

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

DRAFT

MARC VEASEY, ET AL.,)	CASE NO: 2:13-CV-00193
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
RICK PERRY, ET AL.,)	Friday, September 5, 2014
)	(7:58 a.m. to 12:08 p.m.)
Defendants.)	(1:08 p.m. to 6:16 p.m.)

BENCH TRIAL - DAY 4

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances: See Next Page

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1 Corpus Christi, Texas; Friday, September 5, 2014; 7:58 a.m.

2 (Call to order)

3 **THE COURT:** Good morning. Court calls Cause Number
4 2-13-193, *Veasey, et al. versus Perry, et al.* We're ready to
5 proceed.

6 **MR. DUNN:** Good morning, your Honor.

7 **THE COURT:** Good morning.

8 **MR. DUNN:** Chad Dunn on behalf of the Veasey/LULAC
9 Plaintiffs. We'd like to spend a few minutes this morning
10 reading the testimony from Senator Wendy Davis in the Section 5
11 trial that was undertaken in Washington, D.C. I have handed a
12 highlighted copy to the State. I'm handing one up to the Court
13 now. Ms. Simson's in the witness box to read on behalf of the
14 Senator. I'll proceed when ready.

15 **THE COURT:** You can proceed.

16 **EXAMINATION OF WENDY DAVIS BY EXCERPTS OF DEPOSITION TESTIMONY**

17 **(QUESTIONS READ BY MR. DUNN; ANSWERS READ BY MS. SIMSON)**

18 "QUESTION: Please state your name.

19 "ANSWER: Wendy Davis.

20 "QUESTION: Senator Davis, would you introduce
21 yourself to the Court?

22 "ANSWER: Yes. I'm a State Senator representing
23 District 10 in Tarrant County.

24 "QUESTION: How would you describe District 10 and
25 the people who make it up?

1 "ANSWER: District 10 is a majority minority
2 district. It's a very diverse district
3 socioeconomically and ethnically.

4 "QUESTION: We'll come back to your district. But
5 could you give us a brief summary of your background?

6 "ANSWER: Yes. I was raised in Tarrant County. I
7 was a single parent, very young at 19. I put myself
8 through community college working two jobs and
9 through TCU. I graduated valedictorian of my TCU
10 class and then graduated from Harvard Law School with
11 honors. I clerked for a federal judge and then
12 practiced law for a number of years. I'm still
13 practicing law, but I served on the city council in
14 Fort Worth for nine years before I was elected to the
15 Texas Senate in 2008."

16 **MR. DUNN:** Moving to page 15, line 22.

17 "QUESTION: Describe where your district is in the
18 state.

19 "ANSWER: It's in Tarrant County, which is in north
20 Texas, the Dallas-Fort Worth metroplex area is north
21 Texas. This district is wholly contained within
22 Tarrant County. It includes most of Fort Worth,
23 about half of Arlington, and then it goes south to
24 the Johnson County, Tarrant County line. And it
25 takes in a tremendous amount of minority growth that

1 has been occurring in those southern areas and
2 traditionally minority neighborhoods in the Fort
3 Worth urban communities that have been there for
4 generations, both Latino and African American.

5 "QUESTION: Is that a growing population in Texas?

6 "ANSWER: Yes, it is.

7 "QUESTION: Is it a growing population in your
8 district?

9 "ANSWER: Yes, it is.

10 "QUESTION: I would like to turn your attention now
11 to the 2011 legislative session which you were
12 present for; is that true?

13 "ANSWER: Yes.

14 "QUESTION: Were there issues of race that came up
15 often in that session?

16 "ANSWER: We had several deeply divisive bills that
17 were debated in that session, all of which revolved
18 around what we believed to be racially discriminatory
19 intended motives. The redistricting bill, of course,
20 my district, as some in this courtroom are familiar,
21 was the target of redistricting. The people that I
22 represent were carved apart to decimate the minority
23 vote there. The voter ID bill, of course, we all
24 believed was a racially motivated bill. There was a
25 bill that would have removed the in-state tuition for

1 students who were undocumented and who were brought
2 to this country when they were young children. And
3 those things collectively really I think formed a
4 great deal of acrimony in the Senate. Also, there
5 was a very divisive Arizona-style sanctuary city bill
6 that was debated and ultimately defeated, but it was
7 a very, very difficult battle.

8 "QUESTION: I think our record here reflects that the
9 photo ID bill was one of the first ones that came up
10 in the session; is that true?

11 "ANSWER: The first bill, yes.

12 "QUESTION: How did that come about that it was
13 first?

14 "ANSWER: It came about in an extraordinary manner.
15 I don't believe any other bill has ever been brought
16 forward in the same manner as this one. It received
17 two special designations. One was it was a special
18 order bill, so it was placed outside of the regular
19 order of business and did not have to be taken under
20 the two-thirds rule as all of our other bills do to
21 come to the Senate floor. And then secondly, it was
22 named an emergency item by the Governor's office.
23 And those two things in combination I don't believe
24 had ever occurred before. We asked our colleagues
25 what the emergency was and no one could seem to

1 define that for us, but it was an emergency item. It
2 didn't have to go through the normal procedures and
3 the time lag that typically a bill would take before
4 it's brought to the floor for debate. It was brought
5 for debate within the first few days of the session.
6 Normally under our rules it's 60 days before a bill
7 can be brought to the Senate floor for debate.

8 "QUESTION: Was there something abnormal about the
9 hearing notice and hearing process?

10 "ANSWER: There was. The hearing notice actually
11 went out three days before the bill and had even been
12 referred to committee, and I don't believe that's
13 ever happened in the history of Texas.

14 "QUESTION: Just describe for us in the record what
15 the hearing notice is and what its purpose is.

16 "ANSWER: The hearing notice's purpose is to inform
17 the public committee of a hearing that will take
18 place on an issue that they may be concerned about
19 and may want to provide input on.

20 "QUESTION: And the hearing notice, how many days if
21 you can recall did it come out before the actual
22 debate was undertaken?

23 "ANSWER: It came out four days -- well, no, actually
24 three days before the actual bill was undertaken.

25 "QUESTION: Despite the notice, did you have some

1 time to prepare for the Senate Bill 14 debate?

2 "ANSWER: Well, we had debated this bill in prior
3 sessions so yes, in that sense. We certainly
4 understood and had had testimony in prior sessions
5 about the pros and cons of such a bill and were
6 prepared from that perspective.

7 "QUESTION: Did you review anything this session to
8 get ready, court decisions, past history, anything of
9 that sort?

10 "ANSWER: I personally did. I went through the --
11 back through the records of prior sessions and
12 refreshed my memory about the fiscal notes that were
13 attached to the bills in prior sessions, what the
14 bills included in prior sessions, and how this bill
15 was unique. And then I also read the Supreme Court's
16 opinion that had been fairly recently rendered in the
17 Indiana voter ID law so that I could understand what
18 it was about that bill that the court found to allow
19 it to be sustained under the Constitution.

20 "QUESTION: And in that work and in reviewing the
21 Crawford opinion, did that help you prepare some
22 amendments on this matter?

23 "ANSWER: Yes, it did.

24 "QUESTION: We'll come back to those, but first I
25 want to get to this mention of the fiscal note.

1 Would you describe what that is to the Court?

2 "ANSWER: Yes. For every bill that comes through the
3 Senate or the House, a fiscal note is prepared by the
4 legislative budget board. And that is to inform us
5 when we're making decisions on legislation what the
6 possible cost to the State might be and whether we
7 have the resources to cover those costs.

8 "QUESTION: Who are the members of the budget board?

9 "ANSWER: The board itself is made up of the
10 Government, Lieutenant Governor, Speaker of the
11 House, Land Commissioner, and I believe the
12 Comptroller.

13 "QUESTION: And are fiscal notes typically prepared
14 on every bill?

15 "ANSWER: Every single bill.

16 "QUESTION: Was there something special or unique
17 going on in this legislative session about the State
18 budget?

19 "ANSWER: Yes. We actually had a rule. We were
20 instructed by the Lieutenant Governor and the Speaker
21 in both chambers that we were not to advance any bill
22 with a fiscal note attached to it in this session.
23 And the reason for that was that we were facing a \$27
24 billion shortfall and we couldn't afford to add any
25 extra costs to burden the State.

1 "QUESTION: Before the session began, had the
2 Governor, Comptroller, Finance Committee members, or
3 other leaders of the State instructed agencies about
4 their budget?

5 "ANSWER: They had. Probably about six months prior
6 to the start of the session, all state agencies were
7 instructed to cut their budgets by five percent and
8 then another five percent within the days preceding
9 the session. And those cuts were very, very deep.
10 So by the time we started, a significant number of
11 cuts had already been made and yet we were still
12 looking at a \$27 billion shortfall and deeper cuts
13 that were going to have to be made.

14 "QUESTION: But why were you concerned then about the
15 fiscal notes specifically on Senate Bill 14?

16 "ANSWER: I was concerned because I didn't feel like
17 the fiscal note accurately represented what the true
18 cost of the voter ID bill would bring to the State if
19 indeed the State complied with its commitment that it
20 was going to provide an adequate public education and
21 election worker education program for this dramatic
22 change, and also for the cost of the State IDs
23 themselves that could be issued now for free if
24 persons needed them for purposes of voting.

25 "QUESTION: In trying to investigate your concerns

1 over the fiscal impact of the bill, did you look at
2 the fiscal notes in this session and the ones past?

3 "ANSWER: I did.

4 "QUESTION: What did you learn?

5 "ANSWER: What I learned was that in the 79th
6 session, the first session that this bill was taken
7 up, the fiscal note that attached to it was 130,000
8 per year, and that was based on an estimate of the
9 number of persons who might be indigent who would be
10 seeking free state ID cards for purposes of voting.

11 In the 80th session --

12 "QUESTION: Let me stop you right there. Was there
13 an estimate in that fiscal note of how folks -- the
14 LBB (phonetic) thought --

15 "ANSWER: That one, it was just a vague reference to
16 the fact that they looked at the poverty guidelines
17 and determined out at a \$15 cost per ID, that's what
18 they expected.

19 "QUESTION: All right, so what else did you learn?

20 "ANSWER: In the 80th session \$171,000 per year note
21 was added and it was added based on an estimate that
22 11,000 people per year would seek the free ID based
23 on indigency status. So in a state of multimillions
24 of people, the estimate was that 11,000 people would
25 ask you for those.

1 "QUESTION: Let me stop you. Let's be frank, do you
2 think that 11,000 estimate was accurate?

3 "ANSWER: No, absolutely not.

4 "QUESTION: Do you think it was over representative
5 or under?

6 "ANSWER: Under.

7 "QUESTION: What else did you learn?

8 "ANSWER: Also in that session, about a week later
9 the fiscal note was amended or changed. And the
10 fiscal note increased to a cost of \$670,000 a year,
11 and that change was based on the fact that the way
12 the bill was written was to allow any person who
13 wanted a state ID for purposes of voting to request
14 that for free. There was no language in the bill
15 that limited it to persons who were indigent. So
16 that \$670,000 cost per year was based on looking at
17 the number of people in the State of Texas who
18 currently have non-driver's license, state photo IDs
19 that have been issued to them, and the belief that
20 approximately 50 percent of them would be interested
21 in renewing that. It didn't accommodate any new
22 requests for them. And it looked out over a six year
23 period of time of renewals and came up with a total
24 of about \$4 million for that six-year renewal period.
25 "QUESTION: Then did you follow up in the later

1 fiscal notes?

2 "ANSWER: Yes. Then in the 81st session, when the
3 bill was first generated from the Senate rather than
4 from the House, suddenly there was no fiscal note
5 attached for the cost of the IDs themselves.

6 "QUESTION: Let me make sure it's clear. There was a
7 fiscal note with no impact or there just wasn't one
8 prepared at all?

9 "ANSWER: There was a fiscal note with no impact.
10 Then later after we questioned that on the Senate
11 floor, it was suggested that HAVA funds that the
12 State had to use in the amount of \$2 million would be
13 the funds that would be the funds that would be used
14 to provide better education and election worker
15 training.

16 "QUESTION: Now, that HAVA money that was left, was
17 it your understanding that's all of the HAVA money
18 that was remaining from the fund?

19 "ANSWER: That was my understanding.

20 "QUESTION: Had the State been spending its HAVA
21 money on election-related matters?

22 "ANSWER: Yes. I asked that question of the
23 Secretary of State on the Senate floor when we were
24 debating the bill. How had the State spent that
25 money in the past? And what was indicated to me was

1 that in 2008, the State had spent \$3 million just on
2 normal better education efforts."

3 **MR. DUNN:** Continuing to page 25, line 7 for the
4 continuation of the answer.

5 "A \$2 million note was added which I found unusual
6 that such an extraordinary change in our voter
7 requirements was only going to cost or could be
8 possibly adequately funded with a \$2 million number
9 when in 2008, just in the ordinary course of election
10 administration and voter education, \$3 million had
11 been spent from that fund.

12 "QUESTION: Was there any money budgeted in the
13 fiscal note past the \$2 million?

14 "ANSWER: There was not. There was a single
15 expenditure, a one-time expenditure, of \$2 million.
16 Again, as I said, nothing in the 81st or 82nd
17 legislative session that covered the cost of the IDs
18 that would be issued.

19 "QUESTION: Let's move to the next and final fiscal
20 note, the 82nd. What did it reflect?

21 "ANSWER: Again, that same \$2 million number which
22 had been maintained for this purpose from the prior
23 session.

24 "QUESTION: What would -- how was that \$2 million to
25 be spent as proposed in the fiscal note?

1 "ANSWER: Well, it was interesting. It was broken
2 down purely for voter education. There was no money
3 set aside at all for election worker education
4 according to the fiscal note. And the fiscal note
5 said that \$500,000 would be spent on researching what
6 the education effort needed to be; \$750,000 of it was
7 going to the television market for purposes of
8 informing voters about it, and the remainder was
9 through internet and radio and newspaper.

10 "QUESTION: Are you familiar with the media markets
11 in Texas?

12 "ANSWER: Yes, I am.

13 "QUESTION: Why are you familiar with it?

14 "ANSWER: Because of my elections and running
15 campaign ads on television.

16 "QUESTION: Is the amount of money proposed in the
17 fiscal note in the latest legislative session enough
18 to get out the word throughout the State, in your
19 opinion?

20 "ANSWER: Well, just to give you an example, when I
21 ran for election in 2008, I bought what was
22 considered a very weak media buy for a campaign and
23 the air time alone just for the Dallas-Fort Worth
24 market cost \$1.1 million. The \$750,000 that was set
25 aside in the fiscal note to inform voters by

1 television in the entire State of Texas wouldn't have
2 bought 30 seconds of airtime in one county let alone
3 the entire state.

4 "QUESTION: Now, I'd like to sidestep for a minute
5 and talk about the Department of Public Safety. Had
6 there been budget cuts in that agency recently?

7 "ANSWER: There had been and it was part of that
8 overall budget cut that had been requested prior to
9 the session. Before we came into the 82nd session,
10 81 driver's license offices were closed as a
11 consequence of the five percent previous budget cut
12 which was about a 14 and a half million dollar cut to
13 the agency.

14 "QUESTION: Have those offices been reopened?

15 "ANSWER: No, they have not.

16 "QUESTION: Has the reopening of those offices or
17 replacement of them been funded by this bill or any
18 other action in the last legislature?

19 "ANSWER: There was funding that was set aside for
20 the creation of supercenters that would be built. It
21 was about a \$65 million number, and it was recently
22 announced that two of those would be in Dallas-Fort
23 Worth, two to be in Houston, one in San Antonio, and
24 one in Austin. But none of the rural areas where so
25 many of those officers were closed have reopenings

1 under that funding.

2 "QUESTION: So as you prepared for -- or actually
3 just one more question about the HAVA money. Did you
4 do some inquiry into what HAVA money was left and
5 what it could be lawfully used for under federal law?

6 "ANSWER: Yes, I did.

7 "QUESTION: And what did you discover?

8 "ANSWER: I discovered as I was looking at the
9 provisions of law in terms of how HAVA money was to
10 be spent was that there was a particular constraint
11 upon spending HAVA monies for purposes of any type of
12 change in voter law that might not be consistent with
13 what had been done in the past.

14 "QUESTION: All right. Now I'd like to turn your
15 attention to some amendments that you offered. Can
16 you just identify to the Court how many amendments
17 that you offered?

18 "ANSWER: I offered a total of 13. One of them was
19 duplicative because I had pulled one down and then
20 reoffered it.

21 "QUESTION: Do these amendments fall into some
22 reasonable categories?

23 "ANSWER: Yes. I think you could essentially say
24 they fell into two categories. One was where people
25 were indigent and trying to accommodate making sure

1 that we were providing the best opportunity for
2 voting for those persons as possible. And the other
3 was for instances where there were discrepancies in
4 information that might be on someone's voter ID card
5 versus their driver's license, say an address
6 discrepancy or a name discrepancy and because of
7 marriage or divorce, etcetera.

8 "QUESTION: And I should clarify for the record,
9 these amendments were offered in the debate on Senate
10 Bill 14?

11 "ANSWER: Yes, they were.

12 "QUESTION: In the first category of amendments that
13 you discussed indigency, why were you concerned about
14 indigent impact for the bill?

15 "ANSWER: Well, we had some testimony in both
16 sessions from experts who had looked at the overall
17 impact of voter ID laws. The concern that as much as
18 ten to 11 percent of persons who currently legally
19 were exercising their right to vote would be impacted
20 by such a bill because of their inability to get a
21 new ID.

22 "QUESTION: And in your district in your state, have
23 you looked into the types of folks that predominantly
24 make up the indigent citizen rate?

25 "ANSWER: Yes.

1 "QUESTION: What did you -- what have you discovered?

2 "ANSWER: Well, what is the case in the State of
3 Texas, as I suppose it is elsewhere, is that our
4 indigent population is primarily made up of persons
5 who are minority.

6 "QUESTION: Now, I want to go through some of your
7 amendments. But is it fair to say that all of your
8 amendments except one were rejected or tabled?

9 "ANSWER: Yes.

10 "QUESTION: And when those amendments were tabled,
11 who were the folks voting in favor of keeping the
12 amendments?

13 "ANSWER: The Democrats or the persons who
14 represented minority communities.

15 "QUESTION: All right. I want to start -- and I'm
16 just going to move through these somewhat quickly and
17 stop on a few. What did your floor amendment number
18 two do? And for the record, that's at joint appendix
19 1239.

20 "ANSWER: Floor amendment number two would have
21 required when people come into the driver's license
22 offices, that they be informed that they could be
23 provided with a state voter photo ID card free of
24 charge. If the card was to be free of charge, I
25 wanted to make sure that we were informing the public

1 community that that was the case.

2 "QUESTION: And so it had no other impact other than
3 making sure that people knew when they showed up at
4 DPS, the card would be free?

5 "ANSWER: It was a simply communication, yes.

6 "QUESTION: Was that rejected?

7 "ANSWER: Yes, it was.

8 "QUESTION: I'd like to move now to floor -- move
9 down to amendment -- floor amendment 12, which for
10 the record is at joint appendix 1243. Can you
11 explain that amendment to us?

12 "ANSWER: Yes. On the Senate floor I talked about
13 the Indiana case. And one of the things that the
14 Supreme Court looked at in Indiana was that they had
15 made special provisions for persons who might be
16 indigent, not only in the provision of their ability
17 to get a free federal photo ID voting card, but also
18 in order to get that card, underlying documents that
19 might be needed should also be offered for free. And
20 in Indiana, that was part of the voter ID law that
21 was adopted. This amendment would have allowed those
22 underlying documents that would have been required to
23 be offered to an indigent voter for free."

24 **MR. DUNN:** And I'm going to interrupt here to let the
25 Court know that the Senate amendments are contained in

1 Plaintiffs' Exhibit 13 in this case. Continuing at page 31,
2 line 7.

3 "QUESTION: During the debate on that amendment, did
4 you prepare a demonstrative for the Senate about the
5 various costs that could go into getting an ID?

6 "ANSWER: I did.

7 "QUESTION: I'm going to show this to you. This is
8 joint appendix 1165. Is this the demonstrative that
9 you prepared?

10 "ANSWER: Yes, it is."

11 **MR. DUNN:** And can we have Plaintiffs' Exhibit 650 on
12 the screen?

13 "QUESTION: For our record, can you verbalize what
14 you are trying to describe here graphically?

15 "ANSWER: Two things. Number one, I wanted to show
16 the circularity of ID requirements. In order to get
17 a driver's license or a state photo ID, other forms
18 of ID are needed, but often times they rely on the
19 very ID that you're trying to get in order to get
20 that ID. The other thing I wanted to do was show the
21 costs of the underlining (sic) documents because the
22 argument had been made that if we were to offer these
23 free state IDs, it wouldn't impose any problem on a
24 person who might be indigent. But I argued that
25 because the underlying documents did cost money, that

1 essentially it was like going back to the days of
2 having a poll tax, that there was this hidden cost
3 that would be there for persons who were indigent who
4 would not be able to afford their underlying
5 documents to get the photo ID.

6 "QUESTION: One of the things that you have on this
7 chart is that a birth certificate costs \$23. Have
8 you since learned that is correct?

9 "ANSWER: Yes. I think it may have been correct at
10 the time we prepared this chart, but it is \$22 today,
11 plus the cost of sending out the certificate if you
12 can't come to Austin to pick it up yourself, and
13 that's an \$8 cost. So for persons who can't come
14 personally, it's a \$30 cost to get a birth
15 certificate from the State.

16 "QUESTION: Now has DPS regulatorily changed the
17 requirements to get identification in the past?

18 "ANSWER: Yes.

19 "QUESTION: And what concern, if any, do you have
20 over that?

21 "QUESTION: Well, administratively they make changes
22 that I personally believe should come through the
23 legislative process because they can have an impact,
24 a very serious impact, on what the qualifying
25 documents are to receive a State ID. And those have

1 been limited administratively over time."

2 **MR. DUNN:** The direct examination was interrupted by
3 Judge Tatel, who asked the following question:

4 "JUDGE TATEL: Senator Davis, you said that you could
5 get a birth certificate by name. Can you just -- how
6 do you -- you mean you don't have to go to the office
7 to get it, you can have it sent to you?

8 **"THE WITNESS:** Correct. You can send in the
9 underlying documents that are required to get your
10 birth certificate to the State Vital Statistics
11 Office and then have it sent to you for \$8."

12 **MR. DUNN:** Returning to the direct examination.

13 "QUESTION: So we're clear, you pay the \$22 for the
14 birth certificate and then \$8 for the delivery, for a
15 total of \$30?

16 "ANSWER: That's correct.

17 "QUESTION: On your amendment to make the underlying
18 documents to obtain the election ID for free, how was
19 it handled?

20 "ANSWER: I'm sorry, will you repeat your question?"

21 **MR. DUNN:** Judge Tatel again interrupts with a
22 question.

23 "JUDGE TATEL: I'm sorry. Can you then get the
24 election identification certificate by mail or do you
25 have to get that?

1 **"THE WITNESS:** I believe you have to go to get that,
2 yes. You have to appear in person for that."

3 **MR. DUNN:** Returning to the direct examination.

4 "QUESTION: How was your amendment resolved by the
5 Senate?

6 "ANSWER: It was tabled. But then Senator Duncan,
7 who listened intently as I was describing the reasons
8 for laying out the bill and what the bill would
9 include -- actually, it was a different one that
10 Senator Duncan brought back. This one was tabled and
11 it was not brought back.

12 "QUESTION: Let's move through this quickly and I'll
13 get to Senator Duncan's affidavit before we are --
14 because we are short on time. Amendment 13 would
15 have done what?

16 "ANSWER: It would have allowed the use of an ID that
17 had expired and it was in keeping with the Indiana
18 law.

19 "QUESTION: It was tabled?

20 "ANSWER: Yes.

21 "QUESTION: What about Amendment 15?

22 "ANSWER: Amendment 15, same thing, a little bit of a
23 limit on the expiration date on the ID that it could
24 have expired since the last general election.

25 "QUESTION: And for the record, Amendment 13 is in

1 the joint appendix. Both of these were tabled; is
2 that right, ma'am?

3 "ANSWER: Correct.

4 "QUESTION: Then on Amendment 21, what would it have
5 done?

6 "ANSWER: It would have allowed also in keeping with
7 the Indiana law that a federal government ID, a state
8 ID, or a student ID from a state education
9 institution, higher education institution, could be
10 used.

11 "QUESTION: Let's move on to floor Amendment 39 that
12 I think ultimately became floor Amendment 40. What
13 would that have done?

14 "ANSWER: That would have allowed an indigent voter
15 to swear an affidavit to their indigency and to be
16 allowed to vote a provisional ballot, and it was
17 modeled after the Indiana law.

18 "QUESTION: What happened to your version of the
19 amendment?

20 "ANSWER: My version of the amendment was tabled, and
21 actually I agreed to withdraw it after working with
22 Senator Duncan. And Senator Duncan reoffered and it
23 passed when he reoffered it.

24 "QUESTION: Why would it need to come from Senator
25 Duncan? Why could your amendment not been offered?

1 "ANSWER: During the debates of that day, amendments
2 that were being offered by Democrats were being
3 summarily tabled with very, very little discussion,
4 if any discussion at all was occurring on them. And
5 Senator Duncan supported the amendment and wanted to
6 see it go on the bill, so he urged it himself and
7 allowed me then to sign on after his colleagues
8 agreed that they would pass it.

9 "QUESTION: Senator Duncan is a Republican from the
10 panhandle of Texas?

11 "ANSWER: Correct.

12 "QUESTION: How was the amendment offered? I mean,
13 was it uniform support in the Senate?

14 "ANSWER: yes, it was unanimously supported. It did
15 two things as did mine. It allowed an indigency
16 affidavit and it also allowed one where a person
17 might object to having their photograph taken for
18 religious reasons. Again, which was modeled after
19 the Indiana voter ID law.

20 "QUESTION: What happened to the amendment when the
21 bill went to the House?

22 "ANSWER: When the bill went to the House, that
23 amendment which included both of those that I just
24 spoke of was stripped by a Republic House member and
25 on a Republican to Democratic vote, it was taken out.

1 "QUESTION: When the bill went to conference
2 committee, did the issue reinsert itself into the
3 bill in some way?

4 "ANSWER: The conference committee of course is made
5 up of a number of Senators and a number of House
6 members who come together to talk about conflicts and
7 versions of the bill as they came out of each
8 chamber. Interestingly put back into the bill was
9 the exception for allowing the swearing of an
10 affidavit for a person who was objecting to having
11 their photograph taken for religious reasons. Also
12 added into it was something that hadn't come from
13 either chamber, and that was for persons who might
14 not have their voter ID because of a natural
15 disaster. But not added back into it was the
16 indigency clause.

17 "QUESTION: So the bill ultimately allowed for some
18 affidavits to step around the ID requirements, but
19 not for indigents?

20 "ANSWER: That's correct.

21 "QUESTION: The final category of amendments you had
22 were -- and for the record, Amendment 39 and 40 are
23 in the appendix -- the -- just briefly describe what
24 those two amendments were trying to address.

25 "ANSWER: Just those situations where you might have

1 a minor discrepancy between your voter ID card and
2 your driver's license. For example, my personal
3 driver's license has my maiden name and married name
4 on it. My voter ID has only my previous married name
5 on it. Those situations where an election worker
6 could use their discretion in determining that that
7 person was the same person.

8 "QUESTION: Senator, have you developed an opinion
9 whether or not Senate Bill 14 would adversely impact
10 minorities in Texas disproportionate to Anglos?

11 "ANSWER: Yes, I have.

12 "QUESTION: What is that opinion?

13 "ANSWER: I believe that it absolutely will have that
14 impact and I believe it was intended to.

15 "QUESTION: Do you have an opinion whether Senate
16 Bill 14 was adopted by the legislature as a whole
17 with a discriminatory intent?

18 "ANSWER: Yes, I do.

19 "QUESTION: And what is that opinion?

20 "ANSWER: I believe that it was."

21 **MR. DUNN:** The direct examination concluded. Judge
22 Tatel asked the following question:

23 "JUDGE TATEL: Who did you clerk for?

24 "**THE WITNESS:** Judge Jerry Buchmeyer in the Northern
25 District of Texas."

1 **MR. DUNN:** And there was no cross examination. That
2 concludes the reading, your Honor.

3 **MR. HEBERT:** Do you -- oh, sorry.

4 **THE COURT:** Okay, I'm sorry. I didn't know the
5 defense was going to present anything on Ms. Davis.

6 **MS. WOLF:** Your Honor, we're going to present some
7 designations from Senator Davis's deposition. And I'll note,
8 at the trial there was no cross examination because it was read
9 into the record that they would rely on their designations from
10 the deposition.

11 **(Pause)**

12 **MR. TATUM:** Stephen Tatum for the Defendants, your
13 Honor.

14 **CROSS EXAMINATION OF WENDY DAVIS BY EXCERPTS OF DEPOSITION**

15 **TESTIMONY**

16 **(QUESTIONS READ BY MR. TATUM; ANSWERS READ BY MS. WOLF)**

17 "QUESTION: Are you currently registered to vote?

18 "ANSWER: Yes.

19 "QUESTION: Do you have a current Texas driver's
20 license?

21 "ANSWER: Yes.

22 "QUESTION: Do you have a passport?

23 "ANSWER: Yes.

24 "QUESTION: Are there other members of your household
25 who are voting age?

1 "ANSWER: Yes.

2 "QUESTION: Are the voting age individuals in your
3 household registered to vote?

4 "ANSWER: Yes.

5 "QUESTION: And do those individuals have a current
6 Texas driver's license?

7 "ANSWER: Yes.

8 "QUESTION: Did you talk to any lobbyist about SB 14
9 either before or during the 2011 session?

10 "ANSWER: Not that I recall.

11 "QUESTION: Did you speak to any advocacy group about
12 SB 14 either before or during the 2011 session?

13 "ANSWER: Not independent of hearing testimony on the
14 Senate floor.

15 "QUESTION: Do you recall whether you spoke to any
16 lobbyist or advocacy group about the previous 2009
17 voter ID bill?

18 "ANSWER: I don't recall.

19 "QUESTION: To the best of your knowledge, do any of
20 your constituents support photo ID requirements for
21 voting, generally?

22 "ANSWER: I believe that many of my constituents do.

23 "QUESTION: Did anyone outside of the legislature
24 prepare talking points for you on SB 14?

25 "ANSWER: No.

1 "QUESTION: Did anyone outside the legislature at any
2 time provide you with talking points about voter --
3 photo voter ID legislation?

4 "ANSWER: No.

5 "QUESTION: Did anyone outside of the legislature
6 provide you with any kind of background materials on
7 photo ID legislation?

8 "ANSWER: Not that I recall.

9 "QUESTION: Do you know whether anybody outside the
10 legislature provided your staff with materials on
11 photo ID legislation?

12 "ANSWER: I don't know.

13 "QUESTION: And I can hear myself kind of going back
14 and forth. When I say 'photo ID legislation' or
15 'voter ID legislation,' what I intend to refer to is
16 legislation that would require a photo ID to vote.

17 "ANSWER: Yes, I understand your question that way.

18 "QUESTION: Can you recall anyone providing you with
19 materials about SB 14 or voter ID legislation?

20 "ANSWER: I don't recall. We have a Democratic
21 caucus, a Senate caucus, and we have a caucus staff
22 person who sometimes sends emails to us prior to
23 working on particularly controversial issues. I
24 don't recall him having sent anything to us for that,
25 but he may have.

1 "QUESTION: Okay. Did the Senate Democratic caucus
2 provide any material that you can recall specific to
3 SB 14?

4 "ANSWER: I do not recall. It's possible, but I
5 don't recall anything specific.

6 "QUESTION: Did you, your staff, conduct any studies
7 about the potential impact of SB 14?

8 "ANSWER: No, not personally, no.

9 "QUESTION: Did you or your staff review any studies
10 about the potential impact of SB 14?

11 "ANSWER: Information was introduced in each of the
12 two sessions where the bill was debated as part of
13 our hearing. I don't recall whether anything
14 independent of that was provided to me.

15 "QUESTION: And when you say that 'information was
16 provided,' is that information that was either
17 discussed or introduced into the official record?

18 "ANSWER: Yes, both oral testimony and I believe some
19 written testimony as well.

20 "QUESTION: So in some sense, the -- what's thought
21 of as the normal Senate procedure is to suspend the
22 regular order of business?

23 "ANSWER: Yes.

24 "QUESTION: Do you recall seeing any studies about
25 the impact of a photo ID law on voter turnout?

1 "ANSWER: I recall there being testimony about that.
2 And there was likely written testimony introduced,
3 but I don't recall specifically what it said.

4 "QUESTION: Is it accurate to say that in the
5 Committee of the Whole, any Senator has the right to
6 introduce evidence into the record?

7 "ANSWER: Yes.

8 "QUESTION: Is it accurate to say that in the
9 Committee of the Whole, any Senator has the right to
10 question a witness?

11 "ANSWER: Yes.

12 "QUESTION: In talking about the rural minority
13 communities that have problems with access to public
14 transportation and vehicles, is it your understanding
15 that an Anglo voter living in that kind of community,
16 say a rural community in the Valley, would be
17 affected less than a Latino member of that community
18 by SB 14?

19 "ANSWER: My distinction is not whether someone is
20 Anglo or Latino or African-American. The distinction
21 is income level, poverty, and the ability to access
22 transportation. I believe it's the case that
23 disproportionately that impacts persons in the
24 minority community. It certainly, I am sure, impacts
25 persons who are Anglo as well who fit within that

1 category of being low income and having no access to
2 transportation.

3 "QUESTION: Did you ever attempt to survey your
4 constituents to see who lacked a photo ID required by
5 SB 14?

6 "ANSWER: No, I don't.

7 "QUESTION: Can you identify any one of your
8 constituents who lacks one of the IDs required by
9 SB 14?

10 "ANSWER: No, I cannot.

11 "QUESTION: Are you aware or can you identify any
12 specific Texas registered voter who lacks one of the
13 forms of ID required by SB 14?

14 "ANSWER: No, I cannot.

15 "QUESTION: Do you know how many of your constituents
16 do not have the underlying documents necessary to get
17 a photo ID?

18 "ANSWER: No, I don't.

19 "QUESTION: Can you identify any specific
20 constituents who lacks the documents necessary to get
21 a photo ID?

22 "ANSWER: No, I cannot.

23 "QUESTION: Can you identify any particular Texas
24 registered voter who lacks the documents necessary to
25 get a photo ID?

1 "ANSWER: No.

2 "QUESTION: Are you familiar with the levels of photo
3 ID possession by different racial and ethnic groups
4 in Texas? And by levels, I mean the proportion of ID
5 possession.

6 "ANSWER: No, I don't have particular information
7 about that.

8 "QUESTION: You mentioned earlier that you were --
9 that you had read the *Crawford* case out of Indiana.
10 Are you familiar from that or any other source of --
11 are you familiar with the levels of photo ID
12 possession by voters in Indiana?

13 "ANSWER: No.

14 "QUESTION: So you don't know whether African
15 American voters, for example, in Indiana possess
16 photo IDs at a higher rate than African Americans in
17 Texas?

18 "ANSWER: No, I don't.

19 "QUESTION: And would the same be true for Anglo and
20 Asian and Hispanic voters?

21 "ANSWER: That's correct.

22 "QUESTION: Did any of the bill's authors ever say
23 anything to you that expressly stated their intent to
24 harm any minority voter?

25 "ANSWER: No.

1 "QUESTION: Did any member of the legislature ever
2 make a statement to you or to anybody else that
3 you're aware of that they supported SB 14 because
4 they wanted to harm minority voters?

5 "ANSWER: No.

6 "QUESTION: Would you agree that members of the Texas
7 legislature have a duty to represent their
8 constituents?

9 "ANSWER: Yes.

10 "QUESTION: Would you consider that an important duty
11 of any elected official to represent constituents and
12 represent policy that constituents favor?

13 "ANSWER: Yes.

14 "QUESTION: Is there anything wrong with a
15 representative voting for a policy that's favored by
16 his or her constituents?

17 "ANSWER: No.

18 "QUESTION: So it's not your contention that the
19 majority of people in Texas who support voter ID
20 support it for an illegitimate reason?

21 "ANSWER: Absolutely not.

22 "QUESTION: And you don't contend that the majority
23 of people in Texas who support voter ID believe it
24 will have a disproportionate impact on racial
25 minorities?

1 "ANSWER: No, I do not believe that.

2 "QUESTION: And it's accurate to say, isn't it, that
3 the majority of voters in Texas support voter ID
4 legislation; is that right?

5 "ANSWER: I don't know.

6 "QUESTION: Do you have any basis to dispute the
7 majority of voters in Texas support voter ID
8 legislation?

9 "ANSWER: No, I don't.

10 "QUESTION: Did you speak with anybody at the
11 Department of Justice about Senate Bill 14?

12 "ANSWER: Yes, I did.

13 "QUESTION: With whom did you speak?

14 "ANSWER: I don't recall.

15 "QUESTION: Did you talk to the DOJ over the
16 telephone?

17 "ANSWER: Yes, I did.

18 "QUESTION: How many times did you speak to the DOJ?

19 "ANSWER: Twice.

20 "QUESTION: Do you remember roughly when that was?

21 "ANSWER: Within the last six months. That's as best
22 as I can tell you.

23 "QUESTION: Despite the notice, did you have some
24 time to prepare for the Senate Bill 14 debate?

25 "ANSWER: Well, we had debated this bill in prior

1 sessions, so yes, in that sense. We certainly
2 understood and had had testimony in prior sessions
3 about the pros and cons of such a bill and were
4 prepared from that perspective."

5 **MR. TATUM:** Nothing else, your Honor.

6 **THE COURT:** All right. So that's all for this
7 witness then?

8 **MR. DUNN:** Yes, your Honor.

9 **MR. HEBERT:** Good morning, your Honor.

10 **THE COURT:** Good morning.

11 **MR. HEBERT:** I'm Gerry Hebert. I'm one of the
12 attorneys representing the Veasey/LULAC Plaintiffs, and I call
13 Dr. Allan Lichtman.

14 **ALLAN LICHTMAN, PLAINTIFFS' WITNESS, SWORN**

15 **THE COURT:** Good morning.

16 **THE WITNESS:** Good morning, your Honor.

17 **MR. HEBERT:** Morning, Dr. Lichtman.

18 **THE WITNESS:** Good morning, Mr. Hebert.

19 **DIRECT EXAMINATION**

20 **BY MR. HEBERT:**

21 Q Would you give the Court your name and address?

22 A My name, your Honor, is Allan J. Lichtman. I reside at
23 9219 Villa Drive in Bethesda, Maryland.

24 Q And, Dr. Lichtman, you -- could you give us a brief
25 description of your educational background?

1 A Yes. I graduated from Brandeis University in 1967 with a
2 B. A. in history. I graduated from Harvard University in 1973
3 with a Ph.D. in History with a specialty in Quantitative
4 Analysis.

5 Q Now, what is your current position of employment?

6 A I'm a Professor of History at American University in
7 Washington, D.C.

8 Q Now, do you hold the title of Distinguished Professor?

9 A I do.

10 Q All right. And what is a Distinguished Professor?

11 A That's the university's highest academic honor. It's one
12 notch above the rank of professor. There are about four or
13 five distinguished professors in the university out of many
14 hundreds.

15 Q In the course of your professional experience, have you
16 authored any books?

17 A Yes. Depending exactly how you count, I've authored or
18 co-authored about nine books.

19 Q Have any of those books won any awards?

20 A They have.

21 Q My next to most recent book, *White Protestant Nation: The*
22 *Rise of the American Conservative Movement*, was one of five
23 finalists for the National Book Critic Circle Award in General
24 Nonfiction. That's all nonfiction books published in the U. S.
25 My most recent book, *FDR and the Jews*, was a *New York Times*

1 Editor's Choice. It won the National Jewish Book Award in
2 American Jewish Studies. It was a finalist for the *Los Angeles*
3 *Times* Book Prize in History, and won the Tichen-Olen (phonetic)
4 prize for Holocaust Studies.

5 Q In those books that you just cited -- and I'm glad you
6 just gave us two examples -- did those books that you authored
7 involve any inquiry into the decision-making intent of certain
8 individuals?

9 A Yes. That's quite commonly a practice of historians.

10 Q Have you also authored numerous scholarly articles in your
11 field?

12 A I've authored many scholarly articles in historical,
13 political science, and forecasting journals.

14 Q And a number of those have been refereed journals?

15 A Many of them have been refereed journals.

16 Q Give the Court two examples if you could of areas where
17 you've published in that respect.

18 A I've had an article in the *American Historical Review*, the
19 leading journal in the field of history, not just American
20 history. I've had two articles in the proceedings of the
21 United States National Academy of Sciences, widely regarded as
22 one of the three leading scientific journals in the world, as
23 well as many other prestigious journals.

24 **MR. HEBERT:** Now, for the record, your Honor,
25 Dr. Lichtman's report, which includes his curriculum vitae, is

1 Plaintiffs' Exhibit 772.

2 Q Dr. Lichtman, your vitae lists a number of lawsuits and
3 cases over the years that you've been involved in; is that
4 correct?

5 A That is correct.

6 Q And you've been involved, we can say and agree, among
7 dozens of cases; is that correct?

8 A Probably about 80 or more cases over my entire career.

9 Q Now, this is not the first time that I, as a legal
10 counsel, have retained you as an expert witness, is it?

11 A It is not the first time.

12 Q All right. I retained you in a case back in Selma,
13 Alabama, many, many years ago, correct?

14 A That's right, the birthplace of the Voting Rights Act.

15 Q And you were retained as an expert by the United States
16 when I was an attorney for the United States in a case called
17 *Johnson versus DeGrandy* that went to the Supreme Court; is that
18 correct?

19 A That is correct.

20 Q And the court actually in that case and in the Selma cases
21 agreed with your testimony and findings, correct?

22 A Yes.

23 Q And you also testified in a case that I was involved in in
24 my private capacity called *LULAC versus Perry*; do you remember
25 that case?

1 A I do.

2 Q Was that a case that also went to the U. S. Supreme Court?

3 A It did.

4 Q Did that case come out of Texas?

5 A It did.

6 Q What was your involvement in that case, quickly?

7 A My involvement in that was to analyze racially polarized
8 voting and its implications in congressional districts for the
9 ability of minority voters to elect candidates of their choice.

10 Q Did Justice Kennedy, in his opinion for the court in that
11 case, cite you?

12 A He did. He cited my work in his opinion which invalidated
13 I believe it was congressional district 23 for failing to
14 provide opportunities for Hispanic voters to elect candidates
15 of their choice.

16 Q And you've also been retained by me in connection with a
17 case in San Antonio, correct?

18 A That is correct.

19 Q And those are the redistricting cases that still remain
20 pending in that Court?

21 A I think they are still indeed pending.

22 Q All right. In some of those cases that we've just
23 discussed and other cases where you've been an expert witness,
24 have you had the opportunity to look behind the purpose of a
25 particular statute and look at the intent of decision makers

1 with respect to the law?

2 A I have in my scholarship and in my testimony.

3 Q Give me two examples from cases where you've actually
4 looked at legislative motivation.

5 A There are two recent examples. One is in the recent
6 redistricting case that was before the D.C. court in which I
7 testified about discriminatory intent in the development of the
8 State Senate bill in Texas. My testimony was that indeed this
9 bill was enacted with discriminatory intent. Earlier, I
10 believe it was in 2011, I testified on behalf of defendants in
11 the Illinois congressional case, and in that case I testified
12 that the congressional plan was not enacted with discriminatory
13 intent.

14 Q As an expert witness in voting rights cases, have you --
15 you've just indicated you've testified on behalf of both
16 plaintiffs and defendants, correct?

17 A Plaintiffs and defendants, that is correct.

18 Q And you've testified on behalf of Republican entities and
19 Democratic entities?

20 A That is correct.

21 Q You've testified on behalf of state and local governments?

22 A That is correct.

23 **MR. HEBERT:** Your Honor, we offer Dr. Lichtman as an
24 expert in quantitative and qualitative historical analysis of
25 voting, political, and statistical data, with a particular

1 emphasis on motivation of decisions.

2 **THE COURT:** You can proceed.

3 **BY MR. HEBERT:**

4 Q Now, Dr. Lichtman, what were you asked to do in this case?

5 A Yes. What I was asked to do in this case, as indicated in
6 my report, was to examine the passage of the 2011 Texas voter
7 ID bill to investigate whether or not that bill was enacted
8 with the intent to discriminate against minorities in Texas,
9 specifically focusing on the two largest minorities in the
10 state, African Americans and Hispanics.

11 Q Now, you are not drawing any legal conclusions here today,
12 are you?

13 A No. I was very careful to spell out in my report that I
14 am not drawing legal conclusions. As in my other cases, what I
15 am doing here is performing a substantive analysis based on
16 information and my analysis of that information in reaching
17 substantive conclusions.

18 Q And what methodologies did you employ in reaching your
19 conclusions?

20 A I employed the standard methodologies in historical work,
21 the examination and study of documents, and statistical sources
22 of information.

23 Q And you said these are standard historical methods?

24 A Yes, similar to what I've used in my scholarly work and in
25 previous testimony on the issue of intent.

1 Q Now, on page 1 of your report --

2 **MR. HEBERT:** And if we could bring up Plaintiffs'
3 772, page 1.

4 Q -- could you give the Court just a brief snapshot of what
5 data or records you relied on in conducting your factual
6 opinions as set forth in your report?

7 A Yes. I looked at scholarly books, articles, reports,
8 newspapers, and other journalistic articles, demographic
9 information, election returns, court opinions, briefs, reports,
10 government documents including legislative transcripts and
11 legislative journals. I was also supplied by the government of
12 the State of Texas quite a wealth of many hundreds of emails,
13 and I also drew upon scientific surveys.

14 Q Now, what was your particular focus with respect to
15 analyzing the intent behind SB 14?

16 A Yes. I think it's important to understand that I was not
17 looking at the passage of a generic photo ID bill. Rather, I
18 was looking at the specific decisions and choices made by the
19 Texas state legislature with regard to the precise bill, SB 14,
20 that was passed and looking at the justifications for those
21 decisions and how those decisions may or may not have had a
22 disparate -- placed a disparate burden upon African American
23 and Latinos in the State of Texas as compared to Anglos.

24 Q Now, let's get one issue out of the way quickly and then
25 so we can move on, and that is there has been arguments and

1 testimony in this case about partisan motives behind SB 14.

2 Was this just a partisan issue or did it have any racial
3 implications?

4 A It wasn't just a partisan issue, although partisanship was
5 certainly involved, as I explain later in my report, because
6 the Republican base in Texas is Anglo and the Democratic base
7 in Texas is African American and Latinos. So while indeed
8 partisanship was involved, as it always is in politics, the way
9 in which that manifested itself in these particular decisions
10 that I looked at was by placing, in my view, quite knowingly
11 and intentionally disparate burdens on the voting of African
12 Americans and Hispanics in Texas as compared to Anglos.

13 Q Now, it's true, isn't it, that in your report in page 5
14 through 7, you put the context of the SB 14 bill within the
15 framework of the historical and -- discrimination against
16 minorities in Texas?

17 A Yes.

18 Q Would you give the Court just a very brief description of
19 what that section states?

20 A Yeah. It just goes through the longstanding history going
21 back to the 19th century of discrimination against minorities
22 when it comes to voting and carries that forward to recent
23 times, including matters of redistricting.

24 Q And speaking of which, let's stick with redistricting.
25 The -- you've testified in the D.C. court in connection with

1 redistricting of the Texas Senate back in 2012?

2 A Yes.

3 Q All right. And what did you -- what was the subject
4 matter of your testimony in that case?

5 A With respect to the Senate, as I explained previously, I
6 was looking at the issue of intentional discrimination. I also
7 examined polarized voting and the implications of polarized
8 voting for minority electoral opportunities.

9 Q And I guess I didn't ask my question precisely the way I
10 wanted. What was it that you found with respect to intent?

11 A With respect to what?

12 Q To intent behind --

13 A Yes.

14 Q -- the Senate plan in --

15 A I found that indeed there was intentional discrimination,
16 and so testified, behind the enactment of the State Senate plan
17 in Texas.

18 Q And did the court in -- the three-judge court in that case
19 ultimately declare that the State had failed to meet its burden
20 of proof of showing that the Senate map was not enacted with a
21 racially discriminatory intent?

22 A That's correct. And I believe in my reading of it, it
23 went beyond that to find affirmatively -- including citations
24 of my testimony -- that affirmatively the State had adopted the
25 Senate map with discriminatory purpose.

1 Q Now, on page 8 of your report, Exhibit 772, you have a
2 sequence of events that led up to the adoption of the photo ID
3 law. The part I want to focus here is on the demographic
4 changes in the second full paragraph that's noted from 2000 to
5 2010. Can you tell us essentially what that observation was
6 that you made?

7 A Yeah, very briefly, that the recent population growth in
8 Texas has been overwhelmingly minority with African Americans
9 and Latinos accounting for nearly 80 percent of the total Texas
10 population growth between 2000 and 2010. So the result is in
11 terms of percentages, you have an expanding minority population
12 in Texas and a shrinking Anglo population.

13 Q And what are the political implications of that?

14 A The political implications are profound given not only
15 that you've had this population change but, as my report
16 indicates, it's projected to continue that minorities are
17 projected to continue to expand their representation,
18 particularly Latinos. That is of political importance in Texas
19 because voting is highly polarized along racial lines in the
20 State of Texas.

