn't you vote, and we are asking  
9 that question here only of 18 to 24s nationally.

10 And in states without same-day registration, 22.9 percent,  
11 a large group, said, well, they missed the registration  
12 deadline. In states with SDR, a much smaller proportion said  
13 they missed the registration deadline.

14 They are also asked -- of those who registered, they are  
15 asked where; and in the states without same-day registration,  
16 35 percent say that they registered at the Department of Motor  
17 Vehicles, which certainly is a place you can register, but in  
18 some cases could require a whole trip to the DMV to register.  
19 That becomes quite unlikely in states with same-day  
20 registration where only 7.8 percent say that they voted at the  
21 DMV.

22 And, finally, most simply, in states --

23 **THE COURT:** You said "voted." You mean registered?

24 **THE WITNESS:** I'm sorry. Yes. I just misspoke.

25 And then, finally, in states that have same-day

1 registration, fully 45.4 percent of young voters say that they  
2 used it. So it is not an unusual action in those states, and  
3 it is basically zero in the states without it because you --  
4 you are not allowed to do it.

5 **BY MR. SPIVA**

6 Q And in your own research, what are the effects of same-day  
7 registration on turnout?

8 A Right. So you asked me at the very beginning to talk  
9 about methodology, and I gave a very brief answer with respect  
10 to our national analysis. So I will just elaborate a little  
11 bit by saying that we did what social scientists very  
12 standardly do when trying to explain this kind of phenomenon,  
13 which is that we built a statistical model using data from all  
14 50 states, because if you want to know of effects of something  
15 like, in this case, same-day registration, you really can't  
16 tell from looking at a case, let's say, one state in one year  
17 or one state in two years; you really need more data.

18 So we built a statistical model, an elaborate one, in  
19 which what we are trying to predict is voting, the chances that  
20 a young person votes or, put another way, the percentage of  
21 young people who vote in a given state; and what we are  
22 explaining it by is everything that we know from any previous  
23 research might explain voter turnout, such as the  
24 competitiveness of the election, the race and ethnicity and  
25 gender of the individual student, whether the -- not student,

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1 young person, whether the young person went to college, and a  
2 whole lot of other factors.

3 One of the factors is whether the state has same-day  
4 registration or Election Day registration, and the finding is a  
5 very strong positive, statistically significant, robust,  
6 consistent finding that same-day registration, which I am again  
7 using broadly to include Election Day registration, boosts  
8 youth turnout.

9 Q Dr. Levine, in your answer, you started to say college  
10 students, and you corrected yourself and you said "young  
11 person." I know this is not directly on the point that you are  
12 making, but could you explain briefly whether when we're  
13 talking about young persons, are we talking mainly about  
14 college students or not?

15 A We are, in fact, talking mainly about not college  
16 students. So that's why I really misspoke and wanted to  
17 correct myself. About half -- the last I saw, 47 percent of  
18 people turning 18, 19 don't go to college. And then of those  
19 who go to college, close to half go to a two-year community  
20 college, many part-time. And then of those who go to four-year  
21 colleges, really large proportions drop out before completing.  
22 And then those -- and then the 18-to-24 age group also includes  
23 people who did go to college at age 18, did spend four years  
24 there, and are now finished.

25 So by the time you put all those together -- I don't at



1 this moment have a number for you, but a substantial majority  
2 of 18- to 24-year-olds are not college -- current college  
3 students, especially current full-time college students.

4 Q Did you look at the issue of the elimination of  
5 preregistration in North Carolina, Dr. Levine?

6 A Yes. And the main --

7 Q What did you find concerning the use of preregistration in  
8 North Carolina?

9 A Right. Thank you. The main sort of statistical finding,  
10 original finding that we contribute here is that  
11 preregistration was a common phenomenon in the state. So  
12 preregistration, to the best of my knowledge, was available in  
13 the state of North Carolina from 2010 to 2013 when it was  
14 repealed; and during that time, about 150,000 16- and  
15 17-year-old North Carolinians took advantage of it and got on  
16 the preregistration list.

17 Q And how are you defining preregistration for those  
18 numbers? Does that include people who are going to be 18 by  
19 the time of the general election?

20 A It includes -- it's the people who took advantage of the  
21 preregistration provision by using that form and saying they  
22 were -- they wanted to preregister.

23 Q And what is your opinion of the effects of having  
24 preregistration?

25 A My opinion of the effects of having preregistration is

1 that it's positive. It increases turnout of those young people  
2 once they turn 18 and, indeed, gets them on the course of  
3 voting even later in life. That's based, in part, on studies  
4 of other states, such as Florida, strong persuasive studies,  
5 and, in part, on my expert observation and work in this field  
6 more generally over the years, which leads me to believe the  
7 following: That it's very helpful to be able to offer a 16- or  
8 17-year-old a concrete activity to do. They can't register in  
9 the traditional way to vote, they can't vote, but you can tell  
10 them that they can go to preregister.

11 And you would do that, for example, if the kid is taking a  
12 civics class in high school. Most people taking a civics class  
13 in high school are not yet 18. Civics teachers, therefore,  
14 can't tell the kids to register or to vote or encourage them or  
15 tell them about that opportunity, but they can tell them to  
16 preregister.

17 Likewise, if an election should come along, perhaps even a  
18 very exciting election like the 2008 Presidential election, but  
19 any election, when kids are 17 and they get excited about the  
20 election, you can't tell them to vote and you can't tell them  
21 to register, but you can tell them to preregister in North  
22 Carolina and -- or you could until it was repealed. And that  
23 seems like a very effective way to actually get them on the  
24 preregistration list and get them -- and get them in the habit  
25 of voting.

1           And we do also know from the statistics that if they are  
2 on the preregistration rolls in North Carolina, they remain  
3 registered post -- I mean, empirically, as a fact, they stay on  
4 the registration list and they stay on the registration list  
5 even at a slightly higher rate than those who registered upon  
6 turning 18.

7 Q       And what did you conclude regarding the effects of  
8 removing the preregistration option in North Carolina by  
9 H.B. 589?

10 A       The conclusions -- since the conclusion is that  
11 preregistration is a good thing that raises youth turnout, the  
12 conclusion of -- that is -- is that removing it would, at best,  
13 wipe out that advantage and also might even be worse because it  
14 has a -- the act of repealing it has a certain message about  
15 how voting is going to become more difficult and perhaps  
16 more -- less desired by the state. So the effect would be  
17 negative, in short.

18 Q       Can I ask you to turn to Plaintiffs' Exhibit 699 in your  
19 binder. And this is from Table 4b and Table 4c from your  
20 February 12, 2015, report. Those two tables appear on pages 22  
21 and 23 of your report, but we put it on one page here in  
22 Exhibit 699. Have you got 699 in front of you?

23 A       I do. I do.

24 Q       What do these tables show about the effects of shortening  
25 the period of early voting?

1 A Well, they show that the effect of shortening the period  
2 is likely to have been negative. But just to break it down,  
3 Table 4b we are basically drawing everyone's attention to  
4 because it shows that young voters really did take advantage in  
5 the past of early voting. So the rate -- this is not some  
6 minor thing that just a few young people chose to do. It was  
7 quite common. In fact, in the 2012 general election, an  
8 outright majority of young voters used early voting.

9 And in each of the Presidential years that are shown here,  
10 when -- and by the way, in Presidential years, the less avid  
11 voters, the less motivated voters, the lower information voters  
12 are somewhat more likely to participate; and in those years, we  
13 see lots of early voting. We see about half. I mean, that's a  
14 lot.

15 But what about the change? Because in 2010, early voting  
16 was a certain way; in 2014, it was changed and I would say  
17 shortened, the window was shortened. And the answer is, well,  
18 for young voters, the percent who --

19 Q Can you tell us where you are looking, at which table?

20 A I am looking at Table 4c now. So Table 4c compares 2010  
21 to 2014, and it compares young voters and older voters. And  
22 the story here is that for young voters, the percent using  
23 early voting actually fell between 2010 and 2014, expressed as  
24 a percent of the number of votes cast. That way it was down by  
25 9.3 percent. So early voting became -- well, I'll simply say

1 less common for young voters.

2 For older voters, it became quite a bit more common.

3 Their rate of using it went up, and, in fact, 16.6 percent more

4 older voters voted that way. So we would claim that the --

5 assert that the change in the early voting window had a

6 disproportionate negative effect on young voters.

7 Q And let me ask you about the voter ID provision of

8 H.B. 589. In your opinion, what are likely effects of the

9 photo ID requirement in H.B. 589 likely to be?

10 **MR. PETERS:** Your Honor, objection to the extent  
11 that's not on issue in this trial.

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

13 **MR. SPIVA:** Did you say you would allow it?

14 **THE COURT:** No, I said hold on, please. For what  
15 purpose is it being offered at this time?

16 **MR. SPIVA:** Dr. Levine is going to testify that  
17 despite its modification, that it's likely to have continuing  
18 effects because of the confusion that it causes on young voters  
19 and the message that it sends, and this is based on his  
20 research in the field.

21 **THE COURT:** H.B. 589's voter ID provision is being  
22 litigated, at least at this time, I believe, only for the issue  
23 of intent, is it not?

24 **MR. SPIVA:** Intent and we are not challenging the  
25 former provision, but what we are trying to show are the

1 effects of H.B. 589, which continue to include effects of the  
2 voter ID requirement that was in place even though it has been  
3 modified. So the continuing effects of it.

4 **THE COURT:** Okay. Well, first of all, I think maybe  
5 you start with what effects there are of the original bill,  
6 based -- and what that means for intent, and then we'll take it  
7 from there. Did you plan to cover that?

8 **MR. SPIVA:** Yes. Yes, I am, Your Honor.

9 **BY MR. SPIVA**

10 Q Let me go at it this way, Dr. Levine. You've studied the  
11 effects of photo ID laws nationally, I take it?

12 A Yes.

13 Q Okay. And what have you found in terms of the likelihood  
14 of young people having a photo ID, a valid photo ID, under  
15 photo ID laws?

16 A That a considerable number do not have the photo IDs that  
17 are acceptable under various state laws. So one example is a  
18 driver's license, and some 35 percent of 18-year-olds in  
19 America generally don't have a driver's license. Now, granted,  
20 some of them would have a passport or something else, but  
21 35 percent is a substantial number who don't have one of the  
22 standard forms of ID, the driver's license.

23 And then when we looked at the North Carolina data, we  
24 found that 14 percent of 18 to 24s, so a larger age range, did  
25 not have any -- in our estimation, did not have any of the

1 forms of ID that are acceptable now.

2 Q And from your review of the literature over the years, how  
3 well known is that -- are the facts that you just testified to,  
4 how well known are those -- sorry. How widely reported is that  
5 in the literature?

6 A Photo ID has been a very prominent point of controversy  
7 with not only litigation but very active advocacy and not only  
8 advocacy to get to legislatures to take a certain position on  
9 it, but also advocacy in the form of grassroot efforts to vote,  
10 for example, notwithstanding the existence of the photo ID  
11 laws. And in that very high-profile conversation, many times  
12 cited facts are facts about the various groups of young people  
13 who don't have photo ID.

14 And there is -- and so it would be very easy to find out,  
15 in 2010 or earlier, that there's lots of young people who don't  
16 have photo ID. It would come up very quickly on a Google  
17 search.

18 Q And do you think the photo ID requirement, even though it  
19 has -- of H.B. 589, even though it has been modified, would  
20 have continuing effects even after it has been changed?

21 **MR. PETERS:** Same objection, Your Honor.

22 **THE COURT:** I will overrule it.

23 **THE WITNESS:** So I can answer?

24 I would posit that it probably would have those  
25 effects because -- for two reasons, one, simply confusion about

1 whether it's been repealed or not. We were able, for a  
2 separate project, to survey a large sample of young Americans  
3 in the -- just before the 2012 election and asked them about  
4 the state laws in place in their states, and then we went and  
5 compared the real laws to what they said, and they were very  
6 often wrong and they very often overestimated the sort of  
7 difficulty of those laws.

8           For example, in a state like Massachusetts, which  
9 does not have photo ID laws, a lot of people thought it did and  
10 I think -- so I think the communication challenge is difficult.  
11 It is a very crowded communications environment. It's very  
12 hard to get any message out about anything. I think the  
13 message that North Carolina was requiring photo IDs has been  
14 pretty widely broadcast.

15           In fact, I can testify that I have been in the state  
16 talking to college students, and they were up in arms about the  
17 photo ID provisions. I think it's going to be quite hard to  
18 communicate the message to all of them or even to a large  
19 number of them that actually those provisions have been  
20 relaxed. Over a long, long time, yes, they will figure it out;  
21 but I think in the short term, most will believe that there is  
22 a photo ID requirement.

23 **BY MR. SPIVA**

24 Q     Let me ask you about provisional ballots. What effects  
25 has H.B. 589 had on the casting of provisional ballots?



1 A Well, we know from our analysis of this 2014 data that  
2 young people were both much more likely to cast provisional  
3 ballots and also much more likely to have those provisional  
4 ballots rejected in the state than older people.

5 Q Did you look at the effect of a state imposing a number of  
6 a voting barriers?

7 A Yes. So here the question is a little bit different. So  
8 far we have been talking about what are the effects of each  
9 kind of provision on -- by itself on, you know, people. So we  
10 have found -- you know, people's turnout. So we had found that  
11 same-day registration had a positive effect across the country.

12 I don't think I said this, but we found that photo ID had  
13 a negative effect, although it was limited to a negative effect  
14 on young people who were relatively disadvantaged to that  
15 population. So we've had various effects from various  
16 provisions.

17 But the other thing we were interested in was what would  
18 happen if a state had a bunch of provisions that would be  
19 considered barriers, on the theory that a lot of them -- almost  
20 regardless of which ones they were, but a whole batch of them  
21 would have a cumulative negative -- might have a cumulative  
22 negative effect, sort of the sum would be greater than the --  
23 the whole would be greater than the sum of its parts, that the  
24 whole package would be worse than just the pieces separately,  
25 because the whole package communicates that the State doesn't

1 really want you to vote. Particularly, it's very cautious  
2 about your voting and that -- and perhaps, more importantly,  
3 that voting is difficult, that it's this complicated process.  
4 And a lot of young people report being intimidated by the  
5 voting process.

