

EXHIBIT U

Vincent Roscigno

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

Ohio State Conference of	:	
the National Association	:	
for the Advancement of	:	
Colored People, et al.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Case No. 2:14-cv-00404
	:	
Jon Husted, et al.,	:	
	:	
Defendants.	:	

- - -

DEPOSITION

of Professor Vincent Roscigno, taken before me, Karen Sue Gibson, a Notary Public in and for the State of Ohio, at the offices of Mike DeWine, Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio, on Thursday, July 10, 2014, at 9:30 a.m.

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
FAX - (614) 224-5724

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APPEARANCES:

American Civil Liberties Union Foundation
Voting Rights Project
By Mr. Sean J. Young
125 Broad Street, 18th Floor
New York, New York 10004

American Civil Liberties Union
of Ohio Foundation
By Mr. Drew S. Dennis,
Ms. Freda J. Levenson,
and Mr. Paul Moke
4506 Chester Avenue
Cleveland, Ohio 44103-3621

The Law Office of
Spater & Davis-Williams, LLC
By Mr. C. Raphael Davis-Williams
1188 South High Street
Columbus, Ohio 43206-3413

On behalf of the Plaintiffs.

Mike DeWine, Ohio Attorney General
By Mr. Steven T. Voigt,
Senior Assistant Attorney General
Constitutional Offices
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Ohio Attorney General
Mike DeWine.

Mike DeWine, Ohio Attorney General
By Ms. Halli Watson,
Assistant Attorney General
Constitutional Offices
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Secretary of State Jon
Husted.

- - -

Vincent Roscigno

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Thursday Morning Session,
July 10, 2014.

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STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of Professor Vincent Roscigno, a witness called by the Defendants under the applicable Rules of Civil Procedure, may be reduced to writing in stenotypy by the Notary, whose notes thereafter may be transcribed out of the presence of the witness; and that proof of the official character and qualification of the Notary is waived.

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Vincent Roscigno

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PROFESSOR VINCENT ROSCIGNO

being by me first duly sworn, as hereinafter certified, deposes and says as follows:

EXAMINATION

By Mr. Voigt:

Q. Thank you for being here today. Could you please state your name for the record.

A. Sure. Vincent Roscigno.

Q. And how do you spell your last name?

A. R-O-S-C-I-G-N-O.

Q. And, Mr. Roscigno, how do you prefer to be referred to?

A. Professor would be fine.

Q. Professor Roscigno, okay.

MR. VOIGT: I see we have a number of lawyers here, and I would appreciate it if everyone could identify themselves and who they represent.

MR. YOUNG: Sean Young with the ACLU Voting Rights Project on behalf of plaintiffs.

MR. DENNIS: Drew Dennis with the ACLU of Ohio on behalf of plaintiffs.

MR. MOKE: Paul Moke on behalf of plaintiffs.

MS. LEVENSON: Freda Levenson, ACLU Ohio, plaintiffs.

1 MS. WATSON: Halli Watson for Ohio
2 Secretary of State Jon Husted.

3 MR. VOIGT: And my name is Steven Voigt,
4 and I'll be conducting this deposition today on
5 behalf of Secretary of State Husted.

6 I think for logistical purposes, we have
7 got four lawyers on the other side here, if you guys
8 have an objection, can we stipulate that, you know,
9 one person -- one person's objection is going to be
10 sufficient rather than have objection, objection,
11 objection, objection?

12 We are still on the record. Is that
13 okay?

14 MR. YOUNG: Yes. That was the plan.

15 MR. VOIGT: Okay. Great.

16 MS. LEVENSON: Steven, if it doesn't
17 bother you, if it gives you enough space, I am going
18 to move a little closer here?

19 MR. VOIGT: Yeah, that's fine.

20 MS. LEVENSON: Thanks.

21 MR. VOIGT: Let me just clarify -- can we
22 go off the record for just one second?

23 (Discussion off the record.)

24 MR. VOIGT: I just wanted to clarify
25 something on the record. It appears my appearance is

1 on behalf of the AG only so I'm asking questions --
2 I'm representing the AG, but I'll be asking questions
3 on behalf of both defendants today, just minor
4 technicality.

5 Q. Professor Roscigno, thanks for being here
6 today. Is there any reason why you are unable to
7 provide complete and truthful testimony today?

8 A. No.

9 Q. Have you ever been deposed before?

10 A. I have not.

11 Q. Today I'm going to be asking you a series
12 of questions. The court reporter is going to be
13 transcribing my questions and your answers. I would
14 appreciate if you would not begin your answer until I
15 complete my question. And if there's an objection,
16 wait until the objection is over to complete -- to
17 begin your answer just so we have a clean record.

18 A. Sure.

19 Q. And if you don't understand any question
20 that I ask, let me know. If you answer the question,
21 I am going to assume that you understand the
22 question, and I will rephrase the question if you
23 don't understand the question. And at any time if
24 you need to take a break, let us know and we'll stop.

25 A. Okay.

1 Q. Okay? Have you read the plaintiffs'
2 complaint?

3 A. I have not.

4 Q. What is your understanding about what
5 this lawsuit is about?

6 A. About -- my understanding is that it is
7 about access to voting.

8 Q. Anything more?

9 A. Relative to the Voting Rights Act's sort
10 of criteria.

11 Q. Did you read any of the other pleadings
12 in this matter?

13 A. I did not.

14 Q. Did you read Mr. Smith's proffered expert
15 report?

16 A. No.

17 Q. Have you read any news articles related
18 to this report -- or, I'm sorry, this case?

19 A. No.

20 Q. Have you read any of the statements on
21 the ACLU's website related to this case?

22 A. I have not.

23 Q. Who hired you in this litigation?

24 A. The ACLU.

25 Q. Are you getting paid to provide your

1 opinions in this case?

2 A. Yes.

3 Q. What is your hourly rate?

4 A. \$150 an hour.

5 Q. And approximately how much have you
6 invoiced in this case so far?

7 A. I believe 70 hours or around 70 hours.

8 Q. Are those 70 hours -- do those comprise
9 the hours that you put into preparing your expert
10 report, or were there other components of what you
11 were hired to do?

12 A. No, just the expert report.

13 Q. And so today you're testifying on behalf
14 of the plaintiffs; is that correct?

15 A. That's correct.

16 MR. YOUNG: Objection, calls for a legal
17 conclusion, vague. You may answer.

18 A. Yes.

19 Q. Do you know whether the ACLU or the
20 plaintiffs in this case are paying your bills?

21 A. I do not.

22 Q. What did you do to prepare for today's
23 deposition?

24 A. What did I do? I met with several of
25 these attorneys on, I am trying to remember the day

1 of the week, Tuesday -- I'm sorry. We talked on the
2 phone maybe for half an hour on Monday about what a
3 deposition is, just sort of, you know, how -- the
4 formalities of a deposition. And then we met on
5 Tuesday for, I believe, maybe two hours.

6 Q. Who did you meet with?

7 A. I met with everyone in -- I'm sorry,
8 Sean, Freda.

9 MR. MOKE: Paul.

10 A. Paul but not Drew, as well as Raphael. I
11 don't know his last name.

12 Q. Is Raphael a lawyer?

13 A. He is.

14 Q. Do you know who he represents?

15 A. I believe the ACLU, although I'm not
16 sure.

17 Q. Please state what you have done in this
18 litigation.

19 A. What I have done? I evaluated the status
20 of African Americans in the state of Ohio relative to
21 Senate Factors 1, 2, 3, 5, 6, and 7.

22 Q. And when you say you evaluated the status
23 of African Americans, can you be a little bit more
24 specific, you know, in terms of what do you mean by
25 status? And by the way I am not trying to trick you.

1 I am just trying to get a foundation for what it is
2 that you did --

3 A. Sure.

4 Q. -- in this case.

5 A. Sure. First, I sought an understanding
6 of what each Senate factor entailed, and based on
7 that understanding, I then went and did research,
8 examined literature, and performed analyses relative
9 to each criteria as set forth in the Senate factors
10 that were outlined.

11 Q. And you were applying these Senate
12 factors against election laws; is that right?

13 A. No, not exclusively.

14 Q. On election hours?

15 A. Not exclusively.

16 Q. Okay. Then what were you applying the
17 Senate factors against?

18 MR. YOUNG: Objection, vague. You may
19 answer.

20 A. It depended on the Senate factor. So
21 Senate Factor 5 -- I'm sorry, make sure I'm on the
22 right one. Senate Factor 5 to quote is "the extent
23 to which members of minority groups bear the effects
24 of discrimination in areas such as education,
25 employment, and health, which hinder their ability to

1 participate effectively in the political process."
2 Thus, in the case of that Senate factor I examined
3 the extent of inequality and the role of
4 discrimination in the arenas of education, work,
5 residence or housing, and health.

6 Q. Okay. Did you have a staff that helped
7 you prepare your report?

8 A. I do not, did not.

9 Q. And so there were no nonlawyers who
10 assisted you in the --

11 A. No.

12 Q. -- preparation of your report?

13 A. No.

14 Q. How about the lawyers in this case, what
15 did they do to help you with your report?

16 MR. YOUNG: Objection, vague, misstates
17 facts. You may answer.

18 A. Not much, I shared the draft report with
19 Sean, and he provided very general feedback.

20 Q. When did you start working on your
21 report?

22 A. If I remember correctly, the end of
23 April.

24 Q. Do you know approximately when your
25 report was completed?

1 A. June 20.

2 Q. When were you retained in this case?

3 A. I don't recall the specific -- specific
4 date. I believe it was early April.

5 Q. Now, you said you didn't read the
6 complaint, and you haven't read the pleadings.

7 A. Right, I have not.

8 Q. And you did not read Dr. Smith's report.

9 A. No.

10 Q. What facts or data did the attorneys
11 provide to you that you considered in forming your
12 opinions?

13 A. That I considered in forming my opinions.

14 Q. In other words, how did you know what it
15 is that they wanted you to do?

16 A. Well, they asked me specifically to
17 examine these particular Senate factors. I asked
18 for -- I asked for an example of an expert witness
19 report just so I knew what they looked like, and I
20 believe I was sent two examples of expert witness
21 reports.

22 Q. In your report you talk about changes in
23 the election hours and days that occurred in 2014.

24 A. Uh-huh.

25 Q. Did the attorneys provide any information

1 to you about that?

2 A. No.

3 Q. How did you obtain that information?

4 A. I saw it on the news, read it in
5 newspapers.

6 Q. So your attorneys hired -- the attorneys
7 hired you.

8 A. Correct.

9 Q. And said go write this report related to
10 these factors, but they didn't say, you know, write
11 these against the current election regime, the
12 current election hours?

13 MR. YOUNG: Objection, vague, asked and
14 answered. You may answer.

15 A. No.

16 Q. All right. We are going to get back to
17 that in a little bit.

18 Did the attorneys provide any assumptions
19 to you that you relied on in forming your opinions?

20 A. No.

21 MR. VOIGT: At this time I would like the
22 court reporter to mark as Exhibit 1 Professor
23 Roscigno's report.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. And I am going to ask the court reporter

1 to pass the exhibit to you.

2 Are you familiar with what the court
3 reporter has marked as Exhibit 1?

4 A. I am.

5 Q. What is it?

6 A. It is my expert report.

7 Q. Throughout the report there are a number
8 of citations, particularly in footnotes. Aside from
9 the materials that are cited in those footnotes and
10 other places in the report, did you rely on any other
11 documents to prepare this report?

12 A. No.

13 Q. Is your curriculum vitae attached to the
14 report?

15 A. It is.

16 Q. Is that a -- is there anything in your
17 curriculum vitae that is incorrect?

18 A. No.

19 Q. Your CV, is it okay if I call it CV?

20 A. Sure.

21 Q. Your CV states you are a professor of
22 sociology; is that fair to say?

23 A. Yes.

24 Q. And where do you teach?

25 A. At the Ohio State University.

1 Q. Please summarize your teaching focus.

2 A. Social inequality, theory, historical
3 sociology, work and occupations, sociology of
4 education, politics in American society, and social
5 movements.

6 Q. Can you provide a little bit more
7 specificity about politics in American society? What
8 exactly do you focus on there?

9 A. The political process, the formal
10 political process, as well as informal political
11 processes such as social movements that shape change.

12 Q. And when you refer to the political
13 process, what do you mean by the political process?

14 A. Voting, registration, party politics.

15 Q. Please summarize your academic research
16 focus.

17 A. Academic research focus is largely on
18 social inequality, workplace dynamics, race and
19 ethnic relations, institutions, and power.

20 Q. Please turn to page 42 of your report.

21 A. Uh-huh.

22 Q. Beginning on page 42 does your CV
23 accurately list the books, articles, and book
24 chapters that you have authored?

25 A. Yes.

1 Q. Have you ever authored a book or a paper
2 examining the legislative history of the Voting
3 Rights Act of 1965?

4 A. Can you repeat the question, please?

5 MR. VOIGT: Could the court reporter
6 please repeat the question.

7 (Question read.)

8 A. No.

9 Q. Have you ever authored a book or paper
10 explaining the proper legal application of the Voting
11 Rights Act of 1965?

12 A. No.

13 Q. Have you ever attended law school?

14 A. No.

15 Q. So it's fair to say you're not a lawyer.

16 A. This is true.

17 Q. Is it correct to say you are not an
18 expert on the legal framework of the Voting Rights
19 Act of 1965?

20 THE WITNESS: Can you repeat the
21 question, please.

22 (Question read.)

23 A. That's correct.

24 Q. You are also not an expert on election
25 law; is that correct?

1 A. Correct.

2 Q. If you would please turn to page 3 of
3 your report. Take a look toward the bottom of the
4 page, there is a sentence that begins with "It is my
5 understanding." Do you see that? It's actually the
6 second to last sentence of the last paragraph.

7 A. Yes, uh-huh.

8 Q. I am going to read that. "It is my
9 understanding that the Senate Judiciary Report
10 specifies several 'Senate Factors' that courts may
11 consider when assessing the 'totality of
12 circumstances.'" Did I read that correctly?

13 A. Yes.

14 Q. From where did you gain your
15 understanding that the Senate Judiciary Report
16 specified several factors?

17 A. I -- I recall looking -- looking up the
18 Senate factors themselves.

19 Q. Where did you look them up?

20 A. I believe -- if I remember correctly,
21 that I went online to the Senate Judiciary Report
22 itself.

23 Q. But generally the plaintiffs' lawyers
24 told you there were factors; is that right? That's
25 what led you to --

1 A. Yes.

2 Q. -- explore further.

3 A. Correct.

4 MR. YOUNG: Let him finish the question
5 before answering.

6 Q. Did your lawyers tell you what the Senate
7 factors are?

8 MR. YOUNG: Objection, misstates facts.
9 We are not his lawyers.

10 Q. I'm sorry. Did the plaintiffs' lawyers
11 tell you what the Senate factors are?

12 A. I do not believe so.

13 Q. Approximately when did you learn about
14 the Senate factors?

15 A. When I was first contacted by these
16 attorneys.

17 Q. And so that would have been in
18 approximately the end of April of this year?

19 A. I believe the beginning of April.

20 Q. You're not opining today whether the
21 Senate factors actually apply in this case, are you?

22 MR. YOUNG: Objection, vague. You may
23 answer.

24 A. No.

25 MR. VOIGT: Just as a point of procedure,

1 it's typical that when an objection is made, it is
2 simply "objection, form." Sometimes when -- you
3 know, some of your objections could be perceived as
4 leading in some way, so I would appreciate it if you
5 could just keep it to "objection, form," and later if
6 we get to the point of dealing with objections, we
7 could get into more specificity.

8 MR. YOUNG: Okay.

9 MR. VOIGT: I appreciate that.

10 Could you repeat the last question and
11 answer, please.

12 (Record read.)

13 Q. And that's because that's a legal
14 question; is that right?

15 A. That's right.

16 MR. YOUNG: Objection, form.

17 Q. But you personally don't have any
18 knowledge or expertise as to whether these factors
19 actually apply; is that fair to say?

20 MR. YOUNG: Objection, form.

21 A. It is my understanding that they apply.

22 Q. Where did that understanding come from?

23 A. From the Senate Judiciary Report.

24 Q. Right. But previously you stated that
25 this is a legal question. Are you now opining that

1 these do apply as a -- as a legal matter?

2 MR. YOUNG: Objection, form.

3 A. My understanding is that they apply.

4 Q. But that's only from reading the Senate
5 report; is that right?

6 A. Yes.

7 Q. It comes from nothing else.

8 MR. YOUNG: Objection, form.

9 A. No.

10 Q. You didn't read any case law related to
11 prior Voting Rights Act cases, have you?

12 A. No.

13 Q. Prior to your report in this case, have
14 you ever been asked to conduct an analysis of the
15 factors in the Senate Judiciary Report?

16 A. No.

17 Q. In fact, you didn't know about those
18 factors before April of this year; is that correct?

19 A. No.

20 Q. That's not correct?

21 A. No.

22 Q. When did you first learn about the
23 factors?

24 A. When I was in graduate school.

25 Q. Prior to -- subsequent to the time that

1 you learned about the factors and your retention in
2 this case, had you ever conducted an analysis of
3 those factors?

4 A. No.

5 Q. And when you learned about it in graduate
6 school, was that in the course of just a class?

7 A. I believe it was in the course of
8 multiple classes as well as some research that I was
9 reading, research literatures.

10 Q. That was not research that you personally
11 conducted though.

12 A. I did conduct some research on voting.

13 Q. Did you conduct research on the Senate
14 Judiciary Factors?

15 A. No.

16 Q. Aside from this report, have you ever
17 published any other analysis of the factors
18 identified in the Senate Judiciary Report?

19 A. No.

20 Q. Have you ever testified as an expert in a
21 litigation involving the Voting Rights Act?

22 A. No.

23 Q. Have you ever testified as an expert in a
24 litigation involving election issues?

25 A. No.

1 Q. And kind of commonsense, has any court
2 ever deemed you to be a qualified expert on the
3 Voting Rights Act or election issues?

