

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

NORTH CAROLINA STATE)
CONFERENCE OF THE NAACP,)
et al.,)
Plaintiffs,)
vs.) Case No: 1:13-CV-658
)
PATRICK LLOYD MCCRORY, in his)
official capacity as the)
Governor of North Carolina,)
et al.,)
Defendants.)

LEAGUE OF WOMEN VOTERS OF)
NORTH CAROLINA, et al.,)
Plaintiffs,)
vs.) Case No: 1:13-CV-660
)
THE STATE OF NORTH CAROLINA,)
et al.,)
Defendants.)

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) Case No: 1:13-CV-861
)
THE STATE OF NORTH CAROLINA,)
et al.,)
Defendants.)

VIDEOTAPED DEPOSITION OF
SEAN P. TRENDE

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VIDEOTAPED DEPOSITION OF
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8:58 A.M.
FRIDAY, JUNE 6, 2014

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2
3 Also
4 Present: Rob Schaaf - Intern
5
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THE VIDEOGRAPHER: On record at 8:58 a.m.

Would the court reporter please swear in the witness.

SEAN P. TRENDE,

having been first duly sworn or affirmed to tell the truth, the whole truth and nothing but the truth, testified as follows:

EXAMINATION

BY MS. MEZA:

Q. Good morning, Mr. Trende. How are you?

A. Doing great, thanks.

Q. My name is Catherine Meza and I'm here representing the United States.

Could you please state and spell your full name for the record.

A. Sean, S-E-A-N, Patrick, P-A-T-R-I-C-K, Trende, T-R-E-N-D-E.

Q. And if everyone in the room and on the phone could please introduce yourselves for the record.

MR. COOPER: Dave Cooper for the United States.

MR. MOORE: Toby Moore for the United States.

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1 that people will enjoy and then you delve down
 2 into the economics of the district, what the
 3 industries are, what the demographics are and
 4 finally kind of what the political affiliation
 5 of the district is.
 6 Now, that's a general -- I'm not saying
 7 I followed that form for every single district,
 8 but those are the general sorts of things that
 9 I wrote about.
 10 Q. What sort of research did you need to do in
 11 order to write the Almanac?
 12 A. Well, it was a lot of historical research.
 13 Some of these states I had -- I didn't have the
 14 level of knowledge that I would want, and there
 15 are all anecdotes that you never heard about,
 16 so I think for every state that I wrote I
 17 bought five or six books some of which were
 18 political trivia and some of which were
 19 history, general histories of the states.
 20 You know, we had research assistants
 21 who would do Lexis searches for the major
 22 cities and towns in the district just to pull
 23 up what's going on, what industries are moving
 24 in or out. If it was -- if it was a state like
 25 North Carolina that provides detailed

25

1 information about the demographics of the
 2 districts, I would look at that because that's
 3 obviously highly relevant for understanding the
 4 politics of a district.
 5 Had to calculate election returns for
 6 some of these districts because they hadn't
 7 come out -- they hadn't been published formally
 8 by Politico yet. Those are the types of
 9 things. I'm sure there's more.
 10 Q. Do you have any experience in elections
 11 administration?
 12 A. No.
 13 Q. Have you worked as a consultant on any
 14 election-related issues?
 15 A. No.
 16 Q. You state in your declaration that you are a
 17 recognized expert in the field of psephology.
 18 A. Election prediction.
 19 Q. Is psephology a formally recognized field of
 20 study in the United States?
 21 A. By whom?
 22 Q. That is can someone acquire a degree or
 23 professional certification in psephology?
 24 A. Not to my knowledge.
 25 Q. Are you aware whether any university has a

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1 department of psephology?
 2 A. No.
 3 Q. Are there professional associations of
 4 psephology?
 5 A. Not to my knowledge.
 6 Q. Are there any peer-reviewed professional
 7 journals in the field of psephology?
 8 A. Well, now -- not specifically dedicated to
 9 psephology, no.
 10 Q. You also state in your declaration that you are
 11 a recognized expert in voter behavior and voter
 12 turnout, correct?
 13 A. Yes.
 14 Q. And what qualifies you as an expert in the
 15 scientific analysis of voter behavior?
 16 A. Well, I have a graduate degree of political
 17 science that involved two semesters of graduate
 18 statistics. I took graduate courses on
 19 campaigns in elections, three that I can recall
 20 at this point, one with Dr. Gronke.
 21 Q. What -- what were the ones that you can recall?
 22 A. It was -- it was -- I don't remember the
 23 specific titles of the courses. I know that I
 24 took a course when I was -- I took a course at
 25 the University of Central Oklahoma at the