6 And so we hypothesize that if you had a lot of rules in  
7 place, it would be particularly -- it would particularly convey  
8 this message of difficulty. And so we separately measure -- in  
9 the same model where we measure the effects of each provision,  
10 we also modeled the effects of putting all -- a lot of  
11 provisions in, and we find that that effect independently is  
12 negative and is negative to a statistically significant extent.  
13 So forget which provision you have; if you have a bunch of  
14 provisions, it's bad.

15 Q And when you say "it's bad," I take it you mean that the  
16 whole is indeed larger than the sum of its parts in terms of  
17 its negative effect on voting?

18 A That's right. That's right.

19 Q Okay. What does your research show concerning the likely  
20 long-term effects of H.B. 589?

21 A Long term. So there's a very robust and consistent  
22 finding in the literature that once young people start -- or,  
23 actually, once anyone at any age starts voting, the likelihood  
24 is higher that he or she will vote again. So the shorthand for  
25 that is voting is habit forming. I will come back in a second

1 to why I think that is.

2 But the immediate implication for North Carolina is that  
3 if the State should reduce voter turnout among young people in  
4 a given year, 2014 or 2016, they would then start at a lower  
5 baseline, and they would always have a lower probability of  
6 voting for the rest of their lives; that is, their voting rate  
7 will increase, but it will increase from a lower baseline and  
8 so there will be a long-term, possibly lifelong turnout --  
9 negative turnout effect.

10 I think if I could just quickly address why.

11 Q Yes. That was going to be my next question.

12 Why was that -- why is that?

13 A I think -- so the finding is very -- in itself is very  
14 statistically robust. The explanation is based on reasoning  
15 about that and bringing in other sources of knowledge. I posit  
16 two explanations. One is kind of psychological, that once you  
17 vote, you're more confident that you can vote. You did it.  
18 You know more. Certain parts of the voting process that might  
19 be inevitably intimidating, such as actually using the voting  
20 machines, you've now got under your belt, and so you are more  
21 confident and positive about voting and you just feel like  
22 you're a voter. So that's all psychological.

23 On the other side, equally -- at least equally important,  
24 once you have voted, you have created a voting record. Voting  
25 records are of value to the political community, that is,

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1 campaigns and consultants and candidates. They are of enough  
2 value that they buy them actually. Even though they are public  
3 records, they buy aggregates of them from companies for quite a  
4 lot of money.

5 And why are they valuable? Because when you have a voting  
6 record, you can -- as a campaign, when you have a voting  
7 record, you can target that person to vote. You can -- they  
8 are then on your contact list, or they can be on your contact  
9 list and you can target them.

10 And we have very ample evidence, including evidence from  
11 randomized experiments, which is the gold standard, that when  
12 people are contacted, they are more likely to vote. So if you  
13 don't have a voter record, you are less likely to be contacted,  
14 and that's a vicious cycle because then you are never  
15 contacted.

16 On the other hand, once you've created that voter record,  
17 they start bugging you to vote. And so that would explain, in  
18 part, why the effect is lifelong.

19 Q Great. Thank you very much, Mr. Levine.

20 **MR. SPIVA:** I have no further questions at this  
21 point.

22 **THE COURT:** Any cross?

23 **MR. PETERS:** Thank you, Your Honor.

24 CROSS-EXAMINATION

25

1 **BY MR. PETERS**

2 Q Good afternoon, Dr. Levine. I am Alex Peters of the North  
3 Carolina Attorney General's Office, and it's good to see you  
4 again.

5 A Yes, it's good to see you, too.

6 Q I would like to ask you first if you would look at tab --  
7 the tab that is marked PX0697 in the book there?

8 A Yes.

9 Q And I believe this is the chart where you compare states  
10 with SDR and states without SDR?

11 A Yep.

12 Q And the percentage of young people nationally who register  
13 in these various ways; is that correct?

14 A That's correct.

15 Q Right. And I believe I understood you a moment ago to say  
16 that when you say states with SDR here, you are including  
17 states that have Election Day registration?

18 A For the purpose of this analysis. I realize that there  
19 are complexities; but, yes, for the purposes of this analysis,  
20 we are treating Election Day registration as a subset of  
21 same-day registration.

22 Q All right. And you are aware that North Carolina has  
23 never had Election Day registrations, aren't you?

24 A Yeah, I am aware of that.

25 Q Right. So in your third row there, when you say

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1 45.4 percent of young people nationally and states with SDR  
2 registered at the polling location when voting, do you know  
3 what portion of that are people who use Election Day  
4 registration rather than same-day registration?

5 A I don't know the proportion. It would be indeed a mix of  
6 the two.

7 Q Right. So that really doesn't tell us anything else, does  
8 it, about how same-day registration, meaning registration  
9 during early voting as was used in North Carolina -- that does  
10 not tell us how many people used that under your national  
11 analysis here, does it?

12 A "Doesn't tell us anything" is too strong. It doesn't give  
13 a perfectly precise quantification for North Carolina, and it  
14 wouldn't do so even if North Carolina had EDR, like everybody  
15 else, because each state is a bit different. It does give us  
16 very strong evidence in favor of a very closely -- in my  
17 opinion, very closely kindred election reform.

18 Q But it is mixing people who registered using a mechanism  
19 that was not available in North Carolina; correct?

20 A That's correct.

21 Q Okay.

22 A Yes.

23 Q Now, let me ask you a minute about preregistration. It is  
24 correct, isn't it, that you were not able to draw any  
25 conclusions about the long-term effects of preregistration in

1 North Carolina because it had been in effect in North Carolina  
2 for such a short period of time; correct?

3 A That's right. So the case for the long-term effects comes  
4 in part from Florida's experience, which is a big longer, and  
5 in part from the general finding that if people vote when they  
6 are young, they are more likely to vote later.

7 Q You mentioned earlier -- you talked about 2014 being a  
8 blockbuster election, using the term that had been used by  
9 another witness earlier today. Did you actually do any  
10 specific analysis of the Hagan-Tillis race and particularly of  
11 that race and the campaign with regard to young voters in North  
12 Carolina?

13 A You know, the kind of testimony that we heard here is what  
14 you really do to find out whether young people were targeted.  
15 I mean, it has to be what we would call qualitative. It has to  
16 be what -- reports of what the situation was like on the  
17 ground, both media reports and grassroots activists reports.

18 If you are asking for a quantification of the amount of  
19 how we see young people, that I would say is actually  
20 impossible to do.

21 Q So is the answer, no, you did not do any analysis or study  
22 of how specifically the Hagan or Tillis campaigns did or did  
23 not try to reach out to young voters?

24 A I think I can say the answer to your question is no,  
25 because analysis is broader to me than number crunching. If

1 the answer is did we do a statistical analysis of how much  
2 outreach there was to young people, the answer is no, and I  
3 think it is -- I think there is no such thing, that there is no  
4 available or pertinent data.

5 But analysis is broader than that. It goes -- the  
6 application, for one thing, of general political science  
7 findings that -- that campaigns mobilize young people when they  
8 have the resources to do so. I think it is also important to  
9 realize mobilization is not generally targeted precisely to age  
10 groups. It is a more broad spectrum. If you canvas in a  
11 neighborhood, you are canvassing to people of all ages. If you  
12 advertise on TV, anybody can watch it. If you contact grandma,  
13 grandma can tell grandson to vote. So regardless of how they  
14 decided to target their outreach, there was a lot of outreach  
15 going on in the 2014 election cycle in North Carolina.

16 Q Would you agree that there is some forms of outreach that  
17 might be more targeted to young voters, such as through social  
18 media?

19 A I would. The efficacy of spending dollars in those  
20 particular ways has not really been assessed, though.

21 Q But that doesn't mean it is not done, does it?

22 A No. Often there would be some intentional action to do  
23 that. There would also be often some people on the campaign  
24 staff who are supposed to be worrying about young people, but  
25 they don't necessarily have some special budget that's



1 allocated out for them.

2 Q Would you agree that one way that a campaign might try to  
3 motivate young voters is through activities on the college  
4 campus?

5 A Yes. It only reaches college students, but it is indeed  
6 one way that they would do it.

7 Q Speaking of only reaching college students, you testified  
8 earlier that when you are talking about young voters, college  
9 students are a -- I don't want to put words in your mouth, but  
10 relatively small portion of the young voter population as a  
11 whole?

12 A A minority, yes.

13 Q A lot of things go into determining whether or not someone  
14 participates in the electoral process, don't they?

15 A Yes.

16 Q One of those things would be education level?

17 A Yes.

18 Q So even if college students are a smaller proportion of  
19 young voters, would you say they are more likely to participate  
20 in the electoral process than those who do not go to college?

21 A Yes. That's not just an inference or hypothesis. That's  
22 very well documented.

23 Q Now, I want to talk for a moment about early voting. You  
24 say in your report -- and if you want to take a look at it,  
25 this is Tab 236, and I am looking at pages 3 and also on

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1 page 7. Maybe the easiest spot to look is page 7, because you  
2 have a heading there that says "In-person Early Voting."

3 A Yes.

4 Q And you say that North Carolina had fewer -- North  
5 Carolina voters, excuse me, had fewer days to cast their votes  
6 prior to Election Day?

7 A Right, in 2014.

8 Q Now, you did not do any study, did you, of exactly when  
9 individual counties offered early voting during those 17 days,  
10 did you?

11 A Our findings are based on comparing the whole early voting  
12 window in 2010 to the whole early voting window in 2014, and  
13 find that the latter was less attractive to young people. And  
14 we didn't -- I am not sure I see the value of looking at any  
15 details within this because our claim is simply that the second  
16 situation that applied in 2014 was worse for young people than  
17 the first situation.

18 Q Well, are you aware that the 17-day voting period -- that  
19 the only place in a county that was required to be open during  
20 business hours, and the last Saturday morning of that early  
21 voting period -- the only place required to be opened was the  
22 county board of elections?

23 A I think so. I think you may have told me in deposition.  
24 But, in general, all we really have here is an experiment with  
25 two different -- a kind of rough experiment with two different

1 sets of provisions. Both of them are fairly complicated as to  
2 days, hours, locations, but I am testifying that the latter set  
3 of arrangements was worse for young people.

4 Q Right. But you didn't actually look at what voting  
5 centers were available to young people, did you?

6 A We did not. I am not sure what we would have done with  
7 that information if we had it, but we didn't.

8 Q So, for example, you did not look at whether voting  
9 centers might be more likely to be closer to larger populations  
10 of young voters, such as a college campus, did you?

11 A We didn't do any geographic or geospatial analysis about  
12 polling locations.

13 Q And if it were to be the case that a -- voting locations  
14 were, for example, on a college campus, that might contribute  
15 to the -- what has been described as disproportionate use of  
16 those locations by young voters, wouldn't it?

17 A On the whole, I am in favor of putting the voting  
18 locations on college campuses, but what we have here is a  
19 pretty clear showing that whatever combination of locations and  
20 times and dates were available in 2014 worked worse than what  
21 was available in 2010.

22 So if we found out that there were more polling places on  
23 campuses in 2014 than in 2010, this would show that that didn't  
24 work.

25 Q My question is, when you are looking at the data for

1 2012 --

2 A Right.

3 Q -- you did not look at where the voting locations were and  
4 how that might have affected the way those voting locations  
5 were used by young voters, did you?

6 A No, we didn't.

7 Q You also say -- and this is on page 21 and 22 of your  
8 report -- you also say that young people are more likely to  
9 vote after 1:00 on the last Saturday of early voting.

10 A Right.

11 Q Did you do any research to determine why that might be the  
12 case?

13 A Not exactly. The finding is a straightforward statistical  
14 number. It's that the -- and it is shown on Table 4a where  
15 the -- the votes on Saturday before and after 1:00 are shown.  
16 And so -- but I could very reasonably, I think, speculate for  
17 two reasons why the afternoon would be beneficial to young  
18 people. One is a lot of young people are not waking up very  
19 early on Saturday morning, and number two is that young people  
20 are going to benefit from an Election Day window -- a voting  
21 window that -- and registration -- in the days when North  
22 Carolina had same-day registration, a voting and registration  
23 window that goes as late as possible towards Election Day,  
24 because elections build up as a crescendo of attention right  
25 towards the end. Young voters are some of the last to get

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1 mobilized, and so they're -- it's going to -- the hours are  
2 going to tick down. There are going to be more and more young  
3 people who are mobilized. So you don't want to cut back by --  
4 so Saturday afternoon, from a point of view of the campaign  
5 organizer or Get Out the Vote activist, is going to be prime  
6 time because it is right before the election and it is a time  
7 when the kids are awake and they are not -- a lot of them are  
8 not in school or in classrooms, if they're college kids, or  
9 working, if they are workers. So that's prime time. So losing  
10 it is going to be harmful.

11 Q Are you aware that prior to House Bill 589, all early  
12 voting locations closed at 1:00 on Saturday unless the county  
13 board of elections made a decision to keep a specific location  
14 open?

15 A I don't know -- I suppose the answer to that is yes. I  
16 think I have been told that, and the -- I don't know if a  
17 proportion of the polling places were open after 1:00.

18 Q Nor do you know which polling places were kept open after  
19 1:00, do you?

20 A No, but we do know what proportion of young people voted  
21 after 1:00 p.m. on Saturday in 2012. It was nearly 4 percent,  
22 and that's a significant number of people.

23 Q But you didn't do an analysis to determine whether part of  
24 the reason for that might be because it was the locations near  
25 them that stayed open; whereas, other locations perhaps did

1 not?

2 A So you are claiming that they might have gone to that  
3 space because of -- so you'd like an answer to the question.

4 No. We did not do the analysis. I have been trying to  
5 understand why we would even want to, but the answer is, no, we  
6 didn't.

7 Q Dr. Levine, I believe you testified at the beginning of  
8 your testimony that what you were asked to do in this case was  
9 to perform an analysis on the long-term effects of House  
10 Bill 589; is that correct?