4 A. No.

5 Q. Has any court ever deemed you to be a
6 qualified expert on any subject?

7 A. No.

8 Q. Prior to this engagement have you ever
9 been -- were you ever hired to provide opinions
10 related to election law issues?

11 A. No.

12 Q. Have you ever taught a course related to
13 election laws?

14 A. One undergraduate course that I've taught
15 dealt partially with election laws.

16 Q. How much of the course dealt with
17 election laws?

18 A. Maybe a fourth.

19 Q. What was the name of the course?

20 A. I believe it was American Society in
21 Politics or American Politics in Society.

22 Q. Do you remember the textbook you used for
23 that course?

24 A. I used multiple textbooks.

25 Q. When did you teach this course?

1 A. I believe the last time I taught it was
2 maybe six or seven years ago.

3 Q. You know, from a very high level, I don't
4 need to know exactly what you did in your -- every
5 day in the curriculum, but can you talk -- tell me
6 about what you discussed or what you taught during
7 that component of that course.

8 MR. YOUNG: Objection, form.

9 A. That portion of the course dealt with
10 political party formation, dealt with voting rights
11 historically, changes in voting rights, and
12 exclusions from voting historically.

13 Q. Did you address Ohio laws during your
14 course?

15 A. I believe I did.

16 Q. Did you address Ohio -- well, this was
17 six -- six years ago, you said?

18 A. Six or seven is my memory.

19 Q. Okay. And did you discuss Ohio's laws at
20 that time during your course?

21 MR. YOUNG: Objection, form.

22 A. Not that I recall.

23 Q. Have you ever authored a published paper
24 related to election laws?

25 MR. YOUNG: Objection, form.

1 A. No.

2 Q. You wrote a book titled "The Face of
3 Discrimination"; is that correct?

4 A. Yes.

5 Q. Does that book discuss preelection
6 voting?

7 A. No.

8 Q. Have you ever taught a course about
9 preelection voting?

10 MR. YOUNG: Objection, form. Can you
11 explain what you mean by "preelection"?

12 MS. WATSON: You mean preelection day
13 voting.

14 Q. Sorry. Let me -- do you understand
15 that -- actually I'll save these questions. I am
16 going to get into this in a little bit. I am going
17 to save this question for a little bit later.

18 MR. VOIGT: At this time I would like the
19 court reporter to mark the complaint in this case as
20 Exhibit 2 and to pass it to the witness, please.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Are you familiar with what the court
23 reporter has marked as Exhibit 2?

24 A. I -- no.

25 Q. Are you aware of -- please turn to

1 paragraph 2 of the plaintiffs' complaint. Are you
2 aware of Senate Bill -- are you familiar with --
3 strike that.

4 Are you familiar with Senate Bill
5 No. 238?

6 A. Yes.

7 Q. And are you familiar with Secretary of
8 State Directive 2014-06?

9 A. Yes.

10 Q. Today if I refer to Senate Bill 238 as
11 SB 238 and Secretary of State Directive 2014-06 as
12 Directive 2014-06, the same way that the plaintiffs
13 refer to it here in the complaint, is that
14 understandable to you?

15 A. Yes.

16 Q. Please turn to page 29 of the complaint.
17 Take a look at pages 29, 30, 31, 32, and just the
18 first few words of page 33. I don't need you to read
19 them in detail. I -- just read the titles of the
20 claims for relief. Do you see that the plaintiffs
21 have three claims for relief?

22 A. I do.

23 Q. And the first claim relates to equal
24 protection under the Fourteenth Amendment?

25 MR. YOUNG: Objection, form.

1 A. Yes.

2 MR. VOIGT: Can I ask you what the
3 objection is there?

4 MR. YOUNG: That's -- those aren't the
5 words that are being used in the title.

6 MR. VOIGT: The header of the claim is --
7 involves those words.

8 MR. YOUNG: Professor Roscigno is not a
9 lawyer, so I don't know where you are going but go
10 ahead and ask your questions.

11 Q. Okay. So you do see that the first claim
12 involves equal protection under the Fourteenth
13 Amendment.

14 A. Yes.

15 Q. And the second claim also involves equal
16 protection under the Fourteenth Amendment; is that
17 right?

18 A. Yes.

19 Q. The third claim, which the header is on
20 31 and then it spills over onto 32, that involves
21 Section 2 of the Voting Rights Act of 1965; is that
22 right?

23 A. Yes.

24 Q. And you were retained to analyze issues
25 relating to the Voting Rights Act; is that correct?

1 MR. YOUNG: Objection, form.

2 A. Yes.

3 Q. You were not retained to opine on issues
4 relating to the Fourteenth Amendment; is that right?

5 A. Correct.

6 MR. YOUNG: Object.

7 Q. You were not retained to opine on issues
8 related to the equal protection clause of the
9 Constitution; is that correct?

10 MR. YOUNG: Objection, form.

11 A. That's correct.

12 Q. So is it fair to say you were hired to
13 provide support for plaintiffs' third claim for
14 relief but not the first two claims?

15 MR. YOUNG: Objection, form.

16 A. Support is not the word I would use.

17 Q. Would it be fair to say you were hired to
18 provide an opinion related to plaintiffs' third claim
19 for relief but not the first two claims?

20 MR. YOUNG: Objection, form.

21 A. Yes.

22 Q. Does your report discuss the Fourteenth
23 Amendment at all?

24 A. No.

25 Q. So is it fair to say you're testifying on

1 plaintiffs' third claim for relief but not the first
2 two?

3 MR. YOUNG: Objection, form.

4 A. That's my understanding.

5 Q. So we already talked a little bit about
6 the Senate factors. And you're familiar with what
7 those are; is that correct?

8 MR. YOUNG: Objection, form.

9 A. Yes.

10 Q. How many Senate factors are there?

11 A. I believe there are seven.

12 MR. VOIGT: Okay. Let's -- I would like
13 the court reporter to mark this document as Exhibit 3
14 and pass it to the witness.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. Do you recognize -- well, I'll just --
17 I'll just represent to you this is a page from the
18 United States Department of Justice. And if you look
19 about two-thirds of the way down the page, there are
20 some bullet points.

21 A. Uh-huh.

22 Q. What are those bullet points?

23 A. My understanding is that they are
24 summaries of each Senate factor.

25 Q. And in your report you refer to Senate

1 Factor 1, Senate Factor 2. When you are referring to
2 Senate Factor 1, was that the first bullet point and
3 Senate Factor 2 the second and so forth in that list?

4 THE WITNESS: Could you repeat the
5 question?

6 (Record read.)

7 Q. Do you understand the question?

8 A. Yeah. I believe that's correct.

9 Q. Take a look at the paragraph following
10 the bullet points, the first sentence. And I'm -- I
11 am going to read that sentence. It states "The
12 Judiciary Committee also noted that the court could
13 consider additional factors, such as whether there is
14 a lack of responsiveness on the part of elected
15 official" -- "elected officials to the particularized
16 needs of minority group members or where the policy
17 underlying the state or political subdivision's use
18 of the challenged standard, practice, or procedure is
19 tenuous." Did I read that correctly?

20 A. Yes.

21 Q. Does that state that there are two
22 additional factors that could be considered in
23 addition to the bullet points above?

24 MR. YOUNG: Objection, form.

25 A. Yes.

1 Q. And just for convenience today I would
2 like to refer to the first part of that sentence, the
3 first factor, as No. 8 and the second as No. 9 so
4 just let me read it for clarity. So No. 8 would be
5 "The Judiciary Committee also noted that the court
6 could consider additional factors" -- I'm sorry, that
7 was the prelude. And No. 8 is "such as whether there
8 is a lack of responsiveness on the part of elected
9 officials to the particularized needs of minority
10 group members." And then No. 9 would be "or where
11 the policy underlying the state or political
12 subdivision's use of the challenged standard, policy,
13 or procedure is tenuous." If I refer to those as
14 Factors 8 and 9, is that confusing to you at all?

15 A. No.

16 Q. Okay. So if you put -- mentally put a
17 number next to those bullets, 1, 2, 3, 4, 5, 6, 7,
18 and then 8 would be the first part of the next -- the
19 first part of the subsequent paragraph, and 9 would
20 be the next sentence -- or next phrase in the
21 subsequent paragraph as we discussed, with regard to
22 which of the factors were you engaged to provide an
23 opinion?

24 MR. YOUNG: Objection, form.

25 A. Senate Factors 1, 2, 3, 5, 6, and 7.

1 Q. So is it correct you're not presenting an
2 opinion with regard to the 4th, 8th, and 9th factors?

3 A. Yes.

4 Q. And just so it's clear for the record,
5 you are not presenting testimony or a report
6 regarding Factor 4 which states "whether there is
7 exclusion of members of the minority group from the
8 candidate's slating process"; is that correct?

9 A. Yes.

10 Q. And you're also not presenting testimony
11 or a report regarding Factor 8 which is "whether
12 there is a lack of responsiveness on the part of
13 elected officials to the particularized needs of
14 minority group members"; is that right? Do you need
15 the court reporter to reread that?

16 A. No. I would answer not directly. That
17 is, my report does not directly address what you are
18 referring to as 8.

19 Q. You are not presenting testimony
20 regarding Factor 9 which is whether "the policy
21 underlying the state or political subdivision's use
22 of the challenged standard, practice, or procedure is
23 tenuous"; is that right?

24 A. That's correct.

25 Q. Were you asked to provide an opinion

1 about Factors 4, 8, and 9?

2 MR. YOUNG: Objection, form.

3 A. No.

4 Q. Earlier you said, and correct me if I'm
5 wrong, the lawyers didn't tell you what the factors
6 are.

7 A. That's correct.

8 Q. So how did you know which factors you
9 were supposed to examine and which ones you were not
10 supposed to examine?

11 A. Well, they -- they communicated which
12 factors they would like me to examine. And I through
13 probably the same exact page or something close to
14 the same exact page learned precisely what those
15 factors were --

16 Q. Okay.

17 A. -- or what they meant.

18 Q. So they -- when they were telling you
19 which ones they wanted you to look at, they did not
20 say look at Factors 4, 8, and 9; is that correct?

21 THE WITNESS: Can you repeat that?

22 (Question read.)

23 A. That's correct.

24 Q. But they did tell you to take a look at
25 the other factors?

1 MR. YOUNG: Objection, form.

2 A. 1, 2, 3, 5, 6, and 7.

3 Q. Those are the -- 1 -- 1, 2, 3, 5, 6, and
4 7 are the factors that the lawyers asked you to look
5 at.

6 A. Correct.

7 Q. Had you been asked to provide an opinion
8 or a report about Factors 4, 8, and 9, do you think
9 you would have been qualified to do so?

10 MR. YOUNG: Objection, form.

11 A. Perhaps.

12 Q. You don't know one way or the other?

13 A. No.

14 Q. Are you familiar with Section 5 of the
15 Voting Rights Act of 1965?

16 A. No.

17 Q. So would it be fair to say you do not
18 understand the differences between Section 2 and
19 Section 5 of the Voting Rights Act of 1965?

20 A. That would be correct.

21 Q. Okay. Let's put that aside for now and
22 go back to your report. I'm sorry we don't have
23 water here. If any --

24 MR. VOIGT: By the way if any of the
25 lawyers need to break for water or needs to, we can.

1 MR. YOUNG: Maybe in like 10 minutes.

2 MR. VOIGT: Yeah. Let's do a little bit
3 more and then we'll break for water.

4 MR. YOUNG: Sure.

5 Q. Please take a look at page 2 of your
6 report in the second -- specifically the second full
7 paragraph. And the sentence that I am interested in
8 is toward the end of that paragraph. It begins with
9 "Recently instituted voting restrictions." Do you
10 see the sentence I am referring to?

11 A. Yes.

12 Q. Would it be fair to say that in your
13 report you were discussing relatively recent changes
14 in Ohio's election laws?

15 A. I would have to clarify or ask for
16 clarification on how recent you are referring.

17 Q. Well, I understand you discuss some
18 various historical things.

19 A. Uh-huh.

20 Q. And putting that aside, in addition to
21 that, you were also discussing relatively recent
22 changes in Ohio's election laws. In other words, you
23 were discussing things -- events that occurred in
24 2014 or more recently.

25 A. Correct.

1 Q. And you mentioned that you are familiar
2 with SB 234 and 2014-06?

3 MR. YOUNG: You mean 238. Sorry, you
4 just said SB 234. You meant SB 238.

5 MR. VOIGT: Oh, I'm sorry. Thank you.

6 Q. Strike the question. Let me repeat that.
7 You testified earlier you were familiar with SB 238
8 and Directive 2014-06; is that correct?

9 A. Correct.

10 Q. Is it correct to say in your report
11 you're analyzing the Senate Factors 1, 2, 3, 5, 6,
12 and 7 against the changes in voting laws under SB 238
13 and Directive 2014-06?

14 MR. YOUNG: Objection, form.

15 A. Correct.

16 Q. Were you analyzing these factors against
17 any other Senate bills?

18 MR. YOUNG: Objection, form.

19 A. I do not believe so.

20 Q. Were you analyzing these factors against
21 any other directives issued by the Secretary of
22 State?

23 MR. YOUNG: Objection, form.

24 Q. And when I refer to Secretary of State, I
25 am referring to the Secretary of State of Ohio.

1 A. Right. My recollection is that there --
2 there were more than these -- the two pieces of
3 legislation that you mentioned, but I cannot recall
4 what the third was.

5 Q. Do you recall it was a directive or a
6 Senate bill?

7 A. I believe it was a Senate bill, but I'm
8 not sure.

9 Q. Do you recall the substance of the Senate
10 bill?

11 A. If I'm recalling correctly, it had to do
12 with the elimination of voter registration and voting
13 within the same week.

14 Q. And do you think that's something
15 different than Senate Bill 238?

16 A. I would have to refresh myself on 238
17 specifically to draw a conclusion on that.

18 Q. Could you point in your report where --
19 where it is that you are talking about recent bills
20 or directives other than 238 and -- SB 238 and
21 Directive 2014-06?

22 MR. YOUNG: Objection, form.

23 A. Page 29 I refer to several bills,
24 although I don't name the specific bills.

25 Q. You're referring to the first full

1 paragraph?

2 A. True.

3 Q. HB 194?

4 A. Yes.

5 Q. Anything else?

6 A. Again, I'm referring to other bills that
7 entail restrictions to voting, voting hours, the
8 first week of early voting, as well as Sunday voting.

9 MR. VOIGT: All right. This would be a
10 good time to take just a 10-minute break.

11 MR. YOUNG: Okay. Great.

12 (Recess taken.)

13 Q. Let's go back on the record.

14 Mr. Roscigno, we just took a break. Did you speak
15 with the plaintiffs' lawyers during the break?

16 A. No.

17 Q. Did you bring any documents with you
18 today?

19 A. Only a copy of my report.

20 Q. Are there -- did you make any notes on
21 the report?

22 A. I did not.

23 Q. We talked a little bit earlier about what
24 you did to prepare your report and what documents you
25 looked at. In addition to documents is there

1 anything else you reviewed to prepare your report?

2 A. No.

3 Q. When you completed your report -- as you
4 were working on your report, did you complete a draft
5 prior to the final product?

6 A. Yes.

7 Q. Did you share that draft with the
8 plaintiffs' lawyers?

9 A. I did.

10 Q. Did they make comments on the draft?

11 A. Very general comments.

12 Q. How many times did you share a draft with
13 the plaintiffs' lawyers?

14 A. I believe twice.

15 Q. And both times did the plaintiffs'
16 lawyers provide comments?

17 A. My memory is only the second -- only on
18 the second round.

19 MR. VOIGT: Could we go off the record
20 for just a second?

21 (Discussion off the record.)

22 Q. Let's go back on the record. Do you have
23 a retention agreement with the plaintiffs' counsel?

24 A. I signed -- I'm not sure exactly. Can
25 you explain a retention agreement?

1 Q. Do you have a contract or an engagement
2 letter that you signed stating the scope of what
3 you're going to be doing and how much you would be
4 paid?

5 A. Yes.

6 MR. VOIGT: I would ask for a copy of
7 that.

8 MR. YOUNG: Yes.

9 MR. VOIGT: Yes, you are going to produce
10 it?

11 MR. YOUNG: Sorry. Yes, I will give that
12 to you.

13 MR. VOIGT: Thank you.

14 Q. Are you familiar with Ohio election laws?

15 A. To some extent.

16 Q. In Ohio can a person vote by early
17 in-person voting?

18 A. Yes.

19 Q. What does early in-person voting mean?

20 MR. YOUNG: Objection -- withdrawn.

21 A. My understanding it means that prior to
22 election day there are -- there are opportunities to
23 show up and vote.

24 Q. Show up and vote where?

25 A. My understanding is at a polling place.

1 Q. Do you know where those polling places
2 are located?

3 A. No.

4 Q. Are they at the local boards of election?

5 A. I do not believe so.

6 Q. Okay. So in your opinion early in-person
7 voting is going to a local polling place before
8 election day and casting a ballot; is that fair to
9 say?

10 A. Yes.

11 Q. If a person wants to use an early
12 in-person voting, does that person need to present
13 some kind of reason at the polling place for voting
14 early?

15 A. I do not believe so.

16 Q. In other words, a person who is able to
17 physically vote on election day in Ohio can also vote
18 using early in-person voting for any reason.

19 MR. YOUNG: Objection, form.

20 A. Yes.

21 Q. Do you know when early in-person voting
22 was first allowed in Ohio?

23 A. I do not know the specific date or
24 period.

25 Q. Have you ever served as a poll watcher?

1 A. No.

2 Q. Do you know what a mail-in absentee
3 ballot is?

4 A. Yes.

5 Q. In Ohio can a voter also vote by mail-in
6 absentee vote?

7 A. Yes.

8 Q. And to mail in an absentee ballot, does
9 an Ohioan need to prove or state that he or she
10 cannot actually vote on election day?