21 Q And let's get to that topic, because I think that's on
22 page 10 of your report where you go into the issue of racially
23 polarized voting. And you've indicated before that you had
24 done a study of racially polarized voting in the San Antonio
25 cases that are ongoing.

1 A I've done several studies including the San Antonio case
2 and the earlier congressional case, *LULAC versus Perry*, that
3 you've alluded to.

4 Q And briefly summarize for the Court the kind of two-part
5 findings you make about racially polarized voting in your
6 report.

7 A Yes. I found that typically Whites overwhelming black --
8 backed White candidates in Texas. Most of those White
9 candidates are Republicans whereas African Americans and
10 Latinos overwhelmingly back minority candidates, most of whom
11 were Democrats. But I found something else that's of
12 importance here. That is, this structure of Anglos voting for
13 Republicans and minorities voting for Democrats is deeply
14 embedded within the structure of state politics, that
15 Republicans cannot get around this pattern by recruiting
16 minority candidates to run. Even when Republicans recruit
17 minority candidates, whether they're running against minority
18 Democrats or Anglo Democrats, you get this precise same pattern
19 of Anglos voting for Republicans and Latinos and Hispanics
20 voting for Democrats. I also cited the report of the Texas's
21 expert, Dr. John Alford (phonetic), who came up with the same
22 findings, that this pattern of the Republican base being Anglo
23 and the Democratic base being minority, particularly Hispanic
24 and Latino, is embedded into the structure of Texas politics
25 and does not depend upon the race of particular candidates. So

1 this links together the demographic changes with the structure
2 -- racial structure of Texas politics.

3 Q And did you look at the issue of whether the Republicans
4 could get around this by recruiting more minority candidates?

5 A As I mentioned in my testimony, they can't. Even when
6 they run minority candidates, whether it's against Anglo
7 Democrats or other minority Democrats, the basic patterns of
8 voting still hold.

9 Q Now, we've had testimony in this case -- and there's
10 numerous documents about the photo ID bill that was originated
11 in 2005, 2007, 2009. I'm not going to take you through all
12 those. That's all set out in your report. But I first want to
13 talk about -- and I want to talk about the 2011 SB 14. But
14 before we do, tell us about the elections that took place
15 between the 2009 session and the 2011 session where the bill
16 was enacted.

17 A Yeah. You have the 2010 elections in which not just in
18 Texas but across the nation these were overwhelming Republican
19 victories, and in particular the House of Representatives
20 shifted in Texas from being closely divided between Republicans
21 and Democrats to being overwhelmingly Republican and the State
22 Senate remained overwhelmingly Republican. I think I have some
23 -- a couple of typos in the exact numbers I put in there.

24 Q Go ahead. Well, I'm going to -- we're going to correct
25 those right now.

1 A Yeah.

2 MR. HEBERT: If you would highlight for me the --
3 after the elections of 2010.

4 THE WITNESS: Yeah.

5 MR. HEBERT: That's the second paragraph from the
6 bottom.

7 THE WITNESS: Yeah.

8 BY MR. HEBERT:

9 Q Let's make a couple of corrections.

10 A Yeah.

11 Q By the way, are these the only corrections, except the one
12 name was supposed to be Mary and it was Lois somewhere else
13 that you found?

14 A The only corrections I could find -- obviously, in a 72-
15 page report, one never knows what one might find -- but I'm
16 confident that there wouldn't be any changes that would affect
17 any substantive conclusions.

18 Q Okay. And just for the corrections, I believe the 79
19 Republicans --

20 A Should be 76.

21 Q -- should be 76. The Senate shifted from 19 Republicans
22 and 12 Democrats in the second sentence -- because there's only
23 31 members, correct?

24 A Yeah. It should be 19 and 12 and 19 and 12.

25 Q Okay. So let's talk about the 2011 bill. And was the

1 2011 session itself -- you've testified about the redistricting
2 plans that came out of the 2011 session and other bills that
3 were considered during that session -- was that a racially
4 charged session, in your view?

5 A It was a racially charged session in my view and
6 commentators much closer to Texas politics indicated it was the
7 most racially charged session they had seen in recent history.

8 Q Now, I'm not going to belabor this point, but your D.C.
9 testimony where the court found intentional discrimination on
10 the Senate map, you understand that's not legal precedence,
11 correct? And you're not citing it for that reason, are you?

12 A Oh, no. I understand it's not legal precedent because of
13 the *Shelby* decision. Again, I'm citing it for the substance.
14 And, indeed, my entire report is focused on substantive
15 analysis, not legal analysis, as I made clear in the report.

16 Q Okay. Well, Dr. Lichtman, tell the Court if you would how
17 the 2011 photo ID bill differed from the predecessor voter ID
18 bills that had been introduced in the '05, '07, and '09
19 sessions.

20 A Yeah. It differed in many fundamental ways. First of
21 all, all of the previous bills, while including photo ID, also
22 included a second option, that is, voters could still vote at
23 the polls if they did not have an acceptable photo ID if they
24 presented one of -- presented at least two non-photo IDs from a
25 very large list of non-photo IDs. About 15 or non-photo IDs

1 were acceptable in previous bills. That option was eliminated,
2 yes, in the 2011 bill, and that has important implications.

3 Q And we've brought up on the screen from your report, page
4 12, in which we have listed here at least with respect to HB
5 1706, the non-photo identification bills that you're referring
6 to now.

7 A Yes.

8 Q Give the Court some examples of those.

9 A Yes. I think some of the important examples that are
10 relevant to the inquiry here about racial intent are those non-
11 photo identification that don't cost anything, such as a
12 current utility bill, a bank statement, a paycheck, a
13 government check, official mail, a library card. These are
14 readily available types of non-photo ID that don't cost the
15 voter. And that's important in our inquiry.

16 **MR. HEBERT:** All right. If we could stay on that
17 page (indiscernible) and bring up a paragraph at the bottom
18 where we have -- where -- just below the list in response to
19 criticism and the quote from Representative Denny.

20 A Yes.

21 Q What did Representative Denny -- what was her role in this
22 bill from a prior session? Not the 2011 session. But what did
23 she stress with regard to having the -- both the photo ID and
24 the non-photo IDs in her bill?

25 A Yeah. She was a very important figure in this 2005. She

1 was head of the Election Committee and the main sponsor of HB
2 1706. And she indicated in response to criticisms that this
3 bill might disenfranchise some voters, that in fact the option
4 to have both photo and non-photo ID assured that no one would
5 be disenfranchised while at the same time meeting the goal of
6 ensuring voter integrity at the ballot, that is, you could
7 verify the voter's identity. I think it's worth quoting
8 directly. She says that her bill created, "a very long and
9 liberal bill." And she affirmed that it met the goal, "to make
10 sure that you are the person that is voting on the ballot and
11 you are who you are."

12 Q And I believe you said "bill," but the word is actually
13 "list," "a very long and liberal list."

14 A Very long and liberal list.

15 Q Okay.

16 A I'm a little dyslexic in my old age.

17 Q All right.

18 **MR. HEBERT:** Now, while we're at it, if we could
19 bring up page 26, Table 2.

20 Q I want you to look at Table 2 --

21 **MR. HEBERT:** And if we could just have the table
22 blown up.

23 Q Tell us what Table 2 in your report was intended to
24 convey.

25 A Yeah. Table 2 conveys the well-known fact that as

1 compared to Whites, Hispanics and African Americans in Texas
2 have much lower levels of income and much higher degrees of
3 poverty. And that ties into the elimination of the non-photo
4 IDs.

5 Q All right.

6 A And here's how it does. As I indicated, this was
7 eliminated, even though it had previously been affirmed by not
8 just Representative Denny, but by others in the other debates,
9 that this much more inclusive bill was sufficient to meet the
10 goal of ensuring voter identity. But by eliminating these free
11 options and keeping photo ID options which cost money, this has
12 a clear disparate impact on Latinos and African Americans.
13 Because of their much lower incomes and much lower -- much
14 higher poverty rates, they're going to have less access to
15 forms of ID that cost money and more access to forms of ID like
16 those I mentioned that are free.

17 Q All right. Now, we've gone through the non-photo IDs that
18 were eliminated in the 2011 bill. Let's talk about the photo
19 IDs within the 2011 bill and how they compare to previous
20 sessions.

21 A Yes. In previous sessions, in one form or another you had
22 concealed carry license as an acceptable form of photo ID, as
23 well as some form of government employee ID--federal, state, or
24 local--and some form of student identification.

25 Q All right. And you said that eliminating government IDs

1 and student IDs was actually part of the 2011 bill?

2 A I didn't say that. It's in my report, yes. In the 2011
3 bill, it retained concealed carry as an acceptable form of
4 photo ID but eliminated both government employee photo IDs and
5 student photo IDs.

6 Q Did it also change the expiration dates from prior bills?

7 A Yes.

8 Q In what way?

9 A It changed the expiration date by very sharply narrowing
10 it from two years to just 60 days, and it also extended the
11 narrow expiration date from just driver's licenses to all other
12 forms with the exception, I believe, of naturalization
13 certificates.

14 Q Well, we're going to look at each one of these
15 individually. Let's pull up the license to carry information
16 first. And let me ask you as we're doing that, doctor, if you
17 could -- and this is on page 25, Table 1 -- is this decision to
18 keep a license to carry within the bill in 2011, could you tell
19 us what the racial implications are of such a thing?

20 **MR. HEBERT:** And if we could blow up Table 1.

21 A Yes. As this chart indicates, it does have racial
22 implications. The State keeps data by race on concealed carry
23 permits. It does not separately break out Hispanics. It does
24 separately break out African Americans. And it's quite clear
25 from this table that the percentage of African Americans among

1 permit holders is much lower than the percentage of African
2 Americans in the voting age population, 49 percent lower, and
3 almost a six percentage point difference. And we're talking
4 about large numbers here, I think more than 1.3 million handgun
5 licenses -- concealed carry licenses issued.

6 Q All right.

7 A And this is information available at the time of the
8 debate. You see, I cut it at 2010 to make sure that this was
9 information available. And it's available right on the DPS
10 website.

11 Q So the sponsors of SB 14 have this information at least
12 available to them if they chose to use it?

13 A This information was readily available to them if they
14 chose to use it.

15 Q And it came from the DPS website?

16 A Yes.

17 Q Okay. Now let's look at the choice of eliminating
18 Government IDs. You have a Table 3 on Page 27.

19 **MR. HEBERT:** And if you could blow up the table for
20 us, please?

21 Q What does this Table 3 say with respect to the
22 Legislature's choice of eliminating Government IDs?

23 A Yes, this is based on census data, the American Community
24 Survey from 2008 to 2010 thus, again, information available at
25 the time of the debates over SB 14. And this shows quite a

1 different pattern from that of the concealed carry which is
2 retained. The eliminated Government employee IDs also has
3 racial implications in the opposite direction. This shows that
4 African Americans and Latinos, based on census data, are over-
5 represented among Government employees and Anglos are under-
6 represented, so based on this data African Americans and
7 Latinos would have more access to Government employee IDs than
8 Anglos, opposite of the retained concealed carry.

9 Q Okay. Let's look at the -- Page 29, Table 4.

10 A Yeah.

11 Q And if you could tell the Court what -- how this differs
12 from your total number of employees -- Government employees by
13 race category that you were just talking about in Table 3.
14 What's the difference?

15 A Well, the substantive inquiry is the same to see the
16 breakout of Government employees among African Americans,
17 Latinos and Anglos. The difference is I drew on an entirely
18 different source of data. This is the 2006 CCES Cooperative
19 Congressional Election.

20 Q And, sir, what is that?

21 A What?

22 Q What is that "CCES?"

23 A Yeah, the Cooperative Congressional Election Survey, which
24 is a very standard survey used in the History of Political
25 Science, and what's useful about this survey, it's a very large

1 sample, tens of thousands, so you actually can have
2 statistically significant results like we do here for
3 individual states, particularly a state as large as Texas.

4 The other thing that this survey does is it focuses
5 on registered voters so I can look at the breakdown of
6 Government employees not just in the voting age population, but
7 among registered voters, those most directly impacted by SB 14.

8 Q And what does this Table 4 show?

9 A This shows an even larger disparity between African
10 Americans, Latinos and Anglos with respect to those who are
11 Government employees, very significant differences.
12 African Americans more than twice as likely as Latinos, almost
13 twice as likely as Anglos, to be Government employees and,
14 again, we're talking about large numbers, well upwards of one
15 and half million Government employees at every level in the
16 State of Texas.

17 Q And let's turn to the choice of eliminating student IDs,
18 Dr. Lichtman, and on this you have two tables on Page 31.

19 A I do.

20 Q And let's go to the top table, Table 5 first, and tell us
21 what that table is intended to depict?

22 A That's a similar table to the one I compiled from the US
23 Census for Government employees. In this case it's students
24 and, again, it shows that African Americans and Latinos
25 relative to Anglos are over-represented among students, again

1 in contrast to the difference in concealed carry, but similar
2 to the finding for Government employees.

3 The second table, Table 6 on the same page, again
4 draws upon the CCES survey. In this case we had information
5 from both 2006 and 2008, again always looking at information
6 available at the time of the debates over SB 14, and this,
7 again, zeros in on registered voters, and it shows even bigger
8 disparities between African Americans, Latinos and Anglos than
9 the previous table from Census data.

10 It shows that with respect to both African Americans
11 and Latinos the percentage of students among registered voters
12 is more than twice as high as the percentage of Anglos.

13 Q All right. Now I asked this question with respect to the
14 concealed weapons permits, and I'm going to ask you the same
15 question with regard to Government IDs and eliminated student
16 IDs, was all of this information that you put up in these
17 tables, was that available to the Legislature in 2011?

18 A It was all available to the Legislature in 2011 if they
19 chose to look at it.

20 Q Right. Now did you also look at the effect of reducing
21 the expiration date within the photo IDs?

22 A I think there's one more table on college and university
23 students, Table 7, Page 32.

24 Q Okay. Did I skip over that?

25 A Yeah, you skipped over a table.

1 Q Maybe in the interest of time I was just trying to move
2 this along.

3 A Okay.

4 Q So let's just finish up and talk about the public schools
5 in Texas.

6 A Yeah.

7 Q Because this is a subset of the earlier one, correct?

8 A Right, and it's important because in some of the previous
9 iterations student IDs would have been limited to those issued
10 by public institutions, not issued by State. And, again, it
11 shows, very briefly, that African Americans and Latinos are
12 over-represented relative to the Anglos in the public school
13 population using 2010 enrollment data by race in the State of
14 Texas.

15 Q And public college and university students in the schools
16 of Texas, that's considered a Government ID, correct?

17 A That's correct.

18 Q Okay. So let's look at the effect of reducing expiration
19 dates that you had in your report.

20 Could you give the Court some idea of what effect
21 reducing the expiration times for photo ID would have that was
22 set forth in SB 14?

23 A Yes, several implications. First of all, it costs money
24 to renew a driver's license, I believe \$25. That might not
25 sound like a lot of money, but when you're dealing with a very

1 substantial population of Latinos and African Americans that
2 are in poverty any amount of money that one has to pay can be a
3 deterrent.

4 There are also some special programs in Texas that
5 have to do with the suspending and confiscation of licenses
6 that have very important racial implications as well.

7 Q Which -- which are what?

8 A There are two programs: One is the Driver's
9 Responsibility law that adds on surcharges to various kinds of
10 traffic offenses.

11 The other is the ALR law, the Automatic License
12 Revocation that automatically revokes your license for certain
13 kinds of drunk driving violations.

14 Q All right. We're going to come back to that a little
15 later. So we've gone through these various forms of photo ID
16 and their racial implications.

17 What is your testimony with regard to each of these
18 choices that were made by the Texas Legislature in 2011 with
19 regard to expiration dates, student ID elimination -- excuse
20 me, Government ID elimination, and maintaining the concealed
21 weapon permit?

22 A Well, there's more than that.

23 Q Yes.

24 A First of all, the elimination of nonphoto IDs, many of
25 which are free; then there was the retainment of concealed

1 carry; the elimination of student and Government IDs; and the
2 narrowing of the period for expiration -- and extension of the
3 expiration to other documents.

4 Each one of these individually points in the same
5 direction of imposing disparate burdens when it comes to voting
6 on African Americans and Latinos as compared to Anglos, and
7 clearly taken together those decisions impose disparate burdens
8 on African Americans and Latinos as compared to Anglos. So you
9 can look at them individually and you can look at them
10 collectively, and they all point to the same direction.

11 Q All right. Another topic I'm going to move to now and
12 Dr. Burden testified about this a little bit yesterday, looking
13 at voters who vote by mail in Texas, and did you do a review of
14 those data?

15 A I did.

16 Q Is it reflected on Table 11, Page 53?

17 A It is.

18 Q And tell us -- tell the Court what that Table shows with
19 respect to mail absentee ballots by race only?

20 A Yeah. Yeah. Briefly put I drew upon two independent
21 surveys of how voters voted in Texas, the CCES, which we've
22 already discussed, and the current population survey of the
23 United States Census which I believe was discussed in other
24 testimony. That's a huge sample taken by the Census that also
25 enables you to look at individual States, particularly a State

1 as large as Texas.

2 They are conducted completely independently. Again,
3 I used the information available at the time and this
4 information shows, regardless of which study you use, that
5 Whites, as compared to African Americans and Latinos, are more
6 likely to vote by mail as opposed to voting in person. So
7 voting by mail is disproportionately Anglo in both of those
8 surveys.

9 Q Was this information available to sponsors of SB 14 when
10 it was enacted?

11 A Yes, it was if they chose to look at it.

12 Q Now did you also look at information about whether the
13 sponsors or backers of SB 14 in the Legislature were aware of
14 issues with respect to mail in ballot fraud?

15 A I did and I found considerable information on that.

16 Q Give the Court a snapshot of what you found.

17 A Yeah, very briefly, what I found was there was a report by
18 a Republican-controlled committee on voter fraud, and that
19 report indicated that the main problem with voter fraud is not
20 voter impersonation, but mail in ballot voter fraud.

21 There was also an independent analysis by the Texas
22 Conservative Coalition that included Republican Legislators
23 that came to the same conclusion.

24 I also extensively examined the testimony in the DC
25 trial of Representative Jose Aliseda who was designated by the

1 State to explain how SB 14 met the State's goal of ensuring
2 ballot integrity and deterring voter fraud, and what he spoke
3 about was mail in ballot voter fraud. He said the voters were
4 clamoring to deal with the problem of mail in ballot fraud and
5 did not, in his testimony at all, discuss voter impersonation
6 at the polls and, in fact, that was so evident in his testimony
7 that even one of the three Judges, Judge Collyer, remarked upon
8 it.

9 Q Is that at Page 50 of your report?

10 A Yes. And as you can see here--

11 **MR. HEBERT:** If you could go to top of 50 for me,
12 Bonnie, and highlight maybe the first half of the page? That's
13 enough.

14 A Yeah, is all based on mail fraud, but he described as some
15 large male, ballot fraud involved with balloting, right,
16 Mr. McKenzie, attorney for Texas, yes.

17 Q And then when he was prompted to testify about voter fraud
18 at the polls, what was Representative Aliseda's testimony with
19 regard to that issue?

20 A He did not present examples of voter impersonation at the
21 polls; he simply said that some of his noncitizen clients had
22 told him privately that they had voted and were worried about
23 their legal status. Of course, that's not a public matter and
24 no way of verifying it, but since noncitizens can obtain
25 driver's licenses, Representative Aliseda testified that, yes,

1 these noncitizens had driver's licenses and, therefore, SB 14
2 would have done nothing about that issue.

3 Q Did the backers or sponsors of SB 14 address mail in
4 ballot fraud?

5 A They did not, even though back in 2005 Representative
6 Denny, the head of the Election Committee, had said, "Yes, we
7 understand there's an issue with ballot fraud and we intend to
8 do something about it." They didn't.

9 Q All right. Now, did the sponsors of SB 14 point to other
10 States as model photo ID laws that they wanted to model SB 14
11 after?

12 A They did, in particular, two states.

13 Q What two are those?

14 A Indiana and Georgia.

15 Q All right, let's start with Indiana. What did the
16 supporters of SB 14 say about how they modeled their Bill after
17 Indiana?

18 A They were very explicit about it. They said they modeled
19 their Bill directly upon the Indiana law. They brought in
20 authority from Indiana to testify about how well the Indiana
21 law worked, and when pressed about whether there was a
22 difference between the Indiana law and SB 14, I believe it was
23 Troy Fraser who said very, very small change.

24 Q And that's here on Page 37, the paragraph being
25 highlighted, Senator Fraser's "very, very small change"

1 language?

2 A Yes. Yes.

3 Q All right. And did Senator -- or Representative Harless
4 make a similar observation?

5 A Yes, and that was -- you know, a pretty common thread
6 among backers of SB 14, that it was based on the Indiana law
7 which had received the informata of the United States Supreme
8 Court.

9 Q Now how was the Indiana law different from the Texas law
10 that was passed?

11 A It differs fundamentally. First of all, there's a
12 fundamental difference in approach. Indiana does not establish
13 specific forms of acceptable Government-issued photo ID; rather
14 it allows a voter to present any ID that's issued by the State
15 of Indiana or the US Government.

16 The Texas law is based on a fundamentally different
17 principle. It spells out quite explicitly those forms of photo
18 identification that are acceptable, and unless your ID fits one
19 of those categories it doesn't work for voting.

20 Q Does Indiana permit a license to carry ID?

21 A It does not.

22 Q So that makes it different from Texas.

23 A Yes.

24 Q And why doesn't it allow a license to carry, if you know?

25 A It doesn't have a picture, I believe.

1 Q Okay. Does Indiana also allow public university students'
2 IDs?

3 A Yes, any ID that is issued by the State of Indiana, so
4 that would include public universities which are part of the
5 State.

6 Q The distinction -- the differences -- I'm sorry, go ahead.

7 A It would also include, obviously, Government-issued IDs,
8 both for the Federal Government and for the State Government.

9 Q Right, you made that point and I slipped over it.

10 Now the differences between Indiana and Texas, talk
11 about that with respect to the particular impact on minorities.

12 A Yeah. All of these differences, as we've explained
13 previously --

14 Q And by "minorities" I mean African Americans and Latinos.

15 A I understand, that's what I studied. All of these
16 differences, as I explained previously, have very important
17 implications for African Americans and Latinos.

18 The concealed carry identification very substantially
19 under-represents African Americans, which is retained; the
20 Government and student IDs, which are included in Indiana, but
21 not in the State of Texas over-represent Latinos and African
22 Americans.

23 There's also a distinction in expiration.

24 Q Which is what?

25 A Indiana has a two-year expiration -- expiration

1 essentially to the last general election, but Texas narrowed
2 that down to 60 days and we explained the racial implications
3 of that.

4 Q Earlier, correct.

5 So Georgia was another State that they claimed to
6 model their photo ID law in Texas, correct?

7 A That is correct, saying that the Georgia law was pre-
8 cleared, it met muster under the Voting Rights Act and,
9 therefore, their law modeled on the Georgia law should meet
10 muster as well.

11 Q Let's turn to Page 41 of your report where we can get into
12 the specifics a little bit of Georgia.

13 Can you tell me what Georgia's photo ID law, how that
14 compares to Texas's?

15 A Yeah. It's much more similar to the Indiana law. The
16 Georgia law also doesn't cite specific forms of photo
17 identification, but rather, again, authorizes forms of photo
18 identification issued by Government entities. That would
19 include student photo identification issued by public
20 institutions and Government worker photo identification.

21 Q And Georgia, like Indiana, does not authorize concealed
22 weapons permits as IDs, correct?

23 A That's my understanding, correct.

24 Q And it also doesn't limit driver's licenses to Georgia --
25 the State of Georgia, does it?

1 A No, and it enables you to use expired driver's licenses
2 and it doesn't -- you know, it doesn't have expirations on
3 other forms of ID.

4 Q Is there any evidence, though, that Texas lawmakers or
5 sponsors of SB 14 were actually informed that SB 14, while
6 being claimed to being modeled after Georgia and Indiana, was
7 really not?

8 A Yes, there's some very explicit evidence here.

9 Q Is that in your report?

10 A It is.

11 Q All right.

12 A Page 41 to 42.

13 Q All right.

14 **MR. HEBERT:** And, just for the record, your Honor,
15 even though the gentleman being quoted here has the same last
16 name as me, he is of no relation.

17 **THE COURT:** Okay.

18 **BY MR. HEBERT:**

19 Q Would you tell the Court, in your own words, what Page 41
20 of your report finds?

21 A Yeah, I think this is a very important email finding.
22 You're not going to get, in this day and age, emails or
23 anything written that says "We intend to violate the Voting
24 Rights Act or intend to place disparate burdens upon
25 minorities." That's not going to be found.

1 But, I think this email comes as close as one can
2 come in this day and age to a smoking gun with respect to
3 intentional discrimination in Texas.

4 Q How so, Dr. Lichtman?

5 A This is by Ryan Hebert, who I believe pronounces his name
6 differently from you, although I'm not sure, Deputy General
7 Counsel in the Office of the Lieutenant Governor who, of
8 course, presides over the State Senate. And Counsel Hebert was
9 asked -- was assessing the prospects for pre-clearance of
10 SB 14, and remember, proponents had cited Georgia which had
11 been pre-cleared as their model.

12 He says something quite different. With respect to
13 the prospects of pre-clearance, he says, "The bottom line
14 doubtful," in other words, it's doubtful that SB 14 would meet
15 muster under the Voting Rights Act.

16 But he didn't stop. He went on to recommend that the
17 Republican leadership very substantially revised SB 14 by
18 "using the language in Georgia's law, i.e., any ID issued by
19 the Federal Government, State Government or Local Government
20 within the State."

21 He then went on to be even more specific. He said,
22 "At a minimum -- minimum we might use the language used in our
23 Bill passed last session, a valid identification card that
24 contains the person's photograph and is issued by A, an agency
25 or institution of the Federal Government; or, B, an agency,

1 institution or political subdivision of the State."

2 In other words, he said at a minimum he would
3 recommend a fundamental change in the law to bring it closer to
4 the Georgia law and closer to what had been proposed in the
5 previous session in Texas itself.

6 Q And did the Legislature adopt or enact either of those
7 recommendations?

8 A It did not, it stuck to the specific form of SB 14 which
9 fundamentally differed from the Georgia law and the previous
10 State of Texas proposals.

11 Q Let's go to -- okay. Let's go and compare SB 14 to other
12 photo ID in other States, or voter ID laws in other States, and
13 let's pull up Table 10.

14 And, Dr. Lichtman, have you done a comparison of the
15 State of Texas's photo identification laws compared to laws in
16 effect in other States prior to 2011?

17 A Prior to the enactment of the Bill, I did.

18 Q Let's go to the far column first where you have a column
19 there of labeling either "strict or nonstrict photo ID laws,"
20 do you see that?

21 A I do.

22 Q Describe for the Court what you mean by "strict" and
23 "nonstrict," how that differential was made.

24 A Yeah. Very quickly, as defined by the National Conference
25 of State Legislatures, a "nonstrict" law enables the voter,

1 even if they don't have an acceptable form of photo ID, to vote
2 by an Affidavit of Identity or, in some cases, by being vouched
3 for by a poll worker.

4 A "strict" law does not provide that option. If you
5 don't have an acceptable photo ID you have to cast a
6 provisional ballot and then come back at a later time to
7 present an acceptable photo ID if that ballot is to be counted.

8 Q And what does Table 10 show?

9 A It shows that essentially there are only three strict
10 photo ID laws, Georgia, Indiana and Texas, and Indiana has some
11 provisions that make it less strict with respect to voters who
12 are indigent; all the rest are nonstrict.

13 Q And so even those states with "strict," and you mentioned
14 Georgia and Indiana, I see that you have "Yeses" under
15 "Government ID" and "Yes" under "Student IDs," and "Yes" for
16 expiration dates longer than 60 days, and "Yes" even for
17 (indiscernible) don't allow concealed carries. But in Texas
18 all of those answers are "No," correct?

19 A Right. It's the only state that does not allow either
20 some form of Government ID or student ID, and the only state
21 that has narrowed all of its identifications to expirations of
22 60 days or less, of course, with the exception of
23 naturalization certificates.

24 Q So of the strict states, Texas is the strictest?

25 A Yes, far and away. Both Georgia and Indiana allow some

1 form of both Government and student ID and have much more
2 expansive expirations.

3 Q Now you also have in your report a review of some the
4 polls that have been taken in Texas with respect to photo ID
5 laws, correct?

6 A I do.

7 Q And what did you conclude from reviewing those polls in
8 support among the Texas public for its voter ID laws?

9 A Very quickly, two things. One, it is absolutely correct
10 that if you ask a generic poll about voter ID or Government-
11 issued ID you will get a majority in Texas and most other
12 places saying they're for it.

13 But as I mentioned at the beginning of my testimony,
14 I am not looking at a generic photo ID, I'm looking at the
15 particular decisions made by the Texas State Legislature, and
16 none of the polls refer to, that I've seen or seen cited, refer
17 to that particular form of voter photo ID.

18 Secondly, I looked at polls on the important issues
19 in the State of Texas, again, information available at the
20 time, and voter fraud or ballot integrity or voter ID did not
21 register among the top 13 concerns.

22 Q And why is all of that important?

23 A That's important because supporters of the Bill had cited
24 polling information in justification of SB 14 when, in fact, it
25 doesn't justify SB 14, it applies the generic Bill as not a

1 salient issue for voters.

2 Q Now I'm going to switch topics here and continue to stick
3 with your report somewhat in chronological order page-wise, and
4 I want to pull up Page 54.

5 We've heard a lot of testimony about EICs, Election
6 Identification Certificates, but we really haven't gone into
7 the facts about what documents you need in order to get an EIC.
8 And you looked at that issue very specifically, didn't you,
9 Dr. Lichtman?

10 A I did.

11 Q And tell us what the requirements are with respect to the
12 documentation needed to get an EIC, and don't -- we're not
13 going to go into each and every one, but I want you to give the
14 Court a feel for what the documentation requirements are.

15 A No. I understand. The documentation requirements take a
16 full two pages of my report just to list. They are very
17 substantial and very complex.

18 Critically, to get an EIC you have to fulfill the
19 five criteria outlined here: documentation to verify US
20 citizenship, documentation to verify identity, documentation
21 showing you are eligible to vote in Texas, to show you're a
22 Texas resident and 17 -- and that you are at least 17 years and
23 10 months or older.

24 I then go into the documentation required for proof
25 of citizenship and other elements within these five basic

1 requirements, and they are quite extensive and quite complex.

2 Q All right. So you've gone through, I think, what are the
3 first five requirements, and then you have in your report what
4 documents you actually need to do to establish proof of
5 citizenship, is that correct?

6 A That's correct and you don't quite have the whole thing,
7 you start with B there.

8 Q Well, right, the first one is A.

9 A Right.

10 Q On Page 54 --

11 A And that carries over to Page 55.

12 Q Right.

13 A The first one is a US passport, book or card.

14 Q Okay, and that proves citizenship, and what are the other
15 proof of citizenship documents that are listed on Page 55.

16 A Yeah, right. A birth certificate issued by a US State, a
17 US territory or the District of Columbia.

18 For US citizens born abroad a certificate of report
19 of birth or a Consulate report of birth issued by the US
20 Department of State, or US certificate of citizenship, or
21 certificate of naturalization, or US Department of Justice
22 Immigration and Naturalization Service US citizen ID card. And
23 I didn't go through all the particular names of these forms.

24 Q Thank you for not doing that.

25 What -- do you also have to produce documents to

1 establish your identity?

2 A Yes, you do.

3 Q And is that a complex process?

4 A Yes.

5 Q All right. Let's, if we could, and this is Page 55, tell
6 us what you need to do to establish your identity here in the
7 United States.

8 A It's complicated. You may include one primary document or
9 two secondary documents, or one secondary document and two
10 additional supporting documents, and I include extensive lists
11 of what these documents are.

12 Q So you have on Page 55 you have to establish either one
13 primary document or two secondary documents, or one secondary
14 document and two supporting documents, correct?

15 A Correct.

16 Q Okay. And that's on 55, 56 of your report?

17 A Correct.

18 Q Did SB 14 contain any provisions to ensure that the
19 process for obtaining this EIC would not impose an economic
20 burden on Texans?

21 A No. A lot of these forms of identification cost money,
22 some of them substantial amounts of money. There's no
23 appropriation in SB 14 to assist counties in training for
24 issuing EICs. There's no requirement in the budget for any
25 extensive publicity campaign or extensive traveling mobile

1 units for issuing EIC and nothing to help Texans born outside
2 the state who would have to both pay for birth certificates and
3 go through the bureaucracy of another state, and they have not
4 eliminated fees for these documents, many of which cost money.

5 Q Now on page 57 of your report you have an area that -- at
6 the last full paragraph that talks about unique burdens
7 associated with traveling to DPS offices.

8 Do you remember that part of your report?

9 A I do.

10 Q Were there any facts that the legislature was aware of
11 those burdens that were associated with traveling to DPS
12 offices?

13 A Yes. If you look at page 58 the legislature actually made
14 some specific inquiries and statements that indicated they're
15 very much aware of burdens associated with traveling and of
16 course wait time. In response to a direct question from the
17 speaker a DPS official said "It depends on the office and where
18 it is located but the times can range from 25 minutes in our
19 smaller cities to as long as 3 hours just to get waited on in
20 our largest city, particularly Houston." DPS went on to say
21 "It has been over 10 years since we hired an additional DL
22 employee or built additional DL space while the state's
23 population has increased by 5 million people and we have
24 imposed more stringent requirements which increases the time."

25 The second memo circulated among Republicans at the

1 time refers to difficulties that disabled people might have in
2 traveling. The memo says "77 counties in Texas do not have a
3 DPS office. Therefore, a disabled person may be able to get a
4 ride to their local precinct but not a ride over 75 miles if
5 they live in one of those counties to get the photo ID. It
6 could even be a burden in a suburban or urban area; e.g., there
7 is not a single DPS office inside the loop," referring to the
8 Houston loop. "Although discussed in the context of disabled
9 persons this would also apply to minorities who we have already
10 established have much lower incomes and much more likely to be
11 in poverty than Anglos," and there is also census data on page
12 40 of my report if you want to pull that up which shows that as
13 compared to Anglos minorities have substantially less
14 availability of vehicles in their households.

15 So these difficulties of which the state was well
16 aware apply with particular force to minorities based upon
17 census data readily available at the time.

18 Q And for the record, your report indicates that when you
19 were talking about the quotation, about the 77 counties in
20 Texas that don't have a DPS office and disabled people may be
21 able to get a ride to their precinct but not 75 miles if they
22 live in one of these counties without --

23 A And the problems in the cities.

24 Q Who is the author of that statement?

25 A Dan Patrick.

1 Q And he was a state senator at the time?

2 A Yes.

3 Q Okay. So I want to ask you about EICs, continuing down
4 that road, just a little bit, Doctor, and tell us what
5 significance if any is there to the fact that EIC rules and
6 procedures and requirements are vested in the Texas Department
7 of Public Safety?

8 A That is quite significant.

9 Q In what ways?

10 A The Texas Department of Public Safety deals with public
11 safety issues and as the previous memo that I read indicates
12 has to administer a very large driver's license program as well
13 as the concealed carry program. It is also an office with no
14 history or mission to provide access to voting.

15 Q Did you review documents and e-mails of DPS managers and
16 officers regarding the administration of the EIC program?

17 A Yes. I reviewed e-mails both about their concerns about
18 resources and e-mails about their implementation of the EIC
19 program.

20 Q Now turning to your report at page 59, you indicate that
21 there were some -- in your report that these e-mails contained
22 some concern about how the EIC program could harm DPS' mission,
23 correct?

24 A Yes. I believe this is not an e-mail but a deposition
25 statement.

1 Q Okay.

2 A There are other e-mails later.

3 Q All right. Tell the Court what this -- what this was
4 about.

5 A This was from Joe Peters, the DPS Assistant Director for
6 the Driver's License Division, who is questioned that there was
7 no specific line item in the DPS appropriation for the EIC
8 unit. The answer is "That is correct."

9 "So if they were unexpected needs in some of the
10 quote, unquote DL mission you would face resource
11 constraints like any agency; is that correct?"

12 "ANSWER: Yes, sir."

13 Then on the next page I go to an e-mail --

14 Q If you could, could you name the people involved in this
15 e-mail and what their titles are? I think that's important for
16 the Court to hear.

17 A The next e-mail I will.

18 Q Yes.

19 A This is an e-mail from Robert Bodisch, Assistant Director
20 to the Chief of Staff of the Homeland Security.

21 Q Texas Homeland Security?

22 A Yes. To McGregor Stevenson, Deputy Chief of Staff in the
23 Texas Governor's Office. So it's going to pretty high level
24 people.

25 Q And what does Mr. Bodisch express in that?

1 A He expressed a concern that the EIC program would
2 "severally degrade our DL mission," DL meaning --

3 Q And what's DL?

4 A -- driver's licenses.

5 Q And did Mr. Peters testify in his deposition that since
6 the time of that e-mail that those fears had been alleviated?

7 A Yes, and he said one of the reasons it had been alleviated
8 is the low volume of people applying for EICs. So the fewer
9 people that apply for EICs the less the resource constraint
10 that they worry about on DPS.

11 Q Now did you review other DPS communications regarding that
12 agency's position on administering EICs?

13 A Yes. I reviewed an extensive series of e-mails from Tony
14 Rodriguez, the DPS official, who was their EIC coordinator.
15 They refer to him as the EIC czar in fact.

16 Q And is page 61 a representative sample of some of those e-
17 mails that you're referring to?

18 A Yes.

19 Q And tell us -- tell the Court what those say.

20 A There's a series of them about the implementation of the
21 EIC. At the time when it was beginning to be implemented he
22 said, "I will need negative activity reports to feed the
23 machine up here." The next day in another e-mail to his
24 supervisor he said, "Sir, we continue our clean sweep. No EICs
25 issued. We had a close call on Vantage Park but the customer

1 opted out and left the office."

2 Q Before you go on to the next one, I want to go back
3 because Mr. Rodriguez in his earlier e-mail where it says "I'll
4 need negative activity reports," he also said "Expect to be
5 peppered with requests regarding the number of certificates
6 we've issued and if there are any problems with issuance," does
7 he not?

8 A Correct.

9 Q Okay.

10 A And then added that he -- he needed the negative activity
11 reports.

12 Q Okay. Let's go to the next e-mail that's below that.

13 A Yeah. This is an e-mail in response to an e-mail from a
14 regional DPS manager which indicated that his employees had
15 zero requests for EICs. Mr. Rodriguez responded, "Zero is a
16 good number."

17 Q And he's talking about EICs when he's talking about zero,
18 correct?

19 A Correct.

20 Q And what does -- and there's another e-mail --

21 A Then we have a next --

22 Q -- there from a DPS manager --

23 A Yeah.

24 Q -- Tom Carter.

25 A Yeah.

1 Q Tell the Court what that states.

2 A Yeah. In response to another e-mail from Tom Carter,
3 Rodriguez wrote "No inquiries either. This is getting better
4 by the day."

5 Q And when they say "No inquiries either," they're talking
6 about inquiries to get EICs; correct?

7 A This is all about EICs.

8 Q Okay.

9 A Then there's another e-mail in response to an e-mail from
10 Dallas County requesting the deployment of EIC mobile units to
11 events that might attract large numbers of people. Rodriguez
12 forwarded the memo with the comment "Mission Creep" and as
13 testimony from another EIC official indicates, units were sent
14 to Dallas County over -- only over Mr. Rodriguez's objections
15 to that. So "Mission Creep" certainly meant that he objected
16 to this outreach program for the EICs.

17 Q And --

18 A So this isn't just one e-mail. This is e-mail, after e-
19 mail, after e-mail. The cumulative impact is all essentially
20 the same, a negative approach to the EIC program.

21 Q And, your Honor, just for the record, all of these e-mails
22 are in evidence as part of different exhibits. When his report
23 was prepared exhibits hadn't been numbered yet but -- so I want
24 to go back to the e-mail from the Governor's Office if you
25 could.

1 A Which one?

2 Q That was the one on page -- where the Deputy Chief of
3 Staff expressed concerns. This is on the top of page 60.

4 A This is the Bodisch memo, the Bodisch e-mail?

5 Q Sixty, yes, the Bodisch memo.

6 A I have it.

7 Q All right. Now --

8 A Page 60.

9 Q The top of page 60.

10 A Yes.

11 Q Okay. Now what I want to ask you about this with respect
12 to degrading the driver's license mission, with respect to
13 this, do these kinds of e-mails and concerns that are being
14 expressed, does that reflect in your mind whether or not
15 there's an interest on DPS' part to give out EICs?

16 A I think it clearly shows that it is in the interest of the
17 DPS to minimize the EIC program. Indeed, as we saw the
18 immediate follow-up was, "Well, those fears have been allayed
19 because there are so few applicants" and then all those e-mails
20 from Mr. Rodriguez indicating an interest in keeping down, not
21 expanding, the EIC program.

22 Q Last question on this issue of EICs at least on this part
23 of it, does all this relate to race or ethnicity because after
24 all everybody presumably can get an EIC?

25 A All this very much relates to race and ethnicity because

1 as we've already established African Americans and Latinos have
2 lower levels of income, lower -- more likely to be in poverty,
3 less access to vehicles to which you could drive to DPS
4 offices, and so outreach programs as we know are especially
5 important for minorities, in this case African Americans and
6 Latinos, because of the very large socioeconomic gap that
7 exists and because of the transportation gap that exists.

8 Q Now you started to get into an issue earlier and I said we
9 would come back to it and that's the issue of surcharges
10 imposed by DPS.

11 Do you remember that?

12 A I certainly do.

13 Q There are two special laws I think you've indicated that
14 are administered by DPS and you said that they had burdens on
15 minorities or those people who had valid IDs. Is that what you
16 basically said?

17 A I did.

18 Q Okay. Well, did you study the issue of surcharges imposed
19 by DPS?

20 A Yes, and that is on I believe pages 33 through --

21 Q We brought -- we brought that up Dr. Lichtman here --

22 A Yes.

23 Q -- so if you need to refer to it it's on the screen.

24 A Okay. The surcharge program is the so-called driver's
25 responsibility law in Texas that adds on surcharges to various

1 traffic offenses. Since the law was adopted in 2003 over 2
2 million Texans have been assessed surcharges which can range
3 from a few hundred to even more than a thousand dollars.
4 Unless you pay your surcharge your driver's license is
5 suspended and somewhere around 1.2 to 1.3 million persons in
6 Texas have had a driver's license suspended because of the
7 surcharge program and this has very important racial
8 implications.

9 Q Well, let's bring up table 8 on page 35.

10 A Yeah.

11 Q All right. Talk about the racial implications of this
12 issue.

13 A Yeah. Obviously, again the racial implications can flow
14 from the fact that African Americans and Latinos have much
15 lower incomes than Whites, much more likely to be in poverty,
16 and therefore, it is a much greater burden to pay these
17 surcharges which are quite substantial and unless you pay it
18 your license is suspended and can't be renewed.

19 Table 8 also provides direct evidence of the
20 disparate racial burden on African Americans and Hispanics of
21 the drivers surcharge program. The DPS released the ten zip
22 codes with the largest number of surcharges and --

23 Q And Table -- and Table 8 reflects this?

24 A Yes.

25 Q And what does it show, Dr. Lichtman?

1 A Well, it shows if you look at the last column that these
2 zip codes are overwhelming Latino and Black. On average, the
3 Latino and Black population here voting age is 81 percent
4 compared to the middle 40's for the state as a whole. Not one
5 of these zip codes is anything less than 57 percent Latino and
6 Black. Some of them are 95 percent or more Latino and Black.
7 And so, it's quite striking, the correlation between the top 10
8 zip codes and the minority population providing direct
9 corroboration of the circumstantial facts of differentials in
10 income and poverty.

11 Q So the evidence that you have of this surcharge racial
12 impact, is there any evidence out there that you've found that
13 the legislators or their staffs were aware of the problems
14 stemming from surcharges?

15 A Yes. I found direct evidence indicating that they were
16 aware of this.

17 Q Let's turn to page 44 and then it will spill over to 45
18 and look at Mr. Blifford who's at the bottom, B-L-I-F-F-O-R-D.

19 Tell us what that memo --

20 A Yes. This memo came out from Andrew Blifford to Republic
21 Staffer Meredith Fowler after the Justice Department had denied
22 preclearance to SB 14. Blifford is the budget director for the
23 Republican Speaker of the House and he referred to a blog in
24 which the blogger said because of the surcharge program, the
25 driver's responsibility program, that could account for some

1 1.2 to 1.6 million persons who had ID when they registered to
2 vote but do not have it today because of the suspended license
3 program. The blogger said "It appears that the surcharge is a
4 major contributor to Texas' voter ID law being challenged." In
5 other words, a major contributor to it not being able to pass
6 muster under the Voting Rights Act and Meredith Fowler's
7 response was "Ah, yeah, this came up in the debate. Thanks for
8 passing it along." So clearly the legislatures were aware of
9 this at the time of the debate but didn't address it.

10 Q And that was widely distributed was it not, that
11 information in that -- in Blifford's forwarding?

12 A Yes, and the driver's responsibility program, the
13 surcharges, is well-known within Texas because it's been
14 written up in the press. It's been debated. It's a
15 controversial issue. Certainly legislators had every reason to
16 be aware of it.

17 Q All right. Let's go to page 45 because I think another
18 issue you studied, and this is the last area I'll ask you
19 about, Dr. Lichtman, until we get to your conclusions.

20 Was another issue you studied the issue of suspended
21 driver's licenses?

22 A Well, this is another issue related to both suspended and
23 confiscated driver's licenses.

24 Q And did you also study how that might impact a person's
25 ability to have an ID in order to vote?

1 A Yes. This is what's called the ALR program or
2 Administrative License Revocation Program. If you're convicted
3 of certain -- not convicted, arrested for certain drunk driving
4 offenses, you can have your license confiscated or at a minimum
5 suspended. The requirement is confiscation but from the memos
6 I read it's not clear that all licenses falling under the ALR
7 program are going to be confiscated and this is a very
8 significant program. According to an e-mail from DPS official
9 Tom Vinger (phonetic), in 2008, 112,250 licenses were suspended
10 under the ALR process and this was explicitly brought up in the
11 debates over SB 14.

12 Q All right. And is that the Ron Burnham citation you have
13 on page 45?

14 A Yes, that's on page 45. Representative Burnham
15 specifically pointed out that "100,000 Texans a year have had
16 their driver's licenses suspended. They've had that driver's
17 license taken from them" and there's a response from the
18 sponsor, Republican Representative Harless. She said, you
19 know, not all of them may be registered voters, which is a fair
20 point. She said hypothetically maybe 75,000 and then "if they
21 don't have an alternative form of photo ID such as a passport
22 or citizenship paper with their photo on it, or a CHL, which is
23 a concealed handgun license, they'd have to cast a provisional
24 ballot and this program, like the surcharge program, has racial
25 implications."

1 Q Let's go to page 46 and just let me ask you one final
2 question on this topic.

3 Did DPS weigh in on this issue?

4 A Yes, DPS said there were 112,250 licenses under the ALR
5 program suspended although it indicated not all of them may be
6 confiscated and DPS information indicates it requires a fee of
7 \$125 to reinstate your license under the ALR program,
8 especially burdensome for African Americans and Hispanics.

9 Q Now link this if you would to the right to vote. If
10 someone has a suspended license and they show up -- are they
11 going to show up to vote?

12 A Well --

13 Q What are the options here?

14 A -- several things. One, if their license is confiscated
15 obviously they don't have it but even if their license is
16 suspended they can't renew it and, you know, they have a very
17 narrow expiration date. If it doesn't meet that they can't
18 vote and the truth is, you know, I've studied politics for 50
19 years, people are fearful to present things to official
20 government agents and there's going to be in my view a
21 deterrent factor of going to the poles and presenting a license
22 that has been suspended under the ALR program. You might be
23 afraid your license will get confiscated.

24 Q Sure. Now let's put these two things together and the two
25 things I mean are the surcharges issue that you talked about

1 and this suspended license, driver's license.

2 When you put those together what is the racial impact
3 when you do that?

4 A The racial impact is extremely large. You're talking
5 about substantially more than a million persons in Texas being
6 affected by it and you're talking about those effects falling
7 very sharply along racial lines. We have it circumstantially
8 from the socio-economic data for both programs and we have
9 direct evidence of disparate racial impact from the surcharge
10 program and because the issue in both of them is money you
11 would, therefore, likely infer that you'd have similar racial
12 differences for the administrative license revocation program.
13 Obviously there's going to be some overlap between the two
14 programs so you can't just add up the numbers but regardless,
15 the numbers are very, very large.

16 Q All right. And one final area, Dr. Lichtman, and, your
17 Honor, I neglected to point this out but it was up on the
18 screen and I wanted to call your attention to it but in the e-
19 mail from Mr. Bodisch on page 60 it was to McGregor Stephenson,
20 Deputy Chief of Staff in the Texas Governor's Office, and I
21 neglected to specifically note that for your attention.

22 So, Dr. Lichtman, you have towards the end of your
23 report you start -- you have a number of quotes of different
24 politicians in Texas with regard to the intersection of race
25 and politics and I only want to go through two of them. Let's

1 go with Congressman Kenny Marchant and a gentleman by the name
2 of Ken Emanuelson. It's on pages 66 and 67.