11 A On youth voting.

12 Q Excuse me. To perform an analysis on the long-term  
13 effects on youth voting of House Bill 589?

14 A That sounds correct, yeah.

15 Q Now, when you were asked about that just a few minutes  
16 ago, and what the long-term effects were, you referred to what  
17 the robust literature shows, but you did not refer to your own  
18 analysis; is that correct?

19 A Except that, again, I would define analysis, I think,  
20 standardly, not eccentrically, as broader than number  
21 crunching. So, for instance, my careful reading of scholarship  
22 by people like Eric Plutzer, whose work I've also interacted  
23 with in various ways, gives me a reason to say that voting is  
24 habit forming; and I think that's a kind of expertise and a  
25 contribution to the literature in that I know about his data

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1 set. I know the arguments. So I am contributing that. But we  
2 didn't crunch numbers that project out the effects for North  
3 Carolina.

4 Q So the bottom line of your testimony is that voting is  
5 habit forming? The bottom line of your opinion, I should say,  
6 is that voting is habit forming?

7 A In the way that I testified earlier, yes.

8 Q Let me ask you to look at page 38 of your report, which  
9 is, again, Tab 236.

10 A Yes.

11 Q You see a heading there that says "IV. Long-term  
12 Effects"? Do you see that, Dr. Levine?

13 A Yes, I do.

14 Q Can you read the first sentence?

15 A "The statistical models we have created cannot predict the  
16 long-term effects of provisions adopted in North Carolina since  
17 2012."

18 Q Thank you.

19 **MR. PETERS:** I don't have any further questions.

20 **THE COURT:** Any redirect?

21 **MR. SPIVA:** Just one.

22 REDIRECT EXAMINATION

23 **BY MR. SPIVA**

24 Q Dr. Levine, do you recall on cross-examination you were  
25 asked about Plaintiffs' Exhibit 697, I believe it was? Can you

1 turn to that?

2 A Yeah.

3 Q And you were asked whether you had included Election Day  
4 registration states together with North Carolina, which has  
5 same-day registration but not Election Day registration  
6 preVIVA? Do you recall that?

7 A Yes.

8 Q I just wanted to give you the opportunity to explain why  
9 it would be appropriate to include both Election Day  
10 registration states and same-day registration states, such as  
11 North Carolina, in quantifying the effects of SDR.

12 A North Carolina's provisions that were in place before  
13 589 -- H.B. 589, are -- were highly unusual and anomalous to  
14 the point of being, I think, unique. So there is a category of  
15 states that have Election Day registration, which conceptually  
16 I see as a form of same-day registration. And then there were  
17 categories of states that had nothing pertinent. Then there  
18 was North Carolina, which had same day, but not election. And  
19 there was just a few other sort of anomalies. So you can't do  
20 a really good statistical analysis with N of one. It is a sort  
21 of very fundamental rule. If you have one case, you really  
22 can't generalize.

23 So in this table, the analysis is extremely simple. It is  
24 just an average across these states, but we still pool the  
25 same-day registration to get a meaningful average to have a



1 bunch of states, something on the order of 12 to 15 states in  
2 the left column and the rest in the right column. So that's  
3 the reason. It's a methodological reason.

4 Q And is that type of judgment -- in terms of cross-state  
5 comparisons and which states to group with others something,  
6 that's common in your field?

7 A In some ways, it is actually from Statistics 101 because  
8 it's just a fundamental principle that you couldn't generalize  
9 about a single case.

10 **MR. SPIVA:** That's all I have. I think I asked two  
11 questions, which proves that you can never trust a lawyer who  
12 says he only has one more question.

13 **THE COURT:** Hold on just a minute, please. When you  
14 said that the combination of the various measures can create a  
15 negative effect, you said you had created some kind of  
16 statistical analysis, and that determined it was statistically  
17 significant; is that right?

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

19 **THE COURT:** What do you mean -- what kind of analysis  
20 did you do, and what was the statistical significance?

21 **THE WITNESS:** First, we construct a number for each  
22 state, which is the sum of the potential barriers. So North  
23 Carolina would be about five, by our count, but each state  
24 would have a number; and then we test whether that number is  
25 statistically significantly related to the youth turnout in

1 that state, controlling for all the other things that we  
2 measure.

3           So holding everything else constant is the number of  
4 provisions related to turnout, and the answer is, yes,  
5 negatively and to a statistically significant extent so that  
6 you can rule out the null hypothesis and conclude that it is a  
7 negative.

8           **THE COURT:** So is that a study of North Carolina or  
9 of other states?

10           **THE WITNESS:** Your Honor, it is the study of all the  
11 states, and that's really essentially the methodology. Again,  
12 to zero in on North Carolina, you couldn't do that kind of  
13 study. You have to pool as many cases as you can find, which  
14 in this case is 51.

15           **THE COURT:** Is that analysis in your report?

16           **THE WITNESS:** It is stated in our report and some --  
17 and somewhat elucidated or explained. The full version,  
18 however, it was in a report we did for something called the  
19 National Commission on Voting and Civic Knowledge, and then  
20 we've subsequently published those findings in two  
21 peer-reviewed journals. So that finding can be found in  
22 peer-reviewed literature now.

23           **THE COURT:** Do you know the magnitude of the negative  
24 effect that you found with your study? That is, in other  
25 words, what was your point estimate and what were your

1 confidence intervals?

2           **THE WITNESS:** The -- finding the statistically  
3 significant point estimates, it is possible that with some  
4 study, I could give you a better answer, but point estimates  
5 are sort of difficult with a scale, a one point -- an index.  
6 So it's one, two, three, four, five or six. So, whereas, I  
7 could give you a point estimate for same-day registration, yes  
8 or no, I can't really give you a point estimate. What I can  
9 give you is a statistically significant correlation between the  
10 size of the index score and the turnout.

11           **THE COURT:** Is there an estimate for that?

12           **THE WITNESS:** It's -- I don't mean to just repeat  
13 myself, but it is a statistically significant negative  
14 correlation, and there would be a slope to it, which I guess I  
15 don't remember. In many ways, we were setting this up as a  
16 test of a null hypothesis, and we passed the test, so to speak.  
17 There was a negative finding, but you're right; there would  
18 also be a magnitude to that, and I don't remember it. I don't  
19 think it is in our report.

20           **THE COURT:** Does anybody have any questions about  
21 that?

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

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

24           **THE COURT:** Thank you. You may step down.

25           **MR. BROOK:** Good afternoon, Your Honor. Christopher

1 Brook for League of Women Voters Plaintiffs. The League  
2 Plaintiffs call Michael Owens to the stand.

3 **MICHAEL OWENS**, PLAINTIFFS' WITNESS, at 2:59 p.m., being first  
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 **BY MR. BROOK**

7 Q Good afternoon, sir. Can you introduce yourself to the  
8 Court, please.

9 A Michael Owens.

10 Q How old are you, Mr. Owens?

11 A Fifty-one.

12 Q And what town appears on your mailing address, Mr. Owens?

13 A Shannon, North Carolina.

14 Q Is that the community that you consider yourself to reside  
15 in?

16 A Yes.

17 Q So from this point forward, I am going to refer to Shannon  
18 as your home community; is that okay?

19 A That's fine.

20 Q What county is Shannon in, Mr. Owens?

21 A Robeson County.

22 Q And how long have you lived in North Carolina, Mr. Owens?

23 A All my life.

24 Q Where were you born, Mr. Owens?

25 A In Fayetteville.

1 Q How long did you live in Fayetteville?

2 A Until I was about four or five years old.

3 Q When you were four or five, where did you move to?

4 A To Lumberton.

5 Q Have you lived in Robeson County since you were four or  
6 five years old?

7 A Yes.

8 Q I want to go back and talk a little bit about your  
9 employment history, Mr. Owens. Going back to the beginning of  
10 2013, where were you employed?

11 A At House of Raeford in Raeford, North Carolina.

12 Q Do you continue to work at House of Raeford?

13 A It closed down.

14 Q When did it close down approximately? What year, Mr.  
15 Owens?

16 A It was July 27, 2013.

17 Q Did the House of Raeford closing have any financial  
18 consequences for you?

19 A Yes, it did.

20 Q Can you tell me a little bit about those, Mr. Owens?

21 A Well, once it closed, we can only draw unemployment for 20  
22 weeks. Once the 20 weeks was up, I was out of income.

23 Q So you didn't immediately find a job upon House of Raeford  
24 closing?

25 A No, I didn't.

1 Q How long were you unemployed?

2 A I was unemployed until February of 2014.

3 Q Were there any further consequences that came about due to  
4 you being unemployed for that period of time, Mr. Owens?

5 A Yes, I lost my vehicle. So I had no transportation.

6 Q When, approximately, did you lose your vehicle?

7 A It was in May of 2014.

8 Q All right. Do you currently have a job, Mr. Owens?

9 A Yes, I do.

10 Q Can you tell the Court where you currently work.

11 A I work at K&K Auto Sales in Lumberton.

12 Q And what do you do with K&K Auto Sales, Mr. Owens?

13 A I am a car detailer.

14 Q And did you say when you started with them?

15 A I started in February.

16 Q February of 2014?

17 A 2014, yes.

18 Q When you started at K&K, you still had your truck at that  
19 point; correct?

20 A Yes, I had it for a little while.

21 Q You had it for a little while. Can you tell me what  
22 happened?

23 A Well, I stalled as much as I could and made partial  
24 payments until it was repossessed.

25 Q And it was repossessed in May of 2014?

1 A Right.

2 Q How did -- you talked about living in Shannon previously  
3 and working in Lumberton. After you lost your car in May of  
4 2014, how did you get from Shannon to Lumberton where you  
5 worked?

6 A Through my girlfriend.

7 Q Can you tell me about how that would work out?

8 A We have an eight-year-old son. She would have to be work  
9 at 6:30 in the morning. So what I would do is ride to  
10 Lumberton. We would drop her son off at 6:00. She had to be  
11 to work at 6:30. She would drop me off at my sister's  
12 residence, and then she would go to work. What I would do is  
13 stay from Monday to Friday and then be picked up.

14 Q Stay where from Monday through Friday?

15 A I stayed at my sister's residence from Monday to Friday.

16 Q And where is your sister's residence located?

17 A She stays at Turner Terrace, which is about a three-minute  
18 walk from K&K Auto.

19 Q In Lumberton?

20 A In Lumberton.

21 Q So you would really not see your girlfriend or your son,  
22 who were staying up in Shannon, during the course of the  
23 workweek; is that right?

24 A That's right.

25 Q Would you have access to her car during the course of the

1 workweek?

2 A No.

3 Q Is there public bus service between Shannon and Lumberton?

4 A No.

5 Q I want to transition and talk a little bit about your  
6 voting history, Mr. Owens. When did you first register to  
7 vote?

8 A In 2000.

9 Q And how often do you vote?

10 A I don't vote as much as I'm supposed to, but I vote.

11 Q All right. Is it important for you to vote?

12 A Yes, it is.

13 Q Can you tell me about why it is important for you to vote?

14 A Because a lot of people sacrificed for us to vote. I  
15 registered to vote. There is a lot of people that don't want  
16 to vote; but in order for my opinion to count, I need to get  
17 out and vote.

18 Q Where have you historically voted since registering in  
19 2000?

20 A At Parkview Activity Center.

21 Q And where is Parkview Activity Center located?

22 A It's in Lumberton.

23 Q Have you voted anywhere else in Robeson County since  
24 registering to vote in 2000?

25 A I voted at the board of education before it was torn down.



1 Q The board of education or board of elections?

2 A I'm sorry. Board of elections.

3 Q All right. Have you ever voted in Shannon since  
4 registering to vote in 2000?

5 A No.

6 Q Jump ahead to the 2014 election. Did you have a personal  
7 automobile on Election Day in November of 2014?

8 A No.

9 Q Did you want to vote in the 2014 election?

10 A Yes.

11 Q Did you attempt to vote in the 2014 election?

12 A Yes.

13 Q Can you tell me what happened when you attempted to vote?

14 A I went -- first, I asked my supervisor could I borrow the  
15 truck to vote. He told me no. So I told him that I was going  
16 to use it to go to Lumberton. So I took it down -- when I went  
17 to go down there, I got out of the truck, and there was some  
18 people standing outside. They gave me some paperwork of who I  
19 may want to vote for. So when I walked inside, the young lady  
20 asked me for some ID, and I told her, I said, well, I didn't  
21 think it was time for us to have ID, to show you ID. She said,  
22 that's true, I just wanted to ask.

23 **MR. McKNIGHT:** Your Honor, I just object to that to  
24 the extent that it is offered for the truth of the matter  
25 asserted.

1           **MR. BROOK:** Again, it goes to his understanding of  
2 the circumstance and corresponds to why he acted in the way he  
3 did.

4           **THE COURT:** I will accept it for that reason. You  
5 may continue.

6           **THE WITNESS:** So then the lady asked me my name. She  
7 looked. She said I wasn't on the register, that I couldn't  
8 vote there.

9 **BY MR. BROOK**

10 Q       Can I take you back in your story just for a moment. You  
11 referenced to asking your supervisor to borrow a car, I  
12 believe. Am I correct?

13 A       Right.

14 Q       And this was your supervisor at K&K Auto?

15 A       Correct. He owns the lot.

16 Q       How far was the first place that you went to vote from K&K  
17 Auto?

18 A       Well, if I would have went to Shannon, it would have been  
19 about 16 miles.

20 Q       All right.

21 A       So he said no. So I was going to go back to where I  
22 previously voted, which would have been the Parkview Activity  
23 Center, but they was doing it at the community building, which  
24 is about three minutes from each other.

25 Q       So your supervisor wouldn't let you take it back to

1 Shannon --

2 A Shannon.

3 Q -- 16-miles away, but was okay with you taking it to the  
4 much closer Lumberton voting place?

5 A Yes.

6 Q When they cannot find you on the voting rolls at the  
7 resource center in Lumberton, did they offer you a provisional  
8 ballot, Mr. Owens?

9 A No.

10 Q What happened after you were not able to cast a ballot at  
11 that first stop?

12 A She told me that I could go to Elm Street to see if I  
13 could vote over there at the board of elections.

14 Q At the county board of elections?

15 A Right.

16 Q Is that also Elm Street -- that Elm Street location, is  
17 that also in Lumberton?

18 A It's in Lumberton, yes.

19 Q What happened -- did you go there?

20 A Yes, I went there, and I told them I wanted to vote. She  
21 told me why didn't I vote over there across town. I told her.  
22 She looked it up and told me I couldn't vote there neither.