11 MR. YOUNG: Objection, form.

12 A. No.

13 Q. In other words, a person who is actually
14 able to vote on election day could also opt to vote
15 by mail-in absentee ballot prior to election day for
16 any reason.

17 MR. YOUNG: Objection, form.

18 A. I believe so, yes.

19 Q. And if I refer to absent -- the absentee
20 voting procedure in Ohio as no excuse absentee
21 voting, is that understandable to you? And what I
22 mean no excuse, you don't need to state I, John
23 Smith, voter, won't be able to be at the poll on
24 election day.

25 THE WITNESS: Can you repeat the

1 question? I understand but.

2 (Question read.)

3 A. I understand that.

4 Q. Okay. Just so we're clear, because that
5 was a pretty long question, if I refer to the
6 absentee voting procedure in Ohio as no excuse
7 absentee voting, is that understandable to you?

8 A. Yes.

9 Q. How far in advance of an election is
10 someone allowed to request an application for a no
11 excuse absentee ballot?

12 A. I do not know.

13 Q. Is a voter able to request an application
14 for absentee ballot over the phone by calling the
15 voter's local board of elections?

16 A. I am unsure.

17 Q. Do you know whether a voter can request
18 an application for an absentee ballot using the
19 internet?

20 A. I am not sure.

21 Q. Can a voter ask for an application for an
22 absentee ballot by physically going to a local board
23 of elections?

24 A. I assume so.

25 Q. Once a person has a no excuse absentee

1 ballot, can that person mail the ballot back in?

2 A. Yes.

3 Q. Could the person also drop off the ballot
4 in person at the board of elections?

5 A. Yes.

6 Q. If I refer to an absentee ballot that's
7 mailed in as opposed to physically delivered as a no
8 excuse mail-in absentee voting, is that
9 understandable?

10 A. Yes.

11 Q. When do polls open and close on election
12 day in Ohio?

13 A. Can you be more specific?

14 Q. When do polls to vote open and close on
15 election day in Ohio?

16 A. Are you talking about dates or days or
17 times?

18 Q. No, no. I am talking about election day,
19 not preelection voting. Election day itself what --
20 at what time do polls open in the morning and what
21 time do polls close at night on election day?

22 A. I believe it is 9 to 5.

23 Q. So you don't know whether it includes any
24 evening hours.

25 A. I do not believe it includes evening

1 hours.

2 Q. As of today, July 10, how many days of
3 in -- early in-person voting does Ohio offer?

4 MR. YOUNG: Objection, form.

5 A. I'm unsure given changes that are
6 happening -- or have happened in the last couple of
7 weeks.

8 Q. What changes have occurred in the last
9 couple of weeks?

10 A. I read in the newspaper that there was a
11 court decision that was going to return back some
12 voting hours.

13 Q. And you believe that occurred just in the
14 last couple of weeks?

15 A. Yes.

16 Q. You don't believe that occurred prior to
17 the time that you wrote your report?

18 A. Correct.

19 Q. Did you consider those changes where
20 additional days were added in your report?

21 MR. YOUNG: Objection, form.

22 A. I believe my report was essentially
23 complete before I was aware of those changes.

24 Q. So, in other words, the report did not
25 contain consideration of those additional days?

1 MR. YOUNG: Objection, form.

2 A. Correct.

3 Q. As of today, July 10, how many Saturdays
4 are included in preelection in-person voting days?

5 MR. YOUNG: Objection, form.

6 A. I believe one.

7 Q. How many Sundays are included in
8 preelection voting days?

9 A. I believe it's also one.

10 Q. At the time you wrote your report did you
11 have a different understanding of the Saturdays and
12 Sundays and other days and hours that were available
13 in preelection voting?

14 MR. YOUNG: Objection, form.

15 Q. In other words, has your knowledge
16 changed since the time that you submitted your
17 report?

18 A. My understanding of the available days
19 has changed.

20 Q. Your understanding has changed.

21 A. My understanding of the available day --
22 yeah, of the available voting days has changed.

23 Q. And specifically how did it change?

24 A. My reading of the -- of recent -- I think
25 it was judicial or judge's action was that some early

1 voting was returned or opened up.

2 Q. And that was something you read in the
3 newspaper?

4 A. Yes.

5 Q. Do you recall when you read that?

6 A. When I was in Germany for a week two
7 weeks -- three weeks ago.

8 Q. Are you familiar with Senate Bill 205?

9 A. Not off the top of my head.

10 Q. Do you know whether the Secretary of
11 State of Ohio is authorized to mail absentee ballots
12 to all Ohioans who are registered to vote?

13 A. I believe he is authorized.

14 Q. And where does that -- where does your
15 belief come from?

16 A. My understanding is that most secretaries
17 of state have the authority to offer mail-in ballots
18 at their discretion and relative to their
19 understanding of the law.

20 Q. Have you ever read Senate Bill 205?

21 A. I'm not sure.

22 Q. Did you gain your understanding by
23 newspaper articles or by actually looking at
24 statutes?

25 A. My understanding of?

1 Q. The ability to mail absentee ballots to
2 registered voters.

3 A. My understanding there is largely from
4 newspapers.

5 Q. Do you know whether the Secretary of
6 State is going to mail absentee ballots to all
7 registered voters before the upcoming election?

8 A. I do not know.

9 Q. If the Secretary of State does mail
10 absentee ballots to all registered voters, would that
11 expand or contract the opportunity to vote?

12 MR. YOUNG: Objection, form.

13 A. Expand.

14 Q. You testified earlier that you are aware
15 of Directive 2014-06. Do you recall testifying to
16 that?

17 A. 20 --

18 Q. The Secretary of State Directive 2014-06.

19 A. If you can remind me.

20 Q. It was in, I think, paragraph 2 of the
21 complaint.

22 A. Yes.

23 Q. Do you know -- do you know whether
24 Directive 2014-06 was superseded by another directive
25 of the Secretary of State?

1 A. I do not know.

2 Q. Are you familiar at all with Secretary of
3 State Directive 2014-17?

4 A. No.

5 Q. And how again did you learn about SB 238
6 and Directive 2014-06?

7 MR. YOUNG: Objection, form.

8 A. There were discussions of these in the
9 Columbus Dispatch and New York Times, et cetera.

10 Q. Did the plaintiffs' lawyers tell you
11 about SB 238 and Directive 2014-06?

12 A. I don't believe we had a specific
13 conversation about those stat -- those directives.

14 Q. Let's go back to your report which is
15 marked as Exhibit 1 and please turn to page 29, the
16 first full paragraph. The sentence that begins with
17 "Efforts to restrict voting." Do you see that
18 sentence?

19 A. Yes.

20 Q. You wrote "Efforts to restrict voting,
21 however, commenced in 2014 with the passage of bills
22 effectively eliminating evening voting hours, the
23 first week of early voting, and Sunday voting." Did
24 I read that correctly?

25 A. Yes.

1 Q. How did you conclude Sunday voting had
2 been eliminated?

3 A. My reading of those -- the newspaper
4 articles that were -- that were referring to recent
5 changes referred specifically to the first week of
6 early voting and Sunday voting as included in recent
7 bills that were passed in the state of Ohio.

8 MR. VOIGT: Could you read the answer
9 again. I missed a little part of it.

10 (Answer read.)

11 Q. In other words, those newspaper articles
12 stated that those times had been eliminated.

13 A. Correct.

14 Q. And in that sentence you also said the
15 elimination of Sundays and the first week of early
16 voting was "an effort to restrict voting"; is that
17 right?

18 A. Correct.

19 Q. And you said that this purported effort
20 to restrict voting began in 2014; is that right?

21 A. Correct.

22 Q. Who in your opinion was making this
23 purported effort to restrict voting?

24 A. The Ohio state legislature.

25 Q. Are you saying this was a partisan

1 effort?

2 MR. YOUNG: Objection, form.

3 A. No.

4 Q. Do you have any evidence for your opinion
5 this was an effort to restrict voting as opposed to
6 something else?

7 MR. YOUNG: Objection to form.

8 A. By eliminating voting hours for early
9 voting or Sunday voting is a restriction to my -- to
10 voting. It's eliminating possibilities for voting
11 which is why I referred to it as a restriction.

12 Q. But you referred to it as an effort to
13 restrict voting.

14 A. Uh-huh.

15 Q. Is your opinion that this -- that these
16 changes were an effort to restrict voting, is that
17 just your personal viewpoint?

18 MR. YOUNG: Objection to form.

19 A. No.

20 Q. What is it then?

21 A. It is an empirical fact that by
22 eliminating times, hours, and days of voting you are
23 restricting it. You are restricting potential
24 involvement.

25 Q. Would you agree that the word "efforts"

1 in that sentence could have different connotations to
2 different readers?

3 A. Possibly.

4 Q. Do you feel that was a -- a -- an
5 objective way to explain the changes that occurred in
6 2014 considering that you began the sentence with
7 "Efforts to restrict voting"?

8 MR. YOUNG: Objection, form.

9 THE WITNESS: Would you repeat the
10 question, please.

11 (Question read.)

12 A. Yes, I think it is relatively objective.

13 Q. Even though you believe that people could
14 interpret that in different ways.

15 MR. YOUNG: Objection to form.

16 A. Yes.

17 Q. And you think -- could a reasonable
18 person read that sentence to be something other than
19 objective?

20 MR. YOUNG: Objection to form.

21 Q. Let me put it to you this way, is it
22 possible that a person could read that sentence to --
23 to have a connotation that is other than objective?

24 MR. YOUNG: Objection, form.

25 A. It's certainly possible.

1 Q. As of today, do you know whether there is
2 any Sunday voting in Ohio?

3 MR. YOUNG: Objection.

4 Q. Let me rephrase the question. Do you
5 know whether there is any Sunday preelection day
6 voting in Ohio?

7 MR. YOUNG: Objection, form.

8 MR. VOIGT: What's your objection?

9 MR. YOUNG: Asked and answered.

10 Q. You can go ahead and answer.

11 A. I believe there is one early Sunday day.

12 Q. Why didn't you include any discussion of
13 Sunday voting in your report?

14 MR. YOUNG: Objection, form.

15 A. I included the elimination of Sunday
16 voting in my report.

17 Q. But you just testified that you believe
18 there actually is Sunday voting.

19 A. Right.

20 MR. YOUNG: Objection, form.

21 Q. Why didn't you discuss in your report the
22 existence and the effect of current Sunday voting,
23 preelection voting?

24 A. As I mentioned earlier, I believe my
25 report was complete before changes were made in the

1 last couple of weeks.

2 Q. And so that's why you didn't acknowledge
3 in your report that there is some Sunday voting?

4 A. Correct.

5 Q. Doesn't the existence of this Sunday
6 voting, preelection voting, cut against some of the
7 conclusions in your report about access to the polls?

8 A. Can you clarify "cutting against"?

9 Q. Doesn't the existence of Sunday voting
10 call into question some of the conclusions in your
11 report about access to the polls?

12 A. It's certainly the case if Sunday -- or
13 at least one Sunday voting day has been returned,
14 that there is more opportunity now to vote.

15 Q. So you didn't include discussion of
16 Sunday voting because you felt that it could cut
17 against your conclusions, right?

18 A. That is not true.

19 Q. Well, yeah. I am just saying that's
20 correct, right?

21 MR. YOUNG: Sorry. Sometimes your
22 questions are framed in the negative, and just for
23 purpose of the record I just want to make clear when
24 he says "yes" or "no," it's clear how he is answering
25 a question.

1 A. Can you repeat the question?

2 Q. Yeah. In other words -- in other words,
3 you didn't exclude discussion of Sunday voting
4 because you felt that it would cut against or
5 potentially lessen the conclusions in your report?

6 A. I did not consciously exclude in my
7 report. Any changes to Sunday voting happened
8 following my completion of this report.

9 Q. In other words, you didn't know about it.

10 A. I didn't know about it.

11 Q. And that's the reason why you didn't
12 include it in your report.

13 A. Correct.

14 Q. If there are currently two Saturdays with
15 preelection in-person voting hours for presidential
16 and gubernatorial elections, would this in your
17 opinion expand or restrict access to voting?

18 A. Expand.

19 Q. You did not discuss preelection Saturday
20 voting in your report; is that correct?

21 A. In-person Saturday voting?

22 Q. Correct.

23 MR. VOIGT: Could the court reporter -- I
24 will ask the court reporter to please repeat the
25 question.

1 (Question read.)

2 MR. YOUNG: Objection to form.

3 A. I'm not sure.

4 Q. Would it help if we gave you just a
5 moment to peruse your report and see if there is any
6 place where you discuss Saturday preelection voting?

7 A. Yes.

8 Q. Take your time.

9 MR. VOIGT: Let the record reflect that
10 the witness is reviewing his report.

11 A. I don't believe I mention Saturday
12 specifically.

13 Q. I'm sorry, I didn't hear you.

14 A. I don't believe I mentioned Saturdays
15 specifically.

16 MR. YOUNG: Steve, I just sent you by
17 e-mail a copy of the engagement agreement.

18 MR. VOIGT: Thank you.

19 Q. I apologize if I already asked this, but
20 do you know how many Saturdays there currently are in
21 preelection voting?

22 MR. YOUNG: Objection, form.

23 A. I believe I answered one when you asked
24 earlier.

25 Q. And do you know whether that differs

1 between presidential and gubernatorial elections and
2 off-year elections?

3 A. I do not know.

4 Q. If there is Saturday voting currently for
5 the upcoming election in the fall, would -- would
6 this have been relevant to your analysis of access to
7 the polls?

8 MR. YOUNG: Objection, form.

9 A. To some extent.

10 Q. And the same question for Sunday.

11 MR. YOUNG: Objection, form.

12 A. Similar answer, to some extent, yes.

13 Q. But, again, you didn't discuss Saturday
14 or Sunday voting in your report.

15 MR. YOUNG: Objection, form.

16 A. I discussed the elimination of Sunday
17 voting in particular within the report.

18 Q. Right. But you did -- you did not
19 discuss -- let's -- you did not discuss the current
20 availability of Saturday and Sunday voting,
21 preelection voting, in your report.

22 A. Correct.

23 Q. If there is Saturday and Sunday voting
24 currently -- strike that question. Strike that. I'm
25 sorry.

1 If there is some Saturday and Sunday
2 preelection in-person voting, wouldn't this weaken
3 some of your conclusions in your report about access
4 to the polls?

5 MR. YOUNG: Objection. When you say
6 "some," can you be more specific?

7 Q. Do you understand my question or would it
8 be better --

9 A. It would be better if you rephrased it.

10 Q. Sure. If there is -- let's assume there
11 are two days of preelection Saturday voting --

12 A. Uh-huh.

13 Q. -- and one day of preelection Sunday
14 voting. We are talking about in-person voting. And
15 you did not include that discussion in your report.
16 The fact that there is that preelection voting, would
17 this weaken your conclusions in your report about
18 access to the polls?

19 A. Possibly.

20 Q. It certainly would have been relevant to
21 your overall discussion --

22 MR. YOUNG: Objection.

23 Q. -- is that fair to say?

24 MR. YOUNG: Objection to form.

25 A. Yes.

1 Q. And it would have been relevant to your
2 discussion, your overall discussion, of access to the
3 polls; is that fair to say?

4 MR. YOUNG: Objection, form.

5 A. Yes.

6 Q. And it would have been relevant to your
7 overall discussion of access to polls by African
8 Americans; is that fair to say?

9 MR. YOUNG: Objection.

10 A. Yes.

11 Q. Please turn to page 25 of your report.
12 And this -- in the middle of the page there is --
13 there is a big numeral III.

14 A. Yes.

15 Q. So this is the beginning of Section III
16 of your report. And in this section you talk about
17 Senate Factors 1 and 3; is that correct?

18 A. Yes.

19 Q. What is Senate Factor 3? And if you
20 could -- I can read it -- how about if I just read it
21 and if you just confirm that that's correct. Is
22 Senate Factor 3 the extent to which the state -- I'm
23 sorry. Is Senate Factor 3 "the extent to which the
24 state of political subdivision has used voting
25 practices or procedures that tend to enhance the

1 opportunity for discrimination against the minority
2 group, such as unusually large election districts,
3 majority-vote requirements, and prohibitions against
4 bullet voting"? And feel free to refer to the prior
5 exhibit with the various factors.

6 A. That's correct.

7 Q. And in this section on page 28 you talk
8 about the changes to voting days and hours; is that
9 correct?

10 A. Yes.

11 Q. You also talk about some other things,
12 voter ID laws and so forth; is that correct?

13 A. Yes.

14 Q. In Section III of this report did you
15 discuss the availability of no excuse mail-in
16 absentee voting in Ohio?

17 A. No.

18 Q. Anywhere in your report did you discuss
19 the ability of no excuse mail-in absentee voting in
20 Ohio?

21 MR. VOIGT: Let the record reflect that
22 the witness is reviewing his report.

23 A. I believe somewhere -- somewhere in the
24 report, but I am not finding it at the moment, I
25 refer to the study of Cuyahoga County and use of

1 mail-in ballots, in-person early voting, and racial
2 disparities in the use of each. I'm still looking
3 for it.

4 MS. LEVENSON: Off the record.

5 MR. VOIGT: Let's go off the record.

6 (Discussion off the record.)

7 MR. VOIGT: Okay. Let's go back on the
8 record. Counsel --

9 MR. MOKE: Paul Moke.

10 MR. VOIGT: -- Paul Moke identified a
11 paragraph in the report; and, now, I am turning it
12 over to the witness to answer the question.

13 A. So would you repeat the question so I
14 have it?

15 Q. Thank you. I think we have all forgotten
16 it at this point.

17 (Question read.)

18 Q. Let me rephrase my question. Anywhere in
19 your report did you discuss the availability of no
20 excuse mail-in absentee voting in Ohio?