3 If you could pull those, that page up and it's the
4 first full paragraph on 66, other Texas Republican
5 representatives, I believe.

6 A Yes, that is the correct paragraph.

7 Q Just below the quote.

8 A Yeah.

9 Q Thank you. And what does Mr. Marchant say?

10 A Yeah, I was actually surprised to find these quotes
11 because again in this day and age you don't expect to find
12 politicians making racially charged statements linking politics
13 and race but I did find it, first of all, with Representative
14 Kenny Marchant, an Anglo Republican, who was talking about his
15 opposition to overhauling the immigration laws and said, "If
16 you give the legal right to vote to ten Hispanics in my
17 district, seven to eight of them are going to vote Democrat."

18 Q All right. Let's go to the -- let's now continue with the
19 other one. Let's move quickly here because I want to wrap
20 up --

21 A Yeah.

22 Q -- to page 67 with a quote at the very top of the page.
23 It actually begins on the bottom of 66, the last full
24 paragraph.

25 A Yes. This is a quote from Ken Emanuelson. He's not an

1 elected official but he's one of the leaders of the Tea Party
2 in Texas, a very important movement, and he has close links to
3 the Dallas County Republican party. In fact, when he made
4 these remarks he was leading a meeting of Battlefield Dallas
5 County, a group dedicated to turning out Republican voters.

6 He was asked by a pastor, "What are the Republicans
7 doing to get Black people to vote?"

8 Emanuelson responded, "Well, I'm going to be real
9 honest with you. The Republican party doesn't want Black
10 people to vote if they're going to vote nine to one for
11 Democrats."

12 Q Now these two gentlemen that you've just quoted here
13 weren't members of the Texas legislature so why are their
14 comments relevant to your inquiry?

15 A Well, you have not just members of the Texas legislature
16 but it was a pretty solid Republican foulince (phonetic) behind
17 the voter ID bills and while I'm not saying either of these
18 figures had any role in the passage of voter ID, I am
19 indicating that both a Congressman, an important elected
20 official, and a major grassroots leader were sustaining one of
21 the points analytically made in this report and that is
22 partisanship manifests itself here racially with respect to the
23 interests of the Republican party politically in holding down
24 the votes of Hispanics and African Americans.

25 Q And we've covered a lot of ground. Have you formed an

1 opinion about what all this information in your report shows
2 with respect to whether SB 14 was enacted with a discriminatory
3 purpose? Have you formed an opinion?

4 A Yes.

5 Q What is that opinion and what is it based on if you could
6 summarize that for the Court?

7 A Yeah. Let me summarize the basis of the opinion as
8 quickly as I possibly can.

9 When you look at the specific decisions with regard
10 to SB 14 made by the Texas legislature as compared to previous
11 bills and as compared to bills in other states on which they're
12 modeled, you see in every instance those decisions operated to
13 place a disparate burden on African Americans and Hispanics
14 relative to Whites based on data readily available at the time.
15 You also see that the Texas State Legislature was warned that
16 this bill would likely not pass muster under the Voting Rights
17 Act and there were recommendations that it turn to the actual
18 bills on which it was supposedly based in Georgia, not the very
19 different Texas bills.

20 When one looks at the way in which the goals were
21 justified with respect to voter impersonation and deterrence we
22 see that Republican leaders had indicated much more expansive
23 bills and included nonphoto IDs were acceptable; that
24 Republican leadership affirmed that it was mail-in ballots that
25 were the main problem. But they didn't address mail-in ballots

1 and mail-in ballots are disproportionately White.

2 When you look at the assignment to the DPS, the
3 implementation of the DPS, the problems with getting EIC, all
4 of this and many other pieces of data that I analyzed all point
5 in the same direction; that SB 14 was knowingly and
6 intentionally adopted with the purpose of placing a disparate
7 burden on the voting of African Americans and Latinos relative
8 to Anglos. In other words, with a racially discriminatory
9 purpose.

10 The bottom line here is that SB 14 was not passed
11 despite race but was directly and knowingly passed because of
12 race.

13 **MR. HEBERT:** Thank you. I have nothing further.

14 **THE COURT:** Okay. Let's go ahead and take our 15
15 minute morning break.

16 **COURTROOM DEPUTY:** All rise.

17 **(A recess was taken from 9:59 a.m. to 10:16 a.m.; parties**
18 **present)**

19 **MR. KEISTER:** Good morning, your Honor.

20 **THE COURT:** Good morning.

21 **MR. KEISTER:** Ronnie Keister for the defense.

22 **CROSS EXAMINATION**

23 **BY MR. KEISTER:**

24 Q Good morning, Dr. Lichtman.

25 A Good morning. Good to see you again.

1 Q Good to see you. Dr. Lichtman, you're a historian,
2 correct?

3 A Correct.

4 Q And then do you consider yourself a social scientist?

5 A Yes.

6 Q Could you tell the Court what social science is?

7 A Social science is the application of formal methodologies
8 to information about human -- human beings, either in a group
9 or individually. It's also the development of theories about
10 human beings, either individually or in a group.

11 Q Okay. And in your profession, how do -- how do you
12 utilize social science?

13 A I utilize social science because I do extensive
14 quantitative analyses of social science-type of information,
15 primarily election returns and other forms of political
16 information. This is reflected in many of my books, including
17 Prejudice And The Old Politics, The Presidential Election of
18 1928, The Keys To The White House, The Thirteen Keys to the
19 Presidency, many of my articles, including articles that I
20 referenced in the United States National Academy of Sciences.
21 I've published numerous articles in social science journals,
22 such as *Political Methodology* and *Evaluation Review*. I've also
23 examined theories of social science, such as critical election
24 theory that apposites regular cycles of American political
25 history. I've written about that. I've written a review of a

1 book on critical election theory.

2 Q Okay. And scientific method is important to your -- to
3 your work?

4 A I would call it social scientific method. I don't pretend
5 to be a hard scientist.

6 Q Okay. And do you strive to -- to incorporate recognized
7 best practices in your work?

8 A Yes, but, of course, you know, we're academics and there's
9 always disputes about what is recognized best practices.

10 Q Okay. And --

11 A There's not some bible out there.

12 Q Okay. Can you give us some examples of what would be
13 considered best practices for a social scientist doing the type
14 of work that you do?

15 A Using recognized statistical methodologies and being
16 transparent about those statistical methodologies, and
17 striving, whenever possible, to look at direct contemporaneous
18 evidence, as opposed to later reconstructions of that evidence,
19 would be a couple of examples.

20 Q Okay. And is it important to look at all the details
21 surrounding an issue, pros and cons, to try and come up to
22 the -- to the appropriate issue or resolution of the issue that
23 you're looking at?

24 A That's a nice ideal. Nobody, but nobody, looks at all of
25 the evidence, or we would never complete a single project.

1 Q Fair point. But do you try to at least get an overall
2 view of what -- what an issue is, how it's considered by the
3 other people looking at it from different aspects?

4 A You try to get a sufficient picture to provide an
5 underpinning for your conclusions; that does not by any means
6 indicate you've looked at everything. Nobody does, ever.

7 Q Okay. Now, you've testified that you've served as an
8 expert witness in various cases, more than 80 cases, over the
9 years, correct?

10 A Something like that, expert witness or consultant, yes.

11 Q Okay. And, of course, you're compensated for
12 participating in those cases, correct?

13 A Yes.

14 Q And that's an ongoing part of your income, correct?

15 A Correct.

16 Q And you mentioned that Mr. Hebert was the first attorney
17 that got you involved in -- as being an expert witness,
18 correct?

19 A He wasn't quite the first. Actually, the first case I
20 ever worked on was a landmark Supreme Court case, *Anderson*
21 *versus Celebrezze*, in which I was contacted by the lawyer for
22 independent candidate, John Anderson, in 1980, to write an
23 historical analysis of the role and importance of third parties
24 in political history of the United States. And that case
25 became the pivotal ballot access case, *Anderson v. Celebrezze*,

1 I believe it was back in 1980. And then I began working for
2 the Justice Department in the early 1980s.

3 Q And Mr. Hebert, at that point, was with the Justice
4 Department, correct?

5 A That's my recollection, but he was not the first person
6 who contacted me --

7 Q Okay.

8 A -- from Justice. It was a guy by the name of
9 Mr. Rosenbaum.

10 Q Now, over the years you've had many cases that you've
11 worked on with Mr. Hebert, correct?

12 A Quite a number. I've never counted, but, you know, maybe
13 10 percent or 12 percent of my 80 cases, something like that.

14 Q So maybe ten or thereabouts?

15 A Maybe. I've never counted.

16 Q Okay. And you've established a good relationship with
17 Mr. Hebert, correct?

18 A I would hope so. One never knows.

19 Q I mean, to the point -- well, I think you do, because you
20 told me in your deposition that while you do contracts for most
21 of your clients, you don't do contracts with Mr. Hebert,
22 correct?

23 A Sometimes I don't, that's right.

24 Q Okay. All right.

25 A There are others I don't do contracts with, who I worked

1 with over many years and who I trust.

2 Q Okay. But Mr. Hebert, you didn't do a contract in this
3 case with him, correct?

4 A I got an advance payment in this case actually --

5 Q Which is --

6 A -- so I didn't have to do a contract. \$30,000.

7 Q Which is probably better, but you didn't --

8 A I always like a bird in the hand --

9 Q Okay.

10 A -- like anyone else.

11 Q Okay. And you didn't do a contract with him in the
12 redistricting case, correct?

13 A I got an advance payment on that, too.

14 Q Okay. And you didn't do a contract with him in the -- in
15 the D.C. cases, correct?

16 A I don't recall.

17 Q Okay. I believe you --

18 A I do recall these two, because they're recent and I got
19 advance payments, but --

20 Q I believe you told me in your deposition that you didn't?

21 A That's very possible.

22 Q Okay. All right.

23 A I'm not going to argue that.

24 Q Okay. And so you know Mr. Hebert, Mr. Hebert knows you,
25 and Mr. Hebert knows generally what type of areas you work on

1 and what type of issues that he can come to you for support on,
2 correct?

3 A I didn't catch the last part of your statement.

4 Q I'm sorry. I've caught a cold this week, so..

5 A You've got a cold, I know. And I'm old, so..

6 Q Yeah, just stop me anytime. You know Mr. Hebert and he
7 knows you in a working relationship, and Mr. Hebert knows the
8 type of issues that you can help him on -- or give him expert
9 opinions on in the cases he's working on, correct?

10 A He and many other people around the country know that,
11 because as I told you in deposition, I don't advertise, so
12 people come to me.

13 Q Right. Okay. But I'm concentrating on Mr. Hebert right
14 now.

15 A Oh, sure. Absolutely.

16 Q All right. So he -- Mr. Hebert knows that he can come to
17 you and expect that you will give him certain opinions on
18 certain issues, correct?

19 A Incorrect.

20 Q Well, does Mr. Hebert come to you for opinions that
21 doesn't support his cases?

22 A Mr. Hebert does not come to me for opinions. Mr. Hebert
23 comes to me like everyone else I've ever worked with for my --

24 Q Okay. Now I don't want to know --

25 A Let me finish.

1 Q -- about everybody else you ever worked with.

2 A All right.

3 Q I want to know about Mr. Hebert.

4 A All right. Mr. Hebert --

5 Q Okay.

6 A But let me give you a little context.

7 Q Well, then, Mr. -- we have a limited time frame here, and
8 I'd appreciate it if you'd answer the question.

9 A I will answer your question.

10 Q Okay. Now, my question is: Did Mr. Hebert come to you or
11 does he come to you when he needs help on issues on cases that
12 he's working on?

13 A That I can answer yes, not to your previous question which
14 was quite different, that he comes --

15 Q Okay. I don't -- let's stick with one question at a time,
16 please, sir.

17 A But I haven't finished answering your previous question,
18 because you interrupted me.

19 Q All right. You did answer my question. You wanted to go
20 beyond it.

21 A No.

22 Q So let's stick with one question.

23 A Okay.

24 Q Okay. Now, in this case the issue Mr. Hebert wanted you
25 to work on was to find whether or not there was intentional

1 discrimination with respect to the passage of SB 14, correct?

2 A Yes.

3 Q And he specifically wanted you to look for the issue of
4 intentional discrimination, correct?

5 A To look at that issue, correct.

6 Q Okay. But he wanted evidence -- for you to present him
7 evidence of intentional discrimination, correct?

8 A He never told me that. He told me to examine the issue of
9 intentional discrimination. I always do with Mr. Hebert my own
10 independent analyses and come up with my own conclusions.

11 Q Did you answer anything different to me in the depo in
12 Washington?

13 A Not that I can recall.

14 Q Okay.

15 **MR. KEISTER:** Brian, would you pull up Page 13 of the
16 deposition? It's here...

17 A I have a copy, too.

18 Q Okay.

19 A I have trouble reading that from here.

20 Q Well, I'll read it to you. This is from your deposition,
21 and I asked you the question:

22 "QUESTION: Okay. Now, I notice that you specifically
23 state intentional discrimination. Was that specifically what
24 you were requested to look for in this case?"

25 And you answered: "Yes," correct?

1 A Yes, but you've got to put that in the context, that he
2 did not set out -- if you look at the previous questions:

3 "Okay. Did Mr. Hebert set out any particular parameters
4 of methods of research that he wanted you to engage in?"

5 "No."

6 "Okay."

7 "He left that to me."

8 So I was, in answering your question, I was not answering
9 that I was looking to find anything one way or another, but
10 just looking at the issue of intentional discrimination, the
11 same as I've answered you today.

12 Q Now you would agree, sir, that somebody in your position,
13 it's important, just as you're saying not to look for just
14 evidence of intentional discrimination, it's important to look
15 at the whole context of a case or an issue and try and
16 determine whether or not the whole context shows
17 discrimination, correct?

18 A Yes.

19 Q Okay. Now, what did you look at in this case to determine
20 that there was not discrimination in the passage of SB 14?

21 A Well, that's not the way it works.

22 Q Well, answer my question, though, sir, what did you look
23 at in this case to try and make a determination there was not
24 discrimination with --

25 A I looked at many things that could have shown that there

1 was not discrimination.

2 Q Did you set any of those out in your report, sir?

3 A Many of them.

4 Q Okay. And then we'll go through those.

5 A Okay.

6 Q Did you -- did you review the deposition of -- of
7 Lieutenant Governor Dewhurst in this case?

8 A I don't recall. As I said, my preference as best
9 practice, is to look at contemporary evidence, not later
10 reconstructions, particularly later reconstructions by parties
11 of interest.

12 Q So you did not consider any of the testimony that
13 Lieutenant Governor Dewhurst gave in this case concerning his
14 rationale and intentions behind the passage of SB 14, correct?

15 A No. I was much more concerned with the rationales given
16 at the time, not later reconstructions of rationales which are
17 unprovable and undetectable.

18 Q Did you look at -- did you look at the deposition of
19 Senator Frazier in this case?

20 A I think I did, actually, and it was -- yeah, I think I
21 did.

22 Q Did you set out in your report any statements or
23 rationales that Senator Frazier gave for the passage of SB 14?

24 A No. I didn't find them useful, and the deposition I saw
25 he quoted privilege so many times that it was very difficult.

1 And, again, I'm looking for best evidence, which is --

2 Q How about --

3 A Let me finish -- which is not later reconstruction, but
4 evidence at the time.

5 Q How about Senator Tommy Williams, did you look at his
6 deposition?

7 A I think I looked at his testimony in the trial, but not
8 his deposition.

9 Q Did you set out in your report any of the explanations
10 Senator Williams gave for the passage of SB 14?

11 A I'll answer your question simply: I did not set out any
12 after-the-fact reconstructions of explanations. I set out
13 explanations given at the time.

14 Q Well, sir, it's a fact that in your reports you set out
15 everything negative that you could find about SB 14, but you
16 set out nothing that supports the fact that SB 14 was not
17 passed with racial intent; isn't that true?

18 A No. I set out explicit justifications given by the
19 backers and supporters of SB 14. I examined the specific
20 provisions of SB 14. I compared the justifications for SB 14
21 with justifications given for previous bills that were much
22 more expansive in terms of their photo ID. and nonphoto ID.
23 options. So, absolutely, if those statements and rationales
24 and decisions had borne scrutiny, I would have concluded
25 something very different than I did.

1 Q So the rationales for nondiscrimination did not warrant
2 consideration in your -- for you, correct?

3 A No. I looked at them. I looked at the rationales that
4 were given --

5 Q They just --

6 A -- for nondiscrimination, at the time --

7 Q They just did not warrant being placed in your report; is
8 that correct?

9 A I did place them in my report. I quoted many statements
10 from actors at the time in the actual debates saying, you know,
11 "Our bill is like Indiana, which passed muster under the
12 Supreme Court"; "Our bill is like Georgia, which meets the
13 requirements of the Voting Rights Act." I quoted many
14 statements to that effect on SB 14, but, like any analyst, of
15 course, I subject those statements to scrutiny.

16 Q Yeah. You -- you quoted statements that you felt like you
17 could -- you could beat (indiscernible) in your report,
18 correct?

19 A Incorrect. I quoted the key statements in support of
20 SB 14 by key players at the time.

21 Q Okay. The Judge has your report and she'll review your
22 report. Can you -- can you direct her to any specific pages in
23 your report where you have referred to positive testimony, as
24 opposed to negative testimony --

25 A Absolutely.

1 Q -- about the passage of SB 14?

2 A I'll have to find the section on -- a long report, I've
3 got to find specifics here. Yes. Representative Harless on
4 Page 37 of my report, "SB 14 is similar to George's photo ID.,
5 which was approved by the Department of Justice, and Indiana's
6 photo ID. which was upheld by the United States Supreme Court."
7 Clearly, that is a very positive statement in support of SB 14
8 saying it should meet muster under the Voting Rights Act and
9 muster under the Supreme Court. It would be hard to find a
10 more positive statement.

11 Q Okay.

12 A On that same page, if you want me to go on, "Senator
13 Frazier, the sponsor of the bill said, 'Very, very small change
14 from the Indiana model.'" "Representative Harless said, 'The
15 bill that we filed is modeled on the Georgia and Indiana
16 legislation.'"

17 Q Okay. Anything other than Georgia and Indiana cases or
18 laws, any other statements that they made, positive statements
19 in your report in support of SB 14?

20 A Yes. Here's a statement -- another statement by Senator
21 Frazier. And, by the way, on earlier bills I also quote lots
22 of positive statements for them. "The four types of
23 identification we are offering up, we believe are less
24 confusing, they're simpler for both voters and election voter
25 [sic], everyone knows what they look like. There is a

1 standardization of those, and they all look alike. It will be
2 less confusing for the systems who are accepting the voter ID."

3 This is in defense of not including student and
4 government workers. I then subject that to scrutiny showing
5 that the Indiana bill, which they solicited testimony from the
6 Secretary of State that it had worked so well, that there was
7 no confusion, in fact, had student and government workers. I
8 can go on.

9 Q Did you support any statements that were positive, that
10 you did not cite for the purposes of trying to -- trying to
11 discredit them?

12 A There are hundreds of statements, obviously.

13 Q Did you ever -- did you ever have a section in your report
14 where you gave a positive statement summary of the proponents
15 of SB 14, their reasons for passing it, without -- without
16 subjecting it to the criticisms?

17 A I think I first presented the statements -- I've given you
18 several examples here and then, of course, you subject to
19 critical scrutiny, that's the job of an independent analyst.

20 Q All right. Well, on Page 4 of your declaration, you state
21 that your focus is on intentional discrimination against
22 minorities who achieve partisanship [sic] political advantage, not
23 on racial animus, per se?

24 A That's right.

25 Q Okay.

1 A Although, I also say the evidence indicates that such
2 animus is present as well.

3 Q Okay. Do you believe that voter ID., photo voter ID.,
4 SB 14, was passed for partisan [sic] purposes?

5 A For what?

6 Q Partisan [sic]?

7 A I don't know what partisan [sic] means. Partisan?

8 Q Partisan.

9 A There was, as I explained in my direct, obviously there is
10 partisan politics involved, but the way in which partisan
11 politics was manifest in SB 14 was through intentional
12 discrimination against the African American and Latino
13 democratic base and their ability to vote.

14 Q Okay. Are you aware of what the Supreme Court has said
15 about discriminatory purpose in the case of *Personnel*
16 *Administrator of Massachusetts versus Feeney*?

17 A I don't know that case, but if you want to enlighten me,
18 I'd be happy to listen.

19 Q Okay.

20 **MR. KEISTER:** Brian, if you'd pull that up, please?

21 Q Can you read that to the Court, please, sir?

22 A "Discriminatory and purpose implies more than intent as
23 volition or intent does awareness of consequences. It implies
24 that the decision-maker selected or reaffirmed a particular
25 course of action, at least in part, because of, not merely in

1 spite of its adverse affects on an identifiable group.”

2 Q Okay. And you were not aware of that passage of the
3 Supreme Court when you prepared --

4 A Actually, I was, I just wasn't aware of the particular
5 case. And I think I testified about that very issue, that it
6 was passed, not in spite of, but because of race, and all of
7 the evidence points in that direction.

8 Q Okay. Did you take this case and the passage into
9 consideration when you wrote your report in this case?

10 A No, I didn't. I actually wrote my report independent of
11 that, letting the chips fall where they may.

12 Q Now you've spoken a little bit about history in this case,
13 correct?

14 A A little bit. It's not a focus of my report.

15 Q Okay. And we're not going to go through the whole process
16 that we went through in Washington on this.

17 A I hope not. There was a lot of confusion in that.

18 Q But you -- we talked about in Washington the fact that
19 Texas was a one-party state, for the majority of its history,
20 correct?

21 A I have no dispute with that.

22 Q Okay. And we talked about the fact that it was, and up
23 until ultimately 2003 before the Republican party had a
24 majority in the House, the House of Representatives, as well as
25 the Senate, correct?

1 A I don't dispute any of that.

2 Q And -- and at that point in time, they also took the
3 governorship, lieutenant governorship, and the Attorney
4 General's Office, correct?

5 A I think they took every -- eventually, every statewide
6 office in the State of Texas.

7 Q Okay. In all of the history before that dealt with the
8 time period when the Democratic party was in control of the
9 government of the State of Texas, correct?

10 A I believe that's right. There may have been some minor
11 exceptions, but that is basically correct.

12 Q Okay. Now, are you familiar with the case of -- with the
13 Shelly [sic] case, came out of Springport?

14 A Do you mean the *Shelby* case.

15 Q *Shelby* case. Thank you.

16 A The *Shelby* case, yes.

17 Q That's the case that struck down the Section 4 of the
18 Voting Rights Act case?

19 A Yes, the formula section.

20 Q Okay. And did you consider what that court said in making
21 your historical analysis in your report?

22 A I did not.

23 Q Okay. Do you believe that -- that after *Shelby*, that the
24 more important issue with respect to the history of
25 discrimination is the more current history, as opposed to

1 history a hundred years ago?

2 A Yes, but the current history, like the history a hundred
3 years ago, shows evidence of racial discrimination.

4 Q Well, that wasn't my question to you, sir. My question
5 is: Do you agree that under *Shelby*, that when we're looking at
6 history discrimination, we should be looking at relevant
7 history, recent history, as opposed to history from the 1965s
8 back into the 1800s?

9 A I'm not a lawyer, so I won't parse to you what is legally
10 indicated in *Shelby*. I think, as an historian, I would not
11 dismiss the earlier history. I think it's important, but
12 obviously, recent events are more -- the most relevant.

13 Q All right. And so, as interesting as all the previous
14 history is, at least according to the Supreme Court in *Shelby*,
15 we can almost not totally disregard it, but we can pretty much
16 put that aside in trying to determine what's relevant in this
17 case as to the history of discrimination with respect to the
18 passage of SB 14, correct?

19 A I think I answered that. I would, as an historian, I
20 would not put it aside, but obviously, you want to see if in
21 recent times discrimination continues. It's not just a relic
22 of the past.

23 Q Okay. Now you spoke about polarized voting in this state?

24 A Correct.

25 Q And I want to ask you, just to get some baseline numbers,

1 how many -- what percentage of the Democratic party is African
2 Americans in Texas?

3 A I don't think you register by party in Texas, and
4 certainly not by race, so that's an unanswerable question.

5 Q So you don't know the answer to that question?

6 A It's not an answerable question, for the reasons I just
7 told you.

8 Q Well, when you make a determination that -- that -- that a
9 certain race votes for the Democratic party, based upon race,
10 isn't it important to know the number or percentage of that
11 party that is, in fact, that race?

12 A That percentage I do know. The percentage of African
13 Americans that vote Democratic is over 90 percent in Texas.

14 Q Okay. Do you know what percentage of the Republican party
15 is African American?

16 A Again, you do not register by party in Texas and you do
17 not register by race, but I do know, based on my polarization
18 studies, that votes for Republicans by African Americans is
19 under 10 percent, and often well under.

20 Q So the answer is you don't know the number or percent of
21 African Americans in the Republican party in Texas?

22 A My answer is, for the reasons I explained, that's not an
23 answerable question.

24 Q Do you know the percent in the -- of the Republic party
25 that is Hispanic?

1 A Same answer.

2 Q Okay. Do you know the number of -- of Republican
3 officials that's been elected to office that are minority?

4 A In the whole State of Texas?

5 Q Yes, sir.

6 A I don't have that figure, but I do know in the legislature
7 there are very, very few.

8 Q Okay.

9 A Just a handful, maybe a very small percentage, if at all.

10 Q Have you made any attempt to look from the -- from the
11 state offices, governor, lieutenant governor, statewide elected
12 offices, as well as federal offices, such as congressman and
13 senator, to see what the distribution is?

14 A No. I know there was some, but I've not worked out
15 percentages.

16 Q Okay. And, of course, you're aware that Senator Ted Cruz
17 is -- is Hispanic?

18 A Of course I am.

19 Q And you're aware that he is a Republican?

20 A I am aware.

21 Q And you're aware that he was elected to the Senate, I'm
22 assuming by Republicans, correct?

23 A Correct.

24 Q Okay. So your statement is not always true with respect
25 to polarization, correct?

1 A I've got to explain my statement, because when you say "my
2 statement" --

3 Q Well, I don't -- I'm just -- the statement that you made
4 here in court with respect to the fact that the races vote
5 for -- minorities vote for Democrats and Republicans vote for
6 Anglos. That's not always true, correct?

7 A I carefully qualify that by saying Republicans do
8 sometimes run minorities, like Ted Cruz or like the railroad
9 commissioner in 1998, or the Supreme Court Justice in 2008.
10 But even when they do that, they are still tied to the Anglo
11 base, and the Democrats are still tied to the African
12 American/Hispanic base. So recruiting Republican candidates
13 does not change the structure of politics along racial lines in
14 Texas; that is critical to understanding the implications of
15 SB 14.

16 Q So Ted Cruz was recruited by the Republican party, is that
17 your testimony?

18 A He ran as a Republican.

19 Q Correct. Correct. So racial polarization, while that may
20 be interesting, is not always correct?

21 A Well, I think it is always correct, even in those
22 elections, as I explained, where the Republicans have a
23 minority, you still get the same pattern of racially polarized
24 voting of Anglos voting for Republicans and Democrats voting --
25 and Hispanics and African Americans voting for Democrats, which

1 helps explain the motivation here. You can't change the
2 demography of Texas, but you can pass laws that place disparate
3 burdens for voting on African Americans and Latinos. And in my
4 view, that's what was done here.

5 Q Okay. But you haven't made any determination, and let's
6 say the Appellate Courts in the State of Texas, have you made
7 any determination of how many minorities for the Republicans
8 are on the Appellate Courts in the State of Texas?

9 A No.

10 Q Okay. Well, wouldn't that be important to know whether or
11 not this racial -- racially polarized voting thing is correct
12 is to see whether or not in practice it is correct?

13 A Absolutely not, because as I explained, even when
14 minorities run as Republicans and get on positions like
15 railroad commission or the State Supreme Court or U.S. Senate,
16 they are being elected by Anglos, and the African Americans and
17 Latinos are voting for their Democratic opponents, regardless
18 of the race of the candidate, the patterns of the race of the
19 voter, which is what's critical here, and tied to SB 14 does
20 not change. I specifically studied that in my racial
21 polarization analysis.

22 Q So regardless of what -- what may or may not be the
23 reality amongst elected officials, you're going to stick with
24 that analysis --

25 A My analysis --

1 Q -- without -- without looking at -- at the true numbers?

2 A I did look at racism involving -- I'll repeat myself
3 again -- I did look at elections involving minority
4 Republicans; and the same structure of Texas politics prevails.
5 And that is the structure that's relevant here, not whether or
6 not Anglos can elect some Republican office holders, and
7 overwhelmingly also the Republican office holders are Anglo.

8 Q Okay. But as you said here today, you have no -- no true
9 knowledge of what the numbers are with respect to minority
10 office holders who are Republican in the State of Texas,
11 correct?

12 A I don't have specific quantitative knowledge but I do know
13 from my election analysis and from my examination of the state
14 legislature and the congress that the great majority of those
15 office holders are who are republican are also Anglo.

16 Q But as you sat here today, you can't give us any names of
17 those people, correct or offices?

18 A Names of who, Anglo --

19 Q Other republican minority members of the republican
20 parties who are in fact in office today.

21 A I think I mentioned some. There is Ted Cruz. There is a
22 Supreme Court Justice. There's a railroad commissioner but
23 there's a few of them, very few of them. I'm not sure I can
24 think of a single congressman in the State of Texas who is a
25 republican and a minority, maybe one but there's either none or

1 very, very few. And very, very few in a very large state
2 legislature.

3 Q Okay.

4 **MR. KEISTER:** Brian, would you pull up a table three
5 of the doctor's report, page 27.

6 **BY MR. KEISTER:**

7 Q Do you recognize this table Dr.?

8 A I do.

9 Q Okay. Now at the bottom of this table you have a
10 asterisk, what is that asterisk?

11 A Yeah. There's a problem in using voting age population
12 with respect to Government employee's for Latinos because there
13 is a substantial undocumented immigrant population among
14 Latinos that not anywhere similarly present among African
15 Americans and Anglos. So, I did two things to for adjust of
16 that. One I directly adjusted conservatively an estimate for
17 illegal or undocumented immigrants and I also presented a
18 second table based on registered voters which takes out
19 entirely the issue of undocumented immigrants.

20 Q Okay. And then you set out in footnote three, on page on
21 38, what you did in that case.

22 **MR. KEISTER:** Brian, do we have that? Do you have
23 footnote three?

24 //

25 //

1 **BY MR. KEISTER:**

2 A I think it's -- I think you're wrong. I think it's --

3 Q Am I wrong?

4 A -- footnote 33 on page 28.

5 Q I think you're right. Yeah. Can you just tell us what or
6 tell the Court what that footnote is?

7 A Sure. Should I just it or explain it?

8 Q You can read it if you will.

9 A "The Latino voting age population is adjusted to
10 eliminate undocumented immigrants who are not
11 eligible for Government employment. According to the
12 PEW Hispanic Center, there were between One Million,
13 Four Hundred and Fifty Thousand and One Million,
14 Eight Hundred and Fifty Thousand undocumented
15 immigrants in Texas in 2010. Although age
16 distribution is not available individually for the
17 states nationally, an estimated 87 percent of
18 undocumented immigrants who were of voting age.
19 Taking conservatively the lower bound of One Million,
20 Four Hundred and Fifty Thousand estimate and
21 multiplying by .87 yields a reduction of One Million,
22 Two Hundred and Sixty-one Thousand, Five Hundred from
23 the Latino voting age population."

24 Q Okay. Now Latinos are not the only group that has
25 undocumented immigrants in it, correct?

1 A Yes but they are overwhelmingly the group that does in
2 Texas.

3 Q Did you do any --

4 A Certainly not Anglos and Blacks.

5 Q Okay. In your charts, that we're going to look at and I
6 believe you referenced this or have this asterisk several
7 times, did you adjust the African American and Anglo
8 percentages to account for undocumented immigrants that would
9 fall in those groups?

10 A No, because the citizen voting age population is so close
11 to the overall voting age population that there's no necessity
12 to make that kind of adjustment.

13 Q Okay.

14 A It would be -- if anything changes in the small tenths of
15 a percentage.

16 Q Have any you done any work to actually determine what
17 those percentages would be?

18 A I did. I looked at the citizen voting age population and
19 found that it was very, very close to the voting age
20 population.

21 Q Okay. And undocumented immigrants are not the only
22 immigrants living in the United States who are not eligible to
23 vote, correct?

24 A Oh, yes. That's of course correct.

25 Q Okay. What other immigrants would not be eligible to

1 vote?

2 A Immigrants who are not citizens.

3 Q Okay. All right.

4 A And who may be lawful residents, not undocumented.

5 Q All right. Now did you take those into consideration in
6 your adjustment in these tables?

7 A No, because we're looking at the voting age population,
8 not the population eligible to vote because the Census data on
9 Government employees does not limit it to Government employees
10 who are citizens. So if I took that out then I would be making
11 an apples to oranges comparison. But I did take that out in my
12 next table where I was able to do so because I was dealing
13 there which I can't do with the Census, only with registered
14 voters.

15 Q Okay.

16 **MR. KEISTER:** Brian, would you pull up table five on
17 page 31, please?

18 **BY MR. KEISTER:**

19 Q Now this table deals with voting age college students,
20 correct?

21 A Yes.

22 Q Okay. And in this table, you show that percentage wise
23 there's more African Americans and Latinos attending college
24 than there are Anglos, correct?

25 A Percentage wise, correct.

1 Q Percentage wise.

2 A Not numbers wise.

3 Q And obviously, that does not indicate discrimination,
4 racial discrimination in Texas, correct?

5 A No. What does indicate racial discrimination is the
6 elimination of the option to include student IDs in SB 14 even
7 though such student IDs were in previous bills that republicans
8 had vouched for and are in the Indiana and Georgia laws that
9 republicans had said SB 14 was based on.

10 Q Okay. Well, wouldn't you agree that the fact that there
11 are percentage wise more African Americans and more Latinos in
12 the State of Texas attending college tends to show more of the
13 lack of racial discrimination than it does discrimination,
14 putting aside SB 14 for a minute?

15 A Yeah I didn't look at that issue one way or the other --

16 Q Okay.

17 A -- as to why. There can be many reasons for this
18 distribution of students. I did not go behind it to look at
19 it.

20 Q It's a fairly enlightening statistic though, isn't it?

21 A If you say so.

22 Q Well, wouldn't you think so? I mean --

23 A I didn't look at it for that purpose. I think that's
24 typical of what's happened and it reflects the age distribution
25 as well. Anglos tend to be older. If you look at the

1 population of Anglos in my senior citizen category, it's about
2 double that of African Americans and Latinos so this further
3 reflects the changing demography of Texas with a lot of young
4 African Americans and Latinos. Whether or not there is
5 discrimination in higher education in the State of Texas, I've
6 not studied that issue.

7 Q Okay. And once again on this chart did you take into
8 consideration the percentage of immigrants who are not -- who
9 are college students but are not allowed to vote because of
10 lack of citizenship?

11 A Again, that would not be appropriate because then you'd be
12 having apples and oranges comparison.

13 Q Okay.

14 **MR. KEISTER:** All right, Brian, would you pull up
15 table seven on page 32.

16 **BY MR. KEISTER:**

17 A And let me add to that answer. Again as with employment,
18 I also drilled down to registered voters eliminating all of
19 those issues that you laid out.

20 Q You have again the asterisk at the bottom but on that one,
21 you have footnote 27.

22 A I think that's just a typo. It's the same footnote.

23 Q So it should be the same one --

24 A Yeah.

25 Q -- that you had previously.

1 A Same analysis.

2 Q All right. So on this table; once again did you only make
3 adjustments with respect to Latino students?

4 A Yes, for the reasons I've already explained.

5 Q Okay, you did not make adjustments with respect to African
6 Americans or Anglos, correct?

7 A No, and even if I had it would not change the comparison
8 at all. You'd have the same distributions.

9 **MR. KEISTER:** Brian, would you go to table six,
10 please?

11 **BY MR. KEISTER:**

12 Q And can you tell us what this table represents, sir?

13 A Yeah. This is a different analysis of the distribution of
14 the student population using survey data from standard CCES
15 survey 2006 and 2008 so it was available at the time of the
16 debate over SB 14 showing that among registered voters, those
17 most directly impacted by SB 14 that the percentages of
18 students who are African Americans and Latino are more than
19 double the percentages of Anglos. And these results as I
20 explained are statistically significant.

21 Q Yeah, okay. Without considering whether or not the ratio
22 to the Anglos, wouldn't you agree that that's a fairly small
23 number, 4.7 percent --

24 A Not at all.

25 Q -- of the college students?

1 A If you look at the disparities, they're 2.5 and 2.4
2 percent. And you're talking about a student population of well
3 upwards of one and a half million in the State of Texas so
4 you're talking about disparities affecting hundreds of
5 thousands of registered voters.

6 Q And I'm not referring to -- once again, I'm not referring
7 to the differences of ratio between them.

8 A Not hundreds of thousands but --

9 Q Right.

10 A -- Tens of thousands. Excuse me.

11 Q Okay. All right. Now, do you contend, is it your
12 position of this case that because of SB 14, 4.7 percent of the
13 African American students are no longer going to be able to
14 vote?

15 A No, that's not what I suggest at all. What I'm suggesting
16 is because of SB 14 the decision to eliminate student IDs that
17 places a disparate burden on African Americans and Latinos who
18 have more access to those kinds of IDs than the concealed carry
19 IDs that are retained in the State of Texas. I am not anywhere
20 stating it as you stated it.

21 Q Okay. And the only way you can determine whether or not
22 that 4.7 percent is going to be able to vote despite SB 14
23 requirements is by making the determination of who or what
24 percentage has one of the SB 14 IDs, correct?

25 A Right and when the State Legislature passed SB 14 they had

1 no idea who did or didn't have one of their acceptable IDs
2 because they didn't study that issue. But they did have
3 available to them this information that shows regardless, you
4 know, of this unknown distribution eliminating student IDs
5 poses a disparate burden on African Americans and Latinos.

6 Q Okay. Now we're several years past the implementation of
7 the bill of SB 14 and several years past the debate on SB 14,
8 correct?

9 A Of course.

10 Q Okay.

11 **MR. KEISTER:** Can I get the ELMO turned on, please?

12 **BY MR. KEISTER:**

13 Q I'm going to try this. I'm challenged but we will see how
14 it -- I want you to help me fill out some information if we
15 can. Now, back to your chart, 4.7 percent of African American
16 students is what was referenced in your chart, correct?

17 A No. My chart says 4.7 percent of African Americans who
18 are registered voters are also students. It says nothing about
19 whether they have photo ID or not.

20 Q Okay. Well, can you tell me what percentage of that 4.7
21 percent that are registered to vote have a student ID with a
22 photo on it?

23 A That I don't know.

24 Q Okay. So we are four years, three years past the passage
25 of that, of SB 14 and you don't know the answer for that,

1 correct?

2 A Not to that particular question.

3 Q All right.

4 A But they would all have potential access to such photo
5 IDs. I know in my institution we all have photo
6 identification.

7 Q But your institutions not in Texas.

8 A No, no. I don't know how many do or don't but potentially
9 they would -- all these students would have access to photo
10 IDs.

11 Q Well, potentially. Have you done any studies to see if
12 the community colleges --

13 A No, no.

14 Q -- are of a -- okay. So really and truly you don't know
15 whether or not all the colleges and universities issued photo
16 IDs in Texas, correct?

17 A I don't know two things. One, whether all of them issue
18 it and whether in fact if student IDs have been authorized
19 under SB 14 they would have been motivated to issue photo --

20 Q Yeah.

21 A -- ID's so their students can vote. That would have been
22 a changed condition.

23 Q All right. Well, let's fill in the rest of it. All
24 right, over here about -- under yes is SB 14 IDs. And can you
25 tell us the percentage of that 4.7 percent of African American

1 students that have Texas driver's licenses?

2 A I'll answer your question by saying neither myself nor
3 anyone else including the Texas State Legislature can answer
4 that question.

5 Q Have you made any attempt to answer that question?

6 A No and it's not necessary for my analysis. I wasn't
7 tiering on that.

8 Q How about Texas ID issued by DPS?

9 A I think you're cutting off the top.

10 Q Oh, I'm sorry. Let me see what the top is.

11 A I'll answer all your questions with the same response.
12 Nobody knows how to fill in those blanks without population
13 you've listed.

14 Q Okay. Well, we know how to fill in the blanks. We don't
15 know the information; is that -- that's what you're saying,
16 correct?

17 A Correct.

18 Q Yeah. So as far as you know the entire 4.7 percent may
19 very well have an SB 14 photo ID, correct?

20 A And none of them may have and that's the point. The State
21 Legislature when it passed SB 14 which is the focus of my
22 analysis, did pass SB 14 with an intent to discriminate didn't
23 know either and they afore quite clearly eliminating this
24 option when you don't know whether they have it or not was part
25 of the ways in which SB 14 imposed disparate burdens upon

1 minorities.

2 Q So basically all you're telling the Court in your report
3 is there's 4.7 percent of African Americans who are in colleges
4 or universities, correct?

5 A No.

6 Q That's all that chart shows?

7 A No. That chart shows that whereas there were 4.7 percent
8 of African Americans, registered voters who are college and
9 university students, there are only 2.2 percent who are Anglo.
10 So the percentage of African Americans based on information
11 available to the State Legislature when they excluded the
12 student IDs was 136 percent higher than Whites, a 2.5 percent
13 percentage point difference which given the large number of
14 college students translates into tens of thousands of students

15 Q And we have the larger number of African Americans and
16 Latinos here in colleges. And those are a good thing but my
17 question to you is are you presenting this information to the
18 Court or the information in your chart, trying to represent to
19 the Court that that population of African Americans do not or
20 cannot get SB 14 IDs?

21 A I'm not saying one way or the other because that is
22 unknown and was unknown and admitted as unknown at the time
23 they passed SB 14 excluding these kinds of IDs to which African
24 Americans and Latinos would have greater access than Anglos.

25 Q Well, we're several years and several elections passed the

1 implementation of SB 14. Based upon that, have you found
2 anything to help the Court to understand what part in this 4.7
3 percent of African Americans who are in colleges and
4 universities cannot get an SB 14 ID?

5 A That's an unknowable question. You can't isolate a
6 population that small and divide it into all of these
7 particular categories. And my report is focused on what the
8 legislature knew and understood at the time. What someone
9 might find three or four years later doesn't change the intent
10 of the legislature in 2011 which is why I limited myself to
11 information available to them at the time. And at the time,
12 they had information showing full well that this form of ID
13 which is present in Georgia, present in Indiana, present in
14 previous bills and was eliminated has a disparate burden on
15 African Americans and Latinos. And there was no justification
16 for them claiming that well all of these African Americans and
17 Latinos have other types of voting ID anyway because despite
18 being pressed they never studied that.

19 Q Okay. So you've reviewed all these documents. You've
20 reviewed some statistics. You haven't interviewed anybody in
21 this case, correct?

22 A No, as I said --

23 Q You haven't done any original statistics or research.
24 You've taken other people's statistics in this case, correct?

25 A Well, I wouldn't say other people's statistics. I've

1 taken statistics from the most standard sources used in social
2 science, namely the United State Census, Official State of
3 Texas statistics and two of the most extensive and respected
4 scientific surveys.

5 Q Okay. But now you've made up your mind in your report
6 that you think there's racial discrimination in 2011 and you
7 haven't made any efforts to look at the implementation today to
8 see whether or not the implementation of SB 14 bears out your
9 suspicions that there's racial discrimination when it was
10 passed?

11 A Racially discriminatory intent --

12 Q Yes, sir.

13 A -- and I did in fact look at intent with respect to the
14 discretion provided to DPS showing that by providing this
15 discretion to DPS that was also a decision made that had racial
16 implications for African Americans and Latinos.

17 Q Okay. Now, wouldn't you agree that the universe of
18 colleges and universities in Texas, well there's more than
19 other states because of the size of our state.

20 A A very large student population --

21 Q Yes.

22 A -- that's had more than 1.5 Million.

23 Q But wouldn't you agree that those are somewhat isolated
24 places in the state, isolated institutions, from the standpoint
25 that if you wanted to determine college students and what SB 14

1 IDs they possess it would be fairly easy to do, wouldn't it?

2 A It would be one of the most difficult undertakings you
3 would imagine for the very reasons you said. You've got
4 students scattered.

5 Q Well, but we --

6 A Let me finish. You have students scattered all over a
7 huge state. It would be very difficult, very time consuming
8 and extremely expensive to do.

9 Q Do you know whether or not the administration of those
10 universities and colleges would have that type of information
11 available?

12 A From what I know about colleges and universities, they
13 certainly would not have all of this information that you've
14 laid out available.

15 Q Well, what about some of it? What about Texas driver's
16 licenses?

17 A I don't know whether they do or don't.

18 Q Okay.

19 A I can only speak to my institution. They have no idea
20 whether students have driver's licenses or not, I don't think,
21 except for those who park on campus.

22 Q You're in a private university, correct?

23 A Yes.

24 Q Okay.

25 A But I don't see why that would be fundamentally different.

1 Q Well, I'm not sure it would be either, but it seems to me
2 like, if we're going to come in here and start talking numbers
3 and we want to try and represent things to the Court, that it
4 might be worth an effort to find out whether or not, in
5 reality, these 4.7 percent of African-American students do or
6 do not have one of the SB 14 I.D.'s.

7 A In terms of other inquiries, that might be, but not in
8 terms of my inquiry, which is focused on the understanding and
9 intent of the state legislature in adopting this SB 14.

10 Q Okay. So, you -- you've established the position on the
11 intent of the legislature, and you've done -- you haven't gone
12 beyond that to try and do any research and find out whether or
13 not the actual turnout numbers in the elections and actual
14 things such as the possession of I.D.'s, whether or not that
15 supports your determination, correct?

16 A I have not gone beyond the adoption of the legislation,
17 and there isn't yet an election that would enable you to make
18 reliable determinations because you've only had primaries and
19 municipal elections, which are not good samples for this
20 because they're very low turnout elections, and the most
21 motivated, dedicated, most informed voters are those who turn
22 out. But all of that is beyond the scope of my study. Others
23 have, as I sat and listened, undertaken that.

24 Q Yeah. Well, are --

25 A And that's not part of my inquiry.

1 Q Are you sure about -- about your statement that there
2 hasn't been statewide elections?

3 A Oh, statewide general election. There's been primaries
4 and local elections; hasn't been a statewide general election
5 since the implementation of this, as far as I know, with
6 statewide, top-of-the-ticket candidates.

7 Q So, you're not aware of a 2013 general election in this
8 state?

9 A I think that was a local election; it did not have
10 statewide candidates running. But if you want to correct me,
11 I'm willing to be corrected.

12 Q Well, I don't want to correct you, sir. It's just -- but
13 you're not aware that there has, in fact, been a statewide
14 general election on November 5th --

15 A I believe it was a statewide local election, not one that
16 had senatorial, gubernatorial, or those kinds of high-profile
17 candidates that spark turnout.

18 Q So, you haven't spent a whole lot of time looking at how
19 SB 14 has actually been implemented in terms of the elections
20 in Texas because you're not aware that we actually had a
21 statewide election.

22 A No, I was aware. You're putting words in my mouth. What
23 I said was it wasn't a general election with statewide, top-of-
24 the-ticket candidates. The kinds of elections you've had so
25 far are low-turnout elections, and the most motivated and

1 informed voters turn out. That's what I said, not what you
2 said I said.

3 Q Okay. Well, I won't hammer the point, but do you know
4 what the November 5th, 2013, election was?

5 A Pardon me?

6 Q Do you know what the November 5th, 2013 --

7 A I didn't study that election, but I believe it was -- it
8 did not have the top-of-the-ticket, statewide candidates.

9 Q Well, do you know what was on it, on the ballot, in 2013?

10 A No. I didn't study the election.

11 Q Okay. All right. Now, if we were to go through this
12 process for the other races on -- on your chart, Latinos and
13 Anglos, would your answer be the same? You don't know the
14 answer to any of these questions?

15 A I don't, the legislature didn't, and I don't think it's
16 possible to answer those questions for this particularized
17 group.

18 Q Because you haven't tried.

19 A You can infer things, because it's a very small and
20 specific group, and, as we explained, how difficult it would be
21 to canvass every single college and university in the State of
22 Texas scientifically.

23 Q Well, sir, when you try to strike down a duly passed law
24 enacted by the State of Texas legislature and signed into law
25 by the governor, don't you think that's -- that merits some

1 attention?

2 A I'm not trying to strike down anything.

3 Q Okay.

4 **THE COURT:** I'm sorry; I didn't catch that.

5 **THE WITNESS:** I said I'm not trying to strike down
6 anything.

7 **THE COURT:** Okay.

8 **THE WITNESS:** I'm just giving you my report. So, you
9 know, those decisions are up to others.

10 **BY MR. KEISTER:**

11 Q All right. Brian, would you pull up Table Four, page 29,
12 please?

13 Now, this is similar to the table we've been looking
14 at for students, only this is for government employees,
15 correct?

16 A Correct.

17 Q Now, what have you done, sir, to make a determination as
18 to whether or not every government voter -- voter -- every
19 government employee in the state of Texas is issued a photo
20 I.D.?

21 A I haven't made --

22 Q By -- by the employer.

23 A Yeah. I haven't made that determination. They all have
24 potential access to it, and if SB 14 had been passed, including
25 a provision to allow government employee photo I.D.'s, that may

1 well have affected the policies with regard to the issuing of
2 such I.D.'s for employees.