23 Q So you were not able to vote at that location either?

24 A No.

25 Q Were you offered a provisional ballot --

1 A No.

2 Q -- by her?

3 A No.

4 Q Okay. Why did you not make the 16-mile trip back up to  
5 Shannon where you registered?

6 A Because I was told I couldn't use the vehicle to go there,  
7 and I was on my lunch break. So I went back to work.

8 Q How long is your lunch break?

9 A An hour.

10 Q Would it be possible in your estimation to go up to  
11 Shannon, vote, and then return back to Lumberton within the  
12 hour you have for a lunch break?

13 A It's possible, but if there was a line for people to be  
14 voting, then I would have to stand in line.

15 Q Would it have been possible after you had gone to both the  
16 resource center and then the county board of elections to go up  
17 there?

18 A No.

19 Q Could you have gotten a ride from a family member up to  
20 Shannon to vote on that day?

21 A No.

22 Q Can you tell me about that?

23 A Where -- my sister that I was staying at the time, she  
24 don't have a vehicle, and to pay somebody to take me -- my  
25 lunch break was over.

1 Q Were you aware that subsequent to changes brought about by  
2 House Bill 589, that you would have to vote in your home  
3 precinct on Election Day?

4 A I didn't know at the time.

5 Q Thank you, Mr. Owens.

6 **MR. BROOK:** I have no further questions at this  
7 point, Your Honor.

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

9 **MR. McKNIGHT:** Yes, Your Honor.

10 CROSS-EXAMINATION

11 **BY MR. McKNIGHT**

12 Q Good afternoon again, Mr. Owens. My name is Michael  
13 McKnight. We met at your deposition in Lumberton a month or so  
14 ago.

15 Mr. Owens, how did you get here to court today?

16 A I was picked up.

17 Q Okay.

18 A I was brung to Winston-Salem.

19 Q Okay.

20 A I didn't drive. If you're asking did I drive, I didn't  
21 drive.

22 Q Okay. Who brought you here?

23 A I don't know the young man's name, but it was with the  
24 attorneys.

25 Q And I believe you said that you lost your car around May

1 of 2014; is that right?

2 A Yes, my truck.

3 Q And the State of North Carolina didn't have anything to do  
4 with you losing your car, did it?

5 A No.

6 Q And when did you get your car back?

7 A I didn't. What I did is I stayed at my sister's house for  
8 five days a week. Then I stayed -- I paid my employer \$100 a  
9 week the weeks that I could to save up enough money to make a  
10 down payment on another truck.

11 Q But you currently have a car right now?

12 A Yes.

13 Q When did you get that car?

14 A In November -- about the end of November.

15 Q And so if you had that car a few weeks earlier in  
16 November, you could have driven back to Shannon and voted?

17 A Yes.

18 Q And you could have driven back to Shannon and voted after  
19 you got off work; right?

20 A Yes.

21 Q Because you normally work 8:00 to 5:00; right?

22 A 8:00 to 5:00; right.

23 Q And right now, because you have a truck to drive, you are  
24 not staying with your sister, are you?

25 A No, I'm back home.

1 Q So you were driving back and forth from Shannon to  
2 Lumberton to vote -- to work every day?

3 A Yes.

4 Q In the past, Mr. Owens, have you ever voted early?

5 A Yes.

6 Q And didn't you vote early in the 2012 election?

7 A Yes.

8 Q And before the November 2014 election, you didn't look  
9 into whether there were any early voting sites that you could  
10 have gone to on a Saturday to vote, did you?

11 A But I knew I had a few more days to vote. So I didn't  
12 make no big deal to go vote early. I knew I had time. I still  
13 had time to go vote.

14 Q You were thinking you would vote on Election Day?

15 A Right.

16 Q Now, you mentioned voting at -- you said Parkview Activity  
17 Center in Lumberton; is that right?

18 A Years ago, yes.

19 Q Okay. And were you living in Lumberton at the time you  
20 voted at the Parkview Activity Center?

21 A Yes. I was staying across the street on Birch Street.

22 Q Okay. So you weren't living in Shannon then?

23 A No.

24 Q And you understood that for the 2016 election, if you are  
25 going to vote on Election Day, you'll need to vote at your

1 assigned precinct in Shannon; is that right?

2 A Yes, I understand that.

3 Q No further questions, Mr. Owens.

4 **MR. BROOK:** Just one question on redirect, Your  
5 Honor.

6 REDIRECT EXAMINATION

7 **BY MR. BROOK**

8 Q Mr. Owens, could you state your race for the record,  
9 please?

10 A Black. African-American.

11 **MR. BROOK:** Thank you.

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

13 **MR. DONOVAN:** We are going to have a video next of a  
14 witness, Your Honor.

15 **THE COURT:** All right.

16 **MS. JUDGE:** Good afternoon. Your Honor, Donita Judge  
17 on behalf of the NAACP Plaintiffs.

18 Your Honor, the NAACP Plaintiffs will now play a  
19 brief video clip, a little less than five minutes, from Lue  
20 Alice Abercrombie. The NAACP Plaintiffs' designations are  
21 3 minutes and 11 seconds. The video includes Defendants'  
22 counter-designations at 1 minute and 13 seconds.  
23 Ms. Abercrombie is an affected voter who will testify regarding  
24 the experience with out-of-precinct voting during the 2014  
25 election.



1 I am handing up a script for the Abercrombie video --  
2 for the full Abercrombie video written depositions. The full  
3 designations have been filed with the Court at ECF Number 309-2  
4 and 310-1. May I approach?

5 **THE COURT:** Yes. Is the transcript you just handed  
6 me the full designation by the parties, or is it only what's  
7 being played in court?

8 **MS. O'CONNOR:** What Ms. Judge just handed up is just  
9 the script of the video right now and then immediately  
10 following the video, I will move to admit the written  
11 designations with the video portion highlighted.

12 **THE COURT:** All right.

13 (Designated portions from the video deposition of Lue  
14 Alice Abercrombie were played.)

15 **MS. O'CONNOR:** Your Honor, to close out on that  
16 video, I would like to -- if may I approach, I will hand up the  
17 copies of the Lue Abercrombie deposition designations with  
18 highlighting to reflect the affirmative Plaintiffs' depositions  
19 in blue -- or designations in blue, the Defendants'  
20 designations in red, and the video portions that were played  
21 are in yellow. And this is the format that we will plan to  
22 submit for any other future videos that are played.

23 **THE COURT:** Does this have an exhibit number?

24 **MS. O'CONNOR:** It does. This will be marked as  
25 Plaintiffs' Exhibit 712.

1           **THE COURT:** Any objection?

2           **MR. BOWERS:** No objection.

3           **THE COURT:** Admitted.

4           **MS. O'CONNOR:** Two other items of evidentiary, the  
5 first is a clarification from the binder of exhibits that we  
6 moved to admit this morning. We had two clerical errors that  
7 resulted in the ranges that I read in being slightly off, so if  
8 I might correct those for the record, I'd like to do so now.

9           **THE COURT:** All right.

10          **MS. O'CONNOR:** For Plaintiffs' Exhibit 703, the range  
11 I had read in, PX131 to 166 and PX173 to 185, the correct  
12 ranges are PX131 to 166, PX173 to 177, and PX182 to 185.

13                 And I should say for -- especially for Defendants'  
14 counsel benefit, this is just we had improperly included  
15 numbers. So this is just removing certain numbers that didn't  
16 belong in there.

17                 And then for Plaintiffs' Exhibit 704, I had read the  
18 ranges PX186 to 217 and PX220 to 228. The correct ranges are  
19 PX186 to 214, PX216 to 217, and PX220 to 228.

20          **THE COURT:** All right. Any objection to those?

21          **MR. BOWERS:** No objection.

22          **MS. O'CONNOR:** We would also at this time like to  
23 move to admit the written deposition designations of a number  
24 of witnesses as well as certain of the exhibits that correspond  
25 to those designations that were on the Plaintiffs' exhibit

1 list, none of which have been objected to.

2 **THE COURT:** No.

3 **MS. O'CONNOR:** I will hand up copies of the  
4 deposition designations for Emma Carr, which is being marked as  
5 Plaintiffs' Exhibit 751; Terrilin Cunningham, which is being  
6 marked as Plaintiffs' Exhibit 753; Allison Deters, Plaintiffs'  
7 Exhibit 754; Cherise Dill, Plaintiffs' Exhibit 755; Elizabeth  
8 Gignac, G-I-G-N-A-C, Plaintiffs' Exhibit 758; and Anna Harris,  
9 which is Plaintiffs' Exhibit 759.

10 We would also move to admit the designations of  
11 Jorgen Jensen, which is Plaintiffs' Exhibit 760; Paul Kearns,  
12 Plaintiffs' Exhibit 761; Kathleen Kennedy, Plaintiffs'  
13 Exhibit 762; James Manley, Plaintiffs' Exhibit 764; Bryan  
14 McGowan, Plaintiffs' Exhibit 765; Jane Meadows, Plaintiff's  
15 Exhibit 767 (sic); Yolanda Paylor, Plaintiffs' Exhibit 768  
16 (sic); and Tawanda Pitt, Plaintiffs' Exhibit 769 (sic).

17 There are also four exhibits that we would move to  
18 admit in connection with those exhibits -- with those  
19 designations. And that's Plaintiffs' Exhibit 307A, which was  
20 Exhibit -- Carr Exhibit 1 to that deposition; Plaintiffs'  
21 Exhibit 308, which was Cunningham Exhibit 1 to that deposition;  
22 Plaintiffs' Exhibit 310A, which was Exhibit 3 to the Cunningham  
23 deposition; and Plaintiffs' Exhibit 328A, which was Exhibit 1  
24 to the Manley deposition.

25 **THE COURT:** Any objection?

1           **MR. BOWERS:** No, Your Honor. I do have one question  
2 for clarification. With those deposition designations, does  
3 that mean you will not be calling those witnesses live nor you  
4 will not be showing their videos?

5           **MS. O'CONNOR:** Right. Written deposition  
6 designations that we --

7           **THE COURT:** You can tell me and he can listen.

8           **MS. O'CONNOR:** Those are written deposition  
9 designations that we do not intend to play video for; that's  
10 correct.

11           **MR. BOWERS:** No objection, Your Honor.

12           **THE COURT:** Admitted. These are various fact  
13 witnesses, I take it?

14           **MS. O'CONNOR:** That's right.

15           **THE COURT:** So whether or not they were under  
16 subpoena power and all of that has been agreed upon?

17           **MR. DONOVAN:** It's been, yes, it has.

18           **THE COURT:** Okay.

19           **MR. DONOVAN:** Your Honor, the next witness is going  
20 to be an expert witness. So my suggestion would be to maybe  
21 take the afternoon break, but we're ready if you are.

22           **THE COURT:** Okay. Who is going --

23           **MR. DONOVAN:** Dr. Webster, Department of  
24 Justice-sponsored expert witness.

25           **THE COURT:** We'll take our break for 20 minutes.

1 I have a motion to quash a subpoena. Are you all  
2 dealing with that? Is that still a live issue?

3 **MR. KAUL:** No, we have talked, Your Honor. We do  
4 believe it's still a live issue. I'm happy to address it at  
5 the Court's convenience.

6 **MR. DONOVAN:** There is also the issue -- if we  
7 resolve the PI stipulation issue, that issue goes away. So  
8 they are kind of related.

9 **THE COURT:** All right. I will deal with that at the  
10 end of the day. We'll do that close to 5:00. Okay. All  
11 right. We'll take a 20-minute break.

12 (The Court recessed at 3:26 p.m. )

13 (The Court was called back to order at 3:48 p.m.)

14 **MR. COOPER:** David Cooper for the United States.  
15 The United States calls Dr. Gerald Webster.

16 **GERALD R. WEBSTER, PH.D., PLAINTIFFS' WITNESS,** at 3:48 p.m.,  
17 being first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 **BY MR. COOPER**

20 Q Good afternoon, Dr. Webster. Can you please introduce  
21 yourself to the Court.

22 A I'm Gerald R. Webster. I reside in Laramie, Wyoming.

23 Q What is your current position?

24 A I'm professor and chair of the Department of Geography at  
25 the University of Wyoming.

1 Q And could you describe your educational background?

2 A I have a BA in political science from the University of  
3 Colorado at Denver, an MS in geography from Western Washington  
4 University, and a Ph.D. in geography in 1984 from the  
5 University of Kentucky.

6 Q Could you briefly describe your professional experience?

7 A My first tenure-track job was at the University of Wyoming  
8 in 1985. I stayed there until 1989 when I went to the  
9 University of Alabama and was there for 18 years, serving as  
10 chair the last seven before returning to Laramie and the  
11 University of Wyoming.

12 Q What fields have you published peer-reviewed research in?

13 A Political geography, electoral geography, and southern  
14 studies primarily.

15 Q Have you won any awards in your field?

16 A Yes, sir. Two years ago, I was given the Lifetime  
17 Achievement Award by the Southeastern Division of the  
18 Association of American Geographers. And the year prior to  
19 that, I was asked to give the plenary address to the Political  
20 Geography Specialty Group of the Association of American  
21 Geographers.

22 Q Have you ever served as an expert witness before?

23 A Yes, sir.

24 Q In how many states?

25 A Eleven different states.

1 Q What was the most recent case in which you served as an  
2 expert?

3 A The most recent was the Texas voter ID case in July of  
4 last year.

5 **MR. COOPER:** Your Honor, may I approach?

6 **THE COURT:** Yes.

7 **BY MR. COOPER**

8 Q I've handed you a binder which contains Plaintiffs'  
9 Exhibits 241, 253, and 255. Could you please turn to  
10 Exhibit 241 and tell me, is that a copy of the expert report  
11 that you prepared for this case?