21 A. No.

22 Q. And you also did not discuss the
23 availability of no excuse mail-in absentee voting in
24 Ohio in Section III of your report; is that correct?

25 MR. YOUNG: Objection, form.

1 A. That's correct.

2 Q. In your report did you examine whether
3 mail-in no excuse absentee voting increases or
4 decreases meaningful access to the political process?

5 MR. YOUNG: Objection, form.

6 A. No.

7 Q. In your opinion does the availability of
8 voting by mail increase or decrease access to the
9 political process?

10 A. Increase.

11 Q. In your opinion does the availability of
12 voting by mail increase or decrease access to the --
13 I'm sorry, strike that.

14 In your opinion does the availability of
15 voting by mail increase or decrease access to the
16 political process across all demographics?

17 MR. YOUNG: Objection, form.

18 A. Not equally.

19 Q. Does it decrease access for any
20 particular demographic?

21 A. Decrease access absolutely in terms of
22 sheer numbers?

23 Q. Let me -- let me just rephrase my
24 question. In your opinion does the availability of
25 voting by mail increase access to the political

1 process for African Americans?

2 A. Yes.

3 Q. Are you aware that many states do not
4 allow an absentee vote unless the voter will actually
5 be unable to vote on election day?

6 MR. YOUNG: Objection, form.

7 A. Yes.

8 Q. Do you know whether Pennsylvania allows
9 no excuse mail-in absentee voting?

10 A. I do not know.

11 Q. Do you know how many states allow no
12 excuse mail-in absentee voting?

13 A. No.

14 Q. In your report did you do anything to
15 compare the accessibility of voting in states that do
16 and states that do not allow no excuse mail-in
17 absentee voting?

18 A. No.

19 Q. Does a state that allows no excuse
20 mail-in absentee voting have more access to the
21 political process for its citizens than a state that
22 does not have no excuse mail-in absentee voting?

23 MR. YOUNG: Objection, form.

24 A. I would assume so, yes.

25 Q. And if you are doing such a comparison,

1 would the opportunity to vote by mail at least be a
2 consideration in the availability of voting
3 opportunities overall?

4 MR. YOUNG: Objection, form.

5 THE WITNESS: Could you repeat that,
6 please.

7 (Question read.)

8 A. Yes.

9 Q. If you were conducting an analysis of
10 access to voting opportunities in a particular state,
11 would you include as part of your consideration
12 whether the state allows no excuse mail-in absentee
13 voting?

14 MR. YOUNG: Objection, form.

15 A. Yes.

16 Q. And you would do this because this is a
17 type of opportunity to vote; is that right?

18 A. Yes.

19 Q. Please turn to page 27 of your report.

20 In particular draw your attention to the header next
21 to 2. It's in bold print in the middle of the page.
22 Beginning there you discuss polit -- strike that.

23 You discuss particular practices that you
24 claim suppress political participation; is that
25 right?

1 A. Yes.

2 Q. And that's in Section II of your report.
3 That section you did not discuss no excuse mail-in
4 absentee voting, correct?

5 A. Correct.

6 Q. And then on pages 28 and 29 you discussed
7 changes to in-person early voting hours; is that
8 correct?

9 A. Yes.

10 Q. And then the last paragraph of that
11 section that's on page 29 refers to changes in
12 in-person voting as a result of SB 234 -- I'm sorry,
13 238. Let me restate the question.

14 The last paragraph of that sentence
15 refers to changes in in-person early voting as a
16 result of SB 238 and Directive 2014-06; is that
17 right?

18 A. Yes. I believe so.

19 MR. VOIGT: Could we take just one
20 second? Let's go off the record for just one second.

21 (Discussion off the record.)

22 (Recess taken.)

23 MR. VOIGT: Let's go back on the record.
24 I would just like to state for the record one of the
25 attorneys for the plaintiffs has left and his name

1 is?

2 MR. YOUNG: Drew Dennis.

3 MR. VOIGT: Drew Dennis.

4 Because we took a little bit of a break,
5 could the court reporter repeat the last question and
6 answer. Refresh our recollection as to where we are
7 at.

8 (Record read.)

9 Q. And in discussion -- strike that.

10 This discussion of in-person voting is
11 all within your discussion of Senate Factors 1 and 3
12 beginning on page 25; is that correct?

13 THE WITNESS: Can you repeat that. I am
14 not sure what the question.

15 (Question read.)

16 A. No, I don't believe that's correct.

17 Q. On page 25, Section III begins and then
18 there is a No. 1 and then No. 2 on page 27, and this
19 paragraph falls within the No. 2; is that right?

20 A. What paragraph are you referring to?

21 Q. The last paragraph -- I'm sorry, the
22 first full paragraph on page 29.

23 A. The question was again? I'm sorry.

24 Q. That paragraph, the first full paragraph
25 on page 29, is within your discussion of Senate

1 Factors 1 and 3 and that section begins on page 25;
2 is that right?

3 A. That's correct.

4 Q. So your earlier answer was incorrect.

5 A. Which?

6 Q. You earlier said you did not think it
7 fell within that discussion and that was incorrect.

8 A. Oh, I -- I misinterpreted the question
9 the first time.

10 Q. Okay. I understand. So the answer that
11 you just provided is your answer.

12 A. That's correct.

13 Q. In your opinion changes in early
14 in-person -- oh, let me strike that.

15 Did you have -- we just took a break.
16 Did you have any conversations with the plaintiffs'
17 lawyers during the break?

18 A. I did not.

19 Q. In your opinion changes in early
20 in-person voting hours are relevant to Senate
21 Factors 1 and 3; is that correct?

22 A. That's correct.

23 Q. Other voting practices can also be
24 relevant to Senate Factors 1 and 3; is that correct?

25 A. Correct.

1 Q. The availability of no excuse mail-in
2 absentee voting is relevant to Senate Factors 1 and
3 3; is that correct?

4 A. That's correct.

5 Q. Did you not include a discussion of no
6 excuse mail-in absentee voting in your report in your
7 discussion of Senate Factors 1 and 3 because you
8 wanted to show only the ways in which voting access
9 is restricted?

10 A. That is not correct.

11 Q. Nevertheless you did not include within
12 your discussion of Senate Factors 1 and 3 the
13 availability of no excuse mail-in absentee voting; is
14 that correct?

15 A. That's correct.

16 Q. Have you conducted -- have you conducted
17 any type of analysis of how many African Americans in
18 Ohio vote by no excuse mail-in absentee ballot?

19 A. No, I have not.

20 Q. You did not include any analysis of how
21 African Americans in Ohio vote by no excuse mail-in
22 absentee ballot in your report, did you?

23 A. I referred to another report that does
24 analyze African American use of mail-in absentee
25 ballots.

1 Q. And which --

2 A. That would be -- that would be the Weaver
3 and Gill article cited in footnote 93 in the last
4 paragraph of page 28.

5 Q. Despite citing that you didn't actually
6 discuss it in the body of your report though.

7 A. No.

8 Q. And also the sentence that you are
9 referring to, the sentence that includes the citation
10 to the Weaver and Gill report relates to only
11 Cuyahoga County; is that correct?

12 A. That's correct.

13 Q. And Cuyahoga County is just 1 of 88
14 counties in Ohio.

15 A. That's correct.

16 Q. Have you conducted any comparison of
17 Ohio -- of Ohio early in-person voting with the
18 voting opportunities offered by other states?

19 A. No.

20 Q. Do you know how many days of early
21 in-person voting states other than Ohio offer?

22 A. I do not.

23 Q. Would it surprise you to learn that 18
24 states do not have early in-person voting at all?

25 MR. YOUNG: Objection, form.

1 A. No.

2 Q. No, it would not surprise you?

3 A. It would not.

4 Q. Are you aware that New York State does
5 not have any early in-person voting?

6 A. I am not aware.

7 Q. Is Ohio, which has early in-person
8 voting, more voting inclusive than New York which
9 does not have any early in-person voting?

10 MR. YOUNG: Objection, form.

11 A. I do not know.

12 Q. Why don't you know?

13 A. Because I was asked to do an analysis of
14 Ohio, not the country or a state comparative
15 analysis.

16 Q. Let me put it to you this way, would a
17 state that has early in-person voting have more -- be
18 more voting inclusive than a state that does not have
19 early in-person voting?

20 MR. YOUNG: Objection, form.

21 A. I would assume that to be the case.

22 Q. In your opinion wouldn't the Senate
23 factors weigh much more heavily against a state with
24 no early voting than a state that has early voting
25 opportunities?

1 MR. YOUNG: Objection, form.

2 A. I think --

3 THE WITNESS: Would you repeat the
4 question, please.

5 MR. VOIGT: Could the court reporter
6 repeat the question.

7 (Question read.)

8 A. I would not agree with that.

9 Q. So in your opinion a state that has no
10 early voting opportunities -- strike that.

11 So in your opinion the Senate factors
12 would weigh more heavily against a state with early
13 voting opportunities than against a state without
14 early voting opportunities?

15 A. No.

16 Q. Let's turn to the plaintiffs' complaint
17 and specifically par -- paragraph 74. Please take a
18 moment to read paragraph 74 of the complaint.

19 Have you had a chance to read it?

20 A. Yes.

21 Q. Do you agree or disagree with the
22 following statement in paragraph 74 of the
23 plaintiffs' complaint: "The effects of reducing the
24 number of early voting days will be felt
25 disproportionately by minority voters in voting

1 locations that serve predominantly minority voters"?

2 MR. YOUNG: You mean "and in voting
3 locations."

4 MR. VOIGT: I'm sorry. Did I misread
5 that?

6 MR. YOUNG: You left out the word "and"
7 which I think is --

8 Q. Let me restate the question. Do you
9 agree or disagree with the following statement in
10 paragraph 74 of the plaintiffs' complaint, and I am
11 quoting this, "The effects of reducing the number of
12 early voting days will be felt disproportionately by
13 minority voters and in voting locations that serve
14 predominantly minority voters"?

15 A. I agree with that.

16 Q. In your opinion would you expect to see a
17 lower African-American turnout in states with no
18 early in-person voting?

19 MR. YOUNG: Objection, form.

20 A. Yes.

21 Q. Yes?

22 A. Yes.

23 Q. Are you aware at that time the state with
24 the highest African-American turnout in 2012 was
25 Mississippi?

1 MR. YOUNG: Objection to form.

2 A. No.

3 Q. Are you aware that Mississippi has no
4 early in-person voting?

5 A. I'm not aware.

6 Q. And you didn't consider that in your
7 report?

8 A. No.

9 Q. Is it possible that your assumptions
10 about how early in-person voting affects voter
11 turnout are not borne out by the actual numbers?

12 MR. YOUNG: Objection to form.

13 A. I disagree.

14 Q. Would you at least agree with me they are
15 not borne out by the actual numbers in Mississippi?

16 A. I have not seen the data on Mississippi.

17 MS. LEVENSON: I also have to interpose
18 an objection. Could you define "turnout"? Because
19 turnout usually means the portion of registered
20 voters who cast a vote. I'm not sure that's what you
21 mean by turnout.

22 Q. Did you do anything to take a look at
23 how -- the actual numbers -- strike that.

24 Please turn to pages 29 and 30 of your
25 report.

1 Q. On page 30 would you please explain what
2 you're illustrating on the two -- in the two charts.

3 A. Sure. Black and white voter turnout and
4 black and white voter registration across time.

5 Q. And in each of those charts you have two
6 lines, one line reflects African Americans and one
7 line reflects whites; is that correct?

8 A. Yes.

9 Q. Is it correct in your report that you
10 attribute the increase in African-American voter
11 turnout in recent years in Ohio to expanded days and
12 hours of early in-person voting?

13 A. Yes.

14 Q. Did you do anything in your report to
15 compare African-American voter participation in Ohio
16 with national trends?

17 A. No.

18 Q. Is it possible there are explanations
19 other than early in-person voting for the trends that
20 you depict in the charts on page 30?

21 MR. YOUNG: Objection, form.

22 A. It's -- it's possible, although I believe
23 I account for them.

24 Q. Where in your report do you account for
25 other possibilities?

1 A. When -- within my discussion of Senate
2 Factor 2, yes, Senate Factor 2.

3 Q. On what page?

4 A. In the discussion and figure pertaining
5 to racial voter polarization.

6 Q. Isn't it possible that national trends
7 could have contributed to the illustrations that you
8 depict in paragraph -- I'm sorry, in charts -- in the
9 charts on page 30?

10 A. It's possible.

11 MR. YOUNG: Objection to form.

12 Q. And, again, you did not compare national
13 trends against Ohio to formulate these two charts.

14 MR. YOUNG: Objection, form.

15 A. No.

16 Q. But national trends could have had an
17 impact on what you depict in those two charts?

18 MR. YOUNG: Objection to form.

19 A. I would have to look at what the national
20 trends were before I was able to draw a conclusion in
21 that regard.

22 Q. But nevertheless it's possible the
23 national trends could have had an impact?

24 MR. YOUNG: Objection.

25 Q. On those -- on the trends in those two

1 charts?

2 MR. YOUNG: Sorry, objection. He has
3 answered this question.

4 A. It's possible.

5 Q. Did you do anything in your report to
6 compare African-American voting participation in Ohio
7 with national trends?

8 A. No.

9 Q. Is it possible there are other
10 explanations -- strike that.

11 Is it possible there are explanations
12 other than early in-person voting for the trends that
13 you depict in the charts on page 30?

14 MR. YOUNG: Objection to form.

15 A. It's possible but I could not come up
16 with or imagine or I did not see in the literature
17 other explanations that would be as viable.

18 Q. What work did you do to exclude other
19 possibilities for those trends?

20 A. I examined the research literature on
21 voter participation and what affects it.

22 Q. You did not consider national trends
23 though, did you?

24 A. No.

25 Q. Have you ever heard of the term swing

1 state?

2 A. Yes.

3 Q. Is Ohio a swing state in presidential
4 elections?

5 A. According to the news media.

6 Q. Do you know whether political campaigns
7 spend more money on voter turnout in swing states
8 compared to other states?

9 A. I assume so.

10 Q. Did you do anything to calculate whether
11 political campaign spending affects voter turnout?

12 A. No.

13 Q. Did you do anything to determine whether
14 political campaign spending could have had any
15 bearing on the trends in the charts on page 30 of
16 your report?

17 A. No.

18 Q. Can weather also affect turnout?

19 A. I believe there are analyses that suggest
20 it has very little impact.

21 Q. Did you do anything to determine whether
22 weather could have contributed to the patterns you
23 depict in your charts on page 30 of your report?

24 A. No.

25 Q. Let's put that aside. Have you ever

1 dropped off mail -- I know this sounds like a pretty
2 basic question, but have you ever dropped off mail in
3 a blue postal box?

4 A. Yes.

5 Q. And, again, this might be -- this is
6 commonsense but is a voter able to fill out a no
7 excuse mail-in absentee ballot and put it in one of
8 those blue boxes on a Sunday for the postal delivery
9 person to pick up on Monday?

10 MR. YOUNG: Objection, form.

11 THE WITNESS: What was the question?

12 (Question read.)

13 A. Yes.

14 Q. There's nothing stopping a voter from
15 putting his or her absentee ballot in his or her own
16 mailbox in the evening hours after work; is that
17 correct?

18 MR. YOUNG: Objection, form.

19 A. Correct.

20 Q. Given that a voter can drop off a mail-in
21 absentee ballot in a postal box at any time of the
22 day in Ohio, isn't access to voting in Ohio really
23 unlimited in terms of days and hours?

24 MR. YOUNG: Objection, form.

25 A. Yes.

1 Q. With respect -- strike that.

2 With respect to voters who voted in 2012
3 on the dates and during the times for voting
4 eliminated by SB 238 and Directive 2014-06, did you
5 do anything to assess whether those individuals will
6 instead vote by no excuse mail-in absentee ballot
7 this year?

8 MR. YOUNG: Objection, form.

9 A. I do not believe there is any way of
10 assessing that, in particular without data on
11 specific voters.

12 Q. And so the answer is you did not do it.
13 I understand you are saying you can't -- in your
14 opinion it can't be done, but it follows that you
15 didn't do it.

16 A. I did not.

17 Q. With respect to voters who voted in 2012
18 on the dates and during the times for voting
19 eliminated by SB 238 and Directive 2014-06, did you
20 do anything to assess whether those individuals will
21 instead vote on different days or different times
22 this year?

23 A. No.

24 Q. With respect to voters who voted in 2012
25 on the dates and during the times eliminated by the

1 SB 238 and Directive 2014-06, do you make any
2 conclusions in your report whether those individuals
3 will actually vote this year and in upcoming years?

4 A. My conclusion would be that they are
5 likely to be less likely to vote than they were in
6 2012.

7 Q. Your report only discusses six of the
8 nine Senate factors in the context of SB 238 and
9 Directive 2014-06; is that right?

10 A. That's right.

11 Q. Despite addressing only six of the nine
12 factors, you make a conclusion about the totality of
13 circumstances related to meaningful access to the
14 political process in the context of SB 238 and
15 Directive 2014-06; is that right?

16 A. That's correct.

17 Q. Are preelection in-person voting hours
18 staffed by paid state employees or volunteers?

19 A. I believe they are volunteers.

20 Q. Where did you gain that understanding or
21 that belief?

22 A. I'm not sure.

23 Q. For your report did you consider costs
24 associated with expanded in-person absentee voting?

25 A. You are referring to costs to?

1 Q. Costs to the state.

2 A. No, I did not.

3 Q. Just so the record is clear, in your
4 report did you consider costs to the state associated
5 with expanded in-person absentee voting?

6 A. No, no.

7 Q. Do you agree that costs associated with
8 early in-person voting might be a consideration for a
9 state when that -- when that state decides the hours
10 and days for in-person voting?