3 Q Okay. So, you're telling me that you really don't know
4 how many government employees in the state of Texas today have
5 photo I.D.'s issued by the employer, correct?

6 A No, and, as I said, it might be quite different if SB 14
7 had been passed authorizing --

8 Q Okay.

9 A -- government employee I.D.'s. But I do know every one of
10 these folks that we've listed here has a potential access to a
11 government employee photo I.D. But I have not gone through
12 every employment in Texas to check out their photo I.D., and,
13 as I said, it wouldn't be relevant anyway because it would be
14 quite different if SB 14 had included this type of I.D.

15 Q So, you don't -- when you're talking about government
16 employees, are you talking about government employees from a
17 municipal level --

18 A Yes.

19 Q -- all the way up through the state, all the way up --

20 A Yes.

21 Q -- to the judge here today?

22 A Yes.

23 Q Okay. And --

24 A And from the federal employees I know, being in
25 Washington, they do have picture I.D.'s.

1 Q Okay. But as we sit here today, you don't know from the
2 municipal level up at what point -- municipal, county, on up
3 the chain, which ones are issued photo I.D.'s and which ones
4 are not, correct?

5 A No. And, as I said, that inquiry is only of limited
6 value, because I believe that would change if SB 14 had
7 included government employee photo I.D.'s. There would then be
8 an incentive to -- if, in fact -- and we don't know that --
9 there were some that didn't have photo I.D.'s, there would be
10 an incentive to have photo I.D.'s.

11 Q Okay. So, you aren't saying that the legislature should
12 have realized that every government employee in the state of
13 Texas has a photo I.D. What you are saying is that, well, if
14 they had passed SB 14, then maybe the employers would start
15 issuing photo I.D.'s.

16 A No. What I'm saying is, what the legislature perfectly
17 knew based on information available to them, is that African
18 Americans and Latinos, because they had so much higher rates of
19 being in government as compared to Anglos, had a much greater
20 access to government I.D.'s, either because they already had
21 them, or because, if SB 14 was passed, there would be an
22 incentive. The state employees I know do have picture I.D.'s,
23 but I'm not saying I studied this in Texas.

24 Q Yeah. I mean, (indiscernible) have no idea about
25 municipal, county, district, those type of things, correct?

1 A No. But the legislature certainly knew that there were
2 stark differences and that African Americans and Latinos had
3 much greater access to government photo I.D.'s, and I am
4 saying, had SB 14 passed, that would have been a very strong
5 incentive to make sure that these employees had not just
6 I.D.'s, but photo I.D.'s.

7 Q But wouldn't you think that, considering all the
8 municipalities, all the counties, all the districts in the
9 state of Texas, that all of those would probably outnumber --
10 the employees in all those governments would probably outnumber
11 the employees in state government?

12 A Uh, I don't know. We could check that --

13 Q Right.

14 A -- but it's hard to know.

15 Q Yeah. But you -- you don't know.

16 A No.

17 Q And you're speculating, for some reason, that the state
18 legislature knew whether or not all those people had photo
19 I.D.'s when they passed SB 14.

20 A Incorrect. That's never what I said. What I said was the
21 state legislature, had they looked at information available to
22 them at the time, would have known that African Americans and
23 Latinos, as compared to Anglos, are much greater, percentage-
24 wise, government employees and, therefore, had much greater
25 access to government employee photo I.D.'s, either those

1 existing at the time or those that would have been issued in
2 response to the state legislature passing this very important
3 bill, which included government photo I.D.'s as a means of
4 getting you authorized to vote.

5 Q Okay. So, to make a long story short, you don't know how
6 many government employees had photo I.D.'s when SB 14 was
7 passed, correct?

8 A No.

9 Q And all you're suggesting is that if -- if the legislature
10 had included government employee I.D., then maybe government
11 employers would decide to issue photo I.D.'s, correct?

12 A Incorrect. That's part of what I'm suggesting --

13 Q Okay.

14 A -- but the other part was there are also those who already
15 had government employee photo identifications, and if that was
16 not everybody, then the passage of SB 14 would then be an
17 additional incentive for government employees to have not just
18 I.D.'s, but photo I.D.'s.

19 Q Okay

20 A So, I'm saying two things that are related but distinct.

21 Q Yeah. Now, if we went back to --

22 Can you take that down, Brian?

23 **(Pause; voices and whispers off the record)**

24 Yeah. There you go.

25 If we go back to this and we were to substitute in

1 government employees instead of students, if we went through
2 the same exercise, how many government employees have
3 government I.D.'s, your answer would be you don't know,
4 correct?

5 A I don't know --

6 Q Okay.

7 A -- and the legislature did not know at the time they
8 adopted SB 14, and they certainly could not have presumed,
9 since they didn't study it, that either all or even a majority,
10 or a great majority, of government employees or students had
11 other forms of I.D.

12 Q I understand, but we're three years past the passage.
13 Now, going down the list of these I.D.'s on the right, can you
14 tell the Court the percentages of the government employees that
15 have each one of these SB 14 photo I.D.'s?

16 A No, and I think it may be unknowable.

17 Q Okay. We had a gentleman --

18 A Like with the students.

19 Q We had a gentleman testify in here on Tuesday who was
20 with -- with the Beaumont (indiscernible) Fire Department, who
21 is deputy chief, and he testified that -- that in the fire
22 department they're required to have driver's licenses. Were
23 you aware of that?

24 A No; but it's possible.

25 Q Would that surprise you?

1 A No.

2 Q Okay. Have you made any attempt to determine how many
3 government employees in Texas, that their job would require
4 them to have a driver's license in order to be in that job?

5 A No. I have already answered those questions.

6 Q Okay.

7 **(Pause)**

8 What is the difference between a university or an
9 employer issuing an I.D. to a person as opposed to an I.D.
10 being issued by the Texas Department of Public Safety?

11 A Issued by different agencies; they may have different
12 formats.

13 Q What about procedures?

14 A Procedures may be different.

15 Q Okay. And what is the purpose of an identification?

16 A An identification is so you know who you are and someone
17 else knows who you are.

18 Q Okay. And do you understand -- and I think you do because
19 of the testimony we've heard in this case -- that DPS goes
20 through a fairly stringent identification process before they
21 issue somebody a driver's license or an I.D., correct?

22 A I'm not sure that's true for concealed carry, which --

23 Q Well, let's -- I didn't ask you about concealed carry.

24 A Oh, you said DPS. That's a DPS I.D.

25 Q Okay. Well, let's -- let's -- let's stick with driver's

1 licenses and I.D.'s, because we've heard a lot about that --

2 A Sure.

3 Q -- and concealed carries are even stricter, but we won't
4 go there.

5 A All right.

6 Q All right. You understand that DPS goes through a fairly
7 stringent identification process before they issue a driver's
8 license or a Texas I.D., correct?

9 A Sure.

10 Q And what is the purpose of that?

11 A The purpose of it is, when you're driving you're in a
12 position of responsibility, and they, therefore, go through an
13 identification procedure for you.

14 Q And it goes further than just driving, correct?

15 A Correct. It could be used for other -- other purposes.
16 Of course.

17 Q Yeah, and, in fact -- in fact, it is. Wouldn't you agree
18 that the most common used form of identification in Texas is a
19 Texas driver's license?

20 A I haven't studied that, but I wouldn't dispute that,
21 because it is the most commonly used form of identification
22 generally in the United States.

23 Q Right. And wouldn't that be one of the reasons, because
24 when people see a Texas driver's license in this state, they
25 recognize that as being identification that's reliable?

1 A I'm not sure everyone thinks driver's licenses are
2 reliable. I teach at a university, and lots of underage
3 students have fake driver's licenses.

4 Q Well, are you aware of the efforts that DPS has taken
5 to -- to minimize the ability to forge driver's licenses?

6 A You know what? Every agency, including the ones I'm
7 familiar with, have undertaken such efforts, and students and
8 others who want fake I.D.'s are infinitely resourceful.

9 Q Okay. Would you agree that the university and an employer
10 does not go through the same identification process that DPS
11 does?

12 A The employer might actually go through a more rigorous
13 process because you're employing someone, and I know when we
14 employ someone, we go through a very rigorous process, well
15 beyond anything that DPS would do to go through their
16 processes. So, absolutely not for employers.

17 Q Well, we're not talking about you, sir. We're talking
18 about Texas and we're talking about -- we're talking about all
19 levels of society, not just college professors --

20 A Understood.

21 Q -- and my question -- hold on.

22 A Okay.

23 Q Have you done any studies to determine whether or not the
24 typical employer in Texas will do the same type of
25 identification process that the Department of Public Safety

1 does before it issues a driver's license or a personal I.D.?

2 A I haven't studied that, but from extensive experience with
3 employment, it could well be that they undergo more extensive
4 checks.

5 Q It could be, but have you done anything to study that?

6 A No, no. No, no. I haven't studied that issue
7 specifically.

8 Q Did you see anything in the legislature where that was
9 discussed?

10 A Oh, absolutely.

11 Q Okay.

12 A It was discussed as to why --

13 Q My question is: Was there anything in the legislature
14 discussed about the reliability of a driver's license as
15 opposed to the reliability of a -- of a government -- not a
16 government, but of an employer I.D. or a student I.D.?

17 A What I do recall being discussed, and it may not be
18 exactly on point, but it's close, is that driver's licenses are
19 pretty standard in format, whereas student I.D.'s and
20 government employee I.D.'s might vary in format. And, so,
21 there might be some confusion in verification.

22 Q Okay.

23 A I do recall that being discussed, and I examined that
24 issue in my report.

25 Q Yeah. Verification is a different -- that's a valid

1 issue, but it's a different issue. That was one of the
2 rationales for limiting the number of SB 14 I.D.'s, correct?

3 A Right. And I found that rationale did not hold.

4 Q Well, I understand.

5 A Yeah.

6 Q But my question is -- we're not going towards the
7 recognition of it; we're going towards the underlying
8 identification process.

9 A Right.

10 Q Okay. Was there any -- anything that was brought out by
11 the opposition in the legislature of SB 14 about whether or not
12 the underlying process of identification for the issuance of a
13 student I.D. --

14 A Yeah.

15 Q -- or an employment I.D. was the same as that of the DPS?

16 A Only indirectly in that Indiana authorizes student I.D.'s,
17 and there was considerable testimony brought forth by the
18 supporters of SB 14 that Indiana had no problems whatsoever in
19 verifying identities and administering their law despite
20 authorizing both student and government I.D.'s. So, we
21 actually have a laboratory to test whether that has caused
22 problems.

23 Q Okay. And you were a supporter of the Indiana photo I.D.
24 law?

25 A I did not take a position supporting or against it, one

1 way or the other.

2 Q Well, today are you a supporter of the Indiana photo I.D.
3 law?

4 A I don't live in Indiana and have not thought about it
5 enough to take a position one way or the other.

6 Q Were you a supporter of the Georgia I.D. law?

7 A Same answer.

8 Q Okay. You're not going to tell us?

9 A No.

10 **MR. KEISTER:** All right. Thank you, sir.

11 **THE COURT:** Thank you.

12 **MR. HEBERT:** I have no redirect.

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

14 **THE WITNESS:** Thank you, your Honor.

15 **THE COURT:** You can step down.

16 **(Witness stepped down)**

17 **MR. DUNN:** Your Honor, consistent with your
18 admonishment not to send you looking for truffles, I have a
19 couple of interrogatories I want to bring to the Court's
20 attention.

21 **THE COURT:** Okay.

22 **MR. DUNN:** If I could see Plaintiffs' Exhibit 901.
23 And go with me, please, to page 75. And zoom the bold
24 paragraph, please. Since there is not a jury, I didn't intend
25 to read this; I was just going to bring it to the Court's

1 attention.

2 All right. So, the essence of the question is to
3 identify the state and local agencies that issue authorized
4 identification. If we go down to page 76, the list begins, and
5 it lists some of the I.D.'s we've talked about, and then it
6 begins below with various agencies. Now, if you can tab down
7 to the next page, and the next page, and the next page, and the
8 next; so, those are the state agencies the State has identified
9 can issue identifications.

10 The next exhibit -- oh, excuse me, your Honor.

11 **MR. KEISTER:** That the DPS issues identifications,
12 your Honor.

13 **MR. SPEAKER:** Yeah, yeah, right.

14 **THE COURT:** That D -- I'm sorry.

15 **MR. KEISTER:** That these are the agencies to which
16 the DPS issues identifications.

17 **THE COURT:** Okay.

18 **MR. DUNN:** Now, to Plaintiffs' Exhibit 1033; and go
19 to page four, please. So, the essence of the question here is
20 to identify holders of DPS identification cards that have
21 proven their U.S. citizenship. And after the objection we'll
22 go to answer -- now, I'm sorry, Judge. I meant to go to
23 Interrogatory Number Two on page eight. So, this is a question
24 that asks about who's proven citizenship that has these
25 identifications. And, then, answer 2A says that as of May 18th

1 there were 4,134,370 persons with an unexpired license --
2 driver's license, occupational license, or identification cards
3 who have -- are identified in the database as being U.S.
4 citizens.

5 The answer to 2B is that 14,039,884 is the number of
6 persons with an unexpired license, occupational license, or
7 identification cards who are identified as U.S. citizens in the
8 DLS database and who have provided DPS with proof of identity
9 that is not one of the following: citizenship certificate,
10 naturalization, passport, birth certificate, et cetera; the
11 others mentioned.

12 Then, on 2C, the figure is 211,167, is the number of
13 persons with an unexpired license, occupational license, and/or
14 identification card who do not have citizenship identified in
15 the driver's license database.

16 And, then, 2D is 2,120,288, is the number of persons
17 with an unexpired license, occupational license, or
18 identification card who are identified as non-U.S. citizens in
19 the driver's license database.

20 That concludes the offer at this time. Excuse me.
21 Maybe it doesn't.

22 **(Pause)**

23 That's it with that interrogatory. On Plaintiffs'
24 Exhibit 901, that list of DPS issued I.D.'s are I.D.'s that are
25 not valid but are, nevertheless, issued by DPS. I wanted to

1 make sure that was clear. Mr. Derfner thought my -- my
2 comments were somewhat ambiguous in that regard.

3 **THE COURT:** Right. Okay.

4 **MR. DUNN:** All right. I will move on and call a live
5 witness.

6 **THE COURT:** I got it.

7 **MR. DUNN:** Okay.

8 **THE COURT:** It was (indiscernible).

9 **MR. SCOTT:** What is that bus, Chad?

10 **MR. DUNN:** What bus is that?

11 **MR. SCOTT:** The one you just threw him under.

12 **MR. DUNN:** Oh.

13 **(Laughter)**

14 I thought I threw myself under it. I intended to.

15 All right. Plaintiffs call Senator Rodney Ellis.

16 **(Pause)**

17 **THE COURT:** Good morning.

18 **MR. ELLIS:** Good morning.

19 **THE COURT:** If you'll raise your right hand, please.

20 **RODNEY ELLIS, PLAINTIFFS' WITNESS, SWORN**

21 **THE CLERK:** Thank you, sir.

22 **DIRECT EXAMINATION**

23 **BY MR. DUNN:**

24 Q All right. Please tell us your name.

25 A My name is Rodney Ellis.

1 Q Senator Ellis, would you introduce yourself to the Court;
2 where you grew up, where you're from, that sort of thing?

3 A I'm from Houston, and I grew up in a working-class family.
4 My father was a yardman; my mother was a maid. And I'm the
5 second or third in my family to get a college degree.

6 Q Where did you go to school?

7 A Public schools in Houston, Xavier University in New
8 Orleans, Texas Southern, University of Texas to get a couple of
9 degrees.

10 Q And one of those was a law degree; is that right?

11 A Yes, sir.

12 Q And a master's of public administration?

13 A I think we called it public policy, but I'm not sure.
14 It's been a long time.

15 Q Are you a licensed attorney?

16 A I am.

17 Q For how long?

18 A Since 1979, '80.

19 Q You represent a senate district from Houston; is that
20 true?

21 A I do.

22 Q Could you --

23 A Senate District 13.

24 Q Could you describe it for us?

25 A It's an inner-city district, about 750,000 people,

1 predominantly minority, about 90 percent minority; I'd say
2 about 40 percent African American, 30 percent Hispanic, and,
3 you know, a growing Asian, South Asian population as well.

4 Q And, then, how long have you represented that district?

5 A It will be 25 years in February. But who's counting?

6 **(Laughter)**

7 Q As part of your representation, do you attend community
8 events and get to know your constituents?

9 A I do.

10 Q And what is the impression you've taken from getting to
11 know your constituents in terms of whether they want to vote by
12 mail, for example?

13 A In the African-American community, there is a strong
14 tradition of showing up on election day. And I try to break
15 that, but the mailing ballot program is -- you know, we
16 politicians like it, but it's expensive to go and do. But
17 there is a tendency, even in my own household, to want to go to
18 the polling place on election day.

19 Q Since you've been in the -- prior to joining the
20 legislature, what sort of roles did you play in politics in
21 Texas?

22 A Well, I was student body president in high school, and --
23 and I have worked for a number of the key elected officials in
24 the state. I worked for Bill Hobby, who was lieutenant
25 governor a number of years; Buddy Temple, who was a railroad

1 commissioner; late Congressman Mickey Leland; and I'd say those
2 three would be my mentors. So, I've been around politics a
3 long time; since high school, in fact.

4 Q Have you had to deal with racial issues as it pertains to
5 redistricting, really since you've been an elected official?

6 A I have, every cycle, regardless of whether the people in
7 power were Democrats or Republicans.

8 Q And regardless of who was in power, what were the effects
9 on the minority community in one redistricting after another
10 that you've experienced?

11 A Well, there's always been a big struggle. Obviously,
12 we've made progress in Texas, but people don't like giving up
13 power easily. You know, I can go back to even before I was in
14 office, working around the capitol, and my predecessor, Barbara
15 Jordan, and Craig Washington would have to fight with their
16 Anglo colleagues, who were Democrats at the time, in order
17 to -- to get them to share that power.

18 Q Do you have some legislative accomplishments that you --
19 you know, you really hold out as some of the great things
20 you've accomplished?

21 A Well, that would probably be in the mind of the holder,
22 but I'm real proud of the Texas Grants Bill. I think it is the
23 largest state-funded student financial aid program in the
24 country. I'm real proud of my hate crimes bill. I'm proud of
25 a budget that I was the lead author on in 2001, in part because

1 it was a Republican body. I happen to be a Democrat and Black,
2 if you hadn't noticed, and I chaired the finance committee and
3 passed that budget unanimously on my side in the senate
4 chamber, and I think -- I think we funded a lot of things that
5 had been sorely under funded for a long time. And I'm real
6 proud of a number of the criminal justice reforms I've passed,
7 although I'm not -- certainly not a criminal lawyer.

8 Q On the hate crimes bill, what brought that about?

9 A There were a number of swastika painting instances on
10 synagogues in Houston and a horrific hate crime in which a
11 young man was targeted because he was gay. And, so, the Jewish
12 community and some leaders in the GLBT community came to me and
13 asked me to put this bill in, and it was bubbling up around the
14 country nationally, the issue of hate crimes legislation. So,
15 the initial bill that I put in, that's why I put it in, and I
16 passed two hate crimes bills; one that was probably
17 unconstitutional, but it had a strong reporting requirement in
18 it, so that's why I took the compromise and passed it. It had
19 broad categories in it; the law requires you be specific if
20 you're going to charge someone with a criminal offense. And,
21 then, the James Byrd Hate Crimes Act, which is the one we
22 operate under today, you know, that deal got a lot of national
23 attention, but I was the lead author on that bill. But it took
24 about a decade. You know, we meet every two years, so every
25 session the hate crimes bill was like that atomic bomb that

1 would blow up at some point. So, I'm -- I'm not proud of the
2 fact that I had to water the bill down so much that it really
3 has rarely been used, but I am proud of the fact that it had
4 all those categories -- race, religion, sexual orientation --
5 but we eventually did come to a consensus and pass the bill.

6 Q Well, I want to talk a little bit about how you were able
7 to do that, but first could you tell us who James Byrd was?

8 A He was a victim of one of the most horrific racial hate
9 crimes in contemporary Western history. A Black man was
10 dragged down the street in Jasper, Texas, targeted because he
11 was Black, and, you know, got a lot of media attention. And,
12 now, I mentioned earlier the bill had been around, but when
13 that hate crime occurred, we asked the family if we could name
14 that bill in honor of Mr. Byrd, and that is the language that's
15 on the books today.

16 Q Do you know about when that occurred?

17 A I don't want to perjure myself, so don't make me guess,
18 but if it passed in 2001, maybe --

19 Q Actually, I wasn't asking about the bill. When the
20 drag --

21 A Oh, the crime occurred.

22 Q Yeah.

23 A I want to say maybe nineteen -- well, Governor Bush was --
24 was in. I'm not -- it was in the -- it was -- I'll just say
25 the mid-nineties; '97, '98, somewhere in there.

1 Q Now, it's been -- it's been urged here that racial issues
2 in Texas are resolved. Have you been to East Texas recently?

3 A I have.

4 Q What happened to Mr. Byrd in Jasper, is it your assessment
5 that Jasper's purged of its racial tension?

6 A No, there are still problems. You know, I -- I haven't
7 been to Jasper the last several years, but I keep up with,
8 obviously, that community since one of their more high-profile
9 citizens I named a bill after; I knew the family. But they --
10 it was -- it's interesting how far we've come in a little East
11 Texas town like that two hours from Houston. They ended up
12 with a African-American police chief named Rodney somebody,
13 some years after the James Byrd tragedy, and then, in part, I
14 think, as a reaction to people just not adjusting to the times,
15 this -- this guy had a pretty distinguished background; I think
16 he might have been a Texas Ranger or a trooper, firefighter --
17 they had to recall the election over the town having -- a
18 couple of the Black city council members having spearheaded the
19 effort to name this African American as police chief. And a
20 strange quirk in that law, you could recall someone from a
21 district council seat by having a at-large vote. Just a
22 strange quirk in their local ordinance. But -- and I'm
23 familiar with that because that case got a lot of attention. I
24 think it even hit the New York Times. But, you know, Jasper
25 made tremendous strides; I thought after that tragedy things

1 were really going in a good direction. I think that death
2 brought out the best in some people in that town, but it didn't
3 last too long.

4 Q Is that something that's occurred in this century, those
5 events you just described?

6 A Yes.

7 Q Now, have you been to public government --

8 A This -- this decade.

9 Q This decade. Excuse me. Have you been to public meetings
10 in East Texas, like school board meetings or county
11 commissioner meetings or things of that nature?

12 A I have. I've been to some in Jefferson County and other
13 rural parts of Texas.

14 Q Describe how the audience sets up for their government
15 meetings.

16 A You know, I don't know if it's a -- I just sense -- and I
17 hope it's not because I'm a city guy, but I sense a difference
18 on the part of African Americans, in particular. Sort of like
19 they go in and, you know, sort of head bowed, and the Blacks on
20 one side, the Whites on one side. I mean, it's just the
21 strangest thing in the world. I would -- unlike the -- a
22 number of my urban constituents would have a sense you want to
23 go where -- you want to open it up a little bit. You know, I
24 don't want to be accused of always going to my side. But
25 that's just not the dynamic when I'm in a --

1 Q And you're not suggesting that these governmental agencies
2 are requiring Whites on one side and Blacks on the other.

3 A No.

4 Q It just happens.

5 A I just think it's hard to break -- to break tradition.
6 There's still a lot of tension. I mean, I just sense more --
7 in East Texas, I just sense more -- of people not adjusting to
8 things, hopefully, having changed. I remember that old sign in
9 Vidor, Texas, about the N word; don't let the -- don't let the
10 sun set on you in -- in this particular little town.

11 Q And going back to the hate crimes legislation, about how
12 many years did it take you from when you first filed that bill
13 to when you were able to get it passed?

14 A I went to the senate in 1990, filed a bill during the
15 early filing session, so from 1990 until 2001, and it was
16 awarded -- that was a unconstitutional one that I did pass. I
17 knew it, and everybody else knew it; 1993. But it had the
18 reporting categories there, and I knew that would -- I hoped
19 that would set the stage once the data was there to make the
20 case to help bring my colleagues along to pass the bill
21 eventually.

22 Q On the final bill that you passed, what were some of the
23 obstacles you faced in the legislature to get it over the
24 finish line?

25 A You know, the biggest tension, by the way, was, I think,

1 to be honest with you, over the term "sexual orientation";
2 although people wouldn't admit it. You know, they'd hide
3 behind other things. Hate is hate; crime is crime. Because
4 you can make the argument it was really a law-and-order bill.
5 I was enhancing the penalty, as opposed to some of my
6 constituents say I should have been spending time trying to un-
7 enhance some penalties.

8 Q Were there legislative rules that -- that you had to
9 overcome in order to get that bill passed?

10 A Yeah. There was no question that Texas would -- that my
11 colleagues would make sure that we respected the two-thirds
12 tradition before bringing a bill up in the Texas legislature,
13 even to the extent -- and the year the bill did pass, a number
14 of my colleagues were telling me that they would be out of
15 town. One, in particular, who is a dear friend, I was
16 wondering, was I expected to buy the ticket? Then it dawned on
17 me this member wanted to give me a window when the member would
18 be out of town and could justify being out of town so it would
19 be easier for me to get my votes. And, then, one of the votes
20 that I had, who's one of my closer allies in life, happens to
21 be a Republican, decided although he committed to vote for the
22 bill, he wouldn't vote for it unless all of the members were
23 present. I remember thinking it's because the governor asked
24 him to do that. And if we operated under that rule, I could
25 just shut the place down. I could just decide to be absent,

1 get sick every week, if I didn't want a bill to come up. So,
2 clearly, that was a -- I mean, look; it was a -- it was a
3 long -- it was a long and interesting journey.

4 Q So, we've heard quite a bit about the two-thirds rule. Is
5 there a book we can go open up and find the two-thirds rule in
6 it?

7 A Textbooks. I mean, it's a tradition, very much based on
8 the tradition in the United States senate to have culture, to
9 shut down a filibuster. I think --

10 Q How does it work?

11 A Well, you put a blocker bill up, a meaningless bill, to
12 change the name of a river or a dam or something, and you just
13 leave it there so that in order to bring up another bill you
14 would have to suspend the rules, which would require a two-
15 thirds vote. And, you know, I'm -- I'm -- you know, it's been
16 in place for over a hundred years. You know, it's probably a
17 good thing. You know, in some ways I could make the case that
18 it helps you -- you know, we meet every year for 140 days;
19 several thousand bills are filed; you know, a little over a
20 thousand, maybe two thousand pass out of 5,000 -- whatever the
21 number is, don't hold me to it. You know, it's a game for the
22 swift. It's a \$600 a month job; you're moving quick. On that
23 two-thirds tradition in the senate, sort of serves the way a
24 calendars committee operates in the state house. It slows
25 stuff down until the issue is ripe, until at least you do your

1 best to find consensus. And if you can't find consensus, you
2 know, maybe -- maybe -- maybe it shouldn't pass. Now, I
3 wouldn't always feel that way when it's my bill, but the truth
4 of the matter is, even with my hate crimes bill, you know,
5 maybe -- maybe the bill was ahead of its time.

6 Q Did the two-thirds rule ultimately result in you having to
7 make changes to the hate crimes bill as you wanted to pass it?

8 A Sure. It meant that I had to -- you know, to -- it meant
9 I had to water it down and -- you know, I -- I would never use
10 the state's -- the public's money to pass my bills, but I
11 suspect the fact that I chaired the finance committee in 2001
12 may have -- may have had some subliminal impact on some of the
13 votes, but -- but I would never have -- have used that position
14 in order to pass my bills.

15 Q Have there been some recent examples where the two-thirds
16 tradition has been ignored?

17 A Yes. My reading of history would be on insignificant
18 bills -- with all due respect, I assume that there are rules of
19 procedure in the court, but nobody raises them; they may not
20 get observed. Same way with any legislative body, particularly
21 one like the Texas legislature, one that's moving so quick.
22 So, if it's a insignificant bill, you know, we don't have a --
23 a board on the wall in the senate; we do voice votes. And if
24 nobody challenges you -- you know, sometimes I say the best
25 votes I've cast would be the ones when I'm over on the house

1 side trying to pass my bills and I leave my vote with the vote
2 counter; and sometimes they probably do a better job than I
3 would do. But, you know, if it's a insignificant bill or if
4 nobody's paying attention. But when we have changed to two-
5 thirds tradition, you know, my reading of history was during
6 the "Segregation Forever" special session in '50 something,
7 when they had all of this poll tax stuff and couldn't file a
8 lawsuit against the state, over -- over school integration, and
9 it was called the "Segregation Forever" special session, those
10 bills passed, you know, in which -- you know, you -- you only
11 had one minority member, Henry B. Gonzalez, but he couldn't
12 get -- the good news is that they couldn't get to a third --
13 they couldn't get two-thirds of the Anglo members at that
14 time -- they were all Democrats -- to vote for a lot of that
15 trash. So, they had to do it without the two-thirds tradition.
16 That's a good thing, I mean, that they ended up having -- they
17 couldn't get all of them, two-thirds of them, to do it.

18 But then over redistricting, when I was a baby
19 senator, some of my colleagues in the opposite party,
20 Republican Party, we'd worked up a bill, and we agreed, but
21 they didn't want to get the heat for voting for it, so we
22 didn't do the two-thirds tradition then. And, then, over these
23 racially explosive issues, like voter I.D. and redistricting,
24 in contemporary times.

25 Q Was there a time where you had the opportunity to pass a

1 measure in the senate and get past the two-thirds rule?

2 A Not a bill. I know the issue came up in a -- in a
3 deposition over integrating the judiciary. I think the Legal
4 Defense Fund filed a lawsuit challenging the Texas at-large
5 system of electing state, district, or county court at law
6 judges. And, so, I took that issue up when Dan Morales was
7 attorney general and advocated that he settle that lawsuit the
8 way the attorney general of Mississippi and Louisiana did, and
9 much to my surprise, he did settle it. And he put in some
10 language that said you have to get the governor, the lieutenant
11 governor, the speaker to sign off on it, both houses of the
12 legislature. And the three state -- the governor and
13 lieutenant governor signed it and speaker signed it; the house
14 passed it saying we agree to the settlement; and the senate --
15 this was a resolution, not a bill. I couldn't have gotten a
16 new resolution through, and someone told me: You've got some
17 old resolution of yours saying the state ought to do a
18 proportionate judicial redistricting when you change these
19 courts of appeals so the population is similar. It's just
20 luck. Beginner's luck.

21 Q What was lucky, that that resolution was next up in the
22 order?

23 A Yeah. It was -- you know, it was just -- it was one -- it
24 was just one sitting there that I probably wouldn't have
25 thought about passing, to be honest with you, until this issue

1 came up, and so I decided when it comes up I'll get recognized;
2 I'll just substitute this language. It is germane; it is about
3 judicial redistricting; and -- so, some of my colleagues, both
4 Democrats and Republicans --

5 Q Well, let me stop you. So, what would -- what was the
6 vote you would need there if you had gone --

7 A If it's a resolution, you need a simple majority of a
8 quorum. You need 16 votes.

9 Q And how enthused were your colleagues about you using this
10 opportunity you found?

11 A They were not too happy with it. And -- but, you know, it
12 was -- it was beginner's luck. And, so, the -- you know, it
13 was -- there was a joke. They had a -- they had a deal where
14 members broke the quorum when I was working for Bill Hobby over
15 changing the date of the Texas presidential primary so John
16 Connally would have the advantage in the Republican primary.
17 It was a Democratic legislature then, by the way, '75, '76, so
18 they broke the quorum. And they called it the "Killer Bee"
19 incident. Killer bees. So, you could hear this buzz on the
20 senate floor when I was about to get recognized. Bzzz. And --
21 and, so this is -- this is another Killer Bee incident. So,
22 the lieutenant governor said: Rodney, you -- you're well
23 within the rules, but you're going to rip the heart out of this
24 senate. And I know you're ambitious; you won't last long. You
25 won't be here. If he sees me now, after 25 years -- but he

1 said: It's your choice, but you -- it's a mistake if you do
2 it.

3 So, we went in the back room and talked, and, you
4 know, I worked up a compromise with my colleagues. Most of
5 them were Republicans; all of them were not. They happened to
6 have been White. It was a racial issue. And, so, the
7 compromise was, if I'd back off and not push forward and get my
8 vote, which I was entitled to, by a simple majority vote, we
9 could meet in committee of the whole, and then I could try to
10 persuade the attorney general to let that be his mandate.
11 That's the senate expressing its consent to his settlement,
12 which was not needed, by the way. No attorney general in
13 America, state attorney general, expects the legislature or the
14 governor to decide whether or not they can settle a lawsuit,
15 but that's what we did. And we settled the lawsuit, and then
16 the judges went to federal district court and gave me a
17 spanking.

18 **(Laughter)**

19 So, then, maybe -- maybe -- maybe that's why they
20 agreed to my compromise; they knew they'd get me in the
21 courthouse.

22 Q Now, transitioning to Senate Bill 14, you understand that
23 to be the 2011 photo identification bill that passed?

24 A Yes.

25 Q You were in the courtroom earlier to hear Senator Davis's

1 testimony. You recall that?

2 A Yes.

3 Q She testified that there was just a handfuls of days'
4 notice from when the bill was filed to when the hearing and
5 debate was had in the senate. Is that your recollection?

6 A That is.

7 Q I want to ask you; you proposed some amendments. Is that
8 true?

9 A I did.

10 Q And I'll get to those in a moment, but when you -- would
11 you explain to the Court how it is that you or your staff
12 prepare an amendment?

13 A Well, you know, we get ideas from people. You know,
14 sometimes it's seat of the pants. You know, this issue had
15 been around; the previous sessions, you know, at least two
16 cycles. So, you know, when -- I get together with people that
17 I agree with. You know, in our senate, it really hurts your
18 feelings real bad when you don't get your votes. I mean, this
19 is a fairly -- historically, it's been a collegial body. So,
20 it doesn't help one's career to bring something up and you
21 don't have the votes. So, I knew I wouldn't have the votes,
22 but, you know, I probably had a list of a good 30, 40
23 amendments. You know, my staff and I called around to other
24 states to see when the issue came up in Georgia and Indiana
25 what -- what happened, what was happening as people talked

1 about it in other places, you know, from press accounts. You
2 just get ideas and you try to think of stuff that would make
3 the bill better and also to make a point, hopefully to
4 persuade -- in my case, you know, some of my amendments were to
5 persuade some of my colleagues that they were going -- that
6 they would not get a good feel -- reading about what they did
7 20 years after they leave the body.

8 Q In terms of the actual language of the amendment, who will
9 write that up?

10 A My staff will help me. You know, I'll call and try to get
11 as much expert advice as I can; leg. council if you have time.
12 The best thing to do is to try to get leg. council to write it
13 up. On these amendments, during that session, this thing was
14 on a spaceship. I mean, it was moving quick. So, I mean, I'd
15 be hard pressed to go say that I took these amendments to leg.
16 council or anybody did.

17 Q How about -- I'm sure you're familiar with fiscal notes;
18 is that right?

19 A Yes.

20 Q Is it the regular practice in the Texas senate for
21 amendments to have fiscal notes?

22 A No.

23 Q How many bills have you passed?

24 A I'm well over 600 now.

25 Q Now, have you got a general estimate of how many

1 amendments you've been able to move on to some legislation?

2 A Well, sometimes my bills come in the form of amendments.

3 Q How --

4 A Quite a few.

5 Q How often do you see a fiscal note associated with an
6 amendment that's offered?

7 A Well, you can't get an official fiscal note until a bill
8 has been set for hearing. You know, you've got 140 days. I
9 have 6,000 bills, you know, how many amendments. So, the
10 system just would collapse if you gave everybody a fiscal note.
11 So, sometimes the way you kill somebody's bill is you never set
12 it for a hearing, because if it is set for a hearing, before
13 it's heard, they'll have to come in with a fiscal note from
14 LBB. But if it's simply an amendment, unless it is an
15 amendment that was heard somewhere else as a bill, turning a
16 bill into an amendment, you won't have a fiscal note --

17 Q Have you accept --

18 A -- unless you make up your own.

19 Q Have you accepted countless amendments from other senators
20 on your bills without having a fiscal note?

21 A Oftentimes.

22 Q With regard to the amendments that were advanced by
23 members of the legislature that represent the minority
24 community, was there coordination of that, to some degree?

25 A Not enough, based on the success we had.

1 **(Laughter)**

2 Q But there was some --

3 A But there was coordination.

4 Q I mean, is it fair to say that the various Democratic
5 members were attempting to organize a unified effort to defeat
6 the bill?

7 A Yes, but with this caveat. Not because they were
8 Democrats. Look, on some of my amendments I would go -- you
9 know, as I said, it really hurts your feelings. When you look
10 at those amendments, I think in some ways Senator Davis may
11 have offered so many because she hasn't been around as long.
12 You know, when people just get accustomed to voting you down,
13 bad habits are hard to break. So, you know, I go -- I talk to
14 my colleagues in both parties trying to get my votes and trying
15 to see if there's a level to which I can compromise and it's
16 still meaningful but it doesn't go so far that it's
17 meaningless. So, look, on my amendments, you know, I talk to
18 my colleagues who happen to be in the opposite party, and they
19 talk to me about -- and there's a lot of stuff of theirs that I
20 voted for and then hope to God it didn't stay in the law.

21 Q As a way to try to get votes on your amendments.

22 A Well, as a way to try to get votes and sometimes as a way
23 to just try to get along. Small body. You know, you're going
24 to -- I've been there 25 years. You've got to live with
25 people, you know. You have to live with people a long time.

1 They don't fall over dead that often in the senate.

2 Q In 2011, in terms of the number of -- in terms of the
3 Democrats that were there, how many of the Democrats or what
4 percentage of the Democrats there represented communities that
5 were majority minority?

6 A All of them. Unfortunately, we pack these districts, or
7 some would say ghetto-ize these districts so much, you know,
8 unfortunately, virtually all of them minorities. You know,
9 hey, I've got a 90 percent minority district.

10 Q Let me show you a document, if I could have the ELMO,
11 please. For the record, this has been -- it's not an exhibit
12 as of yet, but it's marked as CU-PRIV, five leading zeroes, and
13 then a nine, and then the next page is a ten.

14 All right. This is a document that's been stated
15 here summarizes the senate amendments that were offered on the
16 photo I.D. legislation, and actually let me just give you a
17 copy if that would help you.

18 May I approach, your Honor?

19 **THE COURT:** Yes.

20 **BY MR. DUNN:**

21 Q All right. So, it's been the testimony, or it's been
22 suggested here, that there was a rigorous and fair debate in
23 the senate where many Democratic amendments were accepted. Is
24 that your recollection?

25 A No. You know, if it was rigorous -- you know, this bill

1 took a couple of days, I mean, early on in the session. This
2 is -- this thing was on a spaceship. I mean, it -- was trying
3 to rocket this bill out of there.

4 Q Now, you could see that there were some amendments that
5 were accepted that were offered by Democrats; is that true?

6 A Yes.

7 Q I'd like to walk through some of these, if I could,
8 starting with number five. Do you see that amendment?

9 A The one by Zaffirini.

10 Q And that requires a photographic notice or the photo I.D.
11 notice to be posted separately from other election notices? Do
12 you see that?

13 A Yes.

14 Q Was that something that was adopted because there was an
15 understanding in the senate the federal law already required
16 that?

17 A You know, I don't remember, but, hey, to me it's pretty
18 non-controversial. I mean, how could anybody be against an
19 amendment that says what you're saying you want the bill to do?
20 You don't want people to vote unless they have a appropriate
21 photo I.D., so you're putting a public notice up that's
22 separate from all of those other notices that may be around a
23 polling place.

24 Q The next one that's in bold is number 18. I assume that
25 references Senator Hinojosa on the concealed gun offering.

1 That was an amendment to allow concealed handgun permits to be
2 used as I.D.'s; is that right?

3 A That's correct.

4 Q And how did you vote on that?

5 A You know, I -- I -- I'm -- I think I voted for it, because
6 I -- you know, I looked at the -- the -- my old deposition when
7 somebody asked about that, and I think I said something -- I
8 had a joke about, you know, I'm not a big gun guy, but I think
9 I would have been expected to vote against it. I knew it had
10 the votes; I think I voted for it.

11 Q Why so?

12 A Well, in part, I knew it was going to pass, and I was
13 trying to set the stage to, you know, show that I'm a -- my --
14 I had one that's the next one, so I was trying to curry a
15 little favor.

16 Q What's the next amendment that was offered, then, by you?

17 A Number 19 was a student I.D. amendment.

18 **MR. DUNN:** Your Honor, for the record, that's at
19 Plaintiffs' Exhibit 13, page 21.

20 **BY MR. DUNN:**

21 Q And what would -- in short, what would that amendment have
22 done?

23 A It would have let people at public universities use their,
24 I would argue, state-issued I.D. because they're public
25 universities. Now, my recollection is I did not include

1 private universities. I'm not sure; that's my recollection.
2 But I do remember going around talking to people on the floor,
3 some of -- trying to get some votes from some of my Republican
4 colleagues saying, hey, it's a state-issued I.D. You know, if
5 we want to change the rules on it, you all are with the state,
6 do it.

7 Q Were you able to get enough support for it to pass?

8 A No.

9 Q Why not?

10 A In my mind, I think it was a forgone conclusion that they
11 were going to do what they were going to do, and they knew the
12 bill had a disparate impact, and intended for it to have a
13 disparate impact. And, look, they know that -- you know, look,
14 it's no secret; you don't get to where my colleagues are in
15 government without having a pulse of your community and the
16 state, the demographics. So, they -- you know, I think they
17 knew that a driver's license is something that a good number of
18 minorities would not have. Student I.D. would be one easier to
19 get, and the growth in Texas indicates, you know, those young
20 people, more and more, who are at our universities happen to be
21 minorities.

22 Q I'm going to turn now to the same document with -- ending
23 in Bates Number 10. And you'll see there number 23, Senator
24 Lucio, a Democrat, offered an exhibit about expired license,
25 giving a 60-day window. That one was accepted; is that right?

1 A That's correct.

2 Q Now, there's number 32. Senator Watson, a Democrat from
3 Austin, offered the Ogden Amendment; is that right?

4 A That's correct.

5 Q Now, tell us what an "Ogden Amendment" is.

6 A Senator Ogden was chair of the finance committee that go-
7 around, and -- you know, I -- I think that the notion -- the
8 Ogden Amendment is what used to be called the "Ratliff
9 Amendment" when I was finance chair and Bill Ratliff, a state
10 senator, was the presiding officer. And he had -- he had us
11 adopt language that said if you add something to a bill that
12 costs money, it does not go into effect until the money is
13 appropriated. Now, you know, I don't know; I'm guessing when I
14 was finance chair they wanted to make sure I didn't pull
15 anything slick. So, which is why they called it a "Ratliff
16 Amendment" instead of "Ellis Amendment," since I was the
17 finance chair. But just in case I let something go in to the
18 budget or in a bill, usually you'll turn to the finance chair
19 if we don't know what an amendment costs, and that person will
20 object, or if somebody else says your amendment is going to
21 cost a million dollars, usually they'll look over to the
22 finance chair, because this is a game for the swift and moving
23 fast, and that person will give the nod or not --

24 Q So --

25 A -- sometimes even if they don't know. So, that -- that

1 was to make sure if something got on and it cost money, it
2 would not go into effect until it was appropriated. So, it's
3 really -- it's a polite way of letting the system work, so you
4 could put stuff on, and it wouldn't mean anything if the money
5 was not appropriated.

6 Q And the Ogden Amendment passed?

7 A Sure did.

8 Q So, does that have the effect of freeing up the senate to
9 accept any amendments it thought were appropriate that might
10 have a fiscal impact and later dealing with it in the budget
11 bill in terms of funding that amendment?

12 A That's correct, and that's why even people who knew it
13 would likely gut their amendment would vote for it, because it
14 gave you the ability to make your case at a later point during
15 the 140-day session.

16 Q You also offered an exhibit -- or I mean an amendment,
17 Amendment 28, that offered same-day registration. Is that
18 right?

19 A I did.

20 Q And, for the record, that's Plaintiffs' Exhibit 13, page
21 26. And what was your -- what was your purpose with that
22 amendment?

23 A You know, Texas is a -- you know, not -- the --
24 virtually -- we're virtually at the bottom in terms of voting
25 participation. People just don't -- they don't vote. So, I

1 figured if you're going to put these barriers up to make it
2 more difficult to vote, when we already have such low
3 participation levels, I could offer something on the other side
4 of the equation to help increase voter participation, and
5 knowing this bill was going to pass, you know, same-day
6 registration ought to be easier to implement, because you'd
7 have to have all these new requirements in order to do same-day
8 voter registration, which I think they do in -- I saw it in
9 Iowa when I went up for the presidential primaries, and I
10 think -- it might be Minnesota is one of the leaders in this
11 space.

12 **THE COURT:** Shall we break?

13 **MR. DUNN:** Sure.

14 **THE COURT:** I suspect he may take a while, even on
15 cross, or --

16 **MR. SCOTT:** There will be, your Honor.

17 **THE COURT:** Right. So, let's go ahead and break for
18 lunch and return at 1:10.

19 **MR. DUNN:** Thank you, Judge.

20 **THE COURT:** You all can be excused.

21 You can step down, sir.

22 **THE WITNESS:** Thank you.

23 (Witness stepped down)

24 (A recess was taken from 12:08 p.m. to 1:08 p.m.; parties
25 present)

1 **THE CLERK:** Please be seated.

2 **THE COURT:** Yes.

3 **THE CLERK:** Counsel, if you could please announce
4 your name each time you speak. Ms. Cayce is -- she's filling
5 in for Genay this afternoon so she may not be as familiar with
6 you-all.

7 **MR. DUNN:** This is Chad Dunn for the Veasey
8 Plaintiffs, continuing examination of Senator Ellis.

9 **DIRECT EXAMINATION (CONTINUED)**

10 **BY MR. DUNN:**

11 Q All right, Senator. There's one more amendment that you
12 offered that I'd like to discuss. It had to do with some
13 information reporting. Do you recall that?

14 A Yes, I do.

15 Q And for the Court, that's Plaintiffs' Exhibit 13, page 28.
16 What would that amendment have done?

17 A This is an amendment that would have required the
18 collection of all of the data related to who has whatever kind
19 of I.D. It was a combination of all of the questions that I
20 could think of that were asked during the debate and it would
21 go forward so that at least if one would say that they don't
22 know it has a district impact or argue it does not have a
23 district impact, we would have someone collect the data and
24 know. And, you know, that's -- sometimes that's expensive to
25 get. So the State would have -- the Secretary of State would

1 have compiled that data for us.

2 Q Would that information have revealed one way or the other
3 whether Senate Bill 14 was having a discriminatory impact had
4 it been accepted, the amendment?

5 A I think it would have. I think we knew that. I mean,
6 most reasonable people knew it. But, you know, this would have
7 documented it.

8 Q Okay. And what was the result of that amendment?

9 A It failed.

10 Q Would that amendment have done anything to delay the
11 implementation of Senate Bill 14?

12 A No.

13 Q Would it have done anything to water down, so to speak,
14 the requirements of Senate Bill 14?

15 A No, sir.

16 Q Do you think it would have had any fiscal impact to it?

17 A I think most of that data is readily available. It would
18 not have had any fiscal impact because of the so called
19 (indiscernible) amendment we talked about earlier. So, unless
20 it was -- if the argument would be made that it would cost
21 money, well don't fund it and it would not have gone into
22 effect.

23 Q Now, while you were debating Senate Bill 14, were you
24 asking questions from State agencies or from the Bill sponsor
25 about what effect it might have?

1 A I'd ask questions during the debate, ask questions
2 privately, and throughout the process. As I stated earlier,
3 this thing was on a fast pace. And I think we had an agreement
4 on both sides. Everything that was in the record from the
5 previous debate two years earlier would be in the record again.
6 And I'm just saying that because I don't want someone to go
7 look at the record and say I don't see you asking this, that,
8 but -- you know, so everything was included, but --

9 Q What was the response you would receive when you'd ask for
10 specific data on what the effects of Senate Bill 14 would be?

11 A My (indiscernible) and friend Senator Frazier would say
12 something to the effect, "I'm not advised, ask the Secretary of
13 State."

14 Q And when you'd ask the Secretary of State, what would you
15 learn?

16 A Nothing.

17 Q And you mentioned earlier on the James Byrd Hate Crimes
18 Bill that as you worked it through the process, it had to
19 become watered down, I think you said?

20 A That's correct.

21 Q What was the situation with the Photo I.D. Bill over the
22 sessions it was considered? Did it become less restrictive or
23 more?

24 A It became more restrictive.

25 Q Now, at some point in time during the debate, Senator

1 Frazier made some comments about it wasn't his intent to have a
2 discriminatory affect or something in that regard?

3 A That's correct.

4 Q And what was your response to that?

5 A You know, when I was laying out one of my amendments, you
6 know, I was polite. You know, you normally don't on the Senate
7 floor -- you know, rarely have I lost my temper, so to speak,
8 even on an emotional Bill like this one. I can only think of
9 one time that I've done that, might have lost my temper. But I
10 made some language about -- you know, "Senator Frazier, I know
11 your intent was not" -- you know, it's kind of like being nice.
12 I made the analogy that if you watch debates on C-Span, if
13 you're an insomniac, you hear somebody refer to somebody as the
14 general Congresswoman to distinguish Congressman and then
15 proceed to rip them apart in a not so gentle way. I mean, it's
16 just one of the things that we do. And my colleagues do it as
17 well, sometimes the ones who are most adamantly opposed to
18 something I would do, will pay me the -- just the nicest
19 compliments before killing my legislation.