12 A Yes, sir.

13 Q And could you turn to Appendix 4 at the end of  
14 Exhibit 241.

15 A Yes, sir.

16 Q Is that a copy of your CV?

17 A Yes, sir, through February 1 of 2015.

18 Q And does your CV accurately reflect your professional  
19 experience?

20 A Yes, sir.

21 Q Could you turn to Exhibit 255, which is the next document  
22 that you have in your binder. And tell me, is this a corrected  
23 version of Appendix 1 which is attached to your expert report?

24 A Yes, sir.

25 Q And then is Exhibit 253, the next document, is that a copy

1 of the surrebuttal declaration that you prepared for this case?

2 A Yes.

3 Q Dr. Webster, will the testimony that you give today  
4 reflect the analysis and conclusions set forth in these  
5 reports?

6 A Yes, sir.

7 **MR. COOPER:** Your Honor, the United States offers  
8 Dr. Webster as an expert in geography, political geography, and  
9 spatial analysis.

10 **MR. BOWERS:** Your Honor, no objection to  
11 Dr. Webster's qualification as an expert. However, we would  
12 object to any testimony that Dr. Webster may give regarding  
13 photo ID. I will represent to the Court that the vast majority  
14 of Dr. Webster's declaration, Plaintiffs' Exhibit 241, is  
15 devoted to photo ID analysis, and we would object to any  
16 questions or testimony given on that issue.

17 **MR. COOPER:** Your Honor, I think we can make clear  
18 through Dr. Webster's testimony that much of his report is  
19 relevant to the issues apart from photo ID. I think that will  
20 become clear from his testimony.

21 **THE COURT:** All right. I will take it on a  
22 question-by-question basis. If you have any -- as with any  
23 other witness, any part you deem objectionable, I will leave it  
24 to you to make your objections, and I will rule on those. All  
25 right?



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

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

3           **MR. COOPER:** We would also move to admit  
4 Exhibits 241, 255, and 253 into evidence.

5           **MR. BOWERS:** No objection.

6           **THE COURT:** Those are admitted.

7 **BY MR. COOPER**

8 Q       What were you asked to do for this case?

9 A       I was asked to do three things: First, to provide a  
10 demographic overview of the state of North Carolina; secondly,  
11 to look at the differential effects of the voter ID law on  
12 transportation to a DMV office to secure proper ID; and,  
13 thirdly, to look at out-of-precinct voting.

14 Q       I will be asking you to focus on the aspects of your work  
15 that do not relate to the photo ID requirement since that's not  
16 part of today's proceedings.

17 A       Yes, sir.

18 Q       Let me ask you a bit about your analysis of demographic  
19 characteristics of North Carolina. As part of that, you looked  
20 at census data regarding household vehicle access; is that  
21 right?

22 A       Yes, sir.

23 Q       Can you explain what household vehicle access means?

24 A       In an occupied household, the household has access to a  
25 vehicle if one member of the household has a car, a truck, a

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1 panel van, and that vehicle is accessible to other members of  
2 the household.

3 Q And do the numbers that are showing on the screen in front  
4 of you right now, do those come from Table 3 of your report,  
5 which is Exhibit 241 at page 9?

6 A Yes, sir.

7 Q Did you conclude anything about vehicle access rates  
8 across different racial groups in North Carolina?

9 A There is a significant disparity between African-Americans  
10 and white North Carolinians in terms of access to a vehicle.  
11 While 4.1 percent of non-Hispanic white households have access  
12 to -- or don't have access to a motor vehicle, the rate for  
13 non-Hispanic or black households is 14.5 percent or  
14 3 1/2 percent greater -- or three and a half times greater, I'm  
15 sorry.

16 Q And I would like to ask you about two maps from your  
17 report. The maps that you are looking now, are these Figures 1  
18 and 4 of your report?

19 A Yes, sir.

20 Q What do those maps show?

21 A Figure 1 is the African-American population at the county  
22 level in the state of North Carolina. It is a choropleth map  
23 showing where the -- which counties have the highest  
24 proportions of African-American population. And from the map,  
25 one can discern that the concentrations in the northeastern

1 portion of the state are substantial with a somewhat lesser  
2 concentration in the south central portion of the state.

3 Figure 4 is vehicle access rates at the county level.  
4 This would be in the aggregate. And what we see is that the  
5 darker counties have higher rates of no access for occupied  
6 households to motor vehicles, and there is a concentration in  
7 the northeastern portion of the state with a somewhat lesser  
8 concentration in the south central portion of the state.

9 And clearly there is substantial spatial overlap between  
10 the distribution of the African-American population and greater  
11 rates of no access to motor vehicles.

12 Q Did you also analyze vehicle access rates in some of the  
13 cities in North Carolina?

14 A Yes, sir.

15 Q Which cities did you look at?

16 A I looked at the five largest cities in the state:  
17 Charlotte, Raleigh, Greensboro, Winston-Salem, and Durham.

18 Q Did you find racial disparities in vehicle access rates in  
19 those cities as well?

20 A Yes, sir.

21 Q Each one of them?

22 A All five cities had significant disparities between access  
23 to motor vehicles by African-American households versus white  
24 households.

25 Q And that data is included in your report?

1 A Yes, sir.

2 Q I would like to ask you about Charlotte as an example.

3 That's the largest city in the state; right?

4 A Yes, sir, with over 700,000 people.

5 Q The two maps that you are looking at now, are these maps  
6 included as Figures 7 and 9 on page 24 of your report?

7 A Yes, sir.

8 Q What do these maps show?

9 A These are choropleth maps. They show the concentration of  
10 African-American population in Charlotte and also the  
11 concentration of occupied households without access to a motor  
12 vehicle. In Figure 7, clearly the northern portion of  
13 Charlotte, as well as its western margins, have higher  
14 proportions of African-American population by census tract.

15 The -- Figure 9 again is Charlotte vehicle access. There  
16 is a concentration of census tracts in the north central  
17 portion of the city with large proportions of households not  
18 having access to a motor vehicle as well as to the eastern  
19 portion of the -- the central portion of Charlotte. These two  
20 patterns have significant spatial overlap.

21 Q And did you include maps similar to these for the next  
22 four largest cities in your report?

23 A Yes, sir.

24 Q Did you reach conclusions about the geographic correlation  
25 regarding those cities as well?

1 A Yes, sir. There were similar geographic patterns,  
2 geographic correlations, spatial overlap in all four of the  
3 other large cities.

4 Q And you explained that these maps are based on census  
5 tracts. Could you just explain to the Court what the  
6 definition of a census tract is?

7 A A census tract is one unit in the census hierarchy of  
8 geographic units. A census tract on average has 4,000 people,  
9 and, historically, there's been an effort to have some type of  
10 neighborhood coherence within a census tract. Commonly, they  
11 are used in social science research generally, but particularly  
12 in geography.

13 Q Dr. Webster, what is the significance of lacking vehicle  
14 access for a household?

15 A The quality of life of the household without access to a  
16 vehicle can be subdued for daily travel patterns, whether it's  
17 going to a grocery store or a church or, in this particular  
18 case, going to a DMV or to a polling station to vote.

19 Q And as part of your analysis for this case, did you  
20 undertake a study involving public transportation in the five  
21 largest cities?

22 A Yes, sir.

23 Q What did you study?

24 A I looked at the time and distance from particular census  
25 tracts for an individual that had access to a motor vehicle to

1 travel to a DMV office. I also looked at the public  
2 transportation time that one would need to get to that same DMV  
3 office from the same census tract and found that the  
4 differences in time ranged from as little as 5 times up to 11  
5 times more time needed to use the public transportation system  
6 to get to a DMV office versus a private vehicle.

7 Q Does the results of your analysis of travel to DMV offices  
8 help us understand burdens faced from other travel tasks by  
9 people who lack vehicle access?

10 **MR. BOWERS:** Objection, Your Honor, relevance. You  
11 don't go to DMV offices to vote. You go to get photo IDs.

12 **THE COURT:** Overruled.

13 **THE WITNESS:** Yes. Whether it's a grocery store, a  
14 pharmacy, a church, any trip to any particular place has  
15 greater burdens if the household doesn't have access to a motor  
16 vehicle and must rely on public transportation.

17 **BY MR. COOPER**

18 Q And so did you conclude anything from your study about  
19 whether public transportation addresses the needs of  
20 individuals who lack vehicle access?

21 A It provides an option, but it also imposes a burden, a  
22 burden in terms of the amount of time needed to do the same  
23 trip that one could do if one had a private -- or access to a  
24 private automobile.

25 Q Now, did you look at areas across the state that have high

1 rates of households that lack vehicle access?

2 A Yes, sir. I looked at all census tracts in the state of  
3 North Carolina that had greater than 25 percent of their  
4 households without access to a motor vehicle.

5 Q And how many of those tracts did you identify?

6 A Seventy-seven.

7 Q And how many approximately are in the five largest cities?

8 A Approximately half.

9 Q Where are the others located?

10 A After that first half, the next quarter are located in  
11 smaller cities, Asheville, for example, and the remaining  
12 quarter are located in dominantly rural settings.

13 Q So how would the potential -- how would the experience of  
14 potential voters in tracts located in the largest cities  
15 compare with potential voters in the other tracts?

16 A Because there is access to public transportation in the  
17 larger cities, the burden is arguably somewhat less in those  
18 larger cities than it would be in the smaller cities without  
19 regular public transportation. And in the rural areas, of  
20 course, where there is no public transportation, substantially  
21 greater burdens faced potential voters.

22 Q Did you also look at low vehicle access rates in counties  
23 in North Carolina?

24 A Across all 100 counties in the state, yes.

25 Q Did you find that there were some counties with relatively

1 larger rates of no vehicle access?

2 A Yes.

3 Q And what exactly did you find?

4 A Well, there are 13 counties in the state of North Carolina  
5 that have more than 10 percent of their occupied households  
6 without access to a motor vehicle.

7 Q Did you look at the racial compensation of those counties?

8 A Yes. All 13 of those counties are at least 30.5 percent  
9 African-American, but over 60 percent African-American in  
10 Bertie County.

11 Q So, Dr. Webster, what is the significance of your findings  
12 about transportation in North Carolina for potential  
13 African-American voters?

14 A Unless a potential voter -- African-American voter has  
15 access to a motor vehicle, he or she faces significantly  
16 greater burdens in actually getting registered and going to the  
17 polls to vote.

18 Q Now, you've discussed a little while ago what a census  
19 tract is and why geographers use them. I want to ask you a  
20 question. If you were to undertake a study of the  
21 socioeconomic status of individuals who utilized one of the  
22 options for voting that's no longer available, such as people  
23 who voted out of precinct, how would you go about a study of  
24 that nature?

25 A I personally would use census tracts because of their



1 consistency in terms of numbers of people; therefore,  
2 comparability, also availability of census information.  
3 Because census tracts are not included in the voter rolls, the  
4 voter rolls would have to be placed geographically in census  
5 tracts. The process of geocoding, which essentially the  
6 computer takes a name and an address and places a potential  
7 voter or a voter -- registered voter in a particular census  
8 tract, and then by looking at the context or the nature of the  
9 census tract, try to come to some kind conclusion about what  
10 types of registered voters are going to the wrong precincts.

11 Q Are there challenges that you would expect to encounter in  
12 that process that you just described?

13 A It is tedious, and, of course, because names change or may  
14 be misspelled or addresses may not be complete, the process of  
15 geocoding can be successive approximations and take quite some  
16 time.

17 Q Could you use ZIP codes instead of census tracts?

18 A You could. But there are approximately 1,000 ZIP codes in  
19 the state of North Carolina, and there are 2,200 voter -- or  
20 tracts, census tracts.

21 In geography, as a rule of thumb, we try to use the  
22 smallest level of geography possible for any kind of analysis.  
23 It increases the accuracy of our results.

24 Q Now, let me ask you about the analysis that you did that  
25 was specific to out-of-precinct voting. You looked at

1 out-of-precinct provisional voters in two counties; is that  
2 right?

3 A Yes, sir.

4 Q And which two counties were those?

5 A Mecklenburg and Wake.

6 Q And let me ask you to turn to page 43 of your report.

7 That's Exhibit 241. Did you describe in -- on this page the  
8 analysis that you conducted?

9 A Yes, sir.

10 Q I am not going to ask you to go through the details. Can  
11 you just tell me what the result that you achieved was -- that  
12 you received was?

13 A The result was that a voter who goes to the incorrect  
14 precinct in Mecklenburg County would have to travel an  
15 additional 6.6 miles to get to the correct precinct. One in  
16 Wake County who goes to the incorrect precinct would have to  
17 travel an additional 6.8 miles in addition to the travel  
18 distance and time that they exerted going to the incorrect one  
19 in the first place.

20 Q Why did you focus on these two counties?

21 A They are the largest counties in the state. In total,  
22 they constitute 19 and a half percent of the state's total  
23 population. And we could -- I was able to get the actual  
24 addresses of the precincts for these two counties.

25 Q Did you consider looking at other counties or the whole

1 state?

2 A I did consider looking at the entire state, but there is  
3 2,700 precincts in the state of North Carolina, and I could not  
4 find access to a list of accurate addresses for all of those  
5 precincts.

6 Q Is it common for geographers to focus on specific areas  
7 when studying a larger region or state would be onerous?

8 A Yes. In many cases, geographers emphasize place --  
9 specific places to study in depth to make generalizations to  
10 other places nearby.

11 Q And do you have any reason to think the results would be  
12 different for other predominantly urban counties?

13 A No. I would expect them to be quite similar.

14 Q What about rural counties?

15 A In rural counties, the numbers, in fact, may be actually  
16 worse because of the more limited density of voter precincts.  
17 Hence, the greater distance from an incorrect one to a correct  
18 one.

19 Q And what can you say about the burden imposed on a  
20 potential voter by a need to travel six to seven miles if the  
21 voter lacks access to a vehicle?

22 A If they do, then seven miles is a substantial distance.  
23 Since 2.65 times more African-American voters go to the wrong  
24 precinct, there is a greater burden on African-American -- or  
25 potential African-American voters.

1 Q And the 2.6 number, is that the analysis from  
2 Dr. Stewart's report?

3 A Yes, sir.

4 Q And so what do you conclude overall about the effect of  
5 removing out-of-precinct voting as an option for  
6 African-American voters?