11 MR. YOUNG: Do you mean costs to the
12 state?

13 MR. VOIGT: Costs to the state.

14 Q. Let me rephrase the question. Do you
15 agree that costs to the state associated with early
16 in-person voting might be a consideration for a state
17 when that state decides the hours and days for early
18 in-person voting?

19 A. The cost to a state seemed irrelevant
20 relative to the Senate factors that I was looking at.

21 Q. Do you know how many counties in Ohio
22 there are?

23 A. I believe there is 88.

24 Q. That's my understanding as well.

25 A. Okay.

1 Q. Prior to Directive 2014-06, how were
2 local election hours and days established in each
3 county?

4 A. I'm not sure exactly.

5 Q. Do you agree or disagree that a state can
6 have a legitimate interest in establishing uniform
7 preelection voting days and hours across all counties
8 in the state?

9 MR. YOUNG: Objection, form.

10 THE WITNESS: Could that be repeated,
11 please.

12 (Question read.)

13 A. I agree.

14 Q. Okay. Let's assume there are two states
15 with 88 counties. State A has one uniform set of
16 days and hours for preelection in-person voting
17 across all of its counties. State B has different
18 hours and days for preelection in-person voting in
19 each of its 88 counties. Do you understand the
20 hypothetical?

21 A. Yes.

22 Q. Under this hypothetical in your opinion
23 would it be easier for state A or state B to educate
24 their citizens about voting days and hours?

25 MR. YOUNG: Objection, form.

1 A. State A which is the uniform one would
2 arguably have an easier time.

3 Q. Under the same hypothetical would it
4 probably cost state A or state B more money to
5 educate its citizens about voting hours?

6 MR. YOUNG: Objection to form.

7 A. I do not know.

8 Q. What is the Ohio Association of Election
9 Officials?

10 A. I'm not sure.

11 Q. Okay. It's a long title, so if I refer
12 to it as the OAEO for Ohio Association of Election
13 Officials, is that understandable?

14 A. Yes.

15 Q. The OAEO. Are you aware that the OAEO
16 made a bipartisan recommendation for the hours and
17 days for absentee voting?

18 A. I believe, yes; I believe I read that in
19 the newspaper.

20 Q. So you do have some familiarity with what
21 the OAEO is.

22 A. Right. I am assuming it's some
23 bipartisan -- some bipartisan group that oversees
24 elections, but I have not done research on who they
25 are and how they get these positions, et cetera.

1 Q. Then that's -- your understanding of that
2 just came from reading the newspaper.

3 A. Uh-huh.

4 MR. YOUNG: Is that a "yes"?

5 A. Yes.

6 MR. VOIGT: Thank you. Could the court
7 reporter just read the last question and answer,
8 please.

9 (Record read.)

10 Q. Do you have any reason to believe this
11 recommendation was biased in any way?

12 MR. YOUNG: Objection, form.

13 A. No.

14 Q. In other words, based on the knowledge
15 that you have of it, and I recognize it's limited,
16 but do you have any reason to believe that the
17 recommendation of the OAE0 was biased?

18 A. I have no -- I have no evidence of -- of
19 bias in the formation of the recommendation.

20 Q. Do you have any reason to believe that
21 the recommendation was unfair in any way?

22 A. I believe that it -- based on evidence in
23 my report that the outcome of the recommendation may
24 have a disparate impact.

25 Q. Are you aware that election officials

1 from all of Ohio's 88 counties have input into the
2 decision making of the OAE0?

3 MR. YOUNG: Objection, form.

4 A. No.

5 Q. Did you include anything in your report
6 about the recommendation of the OAE0?

7 A. I did not.

8 Q. Have you ever read the report of the OAE0
9 with its recommendation?

10 A. No.

11 Q. Is it possible that this bipartisan
12 recommendation from the OAE0 might have a bearing on
13 several of the Senate factors?

14 A. I don't believe it does.

15 Q. I guess you'd have to temper the last
16 answer with the fact you haven't actually read the
17 report; is that right?

18 MR. YOUNG: Objection to form.

19 A. No, I would not temper the answer or
20 change the answer.

21 Q. But you don't know what's in the report.

22 A. My understanding is the report is a
23 recommendation, not law.

24 Q. Let's take a look at your report. On
25 page 27 the header that states -- the header No. 2,

1 could you please read that into the record.

2 A. "More Recent Voting Practices That
3 Compress Minority Political Participation."

4 Q. And you used the word "suppress" there,
5 right?

6 A. Uh-huh.

7 Q. Okay.

8 MR. YOUNG: That's a "yes"?

9 A. Yes, sorry.

10 MR. YOUNG: That's okay.

11 Q. And then on page 29, first full
12 paragraph, the sentence that begins "Efforts to
13 restrict voting." In that sentence you use the
14 phrase "Efforts to restrict voting"; is that right?

15 A. Yes.

16 Q. And than on page 36 you refer to a
17 comment by a Mr. Preisse, I don't know how to say
18 his, P-R-E-I-S-S-E, related to cutbacks to Ohio early
19 voting program. And you quote what he purportedly
20 stated; is that right?

21 A. I'm still looking. Oh, oh, I see, yes.

22 Q. So would it be fair to say you do talk
23 within your report about some of the purported
24 motivations behind the changes in the election laws?

25 A. I do talk about purported motivations.

1 Q. And do you know whether the OAE0 report
2 talks about motivations behind the changes?

3 A. I do not.

4 Q. If it does talk about the motivations,
5 would that be something that might be relevant to
6 your report --

7 MR. YOUNG: Objection.

8 Q. -- considering that you used various
9 other sources to talk about motivations?

10 MR. YOUNG: Objection to form.

11 A. Let me refer back to my report for just a
12 moment. I do refer to other motivations on page 29
13 which was probably also gleaned from the at least
14 newspaper coverage that did emerge on the logical
15 formalizing and standardizing voting procedure.

16 Q. Yeah, but you didn't answer my question.

17 MR. VOIGT: Could you repeat my question,
18 please.

19 THE WITNESS: Yeah.

20 (Question read.)

21 A. My feeling is largely that motivation is
22 itself not as relevant to the Senate factors as is
23 impact.

24 Q. But nevertheless you did include it
25 within your report, some discussion of motivation?

1 A. Motivation --

2 MR. YOUNG: Objection, form.

3 A. Go back to 29.

4 Q. Or what you claim is motivation.

5 A. Well, not what I claim is motivation,
6 what is reported via a quote.

7 Q. My -- my question to you is if the OAE0
8 report includes a discussion of motivations or
9 reasons for these changes, considering that you've
10 discussed other reasons or potential reasons for the
11 changes --

12 A. Uh-huh.

13 Q. -- wouldn't the OAE0 report also be
14 something you would want to discuss in your report?

15 MR. YOUNG: Objection, form.

16 A. I suppose.

17 MR. VOIGT: And for the record somebody
18 just entered the room.

19 MR. DAVIS-WILLIAMS: Raphael
20 Davis-Williams, I am one of the team members for the
21 plaintiffs.

22 MR. VOIGT: And, I'm sorry, are you a
23 lawyer representing?

24 MR. DAVIS-WILLIAMS: Yes, yes, I'm on the
25 team, one of the attorneys on the team for

1 plaintiffs.

2 MR. VOIGT: Okay. And just for the
3 record who do you represent?

4 MR. DAVIS-WILLIAMS: All of the -- all of
5 the plaintiffs.

6 MR. VOIGT: Okay. I understand. Thank
7 you.

8 MR. DAVIS-WILLIAMS: Here, for the court
9 reporter.

10 MR. VOIGT: Thank you.

11 Q. (By Mr. Voigt) Certainly the intent
12 behind the changes is something that would be
13 relevant to Senate Factor 9; is that right?

14 MR. YOUNG: Objection, form.

15 A. I didn't look at Senate Factor 9.

16 Q. Well, let's take a look at it now.

17 A. Is there a Senate Factor 9?

18 Q. "The policy underlying the state or
19 political subdivision's use of the challenged
20 standard, practice, or procedure is tenuous."

21 MR. YOUNG: Professor Roscigno has
22 testified that he has only been asked to analyze 1,
23 2, 3, 5, 6, and 7. So asking him to speculate about
24 these other factors, I don't see the point of that.

25 MR. VOIGT: I would appreciate no

1 speaking objections and commentary in an attempt to
2 lead the witness. I'm simply asking if he's used
3 other considerations in his report that indirectly or
4 directly relate to a number of the factors, and I am
5 entitled to explore what he did use and what he did
6 not use and why he used what he used and why he did
7 not use what he did not use.

8 Q. So with that are you able to answer the
9 question, or do you need to have it repeated?

10 A. I would like it repeated.

11 (Question read.)

12 Q. Okay. Was the reason why you didn't
13 include any discussion of the OAE0 recommendation is
14 because it actually supports Directive 2016 -- I'm
15 sorry, 2014-06?

16 MR. YOUNG: Objection, form.

17 A. No.

18 Q. Where you did discuss potential
19 motivation for the changes, under what factor --
20 strike that.

21 Where you did discuss potential
22 motivations for the changes, with regard to which of
23 the Senate factors were -- were you referring to? In
24 other words, under the context of which discussion of
25 which factor did you include that discussion?

1 A. I believe you are referring to the
2 discussion under Senate Factor 6.

3 Q. Could it also relate to Senate Factor 3?
4 MR. YOUNG: Objection, form.

5 A. It could be read in that way, or used in
6 that way.

7 MR. VOIGT: I am going to ask the court
8 reporter to mark this document as Exhibit 4 and then
9 pass it to the witness.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. Professor, have you ever read this
12 document?

13 A. No.

14 Q. Have you ever seen the document?

15 A. I have not.

16 Q. Did you consider the document in the
17 con -- in your report?

18 A. No.

19 Q. The title of this is "Ohio Association of
20 Election Officials Report and Recommendation for
21 Absentee Voting Reform."

22 MR. VOIGT: And it would really be
23 helpful for me for the witness to just have a chance
24 to at least briefly skim over this, so do you want to
25 take a break?

1 MR. YOUNG: Do you want to do a lunch
2 break?

3 MR. VOIGT: That would be great.

4 Q. And during the lunch break you would have
5 a chance to at least look over it --

6 A. Sure.

7 Q. -- generally.

8 A. Sure.

9 MR. YOUNG: 30 minutes? 45 for length of
10 a lunch break?

11 MR. VOIGT: Let's go off the record.

12 (Discussion off the record.)

13 (Thereupon, at 12:48 p.m., a lunch recess
14 was taken.)

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1 Thursday Afternoon Session,
2 July 10, 2014.

3 - - -

4 PROFESSOR VINCENT ROSCIGNO

5 being by me previously duly sworn, as hereinafter
6 certified, deposes and says further as follows:

7 EXAMINATION (Continued)

8 By Mr. Voigt:

9 Q. We are back from lunch; and, Professor,
10 did you talk -- speak with the attorneys for the
11 plaintiffs during lunchtime?

12 A. No, I did not.

13 Q. We were talking -- oh, also did you have
14 an opportunity to look during lunch at the "Ohio
15 Association of Election Officials Report and
16 Recommendation for Absentee Voting and Reform"?

17 A. Yes.

18 Q. And the court reporter has marked that as
19 Exhibit 4.

20 A. 4.

21 Q. One more thing, as a logistical matter,
22 the court reporter will want to attach the exhibits
23 to -- to the deposition transcript so before you
24 leave just please remember to give them back to her.

25 A. Okay.

1 Q. It's happened in other situations where
2 the witness has accidentally left with all of the
3 exhibits so just at the -- you know, because we might
4 forget but let's just all try to remember to have
5 them to the court reporter so she can attach them.

6 And you said you did have a chance to
7 look at Exhibit 4.

8 A. Yes.

9 Q. Would it be fair to say that this report
10 is relevant to Senate Factor 9?

11 MR. YOUNG: I just wanted to interpose a
12 continuing objection to all questions related to the
13 OAEO report which Professor Roscigno testified
14 earlier he had not been asked to read before or asked
15 to consider for his report.

16 Q. You can now answer the question.

17 A. I'm uncertain mostly owing to the
18 interpretation of what you're referring to as Senate
19 Factor 9.

20 Q. You have a confusion as to which --

21 A. No. My confusion is just over the
22 interpretation, how to interpret what is Senate
23 Factor 9, what you referred to as Senate Factor 9.

24 Q. Could the report be relevant to a
25 consideration of Senate Factor 9?

1 A. It could be, yes.

2 Q. How about costs to the state related to
3 preelection voting hours, is that something that
4 could be relevant to Senate Factor 9?

5 MR. YOUNG: Objection.

6 A. I don't believe so.

7 Q. Do you have any support for that, or is
8 that just your personal opinion?

9 A. I see -- I see no consideration of cost
10 in any of the Senate factors specifically.

11 Q. Is it possible that cost could relate to
12 a state policy --

13 MR. YOUNG: Objection.

14 Q. -- or a state consideration?

15 MR. YOUNG: Objection.

16 A. That -- that would not be my
17 interpretation of this use of policy.

18 Q. A moment ago counsel for ACLU stated that
19 you had not been asked to consider Exhibit 4. Do you
20 recall him raising that speaking objection?

21 A. I had not been asked to --

22 Q. Yes. In other words, he just put an
23 objection on the record momentary ago -- momentarily
24 ago stating that you had not been asked to take a
25 look at Exhibit 4.

1 A. I had not been -- I agree that I had not
2 been asked to look at this exhibit.

3 Q. What did counsel ask you to look at?

4 A. The extent to which Senate factors in my
5 report, 1, 2, 3, 5, 6, and 7, look at those Senate
6 factors in particular relative to the status of
7 African Americans and minorities in general in Ohio.

8 Q. Did they provide you with any documents?

9 A. No.

10 Q. Did they provide you to any citations, to
11 reports to review?

12 A. No.

13 Q. Let's go back to Exhibit 4 which is the
14 "Ohio Association of Election Officials Report and
15 Recommendations for Absentee Voting Reform." I would
16 like to read some sentences in that recommendation,
17 and for each I would like for you to state whether
18 the sentence is something that is important when
19 considering whether the current voting days and hours
20 in Ohio are fair. Do you understand my question?

21 A. I believe I do.

22 Q. Okay. Beginning in the second paragraph,
23 "In 2010, the Ohio Association of Election Officials
24 (OAEO) began exploring possible ways to reform our
25 absentee voting statutes by commissioning a task

1 force of six members from different political parties
2 and different sized counties." Important?

3 MR. YOUNG: Objection.

4 A. Yes.

5 MR. YOUNG: Are these -- are you asking
6 him to assume that everything in here is true in your
7 questions?

8 MR. VOIGT: Sean, I am not going to
9 respond to your, you know, speeches. This is a
10 question. I mean, in his opinion does he think it's
11 important or not.

12 MR. YOUNG: But that assumes the truth of
13 every statement.

14 MR. VOIGT: It assumes that the statement
15 is what it is. I mean, this is a, you know --

16 MR. YOUNG: I just wanted to make the
17 record clear. So is it a hypothetical that you are
18 asking or is it -- because he didn't testify to the
19 truth of any of these facts so are you asking him to
20 consider the hypothetical in which the O -- each of
21 these statements are true and then asking him if that
22 hypothetical is true?

23 MR. VOIGT: I think my question -- you
24 know, my question speaks for itself, okay? He
25 understood the question, and we can move on.

1 Q. How about this, "In 2012, the Task Force
2 was reconstituted to include eight members, four from
3 each political party, with adequate representation
4 from small, medium and large counties." Important?

5 A. It could be.

6 MR. YOUNG: Objection.

7 Q. "This Task Force" was made up -- I'm
8 sorry. Strike that.

9 "This Task Force made a series of
10 recommendations that were amended and passed by our
11 bi-partisan legislative committee." Important?

12 MR. YOUNG: Objection.

13 A. It could be.

14 Q. "The amended recommendations were" -- I'm
15 sorry. Mine is cut off. What's the next word? Oh,
16 "then." I'm sorry. Strike that.

17 "The amended recommendations were then
18 ratified by the trustees of the OAE0. Our board of
19 trustees is comprised of 20 members, equal numbers of
20 Republicans and Democrats, equal numbers of board
21 members and staff, and representative of different
22 sized counties." Important?

23 A. It could be.

24 Q. "OAE0 consists of local boards of
25 elections and firmly believes that local boards have

1 the knowledge to make informed decisions for their
2 local voters." Important?

3 A. I would say it could be important and
4 could be problematic.

5 Q. "However, the courts have recently held
6 that equal protection issues arise when absentee
7 voters are treated differently. Thus, the
8 association entered into discussions with the
9 ultimate goal of creating uniform rules for absentee
10 voters across the state."

11 MR. YOUNG: I'm sorry. Are you
12 reading -- the text that you just read doesn't seem
13 to match.

14 THE WITNESS: It did on mine.

15 MR. YOUNG: It did on yours?

16 Is this under the -- is this the
17 paragraph under "A Spirit of Compromise"?

18 MR. VOIGT: Correct. It's the second
19 sentence.

20 MS. LEVENSON: This matches.

21 THE WITNESS: It sounds like some of them
22 match.

23 MR. VOIGT: Let's go off the record for a
24 second.

25 (Discussion off the record.)

1 MR. VOIGT: Okay. We had a little bit of
2 confusion about the phraseology so the prior -- Sean
3 Young and I just discussed this. And the prior
4 statements didn't seem to match the document. But I
5 want to restate the last question. So I am going --
6 I am going to pass this back to -- Exhibit 4 back to
7 the witness.

8 MR. YOUNG: Yes.

9 Q. "However, the courts have recently held
10 that equal protection issues arise when different
11 rules apply for absentee voting amongst the counties.
12 Thus, the association entered into discussions with
13 the ultimate goal of creating uniform rules for
14 voters across the state." Important?