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1 graduate level that covered campaigns that
 2 counted towards my master's degree. I took a
 3 course with John Aldridge that dealt with
 4 American elections and campaigns, and I took a
 5 small seminar with John Aldridge and Paul
 6 Gronke that dealt with campaigns and elections.
 7 And in addition for the statistics
 8 classes, you always had to do statistical
 9 projects and I would always choose an election
 10 or turnout-related issue.
 11 Q. And everything you've just named that you are
 12 representing would qualify you as an expert in
 13 the analysis of voter behavior?
 14 A. Well, what do you mean by expert?
 15 Q. You have called yourself an expert in voter
 16 behavior. What do you mean by expert?
 17 A. Sure, sure. Expert is also a legal term, and
 18 so I haven't looked up the regular legal term
 19 or the definition of the legal term of expert.
 20 With the understanding that I'm
 21 referring to my own understanding of what an
 22 expert would be or what people would recognize
 23 as an expert, yeah, that does qualify me as an
 24 expert. It gives me a degree of understanding
 25 that far exceeds what we would call a lay

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1 Q. You didn't mention those other reports in here?
 2 A. No.
 3 Q. Can you think of any examples of them?
 4 A. I think earlier in my deposition I mentioned
 5 Alvarez's 2012 piece.
 6 Q. Alvarez in 2012 concludes that minority voters
 7 disproportionately rely on early voting, does
 8 he not?
 9 A. Off the top of my head, I thought Alvarez was
 10 talking about income, but I would have to go
 11 back and reread the article.
 12 Q. You didn't mention the Alvarez article in your
 13 report?
 14 A. No.
 15 Q. You decided --
 16 (Brief Interruption.)
 17 MR. FARR: This suggests the department
 18 had something like that when you've been on the
 19 phone too long.
 20 MS. MEZA: I don't know that we've had
 21 a conference call go on this long, and I don't
 22 know that they call in for depositions.
 23 BY MR. HO:
 24 Q. So you chose not to mention those other
 25 articles that you read in your report?

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1 A. I didn't mention them, no.
 2 Q. You're aware that under the rules you're
 3 obliged to list all the materials on which you
 4 relied in formulating your opinion?
 5 MR. FARR: Objection to the form.
 6 THE WITNESS: If I listed every article
 7 that I ever read that was remotely related to
 8 the opinions that I formed, we would have a
 9 stack of articles to the ceiling.
 10 These are the major articles on which I
 11 relied.
 12 BY MR. HO:
 13 Q. Did you look at any article suggesting that
 14 early voting increases turnout?
 15 A. What do you mean by suggesting?
 16 Q. Did you read any articles where the author
 17 suggested based on empirical research that
 18 early voting produces an increase in turnout?
 19 A. I don't know if I did.
 20 Q. You're aware that there are articles that posit
 21 that relationship?
 22 A. Well, I know that Dr. Gronke has cited some
 23 articles in his report that hypothesize that
 24 because of 2008 and 2012 we should conclude
 25 that there's been a phase shift. That's just

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1 not a view that I necessarily agree with.
 2 Q. Did you read those articles?
 3 A. Do you have Dr. Gronke's report?
 4 Q. I don't.
 5 A. I read -- I know I read some articles that he
 6 cites to.
 7 Q. Do you remember off the top of your head
 8 whether or not you read articles cited in
 9 Dr. Gronke's report positing that early voting
 10 increases turnout?
 11 A. I don't remember the exact conclusion. If you
 12 told me that the Smith article in one of his
 13 footnotes had that presupposition, I wouldn't
 14 disagree with you.
 15 Q. Did you look at academic papers concerning
 16 differential use of early voting across racial
 17 groups?
 18 A. I know that is part of the literature, and I'm
 19 sure I did read some of those articles.
 20 Q. Do you remember any of them -- can you tell me
 21 any of them here today?
 22 A. No. That wasn't the direct concern of my
 23 report and so I didn't make mental notes of
 24 those articles.
 25 I do think, again, the -- he has two