7 A It will place a disproportionate burden on potential  
8 African-American voters relative to white voters.

9 **MR. COOPER:** I have no further questions at this  
10 time.

11 **THE COURT:** Any cross?

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

13 CROSS-EXAMINATION

14 **BY MR. BOWERS**

15 Q Dr. Webster, good afternoon. Good to see you again. I am  
16 Butch Bowers here for the defense.

17 Dr. Webster, your report, correct me if I'm wrong, but  
18 through the signature page, excluding the appendices, is 46  
19 pages; is that correct?

20 A I believe that's correct, yes, sir.

21 Q Okay. And correct me if I'm wrong, but only one page,  
22 that's page 43, is devoted to your analysis on the impact of  
23 the elimination of out-of-precinct voting; is that correct?

24 A That's correct.

25 Q Okay. So roughly a little over 2 percent of the report is

1 devoted to out-of-precinct voting; correct?

2 A Yes, sir.

3 Q Then as Mr. Cooper was asking you questions, you only  
4 looked at Mecklenburg County and Wake County, correct, to  
5 perform your analysis on out-of-precinct voting?

6 A Those two counties that constitute nearly 20 percent of  
7 the state's population, yes.

8 Q Okay. Your photo ID analysis, which took up almost  
9 98 percent of your report, focused on North Carolina's five  
10 largest cities. Why didn't you do the same thing for your  
11 out-of-precinct voting analysis?

12 A First, because we -- or I tackled this particular issue  
13 with about a week to go. It would have been possible to do  
14 others, but, again, without access to an accurate list of the  
15 locations of the voting precincts, it was an onerous and very  
16 time-consuming process.

17 Q So you left this portion of the report to the final week  
18 of its due date. Did I understand you correctly?

19 A I didn't leave it. That's when I was asked to do it. We  
20 quickly managed the analysis, but limited it to those two  
21 counties because of time and data limitations.

22 Q So was this portion of your report an afterthought?

23 A I would not characterize it as an afterthought. It  
24 depended on how far along we were with respect to voter ID.  
25 When it became clear that we could finish that portion of the

1 report, we added this into the report.

2 Q You will agree that it was done last; correct?

3 A Yes, sir.

4 Q You will agree that it only compromises about 2 percent of  
5 your entire report?

6 A A bit more than that, but, yes, it is one page out of 45.

7 Q Mr. Cooper asked you some questions about census data.

8 That census data was from 2010; correct?

9 A What data?

10 Q Well, the data that you used to perform your analyses in  
11 this report.

12 A No. Some of it is from 2000 and some of it was from 2010.

13 Some of it is from 2006 to 2010. There are some accurate  
14 enumeration data from the census, but there is also American  
15 Community Survey five-year estimates utilized in the report.

16 Q And those ACS estimates, what's the most recent date that  
17 those use?

18 A I believe I used 2006 through 2010 in certain cases  
19 because of data limitations and then up through 2010 to 2013.

20 Q Okay. Now, Dr. Webster, you would agree with me, would  
21 you not, that household access to a motor vehicle is related to  
22 household income levels; correct?

23 A It could be.

24 Q Okay. And you would agree that household income levels  
25 are related, at least in part, to employment rates, correct --

1 employment levels?

2 A They could be.

3 Q Okay. Isn't it true that you don't know what the  
4 unemployment rate was in North Carolina in 2010?

5 A No, sir, I do not.

6 Q Okay. And in terms of determining access to motor  
7 vehicles, you didn't consider that the employment rate in 2015  
8 may have been half of what it was in 2010, did you?

9 A I looked at the 2005 through 2009, 2006 through 2010, the  
10 2007 through 2011, the 2008 through 2012, and the 2009 through  
11 2013 American Community Survey in vehicle access. They are  
12 virtually identical for all five-year time periods, varying no  
13 more than two-tenths of 1 percent. They're very, very  
14 consistent.

15 The reason for having to use the 2006 to 2010, of those  
16 five American Community Survey releases, it is the only that  
17 breaks down occupied households by race and ethnicity; but  
18 there is no basis on which to suggest that there is any great  
19 difference between 2006 to 2010 and what we'll see in December  
20 of this year when the 2010 through 2014 data is released.

21 Q Okay. My question is this: You didn't consider the  
22 unemployment rates during those periods of time, did you?

23 A No, sir.

24 Q Okay. And you're projecting what may happen in the  
25 future, are you not?

1 A I'm saying that over the period of time from 2005 to 2013,  
2 those numbers were very, very consistent in terms of access to  
3 a motor vehicle. Again, statewide differed than more than .17  
4 percentage points. As a result, there is no expectation that  
5 changes in unemployment would have fundamentally or  
6 significantly changed the data.

7 Q But you didn't take that into consideration; so you don't  
8 know one way or the other, do you?

9 A I looked at the consistency of the numbers and determined  
10 that it really was not an issue.

11 Q But you didn't look at unemployment rates, did you?

12 A No, sir, I did not.

13 Q And you just testified that unemployment rates are at  
14 least related to household access to a motor vehicle; correct?

15 A I didn't say that. I said they could be.

16 Q They could be, okay. And you didn't take into account the  
17 most recent 2015 unemployment data, did you?

18 A No, sir.

19 Q Okay. Let's talk about your definition of vehicle access,  
20 household access to a vehicle. Dr. Webster, your definition  
21 does not take into account a family member who may live next  
22 door or in the same neighborhood who may own a vehicle, does  
23 it?

24 A It is not my definition. It is the Bureau of the Census  
25 definition.



1 Q Okay. But this is your report; correct?

2 A Yes, sir, but it is not my definition.

3 Q You could have expanded your definition to consider a  
4 neighboring family member who might have a vehicle, could you  
5 not have?

6 A The data are not available, and, therefore, I could have  
7 not expanded my definition in terms of the analysis.

8 Q Let me go at it another way, Dr. Webster. The definition  
9 that you used in your report does not take into account a  
10 family member who may live next door who owns a vehicle?

11 A By the Census definition, that is true.

12 Q Okay. It also does not take into account any other  
13 potential arrangements that may be made, like we heard a  
14 previous witness whose employer allowed him to use his vehicle?  
15 It doesn't take into account that possibility either, does it?

16 A No, sir.

17 Q And in terms of access to a vehicle, for purposes of  
18 driving to the correct precinct to go cast a ballot, you would  
19 agree with me, Dr. Webster, that's only a one-time event, maybe  
20 two, if you go to the wrong precinct first as opposed to a  
21 repeated event like going to a job day after day; correct?

22 A Does your question pertain to registering to vote?

23 Q My question pertains to vehicle access and the use of a  
24 vehicle to go to vote as compared to the use of a vehicle on a  
25 day-to-day basis. It would be easier to use a -- borrow a

1 vehicle -- if your household didn't have one, it would be  
2 easier to use one or borrow one, if you had access to borrowing  
3 one, for one or two events as opposed to a day-to-day event;  
4 correct?

5 A In all probability, yes. Of course, if you are trying to  
6 do it over your lunch hour, there may not be sufficient time to  
7 go from the incorrect precinct to the correct precinct.

8 Q Of course, if you do it after work, and you get off work  
9 at 5:00 and the polls don't close until 7:30, you may have  
10 enough time; correct?

11 A If the person you are borrowing the automobile from would  
12 allow that to happen.

13 Q Dr. Webster, when you were preparing your report, you  
14 didn't take into account how many people in North Carolina show  
15 up at the wrong precinct to vote, did you?

16 A The total number in the entire state?

17 Q Yes, sir.

18 A No, I looked at just those two counties.

19 Q Just those two counties. And you didn't analyze why  
20 voters show up at the wrong precinct either, did you, the  
21 reason for showing up at the wrong precinct?

22 A No, sir.

23 Q And you don't know how many voters in the November 2014  
24 election who did show up at the wrong precinct drove there on  
25 their own versus those who took public transportation, do you?

1 A No, sir.

2 Q And you don't know how many of those voters may have been  
3 given a ride by a Get Out the Vote organization, do you?

4 A No, sir.

5 Q Dr. Webster, if you would go to page 10 of your report.  
6 Specifically paragraph 20, in your discussion about poverty,  
7 you reference the digital divide. Do you see that?

8 A Yes, sir.

9 Q And in your report, would you agree with me that you  
10 define the digital divide as households without a computer and  
11 access to the Internet?

12 A That's the definition of the United States Census.

13 Q Okay. And that's the definition that you used in your  
14 report; correct?

15 A It is the data that I used based on their definition, yes,  
16 sir.

17 Q Okay. So that data -- the data that you used for your  
18 report does not take into account cell phones or smart phones  
19 or any other mobile devices that may have Internet access, does  
20 it?

21 A No, sir. By definition, they don't constitute a computer.

22 Q But you are aware that mobile devices are prevalent in  
23 today's world; correct?

24 A Yes, sir.

25 Q In fact, I think we heard a previous witness testify about

1 the Snapchat Generation with mobile devices. And you  
2 acknowledge that mobile devices -- many mobile devices have  
3 access to the Internet; correct?

4 A Though I am not a member of that generation, I am aware of  
5 that, yes, sir.

6 Q Very well. Thank you, sir. Dr. Webster --

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

8 **THE COURT:** Yes.

9 **BY MR. BOWERS**

10 Q Dr. Webster, do you have a pen and paper?

11 A No, sir.

12 Q Let me bring you that, too.

13 **MR. BOWERS:** May I approach the witness, Your Honor?

14 **THE COURT:** Yes.

15 **BY MR. BOWERS**

16 Q Dr. Webster, if you would please turn to page 22 of your  
17 report, paragraph 35.

18 A Yes, sir.

19 Q Okay. And you have total CVAP numbers. Tell the Court  
20 what the acronym CVAP stands for.

21 A Citizen voting-age population.

22 Q Why did you use CVAP for your analysis?

23 A Noncitizens can't vote. Hence, the relevant number, if it  
24 is available, would be citizens of voting age.

25 Q And the CVAP number in paragraph 35 for the city of

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1 Charlotte, at least the data that you used, was 460,826. Do  
2 you see that?

3 A 460,826, yes, sir.

4 Q Would you please write the number down on the pad I gave  
5 you. And then the non-Hispanic black CVAP was estimated to be  
6 165,688; correct?

7 A Yes, sir.

8 Q Okay. Let's flip over to page 26 of your report, please,  
9 sir. And this is your analysis of Raleigh. Do you see that?

10 A Yes, sir.

11 Q And you talk about CVAP there as well; correct?

12 A The total for the city of Raleigh was estimated to be  
13 259,082.

14 Q Okay. Would you write that number down on your pad. And  
15 then for Raleigh, what is the non-Hispanic black CVAP?

16 A 75,989.

17 Q Okay. Dr. Webster, flip to page 43, the one page of the  
18 report that analyzes out-of-precinct voting.

19 A Would you say that page number again, please?

20 Q Yes, sir, 43. And, Dr. Webster, in paragraph 81, you  
21 state that you determined that in the 2014 election, there were  
22 359 voters in Mecklenburg County and 483 voters in Wake County  
23 that cast provisional ballots at voting precincts other than  
24 the one they were assigned; is that correct?

25 A Yes, sir.

1 Q Okay. And you conclude that that's a total of 842 voters;  
2 correct?

3 A I did not add it up, but I will.

4 Q You did, actually, on the fifth line down in paragraph 81.

5 A I see it. 842, yes, sir.

6 Q Okay. Now, Dr. Webster, you didn't analyze the racial  
7 breakdown of those 842 voters, did you?

8 A No, sir.

9 Q And, Dr. Webster, you will agree with me that Wake County  
10 is bigger in terms of CVAP than just Raleigh; correct?

11 A Yes, sir.

12 Q Okay. You will also agree with me that Mecklenburg  
13 County, as a whole, is bigger in terms of CVAP than just  
14 Charlotte?

15 A Yes, sir.

16 Q Okay. We'll use these numbers. So now here is where the  
17 calculator comes in. I want you to take -- let's assume that  
18 all 842 of those voters were African-American, although we know  
19 that's very unlikely; correct?

20 A It would be unlikely, yes.

21 Q But for purposes of this calculation, I want you to assume  
22 that all 842 were African-American voters. I want you to  
23 divide -- or calculate, rather, the black -- the number of  
24 black voters who cast a ballot in the wrong precinct as  
25 compared to CVAP in both Charlotte and Raleigh.

1 A Are you asking me to add up the non-Hispanic CVAP in the  
2 two cities in the non -- and then the totals for the two  
3 cities?

4 Q I am asking you to add up the total non-Hispanic black  
5 CVAP in both cities.

6 A Okay.

7 Q Tell me what you come up with.

8 A The total for the non-Hispanic black CVAP is 241,677.

9 Q That's what I get, too. That's in both Charlotte and  
10 Raleigh?

11 A Yes, sir.

12 Q Which you've acknowledged is a smaller subset of the  
13 entire counties of Wake and Mecklenburg; correct?

14 A Approximately 80 percent, yes, sir.

15 Q So what percentage is 842 voters of 241,677?

16 A Three-tenths of 1 percent.

17 Q Okay. So even though we used those smaller subset of  
18 those two counties -- those two large counties and even though  
19 we assumed that all of the out-of-precinct voters in those two  
20 counties were African-American, we still only come up with less  
21 than one-third of 1 percent; correct?

22 A Yes, sir.

23 Q Okay. I am not a statistician, but is that even  
24 statistically significant?

25 A Yes, sir. And, most particularly, if we consider

1 circumstances like the state of Florida in 2000 where 549 votes  
2 were in dispute and, of course, one way or the other decided  
3 the Presidential election. So a small number of votes can have  
4 an absolutely enormous impact.

5 Q On outcomes of elections; correct?

6 A Yes.

7 Q But you would agree with me that less than one-third of  
8 1 percent is a very, very small number?

9 A It is a very small number in a landslide election. It is  
10 a very big number in a closely contested election.

11 Q Okay Dr. Webster, you still on page 43 of your report?

12 A Yes, sir.

13 Q Okay. Paragraph 81, and you state in your report that the  
14 359 voters casting provisional ballots at the incorrect  
15 precinct in Mecklenburg County would, on average, have to  
16 travel an additional 6.6 miles to arrive at their assigned  
17 voting precinct. Do you see that?