20 Q Did you have the impression that Senator Frazier didn't
21 have his heart in the Bill?

22 A I did because he's a very intelligent colleague. You
23 know, there's windmills out there that you look at here is in
24 part of a legislation that he did. It gave us so much wind
25 energy in Texas. Well read. Reads a lot. I know him. I'm

1 very close to him. It was out of character for someone to have
2 a major Bill and just say you're not advised, almost to the
3 point of being embarrassing.

4 Q Did you ever talk to Senator Frazier to the effect of why
5 are you carrying this Bill?

6 A I have some comments in a deposition so I don't want to
7 get into -- you know, revealing somebody else's private
8 conversation to have somebody object but there's language in a
9 deposition where he made a passing comment. I asked the
10 question, "Why are you --" He made a passing comment about,
11 you know, it was my turn. I drew the bean. You know, I got
12 the straw. Something often times other members will say or
13 somebody -- he was asking me who's a friend -- you know,
14 Rodney, why are you -- I'll say, "My turn."

15 Q Now, there's been some testimony shown here for Senator
16 Frazier and Lieutenant Governor Dewhurst where they assert that
17 both of them were trying to work out a consensus on Senate Bill
18 14; is that your recollection?

19 A It's not my recollection.

20 Q And was there an effort to work with you or other members
21 who represented minority communities to address your concerns
22 about the Bill's impact?

23 A No.

24 Q But based upon your experience -- extensive experience in
25 legislature and in this Bill in particular, do you have an

1 opinion on whether or not Senate Bill 14 will have a
2 discriminatory effect?

3 A I'm convinced that it will.

4 Q Do you have an opinion on whether or not Senate Bill 14
5 was adopted by the legislature as a whole with a discriminatory
6 purpose?

7 A I'm convinced that it was.

8 Q Thank you, Senator.

9 MR. DUNN: I pass the witness.

10 CROSS EXAMINATION

11 BY MR. CLAY:

12 Q Senator, how are you today?

13 A Fine. How are you?

14 Q I think we've met a couple of times, but I know you meet
15 and know a lot of people so you may not remember me. My name
16 is Reed Clay. I'm here for the Attorney General's Office today
17 and just want to ask you a few follow up questions. Were you
18 present this morning when there were some testimony from
19 Senator Davis that was read into the record?

20 A I was here for some of it.

21 Q Do you recall the testimony where she was asked if she
22 agrees that members of the Texas legislature have a duty to
23 represent their constituents, and she replied "yes?"

24 A I don't recall that part specifically. I may have been in
25 (indiscernible).

1 Q Do you recall if when asked, "Would you consider that an
2 important duty of any elected official to represent
3 constituents and represent policy in constituent's favor," she
4 replied, "yes?"

5 A I think so.

6 Q Okay. I give you Defendants' -- it's 0987. This -- her
7 deposition was taken in June of 2012. You'll see here, the
8 title of this article is "Democrat Wendy Davis Not Representing
9 Senate District 10 Voters by Fighting the Voter I.D. Law in
10 Court." This was in the midst of the Section 5 preclearance
11 case, right?

12 A I think it was.

13 Q Okay. And you see here --

14 **MR. CLAY:** Can you scroll down just a little bit,
15 Brian?

16 Q Do you see where it says that, "State Senate District 10
17 General Election Voter Survey?" The question asks --

18 A Yes.

19 Q -- "do you favor or oppose requiring voters to provide a
20 valid photo I.D. to vote?"

21 A Yes, I do.

22 Q And it was asked of the folks there in Senate District 10
23 which is Senator Davis' district, correct?

24 A That's correct.

25 Q And you see where it says, "We're broken down along party

1 affiliation and we have 89 percent of Republican primary voters
2 that favor voter I.D." Do you see that?

3 A I see it.

4 Q "And 57 percent of Democratic primary voters approve of
5 voter I.D.?"

6 A I see it.

7 Q "And then 77 percent of independent voters," correct?

8 A That's correct.

9 Q And then they break it down along racial lines and it says
10 that among Black voters, 62 percent favor voter I.D.; do you
11 see that?

12 A I see it.

13 Q And among Hispanic voters in Senate District 10, 69
14 percent of voters favor voter I.D.; do you see that?

15 A I do.

16 Q And then down here at the bottom, White voters in Senate
17 District 10, 79 percent of them were in favor of voter I.D.,
18 right?

19 A Yes, sir.

20 Q Okay. Do you know who Stan Stanart is?

21 A I think he's a Harris County Clerk or was a Harris County
22 Clerk.

23 Q Are you aware that he gave deposition testimony in this
24 case?

25 A No.

1 Q So, you didn't know that when he was asked about if there
2 were any complaints regarding implementation of voter I.D.,
3 that he had received few?

4 A I don't think I've read his deposition.

5 **MR. CLAY:** Can we put that up?

6 Q The question, "Have you had any complaints from citizens
7 about the voting photo I.D. requirement?"

8 "ANSWER: I'm sure there's some, yeah. There some
9 small people that complain about it, yes. But not
10 very many. I mean, in the big picture, I thought
11 the election went well.

12 "QUESTION: Would you have lodged these complaints
13 by phone or mail or e-mail or all three?

14 "ANSWER: I've got probably -- I've got -- probably
15 got a few e-mails and a few by phone but like I said,
16 pretty small numbers."

17 Do you see that?

18 A I see it.

19 Q And earlier, you were testifying about Jasper, Texas,
20 right?

21 A Yes.

22 Q Is that in Jefferson County?

23 A It was east Texas. I'm not sure of the county.

24 Q Okay. Do you know who Debbie Newman is?

25 A No.

1 **MR. CLAY:** Could you put up her deposition testimony?

2 Q She's the County Clerk there. And when asked about if she
3 had had any complaints from constituents about the photo I.D.
4 law, she replied, "No." Were you aware of that?

5 A No, I was not.

6 Q And you represent Harris County, correct, or part of it,
7 correct?

8 A Correct.

9 Q Do you know how many DPS offices you have in Harris
10 County?

11 A I know we don't have enough.

12 **MR. CLAY:** Could you put up the DPS web site here and
13 would you go down to County -- there you go.

14 Q So, here -- do you see here we've got all of the -- it
15 says -- actually gives you the number right here -- 12
16 locations in Harris County.

17 **MR. CLAY:** And could you scroll down so we can see
18 the hours of the Spring Mega Center?

19 Q And you see it's open from -- at 7:30 in the morning until
20 6:00, Monday through Thursday, from 7:30 until 5:00 on Friday;
21 do you see that?

22 A I do.

23 **THE COURT:** Where is the mega center?

24 **MR. CLAY:** It's -- this one is in Spring. And
25 there's another one in Gessner (phonetic). I'll go through all

1 of these tabs and we can see the hours for all of them if you
2 like, your Honor.

3 **THE COURT:** No, no. I just had a question.

4 **BY MR. CLAY:**

5 A Are these hours at the bottom?

6 **MR. CLAY:** Okay. I didn't think you did.

7 **THE COURT:** (indiscernible).

8 A Are those hours at the bottom, the business hours?

9 Q Yeah. Days and hours open.

10 A So, we (indiscernible) working hours.

11 Q Yeah. Earlier you testified about student I.D.'s, right?

12 A That's correct.

13 Q Were you aware that at the University of Texas a student
14 I.D. cost ten dollars?

15 A No, I was not.

16 Q Were you aware that you have to provide some other form of
17 photo identification in order to get a student I.D. of Texas?

18 A No, I was not.

19 **MR. CLAY:** Can you pull up the I.D. --

20 Q This is the I.D. center at the University of Texas; do you
21 see that?

22 A I see it.

23 Q Let's look at getting a new I.D. or EID upgrade; do you
24 see that?

25 A I do.

1 Q It requires a valid government issued photo I.D. as proof
2 of identify; do you see that?

3 A I see it.

4 **MR. CLAY:** And can you scroll down to the bottom,
5 please?

6 Q Do you see the cost?

7 A (No response.)

8 Q "A ten dollar fee is billed to the users, what I owe,
9 paid," for each I.D. card issued except for first time employee
10 cards where the fee is exempt.

11 A I assume that could be included in your scholarship or
12 your Texas grant, too. But I'm sorry -- you didn't ask that.

13 Q I didn't. Do you know what the cost of an election
14 identification certificate is? Do you know how much DPS
15 charges for that?

16 A I know what it costs to get a birth certificate because I
17 had to get one recently.

18 Q And it -- what does it cost to -- well, first of all, can
19 you answer my first question? Do you know what the cost of an
20 EIC is from the Department of Public Safety?

21 A I think the actual certificate -- the actual EIC is free.

22 Q It is?

23 A But you have to submit information that does cost money to
24 get it.

25 Q And you were -- one of those pieces of information you

1 said was a birth certificate, correct?

2 A That's correct.

3 Q And you're aware that the vital Department of -- excuse me
4 for a minute --

5 A Vital statistics.

6 Q I call it by the -- yes, it's vital statistics and it's a
7 part of (indiscernible). I always call it (indiscernible) so
8 I'm forgetting what it stands for at the moment. But are you
9 aware that they have changed the rule for persons who need a
10 birth certificate in order to get an EIC such that a birth
11 certificate only costs two or three dollars, correct?

12 A I've been told it costs about the same as the poll tax
13 costs when we had one.

14 Q Are you aware of the rule change?

15 A I am.

16 Q Okay. Do you know what the costs of the -- well, do you
17 know that Indiana had a voter I.D. law that was considered by
18 the Supreme Court?

19 A I'm aware of that.

20 Q Do you know what a birth certificate cost in Indiana at
21 the time the Supreme Court validated its law?

22 A No, I don't.

23 **MR. CLAY:** Your Honor, consistent with what we did
24 yesterday with Senator Uresti, I've got some declarations here
25 that authenticate the documents that no privileged ruling was

1 needed but they waived the privilege on it. They allowed us to
2 use. May I approach?

3 **THE COURT:** Yes.

4 **BY MR. CLAY:**

5 Q Here you go. So, do you remember being asked to cull
6 through your legislative files and produce documents regarding
7 voter I.D. in this case?

8 A Yes, sir.

9 Q And you did that, right?

10 A I had my staff do it.

11 Q Okay.

12 **MR. CLAY:** Could you put up RE Priv 03422?

13 Q This was a document that was produced by you in this
14 litigation and it said -- who is Harold Cook? Do you know who
15 Harold Cook is?

16 A He was a --

17 Q I actually do know who he is so I'll ask you if you know
18 who he is.

19 A Yeah. He is a young staffer who worked for the Senate
20 Democratic Caucus.

21 Q And do you see where it says "Questions for Democratic
22 Expert Witnesses?"

23 A Yes.

24 Q And the date is 1-25?

25 A Yes.

1 Q When was SB 14 considered by the Senate in 2011?

2 A Reed, I have to look at my notes, sir, to remember your
3 name so I certainly wouldn't remember what day that Bill came
4 up four years ago.

5 Q Oh, no, you took down my name?

6 A I did.

7 Q Oh, no. Well, does this -- does January 25th sound about
8 right for when the Senate as a committee whole considered
9 SB 14?

10 A If you say so.

11 Q Okay. Do you recall whether Mr. Bledsoe from the Texas
12 NAACP testified before the Senate?

13 A I don't.

14 Q Okay.

15 **MR. CLAY:** Can you scroll down? Is that the last
16 page?

17 **MR. SPEAKER:** No. You want the next page?

18 **MR. CLAY:** Yes. Sorry. I forget that they're --

19 Q What about Louis Figueroa?

20 A I certainly know who he is. But, I mean, I'll trust for
21 the record, whoever you say testified. I mean, I'd have to
22 pull the record and go and see.

23 **MR. CLAY:** And then the next page?

24 Q And Chase Bearden, do you recall if he testified?

25 A I don't remember.

1 Q Okay.

2 **MR. CLAY:** And could we go to the Republican
3 questions?

4 Q And then this is the e-mail from Harold Cook that we
5 talked about yesterday. And do you know who Jason Hassay (per
6 the log) is?

7 A I don't.

8 Q Uh, he was or is Senator Uresti's chief of staff. But
9 here's a bunch of e-mail -- who is David Edmundson?

10 A He's my chief of staff.

11 Q Okay. And so, he was the recipient of this -- this
12 January 24th e-mail from Harold Cook, correct?

13 A That appears to be the case.

14 Q Okay. And then this lists a bunch of question and answers
15 for the Republican witnesses that are going to be appearing
16 before the Senate, correct?

17 A That's correct.

18 Q Okay. And then ultimately SB 14 passed the Senate and the
19 House and was signed into law, correct?

20 A That's correct.

21 **MR. CLAY:** Could you put up (indiscernible) -- yes,
22 this one. Thank you. And then scroll in right --

23 Q So, again, this is an e-mail that we saw yesterday that
24 was received by Senator Uresti's chief of staff.

25 **MR. CLAY:** And can you zoom in on the -- you were

1 doing it. Thank you.

2 Q And it's from Harold Cook again. It says,

3 "I'm always saying that if you can't win, you have to
4 lose right. That is even more important in a
5 situation which is sure to end up in the Federal
6 Courts and the Department of Justice was serious
7 reviewed."

8 Do you see that?

9 A I do.

10 Q Okay. Do you think Mr. Edmundson ever received this
11 e-mail?

12 A You know, I don't know. I know I hadn't seen it. You
13 know, this -- I classify this as busy work. Being a former
14 staffer myself, you know, we -- the way we legislate is not all
15 these e-mails that go back and forth between staff, with all
16 due respect. You know, I don't want to hurt their feelings.
17 You know, sometimes I'll tell them to take their briefing notes
18 and post them on the internet so at least somebody will get to
19 look at them.

20 Q Understood. So, you -- I gather from that testimony that
21 you don't look at every e-mail that comes through your inbox?

22 A I don't look at most e-mails that come into my inbox.

23 Q Understood. I wish I had that ability to do that
24 sometimes.

25 A Try it.

1 **MR. CLAY:** Can we pull up next RE Priv 004607?

2 Q And this was produced from your files. And it's a -- it
3 says "talking points" -- well, the date is April 5th, 2012,
4 right?

5 A (No response.)

6 Q And it says, "talking points, conversations with DOJ
7 regarding voter I.D." It says "who -- you will be following
8 Jennifer Maranzano (per the log), the Department of Justice,
9 Voting Rights Division." And then it's -- gives it -- do you
10 see here where it says "(indiscernible) will be discussed."
11 She's (indiscernible) talking generally about the history of
12 voter I.D. legislation in Texas in her particular role?

13 A Yes.

14 Q Did you receive this document?

15 A You know, I don't know. But I do know this, I don't read
16 well. People write great speeches for me and I post those on
17 Twitter and Facebook on a regular basis, but you'd be hard
18 pressed to think I follow somebody's talking point.

19 Q Did you ever talk with Ms. Maranzano?

20 A Hopefully more than on whatever date this is. I talk to
21 the Justice Department all the time.

22 Q Okay. I want to talk a little bit about the last
23 amendment that Mr. Dunn walked you through which was the -- it
24 was number 30.

25 **MR. CLAY:** Can we switch to the Elmo just for a

1 second, please?

2 Q And it was a -- I guess a joint amendment between you and
3 Senator Uresti and Senator Rodriguez; is that right?

4 A Yes.

5 Q And it's -- was asking for an annual report from SOS
6 regarding district impact?

7 A Yes.

8 Q Do you know who Coby Shorter is?

9 A I think Reverend Coby Shorter is someone who was working
10 for the Governor or the Secretary of State.

11 Q Yeah, he's the director of elections at the Secretary of
12 State, right?

13 A I don't -- maybe he is now.

14 Q Actually, he's the Deputy Chief of the Secretary of State,
15 correct?

16 A Well, he got a promotion. I didn't know that.

17 Q He did. Yes, sir. Do you -- were you aware that he gave
18 testimony in this case?

19 A No, I was not.

20 Q Were you aware -- so you're not aware that he gave
21 testimony regarding this particular amendment?

22 A No.

23 **MR. CLAY:** Could you put up Mr. Shorter's deposition,
24 please?

25 Q "QUESTION: Would it surprise you to learn that

1 Ms. McGeehan testified that she sent this?"
2 And this was a comparison -- "this" refers to a comparison
3 between the voter registration rolls and the Department of
4 Public Safety's driver's license database to you and that she
5 discussed it with you.

6 "ANSWER: It may have been discussed with me -- I
7 mean, the matching exercises. I remember visiting
8 with our staff about the matching exercises and I
9 remember the staff consistently telling me that we
10 were trying to match apples and oranges and that it
11 wasn't giving information that the staff was
12 comfortable with or had confidence in."

13 A Now, what is this? Is this Coby Shorter's?

14 Q Yes. This is his deposition regarding the type of his
15 (indiscernible) impact study that you had requested in that
16 amendment.

17 A So this was regarding my amendment or just him asking for
18 it separate?

19 Q No, it was regarding the study that your amendment was
20 requesting be done between the registration rolls and the
21 Department of Public Safety's database. Do you see that?

22 A Oh, I do see it.

23 Q And you never heard that from the Department of Public --
24 or the Secretary of State's Office?

25 A Well, I don't recall -- I do know this -- all of the stuff

1 that I asked for in the amendment struck me as imminently
2 reasonable. And if you're passing a major change in how you
3 vote in a State with such low voting numbers, well, why
4 wouldn't you -- it's always an issue if it's added to a Bill
5 and it comes in as opposed to some member asking for it.

6 Q Uh-huh. Are you aware that Harold Cook is actually the
7 person responsible for recommending that this amendment be
8 done?

9 A I would be surprised because -- you know, in this
10 business, it's -- you know, it's amazing how everybody is
11 responsible for passing a Bill in the legislature other than
12 the people who carry it and vote on it.

13 **MR. CLAY:** Put up CU Priv 00007, please. Scroll down
14 to -- the next page, please. I don't think that's it. That
15 was talking about Dancing with the Stars so I'm pretty sure
16 that's not it.

17 **(Laughter)**

18 A He might be responsible for that.

19 **(Laughter)**

20 **MR. CLAY:** Well, let's try -- let's try the -- yes,
21 this is it. And this -- the bottom half of this, please.

22 Q "As of right now, Senator Ellis is (indiscernible) up
23 three amendments," and here's the district impact report that
24 we're referring to that you propose that was ultimately tabled,
25 right?

1 A Yes.

2 MR. CLAY: And then could you go to the e-mail just
3 above it. It's from --

4 Q So, this is an embedded e-mail -- I guess it was sent from
5 your chief of staff and then here's Harold Cook replying --
6 "Actually group number two on David's list," and that's
7 referring again to the district impact amendment that you
8 proposed.

9 A Yes.

10 Q "When the Republicans vote against that amendment,
11 whoever takes the lead in opposing preclearance,
12 we'll be able to show what the exact sort of data DOJ
13 would most want to know about could have been
14 gathered but the legislature rejected gathering it."
15 Were you aware that he said that?

16 A No, but I would say this to you. As a former staffer
17 myself, you know, you want to stay busy and if you think you
18 can figure out what goes on in a legislature just by reading
19 e-mails, you get a very jaded view of what goes on. It's just
20 simply not that simple.

21 Q Do you know who Jerry Hebert is?

22 A I do.

23 Q Did he ever advise the Democratic Caucus on voter I.D. in
24 2009?

25 A Well, I would assume that we called Jerry Hebert that

1 we -- or I called Chad Dunn -- I mean, you call whatever legal
2 expert you can just as I'm sure my colleagues who don't
3 represent minority populations will call in legal advisors and
4 other advisors on something as important as this piece of
5 legislation.

6 Q Were you aware that he may have made himself available to
7 staffers and/or Senators during the debate in 2009?

8 A I would hope so.

9 Q Were you aware that he testified on voter I.D. before the
10 Senate?

11 A I don't remember all of the witnesses, but he would have
12 been a good one.

13 Q Do you know who -- I won't disagree with that. Do you
14 know who Chandler Davidson is?

15 A I think he's a -- but, you know, why don't you read
16 (indiscernible) -- I can't remember all of their names. I meet
17 so many wonderful people.

18 Q So, no?

19 A But I know who he is. I think he's a professor. I just
20 can't remember if he's at Rice or if he's at SMU.

21 Q Do you know that he was retained by the Department of
22 Justice, an expert in this case?

23 A If he's the one I'm thinking about who's the author of a
24 number of books who has looked at racial impact going back to
25 when the Democrats controlled it, he'd be a good one.

1 Q Did you know that he testified before the Senate on voter
2 I.D.?

3 A I don't recall.

4 Q Did you receive draft questions to ask Mr. Davidson?

5 A I wouldn't be surprised. Did I ask him? I'm just making
6 a point.

7 Q Did you?

8 A I get a lot of e-mails. I get a lot of requests to do a
9 lot of things. It doesn't mean that you do it.

10 Q Did you -- one last question -- do you know who Toby Moore
11 is?

12 A That's a name that escapes me.

13 Q Okay.

14 **MR. CLAY:** I have nothing further. I do have the
15 offer of proof that we promised you last week containing the
16 legislative documents that are still privileged that we'd like
17 to do as an offer of proof.

18 **THE COURT:** Okay.

19 **MR. CLAY:** It was filed earlier today. I had a paper
20 copy here but I think it's already been filed earlier today,
21 so --

22 **THE COURT:** Okay. But, it's not -- are we finished
23 with this witness?

24 **MR. DUNN:** I have no further questions, but I would
25 like to see said offer of proof.

1 **THE COURT:** Right. But I -- are we finished with
2 him --

3 **MR. CLAY:** Understood.

4 **THE COURT:** -- so he can step down?

5 **MR. CLAY:** I have no further questions.

6 **THE COURT:** Okay. Then you can step down, sir.

7 **THE WITNESS:** Thank you.

8 **(Witness Excused)**

9 **THE COURT:** So you-all will discuss that and I'm
10 assuming the offer of proof that's coming in is going to be on
11 documents I ruled on pretrial?

12 **MR. SPEAKER:** That is correct.

13 **MR. CLAY:** Yes, that you ruled were privileged;
14 that's correct.

15 **THE COURT:** Yes. Okay. But you-all can look at
16 those. So, I guess we can proceed with our next witness.

17 **(Pause)**

18 **MR. BRAZIL:** Scott Brazil for the (indiscernible)
19 Plaintiffs, your Honor.

20 **THE COURT:** Good -- okay -- sorry. Good afternoon,
21 sir. Would you raise your right hand?

22 **KEN GANDY, PLAINTIFFS' WITNESS, EXCUSED**

23 **THE CLERK:** Thank you, sir.

24 **THE COURT:** You can have a seat.

25 //

DIRECT EXAMINATION

1

2 **BY MR. BRAZIL:**

3 Q Would you state your name?

4 A Ken Gandy.

5 Q Mr. Gandy, how old of a man are you?

6 A Seventy-four.

7 Q And where do you reside; where do you live?

8 A 203 Richard Street on Corpus Christi.

9 Q And how long have you lived in the State of Texas?

10 A In the State of Texas, about 43, 44 years.

11 Q And are you registered to vote in the State?

12 A Yes, sir.

13 Q How long have you been registered to vote in the State of
14 Texas?

15 A Ever since I've lived here.

16 Q Do you own a car?

17 A I did.

18 Q How long has it been since you've owned a automobile?

19 A 1990.

20 Q Do you have a current Texas driver's license?

21 A No, sir.

22 Q How long has it been since you held a current Texas
23 driver's license?

24 A 1990.

25 Q Does your wife drive?

- 1 A No, sir.
- 2 Q Is she retired also?
- 3 A Do what?
- 4 Q Is your wife also retired?
- 5 A She's never worked.
- 6 Q Okay. Are you retired?
- 7 A Yes; yes, sir.
- 8 Q Okay. Where were you born?
- 9 A New Jersey.
- 10 Q What is your primary means of transportation? How do you
11 get around town?
- 12 A On the bus.
- 13 Q And do you have a I.D. that allows you to get on that bus?
- 14 A Yes, sir.
- 15 Q And you get a discount because you have a senior
16 citizen --
- 17 A I get a discount because I'm over 60 years old.
- 18 Q Do you possess a certified copy of your birth certificate?
- 19 A No, sir.
- 20 Q And do you have a copy of your birth certificate?
- 21 A Yes, sir.
- 22 Q And you were born in what State?
- 23 A New Jersey.
- 24 Q Okay. Do you have a passport?
- 25 A No, sir.

1 Q Have you ever held a passport?

2 A No, sir.

3 Q Have you ever held a position in the military?

4 A No, sir.

5 Q Do you have any current form of identification that
6 qualifies you to vote in Texas in person?

7 A No.

8 Q Have you voted in person all of your life?

9 A Yes, sir.

10 Q Until Senate Bill 14 became law, did you always vote in
11 person?

12 A Yes, sir.

13 Q Since Senate Bill 14 became law, have you voted?

14 A Yes, sir.

15 Q How did you vote?

16 A By mail.

17 Q And how did you obtain your mail-in ballot?

18 A I applied for it at the courthouse.

19 Q And how did you get to the courthouse?

20 A On the bus.

21 Q Okay. And you got an application at the courthouse?

22 A Yes.

23 Q Took that home?

24 A Do what?

25 Q Took the ballot home with you?

1 A Yes.

2 Q Filled it out, mailed it in?

3 A No. Actually, I didn't even take it home. I filled it
4 out at the County Clerk's Office and handed it to them right
5 there.

6 Q Okay. And how many times have you voted by mail since
7 Senate Bill 14 became law?

8 A Three or four.

9 Q Do you serve on any type of ballot board or election type
10 committee?

11 A Yes.

12 Q What do you serve on?

13 A I'm precinct chair for Precinct 56 and I'm on the ballot
14 board.

15 Q And how long have you been on the ballot board?

16 A Six, eight years.

17 Q And how did you obtain that position? How do you -- how
18 does one get on a ballot board?

19 A You volunteer for it.

20 Q And what does the ballot board do?

21 A They take all the -- all the mail-in ballots, open them
22 up, approve them, and confirm that it's a valid vote.

23 Q How long does the ballot board meet?

24 A Starting on the first day of early voting and until two
25 weeks after -- no, one week after the election date.

- 1 Q And what are you counting?
- 2 A What?
- 3 Q What are you counting?
- 4 A After election, military and provisionals.
- 5 Q Are those -- some of them are mail-in ballots?
- 6 A Yes.
- 7 Q Are you counting your own ballot?
- 8 A No.
- 9 Q How does that work?
- 10 A They find my ballot and they pull it out and they make
11 sure it goes to another board member.
- 12 Q So, you're serving on a ballot board that counts mail-in
13 ballots?
- 14 A Right.
- 15 Q But you cannot vote in person?
- 16 A No.
- 17 Q Have you ever tried to obtain one of the photo
18 identification --
- 19 A Yes.
- 20 Q -- documents to vote in person?
- 21 A Yes, sir.
- 22 Q And what did you do to obtain that document?
- 23 A Went down to the DHS and --
- 24 Q DPS you mean?
- 25 A D -- yeah.

1 Q Okay. And what did you do at the DPS office?

2 A I went in and I gave her all my papers and told her I
3 wanted a voter I.D. card.

4 Q What did they tell you?

5 A They told me they couldn't give it to me and to go down to
6 Horn Road and apply for my birth certificate.

7 Q Go down to what road?

8 A Horn Road.

9 Q And what --

10 A The Health Department on Horn Road to get my Texas birth
11 certificate.

12 Q But you were born in New Jersey?

13 A Yes.

14 Q Okay. Did you go down to Horn Road and get a New Jersey
15 birth certificate?

16 A No.

17 Q Okay. I assume if you wanted to, you could pay the money
18 and get a certified copy of your New Jersey birth certificate?

19 A Yes.

20 Q Okay. Are you living on a fixed income?

21 A I'm on Social Security.

22 Q Okay. Would you rather vote in person or by mail?

23 A In person. I voted in person all my life.

24 Q Do you still serve on the ballot board?

25 A Yes, sir.

1 Q Will you be serving on the ballot board this November?

2 A Yes.

3 Q And will you have to vote by mail?

4 A Yes, sir.

5 Q Thank you, Mr. Gandy.

6 **MR. WHITLEY:** David Whitley for the Defendants.

7 **CROSS EXAMINATION**

8 **BY MR. WHITLEY:**

9 Q Mr. Gandy, good to see you again.

10 **MR. WHITLEY:** I'd like to read very quickly, your

11 Honor --

12 **BY MR. WHITLEY:**

13 A Could you speak up a little bit?

14 Q Yes, sir; I will.

15 **MR. WHITLEY:** Your Honor, I'm going to read a
16 Stipulation of Fact regarding Plaintiff Ken Gandy that was
17 entered in this case. And I'm not sure which ECF number but
18 it's been one of the last couple.

19 "Stipulation of Fact Regarding Plaintiff Ken Gandy.
20 Plaintiff Ken Gandy and Defendants stipulate to the
21 following. Plaintiff has in his possession, custody
22 or control two or more supporting identification
23 documents listed on the Department of Public Safety's
24 election identification EIC documentation
25 requirements web page."

1 And it lists the web page, www.txdps.state.tx.us/driver
2 license/eic/doc/reqmnts.htm. And that's dated September 5th.
3 I'm not sure when that was entered, your Honor, but it has been
4 entered.

5 **THE COURT:** All right.

6 **BY MR. WHITLEY:**

7 Q Mr. Gandy, just a couple of quick questions and I'll get
8 you back on your way. You mentioned earlier that you live on
9 Richard Street here in Corpus; is that correct?

10 A Yes, sir.

11 Q And during your deposition when you and I were discussing
12 your birth certificate from Indiana, you mentioned that you
13 were familiar with the requirements for getting a birth
14 certificate from Indiana because you had visited the web site.
15 Do you remember that?

16 A Indiana?

17 Q I'm sorry. Not Indiana; New Jersey.

18 A New Jersey, okay.

19 Q I apologize. So, during your deposition we visited about
20 your New Jersey birth certificate; do you remember that?

21 A Yes.

22 Q And you mentioned that you understood the requirements for
23 getting that birth certificate because you had visited the
24 vital statistics web site, correct?

25 A Yes.

1 Q And are you still familiar with the requirements to get a
2 New Jersey birth certificate?

3 A I forget exactly how much it cost, but it's quite a bit of
4 money.

5 Q So at your house on Richard Street, do you have any
6 utility bills there?

7 A Yes.

8 Q Do you keep copies of those bills once you receive them?

9 A Oh, I don't get the bill by mail. It comes in on the
10 computer.

11 Q Okay. Do you save any of those, the ones that come to
12 your computer?

13 A I guess I still have a couple there.

14 Q Do they come via e-mail?

15 A Uh-huh.

16 Q And are any of them in your e-mail inbox that are less
17 than 90 days old?

18 A I don't know.

19 Q Okay. And we mentioned in your -- during your deposition
20 before that you had opened a bank account many years ago,
21 correct?

22 A Yes.

23 Q Do you still have that bank account?

24 A Yes, sir.

25 Q And do you get statements for that bank account?

1 A No. I'm notified by -- I'm notified by e-mail when it is
2 available and I have to go to their web site to pick it up.

3 Q Do you go to the web site to pick them up?

4 A Only when I want to know my balance.

5 Q So on that web site are there any bank statements that are
6 less than 90 days old?

7 A Yes.

8 Q And you mentioned before that you voted in each of the
9 three elections that have taken place since SB 14 went into
10 effect, correct?

11 A There have been primaries and runoffs since then --

12 Q So there has been --

13 A -- in addition.

14 Q But you have voted in each one, correct?

15 A Yes.

16 Q And you plan to vote in the November election by mail?

17 A Yes, sir.

18 Q And you work for the ballot board; is that correct?

19 A Yes, sir.

20 Q Is that a paid position?

21 A Is that a what?

22 Q Paid position?

23 A Yes.

24 Q And how much do you get paid to do that?

25 A I think it's something like \$11 an hour now.

1 Q How often do you work on a ballot board? Is it every
2 election?

3 A Every election; yes.

4 Q And you take the bus to get there?

5 A Yes.

6 Q And how long does it take to get there on the bus?

7 A From my house, about 20 minutes.

8 Q And that's at the county courthouse, correct?

9 A Yes.

10 Q And you mentioned that you're Precinct 56 chair; is that
11 correct?

12 A Yes.

13 Q And that's for the Nueces Democratic Party?

14 A Yes.

15 Q And we mentioned during your deposition you produced some
16 e-mails that you had searched for in advance of the deposition
17 that you had e-mailed with Sondra Halton (phonetic). Do you
18 remember that name?

19 A Yes.

20 Q And at the time you e-mailed with her, do you remember
21 what her position was?

22 A I don't remember, but she was -- she left the -- a deal on
23 a newsletter that I read and I called her up about -- or I
24 e-mailed her about it.

25 Q Do you remember what you e-mailed about?

1 A The fact that I could not get a voter I.D. card.

2 Q And did she personally e-mail you back?

3 A Yes.

4 Q And you-all discussed your situation?

5 A Uh-huh.

6 Q Via e-mail?

7 A Yes.

8 Q Do you know what she's doing now?

9 A Well, she's working with some -- it's not a political
10 party. It's a -- I don't know what you call it. It's one of
11 these -- uh -- I don't know what you call it but she has a
12 letter she puts out every so often.

13 Q All right. That's good enough.

14 **MR. WHITLEY:** I don't have any further questions,
15 your Honor.

16 **THE COURT:** All right.

17 **MR. BRAZIL:** Nothing further, your Honor.

18 **THE COURT:** Thank you, sir. You can step down.

19 **(Witness Excused)**

20 **MS. VAN DALEN:** Your Honor, the Plaintiffs' next
21 witness is Mr. Margarito Lara.

22 **THE COURT:** Okay, he can step over here. Just watch
23 the incline.

24 **MS. VAN DALEN:** And I am Marinda Van Dalen.

25 **THE COURT:** Would you raise your right hand?

1 **MARGARITO LARA, PLAINTIFFS' WITNESS SWORN**

2 **THE WITNESS:** Yes, ma'am.

3 **THE CLERK:** Thank you.

4 **DIRECT EXAMINATION**

5 **BY MS. VAN DALEN:**

6 Q Sir, can you please state your name for the record?

7 A My name is Margarito M. Lara.

8 Q And where do you live?

9 A I live in a little town, Sebastian, Texas.

10 Q Is that in Willacy County in the Valley?

11 A North -- south of Corpus Christi, south of Raymondville.

12 Q Okay. And who do you live with?

13 A I live there with my wife.

14 Q And when were you born?

15 A I was born December 20th, 1936.

16 Q And where were you born?

17 A I was born in a farm ranch in about Cameron County, about
18 two, three miles from Sebastian.

19 Q Okay. And were you born in a hospital or in a home?

20 A No, in a home.

21 Q Okay. Do you know whether your birth has ever been
22 registered?

23 A No, I don't know, ma'am.

24 Q Since this -- can you tell us, what is your -- what do you
25 consider your race or your ethnicity to be?

1 A I don't understand, like --

2 Q How would you describe yourself, your race or your
3 ethnicity?

4 A Oh, well, Latin American.

5 Q And are you retired or do you still work?

6 A No, I'm retired.

7 Q And how far did you go in school? How long did you go to
8 school, sir?

9 A Seven years.

10 Q Do you remember when you started voting?

11 A I started voting when the poll tax was on sale for a
12 dollar and 75 cents.

13 Q Okay, and have you voted regularly since then?

14 A Regularly.

15 Q Have you ever voted by mail or do you vote in person?

16 A At the polls house, it's not by the mail.

17 Q I'm sorry, could you repeat your answer?

18 A I didn't vote by mail, at the polls house.

19 Q Why do you prefer to go vote in person?

20 A Well, everywhere there's was a poll so you can vote,
21 either walk or go by bike if I vote.

22 Q Do you plan to keep voting in the future?

23 A I hope so.

24 Q And when did you vote last, do you remember?

25 A Last year.

1 Q How come you haven't voted more recently?

2 A On account that I couldn't get my -- I had to
3 (indiscernible) go my driver's license and I couldn't get my --
4 I couldn't vote without my driver's license whenever they
5 needed it.

6 Q Do you -- did you have a driver's license in the past?

7 A Yes.

8 Q And did that expire?

9 A Expired.

10 Q How long ago?

11 A Ten years.

12 Q And since your driver's license expired, have you tried to
13 get another photo ID from DPS?

14 A Yes, ma'am, I tried it in Harlingen, Texas. They asked me
15 for the birth certificate and they -- when they asked me for
16 the birth certificate I told them I didn't have it. Well, then
17 she told me, "Well, you can't -- you have to bring your birth
18 certificate so you can't apply for your driver's license."

19 Q Have you ever had a birth certificate?

20 A No, ma'am.

21 Q Have you ever tried to get a birth certificate?

22 A We tried it, we couldn't locate it no where.

23 Q What did you do to try to get a birth certificate?

24 A Well, my daughter took me to Brownsville located somewhere
25 in Cameron County. No trace at all. We went to Harlingen, the

1 same thing, and then at last I went to Raymondville Courthouse
2 and I finally went to -- we called to Austin, there was no sign
3 of it.

4 Q How long have you been trying to get a birth certificate
5 for?

6 A Oh, it's quite a few years back.

7 Q More than 20 years, less than 20 years?

8 A Yeah, something like that, ma'am, or more.

9 Q Do you know how to get a birth certificate?

10 A If I know how to get a birth certificate I hoped I could
11 get it, find it, so I can vote.

12 Q Is there -- is there anything that you know of to do to
13 get one yourself?

14 A To do what? Myself?

15 Q Is there anything that you haven't done that you know of
16 that you could do to get one?

17 A Just try it again.

18 **MS. VAN DALEN:** I want to pull up, please,
19 Plaintiffs' Exhibit 989.

20 Q This is a letter that I received from the Texas Department
21 of State Health Services in response to an inquiry as to
22 whether your birth had been registered, and it states that it
23 has not -- had not been registered in response, and that you
24 would have to apply for a delayed birth certificate paying a
25 fee of \$25, an additional fee of \$22 and also noting that \$22

1 had already been paid just to confirm that there was no birth
2 registered for you.

3 Are you aware of any way of getting a birth
4 certificate without paying this money?

5 A No, I'll try (indiscernible) I can do to try to get it,
6 ma'am.

7 Q Okay. Do you -- you do have as Social Security card,
8 right?

9 A Yes, ma'am.

10 Q And do you have a voter registration card?

11 A Yes, ma'am.

12 Q And who do you live with, Mr. Lara?

13 **MS. VAN DALEN:** You can turn that off, please.

14 A Huh?

15 Q Who do you live with?

16 A With my wife.

17 Q And do you and your wife have a car?

18 A No, ma'am.

19 Q How do you get around?

20 A Sometime with my daughters, sometime with my daughter's
21 girls, my sister, they'll help me out to catch a ride to go to
22 the grocery store or whatever. I give them some money gas to
23 help them if I can.

24 Q If they give you a ride you try to give --

25 A To take me, yeah, on the ride.

1 Q -- them some gas money?

2 A That's right.

3 Q Okay. And if you're not able to get a ride, what do you
4 do?

5 A If I'm not able to get a ride, well, I'll walk or go on
6 the bike.

7 Q Okay. How do you feel about asking folks for rides when
8 you need to get places?

9 A I don't like it at all, it's hard.

10 Q And you and your wife receive Social Security, is that
11 right?

12 A Yes, ma'am.

13 **MS. VAN DALEN:** I want to put up, please, Plaintiffs'
14 Exhibit 990. Can you show the second page for a second,
15 please? And now back to the first.

16 Q Mr. Lara, this is a Declaration that -- that describes you
17 and your wife's finances and that you signed. At the time you
18 signed that was that information correct?

19 A Yes, ma'am.

20 Q Has your financial situation changed since then?

21 A No, ma'am.

22 Q Okay. And can you -- do you have any savings?

23 A No, ma'am.

24 Q Okay. And can you -- can you describe for us what your
25 and your wife's personal finances are, what your financial

1 situation is, please?

2 A Well, we got each our little -- a small amount of cash,
3 both of us now, and we try to, you know, stretch it out as
4 possible by the end of the month, and sometime we'll make it
5 and sometime we won't. Yep, that's about it.

6 Q Okay. I know you've been trying to get a birth
7 certificate for a long, long time?

8 A Oh, yes, ma'am.

9 Q I know you really want one. If you had to -- if you had
10 to pay for it, is that something you would do?

11 A Oh, yeah, I'll sacrifice to get it done, or borrow money,
12 whatever, but I'll try to get it.

13 Q Okay, thank you, sir. I have no further questions at this
14 moment.

15 **MS. WOLF:** Your Honor, before I start the Cross
16 Examination, we have also filed a stipulation as to this
17 Plaintiff. I don't know, would you prefer that I read it into
18 the record.

19 **THE COURT:** Go ahead.

20 **MS. WOLF:** So it was just filed at ECF 571.

21 "Plaintiff, Margarito Martinez Lara and Defendants
22 stipulate to the following:

23 In addition to certain other documents produced in
24 discovery, Plaintiff Margarito Martinez Lara has
25 possession or access to the following documents:

- 1 1. A baptismal certificate.
- 2 2. A signed Social Security card.
- 3 3. The birth certificates of two of his children.
- 4 4. An expired Texas driver's license.
- 5 5. A Medicare and/or Medicaid card; and
- 6 6. A utility bill dated within the last 90 days."

7 **CROSS EXAMINATION**

8 **BY MS. WOLF:**

9 Q Good afternoon, Mr. Lara.

10 A Hi.

11 Q Nice to see you again.

12 A I remember you.

13 Q You've had a birthday since we last met, is that correct?

14 A Right.

15 Q So you are 78 now?

16 A Uh-huh (yes.) Right.

17 Q And when we met back in Raymondville I think you told me
18 you have an older sister, is that right?

19 A I've got an older sister -- right.

20 Q Is that Frances?

21 A No --

22 Q Or Maxine?

23 A No, it's --

24 Q Maximina.

25 A Lupe -- Guadalupe.

1 Q Okay. Okay. Is she still living?

2 A She's still living.

3 Q Okay. And we had talked a little bit about we met in
4 Raymondville, correct? Do you remember our meeting in
5 Raymondville?

6 A Yes. Yes, ma'am.

7 Q We met -- I can't remember which building we met in, but I
8 think it was -- was it close to the library? Do you know where
9 the (indiscernible) Memorial Library is in Raymondville?

10 A Where the library is? Yes, ma'am.

11 Q Uh-huh (yes.) Okay. And I think you had said that in --
12 I think we talked a little bit, in 2012 that library was your
13 polling place, is that correct?

14 A Exactly, right.

15 Q And at that time, in 2012, you were living in Sebastian
16 where you live now?

17 A Yes, ma'am.

18 Q So that's about 10 miles, give or take, from your home?

19 A Nine or 10 miles.

20 Q Okay. And you told me you like to take your bike to go to
21 the polling place?

22 A Right.

23 Q Okay. And I think we also talked about the County offices
24 for Willacy County. You knew that those were in -- in
25 Raymondville, near the library as well, right?

1 A Right.

2 Q Okay. And do you still -- you said you travel into
3 Raymondville about once or twice a week, is that true?

4 A It's true.

5 Q Okay, so (indiscernible) you have some time to go in to
6 deliver lumber or --

7 A Oh, yeah, right.

8 Q And you also travel to Harlingen -- and I'm sorry if I
9 pronounce the cities the wrong way, but you travel into
10 Harlingen about two to three times a week, is that correct?

11 A That's correct.

12 Q And when you go does your daughter or your grandkids, they
13 take you?

14 A Uh-huh (yes.)

15 Q Okay.

16 A Correct.

17 Q And I think you also said your sister, she gives you rides
18 a couple of times a week to go to the fruit stand in Sebastian
19 or to go get groceries, is that right?

20 A Right. Correct.

21 Q Okay. So you get rides a couple -- a few times a week to
22 go to Raymondville --

23 A Yes, ma'am.

24 Q -- Harlingen?

25 A Yes, ma'am.

1 Q Okay. I think we had also talked about voting, and I
2 think you said you prefer to vote early as opposed to on
3 Election Day, correct?

4 A Exactly right.

5 Q Okay, and that's because sometimes you forget the day
6 you're supposed to vote, and you care about the early voting?

7 A Right.

8 Q Okay. I'm going to ask --

9 **MS. WOLF:** Brian, can you bring up PL-518, please?
10 And if you can go to the -- I guess (indiscernible) and zoom in
11 on Paragraph 6.

12 Q Mr. Lara, do you know where 190 North 3rd Street is?

13 A Ma'am?

14 Q Do you know where the -- do you see the address up there,
15 190 North 3rd Street in Raymondville? Do you know where that
16 is?

17 A Yes, ma'am.

18 Q Okay, and is that close to the library?

19 A Yes, ma'am.

20 Q Okay. And we had talked the last time we met about the
21 fact that they issue a form of ID that you can use to vote
22 there, is that correct?

23 A Correct.

24 Q And so since we met in May have you tried at all to go to
25 that office to try to get an ID in order to vote?

1 A Have I tried it lately? No.

2 Q Okay. And do you know why you haven't tried?

3 A I'm going to try, I'll go and try it again.

4 Q And I think if you take a look at a document that Ms. Van
5 Dalen had shown you --

6 **MS. WOLF:** Brian, can you pull up PL-989? If you can
7 turn to -- Brian -- I'm sorry, Brian, if you can go Bates
8 Number ORT00019748, which should be the -- about the 10th page,
9 that one, okay.

10 Q So you have -- you have an older sister, correct? Right?

11 A Right.

12 Q Okay. And so do you think she could fill out an Affidavit
13 saying that she's your older sister?

14 A Yes.

15 Q Okay.

16 **MS. WOLF:** And, Brian, if you could just focus on a
17 list of documents up above this one, where it starts with
18 "Birth certificates of adult children."

19 Q Okay. And we -- we -- you didn't answer a question about
20 it, but when we got on the record you said you have the birth
21 certificates of two of your children, correct?

22 A Uh-huh (yes.) Yes.

23 Q Okay, and your kids are over 18?

24 A Yes, ma'am.

25 Q Okay.

1 **MS. WOLF:** And then, sorry, Brian, if you could go
2 back down to the records that may show the parents' names.

3 Q And you have your baptismal certificate, correct?

4 A Right.

5 Q Okay. So you have the three documents on this page?

6 A Yes, ma'am.

7 Q Have you ever tried to take those documents to -- to that
8 address, the 190 North 3rd Street address in Raymondville to
9 try to get a delayed birth certificate?

10 A I tried it twice, yes, ma'am.

11 Q Have you brought all of those documents?

12 A Uh-huh (yes.)

13 Q And your wife, we talked a little about your wife. She
14 currently has a Texas personal ID card, is that correct?

15 A She's got it, right.

16 Q And she got it in December of 2013?

17 A Uh-huh (yes.)

18 Q Do you know why she got that personal ID card?

19 A No, I don't.

20 Q Okay.

21 **MS. WOLF:** I have no further questions, your Honor.

22 **MS. VAN DALEN:** You are almost done. I saw you
23 yawning.

24 //

25 //

REDIRECT EXAMINATION

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BY MS. VAN DALEN:

Q Mr. Lara, where does your older sister live?

A She lives in a little town west of Raymondville, about nine or 10 miles, (indiscernible), Texas.

Q And do you -- you don't actually have a statement from her about where or when you were born, do you?

A No, ma'am.

Q Okay. And do you actually have your children's birth certificates yourself?

A Yes.

Q You have copies at your home?

A Yes, ma'am. Yes, ma'am.

Q The original?

A At home, yes, ma'am.

Q And you testified that your wife has a driver's license, is that right?

A **(No audible response)**

Q Is she driving these days?

A No. We don't have no automobile.

Q Okay.

A No, she don't drive no more.

Q Okay. And why isn't she driving anymore?

A Well, you know, she's been having this sickness of cancer, you know that? And she quit driving, she didn't feel like

1 driving anymore.

2 Q Okay. Thank you, sir. I have no further questions.

3 A Thank you.

4 **MS. WOLF:** I just have a couple, your Honor.

5 **REXCROSS EXAMINATION**

6 **BY MS. WOLF:**

7 Q Mr. Lara, did any of the Plaintiffs' lawyers offer to help
8 you get any affidavit or any letter from your sister regarding
9 your birth?

10 **MS. VAN DALEN:** I'm going to object. This is
11 completely irrelevant, your Honor.

12 **THE COURT:** Sustained.

13 **BY MS. WOLF:**

14 Q Your Honor (sic), did any of the Plaintiffs' lawyers
15 attempt to assist you in obtaining a form of identification in
16 order to vote?

17 **MS. VAN DALEN:** I'm going to object to that as well
18 on the same grounds, plus it's infringing on attorney-client
19 privileged communication.

20 **THE COURT:** Sustained.

21 **BY MS. WOLF:**

22 Q Has anyone offered to assist you in obtaining any form of
23 identification in order to vote?

24 **MS. VAN DALEN:** Your Honor, same objection. This has
25 no relevance.

1 **BY MS. WOLF:**

2 Q Other than your lawyers.

3 **THE COURT:** I'm sorry, the question is -- what was
4 your question?

5 **MS. WOLF:** Has anyone besides your attorneys offered
6 to assist you in obtaining a form of identification in order to
7 vote.

8 **THE COURT:** Sustained.