15 A. It could be important and also
16 problematic.

17 Q. How about the entire next paragraph? "We
18 quickly realized that different sized counties have
19 different needs. Therefore, compromising from what
20 counties want to what they truly need became a core
21 ingredient in formulating recommendations. It is
22 likely that very few, if any, county boards of
23 elections around the state find these recommendations
24 to be ideal for their jurisdiction. However, the
25 recommendations will work for small, medium and large

1 counties. It is our hope that policy makers will
2 follow our members lead in putting aside provincial,
3 political or personal desires in order to craft
4 solutions that are best for the state as a whole.
5 While the process was not easy for our members, these
6 recommendations prove that bipartisan solutions to
7 election problems do exist and can be reached by
8 working together in good faith." Do you think that's
9 relevant to the factors?

10 MR. YOUNG: Objection.

11 A. I do not think it's relevant to the
12 factors that I looked at specifically in my report.

13 Q. I recall earlier you testified that --
14 that motivations are relevant to Factors 3 and 6. Do
15 you recall that?

16 MR. YOUNG: Objection.

17 A. I believe I was referring to motivations
18 as expressed by individuals quoted within these
19 discussion sections as opposed to my research
20 knowledge or focus on all of these Senate factors.

21 Q. So you were looking at motivations of
22 certain individuals but not other individuals?

23 MR. YOUNG: Objection.

24 A. I believe you referenced a particular
25 quote that came from a newspaper article, another

1 individual, when you were referring to motivations.

2 Q. Do you think that one person -- one
3 individual's motivation is necessarily representative
4 of all people's motivations?

5 A. Not necessarily.

6 Q. Is it possible that other people's
7 motivations related to the passage of these bills
8 could be relevant as well?

9 MR. YOUNG: Objection.

10 A. Not to the Senate factors that I
11 investigated. I did not see motivation as being core
12 to any of the six Senate factors.

13 Q. Except for the motivations that you
14 looked at.

15 MR. YOUNG: Objection.

16 A. That I reported. I didn't analyze
17 motivations.

18 Q. In other words, only the motivations that
19 you mentioned in your report are relevant.

20 MR. YOUNG: Objection.

21 A. I would go back and note that I also
22 mentioned that some of the changes that were
23 instituted were for purposes of standardization and
24 formalization.

25 Q. And so -- so standardization and

1 formalization could be relevant to the -- to the
2 factors.

3 A. I don't -- I actually -- my reading of
4 the Senate factors themselves do not implicate
5 motivation as that meaningful for analyses of whether
6 or not there are racial disparity and impact.

7 Q. But nevertheless within your report you
8 included the potential motivations of certain
9 individuals, at least in your opinion?

10 MR. YOUNG: Objection.

11 A. As well as the state legislature.

12 Q. If you included the motivations of the
13 state legislature, were you considering the
14 motivations of the Secretary of State as well?

15 A. No.

16 Q. You didn't consider the motivations of
17 the Secretary of State at all?

18 A. I did not speak with the Secretary of
19 State or interview the Secretary of State.

20 Q. Did you interview members of the General
21 Assembly?

22 A. No.

23 Q. How would you consider the General
24 Assembly's motivations?

25 MR. YOUNG: Objection.

1 A. The same way, from a systematic newspaper
2 search of issues pertaining to voting in Ohio. There
3 were several individuals that were quoted from the
4 state legislature as well as voters.

5 Q. And how many individual -- how many
6 quotes did you look at?

7 A. How many articles?

8 Q. How many quotes?

9 A. I did not count the exact number of
10 quotes because there were multiple quotes.

11 Q. How many individuals?

12 A. I could not -- I could not tell you.

13 Q. Less than five?

14 A. No.

15 Q. More than five?

16 A. Absolutely.

17 Q. More than 10?

18 A. Absolutely.

19 Q. Where are those -- where in this report
20 are those quotes from those more than 10 members of
21 the General Assembly?

22 A. Where are the quotes?

23 Q. Yes.

24 A. They are in the newspapers that I
25 sampled.

1 Q. Let's turn to page 28 of your report.
2 Take a look at the last sentence of the first full
3 paragraph. It says "Indeed, one survey of the 2004
4 election estimated that 3 percent of Ohio's total
5 electorate -- about 130,000 voters -- left the
6 polling place eventually without voting." Did I read
7 that correctly?

8 A. Yes.

9 Q. And in support of that you cite an
10 opinion editorial by an individual named Ari Berman;
11 is that correct?

12 A. Yes.

13 Q. Why didn't you cite the survey itself?

14 A. I couldn't find the survey. I could
15 not -- I could not find it when I did a search.

16 Q. Are you aware that the article itself
17 actually references the survey?

18 A. Yes.

19 Q. And you do know, since you read the
20 article, that the survey was a partisan survey.

21 A. I do know that.

22 MR. YOUNG: Objection.

23 Q. You do know that?

24 A. Yes.

25 Q. And you are aware that was a DNC survey?

1 A. Yes.

2 Q. So in support of that sentence you cited
3 a DNC survey; is that correct? Or you cited a -- I'm
4 sorry. Strike that.

5 In support of that sentence you cited an
6 opinion editorial that itself was referring to a DNC
7 survey; is that correct?

8 A. Yes.

9 Q. But you have never read the DNC survey
10 that's cited in Mr. Berman's article, did you?

11 A. No, I did not.

12 Q. Before a researcher references a survey
13 in an objective report, is it important to determine
14 whether the survey is accurate or otherwise biased in
15 any way?

16 A. It is important to do that as well as to
17 search for whether or not there are other surveys
18 available on the same topic and with the same data
19 sources.

20 Q. Did you do anything to determine whether
21 the DNC survey is accurate?

22 A. I wasn't able to get ahold of the DNC
23 survey.

24 Q. But even though you didn't read it, you
25 included a reference to its conclusions in your

1 report.

2 A. Yes.

3 Q. Do you think if a researcher relies on a
4 partisan survey, shouldn't the researcher at least
5 disclose that the source material is partisan in
6 nature?

7 A. It depends on whether or not there are
8 other data sources out there on the same topic, on
9 the same sample, and with the same level of
10 specificity.

11 Q. But you don't know what the level of
12 specificity is, do you?

13 A. I don't.

14 Q. Do you think an objective researcher
15 should avoid reliance on partisan surveys?

16 A. Not necessarily.

17 Q. Do you think that objective researchers
18 should at least notify the -- strike that.

19 Do you think an objective researcher
20 should at least state in the researcher's report that
21 a conclusion is based on a partisan survey?

22 THE WITNESS: Would you repeat the
23 question, please.

24 (Question read.)

25 MR. YOUNG: Objection.

1 A. Possibly.

2 Q. In other words, a reasonable person
3 reading a report and looking at a conclusion in a
4 particular sentence might be curious to know whether
5 the date presented in that sentence came from a law
6 journal or a political party --

7 MR. YOUNG: Objection.

8 Q. -- is that fair to say?

9 MR. YOUNG: Sorry. Objection, not
10 necessarily.

11 Q. You don't think a reasonable person would
12 be concerned about the source of data used to present
13 a conclusion?

14 MR. YOUNG: Objection.

15 A. Not when there is no countervailing
16 evidence alternatives out there aside from this
17 survey. I also searched for whether or not there was
18 a response to the survey or challenges to the survey.

19 Q. Do you think that if there are no -- in
20 fact, are no other surveys or critiques of the
21 surveys, that this should be something that is
22 disclosed so that an objective reader -- a reasonable
23 reader would be able to draw their -- a conclusion
24 about the facts presented in the sentence?

25 A. I need that reread.

1 Q. I'm sorry.

2 A. That's okay.

3 (Question read.)

4 MR. YOUNG: Objection.

5 Q. Do you understand the question?

6 A. Not quite.

7 Q. In other words, you're saying that there
8 are no other reports or surveys contradicting what
9 you cited in support of this sentence that we are
10 taking about.

11 A. Uh-huh.

12 Q. Is that correct?

13 A. That's correct.

14 Q. Nowhere in your report does it say by the
15 way, this was a Democrat survey, I wasn't able to
16 find anything else, and I just want everybody to know
17 that this statement is based on a Democrat survey.
18 Don't you think that a reasonable person trying to
19 determine whether or not your conclusion in that
20 sentence is reasonable would want -- would want to
21 know that information?

22 MR. YOUNG: Objection.

23 A. Some, possibly.

24 Q. Do you believe that an expert is supposed
25 to be free of personal bias to the extent possible?

1 A. During the research process for sure.

2 Q. Is it important as an expert to allow
3 facts to speak for themselves and not to selectively
4 choose facts to bolster a predetermined conclusion?

5 A. Yes.

6 Q. In Section b on page 28, in the first
7 sentence you -- there's -- there's a phrase there
8 "well documented problems pertaining to voter
9 access." Do you see that?

10 A. Uh-huh.

11 Q. And the only citation you have there is a
12 footnote 89. When I go down to 89, I see three
13 opinion editorials. Do you see that?

14 A. I do.

15 Q. When writing your report, did you do
16 anything to ascertain the objectivity of the authors
17 of those three articles?

18 A. I read the articles closely. I saw that
19 they were relying on observations of field reporters
20 as well as people that they interviewed. I thought
21 they were relatively objective observations of what
22 was going on and reports of simply lines and waiting
23 at polling places.

24 Q. How about footnote 91, Ari Berman, you
25 cite to his opinion editorial; is that right?

1 MR. YOUNG: Objection.

2 A. Yes.

3 Q. And the title of that is "Ohio GOP
4 Resurrects Voter Suppression Efforts." Do you see
5 that?

6 A. Yes.

7 Q. Did you do anything to determine whether
8 Ari Berman was objective in his opinion?

9 MR. YOUNG: Objection.

10 A. As in interviewing Ari Berman?

11 Q. In any way.

12 A. I don't know if there is any way to
13 determine whether or not a writer for a mainstream
14 newspaper is objective in their opinion.

15 Q. Well, let me put it this way, before you
16 cited to these various opinion editorials and relied
17 on them, did you do any research into the background
18 of the articles or?

19 A. No.

20 Q. In other words, you didn't take a look at
21 the history of the types of articles that they write?

22 A. No.

23 Q. You didn't look at whether they
24 disproportionately contribute to one political party
25 or another?

1 A. No.

2 Q. You didn't look at any of their other
3 prior articles to determine whether they may have any
4 other biases?

5 A. No.

6 Q. Let's turn to pages 17 and 18 of your
7 report. Would it be fair to say on these pages you
8 discussed what you termed "the calculus of voting"?

9 A. These -- on -- were you referring to 17
10 or 18?

11 Q. Both 17 and 18.

12 A. Yes.

13 Q. To prepare your opinion in this case, did
14 you speak with any actual voters to determine why
15 they chose to vote on a particular day?

16 A. No.

17 Q. Did you speak with any voters to
18 determine why they voted at a particular time?

19 A. No.

20 Q. Did you speak with any voters to
21 determine when they intend -- strike that.

22 Did you speak with any voters to
23 determine on what day or what time they intend to
24 vote in the future?

25 A. No.

1 Q. In preparing this report, did you speak
2 with any voters to assess whether the factors you
3 present as "the calculus of voting" actually were the
4 reasons a voter chose to vote on a particular day and
5 a particular time?

6 A. No.

7 Q. Isn't it possible that the factors that
8 influence a person to vote on a particular day and a
9 particular time in one election may change in the
10 next election?

11 MR. YOUNG: Objection.

12 A. It's possible that some factors may
13 change.

14 Q. So you're not -- you're not saying in
15 your -- strike that.

16 You're not saying in your report that a
17 person who voted on a certain Thursday in 2012 at
18 4 p.m. will also necessarily vote on that same day
19 and at the same time in 2014; is that right?

20 A. That's right.

21 Q. Let's take a look at page 29 of your
22 report. I know we talked a little bit about the
23 sentence earlier but there is a sentence in the first
24 full paragraph that begins with "Efforts to restrict
25 voting." Do you see that sentence?

1 A. Yes.

2 Q. And in that sentence is it fair to say
3 that you state that these purported efforts commenced
4 in 2014?

5 A. Are you asking me if that's what I state?

6 Q. I'm asking, yes.

7 A. Yes.

8 Q. So, in other words -- okay. Fair enough.
9 And in that paragraph, I think we already touched on
10 that, but you were referring to SB 238 and Directive
11 2014-06; is that right?

12 A. That's right.

13 Q. And you said these purported efforts to
14 what you say in your report were to restrict voting
15 began in 2014; is that right?

16 A. That's what I say in the report, yes.

17 Q. But you didn't provide any citations to
18 support the data 2014 in that paragraph; is that
19 right?

20 A. I would have to ask for you to elaborate
21 on what you mean.

22 Q. In other words, you state that these
23 purported efforts began in 2014. I am wondering if
24 there is a citation in there or some type of support
25 for your conclusion that these purported efforts

1 began in 2014.

2 MR. YOUNG: Objection.

3 A. I believe I was referencing the passage
4 of those particular Senate bills that you referred
5 to.

6 Q. If the Secretary of State of Ohio
7 advocated for uniformity of preelection voting hours
8 in the years preceding 2014 and even the 2012
9 election, wouldn't this call into question your
10 assumption about 2014 in that sentence?

11 A. I don't believe so. I think this
12 sentence is referring to actual legislative action.

13 Q. Take a look at Exhibit 4 again. This is
14 the report from the OAE0. Do you see in the second
15 paragraph it references that "In 2010, the OAE0 began
16 exploring possible ways to reform our absentee voting
17 statutes"?

18 A. Yes.

19 Q. And you didn't mention that in your
20 paragraph discussing 2014, did you?

21 A. I was referencing legislation in that
22 paragraph, not report or exploratory committee
23 recommendations.

24 Q. Are you aware that the Secretary of
25 State's Directive 2014-06 was based on and followed

1 the OAE0's recommendation?

2 A. I believe I read that in the newspaper
3 from maybe a quote of his.

4 Q. And so you wouldn't be able to disagree
5 that at least the considerations for uniformity, even
6 if the final directive wasn't enacted until several
7 years later, the initial considerations began much
8 earlier.

9 MR. YOUNG: Objection.

10 A. According to this exhibit, they began in
11 2010.

12 Q. And you are referring to Exhibit 4.

13 A. Yes.

14 Q. Do you know across all states how
15 expansive Ohio's voting opportunities are when
16 compared with other states?

17 A. I do not.

18 MR. YOUNG: Objection.

19 Q. If there are states that have fewer
20 opportunities than Ohio, would you have expected
21 groups to sue those states before they sued Ohio?

22 MR. YOUNG: Objection.

23 THE WITNESS: Can you repeat the
24 question.

25 (Question read.)

1 A. Not necessarily.

2 MR. VOIGT: Can we take a 15-minute
3 break?

4 MR. YOUNG: Sure.

5 (Recess taken.)

6 MR. VOIGT: Let's go back on the record.
7 I would like to mark as Exhibit 5 Professor
8 Roscigno's engagement letter in this case. And I'll
9 ask the court reporter to mark it and pass it to the
10 witness.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Professor, do you recognize Exhibit --
13 what has been marked as Exhibit 5?

14 A. Yes.

15 Q. What is it?

16 A. It is the letter -- the agreement or
17 contract with the ACLU and myself.

18 Q. And this was signed in March of this
19 year; is that right?

20 A. March 31, I believe. Or 29th by me and
21 31st by Dale Ho.

22 Q. Did you begin working on your opinion
23 shortly thereafter?

24 A. My recollection is I didn't actually
25 begin until mid to late April.

1 Q. What preceded the signing of this letter?
2 In other words, what I'm wondering is how did -- how
3 were you contacted?

4 A. I recall being contacted by -- initially
5 by Freda for ACLU of Ohio who described the case very
6 generally and asked me if I had expertise that might
7 be relevant or interest.

8 Q. And then subsequent to that discussion
9 were there discussions with other lawyers?

10 A. No. I believe the next discussion I had
11 was with Sean Young.

12 Q. And that -- did that discussion relate to
13 executing this agreement?

14 A. I believe it was sort of the initial
15 conversation about whether or not I had time or
16 energy or researcher expertise that was pertinent to
17 the Senate factors.

18 Q. Right. And then you received a copy
19 of --

20 A. Of this.

21 Q. Right. And the witness is referring to
22 Exhibit --

23 A. 5.

24 Q. -- 5. Did plaintiffs' counsel tell you
25 that they had contacted any other experts?

1 A. I do not believe so.

2 Q. Did you ask them?

3 A. No.

4 Q. And just to clarify my last sentence,
5 potential experts. Let's take a look at your
6 engagement letter and also please take a look at
7 Exhibit 3 which is the page from the Department of
8 Justice with the factors.

9 A. Uh-huh.

10 Q. Toward the bottom of Exhibit 5, which is
11 the engagement letter, what do those -- what do the
12 bullets represent?

13 A. My understanding is they represent a very
14 broad summary statement of Senate factors.

15 Q. Take a look at the last bullet and I am
16 going to read it. "Whether there is a lack of
17 responsiveness on the part of Ohio elected officials
18 to the particularized needs of minority group
19 members." Do you see that?

20 A. Yes.

21 Q. You said that you -- this is Senate
22 Factor 8; is that right, if you take a look at
23 Exhibit 3?

24 A. Yeah. They look parallel.

25 Q. And you said that you did not -- you were

1 not testifying with regard to Senate Bill Factor 8?

2 A. That is correct.

3 Q. Did -- at some point after you were
4 engaged, were you then asked not to look at Senate
5 Factor 8?

6 A. No.

7 MR. YOUNG: Objection.

8 Q. In other words, your engagement letter,
9 is it fair to say that you were asked to look at
10 Senate Factor 8?

11 A. No.

12 Q. Is it fair to say Senate Factor 8 is
13 listed under your responsibilities in your engagement
14 letter?

15 A. It is definitely in the engagement
16 letter.

17 Q. And it's not only in the engagement
18 letter; it's under "No. 1 Responsibilities" that
19 states "As directed by and subject to the supervision
20 and review of attorneys from" the -- "from ACLU
21 ('Plaintiffs' Counsel'), Expert shall: Analyze
22 racial disparities" and, you know, and so forth. And
23 the sentence then -- at the end of the sentence is a
24 list of various bullets. The last bullet is Senate
25 Factor 8; is that right? So, in other words, you

1 were asked to take a look at Senate Factor 8; is that
2 correct?