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1 Smith articles that he cites to that I believe
 2 do talk about differential rates, but without
 3 the report --
 4 Q. Did you read those Smith articles?
 5 A. I did.
 6 Q. But you didn't cite them?
 7 A. No.
 8 Q. You only cited the academic pieces that you
 9 thought would serve your conclusion?
 10 MR. FARR: Objection to the form.
 11 THE WITNESS: No. I note that there is
 12 conflicting nature of peer-reviewed scholarly
 13 literature and cited the ones that are most
 14 directly -- that bear the most heavily on the
 15 turnout issue as well as ones that tended to
 16 be, I thought, relevant.
 17 BY MR. HO:
 18 Q. Your report does not contain a discussion of
 19 the academic literature on same-day
 20 registration, does it?
 21 A. No.
 22 Q. You didn't think that was important?
 23 A. No.
 24 Q. Are you aware of a scholarly consensus that
 25 same-day registration increases turnout?

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1 A. Yes.
 2 Q. And you're aware that that literature indicates
 3 positive effects on low-income voters?
 4 A. Caveat about your definition low-income voters.
 5 I will stipulate to differential effects among
 6 income groups.
 7 Q. You didn't think to mention that in your
 8 report?
 9 A. No.
 10 Q. You're aware of the literature indicating that
 11 same-day registration has a positive effect on
 12 African American turnout?
 13 A. I don't know that I did read anything on that.
 14 Q. Do any of the articles that you cite here, the
 15 seven that we listed, discuss same-day
 16 registration?
 17 A. I believe the 2014 Burden piece does.
 18 Q. To your knowledge, what does Professor Burden
 19 conclude about the effect of same-day
 20 registration?
 21 A. I believe he says that it can partly counteract
 22 the depressive effect of early voting on
 23 turnout, same-day registration.
 24 Q. Do any of the articles that you cite conclude
 25 that same-day registration has no effect on

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1 turnout?
 2 A. I don't believe so.
 3 Q. Are you aware of a single peer-reviewed article
 4 indicating that same-day registration has no
 5 effect on turnout?
 6 A. On total turnout, no.
 7 Q. So I want to talk about the different articles
 8 you cite here. Let's talk about the LaRocca
 9 and Klemanski article.
 10 A. Okay.
 11 Q. That was published in 2011?
 12 A. Yes.
 13 Q. It's based on data up into the 2008 election;
 14 is that right? Do you remember? You can turn
 15 to page 84 of the article.
 16 A. Okay. So it discusses the 2000, 2004 and 2008
 17 elections.
 18 Q. Doesn't go past 2008, correct?
 19 A. No.
 20 Q. This article does not look at whether there are
 21 differential effects of early voting on
 22 different racial groups, does it, to your
 23 recollection?
 24 A. I don't believe it does.
 25 Q. This article looks at the effect that adding

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1 early voting has on turnout, correct?
 2 A. Come again.
 3 Q. This article looks at what effect, if any,
 4 adding early voting opportunities has on
 5 turnout, correct?
 6 A. Correct.
 7 Q. It does not look at the effect of removing
 8 early voting opportunities and what that might
 9 have on turnout, correct?
 10 A. I guess that's technically true, yeah.
 11 Q. Let's talk about the Giammo and Brox article
 12 from 2010.
 13 A. Okay.
 14 Q. That article is based on data up until the 2006
 15 election, correct?
 16 A. I believe that's right.
 17 Q. That article does not look at whether there are
 18 differential effects of early voting on
 19 different racial groups, correct?
 20 A. Without the article in front of me, I can't say
 21 that conclusively, but as I sit here today, I
 22 wouldn't have reason to disagree with you.
 23 Q. To your recollection, it doesn't?
 24 A. Correct.
 25 Q. That article does not look at what effects, if