9 **MS. WOLF:** No further questions, your Honor.

10 **THE COURT:** All right. Are we finished with this
11 witness?

12 **MS. VAN DALEN:** Yes, your Honor.

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

14 **THE WITNESS:** Thank you. Thank you.

15 **(Witness excused)**

16 **MS. VAN DALEN:** Your Honor, the next witness will be
17 Maximina Lara.

18 **THE COURT:** Good afternoon. Would you raise your
19 right hand.

20 **(Clerk administers oath)**

21 **(No audible response)**

22 **THE COURT:** Did you hear the opening?

23 Can you hear?

24 **THE WITNESS:** Yes.

25 //

1 **PLAINTIFFS' WITNESS, MAXIMINA LARA, SWORN**

2 **THE COURT:** All right, you can have a seat, but
3 you're going to need to speak up, okay, so we can all hear.

4 **DIRECT EXAMINATION**

5 **BY MS. VAN DALEN:**

6 Q Good afternoon, ma'am. Can you state --

7 A Good afternoon.

8 Q Ma'am, can you please state your name for the record?

9 A Can't hear you.

10 Q Can you tell me your name, please?

11 A Sure. Maximina M. Lara.

12 Q And are you the sister of Margarito Lara?

13 A Yes.

14 Q And do you also live in Sebastian?

15 A Right.

16 Q And do you live alone or with anybody?

17 A I live alone.

18 Q And where were you born?

19 A I was born in Combes, Texas. It's a little town about ten
20 miles from Harlingen, Texas.

21 Q Were you born at home or in a hospital?

22 A No, on the farm.

23 Q Okay. And are you, like your brother, Latino? Is that
24 how you describe yourself? Or how would you describe yourself?

25 A I can't hear you.

- 1 Q What is your race or your ethnicity, please?
- 2 A Hispanic.
- 3 Q And are you working or are you retired?
- 4 A I'm retired.
- 5 Q What type of work did you use to do?
- 6 A I was a waitress for over 35 years and a cook.
- 7 Q And did you go to school?
- 8 A Yeah, I went through eighth grade and then I got my GED.
- 9 Q And do you remember when you started voting?
- 10 A I would say around the 60s.
- 11 Q And have you been a regular voter since then?
- 12 A Oh, yeah.
- 13 Q Have you ever had to pay to vote?
- 14 A Yes, I did.
- 15 Q And when you vote, do you vote in person or do you vote by
16 mail?
- 17 A No, in person.
- 18 Q And why do you do it that way?
- 19 A Well, I always think it's better to go over there in
20 person. That's why.
- 21 Q Are you currently registered to vote?
- 22 A Yes, ma'am.
- 23 Q And what is your name on your voter registration card?
- 24 A Maximina M. Lara.
- 25 Q Okay. You say "emmay" (phonetic), in English that's "M"?

1 A "M".

2 Q And you have a Texas driver's license, is that right?

3 A Oh, yes.

4 Q And do you know when that expires?

5 A It will expire in 2015.

6 **MS. VAN DALEN:** Okay. Can you please put up
7 Defendants' (sic) Exhibit 593 for me?

8 **BY MS. VAN DALEN:**

9 Q Is this a copy of your driver's license?

10 A That's right.

11 Q And what's your name as it -- what's the name that appears
12 on your driver's license?

13 A Maxim M. Lara.

14 Q Okay, so you just said that on your voter registration
15 it's Maximina M. Lara, but on your driver's license it's Maxim
16 Martinez Lara, is that right?

17 A The right one is Maximina M. Lara.

18 Q And the last time you voted did you have to show your
19 driver's license?

20 A Oh, yes.

21 Q Do you remember when that was?

22 A It was the last election, probably in May or something
23 around there.

24 Q And did you have a problem voting with that document, with
25 your driver's license?

1 A Excuse me?

2 Q Did you have a problem voting? Were you allowed to vote?

3 A Oh, no, I haven't had no problem with that.

4 Q Okay. Have you ever tried to correct the name on your
5 driver's license?

6 A I want to.

7 Q You want to do that?

8 A Uh-huh.

9 Q Do you know how to do that?

10 A Well, for that I have to go to the Texas Highway
11 Department for it.

12 Q And where is that?

13 A In Harlingen, Texas.

14 Q How far is that from you?

15 A It's about 12 miles from where I live.

16 Q Okay. And you have a car, right?

17 A Yes.

18 Q But if they want your birth certificate in order to change
19 your name on your driver's license, do you have a birth
20 certificate to show them?

21 A No.

22 Q Do you plan to renew your driver's license next year?

23 A Yes, ma'am.

24 Q And when you go to renew, if they require you to give them
25 a copy of your birth certificate would you be able to do that?

1 A No, ma'am.

2 Q Okay. So you don't have, actually have a birth
3 certificate, is that right?

4 A Excuse me?

5 Q Do you have a birth certificate?

6 A An old one.

7 Q You have an old birth certificate for yourself?

8 A I don't have it with me.

9 Q Have you -- do you have a birth certificate that shows
10 when you were born and where?

11 A I don't have it.

12 Q Do you know whether your birth, whether your parents ever
13 registered your birth with Texas, with the State of Texas?

14 A No.

15 Q No, they didn't, is that your testimony?

16 A Well, they never mentioned it, so I don't know along the
17 years), but I don't think so.

18 Q Have you ever tried to get a birth certificate for
19 yourself?

20 A Yes, I have. I wrote over there about 30 years ago, but
21 they couldn't find me over there in Austin, Texas.

22 **MS. VAN DALEN:** Okay, I'm going to pull, please,
23 Plaintiffs' Exhibit 985.

24 //

25 //

1 **BY MS. VAN DALEN:**

2 Q Ma'am, this is a letter that I received from the Texas
3 Department of State Health Services saying that you -- that no
4 birth certificate was ever registered for you and indicating
5 that you would need to obtain a new birth certificate, a
6 delayed birth certificate, and that the fee for that would be
7 \$25 plus \$22 in addition to the \$22 that had already been paid
8 by our offices to confirm that there was no birth certificate.

9 Are you aware of any way to get a birth certificate
10 for less than \$47?

11 A Yes, probably so.

12 Q Do you know how to -- do you believe that's the amount
13 that you would have to pay if you were able to get a birth
14 certificate?

15 A Yeah. Yes, ma'am.

16 Q Do you believe there is a way to get it for less?

17 A Beg your pardon?

18 Q Could you get it for less than \$47, that you know of?

19 A No. I don't think so.

20 **MS. VAN DALEN:** And could we go to the ninth page of
21 that document, please? The ninth page.

22 **BY MS. VAN DALEN:**

23 Q I'm going to review the documents that would need to be
24 submitted in order for you to apply for a birth certificate and
25 you can let me know if you have them.

1 The first thing is a birth certificate of adult
2 children.

3 Do you have any children?

4 A No, ma'am.

5 Q The next one is school enrollment records and transcripts.

6 Do you have any documents like that?

7 A Just from the hospital.

8 Q Okay, that's a little later in the list. But do you have
9 any school enrollment records or transcripts?

10 A No.

11 Q Okay. Were you ever in the military?

12 A No.

13 Q And have you ever been married?

14 A No.

15 Q Were you ever in the Selective Service, did you ever apply
16 for Selective Service or register for Selective Service?

17 A No, ma'am.

18 Q Do you have a copy of the application you made to get a --
19 to register to vote?

20 A Yes, I have that one.

21 Q Do you have a -- I know you have a copy of your voter
22 registration card.

23 A Yes.

24 Q Do you have a copy of the application you filled out, the
25 form you filled out to get that card?

1 A No. But I can get it.

2 Q How would you get that?

3 A Probably go over there where we vote and tell them about
4 it so I could get it.

5 Q Do you have a -- do you have the application for a
6 driver's license or --

7 A Uh-huh.

8 Q -- a State ID that you filled out, the form itself?

9 A Oh, that one too.

10 Q Do you have that now?

11 A No.

12 Q But you do have your baptismal certificate, is that right?

13 A (Indiscernible)

14 Q Your baptismal certificate, do you have that document?

15 A Oh, yeah. I have a --

16 Q Okay.

17 A -- copy.

18 Q Okay. So right now the only documents you have on this
19 page would be perhaps some hospital records and your baptismal
20 certificate, is that right?

21 A Uh-huh.

22 Q How long have you wanted to have a copy of your birth
23 certificate?

24 A A long, long time. Years.

25 Q Can you give me a guess, an estimate?

- 1 A I would say more than 40 years, I guess.
- 2 Q More than 40 years --
- 3 A More than 40.
- 4 Q -- you've wanted that document?
- 5 A Uh-huh.
- 6 Q Have you ever done anything to try to get one?
- 7 A No, ma'am.
- 8 Q Did you ever send a request or an inquiry?
- 9 A Not at all.
- 10 Q You never paid to find out whether you could get a birth
11 certificate?
- 12 A No.
- 13 Q Do you receive Social Security?
- 14 A Yes, ma'am.
- 15 Q Is that the only income that you have?
- 16 A SSI.
- 17 Q Do you have any other income that you receive?
- 18 A No, ma'am.
- 19 Q Do you have any savings?
- 20 A About 20 or 30 dollars.
- 21 Q And do you have a loan that you pay on each month?
- 22 A Oh, yes.
- 23 Q Is that kind of like what they call sometimes a payday
24 loan or a signature loan, where you can renew it and keep
25 paying?

1 A Yeah, I renew it once it a while.

2 Q And how much do you owe on that now?

3 A About \$900.

4 **MS. VAN DALEN:** Can I show, please, Plaintiffs'
5 Exhibit 986.

6 **BY MS. VAN DALEN:**

7 Q Ms. Lara, I'm showing you a Declaration.

8 **MS. VAN DALEN:** If you can show the second page,
9 please.

10 **BY MS. VAN DALEN:**

11 Q It has your signature and that it was signed on May 21st
12 of this year.

13 When you signed this Declaration was the information
14 in it correct?

15 A I didn't hear.

16 Q When you signed this Declaration, when you signed the
17 sheet of paper, were you signing that the information that you
18 were giving about your finances was true?

19 A Right.

20 Q Have there been any changes in your financial situation?

21 A Do I have any what?

22 Q Have there been any changes in your finances, in your --
23 how much money you are receiving or owe since May?

24 A No, that's all.

25 Q And can you describe for the Court, for the Judge today,

1 your financial situation?

2 A What -- what did you say?

3 Q Can you describe, using your own words, your situation of
4 your finances, your financial situation?

5 A Well, it's the same, you know, it's the same thing all the
6 time.

7 Q And what is that? What is it?

8 A Well, with the bills and all that, you know, the less
9 money left, you know, for me it is.

10 Q Pardon?

11 A I said to me it is less.

12 Q Okay. When the end of the month rolls around are you able
13 to pay your loan -- your expenses and your debt all the time,
14 or are there times that that's difficult?

15 A Difficult.

16 Q Can you describe what that's like at the end of the month?

17 A Well, it's -- there's usually the same -- the bills that I
18 have to pay and maybe something else comes along and I have to
19 pay that too. It's stressful.

20 Q Okay.

21 A Very stressful.

22 Q And are there things that you need that you are unable to
23 pay for?

24 A Oh, yes.

25 Q Could you tell me what some of those things are?

1 A Well, like a car or something, you know, that I want but
2 cannot afford.

3 Q And your house?

4 A Oh.

5 Q Okay.

6 A Clothing.

7 Q Do you know what you would have to do in order to get a
8 birth certificate?

9 A I don't know. I don't know if it's a possibility anymore.

10 Q Okay. If you knew what you had to do and if you had the
11 documents and the only thing coming between you and that birth
12 certificate were \$47, what would you do?

13 A I'd just let it go by. I would. I would. I wouldn't
14 have the money right there.

15 Q You wouldn't be able to afford it?

16 A Uh-huh.

17 **MS. VAN DALEN:** Okay. Thank you.

18 I have no more questions at this time.

19 **THE WITNESS:** You're welcome.

20 **MS. DEASON:** Whitney Deason for the Defendants.

21 **CROSS EXAMINATION**

22 **BY MS. DEASON:**

23 Q Good afternoon, Ms. Lara.

24 A Good afternoon, ma'am.

25 Q Are you over the age of 65?

1 A (No audible response)

2 Q You're over the age of 65, correct?

3 A I can't hear you.

4 Q You're over the age of 65, correct?

5 A Sixty-five?

6 Q You're over the age of 65 --

7 A Oh, yes.

8 Q -- correct?

9 And have you -- you voted in person with your
10 driver's license in the last year, is that correct?

11 A Yes.

12 Q And you haven't had any problems voting in person with
13 your driver's license in the last year --

14 A Not at all.

15 Q -- correct?

16 And your brother, Margarito Lara, who testified here
17 today, is he older than you?

18 A He's older than me.

19 Q And is it correct that you live next door to Mr. Lara,
20 your brother?

21 A I can't hear you.

22 Q Is it correct that you live next door to your brother,
23 Mr. Lara?

24 A Oh, yes, brother.

25 **MS. DEASON:** No further questions.

1 **REDIRECT EXAMINATION**2 **BY MS. VAN DALEN:**3 Q You're almost done. The Declaration that we looked at
4 that you had signed, PL986 (indiscernible), did you -- did we --
5 -- was that read to you before you signed it?

6 A Yes.

7 Q Yes. Okay.

8 And do you know how to use a computer at all?

9 A Not at all.

10 Q Have you ever used the Internet?

11 A I looked like 11 years ago.

12 Q Okay. So you couldn't use -- go to a website and check
13 for information?

14 A Nothing --

15 Q Thank you, ma'am.

16 A -- to do with a computer.

17 **MS. VAN DALEN:** Thank you, ma'am.

18 I have no further questions.

19 **THE COURT:** All right. Is that all for the witness,
20 then?21 **MS. VAN DALEN:** Yes, sir.22 **THE COURT:** You can step down, ma'am.23 **MS. VAN DALEN:** Yes, your Honor.24 **THE COURT:** Thank you.25 **(Witness excused)**

1 Geography at the University of Wyoming.

2 Q Dr. Webster, you have in front of you what's been marked
3 as Plaintiffs' Exhibit 1099. Is that a copy of your most
4 recent CV?

5 A Yes, sir.

6 Q And does your CV accurately reflect your experience?

7 A Yes, sir.

8 Q Dr. Webster, in what fields have you published peer
9 reviewed articles?

10 A Primarily in political geography, but also in cultural
11 geography and also in geographic education.

12 Q And have you won any awards in your field?

13 A Two years -- three years ago I was awarded the lifetime
14 achievement award awarded by the Southeastern Division of the
15 Association of American Geographers.

16 Q And have you given any distinguished lectures in your
17 career?

18 A Yes, sir, a few. Most recently I was asked to give the
19 primary lecture in political geography by the Political
20 Geography Specialty Group of the Association of American
21 Geographers in New York. The Association of American
22 Geographers is our largest national organization of
23 professional geographers.

24 Q Dr. Webster, have you previously provided reports or
25 testimony for litigation?

1 A I provided reports, testimony, or both in ten different
2 states in I think 1996.

3 Q And outside of litigation, have you ever been employed by
4 Legislatures?

5 A Yes, sir.

6 Q And have you been employed by Democratic controlled
7 Legislatures, Republican controlled Legislatures, or both?

8 A Both.

9 **MR. FREEMAN:** Your Honor, the United States would
10 offer Dr. Webster as a expert in geography, political
11 geography, and spatial analysis.

12 **THE COURT:** All right. You can proceed.

13 **BY MR. FREEMAN:**

14 Q Dr. Webster, what were you asked to do in this case?

15 A I was asked to look at the differential effects of SB 14
16 on racial and language minority groups and particularly to look
17 at whether or not there were differential effects in their
18 efforts to secure an EIC.

19 Q And we'll move through your findings stepwise, but what
20 was the ultimate conclusion that you reached?

21 A I did find that there were differential effects and that
22 the obstacles faced by African-Americans and Hispanics were
23 greater than they were for Anglos.

24 Q And did you produce a written report in this case?

25 A Yes, sir.

1 Q And Dr. Webster, you also have in front of you a document
2 that's been marked as Plaintiffs' Exhibit 775. Could you
3 identify that document for the record?

4 A This is my August 15th report.

5 Q Thank you.

6 Dr. Webster, I'd like to start by discussing just
7 some basic facts about Texas.

8 First, did we prepare a presentation containing
9 charts and maps as set out in the report you offered in this
10 case?

11 A Yes, sir.

12 Q And are the charts and maps in that presentation accurate
13 depictions of the charts and maps in your report?

14 A Yes, sir.

15 Q Thank you.

16 Dr. Webster, how did the racial makeup of the state
17 of Texas change from 2000 to 2010?

18 A Quite dramatically. The state grew very rapidly, about
19 20 -- or over 20 percent in total, but the Anglo population by
20 only 4 percent while the Hispanic population grew by a
21 tremendous increase. In fact, 65 percent of the total increase
22 in the state's population was due to the growth in the Hispanic
23 population. So in the year 2000 52.4 percent of the Texas
24 population was Anglo. That's fallen to 45.3 percent in 2010.
25 The Hispanic population was 32 percent in the year 2000 and by

1 the 2010 census had grown to 37.6 percent. And the African-
2 American population also grew as a percent, by two-tenths of
3 one percent.

4 Q Dr. Webster, are there many states where Anglos or White
5 non-Hispanics make up less than 50 percent of the total
6 population?

7 A Texas became the fourth majority minority state after
8 Hawaii, which had already been California and New Mexico.

9 Q Thank you.

10 Among U.S. citizens residing in Texas, how do poverty
11 rates differ between racial or ethnic groups?

12 A Very substantially. The citizen poverty rate amongst
13 Anglos in the state of Texas is 8.6 percent, but it's nearly
14 three times higher for both Hispanics and African-Americans,
15 23.8 percent for Hispanics and 23.5 percent for African-
16 Americans.

17 Q Dr. Webster, for purposes of the U.S. Census American
18 Community Survey, what is household vehicle access?

19 A It means does a household have access to a car, a van, or
20 a truck or have they leased or rented one that's on the
21 premises for 30 days or more and is available for members of
22 the household.

23 Q And among all households in Texas, how does household
24 vehicle access differ across the racial or ethnic groups with
25 regard to the household?

1 A Amongst Anglo households as the household, only
2 3.7 percent of those households don't have access to a motor
3 vehicle. The rate rises among Hispanics to 7.5 percent and
4 fairly dramatically to 13.4 percent among African-American
5 households.

6 Q Dr. Webster, how is the Anglo population in Texas
7 distributed throughout the state?

8 A In general, the counties with the highest proportioned
9 Anglo populations are in the northern and eastern portions of
10 the state.

11 Q And as a quick aside, what are the black dots that appear
12 on this map?

13 A The black dots are the locations of DPS offices, but also
14 town or local government offices that agreed to process EIC
15 applications.

16 Q How is the African-American population of Texas
17 distributed throughout the state?

18 A Quite substantially in the eastern portion of the state,
19 and particularly along the Arkansas and Louisiana borders.

20 Q And in what areas of the state are there
21 disproportionately high concentrations of Hispanic population?

22 A Along the southern -- or the counties along the southern
23 border with Mexico have the highest proportion.

24 Q And how are concentrations of poverty distributed
25 throughout Texas?

1 A The highest proportions are along the U.S./Mexico border
2 and there also are some higher areas in the Texas Panhandle,
3 but also in the eastern portion of the state along the Arkansas
4 and Louisiana borders.

5 Q Thank you.

6 Dr. Webster, are you familiar with SB 14, the law at
7 issue in this case?

8 A Yes, sir.

9 Q And what is your understanding of the geographic
10 distribution of DPS offices throughout Texas?

11 A There are approximately 225 DPS offices and therefore
12 about 80 counties that don't have DPS offices.

13 Q And so around what percent of the counties of the Texas is
14 that?

15 A About a third.

16 Q And you had mentioned that there are non-DPS locations
17 that were accepting applications for an election identification
18 certificate. Do you know how many counties accept EIC
19 applications at county offices?

20 A The last list I saw was 61.

21 Q So roughly how many counties have no fixed location that
22 accepts EIC applications?

23 A Approximately 20.

24 Q And have you looked into whether county offices that
25 accept EIC applications have actually issued EICs?

1 A Yes, I was provided declarations for 44 of the 61 counties
2 that agreed to process EIC applications and of that number,
3 only 11 had and in total had only produced -- or processed 40
4 applications for EICs.

5 Q Dr. Webster, did you analyze the geographic distribution
6 of individuals that Dr. Stephen Ansolahehere estimated to lack
7 SB 14 ID?

8 A Yes.

9 Q Exactly what type of data did you rely on?

10 A I was provided the data he uploaded to census tract, so I
11 had the total number of registered voters, as well as the
12 number of registered voters on the no match list.

13 Q And to be clear, did you perform any independent analysis
14 of which voters in Texas lacked SB 14 ID?

15 A No, sir.

16 Q And did you conduct any independent verification of the
17 validity of Dr. Ansolahehere's analysis?

18 A No, sir.

19 Q Okay. Dr. Webster, where are the most voters without
20 SB 14 ID concentrated in Texas?

21 A Not surprisingly, they're found in the largest cities,
22 with the largest number being in Houston and San Antonio and in
23 Dallas, with secondary clusters in El Paso, Fort Worth, and
24 Austin.

25 Q And could you point out -- do you have a laser pointer up

1 there?

2 A Yes, sir.

3 Q Could you point out the county that we are in now, Nueces
4 County?

5 A (Indicating)

6 Q And according to your map, approximately how many
7 registered voters in Nueces County, Texas don't have SB 14 ID?

8 A A mean in that interval would indicate somewhere between
9 10,000 and 25,000.

10 Q Dr. Webster, what areas of Texas have higher proportions
11 of voters who lack SB 14 ID?

12 A Particularly in the southern and far western part of the
13 state along the U.S./Mexico border, but also there's clusters
14 of counties with higher proportions of registered voters
15 without appropriate ID in the eastern portion of the state
16 running along the Arkansas and Louisiana borders or slightly
17 inland from there.

18 Q And how does that compare to the geographic distribution
19 of different racial or ethnic groups at the large scale level
20 that we discussed earlier?

21 A Of course, the highest proportion of African-Americans by
22 county are in the far eastern portion of the state, so there's
23 overlap there. And also the highest proportions of Hispanics
24 by county in the state are in the southern and western portions
25 of the state along the U.S./Mexico boundary.

1 Q Thank you, Dr. Webster.

2 I'd like to ask a few questions about the
3 distribution of voters lacking SB 14 ID in specific types of
4 areas.

5 First, what is the overall percentage of Texas
6 registered voters who reside in Texas and lack SB 14 ID?

7 A Five point eight percent of all registered voters residing
8 in the state of Texas do not have appropriate ID to vote.

9 Q And Dr. Webster, what is a census tract?

10 A A census tract is a geographic unit used by the Bureau of
11 the Census with average populations of possibly 4,000 people.

12 Q And so in an urban area, approximately how large is a
13 census tract in terms of area?

14 A Very small.

15 Q And what have you described in your report as a low
16 vehicle access tract?

17 A Those tracts that have more than 25 percent of their
18 households with no access to a motor vehicle.

19 Q And what's the percentage of registered voters in low
20 vehicle access tracts in Texas who lack SB 14 ID?

21 A Over double the statewide rate, 13.2 percent.

22 Q Thank you.

23 Dr. Webster, did you do any other quantitative
24 analysis of the geographic distribution of voters without SB 14
25 ID?

1 A I did a Pearson's correlation analysis.

2 Q And are these the results of your Pearson's correlation
3 analysis statewide?

4 A Statewide, yes, sir.

5 Q And what does this table show?

6 A Well, first it shows there were 5,234 census tracts in the
7 state, so that's the "N," which is sizeable. It shows an
8 inverse relationship with Anglos CVAP, and a positive
9 relationship with African-American CVAP, Hispanic CVAP, the
10 citizen positive rate, and the proportion of households without
11 access to motor vehicles. So in the state as a whole, as the
12 proportion of Anglo CVAP increases, the proportion of
13 registered voters without appropriate ID decreases for a
14 negative correlation or inverse correlation of negative .56.

15 Q Is a negative point five -- well, what's the total
16 theoretical range of these correlations?

17 A Negative 1.0 to positive 1.0.

18 Q So is a negative 56, is that a strong inverse
19 relationship, higher Anglo CVAP means less proportion of people
20 without ID?

21 A In social sciences, yes.

22 Q Okay. And how would you describe the correlations between
23 African-American CVAP and Hispanic CVAP and the percentage of
24 people without ID statewide?

25 A It's a substantial correlation of .41.

1 Q And how about Hispanic CVAP?

2 A A moderately substantial correlation of .32 statewide.

3 Q And are all those correlations statistically significant?

4 A Highly statistically significant.

5 Q Thank you.

6 Based on these figures, have you reached an opinion
7 regarding the areas in which there are higher concentrations of
8 voters lacking SB 14 ID?

9 A The correlations would indicate a strong association that
10 the higher the proportion of registered voters without
11 appropriate ID are found in those areas where there are
12 concentrations of high proportions of African-Americans and
13 Hispanics.

14 Q Dr. Webster, I would like to turn to your analysis of the
15 travel burden to obtain SB 14 ID.

16 First, what unit of measurement did you use to
17 measure the travel burden to obtain SB 14 ID?

18 A In some cases both distance but particularly highlighted
19 and emphasized time.

20 Q Is time an accepted metric to measure the costs associated
21 with voting in your discipline?

22 A Yes. Most particularly in social geography.

23 Q In what areas of Texas did you measure the travel costs
24 associated with voting?

25 A I selected the three largest cities. All three are the

1 only three cities over 1 million, so Houston, San Antonio, and
2 Dallas.

3 Q And what percentage of the low vehicle access tracts in
4 the state of Texas are in those three cities?

5 A Fifty-five to 56 percent approximately.

6 Q So more than half?

7 A Yes.

8 Q Okay. And why did you stop after Houston, San Antonio,
9 and Dallas?

10 A Three consistent results in the three largest cities, it
11 seemed inefficient to go on, plus one in -- nearly one in five
12 Texans resides in those three cities and nearly -- yeah, nearly
13 one in three African-American citizens of voting age population
14 resides in those three cities and one in five Hispanics
15 citizens of voting age population resides in those three
16 cities. It's a very substantial sample of the state's
17 population.

18 Q Within the cities you studied, what type of measurement
19 did you make with regard to all of the census tracts in that
20 city?

21 A I calculated the distance and time from the centroid of
22 each census tract in each of the three cities to the nearest
23 DPS office, whether it was in the city or the surrounding
24 county, but it was the one that was closest.

25 Q Let's break down how you did that.

1 So how did you -- first, could you tell us what on
2 this image is a census tract?

3 A The census tract is very elongated. This area here
4 (indicating).

5 Q And for a given census tract, where did you start your
6 driving journey to DPS?

7 A At the centroid, which is right here (indicating). The
8 U.S. Census provides centroids for all census tracts in the
9 United States, since it's a very commonly used point to measure
10 distance or time.

11 Q And using just the census tract, would you expect to see
12 errors based on some people living not right on top of the
13 census roll?

14 A In some cases there's an over estimate and other cases
15 it's an under estimate, but they essentially cancel each other
16 out. And if one looks at the fact that this is smack in the
17 center, I think that's easy to understand.

18 Q And are estimates based on the center of a census tract
19 commonly used in the field of geography?

20 A Yes.

21 Q And where did you measure the driving distance to on this
22 map?

23 A To the DPS office, which is right here (indicating), the
24 red spot.

25 Q And after you measured driving time for all tracts in

1 Houston, did you measure driving time a subset of the tracts?

2 A Yes. Those are in with more than 25 percent of the
3 households do not have access to a motor vehicle.

4 Q And did you also measure the distance -- excuse me -- the
5 time to reach a DPS office using any other modes of
6 transportation?

7 A The bus.

8 Q And why did you only measure bus travel time for low
9 vehicle access tracts?

10 A The distance -- oh, well, in fact -- well, distance in
11 this particular case is much, much less relevant, because, of
12 course, a bus is a much slower means of moving over the same
13 distance than an automobile.

14 Q But why did you not measure bus travel times for all
15 tracts in Houston?

16 A It would have been certainly a big task to do. And, of
17 course, what I was interested in here is accessibility and
18 accessibility in those tracts with more than 25 percent of the
19 households without motor vehicles seemed like the most relevant
20 place to look for differential effect of SB 14.

21 Q Are those most likely bus users?

22 A Yes, sir.

23 Q Okay. And how did you go about measuring the bus travel
24 time from each low vehicle access tract to a DPS location?

25 A The time was measured from the centroid to -- from the bus

1 stop nearest the centroid -- and the centroid is right here
2 (indicating), the nearest bus stop is right there
3 (indicating) -- to the bus stop nearest the DPS office. And,
4 of course, the DPS office is right here (indicating) and the
5 last bus stop is right there (indicating). So it's a
6 measurement of time on the bus, but not walking from their
7 residence, or in this case from the centroid to the nearest bus
8 stop and not walking from the last bus stop to the DPS office.

9 Q And what time -- did you start all of your bus trips at
10 the same time of day?

11 A 8:00 a.m.

12 Q And why did you do that?

13 A For consistency.

14 Q Dr. Webster, after you measured the travel times to DPS
15 offices from all low vehicle access tracts, did you perform an
16 additional round of analysis regarding these tracts including
17 more than just a permanent DPS location?

18 A Yes. There were temporary mobile units dispatched to
19 different points in the three cities, so I added those into the
20 analysis as well.

21 Q Why did you not include the temporary locations in your
22 initial analysis?

23 A Because they were so temporary as to have really little or
24 no effect on the accessibility of getting to a DPS office.

25 Q With that, I'd like to turn to your analysis of the city

1 of Houston and to begin with the same basic demographic maps
2 that we addressed earlier of the state as a whole.

3 Dr. Webster, first, how would you describe the
4 boundaries of the city of Houston?

5 A Highly irregular.

6 Q And so which census tracts did you include in your
7 analysis of the city of Houston?

8 A Census tract boundaries do not follow municipal
9 boundaries, or I probably should say that in the reverse,
10 municipal boundaries don't necessarily follow census tract
11 boundaries. Therefore, all census tracts whose centroids were
12 within the city limits were included in the analysis.

13 Q And Dr. Webster, what are the black dots on this map?

14 A Those are the locations of DPS offices.

15 Q And what are the green dots on this map?

16 A Those are the locations of the temporary mobile units.

17 Q And does this map indicate how many days the temporary DPS
18 locations were open in Houston in 2014?

19 A In this case there were two units that were located on two
20 different days, February 27th and 28th, at least between
21 January 1st, 2014 and approximately May 15th, 2014.

22 Q And so how would you describe the geographic patterns of
23 Anglo population in Houston?

24 A Tends to be in the northeastern portion, the southeastern
25 portion, and beginning or closer to the center of the city and

1 a corridor out to the western edge of the city.

2 Q And did you also create maps of the Anglo citizen voting
3 age population for each of the cities?

4 A Yes, sir.

5 Q And are those also contained in your report?

6 A They're in Appendix 2.

7 Q Okay. How would you describe the geographic patterns of
8 African-American population in Houston?

9 A Quite concentrated. You'll notice there's a large cluster
10 of census tracts with high proportions of African-Americans in
11 the northeastern portion of the city, in the north central
12 portion of the city, and in the south central portion of the
13 city.

14 Q And how would you describe the geographic patterns of
15 Hispanic population in Houston?

16 A In the eastern portion and the southeastern portion
17 there's a substantial number of tracts with high proportion,
18 moving up to the -- I guess that would be east central portion
19 and the northern portion of the city and the southeastern
20 portion of the city.

21 Q And where in the city of Houston are there higher rates of
22 households without access to a motor vehicle?

23 A In different locations, but, obviously, there's a small
24 cluster here (indicating) in the inner part of the city, in the
25 south central portion of the city, and then miscellaneous

1 blocks, not necessarily a concentration, but here and there in
2 the southeastern -- southwestern portion of the city.

3 Q And Dr. Webster, what is the racial makeup of those tracts
4 that you determined to be low vehicle access tracts in the city
5 of Houston?

6 A The geographic correlation, and by that I mean the direct
7 comparison of the patterns on the two maps, are that those
8 areas with high proportions of households without access to a
9 motor vehicle are generally populated by Hispanics and African-
10 Americans.

11 Q And with regard to the specific tracts that you found to
12 be low vehicle access tracts in Houston, what was the racial
13 makeup of those tracts, those individual tracts?

14 A There were 30 in the city of Houston, all but one were
15 either plurality or majority African-American or Hispanic, and
16 one had a plurality Anglo population.

17 Q Dr. Webster, what did you find to be the average one-way
18 travel time by car from inside the city of Houston to a DPS
19 office?

20 A Nine point nine minutes.

21 Q And Dr. Webster, from those census tracts that you
22 determined to have low vehicle access, what was the average
23 one-way travel time by car?

24 A Slightly higher, at 10.5 minutes.

25 Q But from low vehicle access tracts in Houston, what did

1 you determine to be the average one-way travel time by bus,
2 excluding walking and waiting?

3 A Sixty-six point seven, so approximately a five, five and a
4 half time greater amount of time to access the DPS office by
5 bus than by motor vehicle.

6 Q And let's include the temporary DPS units. Including
7 those units, what is the average one-way travel time by car
8 from a low vehicle access tract to a location that accepts
9 applications for EICs?

10 A They were well placed, so it goes down to 7.9 minutes by
11 car and is reduced to 44.6 minutes by bus, but still something
12 like five times greater. And, of course, in this particular
13 circumstance there were two mobile units that were placed for
14 two days.

15 Q And how do you expect these differences to affect African-
16 Americans and Hispanics?

17 A They mean that the obstacles in the inference of time are
18 significantly greater, at least those faced by Hispanics and
19 African-Americans than by Anglos.

20 Q Dr. Webster, what areas of Houston have higher proportions
21 of voters who lack SB 14 ID?

22 A Particularly the northeastern portion and the south
23 central portion, but also some clusters of tracts with high
24 proportions here (indicating) and in the north central portion
25 of the city.

1 Q Dr. Webster, we've prepared some side-by-side slides
2 showing both the no match population and population
3 concentrations.

4 How do the areas with higher proportions of voters
5 lacking SB 14 ID compare to the geographic distribution of
6 African-Americans in Houston?

7 A They match quite closely. The geographic correlation
8 between the two maps is very substantial. If we look up in the
9 northern part of the city here (indicating), high rates of
10 registered voters without appropriate ID. And, of course, this
11 is a concentration of African-Americans. There is a
12 concentration of African-Americans here (indicating) that
13 parallels high proportions of registered voters without
14 appropriate ID in the northeast portion of the city. There's
15 also a high density of registered voters without appropriate ID
16 in the south central part. And, of course, that is a high
17 proportion African-American population area as well.

18 Q And Dr. Webster, how would you describe the geographic
19 correlation between voters lacking SB 14 ID and the
20 distribution of Hispanics in Houston?

21 A There's also an overlap, though not as substantial as with
22 respect to African-Americans. But if we look at this area here
23 (indicating) on the eastern portion of the city, of course, in
24 particular, it lines up with the high proportion Hispanic
25 census tract in the southeastern portion of the city.

1 Q And just looking at the map of -- the map on top of those
2 without SB 14 ID, tell me, the area of the corridor from the
3 center of the city extending west, how would you describe the
4 rates of individuals lacking SB 14 ID in that corridor that we
5 talked about before?

6 A They are much lower. And, of course, this is the Anglo
7 portion -- or greater proportions of Anglos living in those
8 census tracts.

9 Q With that, I'd like to turn to your analysis of the city
10 of San Antonio and begin with the same basic demographic maps
11 again.

12 First, Dr. Webster, how would you describe the
13 boundaries of the city of San Antonio?

14 A Irregular, though not quite as irregular as the city of
15 Houston.

16 Q And so then what census tracts did you include in your
17 analysis of the city of San Antonio?

18 A I included all census tracts with centroids within the
19 city limits of San Antonio in the analysis.

20 Q And how many days were temporary DPS locations open in
21 San Antonio in 2014?

22 A Actually there was one mobile unit and it was there for
23 two days at two different locations.

24 Q I'm seeing two mobile units?

25 A It was the same -- the same mobile unit was at one of them

1 on one day and then at the other on the second day.

2 Q I see. Thank you.

3 Dr. Webster, how would you describe the geographic
4 patterns of Anglo population in San Antonio?

5 A Heavily concentrated in the northern half of the city,
6 with also an enclave of Anglos in the southeastern portion of
7 the city.

8 Q And how would you describe the geographic concentrations
9 of African-American population in San Antonio?

10 A A much smaller area on the eastern -- east central margin
11 of the city.

12 Q And how would you describe the geographic patterns of
13 Hispanic population in San Antonio?

14 A By far the greatest concentration is the southern half of
15 the city.

16 Q And where in the city of San Antonio are there higher
17 rates of households without access to a motor vehicle?

18 A In the southeast or the southern part of the city, which
19 is, of course, largely Hispanic.

20 Q Dr. Webster, what is the racial makeup of those individual
21 tracts that you found to have determined to be low vehicle
22 access tracts in the city of San Antonio?

23 A There were 21. Nineteen of those were either plurality or
24 majority Hispanic, and the remaining two were majority African
25 American.

1 Q So there were no low vehicle access tracts in majority or
2 plurality Anglo areas?

3 A No, sir.

4 Q Dr. Webster, what did you find to be the average one-way
5 travel time by car to a DPS office from in San Antonio?

6 A Nine point nine minutes.

7 Q And from those census tracts that you determined to have
8 low vehicle access what was the average one-way travel time by
9 car?

10 A Somewhat lesser, 7.5 minutes.

11 Q And from the low vehicle access tracts in San Antonio what
12 was the average one-way travel time by bus?

13 A Thirty-six point two minutes.

14 Q And what conclusions did you reach based on that
15 difference?

16 A That the low vehicle access tracts are, in large part,
17 populated by Hispanics and in two cases by African Americans.
18 And if they need to use the bus, it's a several times longer
19 trip than it is by car. And that does not include, of course,
20 the walking time from their residence to the bus stop and then
21 at the last bus walking to the actual DPS office.

22 Q And if we add in that one moving temporary DPS location,
23 what was the average one-way travel time by car from the low
24 vehicle access tracts?

25 A Of course it, again, it was very well sighted. It reduced

1 time to 4.9 minutes and also reduced the bus travel time to
2 31.3 minutes. But again, it was one mobile unit that was
3 placed in two different locations on two different days.

4 Q And over all what would you -- what conclusions have you
5 reached concerning the effects on African Americans and
6 Hispanics of these travel times that you found?

7 A Well, most particularly, in the low vehicle access tracts
8 Hispanics, and to a lesser degree at least in terms of numbers,
9 African Americans faced additional obstacles, burdens in trying
10 to get to a DPS office to secure an EIC.

11 Q Dr. Webster, what areas of San Antonio have the higher
12 proportions of voters who lack SB 14 ID?

13 A Very much the southern portion of the city.

14 Q And again, we've prepared some of these side-by-side maps.
15 How would you describe the cartographic correlation between
16 areas with higher rates of individuals lacking SB 14 ID and the
17 African American population in San Antonio?

18 A Well, you can see the African American concentration for
19 San Antonio is right here, (indicating). And, of course, this
20 correlates on the map with also high rates of registered voters
21 without appropriate ID to vote.

22 Q And how would you describe the cartographic correlation
23 between areas of San Antonio where there are higher proportions
24 of voters lacking SB 14 ID and the Hispanic population?

25 A Again, the Hispanic population spans throughout the city.

1 But the largest concentrations are in the southern half. And,
2 of course, the census tracts with the largest proportion of
3 registered voters without appropriate ID to vote correlate
4 quite well cartographically.

5 Q With that, finally I'd like to turn your analysis to the
6 city of Dallas and to begin with, again, the same demographic
7 maps.

8 First, how would you describe the boundaries of the
9 city of Dallas?

10 A Interesting. Irregular. I even note that in this
11 particular case there are census tracts that are outside of
12 Dallas County that are part of the city of Dallas.

13 Q And so, again, which census tracts did you include in your
14 analysis?

15 A All census tracts that had centroids within the city
16 limits were included in the analysis.

17 Q And how many days were temporary DPS locations open in
18 Dallas in 2014?

19 A There was one mobile unit, which was located for one day.

20 Q Thank you. Dr. Webster, how would you describe the
21 geographic patterns of Anglo population in Dallas?

22 A In the enclave here, obviously very, very high proportions
23 of Anglo population. In the northern third of the city very
24 high proportions of Anglo population by census tract. And then
25 in the southeastern portion and a bit in the southwestern

1 portion.

2 Q Thank you. And how would you describe geographic patterns
3 of African American population in Dallas?

4 A Well, there is an enclave of African Americans in the
5 northeastern segment. In general, the African American
6 population is concentrated in the approximately southern third
7 of the city with an enclave also off to the west.

8 Q And how would you describe the geographic patterns of
9 Hispanic population in Dallas?

10 A Also very concentrated in the eastern but particularly
11 southeastern portion of the city of Dallas, southwestern or
12 south central portion of Dallas and the northwestern portion of
13 Dallas.

14 Q And where in the city of Dallas are there higher rates of
15 households without access to a motor vehicle?

16 A Most particularly in the southern half of the city with
17 some concentrations in the northeast as well.

18 Q And Dr. Webster, what is the racial makeup of those
19 tracts, those individual tracts again, that you determined to
20 be low vehicle access tracts in the city of Dallas?

21 A There were 23, one of which had a plurality of Anglo
22 population. The remaining 25 were either majority or plurality
23 African American in the main with a few that were plurality or
24 a majority Hispanic.

25 Q And that one Anglo plurality district -- or excuse me,

1 plurality tract, that was still majority combined Black and
2 Hispanic; am I right?

3 A Or other minority groups as well.

4 Q Got it. Thank you. Dr. Webster, what is the average
5 one-way travel time by car to a DPS office from inside Dallas?

6 A For all tracts 11.3 minutes.

7 Q And Dr. Webster, from those tracts that you determined to
8 be low vehicle access tracts what was the one-way average
9 travel time by car?

10 A In those 23 tracts it was 12.8 minutes.

11 Q But what was the travel time from the low vehicle access
12 tracts by bus?

13 A Nearly an hour, 59.7 minutes.

14 Q So assuming a 15-minute waiting time and a 15-minute
15 walking time each way, how long on average would a round trip
16 by bus to DPS be from a low vehicle access tract in Dallas?

17 A Approximately two-and-a-half hours.

18 Q What conclusions did you reach based on the difference
19 between travel time by car and travel time by bus from the low
20 vehicle access tracts in Dallas?

21 A Since 22 of the 23 are plurality and in these cases either
22 majority African American or majority Hispanic, Hispanic -- the
23 Hispanic citizens and African American citizens have greater
24 hurdles to overcome to get to a DPS office than Anglos to
25 secure an EIC.

1 Q And if we add in the temporary DPS location in Dallas what
2 was the average one-way travel time by car from the low vehicle
3 access tracts to DPS?

4 A Again there were -- the location that was well sighted was
5 7.8 minutes. But it was only there for one day.

6 Q And if we add in that temporary DPS location, what was the
7 average one-way travel time by bus?

8 A Thirty-three point five minutes.

9 Q Dr. Webster, what conclusion did you reach based on these
10 differences?

11 A In all three cities or with respect to Dallas?

12 Q Just with respect to Dallas.

13 A With respect to Dallas, again, the low vehicle access
14 tracts which were not picked as a result of race but only
15 access to a motor vehicle were populated, in large part, by
16 African Americans and Hispanics. Without access to a motor
17 vehicle having to take the bus they face additional temporal
18 obstacles by using the bus to get to a DPS office to secure an
19 EIC.

20 Q Dr. Webster, what areas of Dallas have higher proportions
21 of voters who lack SB 14 ID?

22 A In particular, in the southern half of the city with a few
23 tracts in the north; but overwhelmingly concentrated in the
24 southern half.

25 Q Dr. Webster, again we've made one of these side-by-side

1 comparisons. And could you describe the cartographic
2 correlation between the areas that have higher proportions of
3 lacking SB 14 ID and higher proportions of African American
4 population?

5 A The geographic or cartographic correlation is quite high.
6 Notice we have a concentration of census tracts with registered
7 voters without appropriate ID up here, (indicating). And we
8 find that those are populated, in large part, by African
9 Americans. Over here, (indicating), we have an African
10 American concentration. And, of course, here, (indicating), we
11 find that there are large proportions of registered voters
12 without access to appropriate ID. And most particular in this,
13 (indicating), area of the city, south central, the largest
14 African American concentrations are located there.

15 Q And it's also the largest concentration of voters without
16 SB 14 ID?

17 A Yes, sir.

18 Q And Dr. Webster, how would you describe the cartographic
19 correlation between voters lacking -- share of voters lacking
20 SB 14 ID and the Hispanic population in Dallas?

21 A Somewhat lesser than the African American population but
22 also quite significant. We have a concentration here,
23 (indicating), of registered voters without appropriate ID.
24 And, of course, that correlates with this, (indicating), the
25 Hispanic concentration. We also have high proportions of

1 registered voters without appropriate ID, and to a lesser
2 extent in this part of the city also is Hispanic.

3 Q I'm sorry to ask you to do that again but just so that we
4 have a clear record could you just describe in terms of
5 cardinal directions --

6 A Sure.

7 Q -- where the overlap is?

8 A Of course. This, (indicating), is the south central or
9 the south central western part of the city with a large
10 Hispanic concentration. And, of course, this overlaps with
11 this, (indicating), area in the south central western portion
12 of the city.

13 Q Thank you. Dr. Webster, looking at Houston, San Antonio
14 and Dallas, how do rates of individuals who lack SB 14 ID in
15 low vehicle access tracts compare to the city as a whole?

16 A In the city of Houston, 6.9 percent of registered voters
17 lack appropriate ID to vote. But if we look at those tracts
18 that are low vehicle access tracts, the number jumps to nearly
19 double, 13.5 percent.

20 In the city of San Antonio, over all 6.8 percent of
21 registered voters lack appropriate ID. But if we look at just
22 the 21 low vehicle access tracts, it jumps again to nearly
23 double at 12.2 percent.

24 In the city of Dallas, 8.2 percent of registered
25 voters lack appropriate ID to vote. If we look at only the low

1 vehicle access tracts, 23 of them, the number jumps to not
2 double but close to a 15.1 percent.

3 Q Dr. Webster, turning to your geographic correlation
4 analysis, what effect did you find on the share of voters who
5 lack SB 14 ID in all three cities when the Anglo population
6 goes up?

7 A These are, in fact, higher than it would be for the state
8 as a whole. They are consistently negative, they are
9 consistently .7 and above, so very consistent findings. So
10 there's an inverse relationship. The greater the proportion of
11 Anglo citizens of voting age population the less the proportion
12 of citizens -- I'm sorry, registered voters without access to
13 appropriate ID.

14 Q And how about the effects on -- what did you find in
15 regard to African American citizens of voting age, those
16 concentrations across the three cities?

17 A Most particularly, in Houston and Dallas who have the
18 larger African American populations, there's a high positive
19 correlation between African American citizens of voting age
20 population by census tract and the proportion of registered
21 voters by tract without access to appropriate ID to vote. And
22 the correlation coefficients are .65 and .66, so very
23 substantial.

24 Q And what did you find with regard to concentrations of
25 Hispanic citizens of voting age across the three cities with

1 regard to the concentration of individuals who lack SB 14 ID?

2 A Well, the most substantial finding was with respect to
3 San Antonio, which has a very high proportion of Hispanics.
4 And it was a positive correlation between Hispanic citizens of
5 voting age population and registered voter -- or the proportion
6 of registered voters without access to appropriate ID to vote.

7 The correlations in the Houston and Dallas are
8 significant, but the coefficients themselves are not as
9 substantial as in San Antonio. And you know, likewise, not as
10 high in San Antonio for African Americans but much more
11 substantial in both Houston and Dallas.

12 Q And across all three cities what relationship did you find
13 between poverty or lack of vehicle access and the number of --
14 and the share of individuals who lack SB 14 ID?

15 A Very substantial positive correlation between the citizen
16 poverty rate by census tract and the proportion of registered
17 voters without access to appropriate ID to vote. So than range
18 from .699, essentially .70, up to .79, which are very
19 substantial and very statistically significant.

20 Q Dr. Webster, as a geographer what is your ultimate opinion
21 of the effect of travel time on the ability of voters to obtain
22 an EIC?

23 A Travel time, particularly in low vehicle access tracts,
24 differs or is much higher in the case that a registered voter
25 or a potential voter needs to secure appropriate ID. The bus

1 travel times in most cases are five or six times greater than
2 they are if someone had access to a motor vehicle. And since
3 those tracts, in general, are largely populated by African
4 Americans and Hispanics, African Americans and Hispanics have
5 much greater obstacles to securing an EIC than Anglos.

6 Q And what types of communities did you find were most
7 likely to contain registered voters who require SB 14 ID and
8 don't currently have it in order to vote?

9 A In large part, there are Hispanic communities and African
10 American communities. Anglo communities, in general, have much
11 higher proportions of registered voters with appropriate ID to
12 vote already.

13 Q So, in sum, what does your geographic analysis explain
14 concerning the effects of SB 14?

15 A My analysis was looking to who, who is going to be most
16 affected. And clearly, in a geographic sense the African
17 American community and the Hispanic communities are going to
18 much more impacted in terms of their efforts to secure an EIC
19 or other appropriate ID.