3 A. I was not explicitly asked to take a look
4 at certain -- at Factor 8.

5 Q. I mean, but isn't that what this document
6 says?

7 MR. YOUNG: Objection.

8 Q. In other words, under "No. 1
9 Responsibilities," the last bullet of what you were
10 asked to look at is Senate Factor 8.

11 A. I would agree with that.

12 Q. Why then didn't you look at Senate Factor
13 8 in your report?

14 A. I'm not sure that my report does not
15 grapple to some extent with Senate Factor 8.

16 Q. We talked a little bit -- very early in
17 the deposition a little bit about your teaching and
18 there was just one question that I said we would come
19 back to later after we reached some similar subject
20 matter. And I would ask that you please elaborate a
21 little bit about your -- any teaching you have done
22 with respect to preelection voting.

23 In other words, my recollection is --
24 and, you know, we are later in the day here. I may
25 not remember things correctly, but I thought you had

1 testified that perhaps one of the courses that you
2 taught may have had a component; and, you know, I am
3 not trying to put words in your mouth. But I would
4 like for you to just elaborate your teaching
5 experience specifically with regard to preelection
6 voting, if any.

7 A. My recollection, again, the course was, I
8 believe, six or so years ago. Used a political
9 science textbook, that was one of several textbooks
10 which had a section on preelection voting across the
11 United States, and I do not recall if it had a
12 specific section on Ohio.

13 Q. And how many -- for how many years did
14 you teach that course?

15 A. I taught it for two years.

16 Q. And the -- when was the last time you
17 taught that course?

18 A. I would have to look back. I'm guessing
19 six or seven years ago.

20 Q. Six or seven years ago?

21 A. Yes.

22 Q. Okay. Do you know anything about the
23 location of where people are able to vote early in
24 person in Ohio?

25 MR. YOUNG: Objection.

1 A. My understanding is it's at the board of
2 elections.

3 Q. Is it possible that -- strike that.

4 Could the location of where people are
5 able to vote early in person have some effect on how
6 many people in a particular area actually vote in
7 person?

8 MR. YOUNG: Objection.

9 A. It's possible.

10 Q. In your report you didn't discuss the
11 locations of early in-person voting places, did you?

12 A. I would have to refer back to the report.

13 MR. YOUNG: I'm sorry. Could you repeat
14 the question?

15 (Question read.)

16 MR. YOUNG: Thanks.

17 A. I don't believe I did.

18 Q. After you were engaged, did the
19 plaintiffs' counsel give you a timeframe for
20 completing your report?

21 A. I believe we had one or two conversations
22 about rough -- rough timeframes.

23 Q. And do you recollect when you were
24 supposed to have your report completed by?

25 A. I'm not sure if it was self-imposed or

1 part of the conversation, but I knew that I wanted
2 discussion of Senate Factor 5 complete, I believe,
3 within the first week or two of May, and then I would
4 continue on the other Senate factors.

5 MR. VOIGT: Okay. All right. I would
6 like to take another 2-minute break. I may be done.

7 MR. YOUNG: Sure. Okay.

8 MR. VOIGT: So let's go off the record.

9 (Recess taken.)

10 Q. Let's go back on the record. During any
11 of the breaks today, did you have any substantive
12 conversations with plaintiffs' attorneys?

13 A. No, I did not.

14 MR. VOIGT: I have no further questions,
15 although I reserve the right to continue questions if
16 opposing counsel has questions.

17 MR. YOUNG: Yes. We have a few
18 questions.

19 - - -

20 EXAMINATION

21 By Mr. Young:

22 Q. Professor Roscigno, your report discusses
23 the fact that there are significant racial
24 disparities in employment and that African Americans
25 generally have greater difficulty taking time off of

1 work; is that correct?

2 A. That's correct.

3 MR. VOIGT: Objection, beyond the scope
4 of the direct examination.

5 Q. Does the availability of early voting on
6 two Saturdays change your analysis concerning racial
7 disparities in employment?

8 A. No.

9 Q. Does the ability of early voting on one
10 Sunday change your analysis concerning employment
11 disparities?

12 A. No.

13 MR. VOIGT: Same objection, continuing
14 for -- maybe I should -- actually I should probably
15 say that objection every time because it's somewhat
16 of a case-by-case basis, so the last two questions I
17 object. They are beyond the scope of the direct.

18 Q. Does the availability of early voting on
19 two Saturdays and one Sunday change the fact -- your
20 analysis concerning racial disparities in employment?

21 A. No.

22 MR. VOIGT: Same objection.

23 Q. Does the polling location for early
24 voting change your analysis concerning racial
25 disparities in employment?

1 A. No.

2 Q. Does the fact that early voting hours are
3 uniform across counties change your analysis
4 concerning racial disparities in employment?

5 MR. VOIGT: Same objection.

6 A. No.

7 Q. Does the motivation behind any of these
8 early voting restrictions that you looked at change
9 your analysis concerning racial disparities in
10 employment?

11 MR. VOIGT: Same objection.

12 A. No.

13 Q. Does the availability of mail-in voting
14 change your analysis concerning significant racial
15 disparities in employment?

16 A. No.

17 MR. VOIGT: Objection, form.

18 Q. What if I were to tell you polls are open
19 on election day from 6:30 a.m. to 7:30 p.m., does
20 that fact change your analysis concerning racial
21 disparities in employment?

22 A. No.

23 Q. Does the voter turnout or behavior in
24 states other than Ohio change your analysis
25 concerning racial disparities in employment in Ohio?

1 MR. VOIGT: Objection, form.

2 A. No.

3 Q. Does the issuance or contents of the OAE0
4 report that we looked at earlier change your analysis
5 concerning any of the racial disparities in
6 employment?

7 A. No.

8 Q. Does the availability of early voting on
9 two Saturdays change -- withdrawn.

10 Is it your opinion that African Americans
11 generally have greater difficulty taking time off of
12 work in Ohio?

13 A. Yes, sir.

14 Q. Does the availability of early voting on
15 two Saturdays change your opinion that African
16 Americans generally have greater difficulty taking
17 time off of work in Ohio?

18 MR. VOIGT: Objection, form.

19 A. No.

20 Q. Does the availability of early voting on
21 one Sunday change the fact that African Americans
22 have greater difficulty taking time off of work in
23 Ohio?

24 A. No.

25 MR. VOIGT: Objection, form.

1 Q. Does the availability of early voting on
2 two Saturdays and one Sunday change the fact that
3 African Americans have greater difficulty taking time
4 off of work?

5 A. No.

6 Q. Does the polling location for early
7 voting change the fact that African Americans have
8 greater difficulty taking time off of work?

9 A. No.

10 Q. Does the fact that early voting hours are
11 uniform across counties change the fact that African
12 Americans have greater difficulty taking time off of
13 work?

14 A. No.

15 Q. Does the motivation behind any of these
16 early voting restrictions change the fact that
17 African Americans have greater difficulty taking time
18 off of work?

19 A. No.

20 Q. Does the availability of mail-in voting
21 change the fact that African Americans have greater
22 difficulty taking time off of work?

23 A. No.

24 MR. VOIGT: Objection.

25 Q. Does the fact that polls are open on

1 election day from 6:30 a.m. to 7:30 p.m. change the
2 fact that African Americans have greater difficulty
3 taking time off of work?

4 MR. VOIGT: Objection, form, asked and
5 answered.

6 A. No.

7 Q. Does the voter turnout or voter behavior
8 from other states change the fact that African
9 Americans in Ohio have greater difficulty taking time
10 off of work?

11 A. No.

12 MR. VOIGT: Objection, beyond the scope.

13 Q. Does the issuance of the OAEO report or
14 its contents change the fact that African Americans
15 have greater difficulty taking time off of work?

16 A. No.

17 Q. Is it your opinion that with respect to
18 housing African Americans tend to be racially
19 isolated in Ohio?

20 A. Yes.

21 MR. VOIGT: Objection, beyond the scope
22 of the direct examination.

23 Q. And is it your opinion -- and does your
24 report describe how racial isolation in housing
25 prevents African Americans from accessing employment

1 opportunities in the suburbs, better schools, better
2 security, and institutional resources?

3 A. Yes.

4 MR. VOIGT: Same objection.

5 Q. Does the availability of early voting on
6 two Saturdays change the fact of racial isolation in
7 housing?

8 A. No.

9 Q. Does the availability of early voting on
10 one Sunday change the fact of racial isolation in
11 housing?

12 A. No.

13 Q. Does the availability of early voting on
14 two Saturdays and one Sunday change the fact of
15 racial isolation in housing?

16 A. No.

17 Q. Does the polling location for early
18 voting change the fact of racial isolation in
19 housing?

20 A. No.

21 Q. Does the fact that early voting hours are
22 uniform across counties change the fact of racial
23 isolation in housing?

24 A. No.

25 Q. Does the motivation behind any of these

1 early voting restrictions change the fact of racial
2 isolation in housing?

3 A. No.

4 MR. VOIGT: Objection to all of these
5 questions with the assumption that your -- your
6 question is assuming something is a fact.

7 Q. Does the availability of mail-in voting
8 change the fact of racial isolation in housing?

9 A. No.

10 Q. Does the fact that polls are open on
11 election day from 6:30 a.m. to 7:30 p.m. change the
12 fact of racial isolation in housing?

13 A. No.

14 Q. Does the voter turnout or behavior in
15 other states change the fact of racial isolation in
16 housing in Ohio?

17 A. No.

18 Q. Does the issuance of the OAE0 report --
19 OAE0 report or its contents change the fact of racial
20 isolation in housing?

21 A. No.

22 Q. Is it your opinion that racial minorities
23 tend to move more frequently than whites?

24 A. Yes.

25 MR. VOIGT: Objection, beyond the scope

1 of the direct examination.

2 Q. Does the fact that -- withdrawn.

3 Does the availability of early voting on
4 two Saturdays change the fact that racial minorities
5 tend to move more frequently than whites?

6 A. No.

7 Q. Does the availability of early voting on
8 one Sunday change the fact that racial minorities
9 tend to move more frequently than whites?

10 A. No.

11 Q. Does the availability of early voting on
12 two Saturdays and one Sunday change the fact that
13 racial minorities tend to move more frequently than
14 whites?

15 A. No.

16 Q. Does the polling location for early
17 voting change the fact that racial minorities tend to
18 move more frequently than whites?

19 A. No.

20 Q. Does the fact that early voting hours are
21 uniform across counties change the fact that racial
22 minorities tend to move more frequently than whites?

23 A. No.

24 Q. Does the -- does the availability of
25 mail-in voting change the fact that racial minorities

1 tend to move more frequently than whites?

2 A. No.

3 Q. Does the fact that polls are open on
4 election day from 6:30 a.m. to 7:30 p.m. change the
5 fact that racial minorities tend to move more
6 frequently than whites?

7 A. No.

8 Q. Does the voter turnout or voter behavior
9 in other states change the fact that racial
10 minorities tend to move more frequently than whites?

11 A. No.

12 Q. Does the issuance of the OAEO report or
13 its contents change the fact that racial minorities
14 tend to move more frequently than whites?

15 A. No.

16 MR. YOUNG: And just for purposes of the
17 record, to respond to objections related to scope,
18 opposing counsel raised the issue of all of these
19 questions that I am asking, and so these questions
20 are well within the scope because they directly
21 address the relevance of these particular factors to
22 Professor Roscigno's analysis.

23 Q. Is it your opinion that African Americans
24 face greater difficulty securing transportation than
25 whites?

1 A. Yes.

2 MR. VOIGT: Objection, beyond the scope
3 of the direct.

4 MR. YOUNG: Same response, standing
5 response.

6 Q. Does the availability of early voting on
7 two Saturdays change the fact that African Americans
8 face greater difficulty securing transportation than
9 whites?

10 A. No.

11 Q. Does the availability of early voting on
12 one Sunday change the fact that African Americans
13 face greater difficulty securing transportation than
14 whites?

15 A. No.

16 Q. Does the availability of early voting on
17 two Saturdays and one Sunday change the fact that
18 African Americans face greater difficulty securing
19 transportation than whites?

20 A. No.

21 Q. Does the polling location for early
22 voting change the fact that African Americans face
23 greater difficulty securing transportation than
24 whites?

25 A. No.

1 MR. VOIGT: Can I just say I have a
2 standing objection, continuing objection, to the form
3 of the question and all of these questions that
4 you're referring to an expert opinion as fact. In
5 other words, you are asking him about his -- his
6 opinion related to certain things, and you are
7 characterizing that as a fact. I object to the
8 extent -- I object for a number of reasons, you know,
9 but I am also objecting to the use of the word
10 "fact."

11 MR. YOUNG: And in response when I use
12 the word "fact," I am referring to Professor
13 Roscigno's opinions as expressed in the report, and
14 so it is -- the foundation for my questions are based
15 on Professor Roscigno's opinions.

16 MR. VOIGT: Nevertheless I still feel
17 that's a misleading way to present questions.

18 MR. YOUNG: Can you read the last
19 question.

20 (Question read.)

21 Q. Does the fact that early voting hours are
22 uniform across counties change the fact that African
23 Americans face greater difficulties securing
24 transportation than whites?

25 A. No.

1 Q. Does the motivation behind any of these
2 early voting restrictions change the fact that
3 African Americans face greater difficulty securing
4 transportation than whites?

5 A. No.

6 Q. Does the availability of mail-in voting
7 change the fact that African Americans face greater
8 difficulty securing transportation than whites?

9 A. No.

10 Q. Does the fact that polls are open on
11 election day from 6:30 a.m. to 7:30 p.m. change the
12 fact that African Americans face greater difficulty
13 securing transportation than whites?

14 A. No.

15 Q. Does the voter turnout or voter behavior
16 in other states change the fact that African
17 Americans face greater difficulty securing
18 transportation than whites?

19 A. No.

20 Q. Does the issuance of the OAE0 report or
21 its contents change the fact that African Americans
22 face greater difficulty securing transportation than
23 whites?

24 A. No.

25 Q. Is it your opinion that African Americans

1 face greater burdens arranging for child care in
2 Ohio?

3 MR. VOIGT: Objection, beyond the scope
4 of the direct examination.

5 A. Yes.

6 Q. Does the availability of early voting on
7 two Saturdays change the fact that African Americans
8 have greater difficulty arranging for child care than
9 whites?

10 A. No.

11 Q. Does the availability of early voting on
12 one Sunday change the fact that African Americans
13 face greater burdens arranging for child care than
14 whites?

15 A. No.

16 Q. Does the availability of early voting on
17 two Saturdays and one Sunday change the fact that
18 African Americans face greater burdens arranging for
19 child care than whites?

20 A. No.

21 Q. Does the polling location for early
22 voting change the fact that African Americans face
23 greater burdens arranging for child care than whites?

24 A. No.

25 Q. Does the fact that early voting hours are

1 uniform across counties change the fact that African
2 Americans face greater burdens arranging for child
3 care than whites?

4 A. No.

5 Q. Does the fact -- does the motivation
6 behind any of these early voting restrictions change
7 the fact that African Americans face greater burdens
8 arranging for child care compared to whites?

9 A. No.

10 Q. Does the availability of mail-in voting
11 change the fact that African Americans face greater
12 burdens arranging for child care than whites?

13 A. No.

14 Q. Does the fact that polls are open on
15 election day from 6:30 a.m. to 7:30 p.m. change the
16 fact that African Americans face greater burdens
17 arranging for child care compared to whites?

18 A. No.

19 Q. Does the voter turnout or voter behavior
20 in other states change the fact that African
21 Americans face greater burdens arranging for child
22 care compared to whites?

23 A. No.

24 Q. Does the issuance of the OAE0 report or
25 its contents change the fact that African Americans

1 face greater burdens arranging for child care
2 compared to whites?

3 A. No.

4 Q. Is it your opinion that there are
5 significant racial disparities in income and poverty
6 rates in Ohio?

7 MR. VOIGT: Objection, continuing
8 objection to these questions being beyond the scope
9 of the direct examination.

10 A. Yes.

11 Q. Does the availability of early voting on
12 two Saturdays change these racial disparities in
13 income and poverty?

14 A. No.

15 Q. Does the availability of early voting on
16 one Sunday change the fact of racial disparities in
17 income and poverty?

18 A. No.

19 Q. Does the availability of early voting on
20 two Saturdays and one Sunday change the fact of
21 racial disparities in income and poverty?

22 A. No.

23 Q. Does the polling location for early
24 voting change the fact of racial disparities in
25 income and poverty?

1 A. No.

2 Q. Does the fact that early voting hours are
3 uniform across counties change the fact of racial
4 disparities in income and poverty?

5 A. No.

6 Q. Does the motivation behind any of these
7 early voting restrictions change the fact of racial
8 disparities in income and poverty?

9 A. No.

10 Q. Does the availability of mail-in voting
11 change the fact of racial disparities in income and
12 poverty?

13 A. No.

14 Q. Does the fact that polls are open on
15 election day from 6:30 a.m. to 7:30 p.m. change the
16 fact of racial disparities in income and poverty?

17 A. No.

18 Q. Does the voter turnout or behavior in
19 other states change the fact of racial disparities in
20 income and poverty in Ohio?

21 A. No.

22 Q. Does the issuance of the OAEO report or
23 its contents change the fact of racial disparities in
24 income and poverty?

25 A. No.

1 Q. In your report you discuss racial
2 isolation in education and how students' poverty
3 rates in African-American schools are higher than
4 poverty rates in white schools which has implications
5 for educational outcomes. Is that a fair and
6 accurate representation -- description of what you
7 discuss in your report?