18 A Yes, sir.

19 Q You go on to say it's an additional 6.8 miles for those  
20 voters in Wake County; correct?

21 A Yes, sir.

22 Q Okay. Your analysis assumes, Dr. Webster, that the voters  
23 go to the wrong precinct first; correct?

24 A Well, they did. I mean, in the data, it has where the  
25 correct one is and the one that they went to, which is the



1 incorrect one. So the calculation is if they were at the  
2 incorrect precinct, how far would they have to go to arrive at  
3 the correct one.

4 Q Did you consider the distance that voters might have to  
5 travel if they go to their correct precinct first?

6 A No, sir.

7 Q Okay. So it's possible that these voters that have an  
8 average of 6.6 additional miles and an average of an additional  
9 6.8 miles -- it's possible that if they went to the right  
10 precinct first, they could have a shorter distance to travel,  
11 is it not?

12 A It is possible, but one -- when one goes to the incorrect  
13 precinct, in many cases it is because that precinct tends to be  
14 closer than the correct one.

15 Q Did you do any study of precinct locations in Mecklenburg  
16 and Wake County to determine if the correct precincts were  
17 closer to the residences of these voters?

18 A No, sir, that is based on my personal experience in going  
19 to the wrong precinct.

20 Q In North Carolina?

21 A In the state of Wyoming.

22 Q Okay. But you don't have any analysis other than your own  
23 self-observation; correct?

24 A No, sir.

25 Q Okay.

1           **MR. BOWERS:** Your Honor, I don't have any further  
2 questions at this time.

3           **MR. FARR:** I have a few, Your Honor.

4           **THE COURT:** All right. Mr. Farr.

5                                   CROSS-EXAMINATION

6 **BY MR. FARR**

7 Q       Dr. Webster, you're not testifying -- by the way, my name  
8 is Tom Farr, Dr. Webster. I'm sorry. We haven't met.

9           You are not testifying that the State of North Carolina is  
10 responsible for disparities in car ownership, are you?

11 A       I'm sorry. The last portion of that I did not understand.

12 Q       In your report -- or in your testimony today, you are not  
13 claiming that the State of North Carolina is responsible for  
14 disparities in car ownership?

15 A       No, sir.

16 Q       Okay. And you said that if you don't have a car, that's a  
17 heavier burden to register and vote than somebody who has a  
18 car?

19 A       All travel is substantially more a burden, yes, sir.

20 Q       Okay. And that would be true regardless of the number of  
21 days of early voting?

22 A       I did not look at early voting, so I cannot come to that  
23 conclusion.

24 Q       That's an issue in this case. So if you have to -- if  
25 it's a harder burden to go vote if you don't have a car, then

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1 that would be true regardless of the number of days that a  
2 State allowed for early voting, would it not?

3 **MR. COOPER:** Objection, this is outside the scope of  
4 Dr. Webster's testimony.

5 **THE COURT:** Overruled.

6 **THE WITNESS:** Would you repeat the question, please?

7 **BY MR. FARR**

8 Q You said that if you don't have a car, it is harder to go  
9 register or vote as compared to someone who owns a car?

10 A True.

11 Q Or has access to a car?

12 A Within their household, yes, sir.

13 Q Okay. And that's true regardless of the number of days of  
14 early voting that the State offers?

15 A Well, actually, I suspect, as has come up previously,  
16 making arrangements to borrow a car or be driven by someone  
17 else, the longer the number of days, the greater the  
18 probability those arrangements might be made.

19 Q Okay. But you still have to find someone to take you.  
20 You wouldn't have your own car. So that would be a burden to  
21 have to find someone to take you; right?

22 A Yes, sir.

23 Q So that would be harder for someone who didn't have a car  
24 than someone who did have a car regardless of the number of  
25 days of early voting?

1 A But if you didn't have a car and there were a lot of days,  
2 the probabilities of making arrangements would be greater  
3 because you have more time to do it.

4 Q But Dr. Stewart -- or, Dr. Webster, it would still be a  
5 bigger burden for someone who doesn't have a car to find  
6 someone to take them to early voting regardless of the number  
7 of days as compared to someone who had a car and could drive  
8 and go whenever they wanted to without asking someone?

9 **MR. COOPER:** Objection, asked and answered.

10 **THE COURT:** Overruled.

11 **THE WITNESS:** The greater the number of days, the  
12 greater the probability that arrangements can be made on one of  
13 those days. Therefore, it may well be a burden for the person  
14 without access to a motor vehicle to make those arrangements;  
15 but if it's 10 days or 20 days, the greater the number of days,  
16 the greater the likelihood that someone that knows that person  
17 will be available to either transport them or allow them to  
18 borrow their car.

19 **BY MR. FARR**

20 Q Okay. And what studies have you made to support that? Is  
21 that just your speculation, or do you have any data to support  
22 that?

23 A Well, I think in general, it's obvious. I have not done  
24 specific studies on that issue and, of course, it was not  
25 included in any way, shape, or form in my report; but given the

1 question, the greater the number of options one has in terms of  
2 timing, the greater the likelihood one can, in fact,  
3 successfully make the arrangements.

4 Q But you will agree that if you have a car, you have less  
5 of a burden than someone who doesn't have a car regardless of  
6 the number of days of early voting?

7 A That's the same response I gave before. The greater  
8 number of --

9 Q Well, you haven't answered my question.

10 A Yes, I have. And, obviously, if you have a car, your  
11 burdens are less. If you don't have a car, your burdens are  
12 greater, but making arrangements over several days versus a few  
13 days is much easier.

14 Q Is the level of the burden different than the likelihood  
15 of success of getting to the polls?

16 A I suspect the burden is the same, but the likelihood of  
17 getting to the poll is, in fact, greater the greater the number  
18 of days of early voting available.

19 Q Okay. And, Dr. Webster, if you were going to vote on  
20 Election Day, if you didn't have a car, you have a greater  
21 burden than someone who had a car regardless of whether or not  
22 you went to the wrong precinct?

23 A Could you restate that, please?

24 Q Well, I've got a car. I decide to vote at the wrong  
25 precinct. My burden to go vote at the wrong precinct is less

1 than someone who goes to vote at the wrong precinct without a  
2 car?

3 A Yes, sir.

4 Q All right. Now, Dr. Webster, did you happen to study the  
5 voting history of any of these individuals that you talked  
6 about on page 43 who voted out of precinct in Wake County or  
7 Mecklenburg County?

8 A No, sir.

9 Q So you didn't look in to see whether or not they had voted  
10 at their right precinct in previous elections?

11 A No, sir.

12 Q And you don't know the reasons why they voted out of  
13 precinct?

14 A No, sir.

15 Q And you didn't study whether or not -- these individuals  
16 who voted in the wrong precinct, you didn't study whether they  
17 had lived closer to their right precinct or closer to the  
18 incorrect precinct that they went to?

19 A No, sir. I only looked at the added distance they would  
20 have to travel from the incorrect precinct to the correct  
21 precinct.

22 Q Okay. And that's correct; the only burden you looked at  
23 was the burden that would be -- that would result if you  
24 initially went to vote at the wrong precinct?

25 A The added burden to go to the correct one, yes, sir.

1 Q But you don't know why any of these people voted at the  
2 wrong precinct?

3 A No, sir.

4 Q Do you know how the number of out-of-precinct ballots in  
5 2014 compared to prior elections?

6 A No, sir.

7 Q And you talked about Florida, Dr. Webster. Does Florida  
8 have out-of-precinct voting?

9 A I am not aware of it, no, sir. I only was using that as a  
10 response to a very, very small number of votes can have a very,  
11 very large impact on the outcome of an election.

12 Q Okay. And you are assuming that somebody who went to the  
13 wrong precinct would be otherwise qualified to vote?

14 A In North Carolina?

15 Q Yes.

16 A If they -- by definition, if they are a registered voter,  
17 yes, they simply need, obviously, to cast their ballot in some  
18 way to have it counted.

19 **MR. FARR:** No further questions, Your Honor.

20 **MR. COOPER:** Very briefly.

21 REDIRECT EXAMINATION

22 **BY MR. COOPER**

23 Q Dr. Webster, your analysis of out-of-precinct voting was  
24 intended -- was intended to -- was related to the removal of  
25 out-of-precinct voting by H.B. 589; right?

1 A Yes, sir.

2 Q So out-of-precinct voting was not available in the 2014  
3 election that you studied?

4 A Yes, sir.

5 Q So did you have any way of knowing how many voters  
6 presented to vote at an incorrect precinct but did not cast a  
7 provisional ballot?

8 A No, sir.

9 **MR. COOPER:** I have nothing further.

10 **THE COURT:** You may step down, sir.

11 **MR. DONOVAN:** Yes, Your Honor. Couple of options to  
12 get your direction. I know we have a couple evidentiary and  
13 housekeeping issues. Also, next would be video witnesses.

14 **THE COURT:** How long is your video?

15 **MR. DONOVAN:** We could have one that is 11 minutes.  
16 After that, we start getting into the 30-minute range.

17 **THE COURT:** All right. Why don't we do the 11-minute  
18 witness, and then we will have a discussion of whatever legal  
19 issues we may have.

20 **MR. DONOVAN:** We'll do that.

21 **THE COURT:** All right.

22 **MS. RIGGS:** Good afternoon, Your Honor. The League  
23 of Women Voters Plaintiffs are offering the video deposition  
24 testimony of Quisha Mallette. Plaintiffs' designations are  
25 11 minutes and 12 seconds long. There are no



1 counter-designations from Defendants. May I approach?

2 **THE COURT:** Yes, please.

3 **MS. RIGGS:** Tomorrow morning we'll have the printed  
4 copy that Ms. O'Connor has been giving up with the highlighted  
5 sections.

6 **THE COURT:** All right.

7 (Designated portions from the video deposition of Quisha  
8 Mallette were played.)

9 **THE COURT:** All right. Why don't we stop there with  
10 the evidence. What do we have to resolve by way of evidentiary  
11 and legal issues?

12 **MR. DONOVAN:** So, Your Honor, if we could start,  
13 there are five exhibits that I think should be the focus -- one  
14 moment. I will give you those, Your Honor. I want to identify  
15 the one that is related to the legislator subpoena issue.  
16 These numbers are PX77, 79, 81, 91, and 104.

17 May I approach, Your Honor?

18 **THE COURT:** Yes. Now, are these things relied upon  
19 by experts, or are they coming as substantive evidence?

20 **MR. DONOVAN:** We are moving it for substantive  
21 evidence, separate purposes. They may have been quoted by  
22 experts as well; but unlike footnotes that may have been --  
23 just formed the basis for the opinion, we are moving this in as  
24 substantive evidence received.

25 (Off-the-record discussion.)

1           Your Honor, we've discussed this. So I just want to  
2 highlight a few points. I think the starting point that the  
3 Plaintiffs relied upon was the stipulation we discussed with  
4 Your Honor on telephone calls in which an order was directed to  
5 get to a stipulation because we said we were going to rely,  
6 pursuant to Federal Rule of Civil Procedure 65 -- to make the  
7 parts of the preliminary injunction record part of the record  
8 here.

9           This all started, and Mr. Farr was proactive. He  
10 emailed me and said the following: The parties are supposed to  
11 sign a stipulation about what can come into evidence from the  
12 PI hearing and file the stipulation by June 12th.

13           Mr. Farr then went on and made a suggestion about  
14 making it simple by saying the parties agree that everything  
15 before the Court during the PI hearing, including all  
16 materials, depositions, declarations, and exhibits, may be  
17 considered by the Court as part of the record for the trial in  
18 chief except as follows, and then says, I think it would be  
19 easier -- to which they object.

20           We had several phone calls and that led to the second  
21 document I gave you in which the parties discussed what would  
22 come in. They talked about the documentary exhibits and then  
23 listed the ones that would come in on Exhibit A. That's the  
24 first attachment.

25           They then talked about expert reports. As you know,

1 the parties agreed to waive authenticity and hearsay but  
2 reserved other objections.

3 **MR. FARR:** Excuse me. Do we have a copy of that?

4 **MR. DONOVAN:** You do.

5 The parties agreed that fact witness declarations  
6 would come in and then listed those and then agreed deposition  
7 designations would be pursuant to Your Honor's order.

8 The five exhibits that I just mentioned and  
9 identified are listed on Exhibit A without any listing of an  
10 objection. Accordingly, the Plaintiffs did not feel the need  
11 based on the justification -- this was then filed with the  
12 Court. There were no material changes. I think there were a  
13 few typos. Was filed with the Court and sat on the Court's  
14 docket. Some weeks later, the Defendants then objected to  
15 documents they had already stipulated to. We then began a back  
16 and forth that led to today.

17 So first, Your Honor, there are other documents, but  
18 these five were used at the preliminary injunction hearing.

19 **THE COURT:** What is the date of the stipulation? Was  
20 it June the 12th? Am I recalling that right?

21 **MR. FARR:** That's correct, Your Honor.

22 **MR. DONOVAN:** Yes, Your Honor. Your Honor, so apart  
23 from the stipulation, these documents have a few additional  
24 reasons why they can be relied upon. First -- and I am going  
25 to hand them up. I apologize. I just need to look for the

1 actual documents here.

2           But two of them relate to then speaker, now Senator  
3 Tillis' statements, which you saw on the video. So they have  
4 somewhat independent corroboration. They're consistent with  
5 that. One is from Mr. Apodaca, which I will play you the video  
6 in a minute, not the exact same quotes but very similar, we  
7 think adds.

8           And Number 3, for the last, including one Mr. Kaul is  
9 attempting to move in, were all moved into the record. Nobody  
10 ever sought a retraction of them. It wasn't even objected to  
11 as hearsay. I know Your Honor can rely on hearsay during the  
12 PI, but the Defendants did not make objections. They did not  
13 object to those documents. They were part of the record that  
14 was both before this Court and the Fourth Circuit. And until  
15 weeks after the stipulation were they ever first objected to.

16           So based on that, Your Honor, we did not serve the  
17 legislators. We didn't try other ways, such as trying to get a  
18 quick deposition. We relied on the good faith and the  
19 stipulation that those would come in as substantive evidence.