20 Q Thank you so much, Dr. Webster.

21 **MR. FREEMAN:** I pass the witness.

22 **(Pause)**

23 //

24 //

25 //

CROSS EXAMINATION

1

2 **BY MR. CLAY:**

3 Q Good afternoon, Dr. Webster. How are you?

4 A Just fine. Thank you.

5 Q Good to see you again. You testified in your report that
6 Houston, Dallas and San Antonio all had well developed bus
7 systems, correct?

8 A Yes, sir.

9 Q Okay. And I think I heard you a minute ago say that
10 setting aside the frequency with which the mobile EIC units
11 were in those counties that they were well situated in those
12 counties?

13 A Yes.

14 Q Okay. And is it your testimony that they were situated
15 near low access vehicle tracts?16 A Not necessarily. But they were located at possibly a
17 crossroad -- in highly accessible places.18 Q Okay. And that's true for Harris, Dallas and Bexar
19 County?20 A Yes. The locations were excellent. The time there was
21 the limitation.22 Q And you testified that you were asked to determine whether
23 implementation of Texas photographic voter identification law,
24 or SB 14, will have differential effects on racial and language
25 minority groups; is that correct?

1 A Yes, sir.

2 Q And then you say, "with an emphasis on contrast between
3 non-Hispanic Whites or Anglos, Hispanics and non-Hispanic
4 African Americans"; is that right?

5 A In their efforts to secure an EIC.

6 Q And you say "with an emphasis on." But did you look at
7 any other racial minorities or racial classes other than
8 Whites, Hispanics or African Americans?

9 A In terms of some of the preliminary work that is found in
10 Appendix 1, there are other groups listed in terms of the
11 population diversity of the state. But I did not calculate
12 driving time or bus time for any other group than all census
13 tracts within the city and the census tracts that had low
14 vehicle access, only two of which had significant Anglo
15 populations and the others, in large part, majority African
16 American or majority Hispanic.

17 Q Yes, sir.

18 **MR. CLAY:** Brian, could you pull up slide number
19 three from the Plaintiffs' demonstrative?

20 Q You were talking about statewide population a minute ago,
21 right?

22 A Yes, sir.

23 Q So these figures here represent the percentage of the
24 total population that are Anglo, Hispanic and African American?

25 A Yes, sir. And the enumeration is in 2000 and 2010.

1 Q Would these numbers be different if you were looking at --
2 I mean your other -- the rest of your analysis was done on the
3 basis of citizen voting age population, correct?

4 A When it was available.

5 Q So would these numbers look different if you were looking
6 at the growth between 2000 and 2010 if you're looking at
7 citizen voting age population?

8 A The 2010 census did not ask any question pertaining to
9 citizenship, so we would not be able to calculate it based upon
10 the 2000 and 2010 census.

11 Q But if you used the ACS survey like you did for the rest
12 of your analysis, you could get the citizen voting age
13 population in, say, the year 2000 for these three racial
14 groups, correct?

15 A Well, the problem is we have no comparator. But --

16 Q Could you get the citizen voting age population for these
17 three --

18 A We can have it for 2006 to 2010 or we can have it from
19 2008 to 2012.

20 Q So is it --

21 A But since those overlap we would not be able to make a
22 comparison of the population.

23 Q Well, you looked at the 2006 to 2010 here, right?

24 A Yes, sir.

25 Q Okay. And why couldn't you have compared the citizen

1 voting age population as estimated in the ACS survey that went
2 from 2006 to 2010 and compared that to the 2000 enumeration to
3 get a better idea of the citizen voting age population growth?

4 A I don't believe that the 2010 enumeration had a question
5 about citizenship either. But we wouldn't have a, again, a
6 baseline, a comparator.

7 Q Okay. So are you saying it's impossible to know the
8 growth and citizen voting age population in the state of Texas
9 between the year 2000 and 2010?

10 A I'm not sure if it's impossible. In the next few years it
11 will be possible as the ACS kicks in and we have more and more
12 additional five-year time periods.

13 Q And so it's not something you looked at for this report.

14 A No.

15 Q Okay. And so going back to what you were asked to do in
16 this report, which is to measure the differential effects on
17 racial and language minority groups in Texas, right?

18 A Yes, sir.

19 Q I found it a little bit curious that given that that was
20 your task --

21 **MR. CLAY:** Switch to the Elmo, please.

22 Q I found it a little bit curious that given that your task
23 was to look at the differential effects in the state of Texas
24 that you looked at, roughly, 2 percent of the number of
25 registered voters who lack SB 14 ID in Texas.

1 **MR. FREEMAN:** Objection, your Honor. That's not a
2 question; it's an observation.

3 **THE COURT:** Overruled.

4 **THE WITNESS:** Could you rephrase the question?

5 **BY MR. CLAY:**

6 Q Well, let's just do the math here. I want to put my phone
7 here and put the calculator on, and I'll put it right next to
8 your chart here. And it says here that -- and these numbers
9 come from Dr. Ansolabehere, correct?

10 A Yes, sir.

11 Q And so he calculated that the registered voters in Texas
12 that there's seven hundred eighty-four, three hundred ninety-
13 six thousand registered voters who lack SB 14 ID, right?

14 A In the state or --

15 Q In the state of Texas.

16 A -- residing in the state of Texas.

17 Q Yes. And so you looked at -- when during your travel
18 burden comparison between buses and cars travel, you looked at
19 the low vehicle access tracts in Houston, the low vehicle
20 access tracts in San Antonio and the low vehicle access tracts
21 in Dallas; is that right?

22 A Yes, sir.

23 Q Okay. And do those add up to about 26 -- if I add up
24 these numbers here, (indicating), for each of those low vehicle
25 access tracts, does that add up to about 26,262 registered

1 voters --

2 A I can't --

3 Q -- without SB 14 ID?

4 A I sorry, sir. I can't really see the table. It's off to
5 the side so I don't know what rows are --

6 Q You have your report in front of you, right?

7 A Yes, sir.

8 Q Okay. We're looking at Table 9.

9 **(Pause)**

10 A Okay.

11 Q Okay. So what I'm asking, my preliminary question is if I
12 take the number -- the total number of registered voters
13 without SB 14 ID in the low vehicle access tracts in Houston,
14 San Antonio and Dallas, do they add up to 26,262?

15 A They should, yes.

16 Q So all of --

17 A No, I'm sorry. That's low -- the second row is low
18 vehicle access tracts in Texas.

19 Q So all of the low vehicle access tracts in Texas are not
20 in Houston, San Antonio and Dallas, right?

21 A No. Fifty-five percent of the low vehicle access tracts
22 in the entire state, the 138 statewide, are found in those
23 three cities.

24 Q So I'm going to add up the number of people that -- number
25 of registered voters without SB 14 ID that are in the census

1 tract, the low vehicle access census tracts that you looked at.

2 Six four three four, plus three six four two, plus
3 five nine six five, equals 16,041; is that right?

4 A Yes, sir.

5 Q Now, if I wanted to know what percentage of that -- what
6 percent that is of the total number of registered voters in
7 Texas that lack SB 14 ID what would I do next?

8 A Divide 784,396.

9 Q So 2 percent?

10 A Yes, sir.

11 Q So your travel burden analysis looked at 2 percent of the
12 registered voters in Texas without SB 14 ID.

13 A Well, I actually looked at all census tracts in all three
14 cities but drilled down on --

15 Q Well, when doing your -- doing your comparison between
16 travel by bus and travel by car you looked at approximately
17 2 percent of the registered voters in Texas that lack SB 14 ID;
18 is that right?

19 A That is true.

20 Q Okay. How many census tracts are in Texas?

21 A It was on one of the tables. I think it's 5,360
22 something, approximating that.

23 Q And how many low vehicle access census tracts did you
24 analyze?

25 A I should correct myself. It's 5,234 total tracts in the

1 state of Texas.

2 Q And how many low vehicle access census tracts did you
3 analyze?

4 A Seventy-seven.

5 Q What percent of 5,234 is 77?

6 A I'm not sure.

7 Q Here, let's do it again. Seventy-seven divided by 5,234
8 did you say?

9 A Yes, sir.

10 Q So you looked at 1.5 percent of the total census tracts in
11 the state of Texas when you were doing your travel comparison,
12 correct?

13 A Yes, sir.

14 Q How did you define -- well, tell me how is "low vehicle
15 access tract" defined?

16 A Those census tracts that have more than 25 percent of
17 their household without access to a motor vehicle.

18 Q And is that something in the census or did you make it up?

19 A I came to the conclusion that it was a relevant number,
20 Six percent of all households in the state of Texas don't have
21 access to a motor vehicle. So essentially what we were looking
22 at is four times the statewide rate.

23 Q So you made up the term low vehicle access tract, right?

24 A I guess that's accurate. I don't know about made up. I
25 mean it's a very accurate label.

1 Q And so why didn't you look at -- you said there were a
2 total of 138 low vehicle access census tracts; is that right?

3 A Yes, sir.

4 Q Well, I mean if we're going to look at low vehicle access
5 census tracts, why would we not look at all of them?

6 A Because after having done the three cities, which is a
7 substantial proportion of the total population of the state of
8 Texas, they were consistent. And essentially what I looked at
9 then is, you know, a sample of approximately 20 percent of the
10 entire state, and 56 or 55 percent of all low vehicle access
11 tracts.

12 Q Am I right in remembering that Dr. Ansolabehere took his
13 no-match list and geocoded all of the registered voters without
14 ID into various census tracts across the state of Texas? Is
15 that right?

16 A I believe so.

17 Q You believe so?

18 A I didn't --

19 Q You don't know whether he did or didn't?

20 A Well, they were geocoded. I didn't speak to him
21 specifically.

22 Q Okay. And then he also geocoded every registered voter in
23 Texas into a particular census tract; is that right?

24 A Yes, sir.

25 Q Okay. And when you were doing your analysis you told us a

1 little bit earlier that you calculated the travel based upon a
2 star point of the centroid.

3 A Yes, sir.

4 Q That's kind of arbitrary isn't it?

5 A No, sir.

6 Q Well, it's arbitrary in the sense that you know which
7 voters lack SB 14 ID in every census tract, because
8 Dr. Ansolabehere gave you that information, correct?

9 A I know -- I knew or I had the proportion of voters,
10 registered voters and the proportion of registered voters by
11 census tract that lacked ID.

12 Q Oh, I see. He gave you aggregate data.

13 A Yes.

14 Q So he didn't give you the actual individuals that were in
15 each census tract?

16 A I had data for all 5,234 census tracts.

17 Q But he didn't give you the actual individuals that were in
18 that census tract, correct?

19 A He didn't give me the data directly. It gave from the
20 Department of Justice.

21 Q But you didn't know the identity of those voters that were
22 in those census tracts because he didn't give that to you,
23 correct?

24 A Yes, sir. It was not relevant to my analysis.

25 Q Or you didn't ask for it.

1 A No, sir.

2 Q Okay. So then your analysis because you didn't have the
3 individual voters or their addresses which were part of the
4 team database that Dr. Ansolabehere analyzed, you weren't able
5 to calculate the travel time for any particular individual who
6 lacked SB 14 ID, correct?

7 A No, sir.

8 Q And that's not something that you were asked to do,
9 correct?

10 A No, sir.

11 Q You also said a minute ago that you chose -- I think your
12 words were to be consistent 8:00 a.m. in a start time; is that
13 right?

14 A Yes, sir.

15 Q Have you ever driven in Houston?

16 A I've driven through.

17 Q What about at 8:00 a.m.?

18 A I don't recall.

19 Q Have you ever driven in Dallas at 8:00 a.m.?

20 A Yes, actually.

21 Q Oh, how did that go?

22 A Well, I'm from Wyoming so any time in a big city is
23 difficult.

24 Q Did you perform any sort of sensitivity analysis to
25 determine whether or not starting in the middle of rush hour

1 would have some effect on the travel times that you calculated?

2 A I did -- we did -- I had a -- I subtracted with the
3 Cartographic Research Laboratory at the University of Alabama,
4 as you know. And we did do some sensitivity and decided that
5 8:00 a.m. was a good time to start; because, one, it was
6 consistent but also it provided the large part of the day
7 should the trip or the stop at the DPS office take a long time.
8 And our --

9 Q Well, that's a good point that I want to come back to.

10 **MR. CLAY:** But first, can you pull up his deposition
11 on Page 118? And I'm looking for line 16 through 20, please.

12 **(Voices heard off the record)**

13 It's 118, Webster Depo 118, 16 through 20.

14 Q "QUESTION: Did you do any sort of, we'll call it
15 sensitivity analysis, by choosing a different start
16 time to see how much travel times varied depending on
17 what time you chose?

18 "ANSWER: No, we picked 8:00."

19 A Well, and I do recall we picked some afternoon times, too.
20 I mean this was not a great, great amount of effort to
21 determine if there was sensitivity between 8:00 and 3:00. In
22 general, we got the same time.

23 Q And I think you put it in your report that you checked --
24 in preparing your report you looked at -- you examined data
25 regarding the locations of Texas Department of Public Safety

1 offices at which potential voters can secure EICs and other
2 forms of identification sufficient to cast a ballot, in-person
3 ballot, under SB 14; is that right?

4 A Yes, sir.

5 Q Did you look at the times they opened?

6 A We had a list of all DPS offices and the times that all of
7 them opened, yes.

8 Q Were you in the courtroom earlier when I pulled up -- when
9 I had Brian pull up the DPS offices in Harris County?

10 A I was in the back of the courtroom. I couldn't see.

11 Q Are you aware that the DPS offices, most of the DPS
12 offices in Harris County open at 8:00 or earlier?

13 A I knew that most of them opened at 8:00, yes.

14 Q So if your concern was that you wanted to let the person
15 have the better part of their day, why wouldn't they leave in
16 time to get there when the DPS office opened?

17 A We could have used 7:00 or 7:30 or 8:00 or 9:00 or 3:00 in
18 the afternoon. But again --

19 Q But you chose 8:00 o'clock in the middle of rush hour,
20 correct?

21 A To pick a consistent time for all of the calculations,
22 yes.

23 Q Let's walk back to the ACS data because I know that -- and
24 we talked a lot about it at your deposition and I'd like to
25 kind of run down some of the things that we talked about for

1 the Court's sake and then ask you some follow-up questions on
2 that.

3 You relied on -- in doing your low vehicle access
4 tracts analysis you relied on ACS data, correct?

5 A Yes, sir.

6 Q And you relied on the five-year estimate, right?

7 A Yes, sir.

8 Q And I think you told me that one of the advantages of
9 using the ACS five-year estimate over, say, the census is the
10 data tends to be more recent, correct?

11 A Yes, sir.

12 Q And in this case another reason that you needed to use the
13 ACS data was because the ACS data had replaced the census long
14 form and so the 2010 census no longer tracked characteristics
15 like access to vehicles, correct?

16 A Yes, sir.

17 Q Okay. And you also told me that even though the most
18 recent five-year ACS data was the 2012 five-year estimate, you
19 used a 2006-2010 because you were unable to extract vehicle
20 access from the 2012 estimate, correct?

21 A It's a 2008 to 2012. It's always referred to in a five-
22 year period.

23 Q Okay. So I'll refer -- from now on I'll refer to the last
24 year and then say "five year estimate" and you'll understand
25 what I mean, yes?

1 A Yes, sir.

2 Q Okay. So am I right that the reason that you used the
3 2010 five-year estimate instead of the 2012 five-year estimate
4 was because you were unable to extract vehicle access
5 information out of the 2012 five-year estimate?

6 A Yes, sir.

7 Q Okay.

8 **MR. CLAY:** Can we pull up the census tract 1101? No,
9 no.

10 **(Voices heard off the record)**

11 Q So when we asked for the documents you relied on, we were
12 told that a lot of what you relied on was with the census and
13 so I went on --

14 **MR. CLAY:** Is it in there?

15 Q So I went online and I found this --

16 **MR. CLAY:** Can you zoom in just at the top right
17 here?

18 Q So this is a 2006-2010 American Community Survey five-year
19 estimate. So that would have been from the survey you relied
20 on, correct?

21 A Yes, sir.

22 Q Okay. And this is Census Tract 1101, Bexar County, Texas.
23 Does that ring a bell?

24 A Yes, sir.

25 Q Okay. So walk me through this. This right here, this

1 number right here, (indicating), is the total housing units in
2 this census tract, right?

3 A Yes, sir.

4 Q And this, (indicating), is the total number of occupied
5 housing units, correct?

6 A Yes, sir.

7 Q What does this, (indicating), number mean?

8 A That is the estimate of the margin of error at the
9 90 percent confidence interval.

10 Q So does that mean that we can be 90 percent confident that
11 the actual number of occupied housing units in this census
12 tract falls somewhere between the numbers of 1309 minus 174 and
13 1309 plus 174?

14 A Yes, sir.

15 Q Okay. So is it fair to say that this is kind of an
16 inexact number?

17 A Well, it's the center of the estimate or the interval, the
18 margin of error. So, you know, it's unlikely that it's going
19 to be at one extreme or the other extreme. It is an estimate;
20 that is true.

21 Q So it is inexact, correct?

22 A It's an estimate. All estimates are inexact by
23 definition.

24 Q Okay. And so and then this number right here,
25 (indicating), is the percent margin of error, correct?

1 A Yes, sir.

2 Q And so using these numbers -- and by using these numbers
3 you're dealing with some amount of unavoidable error, correct?

4 I mean that's what this number means, right?

5 A I wouldn't say error. I would say uncertainty.

6 Q Okay. Unavoidable uncertainty, is that --

7 A Yes, sir.

8 Q Okay. We'll use that word, although they use error. I'll
9 just point that out.

10 So the total number of occupied housing units is 1309
11 in this census tract, correct?

12 A Yes, sir.

13 Q Okay.

14 **MR. CLAY:** Can we scroll down, Brian? Keep going.
15 It should -- you'll see vehicle -- it's on the next page or the
16 third page, I believe. Here it is, vehicles available.

17 Q And so, again, we see the same number from the top line,
18 occupied housing units, 1309. And this is an estimate.

19 And now we see in this census tract that there are
20 555 housing units that lack access to a vehicle, correct?

21 A Occupied housing units that lack access to a motor
22 vehicle, yes.

23 Q And again, this is an inexact estimate because we've got
24 to deal with the 90 percent confidence level, correct?

25 A Yes.

1 Q Okay. And again, there's some unavoidable -- you call it
2 uncertainty; they call it error that comes along with this
3 number as well, correct?

4 A Yes, sir.

5 Q Okay. And so this -- you know, I'm no mathematician but I
6 do think that I'm right in thinking that this census tract must
7 have been one of the ones you analyzed. Because if you divide
8 555 by 1309 it's more than 25 percent, correct?

9 A Yes, sir.

10 Q Okay. So when you look at this number right here,
11 (indicating), is there any way to know how many people live in
12 the housing units that are represented by that number? Let me
13 put it a different way.

14 These houses could have one person in them or they
15 could have seven people in them, correct?

16 A Yes, sir, by definition.

17 Q Is there any way to know the race of the people that live
18 in these houses?

19 A Well, we know who the house holder is. Actually, in the
20 analysis it is the total proportion of occupied housing without
21 access to a motor vehicle, and then looking at the proportion
22 of African American population, a portion of Hispanic
23 population. So we can't drill down to know exactly who is in
24 that 550 -- or 555 I guess it is.

25 Q So that's a no, we don't know the race of the people in

1 those households, correct?

2 A We can -- by looking at the composition of the census
3 tract we can make some pretty logical and substantial
4 inferences if we have a largely homogeneous tract.

5 Q And we also can't tell whether the people in these houses
6 are registered to vote, correct?

7 A No.

8 Q Or whether or not if they are registered whether they have
9 an ID, correct?

10 A We don't know with respect to specific individuals, but
11 that was not part of my analysis.

12 Q And we don't know whether the people in these houses have
13 a birth certificate, right?

14 A No. That was not part of my analysis.

15 **MR. CLAY:** Can you pull up the 2012?

16 Q Okay. So we'll see if -- well, it went kind of fast.

17 **MR. CLAY:** But just so they can see it.

18 Q This is 2008-2012 ACS five-year estimate. Do you see
19 that?

20 A Yes, sir.

21 Q So this is the most recent version of the ACS five-year
22 estimate, correct?

23 A Yes, sir.

24 Q Okay. And then here again we have this -- this is the
25 same census tract in Bexar County, right?

1 A Yes, sir.

2 Q And again, we have total occupied housing units, correct?

3 A Yes, sir.

4 Q And a minute ago that number was -- you remember it
5 was 1309?

6 A I don't recall but I have no reason to dispute that.

7 Q What percentage increase is 1535 over 1309?

8 A Excuse me. That's 1535 isn't it?

9 Q What did I say? Did I -- I meant -- yes, it is 1535.

10 A And the previous one was?

11 Q 1309.

12 A So we're looking at a little over 200 increase. So
13 12 percent, 10 percent?

14 Q And so earlier you testified that one of the reasons you
15 used the ACS survey is because of the recency of the data,
16 right?

17 A Yes, sir.

18 Q And I guess now we're kind of seeing a little bit why. I
19 mean there's been a fair amount of growth just in this census
20 tract alone between, at least estimated to be, between 2010 and
21 2012, correct?

22 A Yes, sir.

23 Q Okay.

24 **MR. CLAY:** And can you scroll down?

25 Q And again, this is also an inexact number because we have

1 to deal with these confidence levels, correct?

2 A Yes, sir.

3 Q And again, we have the margin of uncertainty/error, right?

4 A Yes, sir.

5 Q Okay. And then we'll scroll down. And this is where I'm
6 confused. Because you told me in your deposition that you
7 didn't use 2012 data because it didn't have information
8 regarding access to vehicles.

9 A No, I told you we were unable to find it when we were
10 looking in January of 2014. I was explicit about that, because
11 it may well not have been available at that point in time.

12 Q Okay. So to do your analysis here you used data that
13 was -- the newest data was four years old and the oldest data
14 was eight years old; is that right?

15 A No. Because they are five-year averages, so the most
16 recent one overlaps three years with the past one.

17 Q Oh, but you used the 2010. So the most recent data in the
18 2010 is now about four years old, right?

19 A Yes, sir. Which by historical standards and the census
20 every ten years is wonderful.

21 Q Yeah, but you testified earlier that Texas is really
22 growing fast, right?

23 A Yes, sir, it is.

24 Q And we've seen that this census tract has grown fast,
25 right?

1 A Significantly so, yes.

2 Q And the oldest data in the data set that you used to do
3 your analysis for the, roughly, 2 percent of people in Texas
4 that are registered and don't have an ID, the oldest data is
5 eight years old; is that right?

6 A You mean the base year that the five-year --

7 Q The first year in the 2006-2010 five-year estimate is
8 2006, correct?

9 A Yes.

10 Q Okay. And so this is also the data -- I don't necessarily
11 mean this census tract up here, (indicating). But it's the
12 2006 to 2010 ACS survey that you used to do your -- was it the
13 Pearson correlation coefficients? Is that right?

14 A Yes, sir.

15 Q Okay. Do you have any reason to believe that ID
16 possession varies by variables other than race like, I don't
17 know, age or poverty or urban or rural location?

18 A Could you restate that?

19 Q Sure. Do you have any reason to believe that ID
20 possession varies by other variables other than race? And I
21 listed a few examples like age, poverty, urban or rural
22 setting, things of that nature.

23 A I'm fairly confident that there are differences based on
24 poverty. And I've seen enough individual cases in terms of age
25 that at times older potential voters may not have access to the

1 documentation that they may need to register to vote.

2 Q And you testified in your deposition that Pearson's
3 correlation coefficients do not allow you to predict one
4 variable from the other; is that right?

5 A Well, I also said that if we have a simple R correlation
6 that if we square it, we have a simple regression coefficient
7 or result. And that is explanation or is, in part, a
8 prediction.

9 Q Well, let's look at those. Let me see if it's on here.

10 **MR. CLAY:** Forty-four, slide 44 of their
11 demonstrative.

12 Q And you and I will be looking at a different one because
13 this is kind of a pared down version of the one that's in your
14 report.

15 Now, this is the simple Pearson correlation
16 coefficient, correct?

17 A Yes, sir.

18 Q Okay.

19 A Simple R.

20 Q So in doing the analysis you did here you're unable to
21 predict one variable is true from the other variable, correct?

22 A Not --

23 Q Let me put it different -- let me put it differently.

24 Doing the analysis that you've done right here I
25 can't tell that from -- given a poverty rate I can't tell that

1 somebody in Houston or certain parties in Houston is a
2 registered voter without ID, correct?

3 A A particular individual?

4 Q Right.

5 A No, sir. But that was not part of my analysis. My
6 analysis was looking at who could be disadvantaged by SB 14.
7 And, therefore, looking at the overlap of geographic areas, or
8 in this case registered voters without appropriate ID, overlaid
9 the African American CVAP population.

10 Q Would a regression allow -- would a regression analysis
11 allow you to do some prediction in the way that a simple
12 Pearson's correlation coefficient would not?

13 A What type of regression are you referring to?

14 Q Well, a multi-variable regression.

15 A A multi-variable regression using geographic data is
16 dangerous because of the presence, almost certainly, of spatial
17 autocorrelation. Spatial autocorrelation is essentially a
18 measure of the lack of independence of observations. And a
19 linear model assumes, in general, that the observations that
20 are being input are independent from one another. Therefore,
21 doing a regression is surely possible, but it would be a
22 spatial regression and not what you're probably more familiar
23 with in ordinary least squares. But again, I was not
24 attempting to predict --

25 Q I'm not familiar with either.

1 **(Laughter)**

2 A I was not attempting to predict. What I was attempting to
3 do in a descriptive way is to determine in those areas that had
4 high proportions of registered voters without appropriate ID
5 who lived in them. And so descriptively I was able to
6 determine, in large part, it was African Americans and
7 Hispanics.

8 Q So is that a yes or a no that a regression analysis would
9 be predicted?

10 A Historically, social scientists have looked upon
11 regression analysis as predictive. But there is a debate over
12 whether or not that is, in fact, the case.

13 And again, if we wanted to use in the city of --
14 well, let's say the city of San Antonio, the poverty rate as a
15 predictor of the proportion of citizens without appropriate --
16 or registered voters without appropriate ID, of course the
17 coefficient is .699; so, essentially a .7. If you square .7,
18 you come up with .49. What that means is that 49 percent of
19 the variance amongst the census tracts with the -- I'm trying
20 to think how to phrase this to make it as simple as possible.
21 If the dependent variable is the proportion of registered
22 voters without appropriate ID, we can explain nearly 50
23 percent -- 49 percent of the variance in that dependent
24 variable with the independent variable being percent citizen
25 poverty rate.

1 Q Okay. I'm not sure I ever got an answer to my question,
2 but we'll move on.

3 You were hired in September of 2013, right?

4 A I believe that's true.

5 Q And when did you first get -- well, first of all, how much
6 have you been paid in this case so far?

7 A I've not added it up, sir.

8 Q Does \$47,820 sound right?

9 A It could be in that ballpark; but, again, I've not added
10 it up.

11 Q So here's what I found curious when I finally got your
12 billing records the other night. You got hired in September.
13 Dr. Ansolabehere's no-match list wasn't done until the end of
14 May, and yet you billed tens of thousands of dollars between
15 September and, let's call it the first of May. What were you
16 doing during that time?

17 **MR. FREEMAN:** Objection, your Honor, to the extent
18 that this goes into Dr. Webster's graphs, discovery of which is
19 completely barred by the federal rules.

20 **THE COURT:** Overruled.

21 **THE WITNESS:** My analysis of the no-match list was a
22 very small proportion of the total research that was done.
23 Most of it was looking at times, whether it be bus or whether
24 it be a motor vehicle, the drafting of the cartographic
25 instruments that are in the report. So the no-match list was a

1 comparably small proportion of the total amount of work I did.

2 **MR. CLAY:** Can we pull up slide seven?

3 **THE COURT:** Shall we go ahead and take a 15-minute
4 break?

5 **MR. CLAY:** Well, I'm going --

6 **THE COURT:** Okay.

7 **MR. CLAY:** I've got five minutes, maybe. I promise.

8 **(Voices heard off the record)**

9 **BY MR. CLAY:**

10 Q So I get -- during that time did you make any effort to
11 analyze travel burdens in this part of the state that's so
12 heavily populated by Hispanics?

13 A I think we -- I did take a look at some of the driving
14 times. Of course, we didn't have a comparator for bus service.

15 Q You testified that you've been a consulting or testifying
16 expert on behalf of the NAACP about nine times, right?

17 A Yes, sir.

18 Q And this is your second time to testify on behalf of the
19 Department of Justice; is that right?

20 A I wrote a report in a Montana case for the Department of
21 Justice but I didn't actually testify.

22 **MR. CLAY:** Nothing further.

23 **THE COURT:** Nothing further?

24 **MR. FREEMAN:** I do have a brief redirect, but if
25 you'd like to take a break, your Honor --

1 **THE COURT:** No, let's finish.

2 **MR. FREEMAN:** Okay. It's brief.

3 **REDIRECT EXAMINATION**

4 **BY MR. FREEMAN:**

5 Q Dr. Webster, is aggregate analysis of areas standard
6 practice in your field?

7 A For the past 200 years, yes, sir.

8 Q And does local bus service exist in Texas outside of major
9 cities to your knowledge?

10 A To my knowledge it's very limited.

11 Q So would it have been possible to conduct the same type of
12 analysis that you conducted in Houston, San Antonio and Dallas
13 for the entirety of the state?

14 A No, sir.

15 Q Did you study -- did your study focus on individuals who
16 were most likely to need to use buses?

17 A Yes, sir.

18 Q During rush hour are you aware of whether mass transit
19 systems send buses out more frequently than at other times of
20 the day?

21 A I'm not aware.

22 Q Okay. And when you were looking at the ACS data that
23 Mr. Clay was showing you, did you observe whether the vehicle
24 access rate had changed from the 2006 to 2010 five-year
25 estimate to the 2008 to 2012 five-year estimate?

1 A I did not look at that so I'm not aware.

2 MR. FREEMAN: Is it possible to bring that up?

3 MR. SPEAKER: Which one do you want?

4 MR. FREEMAN: First the 2006 to 2010 estimate. The
5 vehicle access.

6 (Pause / Voices heard off the record)

7 BY MR. FREEMAN:

8 Q And so in this chart it's 42.4 percent is the center of
9 the estimate?

10 A Yes, sir.

11 Q And if we could move to the 2008 to 2012 estimate. That's
12 43.9 percent is the center of the estimate?

13 A Yes.

14 Q So would it have mattered if you'd looked at the 2008 to
15 2012 five-year estimate?

16 A It's so close, very doubtful.

17 Q And just a couple of more quick questions. Mr. Clay was
18 asking you about whether you'd conducted a multi-varied
19 regression.

20 Were you studying who lacks ID or why they lack ID?

21 A Who.

22 Q And to answer who lacks ID do you need to know whether
23 it's -- why a community or who -- what types of communities
24 have higher rates of individuals who lack SB 14 ID, is it
25 important to know whether a poor African American community has

1 high rates of low vehicle access because it's a poor community
2 or because it's a Black community?

3 A I think the primary thing is who lives in that community
4 and then to add in the poverty rate. So in this case it didn't
5 start off with race. It started off with low vehicle access.
6 And as it turns out, of course, it tended to be poor people
7 and, in large part, African Americans and Hispanics.

8 Q And you were talking very briefly about the R squared
9 value and the explanatory power of the correlation
10 coefficients. And I believe for San Antonio your correlation
11 between Hispanic CVAP and low vehicle access was .717. Does
12 that sound about right?

13 A Yes, sir.

14 Q And so across San Antonio what percentage of all the
15 variance that you see in the lack of vehicle access is
16 explained just by the share of census tract -- of the census
17 tracts citizen voting age population that is Hispanic?

18 A I think if I could rephrase that to make sure I -- that
19 we're looking at the dependent variable being the proportion of
20 registered voters without access to appropriate ID and the
21 independent variable being access to motor vehicles. And if
22 the correlation is .7 --

23 Q I was actually asking about the percentage of individuals
24 of the citizen voting age population that's Hispanic.

25 A Oh, okay.

1 Q In San Antonio.

2 A Okay. And to explain not having appropriate ID.

3 Q Yes.

4 A And the correlation coefficient was point --

5 Q I believe it was .717.

6 A Then essentially we are at 50 percent of the variance in
7 not having appropriate ID for registered voters can be
8 explained by the proportion of Hispanics.

9 Q Only the proportion of Hispanics explains fully half of
10 the variation that we see in San Antonio on the rates of lack
11 of SB 14 ID?

12 A Yes, sir.

13 **MR. FREEMAN:** No further questions.

14 **MR. CLAY:** Nothing further.

15 **THE COURT:** All right. You can step down and we'll
16 take a 15-minute break.

17 **(Witness steps down)**

18 **THE MARSHAL:** All rise.

19 **(A recess was taken from 4:00 p.m. to 4:16 p.m.; parties**
20 **present)**

21 **THE COURT:** Okay. Ready to proceed?

22 **MR. GARZA:** Jose Garza with the Mexican American
23 Legislative Caucus and the Ortiz Plaintiffs, and we call Rafael
24 Anchia.

25 **THE COURT:** Good afternoon. Would you --

1 **MR. ANCHIA:** Good afternoon.

2 **THE COURT:** -- raise your right hand.

3 **RAFAEL ANCHIA, PLAINTIFFS' WITNESS, SWORN**

4 **THE CLERK:** Please be seated.

5 **DIRECT EXAMINATION**

6 **BY MR. GARZA:**

7 Q Would you please state your name and residence?

8 A Rafael Michael Anchia, 1418 Yakimo Drive, Y-A-K-I-M-O,
9 Dallas, Texas 75208.

10 Q Representative Anchia, did you grow up in Dallas?

11 A I did not. I'm the son of immigrants. My mother is from
12 Mexico City. My father is from northern Spain. I was born and
13 raised in Miami, Florida, and immigrated to Texas in 1986 to
14 attend SMU.

15 Q And since -- and do you have a law degree?

16 A I do. After SMU, I went to Tulane University School of
17 Law.

18 Q Okay. And then you settled in Dallas?

19 A I did.

20 Q All right. And have you ever been a member of any Latino
21 or Hispanic organizations?

22 A I have. I'm a current member of the Mexican American
23 Legislative Caucus, and I'm a past chairman of a group called
24 "NALEAO," the National Association of Latino Elected and
25 Appointed Officials. And I was chairman of that organization,

1 I believe, from 2006 to 2009, and a board member before that.

2 I also serve on the Hispanic Bar Association and in
3 the Hispanic Chamber.

4 Q And are you currently, then, a member of the Texas House
5 of Representatives?

6 A I am.

7 Q Okay. And which district do you represent?

8 A I represent District 103, which is in Dallas County. It
9 covers a western corridor of Dallas and begins in an area
10 called North Oak Cliff, where I live, and goes all the way up
11 north to Old Downtown Carrollton, along the way picking up
12 portions of the Stemmons Corridor, South Irving, Farmers
13 Branch, and into an area called West Highland Park.

14 Q Okay. And many of these areas are high in Hispanic
15 concentration; is that correct?

16 A Yes, the district I represent, if you break it down on
17 racial and ethnic demographics, is about 73.6 percent Hispanic,
18 about 16 percent Anglo, about 8 percent African American.

19 Q And how long have you been a member of the Texas House of
20 Representatives?

21 A I was elected in 2004 and I began serving during the 2005
22 session.

23 Q And what are the poverty rates or the socioeconomic status
24 of your -- of the residents of your district?

25 A So of the 176,000 people that I represent, about 25

1 percent of the families are families that are in poverty. And
2 to put it -- to give you a further context, the per capita
3 income of the State of Texas is about \$25,500, and the
4 constituents that I represent have a per capita income of about
5 \$17,200, so about a third less than the state average in terms
6 of per capita income.

7 Q And have you ever served on the House Elections Committee?

8 A I have.

9 Q And when were you on the Committee?

10 A I served during my freshman session in 2005, then again in
11 2007 and 2009.

12 Q All right. And was voter identification legislation
13 considered in the House Elections Committee?

14 A Yes, photo ID in order to vote has been considered in
15 every session that I've been a member of the Legislature,
16 except in 2013, the most recent session.

17 Q And as a member of the Committee, did you attend the House
18 hearings for each of the bills during those time periods?

19 A For the most part, I did. I don't recall ever having been
20 absent for a photo ID hearing. It's possible that I may have
21 been out of town on business or something else, but I
22 endeavored to attend all of the -- all of the hearings.

23 Q So suffice it to say that voter ID was an important issue
24 for you and for the Caucus?

25 A Yeah, for me personally, I did a deep dive on this issue,

1 spent a lot of time on it, considered it very important, and I
2 believe that the other members of the Mexican American
3 Legislative Caucus also found it important.

4 Q Now, you didn't mention whether you were in the Elections
5 Committee in 2011.

6 A I was not.

7 Q Okay. Did you nevertheless participate in hearings in the
8 2011 session on --

9 A I --

10 Q -- the photo ID bill?

11 A So it is my recollection that in 2011 the photo ID
12 legislation that ultimately passed was sent to a select
13 committee, and I was not a member of that select committee, but
14 nonetheless participated.

15 The chairman of the committee, Chairman Bonnen,
16 either -- I don't recall if he either allowed me to participate
17 on a one-off basis, or made a general call to the membership so
18 that people who had an interest in the subject matter could
19 attend.

20 But I did attend the very one long -- the very long
21 hearing that occurred on the bill.

22 Q Okay. So whether he invited the general body or you
23 personally, you took advantage of that invitation?

24 A I did.

25 Q Okay. Were you involved with any interim committees or

1 subcommittees that addressed voter identification issues?

2 A I did. So each interim, the Elections Committee that I
3 sat on took testimony, worked on the photo identification
4 legislation.

5 And at one point, the chairman -- the then-chairman
6 of the committee, Leo Berman, created a special subcommittee --
7 and I'll have to refer to my notes on this -- but I believe it
8 is called the Subcommittee to Study Mail-In Ballot Fraud and
9 Incidence of Noncitizen Voting, and I was made chair of that
10 committee.

11 Q So you were chair of that committee on that specific
12 issue?

13 A Correct.

14 Q Okay. And so since you were able to participate in the
15 debate and in the discussion about the photo ID bill from its
16 inception in 2005, when the House considered voter
17 identification bills, has the -- during that time period, has
18 the public justification given for the bills been the same?

19 A It has not.

20 Q And could you describe for the Court why or how it's not
21 the same?

22 A So early on, when I began to pay attention to this issue,
23 there was a narrative that voter fraud was epidemic in the
24 State of Texas, and this came from bill proponents. And the
25 way to curb that voter fraud was to adopt a photo

1 identification standard for voting purposes.

2 So there was -- there appeared to be the creation of
3 a correlation between this alleged widespread voter fraud and
4 the need for photo identification.

5 That began to change over time, and I noticed during
6 the 2007 and 2009 sessions that two issues became conflated.
7 One was immigration and the other was voter fraud.

8 And proponents of the photo identification bill like
9 to talk about things like noncitizen voting, illegal immigrants
10 voting, including the chairman himself -- the chairman of the
11 Elections Committee himself, Leo Berman.

12 And there were a number of witnesses who were called
13 to testify by the chairman, who described the incidence of
14 noncitizen voting or illegal immigrant voting as being a large
15 problem, and that persisted until my subcommittee did some
16 extensive work on that. And we issued a report to the
17 Legislature in 2008 that, in fact, the incidence of noncitizen
18 voting was very low.

19 Q We'll get into that in just a minute.

20 A Right.

21 Q But let -- so --

22 A And then the -- I'm sorry.

23 Q I'm sorry. Go ahead.

24 A And then the rationale continued to move around. Later,
25 it became about the integrity of elections. The narrative went

1 something like if one -- if voter impersonation does occur and
2 one unauthorized ballot is cast, then it disenfranchises a
3 validly cast ballot.

4 And so it was -- it then became about the integrity
5 of elections.

6 And then finally -- and this occurred really at the
7 climax or culmination of when the vote -- or prior to the --
8 when the vote was taken on the first iteration of the photo ID
9 bill in the House -- I had an exchange with the bill author
10 from the back microphone -- and in the Texas House, we ask
11 questions from the back microphone, and we either lay out bills
12 or amendments from the front microphone -- and I asked her, I
13 said, "Well, what -- do you really believe that -- or don't --
14 would you not agree that turnout is going to be hurt," and I'm
15 paraphrasing here, "and that minorities are going to be
16 disenfranchised?"

17 And she said something very interesting at that
18 point. The bill author said, "No, I believe in my heart that
19 this is going to increase turnout."

20 And, in fact, I believe at some point during the
21 debate it was offered that in Indiana before photo ID, turnout
22 was X; and then after photo ID, it was X plus, so that there
23 had been an increase.

24 And I believe that the data was used before photo ID
25 and then after the 2008 presidential election to show that

1 minority turnout had actually increased. Now, I mean, we all
2 know Indiana was a, you know, battleground state and there was
3 our first African-American president. So it would stand to
4 reason that minority turnout turned out.

5 But there came -- attempted to be created a
6 correlation between photo ID and minority -- increase in
7 minority turnout.

8 Q So did the Committee then take testimony from state
9 agencies, and state officials, and advocacy groups on the
10 question of whether voter fraud was epidemic?

11 A Yes, I mean, there were hearings on this. The Attorney
12 General's Office would come in and testify. Our office would
13 regularly request of the Attorney General's Office an update on
14 incidence of voter fraud in the State of Texas.

15 And we were always provided a spreadsheet -- and
16 that's when the narrative began to change from just photo
17 identification as a remedy for voter fraud generally to us
18 really being able to narrow down what kind of remedy it is
19 sought to achieve, and that is the prevention of voter
20 impersonation.

21 So we were able to drill down to this data and check
22 the incidence of voter impersonation, which, even according to
23 the Attorney General's statistics, was for the long time
24 nonexistent and, in any case, very low.

25 Q So in the initial stages in 2005, the evidence that was

1 submitted to the Committee then was that there was not an
2 epidemic in voter fraud and that there was not a large
3 incidence of in-person voter impersonation?

4 A Well, you know, the data that -- I was always focused on
5 impersonation. I was trying to elevate the consciousness of
6 the body to say that, hey, it's -- you know, there may be voter
7 fraud in the State of Texas, and I do believe there is, but
8 it's typically in mail-in ballots, and it's very rarely and/or
9 never in voter impersonation.

10 Q And that's what the evidence showed that was presented to
11 the Committee?

12 A Correct.

13 Q Okay. Then in 2007, when the narrative changed to this is
14 meant to prevent noncitizens from voting, can you describe to
15 the Court how that sort of proved -- what the evidence was that
16 was presented to the Committee on those issues?

17 A Well, it was interesting. The allegations of noncitizen
18 voting would pop up sporadically, even before that. There was
19 an election contest in -- for an election that occurred in 2004
20 between a Vietnamese-American candidate and an incumbent member
21 of the Legislature. And allegations were made that -- that
22 there were noncitizen Vietnamese votes cast in that election.

23 So there was a review of all -- of, I don't remember
24 the exact number, but dozens, if not over a hundred ballots in
25 -- cast in that contest, and it was determined that there was

1 one case of noncitizen voting. It was a legal permanent
2 resident who was Norwegian, who, in fact, when he -- when he
3 signed up to vote had checked the box that he was a noncitizen
4 and received a voter registration card anyway and voted under
5 the mistaken belief that he was able to, and also voted against
6 the Vietnamese candidate, which was interesting.

7 But that was kind of the first time that we heard
8 allegations of noncitizen voting.

9 Then later on, I recall on the House floor the bill
10 sponsor, I believe in the 2007 session, Betty Brown, presented
11 a very large stack of documents purporting to show that
12 hundreds of noncitizens were voting in Texas elections as the
13 reason for needing photo identification.

14 We did a deep dive on those as well, and --

15 Q So at that point, the subcommittee took that issue on; is
16 that --

17 A Correct. Our subcommittee took that issue on in 2008, and
18 we presented our report to the Legislature --

19 Q And --

20 A -- in 2008. And the bill author's assumption was -- or
21 evidence of noncitizen voting was that there were people who
22 had checked a box on their jury wheel form saying that they
23 were not citizens of the United States as one of the reasons
24 you can give to get out of jury duty.

25 Those same people had checked that they were citizens

1 on the United States -- of the United States on a voter
2 registration certificate.

3 So it was those conflicting oaths and affirmations
4 that the bill sponsor and others, including the chairman of the
5 Elections Committee, used to suggest -- and witnesses that came
6 before the Committee -- used to suggest that there was an
7 epidemic of noncitizen voting.

8 Well, as it turns out, all you had were conflicting
9 statements, but neither of them were dispositive of either
10 citizenship or noncitizenship.

11 And then so when you took that universe of persons
12 that had made those statements, I'm sure many of them had made
13 those statements just to get out of jury duty, thinking there
14 would be no subsequent ramification to that; and you looked at
15 the actual number of people who voted, the number was very,
16 very low. So there's very little correlation.

17 I actually sent my staff out to -- and along with
18 other staffs -- to go find these people. We called these
19 people, we sent them letters, and we went to interview them in
20 person.

21 And as it turned out, the percentage of noncitizen
22 voting was minuscule. And during the period that we looked at,
23 I think we may have founded one -- found one or two people.
24 Those people, I think, lacked a requisite mens rea to suggest,
25 I mean, that they were illegally -- knowingly illegally voting.

1 Many of them had the mistaken supposition that they were
2 allowed to do so. Some of them had been told by campaign
3 workers that they were allowed to vote as legal permanent
4 residents or something like that.

5 But it was such a low number, and then we contrasted
6 it to the 29 million votes that had been cast during that
7 period, it was a staggering number.

8 So we brought this -- it's a public document. We
9 brought it before the Legislature. And at that point, we --
10 then you stopped hearing about the illegal alien voting or the
11 noncitizen voting.

12 Then the narrative changed once again.

13 Q And do you know if there are noncitizens that have
14 driver's licenses in Texas?

15 A Absolutely. Sure. If you're a legal permanent resident
16 or a visa holder, you can absolutely have a driver's license in
17 the State of Texas.

18 Q Well, and then with regard to the integrity of the
19 election, what -- how did the debate run on that?

20 A So there was a -- you know, as best as I can -- as best I
21 recall, the narrative was that if photo ID was in place, that
22 was an additional tool in the toolbox that was necessary to
23 make sure elections were as -- I don't know -- as secure as
24 possible, is the -- to be redundant -- but to make sure
25 elections were as secure as possible.

1 And once that happened, then confidence in elections
2 would increase and more people would want to vote.

3 Q All right. And what was the -- and following the evidence
4 that you heard in 2009, did that justification shift in 2011?

5 A Well, it -- I discussed it earlier. I thought that --
6 that justification continued into 2011, but then the real
7 bombshell was, no, this was -- photo ID was really a way about
8 increasing voter turnout, right -- not just preserving the
9 sanctity of the electoral process, but would be a tool used to
10 increase voter turnout.

11 And I described my exchange with the bill, the House
12 sponsor of the bill --

13 Q Right.

14 A -- earlier.

15 Q And as you indicated, the source of her evidence was
16 comparing a nonpresidential election year with a presidential
17 election year --

18 A I recall that was the case. She may have cited some
19 Indiana data, and then she also said it was -- she believed it
20 in her heart.

21 Q All right. Now, during the time that it was being put
22 forward that this was a ballot integrity issue, did you
23 question DPS officers about the integrity of the devices that
24 they were using to ensure this?

25 A Yeah, so at one point, we -- and it was funny. One of the

1 prior witnesses talked about how resourceful 19-year-olds often
2 at college campuses are able to produce documents that make --
3 allow them to get into places where they serve alcohol.

4 Well, we thought similarly. Those of us who thought
5 that young people are pretty darn resourceful, or anybody is
6 resourceful, and if they wanted to create a photo ID in order
7 to vote, that this -- you know, that this might not necessarily
8 stop them either.

9 And so we asked the Department of Public Safety just
10 to bring in a bunch of the photo IDs -- fake photo IDs that
11 they had harvested over time, and they were passed out in a
12 Committee hearing to the members of the Committee. And I can't
13 remember if this was the 2007 or the 2009 session. Don't
14 remember exactly.

15 Q Uh-huh.

16 A But what struck me is that members of the Committee had a
17 tough time telling the real ID from the fake ID. In some
18 cases, it was obvious. In others, less so.

19 And it was also interesting to note that there is a
20 frequently, and you see this when you go through TSA, a blue
21 infrared light that people use to look at watermarks to
22 determine whether IDs are fake or not. Nowhere in any of the
23 bills that have ever been proposed was there a mechanism to
24 give that to poll workers to determine the authenticity.

25 So, you know, it was -- the photo ID standard was

1 offered up as this -- as this almost foolproof mechanism to,
2 you know, to improve the integrity of elections, and that -- I
3 recall that Committee hearing as calling into question whether
4 or not it is a foolproof system, in fact.

5 Q All right. So we've discussed the justifications that
6 were offered for the passage of the photo ID bill and the
7 evidence that the Committee heard with regard to those.

8 Were there concerns that were raised by yourself and
9 other minority members of the Legislature about the impact of
10 the photo ID bill?

11 A Yeah, repeatedly members of the African American Caucus --
12 or Black Caucus, as we call it -- the Mexican American
13 Legislative Caucus raised concerns about the propensity of this
14 type of legislation to disenfranchise Hispanic and African
15 Americans -- African American Texans, poor Texans, disabled
16 Texans, women, so all the people who could be adversely
17 impacted by this.