8 MR. VOIGT: Same objection, continuing
9 objection to all of these questions because they are
10 beyond the scope of the direct examination.

11 MR. YOUNG: Same standing response.

12 A. Yes.

13 Q. Does the -- and is that description true?

14 A. Yes.

15 Q. Does the availability of early voting on
16 two Saturdays change the fact of racial isolation in
17 education?

18 A. No.

19 Q. Does the availability of early voting on
20 one Sunday change the fact of racial isolation in
21 education?

22 A. No.

23 Q. Does the availability of early voting on
24 two Saturdays and one Sunday change the fact of
25 racial isolation in education?

1 A. No.

2 Q. Does the polling location for early
3 voting change the fact of racial isolation in
4 education?

5 A. No.

6 Q. Does the fact that early voting hours are
7 uniform across counties change the fact of racial
8 isolation in education?

9 A. No.

10 Q. Does the motivation behind any of these
11 early voting restrictions change the fact of racial
12 isolation in education?

13 A. No.

14 Q. Does the availability of mail-in voting
15 change the fact of racial isolation in education?

16 A. No.

17 Q. Does the fact that polls are open on
18 election day from 6:30 a.m. to 7:30 p.m. change the
19 fact of racial isolation in education?

20 A. No.

21 Q. Does the voter turnout or behavior in
22 other states change the fact of racial isolation in
23 education?

24 A. No.

25 Q. Does the issuance of the OAE0 report or

1 its contents change the fact of racial isolation in
2 education?

3 A. No.

4 Q. Is your opinion, as you describe I
5 believe on page 25 of your report -- I apologize,
6 page 24 to 25 of your report, is it your opinion that
7 there are significant racial disparities across a
8 variety of health indicators?

9 MR. VOIGT: Again, standing objection to
10 the entire line of questioning because it's beyond
11 the scope of the direct examination.

12 MR. YOUNG: Same response.

13 A. Yes.

14 Q. Does the availability of early voting on
15 two Saturdays change the fact of these racial
16 disparities in health?

17 A. No.

18 Q. Does the availability of early voting on
19 one Sunday change the fact of these racial
20 disparities in health?

21 A. No.

22 Q. Does the availability of early voting on
23 two Saturdays and one Sunday change the fact of
24 racial disparities in health?

25 A. No.

1 Q. Does the polling location for early
2 voting change the fact of racial disparities in
3 health?

4 A. No.

5 Q. Does the fact that early voting hours are
6 uniform across counties change the fact of racial
7 disparities in health?

8 A. No.

9 Q. Does the motivation behind any of these
10 early voting restrictions change the fact of racial
11 disparities in health?

12 A. No.

13 Q. Does the availability of mail-in voting
14 change the fact of racial disparities in health?

15 A. No.

16 Q. Does the fact that polls are open on
17 election day from 6:30 a.m. to 7:30 p.m. change the
18 fact of racial disparities in health?

19 A. No.

20 Q. Does the voter turnout or behavior in
21 other states change the fact of racial disparities in
22 health in Ohio?

23 A. No.

24 Q. Does the issuance of the OAEO report or
25 its contents change the fact of racial disparities in

1 health?

2 A. No.

3 Q. I'm almost done, I promise. Is it your
4 opinion that there are significant and substantial
5 patterns of racially polarized voting in Ohio?

6 A. Yes.

7 Q. Does the availability of early voting on
8 two Saturdays --

9 MR. VOIGT: Objection. I'm sorry.

10 MR. YOUNG: That's okay.

11 MR. VOIGT: Objection, continuing
12 objection to the line of questioning because it's
13 beyond the scope of the direct examination.

14 MR. YOUNG: Same response.

15 Q. Does the availability of early voting on
16 two Saturdays change the fact of racially polarized
17 voting?

18 A. No.

19 Q. Does the availability of early voting on
20 one Sunday change the fact of racially polarized
21 voting?

22 A. No.

23 Q. Does the availability of early voting on
24 two Saturdays and one Sunday change the fact of
25 racially polarized voting?

1 A. No.

2 Q. Does the polling location for early
3 voting change the fact of racially polarized voting?

4 A. No.

5 Q. Does the fact that early voting hours are
6 uniform across counties change the fact of racially
7 polarized voting?

8 A. No.

9 Q. Does the fact that -- does the motivation
10 behind any of these early voting restrictions change
11 the fact of racially polarized voting?

12 A. No.

13 Q. Does the availability of mail-in voting
14 change the fact of racially polarized voting?

15 A. No.

16 Q. Does the fact that polls are open on
17 election day from 6:30 a.m. to 7:30 p.m. change the
18 fact of racially polarized voting?

19 A. No.

20 Q. Does the voter turnout or behavior in
21 other states change the fact of racially polarized
22 voting?

23 A. No.

24 Q. Does the issuance of the OAE0 report or
25 its content change the fact of racially polarized

1 voting in Ohio?

2 A. No.

3 Q. In your report is it correct that you
4 describe a significant -- withdrawn.

5 Is it correct that in your report you
6 describe racial discrimination in employment and in
7 housing in Ohio?

8 A. Yes.

9 MR. VOIGT: Objection, beyond the scope
10 of the direct examination.

11 MR. YOUNG: Same response.

12 Q. Does the availability of early voting on
13 two Saturdays change the fact of this racial
14 discrimination?

15 A. No.

16 Q. Does the availability of early voting on
17 one Sunday change the fact of this racial
18 discrimination?

19 A. No.

20 Q. Does the availability of early voting on
21 two Saturdays and one Sunday change the fact of this
22 racial discrimination?

23 A. No.

24 Q. Does the polling location for early
25 voting change the fact of this racial discrimination?

1 A. No.

2 Q. Does the fact that early voting hours are
3 uniform across counties change the fact of racial --
4 change this fact of this racial discrimination?

5 A. No.

6 Q. Does the motivation behind any of these
7 early voting restrictions change the fact of this
8 racial discrimination?

9 A. No.

10 Q. Does the availability of mail-in voting
11 change the fact of this racial discrimination?

12 A. No.

13 Q. Does the fact that polls are open on
14 election day from 6:30 a.m. to 7:30 p.m. change the
15 fact of this racial discrimination?

16 A. No.

17 Q. Does the voter turnout or behavior in
18 other states change the fact of this racial
19 discrimination?

20 A. No.

21 Q. Does the issuance of the OAE0 report or
22 its contents change the fact of this racial
23 discrimination?

24 A. No.

25 Q. Is it correct that your report discusses

1 a series of racial appeals under Senate Factor 6?

2 A. That's correct.

3 Q. Does the availability of early voting on
4 two Saturdays change the fact that those racial
5 appeals exist?

6 A. No.

7 MR. VOIGT: Again, continuing objection
8 to the entire line of questioning because it's beyond
9 the scope of the direct examination.

10 MR. YOUNG: Same response.

11 A. No.

12 Q. Does the availability of early voting on
13 one Sunday change the fact of these racial appeals?

14 A. No.

15 Q. Does the availability of early voting on
16 two Saturdays and one Sunday change the fact that
17 these racial appeals exist?

18 A. No.

19 Q. Does the polling location for early
20 voting change the fact that these racial appeals
21 exist?

22 A. No.

23 Q. Does the fact that these early voting
24 hours are uniform across counties change the fact
25 that these racial appeals exist?

1 A. No.

2 Q. Does the motivation behind any of these
3 early voting restrictions change the fact that racial
4 appeals exist?

5 A. No.

6 Q. Does the availability of mail-in voting
7 change the fact that these racial appeals exist?

8 A. No.

9 Q. Does the fact that polls are open on
10 election day from 6:30 a.m. to 7:30 p.m. change the
11 fact that these racial appeals exist?

12 A. No.

13 Q. Does the voter turnout or behavior in
14 other states change the fact that these racial
15 appeals exist?

16 A. No.

17 Q. Does the issuance of the OAE0 -- OAE0
18 report or its contents change the fact that these
19 racial appeals exist?

20 A. No.

21 Q. Is it your opinion that African Americans
22 in Ohio have had difficulty winning office,
23 particularly in state-level positions?

24 A. Yes.

25 MR. VOIGT: Object, continuing objection

1 to this line of questioning because it's beyond the
2 scope of the direct examination.

3 MR. YOUNG: Same response.

4 A. Yes.

5 Q. Does the availability of early voting on
6 two Saturdays change the fact that African Americans
7 in Ohio have had difficulty winning office?

8 A. No.

9 Q. Does the availability of early voting on
10 one Sunday change the fact that African Americans in
11 Ohio have had difficulty winning --

12 A. No.

13 Q. -- winning office?

14 A. No.

15 Q. Does the availability of early voting on
16 two Saturdays and one Sunday change the fact that
17 African Americans in Ohio have had difficulty winning
18 office?

19 A. No.

20 Q. Does the polling location for early
21 voting change the fact that African Americans in Ohio
22 have had difficulty winning office?

23 A. No.

24 Q. Does the fact that early voting hours are
25 uniform across counties change the fact that African

1 Americans in Ohio have had difficulty winning office?

2 A. No.

3 Q. Does the motivation behind any of these
4 early voting restrictions change the fact that
5 African Americans in Ohio have had difficulty winning
6 office?

7 A. No.

8 Q. Does the availability of mail-in voting
9 change the fact that African Americans in Ohio have
10 had difficulty winning office?

11 A. No.

12 Q. Does the fact that polls are open on
13 election day from 6:30 a.m. to 7:30 p.m. change the
14 fact that African Americans in Ohio have had
15 difficulty winning office?

16 A. No.

17 Q. Does the voter turnout or behavior in
18 other states change the fact that African Americans
19 in Ohio have had difficulty winning office?

20 A. No.

21 Q. Does the issuance of the OAE0 report
22 change the fact that African Americans have had
23 difficulty winning office?

24 A. No.

25 Q. Switching gears for a moment, you said

1 earlier that in your methodology you relied -- let me
2 rephrase.

3 In your methodology --

4 MR. VOIGT: Can I just interrupt for a
5 second? Are you shifting to another area of inquiry?

6 MR. YOUNG: Yes.

7 MR. VOIGT: Okay. Just I want to draw a
8 defining line. I think all the questions up to this
9 point -- I just want to put on the record I move to
10 strike all of the questions and answers as beyond the
11 scope of the direct examination and also because the
12 particular phraseology used in the questions is
13 misleading among other reasons.

14 MR. YOUNG: And just to restate our
15 response these questions are in direct response to
16 opposing counsel's inquiry about the relevance of
17 each of those different early voting facts and every
18 time I've asked about a certain underlying fact, it
19 relates to Professor Roscigno's opinion as expressed
20 in his report. And for those reasons, among others,
21 we oppose the motion to strike.

22 Q. Is it true that in -- that part of your
23 methodology involved relying on newspaper articles?

24 A. Yes.

25 Q. What is the methodological approach of an

1 objective researcher with respect to newspaper
2 articles generally?

3 A. The most sort of realistic systematic
4 approach is to gather the population of newspaper or
5 media data from a source such as LexisNexis which is
6 a search engine using broad criteria and then
7 analyzing the whole population to look for patterns.

8 Q. And when you say "patterns," can you
9 explain a little bit more about what you mean?

10 A. Sure. Sort of dominant themes that
11 emerge within that population of art -- it would be a
12 population of articles or media in this case. So you
13 gather that population data. You read, you content
14 code potentially certain dominant themes that emerge,
15 and then you report on the dominant themes, not the
16 outlying -- not what we call outliers in social
17 science. It's not exceptions to the rule, but you're
18 reporting on what the dominant themes are.

19 Q. And is this the methodological approach
20 that you used in your report?

21 A. Yes.

22 Q. I think that you testified earlier that
23 some people who voted previously on a day that has
24 now been eliminated may be able to vote on a
25 different time. Did you -- do you recall testifying

1 to that?

2 A. I don't recall that.

3 MR. VOIGT: Objection, vague and
4 confusing.

5 MR. YOUNG: Yeah, yeah, sorry.

6 Q. I believe you earlier testified that some
7 people who voted on one day in the past election may
8 vote on a different day in a later election; is that
9 right?

10 A. Theoretically, yes.

11 MR. VOIGT: Objection, asked and
12 answered.

13 Q. How does that square with the conclusions
14 that you've given in your report?

15 A. How does it square? Can you elaborate?

16 Q. Sure. How does that fact that some
17 people who voted on one day may vote on another day
18 square with the conclusions in your report concerning
19 the impact that these early voting restrictions may
20 have?

21 MR. VOIGT: Objection, form.

22 A. Square, the initial question that you
23 posed was theoretically about whether an individual
24 might vote differently in the next election cycle
25 than the previous election cycle. Individuals may --

1 may have the opportunity to vote on different days,
2 but relative to the group patterns reported here,
3 those who had restrictions at the time one would
4 likely have restrictions at time two, so I don't know
5 that the changes that have taken place would have
6 substantial group level effects. There may be an
7 individual here or there that has flexibility to vote
8 in a new way in the next election cycle.

9 But by and large the inequalities
10 expressed and reported in this document would suggest
11 that disparities that we've seen should persist and
12 difficulties will persist.

13 Q. And just to be -- just to clarify what
14 you just explained also applies when we consider the
15 possibility that someone who might have voted on a
16 day that has now been eliminated might vote on a
17 different day?

18 MR. VOIGT: Objection, form.

19 A. That's correct.

20 Q. And I think that you testified earlier
21 that your report grapples with Senate Factor 8 which
22 is "the lack of responsiveness on the part of elected
23 officials to the particularized needs of minority
24 group members."

25 A. Right.

1 Q. Do you recall giving that testimony?

2 A. Yes.

3 Q. Can you explain what you meant by that?

4 A. By grapple or grapples?

5 Q. Sure. Yes.

6 A. The report is considering what the voting
7 restrictions -- the impact of the voting restrictions
8 on minority populations given various inequalities
9 that you've outlined, and the restrictions themselves
10 are -- are a barometer of responsiveness or lack of
11 responsiveness and by the restricting the -- the
12 argument, I think, is throughout my report, by
13 restricting you've increased the burden to the
14 minority -- to the minority population given
15 disadvantages in housing, et cetera, so I think
16 responsiveness or lack of responsiveness is, if not
17 an explicit threat, it's at least an implicit threat
18 throughout various of the tenate factors that I have
19 discussed.

20 Q. And let me just ask you this one last
21 line of questions, does the availability of early
22 voting on two Saturdays change any of the conclusions
23 that you make in your report?

24 A. No.

25 Q. Does the availability of early voting

1 on --

2 MR. VOIGT: Objection, same objection,
3 beyond the scope of the direct examination.

4 MR. YOUNG: Same response.

5 A. No was my answer.

6 Q. Does the availability of early voting on
7 one Sunday change any of the conclusions in your
8 report?

9 A. No.

10 Q. Does the availability of early voting on
11 two Saturdays and one Sunday change any of the
12 conclusions in your report?

13 A. No.

14 Q. Does the polling location for early
15 voting change any of your conclusions in your report?

16 A. No.

17 Q. Does the fact that early voting hours are
18 uniform across counties change any of the conclusions
19 in your report?

20 A. No.

21 Q. Does the motivation behind any of these
22 early voting restrictions change any of the
23 conclusions in your report?

24 A. No.

25 Q. Does the availability of mail-in voting

1 change any of the conclusions in your report?

2 A. No.

3 Q. Does the fact that polls are open on
4 election day from 6:30 a.m. to 7:30 p.m. change any
5 of the conclusions in your report?

6 A. No.

7 Q. Does the voter turnout or behavior in
8 other states change any of the conclusions in your
9 report?

10 A. No.

11 Q. Okay. Does the issuance of the OAE0
12 report or its contents change any of the conclusions
13 in your report?

14 A. No.

15 MR. YOUNG: May we have a quick break to
16 caucus and hopefully the torture will end?

17 MR. VOIGT: Sure.

18 (Recess taken.)

19 MR. YOUNG: No more questions. Reserve
20 our right to recross.

21 MR. VOIGT: Okay. I just wanted to put a
22 statement on the record that -- just to reiterate and
23 to clarify my motion and my position. Aside from the
24 short line of questioning related to gathering media
25 data which I object to for other reasons, I move to

1 strike the entire cross -- the entire examination
2 done by Mr. Young because for all the reasons
3 previously stated and because those questions were
4 misleading. They assumed facts not in evidence.
5 They were beyond the scope of my examination of the
6 witness and also to the extent the answers are
7 inconsistent with his prior testimony earlier in the
8 deposition or misstate or contradict what he
9 previously stated, among other reasons.

10 And for -- primarily for courtesy of
11 opposing counsel, I didn't want to place an objection
12 after every single question which would just burden
13 the examination so I just want to make it clear I
14 have a continuing objection to each and every one of
15 those questions, and I include those in the motion to
16 strike.

17 MR. YOUNG: And plaintiffs oppose
18 defendants' motion to strike for all the reasons
19 already stated, among other reasons.

20 MR. VOIGT: I have no further questions.

21 MR. YOUNG: And we have no further
22 questions.

23 MR. VOIGT: Okay. We're done.

24 (Thereupon, the hearing was adjourned at
25 4:22 p.m.)

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State of Ohio :
 : SS:
County of _____ :

I, Professor Vincent Roscigno, do hereby certify that I have read the foregoing transcript of my deposition given on Thursday, July 10, 2014; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

Professor Vincent Roscigno

I do hereby certify that the foregoing transcript of the deposition of Professor Vincent Roscigno was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the _____ day of _____, 2014.

Notary Public

My commission expires _____, _____.

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CERTIFICATE

State of Ohio :
County of Franklin : SS:
:

I, Karen Sue Gibson, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Professor Vincent Roscigno was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 11th day of July, 2014.

Karen Gibson
Karen Sue Gibson, Registered
Merit Reporter and Notary Public
in and for the State of Ohio.

My commission expires August 14, 2015.

(KSG-5894)

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