20           **THE COURT:** Did you ever try during the discovery  
21 process to serve requests for admissions to ask them to admit  
22 that the statements were made by these individuals?

23           **MR. DONOVAN:** There were discussions. I don't  
24 believe anybody served a request for admission, Your Honor, but  
25 there were discussions after this. What led up to, I think,

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1 the objections is after we got the objections, we then tried to  
2 talk about stipulations. There were kind of emails back and  
3 forth about different sanctions, if you serve them, and can we  
4 get depositions.

5 **THE COURT:** I understand that and I understand  
6 that -- the issue of trying to put a legislator under oath  
7 raises certain legislative privilege issues.

8 My question was during the pretrial phase whether --  
9 since you knew you had these statements and you may have had  
10 questions about having them admitted, whether you thought about  
11 serving a request for admission and simply ask them to admit  
12 that this person made that statement on that day, in which case  
13 maybe you would have a better argument.

14 **MR. DONOVAN:** I would have to check. I am not sure  
15 if we did that, so --

16 **THE COURT:** That not might have been a bad idea in  
17 hindsight. There may be problems with that that I'm not  
18 thinking through but --

19 **MR. DONOVAN:** Well, I think, Your Honor, the issue  
20 was is from day one we did serve discovery, you remember, on  
21 these legislators, and they have responded to zero. Okay.  
22 So --

23 **THE COURT:** I understand that.

24 **MR. DONOVAN:** So the position --

25 **THE COURT:** But that would raise a different issue

1 about a request for admission as to whether something occurred  
2 as opposed to whether the legislator has to respond.

3 **MR. DONOVAN:** I understand that. I would need to  
4 look to confirm. Can I play the Mr. Apodaca video for you?

5 **THE COURT:** Before you play it, which one of these  
6 exhibits is it?

7 **MR. DONOVAN:** I'm sorry. One moment, please.

8 **THE COURT:** What I am interested in knowing is -- let  
9 me ask it this way: What exactly are the exhibits that you  
10 intend to offer? Are they newspaper reports? Are they videos?  
11 What are they?

12 **MR. DONOVAN:** Sure. Each one that I am referring to  
13 here are newspaper articles that have the quotes in them. I  
14 just want to find the exact one, Your Honor.

15 **THE COURT:** All right.

16 **MR. DONOVAN:** May I approach, Your Honor?

17 **THE COURT:** Yes.

18 **MR. DONOVAN:** Your Honor, I will get a couple of  
19 extra copies as soon as we are done, but that's one set.

20 **THE COURT:** So I have -- hold on just a minute. I  
21 don't have 104, but I have 528. So either I wrote something  
22 down wrong or I have a wrong page.

23 **MR. DONOVAN:** You are right, Your Honor. I need to  
24 get you 104.

25 **THE COURT:** While you are looking for that, is there

1 any difference between 528 and the video you played the other  
2 day?

3 **MR. DONOVAN:** Is that the Senator Tillis quote?

4 **THE COURT:** Yeah.

5 **MR. DONOVAN:** No. So that's kind of originally what  
6 we had moved in.

7 **THE COURT:** So do you need 528 if the video comes in?

8 **MR. DONOVAN:** No, it is just a hard copy. It's  
9 easier to have the quote. We are happy to kind of excise.  
10 More for just ease of reference.

11 May I approach, Your Honor?

12 **THE COURT:** Yes. Well, I have several pages here,  
13 and I think rather than --

14 **MR. DONOVAN:** Maybe what I can help for your notes,  
15 Your Honor, is give you who said each -- which statements  
16 for -- for PX77 is Senator Tillis.

17 **THE COURT:** Okay.

18 **MR. DONOVAN:** PX81 is Mr. Apodaca. PX91 is  
19 Mr. Blust, B-L-U-S-T. And 79 is Mr. Cook. And 104, I don't  
20 have my copy, but I believe that's Governor Patrick McCrory.

21 **THE COURT:** What I would like to do is read these and  
22 not do it while I have you all sit there and watch me read. I  
23 will do it tonight, and then we can talk about it in the  
24 morning.

25 Just briefly, now, the Governor has been sued, but he

1 is sued in his official capacity. How is his statement  
2 relevant to legislative intent in the passage of the law? Is  
3 it because he has the authority to veto the law or not sign it?

4 **MR. DONOVAN:** There's two. He both has the power to  
5 veto -- he was also sued because he is the executive officer  
6 implementing all of these laws. So it goes to both points,  
7 yes.

8 **THE COURT:** And I guess my question is in cases of  
9 this nature, Fourteenth Amendment and Section 2 cases, are  
10 statements of the Governor deemed to be evidence of legislative  
11 intent?

12 **MR. DONOVAN:** I have to look at our cases and see if  
13 that exact situation has happened, and we will do that tonight.

14 **THE COURT:** If you could do that, that would be  
15 helpful. I think I see the concern and issue.

16 **MR. DONOVAN:** Okay.

17 **THE COURT:** And then the video, is that the one I've  
18 already seen?

19 **MR. DONOVAN:** No, it's a different -- it's pretty  
20 short. Should I just play it?

21 **THE COURT:** Sure.

22 **MR. STRACH:** Your Honor, just for the record, there  
23 is some commentary from the reporter, and then there is a clip  
24 from Senator Apodaca. So we are not going to object to the  
25 clip from Senator Apodaca, just like we didn't object to the



1 clip from Senator Tillis, but --

2 **THE COURT:** Let me stop you right there. Do you need  
3 the commentary?

4 **MR. DONOVAN:** No. We want the statement.

5 **THE COURT:** I think you just got a concession on that  
6 one. All right. So which one is that? It's not on my list.

7 **MR. DONOVAN:** That is PX81.

8 **THE COURT:** Okay.

9 **MR. DONOVAN:** The quote here, Your Honor, is from a  
10 different time and slightly different. So -- but we believe  
11 the statement that we get in is corroborative and what is  
12 corroborative of PX81, and we are moving that in as well.

13 **THE COURT:** What I am going to do is read these.  
14 I've already told you I have concern about hearsay on such a  
15 critical issue in the case, and here we have double hearsay.  
16 So if you already have other ways to get things into evidence,  
17 certainly I encourage you to rely on those; but I will take a  
18 look at these as well.

19 Now, is there anything you all want to be heard on?  
20 I will hear you all in the morning briefly on this, but is  
21 there anything in addition and considering as well the  
22 stipulation issues?

23 **MR. STRACH:** Your Honor, the Plaintiffs, specifically  
24 the Intervenors, served a subpoena for Senator Cook's  
25 appearance tomorrow. They served that subpoena about

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1 3:00 Friday afternoon. That's why we filed a motion to quash  
2 last night and this morning.

3 I am told that part of the outcome of this -- you  
4 know, they might withdraw the subpoena, but we certainly are  
5 not going to agree to the newspaper reports. So we are  
6 probably going to have to hear the motion to quash, but it does  
7 ask for Senator Cook's appearance tomorrow.

8 **THE COURT:** Are you here to speak to that?

9 **MR. KAUL:** To address the subpoena, we are happy to  
10 delay his appearance till later in the case. Mr. Strach is  
11 correct, that if we do -- if we are able to admit Exhibit 79,  
12 we don't intend to call Senator Cook. We specifically -- the  
13 only purpose for calling him is to question him about this  
14 public statement. So to the extent that the Court decides that  
15 issue and admits that article first, then that issue would be  
16 resolved. So we are happy to delay the date, but we wanted to  
17 get the subpoena to Defendants at the end of last week so that  
18 we didn't delay further.

19 And I do just briefly want to make two quick notes.  
20 One is that the article itself is actually being admitted, not  
21 for the truth of his statement, but rather as evidence of his  
22 state of mind. And, secondly, with respect to the Court's  
23 question about legislative intent --

24 **THE COURT:** I'm not sure I am persuaded quite yet  
25 on -- that the state of mind exception comes in in this

1 context. It seems to me they are one in the same. The state  
2 of mind is the truth. In other words, it seems to me if I  
3 allow everything in to prove intent, that's the issue in the  
4 case. So now hearsay is all coming in to prove intent and the  
5 question --

6 **MR. KAUL:** I think it depends on the particular  
7 statement, Your Honor.

8 **THE COURT:** The question is whether or not they even  
9 said the statement, and it is critical whether they said it and  
10 what context they said it and what all they said and whether a  
11 reporter quoted them fully and fairly or not and whether there  
12 was follow-up that was not in there.

13 **MR. KAUL:** I think it is important, Your Honor, to  
14 distinguish between two types of statements that go to intent.  
15 There are statements where their intent is only an issue if  
16 what they say is true, and so I will let the others  
17 characterize which statements fall into that category.

18 This statement, we are not introducing it to prove  
19 that college students, in fact, "don't pay squat in taxes" and  
20 "skew the results of local" elections. Rather, we are  
21 introducing that to prove that Mr. Cook was considering that as  
22 a factor in his decision-making.

23 **THE COURT:** But wouldn't it be the case that he could  
24 have only considered it as a factor if he, in fact, said that?

25 **MR. KAUL:** I'm sorry?

1           **THE COURT:** Wouldn't it be the case that he could  
2 only have considered that as a factor if, in fact, he said what  
3 was attributed to him?

4           **MR. KAUL:** That's correct, Your Honor. That --

5           **THE COURT:** So don't I have to determine whether or  
6 not he said that?

7           **MR. KAUL:** Yes, but that takes care of one of the  
8 layers of hearsay that's come up in this discussion, which is  
9 that the Courts point out that there may be a double hearsay  
10 issue with some of the newspaper articles.

11           **THE COURT:** The extra level is that you are not  
12 bringing the reporter in to say that they made the statement,  
13 so on two levels.

14           **MR. KAUL:** Exactly. So if we were to call the  
15 reporter, she could testify directly to this statement because  
16 it's not coming in for the truth of the matter asserted, but  
17 rather just the fact of his statement. So it raises less  
18 evidentiary concerns than would a double hearsay statement is  
19 the point.

20           And then just briefly, and I will let you get out of  
21 here, the Court asked about legislative intent before. I just  
22 wanted to note our position is that's the State's intent that  
23 is at issue here given that it's a discrimination claim as  
24 opposed to a legislative interpretation claim.

25           **THE COURT:** I understand. I was just curious whether

1 there was any legal authority on that. The whole notion of  
2 legislative intent is a little difficult because you have some  
3 cases that say that a legislature really can't have an intent  
4 because it's -- one, you look at the language of the statute.  
5 You have others who say how are you supposed to determine  
6 intent when you have all these different people in a  
7 legislature and various people can be different -- thinking  
8 different things at different times.

9           So I was just curious as to whether there was any  
10 case law as to gubernatorial intent and how that plays into  
11 these kinds of cases. So if you do find something, I am  
12 certainly interested in that.

13           **MR. STRACH:** Your Honor, I know you want to read  
14 those articles this evening. We're certainly happy to argue  
15 this tomorrow or whatever, if you want to read the articles  
16 first.

17           **THE COURT:** I want to read them first. My other  
18 question dealt with the stipulation issue because the earlier  
19 representation was that you all had not meant to stipulate to  
20 the admission of hearsay statements when you signed the  
21 stipulation.

22           **MR. STRACH:** That remains true, Your Honor.

23           **THE COURT:** Okay.

24           **MR. DONOVAN:** Your Honor, two points. One is I would  
25 like to hand up and move in evidence now marked PX533, is the

1 Senator Tillis videos that we played the other day.

2 **THE COURT:** That's the one that was not objected to?

3 **MR. DONOVAN:** Correct, Your Honor. And PX714 is the  
4 Mr. Apodaca video. So I would like to -- I will you give two  
5 sets so you can actually watch it yourself, if you like, or we  
6 can play it again in court tomorrow, but -- so PX533 and PX714.

7 **MR. STRACH:** Can we confirm that the Apodaca video  
8 doesn't have reporter commentary?

9 **MR. DONOVAN:** Well, I mean, it does. We can also  
10 just stipulate to the statement -- happy to represent that we  
11 are only moving into evidence the statement, but since they  
12 objected to the newspaper article --

13 **THE COURT:** Can you redact it overnight? Is that  
14 possible?

15 **MR. DONOVAN:** We could also just stipulate that he  
16 said the statements.

17 **THE COURT:** I understand. Why don't you do this.  
18 Why don't you -- you've moved them. Remind me in the morning.  
19 I have it in my notes. I will rule on it the morning, if  
20 you've already got them redacted, so that the Defendants have  
21 no objection. Then they just come in without any further  
22 notation in the record that somebody would then have to go find  
23 to understand how the exhibit's to be used.

24 **MR. DONOVAN:** One final point, Your Honor, I just  
25 want to make is we're -- we obviously believe we are prejudiced

1 by this, and we believe we are in this position because of the  
2 stipulation and emails from Mr. Farr and do believe this is  
3 something the Defendants can cure.

4 **THE COURT:** What would you have done differently as  
5 of June the 12th if you were told at that time that  
6 everything's agreed to except for the hearsay statements?

7 **MR. DONOVAN:** We would have subpoenaed them that day,  
8 and, actually, we would have done that and then --

9 **THE COURT:** But that would turn on whether or not  
10 they get to testify or whether they would have their subpoenas  
11 quashed.

12 **MR. DONOVAN:** But we also could have done a quick  
13 deposition, which would be a one-question deposition in  
14 their -- it would have been real quick just to say, here's the  
15 statement, did you make it. We didn't think we had to do it.

16 **THE COURT:** I understand that. Anything else?

17 **MR. DONOVAN:** That's what we would have done.

18 **MR. KAUL:** Your Honor, I would add that we could have  
19 looked into finding the reporters and trying to bring them into  
20 court as well.

21 **THE COURT:** All right. I think I understand. Tell  
22 Senator Cook he doesn't need to come tomorrow. I think there's  
23 been already an offer that they would postpone it for a day at  
24 least. We'll resolve this tomorrow.

25 **MR. STRACH:** Thank you, Your Honor.





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 4th day of August 2015.  
11

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14 Briana L. Nesbit, RPR  
15 Official Court Reporter  
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