18 Q Okay. And in the debates, was the term "illegal alien"
19 sometimes used to describe what these bills were aimed at?

20 A I'd have to go back and look at the record. I just don't
21 recall. I don't recall that ever -- I don't recall that term
22 being used on the House floor. It might have been by Betty
23 Brown in the 2007 session, but I can't say for sure. And it
24 may have been used by Leo Berman in Committee, and he was the
25 chair of the House Elections Committee in 2007 --

1 Q All right.

2 A -- as well.

3 Q I'm sorry. The term "noncitizens," though, was used as a
4 justification for the bill?

5 A Yes.

6 Q Did you equate that with Hispanic, being Hispanic?

7 A Yes, not exclusively, but we know that if you look at the
8 immigrant population in Texas, it is largely Hispanic. And so
9 I saw that as kind of a code word, if you will, for Hispanic
10 immigrant.

11 Q All right. And as you mentioned, as these concerns were
12 being articulated, did -- was evidence presented by advocacy
13 groups and by members of the Legislature regarding the
14 potential impact on minority voters?

15 A Yes.

16 Q And could you describe some of that testimony or some of
17 those groups?

18 A Numerous studies were offered. I recall one by the
19 Brennan Center that said African Americans -- 25 percent of
20 African Americans don't have photo ID; that people living in
21 poverty -- I think 15 percent of people living in poverty don't
22 have photo ID.

23 In our subcommittee, gosh, we went down to
24 Brownsville and we took testimony on the very issue that you
25 heard from Mr. Lara earlier, which was people -- a lot of

1 people, especially in rural areas or along the border who were
2 birthed by midwives or were born on farms, didn't have the
3 requisite birth certificates and were in limbo. We took a ton
4 of testimony at UT Brownsville on that, and that was an issue
5 of concern.

6 You know, I thought about my own father, who was born
7 in a stable, basically, and didn't have a birth certificate.
8 And then when he did have one, it didn't match his birthday,
9 because it took a day to walk down from the mountain where he
10 was born to town and have the authorities record his birth.

11 So there were all kinds of stories like that that we
12 heard, which caused me to believe that this was going to be an
13 obstacle for a lot of people.

14 Q And did you request during these different sessions that
15 perhaps some sort of impact study be done before the bill would
16 be implemented?

17 A Yes, both as a member of the Committee, as a -- and then
18 on the House floor, I questioned the author of -- or, excuse me
19 -- the sponsor of the Senate bill about whether or not these
20 studies have been done. You know, have -- has there been a
21 study related to the penetration of the necessary documents
22 needed to obtain photo identification? What is the penetration
23 rate in Latino and African-American communities? That question
24 was asked not only by me, but by others repeatedly. And to our
25 knowledge, it was never done.

1 Q So you would ask for studies that might show the number of
2 people that would be impacted and also what impact -- how the
3 impact would fall on the racial and ethnic groups in the state?

4 A Correct.

5 Q And you were never provided with any information regarding
6 those issues from state officials?

7 A No, I think the best we got was we asked -- we asked to do
8 a match of the voter registration file, the state HAVA voter
9 registration file, with the DPS file for state IDs and driver's
10 licenses, and it took a long time to get that. But,

11 ultimately, it was provided, and I can't remember if it was in
12 the 2011 or 2009 session, but it showed a pretty significant
13 delta where photographs were apparently not on file -- or I
14 should say there was not a -- there was a very poor match --

15 Q All right.

16 A -- among the two files.

17 Q So in addition to the debate and the hearings that were
18 done on the bill, were there also amendments that were offered
19 by the members to try to ameliorate the concerns that were
20 being expressed by the minority members of the Legislature?

21 A Yes.

22 **MR. GARZA:** And could we bring up Plaintiffs' Exhibit
23 34, please? And at Page 79. Now, and could we highlight
24 Section 25 of Amendment 58?

25 Q Representative, do you see that on your screen?

1 A I do.

2 Q And could you describe that for the Court?

3 A Let me just review it very quickly. I think I know what
4 -- which amendment this is.

5 Q And --

6 A So this was an amendment to the bill that essentially
7 requested a delay in the bill's implementation until such time
8 as the Secretary of State's Office conducted a study, and I
9 believe I tasked the Secretary of State -- or it may have been
10 another -- no, it is the Secretary of State. Sorry.

11 The Secretary of State provide an analysis to the
12 Legislature of really the penetration of -- in minority
13 communities of these documents that were needed to -- or these
14 photo identification documents that were needed to vote.

15 Q So you were essentially asking for an impact analysis?

16 A I was. I was. And really this amendment didn't even
17 quarrel, or take issue, with the substance of the bill. It
18 said, "Hey, let's just -- this is voting. Let's just make sure
19 we get it right. Let's delay the implementation of this thing
20 until we have all the data, the impact on protected classes,"
21 and this ultimately was tabled.

22 Q All right. And there were other members of the
23 Legislature that offered amendments as well.

24 **MR. GARZA:** Could we turn to Page 27, please? And if
25 we could highlight Section 63.010?

1 Q And do you see that, Representative?

2 A I do.

3 Q And could -- who offered this amendment?

4 A Difficult to tell from what's highlighted here, but I
5 believe this was Armando Martinez of Weslaco.

6 Q Okay. And what would this amendment have done?

7 A This amendment acknowledges that it takes ID to get ID,
8 and even if the bill proponents were suggesting that the
9 driver's license or, later on, EIC, the election document, the
10 voting ID would be free, that people needed to collect and
11 provide other forms of ID that did cost money.

12 So what Mando -- what Representative Martinez did
13 here was say if you have -- if you need to obtain these
14 underlying documents, that -- for the purpose of voting, that
15 those should be free as well so as to not constitute an undue
16 burden on members of the public.

17 Q And would this have -- this amendment have changed SB 14's
18 identification requirements?

19 A No, sir.

20 Q Okay. And what happened to this amendment?

21 A I believe this amendment was also tabled.

22 Q All right. Now, there were amendments that were offered
23 by minority members of the House that were adopted by the Texas
24 House of Representatives --

25 A I believe --

1 Q -- correct?

2 A -- that's right.

3 Q All right.

4 **MR. GARZA:** And if we could begin by looking at Page
5 17 of Exhibit 34?

6 Q And this is an amendment, it looks like offered by
7 Representative Giddings?

8 A This is difficult for me to read. Regrettably, it is a
9 little blurry on the screen or my eyesight continues --

10 Q If we could highlight from --

11 A -- to deteriorate.

12 Q -- where it says "Amendment 3"?

13 A That is helpful.

14 Q Okay.

15 A So -- let's see.

16 Q Do you see it now?

17 A I do.

18 Q And do you know who Representative Giddings is?

19 A I do.

20 Q And where is Representative Giddings from?

21 A Representative Giddings is one of my colleagues in the
22 Dallas delegation. She represents a district in southern
23 Dallas County.

24 Q And is she African American?

25 A She is.

1 Q All right. And Amendment 3, what it -- what did it
2 propose to do?

3 A My recollection of this amendment was that it allowed for
4 a person who had been robbed of their photo identification to
5 furnish evidence of that crime to authorities and then issue an
6 affidavit in order to vote a regular ballot.

7 Q And did the amendment pass?

8 A It did initially, yes. But in the -- I -- my recollection
9 is that after the conference committee, it was stripped and
10 taken out of the final bill.

11 Q So this is an amendment that was offered by a minority
12 member that addressed that specific issue, was passed by the
13 House, but eventually stripped from the bill?

14 A Yes.

15 **MR. GARZA:** And if we could take -- turn now to Page
16 26. And if we could highlight Amendment 13?

17 Q Now, this is offered by Representative Eiland?

18 A Correct, Craig Eiland is a Democratic member of the
19 Legislature from the Galveston area.

20 Q And he is not minority? He's not -- he is not --

21 A He is not.

22 Q -- Hispanic or African American?

23 A Not to my knowledge.

24 Q Okay. And what did his amendment propose to do?

25 A In -- during the session in which this was offered,

1 Galveston had just been hard hit by Hurricane Ike, and there
2 was a -- the intent of this amendment was to allow persons in
3 areas that have been declared a natural disaster by either the
4 governor or the president to be exempt from the photo
5 identification requirements.

6 Q All right. And did this amendment pass?

7 A It did.

8 Q And do you know if it was maintained in the final bill?

9 A It is my best recollection that it was maintained in the
10 final bill.

11 Q Okay. Now, do either of these first two amendments that
12 we've looked at, do either of them address the issues that were
13 raised by minority members of the House in the debates and in
14 the House hearings about the negative impact this might have on
15 minority voters?

16 A I don't believe this one does.

17 Q Okay.

18 **MR. GARZA:** And now if we could turn to page -- the
19 bottom of Page 63 and the top of Page 64? And let's start with
20 the bottom of the page, where it says "Amendment 45," and
21 highlight that, please.

22 Q Representative Anchia, this is an amendment that you
23 offered?

24 A Yes. If you all can pick up the actual substance of the
25 amendment?

1 Q Yes, and if we could go to --

2 A If this refers -- this refers to an amendment that I
3 offered, I'd like to see the --

4 Q Right. Right.

5 A -- the text.

6 Q There we go.

7 A Okay. Yes, this --

8 Q And --

9 A -- relates to an amendment that I offered. And the
10 substance of this amendment, this sought to address an error --
11 a technical error in the bill.

12 At the time that the -- that this bill was before us,
13 the construct of the bill provided for a free driver's license
14 for persons who could not afford the -- that documentation if
15 they were obtaining it for the purposes of voting -- for the
16 purpose of voting.

17 Well, there were three different types of driver's
18 licenses that you could get, and the bill authors I just think
19 failed to include the duplicate driver's license and duplicate
20 personal identification certificate. That's something that our
21 office caught, so we offered up this technical amendment just
22 to harmonize the bill with practice by DPS.

23 Q And, again, this amendment passed the House of
24 Representatives?

25 A It did. And I would characterize this as a technical

1 amendment.

2 Q And it certainly didn't address any of the adverse impact
3 concerns that had been expressed by minority members of the
4 Legislature?

5 A No, it simply corrected a technical error.

6 Q All right. And do you know if, in the final bill, this
7 provision was included?

8 A It was not, because the bill authors went outside the
9 bounds in conference committee and removed the -- reconstructed
10 the bill and eliminated the free driver's licenses and,
11 instead, went to a model that included a free EIC, election
12 identification card. And that happened in conference
13 committee, and they brought that to the floor rather quickly.

14 So this did not stay in the final bill because of the
15 different approach that the authors took in conference.

16 Q All right. Now, at the time, then, that the House voted
17 on SB 14, how many of the questions raised by the bill's
18 potential negative impact on minority voters, if any, had been
19 answered by the bill's supporters?

20 A In my view, very few. There was -- it appeared to be a
21 disinterest in wanting to know the answers to some of the
22 questions that minority members were asking in terms of adverse
23 impact on minority populations.

24 And on the House floor, when I was asking the bill --
25 the House sponsor of the bill what -- in her view, what the --

1 what were the impacts on minority populations, or had she seen
2 a study, or had she engaged in a study, the answers were very
3 evasive and not -- nonresponsive.

4 Q And --

5 A And I point to that as an example of what I perceived to
6 be a pattern not only on the House floor that day but also in
7 committee that session and sessions previously.

8 Q Did any of the -- did any of these discussions, evidence
9 that was presented by the opponents of the bill, the ones that
10 -- the members of the Legislature that wanted to try to
11 ameliorate these potential negative impacts, did those have any
12 effect on the overall vote? Did you win any votes over to your
13 side?

14 A No, it was my view that this thing was baked. And "baked"
15 is a colloquial term for essentially done. This was a done
16 deal.

17 And that -- what stood out most is that in the second
18 amendment that I offered that we haven't dealt with, I pointed
19 out another flaw in the bill, which was there were provisions
20 that permitted someone -- although the bill sponsor was touting
21 this as a way to increase integrity of elections, there was a
22 provision in the bill that would permit somebody -- or would
23 allow somebody to show up and not be on the rolls, not present
24 a photo ID, not present a voter registration certificate, and
25 vote a regular ballot that was mandatory to accept if that

1 person returned six days after the election and filled out an
2 affidavit saying that they had a religious objection or were
3 indigent.

4 And when I pointed this out on the House floor, I
5 said, "Well, you know, this stands in stark contrast to your
6 claims that this is going to increase ballot integrity, because
7 this is worse than state law. You're actually allowing someone
8 with nothing, just who shows up, allowing somebody to come in,
9 fill out an affidavit, and requiring that that vote count.
10 It's actually worse than state law in some ways."

11 And the bill author didn't believe what I was saying
12 during questioning, and then she asked me to pull down that
13 amendment and consult with her on it. I did, and other members
14 of the body sort of huddled around and said, "You know, I think
15 he's right. I think this is worse than state law, and, in
16 fact, creates a big problem."

17 And so I offered to work with the bill authors on a
18 solution that would not disenfranchise people and that would
19 streamline this affidavit process. And I was working with
20 folks, I made some proposals; and then before I knew it, a
21 number -- another member of the Legislature went up without
22 mentioning to me that, you know -- and I thought I was still in
23 negotiations with my colleagues -- got up and quickly took the
24 microphone, offered up an amendment that dealt with this issue,
25 and then, you know, my proposals were ignored.

1 So I thought that that was less than evenhanded.

2 Q And do you remember how it was dealt with, that particular
3 issue? Were the exemptions --

4 A I think all of the exemptions were eliminated in this
5 amendment. And it went to conference, and I'm not sure what
6 the ultimate resolution was post-conference.

7 Q Representative, you testified that there's a high rate of
8 poverty in your district?

9 A Yes.

10 Q How many of your constituents do you think depend on
11 public transportation because they don't own cars?

12 A I've looked at this issue, and it is two times the state
13 average -- in excess of two times the state average, actually,
14 or maybe 2.5 times.

15 Q And is there a sizeable portion of your constituents who
16 hold hourly wage jobs?

17 A I don't have the exact data on that, but to put it in
18 context, you have Dallas, which is one of the wealthiest places
19 in the state, yet the constituents that I represent earn a
20 third less than the state average in terms of per capita
21 income. So I imagine the job mix would be heavily -- or is
22 heavily tilted towards hourly service jobs.

23 Q And do you have an opinion about how SB 14's requirements
24 impact your constituents?

25 A Adversely.

1 Q Representative Anchia, why is this issue important to you?

2 A Well, so my mother was a public school teacher, and I --
3 was a public school teacher for about 30 years. I consider
4 that some of the most honorable public service that you can
5 engage in.

6 I watched her go to school and walk across the gym
7 floor first at community college, where she graduated, and then
8 her four-year college, and I walked -- I watched her work very,
9 very hard.

10 My father has a seventh grade education. In fact,
11 Mr. Lada reminded me of him a great deal. I got very emotional
12 listening to his testimony.

13 But my mother taught me the importance of public
14 service, the importance of voting. And she used to take me as
15 a child to go vote.

16 And my view on this is that if you're going to
17 encumber the right to vote in any way, there better be a darn
18 good reason. And it should not be shifting rationales. It
19 should be a very, very compelling reason.

20 Now, I do believe that increasing the integrity of
21 the ballot box is a laudable goal, no doubt. But when people
22 call voter fraud epidemic, and then you look at the numbers of
23 voter impersonation, which this has -- which this has sought to
24 remedy, it didn't make any sense to me, and I thought it had to
25 be about something else.

1 would you agree?

2 A No, I think that would be a bad result.

3 Q And why is that?

4 A Well, I don't think a lot of the bills that get filed are
5 good ideas.

6 Q So the reality is that the Texas Legislature is no
7 different from any other law-making body in this country in
8 that there are -- it features two different parties that have
9 different philosophies on government, correct?

10 A Well, I don't think it's a binary discussion.

11 Q Uh-huh.

12 A Often, it is not parties. It is -- there are multi-
13 lateral interests at stake. And so it is a much more subtle
14 and layered discussion than just two different parties going at
15 it.

16 Q But you would agree that, in any given legislature, there
17 are going to be many bills that are opposed by a number of
18 legislators and supported by a number of others, correct?

19 A Yes, that's right.

20 Q Okay. And you're a member of the Democratic Party,
21 correct?

22 A I am a Democrat.

23 Q Okay. It's also not uncommon for the line between the
24 support and opposition of a bill to be drawn right down party
25 lines; is that right?

1 A I would say it's uncommon. In the Texas Legislature, we
2 work very hard to maintain comity -- M-I-T-Y -- C-O-M-I-T-Y,
3 not M-E-D-Y, although you do see some of that.

4 But --

5 Q Sure.

6 A But we really do try to work together a great deal, much
7 more so -- I think it stands in contrast to Washington.

8 Q Okay. So you try to work together, and it -- sometimes it
9 results in compromise and progress, sometimes it doesn't,
10 right?

11 A That's right.

12 Q Okay. Were you here on Tuesday when Representative
13 Martinez Fischer testified?

14 A I was not.

15 Q Okay. I believe he said -- he described the legislative
16 process as a full-contact sport. Would you agree with that
17 opinion?

18 A I don't know. I think of the legislative process as a
19 bill-killing machine. It is very hard -- it is very easy to
20 kill a bill and it's very hard to pass one.

21 Q Would you agree that, in order to pass or defeat a bill,
22 sometimes you have to employ certain strategies or tactics in
23 order to gain an advantage over those who may oppose your
24 position on a bill?

25 A Yes.

1 Q Okay. Now, you testified here today that -- and I think
2 you'd agree -- that voter ID is an issue that predates the 2011
3 Legislature. You would agree with that, right?

4 A Yes.

5 Q Okay. You talked about voter ID -- a voter ID bill that
6 was proposed in 2005, correct?

7 A Yes.

8 Q And you opposed that bill, correct?

9 A I did.

10 Q Okay. And I believe that bill passed the House but it
11 died in the Senate on a two-thirds vote. Is that your
12 recollection?

13 A Yes, I'm not exactly sure how it died, but I think it does
14 relate to the two-thirds rule in the Senate.

15 Q Okay.

16 A I don't think it came up for a vote and it died without a
17 vote.

18 Q Okay. So that voter ID bill died in 2005. In 2007, a
19 similar bill was introduced. Do you recall that bill?

20 A I do.

21 Q And did you oppose that bill?

22 A I did.

23 Q Okay. And I believe that one also got out of the House
24 and died in the Senate. Is that your recollection?

25 A That's my general recollection.

1 Q Okay.

2 A Yes, it is.

3 Q And as has been discussed here, again, another voter ID
4 bill was proposed in 2009. I believe that was SB 362. Do you
5 recall that bill?

6 A I do.

7 Q And did you oppose that bill?

8 A I did.

9 Q Okay. And can you tell me your recollection of how that
10 bill was defeated?

11 A I believe that bill was defeated in the House.

12 Q Okay.

13 A If I'm not mistaken, it was initially -- and I could be
14 wrong about this, because it was a while ago -- but it was
15 initially defeated on a point of order. And I believe it came
16 back, and then there was -- it languished in the calendar, and
17 ultimately did not come up for a vote.

18 Q And why did it not come up for a vote?

19 A Because there were other calendar items before it that
20 took precedence in the regular course of business.

21 Q And is that -- are you referring to the local and consent
22 calendar?

23 A Among others, yes. We have two different calendars, local
24 and consent calendar and the general calendar.

25 Q Okay. So that bill, SB 362, is it your testimony that it

1 died on the local and consent calendar?

2 A I don't believe it died on the local and consent calendar.
3 No, I don't believe that's the case. I believe it was on the
4 general calendar --

5 Q Uh-huh.

6 A -- but that the course of -- or the order of business was
7 that the local and consent calendar came before it, and I
8 believe it fell behind the local and consent calendar.

9 That's my best recollection. I could be wrong.

10 Q Representative, are you familiar with the practice known
11 as "chubbing"?

12 A Yes, I have heard of chubbing.

13 Q Okay. Can you explain to me what your understanding of
14 chubbing is?

15 A Chubbing is when members from either the front microphone
16 or the back microphone take longer than is necessary to do what
17 they need to do, so that they -- so that time continues to
18 elapse and ultimately bills that are behind the bill at hand
19 don't come up, or that a bill that -- or that the bill that is
20 at hand runs up against a time constraint.

21 So you see chubbing just about every session.
22 Usually on the last night when a bill needs to be considered,
23 members will get up and -- there are ample examples even last
24 session about how members got up and talked for a long period
25 of time, asked a lot of questions, so that bills did not come

1 up.

2 It happens about every session.

3 Q So chubbing is kind of like a filibuster, is it not?

4 A Similar concept, yes.

5 Q Okay. Was SB 362 in 2009, was that defeated by employing
6 the tactic of chubbing?

7 A One -- some might argue that. And I think in popular
8 media reports, it was suggested that that was the case. You
9 know, I prefer to suggest that it was -- it never made it up on
10 the calendar.

11 Q Representative, are you -- or I believe you testified
12 you're a member of the Mexican American Legislative Caucus,
13 correct?

14 A Yes, sir.

15 Q Otherwise known as "MALC"?

16 A Yes.

17 Q Okay. And are you aware that MALC is a party to this
18 lawsuit?

19 A Yes.

20 Q And were you a member of MALC in 2009?

21 A Yes.

22 Q We deposed a representative of MALC in this lawsuit.

23 Would it surprise you to know that that representative
24 testified at that deposition that Senate Bill 362 was, in fact,
25 defeated by a practice known as "chubbing"?

1 A It wouldn't. I don't have a basis to -- I don't know who
2 the representative is. I have no basis to suggest that it was
3 defeated -- or what that -- let me rephrase.

4 I have no basis to know what that representative --
5 what that representative's perception is.

6 Q Would it surprise you to know that that representative
7 testified that Senate Bill 362 was defeated by what he referred
8 to as the "chub-a-thon"? Have you ever heard that term?

9 A I haven't heard it quite put like that, but it's funny.

10 Q But you have heard it before?

11 A I don't know that I've ever heard "chub-a-thon." No, I
12 don't know that.

13 Q Okay. Well, let's stick on chubbing for just a second.
14 We'll just call it that for now.

15 A Okay.

16 Q All right. So was Senate Bill 362, I believe you said it
17 never made it off the calendar; is that right?

18 A I believe that's right.

19 Q Okay. And would you -- do you disagree -- or do you have
20 any basis to dispute that it was defeated through the practice
21 known as chubbing?

22 A That's fine. I -- some people believe that, and --

23 Q Okay.

24 A -- I won't dispute it.

25 Q Okay. Has chubbing ever been used to defeat a bill on the

1 calendar like that?

2 A Oh, every session, as I said. Every session, chubbing
3 occurs.

4 Q So you mentioned the other bills on the calendar and that
5 occurs. When that's done, are the other bills that are south
6 of the bill that's being chubbed, are those also killed in the
7 same manner?

8 A Yes, so any -- typically, when you're --

9 Q Uh-huh.

10 A -- hitting certain time frames, and the consequence of not
11 having a bill heard as of that time frame is that the bill
12 dies, there are a number of bills that die. And you hear that
13 regularly.

14 Q Okay. In 2009, were you the author of any of those bills
15 that died?

16 A I don't recall. Probably. There was a long calendar. I
17 imagine a number of members of the House were authors of bills
18 that died. In fact, every session I have bills that die at the
19 end of the session on the calendar.

20 Q Sure. Sticking on the nickname theme, you weren't a
21 member of the --

22 A The chub-a-thon?

23 Q We're moving on from that. You were not a member of the
24 Texas House in 2003, correct?

25 A I was not.

1 Q What were you doing at that time?

2 A I was a -- well, I was and am an attorney in private
3 practice, and I also served on the Dallas School Board.

4 Q Do you recall in the 2003 legislative session an instance
5 where a group of House Democrats left in the middle of the
6 session and, in fact, fled the state in order to bust a quorum
7 and prevent the consideration of a redistricting bill?

8 A I read news accounts of this.

9 Q Okay. And do you remember where they went?

10 A Yes, I do. It was widely reported that they went to the
11 Holiday Inn in Ardmore, Oklahoma.

12 Q And they were given -- that group of House Democrats, they
13 were given a pretty cool nickname as well, weren't they? Do
14 you remember what that was?

15 A I don't.

16 Q Do you recall if they were deemed the "Killer Ds"?

17 A That sounds right.

18 Q Okay.

19 A That sounds right.

20 Q And do you remember if they -- their act inspired a group
21 of Senate Democrats to do something similar? Do you recall
22 reading about that?

23 A I read that the Senate Democrats also fled the state.

24 Q Okay. But they didn't go north to Ardmore, they went west
25 to Albuquerque, didn't they?

1 A Senators typically have more exquisite taste; and as a
2 result, I believe they went to the Marriott in Albuquerque, New
3 Mexico.

4 Q Okay. You're on the record saying that, Representative.

5 A Yes. Yes, sir.

6 Q Okay. Would you call fleeing the state to bust a quorum
7 like that, would you call that a pretty extraordinary tactic?

8 A Yes. I would say yes. It -- breaking quorum is among the
9 rules, and it's not used regularly.

10 Q Okay. So that brings us to 2011 with the proposal of
11 SB 14, which, if my math is correct, this would have been the
12 fourth attempt to pass a voter ID bill; is that correct?

13 A In 2011, yes, sir.

14 Q Okay. Representative, do you take issue with the manner
15 in which SB 14 was passed in 2011?

16 A Yes, the two things that were difficult with respect to --
17 were -- there were a couple things, and I'll just speak
18 procedurally about a couple things that I saw that are not used
19 often when passing legislation.

20 One is, on the Senate side, that there was -- there
21 was an effort to dispense with the two-thirds rule and pass
22 legislation through that, although it had -- it is long a
23 tradition in the Senate that the two-thirds rule -- and I think
24 Senator Ellis alluded to this -- that it is long a tradition
25 that that two-thirds rule is in place to protect minority

1 rights -- and not minority ethnic and racial minority, just
2 minority on a particular position.

3 The second thing that was done differently is that
4 there was a select committee that was created to hear just one
5 bill. And that's very unusual as well in the -- and I'm not
6 saying it's outside the bounds of the rules. It's within the
7 rules, but it is very unusual to see a select committee to take
8 on just one bill.

9 And then, finally, it was unusual for the bill
10 authors to go outside of the bounds in conference committee,
11 which means -- when you go to conference committee to harmonize
12 the differences between a state -- a Senate and a House bill,
13 you have to get a resolution from the members of the State
14 House and the State Senate in order to do so. It is unusual to
15 go outside of the bounds, and then come back with a completely
16 different concept in a piece of legislation that has not been
17 vetted through committee, that is not -- that testimony has not
18 been taken on, that has not been debated, and that was this
19 election identity card. And that was very quickly moved
20 through the process.

21 So those are the things -- those are the very unusual
22 steps that I -- that the photo identification bill went
23 through.

24 Q Representative, do you feel -- or do you believe that
25 SB 14 was enacted with a discriminatory intent?

1 A Either a discriminatory intent or effect.

2 Q Can you point to a specific comment or legislative action
3 that clearly demonstrates that intent?

4 A I can point to the shifting rationales for the
5 legislation. I think that is troublesome when you constantly
6 put up rationales, and then they don't stand scrutiny, and you
7 come up with another excuse or another reason, and you keep
8 bringing it back -- I think that's a concern.

9 I think the evasiveness of the bill authors, the
10 failure to act to answer questions -- the fact that a lot of
11 the bill authors -- or that the bill authors didn't really even
12 know their bill that well caused me to believe that maybe
13 somebody else was writing that bill for them. That was a
14 concern.

15 So there were -- it was -- there were a lot of things
16 that were irregular about this bill.

17 Q So you mention shifting rationales, evasiveness. Is there
18 anything else -- any kind of specific comments, anything else?

19 A Well, you know, during -- are you just talking about the
20 2011 session or previously -- or sessions before?

21 Q I'm talking about 2011.

22 A Okay. No, nothing anyone said specifically. No.

23 Q Okay. So your opinion, then, is -- it's more subjective.
24 It's based on inferences that you drew from these things that
25 you just mentioned?

1 A Yeah, it's based on the totality of the circumstances.

2 Q Representative, early -- earlier today, Senator Ellis was
3 talking about the two-thirds tradition, as he called it, and he
4 mentioned kind of what it does and how it slows things down
5 during a session so that you can build a consensus, you can
6 actually debate the bill, it -- and that kind of thing.

7 Were you here for that?

8 A I was here, I think, for the beginning of that. Yes.

9 Q Okay. Do you think that kind of accurately describes the
10 two-thirds tradition?

11 A Yes.

12 Q That's its purpose?

13 A Yes.

14 Q Okay. And he went on to talk about how, you know, maybe
15 you get a consensus, but maybe you don't. And if you don't,
16 your bill dies. And maybe -- I believe he said something like,
17 you know, "If it dies, it wasn't ready and we'll try it again
18 next year," something like that.

19 Were you there for that?

20 A I was not there for that, no.

21 Q Okay. Do you have any reason to dispute my summary of his
22 testimony?

23 A I'm not sure I understand what it means, but the --
24 Senator Ellis is a very wise senator.

25 Q You're familiar with a special session, correct?

1 A I am. Yes, sir.

2 Q And what is a special session?

3 A A special session is a session that is called by the
4 governor for an extraordinary purpose, typically to deal with
5 an emergency, an issue that the governor believes is
6 meritorious of additional work that was not engaged in during
7 the regular session. It could deal with an appropriations
8 issue, but it is typically at the discretion of the governor to
9 call.

10 Q Okay. So if something doesn't pass during the regular
11 session, the governor can call a special session to kind of
12 hammer it through?

13 A Yes, sir.

14 Q Okay. And does the two-thirds tradition, does that apply
15 in a special session, if you will?

16 A It is my understanding that it does not apply.

17 Q So back in 2005 when that iteration of the voter ID bill
18 was offered and failed to pass, was a special session called
19 that year to hammer that bill through?

20 A I don't recall.

21 Q In 2007 when that voter ID bill failed to pass, was a --
22 do you recall if a special session was called that year and
23 hammered through?

24 A I don't.

25 Q In 2009 when Senate Bill 362 was defeated, do you recall a

1 special session being called that year to hammer that bill
2 through?

3 A I do not.

4 **(Pause)**

5 Q So going into the 2011 legislative session, if you were a
6 lawmaker trying for the fourth time to pass a bill that you
7 supported, do you think you'd be mindful of the strategies and
8 tactics that they used to defeat your previous bills?

9 A I'm certain, sure.

10 Q Is that a yes?

11 A Oh, yes, sir.

12 Q Okay. Might you also, in preparation for that session,
13 consider the major issues coming down the pipe for that
14 session?

15 A Yes. I think that's what all legislators do, sort of
16 evaluate the large issues during a legislative session as
17 they're putting together their legislative package.

18 Q Do you recall any of the issues that the Texas legislature
19 was facing as they gaveled in in 2011?

20 A I think there was a budget shortfall that year. I think
21 the budget was the big issue, and then the cuts to public
22 education and healthcare were big.

23 Q I believe someone testified today about a budget shortfall
24 of roughly \$27 billion; was that correct?

25 A Yeah. There was a big budget shortfall as I recall.

1 Q Do you ever recall a budget shortfall like that in your
2 experience in the legislature?

3 A No, sir.

4 Q So that was a big issue?

5 A Yes, sir.

6 Q Okay. Were there transportation issues that needed to be
7 dealt with?

8 A There always are transportation issues that needed to be -
9 - that need to be dealt with, including this upcoming session.

10 Q How was the drive down I-35?

11 A **(Laughter)**

12 Q Was the legislature going to be considering any healthcare
13 reforms in the wake of Obamacare?

14 A In 2011, I don't think there was much discussion of
15 healthcare reform other than the cuts out of the budget to make
16 the budget balance. I don't recall that that was a big issue.

17 Q Was there a redistricting bill coming down the pipe that
18 session?

19 A I believe so. Yeah, it sounds like the timing is right
20 for redistricting.

21 Q That's always a big one, isn't it?

22 A Yeah. And it -- you know, I always feel like we're always
23 doing redistricting.

24 Q So it sounds like with redistricting, the transportation
25 issues that are always prevalent, and that massive budget

1 shortfall issue, that sounds like 2011 was shaping up to be a
2 pretty busy legislative session.

3 A Yes, sir.

4 Q Okay. Well, Representative, you testified in a previous
5 trial on this voter ID issue; do you recall that?

6 A In the -- if you're referring to the D.C. District Court,
7 yes, sir.

8 Q Yes. Do you recall sitting for a deposition in that case?

9 A Yes, sir.

10 Q Okay. I believe that deposition was held on June 6th,
11 2012; does that sound about right?

12 A That sounds about right, yes, sir.

13 Q Okay. Do you recall in that deposition being shown a
14 number of various polls showing -- indicating public support
15 for voter ID measures?

16 A Yes, sir.

17 Q And do you recall the content of those polls or the
18 results that they depicted?

19 A I don't recall the exact content, no, sir.

20 Q Okay.

21 A But roughly the substance of the polls was that photo
22 identification was popular -- and I don't recall the exact
23 question that was asked -- but it was popular among Republicans
24 and Democrats and African Americans and -- you know, it spoke
25 to the popularity. Did I get that right?

1 Q That's about right, yes.

2 A Okay.

3 Q And there were -- I'll represent to you that there were
4 five or six different polls that you were presented with.

5 A I recall that, yes, sir.

6 Q Okay. So you would agree that at least according to those
7 polls, that voter ID was a pretty popular issue amongst the
8 Texas electorate, would you?

9 A Well, again, it always depends on how you phrase the
10 question. I'm sure if I would have asked the question, "Do you
11 believe that we should institute a photo identification
12 requirement in order to vote that might disenfranchise half a
13 million Texans?" maybe the results of the -- the answer would
14 be different, probably be a less popular discussion -- or a
15 hundred thousand Texans or a Vietnam War veteran, I mean -- so
16 polls -- I just say that because the question you asked often
17 determines the answers that you get.

18 Q So to kind of sum up, Representative, what we talked
19 about, in light of the various attempts to pass voter ID bill
20 in 2005, again in 2007, again in 2009, and in light of the, you
21 know, various big issues that the Texas legislature was facing,
22 basically a packed docket for that year, and in light of, you
23 know, at least potential or as evidenced in those polls, you
24 know, support amongst Texas citizens for voter ID measures, do
25 you suppose that it's possible that SB 14 was passed the way it

1 was because of all those things and not because of some
2 pervasive discriminatory intent?

3 A You know, I believe it's possible, but I don't think it's
4 likely, and I'll tell you why. We had a huge budget shortfall
5 that year. That didn't get a select committee. It didn't get
6 sort of a two-thirds exemption. Transportation funding didn't
7 get a select committee, didn't get dispensation through two-
8 thirds. Any number of other priorities, including priorities I
9 felt strongly about, my Republican colleagues felt strongly
10 about, didn't get this special treatment. So I really do think
11 this was an unusual process for a bill. I have not seen a bill
12 other than this one get that kind of procedural runway. And
13 just to be candid, none of my bills have ever gotten that.

14 Q Now, you testified about the committee on voter fraud
15 earlier; do you recall that?

16 A The select committee?

17 Q Yes.

18 A Yes, sir.

19 Q Okay. And you were not on that committee, right?

20 A That is correct, sir.

21 Q And I believe you testified that you were allowed -- or at
22 least you think you were allowed -- to participate in the
23 debate of SB 14 in front of that committee?

24 A Yes, sir. And my best recollection is that Chairman
25 Bonnen (phonetic) asked me, knowing that I was an opponent and

1 had spent a lot of time working on this bill, I think he may
2 have asked me specifically to sit on the committee.

3 Q And as you testified earlier, you did take advantage of
4 that invitation?

5 A I sure did, yes, sir.

6 Q Okay. And you were able to question -- or ask questions
7 of witnesses that came to testify about that bill, correct?

8 A I did.

9 Q Okay. Do you recall questioning Ann McGeehan, the
10 Secretary of State?

11 A Yes.

12 Q Do you recall questioning Rebecca Davio of the DPS?

13 A Yes.

14 Q Okay. And you even questioned an attorney at the Texas
15 Attorney General's office, David Maxwell, correct?

16 A Yes. I don't remember his name, but yes, I do remember
17 that.

18 Q So you were given ample opportunity to voice your concerns
19 and engage in a debate about SB 14 during its consideration,
20 correct?

21 A Yes. I mean, I was able to participate in the legislative
22 process, that's correct.

23 Q And as you said, you propose an amendment that eventually
24 was accepted into the bill's language, correct?

25 A To fix (indiscernible) along the bill, that's correct.

1 Q Okay. Now, did you or anyone else opposed to SB 14 in
2 2011 consider attempting to -- I'm going to say the word again
3 -- chub the bill this time around?

4 A I don't recall, no.

5 Q And why don't you think that that tactic was attempted
6 again?

7 A I don't recall.

8 Q Would it surprise you to learn that there was a House
9 resolution, I believe, passed that eliminated the practice of
10 chubbing for that legislation?

11 A I do remember -- that's right, we passed a very large
12 rules bill at the beginning of the session and I believe there
13 was language in that rules bill to deal with the -- to try to
14 deal with the practice of chubbing. Still happens regularly,
15 by the way.

16 Q And in that session, what did you vote on that resolution;
17 do you recall?

18 A I think I voted -- I typically vote in favor of all rules
19 resolutions because it's typically a large sweep of rules and,
20 you know, if you're in favor of 90 percent of them, then a lot
21 of times you just vote yes.

22 Q Representative, just a couple more questions.

23 A Yes, sir.

24 Q And at risk of being repetitive, do you agree the strength
25 and the integrity of the election system is an important thing

1 to you, correct?

2 A Yes, sir.

3 Q Okay. And ensuring that those who show up to the polls
4 are who they say you are, that's a laudable goal in your
5 opinion, correct?

6 A Yes, sir.

7 **MR. TATUM:** Okay. Thank you very much,
8 Representative. No further questions.

9 **THE WITNESS:** Thank you.

10 **REDIRECT EXAMINATION**

11 **BY MR. GARZA:**

12 Q Representative, you were asked about the strategies that
13 were used by certain legislators in the 2003 redistricting
14 battle; do you recall those questions?

15 A Yes.

16 Q About certain members going to Oklahoma and other members
17 of the Senate going to New Mexico?

18 A Yes.

19 Q Do you know if those strategies ultimately succeeded in
20 preventing a new redistricting bill from being passed?

21 A I believe they were unsuccessful.

22 Q And do you know --

23 A As far as I recall.

24 Q And do you know if that redistricting bill was challenged
25 in the courts?

1 A I believe it was.

2 Q And you're aware that it was declared unconstitutional by
3 the United States Supreme Court?

4 A I think I recall that, yes.

5 **MR. GARZA:** No further questions.

6 **THE WITNESS:** Thanks.

7 **THE COURT:** Anything further? Thank you, sir, you
8 can step down.

9 **THE WITNESS:** Thank you, your Honor.

10 **(Witness steps down)**

11 **MR. DUNN:** Your Honor, at this time we call
12 Representative Ana Hernandez which -- who will be examined by
13 my co-counsel, Emma Simson.

14 **THE COURT:** Good afternoon or evening now. Would you
15 raise your right hand?

16 **ANA HERNANDEZ, PLAINTIFFS' ATTORNEY, SWORN**

17 **MS. SIMSON:** Good evening, your Honor. Emma Simson
18 for the Veasey/LULAC Plaintiffs. Good afternoon,
19 representative.

20 **DIRECT EXAMINATION**

21 **BY MS. SIMSON:**

22 Q Could you go ahead and state your name and where you
23 reside for the record?

24 A Ana Hernandez, Houston, Texas.

25 Q And can you give us a bit of background about yourself,

1 where you grew up, where you went to school, that sort of
2 thing?

3 A I was born in Reynosa, Mexico. And when I was about one,
4 my family came to the U. S. on a visitor's visa. We overstayed
5 our visa and were undocumented until the passage of the
6 Immigration Reform Control Act of 1986. We were able to become
7 legal permanent residents. And when I became 18 -- turned 18,
8 I became a U. S. citizen.

9 Q And when you became a citizen, did you receive any sort of
10 documentation to prove your citizenship?

11 A I received the naturalization certificate.

12 Q And if you were to lose that document or it were stolen or
13 something happened to it, do you know how much it would cost to
14 replace that?

15 A The fee changes over the years and I believe it's
16 currently about \$345 to request a replacement of that
17 certificate.

18 Q Do you know others who became citizens after being born
19 somewhere else and who would also have to pay \$345 to replace
20 that type of document?

21 A My family, amongst others.

22 Q Okay. And then did you eventually run for office?

23 A Yes.

24 Q And what age were you when you ran for office?

25 A When I started to run -- started the campaign, I was 26

1 and elected at 27.

2 Q Okay. And have you been a representative ever since?

3 A Yes.

4 Q For what --

5 A Since December of 2005.

6 Q For what district?

7 A District 143.

8 Q And can you describe where that district is for us?

9 A It is east Houston, east Harris County. I have about a
10 quarter of the City of Houston. The others include
11 municipalities of Jacinto City and Galena Park and
12 unincorporated areas of Harris County and Channelview.

13 Q And what are the demographics of your district?

14 A It's a majority Hispanic district. It's 73 percent
15 Hispanic, 13 percent African American, and 13 percent White.

16 Q And would you describe it as working class, middle class,
17 upper class?

18 A It is. It's a district along the ship channel in Houston,
19 along the petrochemical capital, and it is a working class
20 district.

21 Q Okay. And we're here today obviously talking about SB 14.
22 Do you recall when that was passed in the legislature?

23 A 2011.

24 Q And what committees were you on in 2011?

25 A I was on the Elections Committee.

1 Q And did -- I presume the Elections Committee considered
2 the voter ID bill?

3 A They did not. As mentioned earlier, there was a select
4 committee that was created to address the voter ID issue.

5 Q Would you normally expect the Elections Committee to
6 consider a bill like voter ID legislation?

7 A Considering they had in previous sessions, I expected it
8 to go to the Elections Committee.

9 Q Did you ever know why the Elections Committee was not
10 given the bill?

11 A No.

12 Q So can you tell us or describe for us the atmosphere of
13 the 2011 legislative session?

14 A It was a tense session. As was mentioned earlier, we were
15 facing a \$27 billion budget shortfall and immigration was also
16 a very hot topic. And sanctuary cities was placed on the
17 emergency items by the -- declared an emergency item by the
18 Governor. And just the entire session we saw a lot of anti-
19 immigrant bills that were filed, including English only bills,
20 and comments that were made about immigrants.

21 Q And can you tell us what the sanctuary cities bill was
22 about?

23 A I'll finish the comments that were made about immigrants,
24 bringing leprosy to the country, bringing other diseases, being
25 a burden on the -- on our government. And I took that very

1 personally because I am an immigrant.

2 Q And can you tell us about the sanctuary cities bill?

3 A It's a bill that in my opinion was unnecessary considering
4 that we don't have sanctuary cities in Texas. For instance in
5 Harris County, they do inquire about your legal status when you
6 are arrested.

7 Q Did you have any concerns about the impact of a sanctuary
8 cities-type bill on your constituents?

9 A I did. I mean, as an immigrant, I remember my family
10 living in fear when we were in undocumented status. I mean,
11 fear of even going to the grocery store because there were
12 immigration raids at that time. So we -- I believe that
13 passage of the sanctuary cities bill would eliminate that
14 cooperation between law enforcement and the immigrant
15 community.

16 Q What about the English-only bills? How did you feel about
17 those?

18 A I also feel that it was sending the message that we
19 weren't welcome, that those immigrants that spoke another
20 language -- for instance, Spanish was my first language -- that
21 we're not welcomed in this country.

22 Q When you say you felt like "we" weren't welcome, are you
23 referring to both -- people who have become citizens who are
24 immigrants?

25 A Yes. I mean, as a citizen, if you're -- if you can't read

1 English, I mean, they were basically saying you can't be in our
2 state.

3 Q Now, in the course of being a legislator, do you talk to
4 your constituents about the issues that the legislature is
5 considering?

6 A I try to keep in close contact with my constituents and
7 attend different events.

8 Q Did you ever talk to constituents about voter ID
9 legislation?

10 A I did during session -- I mean, there was a lot of
11 coverage -- news coverage, and so that was the topic of
12 conversation when I came back to the district. And initially
13 they would ask, well, what's the big deal, you know, for asking
14 for photo identification. But once we discussed it further and
15 I explained that it was a very restrictive list of voter -- of
16 acceptable forms of photo ID, then they changed their opinion
17 about it.

18 Q Okay. And what was the -- turning to the SB 14 debates,
19 what was the tone of those debates?

20 A It seemed like there was no desire to have a discussion
21 about the issues that were being raised through amendments.

22 Q Did you offer any amendments?

23 A I did.

24 Q Do you recall how many?

25 A I believe two.

1 Q Did you think at the time that you introduced those
2 amendments that either one of them would pass?

3 A I was hoping they would. I mean, one was dealing with
4 women that had been recently married or divorced and I was
5 going through a similar situation and changing my name and
6 making sure that when a woman had just been married or divorced
7 and was going through that name change process, that they
8 wouldn't be denied the right to vote and could vote by
9 affidavit.

10 Q And what was the other amendment about?

11 A The other amendment was to allow federally -- a federal
12 government-issued ID as a form of voter identification.

13 Q So you mentioned that the tone of the debate, it seemed
14 like there wasn't really a debate. And so did you expect that
15 either of those would pass?

16 A I was hoping they would. I mean, I offered them hoping
17 they would pass.

18 Q And did they pass?

19 A They did not.

20 Q During the legislative debates, did you ever hear anyone
21 say that one of the purposes of photo ID legislation is to stop
22 non-citizens from voting?

23 A There were a lot of comments made about that.

24 Q Okay. Did your -- were your parents here as a -- before
25 they -- did they -- you -- they ultimately obtained

1 citizenship, did your parents ever attempt to vote before they
2 became citizens?

3 A No. My parents were citizens and weren't participating in
4 elections until I became involved in politics.

5 Q And you talked for a moment about the fear that you felt
6 when you were in undocumented status. Do you think that non-
7 citizens are attempting to vote illegally or successfully
8 voting illegally?

9 A No.

10 Q Why not?

11 A They are living in the shadows. They don't want any
12 contact with the government for fear of being deported because
13 that -- I mean, my family was afraid to even go grocery
14 shopping much less attempt to illegally vote.

15 Q Do you think that SB 14 was about race?

16 A I mean, considering the information that was available and
17 the minority community and the impact it would -- negative
18 impact it would have on the minority, I do believe it was about
19 race.

20 Q Are you aware of any other election changes, recent
21 election changes, that may harm minority voters?

22 A I -- there -- I grew up in Pasadena and they recently made
23 a change to their city council makeup and changed two district
24 council seats and made them at-large seats.

25 Q And do you know the demographic population of Pasadena?

1 A It's a majority Hispanic city, but the -- there is a
2 higher voting participation among Whites.

3 Q Why do you think that is, that there's higher voting
4 participation among the White population there?

5 A Well, just considering, I mean, my family's situation and
6 many other families in Pasadena, they're busy working. And,
7 for instance, my dad still works at a refinery. He does shift
8 work and so he has 12-hour shifts, he does them five days in a
9 row, and so it makes it very difficult when you have that type
10 of work schedule to participate in elections.

11 **MS. SIMSON:** Thank you. I have no further questions.

12 **MR. SCOTT:** The State has no questions for this
13 witness.

14 **THE COURT:** All right.

15 **MR. SCOTT:** Thank you for your service, ma'am.

16 **THE COURT:** Thank you, ma'am. You can step down.

17 **(Witness steps down)**

18 **MR. ROSENBERG:** Your Honor, we have a choice. We
19 have a video which might go a little past 6:00.

20 **THE COURT:** Okay.

21 **MR. ROSENBERG:** We can do some readings and we can
22 perhaps calibrate those a little better. It's up to your
23 Honor's pleasure, so to speak.

24 **THE COURT:** Yes. Like how much past 6:00?

25 **(Mr. Rosenberg confers with co-counsel)**

1 **MR. ROSENBERG:** Oh, 28, so we would basically go
2 about three minutes past 6:00.

3 **THE COURT:** Yeah, whatever you want --

4 **MR. ROSENBERG:** Okay.

5 **THE COURT:** -- to do is fine with me. I don't have a
6 problem with that.

7 **(Mr. Rosenberg confers with co-counsel)**

8 **MR. ROSENBERG:** It would go to around ten after 6:00.

9 **THE COURT:** It's up to you all. If you all want to
10 do that or the other.

11 **MR. HAYGOOD:** Your Honor, the United States would
12 introduce its next witness as a video testimony of Naomi
13 Eagleton, and that video has been labeled as Plaintiffs'
14 Exhibit 1095. And I have a copy of the excerpts from the
15 transcript. And if you allow me to approach?

16 **THE COURT:** Okay.

17 **(Videotaped deposition of Naomi Eagleton played from 5:38**
18 **p.m. to 6:06 p.m.)**

19 **MS. WOLF:** Your Honor, the Defendants will also
20 present some video testimony from Ms. Eagleton.

21 **(Videotaped deposition of Naomi Eagleton played from 6:06**
22 **p.m. to 6:16 p.m.)**

23 **THE COURT:** All right. Is that it? That was a great
24 way to end the week.

25 **(Laughter)**

1 **THE COURT:** So 8:00 o'clock Monday morning then.
2 Anything else? Thank you, have a good weekend. You're
3 excused.

4 **(This proceeding was adjourned at 6:16 p.m.)**

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