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1 any, there are for removing early voting
 2 opportunities on turnout, does it?
 3 A. Technically I believe that's correct.
 4 Q. All right. Let's talk about the Burden, et
 5 al., 2014 and 2009 articles.
 6 A. We can lump them together.
 7 Q. They're essentially the same article, right?
 8 A. It's a fair point that Dr. Gronke makes, yes.
 9 Q. So these articles are both based on data up
 10 until the 2008 election, correct?
 11 A. Correct.
 12 Q. Nothing post 2008?
 13 A. Correct.
 14 Q. And the article does not look at differential
 15 effects of early voting on different racial
 16 groups, correct, to your recollection?
 17 A. Correct, because he is using race as a
 18 demographic control, so the relationship would
 19 be between racial turnout -- race and turnout,
 20 yes.
 21 Q. So he doesn't essentially evaluate whether or
 22 not early voting has different effects on
 23 different racial groups?
 24 A. Not to my recollection.
 25 Q. And he doesn't attempt to look at whether or

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1 say with certainty no on out-of-precinct voting
2 and pre-registration.
3 Q. Before you were retained in this case, had you
4 ever conducted any regression or any analysis
5 involving a regression to determine the effect
6 of any variable on voter turnout?
7 A. Any variable -- I'm sorry, you're going to have
8 to repeat that question.
9 Q. Before you were retained in this case, had you
10 ever prepared a regression or conducted any
11 analysis involving a regression in order to
12 measure the effect of a law on voter turnout?
13 A. I'm sure I've done that. I can't cite specific
14 instances without my body of work in front of
15 me, but I would be very surprised if that had
16 never -- if that had never been done.
17 Q. As you sit here today, you can't think of any
18 examples?
19 A. Well, no.
20 Q. In the footnote on page 40 of your report --
21 A. Okay.
22 Q. -- you mention that same-day registration
23 comparisons are difficult because the way
24 they're implemented, correct?
25 A. Correct.

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1 Q. In this report, though, you do compare same
2 day -- you do compare different states with
3 same-day registration, correct?
4 A. Correct.
5 Q. And you don't take into account any of the
6 differences in the way same-day registration is
7 implemented in these states, do you?
8 A. No. Like I say, it's difficult to do that.
9 Q. Very early on in the deposition, hours ago, you
10 were discussing your deposition prep session,
11 you mentioned an individual named Dale in the
12 session. Do you recall that?
13 A. I believe that was his name.
14 Q. Do you remember what you discussed with Dale?
15 A. No.
16 Q. How did he contribute to the preparation
17 session?
18 A. He was a very nice man. He told a lot of
19 stories about the good ol' days of litigation.
20 Q. Did he ask you any questions about the case?
21 A. You know, I actually don't think he did.
22 Q. When you're measuring voter participation in
23 your report, what are the two variables that go
24 into that measurement?
25 A. Where are we?

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1 Q. Anywhere in your report. For instance, Figure
2 11 you mention the change in African American
3 participation as a heading.
4 A. Right.
5 Q. What are the two variables that go into that
6 measurement?
7 A. It is citizen -- well, as it appears in the
8 CPS -- well, it's four data points that create
9 the variable. It's the number of African
10 American citizens in the state in 2000 and
11 2012, so that's two, and then the number of
12 African American voters in the state in 2000
13 and 2012, so that's another two.
14 Q. And when you say African American citizens, are
15 you referring to the citizen voting age
16 population?
17 A. Right.
18 Q. And why do you choose to use the citizen voting
19 age population rather than the voting age
20 population?
21 A. Because if you're not a citizen, my
22 understanding is you can't vote.
23 Q. So any analysis that relied on the voting age
24 population or any analysis of voter
25 participation relied on the voting age

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1 population would you consider that to be
2 accurate?
3 A. If you are discussing the African American
4 population, I actually don't think it's a huge
5 issue. I was being precise with CVAP.
6 You know, with the Hispanic population,
7 with the larger immigrant base, it is more of a
8 problem, but with the African American
9 population, I don't know that it actually would
10 produce any differential effects.
11 Q. So if you're not limiting yourself to the
12 African American population, if you were to use
13 the voting age population without -- without
14 narrowing to the CVAP, would that create errors
15 in your analysis?
16 A. Well, again, when you're talking about
17 everyone, you know, Hispanics are a smaller
18 share of that, and especially if you're
19 subtracting over time, some of that error is
20 going to be subtracted out.
21 You know, I think it would be better to
22 use CVAP but, I don't think it would be the
23 death of the analysis not to do so.
24 Q. Of those data points you mentioned, the CVAP is
25 the denominator, correct?

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